THE

Influence of Religion

IN THE

DEVELOPMENT

OF

JURISPRUDENCE.

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OF

JURISPRUDENCE

BY

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INTRODUCTION.

Religion finds its way into the law as the best of all morality, first, through the *legislator*, who inquires what the law *ought* to be; second, through the *judge*, when he can discover no rule of positive law, or finds that positive rules conflict, or that their interpretation is doubtful; or, third, through the *lawyer*, in cases when the law as prescribed is indefinite or obscure. The help that he may get from religion in such cases will prove the best in the end. "In every country which acknowledges a revelation, almost every precept of the law which has emanated from a divine source has been over and over again acknowledged by the human sovereign authority. The Koran and the Shasters are the law of the Mohammedans and Hindoos, respectively, in India. The precepts of the Bible have been applied to the institutions of daily life by ourselves, and there has been a tendency rather to strain than to contract the application of the Jewish law to

the wants of modern society."[1] The legislation of christendom has so long been on the basis of the divine law, and has incorporated so many of its precepts, that lawyers lose sight of it as a religious element. The book of which these pages are an abstract has been written to show a part of the debt which the law of the lawyers and the judge-made law owe to religion. And as in the past, so in the future, the religious worships of the world will keep alive these religious sentiments and convictions out of which comes a law-making morality. The laws of society will never rise above its morality, and its morality will never rise above the purity and enlightenment of its religion. According to his God so will be the judge; according to his religion so will be the law. This is illustrated by the diagram at the end, where it is seen that society goes down as the lines of ancient philosophy and force fill, and those of the ancient religions fade; and that exactly as the lines of a true religion fill, so they absorb the lines of force and philosophy; and society, covering the interests of law, liberty, and equality, resistlessly advances and abides. Wishing to avoid the pretense of

[1] Markby, El. Law, Ch. 11, Sec. 85.

being wise above what is written, acknowledged authorities have been frequently cited, and their language freely used. In preparing this abstract it has been found difficult to make the argument as clear in the text as the author felt it to be in his mind, and in the manuscript from which it is abridged.

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CHAPTER I.

Law and the Lawgiver.

"The Law is our schoolmaster."
"There is One lawgiver."

Law is will. Will is one as the sun: law is many as the rays. As every ray is all sun, so every law is all will.[1]

Law implies a lawgiver, unless we regard the word law as a mere convenience to signify only a blind sequence of things self-evolved, self-sustained, and self-destined. The general thinking of mankind has been that over all things there is a supreme intelligence, issuing to matter and mind the law of their being, and that this law is the persistent unfolding of the will of the lawgiver. Law is not something objective or apart from the lawgiver—it is not the expression of his will—it *is* his will itself. In this view, gravitation, for instance, is not a force apart from the Lawgiver, but it is his will—something he may change at his pleasure. As no man's will is apart and above himself, so the will of the Lawgiver is not su-

[1] "There are diversities of operations, but it is the same God which worketh all in all." 1 Cor. xii:6.

preme over himself. What we call the laws or forces of nature are the omnipresent, perpetual law-making, the continuous willing, a living law, the unadjourned legislature of God's mind. There is no moment when the law is so fixed as to be unrepealable—it is never anything but will. The statutes of a State are but the documentary evidence of law : the law itself is the invisible, impersonal, continuing will of the people as law-makers. Thus, omniscient and omnipotent Will is law. Law is the rule of right ; right is the rule of con science ; conscience is a blind guide, following its appointed threads of faith and worship back through the labyrinth of life to the Father's hand. Law may be from religion, but religion is never from law. Rightness is the principle of God's one law, and each relation and event has its own principle and evolves its own rule. Relations and events originate either in sacred faith, or in secular force—never, traceably, in philosophy.

Sometimes together and sometimes apart, religion and law developed into their present limits and relation. Taking our stand with Justinian, over 1,300 years ago, we observe two streams of ancient law flowing toward us, and mingling into one grand river. One of these streams comes from the Mon-

otheistic Hebrew, and the other from the Polytheistic Aryan. Thousands of years ago, these two great races, then one, went out from their original hive in Central Asia—the Hebrew race, working out its civilization, and especially its law side, under the worship of its one God, made its home and history along the Eastern shore of the Mediterranean Sea; the Aryan race, to which we belong, working out its civilization, and especially its law side, under the worship of its many gods, ancestral and Olympian, dispersed toward its home in the West and the North. From these two races and these religions have issued the two streams of law we have mentioned, uniting, under the influence of monotheism, at the beginning of the Christian era, in one broad, enlarging sea of modern civilization.

CHAPTER II.

Law and the Ancient Family.

1. As a Corporation.
2. As a Kingdom.
3. As a Church.

— The family.

The history of law shows that it has evolved or shaped itself either through faith or force, under three creating and fostering conditions and influences—the Family, the State, and the Church.

Twenty-five hundred years before Christ, it was the belief of the Aryan race, from which the Greeks and Romans descended, as well as other Europeans after them, as seen in all ancestral and phallic worship, that the father of a family, as its generator, became its creator, to be obeyed as a king during his lifetime, and adored as a god at his death. Indeed, Father, King, and God were one. His soul was supposed to be buried with his body, and to take perpetual possession of the field containing his tomb. To satisfy the hunger and thirst of this soul, now become that of an ancestral

god, food and wine were, therefore, to be regularly offered. To neglect or fail in this sacrifice would subject the dead to dreadful torment. None but blood kin were permitted to make these offerings. The presence of a stranger at these services was profanation, hence the sacrilege of adultery. The offerings were to be made by the family, in the presence of the family only, and only to the family ancestors or gods.

This religious belief made the family three things: (*a*) The son, as *a corporation* sole, represented the family, as a corporation aggregate, as the king does the realm, and, in behalf of all, held the undivided property of all. To keep up the sacrifices at the ancestral tombs, this domestic corporation was perpetual. Wills were unknown; because the head of the family could not devise property which he held only in a corporate capacity. The death of the male head of the family in no way affected its continuity or property. The field, with its tomb of the dead, was the home of the dead and living members of the corporate family. The sacred fire represented the invisible members as the providence of the family, and the son, as Priest, represented the visible or living members of the aggregate family. (*b*) Because of this perpetual worship and this perpetual Priesthood,

the ancient family was also *a church*, full of the elements of divine authority and perpetuity of a church. The first-born son was the Priest, and alone had the divine power to begin and continue the generation or creation of a family. Daughters might, and indeed were required to, worship with the sons, and keep alive the ancestral fire; but, like the vestal virgins in other and later religions, their office expired with their marriage, or rather was transferred to the altar of the husband. For a woman to marry was to change her religion—was to give up her own gods and worship others. Therefore, the consent of these gods on both sides must be obtained. The male head of her own family, by appropriate religious services, such as eating the sacrificial cake at the tomb of the ancestral gods, absolved her from all duties at her own home, and by similar services at the tomb of her husband's ancestors, she was accepted to serve at their sacrifices. She withdrew from one church and joined another—or was given by one church to another. This church idea of the family accounts for the religious idea of ancient marriage. Her ancestral gods consent that she may go, and they will trust to others of the family for their food and wine, and her husband's ancestral gods consent that she may come and offer food and

wine, and feed the sacred fire for them as she had at her own home. It was thus a sacrament, and, as such, could only be dissolved by a sacrament. Upon a divorce the gods had to be consulted on both sides, as at the marriage. (*c.*) The family was also a *kingdom*. The head of this kingdom, after the father, was the oldest son, who was to be the next god. The parental power—*patria potestas*—was the royal power of a king, and the divine power of a god. The bond of the family was not that of nature, as with us, but it was sternly one of religion placed over nature. The father, having generated the family, or created it, was its king, and god, and so, absolute. Having created his children, he might kill, sell, or enslave them. He might do with his family what we suppose a creator might do with his creatures. To see, in these genealogical lines of fathers, the lines of gods, explains the tremendous power ascribed to the father over all his own. If a father exposed his child or put it to death, he did so as its god.

This was the era when religion regulated the laws of the domestic relations, the rights of property, and the rights of succession.

CHAPTER III.

Law and the Ancient State.

1. Under Rome as a Kingdom.
   (*a.*) The religious period, from Romulus to Servius, B. C. 753–578.
   (*b.*) The secular period, from Servius, B. C. 578, to the Republic, B. C. 509.
2. Under Rome as a Republic.
3. Under Rome as an Empire.

1. Under Rome as a Kingdom.

(*a.*) *The religious period.*

The first or religious period began with Romulus, B. C. 753. Neither the extent of the family as a household, or as a *gens* or clan, nor the peculiar and exclusive character of its religion and laws, could be so expanded and applied to the tribe or the State as to originate *political* laws. The State recognized the family religion and laws as original and exclusive for all *domestic* rights. Changes in them were the work of centuries. The will of the dead ancestors and that of the living father as generator—as god—was the

law of the family The father had original, exclusive, and absolute jurisdiction over the life, liberty, and property of the household family, or of the *gens's*, if at the head of one. For the common people there was at first no law, because they had no religious ancestors, no altars, no worship. At length, they, for the want of other gods, made themselves gods out of the elements of nature, and called them Jupiter, and Juno, and Neptune, and Œolus, and so on; and united them into a synod on Mount Olympus. Numa built the temple of Janus, instituted the several orders of priests, as the *flamens* to serve the gods *Jupiter*, *Mars*, and Quirinus; the *vestal virgins;* the *augurs* to observe the flight of birds, and a college of pontiffs to preside over this State religion. But this religion had no strong hold upon the hearts or consciences of the masses, and when affairs did not satisfy the people they, in revenge, stoned the temples of their gods. Such was the religious state at the close of the first period under the kings. It was the era of the ceremonial and sacerdotal law of the State religion. The family laws by the family religion continued the same as before the State was formed.

(*b*). *The political or secular period.*

The second period begins with Servius Tullus, B. C. 578. Without formally repudiating religion, he gave a secular constitution to the people, and incorporated the domestic with the civil order—the sacred with the secular force, and made law rest, not upon religion, but upon the social expediencies of national growth. This second period was the era of constitutional law; and, forward from Servius, extending through the regal, republican, and imperial eras, is marked by two features: 1. By a constant increase of secular force; and 2. By as constant a decrease of sacred faith.

2. Under Rome as a Republic.

The increase of this secular force thus begun and continued on from the regal period, appeared in (*a*) the class-legislation of the patricians, based upon the religious and social *traditions* of households and clans; (*b*) the laws, political and general, extorted from the patricians by the plebeians, based upon the natural *instinct* of equality of all men; (*c*) in the want also of any sufficient moral power in the philosophy of the age to furnish principles of enduring law; (*d*) and in the decay of religion.

(*a.*) *The class laws of the patricians.*

The patricians, as their name implies, were the *patres*—fathers—of the old families, the first chiefs—land-owners—that had homes, a religion and laws. Of course, this religion and these laws, at first, could only regard the immediate members of the household-family and the clan-family. Strangers, illegitimates, and slaves could not, in the nature of things, share in them. Patricians are notorious in history as the haughty oppressors of the poor, and so no doubt they became; but at first their exclusiveness was justified, *not* in their *pride*, but their *religion*. To understand ancient law, we must go back thousands of years to the beginning of society, and see a father surrounded by his family, guarding it most sacredly; and on the outside a set of cast-offs of humanity, without homes, altars, gods, or worship. These plebs were nobody, and had nothing, and were accordingly powerless. But, at length, one patrician family joined itself to another, either because of intermarriage, or for mutual protection, and the *gens* was formed, and government was founded. Society did not enlarge itself from within, like the expansion of a circle, little by little; but, like a pyramid of cannon-balls, it rose from units of families

as a base, expanding families into clans or gens, and confederating gens into tribes, and tribes into cities or states. Each superposed unit or group of power, once formed, was politically independent of the one above or below it. Political power was not diffused like color in a bowl of water, through and identical with it; but the clans, tribes, or cities, like marbles in a bowl, or states in the United States, each self-centered, self-contained self-regardful, were formed to be each alone empowered to make, alter, adjudge, and execute laws in their own respective sphere. The state, like the ball at the apex of the pyramid, represented the supreme general power of all the series or groups below it. Its powers were automatic within its delegated sphere. Each ball had its own place. Consolidation of the more distinct groups was impossible. Neither the gods nor their worship could be mixed. Religious diversity precluded political unity. Solidification was practicable only when these family religions expired, or became one with the worship of the outside masses. The patrician government was therefore a confederation of wholes rather than a consolidation of parts. But, centuries after, when society had grown in all directions, through its colonizations,

its commerce, its wars, and its arts, the exclusive religion and consequent laws of ancestral worship began to weaken, the more general worship of the Olympian gods—Jupiter, Œolus, Aurora, and the like—began to take its place, and the law then sought to disengage itself from sacred faith, and to take its form from secular force.

(*b.*) *The plebeian instinct of equality originating law.*

For the first 500 years, from Romulus to the creation of the Prætor Peregrinus, the struggle was between the two classes of the Roman people for status. They were contending for a political constitution, and for laws under it exclusively for themselves as apart from and above all other nations. During the second 500 years, from the appointment of this prætor, B. C. 247, to the Antonines, the Romans were making law on the basis of hard common sense and universal equity, which all nations might well adopt.

Both in Greece and Rome the political instinct of all classes, and especially of the plebeian, early became predominant, and gradually overrode all merely family views of religion. When the straggling elements of society, the strangers, freedmen, and illegitimates, multi-

plied in numbers and became wealthy and united into a class, and were a society of their own, they became confident of their power, and demanded such democratic changes in the patrician religious and class laws, and law procedures, as would admit them to a social equality with the first families, and a full political equality in the administration of public affairs. The success of these demands—the first, consummated at the passing of the Canulian law, 445 B. C., legalizing intermarriage of the plebeians with the patricians; and the second, at the passing of the Ogulnian law, 300 B. C., abolishing all class distinctions, and making the plebs eligible to all political offices, changed all subsequent law. The influence of sacred faith almost, if not entirely, disappeared from the law, and it became what secular force happened to make it. During the entire period of the Roman Republic, law grew out of war-force and the application of the rules of logic to human affairs, rather than out of religion; and the popular instinct of right and equality was seeking to place, and so far as mere logic could point the way, did place the law of political relation and of contracts upon the basis of reason and social equality. When imperial Cæsar seized the life of the republic, it was the boast of Rome,

that for nearly 500 years since the era of the Twelve Tables, all men had been equal before the law. The existence of slavery, and the *Patria Potestas*, show how partial was this equality. Whatever it was, it was lost under the entire secularism of the Cæsars. True liberty came only with Christianity, as we shall see hereafter.

(*c.*) *Failure of philosophy.*

So far from Stoicism, as has been frequently and hastily said—or any other philosophy—affecting constitutional law, or any other law, except in its logical form, it would not be difficult to prove the reverse to be true. It furnished no principles. Heron, (Jurisprudence, p. 236) says: "The great jurisconsults of Rome, Gaius, Paulus, Papinion and Ulpian, were all educated in the school of Stoicism. And they introduced into law the maxims which had been hitherto buried in the books of the philosophers." It would have been more satisfactory if he had named some of those maxims. It is questioned whether in a single instance the jurisconsults themselves made any allusion to the philosophers. It is rather to be concluded that with the jurisconsults, philosophy was a mere accomplishment—something apart

from professional learning—a sort of literary fashion—than a real aid to legal pursuits. If the jurisconsults and the philosophers held opinions in common, it was a coincidence merely. Philosophy was not earnestly studied in the days of the jurisconsults. Marcus Aurelius was the last Stoic of any repute, and with him Stoicism went out of fashion. The greater probability is that the lawyers taught the philosophers than that the philosophers taught the lawyers. The great germinal principles of law were evolved from secular events long before the era of philosophy.

God is primarily subjective and secondarily objective. With Him, principles are first. But man is primarily objective and secondarily subjective. With him, facts are first. God makes the law before the event; man can only make the rule after. As history accounts for law, there is first the event, or occasion, and then the rule. The divine will or reason is the principle and *nexus* underlying both. Facts must be before philosophy. The true lawyer gains the principle of law; the practitioner is content with the rule; and the pettifogger, indifferent to and below the principle, learns the rule only to pervert it.

If the jurisconsults had been philosophers before philosophy became corrupt, there would

have been whatever promise of conservation of law such philosophy might give ; but law was before philosophy, especially political or constitutional law : Solon was before Socrates. But few men, if any, can be great in two things. None of the philosophers were jurisconsults, and none of the jurisconsults were philosophers. Philosophy, or religion, to mould law and institutions, must, like the sun, be the idea of the age. This is the reason Christianity so saturates the law ; it has been the great generative idea of 1,800 years, diffusing itself in every direction, and, like space floating the worlds, has enveloped all social movements.

As logic makes lawyers, but not law—systems not principles, so the debt which law owes to the philosophers, "Aristotle and the Stoics," would seem to be in training the mind of the jurisconsults, as they did those of others, to clear methods of thought with which to polish and embellish it. The true growth of law comes from the social morality of events, and not from intellectual dialectics. The testimony of Gibbon is, that the Scævolas "learned law from use and experience, and from the Portico the Roman civilians learned to live, to reason, and to die ; but they imbibed, in some degree, the prejudices of the sect ; the love of paradox, the pertinacious habits of dispute, and a mi-

nute attachment to words and verbal distinctions. The superiority of *form* to *matter* was introduced to ascertain the right of property; and the equality of crimes is countenanced by an opinion of Trebatius, that he who touches the ear touches the whole body; and that he who steals from a heap of corn or a hogshead of wine is guilty of the whole theft."

The period of legal logic during the time of the philosophers, from Cicero to Epictetus, and after the general decay of all religion, illustrates the fallacy of that as well as of this age, that mere "knowledge is power." The power man most needs comes from the moral side of his nature, not its intellectual. There is no connection between right and wrong and the multiplication table. Men never do right because they know the calculus. Opinion does not control action until it has warmth and moral energy. Conduct comes out of the emotions, not the mental persuasions: Law comes out of the necessity of events, not from the advice of Philosophers. This most unfortunate and destructive devotion to a bald, secular, common-school system, divorced from religion, is that dependence upon mere intellectual culture, which Herbert Spencer calls "the superstition of the age." It has become a proverb, that "men know the right,

yet the wrong pursue." Every direction of society not toward God is fatally wrong. True social progress is many-sided; but whatever else may be lacking, the experiment of modern civilization, judging the future by the past, will most certainly break down, if anything be lacking on its religious side. Men do not so much need mental light as moral power. Rome fell not from ignorance, but from immorality. Progress absorbs its aliment, and receives its inspiration from faith or force, not from systems of opinions. Facts or events are real points gained; opinions vary according to each one's mind. Plato and Cicero wrote systems of laws, but no one ever found them practicable. Early Stoicism in Rome shows the insufficiency of mere intellectualism. Men often think one way and act another. Even Seneca, the Stoic philosopher, and Seneca, the sycophant of Nero, are two different men. So are Marcus Aurelius the Stoic, and Marcus Aurelius the Emperor. It is unnecessary to describe fully the fearful demoralization of Rome, saddest of all during the days of philosophy. At that time the very idea of liberty died. As there were no new laws made, the logical skill of some of the jurisconsults occupied itself in giving system and scientific limits to the laws of the old or more virtuous days.

(*d.*) *Decay of religion—Family religion.*

But not only did *political events* secularize the law, but so also most materially did the decrease of sacred faith in the decay of religion, and first of *the decay of family religion.* This did not exhibit itself first in the weakening of the devotion of the living son for the memory of his dead father, or the change of any law before based upon his worship, but first in the indifference he felt for his remote ancestors. As his mind ran back along the line of his ancestral generators—creators—gods—his knowledge of them lessened more and more, until, with their names, it would altogether fade away. For his remote ancestors he would feel scarcely any reverence at all. As the number of his ancestral gods increased in the past, his piety would correspondingly decrease for them in the present. His own father alone, whose divine power he had immediately received through generation, would naturally, in the end, seem to be his only god. It was then true, as the Aryan afterward learned in a more enlightened way from the Hebrew, that the deepest reverence finds a one Father in a one God, and a one heavenly God in a one heavenly Father. Thus, standing at the tomb of his dead father, he found in that his only god, and there his only

worship, and in him his only providence. If he looked back, only dim ancestral traditions moved his reverence. If he looked out into general life, and at the altars of the city gods, he saw delusion, and felt even political devo-
tion chilled in the

— Olympian religion.

It will be remembered that each one in those days had two sets of gods—one his dead ancestors, and the other the gods he made up for himself, deifying either some dead hero or some force or element of nature. The former gave law—the latter gave none. And so as the latter also ran to decay, it left law to grow uninfluenced by any religion, true or false—ancestral or Olympian.

During the republican period, the law was liberalized largely by the progressive limitation of the *jus civile*, and extension of the *jus gentium*. It was effected to a great extent by the agency of the Prætor, and through the rules of practice set forth in his annual edicts. Old laws were not so much formally repealed as they were modified. The laws had grown out of events. The logic of Aristotle modified their working, and put them in shape.

3. Rome as an Empire.

Then came in, not the interest of the governed, but the sole will of the governor as the law of society, and constitutional law was what the remorseless conqueror chose to dictate, when he had wiped his red sword on the white shroud of his victim. Papinian, Ulpian, and the other civilians wrote commentaries on laws, and especially those of the family, inheritance, and property, that began in the faith of most ancient times; the force of which continued to their day. Up to the time of Cato, the Scævolas and Sulpicius, law had been the legislation of religion, or of stern virtues, in the vicissitudes of political struggles; but under the empire it became a compliance to despotism. Even the philosophers pandered to power, and betrayed the trusts of civilization. Stoicism, for 100 years, from Cicero to Seneca, was not the conservator of morality. Society in its merely secular grooves ran rapidly down hill. Slavery, gladiatorial combats, innumerable divorces, disruption of all family life, show what it became when separated from religious sanctions. Pliny says of the youth of Rome in his day: *Statim sapiunt; statim sciunt omnia; neminem verentur; imitantur neminem; atque sibi exempla sunt.* (They think they know all

things; that they understand all things; they revere no one; they imitate no one; but are an example, a law, unto themselves.)

This era began with the age of the law schools, and ended with the stagnant age of the codes.

CHAPTER IV.

Law and the Church.

1. The Christian Religion as Lawmaker.
   (*a.*) Christian morality.
   (*b.*) Christianity and philosophy compared.
2. The Christian Church as a Lawmaker.
   (*a.*) Its priesthood.
   (*b.*) Its canon law.
   (*c.*) Its destruction of feudalism.

1. The Christian Religion as Lawmaker.

This brings us to an entire revolution in the movements of society. Christ came and revived the religious sentiment of the world. While secular force increased and centralized in the emperor, a mightier parallel was by its side. The old secular force and the new sacred faith went on together—the State and the Church—co-workers for man and God. We must remember that when the State was added to the family, it did not supplant it or its laws; and when the Church was added to both it supplemented what was good in each, and corrected, as far as it was permitted, what was incompatible with the advancing civilization.

Of late it has been said that there is no Christianity in our law. It might just as well be said that there is no sun in the ripening wheat—none of its color in the rose, or its wine in the grape. But no force in nature works alone. "All things work together for good." Even man is a little cosmos, having in his bones and muscles all the elements of nature—its earths, its gases, its energies. Everything past contributes to everything present and future. As to law, it has come out of all the sacred faiths of the past, and all its secular forces. Christianity has revised all preceding moralities, and joined with them its own divine basis of Jewish law, and its new and more vitalizing basis of Christian motives. The difference between Christian and other moralities is that that draws its light both from above and within, and these only from within.

We have seen that the ancient Aryan family was an autonomy, and its laws of property and domestic relations were evolved from its religious belief. The ancient State was also an autonomy, but its laws originated in political revolutions. Under republics, as well as under monarchies, *might* prescribed the laws of constitutional right, centuries before the philosophers investigated and defined their morality. But Christianity, adding a Hebrew element to

Roman civil and organic laws before it, reversed the whole philosophy of law, and placed right, not on brute force, or expediency, or consent, but on the essential and eternal rightness of the Divine will. We must be careful to note the distinction between the influence of Christianity *as a morality*, and Christianity *as a Church.*

(*a.*) *Christian morality.*

For the first 300 years, from Christ to Constantine, the influence of Christianity was principally as a religion, and scarcely at all as a church. It established itself, in its first movements, by its theological creed, its moral maxims, its sacramental worship, and the devoted lives of its disciples. The ancestral worship was exclusively for the family, the teachings of the philosophers were for the learned few, but the Christian religion carried its morality and its comforts down to the poor and obscure, and up to the distinguished and the rich. It stopped not in cities, but it went out into the hedges and highways of the world—it lingered not even in Asia, its home, but it went abroad into all the world, and preached its gospel, its moral ideas—its essence of municipal law—to every creature. The time had come for a new, wider, more enduring force in civilization and

law than that of any religion or philosophy ever before known—a force that had man for its subject and the world for its forum and jurisdiction—a force more organized and propagand than that of any previous intellectual or moral movement—a conserving, remedial, aggressive, hopeful, universal regenerator. Such was Christianity. It brought Jewish law and civilization down to an age and people when these new legal and civil forces could join in the moral care of the whole world, which, in their former exclusiveness, they could not do, and it added natural reason and divine revelation to the ancient family and political law of the Greeks and Romans. Solon had spoken for man in the counsels of mere human wisdom; Moses and Christ now spoke for God. Mars Hill, Sinai, and Calvary became the immovable thrones of eternal law. Christianity reunited religion, morality, philosophy, and law, which Socrates, 500 years before, had divorced, and made the law of human relations conservative by again making it divine.

Christianity, as a morality, affects law only as it shapes public opinion; but the new ideas respecting God, human hopes and responsibility in the future, and the new emotions of worship, give new motives to conduct; these new motives give a new morality, and this

new morality is absorbed as public opinion into new civil laws. It takes its chances, it is true, so to speak, with all other moralities, and is in our law only so far as it is held superior to them all: but this test it willingly encounters.

The necessity for law is in the selfishness of man. "Take any statute-book that you please, from the Sinaitic decalogue to the latest codification of modern legislators, and the things forbidden—murder, theft, adultery, and their cognates—spring from self disregarding the rights of other personalities, and into this are resolvable. Pass from overt acts to the virtues and vices of morality—cruelty, lust, deceit—what are these but self caring only for self, and closing its eyes to the existence of others as persons? In the self and non-self we find a principle, wide as the range of our conceptions, simple as all just principles are, determining the moral character of all that we do, say, or feel. The voluptuary, the miser, the tyrant, are stamped as vicious in this, because they are, each and all, absorbing into themselves the world around them to glut their insatiable cravings for pleasure, wealth, and power. *Things* and *persons*—in these words is a practical touchstone for us and our motives. The ideally vicious man regards no personality but his own. Others exist only for his pleasure,

or convenience, or interest. On the other hand, the unselfish see everywhere, in the world around them, the claims, not to be slighted, of beings like themselves."

This selfishness is, in Christianity, overcome, or least weakened, in the Christian's love of Christ. "The love of Christ constraineth us." In this is a new spring of action. Social energies have new tendencies, new spirit, new pleasures, new results to character. Repentance for past vices, faith in a divine Friend, new struggles to keep high supernal law, with respect to one's self and to others, form characters that demand far other laws than those which are formed upon principles the reverse of all this.

In the choice of its morality, the law has no partialities. Principles belong exclusively to no nation or creed ; but, like the sun, are for everybody and for all time. The law, like a lens focalizing all the light within its reach, makes them its own, whencesoever derived. As a moral eclectic, it regards all appropriations of foreign law as legitimate. As a law-making morality, Christianity is a propagand ; it is zealous, has new tendencies, extraordinary supernal helps, and convictions supreme over all theories. It is fraternal, philanthropic, and the inspiration to a new moral life of hundreds of

millions. But, after all the plausible theories of law, it is made by religion or events. As such, formed in a social atmosphere, suffused with Christian morality, based on Christian motives, it must have absorbed much from it; as it would of Confucianism in China, of Budhism in India, or of Mohammedanism in Arabia. As the sponge takes up water, so does law fill itself with the dominant morality around it.

There is much law, however, such as the construction of the terms of a statute or a contract, or the exposition of organic constitutions, the rules of evidence and practice, the validity of ministerial acts, and other purely arbitrary matters, which belong to logic, grammar, and rhetoric, where a rule rather than a principle is wanted, into which moral considerations scarcely enter, as they do in laws affecting the domestic relations, the laws of persons, property, and homes.

Thus Christianity, as a law-maker, spread itself everywhere as a new and living force. Its morality had new motives, new development, and new application. It was no merely human theory of conduct, upon the low plane of human reason, confined to the schools of a select few, and barren of practical results; but it had inherent power to realize and propagate itself, and claimed to be a revelation. All ages

have had their moral schemes; but none, like Christianity, was ever so self-helping, so all-helping, so simplified to common apprehension, and so earnestly and universally disseminated over the earth. Its maxims were for all classes and all nations, and it could, therefore, enter into the law of all ages.

(*b.*) *Christianity and philosophy compared.*

When Socrates separated morality and religion, and political law had developed actively, if not exclusively, under the stimulation of secular force, law grew no more after Cæsar came, and made that force supreme and absolute. But law began an unceasing expansion when morality and religion reunited at the incoming of Jewish thought to the European races, and Christ came and made the union triumphant. As Stoicism, a century after the death of Cicero, (who was an eclectic and not a Stoic) had risen out of its pettiness and rhetorical trifling, and bore a higher religious tone under Seneca, Epictetus and Marcus Aurelius, private law again took on more character in the commentaries of the distinguished jurisconsults, Gaius, Papinian, Paulus, and Ulpian; but Christianity, after it had been proclaimed from the throne of the Cæsars, took its permanent place in

the Hermogenian, Theodosian, and Justinian codes. When the new religion was free to speak, and men could be made to comprehend its divine morality and its administrative energies and aptitudes, it moved rapidly along the lines of civilization to its supreme place among all nations. All valuable and continuing perfection of law of social relations began when the Mosaic code of 1,500 years of age, so long known only to one race, was given to the world, and met the still older religion, polity, and law of the Aryan race, and the ideas of different ages, races, and schools of thought were compared and welded together in the intellectual activity and universal benevolence of the Christian religion.

At this era, three remarkable representatives of moral ideas taught in Rome—Paul and Seneca, A. D. 60, and Epictetus in A. D. 90. Two were philosophers, and had whatever advantage that could give them. They had a place at court. Paul was a foreigner—a hated Jew—he belonged to that despised class who dwelt in the low, dirty quarters of the Ghetto—he was a prisoner. May not the vaunted doctrine of the "survival of the fittest" be applied to the teachings of these representative men? With almost every advantage of fashion, friends, habits of race, and imperial tolera-

tion for the time, philosophy failed. At length Nero ordered Seneca, his tutor, to take his own life, and Domitian banished Epictetus and the philosophers. The later Stoics favored despotism. The influence of Stoicism as a sect became extinct, even while Marcus Aurelius, himself a Stoic, was on the throne. But Paul has impressed his moral teachings, involved in the religion of Christ crucified, upon the world of most cultured thought, as an increasing light in the most hopeful of all known civilizations.

Sir H. Maine, speaking of Stoicism as affecting civil law, reduces its moral force to the habit of "resistance to passion." But did Stoicism monopolize this self-control? Did not the Scævolas and others not Stoics, Cicero, the Eclectic, and other civilians of the republic "resist passion"? Law is in all ages what justice requires rather than what impulse would attempt. In other words, law is wisdom, not passion. So far as philosophy had any formative influence on law, it was as a logician, not as a moralist. The Epicurean based law, so far as he based it at all, on the drift of personal inclination and indulgence; the Stoic, subordinating human freedom to the will of a despot, rested it on the conclusions of logic and the intellect, (which could give only a rule, and not the principle) but

Christianity, accepting the best of all antecedent systems, and rising superior to the servility of Stoicism, bases law on the divine will, sought by the conscience, and in the moral relations of liberty, equality, and fraternity. The Stoics were logicians; but Stoicism had no improving influence on law because some of its private disciples were lawyers. So far from contributing to the great principles of universal justice, they pandered to despotism. Even Ulpian said that the pleasure of the prince had the force of law. With him, law rested on the basis, not of interest, nor of the natural equality of all men, nor on essential justice, nor on the divine will, but on the absolute will of one despotic man. A more servile principle cannot be imagined. Papinian alone, of those most noticed in the Pandects, is commended to the special gratitude of mankind for any intentional service in behalf of human liberty, and there was but little from him.

2. The Christian Church as Lawmaker.

(*a.*) *Its mission.*

Sir H. Maine says: "I am myself persuaded that the influence of the Christian church on law has been very generally sought for in a wrong quarter, and that historians of the law

have too much overlooked its share in diffusing the conceptions of free contract, individual property, and testamentary succession, through the regions beyond the Roman empire, which were peopled by communities held together by the primitive tie of consanguinity. It is generally agreed among scholars that churchmen introduced these races to wills and bequests, and the sacredness of contracts. The will, the contract, and the separate ownership were, in fact, indispensable to the church as the donee of pious gifts." (Hist. Early Insti. 104.)

The distinctive mission and work of the church, like that of its divine founder, is remedial—one of repair, of regeneration—binding up and sanctifying the wounds of humanity, perfecting and supplementing secular deficiencies, taking up the reins of power and authority that no other could or would hold—in other words, keeping society moving along the expanding lines of human progress. Its work was different at different eras. True to its law of inherent and essential conservatism, it ruled when there was no other to rule. It wore the tiara when no heads could wear crowns. When the civil law was forgotten at Rome, it made a code of canons for the government of its ubiquitous hierarchy. It did not anticipate its duty, mistake its opportunity, or unwisely at-

tempt what it thought the world would not permit it to accomplish. It educated the world when the world had nothing else in hand to divert its attention. When the world fought, and piled up the slain, and devastated homes, the church buried the dead, built hospitals for the sick and wounded, and asylums for the homeless and helpless. No labors wearied it, no dangers alarmed it, no sacrifices exhausted it. It was everywhere and for everybody, and for all times—*et semper, et ubique, et omnibus.* Its universality enabled it to teach all the families of men, one morality, one worship, one municipal law. As a lawmaker it sought only remedial ends. Its purpose was to preserve what was good in the laws it found in the world, and educate society, through its public opinion, out of what was bad. It set up liberty, equality, and fraternity as the end and object of all law. In the will of God, it pointed out the principle of law, and left the formula of its rules to grammar and the dialectics.

(*b.*) *Its priesthood.*

Christianity, as a church, had a preparation and a mission for civilization before unprecedented. Its organization was unparalleled and perfect. In all nations it was

one. It took priests, bishops, and popes from any and every class and nation where great abilities established the patent of a leader. Its work was made irresistible in the almost exclusive learning of its omnipresent priesthood.

Campbell, in his Lives of the Chancellors, (vol. 1, 405) speaks of "a long line of eminent ecclesiastics, who, with rare intervals, held for many centuries the highest judicial offices in the kingdom, and exercised a powerful influence over the destinies of the nation." Since the tenth century there have been 173 lord chancellors, 123 of whom were bishops of the church. One of these only, Cardinal Wolsey, was impeached. Of the fifty lay chancellors, five (1-10) were impeached, and four convicted.

Sir Mathew Hale says (Hist. C. L. 139): "The growth of Christianity in this kingdom, and the reception of the learned men from other parts, and especially from Rome, and the credit they obtained here, might reasonably introduce some new laws, and antiquate or abrograte some old ones, that seem less consistent with Christian doctrines." "It is easy to conceive," says Phillmore, "the prodigious influence which a body of men, educated like the clergy, would exercise upon every part of

jurisprudence, especially in the age of trial by battle and ordeals." The man who most radically affected the fundamental law of England, and restrained despotism in both church and state, was Stephen Langton, Archbishop of Canterbury, and the author of *Magna Charta*. Freeman, in his history of the English constitution, says of him: "The last good deed done by a pope toward England was when Innocent III sent us Stephen Langton." Though he was priest of the Church of Rome, in spite of the pope and king, he bravely took the side of the people and the barons. Like a true Christian, he gave all his influence to the amelioration of the condition of his fellow-man. He was a native of England. He might have thrived, had he fawned upon the king, betrayed his divine trust, and sided with oppression. But at that time, liberty and law had but few friends—none so powerful and true as the ministers of the church. "The historians of the age—all of them churchmen, most of them monks—are all but unanimous on the popular side. Prelates like Stephen, Robert Grostete of Lincoln, Walter of Cantelupe, of Worcester, were foremost in the good cause."

(*c.*) *Its canon law.*

"The canon law," says Blackstone, (1 vol. 82) "is a body of Roman ecclesiastical law rel-

ative to such matters as that church either has or pretends to have the proper jurisdiction over. This is compiled from the opinions of the Latin fathers, the decrees of the general councils, and the decretal epistles and bulls of the holy see; all which lay in the same disorder and confusion as the Roman civil law, till, about the year 1151, one Gratian, an Italian monk, animated by the discovery of Justinian's pandects, reduced the ecclesiastical constitutions also into the same method, generally known by the name of *Decretum Gratiani*. Subsequently, many others were added. Gratian's decree, Gregory's decretals, the sixth decretal, the Clementine constitutions, and the extravagants of John and his successors form the *corpus juris canonici*, or body of the Roman canon law. Besides these pontifical collections, which, during the times of popery, were received as authentic in this island as well as other parts of Christendom, there is also a kind of natural canon law, composed of *legatine* and *provincial* constitutions, and adapted only to the exigencies of this church and kingdom. The legatine constitutions were ecclesiastical laws, enacted in the national synods held under the cardinals Otho and Othobon, legates from Pope Gregory IX, and Pope Clement IV, in the reign of King Henry

III, about the years 1220 and 1268. The *provincial* constitutions are principally the decrees of provincial synods, held under divers Archbishops of Canterbury, from Stephen Langton, in the reign of Henry III, to Henry Chichele, in the reign of Henry V; and adopted also by the province of York in the reign of Henry VI. At the dawn of the Reformation, in the reign of Henry VIII, it was enacted in Parliament that a review should be had of the canon law; and till such review should be made, all canon, constitutions, ordinances, and synodal provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And as no such review has yet been perfected, upon this statute now depends the authority of the canon law in England." Phillmore says (Sect. 77) that "William the Conqueror incorporated the canon law of the church, as it then stood, with English institutions." Sir H. Maine says (A. L. 42): "The early ecclesiastical chancellors contributed to the Court of Chancery from the canon law, many of the principles which lie deepest in its structure." "The English common law borrows far the greatest number of its fundamental principles from the jurisprudence of the canonists." (Ib. 153.) The canonists introduced the expressions *jus ad rem* and *jus in re*.

(*d.*) *Its destruction of feudalism.*

Feudalism was martial law, and in its presence there could be no law but that of the will of the chieftain *inter arma silent leges.*

"The church, at first persecuted, and afterward encouraged by the state, had at last absorbed it. It was successively the foe, the ally, the sharer, and the engrosser of temporal authority. It was open to all; it was represented everywhere—in the hut of the serf, in the castle of the noble, and in the palace of the sovereign. Though the priest was separated from the state, he bound the members of it together; like cement, which, though different from the stones of the edifice, keeps every one of them in its right place. By the canon law, and its doctrines, so clearly and distinctly opposed to those of the feudal system, every ecclesiastic became a member of a body guarded by defined principles, and surrounded by recognized immunities, with which no secular authority could interfere. He was governed by laws of his own; he obeyed rules of his own; he moved in an atmosphere of his own. He was neither a German, a Frenchman, a Spaniard, nor an Englishman, but a priest; and, like every other member of the vast body to which he belonged, animated and informed by

the mighty heart, every pulsation of which was felt from the center to the extremities of Europe; a son, not of the mechanic or serf, from whom he sprang, but of that terrible and perfectly-organized hierarchy which numbered sovereigns among its vassals, and distributed kingdoms to its servants; which took the diadem from the head of monarchs, and placed it below its unsandaled feet; which wielded weapons far more formidable than those which any earthly ruler could command. Ancient Rome was content with a material empire: modern Rome extended her conquests to the mind." (Phill. Lectures on Civil and Canon Law, 70.)

Here is seen the power of the Christian church. As the eloquent Phillmore says, the feudal system was "the offspring of mere brutal strength and barbarous ignorance. But the censures of the church were a barrier to the ferocity of those savage nobles whom there was no public opinion to control, and no power to terrify. Before her excommunication the noble trembled who would have spurned the law, and the monarch, who laid provinces waste for his hunting-ground, grew pale. The church, in these days, represented, most imperfectly indeed, but still it did represent, the best of all aristocracies—the aristocracy of education.

In the midst of gloom and misery, the violence and servitude, in which Europe was then plunged, there was yet one avenue by which the seared conscience and callous heart were accessible ; one nerve in the frame of the iron-hearted oppressor and bloody-sceptered tyrant which thrilled at the touch of the low-born and the weak. Abused as it was, prostituted to sordid purposes, and polluted by foul hypocrisy, the power which raised the child of the peasant and the serf above *Hohen Stauffen* and Plantagenet ; which taught the proud humility and the cruel forgiveness, was a grand and a redeeming principle. It saved society from stagnating into despotism ; it is the principle which has regenerated and will disenthrall Europe ; a principle which wrung from the haughtiest and most ignorant of men a reluctant submission to superior intellect and superior education."

CHAPTER V.

Christianity and Laws relating to Woman.

1. The Marriage of Woman.
2. The Divorce of Woman.
   (*a.*) As a civil contract.
   (*b.*) A civil relation.
3. Woman as Distributee of Deceased Husband's Estate.
4. Woman's Dower as Widow.

1. The Marriage of Woman.

Christianity refined the sentiments of men, revived faith in religion, raised woman as she crouched at the foot of her savage lord, recognized her rights and sanctified her worth. Gibbon says (4 vol., 346) that after the Punic triumphs (B. C. 149) the matrons of Rome aspired to the common benefits of a free and opulent republic. Even Cato could not resist or restrain their reckless liberty. They declined the solemnities (*sacra*) of even the old pagan nuptials. They retained their maiden names,[1]

[1] In the early Roman religion the wife was the adopted daughter of her husband, and so took his name. The person-

and made marriage a mere matter of agreement. They retained their own property, and had to their husbands no other bond than one of caprice. To this loose and voluntary compact religious and civil rights were no longer essential; and between persons of similar rank the apparent community of life was allowed as sufficient evidence of their nuptials. The dignity of marriage was restored by the Christians, who derived all spiritual grace from the prayers of the faithful and the benediction of the priest or bishop. The origin, validity, and duties of the holy institution were regulated by the traditions of the synagogue, the precepts of the gospel, and the canons of general or provincial synods; and the conscience of the Christians was awed by the decrees and censures of their ecclesiastical rulers. The civil law even now regards marriage as only a contract, but the Church regards it as one of the most sacred and indissoluble of all relations, and incessantly seeks to educate society in that idea.

The chapter of Justinian law, says Maine, relating to married women, was for the most part, among western nations, read by the light,

ality of the German wife was absorbed in that of her husband, and, of course, she had his name. With us, the wife takes her husband's name as a mere custom.

not of Roman, but of canon law, which in no one particular departs so widely from the spirit of the secular jurisprudence as in the view it takes of the relations created by marriage. This was, in part, inevitable ; since no society which preserves any tincture of Christian institutions is likely to restore to married women the personal liberty conferred on them by the middle Roman law. (A. L. 152.)

2. The Divorce of Woman.

The Church arrested the caprice of divorce, and lifted and restored woman's companionship with man from the degradation of a merely secular contract to a sacramental and indissoluble marriage, and gave the two one name, as they were sacramentally one person.

"When the Roman matrons became the equal and voluntary companions of their lords, a new jurisprudence was introduced, that marriage, like other partnerships, might be dissolved by the abdication of one of the associates. In three centuries of prosperity and corruption this principle was enlarged to frequent practice and pernicious abuse. Passion, interest, or caprice suggested daily motives for the dissolution of marriage : a word, a sign, a message, a letter, the mandate of a freedman, declared the

separation ; the most tender of human connections was degraded to a transient society. A specious theory is confuted by this free and perfect experiment, which demonstrates that the liberty of divorce does not contribute to happiness and virtue. The facility of separation would destroy all mutual confidence and inflame every trifling dispute. One matron in five years is said to have had eight husbands. Pagan philosophy, pagan religion, and pagan law had proved unequal to the correction of the evil. Christ had rebuked the practice of the Jews, and prohibited his people from divorcing their wives except for disloyalty ; and the Christian princes of Rome were the first among the gentiles who specified the just causes of a private divorce." (Gibbon.) The morality of civilization rises or falls with the sacredness or the secularity of the marriage tie. Marriage is a social relation as well as a civil contract. Formerly, state legislatures, like the Parliament of England, granted divorces, as if marriage were only a relation subject originally to the jurisdiction of the political department of government ; but in The State *vs.* Frey (4 Mo. 120) the Court refused to recognize a divorce by the legislature, and decided that marriage was only a civil contract, exclusively cognizable by the judicial department.

(*a.*) *As a civil contract.*

The marriage of one man and one woman as a mere civil contract, is formed like any other contract by persons able to contract, willing to contract, and actually contracting. So far, it is a mere *aggregatio mentium. Consensus non concubitus facit nuptias.* But the moment the contract is formed, the parties have no longer exclusive power over it, to unmake it at their pleasure; but it becomes an executed contract, and forms

(*b.*) *A civil relation,*

With society as a party to it, prescribing exclusively how it shall be continued and how dissolved. As a mere contract, it was in the hands of its makers: as a social or civil relation, it passes to a public forum. The woman, who, as a *femme sole*, has power to make a marriage contract, as a *femme couvert* loses the power to dissolve it by agreement. It is an executed contract beyond rescission. Parties cannot be restored to their ante-nuptial *status.* So that, besides the parties seeking a divorce, society is directly interested as a party, and also children, if there be any. Society cannot be too cautious in opening the door to divorces, lest they be encouraged, and a tide of immor-

ality set in. The divorce laws of this age were, until recently, a great improvement upon those before Christ. Before the time of Moses, men put away their wives at their will. Moses reformed the abuses that had crept in among the Jews, by requiring the husband to state his reasons in a letter of dismissal, called a bill of divorcement. Our Saviour reformed upon this still further by confining the cause of divorce to disloyalty to the husband. It will be noticed that up to this time the husband was accuser, judge, and sheriff, so to speak. His power was without appeal, and our Saviour said that its exercise must be limited to one cause. Present society has, in one respect, gone even further, and transferred the jurisdiction altogether from the husband to the forum of the State. The husband cannot now himself divorce his wife at all, for any cause. If he has any cause of complaint, he must appear before the forum society appoints, and submit to the judgment of public authority. Now, the question arises, upon what grounds may this new forum divorce parties? So long as the husband had exclusive jurisdiction, our Saviour restricted its exercise to one cause; but when the State assumed jurisdiction of the whole matter of marriage and divorce, and forbid the husband to divorce his wife for

any cause, may the State, without conflicting with the moral teaching of Christ, when the whole matter was in the husband's hands, allow other grounds upon which marriage may be dissolved ? That it can is its present opinion, at least. The Church still says that marriage is both sacred and indissoluble, and warns the State against its secularization.

3. Woman as Distributee of Deceased Husband's Estate.

The Church demanded and obtained for the widow a distributive share in the estate of her deceased husband. Up to Edward III, in the 14th century, movable property, at the death of its owner, was not deemed as descendable to any one in particular, and so was taken possession of by the Church. The Statute of 31 Ed. III required the ecclesiastical judge to appoint the nearest of kin to administer all such estates; and the construction of the statute was to vest the surplus of personal property, after paying the debts, in the administrator as his own property. Neither the widow nor any heir got anything. "Prior to the statute," says Markby, "when the estate was administered by the Church, the widow and children had always, in practice, if not by absolute right, got each

their *pars rationabilis*, a half or third, according to circumstances. Now, all went to a single relative, and those for whom it was a duty to provide would thus frequently be left penniless. The Church, which had always fought strenuously for the rights of the widow and children, and had succeeded in establishing their rights to some extent, naturally enough made an attempt to prevent this disastrous result of the statute. The ordinary, or ecclesiastical judge, began to take bonds from the administrators as to how they would administer the estate, by which bonds a provision for the widow and children was secured." The secular Courts prohibited this; but it led to just views on the subject, and was one cause for the enactment of the Statutes of Distribution of 22 and 23 Car. II.

4. Woman's Dower as Widow.

The Church was the only power strong and just enough to secure for her dower in her husband's land. Mr. Maine says that the provision for the widow was attributable to the exertions of the Church, which never relaxed its solicitude for the interests of wives surviving their husbands, winning, perhaps, one of its most arduous triumphs, when, after exacting

for two or three centuries an express promise from the husband at marriage to endow his wife, it at length succeeded in engrafting the principle of dower on the customary law of all Western Europe. (Ancient Law, 218.)

CHAPTER VI.

Christianity and the Court of Chancery.

Christianity created the High Court of Chancery, and for 600 years supplied it with chancellors. In the origin and equitable jurisdiction of the Court of Chancery, Christianity realized itself in common law by the direct and inevitable application of its moral principles. As a secular and not an ecclesiastical court of conscience for such matters as seemed amenable to civil authority, it arose as repeated exigencies occurred. For instance, the earliest applications for relief were made to the king or to his council, or to his clerk the chancellor, by the weak when oppressed by the strong; and as Christianity is a system of sacrifice — of helps — of good conscience, the chancellor, one of its ministers attending upon the king and near the source of protecting power, could not stand by and see an irremediable injury about to be committed, and not seek to prevent it. Therefore the chancellor, a priest of Christianity, to whom these cases of hardship were most commonly referred, intervened to relieve against penalties and forfeitures, mistakes and

accidents. If a man mortgaged his property to secure a debt, and failed to pay on the day it fell due, he was liable, at common law, to lose his property; when, as it was well understood, his mortgage was not a conveyance, but only a security for the debt, Christian conscience demanded, and so the priest as chancellor decided, that the debtor might redeem his property. On the other side, if the creditor lost his bond, his debt, at common law, was gone, for it was his own fault that he did not take care of the bond. If the seal of a deed was destroyed by accident, or eaten off by rats, the deed, at common law, for the want of the seal, lost its force, and the party might plead *non est factum* — it was not his deed. It is no wonder that there was a ready acquiescence in the assumption of power by the chancellor, representing the conscience of the king, in correcting the abuse and restoring the principles of justice to the affairs of the world. However positively the common law said a man should not be called upon to give evidence against himself, the chancellor, as a Christian minister, required the man's conscience to disclose the truth. The common-law lawyers regarded a sealed instrument as sacred and unquestionable; but the fixing of a seal and the formality of a delivery, where there was fraud in its execution, did not preclude the chancel-

lor from questioning the conscience of the fraudulent party, and getting at the facts. It is difficult to imagine, if, indeed, it be not impossible, for a chain of knavery to be so linked and hid that this Christian court of conscience is not prepared to unearth and defeat it. Indeed, the moral science of these ecclesiastical chancellors, extending through 1,000 years of state vicissitudes, has not only remained unshaken, but has been developed into a beautiful system of law, covering the most sacred interests and relations of society ; it has established an inquisitorial court of conscience, and has put the various issues of society and civilization, so far as human adjudications of law can put them, on the moral plane where the essential justice of God appoints.

And wherein, it may be asked, is the rule of judgment of these ecclesiastical chancellors new or superior to that of the Roman prætors ? In what does the "good conscience" of the former differ from the "good faith" of the latter? With either it is the doing what a man ought to do; but they differ in the motive. Good faith is a morality not necessarily connected with religion, while good conscience is so connected. The latter includes the former and adds religious faith to its sanction. Good faith looks only to a present rightness: good conscience looks to

this and also to a future responsibility. Good faith looks to the judgment of man only: good conscience looks first to the judgment of God. Good faith is that sense of honor which comes from education, and varies with nations and the ages: good conscience originates in all the religions, especially of Judaism and Christianity. Good conscience is a morality of religion: good faith, as known to the Romans, might be only the morality of a policy. The one looks upon the outward appearance only: the other upon the heart. Good faith and good conscience are only equal in so far as Christianity has lifted the former into the latter. They are apart exactly where an early and a later culture separate; where the shadow is lost in the substance; where Paganism ends and Christianity begins; where the divine attracts the human into its sphere of higher motives.

The Christian religion taught that with God there is no respect of persons—"to render unto Cæsar the things which are Cæsar's—to honor all men." It made the center of law and morality the same, but with the circumference of the latter, including the former. It required the conscience to perform a contract according to its fair intent and meaning, rather than according to the form of its words. The force of Christian morality is not in authority, but in

rightness; in essential equity, not prescriptive precedent. Christianity teaches to submit to the powers that be, whether their laws be wise or unwise, just or unjust; but under the pervading influence of its divine and unquestioned morality, no municipal provisions will be permanent which are in conflict with it. There may be despotic decrees; bad men may for a time obtrude themselves into the law-making power; vile things may be allowed, and good things prohibited; but in the compensations of life, in the woes and throes of public wickedness, when Christian governments get radically wrong, they will get radically right. There is a higher law which must ultimately prevail over any great evil dressed in the form of law. Forms change; right bides its time to punish and to prevail. Public wrong, like bad humors in the blood, works itself out in curable ulcers. There is no law—that God sees to be law—that is not founded in the unalterable rules and eternal essence of uncreated justice. No doctrine of *stare decisis*, or any arbitrary assertion of authority, can long keep a bad ruling or a bad enactment in countenance. Christianity is perpetually educating the popular mind and conscience in the principles of essential goodness and truth; and these—in the general conscience, in the general convenience, in the gen-

eral harmony of political evolution—must ferret out the evil, and perfect the good in all civil life. Society is making its way to what it believes to be, with high warrant, an order of life based upon great, immutable, pre-existing law,—which, says Burke, was "prior to all our devices, prior to all our contrivances, paramount to all our ideas and all our sensations, antecedent to our very existence, by which we are knit and connected in the external frame of the universe, out of which we cannot stir. This great law does not arise from our conventions or compacts. On the contrary, it gives to our conventions and compacts all the force and sanction they can have." To the supremacy of this principle of essential justice all social order must come. As in the convulsions of the cosmical progressions, it may require ages upon ages before the inauguration of this legal millenium; but the inevitable fullness of things necessitates the perfection of justice as of all else. Man can neither devise nor retard it; but on it comes in the eternal evolution of good as the consummation of infinite wisdom. Popular changes, dynastic glories, wars and outrages are the educators and guides to the summit of the real Utopia. All authority that rests upon mere power, and all precedent that does not represent this universal wisdom, will

expire in their unfitness to the surrounding advancement, and be swept away as dead ideas. All things must give way before the advance, however slow, of the dominion of universal Justice.

CHAPTER VII.

Christianity and the Law of Uses.

Christianity shaped, if it did not create, the law of uses. Under the Saxons, the Church might freely acquire land from either the living or the dying. Indeed, it was then that it received from royal grant the largest body of its lands; but under the Norman despots it might take from the living, by a license, but no one could take from the dying. The barons, fearing the loss of their feudal advantages, forbid all transfer of land by will. Then it was, that for nearly 200 years—from the Conquest, 1067, to Henry III, 1215—the Church, for itself and the nation, resorted to devices to escape from or break through feudal restrictions. The ingenuity of the Church was provoked by the savage power which then dominated the world. The willow stood when the oak would have fallen. It was not against human liberty, but in aid of it; it was not to evade right, but to establish it; it was not to oppress the weak, but to protect them against the strong—that the Church contrived law. If it acquired land, it was to support learning, and feed the poor.

If the Church, in turn, became corrupt, it was still purity and heaven compared to the brutal beastliness of feudalism. Feudalism shut up the alienation of land; the Church re-opened it. The Norman feudal law prohibited a man from conveying his land to another by will. This was soon evaded by a conveyance to use.

The "use," now known as "a trust," was simply a conveyance by A to B for the use of C. The common-law Courts regarded the clause of the deed declaring the use as nothing. At first, the confessor—from Henry III, 1217, to Henry V, 1412, for 200 years—and afterwards the chancellor, looked upon it as everything, and considered that although the legal title was in B, as no real benefit to him was intended, it would be iniquitous in him to appropriate the property to himself, and refuse its enjoyment by C, for whose use it was conveyed. The distinction between the *fidei commissa* of the Roman law and our law of *uses* is this: they both originated in the religious sentiment. The former, in the horror which the ancients had of intestacy, by which the religious worship of the spirits of departed ancestors should cease for the want of a proper heir to keep up the sacrifices, in the latter days of the republic, led those who had no natural heirs to the practice of the testator instituting an heir, at the

same time requesting him to hand over the whole property to the legatee, incapable of taking it directly, by whom the sacrifices might be kept up. The legal title was in the instituted heir, and he was held by no bond of law (*juris*) except his own sense of honor, or shame at not doing what others thought he ought to do. The Olympian gods of the Romans had nothing to do with his morality; he never, therefore, inquired, when ancestral worship waned, what was right in itself, or what supernal authority and wisdom appointed, but what did his fellow-man expect. On the contrary, our conveyance to use was not confined to testamentary matters; and the equitable title of the *cestui que use* did not depend upon the trustee's sense of shame or the human virtue of honor; but our clerical inventors of these uses placed their obligation upon the higher sanction of the religious conscience. The Roman looked to man — the Christian to God.

The Roman prætor compelled the execution of the *fidei commissa* as a grace of the emperor. The Christian chancellor enforced the equity of the "use" under the responsibilities of religion. The former was, at most, only the mode of making a will: the latter unlimited to convey either *inter vivos* or as a will. Certain

it is, that our equitable title, as distinguished from the legal, as held and applied by our clerical chancellors, is a most important, if not new, contribution to legal science; and having its moral sanction in the religious conscience, as something additional and above mere human honor, plants Christianity widely and deeply in the most permanent and developed principles of our common law. To the conception of these chancellors, at least, when Christianity was 1,200 years old, they supposed that they were placing "uses" upon the basis of a Christian, and not a pagan morality. It was Christian law to them. And Digby (His. Real L., 268) says: "As to 'uses,' it must be confessed that their handling by the common lawyers contrasts unfavorably with the enlightened system which had been constructed by the succession of ecclesiastical chancellors."

As uses grew into favor, it was soon adjudged that a use need not be executed the instant the conveyance was made. Consequently, when A gave lands to B for the use of C, when of age, and, on his marriage, to the use of his wife, until C did come of age, B, in conscience, had no right to the benefit of the property, and its use *resulted* or came back to A. But when C came of age, his use *sprung* into being; and when he married, his use having expired, still

B could not, in good conscience, retain the benefit, as it was not even then intended for him, but must allow it to *shift* itself to the wife of C, as directed by A. These several *ex post facto* changes have been distinguished, for the sake of convenience, into *resulting*, *springing*, and *shifting* uses; but under all these successive changes, though the legal title was in B, he had no right to the property, and conscience forbid him to seek any benefit by reason of the expiration of any one use.

And again, in case of a bargain and sale, where the legal owner entered into an agreement with a purchaser for the sale to him of his interest, and the purchaser paid, or promised to pay, the money for the land. The transaction at the common law would not be complete for want of a legal conveyance. The common law knows only acts, not merely moral duties. But the chancellor comes to the morality of the matter, and requires the bargainor, though still retaining the legal title, to hold the bond, as a clear duty of conscience to the use or for the benefit of the bargainee. Upon a proper case, as a matter of conscience, he may be compelled specifically to perform his contract and convey the legal title.

CHAPTER VIII.

Other Service of Christianity to Law.

1. Christianity and Slavery.
2. The Law of Limitations.
3. Christianity and the Law of Wills.
4. The Wager of Battle.
5. The Ordeal.
6. Christianity and the Law of Oaths.
7. Punishment.

1. Christianity and Slavery.

But in what else, it may be asked, has the Christian religion stamped itself, in any peculiar way, upon the growth of law? It created better law by purifying the relations of society.

Christians may thankfully speak of "the liberty wherewith Christ hath made them free." With Him there is no respect of persons. Before the time of Christ there had been no human equality — the Roman slave still clanked his chains. But now "there is neither Greek nor Jew, circumcision nor uncircumcision, barbarian, Scythian, bond nor free, but Christ is

all and in all.' The Church knew nothing human above itself. It took the sons of the lowly, as Becket and Wolsey, and elevated their mitres above royal crowns.

From the third to the twelfth centuries thirty-seven Church councils rendered decisions in favor of slaves. Masters who maltreated their slaves were condemned (305); those who killed them were excommunicated (517). The right of asylum in churches was sanctioned (549). Bishops and priests who maltreated their slaves were severely punished (666–675). Manumission of slaves was protected and encouraged (441). Slaves freed by the Church were protected (549). The Church took it upon itself to defend the liberty of all those who are freed, in whatever manner it may be (587). The Church instituted the redemption of captives (506); it permitted the ecclesiastical property (585), even to the sacred vessels (625), to be sold to ransom them. It interdicted the enslavement of a free man (566). It forbade one Christian to hold another in slavery (922). It released Christians from the hands of Jews or heathens (538–625). It punished, before all, the bishops and priests who transgressed its decisions (656). It freed slaves who wished to enter the ministry (597, 655). It interdicted the traffic in slaves (743). Slavery disappeared

from the Roman world (1300). (Cochin on Slavery, 331.)

2. The Law of Limitations.

Prescriptions were viewed by modern lawyers, first with repugnance, afterwards with reluctant approval. This tardiness the modern world owes to the influence of the Canon Law. The ecclesiastical customs out of which the Canon Law grew, concerned as they were with sacred or quasi-sacred interests, very naturally regarded the privileges which they conferred as incapable of being lost through disuse, however prolonged; and, in accordance with this view, the spiritual jurisprudence, when afterwards consolidated, was distinguished by a marked leaning against prescriptions. It was the fate of the Canon Law, when held up as a pattern to secular legislation, to have a peculiar influence on first principles. It gave to the bodies of customs which were formed throughout Europe fewer express rules than did the Roman law; but then it seems to have communicated a bias to professional opinion on a surprising number of fundamental points, and the tendencies thus produced progressively gained strength as each system was developed. One of the dispositions it produced was a dis-

relish for prescriptions; but I do not know that this prejudice would have operated as powerfully as it has done if it had not fallen in with the doctrine of the scholastic jurists of the realistic sect, who taught that, whatever turn actual legislation might take, a *right*, how long soever neglected, was, in point of fact, indestructible. The remains of this state of feeling still exists wherever the philosophy of law is earnestly discussed. Questions respecting the speculative basis of prescription are always hotly disputed; and it is still a point of the greatest interest in France and Germany, whether a person who has been out of possession for a series of years is deprived of his ownership as a penalty for his neglect, or loses it through the summary interposition of the law, in its desire to have a *finis litium*. But no such scruples troubled the mind of early Roman society. Their ancient usages directly took away the ownership of everybody who had been out of possession, under certain circumstances, during one or two years. (Maine A. L., 277.)

3. Christianity and the Law of Wills.

Anciently, up to the time of Cicero, no man could disinherit his male heirs any more than one now could depose a priest of the Church,

for the male heir was the priest. When he had no male heir, he was allowed, and indeed required, to appoint one by will. It was not so much an owner to his property that he appointed as a priest as his successor to offer sacrifices upon his own and ancestral altars. In other words, a man could make a will when, when only, he had no male heir to act as priest (Maine, A. L., 191). His property was owned by his family as a domestic corporation, and he owned it only *through* his family.

In the ancient law a will was a conveyance of property *inter vivos*. The conception of a will in modern times is taken from Roman testamentary jurisprudence. It came into the English law through the medium of the Church. Wills of personal property were administered in the ecclesiastical court, which applied, though in an imperfect manner, the principle of Roman jurisprudence. The English law of testamentary succession is thus a modified form of the rules under which Roman inheritances were administered. (Maine, Intro. xl. 2.)

4. The Wager of Battle.

From the fourth century in Rome, and from an earlier date among all northern nations, when parties could not agree about their rights,

both parties, taking an oath on the gospel, as to the justice of the cause respectively, appealed to the arbitrament of battle and the decision of God. The result of the judicial battle was a victory to the best skilled and stoutest arm. The trial by battle was thoroughly incorporated in the ideas and manners of feudal times. It was a legal and religious appeal. For five centuries, from Suitprand the Lombard (712) to Frederick II (1250), no secular lawgiver seems to have thought of abolishing the judicial combat thus fostered by almost all nations. During the whole of this period the Church was consistently engaged in discrediting it, notwithstanding that the local interests or pride of individual prelates might lead them to defend their vested privileges arising under it. When King Gundebold gave form and shape to the battle ordeal in digesting the Burgundian law, Avitus, Bishop of Vienna, remonstrated loudly against the practice as unjust and unchristian. In 855, the Council of Valence denounced the wager of battle in the most decided terms, praying the Emperor Lothair to abolish it throughout his dominions, and adopting a canon which not only excommunicated the victor in such contests, but refused the rites of Christian sepulture to the victim. By this time the forces of the Church

were becoming consolidated in the papacy, and the Vicegerent of God was beginning to make his voice heard authoritatively throughout Europe. The popes, accordingly, were not long in protesting energetically against the custom. Nicholas I (876) denounced it vigorously, and his successors constantly endeavored, as we have already seen, to discredit it. In the latter half of the twelfth century Peter Cantor argues that a champion, undertaking the combat, relies either on his own superior strength and skill, which is manifest injustice, or on the justice of his cause, which is presumption, or on a special miracle, which is a devilish tempting of God. Celestin II prohibited the combat. Innocent III and the Council of Lateran (1215) also condemned it. It was finally abolished in the throes of the French Revolution, after having held its place in judicial proceedings over 900 years. The voice of the Church in condemnation has been repeated, emphatic, and effective.

5. The Ordeal.

With the exception of China, where a theophilosophy recognizes pure reason, the laws and forces of nature as God without a providence, the earliest records of the human race

bear witness to the existence of the practice of testing the guilt or innocence of accused people, and the truthfulness of witnesses, by appealing, in the various ordeals, to the judgment of God. The principal modes by which the will of Heaven was ascertained were the ordeal of fire, boiling water, red-hot iron, cold water, the Eucharist, the cross, the lot, and, in cases of murder, touching the body of the murdered person. So inveterate is the superstition that God will miraculously expose the guilt or manifest the innocence of accused people, when subjected to the ordeal, that as late as 1869, at Lebanon, Illinois, this bier-right was resorted to, and the bodies of two murdered persons were dug up, and a crowd of two hundred persons were marched past them, each of whom was made to touch them, in hope of finding the true criminals. In 1767, at Bergen, N. J., it was gravely reported by the coroner, that the body of the murdered man bled freely when a man suspected of the murder touched it.

In India, Japan, the Indian Isles, Thibet, among some Arabs, fire is the test; in Tahiti, water; in Africa, poison; everywhere something. The ordeal prevailed among all barbarous races. There is no trace of the system, however, in the Roman jurisprudence. The Roman mind had too little belief in providence

and too much will-power for the ordeal to become a feature in their system of laws; but it was exactly this will-power—this spirit of personal passion—that made the trial by torture prominent among them—the effort of one will upon another will to force a confession. Torture was native to the Grecian and Italian, but foreign to the northern barbarian. The ordeal and the wagers of battle and of law were, on the contrary, native to the northern races, who believed in a providence, but foreign to the Italian, who did not.

The influence of Christianity on this universal superstition was not uniform. It was strongly condemned by Avitus, Bishop of Vienna, A. D. 500; by Agbard, Archbishop of Lyons, in 900; by Leo IV, and by Stephen V, in the ninth century; by Sylvester II, and by Alexander II and III, in the tenth century. From 1159 to 1227 the opposition of the papacy was emphatic, and more or less effective. While the Inquisition, in certain localities, was torturing its victims in matters of heresy, yet, in England, a rescript of Henry III, in 1219, directs the judges, then starting on their circuits, to employ other modes of proof, "seeing that the judgment of fire and water is forbidden by the Church of Rome." It is forbidden

in Gratian, Code of Canon Law. (See H. C. Lea's Superstition and Force on this matter.)

6. Christianity and the Law of Oaths.

In the oath, so essential to legal procedures, Christianity grasps the consciences of men with all its power of faith in the majesty of the Godhead, and helps the law to get at the truth. All executive, legislative, and judicial officers perform their duties under the supposed watchful omniscience of supernal and ubiquitous Justice, whose vengeance upon falsehood has been solemnly invoked. Oaths were common before Christianity (Adams' R. Antiquities, 118) for many official purposes, but not as a sanction for the testimony of witnesses.

If it be objected that the service of Christianity in this respect be more imaginary than real — that good men do not need oaths, and bad men cannot be bound by them—it may be legitimately replied, that if good men do not need oaths they do not object to them; and while bad men object to them, they, indeed, need them most. If bad men will not tell the truth with an oath, they certainly will not tell it without one, and society in them has no guarantee. If good men will tell the truth without an oath, they will not tell a falsehood

with one. In them, society has every guarantee. Upon every consideration, therefore, Christianity first educates the consciences of men, and then binds them to duty under its awful sanctions.

7. Punishments.

We claim for Christianity a mission of mercy to man, and for the Church, which represents it, a great work of humanity. It is not to be denied that there have been special exceptions, like the Inquisition, and others; but, considering the era—the contemporaneous civil institutions, the common brutality of man—the general bearing of the Church has been an amelioration of human affairs. It has succeeded in the world because such was seen to be its general place in the movements of civilization. Besides its service to the poor, the lame, the halt, and the blind, it sought to moderate civil punishment for crime. "When we think," says Freeman, "of the terrible punishments—death, and mutilations worse than death—which the courts of our Angevine Kings freely inflicted for very slight offenses, we can understand that men looked favorably on the courts of the Bishops, where the heaviest penalties were stripes and imprisonment." (Freeman's

English Constitution, 75.) "In the disputes between the Crown and the Church, from William Rufus to Henry II, we always find popular feeling enlisted on the ecclesiastical side." (1 Guizot, 133 ; see more fully on the mitigation of punishments by "benefit of clergy," iv Seargent's Blackstone, 466.)

CHAPTER IX.

Christianity and Great Lawyers.

Lord Bacon, with the grandest uninspired intellect ever known, though stained with one single weakness, was an earnest and devout Christian. The great Sir Edward Coke gave four hours daily to devout reading and meditation.

Sir William Blackstone, who systematized the law, and made its study a delight, "was a believer in the great truths of Christianity from a thorough investigation of its evidence. His religion was pure and unaffected, and his attendance on its public duties regular, and those duties were always performed with seriousness and devotion." Lord Lyndhurst, three times Lord Chancellor, "applied all the power of his marvelous intellect to the study of religion. He died at the age of 92, in peace and charity with all mankind, and his last words expressing supreme happiness." These and hundreds upon hundreds of other leading representative men, most potential in giving order and limits to legal institutions, apprehending and applying the eternal principles of justice, directing

and securing the universal and most sacred interests of humanity, carried into their juridical reasonings upon matters between man and man, and man and society, the regenerating, moulding, and conservative principles, spirit, and wisdom of Christianity. Their Christian characters were the best part of their lives—the best of what they were, the best of what they did, the best of what they left to posterity. On the contrary, those laymen on the English bench who have done the least, and crushed, shamed, and cursed humanity the most—such as Finch, North, Trisilian, Billing, Fitzjames, Fleming, the two Hydes, Scroggs, Saunders, Thurlow, and Jeffries—distinguished as corrupt, or vindictive or both, have stifled their consciences educated under Christian influences, turned the force of their power and place upon their helpless countrymen, and shown,in careers happily not frequent, that when men of power are not humane as Christians, they easily become ruthless as fiends. Infidels are welcome to all their great men and their records. Fortunately, in the nature of things, there cannot be many of them. They are monstrous exceptions, hated by their contemporaries, and trampled by the indignant feet of the civilization of the best ages of the advancing world. During the last 300 years six have been impeached, viz., Car-

dinal Wolsey, Lord Bacon, Lord Keeper Finch, Lord Clarendon, Lord Somers, and Lord Macclesfield. Lord Somers was acquitted. It will be seen that one only was an ecclesiastic.

There have been in England, up to this time, 173 lord high chancellors. The first 123 of these (for 600 years, from 924–1530) were bishops of the Church, and most generally irreproachable in character—far above their age. Taking a longer period of 800 years, say from William the Conqueror up to this time, out of 1,000 names given by Dugdale, including, besides the 173 lord chancellors before mentioned, 100 lord chief justices of K. B., and as many more of the C. P., and scores of barons of the exchequer, associate justices, sergeants-at-law, and hundreds upon hundreds of others, since Dugdale's time, and those most eminent in law, on the bench or off it, have been no less distinguished for their Christian virtues.

Finally, Christianity has made the religious conscience, immeasurably more than ever before, the sanction of contracts; it elevates the whole science of common law from the level of rude customs to a higher plane, not only of reason, but also of divine will. It did what neither King nor Consul—Patrician nor Plebeian—Prætor nor Judex—Epicurianism nor Stoicism, ever could—it had the wisdom to pro-

claim and put moral responsibility above the will of despotism, and make God the source of law; it protected the weak against the strong; it made successful cunning surrender unconscionable advantages; it gave practical effect to the moral and religious maxim, that man should do unto others as he would have them do unto him; it preserved the mighty influence upon public sentiment and law of the Christian Sabbath, and, by establishing a true religion in families and society, as a false one had been thousands of years ago, it made law possible on its moral and best side. As long as the future controls the present, as it ever will, the friends of religion need not fear for the truth, as God gives it, but only as man presents it. Just as the question is, not, is there such a thing as liberty, but are we free?—not whether there is such a thing as justice, but are we just?—not, is there such a thing as honesty, but are we honest?—not, is there such a thing as faith, but do we believe?—not, is there such a thing as Christianity, but are we Christians?—this is the question of the age. Truth, justice, liberty, all that is meant by Christianity, is the same forever; but each individual will absorb, each for himself, much or little, equally or unequally, as constitution, circumstances, habit, or divine grace may persuade or compel, or unconsciously infuse.

CHAPTER X.

International Law.

Christianity as a sacred force or as a political factor ignores the distinction of the human race into tribes and nations. It ever keeps before it the individual—society—mankind: never classes, nations, or preferred forms of government. Being thus unnational in its nature, it became international in its influence. Religion forbid an ancient law of nations, as it created that of the modern. The ancestral religion could not possibly admit of international communication. The family gods were the ancestors of the family, and for the family only. The State religion of Olympus was political and not moral, and only for its own State; and as there was no international religion, there could be no international law. But the religion of Christ, reforming upon the exclusiveness of the Jewish race, and teaching a morality for all men, was the very and only unnational religion out of which could grow an international morality or law. The State was the first care of the ancients; but with Christianity it is the individual first and

always. Christianity first seeks the moral improvement of man as he is one in himself, then of mankind as an universal unit before its maker. God has made of one blood all nations that dwell upon the face of the whole earth.

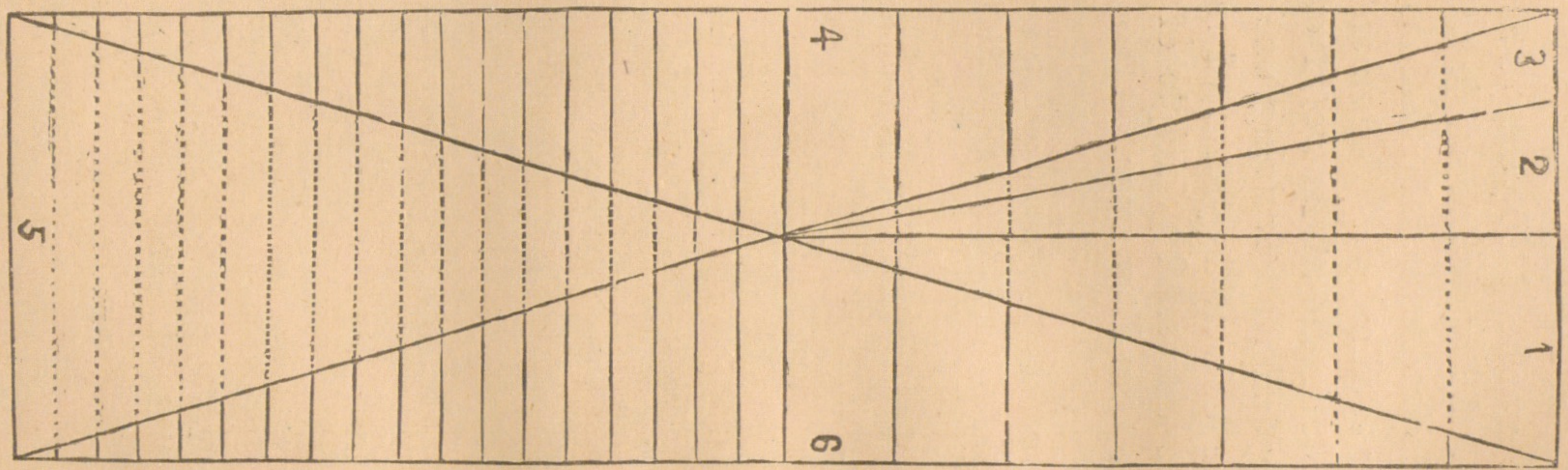
So far as its machinery is concerned, it works with a creed for all. It has a priestly fraternity located in all lands, and animated by one spirit, and unified by one bond. Its cosmopolitan command is to go into all the world, and preach the gospel to every creature. Its councils were the first international congresses, its canon law the first general code for people of all nations. Under its domination vast millions of different nations, says De Quincy, were destined to be fused in a new crucible, to be recast in a happier mould, and to form one family of enlightened nations, to compose one great collective brotherhood, united by the tie of a common faith and a common hope, and hereafter to be known to the rest of the world and to proclaim this unity under the comprehensive name of Christendom. Grotius, Vattel, Ward, Wheaton, Woolsey, Halleck, and other writers on international law will more fully show what Christianity has done, in point of fact, in making this claim real.

The legal results of this age surpass all statement. From the time of the code of Justinian

we number 1300 years of as yet an unconcluded era of law, whose subjects cover the innumerable interests and relations of an ever-expanding civilization. Steam and electricity are now making the whole world one country, demanding and fast evolving one universal language, one universal system of measures and values, one universal principle of law in the will of the ONE LAWGIVER.

Diagram of Civilization from the Founding of Rome, 753 B.C.

EXPLANATION OF DIAGRAM.—1. Ancestral worship peculiar to the Patricians, giving laws of the domestic relations. 2. Mythology or Olympian religion, peculiar to the Plebeians, giving no laws. 3. Judaism. 4. Horizontal lines in the left side of diagram mark centuries of political events. 5. Diverging lines of Christianity crossing the eighteen centuries of horizontal non-religious lines. 6. Horizontal lines on the right of diagram mark the lines of speculative philosophy. As the ancient religions contracted and faded, philosophy and political events expanded and culminated. Lines of religion are lines of morality; lines of philosophy coincide with the lines of immorality. All ancient lines of faith, force, and philosophy ended in slavery at Cæsar, and all modern lines of liberty, equality, and fraternity began at Christ. The movement of religious error is from the many to the few, and the movement of religious truth is from the few to the many.



A Chronology of Law.

B. C.

2000.....Laws of the domestic relations derived from the Aryan worship of ancestors.

1800.....Mythological worship—state religion—gives no private law.

Marriage sacred.

1500.....Mosaic Law.

753.....Rome founded—the legislature (*comitia curiata*) an assemblage of priests—law sacredotal.

578-534....Servius Tullius secularizes the constitution. The laws made by the army (*comitia centuriata.*)

509.....Republican Rome—kings expelled—consuls.

493.....The plebs (*comitia tributa*) make *plebescites.*

Marriage a contract. Divorces allowed.

450.....Patricians frame the laws of the Twelve Tables.

445.....Secular or contract marriages allowed with the Patricians.

401.....Distinctions of class abolished.

334.....The first prætor begins to make law by his edict.

312.....Flavius reveals the sacredotal laws.

247.....Prætor Peregrinus appointed. See page 13.

155.....Greek philosophers as embassadors expelled.

140.....Panætius of Rhodes teaches a modified Stoicism.

130-106....Birth of Cicero. Death of Scævola.

82-59.....Sylla Dictator. Cæsar and Pompey rivals.

Marriage free. Divorce frequent.

A. D.

14.....The Empire. Universal immorality.

100-200....The birth of Christ.

200-300....Emperor attracts to himself all power,

300-400....Perpetual Edict begins codification.

400-500....Papinian, Ulpian, and Paulus, jurisconsults.

500-600....Gregorian and Hermogenean codes.

Marriage sacred and indissoluble. Power of the Church.

Theodosian (438) Justinian (533) codes.

605.....Germans have written laws,

768.....Bishop Augmendus, first Saxon chancellor.

900.....Charlemagne's empire almost universal in Europe.

1067.....Saxons have a code of laws.

1095.....Bishop Maurice, the Conqueror's chancellor.

1136.....Crusades begin.

1151.....Revival of Civil law.

1149.....Gratian's code of canon law.

1215.....Vacarius, a priest, teaches civil law at Oxford.

1206-1272..Magna Charta, written by Archbishop Langton.

1274.....Archdeacon Bracton wrote on English law.

1307.....Edward I. Bishop Burnell the Justinian of his age.

1509.....Year Books. First law reports, to 1507.

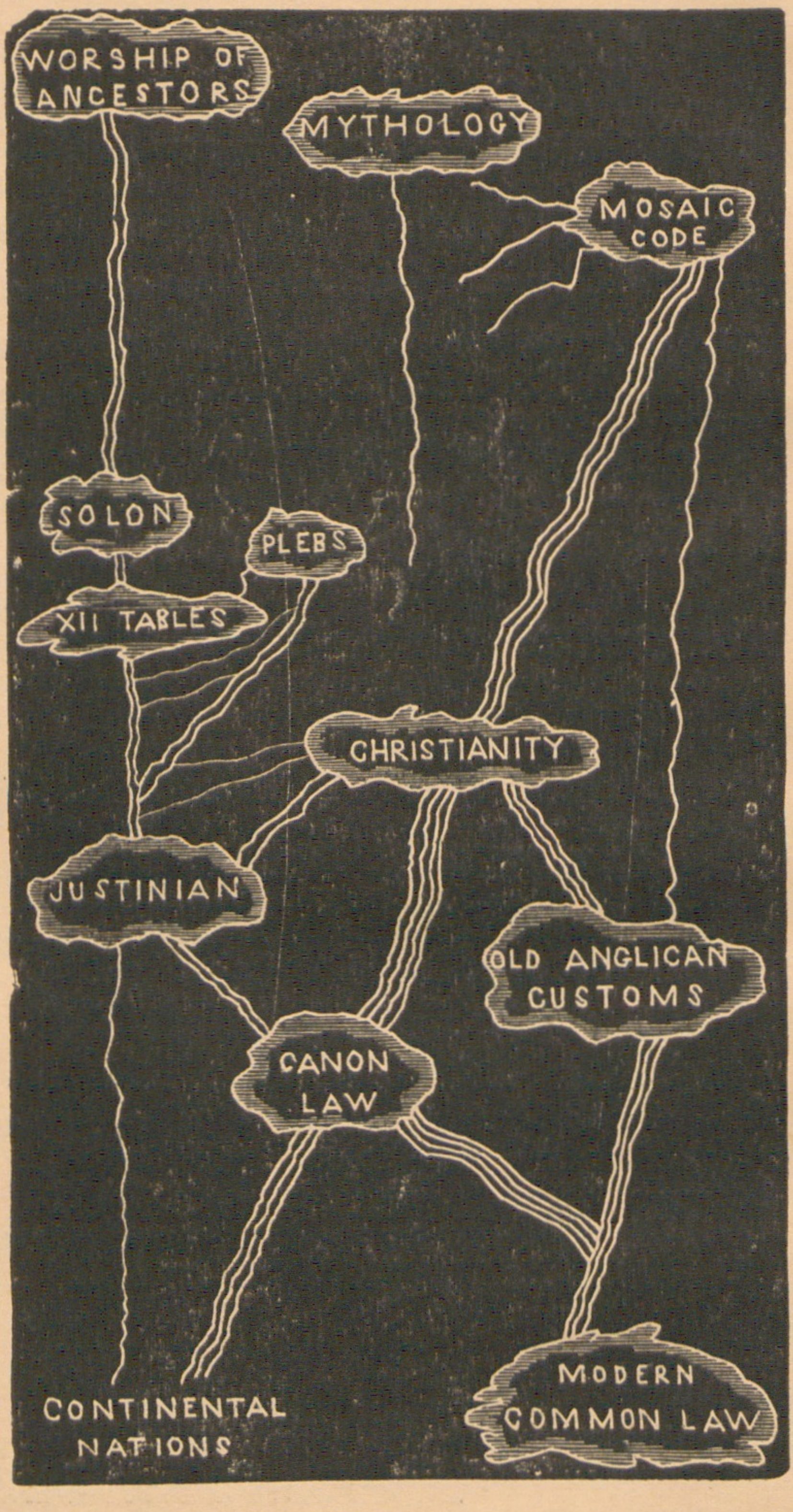
Marriage again a sacrament in the teachings of the Church.

Henry VIII. The Reformation. The divorce of Henry weakened the marriage tie in England.

1600.....The logical element of law begins to be more and more separated from its moral.

1877.....Law must become a science of general principles. Rules will be too numerous to be remembered.

SOURCES OF THE COMMON LAW.



Most ancient dates.

1491

594

451

A. D.

533

1151

1877