



PART TWO

KINGS AND CROWNS



CHAPTER 1

THE ORIGIN OF KINGS

MYTH, RELIGION, AND REALITY

Sir George Frazer postulated a 'magical origin of kings', seeing a lineal development from magic to religion to science.¹ While these delineations are now no longer accepted, 'the origins of monarchy are still a matter of discussion among social anthropologists'². A number of preliminary observations may however be made.

ANCIENT KINGSHIP

Kingship, religion and myths have, since the earliest times, been interrelated, as a means by which humans have both attempted to understand the seen and unseen worlds, and to

¹ See Sir James George Frazer, *The Magical Origins of Kings*, 1905, Macmillan & Co, London; reprinted Dawsons of Pall Mall, London, 1968; and also his *The Golden Bough, a Study in Magic and Religion*, 1890-1915; abridged by Frazer and published 1922; republished Wordsworth Editions Ltd, 1993; reprinted 1994, 1995, 1996.

² D A Binchy, *Celtic and Anglo-Saxon Kingship*, The O'Donnell Lectures for 1967-68, delivered in the University of Oxford on 23 and 24 May 1968, Clarendon Press, Oxford, 1970, at p. 8. It should be noted that the philosophical aspects of kingship were discussed by early Greek philosophers, such as Plato and Aristotle. (see Plato, *The Laws*, especially Book 4; and Aristotle, *The Politics*, especially Book 3).

regulate their mutual behaviour within it.¹ Plato, writing in *The Republic*, expounded upon the idea of the philosopher ruler², and in *The Laws*, recalled the ancient concept of the mutuality of the oaths of kings for the security of their peoples.³

Polytheistic religions, such as those which obtained in Ancient Greece and Egypt, usually had one god which ruled or was above the other gods (for example, Zeus, Osiris); monotheistic religions, like those of Akhenaten in Egypt, the Israelites, the Muslims, and the Christians, perceived the one god as revealing himself and his laws through his prophets, or through the king.⁴ At all events, human society since the earliest time has organised itself in groups under a leader, or a ruler—a ‘head’ of that group, who ‘ruled’. Whether the ruler or the rule came first is a subject which has troubled philosophers for millennia—how is the ruler determined upon? Is he chosen by consent and mutual covenant of the people? Is he chosen by god? Is he chosen by virtue of both these? Or neither, but merely by imposition of force? And why does there need to be a ruler at all?

Western philosophers have tended to see the need for a ruler as derivative from the law of nature, or the law of reason, or the law of god, but in every case they have seen the ruler as being a manifestation of some pre-existing rule or law.⁵ Interest has revived in recent times

¹ For discussions generally on this observation, see “Sacred Offices and Orders: Sacred kingship: Status and Functions: Regal ceremonies.” Britannica Online, and the interrelated links.

² See Plato, *The Republic*, Lee translation, *loc. cit.*, Book 5, 471c-480, Book 6, 484-521b, at pp. 260-325.

³ See Plato, *The Laws*, c. 350s-340s B.C., translated and edited by Trevor J Saunders, Penguin Books, London, 1970, reprinted with minor revisions, 1975, 684a, pp. 128-129; for text see Appendix I.

⁴ Akhenaten (who changed his name from Amenhotep IV to honour his god) introduced the new religion of the Aten, the sun, which however did not endure; records of Akhenaten and his religion were defaced and removed by the priests of Ramses II, (who succeeded Smenkhare, Tutankhamun, originally known as Tutankhaten, Ay, Horemheb, and Ramses I)—see Cyril Aldred, *Akhenaten, Pharaoh of Egypt*, Thames and Hudson, London, 1969, and generally see David O'Connor, and David P Silverman, (eds.), *Ancient Egyptian Kingship*, E J Brill, Leiden, 1994.

⁵ See generally Chester James Antieau, *The Higher Laws: Origins of Modern Constitutional Law*, William S Hein & Co., Inc., New York, 1994; Plato, *The Laws*, Book Four, [IV, 715e-716d] translated and edited by Trevor J Saunders, Penguin Books, London, 1970, reprinted with minor revisions, 1975, at pp. 174-175; Plato, *The Republic*, Book Six, 500c, 508e-509, and 509d, at Plato, *The Republic*, translated with an introduction by Desmond Lee, Penguin Books, 1955, 2nd edn. revised, 1974, reprinted with additional additions 1987, at p. 297, p. 309, and p. 312; Aristotle, *Metaphysics*, XII, 7: 1072b14; Cicero, *De Republica*, *The Republic*, I, xvii, 27, (Keys trans. Harvard, 1951); *Antigone*, Sophocles, 442-441 B.C., translated by E F Watling, Penguin Books, 1947, 1965 reprint; *The Institutes or Elements of Our Lord Justinian*,... translated with an introduction by Peter Birks and Grant McLeod, with the Latin text of Peter Krueger, Gerald Duckworth & Co. Ltd., London, 1987, 2nd impression 1994; St Thomas Aquinas, *On Kingship, to the King of Cyprus, De Regno, Ad Regem Cypri*, (c. 1260), Gerald B Phelan, (trans.), revised with introduction and notes by I Th. Eschmann, Pontifical Institute of Medieval Studies, Toronto, 1949, reprinted 1967, 1978, 1982; Sir John Fortescue, *The Nature of the Law of Nature and its judgment on the succession to supreme office in kingdoms, (De Natura Legis Nature et de ejus Censura in Successione Regnorum Suprema)*, written 1461-1463; Sir Thomas Smith, *De Republica Anglorum, The manner of government or policie of the Realme of Englande*, Seene and allowed at London, [written in 1565] Printed by Henrie Middleton for Gregorie Seton, 1583; L Alston, (ed.), preface by F W Maitland, Cambridge University Press, 1906, p. 19; Thomas Hobbes, *Leviathan, or The*

in what might be called 'the natural law argument' of the origins of law and governance¹, and the idea of 'myth' and 'origin' has also received attention from a different perspective from various 'post-modern' writers².

It can be said, however, that the idea of a ruler, who was differentiated from the rest of the people by visible means, is very old indeed. It is the ruler who both sets out and enforces the rules by which the people over whom he rules live together, and in whom and to a large extent, by whom, that people is identified. In turn, the ruler is identified by means of some kind of ceremony, or by a lifting up above the rest of the people, or by some particular initiation, or by the wearing of an object peculiar to the ruler, or by some or all of these things.

There are two things most often associated with a ruler—a ceremony, and a crown.

Recent archaeological studies of iconographic evidence have found a crown being used to denote kingship as early as the Naqada I (Amratian) culture of Egypt in the mid-Fourth millennium BC.³ The king was the central institution of Egyptian society, and formed the unifying apex of a host of dualities that constituted society, as well as forming the point of connection among human society, the gods and the wider cosmos.⁴ Records of the coronation⁵ of kings date from the time of Hatshepsut⁶ (c.1472-58 B.C.) and Horemheb¹

Matter, Forme, & Power of a Commonwealth Ecclesiasticall and Civill, [written 1648-1650 in France] printed for Andrew Crooke, at the Green Dragon in St Paul's Churchyard, London, 1651, J C A Gaskin, (ed.), Oxford University Press (World Classics paperback), London, 1996; John Locke, *Two Tracts on Government*, c. 1660-1661, P. Abrams (ed.) Cambridge, 1967; William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, with an introduction by Stanley N Katz, University of Chicago Press, Chicago, 1979, in 4 Volumes., Introduction, Section the Second, pp. 54-55; for China, see Leonard Shihlien Hsu, *The Political philosophy of Confucianism*, London, 1932; Liang Chi-Chao, *History of Chinese Political Thought*, London, 1930.

¹ See particularly John Finnis, *Natural Law and Natural Rights*, Clarendon Press, Oxford, 1980, reprinted with corrections, 1982, 1984, 1986, 1990, 1992, 1993; and see also his compendium of articles on the various approaches to and views on natural law in John Finnis, (ed.) *Natural Law*, 2 Volumes, The International Library of Essays in Law & Legal Theory, Dartmouth Publishing Company, 1991.

² See for example, Laurence Coupe, *Myth*, Routledge, London, 1997; and Peter Fitzpatrick, *The Mythology of Modern Law*, Routledge, London, 1992

³ See John Baines, 'Origins of Egyptian Kingship', in *Ancient Egyptian Kingship*, David O'Connor and David P Silverman, (eds.), E J Brill, Leiden, 1994, 92-156, at 95, and plate 3.1 at p. 149, showing a photograph of the red crown of the king of Egypt on a fragment of a jar in the Ashmolean Museum, 1985.795.

⁴ See John Baines, 'Origins of Egyptian Kingship', *ibid.*, p. 95.

⁵ These are discussed in David B O'Connor, 'Beloved of Maat, the Horizon of Re,' in *Ancient Egyptian Kingship*, David O'Connor and David P Silverman, (eds.), E J Brill, Leiden, 1994, 263-300, at 277 ff.

⁶ Pierre Lacau and Henri Chevrier, *Une chapelle d'Hatshepsout à Karnak*, Cairo, IFAO

(c.1319-1292 B.C.); by virtue of the coronation the king became a persona distinct, the link between the real and the other universes.²

BIBLICAL VIEWS OF KINGS

The Judaic view of the world which gained currency throughout the Roman empire after the establishment of Christianity as the formal religion³ (and indeed, before this time)⁴ knew of the ancient kings of Egypt⁵ and of other kings⁶, but there 'were no kings in Israel' 'and every man did what was right in his own eyes.'⁷ Instead of a king, Israel was subject to direction by God through leaders like Moses, and later the prophet Samuel and his sons.⁸ But the Israelites said to the prophet: '...give us a king to govern us like all the nations.'⁹ The king was chosen by lot¹⁰—that is, by vote—and '...all the people shouted *Long live the king!*'¹¹ The Old Testament goes on, 'Samuel told the people the rights and duties of kingship; and he wrote them down in a book, and laid it up before the Lord...'¹² (The Bible unfortunately gives no details of this book¹³.)

¹ See Alan H Gardiner, 'The coronation of King Haremhab', *JEA*, 39, 13-31

² This is discussed by David P Silverman, in his 'The Nature of Egyptian Kingship', in David O'Connor, and David P Silverman, (eds.), *Ancient Egyptian Kingship*, E J Brill, Leiden, 1994, pp. 67 ff. At p. 67, Silverman draws a telling parallel between the persona of the ancient Egyptian kings, and that of the President of the United States of America: '...After participating in the rites of the office and taking its oath, the chosen one becomes the new chief of state; he has a new status; and reference to him in office is now Mr President. Moreover, his place in history is then assured. His statements, decisions, comments, and views take on a new significance, and they issue forth from the White House, his personified office/residence.'

³ 312 A.D., Emperor Constantine's Edict of Milan, Christianity the official religion of the Roman Empire.

⁴ See discussion of the Celtic church *infra*, at p. 35, p. 35, p. 38, p. 40, and p. 319.

⁵ See *Genesis* Chapter 40-50; *Exodus* Chapters 1-14. [All references to the Old and New testaments in this work unless otherwise indicated are from *The Holy Bible, Revised Standard Version* (translated from the original tongues being the version set forth A.D. 1611 revised A.D. 1901 compared with the most ancient authorities and revised A.D. 1952)].

⁶ See 1 *Samuel*, Chapter 8, v. 19-20.

⁷ See *Judges*, Chapter 17, v. 6; and see *Judges* Chapter 18, v. 1, *Judges* Chapter 19, v. 1.

⁸ See 1 *Samuel* Chapter 8, *passim*.

⁹ See 1 *Samuel* Chapter 8, v. 4.

¹⁰ See 1 *Samuel* Chapter 10, verses 17-22.

¹¹ See 1 *Samuel* Chapter 10, v. 24.

¹² See 1 *Samuel* Chapter 10, v. 25.

¹³ Jean Bodin notes in *Le Six Livres de la République*, Paris, 1576, Book I, chapter 8 (on Sovereignty), that '...the Hebrews have written that the kings suppressed his book so that they could tyrannise their subjects.' : see Julian H Franklin, (ed.

These Israelite kings were anointed.¹ An anointed king may prove defective if he did not keep the ways of God, and another king may be selected and anointed in his place;² but it was the fact of anointing that made the person king in the sight of God.

Jesus, the Christ, although crucified under the 'superscription of his accusation...THE KING OF THE JEWS', never referred to Himself as a king, but frequently adverted to 'the kingdom of heaven'.³ He said that 'all the law' depends upon the two great commandments, to love God, and one's neighbour as oneself⁴—clearly He saw God's law as being pre-eminent, and the only real kingdom as God's kingdom⁶.

Nevertheless, the rituals pertaining to the inauguration of the Israelite kings were seized upon by the establishment which became known as the Roman catholic church, and used extraordinarily effectively for political purposes, the church appropriating to itself the right to inaugurate and sanctify kings.⁷ But although the church and governments (both royal and oligarchic) later supported their actions by reference to the laws of God, they tended more often than not to be preoccupied with making rules and regulations rather than with observing and effecting underlying principles.

CELTS AND KINGSHIP

But kings had existed in Britain long before the advent of Christianity.

and *trans.*) Book I, Chapter 8, 'On Sovereignty' from *Jean Bodin, On Sovereignty, Four Chapters from The Six Books of the Commonwealth*, Cambridge University Press, Cambridge, 1992, p. 46.

¹ See 1 *Samuel* Chapter 10, verses 1-2.

² See the selection of David, 1 *Samuel*, Chapter 16, *passim*.

³ See *Mark*, Chapter 15, v. 26; and see *Matthew*, Chapter 27, verses 27-37; the Roman soldiers responsible for the mechanics of the crucifixion erected a sign over his head on the cross, bearing this inscription.

⁴ 'Jesus began to preach, saying, "Repent, for the kingdom of heaven is at hand". ... 'And he went about all Galilee, teaching in the synagogues and preaching the gospel (good news) of the kingdom.' See *Matthew* Chapter 4, verses 17 and 23 respectively. Chapter 5, Verse 19.

⁵ See *Matthew*, Chapter 22, verses 37-40.

⁶ 'Thy kingdom come...' —the Lord's Prayer, *Matthew*, Chapter 6, v. 10.

⁷ See for example the inauguration and anointing of Charlemagne as Holy Roman Emperor by the pope in Rome in 800 A.D. The references to the Old Testament—to the prophets, to Abraham, Isaac and Jacob, to Samuel, David, and Solomon, persisted throughout all the recensions of the coronation *ordos* to the present time—see for example, *The Form and Order of Her Majesty's Coronation*, reproduced in *Elizabeth Crowned Queen, The Pictorial Record of the Coronation*, John Arlott, John Snagge, Sir Gerald W Wollaston, Odhams Press, London, 1953, at pp. 57-61.

The Celts were that people which arose, apparently from nowhere, around the 5th or 6th century BC, to conquer the whole of western Europe before being beaten back into obscurity by the combined pressure of Romans, Germans and Christians.¹ Remnants of the Celts remained in Britain, in the Welsh, the Scots and the Irish, with Ireland being today the only Celtic state remaining in the world.²

The Celts³ were known to have kings (*ri*), whose powers and functions are to be found itemised in a text called the 'Testament' or 'Last Words' of Morand, a mythical judge, addressed to an equally mythical king called Feradach, the earliest version of which is pre-Christian, and which has been said to be the 'oldest *speculum principis* or *Fürstenspiegel* [mirror of princes] in western Europe;' the tract establishes the blessings that occur to the *tuath* (the area under the king's jurisdiction) from the just rule of a righteous king—from *fir flathemon*, literally, 'the prince's truth'.⁴

The Celtic king/*ri* was 'selected' from the blood royal. It appears that the tanist—*tánaise rig*, the 'expected or awaited one'⁵—was first selected by agreement between the new king and all the *rigdomnai* who were themselves eligible for the office and that their choice was subsequently ratified by acclamation in the *airecht* or assembly of notables.⁶

The Welsh succession followed this pattern, with the old native word for the heir being *garthych* ('expected', or 'awaited one') or *gwrthrychiad* ('looker forward'). The later Welsh law

¹ see Jean Markale, *The Celts*, Inner Traditions International, Rochester, 1993; first published in French *Les Celts et la Civilisation Celtique*, Payot Paris, 1976; translated by C Hauch, 1978; at p. 14.

² Markale, *The Celts*, *loc. cit.*, p. 123.

³ There is a significant and growing body of modern scholarship on the Celts, and in particular on the Celts in the British Isles. This work makes passing and perforce incomplete reference to some of the texts in connection with the influence of the Celtic notions of kingship on the subsequent evolution of the idea of kingship in Britain. But this is a very large area of research in its own right, and would repay separate inquiry.

⁴ See D A Binchy, *Celtic and Anglo-Saxon Kingship*, The O'Donnell Lectures for 1967-68, delivered in the University of Oxford on 23 and 24 May 1968, Clarendon Press, Oxford, 1970, at pp. 9-10.

⁵ *Tánaise rig*, the 'expected or awaited one', who would follow the king; *tanistry*, the appointment of a successor during the lifetime of a king—see Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, at p. 26, and reference to D Green, 'Some linguistic evidence relating to the British Church', in *Christianity in Britain, 300-700*, M W Barley and R C P. Hanson, (eds.), Leicester University Press, 1968, pp. 83 ff.

⁶ See Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, at p. 21, and p. 27—'As Frazer [Sir James George Frazer, author of *The Magical Origins of Kings*, and *The Golden Bough, a Study in Magic and Religion*, *loc. cit.*] pointed out long ago, the opposition between 'hereditary' and 'elective' kingship is an unreal one, for a great many communities have employed a combination of both.'

books¹ however mainly use the word *edþyng* to denote the heir to the throne, a borrowing from the Anglo-Saxon, *æðeling*. This departure from the old form has been seen as a deliberate attempt to assimilate the prerogatives and functions of the Welsh kings to those of their Anglo-Saxon overlords². (At that time the *æðeling* was the legally designated Anglo-Saxon successor to the throne, nominated by the king during his lifetime, and it has been suggested that the process of 'election' by the nobles (*witan*) became more of a mere authentication or ratification of the king's choice, than a separate exercise of will by the *witan*.³)

Celtic *rix* may perhaps have been capable of being deposed, although there would appear to be no recorded instances. But if the *ri* were blemished, there was the possibility of his being 'unkinged' (*athrigad*); and it would appear that the 'injustice of the prince' (*gáu flathemon*) had adverse effects on his area of jurisdiction (*tuath*),⁴ or upon his people.

There is substantial evidence for the sacred nature of the Celtic kingship, and for the idea that the Celts saw the king as being wedded to his country in a special ceremony.⁵ A Celtic scholar has argued that while 'it may well be that some kings owed their exalted office to the need for leadership in battle, in the overwhelming majority of cases the origin of monarchy is surely "religious" in Frazer's⁶ loose sense of the term,'⁷ and as regards the early Celtic kings, 'the originally sacred character of the Celtic *rix* is ... universally admitted.'⁸ Celtic kingship came eventually to the notion of an 'overking'.

Celtic iconography shows that a crown was associated with divinity⁹, and complemented

¹ These date from the time of Hywel Dda, (c. 950) who acknowledged Æthelstan (c. 925+) as overlord.

² For a discussion of the Anglo-Saxon succession, see J E A Jolliffe, *The Constitutional History of Medieval England from the English settlements to 1485*, A and C Black Limited, London, 1937; 4th edn., Adam and Charles Black, London, 1961, reprinted 1967, at pp. 30-31.

³ See Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, at pp. 26-30; and see Peter Hunter Blair, *An Introduction to Anglo-Saxon England*, Cambridge University Press, Cambridge, 1956 (reprint 1966), at pp. 198-199.

⁴ See Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, p. 10.

⁵ See Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, at pp. 11-12.

⁶ Sir James George Frazer, author of *The Magical Origins of Kings*, 1905, and *The Golden Bough, a Study in Magic and Religion*, 1890-1915.

⁷ Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, p. 8.

⁸ Binchy, *Celtic and Anglo-Saxon Kingship*, *loc. cit.*, p. 9 and the authorities mentioned there.

⁹ See Anne Ross, *Pagan Celtic Britain*, Routledge & Kegan Paul Ltd, London, 1967; revised edn. Constable and Company Ltd, London, 1992; paperback edition, Constable, London, 1993, at p. 61, p. 76, p. 128, p. 131, p. 178, (where there is a

the Celtic cult of the head¹, sometimes horned, and sometimes human, which received perhaps its most obvious explication in the legend of the head of Bran the Blessed. The Celts regarded the human head as symbolic of divinity and of otherworld powers², and depicted the 'divine head' on their coins.³

It seems clear from modern Anglo-Saxon and Celtic scholarship, that the Celts in Britain exerted a considerable influence on the incoming continental races, in terms of their notions of kingship and the 'overking'⁴, their laws, and (later) their concepts of Christianity.⁵ The notion of an overking was one which would appear to have become embedded in much Celtic lore and tradition. For example, Bran the Blessed, an ancient Celtic hero-god who appears in Irish, Welsh, (*Bendigeit Vran*) and even later Arthurian legends⁶, is described as 'King of Britain'⁷, or '...the crowned king of this island, having been raised to the throne of London.'⁸ He was a multifaceted character, being war-leader, patron of the arts,⁹ religious leader¹⁰, a major contributor to the Celtic cult of the head—literally a 'god head'¹¹—and divine protector of the island.¹ One of the later *Triads* of

connection between the crown and the 'horned god' of old Celtic mythology, and see fig. 93, p. 179, for the resemblance between the depiction of the horned god, and a crown); p. 210; pp. 276-77; and see p. 451, where reference is made to the 'sacred symbols' of the Celts, which included the head, and the crown, the leaf crown being the 'insignia of divinity.'

¹ See Anne Ross, *Pagan Celtic Britain*, *ibid.*, pp. 94-171

² See Anne Ross, *Pagan Celtic Britain*, *loc. cit.*, p. 91.

³ Anne Ross, *Pagan Celtic Britain*, *loc. cit.*, pp. 101-102.

⁴ See discussion at p. 31 *supra*, and see also the references to Bran the Blessed, 'king of Britain', and to **Brigantinos* and 'great king' in Binchy, *Celtic and Anglo-Saxon Kingship*, *op. cit.*, at pp. 9-14, and to the role of the 'kings of Tara', at p. 37, and pp. 42-43; and see Binchy, *op. cit.*, at pp. 31 ff.

⁵ See p. 31, *supra*, and see also p. 35, p. 35, p. 38, p. 40, and p. 319, *infra*.

⁶ See Jean Markale, *Les Celts et la Civilisation*, *The Celts*, Payot, Paris, 1976; translated by C. Hauch, Inner Traditions International, Vermont, 1978, at p. 72, and see p. 246.

⁷ See D. A. Binchy, *Celtic and Anglo-Saxon Kingship*, The O'Donnell Lectures for 1967-68, delivered in the University of Oxford on 23 and 24 May 1968, Clarendon Press, Oxford, 1970, p. 9—'The hero of the Second Branch of the Mabinogi, Bendigeitfran, "Bran the Blessed", who is described as "King of Britain", has long been recognised by Welsh scholars as a euhemerized deity' [i.e. deification of dead heroes], and also the authority in n. 16 [John Rhys, *Celtic Heathendom*].

⁸ See *The Mabinogion*, Jeffrey Gantz (trans.) Penguin books, 1976, reprinted 1981, *The mabinogi* of Branwen, at p. 67.

⁹ See Anne Ross, *Pagan Celtic Britain*, *loc. cit.*, p. 322.

¹⁰ See Markale, *The Celts*, *loc. cit.*, p. 101; Bran makes himself a bridge for his army and says: 'Let him who is a [chief] leader be a bridge.' (see *The Mabinogion*, *Branwen*, *loc. cit.*, p. 76.) Markale notes that 'the bridge-maker is the Latin *pontifex*, the priest, and originally the leader was a priest with all the sacred qualities that implied.' [Note also that Julius Caesar had been Pontifex].

¹¹ After the pyrrhic victory against the Irish and cauldron of rebirth, Bran commanded the remaining seven to cut off his head and bury it in the White Hill in London, facing France 'For while the head was concealed no plague came across the sea to this island.'—*The Mabinogion*, *loc. cit.*, p. 81.

Britain translated him into a saint, claiming that he 'first brought the christian faith to the nation of the Cymry, from Rome where he spent seven years as a hostage for his son, Caradawc'². This figure in turn became Christianised into St Brendan of medieval legend.³ Bran was a continuing force in British mythologies and tales, being identified variously with, for example, Uther Pendragon or Uther Ben ('Terrible Head'), and Ban of Benoic, Lancelot's father, in the Arthurian legends,⁴ a testament to the endurance of Celtic influences.

While nothing certain is known of the beginnings of Christianity in Britain, there is clear evidence of the presence of Christians in Britain from the writings of Tertullian and Origen, both of whom wrote in the first half of the third century.⁵ There was a vigorous Christian community, known as the Celtic church,⁶ with particular influence in the Isles from about 200 A.D. But this is often overlooked, because of the dominance which the Roman catholic church came to have over the indigenous Celtic church in the British Isles after the advent of Augustine in 597.

The Celtic church had considerable influence on Celtic kings, particularly with regard to the idea of the sanctity⁷ and duties of kingship.⁸ The first description of the consecration of a king in Britain is that of a Celtic king—Saint Columba, the Celtic saint who founded the monastery at Iona, consecrated Aidan, King of Dalriada, (the Scots, descended from the Irish Celts of the royal house of Dál nAraide⁹, who emigrated to what is now called

¹ See Markale, *The Celts*, loc. cit., pp. 263-264: '...while it [Bran's head] stayed there [at White Hill in London], the Saxons did not come to oppress this island.'; sourced to *Triad* 14, *Mabinogi* II, p. 240.

² *Triad* 124, *Mabinogi* II, p. 305, quoted in Markale, *The Celts*, loc. cit., at p. 264.

³ Markale, *The Celts*, *ibid.* p. 264.

⁴ See Markale, *The Celts*, loc. cit., p. 246.

⁵ Blair, *Anglo-Saxon England*, op. cit., pp. 126-127.

⁶ Blair, *Anglo-Saxon England*, *ibid.* pp. 124-132; and Markale, *The Celts*, loc. cit., at p. 138 ff.

⁷ Scholars have suggested connections between Celtic precedents and the anointing of kings—see Janet L Nelson, 'The Earliest Surviving Royal Ordo: Some Liturgical and Historical aspects, in *Authority and Power, Studies on Medieval Law and Government Presented to Walter Ullmann on his Seventieth Birthday*, Brian Tierney and Peter Linehan, (eds.), Cambridge University Press, Cambridge, 1980, 29 ff., at 41, especially note 59 referring to her papers in *JEH*, XVIII (1967), p. 48, n. 4; and in *JCH*, XIII (1976), p. 116. And see J Prelog, 'Sind die Weihesalbungen insularen Ursprungs?', *Frühmittelalterliche Studien*, XIII (1979), pp. 303-56

⁸ See pages 31 *supra*, and p. 38ff., and pp. 319 ff. *infra*.

⁹ See Anne Ross, *Pagan Celtic Britain*, Routledge & Kegan Paul Ltd, London, 1967; revised edn. Constable and Company Ltd, London, 1992; paperback edition, Constable, London, 1993, at p. 196.

Scotland) as king¹ in c. 574². Specific rites for the ordination of Celtic kings, like the Lord of the Isles, which included oath-taking and required the maintenance of customs date from at least the seventh and eighth centuries.³ Recent archaeological evidence suggests that British high kings (*Bretwalda*) who claimed rule over the Celtic as well as the Germanic and Scandinavian peoples of Britain, appropriated to their use British/Celtic ceremonial sites and symbolic devices of kingship.⁴

THE LINGUISTIC CONNECTION

The modern word 'king' derives from the Old English '*cyning*' or '*kyning*'.⁵ It has been said that *cyning* was the regular patronymic meaning 'son of' and it has been suggested, though it is by no means certain, that the word *cyning* originally meant 'son of the *gyn*' or 'member of the royal family'.⁶ The modern word 'kingdom' derives from the Old English word *cynedom* (i.e. the territory in which a king (*cyning*) might exercise authority, law, or judgement

¹ see Leopold G Wickham Legg, *English Coronation Records*, Archibald Constable & Co., Westminster, 1901, at pp. 1-2. '...the saint, in obedience to the command of the Lord, sailed across to the Iouan island (Hy, now Iona), and there ordained, as he had been commanded, Aidan to be King, who had arrived at the same time as the saint. During words of consecration the saint declared the future regarding the children... of Aidan, and laying his hand upon his head, he consecrated and blessed him.'—sourced to Brit. Mus. Cotton. Tib. D. iii. fo. 210b; translation from Dr W Reeves' *Life of Saint Columba*, written by Adamann, Edinburgh, 1874, Book iii, Chapter VI, p. 81.

² Francis C Eeles, *The Coronation Service, Its Meaning and History*, A R Mowbray & Co. Ltd, London, 1952, p. 13.

³ See The Marquess of Bute, *Scottish Coronations*, London, 1902, referred to and summarised in Herbert Thurston, *Coronation*, from the *Catholic Encyclopedia*, the Encyclopedia Press, Inc., 1913; transcribed by Douglas J Potter for the Electronic version, copyright 1997 by New Advent, Inc. For text, see Appendix I.

⁴ see Carol Neuman de Vegvar, 'The Iconography of Kingship in Anglo-Saxon Archaeological Finds', in *Kings and Kingship*, ACTA Vol. XI, 1986, The Center for Medieval and Early Renaissance Studies, State University of New York, Joel Rosenthal, (ed.), p. 1, at pp. 12-13; and see the possibility of Celtic precedents for the earliest English coronation orders referred to in 'The Earliest Surviving Royal Ordo: some Liturgical and Historical Aspects', Janet L Nelson, in *Authority and Power: Studies on Medieval Law and Government presented to Walter Ullmann on his seventieth birthday*, Brian Tierney and Peter Linehan, editors, Cambridge University Press, Cambridge, 1980, pp. 29-48, at p. 41; and see also her reference to her papers in *JEH*, XVIII (1967), p. 48, n. 4; and *SCH*, XIII (1976), p. 116; and to J Prelog, 'Sind die Weihesalbungen insularen Ursprungs?', in *Frühmittelalterliche Studien*, XIII, (1979), pp. 303-56.

⁵ see, for example, the Dooms extracted at p. 42, *infra*; and see *De Republica Anglorum, The manner of government or police of the Realme of Englande*, by Sir Thomas Smith, Seene and allowed at London, Printed by Henrie Middleton for Gregorie Seton, 1583; L Alston, (ed.), preface by F W Maitland, Cambridge University Press, Cambridge, 1906, at Chapter IX, p. 18. The word does not derive, as had been suggested by Sir John Fortescue, from the Latin '*regendo*', from which the word 'regal' derives—*De Laudibus Legum Anglie*, 1468-1471, Cap. 12, p. 29 (S B Chrimes, ed.)

⁶ See Peter Hunter Blair, *An Introduction to Anglo-Saxon England*, Cambridge University Press, Cambridge, 1956 (reprint 1966), at p. 195; And see *Sweet's Anglo-Saxon Primer*, 1882; 9th edn., reprinted with corrections, Clarendon Press, Oxford, 1967, which defines *gyn-bearn*, as child of a royal house; *gyn-gierela* as a royal robe; *gyn-lice*, as like a king, royally; *gyn-ric* as kingdom; *gyn-stol* as throne; *gynn* as race or people; and *gyning* as king (masculine).

(*dom*)¹). But in the Old English texts the word 'kingdom' was frequently rendered by the word *rice*². *Rice* is a much older than *gýning*, and represents an early Saxon adaptation of the Celtic word *ri* (king).³ An eighth-century Irish law tract on status offers the following interpretation of *ri*— '*Rí*, why is he so called? Because he rules (*ríges*) over his people (*tuatha*) with coercive power.'⁴ This Celtic word *tuatha* derives from Indo-European **teuta*, and is used in Old English as *ðeode*, meaning 'people', or more generally, 'kingdom' or 'nation'.⁵

The *tuath* was the area of jurisdiction; and in the old Irish legal tracts 'a rule of law is often stated to apply *i tuath*, 'within a *tuath*'.⁶ A recent study has stated that '(s)o far as the western Indo-European peoples are concerned, then, there was a common word **teuta* for the primary unit of society, the people and the territory ruled by a **reg-s*', the

¹ cf. Old English word *dom*, meaning judgement or sentence; hence the 'Dooms' – see *infra* pp. 44ff., and pp. 52ff.

² see for example, its use in the Dooms of Ine, quoted at p. 44 *infra*, and in the Dooms of Wihtred, quoted at p. 45 *infra*.

³ see Blair, *Anglo-Saxon England*, *op. cit.*, cf. Latin *rex*; modern German *reich*, at p. 195. See also the fascinating series of lectures by D A Binchy, *Celtic and Anglo-Saxon Kingship*, The O'Donnell Lectures for 1967-68, delivered in the University of Oxford on 23 and 24 May 1968, Clarendon Press, Oxford, 1970; he argues that 'not merely the Celts, but all the Indo-European-speaking peoples were once ruled by tribal kings, that the word **reg-s* is inherited from the period of unity, and that its disappearance from most of the dialects was due to the replacement of the primitive 'tribal king' by the 'great king' for whom the monarchs of the East had provided the pattern', at p. 4. cf. Indo-European **reg-s*; Sanskrit *raj*; Irish *ri*; Welsh *rhî*; Gaul *-rix*; see Binchy, *loc. cit.*, p. 3. [Some scholars in previous generations freely but wrongly interpreted the word *rice* to mean 'riches'.]

⁴ Binchy, *Celtic and Anglo-Saxon Kingship*, *ibid.* at p. 4; cf., Glanvill (*Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, *The Treatise on the laws and customs of the realm of England, commonly called Glanvill*, written between 1187 and 1189, G D G Hall (ed.), Nelson in association with the Selden Society, London, 1965; [this text is the one hereinafter referred to as Glanvill]— *Not only must royal power be furnished with arms against rebels and nations which rise up against the king and the realm, but it is also fitting that it should be adorned with laws for the governance of subject and peaceful peoples*— Glanvill, p. 1) and Bracton, (*Bracton De Legibus et Consuetudinibus Angliæ*, George E Woodbine (ed.), Yale University Press, 1922, reproduced with translation by Samuel E Thorne, Selden Society and Harvard University Press, Cambridge Mass., 1968, in 4 Volumes; *Bracton on the Laws and Customs of England*, trans. Samuel E Thorne; Latin text copyright 1922 Yale University Press; translation copyright 1968 Harvard, Vol. 2, p. 19 [folio 1] — *To rule well a king requires two things, arms and laws, that by them both times of war and of peace may rightly be observed. For each stands in need of the other, that the achievement of arms be conserved [by the laws], the laws themselves preserved by the support of arms.*); and see 'This fact the Emperor Justinian carefully bears in mind when, in the beginning of the Prooemium to his book of Institutes, he says, Imperial Majesty ought to be not only adorned with arms but also armed with laws, so that it can govern aright in both times of peace and war.' — *Imperatoriam maiestatem non solum armis decoratam, sed et legibus oportet esse armatam, ut utrumque tempus bellorum et pacis recte possit gubernare* — Justinian, *Institutes*, Prooemium, as quoted by Sir John Fortescue, in *De Laudibus Legum Angliæ*, p. 4, 1468-1471, edited and translated with Introduction and Notes by S B Chrimes, Cambridge University Press, Cambridge, 1942, [translated from Edward Whitchurch's edition, 1545-1546,] facsimiles made from copies in the Yale University Library, *De Laudibus* (OM68.583st), Cambridge Studies in English Legal History, H D Hazeltine, (gen. ed.); reprinted by Garland Publishing New York, 1979; for further discussion see *infra*, at note 3 at p. 225, p. 225, and note 8 at p. 225.

⁵ see Binchy, *Celtic and Anglo-Saxon Kingship*, *loc. cit.*, p. 6-7: Celtic: Irish *tuath*; Welsh *tud* (cf. *Tudur* < **tuoto-rix*, 'Tudor'); Breton *tud*; Gaul *Toutatus*, *Teutomas*, *Toutiorix* (=Welsh *Tudur*, Irish, *ri tuaithe*); Greek *Τενταμίδης* (Homer), *Τεντιαπλος* (Thuc. iii. 29); Illyrian, *Tenta*, *Tenticus*; Baltic Lith. *tuata*; Old Prussian *tauto*; Germanic, Goth. *þiuda* 'people' (*þiudans* 'ruler, king'), Old Norse, *þjóð* (*þjóðann*); Anglo-Saxon *peod* (*peodin*); Italic, Umbrian *tota*, Osc. *touto*; and see Sweet's *Anglo-Saxon Primer* for definition of *ðeode*.

⁶ Binchy, *Celtic and Anglo-Saxon Kingship*, *ibid.* p. 5

interrelationship of these words being justified not merely by the Irish evidence but also by the survival of such proper names as W. [Welsh] *Tudur* and *Tutri*, Gaul. *Toutiorix*, Germ. *Theodrich* (all of them = Ir.[Irish] *rí tuaithe*)¹. It is not uninteresting in this context that the Lancastrian line of Welsh Henry Earl of Richmond took the name of 'Tudor'² for their house.

This, then, is the background against which the kingship in Britain evolved. Early British kings were influenced, as evidenced by the linguistic connection, by the Celtic idea of kingship. Through Celtic tradition and the Celtic church, and prior to the arrival of St Augustine, British kings had acquired a notion of a sanctified kingship, with responsibilities for making laws and 'ruling' the people.

BRETWALDAS AND THE CELTIC TRADITION

From the fifth century A.D. references are to be found to the *Bretwalda*, the 'Britain ruler', or the '*rex Britanniae*'.³ The *Bretwalda* was what the Celts would have called an 'overking'.

The title *Bretwalda* may have been won in battles, and/or signified by homage of lesser or defeated sub-kings, who in turn (together with the clergy and the *Bretwalda*'s closest personal advisers) became the king's council or *uian*. But the *Bretwalda* was a peculiarly *British*, not necessarily an Anglo-Saxon, phenomenon.

It has, in my opinion, been a mistake for most commentators on the British⁴ system of kingship, laws, philosophy and governance, firstly to interpret the term 'British' artificially

¹ Binchy, *Celtic and Anglo-Saxon Kingship*, loc. cit., p. 7.

² Henry VII was also descended from Owen Tudor, (who had married the widow of Henry V of England), who was himself descended from Ryhs ap Tewdwr (1078-1093), prince of South Wales, who in turn was a descendant of Tewdwr Mawr the Great, and of Rhodri Mawr the Great of Gwynedd (844-878), who unified most of Wales under his rule.

³ Æthelbald of Mercia (716-757) is described in this way, i.e. '*rex Britanniae*', in the Ismere Charter of 736; Blair, *Anglo-Saxon England*, op. cit., p. 107.

⁴ Here I mean the area now known as the United Kingdom, that is, England, Scotland, Wales, and Northern Ireland, and until relatively recently, Eire.

and narrowly as if it were synonymous with 'English'¹; and secondly, to be guided by an underlying assumption that all such 'English' systems were derivative mainly from the Teutonic/Germanic continental systems, with overlays of the civil law as codified by Justinian.² It could well be that this is an example of the pervasive 'Whig historiography' that grew out of the convenient misreadings and misrepresentations by seventeenth century parliamentarians of the early history of Britain; the essence of this view relied almost entirely upon the influence of the Germanic tribes, particularly in their perceived ideas of election and deposition of kings.³ Be that as it may, Percy E Schramm, author of *The History of the English Coronation*⁴, (translated from the German by Leopold Wickham Legg who in turn had compiled *English Coronation Records*⁵), stated that in his view the Celtic traditions were 'meagre'⁶, and that "These reasons justify us in leaving the Celts entirely out of consideration."⁷; consequently he to a very large degree saw the development of kingship in Britain as primarily descended from the Teutonic/German examples on the continent. Moreover, earlier scholarship on the Celtic civilisation in the British isles appears also to have interpreted Celtic religions, customs and society very much through the prism of the Germanic/Teutonic experience on the continent.⁸

The old British concept of the *Bretwalda* or 'overking' is, in my view, merely a natural

¹ Note here my observations below, concerning the Anglo-centric nature of most 'British' constitutional law—see *infra*, p. 356 and note 3

² See, for example: Reinhard Bendix, *Kings or People, Power and the Mandate to Rule*, University of California Press, Los Angeles, 1978, at pp. 23-25, p. 178, and p. 197; and also see Percy E Schramm, *A History of the English Coronation*, translated from the German by Leopold G. Wickham Legg, Clarendon Press, Oxford, 1937, cited *infra*; and also see J E A Jolliffe, *The Constitutional History of Medieval England from the English settlements to 1485*, Adam and Charles Black, 4th edn., London, 1967, at p. 1 ff.

³ See Peter Hunter Blair, *An Introduction to Anglo-Saxon England*, Cambridge University Press, Cambridge, 1956 (reprint 1966), at p. 194; and see J G A Pocock, *The Ancient Constitution and the Feudal Law*, Cambridge University Press, Cambridge, 1957, 1987, referred to by Mark Goldie, (ed), John Locke, *Two Treatises of Government*, Everyman, London, 1993, at p. xix; and see H Butterfield, *The Whig Interpretation of History*, G Bell & Sons, London, 1963.

⁴ Percy E Schramm, *A History of the English Coronation*, translated from the German by Leopold G. Wickham Legg, Clarendon Press, Oxford, 1937.

⁵ Leopold G Wickham Legg, *English Coronation Records*, Archibald Constable & Company Limited, Westminster, 1901; for my own doubts about the accuracy of the assertions made by Legg in this work, and by Schramm in his *History*, see *infra* p. 113, p. 118, pp. 247-257, and pp. 292-294 particularly regarding the texts relating to Richard III, Henry VII, and Henry VIII, and see also p. 314 and p. 316, *infra*.

⁶ See Schramm, *History of the English Coronation*, *loc. cit.*, p. 5; admittedly at his time also (c. 1937) Celtic and Anglo-Saxon scholarship had not by any means attained the depth that it now has, nor will yet, attain.

⁷ Schramm, *History of the English Coronation*, *loc. cit.*, p. 13.

⁸ See Anne Ross, *Pagan Celtic Britain*, Routledge & Kegan Paul Ltd, London, 1967; revised edn. Constable and Company Ltd, London, 1992; paperback edition, Constable, London, 1993, at p. 31.

evolution of a pre-existing Celtic concept of overlord and protector, and the notions of sanctity and duties of the king grew not only from Teutonic ideas, but also from the vestiges of Celtic kingship abroad in the islands and from the influence of the Celtic church in Britain.

This lineal descent¹ would account for the otherwise almost inexplicably deep-seated sense of common 'Britishness', of 'Britannia' as the '*patria*'², which dates from before the time of Æthelberht in 597³. It would account also for the sense of 'communal identity' or the '*gens Anglorum*', with which, despite the multiplicity of tribal backgrounds, the populace south of the Humber viewed themselves when looking outwards, and through which the inhabitants of the continent viewed them.⁴ Such a lineal progression would also account for the relative ease⁵ with which rules of law were established and kept throughout the kingdoms under the *aegis* of a single king, as the notions of king as law-giver, law-enforcer, and the sanctity of the king had become embedded in the popular psyche for generations prior to the advent

¹ I have not dealt with the impact of the Roman occupation of Britain, which lasted some four hundred years, as it would appear, apart from the remains of fortifications, roads and buildings, to have had no lasting effect on the British. And see *The Constitutional History of Medieval England from the English settlements to 1485*, J E A Jolliffe, A and C Black Limited, London, 1937; 4th edn., Adam and Charles Black, London, 1961, reprinted 1967, at p. 1—'Whatever the degree of Romanization of the British Province, no trace of Latin influence upon the English peoples has been or is likely to be detected before the Gregorian mission introduced an ecclesiastical strand into the land law in the seventh century. There are some obvious survivals from the past in Northumbria and in the extreme west of the Midlands, but they are Celtic, and testify rather to the failure of Rome to change the essentials of life in the remoter parts of the island than to any permanent influence of Latin political or social forms.' Indeed, the Romans would appear to have appropriated the Celtic gods and customs and merely in many cases substituted their own gods and customs—see Anne Ross, *Pagan Celtic Britain*, Routledge & Kegan Paul Ltd, London, 1967; revised edn. Constable and Company Ltd, London, 1992; paperback edition, Constable, London, 1993, at pp. 71 ff. (reference to Romano-Celtic shrines etc.) and pp. 447-82. It could be argued, however, that the example of the Romans, with one centralised authority (the Emperor), permeated the indigenous consciousness, reinforcing the older examples of the hero-kings. And of course, with the establishment of the Roman catholic religion as the religion of the Roman empire by the Emperor Constantine in the Edict of Milan in A.D. 312, the efforts of the Celtic church in emphasising the sacred nature and responsibilities of kings would again have reinforced the old Celtic ideas of the hero-king.

² Latin, meaning 'country', or men belonging to a particular place. See Patrick Wormald, 'Bede, *Bretwaldas* and the Origins of the *Gens Anglorum*,' *Ideal and Reality in Frankish and Anglo-Saxon Society, Studies presented to J M Wallace-Hadrill*, Patrick Wormald, Donald Bullough and Roger Collins (eds.) Basil Blackwell, Oxford, 1983. pp. 98-129, at p. 120 ff.

³ Wormald, 'Bede, *Bretwaldas*,...', *art. cit.*, p. 124.

⁴ See Wormald, 'Bede, *Bretwaldas*,...', *art. cit.*, p. 128.

⁵ Patrick Wormald sees it as 'virtually incredible' that unification under one authority occurred in Britain (which was not initially subject to a single political authority), when it did not happen until long afterwards in continental countries which *were* initially subject to a single political authority. He tends to dismiss the existence of position of *Bretwaldas* on this ground, because to accept such a position is in the light of the foregoing statement 'all too easy.' He does however accept the existence of the communal identity, which he sees as drawing its strength 'from spiritual ideals rather than political realities', which he in turn attributes '...probably...to Canterbury's papally inspired vision of their unity before God.' 'Bede, *Bretwaldas*,...' *art. cit.*, at p. 129.

of Christianity or the Anglo-Saxons.¹

This disregard of the Celtic connection is, in my view, one reason why it is unfortunate that most modern writers on the English coronation ceremony, for example, continue to accept Schramm as the authority on the English kingship, either explicitly or implicitly.²

But who, then, were these *Bretwaldas*, and what were they?

EARLY ENGLISH KINGS AND THE *BRETWALDA*

Bede³ in his *History of the English Church and People* c.731, speaks of a number of kings of various 'provinces'— Wessex, Mercia, Northumbria, East Anglia, Kent, and the East and South Saxons('the Heptarchy').⁴ He notes that Æthelberht, king of Kent [560-616]

... was the third English king to hold sway over all the provinces south of the river Humber, but he was the first to enter the kingdom of heaven. The first king to hold this position was Aella, [Aelle] King of the South Saxons [Sussex, 477-514]; the second was Caelin, King of the West Saxons [Wessex], known to his people as Ceawlin [Ceawlin, 560-591]; the third, as I have mentioned, was Æthelberht; the fourth was Redwald, King of the East Angles [Rædwald, King of East Anglia, c.590-616], who even in the lifetime of Ethelbert [Æthelberht] won pre-eminence for his own people. The fifth was Edwin, King of Northumbria, [616-632] that is, the province north of the Humber, who was a powerful King, and ruled all the peoples of Britain, both Angles and Britons, with the exception of Kent. He also brought under English rule the British Mevanian Isles [Man and Anglesey], which lie between Ireland and Britain. The sixth was Oswald, the most Christian king of Northumbria, [632-641] who maintained the same

¹ Note here that Æthelstan described himself as 'king of the English', and 'Bretwalda of this island' [see Dorothy Whitelock, *English Historical Documents*, Vol. I, Dorothy Whitelock, (ed), Eyre Methuen, London, 1955, 2nd edn. 1979, at p. 549: Charter, Grant by King Æthelstan of Amounderness to the church of York, 7 June 934; see note 1, p. 43 *infra*; Grant of land by King Æthelstan to the Old Minster, Winchester, in F L Attenborough, *The Laws of the Earliest English Kings*, 1922, ed. cit.; reissued Russell & Russell, New York, 1963, at pp. 48-49.]. William the Conqueror described himself as 'king of the English': see C Stephenson, and F G Marcham, (eds.), *Sources of English Constitutional History: Vol. I: A Selection of Documents from AD 600 to the Interregnum*, New York, Harper & Row, rev. edn., 1972, at p. 35.

² See for example, Randolph Churchill, *The Story of the Coronation*, Derek Verschoyle, London, 1953, at p. 20: 'The most authoritative work on the history and theory of the English coronation service was written by a German, Percy Ernst Schramm... who writes with unchangeable scholarship and pith...'; and see John Cannon and Ralph Griffiths, *The Oxford Illustrated History of the British Monarchy*, Oxford University Press, 1988, reprinted with corrections, 1989, 1992, 1997, p. 682, 'Further Reading', 'The Age of Empires', 'Court Life'— P E Schramm, *A History of the English Coronation*, (etc) , —'still the standard work'. For other of my reservations about some of the conclusions of Schramm and LGW Legg, see for example, p. 39 *supra*, and p. 113, p. 118, p. 247, p. 248, p. 249, p. 251, p. 257, p. 294, p. 292, p. 314 and p. 316 *infra*.

³ The venerable Bede describes himself as 'Priest and servant of Christ' in his preface to *A History of the English Church and People*, c. 731; *Trans.* Leo Sherley-Price, Penguin Books, Harmondsworth, 1965

⁴ see Dorothy Whitelock in the introduction to *English Historical Documents*, Vol. I, Dorothy Whitelock, (ed), Eyre Methuen, London, 1955, 2nd edn. 1979, at p.10.

*frontiers; the seventh was his brother, Oswiu, [Oswiu, 641-670] who for a while held the same territory, and to a large extent conquered and made tributary the Picts and Scots in the northern parts of Britain.*¹

Here Bede refers to seven kings who had dominion over others; and he appears to add Æthelbald, King of Mercia [716-757] to the list, although he ignores Offa, the famous King of Mercia from c.757-796². The *Anglo-Saxon Chronicle* for 827 (*recte* 829) states:

And that year King Egbert conquered the kingdom of the Mercians and everything south of the Humber; and he was the eighth king who was 'Bretwalda'. [sic. MS. A; other MSS. 'Brytenwalda']³

Egbert (802-839) subdued in turn Kent, Surrey, Sussex, Essex, East Anglia, Mercia, Northumbria, and Wales;⁴ the basis of Egbert's authority to be *Bretwalda* appears to have been armed force, which either directly subdued or indirectly protected neighbouring kingdoms.⁵ *Bretwalda* is a symphysis of O.E. *Bretwealh* (Briton) and *ge-wealdan* (to rule, have power over)—one who rules or has power over the Britons. The term *Bretwalda*, the 'Ruler of all the Britons', 'Britain ruler', or the '*rex Britanniae*'⁶ was certainly used in the Charters of Æthelstan, King of England from 925-939:

In Godes name ich Apelstan God gyning welding eal Brytone mid alle mine wytene alle biscope of þan kingedome of Engelande... grantye and confirme by disse minre chartre for me and for þe kingges of Engelande dæt comeþ æfter me ene and eure ich... [In the name of God, I, Æthelstan, by the grace of God ruling all Britain, with all of my *wytene* (*witan*, councillors) and all the bishops of the kingdom of England.... grant and confirm by this my charter for myself and for the kings of England who come after me...]

Mid Godæs gife Ic Æthelstan Ongolsaxna cyning 7 brytænwalda ealles Iglandæs þurh Godæs sælene and ealra his balegra.... [I, Æthelstan, King of England (the Anglo-Saxons)*and ruler (of the

¹ Bede, *English Church and People*, *op. cit.*, p. 106

² Bede, *English Church and People*, *op. cit.*, p. 326

³ This is quoted from 'Bede, Bretwalda, and Origins of the *Gens Anglorum*', by Patrick Wormald, in *Ideal and Reality in Frankish and Anglo-Saxon Society, Studies presented to J M Wallace-Hadrill*, Patrick Wormald with Donald Bullough and Roger Collins, (eds.) Basil Blackwell, Oxford, 1983, at 99. And see the quotation from the Chronicle in Whitelock, *English Historical Documents*, *ed. cit.*, at p. 186, and explanation of the *Bretwalda* at p. 11.

⁴ Blair, *Anglo-Saxon England*, *op. cit.*, pp. 202-3; source *Anglo-Saxon Chronicle*.

⁵ Blair, *Anglo-Saxon England*, *ibid.*, pp. 202-3.

⁶ Æthelbald of Mercia is described in this way, i.e. '*rex Britanniae*', in the Ismere Charter of 736; Blair, *Anglo-Saxon England*, *op. cit.*, p. 107.

⁷ Charter of King Æthelstan to Milton Abbey, Dorset; reproduced in *Anglo-Saxon Charters*, A J Robertson, (ed. and trans.), Cambridge University Press, Cambridge, 1956, at p. 44; note that Ms Robertson in her Preface notes 'that very few of the documents appear to be anything other than genuine records' (at p. xxiii); the date, however, for this Charter is given in the text as 843, while Æthelstan was king from c.923-c.939; note however that this could be a scribe's error, and the tone of the charter is similar to the rest of Æthelstan's, in that as Dorothy Whitelock noted, 'Æthelstan's charters are of great interest in showing that the clerks of his writing office, without doubt at the king's instructions, strive to give expression to their consciousness that this king's position in Britain differed from that of his predecessors.' (Whitelock, *English Historical Documents*, *ed. cit.*, at p. 37)

⁸ The translation in brackets is mine; I prefer the translation 'Anglo-Saxon'; in Æthelstan's day 'England' in Old English was rendered by the word '*Englond*' or similar [for example, '*Englaland*', or '*Angelynn*' meaning 'England'; while '*Engle*'

Britons) (*Bretwalda*) of all this island by the grace of God and of all his saints...]¹ (and this Charter granting land was signed by *ÆDELSTAN Onglosaxna cyning and brytenwalda ealles þyses iglandes þurb Godæs gifre þis gesette and gefestnede mid Cristes rodelaerne* — [Æthelstan King of England (the Anglo-Saxons), and ruler of the Britons (*Bretwalda*) in/of all this island through the grace of God this set down and witnessed with Christ's cross...]²

While some commentators have doubted whether there was an 'overking' in Britain as far back as the fifth century, or indeed, at any time,³ evidence suggests otherwise.⁴

Offa king of Mercia in 757, reigned till 796 by which time he could be called *Bretwalda*. He held a dominating position in England south of the Humber⁵. Offa enjoyed close relations with Charlemagne. While there was a short-lived trade war between them in the latter part of the eighth century, their relations were friendly⁶. Charlemagne considered Offa a man of sufficient importance to marry one of his sons to Offa's daughter, though he quarrelled with the suggestion that he become father-in law to one of Offa's sons.⁷ Beorhtric, King of Wessex, married one of Offa's daughters⁸. In 786, the pope sent legates to England for the first time since Augustine, nearly two centuries before; this was closely concerned with Offa's wish to establish an independent archbishopric at Li chfield in which he was successful for a time.⁹ These papal legates while in England issued Canons at the Synod of

meant the Angles, or the English, and 'Englis' meant 'English' — see *Sweet's Anglo-Saxon Primer*, Oxford, Clarendon Press] ; while the suffix '-saxend' appears to mean 'saxon'; in addition, if he (Æthelstan) described himself as king of the Anglo-Saxons, then the use of the word '*Brytenwalda*' subsequent to it makes more sense; that is he is describing himself as king of the Anglo-Saxons and ruler of all Britain in the island.

¹ Grant of Lands By King Æthelstan to the Old Minster, Winchester, Robertson's *Anglo-Saxon Charters*, ed. cit., at p. 48.

² Robertson, *Anglo-Saxon Charters*, op. cit., p. 50. The translation of the signature is mine. Note that among the other signatures to the charter was one '*Huwal Vndercyning*', literally, Huwal, Underking; this was Huwal, the Good King of Dyfedd.

³ see Wormald, 'Bede, Bretwalda...', art. cit., at p. 110 and the sources he cites at p. 104; and for a view that states: 'Thus there is no evidence that there was a bretwaldaship or that there was the office or even status of bretwalda in Anglo-Saxon England. The entire concept ought to be abandoned.' — see Steven Fanning, 'Bede, *Imperium* and the Bretwaldas', *Speculum*, A Journal of Medieval Studies, 66 (1991), published by the Medieval Academy of America, Cambridge Mass., pp. 1-26, at p. 26

⁴ See Dorothy Whitelock in the introduction to *English Historical Documents*, Vol. I, Eyre Methuen, London, 1955, 2nd edn. 1979, at p.11, p.20, and pp. 36 ff.; and at p.381, where she states that the Anglo-Saxon charters 'Tell us of the relations between the kingdoms of the Heptarchy, and show that a *Bretwalda* was an overlord in more than his title...'; and see for a view supporting the existence of the *Bretwalda*, and the contemporary use of that term, having regard to recent archaeological evidence, Carol Neuman de Vegvar, 'The Iconography of Kingship in Anglo-Saxon Archaeological Finds', in *Kings and Kingship*, ACTA Vol. XI, 1986, The Center for Medieval and Early Renaissance Studies, State University of New York, Joel Rosenthal, (ed.), p. 1, at pp. 13-14.

⁵ Blair, *Anglo-Saxon England*, op. cit., at p. 53, p. 202, and p. 218.

⁶ Blair, *Anglo-Saxon England*, op. cit., p. 290; and see Whitelock, *English Historical Documents*, ed. cit., at p. 21 ff.

⁷ Blair, *Anglo-Saxon England*, op. cit., p. 54; and Whitelock, *English Historical Documents*, *ibid.*

⁸ Blair, *Anglo-Saxon England*, op. cit., p. 67.

⁹ Blair, *Anglo-Saxon England*, op. cit., p. 54

Chelsea, 787, concerning kingship.¹ That same year, Offa's son, Ecgrith, was consecrated (*to cyning gehalgod*) while Offa was still alive.² Offa claimed to be *rex a rege regum constitutus*³, and to establish a common *Regnum Anglorum*.⁴ Surviving documents from Offa's time suggest the frequent holding of assemblies, whose business was often concerned with the transfer of land.⁵

Kings uttered (in the sense of giving out) their Dooms (from O.E. *dom*, meaning judgement or sentence), often with the advice of their *witan*. These Dooms were means by which the society was ordered, and infractions of the peace penalised. They began to be written down c.601 by Æthelberht, King of Kent and *Bretwalda*, after his conversion by St Augustine.⁶ The Dooms of Ine, King of Wessex c.688 are typical:

Ic Ine, mid Godes gife, wesseaxna kyming, mid gedeahthe 7 mid lare Cenredes mines fæder 7 Heddes mines biscepes 7 Eorcenwoldes mines biscepes, [7] mid eallum minum ealdormonnum 7 ðæm ieldstan wítum minre ðeode 7 éac micelre gesomnunge Godes ðeowa, was smeagende be ðære hælo urra sawla 7 be ðam stapole ures rices, þætte rýht æw 7 rýhte gynedomas ðurh ure folc gefæstnode wæron, þætte nænig earldormonna ne us undergedeodedra æfter þam wære awendende ðas ure dōmas.

I, Ine, by the grace of God king of the West Saxons, with the advice and instruction of Cenred, my father, of Hedde, my bishop, and of Erconwald, my bishop, and with all my ealdormen [nobles] and the [who are the] chief councillors of my people [*witan* of my people/nation?], and with great concourse of the servants of God as well, have been taking counsel for the salvation of our souls and the security of our realm, in order that just law and just decrees[just king's judgements] may be established and ensured throughout our nation[people], so that no ealdorman nor subject of ours may from henceforth pervert these our decrees... [covers the church, penalties and fines, and certain payments to the king, e.g. king has two thirds of the wergeld of a foreigner slain]⁸

¹ Clare Stancliffe, 'Kings Who Opted Out', in *Ideal and Reality*, Wormald (ed.), *ed. cit.*, p. 154, at p. 157, n. 82, referring to Wallace-Hadrill's work. Edward C Ratcliff, in *The Coronation Service of Her Majesty, Queen Elizabeth II*, Society for Promoting Christian Knowledge and Cambridge University Press, Cambridge, 1953, at pp. 5-6 includes details of the Synod of Chelsea, 787, and the Canons made there to which Offa subscribed, and details of the Canons directions of the king, or *Christi Domini* (the Anointed of the Lord); Ratcliff sources the text in turn to Haddan and Stubbs, *Councils and Ecclesiastical Documents*, Vol. III, p. 452 ff.

² Blair, *Anglo-Saxon England*, *loc. cit.*, p. 205. Ecgrith succeeded Offa, but only for a period of 141 days, according to the *Anglo-Saxon Chronicle*, quoted by Whitelock, *English Historical Documents*, *ed. cit.*, at p. 176; Coenwulf became King of Mercia in 796.

³ Stancliffe, 'Kings Who Opted Out', *art. cit.*, p. 157, n. 82.

⁴ See W de Gray Birch, *Cartularium Saxonicum*, 155, quoted in J E A Jolliffe, *The Constitutional History of Medieval England*, 4th edn., Adam and Charles Black, 1967, at p. 48.

⁵ A charter recording part of proceedings at Brentford in 781 indicates that those present included, besides Offa, the Archbishop of Canterbury, twelve bishops representing all the sees of the southern province, and six men who held the title *princeps*, a term implying members of the lay nobility—Blair, *Anglo-Saxon England*, *op. cit.*, p. 219.

⁶ The Dooms of Æthelberht, Hlothhere and Eadric survive, but those of Offa are lost. For a coverage of the Old English Dooms, see F L Attenborough, (*ed. and trans.*) *The Laws of the Earliest English Kings*, 1922; reissued Russell & Russell, New York, 1963

⁷ Words in brackets my translation.

⁸ F L Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, pp. 40-45..

as are those of Wihtrred King of Kent c. 695-696:

Dis synd Wihtrædes domas Cantwara cyninges. Ðam mildestan cyninges Cantwara Wihtræde nixigendum þe fiftan wintra his rices, þy niguðan gebanne, sextan dæge Rugemes, in þære stowe þy hatte Berghamstye, ðær wæs gesamnad eadigra geþeahendlic ymcyme. Ðær wæs Birhtwald, Bretone heahbiscop, 7 se ær næmda cyning; eac þan Hrofesceastre bisceop (se lica Gybmund wæs haten) andward wæs; 7 cwæð ælc cincean ðære mægðe anmodlice mid þy hersuman folcy.

These are the decrees of Wihtrred, King of Kent. During the sovereignty of Wihtrred, the most gracious king of Kent, in the fifth year of his reign, the ninth Indiction, the sixth day of Rugern, in a place which is called Barham, there was assembled a deliberative council of the notables. There was present there Berhtwald, the chief bishop of Britain, and the above-mentioned king; the bishop of Rochester, who was called Gefmund; and every order of the Church of the province expressed itself in unanimity with the loyal laity (certain people, common people) [assembled there].¹

In common are the factors that the king is king by god's grace or gift, that it is the king who makes the laws, that the laws are for the peace and protection of the kingdom, the laws are to be obeyed and disobedience attracts a financial penalty, and the church is well represented in the king's council which advises him.

Thus, by Offa's time in the end of the eighth century, there was a king who: held sway over the neighbouring provinces²; engaged in dynastic marriages for his children at home and abroad; undertook trade relations with foreign powers; treated personally with foreign kings; engaged in the holding of councils at which both prelates and laity were assembled; entertained papal legates; had his son consecrated as king; issued coin³; made laws⁴; overrode grants and gifts given by subordinate kings⁵; and granted land.

If one accepts the evidence of the *Anglo-Saxon Chronicle* of Egbert in c.827 being the eighth to be known as *Bretwalda*⁶, then it would seem that from late in the sixth century to the beginning of the ninth, the English kingdoms were normally subject to a common overlord, and that by the ninth century the position held by that overlord was so far recognizable that it could be known by a particular title—such a development would have

¹ Attenborough, *Laws of the Earliest English Kings*, loc. cit., pp. 24-5.

² see Whitelock, *English Historical Documents*, ed. cit., at p. 20.

³ Blair, *Anglo-Saxon England*, op. cit., p. 54, p. 290.

⁴ Though the laws of Offa have been lost; see F W Maitland, *The Constitutional History of England*, Cambridge, 1908; reprinted Cambridge University Press, 1950, at p. 2; and see *English Historical Documents*, Vol. I, c.500-1042, Dorothy Whitelock, ed. cit., at p. 361 '...several codes have been lost. One certain and very regrettable loss is that of the laws of Offa of Mercia. Alfred claims to have used them...'

⁵ Whitelock, *English Historical Documents*, ed. cit., p. 20.

⁶ See p. 42 *supra*.

been 'an important influence on the growth of a strictly monarchical government having authority over the whole country'.¹

That the term was used by British Kings², such as Æthelstan, king from c.925–c.939, is beyond dispute.³ His suzerainty was acknowledged by the Celtic princes of Britain: the Scots, Strathclyde, Dyfedd, Gwent, and Bamburgh⁴, and he described himself in charters as '...Æthelstan, king of the English, elevated by the right hand of the Almighty, which is Christ, to the throne of the whole kingdom of Britain...'⁵ and 'Bretwalda of all this island'⁶. He sent fleets to the aid of foreign allies;⁷ married his sisters to continental princes⁸; was close to the church and sent English bishops on missions to the continent⁹. He controlled the coinage¹⁰ and had a treasurer or treasurers¹¹ (*cynges bordera*¹²). He enacted laws and granted land.¹³

It was immediately after the reign of Æthelstan [924-939], that his successor, Edmund [939-946], required an oath of fealty:

Dooms of Edmund III. This is the decree that King Edmund and his bishops, together with his *witan*, formulated at Colyton for the [maintenance of] peace and the swearing of an oath.

¹ Blair, *Anglo-Saxon England*, *op. cit.* pp. 201-202

² Alfred the Great would appear not to have used the title *Bretwalda*. His Dooms were written while he was still only king of the West Saxons (*Westseaxna cyning*); in the latter part of his reign he uses the words *Angul-saxonum rex*, or *Anglorum Saxonum rex* to describe himself.—see Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, p. 85

³ see page 42, *supra*.

⁴ see Whitelock, *English Historical Documents*, *ed. cit.*, at 37

⁵ Whitelock, *English Historical Documents*, *ed. cit.*, at p. 549, Charter, Grant by King Æthelstan of Amounderness to the church of York, 7 June 934.

⁶ see p. 42 and note 3, *supra*, Grant of land by King Æthelstan to the Old Minster, Winchester, in Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, at pp. 48-49.

⁷ Whitelock, *English Historical Documents*, *ed. cit.*, p. 345, extract from Flodoard's (a canon of Reims) *Annals*, para. 939.

⁸ Whitelock, *English Historical Documents*, *ed. cit.*, p. 38.

⁹ Whitelock, *English Historical Documents*, *ed. cit.*, p. 39.

¹⁰ Whitelock, *English Historical Documents*, *ed. cit.*, p. 40; and see Æthelstan's laws issued at Grately, Hampshire, c.926-c.930, *The Ordinances of Æthelstan*, c. 14: 'Concerning moneyers. Thirdly, that there is to be one coinage over all the king's dominion...'; quoted *ibid.*, at p. 420.

¹¹ see *Ordinances of Æthelstan*, c. 3.2 (c. 925) 'And likewise any of the king's treasurers or of our reeves, who has been an accessory of thieves... is to be liable..', quoted in Whitelock, *English Historical Documents*, *ed. cit.*, at p. 418.

¹² see Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, at p. 130.

¹³ A glowing depiction of Æthelstan is to be found in William of Malmesbury's *De Gestis Regum Anglorum* ('Concerning the Acts of the Kings of the English') written about 1125— see the extract quoted in Whitelock, *English Historical Documents*, *ed. cit.*, at pp. 303-310.

1. In the first place [he commands] that all, in the name of God before whom this holy thing is holy, shall swear fealty to King Edmund, as a man should be faithful to his lord¹, without dissension or betrayal, both in public and in secret, loving what he loves and shunning what he shuns; and from the day on which this oath is sworn that no one shall conceal [the breach of] this [obligation] on the part of a brother or a relative any more than on the part of a stranger.²

And it was when Edgar [959-975], the fourth king after Æthelstan, was crowned, he in turn made a promise³:

This writing has been copied, letter by letter, from the writing which Archbishop Dunstan gave our lord at Kingston on the day he was consecrated as king, forbidding him to make any promise save this, which at the bishop's bidding he laid on Christ's altar: —

In the name of the Holy trinity I promise three things to the Christian people my subjects: first, that God's church and all Christian people of my realm shall enjoy true peace; second, that I forbid to all ranks of men robbery and all wrongful deeds; third, that I urge and command justice and mercy in all judgements, so that the gracious and compassionate God who lives and reigns may grant us all his everlasting mercy.⁴

Dis gewrit is gewriten staef be staefe be þam gewrite, þe Dunstan arcebisceop sealde urum hlaforde æt Cingestune, þa on dæg þa hine man halgode to cinge, 7 forbead him ælc wedd to syllane, butan þysan wedde, þe he up on Cristes weofod lède, [king lays text of oath on altar] swa se bisceop him dibt:

On þære halgan þrinnesse naman! ic þing beháte Cristenum folc 7 me underðeoddem:

án ærest, t Godes cyrice 7 eall Cristen folc minra gewearlda soðe sibbe bealde;

oder is, þæt ic reafslac 7 ealle unrihte þing eallum báðum forbeode;

þridde, þæt ic beáte 7 bebeode on eallum dómum riht 7 mildheortnisse, þæt us eallum arfæst 7 mildheort God þurh þæt his ecean milste forgife, so lifað 7 rixað.⁵

¹ The oath of a man to his lord said: 'By the Lord before whom this holy thing is holy, I will to N be faithful and true, loving all that he loves and shunning all that he shuns, according to the law of God and the custom of the world; and never by will or force, in word or deed, will I do anything that is hateful to him; on condition that he will hold me as I deserve and will furnish all that was agreed between us when I bowed myself before him and submitted to his will.'—see C Stephenson, and F G Marcham, (eds. and trans.), *Sources of English Constitutional History: Vol. I: A Selection of Documents from AD 600 to the Interregnum*, New York, Harper & Row, rev. edn. 1972; Vol. I, at p. 25. [Hereinafter referred to in short as S&M1]

² see S&M1, at p. 17.

³ There would appear to be some evidence that Alfred took a coronation oath—see royal oath attributed to Alfred, and printed in English from an eighteenth century copy, (*Two Cartularies of Muchelney and Athelney*, ed. E H Bates, (London), 1899, in Somerset Record Society, p. 126; referred to in 'The Coronation ceremony in Medieval England', P L Ward, *Speculum, A Journal of Medieval Studies*, Vol. XIV, 1939, Medieval Academy of America, Cambridge, Mass., 160, at 166. I have not been able to sight a text of this oath; but in the light of the Celtic kings' taking an oath, and of Alfred's deep dedication to the church, (witness his inclusion of the Ten Commandments in the introduction to his Dooms) it would be most surprising if he had not taken a coronation oath. It should be noted here that earliest English coronation order dates from 732-736—the authoritative text is reproduced in *Two Anglo-Saxon Pontificals*, edited by H M J Banting, Boydell Press for the Henry Bradshaw Society, London, 1989, from MS. Lat. 10575 in the Bibliothèque Nationale, at pp. 1 ff. This order includes the coronation oath in the form of the *tria precepta*. For text see Appendix I, and see discussion on the coronation oath in Part 4, *infra*.

⁴ S&M1, *loc. cit.*, quoted at p. 18; this wording is very similar to that reproduced in L G W Legg, *English Coronation Orders*, Archibald Constable & Company Limited, Westminster, 1901, as the oath in the first coronation order, c.959 at p. 13; and see William Jerdan in his Preface to the *Rutland Papers, Original Documents illustrative of the Courts and Times of Henry VI and Henry VIII, selected from the private archives of His Grace the Duke of Rutland, etc. etc.*, printed for the Camden Society, 1842; reprinted with the permission of the Royal Historical Society by AMS Press, New York, 1968, at p. xi.

⁵ From 'Hs Cotton Cleopatra B XIII, vom XI. Jh., f. 56 (das ursprünglich neue Lage begann), verglichen mit Hs. Cv (Cotton Vitellius A VII, vom XI Jh.), welche verbrannt, aber in Ju (Hs. Oxford Bodley Junius 60) copiert ist.', [MS. Cotton Cleopatra B xiii. from c.

On the basis of this evidence, the powers of a *Bretwalda* would appear to include : to require and accept homage and submission from lesser kings;¹ to take tribute;² and to confirm a subordinate's charters or to override them.³ The *Bretwalda* in his own right as king could deal with his own *demesne* (land), and could issue his own charters⁴ and writs.⁵ No person other than the king could issue charters or writs; although the earls or noblemen (*eorl*) could deal with their own land, subject to the king's agreement.⁶

THE *BRETWALDA*'S PREROGATIVES

These powers of the *Bretwalda* are known as his 'prerogatives', although their extent and duration are a matter of debate.⁸ These prerogatives may be summarised thus:

1100, folio 56, (which began the original new quire/place (i.e. the parchment interpolation)) compared with MS. Cv. (Cotton Vitellius A vii, from c. 1100), which was burned, but which however is copied in Ju. (MS. Oxford Bodley Junius 60)]—see F Liebermann, *Die Gesetze der Angelsachsen*, Text und Übersetzung, Unveränderter Neudruck der Ausgabe 1903-1916, [The Laws of the Anglo-Saxons, Text and Translation, unchanged reprint of the edition of 1903-1916] Scientia Aalen, Sindelfingen, Germany, 1960; in 3 Vols.; at Vol. I, p. 214; and see a slightly different text, reproduced by William Jerdan in his Preface to the *Rutland Papers, Original Documents illustrative of the Courts and Times of Henry VII and Henry VIII, selected from the private archives of His Grace the Duke of Rutland, &c. &c. &c.*, printed for the Camden Society, 1842; reprinted with the permission of the Royal Historical Society by AMS Press, New York, 1968 at p. xi. Jerdan says: '... I am indebted to my friend Mr Wright for the following illustrations being the Oath of King Edgar, reprinted from the *Relique Antiquæ*, Vol. ii. p. 194, where it is given from a contemporary MS'. For the full texts of these Oaths, see my Appendix I.

¹ see Wormald, 'Bede, Bretwalda...', *art. cit.* p. 112.

² Wormald, 'Bede, Bretwalda...', *art. cit.*, p. 114.

³ Wormald, 'Bede, Bretwalda...', *art. cit.*, p. 115; and see Whitelock, *English Historical Documents*, *ed. cit.*, p. 11 and p. 21.

⁴ A charter was a royal charter or *carta*, which began with an invocation of the triune God and contains no salutation of mortals. It declared, if it was a royal land charter, that the king grants, had granted or will grant certain land to a certain person; and it ends with signatures, and the names of the king and the witnesses, and is confirmed with the sign of 'Christ's holy cross'. There were other kinds of Charter as well; note that Magna Carta of 1215 is a grant by the king (John), which fits this form.—see H D Hazeltine, in the 'Note by the Former General Editor on Anglo-Saxon Documents', in *Anglo-Saxon Charters*, edited and translated by A J Robertson, Cambridge University Press, Cambridge, 1939; 2nd edn. 1959.

⁵ A royal writ was a document containing no invocation, which began with a salutation and states in the past tense that the king has made a certain grant to a certain person; see Hazeltine, Note in *Anglo-Saxon Charters*, *ibid.*

⁶ See for example, the Endowment of Stow St Mary by earl Leofric and Godifu: '*þis is gedon be Eadweardes cynges fœmra leafe on his gewinnesse..*' [This is done with King Edward's full consent [knowledge] and cognisance [agreement].] as reproduced in *Anglo-Saxon Charters*, A J Robertson, (*ed. and trans.*), Cambridge University Press, Cambridge, 1956, at pp. 212-217.

⁷ see Wormald, 'Bede, Bretwalda...', *art. cit.*, p. 115

⁸ Wormald, 'Bede, Bretwalda...', *ibid.*, p. 115. But for a view supporting the existence of the *Bretwalda*, and the contemporary use of that term, having regard to recent archaeological evidence, see Carol Neuman de Vegvar, 'The Iconography of Kingship in Anglo-Saxon Archaeological Finds', in *Kings and Kingship*, ACTA Vol. XI, 1986, The Center for Medieval and Early Renaissance Studies, State University of New York, Joel Rosenthal, (*ed.*), p. 1, at pp. 13-14. But

- to be anointed and crowned
- to accept homage and fealty from lesser kings
- to require fealty from all his subjects
- to engage in war
- to require military service from his subjects¹
- to build fortifications and bridges²
- to make peace³
- to have a fleet⁴
- to enter into treaties
- to conduct relations with foreign princes
- to assist foreign allies⁵
- to receive foreign embassies⁶
- to engage in and to regulate trade
- to make laws
- to deal with land in his kingdom, both his own and that of his thanes or earls
- to issue writs
- to use a royal seal⁷
- to issue grants
- to call councils
- to deal with the church, both at home and abroad
- to issue coin, and to regulate its value
- to have the ancient right of hospitality¹ for himself and his messengers, and a food-rent [*cynges feorm*]² due to him from all estates not expressly freed from payment

for a view that states: 'Thus there is no evidence that there was a *bretwaldaship* or that there was the office or even status of *bretwalda* in Anglo-Saxon England. The entire concept ought to be abandoned.' — see Steven Fanning, 'Bede, *Imperium* and the *Bretwaldas*', *Speculum*, A Journal of Medieval Studies, 66 (1991), published by the Medieval Academy of America, Cambridge Mass., pp. 1-26, at p. 26.

¹ see Whitelock, *English Historical Documents*, ed. cit., at p. 60; and see Maitland, *Constitutional History*, op. cit., at pp. 161-162.

² Whitelock, *English Historical Documents*, *ibid.* p. 60.

³ see e.g. the peace treaty between Alfred and Guthrum, at Attenborough, *Laws of the Earliest English Kings*, ed. cit., p. 98

⁴ see page 46, *supra*, and see Flodoard's *Annals*, c.893-966, for the year 939 '...An English fleet, sent by King Æthelstan, their king, in aid of King Louis, crossed the sea...' as quoted in Whitelock, *English Historical Documents*, ed. cit., at p. 345.

⁵ see *Historia Regum* ('History of the Kings') attributed to Simeon of Durham, c. 1104-1108, as quoted in Whitelock, *English Historical Documents*, ed. cit., at p. 256; and see my note 4 immediately *supra*.

⁶ Æthelstan received a Frankish embassy at York; see n. 5 at p. 344 to Flodoard's *Annals*, in Whitelock, *English Historical Documents*, ed. cit.

⁷ see Brigitte Bedos Rezak, 'The King Enthroned, a New Theme in Anglo-Saxon Royal Iconography; The Seal of Edward the Confessor and its Political Implications', in *Kings and Kingship*, ACTA Vol. XI, 1986, The Center for Medieval and Early Renaissance Studies, State University of New York, Joel Rosenthal, (ed.), p. 53; Rezak suggests that the use of a seal for documentary validation had 'become an exclusively royal prerogative' at p. 54, and that sealed writs date only from Edward the Confessor's time (at p. 60), and that they were exclusively reserved for the royal writ, were never used on ecclesiastical diplomas, and were reliant solely on the king's authority, and that this tended to show during the Confessor's reign a growing administrative organisation less dependant upon the church (at p. 61).

- to receive fines and forfeitures for various offences³
- to grant tithes⁴ and give gifts⁵
- to have a treasurer⁶
- to have the right to tolls, to inheritance after foreigners and at least a share in their *wergells* and in those of other kinless folk if they were slain⁷
- and perhaps the right to hold or establish a private court⁸

The *Bretwalda* also had, however, certain obligations:

- to ensure that the church and all Christian people of his kingdom should enjoy true peace
- this was the primary obligation upon the *Bretwalda*, the obligation of the king to keep the peace⁹: which pertained not only to the maintenance of his borders and the establishment of peace, whether by means of battle or negotiation, with aggressors or potential aggressors, but pertained also to the maintenance of peace (i.e. a prohibition on violence) in the king's house¹⁰, in the presence of the clergy¹¹, at a formal court (*beforan aldormen on gemote*,... *beforan cynges ealdormen on gemote*)¹², or at a *folgemot*¹³, or before a subordinate of the king's

¹ Whitelock, *English Historical Documents*, ed. cit., p. 60; cf. the 'progresses' of the later English kings.

² see *The Laws of Alfred*, c. 2 (c. 872), in Attenborough, *Laws of the Earliest English Kings*, ed. cit., at p. 64.

³ see Whitelock, *English Historical Documents*, ed. cit., p. 60.

⁴ e.g. Alfred made Æthelræd, the governor of Mercia, defender of London, and married his daughter Æthelflæd to him; see Blair, *Anglo-Saxon England*, op. cit., p. 78.

⁵ Æthelstan is described as 'dispenser of treasure to men', in the *Anglo-Saxon Chronicle* for the year 937; quoted in Whitelock, *English Historical Documents*, ed. cit., at p. 219.

⁶ see page 46, *supra*.

⁷ see Whitelock, *English Historical Documents*, ed. cit., p. 60.

⁸ Whitelock, *English Historical Documents*, ed. cit., p. 61; Whitelock notes that a charter is in existence dated 816 which implies the existence of a private court (*Cartularium Saxonicum*, ed. W de G Birch, London, 1885-1893, No. 357; and Stenton, *Anglo-Saxon England*, 3rd edn., p. 493); and she believes that the injunctions in the laws of Æthelstan and Edgar against giving false judgements and receiving bribes also suggests the existence of a court: V Æthelstan, 1, 1.3 (c. 925), re reeves accepting bribes at 423; and III Edgar 3 (c.959): 'And the judge who pronounces a wrong judgement on another is to pay the king 120 shillings as compensation, unless he dare declare on oath that he knew not how to do it more justly...', at p. 432; and II Edgar 3, 'And the tithe of all young stock is to be rendered by Pentecost..., and all the church-scot is to be rendered by Martinmas, under payment of the full fine, which the law-book prescribes.', at p. 431. Note also that H G Richardson and G O Sayles, in *The Governance of Medieval England from the Conquest to Magna Carta*, Edinburgh University Press, Edinburgh, 1963, reprinted 1964, agree that 'shire courts' were 'devices of royal government' under Edgar and that the hundreds or wapentakes with their courts similarly go back to at least Edgar (I Edgar 1, and III Edgar 5) — see p. 25 and nn. 2 and 3 thereon, and the sources quoted there.

⁹ see Laws of William I, William I, 1, — 'peace and security to be maintained between Englishmen and Normans.'; and 3, — 'It is my will that all men whom I have brought with me, or who have come after me, shall be under my peace and protection.' see C Stephenson, and F G Marcham, (eds.), *Sources of English Constitutional History: Vol. I: A Selection of Documents from AD 600 to the Interregnum*, New York, Harper & Row, rev. edn. 1972, at pp. 36-37.

¹⁰ Laws of Ine, c. 6 (c. 688): 'If anyone fight in the king's house, he shall forfeit all his property, and it shall be for the king to decide [*sic on cynges dome*] whether he shall be put to death or not'; and fines for fighting in monastery, a taxpayer's house, and (at Ine c. 6 §4) 'Even if the fight takes place in the open, a fine of 120 shillings is to be paid.' But at Ine c. 6 §5 'If, however, two men quarrel over their cups and one endures it patiently, the other [who has recourse to violence] shall pay a fine of twenty shillings.' As quoted in Attenborough, *The Laws of the Earliest English Kings*, ed. cit., at p. 39.

¹¹ Laws of Alfred, c.15 (c. 872); quoted in Attenborough, *Laws of the Earliest English Kings*, ed. cit., at p. 72, 73.

¹² Laws of Alfred, c.38 (c. 872); quoted in Attenborough, *Laws of the Earliest English Kings*, ed. cit., at p. 80, 81.

¹³ Laws of Alfred, c.38 §1 (c. 872); quoted in Attenborough, *Laws of the Earliest English Kings*, ed. cit., at p. 80, 81.

earldorman or a king's priest (*cyninges preoste*)¹, and to the outlawing of numerous offences pertaining both to injury to the person, and to injury to property². The king's peace³ appears to have followed his prerogative. Thus wherever the king held a prerogative, there followed also his obligation to provide protection: for example, security for foreign traders⁴, for his messengers, and for users of the highways⁵. In order to keep the peace, and to enforce it, the king made laws which commanded obedience (in accordance with the allegiance owed to him) and which penalised disobedience.⁶

- to forbid all robbery and all wrongful deeds by all ranks of men.
- to urge and command justice and mercy in all judgements⁷.
- to protect foreigners and others without kin in the land⁸, and the destitute⁹.

The idea of a British state, that is, of an entity in its own right which treated with foreign (non-British) rulers and which had an series of laws universally recognised within its boundaries), and the emergence of the *Bretwalda*, seem to be inextricably intertwined. The *Bretwalda* it was who held all the *indicia* of sovereignty; he it was who held the power and the authority, who made and enforced the laws, who treated with foreign kings; it was he who received homage and allegiance from the people; and it was he who made a compact with the people, who, after the king's recognition, the taking of the coronation oath, and

¹ Laws of Alfred, c.38 § 2 (c. 872); quoted in Attenborough, *Laws of the Earliest English Kings*, ed. *cit.*, at p. 80, 81.

² see any of the dooms of the Anglo-Saxon kings.

³ This very brief summary of the king's peace is greatly indebted to the excellent exegesis on the subject by Frederick Pollock; see Frederick Pollock, 'The King's Peace', *The Law Quarterly Review*, Vol. I, 1885, 37.

⁴ Doms of Æthelræd, ii, 2, 3, (c. 980)

⁵ William I, I, 26.

⁶ It should be noted here it was the king's peace than ran wherever the king's writ ran; the king's peace in these early days was the peace of that particular king. The king's peace depended upon his laws; and the laws were enforced by office-holders appointed by that particular king. Thus when a king died, the king's peace died with him. This gave a particular urgency to the election and consecration of the new king, as the king's peace could only run with the king, and new office-holders were needed to be confirmed by the new king. Similarly, a *parlement* sitting when a king died was automatically dissolved, and any privileges or benefits accruing to those attending the *parlement* died with the king. It was only when an early version of the hereditary principle was accepted by the king's council on the accession of Edward I, that the king's council proclaimed the new king's peace immediately (although this did not in fact become the norm until the death of Elizabeth I and the accession of James VI and I.) For further discussion on this, see Stubbs, *Constitutional History*, Vol. II, pp. 106-107; and see Chapter 3, 'The King and His Peace', *infra*, *passim*, and see *infra* pp. 125-129 and see *infra* p. 94, note 6, and p. 242, note 1.

⁷ These first three obligations were undertaken in the coronation oath of Edgar, c.959, see p. 47 *supra*, the most important obligation on the king was to keep the peace.

⁸ see Whitelock, *English Historical Documents*, ed. *cit.*, at p. 54; see e.g. the Laws of Alfred, 1.3 (c. 872): 'If he has no kinsmen and has not the food, the king's reeve will feed him.' Whitelock, *English Historical Documents*, ed. *cit.* at p. 409; and II Cnut, 40 (c. 1020?): 'If a man in holy orders or a foreigner is for any reason defrauded of property or of life, the king shall then be for him in the place of a kinsman and protector, unless he has another.' Whitelock, *English Historical Documents*, ed. *cit.*, at p. 461, and II Cnut 40.2 'It belongs very rightly to a Christian king to avenge very severely offences against God in proportion to the deed'. Whitelock, *English Historical Documents*, *ibid.* at p. 461.

⁹ See Ordinance of Æthelstan relating to Charities: obligation to provide a destitute Englishman (*earn Engliscmon*) with food; see Attenborough, *Laws of the Earliest English Kings*, ed. *cit.*, pp. 126, 127.

sanctification, became *his* people¹.

DOOMS AND THE CORONATION OATH

There is a strong connection between duties of the *Bretwalda*, the oath made at their coronation by the Anglo-Saxon kings (see the oath of Edgar at page 47² *supra*), and the Dooms which the kings made and the charters which they granted, in terms of commitment to the maintenance of the church, the maintenance of the peace, the regulation of judgements, and the impartial punishment of robbery and other wrong deeds.

The first known written Dooms are those of Æthelberht issued in c. 601 after his conversion to Christianity by St Augustine.³ In the light of the confluence of these three things—the conversion of the British kings to Christianity, and their consecration as Christian kings; their taking of a solemn coronation oath which (coincidentally?) restated the prime obligations of the *Bretwalda*, and the symmetry between the obligations in the oath and the precepts of the Dooms which the kings promulgated—it would not, I think, be stretching credulity to suggest a causal connection between the coronation oath and the establishment of and the content of, the Dooms⁴: that is, between the coronation oath, and the establishment of a common rule of law—that the sovereignty of kings both underpinned and was responsible for, the promulgation of a just, equitable and moral legal system.

This hypothesis receives some additional support from the texts of the coronation orders,

¹ And see the coronation orders: '...let him grant...peace and rest to his own people...' [*propriis in patria pax et securitas.*]—*Egferth Pontifical*, [732-736] as quoted at L G W Legg, *English Coronation Orders*, Archibald Constable & Company Limited, Westminster, 1901, p. 5, and p. 10; and '...sanctify thy servant X, that in the simplicity of a dove he may minister peace unto his people...' [...*X sanctificare tua benedictione digneris: eumque in similitudinem columbe pacem simplicitatis populo sibi subdito prestare...*]—*Liber Regalis*, c.1307-1351, as quoted in Legg at p. 257 and p. 91; same text for the Stuarts, Legg, *ibid.*; and '...you may govern and preserve the Peoples committed to your charge in wealth, peace, and godliness;...'—from The Form and Order of Her majesty's Coronation, in *Elizabeth Crowned Queen, The Pictorial Record of the Coronation*, Arlott, John, and others, Odhams Press Limited, London, 1953, at p.60

² see also text at my Appendix I.

³ see F L Attenborough, *The Laws of the Earliest English Kings*, 1922, *ed. cit.*; reissued Russell & Russell, New York, 1963; S&M1 gives the dates of the Dooms as 601-604.

⁴ And see the discussion on the oath and the common law *infra*, at 'The Continuity of the Law', pp. 170 ff., and 'The Oath and the Common Law', pp. 181 ff.

which all advert to the obligations of the *Bretwalda* as outlined above¹, from the time of the Ecgferth Pontifical² which included the *tria precepta* of Edgar's time, down to and including that of Elizabeth II—all refer explicitly to maintaining peace for the church and the people, to forbidding wrongful deeds, punishing the wicked, defending widows and orphans, restoring that which is gone into decay, and executing judgement with mercy.³

The prayer for Elizabeth II, after Her recognition by the people, and Her swearing the coronation oath⁴ went thus:

*... O God...grant unto this thy servant ELIZABETH, our Queen, the Spirit of wisdom and government, that ... she may so wisely govern, that in her time thy Church may be in safety, and Christian devotion may continue in peace...*⁵

and after the anointing, thus:

*Our Lord Jesus Christ, the Son of God,... prosper the works of your Hands: that by the assistance of his heavenly grace you may govern and preserve the Peoples committed to your charge in wealth, peace, and godliness;...*⁶

She then received the regalia (the tangible *indicia* of kingship), with these accompanying words:

...O Lord, ...support thy servant Queen Elizabeth, that she may not bear the sword [of State] in vain; but may use it as the minister of God for the terror and punishment of evildoers, and for the protection and encouragement of those that do well...

*Receive this kingly Sword [the Sword of State], brought now to you from the Altar of God and delivered to you by us the Bishops and servants of God, though unworthy. ...With this sword do justice, stop the growth of iniquity, protect the Holy Church of God, help and defend widows and orphans, restore the things that are gone to decay, reform what is amiss, and confirm what is in good order...*⁷

Receive the Royal sceptre, the ensign of kingly power and justice...

¹ see p. 50, *supra*; all coronation orders include, as well as those matters immediately discussed, a coronation oath.

² c.732-736, for text see Appendix I.

³ See First English Coronation Order and the Ecgferth pontifical, at Legg *English Coronation Orders*, pp. 4-9 (Latin) and pp. 10-13 (English); see the Third English Coronation Order, said to be of twelfth century provenance, and known as the Coronation Order of Henry I, c.1100, at Legg, *English Coronation Records*, ed. cit., p. 34 (Latin), and p. 40 (English) (Legg says this part of the 12th century order is replicated in the *Liber Regalis*, and the order for Charles I, Legg, *English Coronation Records*, p. 40, p. 120, and p. 260.); and see The Form and Order of Her Majesty's Coronation, reproduced in *Elizabeth Crowned Queen, The Pictorial Record of the Coronation*, John Arlott, John Snagge, Sir Gerald W Wollaston, Odhams Press, London, 1953, at p. 54.

⁴ For Elizabeth II's coronation oath, see text at Appendix I.

⁵ see The Form and Order of Her Majesty's Coronation, in *Elizabeth Crowned Queen*, loc. cit., at p. 56.

⁶ see The Form and Order of Her Majesty's Coronation, in *Elizabeth Crowned Queen*, loc. cit., at p. 60.

⁷ see The Form and Order of Her Majesty's Coronation, in *Elizabeth Crowned Queen*, *ibid.*, at p. 60.

*Receive the Rod of equity and mercy. Be merciful that you be not too remiss, so execute justice that you forget not mercy. Punish the wicked, protect and cherish the just, and lead your people in the way wherein they should go.*¹

There is a direct continuity from the earliest times to the present day in the obligations of the British kings to keep the peace, and to maintain and enforce the law with justice and mercy.

¹ The Form and Order of Her Majesty's Coronation, , *Elizabeth Crowned Queen*, loc. cit., p. 62

CHAPTER 2

THE KING AND HIS PEACE

THE KING'S PEACE

This peace which the *Bretwalda* and all later kings were and are obliged to keep was known as the King's Peace. To this day the King's Peace is defined as:

peace of the king: The security in his realm promised¹ by the Sovereign to his subjects. Originally attached to the royal palace and '3,000 paces beyond the great road', so that breaches of the peace there were punished, and 'royal justice supplanted private vengeance'. On the occasion of a church festival it was extended throughout the realm.

breach of the peace: Offence committed whenever harm is actually done, or is likely to be done to a person, or in his presence to his property, or wherever a person is in fear of being so harmed through assault, affray, riot, unlawful assembly or other disturbance: *R v Howell* [1982] QB 416.²

As explained in Chapter 1³, from ancient times the obligation to keep the peace followed the king's prerogative. This situation still obtains, as was demonstrated in the case of *R v Secretary of State for the Home Department, ex parte Northumbria Police Authority*⁴ where the police¹ contended that there was no mention in nineteenth century textbooks or case law of a

¹ This is promised in the Coronation Oath.

² see L B Curzon, *Dictionary of Law*, Macdonald & Evans Ltd, London, 1979; 4th edn. 1993; reprinted with amendments 1994, and reprinted 1995 by Pitman Publishing, London, at p. 281; and at p. 46 respectively.

³ See Chapter 1, p. 51, *supra*.

⁴ [1988] 1 All ER 556; and see A Bradley (1988) 'Police powers and the prerogative', *Public Law* 298-303.

prerogative power to keep the peace²; on appeal it was held by Nourse LJ that:

[The] scarcity of reference in the books to the prerogative of keeping the peace within the realm does not disprove that it exists. Rather it may point to an unspoken assumption that it does.³

Professor Loveland therefore concluded that: ‘...There is thus no longer any functionalist justification for assuming the grant of statutory powers impliedly suspends or abolishes analogous prerogative authority.’⁴

THE ANGLO-SAXON KING’S PEACE

Originally, there was no concept of an overriding King’s Peace; rather there were ‘thousands of islands of peace which surround the roof-tree of every householder’; at that time the King’s Peace covered only his own hall and immediate presence.⁵ The law was ‘the appropriate maxim on every man’s lips as soon as the facts of any case had been determined’, and its basis was that of the “lawful man”⁶, the man not only credible upon oath, but whose oath has in itself the decisive effect of proof.⁷ The oath was the vital

¹ For some reflections of the peculiar constitutional position of the police force, see Maitland, *Constitutional History*, pp. 415–416. Note also that ‘police officers’ were until relatively recently, referred to a ‘peace officers’.

² See Ian Loveland, *Constitutional Law, A Critical Introduction*, Butterworths, London, 1996, at p. 125.

³ See [1988] 1 All ER 556 at 575; and see Loveland, *Constitutional Law*, *loc. cit.*, at p. 126.

⁴ See Loveland, *Constitutional Law*, *loc. cit.*, at p. 127.

⁵ See J E A Jolliffe, *The Constitutional History of Medieval England*, 4th edn., Adam and Charles Black, 1967, at p. 8. Note also that the concept of ‘the peace’ being fundamental to a society and to any group of persons was enunciated in St Thomas Aquinas, *On Kingship, to the King of Cyprus, De Regno, Ad Regem Cypri*, (c. 1260), Chapter 2, 17, Gerald B Phelan, (trans.), revised with introduction and notes by I Th. Eschmann, Pontifical Institute of Medieval Studies, Toronto, 1949, reprinted 1967, 1978, 1982, at p. 11, and also by St Augustine, in *De Civitate Dei*, Book XIX, Chapter 11 ff., written 413–427, first published 1467, *Concerning the City of God against the Pagans*, A new translation by Henry Bettenson, with an introduction by John O’Meara, Pelican Books, 1972, reprinted with a new introduction by Penguin Books, London, 1984

⁶ Cf. The king as ‘the just man’ at p. 189 *infra*, and see also p. 71 and p. 170 *infra*.

⁷ Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 8. ‘This conception is at once rational and religious. The lawful man is the man of standing in the community, of full and free kindred, of known residence and good repute. Such men, irrespective of wealth or influence, are “oath-worthy”. But in the act of swearing they achieve something more than credibility, and their oath as it is spoken takes a power over them and over their cause which is other than their own. It is in ritual form. Taking to witness at first the pagan and later the Christian divinities, and incorporating their names, it is at once an affirmation, an ordeal, and a doom.’ And for ‘oathworthy’, see Jolliffe, p. 9, n. 1: 1 Edw. [the Elder] 3—‘Men who are notorious false swearers...shall never again be oathworthy, but only ordeal worthy’: (Jolliffe’s liberal translation). Original: *Eac we cwædon be þam mannum ðe mánsworan wære, gif ðæt geswutelod wære, oððe him að burste oððe oferfyrded wære, þæt hy siððan aðwyrðe næran, ac ordales wyrðe*—‘We have further declared, with regard to men who have been accused of perjury: if the charge has been proved, or if the oath on their behalf has collapsed, or has been overborne by more strongly supported testimony, never again shall they have the privilege of clearing themselves by oaths, but only

sanction of early English life. Alfred, king from c. 871-900, codified the pre-existing 'just laws', the first of which was that

Æt ærestan we lærað, þæt mæst dearf is, þæt æghwælc mon his að 7 his wed wærlíce bealde

In the first place we enjoin you, as a matter of supreme importance, that every man shall abide carefully by his oath and pledge.²

In addition, the oath was the underpinning of obligation and loyalty between king and subject, and of the obligation between the king and the people. Edmund in c.942-946 required an oath of allegiance from his subjects³, and the coronation oath of the king whereby he undertakes the duties of kingship and enters the estate of king dates from at least the time of Edgar⁴.

The written Doms did not however represent all of the law, merely those laws which were new or exceptional, such as the extension of the king's *mundbyrd* (the king's protection, and penalty for violation thereof) to cover the peace of the church, a new entity in the scheme of things.⁵ Most of the law was custom, 'the habit of the community', which 'passed from generation to generation by unwritten tradition.'⁶ 'Law was an attribute of the stock, and every member of it was born into folkright (*folcright*), a complex of privilege, status, and obligation coming to him with his father's blood and his material inheritance of land and

by the ordeal.'— from 1 Edward the Elder [c. 900-925], cap. 3, in F L Attenborough, (ed. and trans.) *The Laws of the Earliest English Kings*, Cambridge University Press, Cambridge, 1922, reissued by Russell & Russell, Inc., New York, 1963, at p.117.

¹ see Alfred, Introduction, 49, § 9 *ryhtste* (just)—see Attenborough, *Laws of the Earliest English Kings*, ed. cit., p. 62. Alfred's introduction to his laws included the Ten Commandments, see Laws of Alfred, c. 1-10, and Attenborough, p. 63, and notes at p. 193.

² Laws of Alfred, cap. 1, Attenborough, *Laws of the Earliest English Kings*, ed. cit., pp. 62 and 67.

³ See Doms of Edmund III, C Stephenson, F G Marcham, (eds. and trans.), *Sources of English Constitutional History: Vol. I: A Selection of Documents from AD 600 to the Interregnum*, New York, Harper & Row, rev. edn. 1972; Vol. I, at p. 17; and see Chapter 2, p. 46, *supra*.

⁴ And possibly Alfred, c. 875, or even earlier—see my remarks on Alfred's oath at p. 171 and note 3; Edgar's oath dates from c. 973; for text see my Appendix I and William Jerdan in his Preface to the *Rutland Papers, Original Documents illustrative of the Courts and Times of Henry VII and Henry VIII*, selected from the private archives of His Grace the Duke of Rutland, &c. &c. &c., printed for the Camden Society, 1842; reprinted with the permission of the Royal Historical Society by AMS Press, New York, 1968, at p. xi. And see text as quoted in F Liebermann, *Die Gesetze der Angelsachsen*, Text und Übersetzung, Unveränderter Neudruck der Ausgabe 1903-1916, Scientia Aalen, Sindelfingen, Germany, 1960; in 3 Vols.; at Vol. I, p. 214. And for the earliest text of a coronation oath see the Pontifical of Echberht, Archbishop of York [sometimes called the 'Egbert Pontifical' c. 732-736, reproduced in *Two Anglo-Saxon Pontificals*, edited by H M J Banting, Boydell Press for the Henry Bradshaw Society, London, 1989, from MS Lat. 10575 in the Bibliothèque Nationale, at pp. 1 ff.

⁵ See for example, 1 Æthelberht, c. 1, in Attenborough, *Laws of the Earliest English Kings*, ed. cit., pp. 4-5.

⁶ See Jolliffe, *Constitutional History of Medieval England*, op. cit., p. 13.

goods.¹ The folk enjoyed the protection (*mund*) of their lord, but the greatest protection was the king's, because his *mund* was more dangerous to break.

In return for the king's *mund*, however, all freemen had three² ancient obligations, which were known as the *trinoda necessitas*³, which are owed to the king—that is: *fyrðwite* [army-service], *burhbote* [duty of repairing strongholds], and *bricote* [duty of repairing bridges (and, according to Blackstone, roads⁴)]. If a man failed to perform these obligations when called upon, he suffered the king's *wite*, or punishment,⁵ which was in most cases a payment of a fine.

The basic law was not then the written law, but the folkright, and the basic peace was the peace (*frip*⁶) laid down by the moots (*methef-frip* or *moot-frip*), the fundamental principle of which was that every man was entitled to peace in his own household⁷. The King's Peace initially was localised, or applied to his messengers on the highways. However, the *Bretwaldas* as overlords had greater *mund* than their underkings, and their *frip* also was greater; the lesser kings would submit to the *Bretwalda* 'to *frip* and to *mundbora*'—that is, to his peace and to his lordship.⁸ The *Bretwalda* was *mundbora* (had lordship) not merely over

¹ Jolliffe, *Constitutional History of Medieval England*, *op. cit.*, p. 5. Of course, earlier societies also recognised rights descending from the mother's blood; some, like the Icelandic society, still do.

² Perhaps four—see F W Maitland, *Domesday Book and Beyond, Three Essays in the early History of England*, Cambridge University Press, Cambridge, 1897, reissued by Fontana Library, 1960, 2nd impression, Fontana Library, Collins, London, 1961, at p. 324, where there is a suggestion that a fourth ancient obligation was to be subject to a *wite*, or appropriate punishment for wrongdoing.

³ See Maitland, *Domesday Book*, *loc. cit.*, at p. 323, and see Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, at p. 52; and see William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, with an introduction by Stanley N Katz, University of Chicago Press, Chicago, 1979, in 4 Volumes, Vol. I, Book 1, Chapter 7, p. 253: *trinoda necessitas: pontis reparatio, artis constructio, et expeditio contra hostem*, sourced to Coke, 2 *Instit.* 31, and to Matthew Paris, Cowell's Interpreter, *tit. castellorum operatio*; and see *ibid.*, p. 346; and see 6 Æthelred, c. 32, in S&M1, p. 22

⁴ See Blackstone, *Commentaries*, *op. cit.*, p. 346.

⁵ See Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 54, *fyrð-wite*, (Laws of Ine, c. 51, and also quoted in *Stubbs Select Charters*, p. 62) *burgh-bryce* (Laws of Ine, c. 45)

⁶ *Frip* originally meant a peace between nations, or the land-*friede*, of the peace of a particular community; while *grip* originally meant an individual's peace, usually also guaranteed by another individual's protection or *mund*.

⁷ see Pollock, 'The King's Peace', *art. cit.*, at p. 40, referring to *inter alia* 1 Æthelberht, c.13 and c. 17; and Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, at p. 8.

⁸ 'To *mundbora*' means that a person stands as protector and warrantor of legal standing (Jolliffe, p. 15); *mundbyrdnis* means 'lordship' (Jolliffe, *Constitutional History of Medieval England*, p. 17); and see Jolliffe, p. 51 for the subjection of the East Anglians to Egbert 'to *frip* and to *mundbora*'.

the race from which he sprang, but over all races in Britain south of the Humber.¹

There was also the *grið* or personal peace of an individual, which was granted, the greatest of which was the king's—*cyninges hand-grið*²; this peace was the companion to the king's *mund* or protection. The king's individual *mund* and *grið* is the core of the English *frīþ*³. This concept of the peace is fundamental both to the evolution of the crown, and of the state as we now know it:

Linking the growth of the supremacy of the crown in law and the reforms in political administration, ..., is the evolution of the legal doctrine of the peace. From Ælfred to Æthelred English statesmen were obsessed by this problem, internal peace against theft and disorder and external peace against the Danes, and the legal history of the period is largely that of an intense effort to bring about a common peace in a nation where every minister and church, every local assembly, every great landowner and official, had his several peace, but where there was no peace in the realm. In this effort every *witanagemote* becomes a peace conference and every edict an edict of peace, and in the end they achieved a peace which, if it was not universal and perpetual, sufficed for critical needs and occasions.⁴

The establishment of the King's Peace over the English nation can be traced from the time of Edward the Elder (c. 900–924)⁵, but more complete evidence of its application can be found in the Doms of Æthelstan (c. 925–939). He states that his *witan* has advised him that he had too long suffered the fact that his peace (*ure frīþ*⁶) as laid down at the great assembly at Grately⁷ was not rightly kept.⁸ The king's *grið* becomes the king's *frīþ* which is now seen

¹ See the description, 'King of the English and *mundbora* over many nations', (*Rex Anglorum et curagulus multarum gentium*), from J M Kemble, *Codex Diplomaticus*, pp. 378, 385, 377; and analogous descriptions *Basileus Albonius monarchus* (Emperor of Albion), *ibid.*, p. 461; *totius Britanniae Basileus* (Emperor of all Britain), *ibid.*, p. 357; *Cyning and casere totius Britanniae* (King and Caesar of all Britain), *ibid.*, p. 433; quoted in Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 102

² See Pollock, 'The King's Peace', *art. cit.*, p. 42; literally, 'king's peace given by his hand'.

³ See Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 114.

⁴ See Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, pp. 113–114.

⁵ It should be noted that the specification of the keeping of the peace dates from the earliest surviving written dooms, see Æthelberht c. 1 (*Mæthl frīþ II gylde*—breach of the peace [to be compensated] twofold: see Attenborough, *Laws of the Earliest English Kings*, *loc. cit.*, p. 4, p. 5.); and see 2 Edward the Elder (c.900–924), Introduction: [*Be frype*—Concerning the peace] Edward and his councillors met at Exeter to consider how 'the peace for which they were responsible could be better kept than it had been' (*hu beora frīð* [our peace, or their peace—my translation] *betere beon mæhte, þonne hit ær ðam was*—see Attenborough, *Laws of the Earliest English Kings*, *loc. cit.*, pp. 118, 119.); and see the Doms of Edmund (c. 942–946), 3 Edmund: 'This is the decree that King Edmund and his bishops together with his *witan* formulated... for the maintenance of peace and the swearing of an oath.'—reproduced in S&M1, p. 17

⁶ Literally, 'our peace', see Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, p. 152, p. 153

⁷ The assembly at Grately's edicts concerning the peace are laid down in 2 Æthelstan, in Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, p. 142, p. 143; the assembly comprised representatives of the church, the nobles, and councillors (*ærcbisceop... mid eallum þæm apelum mannum 7 wiotan*) called together by the king (see concluding paragraph).

⁸ See prologue to 5 Æthelstan, in Attenborough, *Laws of the Earliest English Kings*, *ed. cit.*, p. 153, p. 152.

as the domestic *frip* of the nation. The king demands, and basically secures, a universal peace (his people shall *frip* all that he will *frip*¹), and this King's Peace is underwritten by the king's *mund* or protection.² There was thus a great combined effort by king and people to put the realm under a standing peace, and every magnate and reeve at Æthelstan's councils after the initial establishment of the peace at Grately, took an oath the 'he will hold all that *frip* that King Æthelstan and his *witan* set at Grately.'³ By the time of Æthelred, the king and his *witan* could say:

Let us all furthermore give earnest attention to the improvement of the peace and the improvement of the coinage.

The improvement of the peace [shall be] such as is best for the husbandman (*bondan*) and worst for the thief. ...And the repair of boroughs (*burhbote*) and the repair of bridges (*bricbote*) shall be earnestly pushed in every region; and likewise the maintenance of the army and the fleet, whenever there is need, as may be ordered in our common necessity.⁴

Corresponding to the establishment of the King's Peace is the extension of the king's *wite* (penalty/punishment⁵) beyond disobedience to the ancient *trinoda necessitas*, to include failure to obey the king's express orders. This too, began in the reign of Edward the Elder, where on certain counts a man would have to pay his *wite* for any disobedience (*oferhyrnesse*⁶) to such orders. These orders included king's Ordinances made by writing and proclamation⁷ directing compliance by judges with the written laws of Alfred and Ine⁸, and also directing them to have regard to the *folcright* or common law.⁹ They also included laws made by the king with all his councillors for the peace (*Be frype*)¹⁰. The categories of

¹ See 2 Æthelstan, c. 20, § 3, quoted in Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 116.

² See 2 Æthelstan, c. 25, § 2, referred to in Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 116.

³ See 6 Æthelstan, c. 10, quoted in Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 116.

⁴ See 6 Æthelred, c. 31., c. 32, as quoted in S&M1, p. 22; these last mentioned three obligations were the *trinoda necessitas*, the duty and obligation lying on all freemen and landholders to the king. Note that the *trinoda necessitas* are linked to necessity for the realm.

⁵ See Sweet's *Anglo-Saxon Primer*, p. 12.

⁶ See 1 Edward c. 1, § 1 *ðonne sy he cyninges oferhyrnesse scyldig*... in Attenborough, *Laws of the Earliest English Kings*, ed. cit., p. 114; and see 2 Edward, 2, Attenborough, at p. 118; and see Jolliffe, *Constitutional History of Medieval England*, loc. cit., at p. 109.

⁷ *Eadweardes gerædnesses [Be dome 7 spræc]*—Edward's Judgements/Ordinances, by judgement/written judgement and speech/proclamation—see Attenborough, *Laws of the Earliest English Kings*, ed. cit., p. 114, p. 115.

⁸ 1 Edward, Preamble: ...*ðæt ge deman swa rihte domas swa rihtaste cunnon, 7 hit on ðære dombec stande*. see Attenborough, *Laws of the Earliest English Kings*, p. 114, and note 1, p. 204.

⁹ 1 Edward, Preamble: *Ne wandiað for nanum dīngum folcright to geregeanne*, (nor shall you for any cause fail to interpret the public law/folkright)—see Attenborough, *Laws of the Earliest English Kings*, ed. cit., p. 114, p. 115.

¹⁰ 'Concerning the peace'—see 2 Edward, Preamble, at Attenborough, *Laws of the Earliest English Kings*, loc. cit., p. 118, p. 119.

oferhyrnesse were extended by Æthelstan¹ and Cnut². This marked the beginning of the king's official responsibility for the enforcement of law and order. No longer were the *folk-moots* responsible for the judgements they secured in accordance with the law, with the king's *mund* being available only when those remedies failed or were insufficient. Now the judgements in the moots were enforced by the king's ban. Thus the king's *mund*, the king's *wite*, the *trinoda necessitas*, and the king's *oferhyrnesse* came to form an homogenous body of law enforcement.

In addition, outlawry, once the ultimate sanction of the *folk-moots*, came formally into the hands of the king, investing him with the final sanction of law. Æthelræd (979–1016) with his *witan* at Wantage issued Dooms to the effect that, *inter alia*, an outlaw³ in one district was an outlaw throughout the kingdom.⁴ (This, indeed, it could be said, was merely the final recognition in law of the obligation which the early *Bretwaldas* had taken upon themselves under custom, or which the later *Bretwaldas*/kings of England assumed under the common law when they took their coronation oath.)

By the time of Cnut, king of the Danes, and king by election and conquest of England and later Norway,⁵ the struggle by the king and the people to create peace and order, was substantially completed. This was achieved through a mix of leadership, loyalty, and by the authority of mutual and voluntary agreement. There was an agreed national peace, the King's Peace⁶, and a uniform and intensive legal and administrative system to make the

¹ See 1 Æthelstan, c. 5; 2 Æthelstan, c. 20, § 2; 5 Æthelstan, c. 5; referred to in Attenborough, *Laws of the Earliest English Kings*, ed. cit., p. 109, and Stubbs *Select Charters*, p. 66.

² See 2 Cnut, c. 29, § 1; see Attenborough, *Laws of the Earliest English Kings*, *ibid.*

³ A penalty which by Æthelræd's time had come to apply not only to heinous crimes against the law, such as killing within the kin, or betrayal of a lord by his man, but also to many offences of violence, and theft—see 1 Æthelræd, I. 9A, and 1 Æthelræd, I. 13; referred to in J E A Jolliffe, *The Constitutional History of Medieval England*, 4th edn., Adam and Charles Black, 1967, at p. 108. And for a discussion of the evolution of outlawry, see Jolliffe, at pp. 3–4, and pp. 107–108; and see T F T Plucknett, *A Concise History of the Common Law*, 5th edn., Little Brown and Company, 1956, p. 385, p. 387, p. 409, pp. 430–431, and p. 471, n. 1. And see Frederick Pollock, 'The King's Peace', *The Law Quarterly Review*, Vol. I, 1885, pp. 37–50, at p. 43—"The peace-breaker, if he fled, was reckoned an outlaw;..." The only available remedies for an outlaw lay either in the king's pardon, or in sanctuary under the church laws and liberties—see T F T Plucknett, *A Concise History of the Common Law*, at pp. 430–431.

⁴ The condemned man was to be outlaw *wid eal folc*—see 2 Æthelræd, I. 9A.

⁵ See Jolliffe, *Constitutional History of Medieval England*, loc. cit., at p. 105; and see Peter Hunter Blair, *An Introduction to Anglo-Saxon England*, Cambridge University Press, Cambridge, 1956, 1966 paperback reprint, pp. 100–101.

⁶ It should be noted that the idea of the peace dying with the king is implicit in the dooms of the Anglo-Saxon kings, each of whom establishes his own peace: see dooms of successive kings Edward the Elder and Æthelstan.

peace effective was in place¹. And the king controlled the enforcement of the laws through his reeves, high-reeves, sheriffs and *ealdormen*, and by receipt of the *wites* (penalties, usually monetary) for breach of his edicts (king's *mund*, the king's *wite*, the *trinoda necessitas*, and the king's *oferhyrnesse*). From the time of Alfred, reeves and *ealdormen* were required to know the written law, and to impose it upon the courts or moots.² Cnut bound both Saxon and Dane by the law of Edgar³. He styled himself 'king of the whole of England'⁴, seeing his realm as one nation, based on the uniform applicability of his laws to all peoples within his jurisdiction, rather than discriminating between areas of territory and jurisdiction on any racial basis.⁵ He divided the territory into four large areas which were administered by earls⁶, but ordered his law to be observed over all England.⁷ He warned:

If any be so bold, clerk or lay, Dane or English, as to go against God's laws and against my royal authority, or against secular law, and be unwilling to make amends, and to alter according to my bishop's teaching, then I pray Thurcyl my ead, and also command him, that he bend that unrighteous one to right if he can; if he cannot, then will I with the strength of us both that he destroy him in the land or drive him out of the land, be he better, be he worse...⁸

Cnut stated that he would 'make full *frip* through the power that God has given me.'⁹ In

¹ In the forms of the shire and the hundred; see Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 116, and pp. 136-137. The hundred originated from a 'voluntary hundred', or '*frip*-guild'; under Alfred it became the common administrative system, over the individual smaller schemes such as the Danish *trithings* and *wapentakes*, the Celtic *sais*, and the *lathes* and *rapes*. The hundred heard all pleas at first instance, except those of book-land (land granted by charter or *bok* (book)). The shire would appear to have developed from the older concept of boroughs, which in turn had replaced the older great ealdormanries. The king's officers were reeves (boroughs), high-reeves (certain greater boroughs), and sheriffs (shires, or the modern counties). All of this discussion is greatly indebted to Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, Chapter 2, ii, 'The Kingdom of Britain'.

² See Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 112; sourced to Asser, *De Rebus Gestis*, 106. The doomsmen (of the moot) gave judgement, the reeve demanded it of them, and executed the judgement made.

³ See *Anglo-Saxon Chronicle*, 1018D: *Dene and Engle wurdon sammæle æt Oxanæforda to eadgares Læge*; quoted in Jolliffe, *The Constitutional History of Medieval England*, p. 105; and see Blair, *Anglo-Saxon England*, *loc. cit.*, pp. 100-101.

⁴ Cnut, 1027, Proem.: *Canutus, rex totius Angliæ*, I Cnut, Proem.: *Cnut cuning, ealles Englalandes cuning*; quoted in Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, at p. 105.

⁵ *Rationabili consideratione decreuit, quatinus sicut uno rege, ita et una lege universum Angliæ regnum regeretur*—Consiliatio Cnuti (1110-1130), Proem., 2; quoted in Jolliffe, *Constitutional History of Medieval England*, *ibid.*, p. 105. See also the English translation of the Doms of Cnut in S&M1, pp. 22-24.

⁶ See Blair, *Anglo-Saxon England*, *loc. cit.*, p. 102: Wessex (*eorl* Godwine), Mercia (*eorl* Leofric), Northumbria (*eorl* Siward), East Anglia (*eorl* Thorkell the Tall).

⁷ II Cnut, Prologue.

⁸ Stubbs in *Select Charters* at pp. 75-76 reproduces a text of a Charter of Cnut of probably 1020, from which this quotation is taken (sourced to *York Gospel Book*, MS.; no Old English version); see Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 105, who sources this to Cnut, 1020, 9-10.

⁹ Quoted in Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 116, referring to Cnut, 1020, 3; and see Stubbs *Select Charters* at p. 75, Charter of Cnut: '...and I do to you to wit that I will be a kind lord and unfailing in God's rights and to right secular law. I took to my remembrance the writing and the word that archbishop Lyfing brought me from

this he was successful. By the time of Edward the Confessor, the King's Peace and the laws and their enforcement were entrenched, and he could speak of 'all the pleas that belong to my crown'¹. These pleas included not only any rents or taxes owed to him as king (*sac* and *soc*, *scot* and *gafol*, *feorm*, *team* and *toll*), but also the financial penalties imposed for any offences against the King's Peace, which by that time included, in addition to the *trinoda necessitas* [*fyrdrwite*, *brichote*, and *burhbote*], *saestengewerce*, *flymenafyrmdæ*, *forsteall*, *fyrdsocne*, *gryðbryce*, *hamsocn*, *infangenæpeof*, *mundbryd*, *oferhyrnesse*, *weardwite*, and *wergeld*². These pleas were a coherent jurisdiction appurtenant to the crown, and separate from the folkright, part of the *gyneſcipe* (the special powers of the king)³, or the *gyneſyhta* (rights of the king).

Cnut, like his Anglo-Saxon predecessors, clearly saw the law as being two-fold—the law was comprised of God's laws⁴, and secular laws. The King's Peace then was not merely a mechanism by which unity was established among disparate peoples in the process of forging a State, but was also a direct outcome of the responsibility of the king to protect his people, and to obey and enforce God's laws, as he had sworn to do at his coronation.

THE ANGLO-NORMAN KING'S PEACE

At the time of the conquest, William asserted the king's lordship over every acre of land in England (the *terra regis*)⁵. The Normans brought with them the practice of feudalism, and the concomitant notion of *dominium*, or jurisdiction inherent in all lordship. This jurisdiction and the *terra regis* were the springs of the Norman monarchy, the latter being

Rome from the pope, that I should everywhere maintain the glory of God and put down wrong, and work full peace by the might that God would give me...' (sourced to *York Gospel Book*, MS.; no Old English version).

¹ *Ealle tha gyltas tha belimpeth to mine kinehelme; omes forisfacturae quae pertinent ad regiam coronam meam*, quoted in Jolliffe, *Constitutional History of Medieval England*, loc. cit., sourced to charter of Edward the Confessor to Ramsey, from J Earle, *Land Charters*, p. 344. And see Grant by Edward the Confessor to Westminster Abbey, 1056, reproduced in S&M1, pp. 31-32, sourced to Thorpe, *Diplomatarium*, pp. 368 ff., from the Anglo-Saxon (no Old English text given): 'I have granted... free of *scot* and *gafol*, with all things pertaining...*sac* and *soc*, *toll* and *team*, *infangenæpeof*, *blodwite* and *weardwite*, *hamsocn*, *forsteall*, *gryðbryce* and *mundbryce*, and all the rights which there belong to me....'

² for meanings, see Glossary.

³ See Jolliffe, *Constitutional History of Medieval England*, loc. cit., at p. 105, and p. 111.

⁴ See for example, the Ten Commandments in the Introduction to the Laws of Alfred, Attenborough, *Laws of the earliest English Kings*, op. cit., p. 193, and references at note 1, p. 57, *supra*; Dooms of Edward and Guthrum, § 1 (In the first place they declared they would love God...), Attenborough, p. 103.

⁵ See Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 139, and the sources quoted there in note 2.

the basis of increase in the revenues of the crown.¹ The term *folcriht* disappears at the conquest, but it is replaced by the term *consuetudo Angliae* (customs of England)²; and while all of the British *cynryhtia* were retained by the Conqueror, they were gradually subsumed into the feudal notion of *dominium*, from which the king derived his jurisdiction.³ The Conquest was, in fact, distinguished by an extraordinary continuity in both law and governance.⁴

The exemplars of this continuity are William I's coronation oath where he swore in terms almost identical to those of his Saxon predecessors to

protect the holy churches of God and their governor, and to rule the whole kingdom subject to him with justice and kingly providence, to make and maintain just laws, and straitly to forbid every sort of rapine and all unrighteous judgements⁵

and the law he enacted stating: 'This likewise I wish and enjoin: that in [cases affecting] lands, as in all other matters, all shall keep and hold the law of King Edward [the Confessor], with the addition of those [amendments] which I have made for the benefit of

¹ See Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 183; all this discussion draws on Jolliffe, Chapter 3. Note also, that a king by conquest could at his discretion impose any of his laws upon the conquered, and as fruits of victory, could take any land which he had conquered, which now came under his possession and sovereignty. This unpalatable but pervasive fact of life lay at the root of Henry VII's subjects' concern after Bosworth, when he insisted on basing his title to the throne on conquest (*jure belli*)—see observations of Sir George Buck, Master of the Revels, *The History of King Richard the Third*, 1619, edited and with an introduction and notes by Arthur Noel Kincaid, Alan Sutton Publishing, London, 1982, pp. 87-89, text at Appendix II, and discussion at p. 111 (cf. Also, William of Orange, p. 366 and p. 380 *infra*). Moreover, in the light of this precept, William I's undertaking to maintain the laws of Edward the Confessor is much more than a merely conciliatory gesture.

² Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 177.

³ See Sir Frederick Pollock, and Frederic William Maitland, *The History of English Law before the time of Edward I*, 1895, 2 Vols.; 2nd edn., Lawyer's Literary Club, Washington DC, 1959, Vol. I, p. 527: 'jurisdiction is a proprietary right, intertwined with the laws of property and of personal status, implicated with the land law'; quoted in Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 191

⁴ Note here that H G Richardson and G O Sayles, in *The Governance of Medieval England from the Conquest to the Magna Carta*, Edinburgh University Press, Edinburgh, 1963, reprint 1964, at pp. 26-29 say: 'The Normans had little statecraft and little foresight. The Normans had very little to teach even in the art of war, and they had very much to learn. They were barbarians who were becoming conscious of their insufficiency. That the Normans had little statecraft and little foresight, that they had very little to teach and very much to learn, seems to us the obvious conclusion from their history; but so to declare we recognise is to fly in the face of settled convictions of successive generations of historians to whom the Conqueror has appeared as a heroic figure of almost superhuman proportions.'

⁵ From *The Chronicle of Florence of Worcester*, Thomas Forester, (trans. and ed.), Henry G. Bohn, London, 1854; reprinted from the 1854 edition by AMS Press, New York, 1968, at p. 171—For text see Appendix I. And see Maitland, *Constitutional History*, *supra*, at pp. 98-99, but he gives no source for the quotation; H G Richardson and G O Sayles, in *The Governance of Medieval England from the Conquest to Magna Carta*, Edinburgh University Press, Edinburgh, 1963, reprint 1964, at p. 137 give a very similar translation to that of Maitland, and source it to Florence of Worcester, i., 229; see also *Traditio*, xvi. 161-2, 186

the English people.’¹

The King’s Peace was maintained by the Anglo-Norman kings², receiving explicit recognition in Henry I’s Coronation Charter of 1100:

...I establish my firm peace throughout the whole kingdom and command that it henceforth be maintained I restore to you the law of King Edward, together with those amendments by which my father, with the counsel of his barons, amended it. ...³

After the Conquest, however, what had become known as the pleas of the crown under the Confessor broadened. They included not only those offences for which the king and his *witan* had laid down a pecuniary penalty payable to the crown in forfeiture for the breach of the King’s Peace or the law⁴, but also what the Normans had known as ‘the pleas of the sword’⁵—offences which were held to be committed against the crown, where the crown was the avenger together with or on behalf of the injured party or his kin.⁶

ENFORCEMENT OF THE KING’S PEACE

Henry I’s justiciars asserted that any matter which concerned the King’s Peace should be treated as a plea of the crown⁷; breach of the King’s Peace gave rise to the general action of

¹ see William I, 7; from the Latin, in F Liebermann, *Die Gesetze der Angelsachsen*, Text und Übersetzung, Unveränderter Neudruck der Ausgabe 1903-1916, Scientia Aalen, Sindelfingen, Germany, 1960; in 3 Vols., at Vol. I, 486f., as reproduced in C Stephenson and F G Marcham, (eds.), *Sources of English Constitutional History: Vol. I: A Selection of Documents from AD 600 to the Interregnum*, New York, Harper & Row, rev edn. 1972, at p. 37. And see references in Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 175: *Ut omnes habeant et teneant legem Eadwardi Regis in terris et in omnibus rebus* (‘All men shall have and maintain the law of King Edward in lands and in all things’).

² See William II, who promised to *preserve justice and equity and mercy throughout the realm, would defend against all men the peace, liberty, and security of the churches* [Stubbs, *Constitutional History*, Vol. I, §105, at p. 321]

³ See Stubbs, *Select Charters*, p. 99; S&M1, pp. 46-48; *pacem firmam in toto suo regno posuit et teneri praecepit, legem regis Eadwardi omnibus in commune reddidit, cum illis emendationibus quibus pater suus illam emendavit*: quoted from *Flor. Wig.* II 46f. by Robert S Hoyt, ‘The Coronation Oath of 1308: the background of “Les Leys et les Custumes”’, *Traditio*, Vol. XI, 1955, 235-257, at 239.

⁴ *Jura quae rex super omnes homines habet*, and *propria placita regis*, some 40 in number, see *Leges Henrici Primi*, 10 and 52, quoted in Jolliffe, *Constitutional History of Medieval England*, *loc. cit.*, p. 110.

⁵ *Placita gladii*, pleas of the sword of the Norman Duke, referred to in Jolliffe *Constitutional History of Medieval England*, *ibid.*, p. 110.

⁶ See T F T Plucknett, *A Concise History of the Common Law*, 5th edn., Little, Brown and Company, Boston, 1956, at p. 427.

⁷ See Plucknett, *A Concise History of the Common Law*, *loc. cit.*, at p. 15.

trespass¹, though no writ claiming *contra pacem regis* could be heard anywhere but in the king's courts.² By the time of Glanvill (1187-1189) under Henry II, the 'pleas of the crown of the lord king'³ were established in writing, and included 'the plea of the breach of the lord king's peace'; these pleas were heard in the king's courts.⁴ In 1194 the office of coroner or 'crowner'—keepers of the pleas of the crown—was established, whose duties then were more extensive than those of the modern coroner.⁵

In addition to the national King's Peace, there still existed specific instances of the King's Peace, or the old *cyninges hand-grið*⁶. From the time of Edmund, the King's Peace had been declared between specific opposing parties when the family of a man who had been killed accepted an offer of composition from the killer.⁷ This evolved into a specific king's writ to extend the King's Peace to people for specific purposes and in specific instances. These writs were known as the *pax regia per breve data*, or *de pace habenda*, or (because securities were required) *de securitate pacis*.⁸ Essentially, this 'surety of the peace' was extended by the use of the royal prerogative and royal writs and was taken over by the peace-keeping institutions, the Keepers, and later the Justices, of the Peace, who were themselves creatures of the royal prerogative.⁹ In tandem with the surety of the peace went security for good behaviour. This flowed from the royal prerogative to dispense from the law of the land, in the form of a conditional pardon.¹⁰

¹ See Plucknett, *Concise History of the Common Law*, loc. cit., at pp. 366-367.

² See Plucknett, *Concise History of the Common Law*, loc. cit., p. 93, p. 367, and p. 456; these writs not only covered trespass of land as we know it, but also involved certain actions relating to violence, in the sense of trespass to the person, or trespass upon the King's Peace.

³ *placitorum aliud pertinet coronam domini regis*—see *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, *The Treatise on the laws and customs of the realm of England, commonly called Glanvill*, G D G Hall (ed.), Nelson in association with the Selden Society, London, 1965, at p. 3.

⁴ *Placitum de pace domini regis infracta*, see Glanvill, *ibid.*, p. 3.

⁵ See R F Hunnisett, *The Medieval Coroner*, Cambridge University Press, 1961; reprinted by Wm. W Gaunt & Sons, Inc., Florida, 1986, p. 1.

⁶ The king's personal peace given under his hand.

⁷ 2 Edmund, c. 7; referred to in David Feldman, 'The King's Peace, the Royal Prerogative and Public Order: the Roots and Early Development of the Binding Over Powers,' 47 *Cambridge Law Journal*, 1988, 101-128, at p. 109; and see 2 Edmund, c. 1, in S&M1, at p. 17.

⁸ See Feldman, 'The King's Peace, etc.', *ibid.*, at p. 109. For examples of the issue of the writs, see *ibid.*, pp. 109-110

⁹ see Feldman, 'The King's Peace etc.', *art. cit.*, pp. 102-103

¹⁰ The 'dispensing power,' later to assume prime importance at the time of the revolution of 1688. And see Feldman, 'The King's Peace etc.', *art. cit.*, p. 1-3.

The Keepers of the Peace were appointed under royal commission to keep the peace, and to take sureties if necessary.¹ The statute of 1361 established the office of Justice of the Peace², whose powers were those of the Keepers of the Peace, together with a clarified power of taking sureties for good behaviour,³ although the king retained his power under the prerogative to issue commissions.⁴ The King's Peace in the royal prerogative was thus the origin of modern binding over and bail provisions, the purpose being for the maintenance of public order or the King's Peace, rather than any punitive or pre-emptive purpose.⁵ By the beginning of the sixteenth century, the duties and authority of the Justices of the Peace had been enumerated in *The boke of Justices of peas*, later updated in the *New Boke*.⁶

By the thirteenth century, the keeping and maintenance of the peace were seen as fundamental to the king's office and jurisdiction. Henry de Bracton, writing in 1250-1260 stated unequivocally:

in the matter of liberties, we must consider who is able to grant them, ... Who, then? And you must know that it is the lord king himself, who has the ordinary jurisdiction and dignity and power over all who are in his realm. For he has in his hand all rights touching the crown, and the secular power, and the material sword which pertains to the governance of the realm. Moreover he has the justice and the judgment belonging to his jurisdiction, so that by virtue of his jurisdiction as minister and vicar of God he attributes to each one what is his own [he may render to each his due]....

Those things which belong to jurisdiction and the peace, and those which are incidental to justice or the peace, pertain to no one except to the crown alone and to the royal dignity; nor can they be separated from the crown, since they constitute the crown itself.⁸

¹ Feldman, 'The King's Peace etc.," *art. cit.*, p. 111. The Keepers of the Peace were taking sureties for the peace as early as 1281—see A H Thomas, *Calendar of Pleas and Memoranda Rolls of the City of London, 1323-1364*, pp. xv-xvi; referred to in Feldman, *art. cit.*, at p. 102, n. 4. Subsequently, the position of the Keepers of the Peace was spelled out in statute, 1 Edw. 3, stat. 2, c. 16. But the king continued to appoint Keepers under royal commission. For further information, see also S B Chrimes' Introductory Essay to Sir William Holdsworth's *A History of English Law*, Methuen & Co, London, 1903, 7th edn., revised, 1956, reprinted 1966, at p. 24 ff.

² 34 Edw. 3, c. 1, (Justice of the Peace Act), 1361.

³ See Feldman, 'The King's Peace etc.," *art. cit.*, p. 126.

⁴ See Feldman, 'The King's Peace etc.," *art. cit.*, p. 117 and p. 128.

⁵ See Feldman, 'The King's Peace etc.," *art. cit.*, pp. 127-128.

⁶ See P R Glazebrook, (*gen. ed.*), *The Boke of Justices of Peas*, 1506, printed by Richard Pynson or Wynkyn de Worde; Professional Books Limited, London, 1972, and see his Introduction. Glazebrook notes that *The Boke of Justices of the peas* included numerous other matters in addition to those pertaining to JP's. See also Sir Anthony Fitzherbert, *The Newe Boke of Justices of the Peas*, 1538, London; Professional Books Limited, Classical English Law Texts, P R Glazebrook, (*gen. ed.*)

⁷ see Bracton, *loc. cit.*, p. 166 [folio 55b]

⁸ see Bracton, *loc. cit.*, Latin Text, p. 167 [folio 55b]: *...et ea quae sunt iustitiae et paci annexa, ad nullum pertinent nisi tantum ad coronam. Est enim corona facere iustitiam et iudicium, et tenere pacem, et sine quibus corona consistere non poterit nec tenere.*

Bracton immediately goes on to say : 'For the *esse* of the crown is to exercise justice and judgment and to maintain the peace; and without these the crown could neither subsist nor endure.'¹He itemised 'pleas of the crown', which involved 'contempt against the king and his crown and dignity'², and which included capital crimes, such as homicide 'which partly concerns the king, whose peace is broken, and partly the private individual who is slain wickedly and in breach of the king's peace.'³ To this day, cases of homicide and other criminal offences are pleas of the crown, both in the old Anglo-Saxon sense of the king acting to protect the peace and the common weal, and in the Norman sense of the *placita gladii* or pleas of the sword, whereby the king stood as avenger for the wrong done, hence their nomenclature, *Rex versus Bloggs* (*The King against Bloggs*).

Bracton's views on the essence of the crown being the maintenance of the peace agree broadly with the views of St Thomas Aquinas. In *On Kingship* (c.1260) Aquinas said:

...the king, taught the law of God, should have for his principal concern the means by which the multitude subject to him may live well. This concern is threefold: first..., to establish a virtuous life in the multitude subject to him; second, to preserve it once established; and third, to promote its greater perfection. ...[re establishment]...the unity of the multitude, which we call peace, must be procured through the efforts of the ruler. Therefore to establish virtuous living in a multitude three things are necessary. First of all, that the multitude be established in the unity of peace. Second, that the multitude thus united in the bond of peace, be directed to acting well....In the third place, it is necessary that there be at hand a sufficient supply of the things required for proper living, procured by the ruler's efforts.⁴

Enforcement of the King's Peace occurred not only through the activities of the Keepers and Justices of the Peace, but also through the King's courts.

One of the most efficient and popular avenues of seeking redress was the king's Council sitting as a Court in Star Chamber, which received petitions and redressed grievances under

¹ Bracton, *ibid.*, p. 167, fo. 55b.

² see Bracton, *loc. cit.*, pp. 327 ff., and p. 340.

³ Bracton, *ibid.*, p. 340.

⁴ St Thomas Aquinas, *On Kingship, to the King of Cyprus, De Regno, Ad Regem Cypri*, (c. 1260), Book 2, Chapter III, (I, 14,) 116, 117 and 118, at pp. 60-65 of Gerald B Phelan, (*trans.*), revised with introduction and notes by I Th Eschmann, Pontifical Institute of Medieval Studies, Toronto, 1949, reprinted 1967, 1978, 1982. 'Virtuous living', or 'living well together', is the purpose of society, according to St Thomas Aquinas [Book 2, Chapter III, (I, 14), 106-107, p. 60]. It should be noted that Eschmann's revision and translation is of only the work of Aquinas. Previously, editors had followed medievalists who had erroneously compiled *De Regno* with another and quite different work, *De Regimine Principum* (*On the Governance of Rulers*), by Tolomeo of Lucca (d. 1327), publishing both fragments under the name of Aquinas, and calling them *De Regimine Principum*—see Introduction, pp. ix-x. St Thomas Aquinas, *On Kingship, loc. cit.*

the immemorial authority of the Council, exercising jurisdiction on the king's behalf.¹ Being the king's Council, its authority lay in the prerogative, and the prerogative only; although some attempts were made in the fourteenth and fifteenth centuries to limit its jurisdiction.² Its original jurisdiction and chief purpose was to *protect* the King's Peace.³ It heard pleas relating to charges of riot and cognate offences, assault, disturbances of peaceful possession, libel and slander (these latter being likely to lead to a breach of the peace), and fraud and forgery. Some of these offences were ill provided for in the (other) common law courts.⁴ It also *enforced* the King's Peace, by securing law enforcement in all the courts in the realm, dealing with contempt of court, and absence or denial of justice through perjury, false jury verdicts, conspiracy, or subornation or the like. It enforced royal proclamations, and adjudicated their breach—its order concerning printers⁵ arose out of a breach of a proclamation⁶, and developed into a general statement of rules governing censorship.⁷ Put briefly, its purpose was to protect the King's Peace, and act as (to use Elton's words) 'the executant of the king's vigilance over justice.'⁸ A typical bill in Star Chamber would use like words:

To the King our Sovereign Lord.

In humble wise complain to your most noble grace your faithful subjects and true liegemen... That where your said beseechers were in God's peace and yours,... riotous and misruled people... made assault... In consideration whereof, and that your said poor subjects might there live in God's peace and yours, sovereign lord,...⁹

Star Chamber was highly regarded and popular with litigants, because it was relatively speedy, flexible and complete in its work.¹⁰ Sir Edward Coke considered it to be 'the most honourable court (our Parliament excepted) that is in the Christian world, both in respect

¹ See G R Elton, *The Tudor Constitution, Documents and Commentary*, Cambridge University Press, Cambridge, 1960, reprinted 1965, at p. 159.

² See Elton, *Tudor Constitution*, *loc. cit.*, at p. 159, referring to Ogilvie, *King's Government*, 51.

³ See Elton, *Tudor Constitution*, *loc. cit.*, p. 170.

⁴ See Elton, *Tudor Constitution*, *loc. cit.*, p. 171.

⁵ Star Chamber Decree concerning Printers, 1586, Strype, *Whitgift*, I, 423-424; III, 160-165; reproduced in extract in Elton, *Tudor Constitution*, *loc. cit.*, at pp. 179-184.

⁶ See (Privy Council) Order against seditious Books, 1566, summarised by Strype in *Life of Parker*, I, pp. 442-443, extracted in Elton, *Tudor Constitution*, *loc. cit.*, pp. 105-107.

⁷ Elton, *Tudor Constitution*, *loc. cit.*, p. 171.

⁸ Elton, *Tudor Constitution*, *ibid.*, p. 171.

⁹ A bill in Star Chamber (riot, 1500), *Joyfull v Warcoppe*, from Leadam, *Star Chamber*, I, 106, reproduced in Elton, *Tudor Constitution*, *loc. cit.*, pp. 176-177.

¹⁰ Elton, *Tudor Constitution*, *loc. cit.*, p. 163.

of the judges of the court and of their honourable proceeding according to their just jurisdiction and the ancient and just orders of the court.¹ Its abolition in 1641² was not due to any brutality of sentencing carried out by the court³. Rather was it due to Star Chamber's assumption (in the absence of parliaments) in the 1630s of the enforcement of the king's fiscal and social policies; its comparative success in enforcing a centralised economic policy ensured its unpopularity with the landed classes, who hankered after decentralisation even at the cost of efficient government.⁴ The absence of parliaments also meant a greater reliance by the government on proclamations, the enforcement of which had long been a function peculiar to the Star Chamber. Public opinion was also mobilised against Star Chamber in the late 1630s, because of trials of high profile parliamentarians, like William Prynne, and its sentencing of gentlemen of the growing middle class.⁵ Star Chamber's abolition was more to do with emotion than logic.⁶ The gap in the judicature was not easily filled, and Justice Hales remarked that 'since the pulling down of that court, there had bin in a few years more perjuries and frauds unpunished than there had bin in a hundred years before.'⁷

Despite the abolition of Star Chamber, the original jurisdiction of the king's Council lived on. The 1641 Act, while it deprived the Privy Council (the old king's Council) of any jurisdiction on any matter of property belonging to subjects of the British kingdom, left it with jurisdiction as last resort in admiralty matters, and all matters civil and criminal arising in the king's lands beyond the seas, giving rise ultimately to the jurisdiction of the judicial committee of the Privy Council.¹

But the prerogative of the king to keep the peace, imposed and conferred on the king at his

¹ Sir Edward Coke, *Fourth Institutes*, 63-63, 65, extracted in Elton, *Tudor Constitution*, *loc. cit.*, at pp. 172-173.

² An Act for the regulating the Privy Council and for taking away the court commonly called the Star Chamber, 16 Car. I, c. 10, 1641; reproduced in J P Kenyon, *The Stuart Constitution, Documents and Commentary*, Cambridge University Press, Cambridge, 1965, p. 223.

³ See H E I Phillips, 'The Last Years of the Court of Star Chamber, 1630-1641,' *Transactions of the Royal Historical Society*, 4th ser., XXI, (1938), 103, pp. 103-106, and p. 118, referred to in Kenyon, *Stuart Constitution*, *op. cit.*, at p. 118, n. 3.

⁴ Kenyon, *Stuart Constitution*, *loc. cit.*, p. 120.

⁵ See the discussion in Kenyon, *Stuart Constitution*, *loc. cit.*, at pp. 118-120, and the sources quoted there.

⁶ See Kenyon, *Stuart Constitution*, *ibid.*; other, more unpopular, courts, unpopular with lawyers and landowners alike (Court of Requests and Court of Wards) went untouched by the Long parliament.

⁷ Quoted in S B Chrimes, Introductory Essay to Sir William Holdsworth's *A History of English Law*, Methuen & Co, London, 1903, 7th edn., revised, 1956, reprinted 1966, at p. 60, sourced to Phillips, *TRHS*, (4th ser.) xxi 131.

coronation as both his power and his doom², being fundamental to the welfare of the people, has endured. In the time of George III, Blackstone was able to write that the King's Peace was an essential exercise of the royal prerogative:

Another capacity [of the king's prerogative] in which the king is considered in domestic affairs, is as the fountain of justice and general conservator of the peace of the kingdom.³

The king's majesty is, by his office and dignity royal, the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the king's peace.⁴

The most extraordinary example of the king's use of the prerogative for the purpose of maintaining his peace, is Charles II's commitment in the *Declaration of Breda*⁵, subsequently substantially enacted by the *Statute of Oblivion*⁶, whereby he, in the interests of the maintenance of the peace, pardoned all offenders against the law during the Interregnum, except for those regicides still living, and required that no previous such breach of the law should be held against any.⁷

¹ Maitland, *Constitutional History*, p. 320.

² Cf. See discussion on 'the lawful man' at note 7, p. 56, and at p. 56; and of the 'just man' at p. 189; and see also p. 170.

³ William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, with an introduction by Stanley N Katz, University of Chicago Press, Chicago, 1979, in 4 Volumes, Book I, Chapter 7, p. 257.

⁴ Blackstone, *Commentaries*, *op. cit.*, Vol. I, p. 338. And see Blackstone, Vol. I, p. 257; and see Blackstone, Vol. 4, Chapter 11, 'Of Offences against the Public Peace'. p. 142—"We are next to consider offences against the public peace; the conservation of which is entrusted to the king and his officers... These offences are either such as are an actual breach of the peace; or constructively so..."

⁵ Charles II, *Declaration of Breda*, 1660, 4/14 April, 1660, in the twelfth year of his reign (*Lords Journals*, XI, 7-8); for text see Appendix I.

⁶ *Act of Oblivion*, 12 Car. II, c. 11, 1660. For text see Appendix I. Charles II's parliaments however did not like his undertakings towards religious toleration if the Declaration of Breda, and were unsympathetic to his attempts through his Declaration of Indulgence to honour his undertakings. This statute, together with the Declaration of Breda, could be seen as the ultimate exercise of the prerogative, (in this case, of the dispensing power by the king)—an exercise which was conveniently forgotten by the members of the so-called 'Convention parliament' when it purported to enact the Bill of Rights (1 Will. & Mary, s. 2, c. 2—see clause 2, purporting to declare illegal the 'pretended power of dispensing with laws...')

⁷ Charles II, *Declaration of Breda*, 1660, 4/14 April, 1660, in the twelfth year of his reign (*Lords Journals*, XI, 7-8), for text see J P Kenyon, *The Stuart Constitution, Documents and Commentary*, Cambridge University Press, Cambridge, 1965, pp. 357-358. The general pardon received the imprimatur of parliament in the *Act of Oblivion*, 12 Car. II, c. 11, 1660, with primarily only those regicides still living being named as exempt. (see section xxxiv). For texts, see Kenyon, *loc. cit.*, pp. 365-371.

THE KING'S PEACE, THE CROWN, AND SOVEREIGNTY

The development in the King's Peace went hand in hand with the evolution of the notion of 'the Crown.' With the growth of the powers of the king from the *Bretwaldas* to Cnut and the Confessor in promulgating and enforcing laws for the peace of the people, and the concomitant evolution of the idea of a *terra regis* and of the idea of the one king to whom all within the land owed allegiance, there evolved also the idea of 'sovereignty'.

The *Bretwaldas* established the idea of the one king, the overking, having lordship over all others in the land of Britain, hence their name 'Britain-ruler'. They demanded homage from all within Britain, and accrued to themselves the *cyneriht* and the *cyneſcipe*, the rights and powers of the king. They took the coronation oath, and promised to keep the peace. Gradually the *Bretwaldas* subsumed the *folcſiht* (folkright) into their *mund* or protection, and established a system of laws and enforcement to maintain the peace. The 'English peoples' realised an affinity and endorsed a 'king of the English',¹ king by birth, election, and apostolic consecration.

By the assertion of the king and his *ŵitan* that all should *frīþ* what the king shall *frīþ*,² there was established a national *frīþ*, the national peace or the King's Peace. The king held in his hand through his *cyneriht* and the *cyneſcipe* the power of enforcement, and the maintenance of the peace and the enforcement of the laws moved from the *folc-moots* to the king's reeves and other king's officers. The royal right (*cyneriht* and the *cyneſcipe*) gradually became identified with the king, or to put it another way, they were seen to be 'within the circle of the crown'.³ These royal rights, or the rights of the crown, were the outcome of the continuing struggle to construct and maintain peace and order. It is thus that Edward the Confessor came to speak of 'all the pleas that belong to my crown'.⁴

¹ For a discussion of this see Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 102 ff.

² 2 Æthelstan, c. 20, § 3, quoted in Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 116.

³ This is Jolliffe's phrase, see *Constitutional History of Medieval England*, loc. cit., p. 102.

⁴ *ealle tha gyltas tha belimpeth to mine kinehelme* —See J Earle, *Land Charters*, p. 344, quoted in Jolliffe, *Constitutional History of Medieval England*, loc. cit., p. 111.

With the Conquest, the Norman concept of *dominium* or jurisdiction cohered with the *cyneriht* and *cyneſcipe*, and by the time of Glanvill's law tract, he writes of the king as 'the author and lover of peace' in the context of the impartiality of his justice in accordance with the laws and customs of the realm and refers to pleas belonging to 'the crown of the lord king.'¹ Bracton saw the 'essence of the crown' as being in the maintenance of the peace.²

Thus 'the crown' came to be a shorthand way of referring to the king's ultimate jurisdiction, particularly in the maintenance of the peace and the enforcement of the law. 'The crown' was also a means of referring to the rights and powers of the king, (the old *cyneriht* and *cyneſcipe*), or the king's prerogatives. These prerogatives, or powers and obligations peculiar to the king, were identified with 'the estate of the crown', or the 'kingly estate'.

Some commentators have concluded that no concept of 'sovereignty' existed in the middle ages, at least in the sense understood by John Austin³ of the nineteenth century.⁴ Nevertheless, from earliest times in Britain, there *had* existed a concept of 'sovereignty', witness the Dooms of Wihtred, c. 695-696:

Ɗam mildestan cyninges Cantwara Wihtrede riſigendum⁵ þe fiſtan wintra his riſes ...

¹ *pertinet ad coronam domini regis*; see Glanvill, *loc. cit.*, p. 2 and p. 3; see also Bracton, p. 327 ff.

² See Bracton *De Legibus et Consuetudinibus Angliæ*, referred to and quoted at p. 68, and note 1, *supra*.

³ John Austin, *Lectures on Jurisprudence, or, The Philosophy of Positive Law*, 5th edn., revised and edited by Robert Campbell, 2 Vols.; London, John Murray, 1885; Vol. 1, 219 [originally published 1832; Sarah Austin's edition 1863; Robert Campbell's edition, drawing on material supplied by John Stuart Mill, 1885]. Austin speaks of a 'determinate human superior not in the habit of obedience to a like superior, receiving habitual obedience from the bulk of a given society'; in such an instance (in his view), that superior is 'sovereign' in that society, and the society is a 'society political and independent', and to that determinate superior, the other members of that society are subject. 'The mutual relationship which subsists between that superior and them, may be styled the relation of sovereign and subject, or the relation of sovereignty and subjection.'—p. 221.

⁴ See F W Maitland, *Constitutional History*, *op. cit.*, pp. 101-102, and p. 297. Maitland based his observation on the distinction between church and state and on the view that while against the king the law had no coercive power ('the king can do no wrong'), nevertheless, on Bracton's view, the king was below God and the law. Maitland felt therefore, that before the Reformation, no sovereign in Austin's sense was possible in Britain. Maitland's distinction would have been endorsed by St Thomas Aquinas, who made it clear that all Christian kings were subject to the pope, (see Aquinas, *On Kingship*, *loc. cit.*, Book 2, Chapter III, (I, 14), 110, p. 62), but not by Edward I (see *infra*, p. 75) But Maitland's observation was based upon his acceptance of Stubbs and Coke, and I would doubt that were he now able to write in the light of modern scholarship, that he would still hold to this view. See my observations *post*, under 'The King Never Dies' at p. 130 ff., and 'The King Must Die', at p. 146 ff.

⁵ See Sweet's *Anglo-Saxon Primer*, § 16, p. 12, and p. 121: *riſe* (O.E.) [Celtic *rið*], meaning Kingdom, kingship; sovereignty, rule.

[During the sovereignty of Wihtrred, the most gracious king of Kent, in the fifth year of his reign...]¹

While this concept of *nixigendum* or sovereignty here was applied by a Kentish king to himself, it will be remembered that the *Bretwaldas* held lordship or *mundbora* over subject kings², and held other *indicia* of sovereignty, such as negotiations as equals with foreign potentates³.

William I, while paying Peters-pence⁴ asserted that this was not payment by way of tribute, but one of alms, and was not a recognition of subjection.⁵ He responded to the pope's request that William do him fealty by saying in effect he would not, and that moreover, while he was prepared to pay the *Romescot*, this in turn was achieved in accordance with *his*, not the pope's, laws.⁶ Richard I (*Coeur de Lion*) taken prisoner by Emperor Henry VI of Germany, was forced to surrender his kingdom and receive it back as a fief⁷. After conflict between John and the church⁸, pope Innocent III placed England under the *interdict*, and excommunicated the king. In the face of a papally supported impending invasion by Phillip II of France, John surrendered the kingdom to the pope.⁹ England remained a vassal of

¹ See Attenborough, *Laws of the Earliest English Kings*, ed. cit., pp. 24-25

² For example, Edward the Elder secured recognition of his sovereignty from Mercia, Wales and Scotland— In 918, see Blair, *Anglo-Saxon England*, op. cit., p. 203. (*hine sohton him to blaforde* [sought him as their lord]; *hines geas to fader 7 to blaforde* [chose him as father and lord]).

³ cf. Offa and Charlemagne.

⁴ See Glossary; *Romescot*, a tax of a tenth payable to Rome.

⁵ See Sir Matthew Hale, *The Prerogatives of the King, 1640-1660*, D E C Yale (ed.), Selden Society, London, 1976. at p. 12, where he refers to 18th law of William I (sourced to Eadmerum, *Opera Omnia*, II, 1646-1647, and to Ryley, *Plac. Parl.* 379, *inter petitiones propositae contra Magistrum W. de Testa clericum domini Clementis Pape quiti per communitatem Anglie*) which provided for the payment of Peter-pence (or *Romescot*) to the pope; at p. 21 Hale endeavours to show that this was not in any way tribute.

⁶ See Hale, *The Prerogatives of the King*, *ibid.*, p. 21, and Latin text there, sourced to Hoveden, *Chronica*, (Rolls edn.), II, p. 222, and p. 603. Pope Gregory the 7th asked for fealty as well as the Peters-pence. Peters-pence was removed by the *Annates Acts* of 23 Henry VIII, c.20 (1532), and 25 Henry VIII, c.20 (1534).

⁷ See T F Tout, *An Advanced History of Great Britain, from the earliest Times to the Death of Queen Victoria*, Longmans Green and Co., London, 1906, p. 133; Richard also had to pay a ransom of £100,000, the equivalent of two years royal revenue. Hale, at p. 21 *loc. cit.*, glosses over this abrogation of sovereignty by reference to Selden, in *Titles of Honour*, Pt. 1, Ch. 2, s. 5, in *Opera Omnia*, III, 126 *et seq.*

⁸ It would appear that the activities of the pope and the clergy, together with the taxes imposed by Rome, were a contributing factor to the baron's demands at Runnymede, which coincidentally were driven by Archbishop Langton, who had been himself one of the origins of the conflict between the king and the pope. Langton persuaded the barons to require from John a charter similar to Henry I's Coronation Charter. The king's acceptance of the baron's demands endures as the Magna Carta of 1215, the first provision of which, (like Henry I's Coronation charter) was that 'the English church shall be free...'—for a discussion of the relations with Rome, see Tout, *Advanced History of Great Britain*, *loc. cit.*, pp. 140-145 (John), and pp. 159-169 (Henry III), and pp. 183-184 (Edward I).

⁹ See Stubbs, *Select Charters*, pp. 284-286 for text; 15 May, 1213, John, *Act of Submission to the Pope*, made at Dover. John conceded the Kingdom to the Pope; he renewed the act of submission to Nicolas, Bishop of Tusculum at London on

Rome under Henry III¹. It is only with the reign of Edward I, who confined the business of church courts to matters ecclesiastical not entrenching on the jurisdiction of the crown,² and who uttered a restatement of sovereignty with the support of the three estates of the realm, that a practical end was put to the papal overlordship.³

Edward I rejected out of hand a papal claim that Scotland was a fief of Rome, and the barons in 1301 wrote to the pope:

affirming that kings of England never have answered or ought to have answered touching this or any of their temporal rights before any judge ecclesiastical or secular, by the free preeminences of the state of their royal dignity and by custom irrefragably preserved at all times; therefore, after discussion and diligent deliberation, the common, concordant and unanimous consent of all and singular has been and is and shall be, by favour of God unalterably fixed for the future, that the king shall not answer before the pope or undergo judgment touching the rights of the kingdom of Scotland or any other temporal rights: he shall not allow his rights to be brought into question, or send agents; the barons are bound by oath to maintain the rights of the crown, and they will not suffer him to comply with the mandate even were he to wish it. This answer is given by seven earls and ninety-seven barons for themselves and for the whole community of the land, and is dated on the 12th of February.⁴

This seems on its face unquestionably to be a statement of sovereignty, wherein also the 'rights of the king', that is, his temporal rights, are identified clearly with 'the rights of the crown'.

By the time of Edward II, the oath which had been required by earlier kings from their subjects⁵, was reframed. No longer was the oath directed solely to the individual person of the king, but to keeping and maintaining, to safeguarding and restoring, 'the rights of the king and of the crown'.⁶ By 1322, the words 'Royal Power', 'Royal Sovereignty', and 'Estate

3 October 1213 with a golden *bull*, and with the actual performance of liege homage promised in the act. John had to swear an oath of fealty to the Pope. (The text of John's oath may be found in Stubbs', *Select Charters*; for a translation of John's surrender of the kingdom to the pope, and of his oath of fealty to the pope, see R Trevor Davies, *Documents Illustrating the History of Civilization in Medieval England, (1066-1500)*, Barnes & Noble Inc., New York, Methuen & Co. Ltd, London, 1926, reprinted 1969, at pp. 94-95). For a discussion of the details, see Tout, *An Advanced History of Great Britain*, *loc. cit.*, pp. 140-145. And see discussion at p. 182, p. 185, note 5, and p. 267, notes 4 and 5 *infra*.

¹ On Henry's accession, the papal legate took on the supreme direction of the kingdom—see Tout, *Advanced History of Great Britain*, *loc. cit.*, p. 159.

² 1285, the Act *Circumspecte Agatis* [the Act Cautiously Act], referred to in Tout, *Advanced History of Great Britain*, *loc. cit.*, p. 184.

³ See Tout, *Advanced History of Great Britain*, *ibid.*, p. 184.

⁴ Stubbs, *Constitutional History*, Vol. 2, p. 159; he sources this in n. 1, p. 160, to 'Foed. i. 926, 927; Parl. Writs, i. 102, 103; Rishanger, pp. 208-210; Hemingb. ii. 209-213; Ann. Lanerc. pp. 199, 200; Trivet, pp. 381-392; and M. Westminster, pp. 443, 444.'

⁵ See oath required by the Dooms of Edmund, III, text at my Appendix I, and see p. 46, *supra*.

⁶ See Royal Councillors' Oath of Office, 1307, Edward II.: '... to the best of your ability you will give and devote your care, aid and counsel to keep and maintain, to safeguard and restore, *the rights of the king and of the crown* [my italics], in so

of the Crown', were being used interchangeably.¹ Edward III referred to the 'Conservation and Reintegration of the Rights of our Crown, as we be bound' by the coronation oath to observe, and defend the 'Laws and Customs of our Realm of England, and our Prerogatives and Rights Royal'.² And by 1350 'the crown' is being directly connected by the Commons to the estate of king and to the law of the realm by virtue of the king's coronation oath:

*Whereupon the said Commons have prayed our said lord the King, That sith the right of the Crown of England, and the law of the said realm, is such, that upon the mischieves and damages which happen to this realm, he ought, and is bound by his oath, with the accord of his people in his Parliament, thereof to make remedy and law; and, in removing the mischieves and damages which thereof ensue, that it may please him thereupon to ordain remedy...*³

In 1386, 'the crown' was recognised by the king's *parlement*⁴ as including the king's 'prerogative and liberties of his said crown...'.⁵ Thus by the time of Richard II, 'sovereignty

far as you can without committing any wrong. And that when you know of things of the crown and rights of the king to be concealed... you will bring it to the king's knowledge. And that .. you will support the crown. ..' (S&M1, pp. 176-177)

¹ see 15 Edw. 2, 1322, Edward II; *Statutes in Force*, Official Revised Edition, *Revocation of New Ordinances* (15 Edw. 2), revised to 1st February 1978; HMSO, London, 1978; known as the *Statute of York*; see also *Statutes of the Realm*, I, 189.

² 15 Edward III, 1341, repealing the previous statute (15 Edw. III) because it was made without the king's assent; re coronation oath and prerogatives; see *The Statutes at Large*, by Owen Ruffhead, London, Charles Eyre and Andrew Strahan, 1786, Vol. I, p. 233

³ see *The Statute of Prouisors of Benefices*, (25 Edward III, stat. 6); Anno 25 Edw. III. Stat. 6, and Anno Dom. 1350 at p. 260 of Vol. I of *The Statutes at Large, from Magna Carta to the twenty-fifth year of the reign of George III*, by Owen Ruffhead, Eyre, Strahan, Woodfall and Strahan, His Majesty's Printers, London 1764; revised edition, Charles Runnington, (ed.), 1786, Eyre, Strahan, Woodfall and Strahan, His Majesty's Printers, London; and see *Rot Parl.* Vol. II. pp. 232-3; in French.

⁴ In this work, the word *parlement* is used to describe the assembly of the Lords spiritual and temporal together with the commons in response to the king's writ, up until the time of the 1529 meeting of the Lords and commons in response to Henry VIII's writ. The reasons for this would probably involve a work in its own right; but put shortly, the word *parlement* was still being used in texts written in English in the reigns of Richard III and Henry VII, if the *Little Devises* are any guide—see discussion *infra* at p. 240, and note 2, p. 240, and note 5, p. 253. Even though considerable strategic use was made of the *parlements* in the fifteenth century, (witness the *Duke of York's case*, see pp. 100 ff., *infra*, and their use by Richard III and Henry VII, see *infra* p. 105 ff. and p. 111 ff., respectively) it is only in my view after the summoning and the work of the Reformation parliament that the Lords and Commons grew to conceive of their role in terms approaching that of power-sharing with the king, or that the king was willing either to admit them to a greater role, or to admit that indeed they had a greater role than the *parlements* of his predecessors—see discussion at p. 268, *infra*. Note also that Henry VIII said: 'We be informed by our judges that we at no time stand so highly in our estate royal as in the time of Parliament wherein we as head and you as members are conjoined and knit together in one body politic...'—from R Holinshed, *Chronicles of England, Scotland and Ireland*, London, 1808, III, 824-6, quoted in G R Elton, (ed.) *The Tudor Constitution, Documents and Commentary*, Cambridge University Press, Cambridge, 1960, reprinted 1965, p. 270. This extract is from *Ferrers' Case*, 1543, and is discussed *infra* at note 2, p. 276. But note that Maitland uses the word 'parliament' in its more modern connotation as arising from the time of Edward I—see discussion at note 1, p. 191, *infra*. Certainly it was Edward I who articulated the maxim, *ut quod omnes similiter tangit ab omnibus approbetur*, but it was Henry VIII who effected it, firmly asserting his sovereignty as opposed to the pope's, (Henry VIII's lasted, whereas Edward's had not, kings like Richard II and Henry VII 'backsliding' through seeking papal imprimatur for their legislation) and achieving the supremacy of English law with his English Lords spiritual and temporal and the commons—see discussion *infra*, at p. 270.

⁵ *Parlement* of 1386, *Parliament Roll*, see S&M1, pp. 237-239, sourced to *Rotuli Parliamentorum*, III, 216-224 (French).

of the king our sovereign lord' was seen as synonymous with 'the crown of England.'¹ The 1393 *Second Statute of Praemunire*², recites the mischiefs of papal usurpations, and adds the following words:

*And so the crown of England which hath been so free at all times that it has been in no earthly subjection but immediately subject to God in all things touching the regality of the same Crown, and to none other should be submitted to the Pope and the laws and statutes of the realm by him defeated and avoided at his will in perpetual destruction of the sovereignty of the king our sovereign lord his crown and regality and of all the realm which God did defend...*³

This conjunction of sovereignty, the rights of the king, and the prerogatives of the king in the concept of 'the crown' continued; for example the Recognition of Richard III referred to him as the :

...rightful and undoubted enheritor by the lawes of God and man to the corone and roiall dignitie of Engelande with all thinges therunto annexid and apperteynyng, elected chosen and required by all of the iij estates of this same lande to take upon him the saide crowne and royall dignyte...⁴

Henry VIII's Will referred to 'the imperial crown and realm of England and Ireland, our title to France, with all dignities... prerogatives...' Sir Thomas Smith, Elizabeth I's Secretary of State, wrote:

To rule, is understoode to have the highest and supreme authoritie of commaundement. That part or member of the common wealth is saide to rule which doth controwle, correct, and direct all other members of the common wealth. That part which doth rule, define and commaund according to the forme of the govenement, is taken in everie common wealth to be just and lawe...⁶

Where one person beareth the rule they define that to be the estate of a king, who by succession or election cometh with the good will of the people to that govenement, and

¹ see 16 Ric. II, c. 5; 1393, Richard II, *Second Statute of Praemunire* (*Statutes of the Realm*, II, 84), (S&M1, 246).

² 16 Ric. II, c. 5. (*Statutes of the Realm*, II, 84, praemunire), (see S&M1, p. 246)

³ see Hale, *Prerogatives of the King*, *op. cit.*, p. 12; 16 Richard II, c. 5, *Statutes of the Realm*, II, 84 (praemunire); and see also Article 10 of the Articles of Deposition of Richard II, in *English Historical Documents, 1327-1485*, A R Myers (ed.), 1969, Eyre & Spottiswoode, London, 1969, at p. 407 ff., (reproduced in my Appendix I), translated from the original in *Rot. Parl.* III., 416 (Latin).

⁴ See *The Little Device* for the Coronation of Richard III, as reproduced in *The Coronation of Richard III, the extant Documents*, edited by Anne F Sutton and P. W Hammond, Alan Sutton Publishing Limited, Gloucester, 1983, at p. 213; British Library: Add. Ms. 18669. See also 1 Henry VII, *Titulus Regius*, 1485 - (*Rot. Parl.* VI, 270), 'our now sovereign lord king Henry the seventh'.

⁵ Will of Henry VIII, 1546; S&M1, p. 323, quoted from Rymer, *Foedera*, xv, 110-115; and see 35 Henry VIII, c. 1, 1543, *Third Act of Succession*, S&M1, pp. 320-321, quoted from *Statutes of the Realm*, III, p. 955; see also 25 Henry VIII, c. 21, 1534, *Statutes of the Realm*, III, 464 (ecclesiastical licences) - removed payment of Peter-pence to Rome, S&M1, pp. 308-9, [see also Hale, p. 21], where sovereignty is equated with Henry's 'imperial crown and authority royal'.

⁶ Sir Thomas Smith, *De Republica Anglorum, The maner of govenement or policie of the Realme of Englande*, seene and allowed at London, Printed by Henrie Middleton for Gregorie Seton, 1583; L Alston, (ed.), preface by F W Maitland, Cambridge University Press, 1906, Book 1, Chapter 1, 'Of the diversities of common wealthes or govenement', at p. 9.

doth administer the common wealth by the lawes of the same and by equitie, and doth seeke the profit of the people as much as his owne.¹

...Neither any one of these kinges, neither he who first had all, took any investiture at the hand of Themperour of Rome or of any other superior or foraine prince, but helde of God to himselfe, and by his sword his people and crowne, acknowledging no prince in earth his superiour, and so it is kept and holden to this day.²

...A common wealth is called a society or common doing of a multitude of free men collected together and united by common accord and covenantes among themselves, for the conservation of themselves in peace as in warre.³

...Wherefore generally to speak of the common wealth, or policie of Englande, it is governed administred, and manured by three sorts of persons, the Prince, Monarch, and head governor, which is called the king, or if the crowne fall to a woman, the Queene absolute,... in whose name and by whose authoritie all things are administred....⁴

.....For no man holdeth land simply free in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fee, that is upon faith or trust, and some service doone to another Lorde of a Manor, as his superior, and he againe of a higher Lorde, till it come to the Prince and him that holdeth the Crowne...⁵

While Smith does not use the word 'sovereignty', it seems clear from the extracts quoted above, that he understood the law to be sovereign, but that who held the crown, the king, was sovereign in fact, and subject to no foreign prince, but only to God.

The whole body of the common law, 'that broad stream of English custom',⁶ had conspired to ensure that sovereignty lay with the king; that his prerogatives (the rights and duties of the king) were identified without doubt with the crown and a just system of law; and that in turn these prerogatives and the peace of the people both stem from the same root—the coronation oath.⁷ They were the fundamental basis of the English state.

The synonymy between the term 'the crown' and the royal estate and dignity continued even after the time of William and Mary (the *Coronation Oath Act* refers to those who shall

¹ Sir Thomas Smith, *De Republica Anglorum*, *loc. cit.*, Book 1, Chapter 7, 'The definition of a king and of a tyrant', pp. 14-15.

² Sir Thomas Smith, *De Republica Anglorum*, *loc. cit.*, Book 1, Chapter 9, 'Of the name king and thadministration of Englande,' at p. 19.

³ Sir Thomas Smith, *De Republica Anglorum*, *loc. cit.*, Book 1, Chapter 10, 'What is a common wealth, and the partes thereof,' at p. 20

⁴ Sir Thomas Smith, *De Republica Anglorum*, *loc. cit.*, Book 1, Chapter 24, 'Of the fourth sort of men which does not rule,' pp. 46-47.

⁵ Sir Thomas Smith, *De Republica Anglorum*, *loc. cit.*, Book III, Chapter 8, at p. 134.

⁶ This is Jolliffe's phrase, see Jolliffe, *Constitutional History of Medieval England*, *op. cit.*, p. 151.

⁷ Cf. See the deposition of Richard II, see discussion p. 221 *infra*.

‘Succede to the Imperiall Crowne of this Realme’¹), and to this day.² All modern kings on their accession make what is called a ‘Declaration of Sovereignty’ to the Accession Council before their proclamation by the people³ as king.⁴

It will be seen from this analysis that the concepts of sovereignty, and the rule of law (in the sense of maintenance of the King’s Peace and just and equitable remedies) were perceived by the people to cohere in the idea of the king, and to be bound up both with his prerogatives, and with his responsibility for the people and their rights under the law, to which he is bound by his coronation oath. Blackstone said that ‘the law ascribes to the king the attribute of *sovereignty* or pre-eminence’⁵, and that ‘the principal duty of the king is to govern his people according to law,’ which is consonant not only with ‘the principles of nature, of liberty, of reason, of society, but has always been esteemed an express part of the common law of England.’⁶ Blackstone saw the king’s duties as being prescribed in ‘the original contract between king and people’⁷, whereby duties were incumbent on the king under the constitution, ‘in consideration of which the king’s dignity and prerogative are established by the law of the land: it being a maxim in the law, that protection and

¹ See 1 Will & Mary c.6, 1688; *Statutes in Force*, Official Revised Edition, Revised to 1st February 1978, Her Majesty’s Stationery Office, London, 1978 gives this citation. This text is also the text of the Act as reproduced in Ruffhead, Owen, (ed.), *The Statutes at Large*, Magna Charta to the Twenty-fifth year of the reign of George III inclusive, Vol. 3, Charles Eyre and Andrew Strahan, London, 1786, at p. 393; and see Act of Settlement, 12 and 13 Will. 3 c. 2, 1701; *Statutes in Force*, Official Revised Edition, *Bill of Rights*, An Act for the Further Limitation of the Crown and better securing the Rights and Liberties of the Subject. (*Rot. Parl.* 12 & 13 Gul. III. p.1, n.2.), revised to 1st February 1978; HMSO, London, 1978; Short Title give by *Short Titles Act* 1896, (c. 14), Sch. 1.

² See the Accession Proclamation by the Accession Council of George VI as king on 12 December 1936, ‘...the Imperial Crown of Great Britain, Ireland and all other His former Majesty’s Dominions is now solely and rightfully come to the High and Mighty Prince Albert Frederick Arthur George...’; see circular cablegram G.13 from Secretary of State for Dominion Affairs of 11 December, 1936, 5.10 p.m. received Australia 12 December, 1936, marked SECRET, from Australian Archives, Series CP4/10/1, Item 3, ‘Abdication of King Edward VIII’, folios 143-142; and see *Commonwealth of Australia Gazette Extraordinary*, No. 102, Canberra, Saturday, 12th December, 1936, Australian Archives, Series CP4/10/1, Item 3, ‘Abdication of King Edward VIII’, folio 144. And see Queen Elizabeth II, Proclamation of Royal Style and Title in the United Kingdom (28 May, 1953), Proclamation of HM The Queen of 28 May 1953, 1 & 2 Eliz. 2 cap. 9; see *Statutes in Force*, Official Revised Version, Revised to 1st February 1978, Her Majesty’s Stationery Office, London, 1978.

³ Garter King of Arms makes the initial proclamation in London, which is replicated throughout all the kingdoms over which the king rules. This proclamation is the only one not issued under the aegis of the king himself. See discussion of the people’s prerogative at Chapter 5, p. 123 ff., especially pp. 125-126, and p. 130 *infra*, and see Appendix II for proclamations in the Commonwealth.

⁴ See Chapter 10, The Kingless Crown, particularly ‘Election and Recognition’ at pp. 468, *infra*.

⁵ Blackstone, *Commentaries*, *op. cit.*, Vol. I, Book I, Chapter 7, p. 234

⁶ Blackstone, *Commentaries*, *op. cit.*, Vol. I, Book I, Chapter 6, pp. 226-227.

⁷ Blackstone, *Commentaries*, *ibid.*, Book I, Chapter 6, p. 227. The concepts associated with this idea of an ‘original contract’ are discussed *infra* at p. 363, ff.

subjection are reciprocal'.¹ Blackstone saw these reciprocal duties as being the 'original contract' between king and people, which was entered into by the king and the people when the king took his coronation oath.² He said:

All offences are either against the king's peace, or his crown and dignity; and are so laid in every indictment. For, though in their consequences they generally seem (except in the case of treason and a very few others) to be rather offences against the kingdom than the king; yet, as the public, which is an invisible body³, has delegated all its (*sic*) power and rights, with regard to the execution of the laws, to one visible magistrate, all affronts to that power, and breaches of those rights, are immediately offences against him, to whom they are so delegated. He is therefore the proper person to prosecute for all public offences and breaches of the peace, being the person injured in the eye of the law. And this notion was carried so far in the old Gothic constitution, (wherein the king was bound by his coronation oath to conserve the peace) that in case of any forcible injury offered to the person of a fellow subject, the offender was accused of a kind of perjury, in having violated the king's coronation oath; *dicebatur fregisse juramentum regis juratum*. And hence also another branch of the prerogative, that of *pardoning* offences; for it is reasonable that he only who is injured should have the power of forgiving arises. ⁴

In essence then, 'the crown', sovereignty, the King's Peace, jurisdiction, and the royal prerogative, all together emanate from the kingship, into which the king enters when he takes the coronation oath, and is recognised as the sovereign, and the representative for his people—a concatenation aptly described by Blackstone as 'this vast chain of prerogative'.⁵

Moreover, the King's Peace is not merely the king's, but is also a reflection and manifestation of 'God's peace'.⁶ It is a tangible emanation from God's laws, which the king has sworn an oath to uphold and preserve, as a means both of protecting and nourishing his people.

The finest statement, perhaps, of sovereignty and its duties and responsibilities of peace and protection is that articulated by Elizabeth I, just before her death:

[to the commons, while they knelt]

...And though God hath raised me high, yet this I count the glory of my crown, that I have reigned with your loves. And as I am that person that still, yet under God, hath

¹ Blackstone, *Commentaries*, *op. cit.*, Book I, Chapter 6, p. 226

² see Blackstone, *Commentaries*, *ibid.*, Book I, Chapter 6, pp. 226-229.

³ Cf. See my conclusions at p. 163, *infra*.

⁴ See Blackstone, *Commentaries*, *loc. cit.*, Vol. 1, Chapter 7, pp. 258-259; Latin quotation sourced at p. 259, n. c, to 'Stiernh. *de jure Goth.* l. 3 c. 3. A notion somewhat similar to this may be found in the *mirrour*. c. I. § 5.' I have not been able to find any cases which refer in this manner to the coronation oath.

⁵ See Blackstone, *Commentaries*, *loc. cit.*, Vol. 1, Chapter 7, p. 259.

⁶ See for example the quotation from the bill in Star Chamber (riot, 1500), *Joyfull v Warroppe*, from Leadam, *Star Chamber*, I, 106, reproduced in Elton, *Tudor Constitution*, *loc. cit.*, pp. 176-177, quoted at p. 69, *supra*.

delivered you, so I trust, by the almighty power of God, that I shall be his instrument to preserve you from envy, peril, dishonour, shame, tyranny, and oppression; partly by means of your intended helps, which we take very acceptably, because it manifesteth the largeness of your loves and loyalties unto your sovereign.¹ Of myself I must say this: I was never any greedy, scraping grasper, nor a strait fast-holding prince, nor yet a waster. My heart was never set on worldly goods, but only for my subjects' good. What you do bestow on me, I will not hoard it up, but receive it to bestow on you again. Yea my own properties I count yours to be expended for your good. ...*[and she requested them to stand, for she wished to speak a while longer]*

... I know the title of a king is a glorious title; but assure yourself that the shining glory of princely authority hath not so dazzled the eyes of our understanding but that we will know and remember that we also are to yield an account of our actions before the Great Judge. To be a king and to wear a crown is more glorious to them that see it, than it is pleasure to them that bear it. For Myself, I was never so much enticed with the glorious name of a king, or royal authority of a queen, as delighted that God hath made me his instrument to maintain his truth and glory, and to defend this kingdom, as I said, from peril, dishonour, tyranny, and oppression. There will never be a queen sit in my seat with more zeal to my country, care of my subjects, and that will sooner with willingness yield and venture her life for your good and safety than myself. And though you have had and may have yet many princes more mighty and wise sitting in this seat, yet you never had or shall have any that will be more careful and loving...²

¹ Cf. St Thomas Aquinas, *On Kingship, to the King of Cyprus, De Regno, Ad Regem Cypri*, (c. 1260), Book 1, Chapter X, 78, 79, Gerald B Phelan, (*trans.*), revised with introduction and notes by I Th. Eschmann, Pontifical Institute of Medieval Studies, Toronto, 1949, reprinted 1967, 1978, 1982, *loc. cit.*, at p. 45. —'Good kings, on the contrary, are loved by many when they show that they love their subjects and are studiously intent on the common welfare...'

² See Elizabeth I, 30 November, 1601; speech in parliament; S&M1, pp. 375-76; D'Ewes *Journal*, 659 ff. Text at Appendix I.

