

A CRADLE CHRISTIAN

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IN his latest book, *Fountain of Justice*¹—a term used by Lord Mansfield, one of the greatest of the English Chief Justices—Professor John C. Wu deals in turn with law in general, the eternal law, the natural law, and English Common Law. This last he greets as ‘a cradle Christian’.

Unlike the Roman Civil Law which is pagan in essence the English law even of Anglo-Saxon times is Christian law. Ethelbert has left us the first recorded utterance of the English law: ‘God’s fee (property) and the Church’s twelfefold, bishop’s fee elevenfold, priest’s fee ninefold, deacon’s fee sixfold, clerk’s fee threefold’. Churches, bishops, priests, deacons, clerks: no German institutions these. Every trace but the very faintest of the old heathenry has been carefully expurgated from all that is written, for all that is written passes under ecclesiastical hands. A new force is already beginning to transfigure the sum and substance of barbaric law, before the law speaks the first words that we can hear. Similarly, even before he demanded the personal oath of loyalty of all free men, William the Norman proclaimed ‘that one God shall be honoured throughout the whole of the kingdom and that the Christian faith shall be kept inviolate’. The frame of the English constitution and of the English law was always Christian. ‘The law is the highest inheritance of the King, by which he and all his subjects shall be ruled, and if there were no law there would be no king and no inheritance.’

The Roman doctrine *Quod principi placuit legis habet vigorem* had no force in England. The King is under God and the law,² Henry of Bracton will say in the first book of the Common Law; and in his time Edward I had to tell the Churchmen who asked him to repeal the Statute of Mortmain in return for a grant of money, that Statutes passed by Parliament could not be repealed without the consent of Parliament. The rhythm of the Common Law of England recognized three orders of law, the law of God, the law of nature, the law of the land. And Justice Holmes of the American Supreme Court in his classical work on the Common Law states that ‘the experimental dynamic and concrete nature of the common law makes it a much more thought-provoking and profitable study than the judicial decisions of continental courts’. Professor Wu is able accordingly to

¹ *Fountain of Justice: A Study in the Natural Law*, by John C. H. Wu, LL.B., J.D., LL.D. (Sheed and Ward; 18s.)

² One may remark that the words of Bracton—*non sub homine sed sub deo et lege*—are inscribed in their original Latin over the portals of the Harvard Law School.

cite Justice Holmes in his support: 'Our law has reached broader and more profound generalizations than the Roman Law and at the same time far surpasses it in the detail with which it has been worked out. . . . [It was] a far more civilized system than the Roman; . . . a far more developed, more rational and mightier body of law than the Roman.' It was to the principles of the Common Law that St Thomas More appealed when, after verdict, he compelled Audley the Lord Chancellor to ask what he could say why judgment should not be given against him. 'Forasmuch, my Lord, as this Indictment is grounded upon an Act of Parliament directly repugnant to the laws of God and His Holy Church, the supreme government of which, or any part thereof, may no temporal prince presume by any law to take upon him, as rightfully belonging to the See of Rome, a spiritual pre-eminence by the mouth of Our Saviour Himself, personally present upon the earth, only to St Peter and his successors, bishops of the same see by special prerogative granted; it is therefore in law, amongst Christian men, insufficient to charge any Christian man.' And he declared that 'this realm, being but a member and small part of the Church, might not make a particular law disagreeable with the general law of Christ's Universal Catholic Church, no more than the City of London, being but one poor member in respect of the whole realm, might make a law against an Act of Parliament to bind the whole realm'; and further he showed 'that it was both contrary to the laws and statutes of this our land, yet unrepealed, as they might evidently perceive in Magna Carta, *quod ecclesia anglicana libera sit et habeat omnia jura sua integra, et libertates suas illoesas*, and also to that sacred oath which the King's Highness himself and every other Christian prince with great solemnity received at their coronation.'

Starting with the Common Law 'as a cradle Christian', Professor Wu traces its leading ideas through Magna Carta and the pages of Bracton and the Year Books to the age of printing, to Sir Thomas More and Christopher St German who are commonly reputed to be the pioneers of English equity. In the intervening period the writings of Sir Thomas Littleton and Chief Justice Sir John Fortescue show that the law remained true to its Christian principles. In the opinion of Sir Edward Coke, Littleton's book on Tenures was 'the most perfect and absolute work that ever was written in any human science'. Littleton was a member of the Guild of the Holy Cross at Stratford, and seems to have been a good Thomist as appears from his epilogue on the relations of reason and of law. Sir John Forestcue, who was Chief Justice for many years and who seems to have been Lord Chancellor for a short period during the Wars of the Roses, was a profound scholar not only in law but also in philosophy and theology. He wrote

a little book on the Natural Law (*De Natura Legis Naturae*) and a famous work *De Laudibus* (on the Praise of the Laws of England) and a book on the Governance of England in which he made English lawyers familiar with the Thomist distinction between absolute monarchy and constitutional or limited monarchy (*dominium regale* as contrasted with *dominium politicum et regale*). Of Sir John Fortescue's little *Dialogue* on Faith and Understanding an English historian has said that 'it bears witness to the vivid religion of a busy man of affairs, a religion which rings as true as the cloistered virtue of à Kempis'. The dependence of Thomas More on St Thomas Aquinas (and on Cajetan) is sufficiently clear from his long letter to Martin Dorpius written in 1515 and on several passages in the record of his trial in 1535.

The Reformation did not wholly destroy the Christian foundations of the English constitution and the English law, which reappear in the writings and the decisions of Sir Edward Coke, and of Sir John Holt in the eighteenth century; and again in Lord Mansfield who put into words in *Somerset's Case* what was implicit in our law from the beginning: 'by the Common Law of England no man may hold property in another: let the black go free'. In the case of *Lowe v. Peers* in 1768 the Exchequer Chamber on appeal from Lord Mansfield said: 'The law of nature is the law of God. We mean to bottom this judgment upon the law of God, the principles of reason, morality and the Common Law.' In 1917, however, the House of Lords decided, on Appeal, that Christianity is no longer part of the law of England.

The second section of Dr Wu's book traces the reception of the Common Law in the American Union and in the natural law philosophy of the Founding Fathers and gives many interesting examples from decisions of the American Courts in the nineteenth century. In the section entitled 'In the School of Christ', he turns to matters rather more theological and largely outside the scope of a legal practitioner. But in a chapter on Nature and Grace he includes an eloquent passage from a speech of Pius XII in which the Pope, after relating how the Roman law and the Catholic Church survived the decline and fall of the Roman Empire, went on to say: 'Thus it was that in Rome and in the world leavened by its civilization these two vital realities—one the fruit of the leading wisdom of a people and thus of human origin, the other a radiation from the world of revelation announced by the Son of God made Man and as such of transcendent and divine origin—met and fused with an intimate bond; through this bond the law of Rome, penetrated with the new light emanating from the Christian message, was transformed in spirit. It was elevated in its conceptions and perfected in many of its institutions, receiving gradually the principal ideas and higher requirements of the new doctrine. The

legislative work of the Christian Emperors was born of this fertile union of human knowledge and divine wisdom, of which there remain traces so indelible that they demonstrate to the modern world how, between the true juridical science and the teaching of the Christian faith, there is no opposition but concord, because Faith cannot but stamp with its seal the truth which the human mind discovers and considers and systematizes.'

I shall conclude with the interesting passage in which Dr Wu sums up his personal attitude to the Common and Roman laws: 'With the common law, which I have called a "cradle Christian", natural wisdom and the Christian influence grew hand in hand in the course of the centuries. With the Continental law, on the other hand, natural wisdom had reached a high degree of maturity before grace began to work upon it. This is perhaps why the common law is instinctively Christian, while the Continental law is rationally Christian. Both have their great qualities. One possesses classical beauty, the other romantic charm. But I, being a convert like the Continental law, am especially attracted by the enviable qualities of the cradle Christian who has Christianity running, as it were, in the blood.'

OBITER

ERIC GILL IN EDINBURGH. It is nearly twenty years since he died, and the assessment of his work is still a matter of argument. The inevitable post-mortem decline in reputation is passing; the facets in the character of this extraordinary man—draughtsman, illustrator, sculptor, typographer, conversationalist and writer—jump into notice like digits on a computer, and the total sum is not yet on record. Sporadic publication of his writings and a few essays on him have appeared in the interim. Probably the most important collection of his drawings and records was that presented by Mary Gill to the Monotype Corporation in 1954; it formed the nucleus of the exhibition of lettering and type designs held in London in 1958.

This exhibition has now found its way to Edinburgh and, in the lonely spaces of the College of Art's sculpture court, has been making a quiet contribution to the revived interest in Eric Gill's work. It is, of course, severely limited in scope. Some thirty panels of type designs, printed examples and rubbings of stone tablets, and a few cases of blocks and books, do not make a spectacular showing. The rubbings, especially, are of limited value, losing inevitably the three-dimensional quality of stone-cut letters and that characteristic sharpness and clarity of carving that distinguishes Gill's work from that of most of his followers. A full-scale exhibition devoted to him would still be valu-