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RELIGIOUS CULTURE AND CUSTOMARY LEGAL TRADITION: HISTORICAL FOUNDATIONS OF EUROPEAN MARKET DEVELOPMENT

PREFACE

"Globalization, in other words, may not be quite as fresh as it sometimes seems. Since at least the 13th century, when Florentine merchants lent money to the English to pay for King Edward I's wars, international capital has roamed the world in search of high returns. (The start was inauspicious: England defaulted, causing the collapse of two Florentine banks.)" ...

"Still, there is no question that freer capital flows have brought tremendous benefits to the global economy, as well as perils. Some places, like Hong Kong, have opened themselves to capital flows without restriction and are examples of the prosperity that free movements of capital can reap. ...

"What are these capital flows? They are not some sinister force, but simply the result of ordinary people's cash roaming in search of a good return. When an American deposits money at the corner bank, some of that may end up being lent to a Brazilian company, and the same person's pension fund may dabble in the Hong Kong stock market.

"In the United States, trading in foreign securities amounted to 2 percent of gross national product in 1975 and 213 percent last year, according to data from the Bank for International Settlements.

"Paradoxically, historians sometimes attribute the modern boom in international capital, beyond the easy reach of any regulator, to the Communists. In the 1950's, China and Russia kept their dollars out of the United States, for fear Washington would freeze their accounts, and instead deposited the dollars in Europe.

"One result was the "Eurodollars" market and a growing investment pool that flitted from country to country and currency to currency in pursuit of higher interest rates. The amount of foreign currency bank deposits around the world reached \$1 billion only in 1961 and now is almost \$1.5 trillion. ...

"Even in the 19th century, sailing ships used to carry gold to distant countries in pursuit of higher interest rates. In 1849, England raised its interest rate by 2 percentage points, prompting an early demonstration of the volatility of capital flows: ships that were already at sea, headed for America with their gold, turned around and sailed to England to get the higher rate." (The New York Times (INTERNATIONAL), September 20, 1998, p. 18.)

The production of greater amounts of capital due to lower taxes and de-regulation means more opportunities for individuals to begin new businesses or for investors to risk more to the vagaries of the irresponsible statesmen of the world. The world's individuals have gained greatly in recent decades from free capital flows, by capital account convertibility. Insane politicians are threatening to destroy the future for hundreds of millions of poor people by imposing various restrictions on the free convertibility of capital accounts. The politicians are similar to the Sorcerer's Apprentice, the fool who tries to use magic to replace the sound understanding of the wise economic scientists.

The default by King Edward I, bankrupting the great banking house, Riccardi of Lucca, is a landmark event (1294). Edward I's default came after the last part of the Crusader Kingdom of Jerusalem, the citadel of Acre (which had been conceded by Saladin to Richard the Lion-Hearted after the disaster at the Battle of the Horns of Hattin 1187 A.D.), fell to the Mamalukes of Cairo in 1291. This dispersed the three Crusader Orders of knight-monks. The Knights Templar concentrated on their deposit banking and exchange activity.

1.

Some historians recently have labeled the end of the Roman Empire in the West: "The Terrible Revolution." Every major change is considered terrible. Such a label has been attached to other major transformations; for example, terrible is sometimes applied to the increasing capacity to employ an expanding population which we call the "Industrial Revolution" in England in the second half of the 18th century.

In the history schools of Oxford and Cambridge Universities, it was traditional to divide Ancient from Modern History at the date - 476 A. D. - when the last Roman emperor in the West abdicated. What had long been an imperial facade finally was accepted as obviously empty that it was pointless to name another figure-head to wear an imperial crown. Thereafter, the various Germanic dukes and kings - dux and rex - who had claimed to be viceroys of the Roman emperor or even named the figure-heads who wore the imperial purple ruled in their own names. Some of these German rulers of Italia, Gallia, Hispania or (North) Africa accepted titles offered them by the Roman Emperors of the East in Byzantium/Constantinople. The administrative division of the Roman Empire into Western Roman Empire and Eastern Roman Empire existed for almost two centuries before 476 A. D. Thereafter it became a more significant division.

The Roman Republic had gained increasing dominance in the western one-third of the Mediterranean when it overcame its Punic rival, Carthage, a Phoenician colony in modern Tunisia across from Sicily at the narrow point where the eastern two-thirds of the Mediterranean meets the western one-third of the Mediterranean. The Romans defeated Hamilcar Barca (270-228 B. C.) and his son, Hannibal (247-183 B. C.) (The victorious Romans could speak of "Punica fides" meaning faithless; what Carthaginians said in Punic of the Romans has not much survive their final destruction in 146 B. C.: "Carthago Delenda Est - Carthage Must Be Destroyed.")

Virgil identified the Romans with the Trojans against the Greeks; Aeneas piously carries his father in their pilgrimage of exile: "I sing of arms and of the man, who first from the walls of Troy, an exile by fate, to the coast of Italy comes...." The Romans took the Trojan warning to heart: "Beware the Greeks Bearing Gifts."

The Romans great prize was Sicily where the Carthaginians had ruled western Sicily from Palermo while the Greeks had established cities on the eastern side led by Syracuse. In addition, the Romans conquered the Greek colonies south of Rome in Italy. Magna Grecia - Greek colonies had been created from Naples (Neopolis) around the toe and heel of Italy and up the Adriatic coast. These provinces not only enriched the Romans, but it placed Rome in the wider Greek cultural and commercial world.

The Greek world had expanded greatly due to the eastward conquests of Alexander the Great (356-323 B.C.). Alexander's expansion of the Greek world created the Hellenistic Civilization, and the Roman Empire later became the ruler of the Hellenistic world.

Alexander's father, Philip of Macedonia, had gained dominance over the Greek city-states (338 B. C.). Alexander launched his attack on the huge Persian Empire which ruled from the Greek cities of western Anatolia to the borders of India. Alexander's military success brought Macedonian dominance ever eastward - Anatolia, Syria, Egypt, Mesopotamia, Persia, Afghanistan, Central Asia, and the Indus Valley.

2.

Alexander sought to amalgamate the Greek and Persian elites by ordering his officers and soldiers to marry Persian wives. Alexander and his successors established cities throughout this large region. These numerous Alexandrias, Antiochus, etc. were new cities with all the facilities of Greek cities - agora or market, temples, theaters, schools of music, poetry and drama, schools of rhetoric and philosophy. Many settlers were from Greek cities of Greece, Magna Grecia in Sicily and Southern Italy, the Aegean Islands and Anatolia. Others entering cities were local inhabitants. The language of the new cities was Greek. While the language of the theater and schools was classical Greek, a common, commercial Greek language, Koine, became the lingua franca of the Hellenistic world. Koine was used from the Indus Valley and Central Asia to Magna Grecia and Rome.

Pompey the Great cleared the eastern Mediterranean of pirates and gained for Rome the Greater Syrian empire. Pompey's and Julius Caesar's co-triumvir, Crassus' heavy legions were defeated (53 B. C.) in the Syrian desert by the Parthian light cavalry; it led to fixing an eastern border with Persia. Octavian (Augustus) defeated Marc Antony and Cleopatra (descendent of Alexander's general, Ptolemy) and founded the Roman Empire with Egypt as the prime fiscal imperial province (30 B. C.).

The Hellenistic Civilization to which Rome joined itself by conquering the Eastern Mediterranean had become different from the Hellenic Greece before Alexander the Great. Aristotle had been Alexander's tutor, and Aristotle's own thought was marked by distinctions compared to the earlier Greek thinkers. Aristotle was transcending the narrow polis-based conceptions of his predecessors (Cf. Fred D. Miller, Nature, Justice, and Rights in Aristotle's Politics (Oxford, Clarendon Press, 1995).

Alexander's conquests of Central Asia and the Indus Valley, his own and his successors creation of new Greek cities across western Asia, and the Greek speaking populations who worked in new Greek cities meant a Greek world, a Hellenistic world, which was radically different than the past. Instead of the narrow, blood-related polis, most Greek-speaking peoples were first from different polis and then many were from western Asian peoples, Semitic, Persian, Coptic, Hindu, etc. who now spoke Greek. Rather than a little city, their reference was a large universe and a Greek world. Rather than the polis, they belonged to a single, world city, the cosmopolis. The Greek which was spoken, Koine, was the commercial speech of this cosmopolis.

Hellenistic Civilization from Italy to the Indus Valley saw the emergence of a new school of philosophy which reflected the revolutionary changes that had occurred before the Greeks' eyes. Stoicism was not only the new philosophy, it is Modern Philosophy. The Stoics are the source of Modernity. Stoicism saw the implications of the passing of the polis. Expanding on the innovations of Aristotle's concepts of nature, justice and rights, Stoicism accepted the implications of the cosmopolis. The universal city or world city was rooted in the shared common nature of mankind: "all mankind is one." The implications of the single human nature for mankind was revolutionary: it is the source of Modernity. Modern concepts of justice, universality and rights derived from it.

For the Stoics the distribution of property or status was accidental and secondary. Wealth accumulated justly imposed a duty of good stewardship; poverty in a just status was equally honorable. Slavery was not dishonorable for the slave, but a condition which should be borne as an undeserved burden. The slaveholder would be better if he freed his slaves; and if not, must treat them fairly and equitably as fellow human beings. These were revolutionary ideas and represented the birth of Modernity.

3.

The Stoics are the source of concepts of the rule of law, of equality before the law, and of natural law. The Romans were influenced by Stoic contributions, but especially in the area of philosophy most of interest to Romans, legal philosophy. The Romans were practical and considered legal philosophy to be practical. Cicero's legal writings are thoroughly Stoic and they had a great influence on Western legal thought beyond the Middle Ages.

Stoicism was the leading philosophy in the Hellenistic world - the cosmopolis - of Greek speech, recently united under the Roman rule of Augustus Caesar, when Jesus was born. Jesus' disciples quickly traveled to the Greek-speaking Jewish communities of the Hellenistic cities. (The Septuagint is the Old Testament translated into Greek in one of the many Alexandrias founded by Alexander the Great; it was said to have been translated into Greek by seventy Hebrew sages for the large Jewish community of Alexandria, Egypt at the suggestion of King Ptolemy II (270 B. C.).)

Saint Peter became the first bishop of the largest city in Greater Syria, Antioch, which had a large Jewish community; Antioch was the first city in which Jesus' followers were called Christians. The common Koine Greek made it easy for the first Christians to communicate with the Jewish and Gentiles to whom they brought Jesus' message. One can find shared concepts between Stoicism and Christianity in the Epistles of Saint Paul, as the principle that there is no difference between women and man, slave and free, Jew or Greek. There is a shared human nature, a shared justice, a shared deprivation and a shared potential for salvation through Jesus's suffering.

The Easter Week issue of Newsweek discussed the history of Christianity. In the section entitled, "Discovering the Individual," Kenneth Woodward says "that Christianity "discovered" the individual."

In the ancient world, individuals were recognized as members of tribes or nations or families, and conducted themselves accordingly. For Jews, this meant -as now - that one's relationship with God depends upon the prior covenant he has made with Israel as his chosen people. But the Gospels are replete with scenes in which Jesus works one on one, healing this woman's sickness, forgiving that man's sins and calling each to personal conversion. He invites Jews and Gentiles alike to enter God's kingdom. "Christianity discovers individuality in the sense that it stresses personal conversion," says Bernard McGinn, professor of historical theology at the University of Chicago Divinity School. "This is a crucial contribution to Western Civilization because it releases the individual from the absolute constraints of family and society." Newsweek (March 29, 1999, p. 56)

Deepak Lal (James S. Coleman Professor of International Development Economics at UCLA) delivered the very prestigious Ohlin Memorial Lectures at the Stockholm School of Economics in the autumn of 1995. These lectures have become one of the most important books of the decade: Deepak Lal's Unintended Consequences: The Impact of Factor Endowments, Culture, and Politics on Long-Run Economic Performance (Cambridge, MA, The MIT Press, 1998). Lal naturally associates individualism with the nuclear family; the individual is the nuclear family. Lal notes: "This "modern 'individualistic' system, with its stress on the nuclear family ... romantic love," is in stark contrast with the "traditional, extended household, arranged-marriage, kinship-based" system found in "peasant type" societies." (Lal is drawing on Alan Macfarlane, The Origins of English Individualism (1979).)

4.

Lal (Chapter 5, "The Rise of the West") focuses on L. Dumont, Essays on Individualism (Chicago, University of Chicago Press, 1986):

It is important to note that Dumont dates the rise of Western Individualism to St. Augustine in the fifth century. If it is identified, as in Max Weber's famous thesis, with Protestantism, then its role in generating capitalism is open to the fatal objection about its dating made, for one, by Hicks. For an essential element in the rise of capitalism was the "appearance of banking, as a regular activity This began to happen ... long before the Reformation in so far as the 'Protestant Ethic' had anything to do with it, it was practice that made the Ethic, not the other way round." (Lal, p. 78.)

Jack Goody's brilliant book The Development of the Family and Marriage in Europe provides the clues to answering the question of why Pope Gregory VII launched "the first of the great revolutions of Western history ...(which was) against (the) domination of the clergy by emperors, kings, and lords and for the establishment of the Church of Rome as an independent, corporate, political and legal entity, under the papacy." (Lal, p. 83)

Lal identifies individualism, and the emergence of liberty and prosperity derived from individualism, as founded on two Papal Revolutions. Gregory I (c. 600) established the nuclear family as the core of individualism. Lal refers to "the individualistic society launched by Gregory I's family revolution." Augustine, the Benedictine monk who became the first archbishop of Canterbury, in 597 A. D., sent messages to Gregory I asking advice on marriage and sex. Pope Gregory I forbade all the traditional practices:

Gregory's answers, Goody shows, overturned the traditional Mediterranean and Middle Eastern patterns of legal and customary practices in the domestic domain. This traditional system "permitted, indeed, encouraged, the practices of firstly, marriage to close kin; secondly, marriage to close affines or the widows of close kin (possibly by inheritance, of which the levirate was the extreme form); thirdly, the transfer of children by adoption; and finally, concubinage, a form of secondary union." (Lal, p. 83.)

Lal connects the papal revolution of Gregory I with the Eleventh Century papal revolution of Gregory VII which had its origins in the enforcement of celibacy of the clergy to eliminate reprobate clerics diverting Church property to their children. Since politicians were appointing bishops, priests, and abbots, Pope Gregory VII saw the clergy engaging in concubinage, purchase of Church offices, and diversion of Church property. The Gregorian Revolution of the Eleventh Century challenged and checked the role of government in the Church and in society. Lal drawing on Dumont explains the rise of Christian individualism in the Gregorian Revolution:

This, as Southern, Trevor-Roper, and Berman have emphasized, was the papal revolution of 1075, when Pope Gregory VII "declared the political and legal supremacy of the papacy over the entire church and the independence of the clergy from secular control. Gregory also asserted the ultimate supremacy of the Pope in secular matters, including the authority to dispose emperors and kings." ... The papal revolution provided the institutional infrastructure for this Western economic dynamic. Berman has shown how the whole Western legal tradition really derives from the development of both canon and secular law during the eleventh to thirteenth centuries under the aegis of the church. The most important for the economy was the development of the "law of the merchant" - the lex mercatoria... (Lal, p. 81.)

Robert Nisbet, in his History of the Idea of Progress, challenges those who conceive of the idea of progress as a product of the recent centuries. After some of the Greek thinkers, the Roman Stoic Seneca provided the classical statement about progress. According to Nisbet:

But Seneca the social scientist, the anthropologist, is best seen in his Epistulae Morales. Here is another classical text in human progress. ... But what thoroughly engages Seneca's attention is the means and the stages through which humanity has climbed to its present vast knowledge. He grants philosophy some credit, but it is "man's ingenuity, not his wisdom" that discovered all the really vital things in civilization -farming, metallurgy, navigation, tools and implements of every kind, language, and so on. ... "The time will come," he writes in the Questiones Naturales, "when mental acumen and prolonged study will bring to light what is now hidden ... the time will come when our successors will wonder how we could have been ignorant of things so obvious."

Such impressive studies as Gerhard B. Ladner, The Idea of Reform: Its Impact on Christian Thought and Action in the Age of the Fathers; Charles N. Cochrane, Christianity and Classical Culture; Karl Lowith, Meaning in History; and Marjorie Reeves, The Influence of Prophecy in the Later Middle Ages make it certain beyond question that a very real philosophy of human progress appears almost from the beginning in Christian theology, a philosophy stretching from St. Augustine (indeed his predecessors Eusebius and Tertullian) down through the seventeenth century.

The Latin Christian Fathers endowed it with "such attributes as the vision of the unity of all mankind, the rule of historical necessity, the image of progress as the unfolding through long ages of a design present from the very beginning of man's history, and far from least, a confidence in the future that would become steadily greater and also more this-worldly in orientation as compared with next-worldly." (Nisbet, History of the Idea of Progress, p. 47)

Many Western Church Fathers were trained in the law. In contrast with Eastern Church Fathers who were first philosophers and theologians, Latin Church Fathers were trained in rhetoric, law and legal philosophy, of which Cicero was the foremost model. Latin Church Fathers often were not trained in Greek, and read Greek philosophy only in translation.

The legal training of Tertulian of Carthage, Ambrose of Milan, Augustine of Hippo has formed the philosophical and theological thinking of the Western Church. It is important to know the legal tradition in which they were formed. As will be explained, during the Roman Republic and Empire to the end of the Roman Empire in the West (476 A. D.). the Roman Law was a common law, similar to Anglo-Saxon Common Law. Roman Law was an evolutionary legal system based on the growth of the decisions of the Roman jurists.

It was only after 530 A. D. that the Civil Law or Justinian's Code replaced Roman Law, and the older decisions and legal treatises were destroyed by Justinian's order. But, by then, there was no longer a Roman Empire in the West. The writ of the Emperor in Byzantium/Constantinople was limited to the Eastern Roman Empire. The great Latin Church Fathers had never known Justinian's Code, and the Latin Church, like the Latin West, was not commanded by Justinian's Code after 530 A. D. Thus, legal thought in the Latin West was characterized by Cicero's writings and its Stoic sources, and not by the retrogressive, command view of law of the Oriental Monarchy of the Byzantine Emperor.

6.

Monasticism

The end of the Roman Empire in the West preceded a major Western cultural innovation, Benedictine monasticism. Saint Benedict of Nursia (480-543) is the patriarch of Western monasticism. He established monasteries in the vicinity of Rome, and finally, his great foundation at Monte Cassino. The hall-marks of Benedictine, and thus, Western, monasticism were practicality and discretion. Pope St. Gregory the Great (pope from 590 to 604) said the rule of St. Benedict is "conspicuous for its discretion." The rule was practical in its moderation. Each day was divided among the canonical office, physical work and reading, especially the Church Fathers. The precept: "To work is to pray" gave Western monks a practicality, reality, and a grounding of purpose which was unique. Physical labor was raised to the highest vocation by the Benedictine rule and practice.

ROME'S COMMON LAW AND COMMERCE

Commercial customs of the Mediterranean Sea were the source of international commercial legal relations. The island of Rhodes in the Aegean Sea off the coast of Asia Minor and along the routes from Egypt and Syria was the center of commerce in the Hellenistic and Roman eras. By evolution and competition the merchants of this most active port discovered the rules for just conduct most conducive to trade. These rules evolved into the Sea Laws of Rhodes which were accepted by merchants in the classical world.

The city of Rome developed on the western edge of the Hellenistic commercial civilization which stretched eastward from Greater Greece (Southern Italy and Sicily) to the Hellenistic cities in Central Asia and the Indus Valley. Rome conquered its western rival, Carthage, and the Hellenistic countries of Greece, Asia Minor, Syria and Egypt. While the political center was in Rome, the commercial and productive center was in the Hellenistic East.

Rome's legal system was rustic and primitive; its economic parts were based on the original production and trade in hogs. Roman citizens were proud of their archaic legal system, and felt its rustic nature kept them close to their roots. But, as Rome conquered commercial civilizations, Rome became the recipient of huge wealth looted in wars and sale of slaves - prisoners of war. Years of military service meant that Roman citizen-soldiers could not cultivate their fields and pay taxes, they lost their ownership to tax collectors. Rome resorted to pensions and doles to tax-ruined citizens who crowded into Rome paid for by the annual taxes looted from the Eastern, Hellenistic provinces.

The trade to Rome was not in the hands of Roman citizens (a very tiny part of the Roman Empire) but of Greeks, Syrians, Egyptians, etc. of the productive Hellenistic provinces of Rome. With trade, they also brought their eastern religions. This important commercial population were not Roman citizens; they had no recourse to the courts of Roman citizens. The Romans therefore created a special court for the foreigners, e. g. merchants.

The praetors or judges elected annually for this merchant court operated parallel to courts for the Roman citizens. The members of the class eligible for offices competed in annual elections. One started competing for a lower office such as the head of the building and maintenance of the roads and aqueducts. Usually, someone from the eligible class would have studied at a school of rhetoric, often operated by Greek Sophists who could defend any side of an argument. In a general sense, rhetoric was an education which we might call pre-law. Thus, no candidate had training in the works he was to administer. Since only the wealthy sought office, once elected the office-holder would hire the best engineers because the quality of his office was the basis of his future campaign for the next highest office, such as treasurer. Again, the new treasurer would hire the best book-keepers.

7.

The next rung in the 'curial ladder' was praetor or judge. Afterwards, one might compete annually for election as one of the two consuls, paired as a check against monarchy. After serving as one of two consuls, each was rewarded by the Senate with the goal of all this political competition, the governorship of one of the provinces for five years. The governor controlled the administration and appointed the syndicates which could collect the taxes for the province and for Rome. The governor a very profitable office.

The praetors were not trained lawyers so they appointed experts or juris consultus to make judgments and write the opinions. Since the Roman law had been rustic, the experts helped the judges in the discovery of the law and to evolve decisions. Richard Epstein explained it well in his analysis of the law of torts. The Roman law of the Republic and Empire was an evolutionary legal system. The Roman Republic's and Early Empire's legal system was similar to the later northern European customary law and the English common law.

The praetor or praetor urbanus dealt with civil cases; and they were elected by the comitia centuriata. They wore purple fringed robes, presided from an ivory chair, and preceded in public by two lectors bearing emblems. About 242 B.C. increase in foreign inhabitants and merchants led to a new praetor to judge cases between foreigners (peregrini) or between foreigners and Roman citizens: praetor peregrinus. A praetor peregrinus hired scholarly advisors drew upon the more advanced commercial customs of the Hellenistic East which stretched to Central Asia and the Indus Valley. The decisions of the praetor peregrinus were based on those of his predecessors, but corrected, amplified and improved from year to year. If an correction or amplification did not work, it was not repeated or recognized by the successor praetori peregrini. Roman commercial law was evolutionary and customary.

But, from 530 A. D. the Emperor Justinian felt that the successor to Rome, Byzantium, was besieged and faced with decline, so he wanted to freeze the legal system and prohibit any evolution. The Justinian Code was drawn from existing Roman case law; Justinian destroyed Roman commentaries on the law by the earlier centuries' great or not so great scholars, so as not confuse future generations. (A later Byzantine emperor, Basil I, in the eighth century, issued a systematic collection of maritime customs and rules, the Basilica. Much of it was derived from the ancient Lex Rhodia or Law of the Isle of Rhodes.)

Robert Nisbet in Twilight of Authority sees modern exponents of the pluralism, diversity, individual autonomy, decentralization, and voluntary association of the medieval tradition. They included Althusius, Burke, Tocqueville, Acton, Durkheim and Weber. Nisbet viewed the introduction of the Corpus Juris Civilis (Justinian's Code) in Bologna in the Twelfth Century as a major challenge to Europe's traditional culture of evolutionary law and polycentric polities, on which the liberty was founded which gave order to Western societies.

The pluralism, localism, regionalism of the Middle Ages, together with the almost total lack of the idea of secular sovereignty and its correlates, constituted anything but the kind of society in which Roman Law had geminated in the first place - that is, imperial Rome with its military centralization of power vested in the emperor. How, then, could there not have been deep conflict in the Middle Ages between, on the one hand, the large body of customs and traditions which surrounded the major institutions of the time and, on the other, a body of principle which could only find this body of customs and traditions repugnant in the extreme, offensive to the profound rationalism and symmetry which are the hallmarks of the Roman code?

8.

Fundamental to the Roman Law is the idea of the sovereign, the being held to be the sole source of genuine or legitimate law and, by that token, superior to the law. Clearly there is a strong element of potential revolution in the idea of sovereignty when it erupts within a social order that has no clear conception of sovereignty or of the centralization that goes with it; once accepted, the idea of sovereignty stands as an inevitable threat to the medieval kind of pluralism. No legal understanding was more widespread in the medieval period than that which declared the ruler to be under the law. The Romanist idea of power, broadcast through the West, was a tempting weapon indeed to all those - emperor, king, prince - who were eager to enhance their power over those immemorially protected from such a doctrine by medieval custom and writ. (pp. 169-70)

After 950 A.D. in Western Europe, the Benedictine abbots and monks or the bishops and priests organized the peasants to chain the desires of knights and barons who were using their political power for looting the people. The abbot- or bishop-led armed population constrained the political leaders to compact not to continue their evil practices.

The Benedictine abbots or bishops organized the peasants into oath-bound associations to confront and overwhelm local knights and barons engaged in depredations against peasants or monastery. Knights and barons were compelled to contract by oath not to engage in depredations. A leading role in the Peace of God Movement was taken by the Benedictine monastery of Cluny. The reformed Benedictine monastery at Cluny, north of the primal seat of Gaul, Lyons, was founded in 910 A. D. It quickly drew the support of the laity and was called upon by Benedictine monasteries to send them an abbot from among Cluniac monks. Many Benedictine monasteries became associated with the Abbey of Cluny.

By the Peace of God the barons were constrained not to engage in warfare during each of the days of the week associated with the Passion, Crucifixion and Resurrection of Jesus - from Wednesday sunset to dawn on Monday of each week. Also, no warfare during Advent and Lent and octaves of Feast Days. By the Truce of God, the barons swore not to injure peasants, merchants, religious, or Jews, or their animals or properties.

After 1000 A. D. European producers, peasants, merchants, monks improved their farming, their husbandry, their industry, their commerce. Cities began to revive as centers of trade and production. New centers of trade developed. While bound by the chains of the Peace and Truce of God from looting the people, the uncountable manors and baronies meant uncounted competing jurisdictions in close proximity. Anglo-Saxon Common Law was based on Frankpledge of sureties or bonds among neighbors.

This polycentric juridic system created a check on politicians; the artisan or merchant could move down the road to another jurisdiction if taxes or regulation were imposed. Surplus funds could be kept with an international Italian banking firms far from any local politician. Towns arose at river crossings where several jurisdictions - abbey, county, bishopric - met. If the count threatened taxation, the merchant could move to a place he would own across the street in the abbey's competing jurisdiction. The city of London, a tiny jurisdiction, was surrounded by many different borough jurisdictions.

9.

The eminent historical sociologist, Robert Nisbet, predecessor to Giovanni Sartori as the Schweitzer Professor at Columbia University, has captured the historical context. In The Quest for Community Nisbet notes the individual autonomy due to the corporate associations of the medieval towns: "What were the towns - at least those which were not survivals of the Roman Empire - but, in origins, associations of merchants and tradesmen. The walls surrounding so many of these towns were no thicker than the protective framework of corporate rights which lay in the charters of the towns." (p. 76). Nisbet expanded:

But, in fact, medieval society, from the point of view of formal authority, was one of the most loosely organized societies in history. Despite the occasional pretensions of centralizing popes, emperors, and kings, the authority that stretched theoretically from each of them was constantly hampered by the existence of jealously guarded "liberties" of town, gild, monastery, and village. (According to Pollard, power) "was dilute, not because it was distributed in many hands, but because it was derived from many independent sources. There were the liberties of the church, based on law superior to that of the King; there was the law of nature, graven in the hearts of men and not to be erased by royal writs; and there was the prescription of immemorial local and feudal custom stereotyping a variety of jurisdictions and impeding the operation of a single will. The laws which ruled men's lives were the customs of their trade, locality, or estate and not the positive law of a legislator; the whole sum of English parliamentary legislation for the whole Middle Ages is less in bulk than that of the single reign of Henry VIII."

The early Medieval universities emerged from the transnational clerical world of Cluniac monasteries and cathedral schools. Dom David Knowles was a scholar in the Benedictine Order in England. He held the chair in Medieval History at Cambridge University from 1947 to 1954, and succeeded to the Regius Professorship of Modern History at Cambridge from 1954 to 1963 which had been held by Lord Acton. Dom Knowles died in 1974. (The Regius Professorships in Modern History meant European history after the fall of the Western Roman Empire in 476 A. D. Dom Knowles has written:

For three hundred years, from 1050 to 1350, and above all in the century between 1070 and 1170, the whole of educated Europe formed a single and undifferentiated cultural unit. In the lands between Edinburgh and Palermo, Mainz or Lund and Toledo, a man of any city or village might go for education to any school, and become a prelate or an official in any church, court, or university (when these existed) from north to south, from east to west. It is the age of Lanfranc of Pavia, Bec, and Canterbury [Lanfranc was William the Conqueror's chief adviser and archbishop of Canterbury]; of Anselm of Aosta, Bec, and Canterbury [Anselm succeeded his former teacher, Lanfranc, under William's successor]; of Vacarius [a famous professor of Roman Law] of Lombardy, Canterbury, Oxford, and York; of John of Salisbury, Paris, Benevento, Canterbury, and Chartres [an intimate associate of kings, archbishops, and popes, "the most accomplished scholar and stylist of his age"] ... of Nicholas Brakespeare of St. Albans, France, Scandinavia, and Rome [the son of English peasants, who became Pope Hadrian IV]; of Thomas of Aquina, Cologne, Paris, and Naples ... In this period a high proportion of the most celebrated writers, thinkers, and administrators gain greatest fame and accomplished the most significant part of their life's work far from the land of their birth and boyhood. (David Knowles, Evolution of Medieval Thought, (London, Longman, 1962) pp. 80-81, in Part Two: "The Renaissance of the Eleventh and Twelfth Centuries," pp. 65-136.)

10.

Dom David Knowles and Harold Berman helped us to understand the cosmopolitan and international nature of Medieval culture. In some sense, the Medieval world achieved a Neo-Platonic and Stoic goal of a world in which national and ethnic origins were rather irrelevant to the central concerns of intellect, science and literature. It is important for us to learn from Berman's emphasis that the Medieval commercial world had many of these same cosmopolitan and international attributes. Literacy was a requirement for the clergy but not for other persons' activities. The investment in the human capital of the clergy by Medieval societies was so valuable that when the clergy - including university students around town and in minor orders - committed crimes, the societies considered it to be too costly to suffer the loss of the investment in the human capital of literacy and spared the life of clergy. They could be usefully incarcerated inside a monastery as a punishment.

The transnational merchants were not literate compared to Europe's intellectual leaders among the clergy. But, they were international. If we examine how international commerce progressed in the Middle Ages we will have a better appreciation of Medieval institutions of liberty, order, and cosmopolitanism.

Based on the success of the Peace of God Movement, Europe's agricultural economy began to progress. Improved methods of growth and husbandry meant greater amounts for sale in the market. Widespread use of legumes (peas and beans) gave greater nitrates to the soil and replaced what was removed through growth of cereal crops. Crop rotation meant fixing the soils' productivity, increasing the yield. Better breeding of animals led to larger yields. The use of the horse collar led to greater efficiency where the horse could replace oxen. Water mills and wind mills were built for milling, cutting wood, and raising water as in irrigation or drainage. By the mid-eleventh century England alone had a thousand mills in operation.

Increased agrarian productivity meant more produce to be sold in the market. Merchants began to regularly visit villages to purchase the increased production. Increased food production led more people to feel confident to give up agriculture - which had insured one did not starve - and entering craft or artisanal production. Industrial workers had the security of the market to provide their food and did not have to devote much of their time to feeding themselves. Their products were in demand among the rural people who provided their food. Merchants provided the opportunity for them both to benefit from their mutual productivity.

However, another element entered the equation: Religious festivals and ceremonies. We witness each year before Lent the large gatherings who come to New Orleans for the festivals and Carnival ceremonies which precede Ash Wednesday, especially Shrove (Penance) Tuesday or Mardi Gras (Fat Tuesday). Any religious festival or ceremony drew large numbers for their liturgical observance. An observance at the town church on the same day each week, or same week each year, became a focus for large crowds. They might bring their farm's production each week, or their winter craftwork for an annual feast. But, the large numbers of people drew traders, pie-makers, brewers and performers to give services to the large numbers of customers away from their homes. The court yards or squares before the entrances to the monastery or cathedral became gathering places for the pilgrims and their place of rest, refreshment, entertainment and shopping.

11.

The religious feasts and holidays drew crowds to a particular monastery or church or cathedrals. People made pilgrimages to the annual feast of the saint of a monastery or cathedral. We have the familiar model of Chaucer's The Canterbury Tales to describe the pilgrim journeys in the Middle Ages. Chaucer's pilgrims were gathering at the Tabard Inn across the Thames River from London to do homage at the tomb of St. Thomas a Becket, archbishop of Canterbury martyred on the orders of King Henry II. Medieval people seemed to enjoy the journeys of pilgrimages. They were protected by special sanctions by the ecclesiastical authorities to which secular powers adhered. Sometimes they traveled long distances across borders, for example, to the See of St. Peter in Rome or to St. James (Santiago) in Compostella. Rome and Compostella were long journeys. The Clunac monasteries encouraged these pilgrimages, and organized and led them. The Cluniacs created a series of hostels for pilgrims a days journey apart across northern Spain. Many ordinary Medieval Europeans engaged in international travel for religious motives.

Medieval Europe in the Ninth and Tenth Centuries was an economy thrown in on itself. European commerce had contracted. There was little trade with the non-European world. The Mediterranean Sea was too dangerous for seaborne commerce. Visby on the island of Gotland, off the eastern coast of Sweden, was the Baltic Sea hub for trade which came up the Russian rivers from the Caspian and Black Seas, especially from Constantinople. The Norse trade continued to Europe through the base of Jutland to the North Sea and to the Elbe and Rhine rivers.

By the Eleventh Century, Amalfi, Pisa, Genoa and Venice became more confident in the seafaring and engaged in ever widening shipping ventures. The Islamic realms of Sicily, Andalusia, Morocco, Tunisia, Egypt, Syria, Bagdad had become increasingly focused on wealth creation and intellectual and artistic creativity. Italians and Moslems became partners in commerce rather than uncommunicating enemies. Originally the Arabic world was less developed than the Byzantine empire it replaced; as Howard Adelson has demonstrated, the Byzantine's minted a light-weight Solidi to facilitate trade with Islam.

But, Western Europe had been always less economically developed than the Near East. Western Europe only had natural resources to trade for the manufactured products or valuable produce of the Arab world. Even the great Medieval European manufactured product, woolen cloth, had as little appeal in the climates of Islam in the eleventh century as did for the English wool attempted to be traded in India and China by the English East India Company in the seventeenth century. Medieval Europe shipped iron, timber, and slaves (from the pagan Slavic lands).

In the eleventh century four wool cloth manufacturing cities in the county of Champagne (east of Paris) honored patron saints with festivals drawing many pilgrims. Two of the cities held two festivals a years. The pilgrims drew many traders to engage these consumers; soon the traders began to trade with each other, and the six feasts honored not only the patron saints but also the material needs of the pilgrims, the artisans and the merchants. As with all festivals/fairs, the pilgrims (and merchants) were protected by the sanctions of the abbots or bishops of the abbey or diocese. The pilgrims attending the feasts were very generous in contributions to maintain those officiating at the liturgies. The abbots and bishops did not wish anyone to fear to travel to the feasts/fairs. The abbots and bishops placed serious religious sanctions on anyone interfering with the pilgrims (and merchants) going to or coming from the fairs. Elements of the Peace of God were in the protections given to the pilgrims traveling to the fairs.

12.

Some abbots and bishops provided armed escorts or patrols of the roads leading to the fairs. We may be reminded of the escorts and patrols provided by the religious brothers of the Hospital of St. John of Jerusalem for the pilgrims in the Holy Land traveling to Jerusalem. Founded by Brother Gerard in pre-Crusader Jerusalem, the brothers hospitalers, living under the rule of St. Benedict in their service of hospitality and nursing the pilgrims and the poor, became trained monk-knights. The Knights Hospitalers and later the Knights Templars and Tuetonic Knights carried through the role of religious protectors of pilgrims to the extent of building and manning impressive fortresses in the Latin East between the roads and routes these armed monks patrolled.

The Peace of God elements in the sanctions of the abbots and bishops were present also in the reinforcement of the sanctions by the counts of Champagne. They valued the prosperity brought to the county of Champagne by the pilgrims and merchants who frequented the Fairs of Champagne. For two hundred years they beneficently observed the economic growth of their domains brought about by efforts of the abbots and bishops to encourage the success of the fairs. The four cities held six fairs through the seasons of the year - each fair lasting as long as six weeks. Over time the merchants attending the fairs moved around the circuit of the six cities adding to the stability of the commercial associations.

The Fairs of Champagne not only were markets for the locally produced woolen cloth, the wine, grain, but also of goods brought to the fairs by the merchants from distant places. Well served by river valleys from the Mediterranean and North Seas as well as from Ile de France and the Rhineland, the Fairs of Champagne attracted the most active international merchants. The cloth industry operated on a major international basis.

Many technological advances in early medieval Europe included the horse collar, water and wind mills, three field rotation with legumes, and new deep furrow plows. These plows might have been the source for the progress to more developed forms of merchant firm. Many cultures, Islam, India, and China, had partnerships, but they were generally based on the family. An example was the Sephardic Jewish partnerships in Cairo for foreign trade to the Emirate of Sicily and to Tunisia. We have a large number of these contracts for long-absent traders among religious confreres and relatives.

But, in Italy, firms for long-distance trade were formed among strangers or non-family members; shares were taken in commercial ventures without reference to familial relationships. One explanation is that peasants in Lombardy's heavy soils needed four teams of oxen to pull the deep furrow plows; each peasant family tended to have each a two oxen team and needed to cooperate with neighbors to have sufficient oxen power to achieve their profitable goals. Whatever the source, Italians progressed to non-family partnerships.

LOCAL PILGRIMS ARE INTERNATIONAL CONSUMERS

After 1000 A. D. Europe was covered with growing centers of local and regional trade. Weekly markets met in villages and towns. Abbeys or cathedrals were goals of pilgrims during the feast days of the saint who was honored by being named the patron of the abbey or cathedral. Their courtyards were the focus of religious plays about the patron saint or holy scriptures, as well as the liturgies of celebration. Large crowds that gathered once in several months or annually in one place attracted many merchants to offer their wares.

13.

It was very valuable to the abbey or cathedral that there be no obstacles to travel of the pilgrims who were very generous in their support of the liturgies and alms of churches. Ecclesiastical penalties were threatened against any disturber of those traveling to and from the abbey or cathedral; such spiritual penalties meant anyone could fully punish the outlaw. Given the value of the alms, the abbeys and cathedral hired guards to patrol the roads of the pilgrims and merchants, and to pursue anyone daring to rob holy pilgrims.

Some markets became regional or international fairs. The most significant fairs were the Fairs of Champagne, for two hundred years, the focus of international merchants, and then bankers. The Counts of Champagne in the late 1000's encouraged existing fairs at abbeys and cathedrals to become an annual round of fairs - six during the year. Each fair lasted for a month or more and then merchants moved on to the next scheduled fair. Champagne was a major producer of woolen textiles. Italian merchants purchased unfinished cloth for finishing and dyeing in Florence. England was a major producer of raw wool; Flanders was an important manufacturer of unfinished cloth. Raw wool or cloth were high value products for Italian merchants. Some Italian merchants became the changers of the various moneys in use, and then dealers in letters of exchange. In addition to Lombard and Tuscan bankers, a banking culture was expanded from the Midi by bankers from Cohors.

1999 is the Nine Hundredth anniversary of the Hospitalers' (Knights of Malta) founding at the time of the First Crusade. Teutonic Knights and Templars were founded soon after. First catering to pilgrims in Holy Land hospices, the brothers began to defend militarily the pilgrims from raiders on route, becoming knight-monks. Rejecting the rivalry and egoism of secular knights, the knight-monks became the reliable and permanent defenders of the Holy Land until their massacre after the Battle of the Horns of Hattin (1187).

But, the Knights Templars began to provide another unique service: banking and travelers checks. Pilgrims did not want to carry gold or silver on route to Jerusalem. Commercial bankers engaged in investment in trade. The faithful donated large sums, especially in land, to support the chivalry of the knight-monks in the Holy Land. Important citadels were built by Templars in London (Inner Temple and Middle Temple) and in Paris (Temple district) to hold the receipts for forwarding to Jerusalem. Pilgrims might purchase letters of credits and bills of exchange to be paid in the Levant by the Knights Templar's establishments.

Pilgrims began to deposit funds in the major European Temples and carried letters of credit to receive the money in Jerusalem. Soon people, including kings, princes, bishops, felt that these strong-hold Temples and the knight-monks were a physically and morally safe place for deposits and transfers. Finally, returning to Europe after the fall of Acre (1291), the Templars began to specialize in financial activities, loaning or guaranteeing loans to kings.

Why has the history of European legal institutions gained increased attention among American scholars? The wide success of Harold Berman's Law and Revolution since it was published in 1983 has highlighted this fact. The continued improvement in the material and intellectual lives of Americans and Europeans compared to the rest of the world has caused a general search for the reasons why. The Western Legal Tradition is seen as its major source since the role of European polycentric systems was identified by Jean Baechler, in Les Origins du capitalisme (Paris, Gallimard, 1971). (Cf. E. L. Jones, The European Miracle (Cambridge, Cambridge University Press, 1981); Nathan Rosenberg & L. E. Birdzell, Jr., How the West Grew Rich (New York, Basic Books, 1986); and Randall Collins, "The Weberian Revolution of the High Middle Ages," Weberian Sociological Theory (Cambridge, Cambridge University Press, 1986).)

14.

Harold Berman acknowledges that when he became a graduate student in legal history in 1938 at the London School of Economics, Professor T. F. T. Plucknett (dean of English legal historians) said Berman could not understand a word of English legal history unless he mastered the law of the twelfth century. (Cf. Theodore F. T. Plucknett, A Concise History of the Common Law (Boston, Mass., Little, Brown and Company, (1929) 1956); Bruno Leoni, Freedom and The Law (Indianapolis, IN, Liberty Press, 1991).

The American colonies revolted over attempts of the English crown to 'modernize' the legal system. England's judicial system was autonomous; a tradition emphasized by Chief Judge Sir Edward Coke in the early seventeenth century. The execution of Charles I (January, 1649); the exile of his son, James II (November, 1688); and the succession of the German-speaking Hanoverians had limited royal powers to less than those of the Doge of Venice. George III attempt to restore royal power caused the American Revolution.

Harold Berman refers to William Blackstone's Commentaries on the Laws of England (1768) noting the different laws then prevailing in English courts: natural law, divine law, law of nations, English common law, equity, local customary law, Roman law, ecclesiastical law, and law merchant. These were the laws of the American colonies, and the inheritance of the American states which declared independence. Berman adds:

Implicit in this catalogue was a view of history not limited to the nation or to the recent past, but a view of overlapping histories - the history of Christianity and Judaism, the history of Greece, the history of Rome, the history of the church, local history, national history, international history, and more. ...Blackstone himself was very "English" and in many respects quite conservative, but in recognizing the multiformity of the legal tradition in England he recognized the multiformity of history itself. (Berman, "Preface," p. vii)

To a large degree English and American legal institutions in the seventeenth and eighteenth centuries were medieval institutions. England and the American colonies had escaped the overthrow of medieval institutions which protected from political forces individuals, families and associations. The modern bureaucratic state of Europe was kept at bay. Legal historians view the American states and the United States as the last repository of medieval liberty: bill of rights, separation/balance of powers, judicial supremacy, decentralization.

Civilizations outside the West have been characterized by divination of the ruler. The ruler was a god or in more current models the ruler is an unquestioned and permanent leader. Such contemporary cultures have been proposed as an alternative to the Western Legal Tradition, for example, the culturally rich and historical traditions, such as Confucianism, with its unquestioned ruler. Confucianism had an influence in Europe in the model of 18th century Enlightened Despotism and its successor, Jacobinism.

The Roman Empire became an Oriental Despotism by the introduction of Persian ruler worship. The Eastern Roman Empire incorporated the concept of the ruler as God's regent on earth. The end of the Western Roman Empire meant a plurality of rulers in Europe, and the difficulty of claiming the divine succession. But, the re-emergence of the Holy Roman Empire of the German Nation under the Ottonians and their Byzantine connections re-introduced the concept of the Emperor as God's regent on earth. The Pope's crowning of Otto I as emperor (962) gave legitimacy against challenges by German dukes and for his claims over the middle kingdom of Lotharingia, including the Burgundian and Lombard kingdoms. But, popes claimed to be the arbiters of the Empire in which bishops, abbots and abbesses were important centers of political power.

15.

Berman identifies the Papal Revolution of Gregory VII as the origin of the Western Legal Tradition and the Gregorian Revolution as a culmination of the Cluniac Reform movement. The Benedictine Abbey of Cluny (founded in 910) is described by Berman as "the first translocal corporation" because "Cluniac monasteries ... which may have numbered well over a thousand within a century after the order was founded, were all ruled by priors under the jurisdiction of the Abbot of Cluny." The Cluniac movement sought to restore the monks' observation of the Rule of St. Benedict and to focus the fruits of St. Benedict's admonition: "To Work is to Pray," on book copying and learning, on beautification of the church edifice, and magnificent liturgy.

Observation of the Rule required elimination of political control of appointments of abbots or priors since political control meant non-religious motivations for entering the monastery - for the wealth or local influence - and non-observance of vows of chastity. Concubinage was more widespread among the parish priests. Often they were appointed by their fathers or brothers and were mainly interested in the income of the office. In Western Europe's poorer economy, there was a temptation for clergy to alienate church properties to their sons. In the wealthier economies of the Eastern Mediterranean, church properties were not available for such alienation. Thus, the older Catholic churches of the East had not imposed celibacy on the parish clergy as the Latin-rite Church had elected. The morality of the clergy in poorer Western Europe required elimination of church appointments by politicians.

The Cluniac Reform was not limited to struggle against politicians' intrusion in the Church. Knights and lords also ravaged the local populations. Monasteries' and parish churches' properties were violated by the feudal lords. Abbot Odilo of Cluny promoted the Truce of God which required knights and lords to suspend fighting eventually from Wednesday evening until Monday morning each week to honor the days associated with Jesus' passion, death, and resurrection. War was prohibited during the seasons of Lent and Advent, as well as the times of feasts of various saints. (Cf. Thomas Head and Richard Landes, eds., The Peace of God (Ithaca, New York, Cornell University Press, 1992).

Already Cluniac priors and monks had organized local peasants into sworn or oath-bound associations. From the Tenth Century, these Peace of God sworn associations of armed peasants were led by the monks to confront the knights and lords who were forced to swear to observe the Peace. The Peace of God bound the knights and lords not to kill, injure or rob peasants, clergy, women, merchants, and Jews. Berman concluded: "The importance of the peace movement for the future, however, and especially for the future of the Western legal tradition, was enormous, for the experience of collective oath-taking by groups in the name of peace played a crucial role in the founding of cities in the late eleventh century and thereafter, in the formation of guilds within cities"

The Peace of God movement constrained the lords and permitted the peasants, monks and merchants to invest and improve in land, technology and trade which represented the agricultural and commercial revolutions of the eleventh century. For Berman, the spiritus capitalisticus of the eleventh century is a major development. The sole linking of capitalism with Calvinism arose "from a view of the relation of Christian doctrine to the development of commercial capitalism which is based on a distortion not only of Roman Catholic thought in the period from the late eleventh to the fifteenth centuries but also of Protestant thought in the sixteenth and seventeenth centuries. It is wrongly supposed that Roman Catholic thought was fundamentally otherworldly and ascetic; in fact, in the late eleventh and the twelfth centuries Roman Catholic theology broke away from the predominantly otherworldly, ascetic ideal which had prevailed earlier and which still prevails in much of Eastern Orthodoxy." Berman's conclusions come from his own Calvinist background.

16.

Fairs and markets emerged around monasteries during feast days. They were frequented by merchants from all over Europe; these merchants developed their own Law Merchant for the settlement of their disputes. Ordinary courts met at long intervals. Merchants traveled often daily and needed disputes resolved immediately by arbitrators completely conversant with the practices of trade. In England, merchant courts were called 'Pie Powder Courts.' This was a translation by local people of the merchants' description of the courts as Pieds Poudreux in the Law French used in English courts since the Norman Conquest of 1066.

The Cluniac (and Lotharingian monasteries associated with Gorze) were the source and backbone of the Gregorian Revolution. These monasteries were the centers of the writings supporting the papacy against the emperor. The Gregorian Revolution witnessed the first large number of political pamphlets in European history. There were clergy on both sides of the controversy over the Gregorian Revolution and they wrote many pamphlets. These writings or Libelli are a milestone in the history of political thought. They drew their argumentation from the Old and New Testaments, the Church Fathers, Classical authors, and the Stoics. Political rulers did not have a positive profile among the clergy of the Gregorian Revolution, such as Cardinals Peter Damian, Deusdedit, and Humbert of Silva Candida. The Gregorian clergy emphasized a compact theory of government. They held that the emperor had violated his contract with the people. (Cf. Monumenta Germaniae Historica: Libelli de Lite (3 volumes).)

The European Liberal Historian, Lord Acton, concluded that Latin Christianity was central to the foundations of liberty. "Although the doctrine of self-reliance and self-denial, which is the foundation of political economy, was written as legibly in the New Testament as in the Wealth of Nations, it was not recognized until our age." (The History of Freedom in Antiquity (1877). Acton's analysis is elaborated in his The History of Freedom in Christianity (1877) (William H. McNeill, ed., Lord Acton, Essays in the Liberal Interpretation of History (1967).

According to Manegold of Lauterbach: "the people are free from his lordship and from subjection to him since it is evident that he first broke the compact by virtue of which he had been appointed." Manegold noted: "To take an example from a meaner sphere, if a man hired someone for a fair wage to look after his swine and then found that he was not caring for them but stealing, killing and destroying them, would not the man withhold the promised wage from him and remove him ignominiously from his task of caring for the swine? ...If, however, he breaks the compact by which he was elected...reason justly considers that he has absolved the people from their duty of submission to him since he himself first broke the bond of mutual fidelity by which he was bound to them and they to him." (Brian Tierney, The Crisis of Church and State, 1050-1300 (Engelwood Cliffs, N. J., Prentice-Hall, 1964), p. 79-80; Cf. Sir R. W. Carlyle and A. J. Carlyle, A History of Medieval Political Theory in the West (6 volumes, Edinburgh and London, William Blackwood & Sons, 1950), IV, pp. 165-210.)

Europe's economic resurgence in the Eleventh Century was based on the creation of the rule of law by the Peace of God and Truce of God movements. The Cluniac reform turned from the secular world to the world of religious orders and clergy. Monasteries in France had gained the most from the Cluniac reforms. But, in the still very extensive Holy Roman Empire, monasteries and dioceses remained unreformed. The Holy Roman Empire in addition to Germany included in the west, Flanders and the Low Countries, Lorraine, Burgundy, down the west side of the Rhone River to the Mediterranean (the old Kingdom of Arles), and northern Italy (the old Lombard Kingdom of Italy). Cluniac influences spread to monasteries in Lorraine, such as Gorze, and to monasteries in Rome itself.

17.

The Holy Roman Emperor or duke or lord (10th-11th century) had been appointing the bishop, abbot or priest. Often they appointed a relative or younger brother to provide a comfortable living. Sometimes the lord's family had donated the land to the monastery or parish. Bishops and Abbots commanded military forces which the Emperor or lord wanted in hands that he trusted. The lords would demand payment from those appointed from the income of the diocese or benefice. Many bishops or priests had no religious vocation, but took this role at the family choice. Many of these clergy did not feel bound by the Western Church's introduction of celibacy for the clergy. Many had common-law wives, and they sought to divert church properties for the support of their children.

Cluniac reformers initiated campaigns to end the simony and concubinage among the clergy. They soon decided that the root of the problem was the political role in the selection or appointment of bishops, abbots or clergy. The monastic movement gained increased adherents among the Cluniac clergy on the staff of the Holy Pontiff in Rome.

Clerical celibacy was a central concern of the reforming Popes precisely because it counteracted the tendency to hereditary appropriation of office, and hence the melding of personal with institutional rights and properties that was so prominent in the patrimonial-feudal organization of most agrarian societies. The Church was able to create a successful bureaucratic rule within its own ranks by stressing its character as an organization of freely recruited individuals, educated into "expert" literate qualifications on the basis of its own texts and laws, and subject to the administrative control of a chief whose legitimation was given within the formal laws of the organization itself. (Randall Collins, "The Weberian revolution of the High Middle Ages.")

The Cluniac monastic reformers were joined by movements for reform among the growing populations of the cities of northern Italy, especially Milan, which had been the capital of the Late Roman Empire as well as the capital of the Lombard Kingdom. The economically growing city population began to clash with the old notables of the city who controlled the appointments of the clergy, generally their relatives.

The new urban citizenry expected their clergy to lead proper, celibate lives which caused some to question the validity of sacraments performed by the political appointees. Rather than have the validity of the sacraments questioned, which the reformers could not support, they marshaled the citizens to challenge the problems of simony and clerical concubinage directly. Thus, against the Holy Roman Empire's old notables in the cities of the Lombard Kingdom, who were the imperial forefathers of the Ghibelline party, there formed the popular or Papal party, or Guelphs. The Papal led popular reform movement found its base among the new, merchant and artisanal class in the cities of the Italian Commercial Revolution. These were serious people, serious about their work, their contracts and their religious practices and commitments. The people had no patience with bad clergy.

The Papal reform party came into conflict with the Emperor and the lords. The Papal reform movement was led by the Cardinals and staff of the Roman Pontiff. The most important of whom became Pope Gregory VII (1073-1085). The conflict witnessed not only the origins of political parties in the Italian cities, the Guelphs and the Ghibelline, but also the emergence of the first political pamphlet literature. There were monks on both sides of the issues: reformers against defenders of the traditional role of political patrons to appoint bishops, abbots and clergy. These monks wrote many pamphlets on the issues under debate. Some of the pamphlets or libelli raise important questions in political philosophy law, and legal and constitutional institutions.

18.

The reformers suffered many setbacks and challenges. They made much progress, and achieved many of their goals. The Emperor and other princes were limited in their powers over bishoprics and abbeys. The continued conflicts led to such crisis as the murder in the Cathedral of Canterbury of St. Thomas a Becket by the knights of King Henry II. The royal power suffered a reduction in prestige and legitimacy. The English church gained the prestige and legitimacy to lead future challenges to the royal power, such as resulted in the Magna Carta.

The Gregorian Revolution of the Eleventh Century was supported and financed by the Commercial Revolution. Italian bankers sustained Papal reformers against the Emperors. Local merchants financed the local reformers against the imperialists. One major consequence of the Gregorian Revolution was the independence of the Italian cities from the Holy Roman Empire. In fact, Italy itself became autonomous from imperial rule.

The independence of the Italian cities and provinces reveals one of the most important consequences of the Gregorian Revolution. The polycentricism of Western Europe. Western Europe was characterized by a multiplicity of political entities and jurisdictions. Western Europe had an emperor only in name. Most kings had power only over a limited geographical area. Europe's large number of political entities meant that there was much room for what political economists refer to as "Voice and Exit."

Where the merchants or artisan (and in some cases, peasants) did not receive a reciprocal Voice in relations with the political ruler, whether Emperor or squire, they could easily move or Exit. Since there were many political entities in any cultural/linguistic area, polycentricism permitted to the easy migration to the next town or the next jurisdiction. In a sense, the politic units and rulers were in competition with each other to give Voice to their subjects or suffer their Exit. Taxes and regulations needed to be kept minimal to keep their loyalty - to keep them contributing to the prosperity of the town or county or kingdom.

Wool was the raw material. The most desired wool came from England where the wet weather caused the sheep to constantly grow richer, more lanolined (lana, Latin for wool) wool. The best wool was the product of unintended consequences. In the midst of the hot house of religious reform associated with the Gregorian Revolution of the Eleventh century, and in the same spirit that led Pope Urban II to preach the First Crusade in Clermont, some people decided that the praise of God in the Cluniac monasteries was too rich for God's taste. Cluniac monasteries' leaders had gained widespread admiration for their liturgical praise of God and reform of religious life; they were very richly rewarded with donations of very productive properties and gifts to support the liturgies.

To the reformers' minds, God doubtless desired a plainer praise. The innovators gathered at Citeaux (Cistercium) in 1098. If they did not undertake the hardship of the pilgrimage to the Levant, they would endure the hardship of an austere monastic life. The Cistercian Rule sought to negate the rich liturgies and ecclesiastic decoration and the wealth of production which it required. They would seek to found monasteries in the wilderness and forests where there were not productive grain fields or artisanal shops producing crafts to support the abbey. They went far from the grain and vine enriching sunshine. They went to the far reaches of Wales and northern England, and their challenging wilds.

19.

Randall Collins, Weberian Sociological Theory, chapter 3, "The Weberian revolution of the High Middle Ages," states:

I intend to argue, on the contrary, that the Middle Ages experienced the key institutional revolution, that the basis of capitalism was laid then rather than later, and that at its heart was the organization of the Catholic Church itself. ...

Weber's comparative work on the world religions, which was to establish a kind of experimental proof for his thesis on the Western origins of capitalism, was left unfinished at his death.

In addition to his existing treatments of the religions of China and India, and of ancient Judaism, there were to be further studies of Islam and ancient and medieval Christianity. My contention is that if the latter were to be carried out, it would result in the Weberian theory shifting its emphasis to the 'revolutionary' development of medieval European society. ...

We all know now that the Middle Ages experienced a revival of trade, the growth of towns, and a rise in population. Medieval Europe was an expanding economy, clearing forests, draining swamps, and occupying more land with a denser population than had existed in Roman times. ...

First, there was the growth of rationalized technology in this period. Lynn White draws attention to the fact that the European Middle Ages is one of the major periods of technological innovation in the history of the world. Ancient Mediterranean society was stagnant by comparison. Medieval agricultural productivity was drastically increased by innovations in plowing, crop rotation, the harness and iron horseshoes, and new crops. Land transportation was made cheaper, faster, and more wide-ranging by new methods of harnessing and riding the horse, and by improvements in wagons and cars. ...

Above all, medieval Europe experienced a revolution in the use of machinery, so much so that Jean Gimpel entitled his book on the period La Revolution industrielle du Moyen Age. ... The medieval boom in technology thus implies a larger institutional transformation. This seems especially likely in the period of the 1200s, when a veritable "mill-building craze" took place, financed by shareholders who traded freely like a modern stock exchange, and subject to numerous lawsuits. ...

The High Middle Ages were above all a period of expansion in Christian monasticism. Since ancient times there had been only one order, the Benedictine.

Around A. D. 1100 there was an outpouring of rival orders: the Cistercians, the Augustinians, the various Crusading orders. A century later came a second wave, the mendicant friars of the rival Franciscan and Dominican orders. ...

Most central of all was the order of Cistercians. It was founded in 1098 and underwent spectacular growth during the next two centuries. It was most prominent in France but was also notable in opening up Europe's frontiers: Iberia, Austria, Hungary, Poland, Scandinavia, and the borders of England. Unlike the earlier Benedictines, the Cistercians accepted no rents or labor services from feudal donors but would take only full possession of land to do with it as they wished.

These estates they worked themselves in a highly rationalized manner. Much of the land they took consisted of uncleared or marginal areas within France itself, upon which they carried out an internal colonization by bringing the land into productive cultivation. Their prime concern was these economic activities ...

but plowed back all income into buying up land to consolidate their estates. By the end of the 1100s, the Cistercians' asceticism had brought them not only tremendous economic success but also a reputation for covetousness and greed, especially among neighboring landowners. ...

These monasteries were the most economically effective units that had ever existed in Europe, and perhaps in the world, before that time.

In England, the entire monastic economy was geared toward producing wool for the export market. The Cistercians were the cutting edge of medieval economic growth. They pioneered in machinery because of their continuing concern to find laborsaving devices. ...

Weber characterizes capitalism in terms of rational technology, entrepreneurial organization of capital, free labor, and mass commodity markets. The rational technology we have seen, especially in the Cistercian "factories." The Cistercians also represent the entrepreneurial organization of capital, indeed in a more massively centralized and effective form than most private capitalists were to achieve before the late nineteenth century. They followed a form of rational cost accounting, and plowed back their profits into the business. One could say that they represented Weber's "inner-worldly asceticism" in the most literal form.

The re-emergence of trade in the Western Mediterranean witnessed the flourishing of cities which were connected to the Byzantine Empire. Venice was one. Amalfi near Naples was a small, but well protected harbor and part of the Byzantine provinces in southern Italy. The Customs of Amalfi (1010 A. D.) were widely accepted, and contributed to the later stages of maritime law in Europe. Italian merchants took advantage of the new nautical navigation instruments, new maritime technology and cartography of a brilliant Sephardic community in the Moslem Balearic Islands off the coast of Catalonia. Genovese and Venetian convoys began (c. 1298) to sail into the Atlantic to Southampton and Bruges with wares and financial human capital they had previously carried to the Fairs of Champagne; they returned by sea with the wool and woolens produced in the undeveloped north. Catalanian merchants developed the provisions of the Consolato del Mare of Barcelona. (Cf: Stanley S. Jados, Consulate of the Sea and Related Documents).

From Flanders the Italians were in direct trade with the North and Baltic Seas merchants who were associated in the Hanseatic League. The Hanseatic League was formed by the regional associations of merchant cities in the Holy Roman Empire of the German Nation. One focus of the Hansa was northward from Germany toward the Baltic and North Seas with their important trading houses in London and Bruges in the west, Bergen in the north, and St. Peterhof in the Republic of Novgorod, Russia's window to the west and outside the Tartars' sphere of conquest in Russia. The Laws of Wisby on the island of Gotland (off the eastern coast of Sweden) evolved among the Baltic merchants.

Italian bankers' agencies exited the Fairs of Champagne for Bruges and Ghent to dispense loans from the developed low-interest Italian savers to the undeveloped high-interest emerging northern European markets. The records of the Italian banking houses were studied by Raymond de Roover of Antwerp. Boston College Professor De Roover was the scholar who unraveled the medieval bankers exchange contracts to reveal interest payments embedded in the exchange rates.

Similarly, de Roover showed how the medieval moralists had disentangled the primitive pastoral admonitions in the Bible about charging usury to one's relatives from the modern 13th century market's economic need for pricing capital for its most productive use for society. Joseph Schumpeter drew on his friend de Roover's work for parts of his History of Economic Analysis.

Beginning in the Middle Ages, according to Leon Trakman, The Law Merchant:

The principle of free trade has prevailed in law for centuries. As a legal concept, freedom to contract has signified the dominance of the libertarian notion of laissez-faire over government intervention in business affairs. Evolving out of the economic theory of perfect competition and philosophical concepts of free will, this sanctification of the business process has matured into a central tenet of the law governing international trade. Merchants engaged in world trade are to be free to transact business across national boundaries in accordance with their own trade design. This book proposes that the legal diminution of the freedom to transact across national boundaries undermines the autonomy of business obligations. To permit judicial interference with private international agreements is to disregard the internal capability of the agreement, the marketplace and the trade to regulate international business bargains.

For centuries the sanctity of contracts has dominated the regime of international trade. The agreements of merchants have been respected as a matter of sound business sense. Various reasons account for the legal sanctification of commercial freedom. Merchants in the sophisticated domain of international trade generally appreciate the nature of their own needs and the capacity of the international market to satisfy them. Indeed, their very survival in the marketplace demands that they balance together market supply and market demand, price and competition in determining the nature of their bargains. Merchants decide with whom they wish to contract and upon what terms; they determine the limits of their own requirements; they establish the parameter of their obligations. They do so themselves. The law does not fulfill such functions for them. Within this context, the sanctity of their bargain is not merely a legal privilege; it is a commercial necessity. The business agreement, construed against the background of similar international agreements, is the most effective means towards interpersonal harmony in international trade. The contract is devised as a matter of the free will of the parties; it is reciprocal in intent; it is adaptable in its scope of application.

The focal point of free trade therefore fore lies in the interaction among three concepts: marketplace, agreement and time.

Even in medieval times there was abundant evidence of highly developed commercial instruments. Merchant practices gave rise to commercial paper, letters of credit and bills of exchange, all reflecting noticeable uniformity in character and design. ...

Proceedings before Law Merchant tribunals had these features in common. Adjudication was essentially oral. Formal testimonies, written affidavits and extensive judgments were generally dispensed with as a matter of course. Commercial adjudicators took judicial notice of trade custom and business practice; and they avoided the delays that would otherwise arise from administration of oaths, the tedious cross-examination of witnesses and the lengthy adjournment of proceedings.

Within this business domain, merchant institutions were translated into legal institutions. Codes of law operating at merchant centers embodied the custom of the merchants; they reflected trade habits and market usages. Most importantly, in regulating transregional trade local influences subserved to the demands of the cosmopolitan trader. Such was the nature of the medieval law merchants.

Arbitration proceedings embody commercial understandings within their arbitral frameworks; while conciliators and mediators resolve international disputes over nonperformance by balancing needs, interests and concerns of merchants. Custom, not law, has been the fulcrum of commerce since the origins of exchange. From the earliest times, merchants have devised their own business practices and regulated their own conduct. International trade law has been fostered by merchant custom.

The eleventh century heralded a localization of custom within specific regions. Towns and markets reduced local practices into regulatory codes. Merchants began to transact business across local boundaries, transporting innovative practices in trade to foreign markets. The mobility of the merchant carried with it a mobility of local custom from region to region. The laws of particular towns, usually trade centers, inevitably grew into dominant codes of custom of trans-territorial proportions. In this way, the customs of Barcelona, known as the Consulato del Mare (approximately 1340 A. D.) ascended as an internationally recognized body of mercantile custom.

The island of Oleron in the twelfth century produced the famous Rolls of Oleron, which had a profound effect on the evolution of English Admiralty Law. And the Laws of Wisby came into prominence as the third great commercial code of Europe several centuries later under Baltic influence. Each of these codifications exemplified the localization of custom throughout the medieval world.

The needs of sea-borne traffic led to a distinctive creation which was to dominate European trade for centuries thereafter. This creation was the cosmopolitan Law Merchant, which gained ascendancy in the twelfth and thirteenth centuries. The Law Merchant reflected the ultimate move away from local law towards a universal system of law, based upon mercantile interests.

The only law which could effectively enhance the activities of merchants under these conditions would be suppletive law, i. e., law which recognized the capacity of merchants to regulate their own affairs through their customs, their usages, and their practices. (Trakman, The Law Merchant, pp. ix-x, 1-9.)

The great Oxford historian of political philosophy, Sir Ernest Barker, concluded that the origin of the concept of political representation in the Middle Ages can be found in the monastic institutions. The Benedictine monastic rule was the reference point for the new religious foundations starting in the Gregorian Reform. Daily chapter meetings, elections by chapter of abbots or priors, bishops or deans, election of delegates to provincial councils were part of the ordinary clerical life. Rulers, whether barons, counts or kings, inherited their titles as properties, along with the lands to support each in his proprietary title. Any baron, count or king was expected to live on his own resources; if one did not have the property to support one's title, such as king, no one else was expected to pay for the expenses. Monastic and cathedral offices were not property as there were no heirs. Chapter meetings and elections of officers or delegates to provincial councils was the rule.

Sir Ernest Barker focused on 'Convocation' developed by the Dominican Order which was founded in southern France by Domingo de Guzman (1170-1221). (Francis of Assisi (1182-1226) founded the Franciscan Order in Umbria.) These new orders of Friars were no longer bound to the monastery but were itinerant and begging for their livelihood; the mendicant Friars might go from town to town to beg and preach. Friars were active among the greatly expanded populations of the cities; Friars ministered to the urban commercial revolution.

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Barker considered the Dominican Convocation as the model for the representative institutions which emerged later in the 13th Century, including the House of Commons. Simon de Montford's mid-thirteenth century summonings of citizens and burghers was an important stage in the representations of cities and boroughs. Simon de Montford was very much influenced by the Dominicans and may have been their pupil. (Ernest Barker, The Dominican Order and Convocation: A Study of the Growth of Representation in the Church during the Thirteenth Century (1913).)

More important than the representative institutions was the legal and constitutional framework in which they emerged. For the Anglo-American tradition, the landmark document is Magna Carta (1215). In 1213 King John called a Council at St. Alban's

at which the prelates and 'magnates of the realm' are stated to have been present, the sheriffs of every county were directed to return from every township in the King's demesne four men and the reeve, to estimate the damages lately suffered by the bishops. This was evidently an adaptation for a particular purpose, by the central government, of the local system of representation, long familiar in the constitution of the court of the shire. It is probable that from an early period some of the wealthy burghers of important towns occasionally attended the general assembly. The letter addressed to the Pope by the Parliament of 1246 is written in the name, not only of the totius regni Angliae barones, proceres, et magnates, but also of nobiles portuum maris habitatores, necnon et clerus et populus universus. (Thomas Pitt Taswell-Langmead, English Constitutional History Cambridge, MA, Houghton, Mifflin & Co., 1886, pp. 238-39.)

In the court of the shire or county - the folkmoot - the bishops and major clergy, earls, barons, knights and freeholders were joined by the town reeve and four representatives.

Institutions of representation in the Thirteenth Century, such as the House of Commons, evolved in varying directions, depending on the different countries and different challenges. Initially such institutions become royal instruments for the growth of royal power, power to extract fiscal resources, and special interest legislation which limited economic freedom and prosperity. The Church institutions came under royal control over appointments and over Church income, starting with the Babylonian Captivity of the Papacy at Avignon in the Fourteenth Century. These developments are the future chapter.

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