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AN ORATION

ON THE

Relations of the Catholic Church to American Jurisprudence.

DELIVERED BY THE HON. FRANK H. HURD, LL. D.,

OF TOLEDO, OHIO,

AT THE

Thirty-Third Annual Commencement of the University of Notre Dame, Indiana.

JUNE 27, 1877.

NOTRE DAME, INDIANA:

SCHOLASTIC PRINT.

1877.

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Relations of the Catholic Church to American Jurisprudence.

Right Rev. Bishop, Rev. Fathers,
Ladies and Gentlemen:

Of all pursuits, few are so fruitful in interest and information as the study of the law. In its uses it is not confined to the mere professional man, nor to him alone who is engaged in the administration of justice, but it extends to all who are actively occupied in the ordinary vocations of life. Its importance results, largely, from the variety of subjects it touches. The law reaches every relation of life. It defines every civil right, and the method of its enjoyment. It affords protection to every legitimate enterprise. It guarantees security to all honest efforts in business. It regulates the relations of men to each other, whether they grow out of their combination in society, their associations in the domestic circle, or their connections for the accumulation of wealth. It defends the weak against the strong and grasping. It protects the innocent against the touch of the polluted. It punishes the offenders against good morals, and affords all the encouragement within the competency of wise legislation to the honest and the truthful.

The law, too, deals largely with the duties of men in the natural order. It determines by appropriate legislation what those duties are, fixes the rules by which their performance is to be governed, and imposes penalties for their violation.

From these considerations it will appear that some knowledge of the law is requisite to every man who expects to be interested in the active life of the community or State in which he resides. Such knowledge will alone inform him of his rights and the lawful means of protecting them, his duties and the proper manner of discharging them, and of his powers and the just methods of exercising them.

While in all governments it is important that the citizen should obtain such information of the law as I have indicated, to acquire it

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would seem to be especially the duty of a citizen of a republic like this. Here the people are the sources of all power. The governments are created solely for their benefit. The officers chosen are merely their servants. The laws are simply the expression of their will. That knowledge which might be regarded as merely ornamental in a monarchy, becomes a necessity in a republic. How without it can the citizen wisely discharge the duties which the republic devolves upon him? How otherwise can he take part in the work of legislation or intelligently decide as to legislative policies? Without such knowledge in the people what hope can there be of free institutions? Men must know their rights, or they will be powerless to defend them. They must understand their institutions, or they will be indifferent as to their preservation. They must appreciate their liberties and the laws enacted to protect them, or else in some unguarded hour they will lose them. My friends, a republic rests upon the devotion of its citizens to the principles of free government, a devotion which can only exist where the nature of such government, with the laws necessary for its administration, is understood by the people. In a knowledge, therefore, widely diffused, of the system of American jurisprudence, will be found the best guaranty for the perpetuity of American institutions.

To understand that system it is necessary that we should know the sources from which it is drawn. No one can take a philosophical view of the present state of our law unless he knows its history, can trace back to their origin the great principles underlying it, and see the connection between the policies of to-day and the measures it may be of a thousand years ago, from which these policies have been derived. To review that history in some of its phases, to point out the sources of some of the principal jurisdictions of our law, and the origin of its chief liberties, is my present purpose. To that end I have chosen as the subject of my remarks "The Relation of the Catholic Church to American Jurisprudence."

When I use the phrase American jurisprudence, I do not mean our system of constitutional law, either federal or State, a system which provides the limitation of all governmental power and defines the nature and boundaries of the several branches of government; nor yet do I mean the statutory enactments of the Congress of the United States, or of the several States. These carry out the powers delegated to the legislative authority, or relate to the local and temporary necessities effected by these enactments; but I refer to that system of juris-

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prudence which underlies all our constitutions and laws, which is the foundation of our whole American scheme of government, which while not interfering with nor disturbing positive enactments, is at once the origin and supplement of them all. I mean the American common law, which is the result of the habits and customs of our people for generations, which has sprung from our ancestors who colonized America and secured its independence, and which is largely the outgrowth of the English common law which those ancestors claimed as their heritage when they migrated from English soil and separated from the English crown.

The Congress of 1774 unanimously resolved "That the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of that law." They further resolved that "they were entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they have by experience respectively found to be applicable to their several and local conditions." They also resolved that "their ancestors at the time of their emigration were entitled to all the rights, liberties and immunities of free and natural-born subjects of the realm of England."

Mr. Justice Story, in his Commentary on the Constitution, says: "The universal principle (and the practice has conformed to it) has been that the common law is our birthright and inheritance, and that our ancestors brought hither with them upon their emigration all of it which was applicable to their situation. The whole structure of our present jurisprudence stands upon the original foundation of the common law."

In this way did the system of the English common law become the source and foundation of our law. The inhabitants of the original thirteen Colonies brought it with them as their birthright, and made it part of the government which they adopted for themselves on the inhospitable shores which they had chosen for their homes. It was this that kept alive in their bosoms the spirit of independence. It watched over the first indications of resistance to British aggression. It nurtured the resolution of freemen. It inspired the immortal words of the Declaration of Independence. It nerved the arm of the weak and despised colonists to engage in the War of the Revolution, and in the hours of despair it breathed encouragement and hope until they saw the establishment of the greatest Republic of the ages. It dictated

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largely the provisions of the Constitution. It suggested the plan for the dvision of powers and the restraints to be imposed upon them. It has since afforded the rules for the construction of that instrument, and established regulations for the administration of justice under it. In the years which have followed the formation of the Union, it has ever contributed to the jurisprudence by which that Union has been preserved; and much of the prosperity which has attended it, and of the glory it has achieved, is attributable to the English common law.

I do not use the term common law in the technical sense in which it is generally employed by the legal profession. I use it to signify the whole body of the law which has been adopted from England into our system, including that which belongs to chancery and admiralty jurisdiction, as well as that which relates to what are termed more restrictedly "the laws of England."

What have been the contributions of the Catholic Church to this system of law, and what have been the relations of the one to the other, are the questions I desire to consider.

In this discussion I shall not refer in detail to the distinguished names of clergymen who during the years preceding the reign of Henry the Eighth explained and commented upon the English law. Indeed there were few commentators but them. They found it without form, and systematized it. They gathered together the scattered cases, and derived from them the rules and principles which are necessary to an orderly system of jurisprudence. It is sufficient for me to mention Bracton, Dean of Barnstable, and Britton, Bishop of Hereford, who have been termed by one of the greatest of lawyers as the fathers of English law. The work of Bracton, *De Legibus Angliæ*, was the first scientific commentary of the English law, and it has ever been regarded, as remarked by a distinguished German, "as the best and truest authority of the common law." In the early days of English history, not only were the clergy the chief commentators of the common law, but they were as well the judges who administered it and the lawyers who engaged in its practice. Before the conquest by the Normans, and long afterwards, few were learned in the law except the clergy. In the time of Rufus the monks of Abingdon were so celebrated for their knowledge of the law that they were universally consulted. So generally were the clergy engaged in the practice of the legal profession that an early writer remarked: *Nullus clericus nisi causidicus.*

The effects upon the common law of the judges and practitioners being

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clergymen were most marked. They were most apparent in those branches with which the clergy were most connected. I ask your attention to the influence of the Church, first in securing English liberties, secondly in developing the system of equity jurisprudence, and thirdly in establishing international law. These are the most important features of our jurisprudence. What of more value than our liberties, our right to an equitable administration of justice, and our relations with our fellow-beings of other nationalities?

And, first, what was the influence of the Church and the clergy in the establishment of English liberties? Those liberties were first clearly expressed and defined in *Magna Charta*, as it is known in English history. That instrument was approved by King John, June 5th, 1215. A review of the circumstances by which that approval was maintained will show the part taken by the English clergy in that important transaction.

After the conquest of England by William of Normandy, the conquered Saxons were treated with the greatest severity. Their property was confiscated, and divided among the favorites of the conqueror. The most galling restrictions were imposed upon them. Evidences of their humiliation were continually kept before them. Their liberties were entirely taken from them. Incessant efforts were made by the people for a restoration of the old statutes by which their titles had been protected and their liberties secured. William the First, William Rufus, Henry the First, and Stephen, were all earnestly entreated to grant their renewal. At last, about the year 1100, a charter for their liberties was issued by Henry the Second, wherein among other things is was declared that "evil customs should be abolished," and that "the Church should be free."

When John ascended the throne he promised a restoration of the liberties and a renewal of the charter of Henry the First. Some discussion having arisen as to its true meaning, the Archbishop of Canterbury and the Bishops gave an interpretation to it in a protest. That protest commences: "To all the faithful in Christ to whom the present letters shall come: Stephen, by the grace of God, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church, and Henry, Archbishop of Dublin, William of Leeds, Peter of Windham, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, and William of Coventry, Bishops, Greeting in the Lord!" Then follows the statement of the true construction to be given a provis-

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ion in the charter, which was accepted without dispute by both king and subjects. The particular demands made by the barons, clergy and people of the king were for freedom of the Church and liberties of the people in relation to titles to property, rights of forest, and trials in courts. King John, although repeatedly promising to grant these liberties, never kept his word. At last, after his kingdom had been placed under an interdict by Pope Innocent the Third, when he found that his barons would not go to battle with him because he had been excommunicated, King John took the following oath, which was administered to him by the Archbishop of Canterbury: "I will diligently defend the ordinances of Holy Church, and my hand shall be against all her enemies; I will recall the good laws of my ancestors, and especially those of King Edward the Confessor, and destroy the evil ones, and I shall see that my subjects shall receive justice according to the rightful decrees of my courts."

After the interdict had been removed and John had accomplished his purposes, he forgot his promise and his oath, and refused to yield the liberties he had sworn to grant. A meeting of the clergy was called, to assemble at St. Paul's, to which the barons were invited. The central figure was Cardinal Langton, Archbishop of Canterbury. He addressed them in the most fervid language. He said: "Ye have heard, when at Winchester, before the king was absolved, I compelled him to swear that the existing evil statutes should be destroyed, and that more salutary laws, namely those of King Edward the Confessor, should be observed by the whole kingdom. In support of these things are ye now convened, and I here disclose to you a newly discovered charter of King Henry the First of England, the which if ye are willing to support, your long lost liberties may be restored in all their original purity of character." The Cardinal then read the Charter in a loud voice and appealed to them in the most impassioned eloquence to insist upon their liberties, assuring them of his own most faithful assistance and that of all the clergy. With the greatest enthusiasm, the barons swore in the Cardinal's presence that they would demand their liberties of the king, and would defend them even to death itself. The Cardinal then assured them that if they would stand by the covenant then made they would reflect honor on their names through successive generations.

When the demand was made of the king, in pursuance of the covenant, he hesitated, and equivocated as usual. At length a year hav-

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ing elapsed, with nothing accomplished, the barons determined to compel the grant from the king.

An army was formed, which was called "the army of God and Holy Church," to command which Robert Fitz-Walter was chosen. It was organized with the approval and blessing of the clergy. In every way possible the clergy aided it in its formation and progress. By rapid marches it proceeded to London. The Archbishop of Canterbury surrendered to it the fortress of Rochester, one of the strongest fortifications of the realm. It entered London May 26th. The king secured himself in the Tower at first, determined to resist the barons to the uttermost. But at last, abandoned by all, King John sent the Earl of Pembroke to the army, to declare his readiness to accede to their demands. An early day was fixed upon for the conclusion and ratification of the Great Charter.

On a large meadow between Staine and Windsor the meeting was to occur between the king and the army of his people. On the 5th of June, the interview was held, at Runnymede. On the one side was the army of "Holy Church" with its leaders, and Cardinal Langton and the clergy. On the other side was the king, with a few of his nobles and some of the Bishops as his spiritual advisers. Few scenes more attractive have ever been witnessed in English history. A king was brought face to face with his subjects; the people, clergy and barons were there to demand in person the liberties which had so long been denied them. The barons were there in martial array, with their armor glistening in the summer sun and their gorgeous banners breathing with the summer air. The clergy were there, attired in the garbs of their sacred offices. The king sat upon his throne of state, clad in robes of royalty. The demand was formally made for the liberties, in the name of God and the Holy Church, not with obsequiousness, but boldly, as became freemen. The demand was at once acceded to. The Great Charter was then presented to the king, the great seal of England was affixed to it, and the king swore a solemn oath to support it. Before the setting of that day's sun English liberties were incorporated into an instrument which has become immortal, and which from that day to this has been the guarantee of the rights of Englishmen and their descendants the world over. The first sentence of that instrument declares that it was granted by the king "in the presence of God, for the salvation of his own soul and that of his ancestors and of his heirs, to the honor of God and the exaltation of

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the Holy Church and the amendment of his kingdom, and with the approval of Master Pandulph, our Lord the Pope's subdeacon and familiar." The first grant is "that the English Church shall be free, and shall have her whole rights and liberties inviolable; and we will this to be observed in such a manner that it may appear from thence, that the freedom of elections which was reported most requisite to the English Church, which was granted and by our charter confirmed, and obtained the confirmation of the same from our Lord Pope Innocent the Third, before the rupture between us and our barons, was of our own free will, which charter we shall observe, and we will it to be observed with good faith by our heirs forever." The principal section relating to the liberties of the people was: "No freeman shall be seized or imprisoned or dispossessed or outlawed or in any way destroyed; nor will we condemn him, nor will we commit him to prison excepting by the legal judgment of his peers or by the laws of the land."

Thus by this great instrument were the liberties of the Church and the people at the same time guaranteed and established. A king determined upon tyranny and the exercise of arbitrary power was compelled by an army organized under the authority of the Holy Church, the chief adviser and supporter of which was a Cardinal of that Church, to grant freedom and security to both priests and people.

The importance of that instrument in the history of England cannot be exaggerated. So dear was it to the people that it was afterwards confirmed by kings and parliaments no less than thirty-two times. The elder Pitt said that the language of *Magna Charta* relating to the rights of freemen was worth all the classics. It formulated for the first time in simple language the rights and powers of the people and of royal prerogative. It interposed an insurmountable barrier to arbitrary power. It declared the supremacy of the law. It closed all prison doors except to those who were convicted under the laws of the land. It exhibited and encouraged a spirit of sturdy independence which has always been one of the peculiar features of the English character. More than all else it has been the source of English power. It has made that little stormy island the seat of an empire which has extended its arms unto the remotest ends of the earth and brought into its coffers resources from every clime. To the influence of the Church is England, and are we, chiefly indebted for *Magna Charta*.

"No freeman shall be seized, or imprisoned, or dispossessed, or enslaved, or in any way destroyed, nor will we condemn him, nor will

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we commit him to prison except by the legal judgment of his peers or by the laws of the land." Immortal words! the very soul of free institutes! the vital principle of this Republic! the bulwark of our liberty, the power and glory of our freedom! And when these words are remembered, and the incalculable importance they have held in English history, I would have it understood that they were extorted from an unwilling king by an "army of Holy Church"; that they are the words of Stephen Langton, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church.

In the next place, I ask your attention to the influence of the Church in the development of equity jurisdiction. At a very early day in English history it was discovered that there were many defects in the laws of the realm as administered in the regular courts. Their decisions were in many instances narrow and unjust. In their application of the law to cases not specially provided for, great hardships were occasioned. Their rigors admitted of no abatement. Their processes were powerless to afford relief in many cases where relief was needed.

Whatever the causes of these deficiences in the laws of the realm, it was conceded on all sides that they existed. Another tribunal, therefore, was required in which these defects could be cured and the justice which had been denied in the regular courts might be obtained. Another tribunal was established, where jurisdiction was to provide "for the correction of that wherein the law by reason of its universality was deficient." As said by Mr. Justice Blackstone, that court was established "to detect latent frauds and concealments which the process of courts of law is not adapted to reach; to enforce the execution of such matters of trust and confidence as are binding in conscience though not cognizable at common law, to deliver from such dangers as are owing to misfortune or oversight, and to give a more specific relief, and more adapted to the circumstances of the case, than can always be obtained by the rules of the common or positive law."

That tribunal was the Court of Chancery. From the time of the first Christian king its chief officer was the Lord Chancellor, who always enjoyed the title of "Keeper of the King's Conscience." It was to him that application was made for the abatement of the rigors of the common law. It was from him that process issued to grant relief where before it had been refused. It was his judgment which corrected or restrained the unjust judgments of the regular courts. It was

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through his decrees that fraud and errors were punished and reformed.

An inquiry into the character and position of the Lord Chancellors and the methods by which they administered their office will easily exhibit the influence of the Church in the development of this branch of our jurisprudence. Who then were the Lord Chancellors of England? The Chancellor of the first Christian king was Augmendus, one of the ecclesiastics who accompanied St. Augustine to England on his holy mission. It is said that he drew up a code of laws then published which materially softened many of the customs which had prevailed while the Scandinavian deities were still worshipped in England. The personal vocation of the Chancellor is manifest from the title to which I have already referred, "Keeper of the King's Conscience." He must have been of the clergy, and confessor to the king. Lord Campbell, in his Lives of the Lord Chancellors, says: "From the conversion of the Anglo-Saxons to Christianity by St. Augustine, the king always had near his person a priest to whom was entrusted the care of his chapel and who was his confessor. This person, selected from the most learned and able of his order, and greatly superior in accomplishments to the unlettered laymen attending the court, soon acted as private secretary to the king, and gained his confidence in affairs of state. Soon to this person was assigned the business of superintending writs and grants, with the custody of the great seal."

In this manner it happened that the Lord Chancellor was a clergyman; and from the days of Augmendus, in the year 605, to 1532, with a few unimportant exceptions, every Lord Chancellor was an ecclesiastic. For nearly a thousand years was the system of equity jurisprudence administered by priests and dignitaries of the Church. Of these many of the most distinguished filled the office of Chancellor. I need mention but few names.

St. Swithin, Lord Chancellor under King Egbert and his successors, was one of the most distinguished among the early holders of that office. In the administration of the chancellorship he commanded the respect and confidence both of king and people. His life was one of extraordinary devotion to his country and his Church. His death was universally deplored; and within a century afterwards he was canonized at Rome. So great honor has always been paid him in England that even ever since the time of Henry the Eighth, July 15th is preserved in the English Calendar as a saint's day, dedicated to Lord Chancellor Swithin.

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Need I mention Thomas á Becket, known throughout the whole Christian world as St. Thomas of Canterbury? He filled the office of Chancellor with distinction for more than eight years. His commanding presence, his extraordinary genius, his spotless sanctity, his heroic martyrdom, point him out as the greatest Englishman of his time. His thorough devotion to the Church leaves no doubt as to the character of his administration of the office. Even the most unfriendly of his critics concede the purity of his character as Chancellor, and praise him for his impartiality in the office.

Shall I name Cardinal Wolsey, one of the most distinguished characters in English history? As Chancellor, more than any of his predecessors he asserted the powers of his court. He declared it to be his duty always to execute judgment with clemency where conscience was opposed to the rigor of the law. Whatever the differences of opinion of his biographers as to other matters, they all agree that he made a bold, honest, fearless and able Chancellor.

Who more distinguished in that office than Sir Thomas More, who though a layman could not have been excelled by any clergyman in his devotion to the Church? He was the first scholar of his age. He was the purest judge of his time. He has been called by the most brilliant writer of this generation the greatest of all Englishmen. When his whole character is considered, we are at a loss to know which most to admire, the simplicity and purity of his nature, the extent of his intellectual acquirements, the brilliancy of his statesmanship, the impartiality of his administration of public office, or the heroic constancy with which he suffered death rather than abandon his conviction. One thing is certain, no name in English history is more universally admired than that of Sir Thomas More.

Thus for a period of a thousand years was the office of Chancellor administered by St. Swithin, St. Thomas of Canterbury, Cardinal Wolsey, and Sir Thomas More, and men like them in religious profession and life.

Who can doubt the rules and methods by which they were governed and the sources from which these were drawn? Consider first that they could not have been drawn from the common law, for it was to mitigate its rigors that the Court of Chancery was established. They must have been derived from those systems with which the Chancellors were familiar. What those systems were, their course of education clearly indicates. Placed in seminaries in England, Ireland and

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the Continent, they were instructed both in the canon and civil law. With the details of the canon law they must have been especially familiar. It was a necessary part of their education for holy orders. They were taught with thoroughness what was requisite for the purification and the enlightenment of the conscience. They possessed a knowledge of the rules for a wise administration of the Sacrament of Penance. And as the Chancellor in his capacity of Keeper of the King's Conscience was his confessor, it must have been that he who held the office was among the best instructed of his order. In this administration of the office of Chancellor it was generally said that relief was granted according to conscience. It was termed a court of conscience. It was by appealing to the conscience of the Chancellor that suitors found relief. Was this power exercised, as some have maintained, arbitrarily and according to the whim of each Chancellor? To so maintain would be to make a mockery of justice and to substitute for equity the varying caprices of an individual. No, my friends, the powers were exercised regularly, methodically, by the application of the rules of the canon law. Appeals to conscience were settled as that system prescribed; the Lord Chancellor only sat to administer the canon law, and the civil law so far as it was applicable to cases of conscience, to cure the defects of the common law.

The system of equity jurisprudence was not perfected in a short time. Each year new cases would arise in which new decisions would be made. As the years advanced it grew into form until it reached the perfection it possessed when our ancestors brought it with them to the Colonies. The system has received many improvements since the days of Sir Thomas More, but the great principles on which the jurisdiction has been administered were settled during the thousand years before by the disciples of the canon law who held the Chancellor's office. How beautifully the two systems of law have blended together! The law of the realm administered in one court, as the ancient customs of the people prescribed, to be abated in its rigor in the chancery court of conscience enlightened by the canon law. The asperities of the one modified by the tenderness of the other, the injustice of the one restrained by the charity of the other; these together constituting a body of the law, which for protection to liberty, restraint of injustice, enforcement of obligation and security to property has never been equalled in the history of the world.

To illustrate the obligations under which we are to the court of

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conscience, consider the powers it exercises and the subject matters of which it treats.

Lord Coke has said that three things are to be judged in a court of chancery: fraud, mistake, and breach of confidence. There is no hiding-place for fraud which equity will not reveal. There are no fortifications behind which it may entrench itself which equity will not break down. It will expose every fraudulent transaction, however it may surround itself by forms of law, and whatever the position of the men who may be engaged in it. Chancery corrects the errors and mistakes men make in their dealings with each other. It allows no man to take advantage of another. It takes from him who has ill-gotten gains whatever he has unlawfully obtained. It compels the unwilling man who has made a contract to keep it. It administers trusts for the benefit of those interested in them. The poor, the weak, the helpless, the confiding are its wards, whose interests are ever watched after and whose claims for relief are never denied. Its doors are always open for suitors, and its ears are never closed to the complaints of the deceived and innocent.

In remedies it uses processes which furnish instantaneous relief. Injunctions are issued solely by its authority. It can restrain the corrupt and designing at any step in their criminal progress and preserve threatened rights from the dangers which may impend. One of its chief glories is that it modified the harsh rules of the common law as to married women. Most of the rights which by our later statutes have been conferred upon married women have been given them in courts of equity for more than twelve hundred years under the liberalizing influences of the canon law. In short, equity exposes fraud and compels the giving up of its fruits, protects the defenceless, guards the infant, defends the widow and orphan, and relieves from too severe restraint the married woman. In all its administration it is governed by conscience, enlightened by that charity which is the chief jewel of the Christian religion.

Allow me to call your attention for a few moments to the influence of the Church in the establishment of international law. So far as it may be called a system, its rules and principles are the same as those which have prevailed throughout Christendom. That the Church was largely instrumental in adopting them everyone familiar with history must admit. Prior to the establishment of Christianity in Europe the Continent was overrun by the Northern barbarians. Whatever had

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been gained in bringing nations together under the Roman laws was overturned. Society relapsed into barbarism. The only arbitrator was the sword, as force was the only law. Men lived in constant distrust and hostility. The barbarians divided into clans and went whithersoever their inclination directed, ravaging the territory and enslaving the people. Rights of person and property did not receive the slightest consideration. Prisoners were treated with the greatest barbarity. Strangers were regarded as enemies. Boundaries between different provinces or settlements were not fixed, or if fixed were not respected. Turbulence and violence ruled the nations, in which men were treated as brutes, and all laws human and divine were disregarded. "Instances were frequent of the violation of embassies, of the murder of hostages, the imprisonment of guests, and the killing of heralds."

When Christianity was introduced a change was quickly effected. The savage nature of the barbarians was subdued. Private rights began to be respected. The law was able to assert its authority. The boundaries between nations were clearly established. The rights of citizenship soon received a clear definition, and governments learned the duty of protection to those who were subject to its laws. Christianity taught the great duty of charity, which implied hospitality to the stranger, forgiveness of injury, and protection to the helpless. It impressed upon its believers the doctrine that all men were brethren, and that, though of different nationalities and races, they were all included in the same divine plan of salvation. The Church by the administration of the Sacraments was continually restraining the passions of the people and directing their feet in the paths of peace. Where before there had been bloodshed and rapine and violence, now there were peace and respect for property and obedience to law. The marauder was changed into a good citizen. The savage was transformed into a Christian.

As soon as the nations were converted, their common Faith brought them closely together. The rights of one citizen in the country of another became the subjects of discussion. The duties of conquerors to their prisoners and the obligation of belligerents began to be considered by the priests. Disputes often arose between nations, which were referred to councils of the Church for decision, and ultimately to the Pope as the head of the Church. The instances are numerous where the authority of the Church was exercised in restraining the turbulent princes when determined to engage in war. It is said by a distinguished Protestant writer: "The Church had its coun-

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cils or convocations of the clergy which formed the nations into a connection resembling a federal alliance, and these councils sometimes settled the titles and claims of princes and regulated the temporal affairs of the Christian power. This alliance was termed Christendom, and for centuries the Pope of Rome was its undisputed Head. The judgment of these councils, the decrees of the Holy Fathers, the treaties made between the Christian nations, form the chief source from which are drawn the principles of international law. It is not my present purpose to consider what those principles are. It is sufficient to say that they relate to the rights of States as parts of Christendom, to methods of peaceably settling disputes between nations, the rights and duties of belligerents and neutrals in time of war, and to the methods of commercial intercommunication in times of peace. What beneficent changes did not the Church thus introduce into the relations of Christian nations! How were softened the bloody codes of warfare! How were stayed the stained hands of contest? With what gentleness were the wounded then cared for on battle-fields! With what humanity, before unknown, were prisoners treated! How were heard, even in the din of contending hosts, the sweet whisperings of Christian charity! As when in the desert the serpent was lifted up to heal those who might look upon it, so was the Cross of Christianity raised to hush the note of conflict, to bring peace to warring nations, and contentment to homes disturbed. Oh, that the nations would return to the peaceful ways of the ages of faith! Oh, that the hand of strife might be mailed to be lifted, as then, only in benediction!

The reflections I have submitted to your consideration to-day should lead to an exalted opinion of our American jurisprudence. It has consulted all authorities. It is derived from all enlightened systems of law. From the English law it takes a sturdy love of liberty, the bold processes by which it is protected, and the great writs of right, by which, when outraged, it may be vindicated. From the civil law it draws accuracy in the statement of private right, certitude in the obligations of personal contracts, and completeness in the definition of the duties which flow from them. From the canon law it takes the watchfulness with which the rights of the helpless are guarded, the vigilance with which fraud is pursued and punished, and the exactness with which trusts are required to be administered. From England comes liberty, from the Rome of the Emperors comes culture, from the Rome of the Popes comes charity. From America—America with

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her free mountains, and rivers, and prairies, and forests—comes the living, breathing soul of freedom, which vivifies and energizes all the rest and makes the whole the very perfection of juridical science.

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