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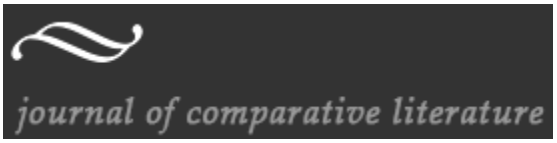

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A Tale of the Rise of Law: Geoffrey of Monmouth's *The History of the Kings of Britain*

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Geoffrey of Monmouth's *The History of the Kings of Britain* is a tale of the rise of law, suggesting that there can be no Britain without law – indeed, that Britain, like all nation-state constructs, *was* law or at least a complex network of interrelated processes and procedures that we might call law. During an age with multiple sources of legal authority in Britain, *The History* treats law as sovereign unto itself in order to create a narrative of order and stability.1 This article examines the way Geoffrey establishes the primacy of law by using the language-based, utilitarian methodologies of John Austin, who treats law as an expression of a command issued by a sovereign and followed by a *polis*, and whose jurisprudence enables twenty-first-century readers to understand Geoffrey's narrative as a response to monarchical succession and emerging common law. The first section of this article briefly explains Austin's jurisprudence and provides historical context for *The History*. The second section considers *The History* in terms of uniform and rational justice in the twelfth century, situating Geoffrey's jurisprudence alongside that of Ranulf de Glanvill and analyzing the complex relationships between sovereignty, law, *polis* and nation state.

The Jurisprudence of John Austin

Austin treats law as an expression of will that something be done or not done, coupled with the power to punish those who do not comply: "A command [...] is a signification of desire [...] distinguished from other significations of desire by this peculiarity: that the party to whom it is directed is liable to evil from the other, in case he not comply with the desire" (*Province* 6).

Accordingly, law is a command that carries the power of sanction. Austin, who writes in the nineteenth century, is in many ways different from the twelfth-century Geoffrey. Whereas Geoffrey employs fiction to instruct his contemporaries in the official narrative of incipient nationalism, Austin proclaims that many "of the legal and moral rules which obtain in the most civilized communities, rest upon brute custom, and not upon manly reason" (*Province* 58). Austin adds that these legal and moral rules "have been taken from preceding generations without examination, and are deeply tinctured with barbarity," and also that these takings are particularly harmful because the rules "arose in early ages" during "the infancy of the human mind" when people ruled based on "the caprices of fancy" (*Province* 58). Because *The History* is more mythology than fact, Austin probably would have accused Geoffrey of perpetuating "obstacles to the diffusion of ethical truth" and of "monstrous or crude productions of childish and imbecile intellect" that nonetheless "have been cherished [...] through ages of advancing knowledge" (*Province* 58). Austin, in short, was skeptical of mythology and claims about absolute law; whereas, Geoffrey embraced mythology and implied that law was a constant corrective.

Despite this disjuncture, or perhaps because of it, Austin's theories provide an illuminating framework in which to consider *The History*. Austin's proposition that laws are commands backed with the power to sanction stands in contradistinction to Geoffrey's suggestion that law emerged out of an ancient precedent and achieved its fullest expression under the great King Arthur. The conception of law as merely language reinforced by the possibility of physical threat undercuts the idea that law is based in first principles discovered by the fathers of civilization. Austin's proposition – that customary laws carry no threat of punishment and therefore are not laws at all unless a sovereign, who can punish, declares them to be laws – also contradicts Geoffrey's suggestion that law is embedded in custom and represents a point of authority from which kings may or may not deviate. Finally, Austin's proposition that "every law which obtains in *all* societies, is made by sovereign legislators" (*Lectures* 566), even if such law derives its lexicon from divine inspiration or religious texts, weakens Geoffrey's suggestion that law is relatively fixed in custom and tradition despite the whims and fancies of a given age. To employ Austin's jurisprudence is not to privilege Austin's reading over Geoffrey's or Geoffrey's reading over Austin's but to treat Austin as a lens through which to examine how Geoffrey navigates the legal terrain of his day and negotiates conflicts about law and monarchy that unsettled the harmony of the burgeoning state. Geoffrey uses myth both to validate law and British unity and to reassure the anxious *polis* of law's ultimate supremacy over temporary ideological disruptions. He establishes models of behavior for both monarchs and the *polis*.

Although medieval jurisprudents based their theories on classical notions of law – most notably Cicero's notion from *The Republic* that "true law is right reason, conformable to nature, pervading all things, constant and eternal" (211) – Austin's jurisprudence incorporates classical law, applying as it does to any command habitually followed during any era. Austinian command theory even encompasses the Ciceronian notion of the *pactum* – a tacit contract between governor and governed – because the *pactum* is manifest in Austin's discussion of equilibrium between commander and commanded: a sovereign may issue law only so long as

the *polis* allows.2 In Geoffrey's time, Henry I went to great lengths to establish a system whereby the king's commands were universally and habitually followed within England. The indeterminacies and contingencies of monarchical rule and succession meant that law and the king were not necessarily wedded because a king could forfeit sovereignty if sociopolitical circumstances disrupted the populace's habits of following him. If the "bulk of the given society is not in a habit of obedience to one and the same superior," Austin explains, "there is no law (or simply strictly so styled) which can be called the law of that given society or community" (*Province* 184). When no king issues commands or when the populace disregards a king's commands without being punished, there is no sovereign that is king – despite possible claims to kingship – and the rules and principles that the populace follows are customary laws, defined by Austin as "laws which are set or imposed by the general opinion of the community, but which are not enforced by legal or political sanctions" (*Province* 184). As soon as legal or political sanctions accompany customary laws, the sanctioner becomes the sovereign. A sanctioner is not necessarily king, unless he evidently governs several individuals that together make up a state: a body of people subject to one sovereign who commands rules that, along with their corresponding punishments, are immediately effective upon the body.3

The History is the product of an era when kingship and sovereignty are not definite because questions of who can punish and with what authority are in flux. Giorgio Agamben defines the sovereign as "the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence" (32). The sovereign is the state of exception because it is the site either where the illegal becomes legal, or where an individual or institution stands outside or constitutes law. The sovereign's actions are legal because they emanate from the sovereign. Geoffrey's chronicle about legendary kings promotes sovereign authority by attending to justice and rule of law while strategically avoiding references to particular contemporary sovereigns or kings. Geoffrey maps the continuity of British customary law while working within the framework of myth to sponsor and legitimize the official narrative of nationhood, but he champions a governable state more than any specific governing person or group of persons. His aim seems to be to validate the concrete figuring of Britain as a state confected by law.

Stephanie L. Mooers posits that the "theory, if not the practice, that every individual is entitled to uniform and rational justice is a direct outgrowth of the twelfth-century principle that one law should apply equally to all free men" (340). Is Mooers right to locate this principle in the twelfth century? The answer, if we believe Geoffrey's accounts in *The History*, is no. For Geoffrey takes pains to plot the development of the British nation as well as the skeleton – law – that holds that nation together. In so doing, he grounds English customary law not in the twelfth century but in antiquity, suggesting that uniform and rational justice is not only nothing new but also, quite conveniently, something old. I say conveniently because in Geoffrey's historical moment, the legal mores of the ancients were so celebrated that they were taken as given, and law was assumed to be organic: an outgrowth of earlier principles and doctrines.4 Law was therefore crucial to any legitimizing narrative of peoples, nations or laws. For an idea to gain purchase at this time, it had to suggest continuity with a classical past.

The History is as much a case for the establishment and continuity of British law as it is for the establishment and continuity of British culture, which of course is never entirely divorced from law because it informs and enables legal rules and institutions. One might say that law is an embodiment of culture. Narrative, even its fictional variety, is amenable to policy and hence to the promulgation of rules and regulations. *The History*, likewise, is amenable to lawmaking. Geoffrey probably sought to celebrate law with his text because the British legal order was beset with factions and divisions leftover from Norman Conquest, with contests over monarchical succession and with civil war always threatening to undermine sovereignty.

Austin criticizes the idea, seemingly endorsed by *The History*, that a sovereign is not the author of law but merely one who defines and describes preexisting rules (*Lectures* 567). Austin agrees that a sovereign can define and describe preexisting rules, but he maintains that "the Sovereign makes it law, not by the mere description, but by the sanction with which he clothes it" (*Lectures* 567). Whereas Geoffrey uses *The History* not only to authorize British customary laws that precede his historical moment, but also to suggest that these customary laws will obtain no matter the sovereign, Austin would argue that customary laws have no practical bearing unless the sovereign commands them to have practical bearing. Applying Austin's proposition to Geoffrey's historical moment, we might say that *The History* is a response to anxieties about a pluralistic legal order whereby many sovereigns govern small pockets of people, as opposed to a definite, centralized legal order whereby one individual and his various agents govern society writ large. In this respect, *The History* makes the case that British customary laws are worthy of being commanded and governed by a centralized order.

Uniform and Rational Justice in the Twelfth Century

As the sovereign, or king, was never fixed in Geoffrey's lifetime, even if the idea of sovereignty was, *The History* treats law as transcending any particular human sovereign. Geoffrey creates a need for law by portraying it as sovereign, anchored in a classical past and cloaked in religious terms. Austin works as a functional lens through which to view *The History*'s suggestion that law is necessary to provide shape to the nation-state. Geoffrey's text signals what Mooers calls the "outgrowth" of twelfth-century legal principles that enabled coercive, nationalist projects and agendas before people could speak of concepts like nation-states. Put another way, Geoffrey was an originator of and a participator in twelfth-century jurisprudence not necessarily a transcriber of an ancient *corpus juris*.5 This claim is not to reduce Geoffrey's text to the grade of propaganda but rather to adduce jurisprudence from *The History* to support a claim that Geoffrey champions legal theory instead of simply documenting it. Because the term "uniform and rational justice" does not admit ready definition, I defer to Mooers's clarifying focus on the comprehensive systemization of law manufactured by royal writs and other like instruments (341). Uniform and rational justice had to do with the proliferation of court systems whereby centralized authorities could begin to impose and enforce sets of common, consistent rules. The twelfth century was, after all, the age laying the institutional structures of the Anglo common law.6 The common law was the distillation of custom (a claim

made by its iconic protagonists such as Bracton, Fortescue, and St. German) and thus was of time immemorial, beyond the memory of man. But the solidification of the common law as a mass system enforceable by a centralized body – the precursor to the modern state – began in the twelfth century. Roman law may have influenced these common, consistent rules and inspired Henry I, Matilda, Henry II, Geoffrey and their contemporaries, but tracing the concept of uniform and rational justice back to pre-Britain is not my aim, for that would entail looking beyond Britain in a way that Geoffrey refuses (or fails) to do. Medieval and early modern common law derived its authority from religion, and medieval jurists claimed unequivocally that common law was derived from God.7

Geoffrey's first sustained treatment of law and the sovereign and their relationship to uniform and rational justice appears at the end of Brutus' section. Here, Geoffrey submits that when Brutus built his capital on the River Thames, Brutus not only presented the city "to the citizens by right of inheritance," but also gave those citizens "a code of laws by which they might live peacefully together" (74). Coming as they do after Brutus' many battles and conquests, these laws suggest peace and order befitting a civilization prophesied by a goddess: Diana. No sooner is this putative history of a nation professed in terms of law than it is consumed in mythology and institutional legend. That Brutus, the eminent Trojan, would establish this city ("Troia Nova" or "New Troy") suggests that the British legal system had the proper pedigree, according to Geoffrey and his contemporaries.

Authored during the reign of Henry II in the late 1180s, roughly half a century after the publication of *The History*, Ranulf de Glanvill's landmark legal treatise, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, is important as it suggests that *The History* reflects ideas common to the period, showing the workaday application of various strands of jurisprudence. Moreover, like *The History*, *The Treatise* anchors law in history and tradition, asserting that the "laws and customs of the realm had their origin in reason and have long prevailed," and as if to neutralize anxieties about the fact that many of these laws remained unwritten, Glanvill adds that if "merely for lack of writing, they were not deemed to be laws, then surely writing would seem to supply to written laws a force of greater authority than either the justice of him who decrees them or the reason of him who establishes them" (2). The epigram preceding the prologue of *Glanvill*, apparently affixed to the text after Glanvill's death, adds to this invocation of history and celebrates Glanvill himself as "the most learned of that time in the law and ancient customs of the realm" (1). Foregrounding custom and tradition seems like a strategy for both Geoffrey and Glanvill as well as other contemporary writers who sought to anticipate objections to law or to mobilize support for legal mechanisms currently in flux (because the monarchy is in flux).

The History is thus a model for government and for those subject to government. It mythologizes what law can be – derivations of divine prophesy couched in terms of Roman mythology and not Christian truth – and so inspires readers to ensure that law realizes its full potential. From Geoffrey's attention to Brutus, for instance, readers are supposed to learn that law corresponds with peace and that the king initiates and sanctions law. It is Brutus, after all, who drives away the giants from the caves of Britain into the mountains and who commands

the populace to "divide the land among themselves," "cultivate the fields," and "build houses" (72). Geoffrey uses Brutus to establish the image of an authoritative king and, more specifically, a glorified body as a site of sanctified authority.8

Glanvill underscores the centrality of peace to law and even suggests that law, which vests in the king, endeavours primarily toward peace and harmony. *Glanvill* opens by rendering law as the sovereign's decorative yet lethal façade: "Not only must royal power be furnished with arms against rebels and nations which rise up against the king and the realm, but it is also fitting that it should be adorned with laws for the governance of subject and peaceful peoples" (1). Like Geoffrey, Glanvill does not put a name on the sovereign; he merely extols law and its utility to the king. These lines suggest that peace cannot exist without war and that law obtains in the jurisdiction not to make peace or war but to assist the king in the functioning of his office. Uniform and rational justice does not arise for its own sake but for the service of the sovereign so that he "may so successfully perform his office that, crushing the pride of the unbridled and ungovernable with the right hand of strength and tempering justice for the humble and meek with the rod of equity, he may both be always victorious in wars with his enemies and also show himself continually impartial in dealing with his subjects" (1). For Glanvill and for Geoffrey, law is mostly about utility to the king in that it sanctions sovereign violence and centralizes power such that one individual, the sovereign, can issue commands to his subjects, demand the submission of his subjects to his authority by visiting punishment upon those who violate his commands and, therefore, ensure the habitual obedience of multiple subjects across a vast territory.

The lack of a centralized authority or definite sovereign is the reason that Britain falls into disarray when, after Brutus' death, Brutus' sons Locrinus, Kamber, and Albanactus divide the kingdom of Britain into thirds (Geoffrey 75). As a result of this partition, the brothers are unable to maintain the military presence necessary to preserve the *polis* and its laws, and therefore the island suffers from foreign invasion and bloodshed. Likewise, Maddan's sons quarrel over the crown upon Maddan's death, and as a result, law becomes something oppressive as one son, Mempricius, given to sodomy and other "vices," murders the other son, Malin, and "by force and by treachery" does away with "anyone who he feared might succeed him in the kingship" (78). Unlike Brutus, Mempricius exercised "so great a tyranny over the people that he encompassed the death of almost all the more distinguished men" (78). Geoffrey redeems law by giving Mempricius the fate of being devoured by wolves, presumably due to his despotism (78). The suggestion here is that although laws are, as Austin claims, the commands of a sovereign, a sovereign like Mempricius will forfeit sovereignty if his commands take on forms that the *polis* cannot or will not habitually obey. God or Nature will destroy him for that failing, since the devouring by wolves seems to have some kind of divine justice. Such bodily mutilation signifies destruction of law itself; as Goodrich points out, law and the body are interactive in religious terms:

> [The annunciation] is *logos*, the word as incarnation of divine presence, the spirit made flesh. For the law, the spirit made flesh takes the form of a text, vellum or skin in which is inscribed the form of the institution, of society and its subjects as

> the unified members and membrane of a body, the *corpus iuris civilis* or civilised body, the *corpus mysticum* or body politic, Leviathan or law. (248-49)

The mutilation of the body is, for Geoffrey, an announcement of the death of law – not of *all* law but of that law which emanated from the now-dead sovereign or king. The Molmutine Laws, promulgated by Dunvallo Molmutius, are, Geoffrey suggests, still "famous" among the English of Geoffrey's day (89). Geoffrey chooses to emphasize the merciful or compassionate quality of these laws, a decision that anticipates similar moves by later medieval authors such as John Gower9 and Thomas Hoccleve.10 For example, Molmutius' commands do not merely restrict action; they call for amnesty in the temples and bestow property rights to peasants (89). This approach of commanding liberality affords Geoffrey wide latitude to cast law not as coercive but as protective and as therefore attractive to his audience. Just as Glanvill celebrates "how justly and how mercifully" his sovereign has "behaved towards his subjects in time of peace" (1-2), so Geoffrey celebrates the evenhandedness of Molmutius – and the fictions of both Glanvill and Geoffrey have as their *telos* certain practical considerations such as preserving sovereignty and promoting and securing order. Geoffrey presumably sought to galvanize his readers to support the jurisprudential forms taking shape as law in the twelfth century when, according to Glanvill, it was "utterly impossible for the laws and legal rules of the realm to be wholly reduced to writing [...] both because of the ignorance of scribes and because of the confused multiplicity of those same laws and rules" (3). So long as law remained tenuous and uncertain – because commands issued from various sources – and therefore confused the *polis* and disrupted its habits of obedience, unwritten laws required written defense or else written recordation. *The History* suggests that British laws, written or otherwise, have a long lineage that predates any current ambiguity in either sovereignty or kingship, and therefore that law itself is sovereign even if its human representative is temporarily indeterminate.

Geoffrey changes his focus from conflict to contribution: the law does not merely command – it bestows. What does it bestow? According to Geoffrey, it bestows rights regarding temples of the gods, amnesty, roads and property rather than always restricting action and punishing disobedience (of course, Austin would argue that even laws granting privileges entail corresponding punishments for those who do not comply with the privileges). Geoffrey says of amnesty under the Molmutine Laws, for example, that "the cities should be so privileged that anyone who escaped to them as a fugitive or when accused of some crime must be pardoned by his accuser when he came out" (89). Law therefore allows for sanctuary and security; it generates and does not just restrict liberty. Law is more than law enforcement: it is liberating, protective and forgiving. The constructive effect of this message is to render in its readers some sense of happy acceptance: the law is good; we should embrace it. This message also makes the case for the contemporary relevance of an ancient order – a case which is bound up with happy acceptance because, to be accepted at all, an order must be tied to antiquity. The insistence upon antiquity gives rise to an almost paradoxical axiom: the more ancient the order, the more valid and relevant the order is to the contemporary *polis*.11

Geoffrey's account of the goodness of commands under the Molmutine Laws shows that a good law or a good command will inspire habitual obedience in the *polis* because it is fair and appealing to the *polis*. For instance, the Molmutine Laws provide that "the ploughs of the peasantry should be inalienable" (89). By this interpretation, the sacrosanctity of private property rights belongs to the poor as much as to the rich; the law of ownership applies equally to all regardless of social station. The law, then, is just. Glanvill, too, emphasizes the impartiality – and hence fairness – of this legal system in which "a poor man is not oppressed by the power of his adversary" (2). That law that regards the poor and rich equally means that it is impartial and hence likeable. Goeffrey might have expected his readers to read about the Molmutine Laws and then to reason as follows: if the law is good and fair and the source of law is the king, then the king himself is good and fair. Or he might have expected readers to think that law itself is good, fair and always a reliable point of reference and a consistent measure of a king's goodness or fairness.

Geoffrey extends his commentary on the "goodness" of law in his account of Belinus, who "ratified the laws" and "proclaimed that justice should be administrated fairly throughout his kingdom" (93). Geoffrey submits that, above all, Belinus "decreed that cities should have that right of sanctuary which Dunvallo [Molmutius] had established" (93). Commerce and prosperity, like fairness emanating from the Molmutine Laws or order emanating from Belinus' laws, are constructive and appealing concepts that would have validated commands and disposed the *polis* to habitual obedience. Belinus sought to show his people the benefits of living under ancient laws with an increase of commerce, travel and prosperity. Before Belinus' reign, "roads themselves were a bone of contention, for no one knew just where their boundaries should be" (93). But Belinus was "very keen to remove every ambiguity from this law" by summoning "workmen from all over the island" and ordering them "to construct a road of stones and mortar which should bisect the island longitudinally" (93). Belinus then oversaw the construction of three more roads: one running east to west and two running in diagonal patterns along the country (93). All of these roads extended from one end of the kingdom to the other (93).

Besides having topographic, architectural and economic significance, these roads had metaphorical significance: they were spaces of mobility and links between various destinations, and they signified stability, communication and civilization. Although details about roads in medieval England remain obscure (Stenton 1), we can at least speculate that roads condensed a vast geography into something both physically and intellectually manageable.12 They also facilitated communication, which was necessary to create law and a governable state because it facilitated enterprise, provided for transportation of goods and services, and allowed for the proliferation of law and commerce. This latter reason was part of the motivation behind judges' circuit-riding and visiting of various shires, a custom that began during the reign of Henry II (Warren 284-85). The significance of the road and its association with the sovereign bears emphasis because the sign is "the predominant means through which law is understood by its subjects" (Raffield 44) and because it "is through symbols and the form of its public representation that law is recognised as the legitimate action of a sovereign power" (45). Geoffrey fashions and extends the graphic linkage between the king and roads, a

linkage that forms a criterion for determining the goodness of the sovereign in Geoffrey's era as well.

Belinus not only built roads, but also regulated them; he proclaimed that "an integral part of his code of laws [was] that punishment should be meted out to any person who committed an act of violence" upon the roads (Geoffrey 93-94). Thieves who obstructed commerce by frightening carriers, thereby dis-incentivizing trade and transport, were subject to punishment; although, local sheriffs and not the king's court handled crimes of theft, which were "heard and determined according to the varying customs of different county courts" (Glanvill 177). Law freed up trade through specific deterrence (deterrence of the individual offender) and general deterrence (deterrence of all society) and set in place protections meant to allow goods to flow more smoothly to and through the marketplace. Geoffrey suggests that the regulation of roads led to "peace" and "tranquility" (94): values essential to the jurisprudential outlook of the twelfth century in which Christianity formed the basis of rulemaking (Post 499-503). The idea that peace and tranquility were present as early as Belinus' reign would have appealed to the twelfth-century *polis*. If a state cannot exist without law and undivided loyalty to a centralized authority, then the gradual improvement of Britain's infrastructure, portrayed in Geoffrey's tidy sweep of history, gives the impression that customary law can be improved upon and expanded. The practical result of roads in Geoffrey's history proves their validity and productivity and hence warrants their continued development and enhancement at Geoffrey's moment. This message is not just for the *polis* but for the would-be or current monarch. In a roundabout way, it lobbies for the continued progression of infrastructure by glorifying those kings who have improved infrastructure in the past.

Belinus serves to ensure the continuity of ancient law by enlarging and revising those regulations passed down to him and by restoring fallen cities and thereby extending the jurisdiction of the already existing law (Geoffrey 99). Geoffrey explains that Belinus "ratified his father's law everywhere throughout the kingdom, taking pleasure in the proper administration of his own justice" (100). By broadening the jurisdiction and solidifying the rules within that jurisdiction, Belinus renews his patrimony and secures his place in an ancient tradition, thereby showing Geoffrey's audience that British law, although currently tentative, is the product of a long, meliorating process, sometimes progressing, sometimes regressing but always coming out stronger and better. To the degree that the common law developed out of customary law and tradition, Geoffrey's text supplies and affirms a history for law in his era. Goodrich explains that to "know the law, to belong to the company of the sages and the sacred judges of the law, is a matter of knowing an antique and unwritten tradition that exists outside of history, beyond all texts in the inaugural realm of things divine and to be divined" (117). *The History* invents a past for law, lending law a textual foundation, however mythologized, and thus enabling the mostly imagined law of Belinus to provide a narrative basis for law in Geoffrey's era. The message is that law in the twelfth century has a legitimate origin and guaranteed lineage and is therefore of unquestioned force and unimpeachable quality.

Belinus is so successful that "in his time there became available to the populace such an abundance of wealth as no previous age had ever witnessed and no subsequent era was ever to

acquire" (Geoffrey 100). The result of good and fair law is prosperity, peace and order. It will take more than uncertainty about kingship or monarchical succession, then, to dismantle British institutions because following customary law is enough, absent sovereign will, to preserve and extend the nation-state model. Geoffrey seems to suggest either that law is more sovereign than the king or that kings who want to generate mass allegiance or to ensure the habitual obedience of the *polis* must produce some good for the *polis.* Power does not run one way, in other words. The sovereign must earn his sovereignty by giving the *polis* a reason to obey his commands.

Gurguit Barbtruc, Belinus' son, succeeds Belinus to the throne. Like his father, Barbtruc is a "lover of peace and justice" (Geoffrey 100), and his reign is followed by that of another champion of law and order: Guithelin, whose wife Marcia devised the *Lex Martiana* ("the Laws of Marcia"), which King Alfred would later translate into the Saxon tongue (101). At this point in the line of succession, Geoffrey begins to show how law adapts with each particular king. Geoffrey speaks of Archgallo the Dutiful, whose "administration of justice was equitable" (104), and also, on the other hand, of Marganus, a tyrant who "had no time for justice" (105). By tracing law and order from Brutus all the way up to Cassivelaunus – who, if he "was determined to have the law on Cuelinus," the man who killed Cassivelaunus' nephew, "by age-old custom [...] ought to [have sought] justice in the town of Trinovantum" – Geoffrey traces a genealogy for law and monarchy (114). He creates and repeats the mantra that the sovereign is divinely ordained and exists to assist and protect the people with and through law. All of these successive monarchs predate Roman occupation, and Rome stood as the touchstone for all matters legal. If Britain's laws were older than Roman laws, then narrative logic would have it that Britain is the supreme nation: the originator of law and the eminent prototype for sovereign power. Although law in Britain is continually modified to fit the sociopolitical settings of the time, it has its origins in a civilization several stages ahead of rival sects and nations.

Permanence and antiquity are particularly striking concepts if Geoffrey is right and English law does predate Roman law. On this score, we might consider Blackstone's introduction to *The Commentaries*: "But we must not carry our veneration [for civil law] so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian: we must not prefer the edict of the praetor, or the rescript of the Roman emperor, to our own immemorial customs, or the sanctions of the English parliament" (5). History, tradition, customs, mores – these concepts remained powerful several centuries after Geoffrey's particular moment. These concepts apparently rally people to unite around the sovereign, multiply the supposed magnitude of law and facilitate devotion to legal institutions, whether these concepts are invoked in the twelfth century or in the late eighteenth century when Blackstone was writing. One could make the case, as I would, that mythical thinking about law was more consequential in the twelfth century than in the eighteenth century simply because of the various claims to sovereign authority in the twelfth century. At any rate, the legend of kings and law shows how Geoffrey employed and deployed claims of antiquity as indirect appeals for the continued import of governmental supervision and legal control in Britain. Part of law's enforcement power had to do with its capacity to inspire adherents, for adherents are necessary to carry out law. That is

to say, law needs followers not just enforcers; although, the act of following has a self-policing mechanism built into it.

Geoffrey's fictional rendering of Brutus and Belinus and their progeny excites and inspires. Brutus and Belinus are extenders of law and of the legal tradition: links to both past and future. A system of law that can claim their patrimony is one that can also claim to have worked. The system has been tried and tested, the story goes, and so the book that lauds the system becomes the locus of admiration and sympathy for sovereignty. As Geoffrey told this story, moreover, the laws of Britain were yoked to the oft-celebrated laws of Rome. Once bitter enemies, Cassivelaunus and Julius Caesar "became friends and gave each other presents," and when Cassivelaunus died, his brother Tenvantius succeeded him to the throne (Geoffrey 118-19). Tenvantius "insisted upon the full rigour of the law," and when he died, his son, Cymbeline, reared in the household of Augustus Caesar, assumed the throne (119). Geoffrey explains that Tenvantius "was so friendly with the Romans that he might well have kept back their tribute-money, but he paid it of his own free will" (119). Against this backdrop, Geoffrey's portrayal of Britain seems to counteract the history that would have Britain as Rome's subordinate. Britain never lost agency but instead shared its powers with Rome, which therefore could not have imposed its laws upon Britain so much as it borrowed from British laws and imparted its own legal practices and experiences at Britain's behest. The fraternal link between Rome and Britain is important for Geoffrey's argument about the inheritance of British law because of the cultural currency of ancient phenomena and because of the sense of rootedness during an "unrooted" time.

Geoffrey's colorful commentary leaves it to Guiderius to disrupt the cultural harmony between the British and the Romans. Arvirargus succeeded Guiderius to the throne after Guiderius died in battle against the Romans, and Arvirargus not only made peace with his Roman counterparts, but also achieved a social equilibrium that only law could maintain. He ruled "his kingdom with such firm application of the law that he was feared by far-distant kings and peoples," thus causing him to become arrogant and to scoff at the "majesty of Rome," and later in life when old age softened him, he began to concede powers to the Senate and "to rule his kingdom in peace and quiet" (Geoffrey 122). Guiderius also used his old age as an occasion to confirm "the old traditional laws" and to pass "a number of new ones" (122). This passage reverses the privilege of Rome and Britain, casting the latter as the superior civilization, and it confirms the centrality of law to any valid vessel of power. As if to verify his genealogical theses, Geoffrey then points out that Guiderius' son, Marius, was "encouraged by the example of his father" and therefore "fostered justice and peace" as well as "the maintenance of the laws" (124). The explanation for Geoffrey's frenzied insistence on lineage lies in his commitment to the supremacy of law on the one hand, and to his strategy of hagiography on the other. Geoffrey's tale is something of a secular theology with the sovereign as godhead. What is not clear is whether the sovereign is, for Geoffrey, the law or the king. In either case, religious overtones would have resonated with readers and endowed the text with a certain high seriousness reserved for that which was understood as divinely inspired or ordained.

The reign of Aurelius falls several generations after Guiderius' reign, and it is with Aurelius' reign that Geoffrey reanimates his narrative of law just, as he claims Aurelius brought "new life to laws which had been allowed to fall into disuse" (Geoffrey 194). "The entire energy," Geoffrey explains of Aurelius, who undertook war with the Saxons and granted clemency after his victory, "was devoted to restoring the realm, re-building the churches, renewing peace and the rule of law, and administering justice" (194). The proximate bases for Aurelius' mercy toward the Saxons and his subsequent execution of the law had to do with Christian doctrine. What this meant for Geoffrey is that religion, along with its attendant canons of law and practice, carried over into secular or pseudo-secular policy and also that fiction, seeking to enact policy, had to appeal to Christian faith. It is little wonder that Geoffrey has a bishop first suggest to Aurelius the option of mercy toward the Saxons and that Geoffrey has Aurelius visit monasteries and perform Christian rituals after his victory. A certain blending of religion and state was necessary for Geoffrey's text to accrue value and gain authority.

Although Geoffrey highlights other subsequent monarchs as great men of law – such as Uther, who "administered justice throughout the regions in a way that none of his predecessors had been able to do" (204) – none is as prominent as King Arthur. No less than Brutus, Arthur is the father of British law. He mounted a rhetorical and physical attack upon the Romans, who perverted law by resorting to tyrannical occupation. Arthur called together "an assembly of clergy and people" and then "settled the government of the realm peacefully and legally" (225). Not until Arthur's reign did the laws begin to crystalize into something of a state. Arthur defied the Romans and their supposed laws in whose eyes the British were, in Arthur's words, merely "tributaries" (Geoffrey 233). Further, Arthur's diction recalls the rule of Cassivelaunus and the time in which Rome was a tributary of Britain, at least according to Geoffrey. With Arthur, Geoffrey seems to have returned to the theme of preservation and extension of a quasi-sacred British genealogy of legal dominion. Arthur's stance against the Romans pivots on law because he travels to Rome not to pay tribute to the Romans or to seek out "their legal decision" but to "exact from them what they had decreed in their own judicial sentence that they would demand from him" – namely, homage and tribute (236). Geoffrey couches this clash of civilizations in the vocabulary of law. This was not a war of culture; it was a war of law and its attendant praxes and principles – not just a physical battle, in other words, but a battle of ideology. Geoffrey uses Arthur to stir up devotion to law, sovereignty and Britishness. In this context, Britishness is a sense of cultural unity among the *polis*. Geoffrey uses Arthur as a model – both as a king for the *polis* to support and follow, and as a sovereign for the current king (or queen) to mimic. Arthur is a paragon of kingship – the site of the convergence of sovereignty and law. Arthur is in many ways the antithesis to Vortigern, who crowns himself King of Britain (155), falls in love with Renwein, the pagan princess (159-60), loses control of his authority to the Saxons (161), gets deposed in favor of Vortimer (ibid), gets reinstated King (163), becomes responsible for the murder of many Britons at the hands of Hengist (165), retreats to Wales (166), struggles to build a tower at the direction of his magicians (166-70) and ultimately burns alive in his tower (188). Vortigern's rule seems to parallel the rambunctious politics of Geoffrey's own time and place, and Arthur, in contrast, seems to stand for stability and order.

Conclusion

The History chronicles and, in many ways, creates the story of Britain, beginning with the Trojans and proceeding systematically through the legendary kings of Britain, ending roughly at the seventh century. It suggests that law, rather than king, is sovereign or, alternatively, that kings are sovereign only insofar as they maintain law. *The History* also suggests that British monarchs receive, revise and transmit legal principles from one age to the next rather than capriciously enacting rules with no bases in precedent or agreed-upon common practice. Precedent has both a written and oral claim to authority, especially in English law, and the implied message of *The History* is that a king is sovereign if the populace habitually obeys his authority. If, however, the populace habitually obeys inherited rules and principles while the king does not recognize or adhere to those rules and principles, then the king ceases to be sovereign and his commands are not law. Geoffrey's chronicles of the trajectory of British law over time culminate in the rule of Arthur, a sovereign who can issue commands that the *polis* ought to and will habitually obey. Establishing Arthur as a model king to conclude *The History* validates both Geoffrey's notion of sovereignty and the commands that flow from such a sovereign, and provides an example of the protection of law and legal inheritance by way of a resonant symbol. Moreover, if Arthur could stabilize and consolidate law, so too, presumably, could the sovereign in Geoffrey's time. Accordingly, the key message of *The History* is that law persists across the centuries, no matter who fulfills the role of sovereign, as the sovereign is subject to legal precedent even if he is capable of issuing law. This message is reassuring: regardless of who becomes the sovereign, law will protect by providing order and peace among the *polis* and by ensuring the continuity of the nation state.

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Bio

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1. The term *sovereign* indicates a person or group of persons that the populace habitually obeys; therefore, a person or group of persons that habitually obeys another person or group of persons cannot be sovereign. The sovereign can be a king or the head of a small unit of people. When the sovereign is a king and holds title to a vast amount of land, the populace under his authority, together with his agents and legal instrumentalities, constitutes what in the modern designation is called a state. I will therefore use the term *state* throughout this essay.

2. Austin explains, for example: "I am determined or inclined to comply with the wish of another, by the fear of disadvantage or evil. I am also determined or inclined to comply with the wish of another, by the hope of advantage or good. But it is only by the chance of incurring *evil*, that I am *bound* or *obliged* to compliance. It is only by conditional *evil*, that duties are *sanctioned* or *enforced*. It is the power and the purpose of inflicting eventual *evil*, and *not* the power and purpose of imparting eventual *good*, which gives to the expression of a wish the name of a *command*" (*Province* 10-11).

3. I have used a nineteenth-century definition for *state* to apply to a pre-nineteenth-century nation, which is a less-geographically determined society. I have done so because I wish to emphasize that the state and the nation are similar organisms sprung from common ideological constructs – namely, myths that inspire the *polis* to consolidate rules and regulations on the basis of cultural solidarity.

4. Berman explains this point succinctly: "Ever since the formation of discrete modern Western legal systems in the twelfth century, it had been taken for granted that a legal system has an ongoing character, a capacity for growth over generations and centuries. This was a uniquely Western belief: that a body of law, a system of law, contains, and should contain, a built-in mechanism for organic change and that it survives, and should survive, by development, by growth" (1654).

5. For an example of an ancient *corpus juris*, see the Code of Justinian, or *Corpus Juris Civilis* (c. 1530).

6. According to Hall, "It is easy and fruitless to argue about the . . . exact date at which there can first be said to be a common law: what is clear is that it is a product of the twelfth century" (xi).

7. Williams ("Geoffrey of Monmouth and the Canon Law") and Olson ("Of Enchantment") discuss sources of authority for medieval and early common law. They point out that these sources derive out of canon law and custom.

8. Goodrich discusses the importance of memory and a discourse of the body to the development and implementation of early law on pages 20-52 of *Languages of Law*.

9. Gower addresses this quality in *Confessio Amantis*. He does so in the context of justice (325-33) and pity (335-58).

10. Hoccleve addresses this quality in *The Regiment of Princes*, discussing the relationship between law, justice, compassion and mercy (97-127). Malory began *Le Morte Darthur* in 1469, some three centuries after *The History*. Malory's text romanticizes Arthurian legend and thereby extends the project Geoffrey began. Mercy in *Le Morte Darthur* becomes not just something to which kings and princes aspire, but something to which all chivalrous gentlemen should aspire. Consider this code of chivalry of the Knights of the Round Table: "[T]he Kynge stablysshed all the knyghtes and gaff them rychesse and londys – and charged them never to do outerage nothir mourthir, and allwayes to fle treson, and to gyff mercy unto hym that askith mercy, uppon payne of forfeiture of their worship and lordship of Kynge Arthure for evermore; and allwayes to do ladyes, damesels, and jantilwomen and wydowes [socour], strengthe hem in hir ryghtes, and never to enforce them, uppon payne of dethe" (77).

11. Pollock and Frederic William Maitland describe tenth-, eleventh- and twelfth-century jurisprudents as borrowing from ancient Roman and Germanic law books (18), but especially during the time of Glanvill and Bracton, jurisprudents were trying to "connect this new order with the old, to make the world of 'the classical feudalism' grow out of the world of the folk-laws" (19); this jurisprudence led to the theory that "a king is expected to publish laws" (20).

12. Cooper's *Bridges, Law and Power in Medieval England, 700-1400* is all about the importance of roads and bridges, their upkeep and their relationship to law; he suggests that the rise of roads was indispensable to the rise of law: "The history of the roads is . . . the story of legal jurisdiction and of the definition of a distinct space removed from legal order on either side of it" (2).