In Praise of the Laws of England
Introduction to the Matter

Not long ago, a savage and most detestable civil war raged in the kingdom of England, whereby Henry the Sixth, most pious king, with Margaret his queen-consort, daughter of the King of Jerusalem and Sicily, and their only son Edward, Prince of Wales, were driven out of the realm, and whereby King Henry was himself eventually seized by his subjects and for a long time suffered the horror of imprisonment. The Queen meanwhile, thus banished from the country with her child, lodged in the duchy of Bar in the domain of the said King of Jerusalem.¹

The Prince, as soon as he became grown up, gave himself over entirely to martial exercises; and, seated on fierce and half-tamed steeds urged on by his spurs, he often delighted in striking and assailing the young companions attending him,² sometimes with a lance, sometimes with a sword, sometimes with other weapons, in a warlike manner and in accordance with the rules of military discipline. Observing this, a certain aged knight, chancellor of the said

Books mentioned in the footnotes which also appear in the Select bibliography are referred to by author and short title. Other books are given full details.

¹ This refers to the period of exile 1463–1471, see ‘Principal events in Fortescue’s life’ and ‘Select bibliography’ above xi–xliii and xliv–liii.

² According to William Worcester there were some 200 people with the Queen at Bar, Liber Niger Scaccarum, necnon William Worcesterii annales rarum Anglicarum, i.ii, ed. T. Hearne, (2 vols., London, 1774). These included the dukes of Exeter and Somerset, Edmund Mundford, Edmund Hamden, Henry Roos, John Morton, William Vaux and Robert Whityngham.
King of England, who was also in exile there as a result of the same disaster, thus addressed the prince.

Chapter I
Here the Chancellor first moves the Prince to the study of the law

‘I do indeed rejoice, most fair Prince, at your noble disposition, perceiving as I do with how much eagerness you embrace military exercises, which are fitting for you to take such delight in, not merely because you are a knight but all the more because you are going to be king. “For the office of a king is to fight the battles of his people and to judge them rightfully”, as you may very clearly learn in 1 Kings, chapter viii. For that reason, I wish that I observed you to be devoted to the study of the laws with the same zeal as you are to that of arms, since, as battles are determined by arms, so judgements are by laws. This fact the Emperor Justinian carefully bears in mind when, in the beginning of the Preface to his book of Institutes, he says, “Imperial Majesty ought to be not only adorned with arms but also armed with laws, so that it can govern aright in both times of peace and of war.”

Furthermore, Moses, that greatest of legislators, leader of the synagogue in time past, invites you to strive zealously in the study of the law, even more forcefully than Caesar, when with divine authority he commands the kings of Israel to read their laws every day of their lives, saying thus, “After the king has sat on the throne of his kingdom, he shall write for himself the laws of Deuteronomy in a book, receiving a copy from the priests of the Levites, and he shall have it with him, and shall read it all the days of his life, so that he may learn to fear the Lord his God, and to keep His words

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Footnotes:

3 Fortescue was possibly made Chancellor in 1461, but the official title could not have lasted more than two weeks. Henry VI, however, continued to refer to him as Chancellor.

4 I Samuel 8:20. The four Books of Kings are I and II Samuel and I and II Kings.

5 CIC, Institutes, proemium. Bracton, too, began his work On the Laws and Customs of England (c.1250), “To rule well a king requires two things, arms and laws, that by them both times of war and of peace may rightly be ordered”, (Woodbine, edn (trans. Thorne), 10). On Bracton’s derivation of this and many other statements from the civilian Azo, see F.W. Maitland, Select Passages from the works of Bracton and Azo (London, 1895).
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and His rites, which are written in the law” (Deuteronomy, chapter xvii). Helyandus, expounding this text, said, “The prince, therefore, ought not to be ignorant of the law, nor is he permitted, on pretext of military duty, to be ignorant of it”, and, a little further on, “he is commanded to receive a copy of the law from the priests of the Levites, that is, from men catholic and learned”. Thus says he.

The Book of Deuteronomy, indeed, is the book of the laws by which the kings of Israel were bound to rule the people subject to them. Moses commands the kings to read this book, so that they may learn to fear God and to keep His commandments, which are written in the law. Lo! to fear God is the effect of the law, which man shall not be able to attain to unless he first knows the will of God, which is written in the law. For the beginning of all service is to know the will of the lord whom you serve. Yet Moses, giver of laws, mentions first in this command the effect of the law, namely the fear of God, and then exhorts to the observance of the cause thereof, namely the commandments of God; for the effect is prior to the cause in the mind of him who exhorts.

But what sort of fear is it that the laws promise to those who keep them? Truly, it is not that fear of which it is written that “Perfect love casts out fear.” Yet that fear, though it is abject, often incites kings to read the laws, but is not itself the offspring of the law. That fear, of which Moses here speaks and which the laws beget, is that of which the prophet says, “The fear of the Lord remains for ever holy.” This fear is as a son’s for his father, and knows not the pain of that fear which is cast out by love. For this fear is promoted by the laws, which teach the doing of the will of God, by which we escape pain. “But the glory of the Lord is upon

6 Deuteronomy 17:18–19.
7 Helyandus (d.1239), De Bone Regimine Principis, printed in J.P. Migne, Patrologiae Cursus Completus CCLI, Series Latina (Paris, 1857–66), 735–46. These quotes from Deuteronomy and from Helyandus are to be found in Vincent of Beauvais, On the Moral Education of a Prince, a copy of which is in Fortescue’s own collection, Bodleian Rawlinson MS C.398, fo.106r.
8 The account of the Mosaic law given in Deuteronomy is important to an understanding of Fortescue’s concept of justice; the ‘good things’ and ‘bad things’ which come of the different forms of government in France and England are the blessings and curses of God, see below 49 and 51.
9 I John 4:18.
10 Psalms 19:9.
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those that fear Him, whom also He glorifies."11 This fear, furthermore, is that of which Job, after he had sought wisdom in manifold ways, speaks thus, "Behold! fear of the Lord is wisdom itself, and to depart from evil is understanding" (Job, chapter xxviii).12 The laws teach that departure from evil is understanding of the fear of God, whereby they also produce that fear.

Chapter II
Replication of the Prince to the Chancellor’s motion

When the Prince heard this, facing the old man squarely, he spoke thus, ‘I know, Chancellor, that the Book of Deuteronomy which you mention is a book of holy scripture, and that the laws and usages set down therein are also sacred, decreed by the Lord and declared by Moses. For that reason it is good to read them with reverent thought. But the law, to a knowledge of which you exhort me, is human, decreed by man, and treats of this world; and, though Moses constrained the kings of Israel to the reading of Deuteronomy,13 nevertheless it is beyond all reason that he should have thereby obliged other kings to do the like with regard to their laws, since the purpose in studying the two sets of laws is not the same.’

Chapter III
Here the Chancellor strengthens his motion

‘I know’, the Chancellor said, ‘from what you have just objected, Prince, with how much attention you consider the nature of my exhortation, whereby you encourage me not a little to discuss with you, up to a point, the matters that have been raised, not merely more clearly, but also more deeply. I want you, then, to know that not only the laws of Deuteronomy, but also all human laws, are sacred, inasmuch as law is defined by these words, “Law is a sacred sanction commanding what is honest and forbidding the contrary.”14 For what is sacred by definition must be sacred. Law may

11 Psalms 14:4.
13 Deuteronomy 17:18–19.
14 This is from the Accursian gloss to CIC Institutes, 1, 2, 3, v. Lex. Is also in Bracton, Woodbine edn, 22, taken from Azo, Summa Institutionum, i.1, no.4.
also be described as that which is the art of the good and the just, in virtue of which they call us priests. 12 For a priest is by etymology said to be one who gives or teaches holy things, and, because human laws are said to be sacred, hence the ministers and teachers of the laws are called priests.

Moreover, all laws that are promulgated by man are decreed by God. For, since the Apostle says “All power is from the Lord God” 16 laws established by man, who receives power to this end from God, are also formulated by God, as is implied by the Author of the Causes when he says that, “Whatever the second cause effects, so also does the first cause, in a sense superior and more excellent.” 17 Wherefore, Jehoshaphat, King of Judah, says to his judges, “The judgements that you give are the judgements of God” (II Chronicles, chapter xix). 18 By this you are taught that to learn the laws, even though human ones, is to learn laws that are sacred and decreed of God, the study of which does not lack the blessing of divine encouragement.

But still, as you know, this blessing was not the reason that Moses commanded the kings of Israel to read Deuteronomy. For, on that account, he exhorted the kings no more than the people to the reading thereof, nor did he encourage the reading of the Book of Deuteronomy more than other books of the Pentateuch, since those books no less than Deuteronomy abound in revelations of the Holy Spirit, the meditation of which is devout exercise. Hence the reason for that command was none other than that the laws by which the king of Israel is obliged to rule his people, are set forth in Deuteronomy rather than in other books of the Old Testament, a fact

15 CIC, Digest, 1.1.1. This is also in Bracton, Woodbine edn, 24, from Azo, Summa Inst., 1.1., no.3.
16 Romans 13:1.
17 This is a reference to the thirteenth-century, pseudo-Aristotelian Liber de Causis (ed. O. Bardenhewer (Freiburg, 1882)). But Fortescue is likely to have used the popular Auctoritates Aristotelis for this reference, as he did for almost all of his citations of Aristotle. The Auctoritates, compiled possibly by Marsilius of Padua at Paris (See Hamesse edn), contains some 3000 citations, of varying accuracy, from the works of Aristotle (including the pseudo-Aristotelian Liber de Causis and Secreta Secretorum), together with extracts from the major commentaries of Averroes and Aquinas. It also contains some extracts from the works of Plato, Seneca and Boethius. The citation is from Liber de Causis 1.14, 49–52 and is at Auctoritates, 231.
which the circumstances of the command clearly show us.\textsuperscript{19} Hence, Prince, the same reason impels you no less than the kings of Israel to be a careful student of the laws by which you will in future rule the people. For what is said to the king of Israel must be understood figuratively to apply to every king of a people acknowledging God.

Have I not, then, fitly and usefully proposed to you this command enjoined to the kings of Israel — to learn their law? For not only its example, but also, figuratively speaking, its authority, teach you and oblige you to act in the same way with regard to the laws of the kingdom which, by the permission of God, you are to inherit.'

Chapter IV

Here the Chancellor proves that the Prince can become happy and blessed through the laws

‘The laws, most reverend Prince, not only invite you to fear God and thereby be wise, saying with the prophet, “Come children, hear me, and I will teach you the fear of the Lord”\textsuperscript{20}, but invite you also to their study, that you may obtain happiness and blessedness as far as they are obtainable in this life. For all the philosophers who have disputed so differently about happiness are agreed in this respect, namely, that happiness or blessedness is the end of all human desire. For that reason certain of them called it the *Summum Bonum*. The Peripatetics, however, placed it solely in virtue, the Stoics in what is honest, and the Epicureans in pleasure.\textsuperscript{21} But since the Stoics defined honesty to be what is done well, laudably, and out of virtue, and the Epicureans asserted that nothing is pleasurable without virtue, all these schools, as Leonardus Aretinus says

\textsuperscript{19} Fortescue here stresses that the analogy with Moses is not literal but figurative and is to be applied to the Prince’s own particular circumstances, that is, it is to refer to the English law by which he shall rule his people. None of Fortescue’s analogies (for example that of Rome, later) are to be applied literally and directly, but are rather to be adapted to the circumstances of the specific case under discussion.

\textsuperscript{20} Psalms 34:11.

\textsuperscript{21} The Peripatetics were followers of Aristotle (384–322BC), the Stoics were founded by Zeno of Citium (335–263BC) and the Epicureans followed the teachings of Epicurus (341–270BC), see J.H. Burns (ed.), *The Cambridge History of Medieval Political Thought c.350-c.1450*, ch.2.
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in his Isagoge of Moral Philosophy, agreed in the view that virtue alone procures happiness. Hence the Philosopher, in the seventh book of the Politics, in defining happiness, says that “It is the perfect exercise of virtues.”

These premises being granted, I want you to consider what follows from them. Human laws are none other than rules by which perfect justice is taught. But, to be sure, the justice which the laws disclose is not of the kind that is called commutative or distributive or any other particular virtue, but is itself the perfect virtue which is called by the name of legal justice and which the aforesaid Leon-ardus therefore says is perfect because it eliminates all vice and teaches every virtue, so that it is in itself justly called virtue. Homer spoke of it in the same way as Aristotle in the fifth book of the Ethics, saying that “It is the most excellent of virtues, and neither Lucifer nor Hesperus is as wonderful as this.” This justice, indeed, is the object of all royal administration, because without it a king judges unjustly and is unable to fight rightfully. But this justice attained and truly observed, the whole office of a king is fairly discharged.

Therefore, since happiness is the perfect exercise of virtues, and human justice, which is not perfectly revealed except by the law, is not merely the effect of virtue, but is the whole virtue, it follows that he who enjoys justice is made happy by the law. Thereby he becomes blessed, for blessedness and happiness are the same in this fleeting life, and through justice he attains the Summum Bonum of this world. Not, indeed, that law can do this without grace, nor will you be able to learn further nor to strive after law or virtue, without grace. For, as Pariensis says in his book Cur Deus Homo, “The fundamental appetite of man for virtue is so vitiated by

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22 A copy of Leonardo Bruni’s Isagoge of Moral Philosophy (c.1422) was given to the University of Oxford by Humphrey, duke of Gloucester in 1443. It is printed in H. Baron (ed.), Leonardo Bruni Areteo Humanistisch-Philosophische Schriften 20–41 and in English translation in G. Griffiths, J. Hankins and D. Thompson (eds.), The Humanism of Leonardo Bruni, 267–82. The section referred to by Fortescue is at Baron edn 27–8 and Griffiths et al edn. 273.

23 Auctitates Aristotelis, 261, from Aristotle, Politics, vii.viii.5.

24 Bruni, Isagoge of Moral Philosophy, Baron edn 36 and Griffiths et al edn 279. This is a commentary on Aristotle, Ethics, v.

original sin, that to him the works of vice savour sweet and those of virtue bitter." 26 Wherefore that some give themselves to love and pursuit of virtues is a gift of the divine goodness, not derived from human merit. Are not, then, the laws which, guided and directed by grace, accomplish all these effects worthy to be studied with all application, since the learner of them shall obtain the happiness which according to the Philosopher is the end and completion of human desire, whereby he shall be blessed in this life, possessing its Summum Bonum?

Truly, if these considerations do not move you who are one day to rule the kingdom, the words of the prophet shall move you and oblige you to the study of the law, saying, “Be instructed, you who judge the earth.” 27 For here the prophet does not persuade to a knowledge of any practical or mechanical art, for he does not say, “Be instructed, you who cultivate the earth”, nor does he persuade to a knowledge of a wholly theoretical science, however suitable for the inhabitants of the earth, for he did not say in general terms, “Be instructed, you inhabitants of the earth.” But the prophet invites kings only to the study of the law by which judgements are rendered, when he uses these specific words, “Be instructed, you who judge the earth”. It follows on, “Lest at any time the Lord be angry, and you perish from the right way.” 28 Nor, king’s son, does holy scripture command you only to be instructed in the laws by which you shall pursue justice, but also, in another place, it requires you to love justice itself, when it says, “Love justice, you who judge the earth”, Wisdom, chapter 1. 29

Chapter V
Here he proves that ignorance of the law causes contempt for it

‘But how shall you be able to love justice, if you do not first somewhat grasp a knowledge of the laws by which justice itself is known?

26 Pariensis is William of Auvergne, Bishop of Paris (d.1426). Fortescue had a copy of his Car Deus Homo in his collection; an approximation to this quotation may be found at Bodleian Rawlinson MS C.398, fo.137v.
27 Psalms 2:10.
28 Psalms 2:12.
29 Wisdom 1:1.
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For Aristotle says that “Nothing is loved unless it is known.”30 Wherefore Fabius the Orator says that “The arts would be fortunate if artists alone were to judge them.”31 Indeed, what is not known is usually not only unloved but also spurned; hence a certain poet observes, “All that he is ignorant of, the rustic declares, ought to be despised.”32 And this view is that not only of the rustic, but also of learned experts. For, if a metaphysician tells a natural philosopher, who has never studied mathematics, that his science considers things disjoined from all matter and motion according to reality and reason; or a mathematician tells him that his science considers things conjoined with matter and motion according to reality but disjoined according to reason, the natural philosopher, who never knew anything disjoined from matter and motion in reality or reason,33 rejects their sciences, though nobler than his own, and derides both of them, albeit they are philosophers, for no other reason than that he himself is utterly ignorant of their sciences.

Thus, you, Prince, would marvel at one learned in the laws of England if he told you that a brother shall not succeed in a paternal inheritance to a brother not born of the same mother, but that rather the inheritance shall descend to a sister of the whole blood or shall fall to the lord-in-chief of the fee as his escheat,34 because you are ignorant of the reason for this law. But the difficulty of such a case does not in the least perturb one learned in the law of England. Wherefore it is commonly said that “Art has no enemy except the ignorant.”35 But far be it from you, king’s son, to be hostile to or to despise the laws of the kingdom to which you are to succeed, when the book of Wisdom aforementioned instructs you to love the justice, which the laws reveal. Again and again, therefore, do I adjure you, most noble Prince, to learn the laws of your father’s realm, to which you are to succeed, not only that you may avoid

30 This is not to be found in Auctoritates Aristotelis. It is perhaps taken from another of Fortescue’s sources, Augustine On the Trinity, x.ii.4.
31 This has not been found in the works of Quintilian.
32 Origin unknown.
33 This is taken from Aquinas’ commentary on Aristotle’s Metaphysics vi, lect.1, n.1162 and is at Auctoritates, 127.
34 For inheritance and the half-blood, see T.F.T. Plucknett, A Concise History of the Common Law, 719–22.
35 Origin unknown.