Questions about the role of the law in society at large are posed nowadays with mounting urgency. Is the law an oppressive or a liberating force? Is the 'Rechtsstaat', the 'rule of law' an illusion or a reality? Is the law truly based on consensus or merely the invention and instrument of ruling minorities? These questions can be asked about any great historical period: what we shall attempt in this paper is to analyse the importance of the law as a dynamic force in medieval Europe.

1. - Medieval law not a monolithic continuum

The Western Middle Ages constitute a very considerable slice of human experience, extending as they do over roughly a thousand years and a multitude of nations and cultures. They comprise the mainly Roman-Germanic community which, as Latin Christendom, originated from the collapse of the classical world, along with the two other daughter-civilizations of Antiquity, the Byzantine and the Arab World.

In the millennium which we call the Middle Ages, Europe has gone through so many and such dramatic developments that we cannot speak of one medieval law, or the Law of the Middle Ages; rather there was a multitude of legal systems, sometimes co-existing. Whereas this does not simplify the historian's task, it certainly makes the period all the more fascinating. So numerous were the legal problems and solutions, and so passionate the arguments that medieval man devoted to them, that the period must be considered one of the richest treasure houses of human experience in the field of law.

There was, of course, a great geographical variety in a world extending from Scotland to Sicily and from Poland to Portugal, from early Christian to recently converted lands, from Mediterranean to Nordic countries and from such urbanized areas as northern Italy to the agrarian grain-belt along the south coast of the Baltic Sea. But there was also the greatest contrast within the whole of this geographic area between the archaic 'first Middle Ages' with their primitive tribal laws, and the sophistication of the late medieval schools. For centuries after the
great Germanic migrations the law was tribal, it belonged to the person and was a matter of kinship and blood-ties: it is only toward the end of the Frankish period that the territorial principle asserted itself and that the area where one lived became more important than the tribe to which one belonged. As to the close link between magic and the law, it survived even longer. This can nowhere better be seen than in the history of evidence. To the Germanic tribes who entered the Roman world the appeal to the supernatural forces of fire and water, and combat as a judicialized form of fighting for one's right, was a normal idea. The Church christianized these views and customs, and the practice of ordeals, a form of judicial magic or magical justice, continued with very little opposition and considerable official support until the twelfth century. At that time a vast movement got under way to expel these dark forces from the law courts as fraudulent, superstitious and diabolical temptations of God and to rationalize the forms of process in general and the administration of proof in particular. It is an intriguing question why at a certain moment the breaking point is reached and the judicial building threatens to collapse under this weight of superstition, diabolical temptation and fraud. Does increased sophistication increase fraud to an intolerable level or is the amount of fraud unchanged but the tolerance level lowered? Information on fraud in the administration of ordeals is available in texts of the late twelfth and early thirteenth centuries. In any case, from the thirteenth century onwards these forms of 'proof' were fast becoming a matter of horror and ridicule to medieval man himself and there was a world between the 'Gottesurteilrituale' edited by such scholars as Liebermann and von Schwerin, and the treatises on the 'preuves savantes', studied by J.Ph. Lévy. Yet it remains a source of amazement that the Hungarian Registrum Varadinense, with its careful reports on the result of hundreds of hot iron ordeals, and the monumental Speculum Judiciale of the French author William Durantis (†1296), witnesses of two opposed worlds, were both produced in the same century.

2. Western tradition of cultural assimilation

However, this sort of contrast, this co-existence of mental worlds that seem to us miles apart and in flagrant opposition, should not surprise us overmuch when we

4. R.C. Van Caenegem, La Preuve, p. 713.
5. J. Karacsonyi and S. Borovszky, Registrum varadinense examinum feri candentis, Budapest 1903.