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## **“Thomas Hobbes as Constitutional Theorist:**

**An Essay on the Role of Christian Lawyers and Judges Within the Secular State”©**

**By**

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The ideas expressed in this Apostolate Paper are wholly those of the author, and subject to modification as a result of on-going research into this subject matter. This paper is currently being revised and edited, but this version is submitted for the purpose of sharing Christian scholarship with clergy, the legal profession, and the general public.

## PREFACE

The organized Christian church of the Twenty-First Century is in crisis and at a crossroad. Christianity as a whole is in flux. And I believe that Christian lawyers and judges are on the frontlines of the conflict and changes which are today challenging both the Christian church and the Christian religion. Christian lawyers and judges have the power to influence and shape the social, economic, political, and legal landscape in a way that will allow Christianity and other faith-based institutions to evangelize the world for the betterment of all human beings. I write this essay, and a series of future essays, in an effort to persuade the American legal profession to rethink and reconsider one of its most critical and important jurisprudential foundations: the Christian religion. To this end, I hereby present the sixth essay in this series: “Thomas Hobbes as Constitutional Theorist.”

## INTRODUCTION<sup>1</sup>

I have chosen “Thomas Hobbes as Constitutional Theorist” as the topic of the sixth essay in this series, because Hobbes was the first “secular” philosopher who enabled me to compartmentalize “Christian” religious principles and “non-Christian” secular jurisprudence. I entered law school with a profound religious conviction. It was thus second-nature for me, as a law student, to view American jurisprudence through the prism of the Christian faith and natural law. Through the influence of the African Methodist Episcopal (A.M.E.) Church, assigned undergraduate collegiate studies, and independent readings, I had been nurtured in Judea-Christian history, the teachings of Christ, the theology of Augustine, Aquinas, and the Catholic Church, and the Unitarian ideas of Emerson. During the year 1989, when I was a junior in college, I received a great gift from a college classmate, a book titled, *The English Philosophers from Bacon to Mill*, published by The Modern Library. This book contains the assertion “[t]he anthology of British philosophers here published includes the most important works of all the thinkers of recognized eminence in the field from the time of Francis Bacon to that

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<sup>1</sup> This essay is written in memory Morgan State University Professor Ernestine Walker (a native of Jonesboro, Georgia; Ph.D., Case-Western Reserve; the wife of Solomon Baylor, a circuit court judge of Baltimore County; friend, and mentor). Professor Walker, an expert on the subject, taught me British History.

of John Stuart Mill”<sup>2</sup>; and it has remained in my personal library as a precious resource ever since. This was the heritage of the Church of England—British thinking on the interplay between Christianity, the Church, government, and the secular legal system. I had been fascinated with the history of the British Empire by 1989, having taken the course “English History from 1688 to the present,” and observing the extraordinary world events of this period.<sup>3</sup> I had studied the histories of King Henry VIII and Queen Elizabeth I; and I was vaguely familiar with the Protestant Reformations of Europe. Catholic Church authority was being brought into question throughout Europe; however, during the Seventeenth Century, the authority of all Christian authority and organized religion was starting to be challenged, vetted, or placed into the context of the numerous, bloody, religious civil wars, and the new discoveries of science and diverse non-white, European cultures. And all of this experience was brought to the new world by the American colonists, as is exemplified in the early histories of the Massachusetts Bay Colony, Rhode Island, Connecticut, and Pennsylvania. The American clergy—e.g., Roger Williams (Rhodes Island) and Thomas Hooker (Connecticut)-- played a profound role in shaping early America’s constitutional and legal systems. In the case of Rev. Williams, the ideas of the separation of church and state were first formed; and Rev. Hooker is credited with crafting the first written constitution. The American Revolution, the *Declaration of Independence*, and the United States Constitution were extensions these Western European experiences with Church and State, the monarchical forms of national and imperial governments, and with religious wars and political usurpations and despotisms.<sup>4</sup> In a nutshell, the American Founding Fathers were ready to reject monarchical forms of government and the religious justifications (e.g., the “Divine Right of Kings”) for them. The American Revolution was thus a revolt against two things: the Monarchy and the Christian Church. Under the new American government, the Monarchy system of government would be jettisoned, while the organized Christian Church would be removed from having a formal political role in government altogether—no more formal marriages between the Church and the State! Under the new American governmental scheme, “nature” and “natural law” were to be the foundations of the

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<sup>2</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. v.

<sup>3</sup> There was, for instance, the collapse of the Soviet Union; the revolt of black South Africans against Apartheid, and China’s Tiananmen Square protests.

<sup>4</sup> *The Federalist Papers* (Nashville, TN: Thomas Nelson, Inc., 2014).

independence of the United States. Indeed, Thomas Jefferson has said this much in the *Declaration of Independence* (1776):

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it...

Under this new and revolutionary American constitutional system, there was to be a complete “Wall of Separation between the Church and the State.” What this meant for classical American jurisprudence was that the Christian Church and the Bible would no longer have legal authority to govern in secular governmental affairs. In effect, under this new United States Constitution, St. Thomas Aquinas’ four-fold legal system of Eternal Law, Divine Law, Natural Law, and Human Law would be thus divided under the doctrine of this new doctrine of the “Separation of Church and State,” as follows:

| Church  | State  |
|---|--|
| <b>Eternal Law</b>  | <b>Natural Law</b> (i.e., reason; natural justice; equity).                  |
| <b>Divine Law</b> (i.e., Canon Law, Sacred Scriptures, Holy Bible, Torah, Holy Quran, etc.) | <b>Human Law</b> (i.e., Constitutional law, common law, statutory law, etc.) |

But even the Church of England’s leading theologians and lawyers had, by the mid-Eighteenth Century, began to shift away from Church authority within secular law and government. And in the American colonies, Christian theologians and lawyers were beginning to question whether the religion should play a role at all in government. But even here, as I shall demonstrate below, we must honestly distinguish between the “Church” from “Christian ideals [i.e., Natural Law],” since

within the “natural law” scheme, upon which early American jurisprudence was based, the Christian doctrine of the “Golden Rule” was readily embraced as a fundamental, secular legal doctrine. Thus an obvious question is whether the First Amendment doctrine of “Separation of Church and State” was intended proscribe [i.e., “Christian ideals [i.e. Natural Law]” from being constitutionally binding or playing a role in the interpretation and application of laws in American courts?

In answering this question, I would like to present two critical legal theories:

First, as a result of the *Declaration of Independence*, the foundations of several critical areas of American jurisprudence rests upon Roman and Anglican Catholic Christian doctrines of natural law; and,

Second, because of those natural law foundations, American lawyers and judges have strong grounds to argue for the application of legal or constitutional principles that have strong natural law foundations, despite whether those principles (e.g., “The Golden Rule”; the “Right of Self Defense”) are explicitly enunciated in Jewish, Christian, Islamic, or other sacred scriptures.

However, we must carefully consider the history of England, the Church of England, the Protestant Reformation, and the development of democratic and natural law theory up to the time of the American Revolution, in order to fully understand the natural-law foundations of American jurisprudence.

To do facilitate this process, I hereby present this sixth essay, “Thomas Hobbes, as Constitutional Theorists.”

## **SUMMARY**

Thomas Hobbes’ landmark work, *Leviathan or The Matter, Form, and Power of a Commonwealth*, sets forth the theory that “Nature” is the law of God, which includes reason and science. Hobbes believes that human governments and secular laws should be indistinguishable from “the laws of nature,” which are equity, justice, and the Golden Rule. In a nutshell, Hobbes argues in *Leviathan* that:

1. Natural law is the law of peace<sup>5</sup>, science<sup>6</sup>, and reason<sup>7</sup>;
2. Natural law is the law of God<sup>8</sup>;
3. There should be no contradiction between natural law and the secular laws of nations.<sup>9</sup>

These and similar ideas of natural law and the laws of God were incorporated into the *Declaration of the Independence* of the United States.

## **Part I. Constitutional Law—The Fifteen Laws of Nature**

Sir Thomas Hobbes (1588-1679) published in 1651, “Leviathan, or The Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil,” in which he generally defined “*the laws of nature, as justice, equity, modesty, mercy, and, in sum, doing to others as we would be done to....*”<sup>10</sup> For Hobbes, natural law, or “all the laws of nature” constituted “the laws of God.”<sup>11</sup> Furthermore, Hobbes concluded that in a Christian commonwealth, “[t]here can therefore be no contradiction between the laws of God, and the laws of a Christian

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<sup>5</sup> Hobbes’ *Leviathan* is political science or an attempt to explain the foundations of natural justice, or peace. He opens this treatise stating, “Nature, the art whereby God hath made and governs the world, is by the art of man, as in many other things, so in this also imitated, that it can make an artificial animal.” Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 129.

<sup>6</sup> “[S]cience is the knowledge of consequences, and dependence of one fact upon another: by which, out of that we can presently do, we know how to do something else when we will, out of that we can presently do, we know how to do something else when we will, or the like another time; because when we see how anything comes about, upon what causes, and by what manner; when the like causes come into our power, we see how to make it produce the like effects.” Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 146.

<sup>7</sup> “[N]atural, wherein he governeth as many of mankind a acknowledge his providence, by the natural dictates of right reason....” Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 213.

<sup>8</sup> “The laws of God therefore are none but the laws of nature....” “[W]hat are the Divine laws, or dictates of natural reason; which laws concern either the natural duties of one man to another, or the honor naturally due to our Divine Sovereign. The first are the same laws of nature, of which I have spoken already in the fourteenth and fifteenth chapters of this treatise; namely, equity, justice, mercy, humility, and the rest of the moral virtues.” Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), pp. 214, 222, 225

<sup>9</sup> “And because he is a sovereign, he requireth obedience to all his own, that is, to all the civil laws; in which also are contained all the laws of nature....” “There can therefore be no contradiction between the laws of God, and the laws of a Christian commonwealth.” “And when the civil sovereign is an infidel, every one of his own subjects that resisteth him, sinneth against the laws of God (for such are the laws of nature)....” Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), pp. 225-226.

<sup>10</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 174.

<sup>11</sup> *Ibid.*, p. 225.

commonwealth.”<sup>12</sup> Here, Hobbes also laid down what I have called “Fifteen Laws of Nature” which “dictating peace, for a means of conservation of men in multitudes; and which only concern the doctrine of civil society.”<sup>13</sup> In other words, Hobbes believed that peace was the goal of the social contract (civil society and government), and that to achieve peace, the social contract must be founded upon natural law principles.

|                        |   |              |
|------------------------|---|--------------|
| <b>Natural Law --→</b> | <b>Civil Society --→</b><br>(i.e. Constitutional, Statutory, Customary or Common Law, etc.) | <b>Peace</b> |
|------------------------|---|--------------|

This was certainly the understanding of Saint Augustine of Hippo, who wrote in *The City of God* that:

How much more powerfully do the laws of man’s nature move him to hold fellowship and maintain peace with all men so far as in him lies, since even wicked men wage war to maintain the peace of their own circle, and with that, if possible, all men belonged to them, that all men and things might serve but one head, and might either through love or fear, yield themselves to peace with him! It is thus that pride in its perversity apes God. It abhors equality with other men under Him; but, instead of His rule, it seeks to impose a rule of its own upon its equals. It abhors, that is to say, the just peace of god, and loves its own unjust peace; but it cannot help loving peace of one kind or other. For there is no vice so clean contrary to nature that it obliterates even the faintest traces of nature.<sup>14</sup>

The peace of body and soul is the well-ordered and harmonious life and health of the living creature. Peace between man and God is the well-ordered obedience of faith to eternal law. Peace between man and man is well-ordered concord. Domestic peace is the well-ordered

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<sup>12</sup> Ibid., pp. 225-226.

<sup>13</sup> Ibid., pp. 168-174.

<sup>14</sup> Aurelius Augustine (Saint), *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 688-689.

concord between those of the family who rule and those who obey.  
Civil peace is a similar concord among the citizens.<sup>15</sup>

And, also similar to St. Augustine, Sir Thomas Hobbes described “Nature” as “the art whereby God hath made and governs the world.”<sup>16</sup> For Hobbes, “Nature” thus came to reflect the intent, purpose, and law of God; and “Nature” was the foundation for legislation and government. This idea of “Nature” was also set forth in Augustine’s *The City of God*.<sup>17</sup> However, Hobbes did not think that human legislation and government could ever be in perfect alignment with nature, and for this reason, he referred them as “an artificial animal,” hence the nickname “Leviathan.”<sup>18</sup> Like St. Augustine’s theme in *The City of God*,<sup>19</sup> Hobbes concluded that the “nature of man” was one of insecurity, sin, and separation from God. “So that in the nature of man,” writes Hobbes, “we find three principle causes of quarrel. First, competition; second, diffidence; thirdly, glory. The first maketh men invade for gain; the second, for safety; and the third, for reputation.”<sup>20</sup> Hobbes describes the “state of Nature” as a human condition whereby every human being has a “natural right” to self-defense through theft, murder, assaults, etc., in a continuous and barbarous state of warfare. According to Hobbes, this “state of Nature” is a “condition of war,” where everyone is against everyone, and everyone has a right to all things, even to another’s person and life.<sup>21</sup> Under this condition, “there can be no security to any man, how strong or wise soever he be, of living out the tie which nature ordinarily alloweth men to live.”<sup>22</sup>

Hobbes reasoned that in order to alleviate themselves from this wretched condition, human beings must reason their way to higher form of existence, through entering into a social compact.<sup>23</sup> Their “natural rights” must thus give way to “natural law,” which is the law of God, or “law of the Gospel.” Similar to Aristotle and Plato, Hobbes next conceptualized the intellectual process of clear

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<sup>15</sup> Ibid., p. 690.

<sup>16</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 129.

<sup>17</sup> Aurelius Augustine (Saint), *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 380-390.

<sup>18</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 129.

<sup>19</sup> “Now every fault injures the nature, and is consequently contrary to the nature. The creature, therefore, which cleaves to God, differs from those who do not, not by nature, but by fault....” Aurelius Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 381.

<sup>20</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 160.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., p. 165.



thinking and right reasoning, in order to ascertain truth, and to separate veracity from fiction, several chapters of *Leviathan*.<sup>24</sup> In order to discover “natural law,” human beings must engage in right reason. “When a man reasoneth,” wrote Hobbes, “he does nothing else but conceive a sum total, from addition of parcels; or conceive a remainder, from subtraction of one sum from another; which, if it be done by words, is conceiving of the consequence of the names of all the parts, to the name of the whole; or from the names of the whole and one part, to the name of the other part.” Hobbes agrees with St. Augustine that “peace is a good so great, that even in this earthly and mortal life there is no word we hear with such pleasure.”<sup>25</sup> For Hobbes, “peace” could be obtained through “a general rule of reason.” “And consequently,” Hobbes wrote, “it is a precept, or general rule of reason, that every man ought to endeavor peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war. The first branch of which rule containeth the *first and fundamental law of nature; which is, to seek peace and follow it*. The *second, the sum of the right of nature; which is, by all means we can, to defend ourselves*.”<sup>26</sup> And, finally, Hobbes does not hesitate in stating that these two natural laws are reflected in the Golden Rule, as he put it: “This is that **law of the Gospel**: whatsoever you require that others should do to you, that do ye to them.”<sup>27</sup>

Similar to St. Thomas Aquinas, Hobbes concluded that the “law of God” is indistinguishable from “the law of Nature.”<sup>28</sup> Hobbes quite simplistically and clearly defined natural law or “the laws of nature,” as “the precepts by which men are guided” in order to avoid “anarchy, and the condition of war.”<sup>29</sup> “A law of nature, *lex naturalis*, is a precept or general rule, *found out by reason*, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same; and to omit that by which he thinketh it may be best preserved.”<sup>30</sup>

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<sup>24</sup> See, e.g., Chapter V, “Of Reason and Science,” *Leviathan* [Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), pp. 143-148.]

<sup>25</sup> Aurelius Augustine (Saint), *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 686.

<sup>26</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 160.

<sup>27</sup> *Ibid.*, p. 164.

<sup>28</sup> *Ibid.*, p. 225.

<sup>29</sup> *Ibid.*, p. 212.

<sup>30</sup> *Ibid.*, p. 163.

For Hobbes the civil law of contracts was a natural law mandate, because the civil society could not properly function where contracts could be made and breached with no penalties. Thus, Hobbes' **third law of nature** was "that men perform their covenants made; without which, covenants are in vain, and but empty words; and the right of all men to all things remaining, we are still in the condition of war."<sup>31</sup> Here we begin to see rudimentary elements of Aristotle's corrective and distributive justice. Importantly, Hobbes clearly described "the law of nature" as the foundations of constitutional and secular law:

*And in the law of nature, consisteth the fountain and original of civil justice.* For where no covenant hath preceded, there hath no right been transferred, and every man has right to everything; and consequently, no action can be unjust. But when a covenant is made, then to break it is unjust and the definition of injustice is no other than not performance of covenant. And whatsoever is not unjust, is just.

But because covenants of mutual trust, where there is a fear of not performance on either part, as hath been said in the former chapter, are invalid; though the original of justice be the making of covenants; yet injustice actually there can be none, till the cause of such fear be taken away; which while men are in the natural condition of war, cannot be done. Therefore before the names of just and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant; and to make good that propriety which by mutual contract men acquire, in recompense of the universal right they abandon: and such power there is none before the erection of a commonwealth. And this is also to be gathered out of the ordinary definition of justice in the Schools; for they say, that justice is the constant will of giving every man his own. And therefore where there is no own, that is no propriety, there is no injustice; and where is no coercive power erected, that is, where there is no commonwealth, there is no propriety; all men having right to all things; therefore where there is

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<sup>31</sup> Ibid., p. 168.

no commonwealth there nothing is unjust. So that the nature of justice consisteth in keeping of valid covenants; but the *validity of covenants begins not but with the constitutions of a civil power sufficient to compel men to keep them*, and then it is also that propriety begins....<sup>32</sup>

Hobbes' **fourth law of nature** is gratitude towards gifts or the bestowing of grace; for this promotes voluntary good will, trust, and benevolence among citizens within the community.<sup>33</sup> His **fifth law of nature** is to accept diversity and to reasonably accommodate oneself to the larger society. Hobbes gives a very good example of his point: "For as that stone which, by the asperity and irregularity of figure, takes more room from others than itself fills, and for the hardness cannot be easily made plain, and thereby hindereth the building, is by the builders cast away as unprofitable and troublesome: so also, a man that by asperity of nature will strive to retain those things which to himself are superfluous and to others necessary, and for the stubbornness of his passions cannot be corrected, is to be left, or cast out of society, as cumbersome thereunto. For seeing every man, not only by right but also by necessity of nature, I is supposed to endeavor all he can to obtain that which is necessary for his conservation; he that shall oppose himself against it, for things superfluous, is guilty of the war that thereupon is to follow; and therefore doth that which is contrary to the fundamental law of nature, which commandeth to seek peace. The observers of this law may be called sociable; the Latins call them commode; the contrary, stubborn, insociable, forward, intractable."<sup>34</sup> Here, we find in Hobbes' "fifth law of nature" the proscriptions against various elements of vice (i.e., greed and selfishness) which lead to societal or social injustice.

Hobbes' **sixth law of nature** is that of forgiveness from those who desire it. "A man ought to pardon the offenses past of them that repenting, desire it."<sup>35</sup> The reason for this is that to forgive those who genuinely desire it, is to promote peace and the cessation of hostilities within the civil society.<sup>36</sup> The **seventh law of nature** is provide punishment that is proportional to the offence, and not cruel, unusual, or excessive punishment—according to Hobbes, this fosters the cessation

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<sup>32</sup> Ibid., p. 168.

<sup>33</sup> Ibid., pp. 168-169.

<sup>34</sup> Ibid., p. 169.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

of warfare and promotes peace.<sup>37</sup> Hobbes' **eighth law of nature** is that "no man by deed, word, countenance, or gesture, declare hatred or contempt of another."<sup>38</sup> Hobbes' **ninth law of nature** is that "every man acknowledge another for his equal by nature." "The question who is the better man, has no place in the condition of mere nature; where, as has been shown before, all men are equal."<sup>39</sup> "On this law dependeth another, [the **tenth law of nature**] that ... no man require to reserve to himself any right which he is not content should be reserved to everyone of the rest.... The observers of this law, are those we call modest, and the breakers arrogant men. The Greeks call the violation of this law... a desire of more than their share."<sup>40</sup>

Hobbes' **eleventh law of nature** is that judges and arbitrators "deal equally" between persons whom they must judge. Otherwise, "the controversies of men cannot be determined but by war."<sup>41</sup> Importantly, Hobbes here highlights the Aristotelian doctrine of equity and ethics: "The observance of this law, from the equal distribution to each man, of that which in reason belongeth to him, is called *equity*, and, as I have said before, distributive justice; the violation, exception of persons...."<sup>42</sup> Hobbes' **twelfth law of nature** is that "such things as cannot be divided, be enjoyed in common, if it can be; and if the quantity of the thing permit, without stint; otherwise proportionally to the number of them that have right."<sup>43</sup> "For equal distribution is of the law of nature, and other means of equal distribution cannot be imagined."<sup>44</sup> Hobbes' **thirteenth law of nature** is that judges should be protected from reprisal and retaliation. They should be provided "safe conduct."<sup>45</sup> Similarly, Hobbes' **fourteenth law of nature** is that "they that are at controversy, submit their right to the judgment of an arbitrator [or judge]." Again, this promotes peaceful resolutions of cases and controversies within a civil society. Finally, Hobbes' **fifteenth law of nature** opined that so far as the Commonwealth has committed to protecting the natural rights of its citizens, that is

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid., p. 170.

<sup>39</sup> Ibid., p. 170.

<sup>40</sup> Ibid., pp. 170-171.

<sup>41</sup> Ibid., p. 171.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

to say, “the laws of nature, as justice, equity, modesty, mercy, and, in sum, doing to others as we would be done to...,”<sup>46</sup> that every citizen has a duty and obligation to defend the Commonwealth, “that every man is bound by nature, as much as in him lieth, to protect in war the authority, by which he is himself protected in time of peace.”<sup>47</sup>

Hobbes is careful to point out that these “Fifteen Laws of Nature” deal only with the civil society and government, but he clearly acknowledges that various moral laws that regulate *virtuous moral behavior among individual persons* is also *extremely important to the general welfare of the civil society*. “There be other things tending to the destruction of particular men; as drunkenness, and all other parts of intemperance; which may therefore also be reckoned amongst those things which the law of nature hath forbidden...”<sup>48</sup> Since Natural law reaches individual conduct, Hobbes would likely conclude that the secular government, as the chief administrator of natural law, has the authority and duty to promote virtuous moral development and behavior among private citizens.

## **PART II. Constitutional Law—Secular Laws Must Reflect the Laws of Nature**

In addition, Hobbes also acknowledges that man, or most people, are too busy or too unlearned to fully understand the laws of nature, but that, through fulfilling the Golden Rule, they would also be fulfilling these various laws of nature. “And though this may seem too subtle a deduction of the laws of nature,” wrote Hobbes, “to be taken notice of by all men; whereof the most part are too busy in getting food, and the rest too negligent to understand; yet to leave all me inexcusable, they have been contracted into one easy sum, intelligible even to the meanest capacity; and that is, *Do not that to another, which thou wouldst not have done to thyself.*”<sup>49</sup> Here, I hasten to add, that Hobbes clearly appears to be echoing St. Paul’s doctrine that “For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which shew the works of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or

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<sup>46</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 174.

<sup>47</sup> *Ibid.*, p. 228.

<sup>48</sup> *Ibid.*, p. 172.

<sup>49</sup> *Ibid.*

else excusing one another;) in the day when God shall judge the secrets of men by Jesus Christ according to my gospel.”<sup>50</sup> Hobbes system, in fact, synthesizes Christianity into the civil government that is founded upon natural law and natural justice—that is Hobbes’ understanding of a “Christian Commonwealth”:

[T]here is nothing in the Scripture, from which can be inferred the infallibility of the Church; much less, of any particular Church; and least of all, the infallibility of any particular man.<sup>51</sup>

But what commandments are those that God hath given us? **Are all those laws which were given to the Jews by the hand of Moses, the commandments of God? If they be, why are not Christians taught to obey them? If they be not, what others are so, besides the law of nature? For our Savior Christ hath not given us new laws, but counsel to observe those we are subject to; that is to say, the laws of nature, and the law of our several sovereigns: nor did he make any new law to the Jews in his Sermon on the Mount, but only expounded the law of Moses, to which they were subject before. The law of God therefore are none but the laws of nature,** whereof the principal is, that we should not violate our faith, that is, a commandment to obey our civil sovereigns, which we constituted over us by mutual pact one with another. And this law of God, that commandeth obedience to the law civil, commandeth by consequence obedience to all the precepts of the Bible; which, as I have proved hath made it so; and in other places but counsel; which a man at his own peril may without injustice refuse to obey.<sup>52</sup>

Hobbes thus placed the Christian religion into context with all laws secular and sacred. For Hobbes, the Christian religion—i.e., the parables and teachings of Christ-- supplements both the natural and civil law; and it also supplements the law

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<sup>50</sup> Romans 2:14-16.

<sup>51</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 223.

<sup>52</sup> *Ibid.*, p. 222. See, also, Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris, 2015).

of Moses.<sup>53</sup> The law of the Gospel (i.e., the Golden Rule) thus runs through all of human transactions, private, public, or secular government.

## CONCLUSION

In sum, under Hobbes' scheme, laws under a Christian commonwealth should reflect *“the laws of nature, as justice, equity, modesty, mercy, and, in sum, doing to others as we would be done to . . .”*<sup>54</sup> (But Hobbes also introduced the idea that even “infidel” states had the same obligations to follow the laws of nature.) Hobbes' ideas as to “law” appeared to be in perfect alignment with the Catholic Churches' conceptualization of secular law, as being derivative of natural law, divine law, and eternal law. However, Hobbes' thinking clearly shifts the idea of “law” in the direction of secularization, with “natural” law as its primary foundation. In other words, the foundations for the separation of church and state can be seen clearly in Hobbes' masterpiece, *Leviathan*, where natural law is presented as the primary source of constitutional and statutory laws, and religion is given a secondary role.

### Sources of Secular Law

|                  |  |
|------------------|--|
| Primary Source   | Natural Law (Equity, Reason and Science)   |
| Secondary Source | Eternal Law, Divine Law, Sacred Scriptures |

For reaching these conclusions, Hobbes has been mistakenly described as an atheist! Such gross mischaracterizations, however, underscores the importance of reading an author's original writings, rather than another person's interpretations of what an author thought, stood for, and wrote—a practice which I have adopted since the late 1980s. Without question, Hobbes was a Christian political and legal theorist who set forth the essential doctrine that:

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<sup>53</sup> See, e.g., Roderick O. Ford, *The Parables of Christ* (Tampa, FL.: Xlibris, 2015); and, Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris, 2015).

<sup>54</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 174.

1. Natural law is the law of peace<sup>55</sup>, science<sup>56</sup>, and reason<sup>57</sup>;
2. Natural law is the law of God<sup>58</sup>;
3. There should be no contradiction between natural law and the secular laws of nations.<sup>59</sup>

Thus a reading of Hobbes' *Leviathan* leads to the inevitable conclusion that, according to Hobbes, God's law is universal, crossing all national and cultural boundaries. Additionally, according to Hobbes, the secular laws of a commonwealth should not be distinguishable from God's law (i.e., universal natural law), which is the secular sciences, reason, and the law of peace. In Hobbes we find the constitutional principal that nature (i.e., the Law of God) is the foundation of constitutional law. And this idea was incorporated into the American *Declaration of Independence*, which pre-dates and prefigures the United States Constitution.

## THE END

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<sup>55</sup> Hobbes' *Leviathan* is political science or an attempt to explain the foundations of natural justice, or peace. He opens this treatise stating, "Nature, the art whereby God hath made and governs the world, is by the art of man, as in many other things, so in this also imitated, that it can make an artificial animal." Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 129.

<sup>56</sup> "[S]cience is the knowledge of consequences, and dependence of one fact upon another: by which, out of that we can presently do, we know how to do something else when we will, out of that we can presently do, we know how to do something else when we will, or the like another time; because when we see how anything comes about, upon what causes, and by what manner; when the like causes come into our power, we see how to make it produce the like effects." Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 146.

<sup>57</sup> "[N]atural, wherein he governeth as many of mankind a acknowledge his providence, by the natural dictates of right reason...." Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 213.

<sup>58</sup> "The laws of God therefore are none but the laws of nature...." "[W]hat are the Divine laws, or dictates of natural reason; which laws concern either the natural duties of one man to another, or the honor naturally due to our Divine Sovereign. The first are the same laws of nature, of which I have spoken already in the fourteenth and fifteenth chapters of this treatise; namely, equity, justice, mercy, humility, and the rest of the moral virtues." Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), pp. 214, 222, 225

<sup>59</sup> "And because he is a sovereign, he requireth obedience to all his own, that is, to all the civil laws; in which also are contained all the laws of nature...." "There can therefore be no contradiction between the laws of God, and the laws of a Christian commonwealth." "And when the civil sovereign is an infidel, every one of his own subjects that resisteth him, sinneth against the laws of God (for such are the laws of nature)...." Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), pp. 225-226.





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