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"A History of the Anglican Church—Part VIII:

An Essay on the Role of Christian Lawyers and Judges within the Secular State"©

By

Roderick O. Ford, Litt.D., D.D., J.D.

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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 nineteenth essay in this series: "A History of the Anglican Church—Part VIII."

PART VIII Anglican Church and the Canon Law (1300 to 1600 A.D.)

Introduction[1]

The Law of Christ-- as exemplified in the writings of St. Augustine of Hippo, St. Thomas Aquinas, and others-- looms large in the history of Anglo-American jurisprudence and legal education. It laid the foundation for the secular law of England and Western Europe through the Roman Catholic Church and the Roman canon law. The conspiracy of silence regarding this fact in American law schools denotes the antipathy towards religion in general and Christianity in particular. We have, in essence, removed the coveted *Juris Doctor* degree from its divine, Christian origins (i.e., the LL.D./ D.C.L. degrees from Cambridge and Oxford) and noble objectives; and we have constricted the *Juris Doctor* degree to a rather mundane, if not altogether sordid, idea of making money.[2] I realize that this

[1] This essay is submitted in honor of John E. Cribbett (property law) and Wayne R. La Fave (criminal law), two titans of American legal education. I had the privilege of studying law under their instruction at the University of Illinois College of Law during the Fall of 1991.

[2] I am told that Professor C.C. Langdell of Harvard University and others developed the Juris Doctor degree from a German counterpart in order to promote the scientific study of law during the late 19th Century, which was a period of laisse-faire corporate monopoly, imperial investing, and pseudo-scientific theories such as Social Darwinism. This was also the period of Pope Leo XIII and the resurgence of Neo-Thomism and Catholic legal thought. For reasons stated throughout this entire series of essays on the "Role of the Christian Lawyer and Judges within the Secular State," I would argue that the Anglican origins of Anglo-American law certainly overshadows, and takes

is a broad generalization, but it is not an unfair one. The fact is readily apparent that from a careful observation of the entire law school, bar review, and bar association curricula—we lawyers have effectively concealed the powerful presence of Jesus of Nazareth from American jurisprudence. And, despite broad admonitions within the legal profession to perform pro bono service, the systematic distortion of the Christian foundations of Anglo-American and western jurisprudence has grossly undermined legal services to the general public—particularly the poor. [3]

The American legal profession traces its roots to the canon law of the Roman Catholic Church, particularly to the English common law and the Inns of Court of England. For the English common law had been early and largely formulated and defined by England's Roman Catholic jurists who had for many centuries synthesized into the Roman civil and canon law divers and various customary laws from many racial and ethnic groups. The English common law reflected the spirit of the canon laws of the Anglican Church. In England, the universities at Oxford and Cambridge, while under the auspices of the Roman Catholic Church, later furnished the trained legal scholars and technicians for England's ecclesiastical courts and high levels of government service. The English common law, which was not taught at Oxford and Cambridge until the nineteenth century, continued to be developed through the various Inns of Court and Inns of Chancery. Meanwhile, the Roman civil law and the Catholic canon law formed the legal academic curriculum at Oxford and Cambridge Universities. The subject matter of this canon law was much more expansive than its modern-day

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precedents over, the 19th Century move toward the scientific study of law. The two movements—i.e., Neo-Thomism and the scientific analysis of law—were not necessarily incompatible or diametrically opposed to each other. And it is quite likely that both of these broad intellectual legal perspectives needed to counter-balance each other. The main objective of this series of essays on the "Role of Christian Lawyers and Judges within the Secular State," however, is to highlight to Christian foundations of Anglo-American jurisprudence and to create a respectable cultural and professional space within the secular, American legal profession for Christian legal theorists, lawyers, and judges. American law schools, bar associations, and practitioners should recognize the important fact that **the ancient Roman canon law may very well just be as significant as, if not more so, the English common law, as being the foundation of American jurisprudence.**

[3] The central message of Jesus of Nazareth was to love ye one another (John 15:12); to do justice and judgment (Genesis 18:18-19; Proverbs 21:1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3), and that message was sown into the English common law through the canon law of the Roman Catholic Church, the Church of England, the English Inns of Court, and the law faculty of Oxford and Cambridge universities.

counterpart, because, as previously mentioned in previous essays within this series, the Roman Church of England functioned as a major national government agency. As a consequence, the Roman canon law laid the foundation for modern-day constitutional law, human rights, criminal law and procedure, civil procedure, domestic relations, equity jurisprudence, property law, contract law, and corporate law. For this reason, the first university degrees were law degrees, and these degrees were doctoral degrees (i.e., the D.C.L. at Oxford and the LL.D. at Cambridge). These law degrees were ecclesiastical and also the first doctoral degrees ever to be granted, antedating even the doctor of philosophy degrees. *Hence, the law degree is itself the legacy of the Roman Catholic Church and the Christian faith*.

SUMMARY

The period 1300 to 1600 A.D. in British history witnessed the rise of world trade, mercantilism, nationalism, and secularization, but these phenomena occurred within the auspices of the Roman Church of England. The role and function of Roman clerics were more and more diminished within the secular courts; and the role of non-ordained, secular lawyers, who now served the wealthy merchants and nationalistic European kings or queens, significantly increased. In England, the founding of the Inns of Court occurred during this period. Notwithstanding, the Church of England's powerful grip upon the Inns of Court, the royal courts, the universities, and the ecclesiastical courts essentially meant that the Christian religion continued to dominate England's secular law and legal education.

The Church of England continued to administer the sacraments of the Roman Catholic Church even after the Reformation; and the English ecclesiastical courts continued to maintain an expansive jurisdiction over many areas of secular life through the canon law. This was a part of wider system of Catholic clerical administration of Western Europe. During the period 1100 to 1600, several European universities were founded, including Oxford and Cambridge Universities. These universities were founded largely to promote the study of law—civil and canon law. The first university degrees were law degrees, and these degrees were doctoral degrees (i.e., the D.C.L. at Oxford and the LL.D. at Cambridge). This was a most elite education; and the law degree was a most coveted qualification for high-level service in both church and state. Hence, the

law degree is itself the legacy of the Christian faith and the Roman Catholic Church.

A. The Canon Law

The Law of Moses is the foundation of the Christian faith (i.e., the Law of Christ) and, thereby, the canon law of the Roman Catholic Church. First, there "is insufficient evidence to support any notion that Jesus, in the manner of a Moses or a Muhammad, deliberately sought to legislate for a later community" and the "canonical Gospels also portray Jesus as a teacher of Torah—albeit without formal training (Mark 6:1-6)—whose interpretation of a righteousness that 'exceeds that of the Scribes and Pharisees' (Matthew 5:20) came into direct conflict with those experts in Jewish legal interpretation."[4] Second, Jesus "did not directly engage or challenge" the Roman Empire or Roman law. "What seems historically clearer is that aspects of Jesus' behavior with respect to Torah observance caused offense: his breaking of the Sabbath, his neglect of purity regulations, his non-payment of the temple-tax, his association with notorious flouters of Jewish piety, the 'sinners and tax-collectors,' his claim to a special relationship with God, and his prophetic gesture in the precincts of the Jerusalem Temple."[5]

After Christ's crucifixion, the early Christians eventually formed their own societies or associations (*ekklesiai*) which existed within the Roman Empire and within the context of Roman law and culture. "These are the words which I spake unto you," said Jesus, "that all things might be fulfilled, which were written in the law of Moses, and in the prophets, and in the psalms, concerning me."[6] Thus, the early Christian church had to define the nature of Christ; they had to define themselves; they had to establish rules for its members, as well as the criteria for excommunication from membership; and, they had to cope with the secular or non-

[4] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), pp. 56-57.

[5] Ibid., p. 57.
[6] Luke 24:44.

Christian Roman world which engulfed it. It is thus natural that the history of the Catholic Church is both the history of internal and external conflict. From the beginning, Church law was prone to run afoul of the Roman civil law; sometimes, Christian persecution was the result. Thus, from the very beginning early Christianity experienced "church-state" tensions; and early church leaders had to take account of the secular law.

Figure 1. Primitive Christianity vs. Roman Empire (Church- State Conflict, c. 33 to 325 AD)

Primitive Christianity (Church)	**Roman Empire (State)**
The Gospels (Church customs) ----->	<----- Civil Law (local customs)

When the Roman Empire legalized and adopted Christianity as its official religion during the 4th century AD, Roman law (and perhaps even pagan Roman religious structures and liturgical practices) was incorporated into Church law, and vice versa; the pagan Roman civil law became Christian (see, e.g., the *Corpus Juris Civilis*, or Code of Justinian); and Roman law became the official law of the Roman Catholic Church. For this reason, during later centuries, church lawyers were required to study both the canon law and civil law together.

When formulating the canon law, however, it was thus natural that the early church had to take into account three forms of law: Torah (ancient Jewish law); the law of ancient Rome; and the Gospels of Christ. The former Jewish Pharisee and Roman citizen Apostle Paul thus appeared to be the most qualified of all of the early apostles to synthesize these conflicting laws into a new synthesis that would form the basis for Christian church law.[7] Paul's writings were perhaps the first to lay the foundation for Church law; later, the writings of other church leaders were likewise engaged the original sources of the Old Testament, Greco-Roman

[7] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), pp. 59-67.

philosophy and law, and the New Testament in order to further contribute to the development of Church law. Their goal was always to delineate between good and bad behavior and to determine what Christian normative standards, conduct, and customs should be—hence, the origins of the canon law.

For several centuries, the Roman Catholic Church (and indeed the Eastern Orthodox and Oriental Churches) carried out the important work of defining and establishing the Christian faith and the role of the church within the larger secular or non-Christian world order. The result of their customary norms or canons laid the foundations for Christian law, equity and jurisprudence throughout the empire:

> The law of the church is called the canon law. The term itself comes from a Greek word that means a measuring rod, taken figuratively in the West to be a measure of right conduct. In the broadest sense, canons are intended to lead men and women to act justly in the world so that they may ultimately stand before God unashamed…. The canon law has thus always been connected with the 'internal forum' of conscience…. By design, the canons create conditions that promote harmony within the church and freedom from interference from without. But this has never been their sole aim. The canon law has also aimed higher, assuming to provide salutary rules for the lives of ordinary Christians and to exert an influence on the content of temporal law…. Nothing less than leading men and women toward God and establishing a Christian social order."[8]

[8] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 71.

Hence, the Roman canon law evolved over several centuries, as follows:

Year	**Historical Development of the Roman Canon Law up to 1600 A.D.[9]**
Circa 100 A.D.	*Didache*. This was a collection of instructions originating in Syria and Palestine pertaining to liturgy and morality. "It became the basis for many later collections of laws for the early church. It contained rules about baptism, eucharist, the organization of the Christian community, and the selection and consecration of church officials."[10]
Circa 218 A.D.	*Traditio Apostolica*. "It contained rules concerning the consecration of bishops, priests, and deacons as well as regulations for confessors, catechumens, lectors, and other diverse prescriptions concerning life in the community of believers."[11]
Circa 250 A.D.	Didascalia Apostolorum. This is "one of the first attempts at assembling a body of canon law, touching on many important aspects of community life, including: advice for widows and married couples, fasting, the manner of celebrating eucharist."[12]

[9] In 1917, the *Code of the Canon Law* was promulgated. "This was an important work of Pope Pius X (1835-1914) in which he attempted to codify the vast canonical tradition into a coherent whole. The actual work was done by a commission of cardinals headed by Cardinal Pietro Gasparri. After consultation with the bishops and major superiors throughout the world, the code was promulgated by Pope Benedict XV, May 27, 1917. A revision of the *Code of Canon Law* was inaugurated during the pontificate of Pope John XXIII, who announced in 1959 his desire to update the law of the church at the same time he announced an ecumenical council (Vatican II) and a synod for the city of Rome. Pope Paul VI determined that the work of the code commission itself would not begin until the conclusion of the Second Vatican Council. The work was finally completed under the pontificate of John Paul II when the Code was promulgated, January 25, 1983. In October of 1990, Pope John Paul II was to promulgate the Code of Canons of the Eastern Churches in order that the proper disciplines of the Eastern Churches be maintained and fostered." Kevin E. McKenna, *A Concise Guide to Canon Law: A Practical Handbook for Pastoral Ministers* (Notre Dame, IN: Ave Maria Press, Inc., 2000), pp. 18-19.

[10] Ibid., p. 15.

[11] Ibid.

[12] Ibid., p. 16.

Circa 300 A.D.	Canones Ecclesiastici Apostolorum. This is a "collection of thirty chapters written in Greek, dealing with both moral norms and disciplinary regulations."[13]
325 A.D.	Council of Nicea. This was "(the first ecumenical council)—gathering of representatives of the entire church convened for doctrinal and disciplinary consolidation, fixing in place some long-standing practices such as the election of bishops, structural organization (e.g., dioceses), and the readmission of schismatics into the church."[14]
Circa late 300s A.D.	*Syntagma Canonum*. This is a "collection of canons from councils of the church, assembled at Antioch and completed in the fifth century."[15]
Circa 500 A.D.	*Liber Decretorum*. This is "a canonical collection by a monk named Dennis, consisting of 50 apostolic canons, 350 canons from various councils of the church, and 38 decrees of various popes. This was a major collection of laws utilized throughout the church for the next several centuries."[16]
Circa 550 A.D.	*Collectio 50 Titulorum*. This is a "collection by an Antiochene lawyer Joannes Scholasticus, who brought together under about fifty titles the law of the church current at that time."[17]
774 A.D.	*Dionysiana-Hadriana*. This is a "collection of laws presented by Pope Adrian I to Charlemagne, a model code

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid., pp. 16-17.
[17] Ibid., p. 17.

	based on the *Dionysiana* of Dionysius Exiguus."[18]
Circa 800 A.D.	*Dacheriana*. This is "a French collection of an anonymous priest, of great use during the Carolingian reform, touching on such subjects as penitential discipline and procedural law."[19]
806-882 A.D.	Hincmar, archbishop of Rheims, made significant contributions to the science of canon law.[20]
1008-1022 A.D.	Burchard, bishop of Worms, issued his *Decretum*, which was an effort to reform the clergy and to increase the power of bishops.[21]
1091- 1116 A.D.	Ivo, archbishop of Chartres, fostered reform and respect for papal primacy with the publications of *Tripartita*, *Decretum*, and *Panormia*.
Circa 1140 A.D.	John Gratian published the *Concordantia Discordantium, Canonum* (A History of Discordant Canons), or *Decretum*. "Up until this time there was great confusion in the area of law due to the vast variety of diffuse collections. Gratian, a monk teaching at the University of Bologna, undertook to harmonize the various collections into a coherent whole, similar to efforts that were currently underway for a comparable civil law corpus. His efforts bore fruit in his *Decretum*, which became an enormously important reference work for canonists."[22]
1234 A.D.	*Decretals of Gregory IX*. This was a "collection assembled to include papal

[18] Ibid., p. 17.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.

	decretals and conciliar canons issued since the *Decretum*, assembled by St. Raymond of Penafort. Since this was formally promulgated by the pope it became an authentic collection of laws for the entire church."[23]
1298 A.D.	*Liber Sextus* (Book Six). "(named thus since it was intended to supplement the five books that made up the Decretals of Gregory IX) another collection of laws, this time by Boniface VIII which included his own decretals and those of his predecessors since Gregory IX, as well as the canons of the councils of Lyons (1245 and 1274)."[24]
1500 A.D.	*Corpus Iuris Canonici* (Body of Canon Law). This is a "compilation by John Chappuis and Vitale de Thebis of the major collections of law up until that point, including Gratian's Decretum, the Decretals of Gregory IX, and other collections. It remained an important source of law for the church up until the promulgation of the first code of canon law (1917)."[25]
1545-1563 A.D.	Council of Trent. This important conference "attempted to give a canonical as well as a doctrinal basis for the internal reform of the church which included the duties and obligations, criminal proceedings, and penitential disciplines, and synods."[26]

We should here pause to reflect upon early Church's emerging understanding of who Jesus of Nazareth really was: the *Logos* of ancient Egyptian,

[23] Ibid., p. 18.
[24] Ibid.
[25] Ibid.
[26] Ibid.

ancient Hebrew, and Greco-Roman philosophy.[27] The ideas of the "Word" and an animating spiritual intermediary between God and man first appeared in the Egyptian *Book of the Dead*[28], and spread through the centuries to other ancient civilizations and religions, as reflected in the writings of the Hellenized Jewish philosopher Philo of Alexandria (20 B.C.—50 A.D.) This essentially meant that to the Christian world, Jesus Christ was the incarnation of the divine word and natural law; indeed, he was the personification of equity and all sacred and secular law.[29] The result was that when the Catholic Church incorporated Roman civil law into the canon law of the church, the Law of Christ was considered supreme over the secular Roman civil law.

Figure 2. Hierarchy of Law after 325 A.D. (Roman Empire)

Christian Roman Empire: Hierarchy of Law
1. The Law of Christ (the Old and New Testament; Roman Canon Law; Natural Law and Equity)
2. Roman Civil Law (Secular Law)

This hierarchy of law, which reflected the Catholic ideal and was eventually refined in the writings of St. Thomas Aquinas, became the legal standard for western law and jurisprudence for the next thirteen centuries.

B. The Ecclesiastical Law Degree

As we have seen through previous essays in this series, the Church leaders became very philosophical, scholarly, and cosmopolitan in their efforts to establish the church and to defend the Christian faith. This was possible largely because Britain had been a province of the Roman Empire; and, within the Roman Empire lay the intellectual treasures of many diverse cultures. First, Egyptian or North

[27] Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL: Xlibris, 2015), pp. 428-430.

[28] See, also, W. M. Flinders Petrie, *The Religion of Ancient Egypt* (London, Eng.: Archibald Constable & Co. LTD, 1906), p. 67-69 ("Of the formation of the earth there were two views. (1) That it had been brought into being by the word of a god, who when he uttered any name caused the object thereby to exist… The creation by the word is the most elevated idea, and is parallel to the creation in Genesis.")

[29] Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL: Xlibris, 2015), pp. 428-430.

African monasticism, from which the Western Church developed its first monasteries[30], cathedral schools, and universities, laid the foundation for Christian introspection and intellectual reflection. Of all the ancient Roman provinces from which the Catholic Church absorbed this ancient learning and culture, the city of Alexandria in Egypt was most important:

> [A]lmost from its inception, Alexandria was also an unrivalled seat of learning and high culture. In the royal quarter of the city—the Brucheium—the first two Ptolemaic kings had established the grand 'Museum' (dedicated to the study of all the arts, humane and scientific) and the Great Library, a vast repository of texts from every land and culture known to Hellenistic civilization. The Library disappeared before the Christian period, despite a modern legend to the contrary, but the tradition of scholarship it inaugurated survived into the early seventh century AD. For many centuries, the greatest scholars in every tradition were often to be found in Alexandria; and at the higher levels of Alexandrian society, pagans, Jews and Christians associated freely. They pursued their studies in philosophy, literature, the sciences and rhetoric, frequently at one another's feet…. It was in Alexandria, also, that the first Christian institution of higher learning in the empire was established, midway through the second century, by the philosopher Pantaenus (d. before 200), a convert to Christianity from Stoicism. After Pantaenus, this 'Catechetical School of Alexandria' was led first by Clement of Alexandria (c. 150- c. 213) and then by the great Origen Adamantius (c. 185- c254),

[30] See, also, W. M. Flinders Petrie, *The Religion of Ancient Egypt* (London, Eng.: Archibald Constable & Co. LTD, 1906), pp. 90-93.("This system of monasticism continued, until Pachomios, a monk of Serapis in Upper Egypt, became the first Christian monk in the reign of Constantine. Quickly imitated in Syria, Asia Minor, Gaul, and other provinces, as well as in Italy itself, the system passed into a fundamental position in medieval Christianity, and the reverence of mankind has been for fifteen hundred years bestowed on an Egyptian institution.")

> two men of immense erudition, who made free use in their teaching of Greek philosphy and Greek methods of textual interpretation. Origen, in fact, required his students to regard no path of wisdom as forbidden to them, and to apply themselves to the study not only of subjects as geometry and astronomy, but of all the religious and philosophical texts of pagan culture.[31]

From this Alexandrian system, the Roman Catholic Church early produced trained and scholarly churchmen for its leadership during the first ten centuries of its existence. Thence came the Catholic universities of the twelfth and thirteenth centuries.[32] It should here be noted that the study of "Old and New Testament

[31] David Bentley Hart, *The Story of Christianity: An Illustrated History of 2000 Years of the Christian Faith* (New York, NY: Metro Books, 2011), pp. 45-46.

[32] "Perhaps no accomplishment of the High Middle Ages was ultimately more significant for the later development of Western civilization than the cultivation of a new dedication to scholarship, not only in the abstract disciplines of philosophy and theology, but in the humane, natural, physical and theorectical sciences. From at least the time when the Cathedral School of Chartres reached its apogee, in the 11th and 12th centuries, the devotion of Western scholarship to 'natural philosophy' was pronounced. The bishop of Lincoln Robert Grosseteste (c. 1175-1253), for instance, was the first known expositor of a systematic method for scientific experimentation. St. Albert the Great (c. 1200-80), the insatiably curious student of all disciplines, might justly be called the father of biological field research. He also undertook studies in mechanical physics, studying the velocity of falling bodies and the centres of gravity of objects; and he insisted that empirical experience—rather than metaphysical speculation—was the only sure source of true scientific knowledge.

"Throughout the course of the 13th and 14th centuries, moreover, a number of Christian scholars began developing mathematical models by which to understand the laws of physical motion. Early in the 13th century, Gerard of Brussels ventured to measure the motion of physical bodies without reference to any receivfed causal theories. After him, a succession of scholars in Oxford such as William of Ockham (c. 1285- c. 1348), Walter Burleigh (1275- after 1343), Thomas Bradwardine (c.1290- 1349), William Heytesbury (fl. 1335), Richard Swineshead (fl. 1348), and John Dumbleton (d.c. 1349), while others in Paris such as Jean Buridan (1300-58), Nicholas Oresme (c. 1320-82) and Albert of Saxony (c. 1316-90) pursued the same course with ever greater sophistication.

"Buridan, for instance broke with several of the (erroneous) principles of Aristotelian science, developed a theory of 'impetus' and even ventured the speculation that the Earth might revolve on its axis. Oresme put forward the same hypothesis, fortified by even better arguments; his studies of physical movement allowed him to devise geometric models of such things as constant and accelerating motions, and also allowed him to answer objections from his critics to the theory of terrestrial rotation.

"None of these studies would have advanced very far, of course, had it not been for the institution of the Medieval university. The first university established in Christendom—or perhaps in the world—was in Constantinople (849). The first true university in Western Europe, though, was probably that of Bologna in northern Italy, founded late in

Law," together with the Christian Byzantium Civil Law, formed the foundation of Medieval academic and legal scholarship.[33] According to Wikipedia on-line, "[t]he first academic degrees were all law degrees- and the first law degrees were doctorates. The foundations of the first universities in Europe were the glossators of the 11th century, which were schools of law.[34]

"The first European university, that of Bologna, was founded as a school of law by four famous [Roman Catholic] legal scholars in the 12th century who were students of the glossator school in that city. It is from this history that it is said that the first academic title of doctor applied to scholars of law.[35]

"The degree and title were not applied to scholars of other disciplines until the 13th century. And at the University of Bologna from its founding in the 12th century until the end of the 20th century the only degree conferred was the

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the 11th century. And the first major universities in the West were the late 12th-century universities of Paris and Oxford. Both taught theology and philosophy, law (ecclesiastical and secular) and the liberal arts. In the 13th century, the most notable foundations were those of Cambridge, Salmanca, Montpellier and Padua; and, in the 14th century, those of Rome, Florence, Prague, Vienna and Heidelberg.

"Universities were principally ecclesiastical institutions, and dependent upon popes and princes for their charters…. And, since they all shared a common language—Latin—together they constituted a unified European intellectual community, transcending national boundaries." David Bentley Hart, *The Story of Christianity: An Illustrated History of 2000 Years of the Christian Faith* (New York, NY: Metro Books, 2011), pp. 155-156.

[33] Much of this scholarship was carried out by the "glossators." "The scholars of the 11th and 12th century legal schools in Italy, France and Germany are identified as **glossators** in a specific sense. They studied Roman Law based on the *Digestae*, the *Codex* of Justinian, the *Authenticae* (an abridged Latin translation of selected constitutions of Justinian, promulgated in Greek after the enactment of the *Codex* and therefore called *Novellae*), and his law manual, the *Institutiones Iustiniani*, compiled together in the Corpus Iuris Civilis. (This title is itself only a sixteenth-century printers' invention.) Their work transformed the inherited ancient texts into a living tradition of Medieval Roman Law. The glossators conducted detailed text studies that resulted in collections of explanations. For their work they used a method of study unknown to the Romans themselves, insisting that contradictions in the legal material were only apparent. They tried to harmonize the sources in the conviction that for every legal question only one binding rule exists. Thus they approached these legal sources in a dialectical way, which is a characteristic of medieval scholasticism. They sometimes needed to invent new concepts not found in Roman law, such as half-proof (evidence short of full proof but of some force, such as a single witness). In other medieval disciplines, for example theology and philosophy, glosses were also made on the main authoritative texts." https://en.wikipedia.org/wiki/Glossator.

[34] https://en.wikipedia.org/wiki/Law_degree.

[35] Ibid

doctorate, usually earned after five years of intensive study after secondary school. The rising of the doctor of philosophy to its present level is a modern novelty. At its origins, a doctorate was simply a qualification for a guild—that of teaching law."[36]

"From the twelfth to fifteenth centuries, the Catholic Church claimed a vast new jurisdiction—literally the power 'to speak the law' (jus dicere). The church claimed personal jurisdiction over clerics, pilgrims, students, the poor, heretics, Jews, and Muslims. It claimed subject matter jurisdiction over doctrine and liturgy; ecclesiastical property, polity, and patronage; sex, marriage and family life; education, charity, and inheritance; oral promises, oaths, and various contracts; and all manner of moral, ideological, and sexual crimes. The church also claimed temporal jurisdiction over subjects and persons that also fell within the concurrent jurisdiction of one or more civil authorities."[37]

Medieval writers advanced four main arguments to support church jurisdiction.

First, the church had the right to administer Christ's seven sacraments. The Church held that Christ himself was at work in the sacraments.[38] The mysteries of Christ's life were believed to be "the foundations of what he would… dispense in the sacraments, through the ministers of his Church."[39] "Thus the Church…discerned over the centuries that among liturgical celebrations there are seven that are, in the strict sense of the terms, sacraments instituted by the Lord."[40] These Seven Sacraments are Baptism, Confirmation or Chrismation, Eucharist, Penance, Anointing the Sick, Holy Orders, and Matrimony. Furthermore, the Church held that the Seven Sacraments were "'powers that come forth' from the Body of Christ, which is ever-living and life-giving. They are actions of the Holy

[36] Ibid.
[37] Ibid., p. 10.
[38] Ibid., p. 319
[39] Catechism of the Catholic Church, p. 316.
[40] Catechism of the Catholic Church, p. 316.

Spirit at work in his Body, the Church. They are 'the masterworks of God' in the new and everlasting covenant."[41] The sacraments expressed the Catholic faith.[42]

For this reason, by the fifteenth century, the Severn Sacraments formed the basis for *whole bodies of sophisticated church law* (i.e., "canon law"). [43]

For instance, the *sacrament of marriage* supported the canon law of sex, marriage, and family life.[44]

The *sacrament of penance* supported the canon law of crimes and torts (delicts) and, indirectly, the canon law of contracts, oaths, charity, and inheritance.[45]

The *sacrament of penance* and *extreme unction* also supported a sophisticated canon law of charity and poor relief, and a vast network of church-based guilds, foundations, hospitals, and other institutions that served the personae *miserabiles* of Western society.[46]

The *sacrament of ordination* became the foundation for a refined canon law of corporate rights and duties of the clergy and monastics, and an intricate network of corporations and associations that they formed.

The *sacraments of baptism* and *confirmation* supported a new constitutional law of natural rights and duties of Christian believers.

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[41] Ibid.
[42] Ibid., p. 320.
[43] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), pp. 10-11.
[44] Ibid.
[45] Ibid.
[46] Ibid.

C. Jurisdiction and Legacy of the Roman Canon Law

As a consequence, the Catholic Churches' administration of the Seven Sacraments left an indelible mark upon Western and Anglo-American jurisprudence.

Law Area	**Catholic Churches' Impact**
Natural Rights (Constitutional Law)	Synthesized Greco-Roman ideas of natural rights into Judea-Christian concepts.
Natural Law (Constitutional Law)	Synthesized Greco-Roman ideas of natural rights into Judea-Christian concepts.
Human Rights[47]	"The Bible commands us to love all

[47] According Thomas Woods, Spanish Catholic Theologians developed international law and the law of human rights during the sixteenth century as a direct result of the genocidal crisis that erupted among the Native Americans in the New World. "Reports of Spanish mistreatment of New World natives promoted a severe crisis of conscience among significant sectors of the Spanish population in the sixteenth century, not least among philosophers and theologians…. It was in the course of that philosophical reflection that Spanish theologians achieved something rather substantial: the beginnings of modern international law. Thus the controversy surrounding the natives of America provided an opportunity for the elucidation of general principles that states were morally bound to observe in their interactions with each other….[T]hese Spanish theologians believed with Saint Paul that the natural law was written on the human heart, and they therefore possessed a basis on which to establish international rules of conduct that could morally bind even those who had never heard (or had actually rejected) the Gospel. Such peoples were still thought to possess the basic sense of right and wrong, summed in the Ten Commandments and the Golden Rule—both of which some theologians all but identified with the natural law itself—from which international obligations could be derived…. This point served as 'the basis of a theory of the dignity of man and the gulf between him and the rest of the animal and created world.' One scholar concludes that this view of the natural law as something common to all human beings, and to human beings alone, led 'to a firm belief that the Indians of the New World, as well as other pagans, had natural rights of their own, the infringement of which no superior civilization or even superior religion could justify….' Among the most illustrious of these thinkers was Father Francisco de Vitoria. In the course of his own critique of Spanish policy, Vitoria laid the groundwork for modern international law theory, and for that reason is sometimes called 'the father of international law,' a man who 'propose[d] for the first time international law in modern times.' With his follow theological jurists, Vitoria 'defended the doctrine that all men are equally free; on the basis of natural liberty, they proclaimed their right to life, to culture, and to property.' In support of his assertions, Vitoria drew from both Scripture and reason. In so doing he 'furnished the world of his day with its first masterpiece on the law of nations in peace as well as in war.' It was a Catholic priest, therefore, who brought forth the first grand treatise on the law of nations—no small accomplishment…. Vitoria borrowed two important principles from Saint Thomas Aquinas: 1) the divine law, which proceeds from grace, does not annul human law, which proceeds from natural reason; and 2) those things that are natural to man are neither to be taken from nor given to him on account of sin. Surely no Catholic would argue that it is a less serious crime to murder a non-baptized person than a baptized on." Thomas E. Woods, Jr., *How The Catholic Church Built Western Civilization* (Washington, D.C.: Regnery Publishing, Inc., 2005), pp. 135-153.

	others as ourselves, and this universal love command is a critical foundation of our modern understanding of human dignity and human rights."[48]
Criminal Law and Punishment	"Christians are called to love even their enemies… this startling ethic must work to transform our understanding of punishment of one such enemy, the criminal."[49]
Conscientious Objection	Originated.
Religious Liberty	Synthesized Greco-Roman ideas of natural rights into Judea-Christian concepts.
Criminal & Civil Procedure	Originated.
Property Law	"One critical use of property for Christians… is to relieve the plight of the poor and needy, and Christians over the centuries have elaborated structures and programs to discharge their obligations of charity and love to the 'least' in society."[50]
Marriage Contract	"An institution of such critical importance in the Western tradition that the church has elevated it to a covenant or sacrament as well"[51]

[48] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 4.
[49] Ibid.
[50] Ibid.
[51] Ibid.

Corporate Law	"[T]he church chartered and Christians ran many of the business associations of the West, and defined a good bit of the law of associations that governed these institutions."[52]
Equity Jurisprudence	Synthesized Greco-Roman ideas of natural rights into Judea-Christian concepts.

Second, Catholics claimed that Christ had vested St. Peter with authority to lead the Church in the present world, and that this authority was passed along, through apostolic succession, to the pope. This meant that the pope possessed "a key of knowledge to discern God's word and will, and a key of power to implement and enforce that word and will throughout the church."[53]

Third, Catholics also claimed that the Church's jurisdiction was superior to the secular jurisdiction under a "two swords" theory.[54] This theory held that the pope was the "vicar of Christ" on earth, holding both the spiritual and the temporal sword. "The pope and lower clergy wielded the spiritual sword, in part by establishing canon law rules for the governance of all Christendom. The clergy, however, were too holy to wield the temporal sword. They thus delegated this temporal sword to those authorities below the spiritual realm—emperors, kings, dukes, and their civil retinues, who held their swords 'of' and 'for' the church."[55]

Fourth, the "two-swords theory" essentially meant that the law of the Church (i.e., the law of Christ) was far superior to secular, human law. "[M]edieval writers

[52] Ibid., p. 4.
[53] Ibid. p. 11.
[54] Ibid., p. 12.
[55] Ibid.

argued that the church's canon law was the true source of Christian equity—'the mother of exceptions,' 'the epitome of the law of love,' and 'the mother of justice,' as they variously called it. As the mother of exceptions, canon law was flexible, reasonable, and fair, capable either of bending the rigor of a rule in an individual case through dispensations and injunctions, or punctiliously insisting on the letter of an agreement through orders of specific performance or reformation of documents. As the epitome of love, canon law afforded special care for the disadvantaged—widows, orphans, the poor, the handicapped, abused wives, neglected children, maltreated servants, and the like. It provided them with standing to press claims in church courts, competence to testify against their superiors without their permission, methods to gain succor and shelter from abuse and want, opportunities to pursue pious and protected careers in the cloister. As the mother of justice, canon law provided a method whereby the individual believer could be reconciled to God, neighbor, and self at once. Church courts treated both the legality and the morality of the conflicts before them. Their remedies enabled litigants to become righteous and just not only in their relationships with opposing parties and the rest of the community, but also in their relationship to God. This was one reason for the enormous popularity and success of the church courts in much of medieval Christendom. Church courts treated both the legality and the morality of the conflicts before them."[56]

"By the later twelfth century, church officials emerged as both the new legislators and new judges of Western Christendom. Church authorities issued a steady stream of new canon laws through papal decretals and bulls, conciliar and synodical decrees and edicts, and more discrete orders by local bishops and abbots. Church courts adjudicated cases in accordance with the substantive and procedural rules of the canon law. Periodically, the pope or a strong bishop would deploy itinerant ecclesiastical judges, called inquisitors, with original jurisdiction over discrete questions that would normally lie within the competence of the church

[56] Ibid., pp. 11-12.

courts. The pope also sent out his legates who could exercise a variety of judicial and administrative powers in the name of the pope. Cases could be appealed up the hierarchy of church courts, ultimately to the papal rota. Cases raising novel questions could be referred to distinguished canonists or law faculties called assesors, whose learned opinions (*consila*) on the questions were often taken by the church court as edifying if not binding."[57]

"Thousands of legal and ethical teachings drawn from the apostolic constitutions, patristic writings, and Christianized Roman law of the first millennium were collated and harmonized in the famous *Decretum Gratiani* (c. 1140), the anchor text of medieval canon law. The Decretum was then heavily supplemented by collections of papal and conciliar legislations and juridical glosses and commentaries. All these texts were later integrated in the five-volume *Corpus Iuris Canonici* published in the 1580s, and in hundreds of important canon law texts on discrete legal topics that emerged with alacrity after the invention of the printing press in the early fifteenth century."[58]

D. The University and the Canon Law

The old myth is that the Catholic Church stifled learning during the Medieval period. However, the Catholic Church, as the direct heir of the Roman Empire, had laid claim to the rich intellectual history of the Alexandrian and North African church; for the city of Alexandria continued to pour talented and erudite scholarship into the Catholic Church and other Orthodox Churches.[59] With these models, the Catholic Church created the Western university system during the Medieval period.[60] This system developed around "Cathedral Schools," which

[57] Ibid, pp. 12-13.
[58] Ibid. p. 13.
[59] See, also, W. M. Flinders Petrie, *The Religion of Ancient Egypt* (London, Eng.: Archibald Constable & Co. LTD, 1906), pp. 90-93.
[60] http://www.cdu.edu/content/10-oldest-colleges.html. See, also, Thomas E. Woods, Jr., *How The Catholic Church Built Western Civilization* (Washington, D.C.: Regnery Publishing, Inc., 2005), pp. 47-66; and David Bentley Hart, *The Story of Christianity: An Illustrated History of 2000 Years of the Christian Faith* (New York, NY: Metro Books, 2011), pp. 155-156.

were created to teach theology and canon law to the local clergy. Eventually, these schools developed into universities—which taught philosophy, theology, law, and the liberal arts—and which owe their origins to the Roman Catholic Church.

Importantly, during this era, a school could only start granting degrees once it had been recognized and approved by the Pope, essentially a pontifical accreditation.[61] This attests to the Christian influence upon Western education and learning. The first European universities were founded under the auspices of the Roman Catholic Church, as follows:

University	**Year Founded**	**Year Chartered by the Pope**
University of Bologna	1088	1189 chartered by Pope Clement III
University of Paris	1045	1215 charted by Pope Innocent III
Univ. of Oxford	**1096**	**1254 chartered by Pope Innocent IV**
University of Salamanca	1134	1255 chartered by Pope Alexander IV
Univ. of Cambridge	**1209**	**1318 charted by Pope John Paul XXII**
University of Siena	1240	1252 charted by Pope Innocent IV
University of Valladolid	1241	1346 chartered by Pope Clement VI
Univ. of Macerata	1209 founded by Pope Nicholas IV	
The Sapienza (The	1303 founded by	

[61] Ibid.

Univ. of Rome)	Pope Boniface VIII	
The Univ. of Perugia	1308 founded by Pope Clement V	

E. Oxford and Cambridge Universities

It is thus amongst this backdrop of the Roman Catholic Church's establishment or chartering of European universities that we must assess the Catholic influence upon the legal studies at Oxford University and Cambridge University during the period 1300 to 1600. The Inns of Court existed alongside the law faculties of Oxford and Cambridge; but the common law was not taught at the law departments of Oxford and Cambridge during this period—only the Roman civil law and canon law taught. British legal scholars were "doctors of the law," but they were typically "high-church" officials, whose primary interests lay with Church law and administration, including the ecclesiastical courts and the chancery court.

Taking his cue from the German Reformation, King Henry VIII severed all legal and political ties with Roman Catholic Church, and, through the Supremacy Act (1534), declared himself to be the "Supreme Head" of the Church and Commonwealth of England, as well as the Defender of the Faith. Thereafter, the Tudor monarchs (particularly Queen Elizabeth I), established a uniform doctrine and liturgy; issued the Book of Common Prayer (1559); the Thirty-Nine Articles (1576); and, under a Stuart monarch, the Authorized (King James) Version of the Bible (1611).

The teaching of Roman canon law at the Universities of Oxford and Cambridge was abrogated by Henry VIII during the early 1500s. Thereafter, lawyers in the Anglican ecclesiastical courts were trained in Christianized Roman civil law and Church of England's own canon law, receiving a Doctor of Civil Law

(D.C.L.) degree from Oxford, or a Doctor of Laws (LL.D.) degree from Cambridge.

University	**Law Degree Conferred**[62]
Oxford	Doctor of Civil Law (D.C.L.)—the "C.L." denotes the Christianized Roman civil law (i.e., the Code of Justinian; the *Corpus Juris Civilis*) within the nomenclature of this degree.
Cambridge	Doctor of Laws (LL.D.)—"civil law" and "canon law" denotes the "LL." within the nomenclature of this degree.

It should be pointed out here, as previously stated, that after the Church of England severed its papal ties, it adopted much of the old Roman canon law into is liturgy and administration. Henry VIII had left open the option of amending the Roman canon law, but for all practical purposes the Church of England left most of it intact.

The new and independent Church of England assumed jurisdiction over poor relief, education, and other activities that had previously been carried on under Roman Catholic auspices, and dissolved the many monasteries, foundations, and guilds through which the church had administered its social ministry and welfare. This meant that the English ecclesiastical courts continued to operate much as they had under Catholic auspices. These ecclesiastical courts decided many matters such as disputes relating to marriage, divorce, wills, and defamation, and they

[62] The American *Juris Doctor* degree bears none of its obvious ecclesiastical or Christian nomenclatures and is thus considered a purely secular law degree that is based upon the "scientific" study and application of general law. Nevertheless, as the previous essays in this series show, the *Juris Doctor* degree should be conceptualized as an extraction of the older D.C.L. and LL.D. degrees, because the *Juris Doctor* degree is founded upon the Christianized English common law (i.e., the Inns of Court) and the Christianized Roman civil law (i.e., Oxford, Cambridge, etc.).

maintained jurisdiction over certain church-related matters (e.g. discipline of clergy, alteration of church property, and issues related to churchyards).

Additionally, membership status within the Church of England was also rendered a condition for citizenship status, public office, and qualification to work in professions such as law, within the Commonwealth of England. The secular law of England thus explicitly incorporated the Christian religion into its corpus and remained largely "Catholic" in substance. In the Church of England, the ecclesiastical courts that formerly decided many matters such as disputes relating to marriage, divorce, wills, and defamation, still have jurisdiction of certain church-related matters (e.g. discipline of clergy, alteration of church property, and issues related to churchyards). These courts were considered "royal" courts.

As previously mentioned, the Church of England and its ecclesiastical courts remained largely "Catholic" in substance. Indeed, despite "intermittent waves of revolt, restoration, and constitutional reform, much English law remained rather strikingly traditional in the early modern period. Unlike other Protestant lands, England did not pass comprehensive new legal reformations that reflected and implemented its new Protestant faith. Armed with the conservative legal syntheses of Richard Hooker (1553-1600) and others, England chose to maintain a good deal of its traditional medieval common law and canon law, which was only gradually reformed over the centuries by piecemeal parliamentary statutes and judicial precedents."[63]

"Moreover, after divesting the [Roman Catholic] church of its lands and jurisdiction during the early Reformation era, Queen Elizabeth I (1533- 1603) and her successors turned anew to established Anglican church institutions to help administer the English laws of charity, education, domestic relations, and more."[64]

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[63] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 20.
[64] Ibid.

CONCLUSION

The American juris doctor or doctor of jurisprudence degree traces its roots to the ecclesiastical and Roman Catholic law degrees of Western Europe. Just as the English Inns of Court are the home of the English Common Law, the Catholic-chartered universities of England and Western Europe are the homes of the doctor of law degree. In England, Oxford and Cambridge Universities awarded the first doctor of law degrees for ecclesiastical and public service. These universities were tied to a larger system that included the English Inns of Court, the royal courts, the ecclesiastical courts, and the courts of chancery. Their graduates were the most senior jurists in the British Commonwealth, for they held the doctorate law degrees of D.C.L. or LL.D. and, through their monopoly over all of the law faculty professorships and most of the judgeships, through the Serjeants Inn, cast a large shadow over the British legal system.

We are told that Professor C.C. Langdell of Harvard University and others developed the Juris Doctor degree from a German counterpart in order to promote the scientific study of law during the late 19th century, which was a period of laisse-faire corporate monopoly, imperial investing, and pseudo-scientific theories such as Social Darwinism. Importantly, the late 19th century was also the period of Pope Leo XIII and the resurgence of Neo-Thomism and Catholic legal thought. For reasons stated throughout this entire series of essays on the "Role of the Christian Lawyer and Judges within the Secular State," I would argue that the Anglican and Roman Catholic origins of Anglo-American jurisprudence certainly overshadows, and takes precedents over, this 19th century sift in American legal thinking toward the scientific study of law. In any event, these two broad movements—i.e., Neo-Thomism and the scientific analysis of law—were not necessarily incompatible or diametrically opposed to each other. And it is quite likely that both of these broad intellectual legal perspectives needed to counter-balance each other. The main objective of this series of essays on the "Role of Christian Lawyers and Judges within the Secular State," however, is to highlight the Christian foundations of

Anglo-American jurisprudence and to create a respectable cultural and professional space within the secular American legal profession for Christian legal theorists, lawyers, and judges. American law schools, bar associations, and practitioners should recognize the important fact that *the ancient Roman canon law may very well be just as significant as-- if not more significant than-- the English common law, as being the foundation of American jurisprudence.*

Importantly, all of England's legal institutions were arms of the Church of England; they were guided by her canon law; and together they developed the comprehensive body of Christian jurisprudence, such as the English common law and equity, which comprised the British legal system. This system, in both theory and practice, reflected the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgment (Genesis 18:18-19; Proverbs 21:1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

THE END

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