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"A History of the Anglican Church—Part IX:
An Essay on the Role of Christian Lawyers and Judges within the Secular State"©

By

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TABLE OF CONTENTS

II. Pre-Christian Era: Law of Contracts, Pre-history to 1000 A.D.

A. Law of Contracts: Primitive and Germanic Tribal Laws
B. Law of Contracts: Ancient Roman Law

III. The Christian Era: Law of Contracts, 1070 to 1600 A.D.

A. The Glossators and the Canon Law (1070 to early 1600s)
B. The Anglican Church and Contract Law, 1300 to early 1600s
C. Modern Contract Theory: A Christian Legacy

IV. A Final Word: The Need For Christian Leadership in the American Bar and Bench

Conclusion

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 twentieth essay in this series: “A History of the Anglican Church—Part IX.”

PART XI. Anglican Church: Christianity and the Law of Contracts (1300 to 1600s A.D.)

INTRODUCTION[1]

St. Augustine's two mystical cities, that is to say, the *City of God* and the *Earthly City* (or the City of Man), may rightly be observed within the competing Christian and non-Christian viewpoints on modern Anglo-American contract law and theory. These two competing viewpoints are readily manifested in three of the most important relationships in civil society: that of parent and child; husband and wife; and employer and employee (or master and servant). And these competing viewpoints are also manifested in other important relationships, including all other human, commercial, and fiduciary relations which are governed by the law of contracts. Significantly, the principles governing the law of contracts are the most fundamental aspect of all other human relations. For this reason, the law of contracts has throughout history been considered sacred as well as secular. These principles have generally held that promises, oaths, pledges and the like should be kept, or else the offending party could be held accountable to both God and his fellow countrymen. Hence, the law of contracts emerged as a form of sacred obligation and a duty toward both God and man.

In the Christian world, the law of contracts required such things as "honesty in fact" and "good faith" in order to be enforceable and valid. As this essay will explain, the Catholic Church developed modern contract law and theory through a process of borrowing from the customs and traditions of a variety of cultures and religious traditions. They developed contract law through the canon law of the church; they were determined that the "Law of Christ" govern even the secular affairs of the laity. See, e.g., Figure 5, below. In the typical situation, two parties entered into a binding contract as follows:

> **A** enters into an agreement (mutual understanding or "meeting of the minds") with **B**, to do or to exchange a particular thing.

[1] This essay is submitted in honor of an outstanding professor and legal scholar at the University of Illinois College of Law: Charles Tabb, (B.A., Vanderbilt Univ./ J.D., Univ. of Virginia), who is the Mildred Van Voorhis Jones Chair in Law (contract law/ bankruptcy law/ commercial law). I had the honor of learning contract law (8 credit hours) under Professor Tabb, during the 1991-92 Academic Year.

Let us assume that A and B were laymen in the commonwealth of England during the year 1457. Their agreement could fall within the jurisdiction of the ecclesiastical courts of the Roman Church of England, where a bishop would likely preside as judge in order to ensure that the objective of this agreement was just and that it had been entered into through good faith and honesty in fact. The Court of Common Pleas and the Kings' Bench might also have jurisdiction, from which an appeal could be taken to the Chancery Court, where the Lord Chancellor (an archbishop or bishop) would preside. Both the ecclesiastical and secular courts were generally responsible for ensuring that all of England's court decisions comported with the "Law of Christ." See, e.g. Figure 5. The Christian faith had thus imposed certain assumptions into Medieval-contract law and theory, including the obligation of contracting parties to remain mindful of the presence of God, the inherent dignity of their fellow countrymen, and the solemnity of the Law of Christ, when discharging their contractual obligations. The "doctrine of sin" and the imposition of purity and honesty-in-fact were thus sine qua non. Contracts were considered to be sacred, as were the parties who entered into these important agreements.

The idea that human contractual agreements were sacred did not originate in England but was developed from ancient ideals through the Roman Catholic Church. Jesus of Nazareth was believed to be the incarnate Word of God, or *Logos*. In Greco-Roman philosophy, the word "logos" meant "active reason pervading and animating the universe. It was conceived of as material, and is usually identified with God or Nature. According to Roman stoic philosophy, the 'seminal logos' was a 'law of generation in the universe,' and that human beings possessed a portion of the divine logos. They had adopted the philosophy of the Greek Aristotle, who opined that 'law is reason, free of passion.'"[2] The Roman Catholic Church incorporated these pagan ideals into the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgement (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).

[2] Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris, 2015), p. 432.

The result was the "Law of Christ" (i.e., the Christian law of equity; see, e.g., Figure 5) which had been developed from ancient Roman equity[3] and was later codified in the canon law of the Roman Catholic Church. This was the same equity that became the foundation of Anglo-American equity jurisprudence and which was applied in England's ecclesiastical, chancery and royal courts during the Medieval and Early Modern periods.[4] Catholic theologians and lawyers drew from a variety of Christian and pagan sources when fashioning the canon law, which was considered the "mother of Christian equity" in England and Western Europe.[5] For this reason, the modern law of contracts—like several other areas of the secular Anglo-American law-- can be properly understood only when one considers its Christian origins, whose central message seems to say: **"God is my Father; and all men are my brothers."** See, e.g. Figure 1, below.[6]

Figure 1. Christianity and Equity Jurisprudence[7]

Christian Source	**Pagan Source**	**Christian-Pagan Convergence**	**Roman Catholic Theology and Canon Law (The Law of Christ; Equity)**
1. Moses (The Torah)	Ancient Egypt; *Book of the Dead*	Faith	God is Faith, Rightness, and Justice
2. Jesus	Socrates	Truth	God is Truth.
3. St. John (Gospel of John)	Stoics	Logos ("Word" or "Reason")	God is Reason (i.e., the Divine Logos)

[3] "The source of Roman equity was the fertile theory of natural law, or the law common to all nations." Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris, 2015), p. 432.
[4] Ibid., pp. 423-441.
[5] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 11.

[6] Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris, 2015).
[7] Ibid.

4. St. Paul (Letter to Romans)	Stoics	Natural Law	God is universal natural law
5. St. Augustine	Plato	Justice	God is Justice
6. St. Thomas	Aristotle	Reason	God is Reason

It is through this system that the Christian religion became sown into the various elements of what later emerged as modern contract law and theory. Parties to contracts were required to maintain Christian standards and to remain mindful of their sacred covenants with God and fellow countrymen. These solemn obligations were inherent and implied in all contracts that were created and administered in Medieval Europe and England. In sum, contracts were required to uphold Christian standards—standards that were cosmopolitan and sophisticated-- in order to be legally enforced.

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If we now fast-forward to 19th century America, [8] we will find a movement within the American legal academy "to cut the general law of contract loose from its moorings in a religious—more specifically, a Christian—belief system. They sought to replace those moorings with their own belief system, based on rationalism and individualism. It was that secular faith which found expression, in

[8] 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 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.

nineteenth-century contract law, in the overriding principles of freedom of will and of party autonomy."[9]

As a result of this new "secular faith," American law schools have stressed the principles of modern contract law and theory without acknowledging their Christian foundations; the result of which has been the "breakdown of traditional contract law in practice" because of the "social consequences" of widespread evasions.[10] Thus, I concur with Professor Harold J. Berman who has concluded that:

> Many of these concepts continue to be taught today in law school courses throughout the world—concepts and rules concerning fraud and duress and mistake, unconscionability, duty to mitigate losses, and many other aspects of contract law that link it directly with moral responsibility. It would contribute enormously, I believe, to our understanding of modern contract law if teachers and writers were to trace its formation to the canon law of the church as it developed in *pre-capitalist, pre-industrialist, pre-rationalist, pre-nationalist era*.[11]

There is today a fundamental conflict between Christian and non-Christian members of the bar as to how to interpret and administer the law of contracts. See, e.g., Figure 2. Here we may rightly observe the conflict between St. Augustine's two mystical cities, that is, the *City of God* and the *Earthly City* (or the City of Man). The Christian lawyer or judge views the world through the prism of "Higher Law," which tends to reflect fairness, equity, social responsibility, and justice. These Christian lawyers and judges have no hesitancy when looking toward equity jurisprudence to correct injustices. The non-Christian lawyer or judge, on the other hand, tends to lean toward strict construction, even if strict construction of the terms of the contract will lead to draconian, unjust, or odious consequences to the unwary or the unassuming. The non-Christian lawyer or judge typically ignores equity jurisprudence altogether, and will consider it only after they have determined that the contract was, in fact, breached, or when determining or fashioning an appropriate remedy for contract breach.

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[9] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 127.
[10] Ibid., p. 126.
[11] Ibid., p. 139.

Figure 2. Competing Views of Modern Contract Law

Modern Christian View of Contracts	Non-Christian/ Modern/ Post-Modern View of Contracts
1. Contracts are subject to a Higher Law (i.e., the Law of Christ, which is Equity; Figure 5 (see below)).[12]	There is no Higher Law
2. Equity actually reflects the "Law of Christ" and therefore must <u>lead or guide</u> the interpretation of contract law.[13]	Equity does not represent the Law of Christ. Equity does not lead or guide the law of contracts. Equity only <u>follows</u> law ; equity must follow the law of contracts, not lead it; equity is restricted to providing non-monetary remedies only.
3. Parties to contracts are not autonomous; their actions and behavior must take God and the general welfare of society into account.[14]	Parties to contracts are free, rational and autonomous. No consideration need be given to God or the general welfare of society unless imposed by legislation (i.e. public policy).

Non-Christian lawyers and judges (or those Christians who hold to the non-Christian view of modern contract law) may be less likely to have the

[12] This view is premised upon classical social contract theory, as reflected in *The Declaration of Independence*, which holds that the **American social contract** is premised upon "Nature's God," in the proclamation: "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."

[13] Ibid.

[14] Ibid.

competencies to understand and apply Christian equity. For this reason, and unlike Professor Berman, —and after more than 20 years of law practice— I seriously question whether secular-minded lawyers, judges, and law professors are capable of truly understanding the moorings of the canon law without being themselves devoted Christians, if not Catholic priests or Christian theologians.

Is it probable that only devoted Christians from within the current ranks of lawyers and judges-- men and women who know both Christian theology and the secular law-- could possibly turn the tide in favor of re-establishing the law of contracts upon its equitable and Christian foundations? I think so. This essay is thus presented as part of a series to promote the unique function and leadership roles which Christian lawyers and judges ought of play within the secular state. (That is to say, Christian lawyers and judges need to take the leadership initiative in leading their non-Christian colleagues on this issue.) It concludes that the role and function of the Lord Chancellor should be a model for modern Christian lawyers and judges.

SUMMARY

American contract law, in both legal theory and law practice, has collapsed under the weight of economic greed and legalism devoid of equity. This problem is not a new one: it can be observed in the very conflict between Socrates and the Sophists; and between Jesus of Nazareth and the Pharisees. It was the reason that the Church of England in the Commonwealth of Virginia was unable to persuade the wealthy planters that Christian baptism was the legal basis for manumission from slavery. Without equity, a legal system cannot produce justice, because pure law and legalism devoid of reality and reason cannot take into account various exceptions and therefore cannot produce justice. And a legal system that does not produce justice eventually undermines its own credibility. And such has been the case with American contract law in a number of areas, such as labor and employment law.

Unfortunately, American law schools and bar association leaders have boxed themselves into a secular faith that systematically evades Christianity, Christian philosophy, and the Christian religion. This makes it difficult for the American bar and bench to comprehend the pillars of the secular law which have ecclesiastical

origin or influence. I believe that in order to lead the American bar and bench out of this quagmire, trusted and respected members amongst its own ranks, who are devoted Christians and who thoroughly know the Bible and the law, must lead. They must lead within the American bar as the Medieval English Lord Chancellor led in the English bar: they must exemplify the best in bar leadership and legal scholarship, while remaining devoted to Christ. To this end, the present essay discusses the Christian foundations of contract law in an effort to set forth an example of how Christian lawyers and judges should exemplify the leadership at the bar.

Part IX. Anglican Church: Christianity and the Law of Contracts (1300 to early 1600s A.D.)

I. Christian Foundations: Law of Contracts, 1300 to 1600s, A.D.

The law of contracts within Anglo-American jurisprudence is deeply-rooted in the religious and secular theology of western Christendom where it was widely-held that God had ordained both ecclesiastical and secular courts to apply the "Law of Christ" in the administration of secular contracts. In England, both the ecclesiastical and the secular courts had jurisdiction over a variety of secular contracts; but the remedies available in each court were different. The ecclesiastical courts applied the law of equity and considered the moral wrongfulness and the "sin" component of the contract dispute; whereas the secular courts considered primarily the legal formalities of contract formation, contract breach, and damages available under the common law. This was the general system of law and equity which the American colonies inherited from Britain during the seventeenth century.

A. Lord Chancellor and Equity

During the period 1300 to the 1600s, England's Lord Chancellor, who had typically been an archbishop or bishop in the Church of England and a doctor of the canon and civil law[15], held appellate jurisdiction over the secular courts. In this

[15] In England, during the Medieval and early modern periods, the Doctor of Civil Law (D.C.L.) was issued at the University of Oxford and the Doctor of Laws (LL.D.) was issued at the University of Cambridge.

role, the Lord Chancellor could apply the law of equity, canon law, and the English common law in order to rectify an unjust ruling in the lower secular courts.

This unique role of England's Lord Chancellor struck my mind as the model template for setting forth the role of Christian lawyers and judges in the United States. In law school and throughout my law practice, I had often heard that courts of the common law and courts of equity were at one time very separate and distinct entities; but that sometime during the 19th and early 20th centuries American rules of court procedure within most of the several states began to merge law and equity under one roof. Who then were left with the obligation of administering and enforcing equity jurisprudence in the United States, where there is no Lord Chancellor? Obviously, that role fell to the secular American bar and bench; and yet, here, where Christianity and natural law are well-nigh eradicated from American law and jurisprudence since the late 19th century, equity jurisprudence in American state and federal courts has become systematically evaded, diminished, and reduced to a negligible curiosity.

B. **Collapse of Equity in American Contract Law**

In American law schools, contract law and theory are taught from a secular and scientific viewpoint that was largely originated during the late nineteenth century. Unfortunately, since the late 19th century and continuing up to the present, the *removal of the covenant requiring an obligation to God* from modern contractual obligations may have decisively restricted the role of equity jurisprudence in contract law and administration. Moreover, the removal of Christianity from American equity jurisprudence may have also resulted in a diminished capacity to interpret, define, or administer American contract law in a variety of areas such as employment and labor, marriage and family law, law of mortgages, and several other areas where the rich are likely to dominate the poor. Legal scholars have now for several decades held that American contract law has collapsed as a result of growing economic inequality, the lack of meaningful bargaining between the parties from various economic and racial classes, and the

lack of court access amongst the working classes and the poor.[16] What happened to modern contract law since the late 19th and 20th centuries?

> [During the late 19th century]… American jurists, Christopher Columbus Langdell and Oliver Wendell Holmes, Jr., had invented the modern system of contract doctrine, which Williston later refined.
>
> In fact, Langdell in 1870 carried over into American legal thought ideas that had been propounded in France, Germany, England, and elsewhere for a hundred years. The Enlightenment of the late eighteenth century stimulated the desire to rationalize and systematize the law in new ways.
>
> In England, Jeremy Bentham called for the 'codification'—a word of his own creation—of the various branches of law. In the wake of the French Revolution, France adopted separate codes for civil law, civil procedure, criminal law, criminal procedure, administrative law, and commercial law.
>
> The idea was taken up everywhere in the West that the entire body of civil law, and, within it, its component parts, should be rationalized and systematized anew, whether in a code (as in France), or in scholarly treaties (as in Germany), or in court decisions collected by law teachers (as in England and the United States).
>
> Indeed, in the United States, a generation before Langdell, William Story wrote *A Treatise on the Law of Contracts Not Under Seal* (1844) and Theophilus Parsons wrote *The Law of Contracts* (1853).
>
> And so, Langdell and others did for American contract law what others had done for English and other legal systems. They attempted to reduce it to a set of concepts, principles, and rules which would be applicable to all contracts….[17]

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[16] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), pp. 125-127.

[17] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), pp. 126-127.

> Looking back at what happened to contract law in action during the twentieth century, and especially to accepted contract practices, one is struck by the fact that the priorities of contractual intent and party autonomy, which still form the basis of contract law in theory, *no longer correspond to reality in most situations*. Contracts of adhesion, regulated contracts, contracts entered into under economic compulsion, and other types of prefabricated contractual arrangements, are now typical rather than exceptional.
>
> Doctrines of frustration and of substantial performance have been greatly expanded. The defense of unconscionability had become a reality in consumer sales and is a potential obstacle to contractual autonomy in other types of transactions as well.
>
> Duties of cooperation and of mitigation of losses have begun to change the nature of many types of contractual relationships. Promissory estoppel has spawned non-promissory estoppel, notably in the form of implied warranties which, though contractual in theory, nevertheless 'run with the chattel.'…[18]
>
> The breakdown of traditional contract law in practice has given some support to those legal theorists who contend that all law must be judged not in terms of doctrinal consistency but in terms of social consequences.[19]

Why did this happen? It is because the Christian and natural law foundations of American jurisprudence have been systematically nullified through callous indifference and ignorance as to the purpose, substance and function of equity law and jurisprudence within the law of contracts. As a consequence, American contract law in a variety of areas has collapsed, or is collapsing, under the weight of legalism devoid of *agape love*; legalism devoid of natural law and natural justice; and legalism devoid of the liberal arts (science, mathematics, history, philosophy, and sociology).

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[18] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 126.
[19] Ibid., p. 126.

The Lord Chancellor, who had special training in law and theology, understood how to balance competing interests which included the inherent worth of the disenfranchised, the poor, the fatherless, widows, victims of unscrupulous oppression—all of the innocent persons whom the Old Testament admonished kings, governors, and rules to protect. Modern American legal education does not now have the competencies to instill the same sort of professional obligation and spirit—the spirit of the Medieval English Lord Chancellor-- into professional ethos of American lawyers and judges. American equity jurisprudence has given way to the legalism of commercial law and the merchant's courts.

Agape love, natural law, natural justice, the liberal arts-- these are things which equity jurisprudence brings to the American court system! Today, however, non-sectarian American law schools now face a crisis: should they honestly have serious law courses that teach Christian ideas and ideals, such as the Roman canon law (and perhaps other world religions or religious principles) in order to best understand the foundations of equity jurisprudence and law; or should they continue along a path of callous indifference toward these "weightier matters of the law…"?[20] In making this statement, I believe that is important to point out that the Judea-Christian ethic is heavily tailored around alleviating men and women from oppression.

C. **Christian Foundations of Equity Jurisprudence**

I have always been intrigued with the Biblical references to the foundations and sources of American jurisprudence. See, e.g., Figures 3 and 5. This came naturally following my entrance into law school; it flowed naturally from my Christian up-bringing in rural, northern Florida. I think that my own experiences reflect the experiences of other Christian lawyers and judges who have observed parallels and similarities between the Bible and American jurisprudence. I believe that Figure 3, below, reflects the mind of the Christian lawyer or judge who looks at the secular law with Biblical references in mind. This is a *natural process within the Christian legal mind*, and I submit that this is the very process from which the Roman canon law and equity jurisprudence were likely derived: through reason and "divine" revelation through study of Sacred Scriptures. In Britain, the church lawyers and the Lord Chancellor certainly relied upon Biblical principles, among

[20] See, e.g., Matthew 23:23.

other sources, in determining the correct course of action in rendering legal opinions.[21]

Figure 3. Biblical Foundation of Equity Jurisprudence

Anglo-American Contract Law	**Equity Jurisprudence (Foundational Biblical References)**
Employer-Employee; Master-Servant Relations	Genesis 3:19 "By the sweat of your face you shall eat bread, till you return to the ground, for out of it you were taken; for you are dust, and to dust you shall return." Colossians 4:1 "Masters, treat your slaves justly and fairly, knowing that you also have a Master in heaven." Colossians 3:23 "Whatever you do, work heartily, as for the Lord and not for men…." James 5:4 "Behold, the wages of the laborers who mowed your fields, which you kept back by fraud, are crying out against you, and the cries of the harvesters have reached the ears of the Lord of hosts." 1 Peter 2:18-20 "Servants, be subject to your masters with all respect, not only to the good and gentle but also to the unjust. For this is a gracious thing, when, mindful of God, one endures sorrows while suffering unjustly. For what credit is it if, when you sin and are beaten for it, you endure?

[21] See also the following fiction/novel which explains the same position: Roderick O. Ford, *Bishop Edwards: A Gospel For African American Workers During the Age of Obama* (Tampa, FL: Xlibris Pub., 2015).

	But if when you do good and suffer for it you endure, this is a gracious thing in the sight of God." Proverbs 22:16 "Whoever oppresses the poor to increase his own wealth, or gives to the rich, will only come to poverty." Romans 4:4 "Now to the one who works, his wages are not counted as a gift but as his due." Ephesians 6:9 "Masters, do the same to them, and stop your threatening, knowing that he who is both their Master and yours is in heaven, and that there is no partiality with him." Jeremiah 22:13 "Woe to him who builds his house by unrighteousness, and his upper rooms by injustice, who makes his neighbor serve him for nothing and does not give him his wages…" Leviticus 19:13 "You shall not oppress your neighbor or rob him. The wages of a hired servant shall not remain with you all night until the morning." Matthew 20:10-15 "Now when those hired first came, they thought they would receive more, but each of them also received a denarius. And on receiving it they grumbled at the master of the house, saying, 'These last worked only one hour, and you have made them equal to us who have borne the burden of the day and the scorching heat.' But he replied to one of them,

	‘Friend, I am doing you no wrong. Did you not agree with me for a denarius? Take what belongs to you and go. I choose to give to this last worker as I give to you. ...” Malachi 3:5 “Then I will draw near to you for judgment. I will be a swift witness against the sorcerers, against the adulterers, against those who swear falsely, against those who oppress the hired worker in his wages, the widow and the fatherless, against those who thrust aside the sojourner, and do not fear me, says the LORD of hosts.” Romans 13:1-14 “Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. ...” Leviticus 25:43 “You shall not rule over him ruthlessly but shall fear your God.” 1 Timothy 5:18 For the Scripture says, “You shall not muzzle an ox when it treads out the grain,” and, “The

	laborer deserves his wages." Deuteronomy 24:14 "You shall not oppress a hired servant who is poor and needy, whether he is one of your brothers or one of the sojourners who are in your land within your towns." 1 Timothy 5:8 "But if anyone does not provide for his relatives, and especially for members of his household, he has denied the faith and is worse than an unbeliever." James 5:5 "You have lived on the earth in luxury and in self-indulgence. You have fattened your hearts in a day of slaughter." Colossians 3:22 "Slaves, obey in everything those who are your earthly masters, not by way of eye-service, as people-pleasers, but with sincerity of heart, fearing the Lord." Luke 10:7 "And remain in the same house, eating and drinking what they provide, for the laborer deserves his wages. Do not go from house to house." Job 31:13-15 "If I have rejected the cause of my manservant or my maidservant, when they brought a complaint against me, what then shall I do when God rises up? When he makes inquiry, what shall I answer him? Did not he who made me in the womb make him? And did not one fashion us in the womb?"

	1 Timothy 2:1-2 “First of all, then, I urge that supplications, prayers, intercessions, and thanksgivings be made for all people, for kings and all who are in high positions, that we may lead a peaceful and quiet life, godly and dignified in every way.” Ephesians 6:5 “Slaves, obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ…” Romans 13:4 “For he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer.” John 13:1-20 “Now before the Feast of the Passover, when Jesus knew that his hour had come to depart out of this world to the Father, having loved his own who were in the world, he loved them to the end. During supper, when the devil had already put it into the heart of Judas Iscariot, Simon's son, to betray him, Jesus, knowing that the Father had given all things into his hands, and that he had come from God and was going back to God, rose from supper. He laid aside his outer garments, and taking a towel, tied it around his waist. Then he poured water into a basin and began to wash the disciples' feet and to wipe them with the towel that was wrapped around him. ...” Luke 16:10 “One who is faithful in a very little is also faithful in much, and one who is dishonest in a

	very little is also dishonest in much." Proverbs 11:1 "A false balance is an abomination to the LORD, but a just weight is his delight." 2 Thessalonians 3:10 "For even when we were with you, we would give you this command: If anyone is not willing to work, let him not eat." Matthew 10:10 "No bag for your journey, nor two tunics nor sandals nor a staff, for the laborer deserves his food." Ruth 2:4 "And behold, Boaz came from Bethlehem. And he said to the reapers, 'The LORD be with you!' And they answered, "The LORD bless you.'" 1 Corinthians 6:10 "Nor thieves, nor the greedy, nor drunkards, nor revilers, nor swindlers will inherit the kingdom of God." Matthew 5:16 "In the same way, let your light shine before others, so that they may see your good works and give glory to your Father who is in heaven." James 4:1-2 "What causes quarrels and what causes fights among you? Is it not this, that your passions are at war within you? You desire and do not have, so you murder. You covet and cannot obtain, so you fight and quarrel. You do not

	have, because you do not ask." 1 Corinthians 6:1-20 "When one of you has a grievance against another, does he dare go to law before the unrighteous instead of the saints? Or do you not know that the saints will judge the world? And if the world is to be judged by you, are you incompetent to try trivial cases? Do you not know that we are to judge angels? How much more, then, matters pertaining to this life! So if you have such cases, why do you lay them before those who have no standing in the church? I say this to your shame. Can it be that there is no one among you wise enough to settle a dispute between the brothers, ..." Matthew 6:31-33 "Therefore do not be anxious, saying, 'What shall we eat?' or 'What shall we drink?' or 'What shall we wear?' For the Gentiles seek after all these things, and your heavenly Father knows that you need them all. But seek first the kingdom of God and his righteousness, and all these things will be added to you." Ecclesiastes 10:1-20 "Dead flies make the perfumer's ointment give off a stench; so a little folly outweighs wisdom and honor. A wise man's heart inclines him to the right, but a fool's heart to the left. Even when the fool walks on the road, he lacks sense, and he says to everyone that he is a fool. If the anger of the ruler rises against you, do not leave your place, for calmness will lay great offenses to rest. There is an evil that I have seen under the sun, as it were an error proceeding from the ruler: ..." Proverbs 29:21 "Whoever pampers his servant from childhood

	will in the end find him his heir." Ephesians 6:5-6 "Slaves, obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ, not by the way of eye-service, as people-pleasers, but as servants of Christ, doing the will of God from the heart…." Acts 1:7-8 "He said to them, 'It is not for you to know times or seasons that the Father has fixed by his own authority. But you will receive power when the Holy Spirit has come upon you, and you will be my witnesses in Jerusalem and in all Judea and Samaria, and to the end of the earth.'" Proverbs 29:1-27 "He who is often reproved, yet stiffens his neck, will suddenly be broken beyond healing. When the righteous increase, the people rejoice, but when the wicked rule, the people groan. He who loves wisdom makes his father glad, but a companion of prostitutes squanders his wealth. By justice a king builds up the land, but he who exacts gifts tears it down. A man who flatters his neighbor spreads a net for his feet. ..." Exodus 21:16 "'Whoever steals a man and sells him, and anyone found in possession of him, shall be put to death." Revelation 21:8 "But as for the cowardly, the faithless, the detestable, as for murderers, the sexually immoral, sorcerers, idolaters, and all liars, their portion will be in the lake that burns with fire

	and sulfur, which is the second death.'" <u>2 Thessalonians 1:6</u> "Since indeed God considers it just to repay with affliction those who afflict you…." <u>1 Corinthians 6:9</u> "Or do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practice homosexuality…." <u>John 14:1-31</u> "'Let not your hearts be troubled. Believe in God; believe also in me. In my Father's house are many rooms. If it were not so, would I have told you that I go to prepare a place for you? And if I go and prepare a place for you, I will come again and will take you to myself, that where I am you may be also. And you know the way to where I am going.' Thomas said to him, 'Lord, we do not know where you are going. How can we know the way?'. ..." <u>Luke 7:1-50</u> "After he had finished all his sayings in the hearing of the people, he entered Capernaum. Now a centurion had a servant who was sick and at the point of death, who was highly valued by him. When the centurion heard about Jesus, he sent to him elders of the Jews, asking him to come and heal his servant. And when they came to Jesus, they pleaded with him earnestly, saying, 'He is worthy to have you do this for him, for he loves our nation, and he is the one who built us our synagogue.' ..."

Creditor-Debtor; Discharge of Debts	Micah 2:1-3 “Woe to those who scheme iniquity, Who work out evil on their beds! When morning comes, they do it, For it is in the power of their hands. They covet fields and then seize them, And houses, and take them away They rob a man and his house, A man and his inheritance. Therefore thus says the LORD, "Behold, I am planning against this family a calamity From which you cannot remove your necks; And you will not walk haughtily, For it will be an evil time.” Luke 11:42 "But woe to you Pharisees! For you pay tithe of mint and rue and every kind of garden herb, and yet disregard justice and the love of God; but these are the things you should have done without neglecting the others.” Deuteronomy 15:1-2 "At the end of every seven years you shall grant a release of debts. And this is the form of the release: Every creditor who has lent anything to his neighbor shall release it; he shall not require it of his neighbor or his brother, because it is called the LORD's release" Deuteronomy 15:12-14 "...in the seventh year you shall let [your Hebrew slave] go free from you. And when you send him away free from you, you shall not let him go away empty-handed; but you shall supply him liberally from your flock..."

Marriage Covenant; Divorce	Genesis 2:24 "Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh." Ephesians 5:222-28 "Wives, submit yourselves to your own husbands as you do to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. Now as the church submits to Christ, so also wives should submit to their husbands in everything. Husbands, love your wives, just as Christ loved the church and gave himself up for her to make her holy, cleansing[a] her by the washing with water through the word, and to present her to himself as a radiant church, without stain or wrinkle or any other blemish, but holy and blameless. In this same way, husbands ought to love their wives as their own bodies. He who loves his wife loves himself." Matthew 5:32 "But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery." Mark 10:12 "And if a woman shall put away her husband, and be married to another, she committeth adultery." Romans 7:2

	"For the woman which hath an husband is bound by the law to [her] husband so long as he liveth; but if the husband be dead, she is loosed from the law of [her] husband."

We should here point out that the first English settlers in North America, such the Puritans of Massachusetts Bay Colony and the Anglicans of the Virginia Colony, were intensely religious, communitarian, and Protestant. Their idea of contracts "started from the premise that God is a God of order, who enters into contracts with his people by which both he and they are absolutely bound…. These were not yet the autonomous, self-sufficient individuals of the eighteenth-century Enlightenment. England under Puritan rule and in the century that followed was intensely communitarian."[22] The law of contracts in the American colonies was thus extracted from England's law of contracts as it existed in the seventeenth century.

D. Pomeroy's *Equity Jurisprudence* and the Modern View

Perhaps it was altogether fitting and proper that, during the rise of C.C. Langdell's scientific jurisprudence at Harvard, and the growing secularization of American jurisprudence, that Professor John Norton Pomeroy of the University of Hastings at California counter-argued that Anglo-American equity jurisprudence was under assault; that equity jurisprudence was of Christian and Divine origin[23];

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[22] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 140.

[23] *Pomeroy's Equity Jurisprudence* (Fifth Edition), Vol. 1, Sec. I, § 8 -- Aequitas as Embracing "Jus Gentium" and "Lex Naturae."— "In their work of improving the primitive jus civile, the magistrates who issued edicts (who possessed the jus edicendi), and jurisconsults who furnished authoritative opinions (response) to aid the praetors (those who possessed the jus respondendi), obtained their material from two sources, namely: At first, from what they termed the jus gentium, the law of nations, meaning thereby those rules of law which they found existing alike in the legal systems of all the peoples with which Rome came into contact, and which they conceieved to have a certain universal sanction arising from principles common to human nature; and at a later day, from the Stoic theory of morality, which they called lex naturae, the law of nature. The doctrines of this jus gentium and of this lex naturae were often identical, and hence arose the conception, generally prevalent among the juridical writers of the empire, that the 'natural law' (lex naturae) and the 'law of nations' (jus gentium) were one and the same; or in other words, that the doctrines which were found common to all national systems were dictated by and a part of this natural law. The particular rules of the Roman jurisprudence derived from this morality, called

that equity jurisprudence was really the culmination and the highest form of law; that equity had arisen to correct the deficiencies of the common law and to work out a higher form of justice; and equitable principles were developed alongside the common law and were just as important—if not more important—than law in and of itself. Pomeroy expressed his concern that when the modern codes of civil procedure were being created in the late 19th century, the civil courts were merging "law" and "equity," but that American lawyers and judges were suppressing equity (i.e., obliterating equity) from American jurisprudence.[24] For this reason, Pomeroy published his path-breaking book on American equity jurisprudence in 1881, in which he thoroughly sets forth the historical and Christian roots of equity within Anglo-American jurisprudence. Pomeroy insists that within the American system of law, equity jurisprudence must function just as it did within the English system (i.e., it must correct injustices through established equitable principles).[25]

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the law of nature, were termed 'aequitas,' from aequum, because they were supposed to be impartial in their operation, applying to all persons alike. The lex naturae was assumed to be the governing force of the world, and was regarded by the magistrates and jurists as having an absolute authority. They felt themselves, therefore, under an imperative obligation to bring the jurisprudence into harmony with this all-pervading morality, and to allow such actions and make such decisions that no moral rule should be violated. Whenever an adherence to the old jus civile would do a moral wrong, and produce a result inequitable (in-aequum), the praetor, conforming his edict or his decision to the law of nature, provided a remedy by means of an appropriate action or defense. Gradually the cases, as well as the modes in which he would thus interfere, grew more and more common and certain, and thus a body of moral principles was introduced into the Roman law, which constituted equity (aequitas). This resulting equity jurisprudence, displacing what of the ancient system was arbitrary and unjust, and bringing the whole into an accordance with the prevailing notions of morality. In its original sense, aequitas, aequum, conveyed the conception of universality, and therefore of impartiality, an having regard for the interests of all whose interests ought to be regarded, as contrasted with the having an exclusive or partial regard for the interest of some, which was the essential character of the old jus civile. At a later period, and especially after the influence of Christianity had been felt, the signification of aequitas became enlarged, and was made to embrace our modern conceptions of right, duty, justice, and morality."

[24] See, generally, *Pomeroy's Equity Jurisprudence* (Fifth Edition), Vol. I.

[25] *Pomeroy's Equity Jurisprudence* (Fifth Edition), Vol. 1, Sec. II, § 60, pp. 77-80 ("Necessity of Adapting Principles to Novel Conditions— "The general language of some writers, and particularly of Blackstone, presents an erroneous theory as to the office of precedents in equity, and if followed, would check and abridge the beneficient operation of its jurisdiction. The true function of precedents is that of illustrating principles; they are examples of the manner and extent to which principles have been applied; they are the landmarks by which the court determines the course and direction in which principles have been carried. But with all this guiding, limiting, and restraining efficacy of prior decisions, the Chancellor always has had, and always must have, a certain power and freedom of action, not possessed by the courts of law, of adapting the doctrines which he administers. He can extend those doctrines to new relations, and shape his remedies to new circumstances, if the relations and circumstances come within the principles of equity, where a court of law in analogous cases would be powerless to give any relief. In fact, there is no limit to the various forms and kinds of specific remedy which he may grant, adapted to novel conditions of right and obligation, which are constantly arising from the movements of society. While it must be admitted that the broad and fruitful principles of equity have been established, and cannot be changed by any judicial action, still it should never be forgotten that these principles, based as they are upon a Divine morality,

Pomeroy's 1881 treatise on equity jurisprudence was designed to appeal not to Christians or to the Church, but rather to American lawyers and judges who were charged with administering the secular laws of the United States. And yet Pomeroy's task was not a difficult one, because although "equity" has theological origin, it is completely self-authenticating and may be expressed, as Bertrand Russell says, "in untheological terms."[26] We may arrive a "natural law" or "equity," says Russell, without Christian theology. He writes:

> To arrive at the law of nature, we may put the question in this way: in the absence of law and government, what classes of acts by A against B justify B in retaliating against A, and what sort of retaliation is justified in different cases? It is generally held that no man can be blamed for defending himself against a murderous assault, even, if necessary, to the extent of killing the assailant.... We may then identify 'natural law' [i.e., "equity"] with moral rules in so far as they are independent of positive legal enactments. There must be such rules if there is to be any distinction between good and bad laws…. Natural law decides what actions would be ethically right, and wrong, in a community that had no government; and positive law ought to be, as far as possible, guided and inspired by natural law.[27]

Here, Professor Russell, who is a self-avowed atheist, admits the truth of the fundamental basis Christian equity, to wit, "moral reason" and "moral theology," operating within a superior sphere outside of the positive legal system.[28] This, I suggest, may be presented as the "modern" view of equity jurisprudence.

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possess an inherent vitality and a capacity of expansion, so as ever to meet the wants of a progressive civilization. Lord Hardwicke, who was, I think the greatest of the English chancery judges… indicated the true theory in a letter to Lord Kames: "Some general rules there ought to be… the [Chancellor] must not be so absolutely and invariably bound by them as the judges are by the rules of the common law. For if he were so bound, the consequences would follow that he must sometimes pronounce decrees which would be materially unjust, since no rule can be equally just in the application to a whole class of cases that are far from being the same in every circumstance.'… In other words, Lord Hardwicke in this short passage states the same view which I had given in the text. Although equity is and long has been in every sense of the word a system, and although it is impossible that any new general principles should be added to it, yet the truth stands, and always must stand, **that the final object of equity is to do right and justice**.")

[26] Bertrand Russell, *A History of Western Philosophy* (New York, N.Y.: Touchstone Books, 2007), p. 627.

[27] Ibid., pp. 627-628.

[28] Ibid.

II. Pre-Christian Era: Law of Contracts, Pre-history to 1000 A.D.

The idea of enforcing moral obligation through ritualistic pledges developed over several centuries in Britain and Europe. Only during the Christian era, after about 1000 A.D., did the modern idea of enforceable contracts emerge. "In the year 1000… there was no general principle that a promise or an exchange of promises may in itself give rise to legal liability among the inhabitants of Western Europe. Legal liability attached to promises only if they were embodied in formal religious oaths, which were almost always secured by some kind of pledge."[29]

A. Law of Contracts: Primitive and Germanic Tribal Laws

The law of contracts in Western Europe emerged from tribal and customary laws, through religious rituals and tribal traditions. This development was pre-historic and universal; it was similar to the legal developments in much of Africa and Asia.

In Britain and Western Europe, the "pledge" came to represent the solemn oath between to two or parties; this "pledge" was necessary to create and enforce an agreement. The "pledge" was a very serious matter and it usually represented obligations towards the gods, the family, and the clan. In other words, the "pledge" did not simply apply to the parties involved, but it also carried social connotations and reflected social obligations toward the community-at-large. After Christianity was introduced in Britain and Western Europe, these ideas regarding the "pledge" were later incorporated into the emerging law of contracts which developed under Christian auspices.

During the pre-Christian period, the "pledge" could consist of the surrender of the oath-taker's "own person or body," symbolized in the formal transfer of his faith, such as the ritual of shaking hands.[30] In addition, other persons could be pledged as "hostages."[31] Property could also be pledged as "security" for the

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[29] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 128.

[30] Ibid.

[31] Ibid., p. 129.

promise.[32] "Germanic law (including Frankish, Anglo-Saxon, Burgundian, Lombard, and other varieties of clan or tribal law) also recognized a duty of restitution arising from a half-completed exchange: a party who had transferred property to another was entitled to receive from the other purchase price or other equivalent."[33]

Again, this primitive system was not really a "law of contracts" in the modern sense of that term, but it was the one social instrument during the pre-Christian era that comes closest to the modern-day contracts, and from which we may say the law of contracts traces its roots.

B. Law of Contracts: Ancient Roman Laws

The ancient pagan Romans' written laws were more advanced than those unwritten customs of the Germanic tribesmen. The Roman laws provided more sophisticated methods of forming, executing, and attaining remedies for breaching contractual agreements. These laws covered such general areas as leases, the sale of goods and chattel, partnerships, agencies, etc.

During the sixth century, the Christianized Code of Justinian (*Corpus Juris Civilis*) adopted these older pagan contract rules and further developed more elaborate contract rules through jurist opinions, decrees, and court decisions.[34] "Unnamed ('innominate') contracts included a gift for a gift, a gift for an act, an act for a gift, and an act for an act. Innominate contracts were actionable only after one party had performed his promise."[35]

The Christianized Eastern Roman Empire, however, did not establish or further develop a systematic method for classifying its contract laws or for developing a theory of contracts. The development of contract law and theory did not occur until the late eleventh and twelfth centuries, which was more than five hundred years after the *Corpus Juris Civilis* was first promulgated.[36]

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[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] "Starting in the last two decades of the eleventh century, the glossators of Roman law began to construct out of Justinian's massive texts, newly discovered after more than five hundred years of virtual oblivion, a coherent corpus juris that had only been adumbrated in the original writings…. The glossators of the late eleventh and the twelfth

III. The Christian Era: Law of Contracts, 1070 to 1600s

A. The Glossators and the Canon Law (1070 to early 1600s)

When the Western Roman Empire discovered the *Corpus Juris Civilis* during the late eleventh century, law schools in Italy, beginning with the University of Bologna, were opened to *gloss* or study this code. The students and priests who glossed the *Corpus Juris Civilis* were known as the glossators, "civilians," or as the Romanists, as distinguished from those who were the canonists or canon law lawyers. The glossators were pure academics; whereas the canonists tended to be both academic and professional law practitioners before the ecclesiastical courts.

The glossators read and pulled from the *Corpus Juris Civilis*; they organized and systemized this law. They also provided their own commentaries on this law. These commentaries were the first attempts to establish a scientific analysis of law, including a legal theory of contract law. Their writings were shared with the canonists or canon law attorneys, who in turn incorporated these writings into the Roman canon law. For this reason, the law of Rome early and largely became the law of the Roman Catholic Church. This is how modern contract law theory was developed: church lawyers borrowed from the *Corpus Juris Civilis*, the Mosaic law, the Gospels, established canon law, and even ancient customary law (e.g., the old Germanic customary laws) and developed contract law and theory.

Importantly, these church lawyers removed much of the mysticism and superstition from the law of contracts. For example, the "pledge" that had been required under Germanic customary law was abrogated under the Roman canon law; many of the formalities that had been required make and enforce contracts under the *Corpus Juris Civilis* were also abrogated under the Roman canon law.[37] At this point, the Roman canonist reduced contract law theory to a few simple propositions:

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centuries, in indexing the Roman texts, collected the various statements of the older Roman jurists on contracts, and in glossing them, elaborated general concepts and principles that they found to be implicit in them. The canonists went even further, offering a general theory of contractual liability and applying that theory to actual disputes litigated in the ecclesiastical courts." John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), pp. 129-130.

[37] Ibid., p. 130.

1. The contract itself must have a *just* purpose or objective;
2. A breach of the contract, without justification, is *sin* against God and a violation of the social contract with fellow countrymen; and
3. A breach of the contract should afford an *adequate remedy* to the non-offending party.

Hence, Roman canon law based its contract theory on two broad theories: "a *theory of sin* and a *theory of equity*."[38] This theory of sin thus held those who had made contracts to the highest of ethical and Christian standards. These standards certainly included the *implied obligations of good faith and fair dealing*, between the parties because God required this behavior in his covenant with humankind.

> Equity, for the twelfth-century canonists and Romanists alike, required, in contracts, a balancing of gains and losses on both sides. This principle took form in the doctrine of the just price. Both the Romanists and the canonists started with the premise that normally the just price is the common estimate, that is, the market price; a sharp deviation from the market price was prima facie contrary to reason and equity. Usury, which was defined as a charge for the loan of money in excess of the normal rate of interest, was also condemned by both Romanists and canonists as a breach of market norms.
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> The canonists, however, in contrast to the Romanists, were more concerned with another aspect of a sale in excess of the just price, or a charge for money in excess of normal interest, namely, the immoral motive that often underlay such practices. Profit-making in itself—contrary to what has been said by many modern writers—was not condemned by the canon law of the twelfth century. To buy cheap and sell dear was considered to be proper in many types of situations. What was condemned by the canon law was 'shameful' profit (turpe lucrum, 'filthy lucre'), and that was identified with avaricious business practices. Thus, for the canonists, rules of unfair competition,

[38] Ibid., p. 132.

> directed against breach of market norms, were linked also with rules of unconscionability, directed against oppressive transactions.[39]

For this reason, the Christian world (i.e., Britain and Western Europe) held the belief that God himself had "instituted the ecclesiastical and secular courts with the task, in part, of enforcing contractual obligations to the extent that such obligations are just."[40]

B. The Anglican Church and Contract law, 1300 to early 1600s

Anglo-American law inherited the canon law's jurisprudence on contracts through the Roman Church of England. As we have seen in previous essays in this series, England's lawyers and judges were primarily churchmen under holy orders; and those who were not priests were in communion with and heavily regulated by the Church of England. Under this set of circumstances, England's contract law was thoroughly Christian. "The English ecclesiastical courts, which had a wide jurisdiction over contract disputes involving not only clerics but also laymen, applied the canon law of the Roman Church."[41]

The Chancery Court[42], which had jurisdiction over England's secular courts, also instilled Christian principles of the canon law into the English common law and the law of merchants.[43]

Thus, during the period 1300 to the 1600s, "the diverse types of law applicable to contracts were strongly influenced by the religious beliefs that prevailed during those centuries in England"[44] and "[d]espite the significant changes in the law of contracts which took place in the sixteenth and early seventeenth centuries, in all the legal systems that prevailed in England, including

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[39] Ibid., pp. 131-132.
[40] Ibid., p. 132.
[41] Ibid., p. 133.
[42] "In Chancery, the influence of moral theology was even more apparent, if only because the chancellor, in those centuries, was almost invariably an archbishop or bishop, quite familiar with the basic features of the canon law, and his decisions were often grounded expressly in Christian teaching. Indeed, his jurisdiction may be said to have rested on three principles that were attributed to Christian faith: the protection of the poor and helpless, the enforcement of relations of trust and confidence, and the granting of remedies that 'act on the person' (injunctions, specific performance, and the like)." John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 134.
[43] Ibid.
[44] Ibid., p. 133.

the common law, the underlying presuppositions of contractual liability remained what they had been in the earlier period.

Breach of promise was actionable, in the first instance, because (or if) it was a wrong, called a tort, and in the second instance, because (or if) the promise had a right to require its enforcement in view of its reasonable and equitable purpose. With some qualifications, the common lawyers accepted these premises no less than the canon lawyers."[45]

"The chief common law actions relating to agreements were founded on the *concept of moral wrong* as expounded in Roman Catholic theology: debt, detinue, and account presupposed the *wrongfulness* of retaining money or property that was due to the other party in a half-completed exchange; deceit presupposed an *intentional wrong*; covenant presupposed the *wrongfulness* of violating a solemn oath; assumpsit—more accurately, trespass on the case upon an assumpsit—developed in the fifteenth century to permit recovery for the *wrongful* act ('trespass' is, of course, law French for the Latin transgression, 'sin') of negligently performing an undertaking (misfeasance)."[46]

In other words, the English law of contracts was tailored after the religious pattern established in the Law of Moses and the *doctrine of sin*.[47] Within English jurisprudence, the Christian conscience and Christian self-consciousness were thus *sine qua non*; that is to say, the English law pre-supposed that lay individuals maintained Christian self-consciousness. Thus, from between 1300 to the 1600s (and throughout the next three centuries), England's law of contracts fell within the general framework of England's Christian jurisprudence.[48] "It was not the

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[45] Ibid., p. 135.
[46] Ibid. p. 134.
[47] Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris Pub., 2015), p. 520 (discussing the historical roots of the doctrine of good faith and fair dealing to the Law of Moses).
[48] "'In the late sixteenth and seventeenth centuries, English Puritan theologians radically expanded the doctrine [of covenants] with two major innovations. First, they transformed the covenant of grace as a merciful gift of God into a bargained contract, voluntarily negotiated and agreed upon, and absolutely binding on both sides… Second, Puritan theologians added parties to the covenant not only with the elected individual Christian but also with the 'elect nation' of England, which was called to reform its laws and legal institutions according to God's word. Moreover, within the Biblical covenants the Puritans advocated political and institutional covenants of all kinds: covenants to form families, communities, associations, churches, cities, and even commonwealths, each of which was deemed absolutely binding.'" John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 139.

lawyers… but the theologians, who articulated the underlying premises of the new bargain theory of contractual liability."[49]

C. Modern Contract Theory: A Christian Legacy

The modern theory of contracts that is taught in American law schools today was thus extracted out of the Roman canon law and the Christianized *Corpus Juris Civilis*. See, e.g., Figure 4, below.

This is significant for a number of reasons: first, many of the modern contractual duties and defenses were derived from the idea of "sin," which carried with it the remedial doctrine of "equity." This essentially meant that all contractual obligations carry with it the *doctrine of good faith and fair dealing* between *the contracting parties, toward the entire British society, and God*.[50] This essentially meant that the contracting parties had solemn duties and social responsibilities imposed upon them through the Law of Christ and enforced through the English courts.[51] And these duties and responsibilities were constantly refined through the prism of the canon law of the Anglican Church. See, e.g., Figure 4.

Figure 4.

Modern Contract Law & Theory	**Modern Definition**	**Canon Law Origin**
Formation of Contract—Capacity to Contract	"No one can be bound by contract who has not legal capacity to incur at least voidable contract duties." " A natural person… unless he is (a) under guardianship, or (b) an infant, or (c) mentally ill or defective, or (d) intoxicated."	**Ten Principles of the Canon Law on Contracts** [a]. That agreements should be legally enforceable even though they were entered into without formalities (*pacta sunt servanda*), provided that their purpose (*causa*) was just; [b]. that agreements entered into through the fraud of one

[49] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 138.
[50] Ibid, p. 139.

[51] Ibid.

		or both parties should not be legally enforceable; [c]. that agreements entered into through duress should not be legally enforceable; [d]. that agreements should not be legally enforceable if one or both parties were mistaken concerning a circumstance material to its formation; [e]. that silence may be interpreted as giving rise to inferences concerning the intention of the parties in forming a contract; [f]. that the rights of third-party beneficiaries of a contract should be protected; [g]. that a contract may be subject to reformation in order to achieve justice in a particular case; [h]. that good faith is required in the formation of the contract, its interpretation, and in its execution; [i]. that it matters of doubt, rules of contract law are to be applied in favor of the debtor (*in dubiis pro debitore*); and [j]. that contracts that are unconscionable should not be enforced.[52]

[52] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 131.

Formation of Contract—Mutual Assent	"Manifestation of mutual assent to an exchange requires that each party either make a promise or begin or render a promise."	See above, *10 Principles of Canon Law on Contracts*
Offer and Acceptance	"An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it."	See above, *10 Principles of Canon Law on Contracts*
Requirement For Consideration	"To constitute consideration, a performance or return promise must be bargained for."	See above, *10 Principles of Canon Law on Contracts*
Statutes of Fraud	"[A] contract within the Statute of Frauds is enforceable if it is evidenced by any writing, signed by or on behalf of the party to be charged…."	None.
Mistake	"A mistake is a belief that is not in accord with the facts."	See above, *10 Principles of Canon Law on Contracts*
Misrepresentation, Duress and Undue Influence	"A person's non-disclosure of a fact known to him is equivalent to an assertion that the fact does not exist…." "A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker… knows or believes that the assertion is not in accord with the facts…."	See above, *10 Principles of Canon Law on Contracts*

Restitution	"Restitution in favor of party who is excusably ignorant or is not equally in the wrong."	See above, *10 Principles of Canon Law on Contracts*
Good Faith and Fair Dealing	"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."	See above, *10 Principles of Canon Law on Contracts*
Performance and Non-Performance	"Effect of performance as discharge and of non-performance as breach."	See above, *10 Principles of Canon Law on Contracts*
Impracticability of Performance and Frustration of Purpose	"Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary."	See above, *10 Principles of Canon Law on Contracts*
Discharge of Assent or Alteration	"Accord and satisfaction… contract not to sue, etc."	See above, *10 Principles of Canon Law on Contracts*
Remedies	"Expectation" "reliance interest" "restitution interest."	See above, *10 Principles of Canon Law on Contracts*

We should note here the significance of the "doctrine of good faith and fair dealing." This obligation included not simply the contracting parties but it also included obligations to the entire British society and toward God. Contracts had to

be just, could not be odious or repugnant to Christian order, or oppressive or exploitative of the poor. Britain's ecclesiastical and Chancery courts were designed to root out any and all unchristian schemes, objectives, or motives from civil contracts.

For instance, the Lord Chancellor, who held the King's conscience, ensured that the rich did not unduly oppress the poor with unscrupulous contracting schemes. This often meant that the Lord Chancellor could utilize his authority to ensure that the poor and oppressed could avail themselves of certain contract defenses in order to be alleviated from oppressive or over-burdensome contracts. These contract defenses might include, for example: misrepresentation, duress, undue influence, mistake, impracticability, frustration of purpose, fraud, etc. Here, we see the influence of Christian equity (i.e., the canon law of the Catholic Church) upon the English common law. While it is true that "equity follows law," it is also true the "equity guides the law by preventing unconscionable, unjust results." Equity has also merged into the common law and the statutory law; that that end, equity may also be called "law."

I would be remiss if I did not here stress the fact that equity jurisprudence is not perfect and has in the past varied from court to court and judge to judge-- a fact of life in most court jurisdictions within the United States. For this reason, only the most senior and experienced lawyers and jurists will be generally qualified to administer equity jurisprudence. Not every attorney who graduates from law school and passes the bar examination necessarily will have the requisite experience to function as a "Lord Chancellor," simply because of the tremendous responsibility and nature of the task. Effective equity administration requires a deep understanding of human affairs and life, the foundation of law and jurisprudence, and understanding of theology (in the broadest sense of that word) and a commitment to defending the poor and disenfranchised. Unfortunately, these competencies are not typically taught in most American law schools; nor are the academic curricula in most law schools conducive to encouraging law students to take up this mantle of leadership. For the reasons already pointed out in this essay, a thorough understanding of the Christian foundations of the Anglo-American law of contracts remains critically important for the development of both Christian and non-Christian lawyers alike. See, generally, Figure 5, below.

Figure 5. Christian Sources of Modern Contract Defenses: the Bible and the Canon Law of the Church of England (Roman Catholic & Anglican)

The Law of Christ (The Bible) ------→	**Roman Catholic Theology and Canon Law (The Law of Christ; Equity)------→**	**Modern Contract Defenses**
"A new commandment I give unto you, That ye love one another; as I have loved you, that ye also love one another." John 13:34 "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets." Matthew 7:12 "[J]udge not according to appearance but to judge righteous judgments." John 7:24	**Ten Principles of the Canon Law on Contracts** [a]. That agreements should be legally enforceable even though they were entered into without formalities (*pacta sunt servanda*), provided that their purpose (*causa*) was just; [b]. that agreements entered into through the fraud of one or both parties should not be legally enforceable; [c]. that agreements entered into through duress should not be legally enforceable; [d]. that agreements should not be legally enforceable if one or both parties were mistaken concerning a circumstance material to its formation; [e]. that silence may be interpreted as giving rise to inferences concerning the intention of the parties in forming a contract; [f]. that the rights of third-party beneficiaries of a contract should be protected; [g]. that a contract may be	a. Misrepresentation b. Duress c. Undue Influence d. Mistake e. Impracticability f. Frustration of purpose g. Adhesion contracts h. Fraud, etc.

	subject to reformation in order to achieve justice in a particular case; [h]. that good faith is required in the formation of the contract, its interpretation, and in its execution; [i]. that it matters of doubt, rules of contract law are to be applied in favor of the debtor (*in dubiis pro debitore*); and [j]. that contracts that are unconscionable should not be enforced.[53]	

Here, in Figure 5, we find in the very substance of the unique role of the Lord Chancellor (during the period 1300 to the 1600s) a prime example of the role which Christian lawyers and judges must play within the modern secular state. They must ensure that modern contracts are not utilized to re-create slavery; to oppress and exploit the poor; to take advantage of the unwary and unassuming; or to promote odious and repugnant conduct.

IV. A Final Word: The Need for Christian Leadership within the American Bar and Bench

There is thus today a need for Christian leaders within the American bar and bench—not to evangelize or proselytize non-Christian members or the non-Christian body-politic-- to help explain and interpret the important Christian foundations of the law. To that end, this essay is thus presented—using my own professional experiences and observations-- to provide an important personal example of precisely how other Christian lawyers and judges might go about this important work.

[53] John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 131.

First off, at some point in my career as a labor and employment attorney, I really began to see the parallels between the Bible and employment jurisprudence, where it became clear that the poor (especially black and brown unskilled and low-wage workers) were at a clear and distinct disadvantage with respect to negotiating employment terms and conditions and enforcing their contractual and legal rights. I could see within the law of equity all of the Biblical mandates to do justice and judgment to these poor and oppressed; and, yet, I could also see a systematic callous indifference amongst the American bar and bench toward alleviating this oppression.

Secondly, as I have previously mentioned in previous essays within this series, while in law school I researched and wrote what I considered to be path-breaking research on constitutional law, titled *The American Jurist: A Natural Law Interpretation of the U.S. Constitution, 1787 to 1910*. For I would not have developed a life-long interest into the actual administration of labor and employment contracts had it not been for this enlightening legal research. I began to seriously look at the economic component to contract law—particularly collective bargaining and employment law.

In retrospect, I think that what led me to labor and employment law was a book on peonage in the American South. From this book on peonage I first learned that during the period 1865 to throughout the 1940s, oppressive labor or employment contracts had been used to exploit weak, ignorant and unassuming African American peasants who were the newly-freed slaves or the sons and daughters of slaves in the American South.

And as a farm boy from rural, northern Florida, I had seen glimpses of this aspect of the American South. I had known more than a few southern families who lived in homes built during the late-19th or early twentieth century. I had seen homes with no in-door toilets but instead out-houses—even during the winter time-- were used; homes with fire-wood stoves and fire-places used as the primary source of heat during the winter; homes with no indoor plumbing and where out-door hand pumps and water tubs were used for drinking water, bathing, and laundry; and homes with no air-conditioning units save electrical fans. This seemed to be a tiny microcosm of the American South prior to civil rights

movement.[54] The older African American farming communities during the 1970s were still largely molded and shaped by the social, political and economic philosophy of Booker T. Washington.[55] This was only natural: the men and women in these communities were considerably older than Dr. Martin Luther King, Jr. and other leaders who came along during the 1960s and 70s. Booker T. Washington's ideas and philosophy (or ideas similar)[56] were still predominate amongst my grand-parents' and great-grand parents' generations, and these were the men and women who most decisively molded and shaped my character as a child.[57]

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[54] I voluntarily lived for about four weeks in these conditions during the summer of 1982. I honestly saw this as a "rite of passage" that I wanted to experience. All the older men in my family had cropped tobacco, and I wanted to experience what this felt like. (*I note that in 2007, I read somewhere that Dr. Martin Luther King, Jr. had similarly worked as a teenager in a tobacco field, where his fellow field-hands nominated him to be their preacher!!! See, e.g. http://www.nbcconnecticut.com/news/local/MLK-Worked-Two-Summers-on-Simsbury-Tobacco-Farm-289024601.html*) I worked in tobacco fields owned by both black and white farmers in rural northern Florida. I was fourteen years old then, and as I can recall the conditions were at first miserable. After my first day being in the tobacco field, I felt sweaty, dirty, sticky and miserable. The lack of in-door plumbing added to this misery! How was I to wash all the tobacco stains off my arms hands and face? Actually, I didn't; I couldn't. Over the course of that summer, my fingernails and the palms of my hands turned green! I hated going to the restroom and taking bathes outdoors. I worked in the tobacco fields that summer, in the hot sun, for about $30 per day. Nights were hot, sweaty, and mosquito infested. There were no neon lamps outside—the sky was often pitch black, unless the stars and moon were out. The tobacco fields had all kinds of snakes and rodents, not to mention the huge tobacco worms that often clung to your clothing. This was also a very fun fraternal experience—one that that I will cherish and never forget! All the young men who experienced this are like a fraternity. After about four weeks, I gained a new respect for how my parents, grand-parents, and great-grand-parents lived and worked in the rural South. I called my mom and told her that I was ready to come home. I was fortunate, because many boys who lived in the country, and whose fathers and grandfathers were tobacco farmers, did not have this option!

[55] I do not here intend to state that the African American men and women in this community were conscientious followers of Booker T. Washington. My purpose is rather to provide a cultural reference for those persons who may be unfamiliar with early twentieth-century African American culture in the South. The men and women in these communities were generally conservative, Christian, and self-reliant. To be sure, their isolated conditions were imposed upon them through official racial segregation, but for the most part they professed a belief in Christian ideals and in conservative self-reliance.

[56] Ibid.

[57] To this point, I should add that I grew up inside a network of rural African American communities throughout rural, northern Florida. I could readily see that during the days of enforced racial segregation, the "Law of Christ" reigned supreme throughout the African American South; the "Law of Christ" shaped and governed their social norms, family life, and character. *The Holy Bible* was, in fact, the foundation of African American culture and life in the rural South. I spent a lot of time inside of the homes of my maternal grandparents, Deacon Grover Mackey (1907-1989) and Nancy Edwards Mackey (1910-2007)(members of Mt. Saini Baptist Church, McAlpin, FL) and my paternal great aunts and uncles, particularly the Reverend Lee Andrew Ford (DOB, circa 1914-2015) of the A.M.E. Church, and his sister Ernestine Ford Johns (DOB, circa 1917- 2001); Rev. Ford and Aunt Ernestine were siblings of my paternal grandfather Reverend Sidney Ford, (DOB 1904- 1962) of the A.M.E. Church. I also spent a lot of time the home of the Rev. Sidney Ford's widow, Alice Jones Ford (1908-1997), a leading member of the Ebenezer A.M.E. Church; I actually lived with Grandma Alice for two weeks in 1984, and found her to be a *most strict* and devoted Christian. This was the "greatest" generation—the World War II generation-- that influenced, molded and shaped

All four of my grand-parents had been born during the first decade of the twentieth century; and I had the privilege of having grown to full adulthood and knowing and speaking with three of them about their first-hand reminisces of African American life in the South. They provided me with southern culture and my southern mannerisms; and, indeed, like the great Booker T. Washington, I grew to cherish, love, and respect the American South as the homeland of authentic black culture. I knew relatives (men and women) who were born in the late 19th century. [58] I knew black and white farmers and farm hands; I knew southern poverty and ignorance; I knew southern aristocracy and wealth; and I knew something of the southern court system where there always appeared to be a dearth of African American lawyers and judges.

Always and everywhere, it seemed, that the southern poor—and especially the African American poor—were simply too ignorant and weak to overcome the

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my values as child and young adult. The Rev. Lee Ford, whom I had the honor to represent in a court case, remained my personal spiritual advisor and confidant most of my adult life.

[58] First, my maternal great-grandmother, **Amanda Wright Mackey** (DOB, circa 1880s) died in 1979, in her early 90s, when I was ten years old. I remember her quite vividly. She sat quietly on the front porch on most days; my grandfather (her son) often sat next to her. I remember her with walking stick moving slowly with determination. I can still see her walking up to the "rolling store" truck to purchase groceries. [The "rolling store" was a grocery store on wheels; it want out to the country-side about once or twice per week to sell groceries to rural folks (particularly the elderly) who did not have transportation and could not go into town.] She kept a chickens, turkeys, and pigs on the farm. I distinctly remember a box of biddies (baby chickens) that she kept. I can recall her sad but glorious funeral at Bethlehem A.M.E. Church, which she co-founded along with my great-grandfather Willie James Mackey. My grandfather kissed her good-bye as she lay in the casket. My great-grand mother Amanda Wright Mackey had an older sister, **Louise Wright Pompey** (DOB, circa 1880s), who lived past the age of 100, died during the mid-1980s, when I was about 15 or 16 years old. My memory of Auntie Louise is also quite vivid (there is a remarkable resemblance between my mother and her). I lived with Auntie Louise for about a week sometime during the early 1980s; every morning, as I distinctly recall, she prayed intense prayers, reciting the Lord's Prayer and the Ten Commandments. Auntie Louise was perhaps the holiest woman I ever laid eyes on. On my paternal side, there were great aunts who had been born during the late 19th century and who lived in South Florida; I barely knew them, but I saw them once or twice at family reunions. Finally, there was **Elder Leroy Freeman** (DOB 1892) who died in the late 1980s), a great-uncle through marriage, who was born in 1892, and who shared the most vivid stories of the South with me while I grew up. We called him "Papa." I am unaware if Papa attended school. I first saw him when I was about five or six years old; and even then, he was able to drive trucks and tractors around the farm. Papa lost his eye-sight; and he would call me about five o'clock each day, and as me to come and "walk him," which meant that I would act as his guide, while he walked from his house to our house, where he watched the six-o'clock evening news. Papa was a "secular" Christian; he believed in the Christian doctrine but he did not go to church. He had been most of his long life a go-getter and a money-maker. Papa had been an astute business man, political theorist, race man, and an apologist for the African American race. Papa had an opinion about most every subject. He was the quintessential African American Southerner. From Papa I learned much about African American life and culture in the American South during the early twentieth century. Papa's first-hand accounts of African American life in the South dove-tailed nicely into my later readings of Booker T. Washington, W.E.B. Du Bois, James Weldon Johnson, Zora Neale Hurston, and several other African American twentieth-century writers.

powerful influences to southern employers, financiers, investors, and capitalists. I had grown up seeing something of the South's economic oppression and exploitation of poor people black and white. Not until law school, during the early 1990s, did I connect this oppression to the economic abuses stemming from unscrupulous financing schemes and employment contracts. This economic problem became more and more clairvoyant as I studied the history of Reconstruction and South from the period 1880 to 1930. In my mind, Black and White Southerners needed to deal with each other in good faith, not simply lip-service and proclamation, but with fair-dealing in economic relations and in just and fair court decisions. In 1989, I became mesmerized with W.E.B. Du Bois' spiritual classic *The Souls of Black Folk* (1903), which contained several chapters on southern political economy-- namely, the chapters titled *"Of the Meaning of Progress," "Of the Wings of Atalanta," "Of the Black Belt," "Of the Quest of the Golden Fleece," and "Of the Sons of Master and Man"*—which set forth, in so many words, the economic oppressions and legal evasions which failed to meet the standards of Christian civilization. The problem had much to do with the inability of African American freedmen to avail themselves of basic civil and human rights, as promised in the Civil Rights Act of 1866,-- namely,

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

In law school, the African American problem became clear; for it was both an economic problem as well as a legal problem of making and enforcing meaningful employment contracts: first, there was African American sharecropping; next came African American peonage; and then racial restrictions of African Americans in employment—all of this, to my mind, stemmed from the failure of the South's lawyers and judges to fairly administer the basic rules of the law of contracts.

Thus, the study of the South's political economy remained of major interest to me during my undergraduate and law school years. In undergraduate school, I analyzed the history and political development of the post-Civil War American South. In law school, my interests shifted to economics, the courts, and the law of

labor contracts (i.e., peonage, sharecropping, and labor and employment law in the American South during the early 20th century). See, e.g., Figure 6, below:

Figure 6. Pre-conditions for Abusive Contract Formation & Administration: Race, Class & Culture

White Capitalists, Landlords & Merchants (late 19th & early 20th Century American South)	**Black Tenant Farmers & Farmworkers (late 19th & early 20th Century American South)**
1. Superior Financial Knowledge	Limited Financial Knowledge
2. Superior Business Education	Inferior or no Business Education
3.Superior Political and Legal Influence	Limited or no Political or Legal Influence

This interest remained with me throughout my legal career, resulting in my publications of *The Evasion of African American Workers: Critical Thoughts on U.S. Labor & Employment Law and Policy* (2008) and *Labor Matters: An African American Labor Crisis, 1861 to Present* (2011, 2015).

In 1995, I thus entered the American legal profession largely predisposed to viewing with hesitation and suspicion the legal system's ability to mete out even-handed justice to working-class and poor African Americans. My professional interests in making a meaningful contribution toward rectifying this American problem came wholly out of my Christian faith.

As a Judge Advocate Attorney in the United States Army, I faced a similar problem which led me to view the African American labor problem within a larger socio-economic context. In the military, there were working-class whites, black, Hispanics, and many other groups; they all were pretty much "in the same boat" so to speak. And yet I also saw this contract exploitation play out over and over again with regards to all of these young soldiers and their families—regardless of their race. Again, since the time of General George Washington and the Continental

Army, unscrupulous creditors sought to take advantage of American soldiers in one form or another. My experiences in fighting for the interests of American soldiers and their family members helped me to master all of the basic principles of contracts—from contract formation to contract defenses. Indeed, I felt compelled and duty-bound to do so; I felt an obligation to fight for the oppressed and their oppressors and a working knowledge of the various contract defenses was indispensable. As I recall now, these contract defenses included:

a. Misrepresentation
b. Duress
c. Undue Influence
d. Mistake
e. Impracticability
f. Frustration of purpose
g. Adhesion contracts
h. Fraud, etc.

And, as we have already observed, the role of Christian lawyers who act as advocates on behalf of those who are the victims of contract oppression is no different than the unique role of the Lord Chancellor in England (during the period 1300 to 1600); that unique role consisted of making sure that the law of contracts were applied fairly, equitably, and in a manner that did not oppress the poor and the unassuming. As Christian lawyers and advocates, we have a duty to fulfill this role because equity jurisprudence—even as it was reflected in the Bible and ancient Greco-Roman philosophy and interpreted and applied in Medieval England by the Lord Chancellor— is part and parcel of American law and jurisprudence.

Christian lawyers and judges must take up this leadership mantle to ensure that equity jurisprudence remains a viable part of American contract law. May we look to the English Lord Chancellor as our guide as we fulfill this obligation. [59]

[59] "In Chancery, the influence of moral theology was even more apparent, if only because the chancellor, in those centuries, was almost invariably an archbishop or bishop, quite familiar with the basic features of the canon law, and his decisions were often grounded expressly in Christian teaching. Indeed, his jurisdiction may be said to have rested on three principles that were attributed to Christian faith: the protection of the poor and helpless, the enforcement of relations of trust and confidence, and the granting of remedies that 'act on the person' (injunctions, specific performance, and the like)." John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 134.

And may we find in this unique role of the Lord Chancellor (during the period 1300 to the 1600s) a prime example of the role which Christian lawyers and judges must play within the modern secular state, vis-à-vis the interpretation and administration of the American law of contracts.

Lawyers and judges should ensure that modern contracts are not utilized to re-create slavery; to oppress and exploit the poor; to take advantage of the unwary and unassuming; or to promote odious and repugnant conduct. For this reason, throughout my legal career, I have, like the Lord Chancellor, felt compelled to apply the principles of equity to various types of contracts, in order to attain justice. This did not come from my law school courses on the law of contracts, but rather it was instilled into me through the church and my Christian faith.

CONCLUSION

Anglo-American contract law was born inside of the cosmopolitan and universal canon law of the Roman Catholic Church. Its foundation, in both theory and practice, continue to reflect the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgement (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)

Today, American contract law is collapsing due to national sin and a callous indifference among lawyers and judges toward equity jurisprudence which is designed to correct the gross injustices against the poor. Such injustices often occur in contract formation and administration for a number of reasons, such as ignorance, poverty, racism, and gross disparities in bargaining power.

For this reason, the spirit of the old chancery courts-- that is to say, the role of the Medieval Lord Chancellor-- should be instilled within the professional practice of every American lawyer and within the duty of every American judge. To reach this stage within the American legal profession, I am convinced that Christian lawyers and judges must take the lead.

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