

APPENDIX

A POSTDOCTORAL STUDY

*Practical Problems in Law and Ministry:
Puritanism and the Presbyterian Enlightenment*

APPENDIX

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APPENDIX A

A Letter to the Board of Trustees of the Whitefield Theological Seminary

Whitefield Theological Seminary
Graduate School of Ministry
1605 East Gary Road
Lakeland, Florida 33801

To the President and Board of Trustees:

I hereby present my postdoctoral study *Puritanism and the Presbyterian Enlightenment: or The Religion of Nature as the Foundation of the United States Constitution*. It is the full vindication of my general Christian political, legal, and, constitutional theology which I have named “Reformed Methodist Theology.” This new theology also has an old label, “Oxford Methodism,” which I have given it out of my deference to the first rise of Methodism at Oxford University and to the great ministries of Wesley and Whitefield. I am not surprised that divine Providence would decree that this new theology be formally developed at Whitefield Theological Seminary and nurtured within the bosom of the African Methodist Episcopal Church.

Oxford Methodism is unique, because it is a theology that is designed for Christian lawyers, judges, law students, and those professionals who administer public policy. It brings together the Arminian theology of the Wesleyan movement and the Jeffersonians (i.e., the latitudinarian or High Church Anglicans) with the Calvinistic theology of Puritans and Presbyterians. It examines the American Declaration of Independence (1776) and the United States Constitution (1787) utilizing the tools of Reformed Protestant ideology. It also absorbs the viewpoints of the more radical Puritan-Baptists of colonial Rhode Island and the Puritan-Quakers of colonial New Jersey and Pennsylvania.

I note that this postdoctoral study addresses only the problem of church-state relations and the general nature of law and civil polity. Under Reformed Methodist doctrine, the authority of the Sacred Scriptures and the two-tables conception of civil government have been embraced, with the Noahic covenant of nature as its fundamental law. To that end, each chapter of this postdoctoral study has been designed to set forth the theological, historical, and juridical basis of Oxford Methodism.

Respectfully Submitted,

REV. RODERICK O. FORD

Mount Olive A.M.E. Church
Gainesville, Florida
August 7, 2022

APPENDIX B

*The Apostolate Papers*¹

by

Roderick O. Ford, LL.D.

1. A History of the Church (St. Augustine of Hippo)
2. A History of the Church (St. Thomas Aquinas)
3. A History of the Church (Origins of Western Jurisprudence)
4. A History of the Church (Emerson and Nature)
5. Thomas Hobbes As Constitutional Theorist
6. John Locke As Constitutional Theorist
7. Christian Philosophy of John Locke
8. Philosophy of Bishop George Berkeley
9. Philosophy of David Hume
10. A History of the Anglican Church-- Part I ("Church and State in England, 50 B.C. to 1066 A.D.")
11. A History of the Anglican Church-- Part II ("Christianity and Law in England, 600 A.D. to 1066 A.D.")
12. A History of the Anglican Church-- Part III ("King William I, 1066 to 1087 A.D.")
13. A History of the Anglican Church-- Part IV ("Lay Investiture Controversy: Christianity & Law in England, 1087 to 1254 A.D.")
14. A History of the Anglican Church-- Part V ("King Henry II, 1154 to 1189 A.D.")
15. A History of the Anglican Church-- Part VI ("Seven English Kings, 1189 to 1400 A.D.")
16. A History of the Anglican Church-- Part VII ("The English Inns of Court, 1300 to 1600 A.D.")
17. A History of the Anglican Church-- Part VIII ("Anglican Church & Canon Law, 1300 to 1600 A.D.")
18. A History of the Anglican Church-- Part IX ("Christianity & the Law of Contracts, 1300 to 1600 A.D.")
19. A History of the Anglican Church-- Part X ("Trial Advocacy, Evidence, & Procedure, 1300 to

¹ Roderick O. Ford, *The Apostolate Papers* (unpublished research papers, 2015 to 2022). www.roderickford.org.

1600 A.D.”)

20. A History of the Anglican Church-- Part XI (“Christian Law of Marriage, 1300 to 1600 A.D.”)
21. A History of the Anglican Church-- Part XII (“English Law of Real Property, 1300 to 1600”)
22. A History of the Anglican Church-- Part XIII (“The Hundred Year’s War, the War of Roses, and the Church, 1337 to 1485 A.D.”)
23. A History of the Anglican Church-- Part XIV (“The House of Tudor, 1485 to 1509 A.D.”)
24. A History of the Anglican Church-- Part XV (“Henry VIII, 1491 to 1547 A.D.”)
25. A History of the Anglican Church-- Part XVI (“Great Lawyers and Clergymen, 1485 to 1600 A.D.”)
26. A History of the Anglican Church-- Part XVII (“King Edward I, 1547 to 1553 A.D.”)
27. A History of the Anglican Church-- Part XVIII (“Queen Mary I, 1553 to 1558 A.D.”)
28. A History of the Anglican Church-- Part XIX (“Queen Elizabeth I, 1558 to 1603 A.D.”)
29. A History of the Anglican Church-- Part XX (“Apologetics o Rev. Richard Hooker, 1554 to 1600 A.D.”)
30. A History of the Anglican Church-- Part XXI (“The Book of Common Prayer,1549 to 1662 A.D.”)
31. A History of the Anglican Church-- Part XXII (“The King James Bible, 1611 to 1800 A.D.”)
32. A History of the Anglican Church-- Part XXIII (Section 1) (“Christian Theology and Protestant Dissent in England, 1530 to 1650 A.D. – St. Augustine of Hippo (354 to 430 A.D.)”).
33. A History of the Anglican Church-- Part XXIII (Section 2) (“Christian Theology and Protestant Dissent in England, 1530 to 1650 A.D. – Martin Luther (1483- 1546 A.D.)”).
34. A History of the Anglican Church-- Part XXIII (Section 3),(“Christian Theology and Protestant Dissent in England, 1530 to 1650 A.D. – John Calvin (1509- 1650) A.D.)”).
35. A History of the Anglican Church-- Part XXIII (Section 4) (“Christian Theology and Protestant Dissent in England, 1530 to 1650 A.D. – Puritans, Presbyterians, Baptists, Quakers, Separatists and Other Minor Sects”).
36. A History of the Anglican Church-- Part XXIV (“Puritanism and the Rise of Capitalism, 1550 to 1750 A.D.”)
37. A History of the Anglican Church-- Part XXV (“Puritanism, Slavery, and the Transatlantic Slave Trade, 1600 to 1750 A.D.”)
38. A History of the Anglican Church-- Part XXVI (Section 1) (“Puritanism and Family: Laural Thatcher Ulrich, *Good Wives*”(Part 1))
39. A History of the Anglican Church-- Part XXVI (Section 2) (“Puritanism and Family: Laural Thatcher Ulrich, *Good Wives*”(Part 2))

40. A History of the Anglican Church-- Part XXVI (Section 3) (“Puritanism and Family: Laural Thatcher Ulrich, *Good Wives*”(Part 3))
41. A History of the Anglican Church-- PartXXVII(“Puritanism and Homosexuality in Colonial New England, 1630 to 1750 A.D.”)
42. A History of the Anglican Church-- PartXXVIII(“Puritanism and the Suppression of Femail Clergy in Colonial New England: the Story of Anne Hutchinson, 1591 to 1643 A.D.”)
43. A History of the Anglican Church-- Part XXIX (Section 1)(“Puritanism and the Family: Part 1”)
44. A History of the Anglican Church-- Part XXIX (Section 2)(“Puritanism and the Family: Part 2”)
45. A History of the Anglican Church-- Part XXIX (Section 3)(“Puritanism and the Family: Part 3”)
46. A History of the Anglican Church-- Part XXIX (Section 4)(“Puritanism and the Family: Part 4”)
47. A History of the Anglican Church-- Part XXX (“Puritanism and the Law of Master and Servant”)
48. A History of the Anglican Church-- Part XXXI (“Puritanism and the Constitutional Law of Colonial New England, 1600 to 1700 A.D.”)
49. A History of the Anglican Church-- Part XXXII (“Christianity and the Constitutional Law of Maryland, Delaware, the Carolinas, New Jersey, and Georgia, 1600 to 1750 A.D.”)
50. A History of the Anglican Church-- Part XXXIII (“King James, 1556 to 1625 A.D.”)
51. A History of the Anglican Church-- Part XXXIV(“Sir Edward Coke, 1552 to 1630 A.D.”)
52. A History of the Anglican Church-- Part XXXV(“King Charles I and The Bishop’s War”)
53. A History of the Anglican Church-- Part XXXVI (“The English Civil War, 1642 to 1651 A.D.”)
54. A History of the Anglican Church-- Part XXXVII (“The Levelers, the Diggers, and An Agreement of the People, 1642 to 1651 A.D.”)
55. A History of the Anglican Church-- Part XXXVIII (“Baptist Polity and Rev. Roger Williams, 1603 to 1683 A.D.”)
56. A History of the Anglican Church-- Part XXXIX (“Rev. Richard Baxter, 1615 to 1691 A.D.”)
57. A History of the Anglican Church-- Part XL (“Rev. Richard Baxter- Advice to Lawyers and Judges”)
58. A History of the Anglican Church-- Part XLI (“Sir Isaac Newton, 1642 to 1727 A.D.”)
59. A History of the Anglican Church-- Part XLII (Section 1)(“The Last of the Stuart Kings- Part 1”)
60. A History of the Anglican Church-- Part XLII (Section 2) (“The Last of the Stuart Kings- Part 2”)
61. A History of the Anglican Church-- Part XLIII (“Society for the Propagation of the Gospels in Foreign Parts, 1701 to 1785 A.D.”)
62. A History of the Anglican Church-- Part XLIV (“The Suppression of the Convocation of the Church of England, 1718 to 1800 A.D.”)

63. A History of the Anglican Church-- Part XLV (“William Warburton, Bishop of Gloucester, 1698 to 1779 A.D.”)
64. A History of the Anglican Church-- Part XLVI (“Joseph Butler, Bishop of Durham, 1692 to 1752”)
65. A History of the Anglican Church-- Part XLVII (“Bishop Joseph Butler, *The Analogy of Religion*”)
66. A History of the Anglican Church-- Part XLVIII (“Matthew Tindal, *Christianity as Old as The Creation; Or the Gospel a Republication of the Religion of Nature* (1730)”)
67. A History of the Anglican Church-- Part XLIX (“Lord Bolingbroke, Toryism, and *The Idea of a Patriot King* (1738)”)
68. A History of the Anglican Church-- Part L (“Adam Smith’s *The Wealth of Nations* (1776)”)
69. A History of the Anglican Church-- Part LI (“The Case of *Somerset v. Stewart* (1772) 98 ER 499, (1772) 20 State Tr 1, (1772) Lofft 1.”)
70. A History of the Anglican Church-- Part LII (“A Prelude to the American Revolution of 1776: John Witherspoon, *Lectures on Moral Philosophy*”)
71. A History of the Anglican Church-- Part LIII (“A Prelude to the American Revolution of 1776: Thomas Paine, *The Age of Reason*”)
72. A History of the Anglican Church-- Part LIV (“The Rise of the Methodist Movement in England and British North America, 1720 to 1800 A.D.”)

The Whitefield Seminary Papers: "The New Testament Early Church"

1. A History of the Early Church- "Jesus Christ, As Logos of God"
2. A History of the Early Church- "Jewish Synagogue, As Model for the Early Church"
3. A History of the Early Church- "Destruction of the Second Temple of Jerusalem"
4. A History of the Early Church- "Greek Influences Upon the Early Church"
5. A History of the Early Church- "The Jewish Wars: 1st & 2nd Maccabees"
6. A History of the Early Church- "Daniel's Prophecy: Prologue to New Testament"
7. A History of the Early Church- "Jacob's Prophecy: Prologue to New Testament"
8. A History of the Early Church- "Hosea's Prophecy: Prologue to New Testament"
9. A History of the Early Church- "Amos's Prophecy: Prologue to New Testament"
10. A History of the Early Church- "Isaiah's Prophecy: Prologue to New Testament"
11. A History of the Early Church- "Micah's Prophecy: Prologue to New Testament"
12. A History of the Early Church- "Joel's Prophecy: Prologue to New Testament"
13. A History of the Early Church- "Jonah's Prophecy: Prologue to New Testament"

14. A History of the Early Church- "Obadiah's Prophecy: Prologue to New Testament"
15. A History of the Early Church- "Nahum's Prophecy: Prologue to New Testament"
16. A History of the Early Church- "Habakkuk's Prophecy: Prologue to New Testament"
17. A History of the Early Church- "Zephaniah's Prophecy: Prologue to New Testament"
18. A History of the Early Church- "Jeremiah's Prophecy: Prologue to New Testament"
19. A History of the Early Church- "Ezekiel's Prophecy: Prologue to New Testament"
20. A History of the Early Church- "Haggai's Prophecy: Prologue to New Testament"
21. A History of the Early Church- "Zechariah's Prophecy: Prologue to New Testament"
22. A History of the Early Church- "Malachi's Prophecy: Prologue to New Testament"
23. A History of the Early Church- "The Apocalypse of St. John: Epilogue to New Testament"
24. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- Pt. 1
25. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- Pt. 2
26. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- Pt. 3
27. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- Pt. 4
28. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- Pt. 5
29. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- Pt. 6
30. A History of the Early Church- "Old Testament Foundations of the Gospel of Matthew"- End
31. A History of the Early Church- "Forensic Origins of the Gospels of Matthew, Mark, and Luke"
32. A History of the Early Church; "Historical Origins of the Logos in the Gospel of John"

Preface: Oxford Methodism (Reformed Methodist Theology)

Oxford Methodism:(RMT)-- Part I. ("Reformed Church Hermeneutics: Notes on Berkhof's *Principles of Biblical Interpretation*")

Oxford Methodism: (RMT)-- Part II. ("Reformed Church Hermeneutics: Notes on Dockery's *Biblical Interpretation Then and Now*")

Oxford Methodism: (RMT)-- Part III. ("Reformed Systematic Theology: Notes on Wesley's *Predestination Calmly Considered*")

Oxford Methodism:(RMT)-- Part IV. ("Reformed Systematic Theology: Notes on Whitefield's *A Letter to the Rev. Mr. John Wesley In Answer to His Sermon entitled 'Free Grace'*")

Oxford Methodism: (RMT)-- Part V. ("Reformed Systematic Theology: Notes on Clark's *Predestination*")

Oxford Methodism: (RMT)-- Part VI. (“Reformed Systematic Theology: Roderick O. Ford’s
“Predestination: An Essay towards A Reformed Methodist
Theology”)

APPENDIX C

“Jesus Christ, the *Logos* of God, and the Foundation of Anglo-American Civil Law and Secular Jurisprudence”²

by

Roderick O. Ford, D.Litt. (Law & Religion)

Before the birth of Jesus of Nazareth in the flesh, was his fundamental spiritual essence (i.e., his divine law of agape)³ accessible to the average man or woman—whether Jew or Gentile—in every nation and in every age? And, if so, how was Christ, or the law of Christ, made manifest or accessible to them?⁴ This ecclesiastical letter endeavors to explain, and perhaps demonstrate, the nature of that manifestation and accessibility through depicting Christ as the *logos* or as the divine *Logos* of God.⁵ Its explanation is grounded upon ancient Hebrew theology and Greek philosophy, as well as the plain text of the New Testament. Its ultimate objective is to discourse with law students and to inform trained legal theorists, lawyers, and judges about the *fundamental element* of justice and jurisprudence called *reason*, and to demonstrate that this very same reason (i.e., *logos*), which is utilized in civil law and secular jurisprudence, is also the *Logos* of God (i.e., Christ).⁶

Indeed, the classical Christian jurisprudence, which was thoroughly sewn into the English common law, is thoroughly reflected in the case of *Dr. Bonham’s Case* (1610) 8 Co. Rep. 107; 77 Eng. Rep. 638, where Chief Justice Edward Coke ruled that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.” This essay shall further demonstrate that this “reason,” which Justice Coke held was the “life of the law” is same *logos* of Greek philosophy (i.e., reason)⁷ and the same *Logos* of the Christian New Testament.⁸ This philosophy and

² Roderick O. Ford, *The Apostolate Papers* (unpublished research papers, 2015 to 2022). www.roderickford.org.

³ The fundamental “Law of Christ,” to wit, is 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); to do justice, judgment, and equity (Proverbs 1:2-3); and “whatsoever ye would that men should do to you, do ye even so to them” (Matthew 7:12). See, also, Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017). But see, also, Psalm 19: 1-4 and Romans 10:18 (stating that God’s Creation preaches the Word).

⁴ See, e.g., Romans 1: 19-20; 10: 17-18.

⁵ Ibid; See, also, John 17:17 (“Sanctify them through thy truth: **thy word is truth.**”) See, also, ‘St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 (“For by consulting the Gospel we learn that Christ is Truth.”); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 (“Your law is the truth and you are truth.”)

⁶ Jesus of Nazareth, as the Son of God, was believed to be the essence of “Reason” or “the Word,” which is the divine “Logos.” See, e.g., John 1:1-3. See, also, “Aquinas on Law,” <https://people.wku.edu/jan.garrett/302/aquinlaw.htm> (where Saint Thomas Aquinas describes law as “a certain rule and measure of acts whereby man is induced to act or is restrained from acting.” (q90, a1) Because the rule and measure of human actions is reason, law has an essential relation to reason; in the first place to divine reason; in the second place to human reason, when it acts correctly, i.e., in accordance with the purpose or final cause implanted in it by God.”) See, also, Sir Edward Coke (1552-1634), former Chief Justice of England and Wales, who says that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.” *Dr. Bonham’s Case* (1610) 8 Co. Rep. 107; 77 Eng. Rep. 638.

⁷ See, e.g., Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309 (“For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....”); and p. 289 (“It was this intellectual element in Plato’s

theology were sewn into Anglo-American law. Indeed, “[i]t has been often said, indeed, that Christianity is part of the common law of England, and this is due in great measure to the authority of Sir Matthew Hale (*King v. Taylor*, i Vent. 293, 3 Keble 507), Blackstone and other writers, while Lord Mansfield held (*Chamberlain of London v. Evans*, 1767) that the essential principles of revealed religion are part of the common law.”⁹

But the seed of that Christian jurisprudence, which blossomed into Anglo-American constitutional law, was firmly planted within the ancient Roman empire during about the time of Caesar Augustus. There at Alexandria, Egypt, a Jewish philosopher named Philo (20 B.C. – 50 A.D.), who was a contemporary of Jesus and his apostles, helped to reconcile the Greek idea of *logos* with the Law of Moses (i.e., the Septuagint). Philo gave great credit to the Greek philosophers. At the same time, Philo acknowledged that many of the Greeks’ philosophical ideas were not new but had already been written and recorded in the Law of Moses,¹⁰ which Philo recognized as the most perfect of human legislation. For instance, Philo pointed out that the Decalogue reflected Greco-Roman conceptions of natural law.

According to Philo, there was the eternal, immutable, and perfect God, who is the creator of all things, and there is God’s finite, mutable, and imperfect creation, which includes all of humanity. According to Philo, God is reality and truth; humanity can only understand God (i.e., reality and truth) through a third party, which is a sort of teacher, explainer, and revealer (i.e., the *Logos* of God).

Philo(c. 20BC– c. 50AD), aHellenized Jew, used the term *logos* to mean an intermediary divine being ordemiurge. Philo followed the Platonic distinction between imperfect matter and perfect Form, and therefore intermediary beings were necessary to bridge the enormous gap between God and the material world.

The *logos* was the highest of these intermediary beings, and was called by Philo “the first-born of God”. Philo also wrote that ‘the Logos of the living God is the bond of everything, holding all things together and binding all the parts, and prevents them from being dissolved and separated.’

Plato’s Theory of Forms was located within the *logos*, but the *logos* also acted on behalf of God in the physical world. In particular, the Angel of the Lord in the Hebrew Bible (Old Testament) was identified with the *logos* by Philo, who also said that the *logos* was God’s instrument in the creation of the Universe.¹¹

religion that led Christians—notably the author of Saint John’s Gospel—to identify Christ with the Logos. Logos should be translated ‘reason’ in this connection.”)

⁸ John 1:1 (“In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. All things were made by him; and without him was not any thing made that was made.”)

⁹ John Marshall Guest, “The Influence of Biblical Texts Upon English Law” (An address delivered before the Phi Beta Kappa and Sigma Xi Societies of the University of Pennsylvania on June 14, 1910)(pages 15-34), p. 16.

¹⁰ See, e.g., Deuteronomy 30:14, describing the *Logos* of God, stating, “But the **word** is very nigh unto thee, in thy mouth, and in thy heart, that thou mayest do it.”) In his *Epistle to the Romans*, for instance, the Apostle Paul interpreted “the word” in Deuteronomy 30:14 to mean “Christ.” Romans 10: 4-10.

¹¹ “Logos,” Wikipedia (online encyclopedia), <https://en.wikipedia.org/wiki/Logos>.

Philo's understanding of the *logos* was built upon a Greek foundation. The Greek philosopher Isocrates (436 to 338 B.C.),¹² who was a logographer (i.e., law advocate; political speech writer), defined the *logos* as a sort of moral law that sustained constitutional and political order.¹³

His professional career is said to have begun with logography: he was a hired courtroom speechwriter. Athenian citizens did not hire lawyers; legal procedure required self-representation. Instead, they would hire people like Isocrates to write speeches for them. Isocrates had a great talent for this since he lacked confidence in public speaking. His weak voice motivated him to publish pamphlets and although he played no direct part in state affairs, his written speech influenced the public and provided significant insight into major political issues of the day.

Around 392 BC he set up his own school of rhetoric (at the time, Athens had no standard curriculum for higher education; sophists were typically itinerant), and proved to be not only an influential teacher but a shrewd businessman. His fees were unusually high, and he accepted no more than nine pupils at a time. Many of them went on to be prominent philosophers, legislators, historians, orators, writers, and military and political leaders. As a consequence, he amassed a considerable fortune.¹⁴

Thus, Isocratean philosophy described the *logos* as law, legislation, and jurisprudence, as well as reason, logic, rhetoric, and the like.

The Greek philosopher Aristotle (384 – 322 B.C.), who taught Alexander the Great, defined the *logos* in remarkably the same fashion as did the Greek logographer Isocrates.¹⁵ For Aristotle, *logos* was defined as “reason” or as “argument from reason,” thus comprising one of three modes of persuasion: the other two modes being *ethos* (i.e., moral character; ethics) and *pathos* (i.e., appeal to emotion).¹⁶ For it is both Isocrates and Aristotle who bring the concept of *logos* into the realm of law and jurisprudence, connecting them to ethical ideals of justice, as well as to its technical description or definition, to wit:

Ancient Greek: λόγος, romanized: *lógos*, lit. 'word, discourse, or reason' is related to Ancient Greek: λέγω, romanized: *légō*, lit. 'I say' which is cognate with Latin: *Legus*, lit. 'law'. The word derives from a Proto-Indo-European root, **leǵ-*, which can have the meanings "I put in order, arrange, gather, I choose, count, reckon, I say, speak". The primary meaning of *logos* is "account" or "measure" or "discourse". It is occasionally used in other contexts, such as for "ratio" in mathematics.¹⁷

¹² “Isocrates,” Wikipedia (online encyclopedia), <https://en.wikipedia.org/wiki/Isocrates>.

¹³ See, e.g., “Logos,” Wikipedia (online encyclopedia), <https://en.wikipedia.org/wiki/Logos>, stating:

Isocratean *logos* characteristically focuses on speech, reason, and civic discourse. He was concerned with establishing the “common good” of Athenian citizens, which he believed could be achieved through the pursuit of philosophy and the application of *logos*.

¹⁴ “Isocrates,” Wikipedia (online encyclopedia), <https://en.wikipedia.org/wiki/Isocrates>.

¹⁵ “Logos,” Wikipedia (online encyclopedia), <https://en.wikipedia.org/wiki/Logos>.

¹⁶ Ibid.

¹⁷ Ibid.

That technical definition of *logos*— i.e., as a form of reason, rhetoric, and law—was never divorced from its larger spiritual essence and foundation of natural law, reality, and truth, which was emphasized by Heraclitus, the Stoics, and Philo of Alexandria.

For instance, Heraclitus (535 – 475 B.C.) tied the *logos* (i.e., reason) to universal moral law, truth, and a common reality.¹⁸ According to Heraclitus, the human mind could not fully grasp truth and reality without the *logos*;¹⁹ and, moreover, the *logos* itself was beyond the full grasp of human understanding.²⁰ According to Heraclitus, the *logos* was a thing apart from humanity, but at the same time the *logos* could also be internalized within humanity through careful listening and acceptance of its truths.²¹ Thus, the *logos* represented universal, timeless, and eternal truth.

Similarly, the Stoics defined the *logos* as a sort of universal principle and binding force within the universe— both philosophical truth and physical power within the universe. For this reason, the Stoics’ definition of *logos* came closest to the Jewish philosopher Philo’s and the Christian Apostles John’s and Paul’s definitions of Word or *Logos*. According to the Stoics,

... *logos* was the active reason pervading and animating the Universe. It was conceived as material and is usually identified with God or Nature. The Stoics also referred to the seminal *logos* (*‘logos spermatikos’*), or the law of generation in the Universe, which was the principle of the active reason working in inanimate matter. Humans, too, each possess a portion of the divine *logos*. The Stoics took all activity to imply a *logos* or spiritual principle. As the operative principle of the world, the *logos* was *anima mundi* [i.e., a vital force of the world] to them....²²

The New Testament writers did not omit any of the foregoing definitions of *logos* when ascribing that same term to the incarnate *Logos* of God, who is also the Christ.²³ For in the Sacred Scriptures, this *Logos* is frequently described as Wisdom²⁴ and The Word of God:²⁵

¹⁸ Ibid. (“For Heraclitus, *logos* provided the link between rational discourse and the world’s rational structure.”)

¹⁹ Ibid. (““This *logos* holds always but humans always prove unable to ever understand it, both before hearing it and when they have first heard it.””)

²⁰ Ibid. (““For though all things come to be in accordance with this *logos*, humans are like the inexperienced when they experience such words and deeds as I set out, distinguishing each in accordance with its nature and saying how it is.””)

²¹ Ibid. (“For this reason it is necessary to follow what is common. But although the *logos* is common, most people live as if they had their own private understanding.” And “[I]stening not to me but to the *logos* it is wise to agree that all things are one.”)

²² Ibid.

²³ John 17:17 (“Sanctify them through thy truth: **thy word is truth.**”) See, also, `St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 (“For by consulting the Gospel we learn that Christ is Truth.”); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 (“Your law is the truth and you are truth.”)

²⁴ See, e.g., Proverbs 2:6 (“For the LORD gives wisdom; from his mouth come knowledge and understanding”); Proverbs 16:16 (“How much better to get wisdom than gold, to get insight rather than silver!”); and James 1:5 (“If any of you lacks wisdom, you should ask God, who gives generously to all without finding fault, and it will be given to you”). And see, also, St. Augustine of Hippo’s *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 603-604, stating: “Christ was the Wisdom of God” and “Here certainly we perceive the Wisdom of God, that is, the Word co-eternal with the Father, hath builded Him an house, even a human body in the virgin womb... hath furnished a table with wine and bread, where appears also the priesthood after the order of Melchizedek....”

²⁵ Revelation 19:13.

I [W]isdom dwell with prudence, and find out knowledge of witty inventions.

The fear of the Lord is to hate evil: pride, and arrogancy, and the evil way, and the froward mouth, do I hate.

Counsel is mine, and sound wisdom: I am understanding; I have strength.

By me kings reign, and princes decree justice.

By me princes rule, and nobles, even all the judges of the earth.

I love them that love me; and those that seek me early shall find me.

Riches and honour are with me; yea, durable riches and righteousness.

My fruit is better than gold, yea, than fine gold; and my revenue than choice silver.

I lead in the way of righteousness, in the midst of the paths of judgment:

That I may cause those that love me to inherit substance; and I will fill their treasures.

The Lord possessed me in the beginning of his way, before his works of old.

I was set up from everlasting, from the beginning, or ever the earth was.

When there were no depths, I was brought forth; when there were no fountains abounding with water.

Before the mountains were settled, before the hills was I brought forth:

While as yet he had not made the earth, nor the fields, nor the highest part of the dust of the world.

When he prepared the heavens, I was there: when he set a compass upon the face of the depth:

When he established the clouds above: when he strengthened the fountains of the deep:

When he gave to the sea his decree, that the waters should not pass his commandment: when he appointed the foundations of the earth:

Then I was by him, as one brought up with him: and I was daily his delight, rejoicing always before him;

Rejoicing in the habitable part of his earth; and my delights were with the sons of men.

Now therefore hearken unto me, O ye children: for blessed are they that keep my ways.

Hear instruction, and be wise, and refuse it not.

Blessed is the man that heareth me, watching daily at my gates, waiting at the posts of my doors.

For whoso findeth me findeth life, and shall obtain favour of the Lord.

But he that sinneth against me wrongeth his own soul: all they that hate me love death.²⁶

The “wisdom” spoken of here in the Book of Proverbs is the incarnate Christ, who is also the incorporeal *Logos* of God. For, as Augustine of Hippo says, “Christ was the Wisdom of God”²⁷ and “wisdom is God.”²⁸

Like Philo of Alexandria, Augustine of Hippo (354 – 430 A.D.) also reconciled Greek philosophy with the Sacred Scriptures and concluded, generally,²⁹ that “the Platonic philosophers... recognized the true God as the author of all things, the source of the light of truth, and the bountiful bestower of all blessedness”³⁰ Augustine observed that both Moses and Plato reached remarkably similar conclusions about the nature of God; Moses described God as saying “I am who am”; and Plato described God as being immutable and eternal.³¹ For it was this same Augustine who highly acclaimed Plato and Cicero, and other Neo-Platonists, and concluded that these pagans “come nearest to the Christian faith.”³²

In Augustine’s *The City of God*, we see more clearly how the concept of the *Logos* of God (i.e., the incarnate Christ, who is Wisdom)³³ is manifest in the Greek philosophy of the *logos* in general.³⁴ When describing Plato’s achievements in particular,³⁵ Augustine writes that “the study of wisdom consists in action and contemplation.... To Plato is given the praise of having perfected philosophy by combining both parts into one. He then divides it into three parts—the first moral, which is chiefly occupied with action; the second natural, of which the object is contemplation; and the third rational, which discriminates between the true and the false.... [I]t is contemplation, nevertheless, which lays peculiar claim to the office of investigating the nature of truth.”³⁶ Hence, “the true and highest good,

²⁶ Proverbs 8:12-36.

²⁷ St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 604.

²⁸ *Ibid.*, p. 243.

²⁹ *Ibid.*, pp. 243 -260.

³⁰ *Ibid.*, p. 249.

³¹ *Ibid.*, pp. 256-257.

³² *Ibid.*, p. 253.

³³ *Ibid.*, p. 604.

³⁴ John 17:17 (“Sanctify them through thy truth: **thy word is truth.**”) See, also, `St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 (“For by consulting the Gospel we learn that Christ is Truth.”); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 (“Your law is the truth and you are truth.”)

³⁵ For example, in Plato’s *Republic*, where he uses Socrates as his chief protagonists, the elemental structure of the entire Christian ethical system is clearly set forth as follows:

[I]f we are persuaded by me [i.e., Socrates], we’ll believe that **the soul is immortal and able to endure every evil and every good**, and we’ll always **hold to the upward path, practicing justice with reason in every way**. That way we’ll be friends both to ourselves and to the gods while we remain here on earth and afterwards—like victors in the games who go around collecting their prizes—we’ll receive our rewards. Hence, both in this life and on the thousand-year journey we’ve described, we’ll do well and be happy.

Plato, *Republic* (Indianapolis, IN: Hackett Publishing Co., Inc., 1992), p. 292.

³⁶ St. Augustine, *The City of God*, supra, p. 247.

according to Plato, is God, and therefore he would call him a philosopher who loves God,” wrote Augustine.³⁷ “It is, we say, with philosophers we have to confer with... men whose very name, if rendered into Latin signifies those who profess the love of wisdom. Now, if wisdom is God, who made all things, as is attested by the divine authority and truth, then the philosopher is a lover of God.”³⁸

Since wisdom and *logos* are one and the same, in both Greek philosophy and in the Old Testament, the Early Church easily identified the *Logos* of God as the “Wisdom of God” or as Jesus the Christ.³⁹ Christ as the *Logos* (i.e., as creator, truth, and reason) means that his omnipresence both envelopes and surpasses the institutional or organized Christian church.⁴⁰ As the creator of the world, the *Logos* was with God “in the beginning.”⁴¹ God’s eternal law, will, and purpose, which are manifest within the *Logos* of God (i.e., Christ), are in everything that exists, and governs every event that occurs—i.e., divine Providence. Therefore, we may see Christ, as the *Logos* of God, throughout the handywork of nature. For as the Psalmist says:

The heavens declare the glory of God; and the firmament sheweth his handywork.

Day unto day uttereth speech, and night unto night sheweth knowledge.

³⁷ Ibid., p. 253.

³⁸ Ibid., p. 243.

³⁹ See, e.g., Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309 (“For Christians, the Messiah was **the historical Jesus**, who was also identified with **the Logos of Greek philosophy**....”); and p. 289 (“It was this intellectual element in Plato’s religion that led Christians—notably the author of Saint John’s Gospel—to **identify Christ with the Logos**. Logos should be translated ‘**reason**’ in this connection.”).

⁴⁰ See, e.g., “Logos,” Wikipedia (online encyclopedia), <https://en.wikipedia.org/wiki/Logos>, stating

Logos became a technical term in Western philosophy beginning with Heraclitus (c. 535 – c. 475 BC), who used the term for a principle of order and knowledge. Ancient Greek philosophers used the term in different ways. The sophists used the term to mean discourse. Aristotle applied the term to refer to "reasoned discourse" or "the argument" in the field of rhetoric, and considered it one of the three modes of persuasion alongside ethos and pathos. Pyrrhonist philosophers used the term to refer to dogmatic accounts of non-evident matters. The Stoics spoke of the *logos spermatikos* (the generative principle of the Universe) which foreshadows related concepts in Neoplatonism.

Within Hellenistic Judaism, Philo (c. 20 BC – c. 50 AD) integrated the term into Jewish philosophy. Philo distinguished between *logos prophorikos* ("the uttered word") and the *logos endiathetos* ("the word remaining within").

The Gospel of John identifies the Christian Logos, through which all things are made, as divine (theos), and further identifies Jesus Christ as the incarnate Logos. Early translators of the Greek New Testament, such as Jerome (in the 4th century AD), were frustrated by the inadequacy of any single Latin word to convey the meaning of the word *logos* as used to describe Jesus Christ in the Gospel of John. The Vulgate Bible usage of *in principio erat verbum* was thus constrained to use the (perhaps inadequate) noun *verbum* for "word"; later Romance language translations had the advantage of nouns such as *le Verbe* in French. Reformation translators took another approach. Martin Luther rejected *Zeitwort* (verb) in favor of *Wort* (word), for instance, although later commentators repeatedly turned to a more dynamic use involving the living word as used by Jerome and Augustine. The term is also used in Sufism, and the analytical psychology of Carl Jung.

Despite the conventional translation as "word", *logos* is not used for a word in the grammatical sense—for that, the term *lexis* (λέξις, *léxis*) was used. However, both *logos* and *lexis* derive from the same verb *légō* (λέγω), meaning "(I) count, tell, say, speak".

⁴¹ Genesis 1:1 (“In the beginning God created the heaven and the earth.”); John 1:1 (“In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. All things were made by him; and without him was not any thing made that was made.”)

There is no speech nor language, where their voice is not heard.

Their line is gone out through all the earth, and their words to the end of the world. In them hath he set a tabernacle for the sun,

Which is as a bridegroom coming out of his chamber, and rejoiceth as a strong man to run a race.

His going forth is from the end of the heaven, and his circuit unto the ends of it: and there is nothing hid from the heat thereof.

The law of the LORD is perfect, converting the soul: the testimony of the LORD is sure, making wise the simple.

The statutes of the LORD are right, rejoicing the heart: the commandment of the LORD is pure, enlightening the eyes.⁴²

So that the Christian faith has already been made known without the coming of the formalized Gospels in written form, as affirmed by the Apostle Paul, who, reaffirming the text of Psalm 19, has observed in his *Epistle to the Romans* that:

[F]aith cometh by hearing, and hearing by the word of God.

But I say, Have they not heard? Yes verily, their sound went into all the earth, and their words unto the ends of the world.⁴³

Because that which may be known of God is manifest in them; for God hath shewed it unto them.

For the invisible things of him from the creation of the world are clearly seen, being understood by the things that are made, even his eternal power and Godhead; so that they are without excuse....⁴⁴

Augustine of Hippo, when explaining and describing the wisdom and philosophy of the Platonists, agreed with the Apostle Paul's theological conclusions regarding the "invisible things... being understood by the things that are made,"⁴⁵ where Augustine writes in *The City of God* that:

[The Platonists] saw that body and mind might be more or less beautiful in form, and that, if they wanted form, they could have no existence, they saw that there is some existence in which is the first form, unchangeable, and therefore not admitting of degrees of comparison, and in that they most rightly believed was the first principle of things, which was not made, and by which all things were made. Therefore that which is known of God

⁴² Psalm 19: 1-8.

⁴³ Romans 10: 17-18.

⁴⁴ Romans 1:19-20.

⁴⁵ Ibid.

He manifested to [the Platonists] when His invisible things were seen by them, being understood by those things which have been made; also His eternal power and Godhead by whom all visible and temporal things have been created.⁴⁶

Therefore, as *Logos*, Christ is incorporeal spirit, reason, and truth,⁴⁷ meaning that his presence is everywhere— and the *Logos* of God (i.e., Christ) is not only omnipresent, but it is also accessible to everyone’s conscience, regardless of whether they be pagans, atheists, polytheists, humanists, Platonists, etc. (as Augustine pointed out in *The City of God*).

For, indeed, the Apostle Paul himself acknowledged that he was a “debtor both to the Greeks, and to the Barbarians”;⁴⁸ and to such irreligious or superstitious persons, the Apostle Paul “reasoned with them out of the scripture.”⁴⁹ In other words, the Apostle Paul met such persons where they were, both spiritually and intellectually, and he was able to utilize their superstitions and belief systems in order to draw out the fundamental truths of Christ, to wit:

Now while Paul waited for them at Athens, his spirit was stirred in him, when he saw the city wholly given to idolatry.

Therefore disputed he in the synagogue with the Jews, and with the devout persons, and in the market daily with them that met with him.

Then certain philosophers of the Epicureans, and of the Stoicks, encountered him. And some said, What will this babblers say? other some, He seemeth to be a setter forth of strange gods: because he preached unto them Jesus, and the resurrection.

And they took him, and brought him unto Areopagus, saying, May we know what this new doctrine, whereof thou speakest, is?

For thou bringest certain strange things to our ears: we would know therefore what these things mean.

(For all the Athenians and strangers which were there spent their time in nothing else, but either to tell, or to hear some new thing.)

Then Paul stood in the midst of Mars' hill, and said, Ye men of Athens, I perceive that in all things ye are too superstitious.

For as I passed by, and beheld your devotions, I found an altar with this inscription, TO THE UNKNOWN GOD. Whom therefore ye ignorantly worship, him declare I unto you.⁵⁰

⁴⁶ Ibid., p. 251 (paraphrasing Romans 1: 19-20).

⁴⁷ John 17:17 (“Sanctify them through thy truth: **thy word is truth.**”) See, also, ‘St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 (“For by consulting the Gospel we learn that Christ is Truth.”); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 (“Your law is the truth and you are truth.”)

⁴⁸ Romans 1:14.

⁴⁹ Acts 17:2.

⁵⁰ Acts 17: 16-23.

For here it is clear that “THE UNKNOWN GOD,” whom these pagans acknowledged, the Apostle Paul affirmed was the same God of the ancient Hebrews, whose presence through the divine *Logos* had always remained present amongst even the pagans. Hence, the Apostle Paul’s persuasive appeal to such infidels and pagans was due to an inner conscience and an inward light (i.e., the *logos*, or the *Logos* of God) that were already implanted within such persons.⁵¹ “Behold, I stand at the door, and knock,” says the *Logos*, “if any man hears my voice, and open the door, I will come in to him, and will sup with him, and he with me.”⁵² And we are to assume that this door to which Christ knocks is the heart of the infidel,⁵³ the sinner,⁵⁴ and the lost sheep.⁵⁵

For, indeed, those nominal Christians who are outwardly religious are no better than these pagan infidels, sinners, and the lost sheep!⁵⁶ The nominal churchmen; or the nominal Christians; or the nominal Jews; or the nominal Muslims; or such persons who are only nominal adherents of the Law of Moses, are no better than these pagan infidels, sinners, and lost sheep. For in Christ, as the incorporeal and divine *Logos*, there is no respect of persons—and there are no denominational labels per se, but there is *only inner spirit and nature*, the incessant summoning of the divine *Logos* in order to choose Life and to avert Death. This is why the Apostle Paul writes:

For there is no respect of persons with God.

For as many as have sinned without law shall also perish without law: and as many as have sinned in the law shall be judged by the law;

(For not the hearers of the law are just before God, but the doers of the law shall be justified.

For when the Gentiles, which have not the law, ***do by nature*** the things contained in the law, these, having not the law, are a law unto themselves:

Which shew ***the work of the law written in their hearts***, their ***conscience*** also bearing witness, and their thoughts the mean while accusing or else excusing one another;)

In the day when God shall judge the secrets of men by Jesus Christ according to my gospel.⁵⁷

⁵¹ John 6:44 (“No man can come to me, except the Father which hath sent me draw him: and I will raise him up at the last day.”)

⁵² Revelation 3:20.

⁵³ Luke 5:32 (“I came not to call the righteous, but sinners to repentance.”)

⁵⁴ Ibid.

⁵⁵ See, e.g., the “Parable of the Lost Sheep,” Matthew 18:12-14; Luke 15:3-7.

⁵⁶ Matthew 23:13-39 (“But woe unto you, scribes and Pharisees, hypocrites!”)

⁵⁷ Romans 2:11-16.

So that the fundamental nature of reality— i.e., nature, natural law, etc.— contains the eternal law and will of God that is communicated through the *Logos* of God (i.e., Christ) to the conscience of every human being,⁵⁸ who shall be judged at the Last Judgment.⁵⁹

And so, Christ is “The Word of God,”⁶⁰ and the *Logos* of God. And it was perhaps Moses himself who first described an incorporeal *logos* or “word” that is readily accessible to everyone, without the need of priests, prophets, lawgivers, or other human intermediaries, where he wrote:

For this commandment which I command thee this day, it is not hidden from thee, neither is it far off.

It is not in heaven, that thou shouldest say, Who shall go up for us to heaven, and bring it unto us, that we may hear it, and do it?

Neither is it beyond the sea, that thou shouldest say, Who shall go over the sea for us, and bring it unto us, that we may hear it, and do it?

But *the word is very nigh unto thee*, in thy mouth, and in thy heart, that thou mayest do it.⁶¹

In his *Epistle to the Romans*, the Apostle Paul interpreted this passage of Moses (i.e., “the word is very nigh unto thee”) to mean Jesus Christ.⁶² In other words, Jesus Christ, as the *Logos* of God, is omnipresent, even outside of the boundaries of orthodox Christian churches, and is accessible to whomsoever, but especially to lost souls such as uncircumcised Gentiles and pagans.⁶³ The voice of reason that is

⁵⁸ Romans 2:16 (“In the day when God shall judge the secrets of men by Jesus Christ according to my gospel”); Romans 14:10 (“... for we shall all stand before the judgment seat of Christ”); Revelations 22:12 (“And, behold, I come quickly; and my reward is with me, to give every man according as his work shall be.”)

⁵⁹ Id.

⁶⁰ Revelation 19:13; John 1:1-3. Romans 10:4-9.

⁶¹ Deuteronomy 30: 11-14.

⁶² Romans 10:4-9, to wit:

For Christ is the end of the law for righteousness to every one that believeth.

For Moses describeth the righteousness which is of the law, That the man which doeth those things shall live by them.

But the righteousness which is of faith speaketh on this wise, Say not in thine heart, Who shall ascend into heaven? (that is, to bring Christ down from above:)

Or, Who shall descend into the deep? (that is, to bring up Christ again from the dead.)

But what saith it? The word is nigh thee, even in thy mouth, and in thy heart: that is, the word of faith, which we preach;

That if thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised him from the dead, thou shalt be saved.

⁶³ See, e.g., The Parable of the Lost Sheep (Matthew 18:10-14).

omnipresent within the human conscience,⁶⁴ which is the *Logos* of God, is also the man Christ Jesus, who is the Son of God. That voice of reason, who is Christ, is the “true Light, which lighteth every man that cometh into the world.”⁶⁵ And this can only mean that the Christ-spirit is everywhere and in all cultures, most religions, and in every nation! This is manifest in the sheer fact that, no matter where one goes, the Golden Rule,⁶⁶ which is a manifestation of the *Logos* or Word of God, is self-evident in every nation, and is reflected in the general natural theology of diverse world religions and cultures; because in Christ, as the incorporeal and divine *Logos*, there is no respect of persons— there are no labels per se, but there is *only inner spirit and nature*, the incessant summoning of the divine *Logos* to choose Life and to avert Death. And for this reason, we find the spirit of Christ (i.e., agape or the Golden Rule) present within most cultures and world religions, to wit:

The Golden Rule in World Religions

“Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, *Thou shalt love thy neighbor as thyself*. On these two commandments hang all the law and the prophets.”

– **Jesus of Nazareth (Second Temple Period)**(*Matthew 22:37-40.*)

“Now this is the command: Do to the doer to cause that he do.”

– **Ancient Egyptian (Middle Kingdom)**

“[T]hou shalt not hate thy brother in thine heart.... [T]hou shalt love thy neighbor as

⁶⁴ See, e.g., Romans 2:11-16 (“when the Gentiles... do by nature the things contained in the law... shew the work of the law written in their hearts”); Romans 10:8 (“The word is nigh thee, even in thy mouth, and in thy heart”); See, e.g., Ernest F. Kevan, *The Grace of Law: A Study in Puritan Theology* (Grand Rapids, MI: Soli Deo Gloria Pub., 2018), p. 59 (citing Anthony Burgess, *Spiritual Refining*, “Of Grace and Assurance,” p. 334, stating “The customary way in which the Puritans expressed this was to say that the Law of God was ‘written’ in his heart.... Authority for this manner of speaking was usually found in Romans ii. 14, 15, where Paul writes of those who, although they never formally received the Ten Commandments at the hand of Moses, nevertheless ‘show the work of the law written in their hearts.’ This means, says Anthony Burgess, that they were ‘not without a Law ingrafted in their conscience, whereby they had common dictates about good and evil;’ indeed, as Paul at once points out in the immediately following clause, this written Law is the very foundation of conscience.”)

⁶⁵ John 1: 9.

⁶⁶ The fundamental “Law of Christ,” to wit, is 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); to do justice, judgment, and equity (Proverbs 1:2-3); and “whatsoever ye would that men should do to you, do ye even so to them” (Matthew 7:12). See, also, Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017). See, also, *The English Philosophers from Bacon to Mill* (New York, N.Y.: The Modern Library, 1994), [page number omitted] quoting John Stuart Mill’s essay on *Utilitarianism*, as stating: “[i]n the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by and to love your neighbor as yourself, constitute the ideal perfection of utilitarian morality.”)

thyself....”

– **Old Testament, *Leviticus 19:17-18***

“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.”

– **New Testament, *Matthew 7:12***

“Do not do to others what you would not like yourself. Then there will be no resentment against you, either in the family or in the state.”

– **Confucianism, *Analects 12:2***

“Hurt not others in ways that you yourself would find hurtful.”

– **Buddhism, *Udana-Varga 5, 1***

“This is the sum of duty; do naught onto others what you would not have them do unto you.”

– **Hinduism, *Mahabharata 5, 1517***

“No one of you is a believer until he desires for his brother that which he desires for himself.”

– **Islam, *Sunnah***

“What is hateful to you, do not do to your fellowman. This is the entire Law; all the rest is commentary.”

– **Judaism, *Talmud, “Shabbat” 3id***

“Regard your neighbor’s gain as your gain, and your neighbor’s loss as your own loss.”

– **Taoism, *Tai Shang Kan Yin P’ien***

“That nature alone is good which refrains from doing to another whatsoever is not good for itself.”

– **Zoroastrianism, *Dadisten-I-dinik, 94, 5***

“One going to take a pointed stick to pinch a baby bird should first try it on himself to feel how it hurts.”

– **African Traditional (Nigeria)**

“Respect for all life is the foundation.” “All things are our relatives; what we do to everything, we do to ourselves. All is really One.” “Do not wrong or hate your neighbor. For it is not he who you wrong, but yourself.”

– **Native American**

“One who you think should be hit is none else but you. One who you think should be governed is none else but you. One who you think should be tortured is none else but you. One who you think should be enslaved is none else but you. One who you think should be killed is none else but you. One who you think should be killed is none else but you. A sage is ingenuous and leads his life after comprehending the parity of the killed and the killer. Therefore, neither does he cause violence to others nor does he make others do so.

– **Janism**

Here it is important to revisit *The Gospel of John*,⁶⁷ to wit:

In Christianity, the *Logos* (Greek: Λόγος, lit. 'word, discourse, or reason') is a name or title of Jesus Christ, seen as the pre-existent second person of the Trinity. In the Douay–Rheims, King James, New International, and other versions of the Bible, the first verse of the Gospel of John reads:

In the beginning was the Word, and the Word was with God, and the Word was God.

In principio erat verbum, Latin for *In the beginning was the Word*, from the Clementine Vulgate, Gospel of John, 1:1–18.

In these translations, *Word* is used for Λόγος, although the term is often used transliterated but untranslated in theological discourse.

According to Irenaeus of Lyon (c.130–202), a student of John's disciple Polycarp (c. pre-69–156), John the Apostle wrote these words specifically to refute the teachings of Cerinthus, who both resided and taught at Ephesus, the city John settled in following his return from exile on Patmos. While Cerinthus claimed that the world was made by "a certain Power far separated from" "Almighty God," John, according to Irenaeus, by means of John 1:1–5, presented Almighty God as the Creator - "by His Word." And while Cerinthus made a distinction between the man Jesus and "the Christ from above," who descended on the

⁶⁷ John 1: 1–5. See, e.g., Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309 (“For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....”); and p. 289 (“It was this intellectual element in Plato’s religion that led Christians—notably the author of Saint John’s Gospel—to identify Christ with the Logos. Logos should be translated ‘reason’ in this connection.”).

man Jesus at his baptism, John, according to Irenaeus, presented the pre-existent "Word" and Jesus Christ as one and the same.

A figure in the Book of Revelation is called "The Word of God", being followed by "the armies which are in heaven" (Rev 19:13–14).⁶⁸

And while present-day secular academics and philosophers seek to read Christ out of the definition of *logos*, particularly as that concept is described in ancient Greek philosophy and in the post-modern academy, it is quite clear that the Apostle John and all of the other Apostles and elders or disciples, on through to the Church Fathers, such as Augustine of Hippo, expressly grappled with the ancient Greek's conceptualization of *logos*, and they expressly defined that very same *logos* with being the *Logos* of God (i.e., Christ).⁶⁹ They conceptualized the man Jesus of Nazareth as being the Christ, as foretold in the Sacred Scriptures, and as being the Word of God, the divine *Logos*, and the essence of reason, reality, nature, truth, etc.⁷⁰

This conceptualization of Jesus of Nazareth, as divine *Logos*, undermines our present-day conceptualization of the "separation of church and state" constitutional doctrine. As the *Logos* of God, the sovereign Christ never loses his sovereignty over the nations.⁷¹ Indeed, the American colonists and, later, the American Founding Fathers, popularly referred to that divine sovereignty as divine Providence, which has been alluded to in the American Declaration of Independence (1776),⁷² with the following words: "[a]nd for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."

This idea of divine Providence was a fundamental tenet of Christian orthodoxy,⁷³ and especially Puritan Christian orthodoxy. And this is why the subjects of politics and secular jurisprudence have never fallen outside of the concern or jurisdiction of the Christian church—the moral question, that is manifest within the Golden Rule, is omnipresent.⁷⁴ Indeed, "[j]ustice [is] the link between the sacred and the

⁶⁸ *Logos* (Christianity). [https://en.wikipedia.org/wiki/Logos_\(Christianity\)](https://en.wikipedia.org/wiki/Logos_(Christianity)).

⁶⁹ John 1:1-3 ("In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. All things were made by him; and without him was not any thing made that was made.")

See, also, Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309 ("**For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....**"); and p. 289 ("It was this intellectual element in Plato's religion that led Christians—notably the author of Saint John's Gospel—to identify Christ with the Logos. Logos should be translated 'reason' in this connection.")

⁷⁰ St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 ("For by consulting the Gospel we learn that Christ is Truth."); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 ("Your law is the truth and you are truth.")

⁷¹ Matthew 28:18 ("And Jesus came and spake unto them, saying, All power is given unto me in heaven and in earth.")

⁷² Declaration of Independence, July 4, 1776. <https://billofrightsinstitute.org/primary-sources/declaration-of-independence>

⁷³ Augustine of Hippo believed that the Providence of God was universal and governed all nations. See, e.g., *The City of God*, supra, p. 158 ("God can never be believed to have left the kingdoms of men, their dominations and servitudes, outside of the laws of His providence").

⁷⁴ See, e.g., the Mosaic law, to wit: (Exodus 21:16 (men-stealing and slavery); Exodus 22: 2-4; 7-8 (theft; restitution); Exodus 22:9 (trespass; theft; restitution); Exodus 23:6-9 and Deuteronomy 25:1-3, 27:19 (justice and judgment; alleviation of oppression of the poor); Leviticus 25: 36-37 and Deuteronomy 23:19 (usury in lending); and Deuteronomy 25:13-19 (fraud; oppression; unjust weights and measures); and the Prophets, to wit: Ezekiel 22:13 ("dishonest gain"), Ezekiel 18:12 ("[h]ath oppressed the poor and needy, hath spoiled by violence...."); Hosea 12:6-7 ("a merchant, the balances of deceit are in his hand: he loveth to oppress... [saying] I am become rich...."); Amos 8:5 ("falsifying the balances by deceit") and Amos 4:1 ("oppress the poor, which crush the needy"); Micah 5:15 ("wicked balances... deceitful weights").

secular....”;⁷⁵ and “[p]olitics is religion because it has to do with major morals, with the relations of men to each other.... The one cry that goes up from man to God is for justice.”⁷⁶ “In a word, human kingdoms are established by divine providence.”⁷⁷ “God can never be believed to have left the kingdoms of men, their dominations and servitudes, outside of the laws of His providence.”⁷⁸

If Jesus of Nazareth—the historical Jesus—was the *Word, who created all things*, then present-day Christians misrepresent Christ when they only and simply describe him as the founder of the Christian religion, rather than as the very *essence of reality*— i.e., as truth itself.⁷⁹ And if this Christ is, indeed, truth itself, then we are left with the inescapable conclusion that non-Christians and, indeed, all human beings, have confronted and grappled with Christ himself (i.e., *Logos* or *Word* or truth itself) and have through varying degrees accepted or rejected him. Those righteous, holy, and saintly men and women who lived before the time of Christ and who were not Hebrews, such as the Patriarch Job from the land of Uz, were anonymous Christians without knowing it. And, likewise, even today, there may be men and women who fall into that same category of anonymous Christians, such that the body or church of Jesus Christ is far broader and much more expansive than what is customarily preached from pulpits or taught in seminaries.

It thus goes without saying that self-professed Christians, such as the undersigned author, have no monopoly whatsoever on the title of sainthood, or upon the grace of holiness, or upon the privilege of communion with the Christ in his form as the divine *Logos*. Such persons who are members of organized churches and nominal Christians, such as the undersigned author, have no monopoly upon the incorporeal *Logos* of God (i.e., Christ); and we have no monopoly over the pouring out of the gift of the Holy Ghost, as the Apostle Peter painstakingly learned, since even the unclean, uncircumcised Gentiles were indiscriminately chosen to receive these gifts, outside of the boundaries of orthodox religion— and the terms and conditions whereby the Almighty God bestows these spiritual gifts have not been changed or monopolized by orthodox churches—i.e., those spiritual colleges of bishops and clergymen to whom the “keys to the kingdom of heaven” are believed to have been bestowed.

⁷⁵ Ruben Alvarado, *Calvin and the Whigs: A Study in Historical Theology*, (The Netherlands: Pantocrator Press, 2017), p. 19. See, also, James Madison, Federal Paper No. 51 (“Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.”)

⁷⁶ Algernon Sidney Crapsey, *Religion and Politics*, (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 304.

⁷⁷ Saint Augustine, *The City of God*, (New York, N.Y.: The Modern Library, 1950), pp. 142-143.

⁷⁸ *Ibid.*, p. 158. See, also, Genesis 9:1-17 (the Noachic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523) (“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service.”).

⁷⁹ St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 (“For by consulting the Gospel we learn that **Christ is Truth.**”); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 (“Your law is the truth and you are truth.”)

As the *Logos* of God, Christ is innately embedded within the human *conscience*.⁸⁰ This means that Christ is everywhere outside of the organized body of self-professed Christian believers. The incorporeal *Logos* of God (i.e., Christ) stands at the door of every man's and every woman's conscience, and knocks. This incorporeal *Logos* is constantly advocating the moral natural law, the ethical course of action, the way of love and charity. And, as previously mentioned, as the *Logos*, Christ is amongst non-believers and infidels, constantly pleading and inviting them to sup with him.⁸¹ As the incorporeal *Logos*, Christ is even within the prisons; he is visiting with hardened criminals; Christ is amongst infidels and atheists, pleading with them and offering other alternatives and blessings, if only they will heed his voice of reason and truth. For, indeed, even when the incarnate Christ was in the flesh, he was constantly accused of hanging out with publicans and sinners, at which he rejoined, “[t]hey that are whole need not a physician; but they that are sick. I came not to call the righteous, but sinners to repentance.”⁸²

For this reason, I believe that the work of Christ is thus being carried out by both orthodox Christians and those persons who we may describe as “anonymous” Christians,⁸³ as well as the organized Christian churches, throughout the entire world; and that, in fact, before there was organized New Testament Christianity, there was indeed anonymous Christianity whereby the saints, such as the righteous Gentile named Job from the land of Uz, exemplified righteous and holy living. And what present-day Christian would consider Job to have been anything other than a true Christian?

It is therefore incumbent upon all true Christians to recognize the important fact that when the voice from heaven answered the Apostle Peter, saying, “What God hath cleansed, that call not thou common,” applies to every human being who receives the Holy Ghost, or the Spirit of Truth, outside of the context of what we conceptualize as orthodox Christianity. For, indeed, the Holy Ghost does fall upon non-Christians, before their full conversion to the faith; and who can deny that gift to those whom God has, from the foundations of the world, decided shall have it? And, besides, the churches of God have no scientific method whereby such divine inspiration can be measured; but, as the Apostle Paul tells us, there are certain features of the true Christian which may be readily observed: the fruits of the spirit are love, joy, peace, longsuffering, gentleness, goodness, faith, meekness, and temperance.⁸⁴ Are we to suppose that only nominal Christians—or, as the Muslims say, the “children of the book”—may attain that state of godliness and holiness? For, indeed, there are men and women who discharge *by nature*, through the inspiration of the same Holy Ghost, the moral laws that are contained within the *Holy Bible* and within the second table of the Decalogue.⁸⁵ Thus, we leave the ultimate judgment of such souls of “anonymous”

⁸⁰ See, e.g., Romans 2: 11-16, stating:

For there is no partiality with God. For as many as have sinned without law will also perish without law, and as many as have sinned in the law will be judged by the law (for not the hearers of the law are just in the sight of God, but the doers of the law will be justified; for when Gentiles, who do not have the law, by nature do the things in the law, these, although not having the law, are a law to themselves, who show the work of the law written in their hearts, their conscience also bearing witness, and between themselves their thoughts accusing or else excusing them) in the day when God will judge the secrets of men by Jesus Christ, according to my gospel.

⁸¹ Revelations 3:20 (“Behold, I stand at the door, and knock: if any man hear my voice, and open the door, I will come in to him, and will sup with him, and he with me.”)

⁸² Luke 5:31-32.

⁸³ See, e.g., “Virtuous Pagan,” https://en.wikipedia.org/wiki/Virtuous_pagan; and see Romans 2:11-16.

⁸⁴ Galatians 5: 22-26.

⁸⁵ See, e.g., Romans 2: 11-16, *supra*.

Christians, who are part of the proverbial “City of God,”⁸⁶ not to the finite human judgments of “orthodox” Christians, such as the undersigned, but rather to the Christ, who is “ordained of God to be the Judge of quick and dead”⁸⁷ and to God the Father who “shall judge the secrets of men by Jesus Christ.”⁸⁸

II.

I now return to the original objective set forth in the opening of our discussion, to wit: to discourse with law students and to inform trained legal theorists, lawyers, and judges about the *fundamental element* of justice and jurisprudence called *reason*, and to demonstrate that this very same reason (i.e., *logos*), which is utilized in civil law and secular jurisprudence, is also the *Logos* of God (i.e., Christ).⁸⁹

In every legislative consideration, in every executive action, and in every juridical determination, the fundamental question is whether a particular recognized evil or injustice or civil wrong has been properly identified and remedied. Political science is the science of social and distributive justice; jurisprudence is the science of individual and corrective justice. And “reason” is the common denominator in both these sciences. For, as previously cited in the case of *Dr. Bonham’s Case* (1610) 8 Co. Rep. 107; 77 Eng. Rep. 638, where Chief Justice Edward Coke ruled, “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.”

This “reason,” then, which is the lifeblood of secular law and jurisprudence— e.g., the Anglo-American common law, equity jurisprudence, and constitutional law—is the same *logos* of Greco-Roman philosophy, and the same incorporeal *Logos* of God, which the Apostle John, the Apostle Paul, Augustine of Hippo, and other Christian writers also called “nature,” and which came into western, English, and American jurisprudence through the Western Church as the “law of Nature,” “natural justice,” “equity,” and “the law of reason.” The incorporeal nature of the *Logos* of God (i.e., Christ) was further defined, and described, as real and practical *agape* (i.e., justice, equity, charity, love, etc.)⁹⁰ and the various manifestations of true justice. For ten centuries, the Christian jurists sewed this Christian jurisprudence into England’s customary law, common law, canon or ecclesiastical law, civil law, and constitutional law.⁹¹ So that, up through the late 18th-century, when the United States of America was founded, the Christian jurisprudential principles of natural law, the law of reason, and equity were firmly incorporated into American jurisprudence. See, e.g., Thomas Wood, *Institutes of the Laws of England* (1720), below.

⁸⁶ Psalm 87:3 (“Glorious things are spoken of thee, O city of God.”); and see, generally, St. Augustine, *The City of God*, *supra*

⁸⁷ Acts 10:41.

⁸⁸ Romans 2:16.

⁸⁹ Jesus of Nazareth, as the Son of God, was believed to be the essence of “Reason” or “the Word,” which is the divine “Logos.” See, e.g., John 1:1-3. See, also, “Aquinas on Law,” <https://people.wku.edu/jan.garrett/302/aquinlaw.htm> (where Saint Thomas Aquinas describes law as “a certain rule and measure of acts whereby man is induced to act or is restrained from acting.” (q90, a1) Because the rule and measure of human actions is reason, law has an essential relation to reason; in the first place to divine reason; in the second place to human reason, when it acts correctly, i.e., in accordance with the purpose or final cause implanted in it by God.”) See, also, Sir Edward Coke (1552-1634), former Chief Justice of England and Wales, who says that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.” *Dr. Bonham’s Case* (1610) 8 Co. Rep. 107; 77 Eng. Rep. 638.

⁹⁰ Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017); and see, also, John Witte, Jr., and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge Press, 2008).

⁹¹ John Witte, Jr., and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge Press, 2008).

Institutes of the Laws of England (1720)

“As Law in General is an Art “As Law in General is an Art directing to the Knowledge

“As Law in General is an Art directing to the Knowledge of Justice, and to the well ordering of civil Society, so the Law of England, in particular, is an Art to know what is Justice in England, and to preserve Order in that Kingdom: And this Law is raised upon ... principal Foundations.

1. Upon the **Law of Nature**, though we seldom make Use of the Terms, The Law of Nature. But we say, that such a Thing is **reasonable**, or **unreasonable**, or against the....
2. Upon the revealed Law of God, Hence it is that our Law punishes Blasphemies, Perjuries, & etc. and receives the Canons of the Church [of England] duly made, and supported a spiritual Jurisdiction and Authority in the Church [of England].
3. The third Ground are several general Customs, these Customs are properly called the Common Law. Wherefore when we say, it is so by Common Law, it is as much as to say, by common Right, or of common Justice. Indeed it is many Times very difficult to know what Cases are grounded on the **Law of Reason**, and what upon the Custom of the Kingdom, yet we must endeavor to understand this, to know the perfect **Reason of the Law**.

Rules concerning Law

The **Common Law** is **the absolute Perfection of Reason**. For nothing that is contrary to Reason is consonant to Law

Common Law is common Right.

The Law is the Subject’s best Birth-right.

The Law respects the Order of Nature....”

Source: Thomas Wood, LL.D., *An Institute of the laws of England: or, the Laws of England in their Natural Order* (London, England: Strahan and Woodall, 1720), pp. 4-5.

As Wood’s treatise amply demonstrate, the “law of Nature” was, within orthodox Anglo-American jurisprudence, the same as the “law of reason,” which was also called the *logos*, or the *Logos* of God, who was made flesh and manifested in the man Christ Jesus. Both English and American equity jurisprudence expressly acknowledge this fact: equity jurisprudence was largely crafted by jurists under holy orders and was derived from the canon law of the Church of England— indeed, *Christ had come to fulfill the law*,⁹²

⁹² Matthew 5:17.

so, too, “[e]quity had come not to destroy the law but to fulfill it.”⁹³ It is for this reason, that Christianity is indelibly linked to American jurisprudence

Thus, in present-day Anglo-American legal and constitutional discourse— as Wood explains in his treatise— the words “nature” and “law of nature” are seldom, if ever used. Instead, court opinions described the human interactions of the litigants as either “reasonable” or “unreasonable.” For example, the “reasonable man” or “reasonable woman” standard is a pillar of common law jurisprudence.⁹⁴ As Wood states in his treatise, *Institutes of the Laws of England* (1720), and as Lord Coke stated in *Dr. Bonham’s Case* (1610), the English common law was conceived as “the perfection of reason.” Another classic example of that is the concept of the “higher law” of God which can be found in Lord Coke’s statement in *Dr. Bonham’s case* that “[a]ll acts against the Law of Reason is Void.” This was only another way of stating that the *Logos* of God (i.e., “the Law of Reason”) is preeminently supreme over the constitutional and secular laws of England.

Hence, we Christian lawyers and judges may safely and rightfully remind our colleagues on the bar and bench that Christ, as the divine *Logos* of God and who is the First Cause and Reason for all things, is also at the heart and soul of Anglo-American jurisprudence—and this is especially true in two broad areas of the law, namely, equity jurisprudence (which is found throughout the various codes of civil and criminal procedure, as well as the common law) and state and federal constitutional law.

This Christian heritage is especially pronounced in Sir William Blackstone’s *Commentaries on the Laws of England* explicitly remind of this truism, where he writes:

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey.

Thus, when the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all moveable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes, at his own pleasure, certain arbitrary laws for its direction,-- as that the hand shall describe a given space in a given time, to which law as long as the work conforms, so long it continues in perfection, and answers the end of its formation....

The whole progress of plants, from the seed to the root, and from thence to the seed again; the method of animal nutrition, digestion, secretion, and all other branches of vital economy; are not left to chance, or the will of the creature itself, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great Creator.

⁹³ Goldwin Smith, *A Constitutional and Legal History of England*, supra, p. 209; Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris Corp., 2015), pp. 423-444.

⁹⁴See, e.g., “reasonable person standard,” https://en.wikipedia.org/wiki/Reasonable_person. (NOTE: this particular article is a criticism of that standard as being anachronistic and arbitrary. Whether this is true, I am not able to debate or discuss within the limited framework of this paper.

This, then is the general signification of law, a rule of action dictated by some superior being.... Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being.... This will of his Maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion, so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

Considering the Creator only as a being of infinite power, he was able unquestionably to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But, as he is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice that existed in the nature of things antecedent to any positive precept. These are the eternal immutable laws of good and evil, to which the Creator himself, in all his dispensations, conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly (2), should hurt nobody, and should render to every one his due; to which three general precepts Justinian (a) has reduced the whole doctrine of law....

The law of nature, being coeval with mankind, and dictated by God himself, is of course superior to obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this (3); and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But, in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life.⁹⁵

Indeed, Anglo-American political theory and constitutional jurisprudence are founded upon natural law principles—the theory and law of reason. As John Locke states, “[t]he state of nature has a law of nature to govern it, which obliges everyone; and *reason, which is that law*, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.”⁹⁶ And this reason is also a gift of God, ingrafted into human nature or the human conscience,⁹⁷ informing human beings about what is truth or untruth, thus permitting human beings to perform the duties of a judge.⁹⁸ And *reason* is, at its core, the Golden Rule, the foundation of what it means to be human.⁹⁹

⁹⁵ William Blackstone, “Of the Nature of Laws in General,” *Commentaries on The Laws of England* (New York, N.Y.: W.E. Dean Pub., 1840), pp. 25-28.

⁹⁶ Edwin A. Burt, *The English Philosophers from Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 405.

⁹⁷ Romans 2:11-16 (“when the Gentiles... do by nature the things contained in the law... shew the work of the law written in their hearts”).

⁹⁸ Saint Augustine, *Confessions*, supra, pp. 248 – 249 (“... he judges all things....”).

⁹⁹ Matthew 7: 12 (“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 22:37-40 (“Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two

More broadly speaking, the “law of reason” or the “law of nature” is, within western political discourse, the equivalence of “justice.” This concept was firmly established in the West, through the Western Church, primarily through Augustine of Hippo’s landmark discourse, *The City of God*,¹⁰⁰ whereby he painstakingly explained, and demonstrated that “God Himself [is] the fountain of all justice”¹⁰¹ and is “the most wise Creator and most just Ordainer of all natures, who placed the human race upon earth as its greatest ornament... for the enjoyment of God and of one another in God.”¹⁰² In this same landmark text, Augustine demonstrates “that a republic cannot be administered without justice,” and explains that “justice is that virtue which gives every one his due.”¹⁰³ For Augustine, “justice” was the deciding factor as to whether a civil polity, regardless of its form or shape, was good or evil.

Covenant of Nature (Human Government)

Form of Government (Virtue) ¹⁰⁴	Form of Government (Vice)
Monarchy	Tyranny
Aristocracy	Oligarchy
Democracy	Anarchy

commandments hang all the law and the prophets.”); James 2:8 (“If ye fulfil the royal law according to the scripture, Thou shalt love thy neighbour as thyself, ye do well”); Romans 10:17-18 (Here, the universal moral law means the two-fold duty to honor or obey God and love neighbor); See, also, Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017). See, also, *The English Philosophers from Bacon to Mill* (New York, N.Y.: The Modern Library, 1994), [page number omitted] quoting John Stuart Mill’s essay on *Utilitarianism*, as stating: “[i]n the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by and to love your neighbor as yourself, constitute the ideal perfection of utilitarian morality.”)

¹⁰⁰ Ruben Alvarado, *Calvin and the Whigs: A Study in Historical Political Theology* (The Netherlands: Pantocrator Press, 2017), pp. 7-8:

In dating the origins of Western civilization, and consequently of its constitution, the publication of Augustine’s *De Civitate Dei* [*Of the City of God*] serves as well as any for a reference point. This book was perhaps the most important ever written in the West; for a thousand years after its publication it exercised an influence unrivalled by any other, besides the Bible itself. For good reason, one writer calls it ‘The Charter of Christendom.’

Augustine believed that the Providence of God was universal and governed all nations. See, e.g., *The City of God*, supra, p. 158 (“God can never be believed to have left the kingdoms of men, their dominations and servitudes, outside of the laws of His providence”).

¹⁰¹ Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 27.

¹⁰² *Ibid.*, pp. 691-692.

¹⁰³ *Ibid.*, p. 699.

¹⁰⁴ St. Augustine, *The City of God*, supra, p. 61-62.

[A] republic, or ‘weal of the people,’ then exists only when it is well and justly governed, whether by a monarch, or an aristocracy, or by the whole people.

But when the monarch is unjust, or, as the Greeks say, a tyrant; or the aristocrats are unjust, and form a faction; or the people themselves are unjust, and become... themselves the tyrant, then the republic is not only blemished... it altogether ceases to be. For it could not be the people’s weal when a tyrant factitiously lorded it over the state; neither would the people be any longer a people if it were unjust, since it would no longer answer the definition of a people—‘ an assemblage associated by a common acknowledgment of law, and by a community of interests.’

Republic (or mixed forms of government containing elements of monarchy, aristocracy, and democracy)	Imperial Republic or Empire (tyranny; oligarchy; and anarchy, often characterized with civil wars and imperial wars against other nations) ¹⁰⁵
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And this same “justice” principle was amply demonstrated and embraced by the father of the United States Constitution, James Madison, in *The Federalist Papers*, where he wrote “[j]ustice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.”¹⁰⁶ This “justice” principle, which contains the principle of the *Logos* of God (i.e., reason (i.e., the Golden Rule)), has been restated at varying times, by various influential political authors, throughout history, to wit:

The Law of Nature in American Constitutional Law

“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.”

– **Jesus of Nazareth (1 – 33 A.D.)**

“The first branch of which rule containeth the first and fundamental law of nature; which is, to seek peace and follow it. The second, the sum of the right of nature; which is, by all means we can, to defend ourselves.... This is that law of the Gospel: whatsoever you require that others should do to you, that do ye to them.”

– **Thomas Hobbes (1588 -1679)**

“The state of nature has a law of nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.”

– **John Locke (1632 – 1704)**

“[W]hat is Justice in England... is raised upon... principal Foundations.... Upon the Law of Nature, though we seldom make Use of the Terms, The Law of Nature. But we say, that such a Thing is reasonable, or unreasonable....”

– **Thomas Wood, *Institutes of the Laws of England* (1720)**

“This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority,

¹⁰⁵ Ibid., pp. 171-173 (“Concerning the difference between true glory and the desire of dominion”).

¹⁰⁶ James Madison, *The Federalist Paper*, No. 51.

mediately or immediately, from this original.”

– **William Blackstone, *Commentaries on the Laws of England* (1753)**

“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.... 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....appealing to the Supreme Judge of the world... with a firm reliance on the protection of divine Providence....”

– **Thomas Jefferson and the Continental Congress, *Declaration of Independence* (1776)**

“On the great law of love to others, I shall only say further that it ought to have for its object their greatest and best interest, and therefore implies wishing and doing them good in soul and body.”

– **John Witherspoon, *Lectures on Moral Philosophy* (1768 - 1794)**

“Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.

– **James Madison, *The Federalist, Paper No. 51* (1787)**

“I had often heard that the Bible constituted a part of every technical law library, and that it was a principle in law that immoral laws are void.”

– **Ralph Waldo Emerson, *Speech on the Fugitive Slave Law* (1854)**

Thus, we may rightly proclaim that Christ as the *Logos* of God—as the fundamental predicate to natural rights, natural justice, and constitutional law— was embraced by the American founding fathers, and woven into America’s constitutional jurisprudence. That very idea was manifest within Sir William Blackstone’s writings, which eventually laid the foundations of American common law jurisprudence and served as a sort of de facto law school for many self-taught prairie lawyers, such as Abraham Lincoln, during the early years of the American republic. (Indeed, after Lincoln himself became President of the United States, he presented several official proclamations and executive orders that tacitly acknowledged the God of the Sacred Scriptures as the God of the United States of America.¹⁰⁷ One reading these official proclamations cannot help but wonder how our present-day discourse on the “separation of church and state,” which completely obliterates religion from the public space, can be credibly entertained.)¹⁰⁸

¹⁰⁷ See, e.g., President Abraham Lincoln’s two official statements, to wit: “Proclamation Appointing a National Feast Day” (1863) and “Second Inaugural Address (1865).

¹⁰⁸ Ibid.

Thus, Christ himself, as the *Logos* of God, is the spirit of Anglo-American law and jurisprudence, because that jurisprudence is founded upon “reason.” In other words, practical court decisions— both theoretically and in practical constitutional terms—must be founded upon “reason.” Practical legislation and statutory interpretation ought to be based upon “reason.” These principles of reason are especially manifest within Anglo-American equity jurisprudence, which was taken from the Sacred Scriptures and the canon laws of the Western Church. That equity jurisprudence is none other than the “law of Christ,”¹⁰⁹ or the manifestation of Christ himself as the *Logos* of God. This is why England’s equity jurisprudence has been described by the historian Goldwin Smith as being a manifestation of Jesus Christ himself— since *Christ had come to fulfill the law*,¹¹⁰ so, too, “[e]quity had come not to destroy the law but to fulfill it.”¹¹¹

Christ as the *Logos* of God, and the *logos* as “reason,” which, in turn, is the very essence of Anglo-American common law, statutory law, and constitutional law, form an unbreakable link within the chain of legal and constitutional history. There is no reason why we should not conclude that the secular jurisprudence’s emphasis upon “reason” or the “reasonable person standard” is not fundamentally an emphasis upon Christ-like behavior and Christian ethical parameters, since the one is not substantively different from the other. These standards of social behavior, which the secular law imposes in various human endeavors, are rooted in the Golden Rule, which is the *Logos* of God (i.e., Christ).

Along the same lines, the political science and constitutional jurisprudence which developed through the Church of England, the Puritan churches of colonial New England, and the Presbyterian churches of the mid-Atlantic states,¹¹² thus held that the civil polity must be led by honest and just rulers who are ordained as God’s ministers,¹¹³ and who rely upon *reason* to ascertain truth¹¹⁴ and just principles in order to establish just decisions through just laws.¹¹⁵ This same “reason” was conceptualized as

¹⁰⁹ Indeed, the Law of Christ is 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). See also “Parable of the Good Samaritan,” Luke 10: 25-37; see, also, Robert F. Cochran, Jr. and Zachary R. Calo, *Agape, Justice, and Law: How Might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge Univ. P., 2017).

¹¹⁰ Matthew 5:17.

¹¹¹ Goldwin Smith, *A Constitutional and Legal History of England*, supra, p. 209; Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris Corp., 2015), pp. 423-444.

¹¹² See, e.g., William Goodell, *The Democracy of Christianity* (Vol. II)(New York, N.Y.: Cady and Burgess, 1852), p. 484, stating that “the democracy of Christianity is signally illustrated in the history of the Puritans, and in the effects of their labors, in America.”

¹¹³ Romans 13:1-4. See, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority’s bearing of the sword must also be divine service. There must be those who arrest, prosecute, execute, and destroy the wicked, and who protect, acquit, defend, and save the good. Therefore, when they perform their duties, not with the intention of seeking their own ends but only of helping the law and the governing authority function to coerce the wicked, there is no peril in that; they may use their office like anybody else would use his trade, as a means of livelihood. For, as has been said, love of neighbor is not concerned about its own; it considers not how great or humble, but how profitable and needful the works are for neighbor or community.”)

¹¹⁴ John 17:17 (“Sanctify them through thy truth: **thy word is truth.**”) See, also, ‘St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645 (“For by consulting the Gospel we learn that Christ is Truth.”); Saint Augustine, *Confessions* (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 48 (“Your law is the truth and you are truth.”)

¹¹⁵ Saint Augustine, *Confessions*, supra, pp. 248 – 249 (“This is why the statement in the plural, ‘Let us make man,’ is also connected with the statement in the singular, ‘and god made man. Thus it is said in the plural, ‘after our likeness,’ and then in the singular, ‘after the image of God.’ Man is thus transformed into the knowledge of God, according to the image of him who created him. And now, having been made spiritual, he judges all things—that is, all things that are appropriate to be judged... Now this phrase, ‘**he judges all things,**’ means that man

primary and fundamental law of all other laws,¹¹⁶ but in theological terms, that same “reason” was also the *Logos* (i.e., the word or the light) of God.¹¹⁷ In orthodox Anglican theology and political discourse, the church-state framework had always been but two sides of the same coin.¹¹⁸

Hence, the fundamental law in England became the unwritten “law of reason” or the unwritten “law of nature,”¹¹⁹ as well as the written “law of God” (i.e., the Sacred Scriptures).¹²⁰ “It has been often

has dominion over the fish of the sea, and over the fowl of the air, and over all cattle and wild beasts, and over the earth, and over every creeping thing that creeps on the earth. And he does this **by the power of reason in his mind....**”)

¹¹⁶ Perhaps this is why the Roman Senator Cicero was able to so succinctly and accurately describe equity and universal moral law in *De Re Publica*, as follows:

There is indeed a law, *right reason*, which is in accordance with nature; existing in all, unchangeable, eternal. Commanding us to do what is right, forbidding us to do what is wrong. It has dominion over good men, but possesses no influence over bad ones. No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether. Neither the people or the senate can absolve from it. It is not one thing at Rome, and another thing at Athens: one thing to-day, and another thing to-morrow; but it is eternal and immutable for all nations and for all time.

¹¹⁷ John 1:1-3 (“In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. All things were made by him; and without him was not any thing made that was made.”)

See, also, Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309 (“For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....”); and p. 289 (“It was this intellectual element in Plato’s religion that led Christians—notably the author of Saint John’s Gospel—to identify Christ with the Logos. Logos should be translated ‘reason’ in this connection.”).

¹¹⁸ See, e.g., Richard Hooker’s *Of the Laws of Ecclesiastical Polity* (1593), which had a great influence upon English philosopher John Locke.

¹¹⁹ See, generally, Goldwin Smith, *A Constitutional and Legal History of England* (New York, N.Y.: Dorset Press, 1990)(providing a detailed history of the “fundamental laws” of the kingdoms of England and Great Britain); and, Lord William Blackstone, *Commentaries on the Fundamental Laws of England* (New York, N.Y.: W.E. Dean Pub., 1840). See, also, “Fundamental laws of England,” Wikipedia Encyclopedia (Online), stating:

In the 1760s William Blackstone described the Fundamental Laws of England in his *Commentaries on the Laws of England*, Book the First – Chapter the First : Of the Absolute Rights of Individuals as “the absolute rights of every Englishman” and traced their basis and evolution as follows:

- ① Magna Carta between King John and his barons in 1215
- ① confirmation of Magna Carta by King Henry III to Parliament in 1216, 1217, and 1225
- ① *Confirmatio Cartarum* (Confirmation of Charters) 1253
- ① a multitude of subsequent corroborating statutes, from King Edward I to King Henry IV
- ① the Petition of Right, a parliamentary declaration in 1628 of the liberties of the people, assented to by King Charles I
- ① more concessions made by King Charles I to his Parliament
- ① many laws, particularly the Habeas Corpus Act 1679, passed under King Charles II
- ① the Bill of Rights 1689 assented to by King William III and Queen Mary II
- ① the Act of Settlement 1701

Blackstone’s list was an 18th-century constitutional view, and the Union of the Crowns had occurred in 1603 between Kingdom of England and Kingdom of Scotland, and the 1628 Petition of Right had already referred to the fundamental laws being violated.

¹²⁰ The unwritten fundamental law in England was also loosely called the “English Common Law,” which can be confusing, because the “English Common Law” should not to be confused with England’s “common law” that is frequently described judge-made rules or decisions handed down in specific cases. Thus, the English Common Law pertains to England’s unwritten constitutional law, which is also called “the fundamental laws of England.” Over time, this unwritten fundamental law, throughout English history, has been reduced to several written documents, beginning with the Magna Carta (1215), the Petition of Right (1628), and the English Bill of Rights (1689). An example of a fundamental law that invokes a higher law of God can be found in the following statement: “All acts against the Law of Reason is Void,” which was enunciated by Chief Judge Edward Coke in *Dr. Bonham’s Case* (1610). Likewise, the American Declaration of Independence (1776), which was a grievance against King George III, is a codification of this “English Common Law” as it was applied to the political conditions in colonial British North America. Throughout English history, several kings were removed from the throne because they purportedly violated the “fundamental laws of England,” including Edward II, Richard II, Richard III, Charles I, and James II. Therefore, the

said, indeed, that Christianity is part of the common law of England, and this is due in great measure to the authority of Sir Matthew Hale (*King v. Taylor*, i Vent. 293, 3 Keble 507), Blackstone and other writers, while Lord Mansfield held (*Chamberlain of London v. Evans*, 1767) that the essential principles of revealed religion are part of the common law.”¹²¹

CONCLUSION

Western law and jurisprudence is founded upon the Christian theology of the Western Church—and Jesus Christ is at the heart of that foundation. In order to correctly understand that Christian foundation, law students, legal theorists, lawyers, and judges ought to ask, before Christ was born in the flesh, where was he and what were his manifestations? Those divine manifestations constitute, among many other things, the very substance of political science, constitutional law, and secular jurisprudence.

Hence, we are discussing the nature of Jesus Christ as the eternal *Logos* of God—not Jesus of Nazareth as he was born in the flesh, walked upon earth, and preached in ancient Judea. And we are analyzing Jesus Christ as an incorporeal spiritual force that was present with the Eternal Father at the beginning, and who created the world, and everything that was made. Genesis 1:26 says, “And God said, Let us make man in our image... and let them have dominion... over the earth.” The description of God in the plural form demonstrates the nature of the Godhead as plural. The New Testament informs us that Christ was within this Godhead in the beginning;¹²² that this same Christ implanted a law of nature within everything that was made;¹²³ and that a law of nature has been communicated to humanity through general revelation by the things created and through divine or special revelation from the prophetic words of the saints.¹²⁴ The Jewish philosopher Philo (20 B.C. – 50 A.D.) found the “image of God” in Genesis 1:27 to mean the “son of God” or the “angel of the LORD” or the *Logos* of God or the power of God that moves upon the earth and controls, intervenes, and shapes human history. Philo identified the Greek *logos* with this divine *Logos* of God, as stated in the Law of Moses (e.g., Deuteronomy 30:14 (“the word is nigh thee”). The Apostle Paul made a similar reference to this *Logos* in his *Epistle to the Romans*.¹²⁵ And as the Greeks were renowned for their search for “wisdom,” Augustine of Hippo accredited them to be lovers of God (i.e., anonymous Christians), because, as he concluded, the Wisdom of God¹²⁶ is Christ. General wisdom in any field of endeavor (especially in the fields of political science and law) then, is *logos*, and reflects the *Logos* of God (i.e., Christ).

If we now consider Jesus of Nazareth as the *Logos* of God, we must acknowledge not only his incorporeal nature before his birth in the flesh, but also his omnipresence and transparency to all of his human creations through the medium which the ancient Greeks called the *logos*. And if Christ be the

very nature of fundamental law is that it is a divine “higher law” predates human institutions.

¹²¹ John Marshall Guest, “The Influence of Biblical Texts Upon English Law” (An address delivered before the Phi Beta Kappa and Sigma Xi Societies of the University of Pennsylvania on June 14, 1910)(pages 15-34), p. 16.

¹²² John 1:1-3.

¹²³ Romans 1: 19-20.

¹²⁴ Romans 1: 19-20; 2:11-16; 10: 17-18.

¹²⁵ Romans 10: 5-8 (“The word is nigh thee...”)

¹²⁶

That “Wisdom of God” is described in Proverbs 8: 12-36.

Logos of God, then he must be found outside of the four corners of the orthodox Christian churches and across all national, language, racial, and religious boundaries! As the divine *Logos*, Christ is simply accessible to anyone—even outcasts—who seeks wisdom and truth.

THE END

APPENDIX D

*“Of Thomas Jefferson and the Jeffersonians”*¹²⁷

by

Roderick O. Ford, D.Litt. (Law & Religion)

No political discourse on the Christian foundations of America’s constitutional documents can be complete without addressing the beliefs and writings of American Founding Father Thomas Jefferson (1743 - 1826), lawyer, statesman, latitudinarian Anglican, slave owner, Congressman, Secretary of State, President of the United States, and founder of the University of Virginia. Jefferson liked ancient Greece and Rome, but he sought to diminish the influence of Episcopal Church and the organized Christian church in public life. He downplayed the influence of Christianity upon Anglo-American common law, and he even suggested that the United States Constitution has been established to liberate mankind from the binding oppressions of religion. But there is tension between many of Jefferson’s democratic views and the prevailing views of many of his contemporaries (e.g., John Adams, Alexander Hamilton, and George Washington) and subsequent generations of influential Americans who thought otherwise. For instance, the Rev. William Goodell’s *The Democracy of Christianity* describes the struggle for American democracy as being the “actual workings and effects of Christianity,”¹²⁸ and suggests that the democratic principles which the United States Constitution¹²⁹ were derived from the Christian religion.¹³⁰ Do Christians tend to give Jefferson’s political philosophy and writings more credit for being Christian than what they justly deserves?

This note analyzes Thomas Jefferson’s political philosophy and writings—i.e., Jeffersonianism—with the objective of carefully pointing out their strengths, weaknesses, and limitations, while co-existing alongside other more predominant political views—e.g., those of John Witherspoon, Alexander Hamilton, John Adams, and George Washington—about the influences of the orthodox Christian religion upon American law and government. In other words, Jefferson was not the only American Founding Father who has strong views, and most of the Founding Fathers did not agree with Jefferson’s tendency towards deism and irreligion. And, finally, it is not likely that Jefferson himself, notwithstanding his wide

¹²⁷ Roderick O. Ford, *The Apostolate Papers* (unpublished research papers, 2015 to 2022). www.roderickford.org.

¹²⁸ William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852), p. 461.

¹²⁹ *Ibid.*, p. 483 (“*The *Declaration of Independence*, it is well known, was a condensed abstract of a collection of the liberty-sustaining literature of the times. The statement of inalienable human rights, so obviously the sentiment of the Puritans, had just been emphatically re-affirmed by Hopkins, in his writings against slavery. ‘Several years before the American Revolution, there was, near the house of Mr. Jefferson, in Virginia, a church which was governed on Congregational principles, and whose monthly meetings he often attended. Being asked how he was pleased with their church government, he replied, that it had struck him with great force, and interested him very much; that he considered it the only form of pure democracy that then existed in the world; and concluded that it would be the best plan of government for the American colonies.’....”)

¹³⁰ *Ibid.*, pp. 484 (“[T]he people of Great Britain are indebted to the Puritans. What is wanting, both in England and America, to the completeness and the security of human freedom, is an undeviating fidelity to those principles of Christian democracy which the Puritans in some measure restored. Neither Christianity nor Democracy proposes any blessings for mankind, any further than their high requisitions are honored by them in practice.”)

influence, was able to singlehandedly up-root the Puritan foundations of American constitutional law and jurisprudence.¹³¹

I. Jefferson's Views on Christianity, the Common Law, and the Separation of Church and State

Among other controversial viewpoints, Thomas Jefferson vigorously held that Christianity had not been incorporated into the English Common Law.¹³² Jefferson wanted to lay the groundwork for intellectual freedom and scientific inquiry that eventually became institutionalized in his University of Virginia, which he founded in 1819. He wanted full and complete freedom of the human intellect—whether scientific, theological, or legal (constitutional). He insisted that one man's opinion was equivalent in dignity and respect as any other man's opinion. And Jefferson was willing to effectuate the complete removal of organized religion—particularly the Church of England—from secular law, government, and politics. In order to achieve this result, Jefferson advocated a constitutional theory called the “Separation of Church and State,” but this theory was never embraced as an accurate or complete description of the true relationship between the Christian religion and Anglo-American constitutional law and jurisprudence. But today, many American lawyers, jurists, political scientists, and promoters of secular humanism rely heavily upon Jefferson's theory in a sustained effort to read Christianity out of the American Declaration of Independence and the United States Constitution.

However, to quote Thomas Jefferson, or to rely solely upon his writings, is a grave mistake that many political scientists, historians, and constitutional lawyers make when promoting the complete secularization of American government, law, and constitutional jurisprudence. And this is a grave mistake for a number of reasons. Indeed, several decades before Jefferson was born, the Thirteen original colonies had been founded upon both Christian principles and the Christian faith.¹³³ And it was not within Jefferson's official capacity to extricate this Christian influence from American colonial, legal, and constitutional history. Nor was Jefferson ever vested with legal or constitutional authority to define for all future generations what the express terms in the American Declaration of Independence meant. Since this Declaration was a “public document,” with fifty-six signers, each signatory bore some part in drafting and defining the express terms of that document.¹³⁴ So that we may rightly suppose that the general understanding of key terms in that Declaration of Independence— e.g., “**the Laws of Nature and of Nature's God,**” “**endowed by their Creator** with certain unalienable Rights, that among these are **Life, Liberty and the pursuit of Happiness**” and “with a firm reliance on **the protection of divine Providence**”— should be ascertained through the prism of custom, tradition, and the lexicon of the late 18th century.

¹³¹ The Quaker influence, together with that of the Congregationalists and the Presbyterians, upon Anglo-American constitutional law and jurisprudence remains paramount. See, e.g., *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394 Pa. 1824 (“not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but **Christianity with liberty of conscience to all men.**...”)

¹³² See, e.g., Jefferson' *Letter to Dr. Thomas Cooper* (Jan. 16, 1814); *Letter to John Adams* (Jan. 24, 1814); *Letter to Dr. Thomas Cooper* (Feb. 10, 1814); and *Letter to Major John Cartwright* (June 5, 1824).

¹³³ See, e.g., “Religion and the 13 Original Colonies,” Britannica (Online): <https://undergod.procon.org/religion-in-the-original-13-colonies/>.

¹³⁴ 28 Anglicans; 14 Congregational; 11 Presbyterian; 1 Roman Catholic; and 2 Unknown: Total 56 signers of the Declaration of Independence (1776).

Up to the time of the American Revolution and for many decades thereafter, the “Laws of Nature” denoted the laws of God as conceptualized in Western Christian theology.¹³⁵ And thus the Declaration of Independence was construed to be deeply influenced by this same natural-law and Anglican tradition—from the writings of the Apostle Paul, Augustine of Hippo, Henry de Bracton, John of Salisbury, Richard Hooker, and many others. In fact, the plain language of the Declaration of Independence is clearly a restatement of the natural religion that had been conceptualized and defined by many Latitudinarian Anglicans during the early half of the 18th-century.¹³⁶ Thomas Jefferson, who was himself a Virginian Anglican, inherited that Latitudinarian tradition, which, according to historical documents, he was clearly exposed to while a student at the College of William and Mary.

Moreover, it is important to keep in mind that Thomas Jefferson’s personal God appears to be a deity with the same inclinations and sovereign features as the God of the Sacred Scriptures. For instance, where Jefferson commented upon the divine punishment that would likely result from the wicked practice of owning slaves in the United States,¹³⁷ he described God as “just,” and that his “justice cannot sleep forever,” stating:

There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to

¹³⁵ See, generally, Norman Doe, *Christianity and Natural Law* (Cambridge, U.K.: Cambridge University Press, 2017), to wit:

- Chapter 1. R.H. Helmholz, “Natural Law and Christianity: A Brief History”
- Chapter 2. Helen Costigane, “Natural Law in the Roman Catholic Tradition”
- Chapter 3. Paul Babie, “Natural Law in the Roman Catholic Tradition”
- Chapter 4. Will Adam, “Natural Law in the Anglican Tradition”
- Chapter 5. Antti Raunio, “Natural Law in the Lutheran Tradition”
- Chapter 6. John A. Harrod, “Natural Law in the Methodist Tradition”
- Chapter 7. Mary Anne Plaatjies van Huffel, “Natural Law in the Reformed Tradition”
- Chapter 8. Paul Goodliff, “Natural Law in the Baptist Tradition”
- Chapter 9. LeoJ. Koffeman “Natural Law in the Ecumenical Movement”
- Chapter 10. Norman Doe, “Natural Law in an Interfaith Context: The Abrahamic Religions”
- Chapter 11. Owen Anderson, “Natural Law and Philosophical Presuppositions.”
- Chapter 12. Russell Sandberg “Towards a Jurisprudence of Christian Law”

¹³⁶ See, e.g., Joseph Butler, *The Analogy of Religion, Natural and Revealed to the Constitution and Course of Nature*, supra, pp. 152, 155, 158 (“the Author of Nature”); p. 159 (“...the Author of Nature, which is the foundation of Religion”); p. 162 (“... there is one God, the Creator and moral Governor of the world”); p. 187 (“Christianity is a republication of natural Religion”); p. 188 (“The Law of Moses then, and the Gospel of Christ, are authoritative publications of the religion of nature....”); p. 192 (“Christianity being a promulgation of the law of nature....”); p. 243 (“These passages of Scriptures ... comprehend and express the chief parts of Christ’s office, as Mediator between God and men.... First, He was, by way of eminence, the Prophet: that Prophet that should come into the world, to declare the divine will. He published anew the law of nature.... He confirmed the truth of this moral system of nature....”).

¹³⁷ Jefferson’s God has been depicted in his writings as a God of “justice” whose actions resemble the God of the Sacred Scriptures. This same description of God, for example, was frequently relied upon by Dr. Martin Luther King, Jr. during the later 20th century. See, e.g., Dr. Martin Luther King, Jr., “The Montgomery Bus Boycott” (December 5, 1955)(Address delivered at the Holt Street Baptist Church), stating:

The Almighty God himself is not the only, not the, not the God just standing out saying through Hosea, “I love you, Israel.” He’s also the God that stands up before the nations and said: “Be still and know that I’m God, that if you don’t obey me I will break the backbone of your power and slap you out of the orbits of your international and national relationships.” Standing beside love is always justice, and we are only using the tools of justice. Not only are we using the tools of persuasion, but we’ve come to see that we’ve got to use the tools of coercion. Not only is this thing a process of education, but it is also a process of legislation.

imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love, for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. But generally it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. ... With the morals of the people, their industry also is destroyed. For in a warm climate, no man will labour for himself who can make another labour for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labour. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? **Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever:** that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest.— But it is impossible to be temperate and to pursue this subject through the various considerations of policy, of morals, of history natural and civil. We must be contented to hope they will force their way into every one's mind.¹³⁸

Thus, the God of Thomas Jefferson may not have been the Trinitarian God of Christian orthodoxy, but neither was Jefferson's God a detached and disinterested watchmaker.¹³⁹ Rather, Jefferson's God, as He

¹³⁸ See Thomas Jefferson, *Writings* (New York, N.Y.: The Library of America, 1984), pp. 288 – 289.

¹³⁹ See, e.g., "Watchmaker Analogy," *Wikipedia Encyclopedia* (Online):

The scientific revolution "nurtured a growing awareness" that "there were universal laws of nature at work that ordered the movement of the world and its parts." Amos Yong writes that in "astronomy, the Copernican revolution regarding the heliocentrism of the solar system, Johannes Kepler's (1571–1630) three laws of planetary motion, and Isaac Newton's (1642–1727) law of universal gravitation—laws of gravitation and of motion, and notions of absolute space and time—all combined to establish the regularities of heavenly and earthly bodies".

Simultaneously, the development of machine technology and the emergence of the mechanical philosophy encouraged mechanical imagery unlikely to have come to the fore in previous ages.

With such a backdrop, "deists suggested the watchmaker analogy: just as watches are set in motion by watchmakers, after which they operate according to their pre-established mechanisms, so also was the world begun by God as creator, after which it and all its parts have operated according to their pre-established natural laws. With these laws perfectly in place, events have unfolded according to the prescribed plan." For Sir Isaac Newton, "the regular motion of the planets made it reasonable to believe in the continued existence of God". Newton also upheld the idea that "like a watchmaker, God was forced to intervene in the universe and tinker with the mechanism from time to time to ensure that it continued operating in good working order." Similarly to Newton, René Descartes (1596–1650) speculated on "the cosmos as a great time machine operating according to fixed laws, a watch created and wound up by the great watchmaker".

And compare this to Dr. Martin Luther King, Jr., "Give Us the Ballot" (May 17, 1957)(Address delivered at the Prayer Pilgrimage for Freedom), stating:

Let us realize that as we struggle for justice and freedom, we have cosmic companionship. This is the long faith of the Hebraic-Christian tradition: that God is not some Aristotelian 'unmoved mover' who merely contemplates upon Himself. He is not merely a self-knowing God, but an other-loving God (*Yeah*) forever working through history for the establishment of His kingdom.

And see, also, Dr. Martin Luther King, Jr., "The Montgomery Bus Boycott" (December 5, 1955)(Address delivered at the Holt Street Baptist

is described in both the Declaration of Independence and in his polemical note against the institution of slavery, was not unlike the God of the Sacred Scriptures who took an active part in human affairs and who dispensed human justice. It is for this reason that I have concluded that Thomas Jefferson was a “Christian Deist” and a “Latitudinarian Anglican,” much like Bishop Joseph Butler, who had an influence upon the Presbyterian and neo-orthodox Calvinist theologian John Witherspoon, who was the only clergyman to sign the American Declaration of Independence. Hence, I believe that Thomas Jefferson (who represented the Latitudinarian Anglicans in North America) and John Witherspoon (who represented the neo-orthodox Calvinists in North America)—i.e., the Anglicans and the Calvinists—found common ground in forging a new Republic in North America. This joint effort between Jeffersonian-Anglicans and neo-orthodox Calvinists was the theological and historical conclusion of at least one prominent American theologian.¹⁴⁰

But there is also a scientific, philosophical, deistic, and near-atheistic component that runs through Jefferson’s writings. Indeed, Jefferson often appears at times to be anti-Christian—or at least anti-orthodox Anglican. During the early 1800s, in several letters, Jefferson argued that the customary laws of the pre-Christian and pagan Anglo-Saxons (i.e., the “ancient [pagan] scriptures”) were the basis of England’s fundamental and customary or common laws—not Christianity or the Sacred Scriptures.¹⁴¹

Interestingly, Jefferson held that the Norman, Tudor, and Stuart kings had simply usurped the pre-Christian rights of the ancient Anglo-Saxons and substituted those rights with “divine rights of Christian kings” and similar false claims and theories.¹⁴² In addition, Jefferson also vigorously argued that a string of English jurists—Chief Justice John Prisor ----→ Chief Justice Finch ---→ Justice Sheppard ----→ Chief Justice Matthew Hale ---→ Justice William Blackstone ---→ Chief Justice Lord Mansfield—had helped these English kings to utilize the Christian religion and to manipulate ecclesiastical doctrine in order to justify their royal authority. Moreover, Jefferson argued, these same jurists had interposed the Christian religion upon the English people through devising a false legal theory that *Christianity had been incorporated into the English common law*. Jefferson vehemently objected to this legal theory. “[T]hus,” writes Jefferson, “we find this string of authorities all hanging by one another on a single hook, a mistranslation by Finch of the words of Prisor, or on nothing. for all quote Prisor, or one another, or nobody. Thus Finch misquotes Prisor; Wingate also, but using Finch’s words; Sheppard quotes Prisor,

Church), stating:

The Almighty God himself is not the only, not the, not the God just standing out saying through Hosea, “I love you, Israel.” He’s also the God that stands up before the nations and said: “Be still and know that I’m God, that if you don’t obey me I will break the backbone of your power and slap you out of the orbits of your international and national relationships.” Standing beside love is always justice, and we are only using the tools of justice. Not only are we using the tools of persuasion, but we’ve come to see that we’ve got to use the tools of coercion. Not only is this thing a process of education, but it is also a process of legislation.

¹⁴⁰ Richard Niebuhr, “Theology and Political Thought in the Western World,” *Major Works on Religion and Politics* (New York, N.Y.: The Library of America, 2015), pp. 498-499. (“Despite the differences between the Calvinist and the Jeffersonian versions of the Christian faith, they arrived at remarkably similar conclusions, upon this as upon other issues of life. For Jefferson the favorable economic circumstances of the New Continent were the explicit purpose of the providential decree. It was from those circumstances that the virtues of the new community were to be derived. For the early Puritans the physical circumstances of life were not of basic importance. Prosperity was not, according to the Puritan creed, a primary proof or fruit of virtue.... But three elements in the situation of which two were derived from the creed and the third from the environment gradually changed the Puritan attitude toward expanding opportunities of American life.”)

¹⁴¹ Jefferson’s *Letter to Major John Cartwright* (June 5, 1824)(“I have read this with pleasure, and much approbation, and think it has deduced the constitution of the English nation from it’s rightful root, the Anglo-Saxon.”)

¹⁴² Jefferson’s *Letter to Major John Cartwright* (June 5, 1824).

Finch and Wingate; Hale cites nobody; the court in Woolston's case cite Hale; Wood cites Woolston's case; Blackstone that & Hale; and L^dMansfield volunteers his own ipse dixit.... May we not say then with him who was all candor and benevolence 'Woe unto you, ye lawyers, for ye lade men with burdens grievous to bear.'"143

Thus, Jefferson felt that generations of English lawyers, judges, and clergymen had conspired to commit a forgery upon the Anglo-Saxon common law by incorporating the Christian religion into it, describing this practice as "the pious disposition of the English judges to connive at the frauds of the clergy."¹⁴⁴ Jefferson goes so far as to say that this was one of the fundamental differences between the Whigs and the Tories.¹⁴⁵ A decade later, Jefferson repeated the same claim, writing: "Finch quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch and Wingate. Hale cites nobody. the court, in Woolston's case, cite Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale. and L^dMansfield, like Hale, ventures it on his own authority. here I might defy the best read lawyer to produce another scrip of authority for this judiciary forgery...."¹⁴⁶ Importantly, no American or English court opinion has embraced Jefferson's views. And, in fact, the several cases and authoritative treaties—such as those authored by Coke, Wood, and Blackstone—which do comment upon the subject conclude that the Christian religion has been made an integral component of the common law and the British legal system.

II. Jefferson Deprecates the History of Christianity in England

Moreover, Thomas Jefferson's voluminous writings both ignored, or failed to seriously analyze, the history of the Christian religion in England and in British constitutional law. Jefferson even doubted that King Ethelbert's and King Alfred's Anglo-Saxon laws (i.e., Dooms) had incorporated texts from the Sacred Scriptures. Jefferson argued that various Anglo-Saxon clergymen had forged those ancient documents as well, stating:

[W]e have a curious instance of one of these pious frauds in the Laws of Alfred. He composed, you know, from the laws of the Heptarchy, a Digest for the government of the United kingdom, and in his preface to that work he tells us expressly the sources from which he drew it, to wit, the laws of Ina, of Offa & Aethelbert, (not naming the Pentateuch.) but his pious Interpolator, very awkwardly, premisesto his work four chapters of Exodus (from the 20th to the 23^d) as a part of the laws of the land; so that Alfred's spreface is made to stand in the body of the work. our judges too have lent a ready hand to further these *frauds*, and have been willing to lay the yoke of their own opinions on the necks of others; to extend the coercions of municipal law to the dogmas of their religion, by declaring that these make a part of the law of the land....¹⁴⁷

¹⁴³ Jefferson's *Letter to John Adams* (Jan. 24, 1814).

¹⁴⁴ *Ibid.*

¹⁴⁵ Jefferson's *Letter to Major John Cartwright* (June 5, 1824). ("It has ever appeared to me that the difference between the whig and tory of England is, that the whig deduces his rights from the A-Saxon source, and the tory from the Norman....")

¹⁴⁶ *Ibid.*

¹⁴⁷ Jefferson's *Letter to John Adams* (Jan. 24, 1814).

Alfred, in the preface to his laws, says they were compiled from those of Ina, Offa, and Aethelbert, into which, or rather preceding them, the clergy have interpolated the 20th, 21st, 22^d, 23^d and 24th chapters of Exodus, so as to place Alfred's preface to what was really his, awkwardly enough, in the body of the work an interpolation the more glaring as containing laws expressly contradicted by those of Alfred. This pious fraud seems to have been first noted by Houard in his *Coutumes Anglo-Normandes* (I. 88.) and the pious judges of England have had no inclination to question it.¹⁴⁸

Jefferson then goes on to clarify his position that the United States of America was founded upon principles of natural law. "Our revolution commenced on more favorable ground," wrote Jefferson, "We appealed to those of nature, and found them engraved in our hearts."¹⁴⁹ But here Jefferson undercut his own argument that Christianity had not been made a part of the English common law (i.e., the unwritten constitution of England), because by acknowledging the "nature" that is "engraved in our hearts," Jefferson unwittingly acknowledged the fundamental tenet of Christian theology, which is that the law of God is the law of nature written in the human heart as well as codified in the Ten Commandments. And, here, we may safely conclude that Jefferson's statement, "those of nature... engraved in our hearts" is no different than that famous statement about "nature" that was uttered by the Apostle Paul in his *Letter to the Romans*, that "**when the Gentiles... do by nature the things contained in the law... shew the work of the law written in their hearts.**"¹⁵⁰ I am convinced that Thomas Jefferson and the Apostle Paul were speaking about the same law of nature. I am also convinced that Jefferson was sufficiently well-read and intelligent enough to have recognized this linkage between Paul's famous theology of "nature" and Jefferson's own ideals about "nature." Jefferson chose either not to recognize, or to simply reject, the fact that the Apostle Paul's *Letter to the Romans*¹⁵¹ had already incorporated this law of nature into Christian theology. Jefferson never acknowledges or admits that Christianity is really a republication of the "laws of Nature" or natural religion. And it is also quite surprising that Jefferson never seriously entertained the idea that "Christianity is a republication of natural religion," which many Christian deists had widely purported and published during the early 18th-century and Jefferson's lifetime.¹⁵²

¹⁴⁸ Jefferson' *Letter to Dr. Thomas Cooper* (Jan. 16, 1814).

¹⁴⁹ Jefferson's *Letter to Major John Cartwright* (June 5, 1824).

¹⁵⁰ Romans 2: 14-15.

¹⁵¹ See, also, Romans 1:14-15 ("I am debtor both to the Greeks, and to the Barbarians.... So, as much as in me is, I am ready to preach the gospel to you that are at Rome also."); Romans 1:19-20 ("that which may be known of God is manifest in them...the invisible things of him from the creation of the world are clearly seen, being understood by the things that are made, even his eternal power and Godhead...."); Romans 2:11-16 ("when the Gentiles... do by nature the things contained in the law... shew the work of the law written in their hearts"); Romans 10:8 ("The word is nigh thee, even in thy mouth, and in thy heart"); Romans 10:18 ("But I say, Have they not heard? Yes verily, their sound went into all the earth, and their words unto the ends of the world.")

¹⁵² See, e.g., Joseph Butler, *The Analogy of Religion, Natural and Revealed to the Constitution and Course of Nature*, supra, pp. 152, 155, 158 ("the Author of Nature"); p. 159 ("...the Author of Nature, which is the foundation of Religion"); p. 162 ("... there is one God, the Creator and moral Governor of the world"); p. 187 ("Christianity is a republication of natural Religion"); p. 188 ("The Law of Moses then, and the Gospel of Christ, are authoritative publications of the religion of nature..."); p. 192 ("Christianity being a promulgation of the law of nature..."); p. 243 ("These passages of Scriptures ... comprehend and express the chief parts of Christ's office, as Mediator between God and men.... First, He was, by way of eminence, the Prophet: that Prophet that should come into the world, to declare the divine will. He published anew the law of nature.... He confirmed the truth of this moral system of nature..."); see, also, the writings of the Latitudinarian Anglican and Chancery Lawyer Matthew Tindal (1657 - 1733), https://en.wikipedia.org/wiki/Matthew_Tindal. See, e.g., Matthew Tindal, *Christianity as Old as the Creation, or the Gospel a Republication of the Religion of Nature* (Newburgh, England: David Deniston Pub.,

There is no reason to assume that Jefferson did not understand and appreciate this idea. For in his speech to the Baptists, he acknowledged a common Creator of all mankind, and that there were various religious traditions all leading to the same general principles of true religion, stating:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man **all his natural rights**, convinced he has no natural right in opposition to his social duties. I reciprocate your kind prayers for the protection and blessing of **the common Father and Creator of man**, and tender you for yourselves and your religious association, assurances of my highest respect and esteem.¹⁵³

But Jefferson never seems to have accepted the idea that the “Laws of Nature” or the “natural rights” of mankind and the Decalogue or the revealed law of Christianity were the same laws; or that the ecclesiastical laws of England were incorporated into the common law of both England and the American colonies. And I find this to be a fundamental flaw in Thomas Jefferson’s objection to the proposition that Christianity is a part of the English common law.

Jefferson’s writings also suffers from its lack of historicity. If I understand the fundamental theme in Jefferson’s writings, he argues that the American colonists came to the New World in large measure to overthrow oppressive English or British laws and traditions which the Norman kings had been instilled into Anglo-Saxon culture through tyranny. Those Norman kings imposed the Christian religion and Roman Catholic institutions upon the Anglo-Saxons and Britons, according to Jefferson. And much of American history could be understood as the historical efforts of Anglo-Saxons to overthrow the tyranny of those so-called Christian kings of Great Britain.¹⁵⁴

While I doubt not that the unique circumstances in North America required the colonists to deviate from certain aspects of the English common law and customs, those colonists had no stated objective to overthrow the Christian law, customs, and culture which they had brought from England and Europe. But Jefferson unfairly and inexplicably ignores the profound influence of the Christian religion upon the development of both England and Western Europe. For example, Jefferson ignores the fact that the ancient Celtic peoples of Ireland, Scotland, and Wales had already received a primitive form of Christianity that predated the arrival of Norman Christianity (i.e., Roman Catholicism) in England.¹⁵⁵

1730) [Republished by Forgotten Books in 2012], pp. 52, 56, 61, 64, 72-74 (stating that Christianity is a republication of natural religion).

¹⁵³ Thomas Jefferson, “Notes on the State of Virginia,” *Writings* (New York, N.Y.: The Library of America, 1984), pp. 283-287; and p. 510 (“To Messrs. Nehemiah Dodge and Others, a Committee of the Danbury Baptist Association, in the State of Connecticut.”)

¹⁵⁴ See, e.g., Jefferson’s descriptions of King George III in the text of the Declaration of Independence.

¹⁵⁵ See, e.g., “Celtic Christianity,” Wikipedia Encyclopedia (Online):

Celtic Christianity (Cornish: Kristoneth; Welsh: Cristnogaeth; Scottish Gaelic: Crìosdaidheachd; Manx: Credjue Creestee/Creestiaight; Irish: Crìostaíocht/Críostúlacht; Breton: Kristeniezh) is a form of Christianity that was common, or held to be

Jefferson does not account for the Irish, Scottish, and Welsh customary laws that had already imbibed the Christian faith, even though the Anglo-Saxons were still pagan and had not yet converted to Christianity. Nor does Jefferson acknowledge that these primitive Celtic peoples had received this Christian faith without having been conquered or imposed upon by the Norman invasion. These Celtic peoples had become part and parcel of the kingdom of England and, later, Great Britain. And Jefferson's writings fail to acknowledge or consider this Celtic Christianity as a viable factor in the development of the Anglo-American common law.¹⁵⁶

But even if we isolate the roots of the English common law to only the Anglo-Saxons, we still find that as early as 600 A.D., Pope Gregory the Great's mission had led to the conversion of Ethelbert of Kent (c. 550-616 A.D.) to the Christian faith. (And, significantly, we should note that this occurred fully 466 years before the arrival of William the Conqueror in 1066 A.D., upon which Jefferson's entire argument on Christian usurpation rests). From this early period onward—a period that predates the landmark year 1066 by several centuries—the Christian religion was an “official religion” in England, and it was thoroughly sewn into the customary law of the kingdom of Kent as early as the 7th century. Jefferson also ignored the history of the kingdom of Kent and its subsequent Christian influence upon the six other non-Christian Anglo-Saxon kingdoms (i.e., the Heptarchy):¹⁵⁷

The first archaeological evidence and credible records showing a community large enough to maintain churches and bishops date to the 3rd and 4th centuries. These more formal organizational structures arose from materially modest beginnings: the British delegation to the 353 Council of Rimini had to beg for financial assistance from its fellows in order to return home. The Saxon invasions of Britain destroyed most of the formal church structures in the east of Britain as they progressed, replacing it with a form of Germanic polytheism. There seems to have been a lull in the Saxon westward expansion traditionally attributed to the Battle of Badon but, following the arrival of Justinian's Plague around 547, the expansion resumed. By the time Cornwall was subjugated by Wessex at Hingston Down in 838, however, it was largely left to its native people and practices which remained

common, across the Celtic-speaking world during the Early Middle Ages [The Early Middle Ages (or early medieval period), sometimes controversially referred to as the Dark Ages, is typically regarded by historians as lasting from the late 5th or early 6th century to the 10th century]. Some writers have described a distinct Celtic Church uniting the Celtic peoples and distinguishing them from adherents of the Roman Church, while others classify Celtic Christianity as a set of distinctive practices occurring in those areas. Varying scholars reject the former notion, but note that there were certain traditions and practices present in both the Irish and British churches that were not seen in the wider Christian world.

¹⁵⁶ These Celtic peoples were native Britons and they readily embraced the Christian religion several centuries before there was the Norman invasion in 1066 A.D. If, then, Celtic laws, customs, and traditions were incorporated into Celtic customary law prior to the arrival of the Anglo-Saxons, then we may rightfully conclude that Christianity had long been sewn into the customary laws on the British Isles.

¹⁵⁷ “Heptarchy,” Wikipedia Encyclopedia (Online):

The Heptarchy is a collective name applied to the seven petty kingdoms of Anglo-Saxon England from the Anglo-Saxon settlement of Britain in the 5th century until the 8th century consolidation into the four kingdoms of Mercia, Northumbria, Wessex and East Anglia.

The term 'Heptarchy' (from the Greek *ἑπτάρχια*, 'heptarchia'; from *ἑπτὰ*, 'hepta': "seven"; *ἀρχή*, 'arche': "reign, rule" and the suffix *-ία*, '-ia') alludes to the tradition that there were seven Anglo-Saxon kingdoms, usually enumerated as: East Anglia, Essex, Kent, Mercia, Northumbria, Sussex, and Wessex.

<https://en.wikipedia.org/wiki/Heptarchy>

inherently Christian in character and St Piran's Oratory is dated to the 6th century, making it one of the oldest extant Christian sites in Britain....

In comparison to its uninterrupted continuity in the culturally Brittonic west, Christianity was extinguished in the east with the arrival of the Saxons, and was *reintroduced to eastern Britain by the Gregorian Mission, c. 600*. Establishing his archdiocese at Canterbury, St Augustine failed to establish his authority over the Welsh church at Chester but his mission—with help from Scottish missionaries such as SS Aidan and Cuthbert—proved successful in Kent and then Northumbria: the two provinces of the English Church continue to be led from the cathedrals of Canterbury and York (est. 735). Owing to the importance of the Scottish missions, Northumbria initially followed the native Church in its calculation of Easter and tonsure but then aligned itself with Canterbury and Rome at the 664 Synod of Whitby. Early English Christian documents surviving from this time include the 7th-century illuminated Lindisfarne Gospels and the historical accounts written by the Venerable Bede.¹⁵⁸

Hence, Jefferson's writings fail to account for the important fact that for more than five hundred years before William of Normandy conquered England in 1066 A.D., there was primitive Christianity among both the Celtic peoples Ireland and Wales *and* there was Roman Catholic Christianity among the Anglo-Saxon peoples of Kent and Northumbria. This Christian faith was not imposed upon these British peoples—they readily adopted them. In other words, Christianity was already well established in England long before the Norman kings arrived in England in 1066 A.D.

Therefore, Jefferson's theory that the Anglo-Saxons and their primitive common law rights were unchristian before the times of the Norman conquerors is historically inadequate, is altogether inaccurate.

Certainly by the early years of the third century Christianity was gathering momentum in Britain. The Christian leaders preached a dynamic and expansive faith. They declared all Roman and Celtic gods false. Because it was a political offense to insult the official deities the Christians were intermittently persecuted, mainly under Diocletian in the early part of the fourth century.... One martyr in Britain was the Roman Alban, who was slain at Verulam; when Verulam later fell and crumbled there rose on its ruins the new town of St. Albans.

The waves of persecution levelled off and Christianity advanced. Three British bishops attended the Council of Arles in 314 to represent the Christian communities in Britain. In the fifth century Celtic Christianity was planted widely among the Picts by the evangelical Ninian; in Ireland by St. Patrick; in Wales, Cornwall, and Devon by St. Illtyd, a disciple of St. Germanus, and the constellation of his missionaries. It is probable that St. Illtyd was a teacher of St. David.

The Emperor Constantine was probably converted to Christianity by a mystical revelation. He abandoned sun-worship himself and gave the Christians toleration throughout the Empire by the famous Edict of Milan in 313. It is often inaccurately stated that Constantine made Christianity the state religion. In his day the ancient prerogatives of the

¹⁵⁸ "History of Christianity," https://en.wikipedia.org/wiki/History_of_Christianity_in_Britain#Celts

old cults were left untouched. It remained for a later generation to proscribe the gods of Caesar.

When Constantine died in 337 the Empire was already beginning to shrink and tremble. Soon the legions went home from Britain, one by one. In their wake the fearful scuttled to security. The Christian missionaries remained behind in Britain. Their cause was greater than that of the Roman Empire.¹⁵⁹

In addition, Jefferson's theory that the Anglo-Saxon common law had remained unchristian until Christianity was fraudulently superimposed upon the English people by their Norman conquerors is also historically inadequate. The truth of the matter is that the Anglo-Saxons themselves thoroughly embraced and adopted the Christian religion since circa 600 A.D.; and, later, King Alfred (848 to 899 A.D.) established the Kingdom of England as a Christian kingdom.¹⁶⁰ Thenceforth, the Christian religion—through the *hundred courts* and the *shire courts*, both of which were staffed with priests and bishops,¹⁶¹ together with sheriffs and constables—fashioned, developed, refined, and promulgated what eventually became known as the English common law.¹⁶² That Jefferson's voluminous writings failed to honestly address the role of the English clergymen—the most learned men in English society and court—within pre-Norman England, reeks of intellectual self-evasion, if not altogether dishonesty.

Moreover, while analyzing the English common law, Jefferson must have also noticed the uniform acknowledgement of the central position of Magna Carta (1215 A.D.) in English and British constitutional history. No constitutional document most memorialized this important fact the English common law than Magna Carta (1215):

In the spring of 1215, as King John (r. 1199-1216) and the barons were negotiating the terms of Magna Carta, bishops, abbots, royal ambassadors, and an army of advisers, servants, and clerks were preparing for a general council of the Western Church to be held at the Cathedral of St. John Lateran, in Rome, the following November. 1 Pope Innocent

¹⁵⁹ Goldwin Smith, *A History of England*, p. 11-12.

¹⁶⁰ Diane Severance, Ph.D. "Alfred the Great," *Christianity.com* (April 28, 2010). <https://www.christianity.com/church/church-history/timeline/601-900/alfred-the-great-11629770.html>, stating:

Alfred's law code began with an introduction containing a translation of the Ten Commandments into English. God's law was to be the basis of the law for Alfred's Christian nation if it wished to be blessed by God. Following the Ten Commandments, Alfred included the Law of Moses (Exodus 21:1-23:19), the Golden Rule (Matthew 7:12), and a brief account of the apostolic history and the growth of Christian law among the Christian nations. Christian principles formed Alfred's concept of justice as he chose the laws which were to be included from the Saxon tradition. In establishing justice in his kingdom, Alfred was especially concerned with protecting the weaker members of society, limiting blood feud, and reinforcing the duty of men to their lords. Heathen practices were forbidden, and the church was protected by law and granted immunity from taxation. The clergy became part of the king's council.

¹⁶¹ Frank Zinkeisen, "The Anglo-Saxon Courts of Law," *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895); "Shire Courts," *Wikipedia Encyclopedia* (Online) https://en.wikipedia.org/wiki/Shire_Court; Godwin Smith, *A History of England* (New York, N.Y.: Charles Scribner's Sons, 1957). From the time of King Ethelbert (560- 616 A.D.) to the year 1066 when William the Conqueror (i.e., King William I) invaded England, the English legal system was then naturally dominated by the priests and the bishops, since they were the most learned and influential men in Europe and Britain. There were two broad types of courts in England: the hundred courts and the shire courts. Bishops and priests, together with earls and sheriffs presided over both courts. See, e.g., Frank Zinkeisen, "The Anglo-Saxon Courts of Law," *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895), pp. 132-144 ("[a]s to actual judicial authority, it seems, at least in the time of [the Anglo-Saxon king] Cnut, to have lain chiefly in the hands of the bishop, who was assisted by the secular arm of the ealdorman (earl) and the executive power of the latter or his deputy, whether a sheriff or other officer.")

¹⁶² *Ibid.*

III (r. 1198-1216) had called them together to make canons for the reform of the Church. On the agenda were the suppression of heresy, the provision of ministers who could preach in the language of their people, and the enforcement of clerical celibacy. The council was the first to require annual confession by all believers and the first to require Jews and Muslims to wear distinctive clothing. It was also responsible for certain reforms in the administration of Church law. It afforded due process before a sentence of excommunication could be pronounced and established a right of appeal, with the possibility of damages for an unjust sentence. It required every ecclesiastical judge to employ a notary to keep a record of his court. It decreed that no defendant was to be called before a court more than two days' journey from his diocese. The council had an important impact, for good and ill, on Western Europe for centuries afterward. Some of its ripples are still felt today. And yet the Fourth Lateran Council is the forgotten event of 1215. It is overshadowed by the events that took place at Runnymede.

The canons of the Fourth Lateran Council became part of the law of the Western Church, a body of law known as canon law. Canon law had been developing for centuries by 1215, but in the 70 or 80 years before Magna Carta, the study of canon law had taken a new turn. Europe's first universities were just starting to come together in the 12th century. The center of learning at Bologna in Italy actually coalesced around the teaching of canon law and its close cousin, Roman law. Romanists and canonists studied each other's laws, borrowed doctrines from each other, and shared a common, dialectical method of scholarship.

The two were often referred to by contemporaries as *utrumque ius* ("both laws") or the *ius commune* ("the common law") and were treated by scholars in the universities, by the beginning of the 13th century, as forming a unified system. They were the two universal laws of Latin Christendom, one being the law of the secular power and the other being the law of the Church. The modern civil law-by twists and turns that took it through the age of nation-states and codification-is the descendant of this medieval *ius commune*. The degree to which Roman and canon law have influenced the AngloAmerican common law is a question that common law lawyers have been debating for a long time and, because Magna Carta is an important text of the common law tradition, scholars have naturally turned their attention to the possibility of Roman and canon law influence on Magna Carta. None of the authors who have written about Magna Carta's civilian pedigree have spent much time on the question of the mechanisms by which *ius commune* would have made its way into Magna Carta, however. When historians and legal scholars talk about influence from one system to another, they tend to assume that it occurs through some process of organic osmosis. Scholars have assumed that the people who were drafting Magna Carta saw *ius commune* and common law as parallel and coequal systems of law and would therefore have thought it natural to borrow doctrines from one to insert into the other. This is one possible model of *ius commune* influence and examples of this kind of influence do exist in 12th- and 13th-century English texts. The Bracton treatise is examined below as one example. But the *ius commune* influence found in Magna Carta is of a different kind, and a different model for understanding it is required....

The central argument of this chapter is that where *ius commune* influence appears in Magna Carta, it is not there because someone in England thought the rules of Roman and canon law should be adopted into or adapted to the needs of the nascent common law. The *ius commune* influence in the text has very little to do with common law. Rather, this chapter considers another way people deployed *ius commune* in England in the 12th and 13th centuries—as a political language that they knew would appeal to the pope—and suggests that *ius commune*'s appeal to an audience in Rome was the main impetus for its inclusion in Magna Carta. Roman and canon law were used offensively and defensively in this period by the major players in England's greatest political battles, such as the Becket dispute of the 1160s and 1170s. The two laws were useful because the pope was often an important figure in these political battles. He was one of the audiences that the various disputing parties were trying to please, and he understood the language of the *ius commune*. Previous scholars have done an admirable job of placing Magna Carta in the context of broader intellectual developments in law in the Middle Ages. To get a better view of how *ius commune* influenced Magna Carta, however, Magna Carta must be placed in the broader context of European politics, in which the fight between John and the barons was a sideshow to a larger story that involved reform of the Western Church. All politics are local, but in the case of Magna Carta, they were also international.¹⁶³

Indeed, the foremost English jurist during the reign of King Henry II (who was a great-great grandson of William the Conqueror) was Henry de Bracton (1210 - 1268), whose influential writing clearly laid the groundwork for the predominant and prevailing viewpoint that the Christian religion was thoroughly sewn into the Anglo-Saxon, English, and British legal systems—especially the common law of England.¹⁶⁴

Bracton's work became the basis for legal literature of Edward I of England. Gilbert Thornton, the chief justice of the king's bench made an epitome of it.

When England was conquered by the Normans in 1066, it came under the influence of the most progressive and best governed system in Europe. It also brought a connection with the entire intellectual life of the Continent that had been absent in the Anglo-Saxon days. Foreigners came to England to study. English youth attended European universities. The only English Pope in history, Pope Adrian IV was elected in 1154. This can be attributed to Norman influence. On the Continent in the twelfth and thirteenth centuries, there was a renaissance in all learning, especially in legal concepts and writing. In Europe, Irnerius, the Four Doctors and Accursius revived the study of civil law. These established the school of the Glossators (writers of a "gloss" or short description of the case). Gratian systematised canon law. The Lombard *Libri Feudorum* and the French *Beaumanoir* reduced to some sort of order the customary feudal law of Europe. Ranulf de Glanvill and Bracton did this same thing for England, following the spirit of the Continent.

¹⁶³ Thomas J. McSweeney, "Magna Carta, Civil Law, and Canon Law" (2014). *William & Mary Law School Faculty Publications*. 1854.

¹⁶⁴ See, e.g., "Henry de Bracton," *Wikipedia Encyclopedia* (online): https://en.wikipedia.org/wiki/Henry_de_Bracton#cite_note-1

Bracton would have been familiar with the description of natural moral law applied in the Decretals: "The natural law dates from the creation of the rational creature. It does not vary with time, but remains unchangeable." He also was familiar with Isidore of Seville or Isidorus Hispalensis (c. 570–636) who wrote of law: "In determining the nature of law, there must be three conditions: the fostering of religion, in as much as it is proportionate to the Divine law; that it is helpful to discipline, in as much as it is proportionate to the natural law; and that is further the common weal, in as much as it is proportionate to the utility of mankind."¹⁶⁵

Henry de Bracton's Christian conceptualization of natural law was the same one that was adopted by most English and American lawyers and jurists both during the time of the American Revolution and during the several decades thereafter.¹⁶⁶

Indeed, Jefferson's own language in the Declaration of Independence has been interpreted through the prism of Henry de Bracton's Christian worldview of English law.¹⁶⁷ This is plainly reinforced by the history of the English legal profession which began in earnest during the reign Edward I. During this important reign, there were four broad categories of law in England—all of which influenced, and were incorporated into, the English common law, to wit:¹⁶⁸

Type of Law	Education/ Training	Professional Title/ Degree	Secular/ Church Affiliation
I. English Common Law	Inns of Court	Barristers; Solicitors; and Sergeants-at-Law. (No university training required)	Non-Clergy or Clergy.
II. Royal Law (Equity or Chancery; Statutes; Ordinances; Decrees)	Inns of Court; Inns of Chancery; Sergeant's Inn; Oxford Univ.; Univ. of Cambridge	Barristers; Solicitors; Sergeants, Clergy; J.C.D (doctor of canon law); LL.D.	Clergy (Roman Catholic; Church of England)

¹⁶⁵ Ibid.

¹⁶⁶ See, e.g., William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852), pp. 376-377, to wit:

An echo of these expositions we have in our Declaration of Independence. [Henry de] Bracton, in his exposition of Romans xiii., had said:

‘He is called a king for ruling righteously, and not because he reigns. Wherefore he is a king when he governs with justice, but a tyrant when he oppresses the people committed to his charge.’

In nearly the same language our Declaration of Independence abjures the authority of the British monarch:

‘A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.’

These words of Jefferson seem but a paraphrase or application of Bracton's, and Bracton's are but his own reference from his own exposition of Paul.

¹⁶⁷ Ibid.

¹⁶⁸ Roscoe Pound, *Legal Profession in the Middle Ages*, 3 *Notre Dame Law Review* 229, 234 (1944).

		(Doctor of Canon/ Civil Law).	
III. Roman Civil Law	Roman Church; Oxford; Cambridge, etc.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)
IV. Canon Law	Roman Church; Oxford; Cambridge.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)

But Jefferson’s writings simply ignore this deeply-ingrained influence of the Roman Catholic Church’s ecclesiastical courts, glossators, and canon laws upon the English legal system:

The *ius commune* has had an influence on English law and did from the very beginning. Canon law was ubiquitous in England in 1215. It was as much the law of England as the nascent common law was. Clerics and laymen alike would have had regular contact with the courts of the Church. Both the royal and ecclesiastical administration employed men trained in Roman and canon law in 1215. Some went as far away as Bologna to be trained in the two laws, Some were teaching it closer to home, at centers like Oxford and Lincoln. One must assume that great value was placed on *ius commune* learning in England if there were people who were prepared to commit several years to its study, possibly in a foreign country.¹⁶⁹

Ostensibly, Jefferson had an agenda, one shared by many others, to completely secularize the American state and national governments. Nevertheless, as we have seen through the undersigned author’s post-doctoral study, *Puritanism and the Presbyterian Enlightenment*, the Roman law (i.e., the civil and canon law of both Western Europe and the Roman Catholic Church) were too pervasively sewn into every aspect of English law and culture that prying it loose from the American colonial law would have been impracticable, if not altogether impossible. And the American colonists never made such an attempt.

Jefferson’s writings also inexplicably fail to seriously address the common law jurisprudence of that great champion of the English common law, Sir Edward Coke (1552 - 1634). Coke’s jurisprudence reflected the dictates of the Roman civil and canon law.¹⁷⁰ “When Sir Edward Coke asserted the common law’s independence from the Stuart monarchy in the early 17th century, he turned to Magna Carta to do it, presenting it as a statement of immemorial common law.”¹⁷¹ In other words, Coke adopted the Magna

¹⁶⁹ Thomas J. McSweeney, "Magna Carta, Civil Law, and Canon Law" (2014), *supra*, p. 306.

¹⁷⁰ See, also, Sir Edward Coke (1552-1634), former Chief Justice of England and Wales, who says in *Dr. Bonham’s Case*, 8 Co. Rep. 107; 77 Eng. Rep. 638 (1610) that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.” Here, we are to understand that “reason” is a reference to “logos.” Jesus of Nazareth, as the Son of God, was believed to be the essence of “Reason” or “the Word,” which is the divine “Logos.” See, e.g., John 1:1-3. See, also, “Aquinas on Law,” <https://people.wku.edu/jan.garrett/302/aquinlaw.htm> (where Saint Thomas Aquinas describes law as “a certain rule and measure of acts whereby man is induced to act or is restrained from acting.” (q90, a1) Because the rule and measure of human actions is reason, law has an essential relation to reason; in the first place to divine reason; in the second place to human reason, when it acts correctly, i.e., in accordance with the purpose or final cause implanted in it by God.”)

¹⁷¹ Thomas J. McSweeney, "Magna Carta, Civil Law, and Canon Law" (2014), *supra*, p. 305.

Carta, which contained express references to the civil and canon laws of the Roman Church, as the foundation of the English common law. And Jefferson's extrapolations on why the Christian religion had not become a part of the English common law—extrapolations that ignore Coke's influential jurisprudence—appear to be a superficial oversimplification of the Christian religion's influence upon Anglo-American constitutional law, common law, and jurisprudence.

III. Jefferson Deprecates the American State Court's Jurisdiction of Matters Previously Adjudicated in England's Ecclesiastical and Chancery Courts

Significantly, in the new United States of America, even the ecclesiastical law that had been interpreted in the English chancery and ecclesiastical courts became part and parcel of the American common law.¹⁷² But, as previously mentioned, Jefferson's voluminous writings contain no serious review of the substantive English ecclesiastical laws or of the fact that these had been transferred over to the regular American colonial and state courts. Jefferson simply ignores the fact that these English ecclesiastical laws had been incorporated into American colonial and state laws. For example, during 18th and 19th centuries, the American common law that related to family law, the law of wills, probate and estates, property law, equity jurisprudence, and certain aspects of criminal law and business transactions had incorporated rules of procedure and substantive law from the English canon laws and the ecclesiastical courts.¹⁷³

¹⁷² See, generally, Eugene A. Haertle, *The History of the Probate Court*, 45 Marq. L. Rev. 546 (1962). See, also, Thomas J. McSweeney, "Magna Carta, Civil Law, and Canon Law" (2014), p. 302.

But canon law was also practiced in English ecclesiastical courts. Canon law was the law in England and, as late as the 19th century, was a law that the average Englishman would come into contact with at some point in his life: issues like marriage formation and probate of personal property were within the exclusive jurisdiction of the ecclesiastical courts. The Church even claimed jurisdiction over contracts sealed by solemn oath. It had its own lawyers, trained separately from the lawyers of the common law courts. Most of the ecclesiastical jurisdiction has been subsumed into the common law in England and its former colonies and its origin in canon law has largely been forgotten. Probate and marriage are now issues for the regular state courts, but in 13th-, 14th-, and 15th-century England, and even much later, there was no such thing as a common law of probate or marriage formation.

¹⁷³ See, generally, Erwin C. Surrency, "The Courts in the American Colonies," *The American Journal of Legal History* Vol. 11, No. 3 (Jul., 1967), pp. 253-276. See, also, Richard C. Dale, "The Adoption of the Common Law in the American Colonies," *The American Law Register* (September 1882), pp. 562 – 565, published by the University of Pennsylvania Law Review.

For in England, many matters purely civil in their nature are within the exclusive jurisdiction of the ecclesiastical courts. For example, all cases arising out of the contract of marriage, in consequence of the old view that this relation was of a purely religious character, were only cognisable in courts presided over by ecclesiastics. In America, where the contract of marriage is purely a civil contract, and where -no ecclesiastical courts exist to take cognisance of such cases, breaches of marital rights would be remediless if the ordinary civil courts had not jurisdiction of such causes. In many of the states, statutory enactments incorporating in extenso the main provisions of the English law, and designating the proper courts for the exercise of this jurisdiction, have removed all difficulty and confusion from the subject. But apart from these statutes, it has been decided that our civil courts have jurisdiction of cases in which rights of person or property are involved, which in England are solely within the jurisdiction of the ecclesiastical courts....

In *Crump v. Morgan*, 3 Ired. Eq. 91, there is a very elaborate and learned discussion of the question whether a court of equity, without statutory authority, could declare void the marriage of a female lunatic, which had been procured in order that the husband might obtain possession of her large estate. The decisions of English ecclesiastical courts having been cited in support of the jurisdiction, it was argued that they had no force in American civil courts. The court unhesitatingly disposed of the objection to the jurisdiction, saying: " It is said that these are the adjudications of ecclesiastical courts and are founded not in the common law, but in the canon and civil laws, and therefore not entitled to respect here. But it is an entire mistake to say "that the canon and civil laws, as administered in the ecclesiastical courts of England, are not part of the common law. Blackstone, following Lord HALE, classes them among the unwritten laws of England, and as parts of the common law which by custom are adopted and used in peculiar jurisdictions. They were brought herd by our ancestors as parts of the common law and have been adopted and used here in all cases to which they were applicable, and whenever there has been a tribunal exercising a jurisdiction to call for their use. They govern testamentary cases and matrimonial cases. Probate and re-probate of will stand upon the same grounds here as in England, unless so far as statutes may have altered it: " *Wightman v. Wightman*, 4 Johns. Oh. 343, repeated the same doctrine, and held further that where by statute jurisdiction is given to any particular court over matters either matrimonial or testamentary, the

IV. American Courts and Legislatures rejected Jefferson's Views on the Common Law and Separation of Church and State

As previously mentioned, most of Jefferson's fellow Anglicans, lawyers, and jurists embraced the conservative British conception of jurisprudence, particularly as set forth in Sir William Blackstone's *Commentaries on the Laws of England*.¹⁷⁴ I note here that Blackstone was a British Tory, and the Tories were orthodox, conservative, and promoters of the established Church of England. I note here, also, that notwithstanding the fact that Blackstone was a Tory, most 18th- and 19th-century American jurists and lawyers read and adopted Blackstone's jurisprudence and utilize it widely in American legal discourse, law, and court opinions. Generally, symbolically, and summarily, the American legal profession considered the Declaration of Impendence and the United States Constitution to be extensions of Magna Carta and the English common law— both of which were, from Blackstone's perspective, codifications of the general principles of the Christian religion.¹⁷⁵ Nor was Jefferson's personal influence was not capable

English law is still to be consulted as a guide in matters relating to the general subject, for which particular provision is not made in the statute. To the same effect is *Williamson v. Williamson*, 1 Johns. Oh. 489, where upon a libel for divorce for adultery, the question was whether the facts having been proved, the granting of a final decree dissolving the marriage was within the sound discretion of the court. The same learned judge said: "The statute says that after the truth of the adultery charged has been ascertained, 'it shall be lawful for the court to decree a dissolution of the marriage.' This language may and ought to be understood as leaving to the court the exercise of that sound discretion which the nature of the case and the principles of equity might require. The general rules of the English jurisprudence on this subject must be considered as applicable under the regulations of the statute to this newly-created branch of equity jurisdiction."

This doctrine is still more strikingly exemplified in *LeBarron v. LeBarron*, 35 Vt. 365, where in a proceeding for divorce by the wife for the alleged impotence of the husband, the petitioner asked for a physical examination of the respondent by medical experts. The application was resisted upon the ground that the statutes relating to divorce contained no provision for such an examination, but the court granted the application, POLAND, 0. J., saying: " To enable us to determine this question, it becomes necessary to examine into the real source and extent of the jurisdiction of the court over this subject. The legal power to annul marriages has been recognised as existing in England from a very early period, but its administration, instead of being committed to the common-law courts, was exercised by their spiritual or ecclesiastical courts. Under the administration of these 'courts for a long period of time, the principles and practice governing this head of their jurisdiction ripened into a settled course and. body of jurisprudence, like that of the courts of. chancery and admiralty, and constituted with these systems a part of the general law of the realm, and in the broad and enlarged' use of the term, a part of the common law of the land. This country having been settled by colonies from England under the general authority of the government, and remaining for many years a part of its dominion, became and remained subject and entitled to the general laws of the government, and they became equally the laws of this country, except so far as they were inapplicable to the new relation and condition of things. This we understand to be well settled, both by judicial decision and the authority of eminent law writers. But if this were not so, the adoption of the common law of England by the legislature of the state was an adoption of the whole body of the law of that country, aside from their parliamentary legislation, and included those principles of law administered by the courts of chancery and admiralty, and the ecclesiastical courts (so far as the same were applicable to our local situation and circumstances and not repugnant to our constitution and laws), as well as that portion of their laws administered by the ordinary and common tribunals. As the jurisdiction in cases matrimonial in England was exclusively committed to the spiritual courts, and had never been exercised by the ordinary law courts, the same could not be exercised by the courts of law in this country until it was vested in them by the law-making power. As we have never had any ecclesiastical courts in this country who could execute this branch of the law, it was in abeyance until some tribunal was properly clothed with jurisdiction over it or vested in the legislature. It was probably on this ground that the legislatures of the states proceeded in granting divorces as many of them did in former times. When the legislature establish a tribunal to exercise this jurisdiction or invest it in any of the already established courts, such tribunal becomes entitled, and it is their duty to exercise it according to the general principles of the common law of the subject and the practice of the English courts so far as they *are suited to our condition and the general spirit of our laws." The order for physical examination was granted. Similar orders upon similar grounds were granted in *Newell v. Newell*, 9 Paige 25, and in *-Devanbagh v. Devanbagh*, 5 Id. 554.

¹⁷⁴ See, e.g., *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394 Pa. 1824 ("not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but **Christianity with liberty of conscience to all men....**")

¹⁷⁵ Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker, 1905), pp. 305-306:

When the Constitutional Convention of 1787 sent forth the Constitution which it devised for the government of the nation it did so in these words:

of dislodging these ingrained Christian values and beliefs within Anglo-American law.¹⁷⁶ And, up to the period of the early 1900s, most American lawyers, judges, and public officials adopted the view that America's founding constitutional documents were fundamentally Christian documents and that the United States was founded as a Christian nation¹⁷⁷ — two propositions which Jefferson's writings and conclusions vigorously refute.¹⁷⁸

During the 18th century and much of the 19th century, the jurisprudence of the English jurist William Blackstone's *Commentaries on the Laws of England*¹⁷⁹ had much more influence the American

'We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our children, do ordain and establish this Constitution for the United States of America.'

Now can any man write a more perfect description of the Kingdom of God on earth or in the heaven than is to be found in these words? A government resting upon such principles as these is not a godless policy; it is a holy religion.... When the people of the United States decreed by constitutional amendment that the government should never by law establish any religion, they did actually establish the only religion that could comprehend in its membership the whole American people.

And see, e.g., *United States v. Macintosh*, 283 U.S. 605, 625 (1931):

We are a Christian people (*Holy Trinity Church v. United States*, 143 U. S. 457, 143 U. S. 470- 471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a nation with the duty to survive; a nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ We must therefore acknowledge Jefferson's great contributions as an American Founding Father but many of his ideas about Christianity simply represent a minority view of law, religion, and the constitution.

¹⁷⁹ See, e.g., William Blackstone, "Of the Nature of Laws in General," *Commentaries on The Laws of England* (New York, N.Y.: W.E. Dean Pub., 1840), pp. 25-28, stating:

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey.

Thus, when the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all moveable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes, at his own pleasure, certain arbitrary laws for its direction,— as that the hand shall describe a given space in a given time, to which law as long as the work conforms, so long it continues in perfection, and answers the end of its formation....

The whole progress of plants, from the seed to the root, and from thence to the seed again; the method of animal nutrition, digestion, secretion, and all other branches of vital economy; are not left to chance, or the will of the creature itself, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great Creator.

This, then is the general signification of law, a rule of action dictated by some superior being... Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being.... This will of his Maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion, so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also he faculty of reason to discovery the purport of those laws.

Considering the Creator only as a being of infinite power, he was able unquestionably to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But, as he it also a being of infinite wisdom, he has laid down only such laws as

legal professional, law, and jurisprudence than the writings of Thomas Jefferson. So that, for example, by the mid-19th century, the Unitarian minister Ralph Waldo Emerson could very credibly write: “I had often heard that the Bible constituted a part of every technical law library, and that it was a principle in law that immoral laws are void.”¹⁸⁰ This is because throughout 19th-century American society and culture, the Christian religion held a sort of constitutional status as revealed religion of the same “natural law” that was the foundation of the Declaration of Independence. American jurists, especially those who were influenced by Blackstone, tended to embrace this worldview.¹⁸¹ And in 19th-century and early- 20th-century America, the widely-held viewpoint on Christianity and Anglo-American common law was opposed to that of Thomas Jefferson’s. “It has been often said, indeed, that Christianity is part of the common law of England, and this is due in great measure to the authority of Sir Matthew Hale (*King v. Taylor*, i Vent. 293, 3 Keble 507), Blackstone and other writers, while Lord Mansfield held (*Chamberlain of London v. Evans*, 1767) that the essential principles of revealed religion are part of the common law.”¹⁸²

Nevertheless, in the United States of America, it was also widely acknowledged that “[t]he common law of England is not to be taken, *in all respects*, to be that of America. Our ancestors brought with them its general principles, and claimed it as their birthright; but they brought with them and adopted *only that portion which was applicable to their situation.*” Story, J., in *Van Ness v. Pacard*, 2 Pet. 137, 144, 7 L. Ed. 374 (1829).¹⁸³ Here, the Jeffersonians might interpose an argument that “an established Christian church” or “Christian orthodoxy” was not “applicable to their situation,” and, therefore, was not a part of American common law. However, even thus, it would be difficult to excise Christian principles from the common law, and most Americans, at least until very recently, simply ignored such attempts.¹⁸⁴

were founded in those relations of justice that existed in the nature of things antecedent to any positive precept. These are the eternal immutable laws of good and evil, to which the Creator himself, in all his dispensations, conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly (2), should hurt nobody, and should render to every one his due; to which three general precepts Justinian (a) has reduced the whole doctrine of law....

The law of nature, being coeval with mankind, and dictated by God himself, is of course superior to obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this (3); and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But, in order to apply this to the particular exigencies of each individua, it is still necessary to have recourse to reason, whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life.

¹⁸⁰ Ralph Waldo Emerson, “The Fugitive Slave Law,” *The Portable Emerson* (New York, N.Y.: Viking Pub., 1990).

¹⁸¹ See, e.g., *United States v. Macintosh*, 283 U.S. 605, 625 (1931):

We are a Christian people (*Holy Trinity Church v. United States*, 143 U. S. 457, 143 U. S. 470- 471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a nation with the duty to survive; a nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.

¹⁸² John Marshall Guest, “The Influence of Biblical Texts Upon English Law” (An address delivered before the Phi Beta Kappa and Sigma Xi Societies of the University of Pennsylvania on June 14, 1910)(pages 15-34), p. 16.

¹⁸³ Ford W. Hall, *The Common Law: An Account of its Reception in the United States*, 4 *Vanderbilt Law Review* 791 (1951).

¹⁸⁴ The history of colony of Pennsylvania also refuted Jefferson’s basic conclusions regarding the Christian religion not being a part of the common law. See, e.g., *Updegraph v. Commonwealth*, 11 *Serg. & Rawle* 394 *Pa. 1824* (“not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but **Christianity**

So that by the later decades of the twentieth century, one might credibly argue that the anti-Christian Jeffersonian conception of the common law became predominant within the American legal profession—especially in areas involving gender identity, same-sex marriage, abortion, etc.—which had become accustomed to irreligion and secularism.¹⁸⁵

But the English common law—including the laws of England’s ecclesiastical and chancery courts—were thoroughly incorporated into the American common law.¹⁸⁶ And American common law thus inherited the Christian jurisprudence from its mother country. For instance, the following extracts from the codes of several states of the United States provide examples of how the English common law was incorporated into American jurisprudence, to wit:

Arkansas: Rev. Stat. 1874, sect. 772. "The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British Parliament, in aid of or to supply the defects of the common law, made prior to the fourth year of James I., that are applicable to our form of government, of a general nature, and not local to -that kingdom, and not inconsistent with the Constitution and laws of the United States, or the constitution and laws of this state, shall be the rule of decision in this state unless altered or repealed by the General Assembly of this state."

California: Act of April 13th 1850, Gen. Laws, p. 599. "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the state of California, shall be the rule of decision in all the courts of this state."

Connecticut: See, e.g., *A System of the Laws of the State of Connecticut* by Zephaniah Swift (1795) ("The common law of England is obligatory in this state by immemorial usage, and consent, so far as it corresponds with our circumstances and situation. As we have no treatise upon our laws, we are under the necessity of becoming acquainted with the English code for the purpose of understanding our own. The operation of the English common law, is ascertained by no general rule, and is bounded by no known line : it can be learned only from the decisions of our courts. A common law peculiar to ourselves,

with liberty of conscience to all men....") Regarding William Penn, the city of Philadelphia, and the state of Pennsylvania, David Yount’s *How The Quakers Invented America*, supra, p. 77, noted Jefferson’s criticism of the Quaker’s as “Protestant Jesuits” and of their leadership in Pennsylvania; but Yount (p. 85) concludes “despite Thomas Jefferson’s disclaimers, William Penn’s Holy Experiment was clearly a success from which every American since has benefited.”

¹⁸⁵ In fact, the tendency in American jurisprudence today is for American lawyers, judges, and law professors to downplay and ignore the Christian foundations of Anglo-American constitutional law and general jurisprudence as reflected in *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394 Pa. 1824. And when the question “why?” is presented, these legal professionals typically respond by saying, “We have a ‘Separation of Church and State’ in the United States,” which is often supplemented by a general reliance upon Founding Father Thomas Jefferson’s writings, not only as reflections of what Jefferson himself believed, but also as the supreme authority for what all of the other American Founding Fathers “intended.” But as this paper clearly demonstrates, the Jefferson’s writings are nothing more than one man’s opinion, even though Jefferson himself was one of the most influential of the American Founding Fathers. But the fact is that Christianity is the foundation and backbone of the English common law, and that same law was thoroughly sewn into American constitutional law and jurisprudence.

¹⁸⁶ See, e.g., Richard C. Dale, “The Adoption of the Common Law in the American Colonies,” *The American Law Register* (September 1882), pp. 562 – 565, published by the University of Pennsylvania Law Review.

resulting from our local circumstances, has been established by the decision of our courts ; but has never been committed to writing.”¹⁸⁷

Delaware: Const. (1776), Article 25. “The common law of England, as-well as so much of the statute law as has been heretofore adopted in practice in this State, shall remain in force, unless they shall be altered by a future law of the legislature; such parts only excepted as are repugnant to the rights and privileges contained in this constitution, and the declaration of rights, &c., agreed to by this convention.”

Florida: Fla. Stat. §2.01 “Common law and certain statutes declared in force.—The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state.”

Georgia: Official Opinion of the Attorney General (97-5). “the General Assembly adopted the common law and statute law of England in "An Act for reviving and enforcing certain Laws therein mentioned" on February 25, 1784.”

Illinois: Rev. Stat. 1874, ch 28, sect. 1. "That the common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British Parliament made in aid of or to supply the defects of the common law prior to the fourth year of James I., excepting the second 'section of the sixth chapter of 43 Elizabeth, the eighth chapter of 13 Elizabeth, and the ninth chapter of 37 Henry VIII., and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

Indiana: Act of 31st May 1852, is in the same words as the Illinois act, supra. Kansas : Rev. Stat. 1868, ch. 119, sect. 3. "The common law, as modified by constitutional and statutory law, judicial decisions and the condition and wants of the people shall remain in force in aid of the general statutes of the state."

Maryland: An Act for Rule of Judicature (1642), reprinted in 1 ARCHIVES OF MARYLAND: PROCEEDINGS AND ACTS OF THE GENERAL ASSEMBLY OF MARYLAND 147, 147-48. “Right & just in all civill Causes shall be determined according to the law or most Generall usage of the province And in defect of such Law usage or president then right & just shall be determined according to equity & good concience, not neglecting (so far as the Judge or Judges shall be informed thereof & shall find no inconvenience in the applycation to this province) the rules by which right & just useth & ought to be determined in England in the same or the like cases And all crimes and offences shall be judged & determined according to the law of the Province or in defect of certain Law then they may be determined according to the best discretion of the Judge or Judges judging as neer as Conveniently may be to the laudable law or usage of

¹⁸⁷ “*Note; The common law of England was never formally or explicitly adopted in Connecticut.”
https://commonlaw.name/connecticut.html#:~:text=*Note%20%3B%20The%20common%20law%20of,or%20explicitly%20adopted%20in%20Connecticut.

England in the same or the like offenses Provided that no person be adjudged of life member or freehold without Law certain of the Province.”

Massachusetts, Plymouth colonies: bible law prior to the Restoration of 1660.¹⁸⁸

Missouri: Rev. Stat. 1870, ch. 86, sect. 1. "The common law of England and all statutes and Acts of Parliament made prior to the fourth year of the reign of James I., and which are of a general nature not local to that kingdom, which common law and statutes are not repugnant to or inconsistent with the Constitution of the United States, the Constitution of this state, or the statute laws in force for the time being, shall be the rule of action and decision in this state, any law, custom or usage to the contrary notwithstanding."

Nebraska: Rev. Stat. 1873, sect. 1. "1 So much of the common law of England as is applicable and not inconsistent with the Constitution of the United States, the constitution of this state or with any law passed or to be passed by the legislature thereof is adopted and declared to be the law within this state."

New Jersey: N.J. Const. (1776), Article XXII. "That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this Colony, shall still

¹⁸⁸ Ford W. Hall, *The Common Law: An Account of its Reception in the United States*, 4 Vanderbilt Law Review 791 (1951), Footnote # 24, p. 796.

“The Magistrates of the Massachusetts Bay Colony were directed to hear cases according to law; where there was no law, they were then to try the case as near to the law of God as possible; and, if no certain rule should be found, the magistrate was to use his best discretion. 1 MASS. COL. REC. 174-175 (Shurtleff ed. 1853). See Aspinwall's preface to the 1655 edition of JOHN COTTON'S ABSTRACT OF THE LAWEES OF NEW ENGLAND (1641) in 5 MASS. HIST. SOCIETY COLLECTIONS (Ser. 1) 187 (1816). See also the last paragraph in the introduction to the LAWEES AND LIBERTIES OF MASSACHUSETTS (Harvard Univ. Press 1929). The proceedings against John Wheelwright and the trial of Ann Hutchinson are two of the most noted examples of the participation of ministers in the affairs of the colonial General Court. A SHORT STORY OF THE RISE, REIGN AND RUINE OF THE ANTINOMIANS, FAMILISTS, AND LIBERTINES THAT INFECTED THE CHURCHES OF ENGLAND (London 1644); 2 HUTCHINSON, HISTORY OF MASSACHUSETTS BAY 366 c sea. (3d ed. 1795).”

“But as the middle of the 18th century approached, more and more English principles and institutions were being applied and set up, as trained lawyers became more abundant, and more English law books were available. After the Restoration a more active exercise of the Crown's veto of colonial legislation and judicial review by the privy council of colonial decisions, helped bring about a greater conformity to the common law.

The basic conclusion is that law administration in America, as it existed around the middle of the 18th century, may aptly be classified as a development of the English common-law system. True, it was not a complete reception of British legal institutions, but fundamentally it as the common-law system which has secured a foothold strong enough to withstand the popular hostility to England and anything English which was being expressed and which reached its greatest outcry during the Revolutionary War and the post-Revolutionary period. It should not be forgotten, however, that the increasing influx of common-law principles by no means obliterated the indigenous systems which had developed during the colonial era and that there existed important differences in law in action on the two sides of the Atlantic....

About the middle of the 18th century the common law of England began to take on a new meaning in America. The same colonists who had insisted that certain English laws were inapplicable to their situation now began to appeal to the common law for protection against Parliament and the Crown....

However, this clamor for the application of English legal principles to the colonial situation was not based on a love for the technicalities, niceties and fictions of the common-law system, but rather on an appeal to the common law as an embodiment of natural law principles of individual rights and personal liberty.

In fact American writers of the Revolutionary period often used the terms "common law" and "Magna Carta" as synonymous terms. Undoubtedly it was this meaning which was attributed to the common law when the Continental Congress on Sept. 4, 1774, declared that "the respective colonies are entitled to the common law of England."

remain in force, until they shall be altered by a future law of the Legislature; such parts only excepted, as are repugnant to the rights and privileges contained in this Charter; and that the inestimable right of trial by jury shall remain confirmed as a part of the law of this Colony, without repeal, forever.”¹⁸⁹

New York: N.Y. Const. (1777), Article XXXV. “And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall, from time to time, make concerning the same. That such of the said acts, as are temporary, shall expire at the times limited for their duration, respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain *any particular denomination of Christians* or their ministers, or *concern the allegiance heretofore yielded to*, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, the King of Great Britain and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New York, and of the convention of the State of New York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this State; subject, nevertheless, to such alterations and provisions as the legislature of this State may, from time to time, make concerning the same.”

North Carolina: Code 1855, ch. 22. “All such parts of the common law as were heretofore in force and use within this state, or so much of the common law as is not destructive of or repugnant to, or inconsistent with, the freedom and independence of this state and the form of government therein established....”

Pennsylvania: 42 PA. CONS. STAT. ANN. § 502 (1981). “The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster [England], or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers: (1) All powers necessary and appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law. (2) The powers vested in it by statute, including the provisions of this title.”

Rhodes Island: § 43-3-1 (2016). “English statutes as common law. In all cases in which provision is not made herein, the English statutes, introduced before the Declaration of

¹⁸⁹ See, Ford W. Hall, *The Common Law: An Account of its Reception in the United States*, 4 Vanderbilt Law Review 791, 819 (1951), stating that **Massachusetts, South Carolina, North Carolina, New Hampshire, Vermont, Georgia, Tennessee, District of Columbia, Delaware, Maryland, New Jersey, New York, Pennsylvania, and Rhode Island** adopted the New Jersey Model, to wit: New Jersey Constitution of 1776: “... the common law of England, as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force, until they shall be altered by a future law.”

Independence, which have continued to be practiced under as in force in this state, shall be deemed and taken as a part of the common law of this state and remain in force until otherwise specially provided.”

South Carolina: SC Code § 14-1-50 (2016). “All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.”

Virginia: Code 1919, § 2, § 1-10; 2005, c. 839. “The common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly.”

Since, as we have seen, the Christian religion was thoroughly sewn into every aspect of English and British law, the English common law, which included the canon and civil law of England’s ecclesiastical courts, was adopted in most of the American states. The substantive common law of most areas of the English law was incorporated into American common law—including the ecclesiastical jurisprudence, Christian principles, and natural law foundations of those laws. These trends were firmly established, and set in motion, during the seventeenth century in the American colonies; and, after the American Revolution was wrought during the 18th century, American jurists in both the state and federal courts officially acknowledged the Christian religion as a component of American constitutional jurisprudence. Thus, the Jeffersonian conception of the English common law being unchristian was never officially embraced by the American legal system or by the American people.¹⁹⁰ During the eighteenth--, nineteenth--, and most of the twentieth century¹⁹¹—

¹⁹⁰ The modern liberalism superficially imposes its own label upon African Americans, the Black Church, as Martin Luther King’s philosophy clearly demonstrate, tended to follow along the conservative juridical and political lines of William Blackstone, Richard Hooker, and John Wesley—i.e., that secular laws must comport with the general laws of God (i.e., the laws of nature).

¹⁹¹ See, e.g., *United States v. Macintosh*, 283 U.S. 605, 625 (1931):

We are a Christian people (*Holy Trinity Church v. United States*, 143 U. S. 457, 143 U. S. 470- 471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a nation with the duty to survive; a nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.

the Jeffersonian worldview was categorized, instead, as a “natural justice and natural law” conception of the Christian religion, or as the Christian religion being a republication of natural religion;¹⁹² and there is, perhaps, no better expression of this Christian and natural law interpretation of Jeffersonianism than the political philosophy of Martin Luther King, Jr.¹⁹³

The End

¹⁹² This is true even despite the fact that Jefferson himself never explicitly reached this conclusion.

¹⁹³ Nothing best exemplifies the mainstream Protestant-American conception of the relationship of the Christian religion to law and government than the speeches of Dr. Martin Luther King, Jr. (1929 – 1968). See, e.g., Martin Luther King, Jr., “The Montgomery Bus Boycott,” (Dec. 5, 1955)(Address delivered to the Holt Street Baptist Church on December 5, 1955): <https://www.blackpast.org/african-american-history/1955-martin-luther-king-jr-montgomery-bus-boycott/> (“And I want to say that we are not here advocating violence. We have never done that. I want it to be known throughout Montgomery and throughout this nation that **we are Christian people**. We believe in the Christian religion. We believe in the teachings of Jesus. The only weapon that we have in our hands this evening is **the weapon of protest**. That’s all”). And see Martin Luther King, Jr., “Give Us the Ballot” (May 17, 1957)(Address delivered at the Prayer Pilgrimage for Freedom): <https://kinginstitute.stanford.edu/king-papers/documents/give-us-ballot-address-delivered-prayer-pilgrimage-freedom> (“I’m talking about the love of God in the hearts of men. I’m talking about a type of love which will cause you to love the person who does the evil deed while hating the deed that the person does. We’ve got to love.... We must work with determination to create a society, not where black men are superior and other men are inferior and vice versa, but a society in which all men will live together as brothers and respect the dignity and worth of human personality.”) And see Martin Luther King, Jr., “I have a Dream” (August 28, 1963), stating “When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.”) To the extent that Dr. Martin Luther King, Jr. led the American Civil Rights Movement during the 1950s and 60s, the Christian religion was the primary stimulant of that movement.

APPENDIX E

American Zionism: How the Puritans of Colonial New England inspired 20th-Century Jewish Lawyers ©

by

Roderick O. Ford, D.Litt. (Law & Religion)

This book report on Jerold S. Auerbach's *Rabbis and Lawyers: The Journey from Torah to Constitution* is a general sketch of the influence which the Puritans of colonial New England had upon the American Jewish community-- but especially the Jewish legal community-- during the late 19th and early 20th centuries. Although it is written with the purpose of disseminating information to a large and wide audience, its special objective is to influence the present-day African American bar and bench, as well as the clergy.

The English dissenters, who were also known as the Puritans, because they wanted to purify the Church of England, or to separate themselves from it, could not conceptualize their decision to uproot themselves from their homeland and to transplant themselves to a foreign and new world “without the ‘sacred significance’ that it derived from ancient Israel.”¹⁹⁴ In order to ease the trepidation of such a hazardous voyage, the Rev. John Cotton (1585 - 1652)¹⁹⁵ delivered his now famous farewell voyage sermon, in which “he reminded them of God’s promise to ‘appoint a place for my People Israel’ – a special ‘place of their own’ where, physically and spiritually secure, they would ‘move no more.’”¹⁹⁶ These Puritans would soon cross the Atlantic Ocean on board the *Arbella*,¹⁹⁷ while sailing toward their promised land in North America.

Ancient Israel served as the model for these Puritans, who sought to make bible commonwealths out of the new homelands in North America.¹⁹⁸ “The Bible was not

194 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 3.

195 “John Cotton,” [https://en.wikipedia.org/wiki/John_Cotton_\(minister\)](https://en.wikipedia.org/wiki/John_Cotton_(minister))

196 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 3.

197 “In 1630, a large number of puritans sailed from Southampton in the "Arbella" and John Cotton journeyed to the port to see them on their way.” <https://www.genealogy.com/forum/surnames/topics/cotton/1018/>

198 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid

merely an ancient religious text. It was literally a historical model, prefiguring the Puritan experience, illustrating divine intervention in the affairs of his covenanted peoples.... There, as Cotton Mather declared, ‘You may see an Israel in America.’¹⁹⁹

In colonial New England, the metaphor of ancient Israel pervaded Puritan ecclesiastical and political discourse. The Puritans conception of the Christian faith mandated that they treat the Holy Bible as a book of law, as the Covenant of God.²⁰⁰ “Analogies to the children of Israel defined reality for New England Puritans. As a covenanted people, the Puritans-- like the Israelites before them-- were a divinely chosen instrument in the process of messianic salvation.... The Puritans transformed the Bible into a superb interpretive structure for their own experience.”²⁰¹

Moreover, Puritan ministers utilized the pulpits of colonial New England to define “the Puritan mission within a biblical frame of reference.”²⁰² The helped to define colonial New England as the “New Jerusalem” or as the “New Israel.” And although the Puritans highly acclaimed both Old and New Testaments as operative law, it is important to note they adopted the Apostle Paul’s conception of the central objective of the New Testament: “to eradicate the normative legal content of the ‘old’ testament, transforming it instead into the prophetic anticipation of the Christian savior.”²⁰³ This meant that the Puritans devised a Christian constitutional and legal system that reflected Christ’s more elastic and flexible interpretation of the Old Testament.²⁰⁴ Thus, the Holy Bible was the foundation of constitutional law and jurisprudence in colonial New England.²⁰⁵

Less known is the 17th-century Puritan influence upon the 18th-century American Founding Fathers, many of whom were sons of the Enlightenment. “[T]he Hebrew Bible continued to provide a persuasive interpretative structure for the American experience.... As Americans drew closer to rebellion and revolution, the fusion of divine election with national purpose explained and justified the struggle for independence. Liberty became the sacred cause of the American people, who inherited the Puritan legacy and reinvested it in

Pro Books, 2010), p. 3.

199 Ibid., p. 4.

200 Ibid., pp. 4-8.

201 Ibid., p. 7.

202 Ibid.

203 Ibid., p. 6.

204 Ibid. See, also, Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris Pub., 2015).

205 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), pp. 3-4 (“Faithful to their mission, the Puritans designed a Bible commonwealth in Massachusetts Bay whose theology, rhetoric, law, and literature were infused with allusions to the biblical experiences of Israel.... The Bible was not merely an ancient religious text. It was literally a historical model, prefiguring the Puritan experience, illustrating divine intervention in the affairs of his covenanted peoples.”)

their new national endeavor. By 1787 the biblical narrative, as the definition of American national purpose, had framed the formative experiences in the first centuries of American history: settlement and independence.”²⁰⁶

However, it is important to notate precisely what the Puritans did not want. As Rev. Algernon Sidney Crapsey has observed, “[t]heir conception of church and of the state forbade their entertaining the notion of what we call religious liberty. In their estimation it was treason to doubt the plenary inspiration of the Bible, or to question the doctrines of the church. They endeavored to secure the absolute identity of church and state by limiting political privileges to the members of the church.”²⁰⁷ Nevertheless, as Rev. Crapsey has observed, the Puritans insisted upon a conception of the civil polity, or the secular state, that is critically essential, to wit: “that officers of the state are the vicegerents of God. Such a conception is the only one that can make the state other than a merciless machine. If the state is not divine it is brutal.”²⁰⁸

For this reason, the Puritan influence “remains characteristically American more than three centuries later.”²⁰⁹ Indeed, although “the Puritan church-state failed as an institution, it endured as an idea.”²¹⁰ In other words, although the strict state-sponsored and state-imposed Calvinism collapsed as a universal civil polity, a neo-orthodox Calvinism and a neo-orthodox Anglicanism-- both of which were mediated through Enlightenment thinkers and the Anglican latitudinarians-- the conception of all mankind has divine rights, and not just the King of England or the English nobility, became predominant, especially amongst the Puritan Baptists, the Puritan Quakers, the Presbyterians, and the Congregationalists or Independents. And that conception of all mankind having divine rights found its natural expression in the American Declaration of Independence, to wit:

The unanimous Declaration of the thirteen united States of America,

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.

206 Ibid., pp. 8-9.

207 Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 242.

208 Ibid., p. 243.

209 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 4.

210 Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 244.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. ...

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions....

And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Hence, as Rev. Crapsey has written, “[i]t was the stern conviction of the Puritan that not King George, but God, was the rightful sovereign in America, not the Parliament of England, but the people of the united Colonies, were the sole keepers of the purse and the only source of political power; and it was the conviction of the Puritan that sustained the people of the country through the long years of the Revolutionary War.”²¹¹

And, furthermore, what is also perhaps less known, and certainly less recognized, is the influence of the Holy Bible upon the public declarations and pronouncements of the American Founding Fathers. As Jewish scholar Jerold S. Auerbach has noted:

The Bible retained its metaphorical power in the United States. Throughout the early years of the republic the New England ministry, with biblical fidelity, defined political virtue as an expression of Christian piety. But the parallels carried well beyond the pulpit, even to the designs submitted for a new national seal: Benjamin Franklin proposed Moses lifting his arms to divide the Red Sea; Thomas Jefferson suggested the children of Israel in the wilderness, following the pillar of cloud by day and the pillar of fire by night. President Washington, responding to inaugural greetings from the Hebrew Congregation of Savannah, expressed his conviction that the same God who had delivered the Israelites from their ‘Egyptian oppressors’ and led them to their promised land had once again conspicuously demonstrated His ‘providential agency... in establishing these United States as an independent nation.’ Jefferson, in his second inaugural address, reiterated the parallel, requesting the favor of that divine Being ‘who led our fathers, as Israel of

²¹¹Ibid., p. 244.

old,' to the promised land. July 4th became known as the 'political Sabbath of freedom,' its celebration resembling, at least superficially, the covenant renewal ceremonies of ancient Israel.²¹²

That Puritan fever continued to dominate American political thought and discourse throughout the 19th century. "As in the Revolutionary, so in the Civil War, it was the New England Puritan that gave the spiritual enthusiasm and moral purpose to the struggle."²¹³

During the American Civil War (1861 -1865), the Puritan ideology of human rights and civil polity was associated with the North's position; the Puritans were pro-liberty and anti-slavery. "It was Lloyd Garrison, Wendell Phillips, John G. Whittier, Owen Lovejoy, and John Brown that were the prophets and martyrs of the cause.... [T]he spirit that sustained and guided the contest [in the U.S. Civil War] was the spirit of New England."²¹⁴ "The Puritan and southern conception of the relation of the state and the church gave rise to distinct and hostile civilizations which struggled for the mastery on American soil for nearly a century. When at last these two conceptions came into collision the Puritan prevailed over the southern and reduced it to subjection."²¹⁵

This Puritan influence, and conception of the civil polity, is readily apparent in President Lincoln's 1863 Proclamation on National Humiliation, Fasting, and Prayer, to wit:

March 30, 1863

By the President of the United States of America

A Proclamation

Whereas the Senate of the United States, devoutly recognizing the supreme authority and just government of Almighty God in all the affairs of men and of nations, has by a resolution requested the President to designate and set apart a day for national prayer and humiliation; and

Whereas it is the duty of nations as well as of men to own their dependence upon the overruling power of God, to confess their sins and transgressions in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon, and to recognize the sublime truth, announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord;

And, insomuch as we know that by His divine law nations, like individuals, are subjected to punishments and chastisements in this world, may we not justly fear that the awful calamity of civil war which now desolates the land may be but a punishment inflicted upon us for our presumptuous

²¹²Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 10.

²¹³Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 246.

²¹⁴Ibid., p. 247.

²¹⁵Ibid., p. 246.

sins, to the needful end of our national reformation as a whole people? We have been the recipients of the choicest bounties of Heaven; we have been preserved these many years in peace and prosperity; we have grown in numbers, wealth, and power as no other nation has ever grown. But we have forgotten God. We have forgotten the gracious hand which preserved us in peace and multiplied and enriched and strengthened us, and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own. Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us.

It behooves us, then, to humble ourselves before the offended Power, to confess our national sins, and to pray for clemency and forgiveness.

Now, therefore, in compliance with the request, and fully concurring in the views of the Senate, I do by this my proclamation designate and set apart Thursday, the 30th day of April, 1863, as a day of national humiliation, fasting, and prayer. And I do hereby request all the people to abstain on that day from their ordinary secular pursuits, and to unite at their several places of public worship and their respective homes in keeping the day holy to the Lord and devoted to the humble discharge of the religious duties proper to that solemn occasion.

All this being done in sincerity and truth, let us then rest humbly in the hope authorized by the divine teachings that the united cry of the nation will be heard on high and answered with blessings no less than the pardon of our national sins and the restoration of our now divided and suffering country to its former happy condition of unity and peace. In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 30th day of March, A. D. 1863, and of the Independence of the United States the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, Secretary of State .

This little-known Proclamation of President Lincoln's is a fair and accurate reflection of the state of political and public discourse in late-19th-century America. But, as Jewish scholar Jerald S. Auerbach has noted, shortly after the end of the U. S. Civil War (1861 – 1865), and during the late 19th century, "biblical imagery finally began to recede from American rhetoric."²¹⁶ Similarly, Anglican clergyman Algernon Sidney Crapsey reached the same conclusion; namely, that the "Puritan influence dominated all other influences in American life from the landing of the Pilgrims down to the close of the Civil War."²¹⁷

For this reason, we may conclude that the rise of big capitalism, which dominated the period of the late 1800s, became predominant, and helped to displace the Puritan conception of law and government, just as large segments of the African American population were being emancipated from slavery, needed education, technical skills, civil

216 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 13.

217 Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker Pub., 1905), p. 244.

rights, and training in modern culture. We find, for instance, in the writings of scholars such as Booker T. Washington, W.E.B. Du Bois, Carter G. Woodson, and Lorenzo Greene, the sort of admonitions, diatribes, and polemics that exemplified Puritan righteous indignation against the broken promises and frustrations imposed through Southern recalcitrance and Northern neglect. For it was during this period that the African American Church emerged and laid the foundation for its unique mission of up-building the formerly-enslaved and providing social services where the state and local governments had fallen short.

Likewise, that same rise of big capitalism helped to displace the Puritan conception of law and government, just as large segments of European Jews began to enter the United States. Like their African American brethren, the Jews were a spiritual people and they were used to discrimination, segregation, and oppression from other Europeans. But, unlike African Americans, the Jews had experienced many centuries of navigating and mastering European civilization and culture. At the same time, the European Jews did not share the stigma of having a “black” skin color, as did African Americans. The Jews also possessed a critical advantage unique only to their culture: they were the people of the Holy Bible and thereby possessed a specialized knowledge that had served as the cornerstone of American constitutional law and jurisprudence. Quite naturally, as Professor Auerbach has observed, the Jews gravitated toward the American legal profession. And, “[j]ust as biblical imagery finally began to recede from American rhetoric [during the late 19th century]... Jews embraced it.... In a supreme irony of American Jewish history, Jews turned to the Puritans and Pilgrims as the authoritative interpreters of their own biblical heritage. Eager to identify themselves as Americans, they were led back to their own sacred texts as a guide to the American experience. From fragments of seventeenth-century Protestant thought, they constructed a unitary Judeo-American tradition that enabled them, as Jews, to become Americans.”²¹⁸

In other words, the Jews became “the last Puritans,”²¹⁹ and as such, helped to preserve a portion of the Christian heritage and foundation of the United States Constitution. “Ever since the late nineteenth century, the identification of Judaism with Americanism has depended upon the Hebrew Bible as the source of their compatibility.”²²⁰ Hence, American Jews early and largely associated and affiliated with the elites of New England and the northeast, while building upon the legacy of the Puritans of colonial New England. “Reform Jews were the first, but hardly the last, American Jews who ‘appropriated for themselves the American national myth of the Republic as the new Zion or Israel.’”²²¹

218 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, LA: Quid Pro Books, 2010), p. 13.

219 Ibid., p. 15 (“So American Jews became the last Puritans; the last Americans, that is, to take seriously the claim that the United States truly was the fulfillment of divine promise to Israel.”)

220 Ibid., p. 16.

221 Ibid., p. 16.

Rabbi Kaugmann Kohler (1843 -1926) became the intellectual leader of Reformed Judaism during the late 19th and early 20th centuries. Rabbi Kohler helped to create an environment whereby American Jews could find their place as American citizens within the American landscape. In order to do that, he connected the Mosaic laws to the principles set forth in the Declaration of Independence and the United States Constitution.

During World War I, for example, Rabbi Kaufmann Kohler proclaimed the continuity between Hebraic and American democratic ideals. Democracy, he declared, ‘found its classical expression in Israel’s holy writings,’ where law was proclaimed as ‘the eternal source of liberty.’ The synthesis of liberty and law had come to fruition in America, where the Founding Fathers (as spiritual descendants of the Puritans) ‘took the heroes of ancient Israel as their models for the championship of liberty and democracy, framing their constitution on the principles underlying the Law of Sinai.’ In a single sentence, Kohler braided liberty, democracy, and law into a strand that connected the divine revelation at Sinai to the principles of American constitutionalism.²²²

During the decade leading up to the First World War, two prominent Jewish lawyers-- Louis Marshall and Louis Brandeis-- developed an additional platform whereby American Jews could connect with American society and culture: the concentration on the centrality of law and justice to both the Hebrew prophetic tradition and the American legal tradition. When American capitalism arose as a dominant fact in American life, certain prominent Jews arose with it, and thus “[d]uring that prewar decade, lawyers challenged rabbis as the undisputed public leaders of the American Jewish community. Their professional success, largely as counselors to wealthy and powerful corporate institutions, enabled them to ascend to influence in Jewish communal affairs.”²²³

Lawyer and jurist Louis Brandeis (1856 – 1941) would become the first Jew to be appointed as an Associate Justice on the United Supreme Court. As Professor Auerbach has noted, this “appointment to the Supreme Court personified [a] synthesis [between Jewish aspirations and Americanism]. It was not merely that he was the first Jew to serve on the high court. For the first time in American history, a Jew was empowered to determine the final meaning of the American Constitution. The synthesis between Americanism and Judaism, between the biblical heritage of Torah and the American rule of law, had been forged.”²²⁴

Prior to this appointment, Brandeis had been influential in shaping “the most popular synthesis of Judaism to Americanism, through the seventeenth-century New

²²²Ibid., p. 20.

²²³Ibid., pp. 18-19.

²²⁴ Ibid., p. 20.

England experience.... [H]e embraced the proposition that... [t]he prophetic teachings of ‘brotherhood and righteousness,’ filtered through seventeenth-century New England (the Puritans, Brandeis believed, were finely honed to their task ‘by constant study of the prophets’), had become the modern liberal ideals of democracy and social justice. In a circuitous historical and conceptual journey, from prophecy through Puritanism, ancient Jewish ideals had become thoroughly Americanized.”²²⁵

Twenty years later, upon the advent of the Second World War, American Jews had fully refined Rabbi Kohler’s and Justice Brandeis’ perspectives regarding the compatibility between Judaism and American constitutional ideals. For instance, as Professor Auerbach stated:

‘Hebrew learning,’ it was asserted, had come to America ‘on the Mayflower’.... ‘Hebrew law and legislation’ was the foundation of American constitutionalism.²²⁶

A Reform rabbi described American revolutionaries as the ‘heirs of the Prophets’; the Declaration of Independence ‘had the ring of Prophetic conviction’ in its emphasis upon liberty and morality; while the Founding Fathers (concededly the children of the Enlightenment) were inspired by the God of Israel....

The fundamental principles of American political theory-- especially ‘republican government within a democratic context’ – were ‘directly related to the great moral values of Jewish tradition and, indeed, are taken predominantly from that tradition as it is expressed in the Bible.’”²²⁷

Hence, American Jewish legal scholars, lawyers, and jurists-- utilizing the example of the Puritans of colonial New England-- synthesized Judaism with American constitutional law and jurisprudence, and thereby forged an American Jewish identity, thus fusing together both law and religion. They believed that the Puritan church-states of colonial New England were founded upon the belief that “**the house of Israel among all nations**,”²²⁸ as depicted in the prophetic books of the Old Testament, was the “true Israelites”²²⁹ whom God had united under one head,²³⁰ i.e., the Messiah or Christ.²³¹

225 Ibid., p. 20.

226 Ibid., pp. 20-21.

227 Ibid., p. 21.

228 Amos 9:9.

229 See, e.g., St. Augustine, *The City of God*, supra, p. 658 (“... the **true Israelites**, the citizens of the country that is above.”)

230 See, e.g., Hosea 1:11.

231 See, e.g., St. Augustine, *The City of God*, supra, p. 660 (“It was given as the chief and most necessary sign of His

To be sure, American Jews recognized that the Puritans were devout Christians, but these Jews emphasized the historical fact that the 17th-century New England church-states had adopted law-codes based upon the Old Testament Sacred Scriptures and, in many instances, ratified verbatim several Mosaic laws.²³² This Puritan legal system, then, was not much distinguishable from the sacred laws of the Jews. At the same time, this Puritan legal system was an extension of English jurisprudence that had developed under the auspices of the Roman Catholic Church and the Church of England— of which, the end result was American constitutionalism that was founded upon Puritan covenant

coming... that every one of them spoke in the tongues of all nations; thus signifying that the unity of the catholic Church would embrace all nations, and would in like manner speak in all tongues.”) and p. 696 (“This heavenly city, then, while it sojourns on earth, calls citizens out of all nations, and gathers together a society of pilgrims of all languages, not scrupling about diversities in the manners, laws, and institutions whereby earthly peace is secured and maintained, but recognizing that, however various these are, they all tend to one and the same end of earthly peace.”)

²³² See, e.g., Algernon Sidney Crapsey, *Religion and Religion* (New York, N.Y.: Thomas Whittaker, 1905), pp. 242-244, stating:

It was not the purpose of these founders of the Puritan commonwealth to grant either liberty of thought or liberty of action. Their conception of the church and of the state forbade their entertaining the notion of what we call religious liberty. In their estimation it was treason to doubt the plenary inspiration of the Bible, or to question the doctrines of the church. They endeavored to secure the absolute identity of church and state by limiting political privileges to the members of the church. We cannot in this lecture enter minutely into the history of this Puritan state-church. It is easy to speak scoffingly of the bigotry and narrowness of the Puritan, to tell lurid stories of the whipping of the heretics, the hanging of women, and the burning of witches; but it is not so easy to measure the moral value and the spiritual potency of that conception of the state which looks upon it as the instrument of divine justice; which teaches that officers of the state are the vicegerents of God. Such a conception is the only one that can make the state other than a merciless machine. If the state is not divine it is brutal.

And when to this conception you join that other pregnant doctrine of which the Puritan was the exponent, which declares the sacredness and the right of the common man; when you make every man's destiny an expression of the eternal will of God,— then you have a foundation for government which cannot be shaken. Every man in the Puritan conception is a church-state in himself. In the man the spiritual power must be supreme. Conscience, not interest, must be the guide of life. Each man, is a divinely inspired, divinely guided, political and spiritual power, and the state is simply a federation of these political and spiritual units in a general government.... This union of Teutonism and Hebraism; this marriage of Mosaic theocracy to English democracy, is the contribution of English Puritanism to the political life of the world, and the modern state is the offspring of this union.

theology.²³³ For this reason, Jewish lawyers and rabbis were naturally attracted to American constitutional law and jurisprudence:

In a supreme irony of American Jewish history, Jews turned to the Puritans and Pilgrims as the authoritative interpreters of their own biblical heritage. Eager to identify themselves as Americans, they were led back to their own sacred texts as a guide to the American experience. From fragments of seventeenth-century Protestant thought, they constructed a unitary Judeo-American tradition that enabled them, as Jews, to become Americans.....²³⁴

For Jews who so preferred, and many did, the identification with American law and justice could even provide an escape from Judaism. Among Jews, it has been suggested, ‘one way of hiding is to choose a universal mask’; as defenders of the American rule of law, and **as champions of social justice**, Jews located themselves securely within the prevailing liberal precepts of modern America....²³⁵

Hence, the American Jewish community embraced the secular American legal system as an avenue for the application, manifestation, and realization of the Jewish religion and their sacred Jewish traditions.²³⁶ And American Jews, perhaps through the

²³³ See, e.g., William Goodell, *The Democracy of Christianity* (New York, N.Y.: Cady & Burgess, 1852), p. 484, stating:

[T]he democracy of Christianity is signally illustrated in the history of the Puritans, and in the effects of their labors, in America.... [T]he people of Great Britain are indebted to the Puritans. What is wanting, both in England and America, to the completeness and the security of human freedom, is an undeviating fidelity to those principles of Christian democracy which the Puritans in some measure restored.

And, in the same text, on pp. 376-377, Rev. Goodell writes:

These Puritan and Common Law expositions of Paul, in Romans XIII, are among the most revolutionary maxims we have in modern times, and, as a matter of historical fact, they have wrought two tremendous revolutions already, one in England and one in America, whether they are to be regarded as sound expositions or otherwise. An echo of these expositions we have in our Declaration of Independence. Bracton, in his exposition of Romans XIII, had said:

‘He is called a king for ruling righteously, and not because he reigns. Wherefore he is a king when he governs with justice, but a tyrant when he oppresses the people committed to his charge.’

In nearly the same language our Declaration of Independence abjures the authority of the British monarch:

‘A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.’

These words of Jefferson seem but a paraphrase or application of Bracton’s, and Bracton’s are but his own inference from his own exposition of Paul.

²³⁴ Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 13.

²³⁵ *Ibid.*, p. 26.

²³⁶ See, generally, Alan M. Dershowitz, *Abraham: The World’s First (And Certainly Not Last) Jewish Lawyer*

necessity of survival and the desire for social justice for themselves, resuscitated and preserved the old Puritan constitutional law and jurisprudence which placed Justice (i.e., God) at the helm of all secular authority.²³⁷

This approach to American constitutional law— whether Anglican, Puritan-Calvinistic, or Jewish— saw a religious and moral objective within the plain text of the American Declaration of Independence and the United States Constitution.²³⁸ For the

(New York: N.Y.: Schocken Books, 2015). See, also, Rabbi Lord Jonathan Sacks, “A Word of Torah: Why Are There So Many Jewish Lawyers?” *The Detroit Jewish News* (July 16, 2021), stating:

Justice has seemed, throughout the generations, to lie at the beating heart of Jewish faith.

At the beginning of D’varim, Moses reviews the history of the Israelites’ experience in the wilderness, beginning with the appointment of leaders throughout the people, heads of thousands, hundreds, fifties and tens. He continues:

“And I charged your judges at that time, ‘Hear the disputes between your people and judge fairly, whether the case is between two Israelites or between an Israelite and a foreigner residing among you. Do not show partiality in judging; hear both small and great alike. Do not be afraid of anyone, for judgment belongs to God. Bring me any case too hard for you, and I will hear it.’ (Deut. 1:16-17)

Thus at the outset of the book in which he summarized the entire history of Israel and its destiny as a holy people, he already gave priority to the administration of justice: Something he would memorably summarize in a later chapter (16:20) in the words, “**Justice, justice, shall you pursue.**”

The words for justice, tzedek and mishpat, are repeated, recurring themes of the book. The root tz-d-k appears 18 times in D’varim; the root sh-f-t, 48 times.

Justice has seemed, throughout the generations, to lie at the beating heart of Jewish faith....

In the course of a television program I made for the BBC, I asked Hazel Cosgrove, the first woman to be appointed as a judge in Scotland and an active member of the Edinburgh Jewish community, what had led her to choose law as a career, she replied as if it was self-evident, “**Because Judaism teaches: Justice, justice shall you pursue**”....

In modern times, Jews reached prominence as judges in America: among them Brandeis, Cardozo and Felix Frankfurter. Ruth Bader Ginsburg was the first Jewish woman to be appointed to the Supreme Court. In Britain, between 1996 and 2008, two of Britain’s three Lord Chief Justices were Jewish: Peter Taylor and Harry Woolf. In Germany in the early 1930s, though Jews were 0.7% of the population, they represented 16.6% of lawyers and judges.

One feature of Tanach is noteworthy in this context. Throughout the Hebrew Bible some of the most intense encounters between the prophets and God are represented as courtroom dramas. Sometimes, as in the case of Moses, Jeremiah and Habakkuk, the plaintiff is humanity or the Jewish people. In the case of Job, it is an individual who has suffered unfairly.

237 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010).

238 See, e.g., Algernon Sidney Crapsey, “The American Church-State,” *Religion and Religion* (New York, N.Y.: Thomas Whittaker, 1905), pp. 297- 326 (“When the Constitutional Convention of 1787 sent forth the Constitution which it devised for the government of the nation it did so in these words: ‘We, the people of the United States, in order to form a more perfect union, **establish justice**, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our children, do ordain and establish this Constitution for the United States of America.’ Now can any man write a more perfect description of the Kingdom of god on earth or in heaven than is to be found in these words? A government resting upon such principles as these is not a godless policy; it is a holy religion.... A religion having as its basis the principles of individual liberty and obedience to righteous law is really the religion of the golden rule.”)

Jewish lawyer could just as easily carry out the Jewish prophetic mission of pursuing social justice within an American nonsectarian secular legal system, as though he was practicing or applying Jewish law before a sacred Jewish tribunal. American Jews thus chose the profession of law as an avenue to discharge their sacred obligation to pursue justice:

The euphoric celebration of the rule of American constitutional law... should not obliterate the fact that it was **never law alone**, but **law as an instrument of justice**, that ostensibly bound the Jewish and American traditions.

Justice was a recurrent theme in the American Jewish discourse of compatibility. It was a necessary insertion, for it enabled Jews to submerge ‘arid’ legalism, the part of their tradition with which modern Jews felt least comfortable, in the resounding call of the ancient Hebrew prophets for social justice and moral righteousness.

Justice was described as ‘the golden thread’ that Judaism stitched into the fabric of American democracy. A ‘passion for justice’ was part of the ‘unconscious inheritance’ that Jews brought to this country. In the United States they transformed ‘the quest for social justice’ into the truest expression of ‘Jewish orthodoxy.’ Jewish ‘cultural and theological values,’ which make it ‘unJewish not to be preoccupied with freedom and justice for everyone,’ explained the enduring liberal commitments of American Jews....²³⁹

The other notable American minority group which has come closest to adopting the Jewish conceptualization of American constitutional law and jurisprudence is African Americans. African American clergymen, however, never developed a strong legal tradition, and they never really synthesized American constitutional law and jurisprudence with the ethos of the Black Church tradition. They seldom conceptualized the practice of law as a viable mode of religious expression or as an ordained ministerial mandate to pursue justice. This lack of conscientiousness of the link between law and religion had largely to do with African Americans’ conceptualization of “religion,” together with their having been subjected to many centuries of slavery and official racial segregation and oppression. On the other hand, their civil rights movement began to awaken within them a new conscientiousness. For example, Martin Luther King, Jr.’s *Letter from the Birmingham City Jail* (1963) represents a plea to the Gentiles to return to the old Anglican or Puritan constitutional methods of subordinating law to the demands of social justice. However, unlike Jewish rabbis and Jewish lawyers, African American clergymen, lawyers, and jurists have never fully synthesized the pursuit of secular justice with the divine mandate for social justice.²⁴⁰

239 Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 23.

240 Unfortunately, the Black Church, due in large measure to its emergence from the adverse condition of slavery

Finally, I would be somewhat remiss if I did not again emphasize the critical influence of late-19th-century capitalism upon the decimation of Puritan heritage of the Declaration of Independence and the United States Constitution. This occurred just as African Americans were emerging from chattel slavery and when large numbers of European Jews were beginning to immigrate to the United States. Both American blacks and American Jews relied heavily upon the Black church and the Jewish synagogue, respectively, for social organization, cultural preservation, and defense against discrimination. For these reasons, both Blacks and Jews have thus relied heavily upon the Holy Bible in their efforts to vindicate their social, cultural, and civil rights, thus indelibly linking them to the rich legacy of the Puritans of colonial New England. The Jews have early and largely recognized this important fact, but the Black church (and, indeed, African Americans in general) has been loathe to appreciate the positive contributions of white Puritan Christianity to American constitutional law and jurisprudence, and thus have largely ignored the social, cultural, and civic examples which the Puritans established in colonial New England.

The Puritans linked the Old Testament's mandate "to do justice and judgment" (Genesis 18:18-19) to the civil polity. And while mainstream American political, legal, and constitutional discourse eventually removed and abated this history of linkage, the Jewish jurists and lawyers of the early 20th century labored valiantly to revitalize this Puritan political and constitutional heritage, and they continued to honor the sacred Judea-Christian heritage of the Declaration of Independence and the United States Constitution.

Most Americans today have been taught that the doctrine and policy to separate church from state had completely obliterated the Christian foundations of American constitutional law and jurisprudence. But this is clearly a misconception which American Jews early and largely rejected. For as Professor Auerbach stated, the First Amendment to the U. S. Constitution "did not repudiate the principle of a Christian state; rather, it provided an alternative means toward securing it."²⁴¹ The United States Supreme Court has likewise confirmed this viewpoint. See, e.g., *Terrett v. Taylor*, 13 U.S. 43 (1815);²⁴²

and racial segregation, never developed a strong "legal tradition" amongst its clergy that could be considered comparable to the Anglican or Puritan or Jewish lawyers and jurists. While the Black Church served as the backbone of the American Civil Rights movement during the 1950s and 60s, and while the National Association for the Advancement of Colored People (NAACP) led the struggle for social justice in the American courts during that same period, it cannot be said that African American lawyers and judges, as a whole, when measured by the parameters of their voluntary bar associations at the local level, have conceptualized the practice of secular law (including civil rights law) as an extension of the "social justice" mission of Black Church. Nor has the Black Church, in general, endeavored to commission African American lawyers to carry out a "social justice" mission through the courts or otherwise. The undersigned author leads The Methodist Law Centre (www.methodistlawcentre.com) in an effort to encourage African American clergy and lawyers to work together for social justice.

²⁴¹ Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 11.

²⁴² *Terrett v. Taylor*, 13 U.S. 43, 52, 9 Cranch 43 (1815)(referencing "the principles of **natural justice**, upon **the fundamental laws of every free government**").

Vidal v. Girard's Executors, 2 How. 127 (1843)²⁴³; *Holy Trinity v. United States*, 143 U.S. 457 (1892),²⁴⁴ and *United States v. Macintosh*, 283 U.S. 605 (1931).²⁴⁵ And perhaps nowhere is this idea of “general Christianity” better enunciated than in the Pennsylvania Supreme Court opinion in *Updegraph v. Commonwealth*, 11 Serg. & Rawl, 394 P. 1824,²⁴⁶ to wit:

Updegraph v. Commonwealth

11 Serg. & Rawle 394 Pa. 1824

“Duncan, J.

“This was an indictment for blasphemy, founded on an act of assembly, passed in 1700, which enacts, that whosoever shall wilfully, premeditatedly, and despitefully blaspheme, and speak loosely and *profanely* of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth, and is legally convicted thereof, shall forfeit and pay the sum *often pounds*....

“Christianity, general Christianity, is, and always has been, a part of the common law of *Pennsylvania*; Christianity, without the spiritual artillery of *European* countries; for this Christianity was one of the considerations of the royal charter, and the very basis of its great founder, *William Penn*; not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but Christianity with liberty of conscience to all men....

“From the time of *Bracton*, Christianity has been received as part of the common law of *England*. I will not go back to remote periods, but state a series of prominent decisions, in which the doctrine is to be found. *The King v. Taylor*, *Ventr.* 93. *3 Keb.* 507.... the case of *The King v. Woolaston*, *2 Stra.* 884. *Fitzg.* 64. *Raymond*, 162... *Evans v. Chamberlain of London*. *Furneaux's Letters to Sir W. Blackstone*. *Appx. to Black. Com.* and *2 Burns' Eccles. Law*, p. 95.... *The People v. Ruggles*, *8 Johnston*, 290....

“In the case of the *Guardians of the Poor v. Green*, *5 Binn.* 55. Judge Brackenridge observed, the church establishment of *England* has become a part of the common law, but was the common law in this particular, or any part of it, carried with us in our emigration and planting a colony in *Pennsylvania*? Not a particle of it. On the contrary, the getting quit of the ecclesiastical establishment and tyranny, was a great cause of the emigration. All things were reduced to a primitive Christianity, and we went into a new state....

“And Chief Justice Tilghman observes, that every country has its own common law; ours is composed partly of our own usages. When our ancestors emigrated from *England*, they took

243 *Vidal v. Girard's Executors*, 2 How. 127 (1843) (the United States is “a **Christian country**.”)

244 *Holy Trinity v. United States*, 143 U.S. 457 (1892) (providing an extensive history of the influence of Christianity upon state and federal constitutional documents and traditions, and concluding that the United States is “a **Christian nation**.”)

245 *United States v. Macintosh*, 283 U.S. 605, 625 (1931) (stating that [w]e are a **Christian people** (*Holy Trinity Church v. United States*, 143 U.S. 457, 143 U.S. 470-471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God.”)

246 For the full text of this court opinion, see “The Quaker Influence Upon the United States Constitution: William Penn, Pennsylvania, and the English Common Law.”

with them such of the English principles as were convenient for the situation in which they were about to be placed. It required time and experience to ascertain how much of the *English* law would be suitable to this country. The minds of *William Penn* and his followers, would have revolted at the idea of an established church. Liberty to all, preference to none; equal privilege is extended to the mitred Bishop and the unadorned Friend.

“This is the Christianity which is the law of our land, and I do not think it will be an invasion of any man's right of private judgment, or of the most extended privilege of propagating his sentiments with regard to religion, in the manner which he thinks most conclusive. If from a regard to decency and the good order of society, profane swearing, breach of the Sabbath, and blasphemy, are punishable by civil magistrates, these are not punished as sins or offences against God, but crimes injurious to, and having a malignant influence on society; for it is certain, that by these practices, no one pretends to prove any supposed truths, detect any supposed error, or advance any sentiment whatever. . . . Judgment reversed.”

But, as of this writing in late Summer of 2023, this string of court cases, although technically valid, is nevertheless tantamount to having already fallen into desuetude (i.e., outdated law). Orthodox religion is not only unwelcome in public discourse or in public spaces, but principles of law which depend upon religious foundation and interpretation have likewise been undermined; and this is especially true in the area of family law, but it is equally true, though less obvious, is contract law, employment law, commercial law, and just about every rule of court procedure-- thus negatively impairing courtroom justice or the legal system as a whole. American Jews, especially the Jewish lawyers and jurists, know and understand this; but my concern is that the vast majority of American Christians do not appreciate the role of religion-- i.e., good religion, true religion-- in meliorating broad social problems, law, and civil government.²⁴⁷ The Puritans of colonial New England, whose example taught scores of American Jewish immigrants, knew and did better. May we all resolve now to follow the noble examples established by those Puritans.

THE END

²⁴⁷ I do not endorse the religion of slaveholders, or any philosophy that hurts or wrongs mankind.

APPENDIX F

“The Quaker Influence Upon the United States Constitution: William Penn, Pennsylvania, and the English Common Law”

The following court opinion from the Supreme Court of Pennsylvania memorializes the important role of the Christian religion in the development of the common law of that commonwealth. It states specifically that “General Christianity,” without the artillery of the established churches of England and Europe, was the foundation of Pennsylvania’s constitutional and common law. Two important observations are thus deserving of mention here:

First, the genre of “General Christianity” which is mentioned in this court opinion is the genre of orthodox “catholic” Christianity which Augustine of Hippo described in his magnum opus, *The City of God*, to wit:

God, then, the most wise Creator and most just Ordainer of all natures, who placed the human race upon earth as its greatest ornament, imparted to men some good things adapted to this life, to wit, temporal peace, such as we can enjoy in this life from health and safety and human fellowship, and all things needful for the preservation and recovery of this peace, such as the objects which are accommodated to our outward senses, light, night, the air, and waters are suitable for us, and everything the body requires to sustain, shelter, heal, or beautify it: and all under this most equitable condition, that every man who made a good use of these advantages suited to the peace of his mortal condition, should receive ampler and better blessings, namely, *the peace of immortality*, accompanied by glory and honour in an endless life made fit for the enjoyment of God and of one another in God; but that he who used the present blessings badly should both lose them and should not receive the others.²⁴⁸

This was the general Christianity of the Puritan-Quakers, and, as previously stated, it was fundamentally “Augustinian” in content.

²⁴⁸ St. Augustine, *The City of God*, supra., p. 691.

Second, the American Founding Fathers adopted this Quaker-version of “General Christianity” in the American Declaration of Independence (1776) and, to that end, also in the U. S. Constitution (1787).²⁴⁹

Updegraph v. Commonwealth

11 Serg. & Rawle 394 Pa. 1824

“Duncan, J.

“This was an indictment for blasphemy, founded on an act of assembly, passed in 1700, which enacts, that whosoever shall wilfully, premeditatedly, and despitefully blaspheme, and speak loosely and *profanely* of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth, and is legally convicted thereof, shall forfeit and pay the sum of *ten pounds*.

“It charges the defendant with contriving and intending to scandalize and bring into disrepute, and vilify the Christian Religion, and the Scriptures of Truth; and that he, in the presence and hearing of several persons, unlawfully, wickedly, and premeditatedly, despitefully and blasphemously, did say, among other things, in substance as follows: “That the Holy Scriptures were a mere fable, that they were a contradiction, and that although they contained a number of good things, yet they contained a great many lies,” and the indictment concludes, to the great dishonour of Almighty God, to the great scandal of the profession of the Christian Religion, to the evil example of all others in like case offending, and against the form of the act of assembly in such case made and provided.

“The jury have found that the defendant did speak words of that substance, in the temper and with the intent stated. This verdict excludes every thing like innocence of intention; it finds a malicious intention in the speaker to vilify the Christian Religion, and the Scriptures, and this court cannot look beyond the record, nor take any notice of the allegation, that the words were uttered by the defendant, a member of a debating association, which convened weekly for discussion and mutual information, and that the expressions were used in the course of argument on a religious question. That there is an association in which so serious a subject is treated with so much levity, indecency, and scurrility, existing in this city, I am sorry to hear, for it would prove a nursery of vice, a school of preparation to qualify young men for the gallows, and young women for the brothel, and there is not a skeptic of decent manners and good morals, who would not consider such debating clubs as a common nuisance and disgrace to the city. From the tenor of the words, it is impossible that they could be spoken seriously and conscientiously, in the discussion of a religious or theological topic; there is nothing of argument in the language; it was the out-pouring of an invective so vulgarly shocking and insulting, that the lowest grade of civil authority ought not to be subject to it, but when spoken in a Christian land, and to a Christian audience, the highest offence *contra bonos mores*; and even if Christianity was not part of the law of the land, it is the popular religion of the country, an insult on which would be indictable, as directly tending to disturb the public peace. The bold ground is

²⁴⁹ Arguably, the Quakers were the first to apply the principles of “General Christianity” to the constitution of a sovereign civil polity. This political was gifted to the United States through the colonies of Pennsylvania and New Jersey. The Anglican George Whitefield (1714 - 1770) preached a type of Gospel— sometimes under the auspices of the Quakers— that reflected this type of “General Christianity.” See, e.g., Arnold Dallimore, *George Whitefield: The Life and Times*, Vol. II., supra, p. 257. In his “Notes on the State of Virginia” (1781), Jefferson highly appraised both the Quakers and the Quaker political experient in the colony of Pennsylvania. Thomas Jeffersons, *Writings* (New York, N.Y.: The Library of America, 1984), pp. 283 - 287. Puritan-Quaker, principle founder of Pennsylvania, and trustee of New Jersey, William Penn (1644 - 1718) “believed politics to be ‘a part of religion itself, a thing sacred in its institution and its end.’”

taken, though it has often been exploded, and nothing but what is trite can be said upon it--it is a barren soil, upon which no flower ever blossomed;--the assertion is once more made, that Christianity never was received as part of the common law of this Christian land; and it is added, that if it was, it was virtually repealed by the constitution of the *United States*, and of this state, as inconsistent with the liberty of the people, the freedom of religious worship, and hostile to the genius and spirit of our government, and, with it, the act against blasphemy; and if the argument is worth any thing, all the laws which have Christianity for their object--all would be carried away at one fell swoop--the act against cursing and swearing, and breach of the Lord's day; the act forbidding incestuous marriages, perjury by taking a false oath upon the book, fornication and adultery, *et peccatum illud horribile non nominandum inter christianos*--for all these are founded on Christianity--for all these are restraints upon civil liberty, according to the argument--edicts of religious and civic tyranny, "when enlightened notions of the rights of man were not so universally diffused as at the present day."

"Another *exceptionis* taken. However technical it may be, and however heinous the offence, still, if it is not charged as the law requires, the plaintiff in error is entitled to the full benefit of the exception. The objection is, that the words are not laid to have been spoken profanely.

"We will first dispose of what is considered the grand objection--*the constitutionality of Christianity*--for in effect that is *the question*.

"Christianity, general Christianity, is, and always has been, a part of the common law of *Pennsylvania*; Christianity, without the spiritual artillery of *European* countries; for this Christianity was one of the considerations of the royal charter, and the very basis of its great founder, *William Penn*; not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but Christianity with liberty of conscience to all men. *William Penn* and Lord *Baltimore* were the first legislators who passed laws in favour of liberty of conscience; for before that period the principle of liberty of conscience appeared in the laws of no people, the axiom of no government, the institutes of no society, and scarcely in the temper of any man. Even the reformers were as furious against contumacious errors, as they were loud in asserting the liberty of conscience. And to the wilds of America, peopled by a stock cut off by persecution from a Christian society, does Christianity owe true freedom of religious opinion and religious worship. There is, in this very act of 1700, a precision of definition, and a discrimination so perfect between prosecutions for opinions seriously, temperately, and argumentatively expressed, and despiteful railings, as to command our admiration and reverence for the enlightened framers. From the time of *Bracton*, Christianity has been received as part of the common law of *England*. I will not go back to remote periods, but state a series of prominent decisions, in which the doctrine is to be found. *The King v. Taylor, Ventr.* 93. *3 Keb.* 507, the defendant was convicted on an information for saying, that *Christ Jesus* was a bastard, a whoremaster, and religion a cheat. Lord Chief Baron *Hale*, the great and the good Lord *Hale*, (no stickler for church establishments) observed, "that such kind of wicked and blasphemous words were not only an offence against God and religion, but against the laws of the state and government, and therefore punishable; that to say, religion is a cheat, is to dissolve all those obligations by which civil societies are preserved; and that Christianity is part of the law of *England*, and therefore to reproach the Christian religion is to speak in subversion of the laws." In the case of *The King v. Woolaston, 2 Stra.* 884. *Fitzg.* 64. *Raymond*, 162, the defendant had been convicted of publishing five libels, ridiculing the miracles of *Jesus Christ*, his life and conversation; and was moved in arrest of judgment, that this offence was not punishable in the temporal courts, but the court said, they would not suffer it to be debated, "whether to write against Christianity generally was not an offence of temporal cognizance." It was further contended, that it was merely to show that those miracles were not to be taken in a literal but allegorical sense; and, therefore, the book could not be aimed at Christianity in general, but merely attacking one proof of the divine mission. But the court said, the main design of the book, though professing to establish Christianity upon a true bottom, considers the narrations of scripture as explanative and prophetic, yet that these professions could not be credited, and the rule is *allegatio contra factum non est admittendum*. In that case the court laid great stress on the term *general*, and did not intend to include disputes between learned men on particular and controverted points, and Lord Chief Justice *Raymond, Fitzg.* 66, said "I would have it taken notice of, that we do not meddle with the difference of opinion, and that we interfere only where the root of Christianity is struck at." The information filed against the celebrated *Wilkes* was for publishing an obscene and infamous libel, tending to vitiate and

corrupt the minds of the subjects, and to introduce a total contempt of religion, morality, and virtue, to blaspheme Almighty God, to ridicule our Saviour, and the Christian religion. In the justly admired speech of Lord Mansfield, in a case which made much noise at the time--*Evans v. Chamberlain of London*. *Furneaux's Letters to Sir W. Blackstone. Appx. to Black. Com. and 2 Burns' Eccles. Law, p.95*. Conscience, he observed, is not controllable by human laws, nor amenable to human tribunals; persecution, or attempts to force conscience, will never produce conviction, and were only calculated to make hypocrites or martyrs. There never was a single instance from the *Saxon* times down to our own, in which a man was punished for erroneous opinions. For atheism, blasphemy, and reviling the Christian religion, there have been instances of prosecution at the common law; but bare non-conformity is no sin by the common law, and all pains and penalties for non-conformity to the established rites and modes are repealed by the acts of toleration, and dissenters exempted from ecclesiastical censures. What bloodshed and confusion have been occasioned, from the reign of *Henry IV.*, when the first penal statutes were enacted, down to the revolution, by laws made to force conscience. There is certainly nothing more unreasonable, nor inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic, than persecution against natural religion, revealed religion and sound policy. The great, and wise, and learned judge observes, "The true principles of natural religion are part of the common law; the essential principles of revealed religion are part of the common law; so that a person vilifying, subverting or ridiculing them may be prosecuted at common law; but temporal punishments ought not to be inflicted for mere opinions." Long before this, much suffering, and a mind of a strong and liberal cast, had taught this sound doctrine and this Christian precept to *William Penn*. The charter of *Charles II.* recites, that "Whereas our trusty and beloved *William Penn*, out of a commendable desire to enlarge our *English* empire, as also to reduce the savages, by gentle and just measures, to the love of civil society, and the Christian religion, hath humbly besought our leave to translate a colony," &c. The first legislative act in the colony was the recognition of the Christian religion, and establishment of liberty of conscience. Before this, in 1646, Lord *Baltimore* passed a law in *Maryland* in favour of religious freedom, and it is a memorable fact, that of the first legislators, who established religious freedom, one was a Roman Catholic and the other a Friend. It is called the great law, of the body of laws, in the province of *Pennsylvania*, passed at an assembly at *Chester*, the 7th of the 12th month, *December*. After the following preamble and declaration, viz.: "Whereas ye glory of Almighty God, and ye good of mankind, is ye reason and end of government, and therefore government in itself is a venerable ordinance of God; and forasmuch as it is principally desired and intended by ye proprietary and governor, and ye freemen of ye province of *Pennsylvania*, and territorys thereunto belonging, to make and establish such laws as shall best preserve true Christians, and civil liberty, in opposition to all unchristian, licentious, and unjust practices, whereby God may have his due, *Caesar*'s due, and ye people their due, from tyranny and oppression on ye one side, and insolency and licentiousness on ye other, so that ye best and firmest foundation may be laid for ye present and future happiness both of ye governor and people of this province and territorys aforesaid, and their posterity:--Be it therefore enacted by *William Penn*, proprietary and governor, by and with ye advice and consent of the deputys of ye freemen of this province and counties aforesaid in assembly mett, and by ye authority of ye same, that these following chapters and paragraphs shall be the laws of *Pennsylvania*, and the territorys thereof.

"Almighty God, being only Lord of conscience, Father of lights and spirits, and ye author as well as object of all divine knowledge, faith, and worship, who only can enlighten ye minds, and persuade and convince ye understandings of people in due reverence to his sovereignty over the souls of mankind: It is enacted by the authority aforesaid, yt no person at any time hereafter living in this province, who shall confess and acknowledge one Almighty God to be ye creator, upholder, and ruler of ye world, and that professeth him or herself obliged in conscience to live peaceably and justly under ye civil government, shall in any wise be molested or prejudiced for his or her conscientious persuasion or practice, nor shall he or she at any time be compelled to frequent or maintain any religious worship, plan or ministry, whatever, contrary to his or her mind, but shall freely and fully enjoy his or her Christian liberty in yt respect, without any interruption or reflection; and if any person shall abuse or deride any other for his or her different persuasion and practice in a matter of religion, such shall be lookt upon as a disturber of ye peace, and be punished accordingly." And to the end that looseness, irreligion, and atheism may not creep in under the pretence of conscience, it provides for the observance of the Lord's day, punishes profane cursing and swearing, and further enacts, for the better preventing corrupt communication, "that whoever shall speak loosely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or Scriptures of Truth, and is thereof legally convicted, shall forfeit and pay 5 pounds, and be imprisoned for five days in the house of

correction." Thus this wise legislature framed this great body of laws for a Christian country and Christian people. Infidelity was then rare, and no infidels were among the first colonists. They fled from religious intolerance, to a country where all were allowed to worship according to their own understanding, and as was justly observed by the learned Chancellor of the associated members of the Bar of *Philadelphia*, in the city of *Philadelphia*, in his address to that body, 22d of *June*, 1822, the number of *Jews* was too inconsiderable to excite alarm, and the believers in *Mahomet* were not likely to intrude. Every one had the right of adopting for himself whatever opinion appeared to be the most rational, concerning all matters of religious belief; thus, securing by law this inestimable freedom of conscience, one of the highest privileges, and greatest interests of the human race. This is the Christianity of the common law, incorporated into the great law of *Pennsylvania*, and thus, it is irrefragably proved, that the laws and institutions of this state are built on the foundation of reverence for Christianity. Here was complete liberty of conscience, with the exception of disqualification for office of all who did not profess faith in Jesus Christ. This disqualification was not contained in the constitution of 1776; the door was open to any believer in a God, and so it continued under our present constitution, with the necessary addition of a belief in a future state of rewards and punishments. On this the constitution of the *United States* has made no alteration, nor in the great body of the laws which was an incorporation of the common law doctrine of Christianity, as suited to the condition of the colony, and without which no free government can long exist. Under the constitution, penalties against cursing and swearing have been exacted. If Christianity was abolished, all false oaths, all tests by oath in the common form by the book, would cease to be indictable as perjury. The indictment must state the oath to be on the holy Evangelists of Almighty God. The accused on his trial might argue that the book by which he was sworn, so far from being holy writ, was a pack of lies, containing as little truth as *Robinson Crusoe*. And is every jury in the box to decide as a fact whether the Scriptures are of divine origin?

"Let us now see what have been the opinions of our judges and courts. The late Judge *Wilson*, of the Supreme Court of the *United States*, Professor of Law in the College in *Philadelphia*, was appointed in 1791, unanimously by the House of Representatives of this state to "revise and digest the laws of this commonwealth, to ascertain and determine how far any *British* statutes extended to it, and to prepare bills containing such alterations and additions as the code of laws, and the principles and forms of the constitution, then lately adopted, might require." He had just risen from his seat in the convention which formed the constitution of the *United States*, and of this state; and it is well known, that for our present form of government we are greatly indebted to his exertions and influence. With his fresh recollection of both constitutions, in his course of Lectures, 3d vol. of his works, 112, he states, that profaneness and blasphemy are offences punishable by fine and imprisonment, and that Christianity is part of the common law. It is in vain to object that the law is obsolete; this is not so; it has seldom been called into operation, because this, like some other offences, has been rare. It has been retained in our recollection of laws now in force, made by the direction of the legislature, and it has not been a dead letter.

"In the Mayor's Court of the city of *Philadelphia*, in 1818, one *Murray* was convicted of a most scandalous blasphemy. He attempted by advertisement to call a meeting of the enemies of persecution; but this ended in mere vapour; the good sense of the people frowned upon it, and he was most justly sentenced. An account of the proceedings will be found in the *Franklin Gazette*, of the 21st of *November*, 1818. If the doctrine advanced in the written argument delivered to the court was just, (and it is but justice to the counsel for the plaintiff in error for the court to acknowledge the propriety of his conduct in preferring this course to a declamation in open court,) impiety and profanity must reach their acme with impunity, and every debating club might dedicate the club room to the worship of the Goddess of Reason, and adore the deity in the person of a naked prostitute. The people would not tolerate these flagitious acts, and would themselves punish; and it is for this, among other reasons, that the law interposes to prevent the disturbance of the public peace. It is sometimes asked with a sneer, Why not leave it to Almighty God to revenge his own cause? Temporal courts do so leave it. "Bold and presumptuous would be the man who would attempt to arrest the thunder of heaven from the hand of God, and direct the bolts of vengeance where to fall." It is not on this principle courts act, but on the dangerous temporal consequences likely to proceed from the removal of religious and moral restraints; this is the ground of punishment for blasphemous and criminal publications; and without any view to spiritual correction of the offender. 4 *Bla. C.* 59. *Fitz.* 67. *Stark. on Libels*, 487.

"Shall each blasphemmer quite escape the rod, And plead the insult's not to man but God?"

It is not *an auto da fe*, displaying vengeance; but a law, punishing with great mildness, a gross offence against public decency and public order, tending directly to disturb the peace of the commonwealth. Chief Justice Swift, in his system of Laws, 2 vol. 825, has some very just reasoning on the subject. He observes, "To prohibit the open, public, and explicit denial of the popular religion of a country, is a necessary measure to preserve the tranquillity of a government. Of this, no person in a Christian country can complain; for, admitting him to be an infidel, he must acknowledge that no benefit can be derived from the subversion of a religion which enforces the purest morality." In the Supreme Court of *New York* it was solemnly determined, that Christianity was part of the law of the land, and that to revile the Holy Scriptures was an indictable offence. The case assumes, says Chief Justice Kent, that we are a Christian people, and the morality of the country is deeply engrafted on Christianity. Nor are we bound by any expression in the constitution, as some have strangely supposed, not to punish at all, or to punish indiscriminately the like attack upon *Mahomet* or the *Grand Luma*.

"*The People v. Ruggles*, 8 *Johnston*, 290. This decision was much canvassed in the *New York* convention, 1821. Debates 463. An article was proposed in the new constitution, declaring that the judiciary should not declare any particular religion the law of the land. This was lost by a vote of 74 to 41. It is a mistake to suppose that this decision was founded on any special provision in the constitution. It has long been firmly settled, that blasphemy against the Deity generally, or an attack on the Christian religion indirectly, for the purpose of exposing its doctrines to ridicule and contempt, is indictable and punishable as a temporal offence. The principles and actual decisions are, that the publication, whether written or oral, must be malicious, and designed for that end and purpose; both the language of indictments, and the guarded expressions of judges show, that it never was a crime at the common law, seriously and conscientiously to discuss theological and religious topics, though in the course of such discussions doubts may have been created and expressed, on doctrinal points, and the force of a particular proof of Scripture evidence casually weakened, or the authority of particular important texts disputed; and persons of a different religion, as *Jews*, though they must necessarily deny the authenticity of other religions, have never been punished as blasphemers or libellers at common law, for so doing. All men, of conscientious religious feeling, ought to concede outward respect to every mode of religious worship. Upon the whole, it may not be going too far to infer, from the decisions, that no author or printer, who fairly and conscientiously promulgates the opinions with whose truths he is impressed, for the benefit of others, is answerable as a criminal; that a malicious and mischievous intention is, in such a case, the broad boundary between right and wrong, and that is to be collected from the offensive levity, scurrilous and opprobrious language, and other circumstances, whether the act of the party was malicious; and since the law has no means of distinguishing between different degrees of evil tendency, if the matter published contains any such evil tendency, it is a public wrong. An offence against the public peace may consist either of an actual breach of the peace, or doing that which tends to provoke and excite others to do it. Within the latter description fall all acts and all attempts to produce disorder, by written, printed, or oral communications, for the purpose of generally weakening those religious and moral restraints, without the aid of which mere legislative provisions would prove ineffectual. No society can tolerate a wilful and despiteful attempt to subvert its religion, no more than it would break down its laws--a general, malicious, and deliberate intent to overthrow Christianity, general Christianity. This is the line of indication, where crime commences, and the offence becomes the subject of penal visitation. The species of offence may be classed under the following heads--1. Denying the Being and Providence of God. 2. Contumelious reproaches of Jesus Christ; profane and malevolent scoffing at the Scriptures, or exposing any part of them to contempt and ridicule. 3. Certain immoralities tending to subvert all religion and morality, which are the foundations of all governments. Without these restraints no free government could long exist. It is liberty run mad, to declaim against the punishment of these offences, or to assert that the punishment is hostile to the spirit and genius of our government. They are far from being true friends to liberty who support this doctrine, and the promulgation of such opinions, and general receipt of them among the people, would be the sure forerunners of anarchy, and finally of despotism. Amidst the concurrent testimony of political and philosophical writers among the Pagans, in the most absolute state of democratic freedom, the sentiments of *Plutarch*, on this subject, are too remarkable to be omitted. After reciting that the first and greatest care of the legislators of *Rome*, *Athens*, *Lacedaemon*, and *Greece* in general, was by instituting solemn supplications and forms of oaths, to inspire them with a sense of the favour or displeasure of Heaven, that learned historian declares, that we have met with towns unfortified, illiterate, and without the conveniences of habitations; but a people wholly without

religion, no traveller hath yet seen; and a city might as well be erected in the air, as a state be made to unite, where no divine worship is attended. Religion he terms the cement of civil union, and the essential support of legislation. No free government now exists in the world, unless where Christianity is acknowledged, and is the religion of the country. So far from Christianity, as the counsel contends, being part of the machinery necessary to despotism, the reverse is the fact. Christianity is part of the common law of this state. It is not proclaimed by the commanding voice of any human superior, but expressed in the calm and mild accents of customary law. Its foundations are broad, and strong, and deep: they are laid in the authority, the interest, the affections of the people. Waiving all questions of hereafter, it is the purest system of morality, the firmest auxiliary, and only stable support of all human laws. It is impossible to administer the laws without taking the religion which the defendant in error has scoffed at, that Scripture which he has reviled, as their basis; to lay aside these is at least to weaken the confidence in human veracity, so essential to the purposes of society, and without which no question of property could be decided, and no criminal brought to justice; an oath in the common form, on a discredited book, would be a most idle ceremony. This act was not passed, as the counsel supposed, when religious and civil tyranny were at their height; but on the breaking forth of the sun of religious liberty, by those who had suffered much for conscience' sake, and fled from ecclesiastical oppression. The counsel is greatly mistaken in attributing to the common law the punishment at the stake, and by the faggot. No man ever suffered at common law for any heresy. The writ *de haeretico comburendo*, and all the sufferings which he has stated in such lively colours, and which give such a frightful, though not exaggerated picture, were the enactments of positive laws, equally barbarous and impolitic. There is no reason for the counsel's exclamation, are these things to be revived in this country, where Christianity does not form part of the law of the land!--it does form, as we have seen, a necessary part of our common law; it inflicts no punishment for a non-belief in its truths; it is a stranger to fire and to faggots, and this abused statute merely inflicts a mild sentence on him who bids defiance to all public order, disregards all decency, by contumelious reproaches, scoffing at and reviling that which is certainly the religion of the country; and when the counsel compared this act against blasphemy to the act against witchcraft, and declared this was equally absurd, I do not impute to him that which I know his heart abhors, a scoffing at religion, but to the triteness of the topics. It is but a barren field, and must contain a repetition of that which has been so often advanced and so often refuted. It is not argument. He has likewise fallen into error with respect to the report of the Judges of the Supreme Court on the *British statute de religiosis*, and of *mortmain*, parts of which are not incorporated, as being inapplicable to the state of the country; these statutes were made to resist the encroachments of religious bodies, in engrossing great landed estates, and holding them in *mortmain*, but these are adopted so far as relates to the avoidance of conveyances to the use of bodies corporate, unless sanctioned by the charter declaring void all conveyances to superstitious uses. The present statute is called the statute *de religiosis*, from the initiatory words of the act. It clipped the wings of ecclesiastical monopoly, and avoided conveyances to superstitious uses, but had no more relation to the doctrines of Christ than of *Mahomet*; the counsel has confounded the name *de religiosis* with the doctrines of Christianity, and drawn a false conclusion; because the statute *de religiosis* was not applicable to the country, therefore religion itself was not, and because they incorporated only part of the statutes avoiding conveyances to superstitious uses, therefore Christianity was superstition, and is abolished. This argument is founded on misconception, and is a nullity. The plaintiff in error has totally failed to support his grand objection to this indictment, for Christianity is part of the common law. The act against blasphemy is neither obsolete nor virtually repealed, nor is Christianity inconsistent with our free governments or the genius of the people.

“As I understand this writ of error was taken out with a view to decide the question, whether Christianity was part of the law of the land, and whether it was consistent with our civil institutions, I have considered it a duty to be thus explicit. No preference is given by law to any particular religious persuasion. Protection is given to all by our laws. It is only the malicious reviler of Christianity who is punished. By general Christianity is not intended the doctrine of worship of any particular church or sect; the law leaves these disputes to theologians; it is not known as a standard by which to decide political dogmas. The worship of the Jews is under the protection of the law, and all prosecutions against Unitarians have been discontinued in *England*. The statute of *William III. Ch. 3*, with its penalties against Anti-Trinitarians, is repealed, and it never was punishable at common law; and no partial mode of belief or unbelief were the objects of coercion by the civil magistrate. Whatever doctrines were heretical, were left to the ecclesiastical judges, who had a most arbitrary latitude allowed to them. Freedom from the demon of persecution, and the scourge of established churches, was not on the *European*, but on our side of the Atlantic. I do not by this allude to any particular church, for the Puritans in turn became persecutors, when they got the upper hand.

By an ordinance of 23d of *August*, 1645, which continued until the restoration, to preach, write or print any thing in derogation, or disapproving of the directory to the established puritanical form of worship, subjected the offender, when convicted, to a discretionary fine, not exceeding 50 pounds. *Scofill*, 98. While our own free constitution secures liberty of conscience and freedom of religious worship to all, it is not necessary to maintain that any man should have the right publicly to vilify the religion of his neighbours and of the country. These two privileges are directly opposed. It is open, public vilification of the religion of the country that is punished, not to force conscience by punishment, but to preserve the peace of the country by an outward respect to the religion of the country, and not as a restraint upon the liberty of conscience; but licentiousness endangering the public peace, when tending to corrupt society, is considered as a breach of the peace, and punishable by indictment. Every immoral act is not indictable, but when it is destructive of morality generally, it is because it weakens the bonds by which society is held together, and government is nothing more than public order. This was the opinion of the court in the case of *Commonwealth v. Sharpless, 2 Serg. & Rawle*, 101. It is not now, for the first time, determined in this court, that Christianity is part of the common law of *Pennsylvania*. In the case of the *Guardians of the Poor v. Green*, 5 *Binn.* 55. Judge Brackenridge observed, the church establishment of *England* has become a part of the common law, but was the common law in this particular, or any part of it, carried with us in our emigration and planting a colony in *Pennsylvania*? Not a particle of it. On the contrary, the getting quit of the ecclesiastical establishment and tyranny, was a great cause of the emigration. All things were reduced to a primitive Christianity, and we went into a new state. And Chief Justice Tilghman observes, that every country has its own common law; ours is composed partly of our own usages. When our ancestors emigrated from *England*, they took with them such of the English principles as were convenient for the situation in which they were about to be placed. It required time and experience to ascertain how much of the *English* law would be suitable to this country. The minds of *William Penn* and his followers, would have revolted at the idea of an established church. Liberty to all, preference to none; equal privilege is extended to the mitred Bishop and the unadorned Friend.

“This is the Christianity which is the law of our land, and I do not think it will be an invasion of any man's right of private judgment, or of the most extended privilege of propagating his sentiments with regard to religion, in the manner which he thinks most conclusive. If from a regard to decency and the good order of society, profane swearing, breach of the Sabbath, and blasphemy, are punishable by civil magistrates, these are not punished as sins or offences against God, but crimes injurious to, and having a malignant influence on society; for it is certain, that by these practices, no one pretends to prove any supposed truths, detect any supposed error, or advance any sentiment whatever.

“The reasoning of the counsel of the plaintiff in error is quite conclusive on the subaltern objection to the form of the indictment. The word *profanely* used in the act, should have been inserted in the indictment. It is a description of the offence, and though the words blasphemously and despitefully, may be synonymous with profanely, and tantamount in common understanding, yet as the legislature has adopted this word as a description or definition of the crime, the omission is fatal. As for blasphemy at the common law, the indictment cannot be sustained, for the sentence is founded on the act of assembly, and distribution of the fine to the poor, is not a part of a common law punishment. The general rule is, that all indictments on statutes, must state all the circumstances which constitute the definition of the offence, so as to bring the defendant precisely within it; and not even the fullest description of the offence, even the terms of a legal definition, would be sufficient, without keeping to the expressions of the act. A case directly in point is the indictment for perjury, on the statute; the word wilfully must be inserted, because it is part of the description the act gives of the crime; though in indictments for some offences at common law, that precise term is not essential, but may be supplied by others conveying the same idea; and in indictments on the black act, the term wilfully is essential, as being used by the legislature, and maliciously, will not suffice. 1 *Chitty's Crim. Law*, where the various authorities are referred to. The judgment is for this reason reversed. I very much incline to think the indictment is defective on another ground. It should have stated the very words: here it is laid, that among other things, he said in substance as follows. In all indictments for words, the words themselves ought to be set out. In an accusation of this nature, particularly, the words ought to be set out, for it is from the mode and manner the words were spoken, that the malicious intention must appear. One individual attending a long sermon, with particular dogmas of his own always uppermost in his head, and with strong prejudice against the speaker and his sect, whose opinions he might hold to be heretical, and who, from that very prejudice, would put the worst construction on all he said, might conclude from an argument in which no vituperative language was used, that in substance, the speaker said

the Scriptures were fabulous, and contained many lies. He might conscientiously suppose, because some favourite opinion of his own was touched, it in substance, amounted to a declaration that the Scriptures were a fable and a lie. When a man undertakes to give an account of the substance of what he has heard or read, he by no means undertakes for the accuracy of expressions; he avoids that; he only states what was his own conclusion from the whole discourse of writing; the speaker in substance intended it; it would be dangerous either to speaker or preacher, if this latitude were allowed. The thing itself, must be stated explicitly and directly, in such an open and palpable form, that any one who heard the words, shall know the law to be infringed. A very serious, conscientious discourse, on a subject or text of Scripture, on which the different sects thought differently, might make the preacher the victim of ignorance, prejudice, fanaticism, or ill will, by taking up a sentence and disjoining it from the whole discourse and scope of reasoning of the speaker. Even in a declaration in slander in *England*, it is not sufficient to state, that the defendant among other things said in substance as follows; the words must be set out, though it would be sufficient to prove the substance. But it has been determined in this court, that in an action of slander the words may be so laid, but it never has been carried so far as to say this would do in indictments.

“In an indictment for a libel, *Commonwealth v. Sweney*, 10 *Serg. & Rawle*, 173, it was decided, that this mode of laying written slander would not be sufficient.

“I am not required to give an opinion on this point, and only throw out this hint to gentlemen who may have occasion to draw bills of this nature.

Judgment reversed.”

APPENDIX H

President Abraham Lincoln's 1863 Executive Orders

Abraham Lincoln's personal religion may be described generally as Christian. Historians note that his family heritage included both Baptists and Quakers, and that Lincoln himself attended a Presbyterian Church in Washington, D.C. during his tenure and President. Known for his keen intellect, superb writing, and genius for making legal and constitutional argument and analysis, Lincoln's own executive orders, such as his "Proclamation on National Humiliation, Fasting, and Prayer" (March 30, 1863) and "Thanksgiving Proclamation" (October 3, 1863) and his presidential speeches, such as his Second Inaugural Address (March 4, 1865), clearly demonstrate that in Lincoln's understanding "general Christianity" had become part and parcel of the United States Constitution and governmental order. Below are excerpts from the above-referenced executive orders.

Lincoln's "Proclamation on National Humiliation, Fasting, and Prayer" (March 30, 1863)

By the President of the United States of America

A Proclamation

Whereas the Senate of the United States, devoutly recognizing the supreme authority and just government of Almighty God in all the affairs of men and of nations, has by a resolution requested the President to designate and set apart a day for national prayer and humiliation; and

Whereas it is the duty of nations as well as of men to own their dependence upon the overruling power of God, to confess their sins and transgressions in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon, and to recognize the sublime truth, announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord;

And, insomuch as we know that by His divine law nations, like individuals, are subjected to punishments and chastisements in this world, may we not justly fear that the awful calamity of civil war which now desolates the land may be but a punishment inflicted upon us for our presumptuous sins, to the needful end of our national reformation as a whole people? We have been the recipients of the choicest bounties of Heaven; we have been preserved these many years in peace and prosperity; we have grown in numbers, wealth, and power as no other nation has ever grown. But we have forgotten God. We have forgotten the gracious hand which preserved us in peace and multiplied and enriched and strengthened us, and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own. Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us.

It behooves us, then, to humble ourselves before the offended Power, to confess our national sins, and to pray for clemency and forgiveness.

Now, therefore, in compliance with the request, and fully concurring in the views of the Senate, I do by this my proclamation designate and set apart Thursday, the 30th day of April, 1863, as a day of national humiliation, fasting, and prayer. And I do hereby request all the people to abstain on that day from their ordinary secular pursuits, and to unite at their several places of public worship and their respective homes in keeping the day holy to the Lord and devoted to the humble discharge of the religious duties proper to that solemn occasion.

All this being done in sincerity and truth, let us then rest humbly in the hope authorized by the divine teachings that the united cry of the nation will be heard on high and answered with blessings no less than the pardon of our national sins and the restoration of our now divided and suffering country to its former happy condition of unity and peace. In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 30th day of March, A. D. 1863, and of the Independence of the United States the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, Secretary of State .

Lincoln's "Thanksgiving Proclamation" (October 3, 1863)

The year that is drawing toward its close has been filled with the blessings of fruitful fields and healthful skies. To these bounties, which are so constantly enjoyed that we are prone to forget the source from which they come, others have been added, which are of so extraordinary a nature that they cannot fail to penetrate and even soften the heart which is habitually insensible to the ever-watchful providence of Almighty God.

In the midst of a civil war of unequalled magnitude and severity, which has sometimes seemed to foreign states to invite and provoke their aggressions, peace has been preserved with all nations, order has been maintained, the laws have been respected and obeyed, and harmony has prevailed everywhere, except in the theater of military conflict; while that theater has been greatly contracted by the advancing armies and navies of the Union.

Needful diversions of wealth and of strength from the fields of peaceful industry to the national defense have not arrested the plow, the shuttle, or the ship; the ax has enlarged the borders of our settlements, and the mines, as well of iron and coal as of the precious metals, have yielded even more abundantly than heretofore. Population has steadily increased, notwithstanding the waste that has been made in the camp, the siege, and the battlefield, and the country, rejoicing in the consciousness of augmented strength and vigor, is permitted to expect continuance of years with large increase of freedom.

No human counsel hath devised, nor hath any mortal hand worked out these great things. They are the gracious gifts of the Most High God, who while dealing with us in anger for our sins, hath nevertheless remembered mercy.

It has seemed to me fit and proper that they should be solemnly, reverently, and gratefully acknowledged as with one heart and one voice by the whole American people. I do, therefore, invite my fellow-citizens in every part of the United States, and also those who are at sea and those who

are sojourning in foreign lands, to set apart and observe the last Thursday of November next as a Day of Thanksgiving and Praise to our beneficent Father who dwelleth in the heavens. And I recommend to them that, while offering up the ascriptions justly due to Him for such singular deliverances and blessings, they do also, with humble penitence for our national perverseness and disobedience, commend to His tender care all those who have become widows, orphans, mourners, or sufferers in the lamentable civil strife in which we are unavoidably engaged, and fervently implore the interposition of the Almighty hand to heal the wounds of the nation, and to restore it, as soon as may be consistent with the Divine purposes, to the full enjoyment of peace, harmony, tranquility, and union.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this third day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-eighth.

ABRAHAM LINCOLN

By the President:

WILLIAM H. SEWARD, Secretary of State

APPENDIX H

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