

# **ST. LUKE’S INN OF COURT**

## **“Law & Religion Forum”**

Volume 1, Apostolate Paper #21

---

### **“A History of the Anglican Church—Part X: An Essay on the Role of Christian Lawyers and Judges within the Secular State”©**

**By**

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

---

#### **TABLE OF CONTENTS**

**Preface**

**Introduction**

**Summary**

**Part X. Anglican Church: Christianity, Trial Advocacy, and the Law of  
Evidence, Proof, and Procedure (1300 to early 1600s A.D.)**

**Introduction**

**A. Trial of Susanna (Book of Daniel)**

**B. Trial of Jesus (Four Gospels)**

- 1. Meeting of the Council at the home of Chief Priest Ciaphus**
- 2. Jesus’ Appearance before the Jewish Sanhedrin**
- 3. Trial before Pontius Pilate**
- 4. Trial before Pontius Pilate: Meaning of Truth**
- 5. Trial before Pontius Pilate: Jesus and Barrabas**

## **C. Search for Truth: A Legacy of Christian Jurisprudence**

### **Summary**

#### **Part 1. Truth: Foundation of Secular and Sacred Jurisprudence**

#### **Part 2. St. Thomas Aquinas's Moral Theology: Anglo-American and Western Law and Jurisprudence**

### **Conclusion**

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

## **PREFACE**

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

## **PART X. Anglican Church: Christianity, Trial Advocacy, and the Law of Evidence, Proof, and Procedure (1300 to 1600s A.D.)**

### **INTRODUCTION<sup>1</sup>**

I matriculated into law school during the fall of 1991 at the University of Illinois with vague curiosity between the connection between the Christian religion and the secular legal system and with my Catholic *New Jerusalem Bible*, which my dear mother had given to me as a college graduation gift. I had every intention of incorporating my bible study into my study of the secular law. I did this whenever possible, and my *New Jerusalem Bible* provided a great advantage that I did have in my beloved Protestant King James Bible. I studied these bibles together, one did not displace the other, but instead they complimented each other. But I found the *New Jerusalem Bible* to be most suitable for a modern-day Christian law student, Christian lawyer, or Christian judge. First, the *New Jerusalem Bible* was written in plain, modern English; it included seven additional books on Jewish History and the Jewish Apocrypha; it contained superior, in-depth commentary on Bible history; it enabled me to attain a greater understanding of the Catholic faith; and it was a natural complement to the new Latin vocabulary and legal terminology that I learned in law school.

#### **A. Trial of Susanna (Book of Daniel)**

During the summer of 1991, even before I travelled from Florida to Illinois to attend law school, I first read the amazing “Story of Susanna,” found in the *Book of Daniel* in *New Jerusalem Bible* ( but not found in the authorized King James Bible). As a Christian law student, thoroughly enjoyed re-reading the Book of Daniel (the Story of Susanna) in light of the new information which I learned in Civil and Criminal Procedure and Evidence. In the “Story of Susanna,” the Prophet Daniel was presented as a trial lawyer; and as a cunning and clever cross-examiner and advocate who was able to exonerate the wrongfully accused:

---

<sup>1</sup> The **American Association for Justice (AAJ)** (formerly known as the **Association of Trial Lawyers of America (ATLA)**) provided tremendous assistance to me when I launched my private Labor & Employment Law Plaintiff’s law practice in 2002. The AAJ members offered great reading materials, continuing education courses, and mentoring and fellowship. In 2004, I was invited to participate as a “moot court” judge in West Palm Beach, Florida. And so, this essay is written in its honor.

As the story goes, a fair Hebrew wife named Susanna was falsely accused by lecherous voyeurs. As she bathes in her garden, having sent her attendants away, two lustful elders secretly observe the lovely Susanna. When she makes her way back to her house, they accost her, threatening to claim that she was meeting a young man in the garden unless she agrees to have sex with them. She refuses to be blackmailed and is arrested and about to be put to death for promiscuity when a young man named Daniel interrupts the proceedings, shouting that the elders should be questioned to prevent the death of an innocent. After being separated, the two men are cross-examined about details of what they saw but disagree about the tree under which Susanna supposedly met her lover. In the Greek text, the names of the trees cited by the elders form puns with the sentence given by Daniel. The first says they were under a mastic (ὕπο σχίνον, hypo schinon), and Daniel says that an angel stands ready to cut (σχίσει, schisei) him in two. The second says they were under an evergreen oak tree (ὕπο πρίνον, hypo prinon), and Daniel says that an angel stands ready to saw (πρίσαι, prisai) him in two. The great difference in size between a mastic and an oak makes the elders' lie plain to all the observers. The false accusers are put to death, and virtue triumphs.<sup>2</sup>

This “Story of Susanna” found in the *Book of Daniel*, together with the “Trial of St. Paul,” found in the *Book of Acts*, were my initial connections between the Bible and criminal law and procedure. And, of course, I also thoroughly enjoyed reading all four Gospels, the argumentations between Jesus of Nazareth and the Pharisees, scribes, chief priests, and lawyers of his day. But the “Trial of Jesus” left its mark upon my legal reasoning, as I am sure it must have left its mark upon the first Christian bishops, priests, and lawyers who first crafted the canon and civil laws of the Christianized Roman Empire.

## **B. Trial of Jesus (Four Gospels)**

---

<sup>2</sup> [https://en.wikipedia.org/wiki/Susanna\\_\(Book\\_of\\_Daniel\)](https://en.wikipedia.org/wiki/Susanna_(Book_of_Daniel)).

Pope Benedict XVI's book, *Jesus of Nazareth (Holy Week: From the Entrance Into Jerusalem To The Resurrection)*<sup>3</sup>, which contains Chapter 7, "Trial of Jesus," is a perfect example of the impact of Jesus' trial upon Christian jurisprudence.

First, Pope Benedict points out that all four Gospels render the same account regarding the arrest of Jesus. An "armed group of soldiers, sent by Temple authorities and led by Judas, came and arrested, leaving"<sup>4</sup> the other eleven disciples unharmed.

The trial of Jesus occurred in three stages, as follows:

- a. A meeting of the Council in the house of Caiaphas, the chief priest.
- b. Jesus' hearing before the Sanhedrin.
- c. The trial before Pilate.<sup>5</sup>

### **1. Meeting of the Council at the home of Chief Priest Caiaphas**

"John tells us that the chief priests and the Pharisees were gathered together. These were the two leading groups within Judaism at the time of Jesus, and on many points they were opposed to one another. But their common fear was this: 'The Romans will come and destroy both our holy place [that is, the Temple, the holy place for divine worship] and our nation.'"<sup>6</sup>

---

<sup>3</sup> Pope Benedict XVI, *Jesus of Nazareth: Holy Week: From the Entrance Into Jerusalem To the Resurrection* (New York, N.Y.: Ignatius Press, 2007). This review of *Jesus of Nazareth*, Chapter 7, "Trial of Jesus" reflects my enthusiasm toward, and appreciation of, Pope Benedict's scholarship and erudition. The entire book was very insightful and filled with careful analogy and cross-references in order to reflect how Jesus of Nazareth really fulfilled the Old Testament Scripture. I strongly commend it to fellow Christians regardless of denominational affiliation, as well as to non-Christians, because—as seen in Chapter Seven, "Trial of Jesus,"—this book contains various nuggets of philosophical and historical truths which transcend religion.

<sup>4</sup> Pope Benedict XVI, *Jesus of Nazareth: Holy Week: From the Entrance Into Jerusalem To the Resurrection* (New York, N.Y.: Ignatius Press, 2007)(Chapter 7, "Trial of Jesus").

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

During this meeting, Caiaphus argues in favor of crucifying Jesus, stating: “You do not understand that it is expedient for you [i.e. the Jewish nation] that one man should die for the people, and that the whole nation should not perish.”<sup>7</sup>

Pope Benedict shrewdly points out here that Caiaphus’ statement had unwittingly prophesied the divine atonement for the world that was the essence of Jesus’ crucifixion.<sup>8</sup>

## **2. Jesus before the Jewish Sanhedrin**

The Sanhedrin consisted of three groups: the chief priests, elders, and scribes.<sup>9</sup>

The first charge against Jesus was that his “cleansing of the Temple”-- where he drove out the money changers-- constituted “an attack on the Holy Place itself.” This charge was dropped.<sup>10</sup>

The second charge was that Jesus had made himself the Messiah and had put himself on par with God.<sup>11</sup> This charge stuck.

Pope Benedict points out that St. Mark’s account of the Sanhedrin trial “offers us the most authentic form of this dramatic dialogue.”<sup>12</sup>

Chief Priest Caiaphus asked Jesus, “Are you the Son of God,” to which Jesus answered: “You say that I am”; or “You have said so...” or; “I am.” According to Pope Benedict, “[f]rom this we may conclude that Jesus accepted the title Messiah....”<sup>13</sup>

“In any event, as far as the high priest and the members of the assembly were concerned, the evidence for blasphemy was supplied by Jesus’ answer, at which Caiaphus ‘tore his robes, and said: “He has uttered blasphemy”’ (Mt. 26:65).”<sup>14</sup>

---

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

Jesus was found guilty of blasphemy. He was then mocked, assaulted, chained and led off to be brought before Pilate.<sup>15</sup>

### 3. Trial before Pontius Pilate

By the time Jesus is brought before Pontius Pilate, the Roman governor, the time was early morning. “The Roman Governor used to hold court early in the morning.”<sup>16</sup>

“In all essentials, the four Gospels harmonize with one another in their accounts of the progress of the trial.”<sup>17</sup>

Pope Benedict states that the Gospels present Pilate as a pragmatic politician, “who could be brutal when he judged this to be in the interests of public order. Yet he also know that Rome owed its world dominance not least to its tolerance of foreign divinities and to the capacity of Roman law to build peace.”<sup>18</sup>

Pope Benefict concludes that Pilate realized that from “the point of view of the Roman juridical and political order, which fell under his competence, there was nothing serious to hold against Jesus.”<sup>19</sup>

What was Jesus’ testimony? It was this:

Pilate: “So you are a king?”<sup>20</sup>

Jesus: “You say that I am a king. For this I was born, and for this I have come into the world, to bear witness to the truth. Every one who is of the truth hears my voice.” And “My kingship is not of this world; if my kingship were of this world, my servants would fight, that I might not be handed over to the Jews; but my kingship is not from this world.” And “***I came to bear witness to the truth.***”

Pilate: “***What is truth?***”<sup>21</sup>

---

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

#### **4. Trial Before Pilate—Of the Meaning of Truth.**

Pope Benedict correctly points out that “[i]t must have astonished Pilate that Jesus’ own people presented themselves to him as defenders of Rome, when the information at his disposal did not suggest the need for any action on his part.”<sup>22</sup>

At this point, Pope Benedict expounds upon the extraordinary meaning of “truth.”<sup>23</sup>

“What is truth?” Pope Benedict rhetorically asks. “The pragmatist’s question, tossed off with a degree of skepticism, is a very serious question, bound up with the fate of mankind. What, then, is truth? Are we able to recognize it? Can it serve as a criterion for our intellect and will, both in individual choices in the life of the community?” Citing St. Thomas Aquinas, Pope Benedict answers this question by defining “truth” as God’s intellect. “Again and again in the world, truth and error, truth and untruth, are almost inseparably mixed together.”<sup>24</sup>

Pope Benedict finally concludes that “in political argument and in discussion of the foundations of law, [truth] is generally experienced as disturbing. Yet if man lives without truth, life passes him by; ultimately he surrenders the field to whoever is the stronger.”<sup>25</sup>

Reflecting on Pilate’s integrity, Pope Benedict states: “Pilate—let us repeat—knew the truth of this case, and hence he knew what justice demanded of him. Yet ultimately it was the pragmatic concept of law that won the day with him: more important than the truth of this case, he probably reasoned, is the peace-building role of law, and in this way he doubtless justified his action to himself.”

I note, however, that Pilate admitted that he “did not find fault” with Jesus; though Pope Benedict omitted this detail.

#### **5. Trial Before Pilate—Jesus and Barabbas**

---

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.



Pilate apparently did not believe that Jesus was guilty of any crimes. Therefore, he presented Jesus “for the Passover amnesty” and sought a way to release Jesus.<sup>26</sup>

“Behold the man,” said Pilate, looking over at the crowd of bystanders. Jesus was juxtaposed to Barabbas, whom Pope Benedict surmised was a Jewish zealot who sought to overthrow the Roman empire through violence.<sup>27</sup>

Hence, Barabbas and Jesus represented two different approaches to freedom and liberation: Barabbas represented violence and vengeance; while Jesus represent truth and love.<sup>28</sup>

Pope Benedict correctly points out that “[a]gain and again, mankind will be faced with this same choice: *to say yes to God who works only through the power of truth and love, or to build on something tangible and concrete—on violence.*”<sup>29</sup>

---

Anglo-American law on proof (i.e., the law of evidence), civil procedure, and criminal procedure traces its historical, theoretical, and political roots to the trial of Jesus of Nazareth in 33 A.D. and to the teachings on law and justice found in the Old Testament. Particularly, the injustices that were perpetuated against Jesus—an innocent man—at the hands of scholarly and trained Jewish and Roman authorities left an indelible mark upon Christian theologians who, beginning in the fourth century, were later charged with creating a judicial system where judicial rulings were based upon “truth” and not political favoritism and deception.

### **C. Search for Truth: A Legacy of the Christian Jurisprudence**

The one area of American jurisprudence where Christian lawyers and judges can provide a far superior and meaningful contribution is in the gathering, evaluation, and determination of key facts in court cases, and in the establishment of truth in judicial opinions. To be sure, this superior contribution to American law is undergirded by the Christian faith but it is also imminently secular in its

---

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

nature. That is to say, Jesus Christ, as the incarnate *Logos*<sup>30</sup> and as the manifestation of Truth<sup>31</sup>, is as much a part of American jurisprudence as he is part and parcel of the Holy Eucharist. American jurisprudence (constitutional, state and federal) is an expression of the Christian faith.

Indeed, in the quest for religious truth, the Christian clergy have much in common with the quest for secular truth in civil and criminal proceedings among secular lawyers and judges. Both groups must rely on some sort of belief system; the Christians call it “faith” while the secular jurists and lawyers refer to it as “inference.” Whether relying on “faith” or “inference,” both groups often reach a point of *uncertainty* as to what the established facts purport or mean, at which point they must rely upon experience, intuition, inference, and reason in order to make a just and righteous determination.

Whether this point of uncertain involve a question of religious faith, such as the nature of Christ’s divinity, or a point of circumstantial evidence in a murder trial, such as whether an “stand-your-ground” self-defense has credibility, the problem in both secular law and religion involves one of faith: faith in the human ability to reason, to rely on intuition, and draw correct inferences and conclusions based upon the human understanding. Here, I submit, that Christianity is the quintessence of Anglo-American and secular jurisprudence.

Saint Augustine believed that determining whether a thing (that is, a person, an animal, an idea, an inanimate object, etc.) is good or evil was a fundamental obligation of both the secular state and the Christian church. For Saint Augustine, such judging is, in some cases, a necessary evil.

For instance, in *The City of God*, Saint Augustine speaks of the “error of human judgments when the truth is hidden,” in which he writes: “What shall I say of these judgments which men pronounce on men, and which are necessary in communities, whatever outward peace they enjoy? Melancholy and lamentable judgments they are, since the judges are men who cannot discern the consciences

---

<sup>30</sup> John 1:1-14.

<sup>31</sup> “For by consulting the Gospel we learn that Christ is Truth.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645. And “Your law is truth and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48.

of those at their bar.... If such darkness shrouds social life, will a wise judge take his seat on the bench or no? Beyond question he will. For human society, which he thinks it a wickedness to abandon, constrains him and compels him to this duty.” Here, Saint Augustine opines that human society “compels” Christian lawyers and judges to the “duty” of judging and determining just, moral and righteous judgments in practical human affairs. These practical human affairs, according to Augustine, are saturated with ungodly jealousy, rivalry and lust between brothers, where the “wicked war with the wicked; the good also war with the wicked.” According to St. Augustine, the Christian lawyer and judge (as a part of the mystical church) are called out to establish justice through the truth; and, concludes Augustine, “[f]or by consulting the Gospel we learn that Christ is Truth.” This essentially meant that criminal or civil trials in secular and ecclesiastical courts were profound expressions of an effort to establish divine justice.

St. Augustine’s conceptualization of secular justice was adopted by the Roman Catholic Church and became the foundation of its moral theology. Establishing truth in court was a problem and professional practice for moral theology. “In ancient Roman law as well as in medieval canon law, the evaluation of evidence of a fact had to make that fact manifestum. A case was manifest when the proof against the defendant was considered sufficient. In 382, just after the establishment of Christianity as the official faith of the Empire, the Roman emperors ruled that a verdict should only be admitted based on ‘indubitable evidence’ (indiciis indubitatis), and that such evidence had to be brighter than light. Echoing this rule, St. Augustine regarded simple suspicion as an insufficient basis for conviction.”<sup>32</sup>

## SUMMARY

*The Holy Bible* is the foundation of Anglo-American and Western trial advocacy law and procedure, law of evidence (proof), and criminal and civil procedure. Biblical accounts of various trials, such as the trials of Susanna, St. Paul, and Jesus of Nazareth provided a rich source for Christian legal theorists, theologians, and lawyers to derive their own legal and procedural rules for the ecclesiastical and secular courts of Medieval Europe. The foundation of these rules was always “truth.” Christians believed that all “truth” fell within the purview of

the Christian faith, and that Jesus of Nazareth, as the incarnate Word of God, was the quintessence of “truth.”<sup>33</sup> Hence, for secular legal systems of Christianized Western Europe, the “truth” had to be established with care and precision, or else justice could not rightfully be said to have been done, in accordance with Christian standards. These high procedural and evidentiary standards have not only not been improved upon throughout the centuries, but they remain as a viable foundation of the modern state and federal rules of trial, evidence, and procedure in the United States, Western Europe, and many other nation-states. For this reason, Christian lawyers and judges may continue to make a significant contribution to improving every aspect of the administration of justice (alternative dispute resolution, mediation, arbitration, law of evidence, civil and criminal procedure, trial advocacy, lowering the rising costs of litigation, etc.); i.e., to carry out the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

### **PART 1. TRUTH: Foundation of Secular and Sacred Jurisprudence**

Now the “law of evidence” merged nicely into my Christian training, as I have previously mentioned in the introductory part of this essay. I could easily conceptualize that both law and religion shared the same foundation and objective: truth. In law school, I had decided that “truth” was the key to secular jurisprudence (particularly the law of evidence (proof), civil procedure, and criminal law and procedure).

According to Rule 102 of the modern Federal Rules of Evidence, “[t]hese rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.” See, e.g., Figure 1. Similarly, Rule 1 of the Federal Rules of Civil Procedure states that, “[t]hese rules govern the procedure in all civil actions and proceedings in the

---

<sup>33</sup> “Your law is truth and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48. “For by consulting the Gospel we learn that Christ is Truth.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645.

United States district courts.... They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

These pre-Christian era ideas of “truth” and “just determination” originated in pre-Christian and pre-historic ancient times. Early Egyptian, Greek, and Roman jurisprudence later expressed these ideas in terms such as ma’ at, equity, and justice. The Christian religion further refined these ideas. Beginning in the Fourth Century, A.D., the first Catholic bishops within the Roman Empire gave this pagan jurisprudence its Christian character through the canon law of the Roman Catholic Church. And the influence of the canon law early and largely shaped secular laws of England and Western Europe from the Fourth Century A.D. up to modern times. To the Christian legal mind, the idea “truth” was a manifestation of Christ and thus had to be incorporated into court rules and procedures.<sup>34</sup> In other words, the modern rules of evidence and procedure, which were extracted largely from the canon law of the Catholic Church, were designed to serve the Law of Christ.

**Figure 1. “Truth” and the Federal Rules of Evidence (United States)  
Federal Rules of Evidence**

**Article I**

General Provisions: these provisions generally support the general objective and purpose of all of the other evidentiary rules to establish “truth.”

**Article II**

Judicial Notice: in civil or criminal trials, deductive and inductive reasoning are necessary to govern who evidence is used, presented, and weighed. “Judicial notice” is one method for determining whether widely known and general information can be relied upon and presented into court evidence without formal procedures. It is generally subservient to the idea of “truth.”

**Article III**

<sup>34</sup> “Your law is truth and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48. “For by consulting the Gospel we learn that Christ is Truth.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645.

Presumptions in Civil Actions and Proceedings: in civil trials, deductive and inductive reasoning are necessary to govern who evidence is used, presented, and weighed. “Presumptions” govern this fundamental and important activity, and thus is generally subservient to the idea of “truth.”

#### **Article IV**

Relevancy and Its Limits: in criminal and civil trials, only relevant evidence is admissible. Relevancy is term of art and of science; relevant evidence must be capable of proving or disproving an issue in dispute. Relevancy is thus subservient to the idea of “truth.”

#### **Article V**

Privileges: evidence that if made known to the public would damage important family or fiduciary relationships are generally not admissible in criminal and civil trials. For example, confidential communications between an attorney and client, or between a clergymen and a penitent, are generally not admissible in court because such admissibility would damage the ability of such professionals to render effective service.

#### **Article VI**

Witnesses: evidence presented in the form of testimony must be reliable. To determine reliability, a character assessment of a witness is relevant. The ability of the witness to have attained knowledge over the subject matter to which he or she is testifying is also relevant. These ideas were developed during ancient times. They are subservient to the idea of “truth.”

#### **Article VII**

Opinions and Expert Testimony: evidence presented in the form of expert testimony must be reliable. To determine reliability, an educational and character assessment of an expert witness are relevant. Similar to “lay” witnesses (above), the role of the expert witness is to further establish complex facts, such as scientific or medical phenomena, in order help the judge or jury to better understand the “truth.”

#### **Article VIII**

Hearsay: this evidence is defined as information that is based upon the out-of-court word of another person. This evidence is generally not admissible because it is less reliable and diminishes the likelihood of “truth.”

### **Article IX**

Authentication and Identification: this is the procedure that is used to ensure that tangible or written evidence is real and not a fabrication or misrepresentation. This is also used to ensure that “truth” is established.

### **Article X**

Contents of Writings, Recordings, and Photographs: this is the procedure that is used to ensure that tape recordings, video recordings, and other written evidence is real and not a fabrication or misrepresentation of what it purports. This is also used to ensure that “truth” is established.

### **Article XI**

Miscellaneous Rules: These rules generally support the general objective and purpose of all of the other evidentiary rules to establish “truth.”

To the Christian world and to the Christian mind, the “Law of Christ” (i.e., “truth” or “the Spirit of truth” ) must be made manifest in the search for truth<sup>35</sup>; in the assessment of evidence at trial or on appeal; and in the rendering of just judgments within both ecclesiastical and secular courts.

Hence, secular Anglo-American and western jurisprudence was theoretically built upon a theological foundation that held all “truth” is a manifestation of God. See Figure 2. This was true even of the “truth” that had to be established within the secular legal system regarding even the most mundane of legal matters. Such “truth” would later serve as the essence of ideals such as “justice,” “due process of law,” “ordered liberty,” and “the rights of man.” This ideal “truth” was both sacred and secular, but always divine and of utmost importance to Christian jurisprudence. “For by consulting the Gospel,” St. Augustine wrote, “we learn that

---

<sup>35</sup> “Your law is truth and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48. “For by consulting the Gospel we learn that Christ is Truth.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645.

Christ is Truth.”<sup>36</sup> Thus, to the Christian legal mind, “truth” served a dual purpose: to establish justice on earth between human beings and to serve God. Every human activity and endeavor, whether secular or sacred, had to be subordinated to God. As St. Augustine put it: “justice, whose office it is to render to every man his due, whereby there is in man himself a certain just order of nature, so that the soul is subjected to God, and the flesh to the soul, and consequently both soul and flesh to God....”<sup>37</sup>

**Figure 2. Merger of Christianity with Egyptian-Hebrew-Greco-Roman Law**

<b>Christian (i.e., Catholic) Theology</b>	<b>Egyptian-Greco-Roman Law</b>
Jesus Christ ---→	Truth <sup>38</sup>
God ---→	Justice <sup>39</sup>

**Figure 3. A System of Christian (i.e., Catholic) Jurisprudence**

**Christ---→ Truth ←--- God---→ Justice**

Jesus Christ	Christ is Truth
God	Truth is God
Justice	God is Justice

Hence, the Roman canon law and the Christianized Justinian Corpus Juris Civilis early and largely incorporated this Christian doctrine of “truth” into every aspect of fact-gathering, civil or criminal trials, and court administration (e.g.,

<sup>36</sup> Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645.

<sup>37</sup> “God Himself, the fountain of all justice....” *The City of God*, p. 27. “Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms?” *The City of God*, p. 112. “And justice, whose office it is to render every man his due, whereby there is in man himself a certain just order of nature, so that the soul is subjected to God, and the flesh to the soul, and consequently both soul and flesh to God—does not this virtue demonstrate that it is as yet rather laboring towards its end than resting in its finished work?” *The City of God*, p. 678. “[A] republic cannot administered without justice.” *The City of God*, p. 699. “For by consulting the Gospel we learn that Christ is Truth.” *The City of God*, p. 645. “That the last judgment, then, shall be administered by Jesus Christ in the manner predicted in the sacred writings is denied or doubted by no one....” *The City of God*, p. 762.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.



inquisitions, depositions, trials, etc., etc.). And this juridical heritage became the foundation of American jurisprudence. See, e.g., Figure 4. This means that juridical heritage of American jurisprudence comes directly from the Medieval canon law of the Roman Catholic Church, whose priests, judges and lawyers were held to a very high standard with regards to establishing sufficient evidence in order to support the judicial decisions. “Truth,” as the ultimate Christian standard, governed the Christian mind and worldview<sup>40</sup>, separating fact from fiction, and ultimately converting Christian theology into the “queen of the sciences”; first, Christian theology became the queen of the science of law (i.e., jurisprudence); and, afterwards, it became the queen of the natural (medical or biological) sciences and physical sciences as well.

**Figure 4. TRUTH: the Foundation of American Jurisprudence**

<p>1. Law of Evidence (Proof): ascertaining “truth” is the primary objective.</p>	<p>Rule 102 of the modern Federal Rules of Evidence, “[t]hese rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.” See Figure 1 (above).</p>
<p>2. Civil Trials: ascertaining “truth” is the primary objective.</p>	<p>See, e.g., Rule 102 of the modern Federal Rules of Evidence; See Rule 1 of the Federal Rules of Civil Procedure.</p>
<p>3. Civil Procedure: ascertaining “truth” is the primary objective.</p>	<p>See, e.g., Rule 102 of the modern Federal Rules of Evidence; See Rule 1 of the Federal Rules of Civil Procedure.</p>
<p>4. Criminal Trials: ascertaining “truth” is the primary objective.</p>	<p>See, e.g., Rule 102 of the modern Federal Rules of Evidence; See Rule 1 of the Federal Rules of Civil Procedure.</p>

<sup>40</sup> “Your law is truth and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48. “For by consulting the Gospel we learn that Christ is Truth.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645.

5. Criminal Procedure: ascertaining “truth” is the primary objective.	See, e.g., Rule 102 of the modern Federal Rules of Evidence; See Rule 1 of the Federal Rules of Civil Procedure.
---	--

**PART 2 St. Thomas Aquinas’s Moral Theology: Western Law of Evidence, Proof and Procedure**

Finally, I would be remiss if I did not stress the importance of St. Thomas Aquinas—perhaps even more than St. Augustine—is elevating trial proceedings to the importance of “moral theology” during the thirteenth century. For St. Thomas, the “truth” in legal proceedings had to be established with scientific precision, based upon all of the information, because this was a Christian mandate. As a result of his influence, the Catholic Church approached evidentiary principles as a distinct branch of St. Thomas’ “principles of moral theology.” Particularly Thomas, in his *Summa Theologiae*, explained that the rules of proof and procedure were designed to implement God’s command to do equity, justice, and righteous judgment.

In so many words, through the moral theology of St. Thomas Aquinas, the law of evidence, criminal procedure, and civil procedure were developed in Western Europe to facilitate the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgment (Genesis 18:18-19; Proverbs 21:1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3). See, e.g., Figure 5, “Catholic Moral Theology.”

**Figure 5.**

**Catholic Moral Theology: Court Procedure and the Law of Evidence**

<b>Catholic Moral Theology (Genesis 18:18-19; John 7:24; Proverbs 1:2-3)</b>	
1. Canon Law of Evidence	---→ Anglo-American Law of Evidence
2. Canon Law of Criminal Procedure	---→ Anglo-American Criminal Procedure

3. Canon Law of Civil Procedure ---→ Anglo-American Civil Procedure
4. Canon Trial Advocacy Procedure ---→ Anglo-American Trial Advocacy Law (Ecclesiastical Courts)

St. Thomas' legal thought thus reached Anglo-American jurisprudence, centuries later, through the Church of England. As I have previously mentioned in other essays in this series, the modern Anglo-American jurisprudence find its roots in the canon law of the Roman Catholic Church and the Church of England. The trial and crucifixion of Jesus of Nazareth, the trial and execution of St. Paul, and Old Testament accounts of trials and justice (e.g., the story of "Susanna (Book of Daniel)" in the Roman Catholic and Eastern Orthodox bibles) left an indelible mark upon Catholic theologians, canonists, and lawyers. They began to look closely at the integrity of judicial opinions and court rulings to ensure the real and meaningful justice had been done. Because of their Christian beliefs, they held the "truth" to be in the highest, most delicate of judicial endeavors; and these beliefs shaped their court procedures through the canon law of the Catholic Church.

In England, this canon law was part and parcel of a wider Western European jurisprudence. "Given the important role of the medieval church in Western society, the Roman-canon law of procedure became the archetype for Continental European law, and it even influenced English law at an early stage. Medieval English churches and monasteries appealed to the pope, who sent a 'delegated judge' and instructed them how to decide the case depending on the findings. This delegate's decrees were later often cast in more generic form and incorporated into the books of canon law to become standard procedural guides for ecclesiastical and secular courts alike. The instruments of the 'delegated judge' secured the uniformity of procedural law in Europe."<sup>41</sup>

---

<sup>41</sup> John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p

Thus, the Church of England's influence upon its secular civil and criminal justice came through the same canon law that became the foundation of the law of evidence, civil procedure, and criminal procedure throughout Western Europe. The university systems of Europe, which included Cambridge and Oxford universities, developed a uniform system of canon law, proof and procedure for all the ecclesiastical courts. "Beginning in the ninth century, canon lawyers asked for more certain proof. Only the evidence that was as 'clear as the noon-day sun' (luce meridian clarior) (cf. Matthew 13:43), they argued, was sufficient for a legitimate judgment in a poena ordinaria procedure. Whatever remained less clear had to be left to God's Last Judgment (1 Corinthians 5:12-13)."<sup>42</sup>

## CONCLUSION

Christian lawyers and judges have a most unique position among members of the secular bar and bench within the secular state to elevate the standards of substantive and procedural justice. Their idea of "truth" is more than simply a legal standard, but rather it is the manifestation of Christ himself and a divine mandate to do justice and judgment. "Your law is truth and you are truth," concluded Saint Augustine in the *Confessions*; and, furthermore, "[f]or by consulting the Gospel we learn that Christ is Truth," he similarly concluded in *The City of God*.<sup>43</sup> Importantly, Christian lawyers and judges have a unique opportunity to inform, and indeed demonstrate, the divine nature of all truth; and to remind the non-Christian members of the secular legal system the laws of trial advocacy, discovery, evidence, proof, and procedure were extracted out of Christian moral theology that is the central message of Jesus of Nazareth to love ye one another (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3)

## THE END

---

<sup>42</sup> Ibid.

<sup>43</sup> "Your law is truth and you are truth." Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48. "For by consulting the Gospel we learn that Christ is Truth." Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645.

## **Bibliography:**

Ford, Roderick. *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity*. Tampa, Fl.: Xlibris Pub. (2015).

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

## **References:**

Aquinas, Thomas. *Summa Theologica*. New York, NY: The Catholic Primer, 2005.

Augustine, Aurelius (Saint). *The City of God*. New York, NY: The Modern Library (1950).

Bode, Carl. *The Portable Emerson*. New York, NY: Penguin Books (1981).

Burt, Edwin A. *The English Philosophers From Bacon To Mill*. New York, NY: The Modern Library (1967).

*Catechism of the Catholic Church* (New York, NY: Doubleday, 1997).

Daniell, Timothy Tyndale. *The Lawyers: The Inns of Court: The Home of the Common Law*. New York, N.Y.: Oceana Publications, Inc. (1976).

Russell, Bertrand. *A History of Western Philosophy*. New York, NY: Touchstone, 2007.

Smith, Goldwin. *A History of England*. New York, NY: Charles Scribner's Sons (1957).

*The Federalist Papers*. Nashville, TN: Thomas Nelson, Inc. 2014.

Woods, Thomas E. *How The Catholic Church Built Western Civilization*. Washington, D.C.: Regnery Publishing, Inc., 2005.