

# **ST. LUKE'S INN OF COURT**

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

**By**

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

## INTRODUCTION<sup>1</sup>

The law of master and servant (or what is today called “labor and employment law”), like most other areas of the English common law, grew out from the Medieval feudal land tenure system and developed under the auspices of the Roman canon law (the mother of England’s equity jurisprudence) within the Church of England. Hence, the Christian faith and the “law of Christ”<sup>2</sup> were sewn deeply into this relationship and have remained there, even to this day. The general ethical and equitable duties of good faith and fair dealing, equality of treatment, workplace safety, adequate compensation, etc., under the ancient English common law of master and servant have not significantly changed in over four hundred years. See, e.g. Appendices A through C. In the United States, the general Christian character of England’s law of master and servant has been codified in landmark economic legislation such as the Sherman Antitrust Act of 1890, the National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, the Taft-Hartley Act of 1947, Title VII of the 1964 Civil Rights Act, the Americans With Disabilities Act of 1990, the Family and Medical Leave Act of 1993, and similar laws.<sup>3</sup>

In colonial New England, the Puritan law for the regulation of masters and servants was extracted from this same English common-law jurisprudence. The Bible served as the foundation for both systems. The Puritans admonished their magistrates, masters, and persons in authority to treat their servants humanely and

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<sup>1</sup> This paper is dedicated to the **Human Resources Certification Institute (HRCI)**, which awarded me the “**SPHR**” designation in 2016; the **School of Industrial and Labor Relations (ILR) School at Cornell University**, which awarded me a post-graduate diploma in 2015; and the **School of Human Resources and Labor Relations at Michigan State University**. From 2005 to 2016, these great organizations provided me with a significant amount of information regarding labor history, labor-management theory, human resources ethics and best practices, federal and state laws, and a host of other useful strategic H.R. management materials, which have enabled me to better appreciate the contents of this paper, together with the Biblical regulations regarding the ‘master and servant’ relationships, including the development of the common law of master-and-servant in England and colonial New England during the period 1600 to 1900. I find that the Bible’s teachings are quite universal and just as applicable to today’s labor and management problems as they were throughout the previous centuries.

<sup>2</sup> 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).

<sup>3</sup> It is my firm conclusion, that these federal statutes were enacted in the United States following a century of juridical experimentation with secular socioeconomic theories such as “Social Darwinism,” and with turning away from the classical Christian and western natural law philosophy of the Roman Catholic and Anglican churches; and that these landmark statutes and other similar laws, such as state and federal workers’ compensation statutes, were enacted, albeit unwittingly, after economic, social and political necessity, and as a form of tacit admission to the validity of the “law of Christ, as being the “fundamental law” for practical, secular affairs.

with *an acknowledgement of the sovereignty of God* and of the “law of Christ.” This admonishment to humanely treat servants came directly from, and was at the heart of, the Old Testament Law.<sup>4</sup> The Book of Exodus and ensuing books within the Bible, wherein the church is repeatedly reminded that it was once “strangers in the land of Egypt,”<sup>5</sup> and subjected to discrimination and hard bondage, promulgates the “law of Christ”<sup>6</sup> as the moral law that governs the master and servant relationship.<sup>7</sup> Therefore, at the core of Judea-Christian ethics within western jurisprudence is justice, fairness, and equity (i.e., no unjust discrimination)<sup>8</sup> within the master-servant relationship. For instance, the Book of Leviticus states:

<sup>33</sup> And if a stranger sojourn with thee in your land, ye shall not vex him.

<sup>34</sup> But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt: I am the Lord your God.

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<sup>4</sup> See, e.g., Appendix A, “Biblical Regulations of the Master and Servant Relationship.”

<sup>5</sup> See, e.g., Exodus 1:8-14:

8 Now there arose up a new king over Egypt, which knew not Joseph.

9 And he said unto his people, Behold, the people of the children of Israel are more and mightier than we:

10 Come on, let us deal wisely with them; lest they multiply, and it come to pass, that, when there falleth out any war, they join also unto our enemies, and fight against us, and so get them up out of the land.

11 Therefore they did set over them taskmasters to afflict them with their burdens. And they built for Pharaoh treasure cities, Pithom and Raamses.

12 But the more they afflicted them, the more they multiplied and grew. And they were grieved because of the children of Israel.

13 And the Egyptians made the children of Israel to serve with rigour....

14 And they made their lives bitter with hard bondage, in mortar, and in brick, and in all manner of service in the field: all their service, wherein they made them serve, was with rigour.

<sup>6</sup> 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).

<sup>7</sup> See, e.g., Appendix A, “Biblical Regulations of the Master and Servant Relationship.”

<sup>8</sup> See, e.g., Appendix A, “Biblical Regulations of the Master and Servant Relationship.”

<sup>35</sup> Ye shall do no unrighteousness in judgment, in meteyard, in weight, or in measure.

<sup>36</sup> Just balances, just weights, a just ephah, and a just hin, shall ye have: I am the Lord your God, which brought you out of the land of Egypt.

<sup>37</sup> Therefore shall ye observe all my statutes, and all my judgments, and do them: I am the Lord.<sup>9</sup>

It is for this reason, together with the influence of Roman Catholic and Wesleyan-Methodist social doctrine upon my law-practice philosophy, that I have advocated for the Church to play an active, progressive role in labor and management relations in the United States.

In law school during the early 1990s, at the University of Illinois, my immediate impression was the Christian doctrine of faith and religion was not relevant or related to the law of contracts, property law, labor and employment law, or the law of business organizations, commerce, and economics. While at this same university, in a graduate course called “Theorizing the Market,” I learned that Karl Marx and the socialists had significantly influenced the economic debate within the American legal academy; so much so that even non-Marxists law students were being subliminally trained to think of the American social order from a Marxist worldview: standard American jurisprudence had divided all Americans up into self-interested, status-conscious, materialistic, and pleasure-seeking “social classes”; between them, there was inherent class conflict, class interest, and class struggle; simultaneously, there was no natural law (and no consideration for traditional ecclesiastical jurisprudence); and, the means of production and class-conscious economic struggle were at the very core of American law, society, and culture.

The owners of capital (i.e., the white males; the Europeans; the global imperialists) were locked into class warfare and struggle against the rest of us: women, people of color, ethnic minorities, the poor, etc. In college and law school, as well as early in my legal career, I was neatly placed into one of these social “classes” and assigned marching orders to stay within my lane, to fulfill my social

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<sup>9</sup> Leviticus 19:33-37.

or class role; and to assert rights and claims from an African American bourgeoisie perspective, perhaps most accurately reflected in the programme of the National Association for the Advancement of Colored People. In law school, I was told: “you do not hold ideas, ideas hold you!”

By the late 1990s, the Christian Church and Christian ideals had been completely removed from the practical problems of sociology, economics, and war and peace within American thought. Pastors and churches had no meaningful role to play within the secular state or the commercial world. Since the death of Martin Luther King, Jr. in 1968, no other clergyman had come close to expressing a social philosophy for the American church or on behalf of the working classes. Instead, the new civil rights doctrine of “equality”<sup>10</sup> had been dissevered from the natural law of the universal orthodox church<sup>11</sup> and had defaced American civil rights with secularism and moral relativism.

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<sup>10</sup>I have since my second year of law school embraced an “Augustinian” view of “natural law,” and believed it to be the foundations of western jurisprudence, including the English common law and ecclesiastical law. St. Augustine’s described “**nature**” as “**peace**”; and “**natural law**” as the “**law of peace.**” According this view, “inequality” is inherent in nature, even though all beings are equal in worth, importance, and dignity. Inequality is necessary to balance out the forces of nature and to establish the peace, tranquility (e.g., health and prosperity), and concord within every aspect of creation, including human political organizations, families, and nations. “The peace of all things is the tranquility of order,” wrote St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 690-693. “**Order is the distribution which allots things equal and unequal, each to its own place.... 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.... But as this divine Master inculcates two precepts—the love of God and the love of our neighbor—and as in these precepts a man finds three things he has to love—God; himself, and his neighbor—and that he who loves God loves himself thereby, it follows that he must endeavor to get his neighbor to love God, since he is ordered to love his neighbor as himself. He ought to make this endeavor in behalf of his wife, his children, his household, all within his reach, even as he would wish his neighbor to do the same for him if he needed it; and consequently he will be at peace, or in well-ordered concord, with all men, as far as in him lies. And this is the order of this concord that a man, in the first place, injure no one, and, in the second, do good to every one he can reach.**” Primarily, therefore, his own household are his care, for **the law of nature and of society** gives him readier access to them and greater opportunity of serving them. And hence the apostle says, ‘Now, if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.’ **This is the origin of domestic peace, or the well-ordered concord of those in the family who rule and those who obey. For they who care for the rest rule—husband the wife, the parents the children, the masters the servants; and they who are cared for obey—the women their husbands, the children their parents, the servants their masters.** But in the family of the just man who lies by faith and is as yet a pilgrim journeying on to the celestial city, even those who rule serve those whom they seem to command; for they rule not from a love of power, **but from a sense of the duty they owe to others—not because they are proud of authority, but because they love mercy.**” Ibid, p. 691-693.

<sup>11</sup> Ibid.

As economist Joseph Schumpeter had eloquently explained in the first four chapters of his work *Capitalism, Socialism and Democracy*,<sup>12</sup> Karl Marx's labor theory of value; social theory of class-struggle; financial theory of surplus profit; and economic theory of wage exploitation, albeit seriously flawed theories for several reasons, had nevertheless had a profound impact upon the entire world: Eastern Europe, Asia, Africa, Latin America, and the United States. Schumpeter had described Karl Marx as "Prophet," "Sociologist," "Economist," and "the Teacher."<sup>13</sup> According to Schumpeter, Marx "was a prophet"<sup>14</sup> who emerged during the mid- to late-nineteenth century when unregulated capitalism had driven the poor into the ground; "[at that time], to millions of human hearts the Marxian message of the terrestrial paradise of socialism meant a new ray of light and a new meaning of life."<sup>15</sup> "Call Marxist religion a counterfeit if you like," wrote Schumpeter, "but do not overlook or fail to admire the greatness of the achievement."<sup>16</sup> Schumpeter thus concluded that there was a grain of truth in Marx's socioeconomic philosophy, stating that "if Marx had not been more than a purveyor of phraseology, he would be dead by now."<sup>17</sup>

According to Schumpeter, Marxism had been able to appeal to the masses "by formulating with unsurpassed force that feeling of being thwarted and ill treated which is the auto-therapeutic attitude of the unsuccessful many...preaching in the garb of analysis and analyzing with a view to heartfelt needs, this is what conquered passionate allegiance and gave to the Marxist that supreme boon which consists in the conviction that what one is and stands for can never be defeated... Personal force and the flash of prophecy work independently of the contents of the creed."<sup>18</sup> Schumpeter's assessment of Marxism was that it held that free-market capitalism was bound to eat itself alive, because imperialism, racism, nationalism, and war were necessary to sustain the capitalist system.

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<sup>12</sup> I was introduced to this book in 1993 by A. Belden Fields (Ph.D., Yale), in his graduate course on political economy, "Theorizing the Market."

<sup>13</sup> Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York, N.Y.: Harperperennial, 2008), pp. 5-62.

<sup>14</sup> *Ibid.*, p. 5.

<sup>15</sup> *Ibid.*, p. 6.

<sup>16</sup> *Ibid.* p. 6.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

But “Marxist socialism,” Schumpeter concluded, “promises paradise on this side of the grave.... The least important point about this is that it explains the success of Marxism.... Purely scientific achievement... would have never won the immortality... which is his.”<sup>19</sup> Marx “undoubtedly falsified the true psychology of the workman” by substituting “his own shibboleth of ‘class consciousness.’”<sup>20</sup> Marx “had probably a clear perception of what the masses are and he looked far above their heads toward social goals altogether beyond what they thought or wanted.”<sup>21</sup>

During the early 1990s, while in college and law school, I could not help but to “compare and contrast” the teachings of Jesus of Nazareth with the dialectical materialism of Karl Marx. As a Christian, I was often confronted by Marx’s description of “religion” as the “opium” of the oppressed working classes.<sup>22</sup> **But what if capital and labor, rich and poor, could all be converted to being Christians, or what if they each and all agreed to bind themselves to Christian norms and Christian principles of behavior?** And I often wondered why the doctors of ministry, divinity and theology within the established, organized church; or why the doctors of law and doctors of philosophy at the bar and bench, or at the university, never seemed to grapple with these questions.

But even as a law student, I stumbled upon a most unusual idea: the “law of Christ”<sup>23</sup> needed to be brought to the forefront of American jurisprudence and legal systems. **Christian methods of alternative-dispute resolution are most urgently needed in the United States!** Hence, my juris doctor thesis, *The American Jurist: A Natural Law Interpretation of the U.S. Constitution, 1787 to 1910*, was based upon this idea. Since about 2010, I have advocated on behalf of the holy, apostolic and universal church; namely, I have argued that that the Christian Church needs trained lawyers and legal advocates to vindicate the “law of Christ” within private and public secular spaces; and that the secularist “class-struggle” within American economic, social and political life needed to be mediated by this “law of Christ.”

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<sup>19</sup> Ibid., p. 5.

<sup>20</sup> Ibid., p. 7.

<sup>21</sup> Ibid., p. 7.

<sup>22</sup> Karl Marx described “Religion as... opium of the oppressed” see:

[https://en.wikipedia.org/wiki/Opium\\_of\\_the\\_people](https://en.wikipedia.org/wiki/Opium_of_the_people)

<sup>23</sup> 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).



As the philosopher Bertrand Russell once observed, the dichotomy between these two worldviews between Christianity and Marxism is pronounced: “[t]he Jewish pattern of history, past and future, is such as to make a powerful appeal to the oppressed and unfortunate at all times. Saint Augustine adapted this pattern to Christianity,<sup>24</sup> Marx to Socialism. To understand Marx psychologically, one should use the following dictionary:

Yahweh = Dialectical Materialism

The Messiah = Marx

The Elect = The Proletariat

The Church = The Communist Party

The Second Coming = The Revolution

Hell = Punishment of the Capitalists

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<sup>24</sup> I have since my second year of law school embraced an “Augustinian” view of “natural law,” and believed it to be the foundations of western jurisprudence, including the English common law and ecclesiastical law. St. Augustine’s described “nature” as “peace”; and “natural law” as the “law of peace.” According this view, “inequality” is inherent in nature, even though all beings are equal in worth, importance, and dignity. Inequality is necessary to balance out the forces of nature and to establish the peace, tranquility (e.g., health and prosperity), and concord within every aspect of creation, including human political organizations, families, and nations. “The peace of all things is the tranquility of order,” wrote St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 690-693. “**Order is the distribution which allots things equal and unequal, each to its own place.... 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.... But as this divine Master inculcates two precepts—the love of God and the love of our neighbor—and as in these precepts a man finds three things he has to love—God; himself, and his neighbor—and that he who loves God loves himself thereby, it follows that he must endeavor to get his neighbor to love God, since he is ordered to love his neighbor as himself. He ought to make this endeavor in behalf of his wife, his children, his household, all within his reach, even as he would wish his neighbor to do the same for him if he needed it; and consequently he will be at peace, or in well-ordered concord, with all men, as far as in him lies. And this is the order of this concord that a man, in the first place, injure no one, and, in the second, do good to every one he can reach.** Primarily, therefore, his own household are his care, for **the law of nature and of society** gives him readier access to them and greater opportunity of serving them. And hence the apostle says, ‘Now, if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.’ **This is the origin of domestic peace, or the well-ordered concord of those in the family who rule and those who obey. For they who care for the rest rule—husband the wife, the parents the children, the masters the servants; and they who are cared for obey—the women their husbands, the children their parents, the servants their masters.** But in the family of the just man who lies by faith and is as yet a pilgrim journeying on to the celestial city, even those who rule serve those whom they seem to command; for they rule not from a love of power, **but from a sense of the duty they owe to others—not because they are proud of authority, but because they love mercy.**” Ibid, p. 691-693.

The Millennium = The Communist Commonwealth.”<sup>25</sup>

I chose natural law, private property, and the orthodox catholic faith over Marxism, howsoever I was able to reconcile my admiration for Marx’s superior analytical skills. I was not unmindful that men like W.E.B. Du Bois, Paul Robeson, and Nelson Mandela had befriended the Soviet Union and became socialists; or that many African heads of state and African freedom fighters (e.g., Prime Minister Kwame Nkrumah of Ghana and Julius Nyerere of Tanzania) and African nation-states, in their struggle for independence during the 1950s, 60s, and 70s embraced socialism; or that many of my local comrades within the African American human-rights community, such as the Uhuru Movement in St. Petersburg, Florida, were avid socialists. (*I then reasoned that these developments were not permanent but merely temporary stop-gap measures of a people struggling to attain their ultimate independence and freedom*). Nor was I unmindful of the fact that the Congressional Black Caucus in the United States Congress and most of the black leadership within the Democratic Party were oriented around non-sectarian, secularist ideals—many of which were opposite to Christian orthodoxy regarding natural law and private property-- that heavily resembled government welfare or socialism. But I believed that, notwithstanding this overwhelming support of liberalism, socialism and the corporate welfare state amongst my brothers and sisters within the Pan-African world, I remained staunchly committed to the Christian-wing of that Pan-African world (e.g., the tradition of Bishop Richard Allen, Bishop James Hood, Bishop James Varick, Bishop Henry McNeal Turner, Rev. Alexander Crummell, and Rev. Martin Luther King, Jr.); and I argued that the “Social Gospel” needed to be the *Alpha* and *Omega* for both the African continent and for the communities of the African diaspora in North America, the Caribbean, and Latin America—**beginning with the problem of capital and labor!** From between 2002 to 2015, I threw the whole weight of my professional career goals toward the economic emancipation of African American workers in North America. I visited Michigan State, Harvard, and the University of Chicago, attending academic and professional-development forums within the field of labor and employment law, human resources management, and labor economics. Simultaneously, I delved into labor history, labor economics, and public policy, and the result was the publications of my books, *The Evasion of African American*

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<sup>25</sup> Bertrand Russell, *A History of Western Philosophy* (New York, N.Y.: Touchstone, 1972), pp. 363-364.

*Workers* (2008) and *Labor Matters: The African American Labor Crisis, 1861-Present* (2015).

At some point during the period 2010 and 2015, I concluded that the relationship between employer and employee, or between master and servant, was rightly “unequal” but still needed to be mediated through institutions founded upon the Christian religion and worldview. How might the American church influence the “master-servant (i.e., employer-employee)” relationship in the United States? During the period 2001 to 2010, I viewed the Methodist Movement of the 18<sup>th</sup> century as being interesting and reflective of my personal philosophy practicing law within the secular world. And I especially liked Pope Leo XIII’s ideas about capital and labor,<sup>26</sup> private property and natural law; and I adopted verbatim within my own philosophy the following “Roman Catholic” logic on this important matter:

### **Rights and Duties of Capital and Labor**

1. That **the spirit of revolutionary change**, which has long been disturbing the nations of the world, should have passed beyond the sphere of politics and made its influence felt in the **cognate sphere of practical economics** is not surprising. The elements of the conflict now raging are unmistakable, in the vast expansion of industrial pursuits and the marvellous discoveries of science; **in the changed relations between masters and workmen**; in the **enormous fortunes of some few individuals, and the utter poverty of the masses**; the increased self reliance and closer mutual combination of the working classes; as also, finally, in the prevailing moral degeneracy....
2. Therefore, venerable brethren, as on former occasions when it seemed opportune to refute false teaching, **We have addressed you in the interests of the Church and of the common weal, and have issued letters bearing on political power, human liberty, the Christian constitution of the State, and like matters, so have We thought it expedient now to speak on the condition of the working classes**....It is no easy matter to define the relative rights and mutual duties of the rich and of the poor, of capital and of labor. And the danger lies in this, that crafty agitators are intent on making use of these differences of opinion to pervert men's judgments and to stir up the people to revolt....
3. In any case we clearly see, and on this there is general agreement, that some opportune remedy must be found quickly for the misery and wretchedness pressing so unjustly on the majority of the working class: for the ancient

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<sup>26</sup> See, e.g., *Rerum Novarum* (Encyclical of Pope Leo XIII on Capital and Labor (May 1891)).

workingmen's guilds were abolished in the last century, and no other protective organization took their place. Public institutions and the laws set aside the ancient religion. Hence, by degrees it has come to pass that working men have been surrendered, isolated and helpless, to the hardheartedness of employers and the greed of unchecked competition. **The mischief has been increased by rapacious usury**, which, although more than once condemned by the Church, is nevertheless, **under a different guise, but with like injustice, still practiced by covetous and grasping men**. To this must be added that **the hiring of labor and the conduct of trade are concentrated in the hands of comparatively few**; so that a small number of very rich men have been able to lay upon the teeming masses of the laboring poor a yoke little better than that of slavery itself....

4. To remedy these wrongs the socialists, working on the poor man's envy of the rich, are striving to do away with private property, and contend that individual possessions should become the common property of all, to be administered by the State or by municipal bodies. **They hold that by thus transferring property from private individuals to the community, the present mischievous state of things will be set to rights, inasmuch as each citizen will then get his fair share of whatever there is to enjoy**. But their contentions are so clearly powerless to end the controversy that were they carried into effect the working man himself would be among the first to suffer. They are, moreover, emphatically unjust, for they would rob the lawful possessor, distort the functions of the State, and create utter confusion in the community.....

5. It is surely undeniable that, when a man engages in remunerative labor, the impelling reason and motive of his work is to obtain property, and thereafter to hold it as his very own. **If one man hires out to another his strength or skill, he does so for the purpose of receiving in return what is necessary for the satisfaction of his needs; he therefore expressly intends to acquire a right full and real, not only to the remuneration, but also to the disposal of such remuneration, just as he pleases. Thus, if he lives sparingly, saves money, and, for greater security, invests his savings in land, the land, in such case, is only his wages under another form; and, consequently, a working man's little estate thus purchased should be as completely at his full disposal as are the wages he receives for his labor....** But it is precisely in such power of disposal that ownership obtains, whether the property consist of land or chattels. Socialists, therefore, by endeavoring to transfer the possessions of individuals to the community at large, strike at the interests of every wage-earner, since they would deprive him of the liberty of disposing of his wages, and thereby of all hope and possibility of increasing his resources and of bettering his condition in life.

6. What is of far greater moment, however, is the fact that the remedy they propose is manifestly against justice. **For, every man has by nature the right to possess property as his own**. This is one of the chief points of distinction between man and the animal creation, for the brute has no power of self direction, but is governed by two main instincts, which keep his powers on the alert, impel

him to develop them in a fitting manner, and stimulate and determine him to action without any power of choice....

8. **The fact that God has given the earth for the use and enjoyment of the whole human race can in no way be a bar to the owning of private property.** For God has granted the earth to mankind in general, not in the sense that all without distinction can deal with it as they like, but rather that no part of it was assigned to any one in particular, and that the limits of private possession have been left to be fixed by man's own industry, and by the laws of individual races....

9. Here, again, we have further proof that private ownership is in accordance with the law of nature. Truly, that which is required for the preservation of life, and for life's well-being, is produced in great abundance from the soil, but not until man has brought it into cultivation and expended upon it his solicitude and skill....

13. **That right to property, therefore, which has been proved to belong naturally to individual persons, must in like wise belong to a man in his capacity of head of a family;** nay, that right is all the stronger in proportion as the human person receives a wider extension in the family group. **It is a most sacred law of nature that a father should provide food and all necessaries for those whom he has begotten; and, similarly, it is natural that he should wish that his children, who carry on, so to speak, and continue his personality, should be by him provided with all that is needful to enable them to keep themselves decently from want and misery amid the uncertainties of this mortal life.** Now, in no other way can a father effect this except by the ownership of productive property, which he can transmit to his children by inheritance....

17. It must be first of all recognized that the condition of things inherent in human affairs must be borne with, for it is impossible to reduce civil society to one dead level. Socialists may in that intent do their utmost, but all striving against nature is in vain. **There naturally exist among mankind manifold differences of the most important kind; people differ in capacity, skill, health, strength; and unequal fortune is a necessary result of unequal condition. Such inequality is far from being disadvantageous either to individuals or to the community. Social and public life can only be maintained by means of various kinds of capacity for business and the playing of many parts; and each man, as a rule, chooses the part which suits his own peculiar domestic condition....**

19. ... Just as the symmetry of the human frame is the result of the suitable arrangement of the different parts of the body, so in a State is it ordained by nature that **these two classes should dwell in harmony and agreement**, so as to maintain the balance of the body politic. **Each needs the other: capital cannot do without labor, nor labor without capital. Mutual agreement results in the beauty of good order, while perpetual conflict necessarily produces confusion**

**and savage barbarity.** Now, in preventing such strife as this, and in uprooting it, **the efficacy of Christian institutions is marvellous and manifold. First of all, there is no intermediary more powerful than religion (whereof the Church is the interpreter and guardian) in drawing the rich and the working class together, by reminding each of its duties to the other, and especially of the obligations of justice....**

#### [DUTIES OF EMPLOYEES]

20. Of these duties, the following bind the proletarian and the worker: fully and faithfully to perform the work which has been freely and equitably agreed upon; never to injure the property, nor to outrage the person, of an employer; never to resort to violence in defending their own cause, nor to engage in riot or disorder; and to have nothing to do with men of evil principles, who work upon the people with artful promises of great results, and excite foolish hopes which usually end in useless regrets and grievous loss.

The following duties bind the wealthy owner and the employer: not to look upon their work people as their bondsmen, but **to respect in every man his dignity as a person ennobled by Christian character.**

They are reminded that, according to natural reason and Christian philosophy, working for gain is creditable, not shameful, to a man, since it enables him to earn an honorable livelihood; but to misuse men as though they were things in the pursuit of gain, or to value them solely for their physical powers - that is truly shameful and inhuman.

Again justice demands that, in dealing with the working man, religion and the good of his soul must be kept in mind.

#### [DUTIES OF EMPLOYERS]

Hence, the employer is bound to see that the worker has time for his religious duties; that he be not exposed to corrupting influences and dangerous occasions; and that he be not led away to neglect his home and family, or to squander his earnings.

Furthermore, the employer must never tax his work people beyond their strength, or employ them in work unsuited to their sex and age. His great and principal duty is to give every one what is just.

Doubtless, before deciding whether wages are fair, many things have to be considered; but wealthy owners and all masters of labor should be mindful of this - **that to exercise pressure upon the indigent and the destitute for the sake of gain, and to gather one's profit out of the need of another, is condemned by all laws, human and divine.**

To defraud any one of wages that are his due is a great crime which cries to the avenging **anger of Heaven. "Behold, the hire of the laborers... which by fraud has been kept back by you, crieth; and the cry of them hath entered into the ears of the Lord of Sabaoth."**

(6) Lastly, **the rich must religiously refrain from cutting down the workmen's earnings, whether by force, by fraud, or by usurious dealing; and with all the greater reason because the laboring man is, as a rule, weak and unprotected, and because his slender means should in proportion to their scantiness be accounted sacred.** Were these precepts carefully obeyed and followed out, would they not be sufficient of themselves to keep under all strife and all its causes?

#### [DUTIES OF THE CHURCH]

21. But **the Church, with Jesus Christ as her Master and Guide,** aims higher still. She lays down precepts yet more perfect, and **tries to bind class to class in friendliness and good feeling....**

25. But, if Christian precepts prevail, the respective classes will not only be united in the bonds of friendship, but also in those of brotherly love. For they will understand and feel that all men are children of the same common Father, who is God...

27. On this subject we need but recall for one moment the examples recorded in history. Of these facts there cannot be any shadow of doubt: for instance, that civil society was renovated in every part by Christian institutions....

28. **Neither must it be supposed that the solicitude of the Church is so preoccupied with the spiritual concerns of her children as to neglect their temporal and earthly interests. Her desire is that the poor, for example, should rise above poverty and wretchedness, and better their condition in life; and for this she makes a strong endeavor.** By the fact that she calls men to virtue and forms them to its practice she promotes this in no slight degree. Christian morality, when adequately and completely practiced, leads of itself to temporal prosperity....

29. **The Church, moreover, intervenes directly in behalf of the poor, by setting on foot and maintaining many associations which she knows to be efficient for the relief of poverty.** Herein, again, she has always succeeded so well as to have even extorted the praise of her enemies....

30. Thus, by degrees, came into existence the patrimony which the Church **has guarded with religious care as the inheritance of the poor.** Nay, in order to spare them the shame of begging, **the Church has provided aid for the needy.** **The common Mother of rich and poor has aroused everywhere the heroism of**

**charity**, and has established congregations of religious and many other useful institutions for help and mercy, so that hardly any kind of suffering could exist which was not afforded relief....

31. It cannot, however, be doubted that to attain the purpose we are treating of, not only the Church, but all human agencies, must concur. All who are concerned in the matter should be of one mind and according to their ability act together. It is with this, as with providence that governs the world; the results of causes do not usually take place save where all the causes cooperate. It is sufficient, therefore, to inquire what part the State should play in the work of remedy and relief.

32. By the State we here understand, not the particular form of government prevailing in this or that nation, but the State as rightly apprehended; that is to say, any government conformable in its institutions to right reason and natural law, and to those dictates of the divine wisdom which we have expounded in the encyclical On the Christian Constitution of the State....

33. There is another and deeper consideration which must not be lost sight of. **As regards the State, the interests of all, whether high or low, are equal. The members of the working classes are citizens by nature and by the same right as the rich; they are real parts, living the life which makes up, through the family, the body of the commonwealth;** and it need hardly be said that they are in every city very largely in the majority. It would be irrational to neglect one portion of the citizens and favor another, and therefore the public administration must duly and solicitously provide for the welfare and the comfort of the working classes; otherwise, that law of justice will be violated which ordains that each man shall have his due. To cite the wise words of St. Thomas Aquinas: "As the part and the whole are in a certain sense identical, so that which belongs to the whole in a sense belongs to the part....

45. Let the **working man and the employer make free agreements**, and in particular let them **agree freely as to the wages**; nevertheless, there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that wages ought not to be insufficient to support a frugal and well-behaved wage-earner....

If through necessity or fear of a worse evil the workman accept harder conditions because an employer or contractor **will afford him no better, he is made the victim of force and injustice.**

In these and similar questions, however - such as, for example, **the hours of labor in different trades, the sanitary precautions to be observed in factories and workshops, etc.** - in order to supersede undue interference on the part of the State, especially as circumstances, times, and localities differ so widely, it is advisable that recourse be had to societies or boards such as We shall



mention presently, or to some other mode of safeguarding the interests of the wage-earners; the State being appealed to, should circumstances require, for its sanction and protection.

46. If a **workman's wages be sufficient to enable him comfortably to support himself, his wife, and his children**, he will find it easy, if he be a sensible man, to practice thrift, and he will not fail, by cutting down expenses, to put by some little savings and thus secure a modest source of income.

Nature itself would urge him to this. We have seen that **this great labor question cannot be solved save by assuming as a principle that private ownership must be held sacred and inviolable**. The law, therefore, should favor ownership, and its policy should be to induce as many as possible of the people to become owners....

57. To sum up, then, We may lay it down as a general and lasting law **that working men's associations should be so organized and governed as to furnish the best and most suitable means for attaining what is aimed at**, that is to say, for helping each individual member to better his condition to the utmost in **body, soul, and property**. It is clear that **they must pay special and chief attention to the duties of religion and morality**, and that social betterment should have this chiefly in view; otherwise they would lose wholly their special character, and end by becoming little better than those societies which take no account whatever of religion. **What advantage can it be to a working man to obtain by means of a society material well-being, if he endangers his soul for lack of spiritual food? ....**

63. **In regard to the Church, her cooperation will never be found lacking**, be the time or the occasion what it may; and she will intervene with all the greater effect in proportion as her liberty of action is the more unfettered. Let this be carefully taken to heart by those whose office it is to safeguard the public welfare. **Every minister of holy religion must bring to the struggle the full energy of his mind and all his power of endurance.**

As a consequence, during the period 2008 and 2018, I worked out a Christ-centered, multidisciplinary approach to civil rights and labor and management relations, with three important publications: *The Evasion of African American Workers* (2008)<sup>27</sup>; *Labor Matters: The African American Labor Crisis: 1861 to*

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<sup>27</sup> It was then when I started lay the plot for *Bishop Edwards: A Gospel For African American Workers* (2008), a novel that takes a very critical look at the relationship between the black middle class to the white ruling classes; between the black middle class and the black underclasses; and between the traditional or Christian values and modern-day commercial or secular values. Throughout my academic and professional career, I have had to contend with and address Marxists, socialists, non-Christian Pan-Africanists, secular-oriented churchmen—men and women from within the African American community who jettisoned the Christian faith and the role of the black church in effectuating social advancement. From with the African American community, such as all-black bar associations, I

*Present* (2011, 2015); and *Bishop Edwards: A Gospel for African American Workers* (2015). These were followed up with my published textbooks on the subject, *Understanding Employment Law* (2017) and *Understanding Labor Law* (2018). During this period, I also made efforts with various local churches to construct “labor ministries” and “social justice” ministries for the delivery of effective, high-quality legal services to the poor, the elderly, and oppressed minority groups. Hence, in retrospect and in looking backwards, it is quite clear to me, that from the period 2000 to 2018, I honestly conceptualized my professional role as an American lawyer to be fundamentally “Christian” in origin, substance, and objective.

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The Puritan idea of the legal relationship between “master-and-servant” was a covenantal relationship that involved three parties: (a) God; (b) the master; and (c) the servant. For this reason, the Bible provided the governing legal principles which regulated this relationship. Indeed, the “master-and-servant” relationship amongst the Puritans was a sacred one; the master was bound by religious duty and ethical obligation to treat the servant with justice, fairness, and equity, as with any other fellow-Christian; and the servant was bound to serve the master as though he or she was God’s vice-regent upon earth, -- i.e., with due respect, integrity, and religious devotion. Arguments, disagreements, and court litigation amongst the Puritans were exercises in Bible-reading and the application of biblical principles to real-world labor and employment problems. The Puritans literally looked to the Bible, to the “law of Christ”<sup>28</sup> for answers to the most minute problems, even those involving practical commercial affairs between employers and employees. And the Bible, in turn, provided plenty of rich material for the Puritans to draw from.

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have intended to reflect the catholic view of history and law, as juxtaposed to what I believe to be a commercial-oriented, materialist view of law and history that has been, perhaps unwittingly, embraced by the vast majority within influential African American leadership. My novel *Bishop Edwards* certainly reflects my idea that the vast majority within this influential African American leadership no longer represent the ideals of St. Augustine, Dr. Martin Luther King, Jr. and Wesleyan-Calvinist oriented black church tradition. Both major American political parties, but especially the Democratic Party, have persuaded the African American community to adopt a “materialist-dialectic” view of history, which certainly reflects the Marxian worldview of humanity, life and culture.

<sup>28</sup> 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).

These religious habits became part and parcel of the English common law. See, e.g., Appendices A through C.

But it is important here to recognize the fact that the Puritans were not alone. The Puritans were, fundamentally, both Anglican and catholic, members of the Western Church. Their attitude toward “master-and-servant” relationship was due in large measure to the influence of the Roman Catholic Church and the Church of England. Within the Western Church, the Pope held the true political power; “[h]e excommunicated kings and laid nations under interdict if they in any way roused his displeasure. He consolidated the power of the clergy, and made the government of Europe sacerdotal. His legate sat in council with the Kings and directed their policy.”<sup>29</sup> This meant that the “law of Christ” was thoroughly sewn into early medieval economic thought. The Medieval churchmen had adopted the “labor theory” of value and this theory became the foundation of economics in the Western world, particularly in England. The “labor theory” of value or surplus value conceptualized “value” and “profit” as the produce of human labor; therefore, excess value and profit were susceptible to being viewed as having been contrived through usury, greed, avarice and theft. The Puritans had inherited their attitude on these issues directly from the Roman Catholic Church and from the Church of England. Indeed, in late 16<sup>th</sup>- and early 17<sup>th</sup>-century England, the Puritans lived under a monarchy and an Anglican church that had carefully regulated England’s economic life.

At every turn... there are limits, restrictions, warnings against allowing economic interests to interfere with serious affairs. It is right for a man to seek such wealth as is necessary for a livelihood in his station. To seek more is not enterprise, but avarice, and avarice is a deadly sin....

The medieval theorist condemned as a sin precisely that effort to achieve a continuous and unlimited increase in material wealth which modern societies applaud as a quality, and the vices for which he reserved his most merciless denunciations were the more refined and subtle of the economic virtues. ‘He who has enough to satisfy his wants,’ wrote a Schoolman of the fourteenth century, ‘and

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<sup>29</sup> Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y: Thomas Whittaker Pub., 1905), p. 168.

nevertheless ceaselessly labors to acquire riches, either in order to obtain a higher social position, or that subsequently he may have enough to live without labor, or that his sons may become men of wealth and importance—all such are incited by a damnable avarice, sensuality, or pride.’ Two and a half centuries later, in the midst of a revolution in the economic and spiritual environment, Luther, in even more unmeasured language, was to say the same. The essence of the argument was that payment may properly be demanded by the craftsmen who make the goods, or by the merchants who transport them, for both labor in their vocation and serve the common need. The unpardonable sin is that of speculator or the middleman, who snatches private gain by the exploitation of public necessities. The true descendant of the doctrines of Aquinas is the labor theory of value. The last of the Schoolmen was Karl Marx.<sup>30</sup>

It was during the period of Reformation, when the Puritans came of age, when few questioned “the assumption that questions of economic conduct belonged to the province of the ecclesiastical jurist.”<sup>31</sup> **“When the age of the Reformation begins, economics is still a branch of ethics, and ethics of theology; all human activities are treated as falling within a single scheme, whose character is determined by the spiritual destiny of mankind; the appeal of theorists to natural law, not utility; the legitimacy of economic transactions is tried by reference, less to the movements of the market, than to moral standards derived from the traditional teaching of the Christian Church; the Church itself is regarded as a society wielding theoretical, and sometimes practical, authority in social affairs.”**<sup>32</sup> Ecclesiastical authority was thus consulted in all matters involving business and commerce; for men were “sufficiently deferential to ecclesiastical authority to send their [priests] to Paris in order to consult the theologians of the University as to the compatibility of speculative exchange business with the canon law.”<sup>33</sup>

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<sup>30</sup> R. H. Tawney, *Religion and the Rise of Capitalism* (New York, N.Y.: New American Library, 1954), pp. 35, 38-39.

<sup>31</sup> *Ibid.*, p. 75.

<sup>32</sup> *Ibid.*, p. 228.

<sup>33</sup> *Ibid.*

Throughout the 17<sup>th</sup> century, the Puritan clergymen represented the new commercial interests, the rich merchants and the bankers. And both Anglican and Puritan clergymen clung their “Roman Catholic” roots of applying the “law of Christ” to every conceivable matter that impacted business organization, economics and commerce.

Today, I am convinced more than ever before that the “law of Christ” must play a role in the relationship between management and labor. What this implies, at least in my mind, is that clergy and Christian laity (especially Christian lawyers and judges) must pay more attention to the unique problems of management and labor, and create forums for creative discussion between various stakeholders and offer constructive solutions. As the Puritans had discovered, the Bible’s central theme—starting with the plight of the Children of Israel in Egypt to the plight of the Jews in ancient Palestine—is the alleviation of oppression of the poor and the duty of obedience and faithful service to those in positions of authority (i.e., masters and magistrates). These delicate relations require fidelity, duty, good faith and fair dealing, integrity, and honesty; they mandate internal goodness from within the heart—not simply self-interested objectives. Only a moral and ethical education can provide these ingredients, beginning with education in the home and at the church. Without this moral and ethical training, the relationship between master (employers) and servant (employees) must remain hostile and tense; and where there are many workers from many different ethnicities, that relationship must become ruthless and brutal. In many respects, without the “law of Christ” to influence it, American labor and employment law has descended to its nadir.

### **SUMMARY**

The common law of master and servant among the Puritans of colonial New England was taken almost verbatim for the Bible. This was also true of England and for the rest of British North America: the “law of Christ” governed, at least in theory, the relationship between masters and servants. This hierarchal relationship was both useful and necessary and therefore “ordained by God.” Therefore, it had to be regulated according to the dictate of the Sacred Scripture. This regulation was based upon the need for good-faith, honesty, and common sense; noting difficult or complicated. The Bible offered guidance as to how the master was to govern the servant, and as to how the servant was to obey and give allegiance and

homage to the master. If we compare today's modern-day common law of "master and servant" to what is required in the Bible, as seventeenth-century Puritans interpreted it, we shall readily see that very little has changed in that relationship, in that the requirement of fairness, justice and equity between master and servant has not changed. The Puritan law of master and servant were taken verbatim from the Bible. At all times, Christ reigned supreme over that relationship. While the servants had a strict duty of obedience towards their masters, the masters had a reciprocal duty to provide to their servants safe working conditions, fair wages, and workplace equity.

## **I. Puritanism: Law of Master and Servant**

When analyzing the Puritan model of the master and servant relationship, it is important to remember that the Puritans placed great weight upon the legal concept of "covenant," which carried divine implications. The "law of Christ" mandated that the master and servant deal with each other in good faith and fair dealing. Commercial reasonableness, together with feudal tradition, combined with each other to create England's common law of master and servant, where the master had a duty to maintain and upkeep the servant even when there was no work to be done, during the period of the tenure which has typically for a term of several years. As recently as the late 19<sup>th</sup> century, the English common law rule was that an employment contract was presumed to be for at least one year, during which time period the master retained a duty to support the servant if there was no work to be done. The Puritans, however, imposed additional duties upon the master, such as the duty to provide religious instruction to servants; and a corresponding duty on the part of servants to give deference to the master's judgments on religion, morals, and styles of worship. Under the older English common-law rules, a servant was not free to leave his master during the period of employment. And corporal punishment and the public pillory could be levied against disobedient, "criminous" servants, but Puritans also imposed reasonable limits imposed upon such punishments.

### **A. Duties of Masters towards their Servants**

#### **1. Duty to Select Good Servants**

The Puritans believed in carefully screening for new hires, and presumably this process would have involved conducting pre-hire interviews.

“If you would have good servants, see that you be good masters,” wrote Rev. Richard Baxter.<sup>34</sup> First off, masters should be careful to select good servants, because servants are “integral parts of the family, who contribute much to the holiness or unholiness of it.”<sup>35</sup> Ideally, it would be good to hire a fellow Christian—a godly servant to serve. “If it be possible, choose such as have the fear of God, or at least such as are tractable and willing to be taught, and not such as are ungodly, sensual, and profane.”<sup>36</sup>

Masters should therefore look for three criteria when selecting a good servant: strength, skill, and willingness. “[N]o two of these will serve without the third.” Rev. Baxter wrote. “Strength and skill without willingness, will do nothing: skill and willingness without strength, can do nothing: strength and willingness without skill, will do as bad or worse than nothing. No less than all will make you a good servant.”<sup>37</sup>

## **2. Duty to Guard against Ungodly and Wicked Servants**

Puritans believed that servants bring culture into the home and into workplace. It is therefore important for masters to carefully guard against hiring ungodly servants. Ungodly men and women bring bad spirits and bad attitude into the masters’ homes and the workplaces. They cause trouble, commit theft, foment friction and division, and sabotage productivity. Human resources professionals and front-line managers frequently deal with such problem workers. They can cost organizations millions of dollars in lost revenue and profit, through litigation and other administrative costs. These sort of personalities are loafers and thieves and simply cannot be trusted. “Many servants whom God hath converted to his love and fear,” Rev. Baxter acknowledged, “have told me how constantly they deceived their masters in buying and selling before their conversion; even of so great sums of money, that some of them were not able to restore it....”<sup>38</sup> Rev. Baxter thus

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<sup>34</sup> Richard Baxter, *A Christian Directory or A Sum of Practical Theology, and Cases of Conscience* (Part 2)(Reprinted in Columbia, S.C. January 2019), p. 89.

<sup>35</sup> *Ibid.*, p. 21.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

continued: “[a]lso an ungodly servant will be a temper to the rest, and will be drawing them to sin: especially to secret wantonness, and uncivil carriage, if not the actual fornication; and to revellings, and merriments, and fleshly courses: by swearing, and taking God’s name in vain, and cursing, and lying, they will teach your children and other servants to do the like; and so be an infectious pestilence in your families. And they will hinder any good which you would do on others. If there be any [servants] in your family under convictions, and in a hopeful way to a better condition, they will quench all, and discourage them, and hinder their conversion; partly by their contradicting cavils, and partly by their scorns, and partly by their diverting, idle talk, and partly by their ill examples, and alluring them to accompany them in their sin.”<sup>39</sup>

Thus, the seventeenth-century Puritans had extensive experience in managing ungodly workers and with “human resources management.” They therefore admonished masters to take steps to avoid hiring such ungodly servants. “Ungodly servants for the most part,” observed Rev. Baxter, “will be mere eye-servants; they will do little more than they find necessary to escape reproof and blame: some few of them, indeed, out of love to their masters, or out of a desire of praise, or to make their places the better to themselves, will be diligent and trusty: but ordinarily they are deceitful, and study more to seem good servants, than to be such, and to hide their faults, than to avoid them; for they make not great matter of conscience of it, nor do they regard the eye of God....”<sup>40</sup>

Therefore, the Puritans admonished masters to screen out and to hire only godly servants, because “a godly servant will be drawing the rest of your family to godliness, and hindering them from sin, and persuading them to be faithful in their duty both to God and you,”<sup>41</sup> and “a truly godly servant will do all your service in obedience to God, as if God himself had bid him do it, and as one that is always in the presence of that Master, whose favour he preferreth before all the world.”<sup>42</sup>

The Puritans also believed that godly servants have a higher calling to fulfill and will generally always work towards the masters’ best interests. As Rev. Baxter observed, the godly servant “is more careful to please God, who commandeth him

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<sup>39</sup> Ibid., pp. 21-22.

<sup>40</sup> Ibid., p.. 22.

<sup>41</sup> Ibid., p.. 22.

<sup>42</sup> Ibid.



to be faithful, than to please you by seeming better than he is: he is moved more to his duty by the reward which God hath promised him, than by the wages which he expecteth from you: he hath a tender, purified conscience, which will hold him to his duty, as well when you know it not, as when you stand by.”<sup>43</sup>

### **3. General Duties towards All Servants**

The “covenant of good faith and fair dealing” is not, as many lawyers and judges might suppose, a component of the modern-day at-will” contract for employment, unless the state legislature or a state supreme court has explicitly adopted this doctrine. At English common law, however, the “covenant of good faith and fair dealing,” together with Christian moral standards as imposed by the Church of England up through the early 1800s, were thoroughly sewn into the common law governing master and servant, as follows:

#### **a. Masters must acknowledge the “human rights” of their servants:**

Puritans reminded all master that their servants were human beings and children of the most high God; that their servants were equal in dignity and worth; and that servants must be provided fairness, justice, and due consideration. Rev. Baxter, for instance, wrote: “[r]emember that in Christ they are your brethren and fellow-servants; and therefore rule them not tyrannically, but in tenderness and love; and command them nothing that is against the laws of God, or the good of their souls.”<sup>44</sup> This directive encompasses the whole of what may be called the “human rights” of the working classes.

#### **b. Masters must prevent Negligent Hiring and Negligent Retention; must provide Safe Working Environment; and must provide Adequate Compensation to afford a descent and comfortable living.**

Just terms of employment required assigning the right and a fair amount of work for servants: not more than what each worker might be reasonably expected to perform during a normal working day. For this reason, the Puritan encouraged masters to only assign the right kind of work to servants who are qualified to perform the work. This means that unqualified workers should not be hire, and unqualified workers should not be assigned work or should be terminated. This is the precise same principle

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid., p 89.

that underlies the modern-day employment doctrine of “negligent hiring” and “negligent retention.” On this point, Rev. Baxter writes, “[p]rovide them work convenient for them, and such as they are fit for; not such or so much as to wrong them in their health, or hinder them from the necessary means of their salvation; nor yet so little as may cherish their idleness, or occasion them to lose their precious time.”<sup>45</sup>

c. **Masters must provide Adequate Compensation, Lodging and Food.** The idea of just wages and “living wages” are directly related to the amount of money required for lodging, food, clothing, and a comfortable lifestyle. In Medieval and early modern England, most masters normally maintained responsibility for making in-kind payments to their servants in the form of lodging and food, over a term or period of years (i.e., contracts of indenture). During this period, they were expected to provide just wages, lodging and food. Regarding this subject, Rev. Baxter wrote: “[p]rovide them such wholesome food and lodging, and such wages as their service doth deserve, or as you have promised them.”<sup>46</sup>

d. **Masters should not Socialize with their Servants in such a manner as to mix business with pleasure or confuse the master-servant relation.** Due to the nature of a master’s moral and social responsibility to lead, supervise and direct servants, it is critically important that masters maintain a proper social distance from their servants. On this point, Rev. Baxter writes: “[u]se not your servants to be so bold and familiar with you, as may tempt them to despise you; nor yet so strange and distant, as may deprive you of opportunity of speaking to them for their spiritual good, or justly lay you open to be censured as too magisterial and proud.”<sup>47</sup>

e. **Masters of households should ensure that Household Servants observe Christian worship.** House servants and slaves were members of the masters’ households and therefore subject to the same rules of discipline. This normally included rules for religious observance. On this point, Rev. Baxter writes: “[r]emember that you have a charge of the souls in your family, and are as a

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

priest and teacher in your own house; and therefore see that you keep them to the constant worshipping of god, especially on the Lord's day, in public and private; and that you teach them the things that concern their salvation...."<sup>48</sup>

f. **Masters should carefully monitor and supervise their servants and look after their overall well-being.** House servants and slaves were members of the masters' families and subject to the same monitoring supervision of adult children within the family. On this point, Rev. Baxter writes: "[k]eep your servants from evil company, and from being temptations to each other, as far as you can."<sup>49</sup> "Watch over them that they offend not God: bear not with ungodliness or gross sin in your family."<sup>50</sup> "Be not like those ungodly masters, that look only that their own work be done, and bid God look after his work himself, and care not for their servants' souls, because they care not for their own; and mind not whether God be served by others, because they serve him not (unless with hypocritical lip-service) themselves."<sup>51</sup>

g. **Masters should through patience and humility Supervise and Govern their Servants.** Rev. Baxter writes: "[p]atiently bear with those tolerable frailties" of servants. "Consider how faulty you serve your heavenly Master, and how much he daily beareth with that which is amiss in you, and how many faults and oversights you are guilty of in your own employment, and how many you should be overtaken with if you were in their stead.... 'And ye masters, do the same things to them, forbearing threatening, knowing that your Master also is in heaven, neither is there respect of persons with him.' Col. Iv. I, 'Masters, give unto your servants that which is just and equal.'"<sup>52</sup>

h. **Masters should set an example of Christian leadership.** Of course, Masters should lead by example. "Go before them as examples of holiness and wisdom," writes Rev. Baxter, "and all those virtue and duties which you would teach them. An ignorant or a swearing, cursing, railing, ungodly master doth

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., p. 90.

actually teach his servants to be such; and if his words teach them the contrary, he can expect but little reverence or success.”<sup>53</sup>

## **B. Duties of Servants towards their Masters**

### **1. Duties of Servants to Seek Employers who are Moral, Ethical and God-fearing**

The Puritans encouraged all servants must also be careful to choose the right employer or master. Carnal-minded, ungodly servants tend not to care so much about the integrity of the employer, so long as their own self-interests are well served. Ungodly servants also tend to select employers based upon worldly standards, such as “mere fleshly ease and sensuality... carnal will and pleasure.”<sup>54</sup> But godly servants should seek godly employers and masters and should endeavor to work alongside god-fearing fellow-servants.<sup>55</sup>

Puritan divines also encouraged godly servants should also seek out employments that are suitable to their talents, skills, and abilities, and choose a modest lifestyle that will enable them to serve God.<sup>56</sup> “A master that feareth God,” writes Rev. Baxter, “will help to save you from sin and hell, and help your souls to life eternal: he may do more for you, than if he made you kings and rulers of the earth. He will hinder you from sin: he will teach you to know God, and to prepare for your salvation. Whereas ungodly masters will rather discourage you, and by mocks or threatenings seek to drive you from a holy life, and use their wit, and work, and authority, to hinder your salvation: or at best will take little care of your souls, but think if they provide you food and wages, they have done their parts. **A master that feareth God will do you no wrong, but will love you as a Christian, and his fellow-servant of Christ**, while he commandeth and employeth you as his own servant, which cannot be expected from **ignorant, ungodly worldly men.**”

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid., p. 22.

<sup>55</sup> Ibid., p. 23.

<sup>56</sup> Ibid., p. 23.

In other words, the modern-day company, corporation or business which employs laborers may be looked upon as a “house” that is headed by a “master.” Like any house, a company or business may be “wicked” or “good,” as a result of poor leadership at the top. “Go not into a falling house,” Rev. Baxter counseled. “A master that feareth God, will help to save you from sin and hell, and help your souls to life eternal: he may do more for you, than if he made you kings and rulers of the earth.”<sup>57</sup> The Puritan encouraged servants to “[r]everence the providence of God which calleth you to a servant’s life, and murmur not at your labour, or your low condition; but know your mercies, and be thankful for them.”<sup>58</sup>

## 2. General Duties of Servants towards Their Masters

The Puritans encouraged all servants to “[b]e conscionable and faithful in performing all the labour and duty of a servant. Neglect not such business as you are to do; nor do it lazily, and deceitfully, and by the halves.”<sup>59</sup> Servants were reminded that God’s all-seeing eye was forever watching their every move, and that at all times, while on duty, they were charged with providing honest, faithful service to their masters. They were encouraged to do their duties to the utmost of their abilities, regardless of whether their supervisors or master were standing guard. The modern-day common law in England and the United States also requires employees to make a good faith effort to discharge their duties to their employers. Acts such as loafing and sabotaging the workflow have been deemed to be illegal or unfair labor practices, including “theft” of time and wages. The Puritan duty to provide good-faith service to masters is thus reflected in Anglo-American common law. See, e.g., Appendices A and B. For example, the Rev. Baxter issued the following advice to servants:

(a) **Duty to be careful and dutiful:** Rev. Richard Baxter admonished Puritan servants to “[b]e more careful about your duty to your masters, than about their duty or carriage to you. Be much more careful what to do, than what to receive; and to be good servants, than to be used as good servants.”<sup>60</sup>

(b). **Duty to be truthful, honest, and faithful:** “Be true and faithful in all that is committed to your trust: dispose not of any thing that is your master’s

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<sup>57</sup> Ibid., p. 23.

<sup>58</sup> Ibid., p. 86.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

without his consent; though you may think it never so reasonable or well done, you remember that it is none of your own: if you would relieve the poor, or please a fellow-servant, or do a kindness to a neighbor, do it of your own, and not of another's, unless you have his allowance."<sup>61</sup>

(c). **Duty to honour masters (i.e., respectfulness):** "Honour your masters, and behave yourselves towards them with that respect and reverence as your place requireth. Behave not yourselves rudely or contemptuously towards them in word or deed."<sup>62</sup>

(d). **Duty to not disdain one's subordinate role:** "Be not so proud as to disdain to keep the distance and reverence which is due. You should scorn to be servants, if you scorn to behave yourselves as servants."<sup>63</sup>

(e). **Duty to find delight in service to others:** "Go not unwillingly or murmuringly about your business, but take it as your delight."

(f). **Duty to remain obedient at all times:** "Obey your masters in all things (which God forbiddeth not, and which their place enableth them to command you); and set not your own conceits and wills against their commands."<sup>64</sup>

(g). **Duty of confidentiality:** "Reveal not any of the secrets of your masters, or of the family."<sup>65</sup>

(h). **Duty to not complain modest provisions that are equitable and within the master's means to provide:** "Grudge not at the meanness of the provisions of the family."<sup>66</sup>

(i). **Duty to pray for the master's prosperity:** "Pray daily for a blessing on your labours and on the family, both privately and with the rest."<sup>67</sup>

The Puritans considered the "master-and-servant" relationship to be a "covenant" between God, the master, and the servant. Puritans thus imposed the

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<sup>61</sup> Ibid., pp. 86-87.

<sup>62</sup> Ibid., p. 87.

<sup>63</sup> Ibid., p. 87.

<sup>64</sup> Ibid., p. 87.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

highest ethical standards and moral duties upon their servants. These standards and duties were taken verbatim from the Bible and linked to their daily walk of Christian faith. As a result, England's common law of master and servant was thoroughly Christian, admitted the inequality of hierarchy and rank, but at the same time imposed obligations of good faith and fair dealing between the various parties involved.

## **CONCLUSION**

The common law of master and servant in 17<sup>th</sup> century England had been developed over several centuries and emerged out from the Medieval feudal system of land tenure, under the auspices of the Roman Catholic Church and the Church of England. Among the Puritans of colonial New England, this law was taken almost verbatim from the Bible. The Puritans considered this law to be "ordained by God," as it had hitherto been regulated by the Church of England and its ecclesiastical jurists. In colonial New England, this law had similarly come within the jurisdiction of the theologians and pastors of the Congregational Churches amongst the Puritans. This law was based upon the Puritan covenant, with three parties being involved: (a) God; (b) the master; and (c) the servant. This regulation of 17<sup>th</sup>-century master-servant law was based upon the need for good-faith, honesty and integrity within the master-servant relationship. While the servants had a strict duty of obedience towards their masters, the masters had a reciprocal duty to provide to their servants safe working conditions, fair wages, and workplace equity. Masters were retained responsibility not only for supervision of their servants, but they also had authority to ensure that the servants were well housed, clothed, fed, and attained some learning of the Bible together with observance of the Sabbath Day. In exchange of this, servants were required to conceptualize their earthly masters as God's vice-regents; and they were to carry out the master's interests with fidelity and utmost obedience and respect. This master-servant relationship was designed to promote fairness and economic efficiency. At all times, "law of Christ" reigned supreme over the master-servant relationship.

**THE END**

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## **APPENDIX A: Biblical Regulations of the Master-Servant Relationship**

Law of Christ<sup>68</sup> is a rule of “natural law,” “natural justice,” and “equity.” These terms are interchangeable. Within the Western catholic tradition, both the church and the state have jurisdiction over these same laws. The “law of Christ” reigns supreme as “equity jurisprudence” within the secular legal systems within the western tradition. At the same time, the “law of Christ” is the law of the Church, as reflected in the Decalogue, and in Christ’s Parables and Sermon on the Mount.<sup>69</sup> Within the legal tradition of the West, the Sacred Scriptures and the authority of the clergy governed secular affairs, including economics, trade, finance, and master and servant relationships. The relationship between lord and tenant, employer and employee, and master and servant were developed from ecclesiastical and equitable principles extracted from the Bible. Since the Act of Supremacy in 1534, and up through the next several decades of the Protestant Reformation during the 1600s, the Church of England and ecclesiastical jurists heavily regulated finance, economics and commercial affairs, including the law of master and servant.

The following texts from the Old and New Testament Laws are examples of scriptures that were relied upon in fashioning the English common law of master and servant (including “slaves”).

### **Old Testament Law**

#### **Genesis 31:7**

"Yet your father has cheated me and changed my wages ten times; however, God did not allow him to hurt me."

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<sup>68</sup> 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).

<sup>69</sup> See, generally, Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris Pub., 2015).

**Deuteronomy 24:14**

"You shall not oppress a hired servant who is poor and needy, whether he is one of your countrymen or one of your aliens who is in your land in your towns."

**Deuteronomy 24:15**

"You shall give him his wages on his day before the sun sets, for he is poor and sets his heart on it; so that he will not cry against you to the LORD and it become sin in you."

**Exodus 21:1-6 -- KJV**

"Now these are the judgments which thou shalt set before them. If thou buy an Hebrew servant, six years he shall serve and in the seventh he shall go out free for nothing. If he came in by himself, he shall go out by himself: if he were married, then his wife shall go out with him. If his master have given him a wife, and she have born him sons or daughters; the wife and her children shall be her master's, and he shall go out by himself. And if the servant shall plainly say, I love my master, my wife, and my children; I will not go out free: then his master shall bring him unto the judges; he shall also bring him to the door, or unto the door post; and his master shall bore his ear through with an aul; and he shall serve him for ever."

**Leviticus 19:13 -- KJV**

"Thou shalt not defraud thy neighbor, neither rob him: the wages of him that is hired shall not abide with thee all night until the morning."

**Leviticus 25:42-43, 53-- KJV**

"For they are my servants, which I brought forth out of the land of Egypt: they shall not be sold as bondmen. Thou shalt not rule over him with rigour; but shalt fear thy God.... And as a yearly hired servant shall he be with him: and the other shall not rule with rigour over him in thy sight."

**Leviticus 19:13 - KJV**

"Thou shalt not defraud thy neighbor, neither rob him: the wages of him that is hired shall not abide with thee all night until the morning."

### **Malachi 3:5 – KJV**

“And I will come near to you to judgment; and I will be a swift witness against the adulterers, and against false swearers, and **against those that oppress the hireling in his wages**, the widow, and the fatherless, and that turn aside the stranger from his right, and fear not me, saith the LORD of hosts.”

### **Job 31:1-40 - KJV**

"I made a covenant with mine eyes; why then should I think upon a maid? For what portion of God is there from above? And what inheritance of the Almighty from on high?... **If I did despise the cause of my manservant or of my maidservant, when they contended with me....** If I have withheld the poor from their desire, or have caused the eyes of the widow to fail.... The stranger did not lodge in the street: but I opened my doors to the traveler.... Let thistles grow instead of barley. The words of Job are ended.”

### **Psalm 123: 2-3 - KJV**

“Behold, **as the eyes of the servants look unto the hand of their masters, and as the eyes of maiden unto the hand of her mistress; so our eyes wait upon the LORD our God**, until that he have mercy upon us. Have mercy upon us, O LORD, have mercy upon us: for we are exceedingly filled with contempt. Our soul is exceedingly filled with the scorning of those that are at ease, and with the contempt of the proud.”

### **New Testament Law**

#### **Matthew 13:55/ Mark 6:3**

[Jesus was a carpenter, as well as the son of a carpenter.]

#### **Matthew 6:24 -- NKJV**

“No one can serve two masters, for either he will hate the one and love the other, or he will be devoted to the one and despise the other. You cannot serve God and money.”

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**1 Peter 2:18 -- NKJV**

“Servants, be subject to your masters with all respect, not only to the good and gentle but also to the unjust.”

**1 Peter 2:18-21-- NKJV**

“Servants, be subject to your masters with all respect, not only to the good and gentle but also to the unjust. For this is a gracious thing, when, mindful of God, one endures sorrows while suffering unjustly. For what credit is it if, when you sin and are beaten for it, you endure? But if when you do good and suffer for it you endure, this is a gracious thing in the sight of God. For to this you have been called, because Christ also suffered for you, leaving you an example, so that you might follow in his steps.”

**1 Peter 4:10-- NKJV**

“As each has received a gift, use it to serve one another, as good stewards of God's varied grace....”

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**Romans 13:1-7-- NKJV**

“Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. ... “

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**1 Corinthians 7:22-- NKJV**

“For he who was called in the Lord as a slave is a freedman of the Lord. Likewise he who was free when called is a slave of Christ.”

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**Colossians 4:1-- NKJV**

“Masters, grant to your slaves justice and fairness, knowing that you too have a Master in heaven.”

**Colossians 4:1-18 ESV / 3 helpful votes**

“Masters, treat your slaves justly and fairly, knowing that you also have a Master in heaven. Continue steadfastly in prayer, being watchful in it with thanksgiving. At the same time, pray also for us, that God may open to us a door for the word, to declare the mystery of Christ, on account of which I am in prison— that I may make it clear, which is how I ought to speak. Walk in wisdom toward outsiders, making the best use of the time. ... “

**Colossians 3:22-- NKJV**

“Slaves, obey in everything those who are your earthly masters, not by way of eye-service, as people-pleasers, but with sincerity of heart, fearing the Lord.”

**Colossians 3:22-25 -- NKJV**

“Slaves, obey in everything those who are your earthly masters, not by way of eye-service, as people-pleasers, but with sincerity of heart, fearing the Lord. Whatever you do, work heartily, as for the Lord and not for men, knowing that from the Lord you will receive the inheritance as your reward. You are serving the Lord Christ. For the wrongdoer will be paid back for the wrong he has done, and there is no partiality.”

**Colossians 3:11-- NKJV**

“Here there is not Greek and Jew, circumcised and uncircumcised, barbarian, Scythian, slave, free; but Christ is all, and in all.”

**Colossians 3:23-- NKJV**

“Whatever you do, work heartily, as for the Lord and not for men....”

**Colossians 3:23-24-- NKJV**

“Whatever you do, work heartily, as for the Lord and not for men, knowing that from the Lord you will receive the inheritance as your reward. You are serving the Lord Christ.”

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**Ephesians 6:5-9-- NKJV**

“Slaves, obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ, not by the way of eye-service, as people-pleasers, but as servants of Christ, doing the will of God from the heart, rendering service with a good will as to the Lord and not to man, knowing that whatever good anyone does, this he will receive back from the Lord, whether he is a slave or free. Masters, do the same to them, and stop your threatening, knowing that he who is both their Master and yours is in heaven, and that there is no partiality with him.”

**Ephesians 6:9-- NKJV**

“And masters, do the same things to them, and give up threatening, knowing that both their Master and yours is in heaven, and there is no partiality with Him.”

**Ephesians 6:5-- NKJV**

“Slaves, obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ....”

**Ephesians 6:5-8-- NKJV**

“Slaves, obey your earthly masters with fear and trembling, with a sincere heart, as you would Christ, not by the way of eye-service, as people-pleasers, but as servants of Christ, doing the will of God from the heart, rendering service with a good will as to the Lord and not to man, knowing that whatever good anyone does, this he will receive back from the Lord, whether he is a slave or free.”

**Ephesians 6:8-- NKJV**

“Knowing that whatever good anyone does, this he will receive back from the Lord, whether he is a slave or free.”

**Ephesians 5:21-- NKJV**

“Submitting to one another out of reverence for Christ.”

**Ephesians 6:6-- NKJV**

“Not by the way of eye-service, as people-pleasers, but as servants of Christ, doing the will of God from the heart....”

**Ephesians 6:9-- NKJV**

“Masters, do the same to them, and stop your threatening, knowing that he who is both their Master and yours is in heaven, and that there is no partiality with him.”

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**Galatians 3:28-- NKJV**

“There is neither Jew nor Greek, there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus.”

**Galatians 5:13-- NKJV**

“For you were called to freedom, brothers. Only do not use your freedom as an opportunity for the flesh, but through love serve one another.”

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**1 Timothy 6:1-- NKJV**

“Let all who are under a yoke as slaves regard their own masters as worthy of all honor, so that the name of God and the teaching may not be reviled.”



**1 Timothy 6:1-2 -- NKJV**

“Let all who are under a yoke as slaves regard their own masters as worthy of all honor, so that the name of God and the teaching may not be reviled. Those who have believing masters must not be disrespectful on the ground that they are brothers; rather they must serve all the better since those who benefit by their good service are believers and beloved. Teach and urge these things.”

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**Titus 2:9-- NKJV**

“Slaves are to be submissive to their own masters in everything; they are to be well-pleasing, not argumentative....”

**Titus 2:9-10-- NKJV**

“Slaves are to be submissive to their own masters in everything; they are to be well-pleasing, not argumentative, not pilfering, but showing all good faith, so that in everything they may adorn the doctrine of God our Savior.”

**Titus 3:1-- NKJV**

“Remind them to be submissive to rulers and authorities, to be obedient, to be ready for every good work....”

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**James 5:4-- NKJV**

“Behold, the wages of the laborers who mowed your fields, which you kept back by fraud, are crying out against you, and the cries of the harvesters have reached the ears of the Lord of hosts.”

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**Philemon 1:10-19 -- NKJV**

“I beseech thee for my son Onesimus, whom I have begotten in my bonds: which in time past was to thee and to me: whom I have sent again: thou therefore receive him, that is, mine own bowels: whom I would have retained with me, that in thy stead he might have ministered unto me in the bonds of the gospel. But without thy mind would I do nothing; that thy benefit should not be as it were of necessity, but willingly. For perhaps he therefore departed for a season, that thou shouldest receive him for ever; Not now as a servant, but above a servant, a brother beloved, specially to me, but how much more unto thee, both in the flesh, and in the Lord? If thou count me therefore a partner, receive him as myself. If he hath wronged thee, or oweth thee ought, put that on mine account; I Paul have written it with mine own hand, I will repay it; albeit I do not say to thee how thou owest unto me even thine own self besides.”

## **APPENDIX B: Anglo-American Common Law of Master and Servant**

### Table of Contents

I. *Corpus Juris Secundum*

II. Florida Jurisprudence (Second)

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#### **I. 30 Corpus Juris Secundum, Master and Servant**

##### **“§ 3 (a) In General**

“While the relationship of employer and employee is not capable of exact definition and cannot be defined in general terms with substantial accuracy, it may nevertheless be stated broadly that the relation is that which arises out of a contract of employment, express or implied, between a master or employer on the one hand and a servant or employee on the other.

“The relationship of employer and employee is substantially the same as that of master and servant, but it has been said that the terms “employer” and “employee” make a better designation of the relation.

“The terms ‘employer’ and ‘employee’ are generally held to be synonymous, although some distinctions have been noted.”

##### **“§ 21 Contracts of Employment**

“The relation of master and servant arises out of contract, and a contract of employment usually involves the agreement of one party to render services or labor for the benefit of another, who in turn becomes obligated to pay a consideration therefor, and the rights of an employer and an employee under an employment contract are correlative....

“What law governs

“It has been held that a contract of employment is governed as to its construction and effect by the law with reference to which the parties in good faith

intended to contract unless application of that law would be an affront to the law or public policy of some state with more significant contact with the matter in dispute....

“(c) Terms and Conditions

“Parties have wide discretion in fixing the terms of an employment contract, and a contract may contain such terms and conditions as the parties see fit to make provided they are not illegal or unreasonable. The contract must conform to, and not be in violation of, valid statutory provisions governing the terms and conditions of employment.”

**“§ 44 Good Faith in General**

“The discharge of an employee for an indefinite term, where not otherwise prohibited by contract, has been held generally not violate any implied covenant of good faith and fair dealing, at least where there is not violation of public policy. It has been held that such a covenant will generally not be implied, that an employee can be discharged for a bad reason and even if the employer acts in bad faith or with an improper motive or with malice, and that there is no prima facie tort claim for wrongful discharge.

“Some authorities hold that every employment contract involves an implied covenant of good faith and fair dealing which can be breached by discharge of an employee. In any event, if a covenant of good faith exists it is not breached by the mere absence of good cause for discharge.

“It has also been held that a discharge motivated by a specific intent to harm the employee is illegal, that in the absence of such intent a discharge is generally legal, and that a bad faith discharge is sometimes illegal.

“Where an employee has a reasonable expectation of certain benefits from a contract independent of continuing employment, and the employer, acting in bad faith and with the intent to deprive him of such benefits, discharges him, it has been held that the discharge is illegal as a violation of an implied covenant of good faith and fair dealing.

“Thus, a discharge for the purpose of depriving an employee of compensation or benefits already earned by past services has been held illegal, while a discharge for the purpose of preventing an employee from earning future benefits has been held not to breach the covenant, or to involve an illegal specific intent to harm the employee.

“However, it has also been held that a bad faith discharge for the purpose of preventing the earning of retirement benefits or other benefits may be illegal. Opportunism by the employer has been held illegal.

“It has also been held that where the employer in discharging an employee acts with bad faith extraneous to the contract and an intent to frustrate contract rights the discharge is illegal as a violation of a covenant of good faith and fair dealing, even in the absence of lengthy satisfactory service, and that where the employer asserts a good cause for the discharge but does not believe that such good cause actually exists the covenant is breached.

***“Effect of contract requirement of cause for discharge***

“It has been held that an implied covenant of good faith and fair dealing has no application where a contract requires cause for discharge. A tort of wrongful discharge with specific intent to harm the employee applies only where the contract does not require cause for termination.”

**“(c), “Master” and “Servant”**

“One is deemed to be a master who has the superior choice, control, and direction of the servant, and whose will the servant represents not merely in the ultimate result of the work, but in the details.

“Stated otherwise, a ‘master’ is a principal who employs another to perform service in his affairs and who controls, or has the right to control, such other’s physical conduct in the performance of the service.

“In its broadest sense the term ‘servant’ includes any person over whom personal authority is exercised or who exerts himself or labors for the benefit of a master or employer; and any one who works for, and under the direction or control of, another for salary or wages.

“In a more restricted sense a servant has been defined to be a person employed to labor for the pleasure or interest of another; especially, in law, one employed to render service or assistance in some trade or vocation, but without authority to act as agent in place of his employer; one who is employed to render personal service to his employer otherwise than in pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master; a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other’s control or right to control.

“The term is sometimes used in the more specific sense of hired help, that is to say, a person hired to assist in domestic matters, living within the employer’s house and making part of his family. Nevertheless, although it has been held always to include those who render menial or manual services, the word ‘servant’ is by no means restricted to persons engaged in menial or even domestic service. The proper meaning to be given the word in a particular case is, of course, largely governed by the context or the intent with which it is employed.”

## **“II. Florida’s Common Law of Master and Servant**

### **“2A Fla Jur 2d, Employee’s Duty to Employer**

**“§225.** The law implies that an employee will faithfully perform the duties required of the employee under his or her employment in the manner directed by the employer provided that the employer may reasonably make such requirements.

“In addition to any duties expressly imposed upon or undertaken by an employee in the contract of employment, an employee has duties and obligations to the employer that are implied by law.

“Among the fundamental duties of an employee is the obligation to yield obedience to all reasonable rules, orders, and instructions of the employer. An employee also is duty bound to fulfill his or her job to the best of his or her ability and is obligated to exercise diligence and good faith in matters relating to employment.”

“§ 226. An employee owes allegiance to his or her employer. An employee does not have to be managerial in order to have a duty of loyalty.

- \* trade secrets

- \* non-compete agreements

- \* solicitation of former customers

“§ 235. The duties that an employer owes an employee may depend on the contract of employment and on legislation governing the relationship of an employer and employee. Generally, however, the duty the employer owes to the employee is conditioned upon the employee acting within the scope of his or her employment, and as a consequence, if the employee’s actions cannot be said to be within the scope or course of employment, no duty is placed on the employer to exercise reasonable care to avert threatened harm. An employer is not liable for injuries to an employee unless the injury is the proximate result of wrongful conduct chargeable to the employer.”

“§ 252. An employer owes its employees the duty to furnish a reasonably safe place in which to work and it required to exercise reasonable care in furnishing them with safe tools and appliances. Such duties are continuing ones, and the employer cannot furnish a safe place to work and proper appliances and then substitute new or different ones that are unsafe and so escape liability. A regulation that addresses safety on the part of the employer has the same force and effect as a statute in that neither assumption of risk nor contributory negligence may be asserted as a defense.”

**“§ 259. An employer has an affirmative duty to provide its employees with reasonably safe instrumentalities, machinery, tools, and equipment.”**

**“§ 262. A master must warn and instruct his or her servant as to the danger or peculiarities of the machinery, tools, and appliances that may cause injury.”**

**“§ 302. Negligent hiring**

“A master has a duty to select workers who have the requisite knowledge and skill in order to properly perform assigned tasks. A master has a duty to select workers who will not pose as a threat or danger to fellow co-workers or the general public.”

**“§ 303 Negligent retention**

“A master has a duty to terminate the employment of any worker who poses a threat or danger to fellow co-workers or to the general public.”

**“§ 304 Negligent supervision**

“A master has a duty to provide adequate training for workers; and to provide competent lead persons, foremen, supervisors, and managers to direct their workers.”

**“§ 305 Negligent training**

A master has a duty to ensure that proper training is given to workers, especially regarding issues involving workplace safety, dangerous machinery and equipment, hazardous materials, and matters that involve potential harm to the general public.”



**APPENDIX C:** *An Essay toward a History of Anglo-American Law of Master and Servant, 1600-1900* by Roderick O. Ford, Litt.D.

The Medieval feudal structure governing “master-and-servant” law did not easily or quickly morph into the modern-day free-market relationship between employers and employees that we know today. Instead, the change from “master-servant” to “employer-employee” occurred very slowly, first in England and then later in North America, over the course of at least three centuries, from the late 1600s to the late 1900s.

Early American employment law was patterned after the English law of master-servant, whereby “the employment relationship was not conceived as the simple product of a voluntary agreement between juridical equals. It placed masters over their workers in a truncated legal hierarchy of ranks and orders, all manual laborers, not merely indentured servants, were subject to penal sanctions for failing to fulfill their contractual undertakings. The relationship of all manual workers to their employers also had crucial common from work undertaken.”<sup>70</sup>

Corporal punishment plus “specific performance” of employment relations or contracts enabled American employers to control free white laborers during the colonial period up to throughout most of the nineteenth century. Run-a-way white workers, just as African American slaves, could be arrested, incarcerated, and beaten. This was true whether the white worker had signed an indenture (an employment contract for a term of years) or had merely agreed to serve a one-year term for some period of time.<sup>71</sup>

The reason for this labor system was because of the need for America’s employers to control a source of reliable labor, and to discipline laborers, in an agrarian English and colonial American society. In exchange for losing control over their labor, white workers received “job security” from their masters. As New York treatise writer John Dunlap stated in 1815: “the principles of natural equity, that the servant shall serve, and the master maintain him, throughout all the

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<sup>70</sup> Roderick O. Ford, *The Evasion of African American Workers* (Tampa, FL: Xlibris Pub., 2008).

<sup>71</sup> *Ibid.*

revolutions of the respective seasons, as well as when there is work to be done, as well as when there is not.”<sup>72</sup>

Early during the American labor experience, white and African American workers were treated equally, under harsh conditions, as indentured servants. At some inexact historical moment, however, only African Americans became earmarked for perpetual servitude as slaves, whereas whites were to serve only for a term of years. “The transformation from indentured servitude (servants contracted to work for a set amount of time) to racial slavery didn’t happen overnight. There are no laws regarding slavery early in Virginia’s history. By 1640, the Virginia courts had sentenced at least one black servant to slavery....”<sup>73</sup>

Many historians and legal scholars consider the famous “John Punch” case as a watershed moment in American labor and employment history. In that case, “[t]here servants working for a farmer named Hugh Gwyn ran away to Maryland. Two were white; one was black. They were captured in Maryland and returned to Jamestown, where the court sentenced all three to thirty lashes. The two white men were sentenced to an additional four years of servitude. But, in addition to the whipping, the black man, a man named John Punch, was ordered to ‘serve his said master or his assigns for the time of his natural Life here or elsewhere.’”<sup>74</sup>

Thus began the history of race discrimination in American labor and employment law; African American workers were treated more harshly for the same workplace infractions. While both white and black workers started out on an equal footing as indentured servants during the 1600s, the white workers’ conditions of employment slowly improved throughout the 1700s and 1800s; meanwhile, the African American workers’ conditions of employment worsened, and morphed from indentured servitude to chattel slavery.<sup>75</sup>

From 1800 to about 1850, while most African Americans were enslaved in the South, white workers slowly began to chisel away at the power and authority of their employers. First, white workers fought for the right to be free from corporal punishment for workplace infractions; and over time corporal punishment came to

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

be associated solely as a mark of involuntary servitude (i.e., African American slavery). Thus, if employers were to discipline white workers, they could do so only by means of non-corporal punishment. Second, white workers fought for and attained the “right to quit” their employment without being hunted down and returned to their employers, and without being placed in jeopardy of incarceration; in other words, if a white worker decided to quit, the employer could no longer seek redress from the courts in order to force the worker to complete the employment contract.<sup>76</sup>

Again, the act of returning an employee to complete an employment term of service more and more came to be associated solely as a mark of involuntary servitude (i.e., African American slavery). The one remaining right which white workers were still fighting for, during the middle part of the nineteenth century, and before the Civil War, was the right to their unpaid wages after they quit their employment before the completion of the contract term. The “doctrine of forfeiture” required white workers who quit their employment early to give up the right to unpaid wages for work previously performed before the end of the contract term. This undoubtedly still gave employers a tremendous amount of power over white workers.<sup>77</sup>

Over time, in American law, clear demarcations regarding the power of employers began to be drawn during the 1850s. This process had slowly occurred as lower state court decisions slowly chiseled away at the “doctrine of forfeiture.” Courts began to embrace, instead, the “doctrine of quantum merit” or “the doctrine of apportionment,” which was an equitable remedy that provided payment for time actually served to employees who quit their employment before the end of the contract period.<sup>78</sup>

The “doctrine of quantum merit” held that all work bestowed some benefit to its recipient employers, and that acceptance of that benefit implied a promise to recompense the laborer. In so many words, the quantum merit or “apportionment” doctrine conjoined with the “right-to-quit” doctrine to create the foundation of the “employment-at-will” doctrine. By the time African American slaves entered into

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<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

the nation's economic arena as "free laborers," this legal evolution of American employment law was nearly completed.<sup>79</sup> As the United States became more industrial during the 1850s, capitalist employers, rather than Southern planters, began to dominate the national agenda regarding employment law.

An emerging view of the wage bargain, one that would remain in place into Reconstruction, would eventually lead to the doctrine of "at-will" employment. In this view, workers sold more than commodified parts of their labor power; rather, they sold the whole of their labor power, thereby vesting their employers with a right to that 'property.' Thus, a capitalist transaction secured a noncapitalist, reciprocal relationship under which the servant worked diligently during the busy spring and summer in return for a home and a meal during the cold, sparse winter months. In essence,... a free-labor world in which works voluntarily obligated themselves to a defined period of service. But service was not servitude, for the contract limited the property rights the master had acquired in the transaction. In this formulation, servants had not sold their persons into service; rather, they had bargained away the whole of their disembodied labor power. This minimal limitation on employer's power represented a tenet of free labor on which most northerners eventually came to agree."<sup>80</sup>

Thus, in 1865, when four million African American slaves were freed and unleashed onto the American free enterprise economic system, they were thrust into a labor system which had not yet rejected the concept that all employment was assumed to be for a contract term of at least one year. The entrance of ex-American slaves into the American free labor system placed great pressure on the American employment law regime, because a critical problem was the irony of white ex-slave masters re-employing their African American ex-slaves.<sup>81</sup> Bad faith in economic transactions between ex-slave and ex-slave master was to be expected, if not flagrant attempts at re-enslavement of the former. For this reason, the Freedmen's Bureau had been established in 1866.

Ever since African Americans were freed in 1865, they faced the problem of racial discrimination in the terms and conditions of their employment. This

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

discrimination was not simply the modern-day version of race discrimination, such as unfair or unequal treatment when compared to similarly-situated white or non-black employees; but, rather, the race discrimination experienced by the ex-slaves were the myriad attempts to reduce them down to a near-slave status—trickery and theft, and legal shenanigans designed to re-enslave them. African American slaves were suddenly freed in 1865; but they were in theory merely free to quit work—whither they could go remained an agonizing enigma. This was basically the extent of their newly-won freedom. Economic circumstances, armed threats from white planters, and illiteracy eventually forced many of the African American freedmen back into a new form of “contract” slavery.<sup>82</sup> Now wholly unregulated by the ethical standards of the Church or by ecclesiastical jurists, this was the status of the law of master of servant in the United States up to 1900.

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*“My weight is my love. By it I am carried wherever I am carried.”*

*-- St. Augustine of Hippo*

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<sup>82</sup> Ibid.