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

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

PREFACE

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

INTRODUCTION¹

The Rev. Richard Baxter (1615- 1691) was a rare, self-taught genius who made his mark upon English ecclesiastical history by becoming the “Chief of the Puritan Schoolmen” and “the most prominent English churchman of the 1600s,”² even without having a theology degree from Oxford or Cambridge. His influence

¹ This paper is the first in this series that is published under the label “St. Clement’s INN of COURT.” It is published on Christmas Day, December 25, 2020, in commemoration of the birth, life and ministry of Jesus the Messiah and Lord. The St. Luke’s INN of COURT, founded in 2015, has changed its name to St. Clement’s INN of COURT in an effort to coordinate its missionary efforts to provide continuing legal education to Christian lawyers and judges from around the world, in conjunction with St. Clements University and the William Wilberforce International Human Rights Law Centre. In September 2020, I had the honor of being nominated as the Chancellor of St. Clements University. This paper is dedicated to St. Clements University and to Dr. David Le Cornu, President of the St. Clements Education Group, www.stclements.edu.

²<https://www.christianitytoday.com/history/people/pastorsandpreachers/richard-baxter.html>

upon Anglican Christianity and the Protestant Reformation cannot be adequately measured, but we do know that Baxter's Christianity was not subordinate to secularism, materialism, or state government. Indeed, it was his understanding that God's government and Providence governed the secular affairs of everyday secular life and state government. Baxter's Christianity conceptualized human government as a subordinate, subcomponent of God's eternal, divine government. This view of law and government was certainly "orthodox" and exemplified the dogma of traditional Toryism: Church and State were inextricably bound together as two sides of the same coin. The "law of Christ"³ was deemed the fundamental law of England; it had been sewn into the Common Law of England; and it had pervaded the general framework of the entire English legal structure. See, e.g., Table 1, Thomas Woods, *Institutes of the Laws of England* (1720).

Table 1. Thomas Woods, *Institutes of the Laws of England* (1720)

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

1. Upon the *Law of Nature*, though we seldom make Use of the Terms, *The Law of Nature*. But we say, that such a **Thing is reasonable, or unreasonable, or against the....**

2. Upon the **revealed Law of God**, Hence it is that our Law punishes Blasphemies, Perjuries, & etc. and receives the Canons of the Church [of England] duly made, and supported a spiritual Jurisdiction and Authority in the Church [of England].

3. The third Ground are several general *Customs*, these Customs are properly called the *Common Law*. Wherefore when we say, it is so by Common Law, it is as much s to say, by common Right, or of common Justice.

Indeed it is many Times very difficult to know what Cases are grounded on the *Law of Reason*, and what upon the *Custom* of the Kingdom, yet we must endeavor to understand this, to know the perfect Reason of the Law.

Rules concerning Law

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

³ The Law of Christ is to "love ye one another" (John 15:12); to do justice and judgment (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3)."

Common Law is common Right.

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

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

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

Significantly, as the law of reason, the English Common Law was the manifestation of the divine *Logos*, or the *Word* of God. For “[i]n the beginning was the Word, and the Word was with God, and the Word was God.”⁴ Hence, “Reason,” “Nature,”⁵ and “Logos” became one “fundamental moral law” during first several decades of the seventeenth century. For this reason, Rev. Baxter held to the opinion that human laws (i.e., the laws of the secular, civil government) were subordinate to natural law, divine or ecclesiastical law, and to the eternal laws of God. This view of law certainly reflected traditional theology of the Roman Catholics, particular of St. Thomas Aquinas. And it is largely upon this foundation that Rev. Baxter was able to render advice to English lawyers and judges. He did not conceptualize their professional, legal, constitutional or traditional functions as being anything other than the godly duty to establish justice. Hence, lawyers and judges were, in Baxter’s view, very important ministers of God. In Rev. Baxter’s view, any other conception of the duties and obligations of lawyers and judges was based upon a fundamental misunderstanding of law or of what law was created for and designed to accomplish. Many of the problems plaguing seventeenth-century English life, including the downfall of the reputation of the English legal profession, was due in large measure to the fact that English lawyers and judges were using the law simply to gain social status and money, and not justice. In Rev. Baxter’s view, such short-sighted selfishness was a “sin” against both God and the secular body politic. And this selfishness was certainly both unchristian and unpatriotic. We therefore turn to a more careful examination of Rev. Baxter’s advice to Christian lawyers and judges.

⁴ John 1:1.

⁵ St Augustine defines “nature” as “essential.” He writes: “Consequently, to that nature which supremely is, and which created all else that exists, no nature is contrary save that which does not exist. For nonentity is the contrary of that which is. And thus there is no being contrary to God, that Supreme Being, and Author of all beings whatsoever.... It is not nature, therefore, but vice, which is contrary to God.” *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 382. Similarly, in another section of *The City of God*, St. Augustine describes “God Himself,” as “the fountain of all justice.” *Ibid*, p. 27.

SUMMARY

Rev. Richard Baxter (1615 – 1691), who is considered to be the Chief of Protestant Schoolman, is an exemplification of the Protestant conceptualization of secular human law as being merely a subcomponent of the natural law and the laws of God. Hence, the Roman Catholic view of law, as espoused by St. Thomas Aquinas, was sewn into the English legal system and remained there even after King Henry VIII formally separated the Church of England from Rome in 1534. By all accounts, the Protestant Reformers did not change or reject Aquinas’ fundamental conceptualization of law, which included human law, natural law, divine law, and eternal law. The natural law (or the “law of reason”) was a specie of the moral theology of the Church and became the heart and soul of the English common law. Rev. Baxter thus admonished English lawyers and judges to study the entire branches of the English Common Law, including Christian theology, in order ascertain the correct and just meaning and application of the law. Hence, the Holy Bible and the Christian faith were still essential components within the English legal and constitutional system throughout the entire seventeenth century (i.e., 1600s) and easily up through the early eighteenth-century (i.e., 1700-1750).

Part XL. Anglican Church: “Rev. Richard Baxter’s (1615- 1691): Advice to Christian Lawyers and Judges”

In his monumental work *A Christian Directory*,⁶ which was originally published in 1664 or 1665, Rev. Baxter had much to say to England’s lawyers as he admonished them to utilize their legal talents to serve God. He wrote:

Gentlemen, you need not meet these directions with the usual censures or suspicions, that divines are busying themselves with the matters of your calling, which belong not to them, and which they do not understand; you shall see that I will as much forbear such matters as you can well desire. **If your calling be not to be sanctified by serving God in it, and regulating it by his law, it is then neither**

⁶ Rev. Richard Baxter (1615 – 1691), “Directions To Lawyers About Their Duty to God,” Chapter IV, *Christian Directory* (Part 4)(1665).

honourable nor desirable. But if it be, permit me very briefly so far to direct you.

To some degree, Rev. Baxter seemed to be telling legal profession as a whole, that if it does not serve God (i.e., Justice and Truth), then it is really and truly only engaged in dishonorable service. This significant conclusion is not simply theological, but it is also a professional self-assessment of right and wrong, and ethical obligation and duty.

I. Put the Laws of God in their Proper Perspective and Relation to the Laws of Man.

There was no separation of Christian theology from law and government in seventeenth-century England, and so Rev. Baxter could inform English lawyers and judges of their obligation to search the Scriptures for knowledge as to God's laws and government first, before taking into account the objectives and goals of secular human laws. Their understanding was that the later was derived from the former, as Rev. Baxter explained:

Direction I. Take the whole frame of polity together, and study each part in its proper place.... Therefore **let the government and laws of God have the first and chiefest place in your studies**, and in all your observation and regard.

1. Because it is **the ground of human government**, and the fountain of man's power and laws.
2. Because **the divine polity** is also the **end of human policy**; man's laws being ultimately to promote our obedience to the laws of God, and the honour of his government.
3. Because **God's laws are the measure and bound of human laws**; against which no man can have power...⁷

Hence, traditionally, within the Anglo-American legal heritage, the Christian faith is as the heart legal profession; it is the foundation; it is the ultimate objective, goal, and purpose; and it is the final measure with which all laws are to be judged.

⁷ *ibid.*

II. Be not Affixed to Money-Making at the Expense of Justice

With Christianity at the foundation of English law, Rev. Baxter reasoned that Christian moral and social philosophy ought to also be at the foundation of the English legal profession. This meant that higher aims and higher goals, other than social-climbing and money-getting, should characterize the highest aims of the English legal profession. For these reasons, Rev. Baxter opined:

Direction II. Be sure that you **make not the getting of money to be your principal end in the exercise of your function**; but the **promoting of justice**, for the **righting of the just**, and the **public good**; and therein **the pleasing of the most righteous God**.

For your work can be to you no better than your end. A **base end doth debase your work....**

The question is not, Whether you seek to live by your calling; for so may the best; nor yet, Whether you intend the promoting of justice; for so may the worst (in some degree). But the question is, **Which of these you prefer? And which you first and principally intend? ...**

And if you say that **you look for no reward but riches, you must look for a punishment worse than poverty**; for the neglecting of God and your ultimate end, is a sin that deserveth the privation of all which you neglect; and leaveth not your actions in a state of innocent indifferency.⁸

Here, Rev. Baxter presents to the English legal profession the choice between Good and Evil, much similar to Moses' presentation of the same choice between Good and Evil to ancient Israel in the *Book of Deuteronomy*. Indeed, Rev. Baxter asks, "which do you prefer," so as to say, "what is in your heart's desire?" thus echoing Jesus of Nazareth, who said, "no man can serve ... God and mammon."⁹

III. Be Advocates for God, Justice, Truth, and the Innocent

⁸ Ibid.

⁹ Matthew 6:24.

Next, it is critically important to note one of God’s important manifestations and attributes is “justice.” For Rev. Baxter, this meant that to establish “justice” is to establish God; but to oppose “justice” is to be in rebellion and opposition against God. And there is no separating “justice” from its divine source. Hence, another reason for lawyers and judges to study the *Holy Bible* is because God is himself the fountain of all justice. Rev. Baxter thus wrote in *A Christian Directory*:¹⁰

Direction III. Be not counselors or advocates against God, that is, against justice, truth, or innocency. A bad cause would have no patrons, if there were no bad or ignorant lawyers. It is a dear-bought fee, which is got by sinning; especially by such a willful, aggravated sin, as the deliberate pleading for iniquity, or opposing of the truth...

[A]s St. James saith to them that he calleth to weep and howl for their approaching misery, ‘Your riches are corrupted, and your garments moth-eaten, your gold and silver is cankered, and the rust of them shall be a witness against you, and shall eat your flesh as it were fire: ye have heaped treasure together for the last days.’

Whatever you say or do against truth, innocency, and justice, you do it against God himself. And is it not a sad case that among professed Christians, there is no cause so bad but can find an advocate for a fee?

I speak not against you for pleading against excessive penalties or damages; for so far your cause is good, though the main cause of your client was bad; but he that speaketh or counselleth another for the defence of sin, or the wronging of the innocent, or the defrauding another of his right, and will open his mouth to the injury or the just, for a little money, or for a friend, must try whether that money or friend will save him from the vengeance of the universal Judge (unless faith and true repentance, which will cause confession and restitution, do prevent it).

¹⁰ Rev. Richard Baxter (1615 – 1691), “Directions To Lawyers About Their Duty to God,” Chapter IV, *Christian Directory* (Part 4)(1665).

The Romans called them thieves, that by fraud, or plea, or judgment got unlawful gain, and deprived others of their right...¹¹

Stated differently, and what Rev. Baxter seems to be asking, is this: without the spirit of Christ leading it, and without God as its ultimate objective, what does the legal profession descend to, other than organized larceny and thievery? That is the fundamental question which the organized bar associations and individual lawyers and judges must grapple with, and confront, in every time and age.

¹¹ Ibid.

IV. Take-Up the Cause of the Oppressed and the Innocent

In the Gospel of St. Luke, a lawyer asked Jesus of Nazareth to define the term “neighbor,” to which Jesus responded with the telling the “Parable of the Good Samaritan.”¹² Rev. Baxter similarly admonished Christian lawyers and judges to act accordingly, to serve and not forget the oppressed and the weak:

Direction IV. **Make the cause of the innocent as it were your own; and suffer it not to miscarry through your slothfulness and neglect. He is a lover of money more than justice, that will sweat in the cause of the rich that pay him well, and will slubber over and starve the cause of the poor,** because he getteth little by them.

Whatever your place obligeth you to do, let it be done diligently and with your might; both in your getting abilities, and in using them.¹³

It is significant here that Rev. Baxter pinpoints the very fleshly problem amongst lawyers and judges to choose rich clients and the cause other powerful above those of the poor and the innocent. This is true not simply of individual lawyers and judges, who make individual choices, but also this is true of legal institutions, bar associations, law schools, and legal education in general.

V. Resist Worldly Temptation

Finally, Rev. Baxter reminded lawyers and judges to take heed and to resist worldly temptations:

Direction V. ...But especially remember who hath said, **‘What shall it profit a man to win all the world, and lose his soul?’** And that temptations surprise you not, be deliberate and take time, and be not too hasty in owning or opposing a cause or person, till you are well informed....

Indeed, Rev. Baxter felt that without the spirit and the law of Christ as the guide, the tendency within the legal profession is preference for social status and affiliation with the rich and powerful, and to get about or exclude the plight of the

¹² Luke 10: 25-37.

¹³ Rev. Richard Baxter (1615 – 1691), “Directions To Lawyers About Their Duty to God,” Chapter IV, Christian Directory (Part 4)(1665).

poor— ungodly and unchristian instincts which the legal profession should guard against.

CONCLUSION

Rev. Richard Baxter was the “Chief of the Puritan Schoolmen” and “the most prominent English churchman of the 1600s.”¹⁴ From his writings we learn that the Christian religion was certainly part and parcel of every aspect of English life. According to Rev. Baxter, Christianity was the foundation of English law, and that in order for lawyers or judges to know and understand law, they must also understand theology. Indeed, Rev. Baxter believed that a theologian could be a good theologian without knowing the law, but a lawyer could not be a good lawyer without knowing theology. Therefore, *Rev. Baxter advised English lawyers and judges to study Christian theology along with their studies of secular laws.*

This advice is even more significant, when we consider the fact that Rev. Baxter was also a leading interpreter of the English Protestant Reformation. For Rev. Baxter, the Reformation had been wrought to make men and women more holy, not more secular. Like Rev. Richard Hooker’s *Laws of Ecclesiastical Polity*, all of Rev. Baxter’s writings on law and government concluded that man-made secular laws were subordinate to divine and natural law. The Providence of God continued to rule the secular state, and laws that conflicted with God’s laws were thus void. This meant that constitutional ideas such as the “divine right of kings” had to yield to divine law and natural law, including the fundamental rights of individual citizens who retained the right of conscience and of civil disobedience. Hence, the parameters of the *American Declaration of Independence* (1776) and *United States Constitution* (1789), which came a century later, grew out of an English constitutional ideal that placed the Christian faith at the foundation of its fundamental constitutional law.

THE END

¹⁴<https://www.christianitytoday.com/history/people/pastorsandpreachers/richard-baxter.html>

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