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

By

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“To speak of the separation of church and state is to speak of the separation of soul and body.”
-- Rev. Algernon Sidney Crapsey (Anglican Priest)

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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 sixty-second in this series: “A History of the Anglican Church—Part LXV.”

INTRODUCTION¹

The life’s work of Whig lawyer-turned-theologian and Anglican Bishop William Warburton (1698 – 1779) is an exemplification of the contradictions, conflicts, and challenges which the Church of England encountered during the rise of the 18th-century British Empire. During his life-span, the forces of global capitalism had slowly wrested control over the British government. The House of Hanover was made the titular ruler of the Whig-dominated Parliament and the titular governor of the Church of England. But also during the first few decades of the 1700s, there was incredible conflict within the British Empire, and the Church of England stood at the epicenter of this conflict, to wit:

¹ This paper is dedicated to the memory of Anglican clergyman **Rev. Dr. Thomas Bray** (1656- 1730). “Thomas Bray... was an English clergyman and abolitionist who helped formally establish the Church of England in Maryland, as well as the Society for the Propagation of Christian Knowledge and Society for the Propagation of the Gospel in Foreign Parts.... “Bray took a great interest in colonial missions, **especially among the slaves and Native Americans, writing and preaching vigorously against slavery and the oppression of Indians.**””
https://en.wikipedia.org/wiki/Thomas_Bray. This paper is also dedicated to **Dr. Michael Joseph Brown**, President of Payne Theological Seminary (Wilberforce, Ohio) and to the future development of African Methodism. .

Table 1. The Major Competing Interests in the British Empire during the 18th Century

<p><u>Major Conflict in the 18th-Century British Empire</u></p> <p>Church ←---→ State ←---→ Capitalism</p>
<p><u>Subcomponents of the Conflict</u></p> <p>Tory Party ←---→ Whig Party</p> <p>Monarchy ←---→ Republicanism</p> <p>American Loyalists (Tories) ←---→ American Patriots (Whigs)</p> <p>Arminianism ←---→ Calvinism</p> <p>British Capitalism ←---→ American Capitalism</p> <p>Arminiansism + British Capitalism ←---→ Calvinism + American Capitalism</p> <p>American + British Capitalism ←---→ French, Dutch, Spanish Capitalism</p>

For Bishop Warburton and other Anglican clergymen, the spirit of the Whig Revolution loomed large. Whigs, Calvinists, the American Patriots, and the Anglo-American merchants believed, in general, that the role of the civil magistrate and the role of the pastor and church must be completely separate functions. Their idea had been that the Church and the State should be connected together within one synergistic relationship, as Baptist theologian Roger Williams had devised in his “two-tables” theory of church and state, to wit:

Table 2. “The Two Tables Theory for Church and State”

AMERICAN PURITAN and CALVINIST POLITICAL THEORY	
CHURCH-- FIRST TABLE	STATE-- SECOND TABLE
Eternal Law	Natural Law
Divine Law	Human Law
Ten Commandments (I – IV):	Ten Commandments (V- X):
<p>I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage. Thou shalt have no other gods before me! Ex. 20:2-3.</p> <p>Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the water under the earth. Thou shalt not bow down thyself to them, nor serve them: for I the LORD thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me; and shewing mercy unto thousands of them that love me, and keep my commandments. Ex. 20:4-6</p> <p>Thou shalt not take the name of the LORD thy God in vain; for the LORD will not hold him guiltless that taketh his name in vain. Ex. 20: 7</p> <p>Remember the Sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work: but the seventh day is the Sabbath day of the LORD thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: for in six days the LORD made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the LORD blessed the Sabbath day, and hallowed it. Ex. 20:8-11.</p>	<p>Honor thy father and thy mother: that thy days may be long upon the land which the LORD thy God giveth thee. Ex. 20:12</p> <p>Thou shalt not kill! Ex. 20:13</p> <p>Thou shalt not commit adultery! Ex. 20: 14</p> <p>Thou shalt not steal! Ex. 20: 15</p> <p>Thou shalt not bear false witness against thy neighbor! Ex. 20:16</p> <p>Thou shalt not covet thy neighbor’s house, thou shalt not covet thy neighbor’s wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbor’s. Ex. 20: 17</p>

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But due to the influence of the Whig Revolution and global capitalism—together with the forces of skepticism, scientific or economic rationalism, deism, and perhaps even Unitarianism—the Puritan “two-tables” theory of civil government did not prevent the sort of moral collapse of colonial New England—a moral collapse which plagued the British Empire as a whole during the 18th Century. The same commercial and secular forces of liberalism and pluralism that shook the foundations of Puritan colonial New England during the early 1700s were also shaking the foundations of the Church of England.

By the 1730s, for instance, Puritan New England was starting to implode. The Calvinist idea of the “elect” had invested both church and government officials with the authority to decide who were, in fact, the elect members of Congregational or Presbyterian churches; and thereby, also, to decide who could vote and hold public office! Throughout New England, only churchmen—i.e., official members of the local established church—could hold public office! The direct link between being a churchman and being a citizen in the New England colonies was challenged and, eventually, broken. During the meanwhile, a real battle occurred inside of New England’s congregational churches regarding “membership.” The new “Half-way” covenant would make it possible for persons who had not yet become “born again” to be members—a measure which New England clergymen such as Rev. Jonathan Edwards (1703- 1758) did not support. The “Half-way” covenant supporters and the liberals first sacked Harvard College; and this caused the conservative Congregationalists to found Yale College in 1701 and eventually Princeton College in 1746. Rev. Edwards was an alumni of Yale and a former President of Princeton.²

The Church of England represented the more liberal Arminian view (i.e., the Half-way covenant view) which the orthodox Calvinists deemed to be their mortal threat. Indeed, in Puritan New England, only the “elect” could be a member of the church or be eligible to vote or run for public office. But how were men and women to be determined as being a member for the “elect?” They were required to testify under oath as to the nature of their conversion experience—and those persons who could not attest that they had received the Holy Spirit could not

² Meanwhile, Harvard College more and more represented those Calvinists and Presbyterians who were tolerant of Arminian views, and this invited to Harvard College those persons who were Arminians and Anglicans. Meanwhile, the College of William and Mary (Virginia) and King’s College (Columbia University in New York) had been established by the Church of England.

become members of the church or otherwise participate in government. This system began to show cracks as the seventeenth-century came to a close.

Some churches maintained the original standard into the 1700s. Other churches went beyond the Half-Way Covenant, opening baptism to all infants whether or not their parents or grandparents had been baptized. Other churches, citing the belief that baptism and the Lord's Supper were "converting ordinances" capable of helping the unconverted achieve salvation, allowed the unconverted to receive the Lord's Supper as well.

The decline of conversions and the division over the Half-Way Covenant was part of a larger loss of confidence experienced by Puritans in the latter half of the 17th century. In the 1660s and 1670s, Puritans began noting signs of moral decline in New England, and ministers began preaching *jeremiaids* calling people to account for their sins....[A jeremiad is a long literary work, usually in prose, but sometimes in verse, in which the author bitterly laments the state of society and its morals in a serious tone of sustained invective, and always contains a prophecy of society's imminent downfall.]

Hence, even Puritan New England began to show signs of spiritual erosion and discord by the early 1700s. Not only had the Arminian wing of the Puritan divide began to increase in number, but also Unitarians emerged; and even within the Calvinist wing of the Puritan divide, there were various other shades of differences that created additional erosion and discord. For it was within this context, by the early 1700s, that the First Great Awakening arose in colonial New England and that a Revival had occurred in England. What caused the need for this spiritual movement? It is likely that **“the influence of Enlightenment rationalism was leading many people to turn to atheism, Deism, Unitarianism and Universalism.** The churches in New England had fallen into a ‘staid and routine formalism in which experiential faith had been a reality to only a scattered few.’”³ Christian humanism of the 16th and 17th centuries took hold of protestant universities where Calvinism was firmly established:

In Geneva, on the contrary, in the protestant cantons of Switzerland, in Sweden, and Denmark, the most eminent men of letters whom those countries have produced, have, not all indeed, but the far greater part of them, been professors in universities. In those countries the

³ https://en.wikipedia.org/wiki/First_Great_Awakening

universities are continually draining the church of all its most eminent men of letters.⁴

Calvinism could not contain excesses within the spirit of capitalism, materialism, and mammon. “[In Geneva] after the short supremacy of the Calvinistic theocracy had been transformed into a moderate national Church, and with it **Calvinism had perceptibly lost in its power of ascetic influence....**⁵ [A]lso in Holland, which was really only dominated by strict Calvinism for seven years, the greater simplicity of life in the more seriously religious circles, in combination with great wealth, **led to an excessive propensity to accumulation.**”⁶

In Philadelphia, for instance, the Calvinist-reared Benjamin Franklin had deified money-making, so long as money-making was done legally, and he had elevated it to a supreme moral virtue, as being an ethical duty and as sure evidence of honesty, integrity and divine favor.⁷ Material and financial success likewise became evidence of the spiritually “regenerated” and the “elect” of God. Not John Calvin himself, *but many of Calvin’s followers*, suddenly merged Calvinism with material success and with capitalistic enterprises. Hence the powerful forces of mammon and materialism infected both Calvinism and Puritanism with a fatal disease:

The question, **Am I one of the elect?** must sooner or later have arisen for every believer and have forced all other interests into the background. And **how can I be sure of this state of grace?** For **Calvin himself his was not a problem.** He felt himself to be a chosen agent of the Lord, and was certain of his own salvation. Accordingly, to the question of how the individual can be certain of his own election, he has at bottom only the answer that we should be content with the knowledge that God has chosen and depended further only on that implicit trust in Christ which is the result of true faith. **He rejects in principle the assumption that one can learn from the conduct of others whether they are chosen or damned. It is an unjustifiable attempt to force God’s secrets. The elect differ externally in this life in no way from the damned;** and even all the subjective experiences of the chosen are, as *lubibria spiritus sancti*, possible for the damned with the single exception of that *finaliter expectant*,

⁴ Adam Smith, *The Wealth of Nations* (New York, N.Y.: The Modern Library, 1937), p. 763- 764.

⁵ Max Webber, *The Protestant Work Ethic and the Spirit of Capitalism* (New York, N.Y.: Vigeo Press, 2017), 120.

⁶ *Ibid.*, p 123.

⁷ *Ibid.*, pp. 26-32.

trusting faith. **The elect thus are and remain God's invisible Church.**

Quite naturally this attitude was impossible for his followers as early as Beza, and, above all, for the broad mass of ordinary men. For them the *certitudo salutis* in the sense of the recognizability of the state of grace necessarily became of absolutely dominant importance. So, wherever the doctrine of predestination was held, the question could not be suppressed whether there were any infallible criteria by which membership in the *electi* could be known... On it depended, for instance, his admission to the Communion, i.e., to the central religious ceremony which determined the social standing of the participants.

It was impossible, at least so far as the question of a man's own state of grace arose, to be satisfied with Calvin's trust in the testimony of the expectant faith resulting from grace, even though the orthodox doctrine had never formally abandoned that criterion. Above all, **practical pastoral work**, which had immediately to deal with all the suffering caused by the doctrine, could not be satisfied. It **met these difficulties in various ways**. So far as **predestination was not reinterpreted, toned down, or fundamentally abandoned**, two principal, mutually connected, **types of pastoral advice appear**. On the one hand it is held to be **an absolute duty to consider oneself chosen**, and to **combat all doubts as temptations of the devil**, since lack of self-confidence is the result of insufficient faith, hence of imperfect grace. The **exhortation of the apostle to make fast one's own call is here interpreted as a duty to attain certainty of one's own election and justification in the daily struggle of life**. In the place of the humble sinners to whom Luther promises grace if they trust themselves to God in penitent faith are bred **those self-confident saints whom we can rediscover in the hard Puritan merchants of the heroic age of capitalism** and in isolated instances down to the present. On the other hand, in order to attain the **self-confidence intense worldly activity is recommended** as the most suitable means. It and it alone **disperses religious doubts and gives the certainty of grace**.⁸

⁸ Max Webber, *The Protestant Work Ethic and the Spirit of Capitalism* (New York, N.Y.: Vigeo Press, 2017), 120.

For during the 18th-century, it was clear that Puritanism and Calvinism had allied itself with capitalism, but that, in the end, capitalism—through the instrument of the Whig parties in both England and North America—overthrew the Calvinistic Puritan church-state in colonial New England. Simultaneously, capitalism had attempted to completely overthrow the privileged position of the Church of England during the very same period, but it did not succeed.

Church ←---→ State ←---→ Capitalism

The Church of England, as the life of Bishop Warburton reflects, moved in a similar direction as Harvard College and as those Congregational Churches in colonial New England who tolerated the Arminian viewpoint—i.e., towards an alliance with global commercialism and the support of Whig public policies.

Therefore, the Church of England retained its privileged position within the British Empire, at least theoretically. As outlined in Bishop William Warburton's *Alliance between Church and State*, the Church of England was still considered to be “superior” to the State; and the primary responsibility of the Church was to inspire, to teach, and to promote virtue amongst the body politic, as well as to admonish the State against injustice, at least theoretically. This medieval view of Church supremacy would guarantee, at least in form, the privileged position of the Church of England. But within the American colonies, there was nothing to help guarantee the privileged role of the orthodox Puritan Congregational or Presbyterian churches in British North America— perhaps the American Ivy League colleges of Yale, Princeton, and Dartmouth would serve as the vanguard of Calvinist orthodoxy.

Indeed, in British North America, Evangelical Arminian Christianity became the dominant form of Christianity, and this religious form did not conceptualize the American Church as carrying on either the “Puritan Church-State” tradition or the “High-Church Anglican” tradition in colonial British North America. During the 18th Century, men such as skeptics Benjamin Franklin and Thomas Paine were quite popular, and they were readily embraced by practical American politicians such as George Washington. American pluralism and tolerance was suitable for Evangelical Arminian Christianity—not the Puritan Church-State of Calvinism or Anglican Church-State of the United Kingdom. And Evangelical Arminian Christianity was suitable for the Methodists and Baptist churches that rapidly populated British North America during the 1700s. Indeed, there were no Anglican bishops in America, because America's religious dissenters were fearful of the re-establishment of a British-style Anglican Church on American soil. This the American colonists could not tolerate, and they were joined by powerful allies

in Dutch and English merchants. A sort of anti-church pluralism thus eventually prevailed in the American colonies:

Table 3. Political, Economic and Social Consequences of the American Revolution, 1776 to the Present

Roman Catholic Church of England	Church of England after the Reformation	Puritan/Anglican churches in colonial British North America	Protestant Christian Pluralism (American and British Whig Parties)/ Christian Humanism/ Deism/ Economic Rationalism (i.e., Capitalism)⁹
800 A.D.- 1534 A.D.	1534 A.D. – Present (England and British Commonwealth)	1620 A.D.- 1785 (Colonial New England; British North America)	1776 A.D. – Present (United States)
God	God	God	God
Pope- Roman Catholic Church	King/Prince/ State	Protestant Church	Republican Civil Government
King/ Prince/State	Protestant Church	Republican Civil Government	Protestant Church

Bishop Warburton’s *Alliance between Church and State* represents the Anglican response to the growing liberalism of the period. The Church of England made a successful adjustment and forged a newer, vibrant Church-State alliance. Bishop Warburton proposed that the State (i.e., the civil government under the alliance) promote a “Natural Religion” only, as opposed to functioning as a strict arbiter of orthodox Calvinism or orthodox Arminianism or orthodox Anglicanism. According to Bishop Warburton, the civil government’s role over religion would be limited, simple, and very basic (i.e. the “**Three Articles of Natural Religion**”):

1. First, the civil government must acknowledge the being of God;

⁹ See, e.g., Max Webber, *The Protestant Work Ethic and the Spirit of Capitalism* (New York, N.Y.: Vigeo Press, 2017); Adam Smith, *The Wealth of Nations* (New York, N.Y.: The Modern Library, 1937); and R. H. Tawney, *Religion and the Rise of Capitalism*.

2. Second, the civil government must acknowledge the Providence of God over human affairs; and,

3. Third, the civil government must acknowledge the “natural essential difference between moral good and evil.”¹⁰

Bishop Warburton referred to these three Articles of Natural Religion as the civil religion or as the “Natural Religion.”¹¹ And, it should be noted here that the new *United States Constitution* (1787), when read in light of the *American Declaration of Independence* (1776), would echo these very same fundamental principles of “**natural religion.**”¹² These revolutionary constitutional documents reflected the three “Articles of Religion” and were, in many ways, the final religious compromise within the British Empire: these two American constitutional documents represented *latitudinal Anglicanism* (Calvinism, Arminianism, Roman Catholicism, etc.)—but these constitutional documents were not solely orthodox Calvinism or orthodox Puritanism. If the *American Declaration of Independence* (1776) and *United States Constitution* (1787) may correctly be called “Christian” documents, then it is to the credit of latitudinal Anglican bishops, such as William Warburton, who, during the Church of England’s negotiations with the Whigs, devised a liberal political theory of Church and State.

For it is clear that the Puritan churches of colonial New England were unable to make the same adjustments as the latitudinal Anglicans—as is evidenced by the life and legacy of the Rev. Jonathan Edwards (1703- 1758). The Church of England, through latitudinal Anglicanism, was able to thrive, or at least survive, in an era which saw England dominated by global commercial interests and Whig politics; but the orthodox-Calvinistic Congregational Churches of colonial New England were unable, or unwilling, to make the same adjustments, which led to the

¹⁰ Ibid., p. 36.

¹¹ Ibid.

¹² See, e.g., Thomas Jefferson, 'A Summary View of the Rights of British America,' stating "Resolved, that it be an instruction to the said deputies, when assembled in general congress with the deputies from the other states of British America, to propose to the said congress that an humble and dutiful address be presented to his majesty.. the united complaints of his majesty's subjects in America; complaints... upon those rights which God and the laws have given equally and independently to all.... The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." And see, also, Thomas Jefferson, "The American Declaration of Independence," stating, "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them.... We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

downfall of the Puritan Church-State in British North America. In the end, the *Declaration of Independence* (1776) and the new *United States Constitution* (1787) exemplified Whig, latitudinal Anglicanism which mandated the State (i.e., the civil magistrate) promote “Natural Religion.” This “Natural Religion” was the essentially the “lawyer’s translation of Christian theology into constitutional law,” and it became the primary Christian legacy which made a lasting influence upon the new constitutions that formulated the United States in North America.

SUMMARY

Bishop William Warburton (1698 – 1779), who was himself a lawyer-turned-theologian, represented the quintessential Anglican clergyman of the eighteenth century, supporting a strong union between Church and State. But Warburton’s union was a “political compromise,” because theoretically and constitutionally the Church was considered “superior” to the State; and, under Magna Carta (1215), the Church was to be free and independent.

However, when King George I prorogued the Church’s convocation in 1718, and after Parliament itself, under Whig leadership, moved in the direction of global commercial expansion, the Church of England had no other option save to compromise and to plea for its survival. Bishop Warburton’s *The Alliance Between Church and State* is representative of the route which the Church of England took in order to remain relevant. Instead of acting separately and independently, as a “Third Estate,” the Bishops within the Church of England were moved to the House of Lords where they would sit as “barons” and “Lords Spiritual,” looking after the administrative needs of the Church of England, as well as the spiritual needs of the entire British commonwealth. This was the new scheme that was devised during the 18th Century—the Church of England, as an established church, was essentially the *vassal* of a Whig-led Parliament, which was itself dominated by global commercial interests.

Finally, Bishop Warburton was one of the few Anglican bishops who were staunchly opposed to African slavery and the transatlantic slave trade as being violations of the Gospel of Jesus Christ. The Rev. John Wesley, for example, quoted Bishop Warburton’s famous anti-slavery sermon given before the Society for the Propagation the Gospel in Foreign Parts, in Rev. Wesley’s tract *Thoughts Upon Slavery* (1774). This further supports the proposition advanced throughout this series that under conventional Anglican law (i.e., English common law) the institution of slavery was expressly prohibited.

Part XLIII. Anglican Church: “The Bishop of Gloucester, 1698- 1779”

During the first half of the 18th-century, from 1700 to about 1750, the Church of England adjusted to the new reality of Whig dominance of British governance and empire. This was an uneasy adjustment of alliance between Church and Capitalism, as well as between Church and State. With respect to the relationship between Church and Capitalism, the primary area of conflict during this period was “African slavery” and the “transatlantic slave trade.” How did the Church of England, in general, approach this issue, and how did it apply the “law of Christ?”¹³

The life and legacy of Bishop of Gloucester William Warburton (1698 – 1779) exemplifies both the adjustment which the Church of England made to revolutionary ideas of the Whig government as well as the conflict that ensued between these two institutions. For one thing, the mercantilist Whig party tolerated slavery, avarice, and profits, but Bishop Warburton and many Anglicans—both the bishops as well as the clergy forewarned them against such policies. Indeed, the primary role of the Church of England would be to retain its privileged position within the English estate and constitution, and to forewarn the other branches of the English government to not violate the moral laws of God. This was what Bishop Warburton had outlined in his classic work, *The Alliance between Church and State* (1736) and what he had preached in his 1766 sermon to the Society for the Propagation of the Gospel in Foreign Parts.

A. A Biographical Sketch of William Warburton, 1698 - 1779

Bishop William Warburton was both a lawyer and a politician. He was educated at Oakham and Newark, and at age 16 he was apprenticed to become an attorney. At age 21, Warburton became a licensed solicitor—which is not quite the same as a “barrister,” which is a more advanced position within the English legal system. In other words, the “solicitor” is not one who had been called the bar. In any event, the “solicitor” conducts client intake, reads the law, prepares cases for the “barrister” to file in court or to handle at trial before the English bar. In this case, Warburton never advanced to the position of “barrister,” because he became interested in theology and a career in the Church.

¹³ The fundamental “Law of Christ,” to wit, 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).

In 1723, Warburton was ordained a deacon by the Archbishop of York, and three years later, he was ordained a priest. Rev. Warburton became rector of Firsby. In 1728, he attained the honorary Master of Arts degree from Cambridge. And in 1736, Warburton published *The Alliance Between Church and State or the Necessity and Equity of an Established Religion and a Test Law Demonstrated*. This publication was the fruit of nearly twenty years of Rev. Warburton's observations and experiences with the current state of the Church of England. With the shift in power from landed noble to merchant; with a global economic system of mercantilism, with the rise of the powerful Whig party; with the shift in the balance of power to the religious independents, Puritans, Baptists, etc., the Church of England was forced to readjust, and Warburton's philosophy of "church-state" alliance seemed to carry the day with Britain's elite. In some ways, Bishop Warburton's quest was a noble one, but in other ways it also reflected a sort of "tainted" compromise of principle. In any event, the Church of England was enabled to retain some sense of importance and respectability, even as the British Empire took a more secular turn in favor of commercial expansion, materialism, and empire.

Rev. Warburton maintained a close connexion with the legal profession throughout his clerical career. In 1746, he became the "preacher" (i.e., rector) at the Lincoln's Inn of Court. In 1756, Rev. Warburton was made the Bishop of Gloucester, a position which he held until his death in 1779. This promotion had been the fruit of many years of political maneuvering, alliances with the wealthy and powerful, and his marriage into an upper-class family.

B. *The Alliance between Church and State (1736)*

In 1736, Rev. William Warburton published *The Alliance between Church and State or the Necessity and Equity of an Established Religion and A Test Law*. Significantly, this work not only provides insight into the 18th-century British conceptualization of law, but also of the role which the Church of England played in administering that law. See, e.g., Table 1., below.

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 ... principal Foundations.

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

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

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

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

Rules concerning Law

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

Common Law is common Right.

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

The Law respects the **Order of Nature....**"

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

Bishop Warburton's *The Alliance between Church and State*, perhaps more than any other writing, set forth the role which the Anglican Church played in the 18th-century British Empire. Significantly, Bishop Warburton advanced the political concept that the Church retained supremacy of the State.¹⁴ I believe he meant, in essence, that since the Church's moral and spiritual laws (i.e., the Holy Bible) constituted a "Higher Law" for the realm. As such, the Church of England would continue to function as (a) the sole established church in England and (b) as a political arm of upper house of Parliament.

According to Bishop Warburton, the Church of England's bishops sat in the House of Lords in two sovereign capacities. First, the Bishops would sit in the

¹⁴ Ibid., p. 141.

“Supreme Court of Judicature,” within the House of Lords. In this role, the bishop sat as “Barons of the Realm.” Second, the Bishops sat the upper chamber of the House of Lords (i.e., the “estate of the Legislature”) as “Lords Spiritual” or as prelates of the Church of England. Previously, the bishops sat in Convocation, where they could enact their own laws—laws for the church, as well as general laws for the realm, with approval from the crown. But since the year 1718, after George I prorogued Convocation, the bishops, who were mostly Whigs and mostly in agreement with the new political changes, were moved to the House of Lords, as staunch allies of both the Crown, the Whig Party, and, seemingly, the commercial objectives of the British Empire. But theoretically speaking, the Anglican bishops within the House of Lords continued to believe that the “**law of Christ**”¹⁵ was the superior and the supreme law of the land, and that the role of the Church was to serve as the moral voice and guide for the entire nation—the Church was still very much the “senior partner” in the alliance between Church and State in England.

The law of Christ was “fundamental” to the English common law system, as Bishop Warburton understood it. According to Bishop Warburton, “religion and government” were linked, because “morality and politics” were linked. “[T]he object of Religion being Truth,” he wrote, “which requires liberty; and the object of Government, peace, which demands submission; they seem naturally found to counteract one another’s operations.”¹⁶

Significantly, Bishop Warburton held that the chief object of the Christian religion is “**truth**.” What a profound assumption and conclusion, because “truth” is as vast and as infinite as is the idea of God. “Truth is God,” and “God is Truth.” Here, a nod to St. Augustine of Hippo’s Platonist theology is clearly referenced.¹⁷ The Augustinian conceptualization of Christ was “truth” itself¹⁸; and Augustinian conceptualization of law was that “truth” itself was the law.¹⁹ (See, generally, this series *The Apostolate Papers, Part X (Paper #21)* (“Christianity, Trial Advocacy,

¹⁵ The fundamental “Law of Christ,” to wit, 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).

¹⁶ *Ibid.*, p. 3.

¹⁷ “For by consulting the Gospel we learn that **Christ is Truth**.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645. And “**Your law is truth** and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

and the Laws of Evidence, Proof, and Procedure (1300 to early 1600s A.D.), analyzing the trial of Jesus:

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

Pilate: “What is **truth?**”

According to Bishop Warburton, the fundamental basis of “religion” and “morality” was **truth**. For this reason, he felt that the civil magistrate (i.e., King and Parliament) had an interest in promoting the “true religion” because the State could not properly govern without “truth.” Thus, the State is itself sacred and ordained by God, since it must administer the laws and constitution of the civil polity in accord with “truth.” This is, therefore, the basis of the civil religion of the body politic:

TRUTH
CIVIL POLITY

In other words, “truth” is above, and superior to, civil polity. According to Bishop Warburton, “truth” was the essence of the Christian religion. Christianity thus functioned to lead, to advise, and to guide, whenever necessary, the civil polity. Thus, for the moment, we must assume that the general consensus, at least in 18th-century England, was that Christianity was believed to be the one and only “true religion.” Although, Bishop Warburton went so far as to say, that even if Christianity was not the only “true religion,” the civil magistrate bore the burden of having to determine the difference between “moral good” and “moral evil.” Without Christianity, the civil magistrate would have to rely upon primitive ideals of right and wrong. This is similar in nature to what happened to Moses in the Sinai desert, where he discovered the Ten Commandments.

The Mosaic Life/Death Grid	
Virtue (holiness) -----→	Life
Vice (Sin) -----→	Death

Bishop Warburton, however, argued that central problem of civil polity is the tendency toward the loss of virtue that leads to decadence, social collapse, and even the fall of nation-states and empires. Law and government alone, according to Bishop Warburton, were inadequate, because the failure or refusal of most people to aspire to live virtuously, or to discharge moral duties beyond mere following the most basic criminal and civil laws, would lead to incivility and covert forms of lawlessness. Bishop Warburton argued that most men would probably not commit murder, in order to avoid the punishment of incarceration or capital punishment. However, without religion, most men could not refrain from being dishonest or from lying, cheating, or from manipulating the civil order in order to extract riches from fellow human beings through fraud, deception, and brute force. He argued that religion was necessary in order to inspire men and women to live righteous and virtuous lives; otherwise, “civilization” would deteriorate over time through vice and immorality. Therefore, without prohibiting the freedom of worship of various Christian sects—i.e., the Puritans, Presbyterians, Baptists, Quakers, Independents, etc.—the civil magistrate, argued Bishop Warburton, must, at a minimum, acknowledge and promote at least three basic things (i.e. the “**Three Articles of Natural Religion**”):

1. First, the being of God;
2. Second, the Providence of God over human affairs; and,
3. Third, the “natural essential difference between moral good and evil.”²⁰

²⁰ Ibid., p. 36.

The civil magistrate should not administer the sacraments; or excommunicate irreverent sinners—those functions should remain the exclusive province of the Church of England and all lawfully-established church sects in England. Instead, the civil magistrate should be limited to administering only the three articles of religion. Bishop Warburton referred to these three Articles of Natural Religion as the civil religion or as the “Natural Religion.”²¹ And, it should be noted here that the new *United States Constitution* (1787), when read in light of the *American Declaration of Independence* (1776), would echo these very same fundamental principles of “**natural religion**.”²²

According to Bishop Warburton, the foundation of civil polity must rest upon “truth,” secured by the “Oath” of office held by civil magistrates, as well as the “Oath” of testimony given by fellow citizens within a court of law. For example, the traditional “Oath,” given in English common-law nations contain the phrase “so help me God” or “so help you God,” in direct reference to this fundamental precept. For example: “Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?” And: “I will uphold, support and defend the Constitution, so help me God.”

Bishop Warburton insisted that Erastianism was unconstitutional, and that the Civil Magistrate did not have the power to govern or regulate the internal religious affairs of the Church. He believed that the Church was both independent and superior to the state—this had been the case since Magna Carta (1215); he believed that the Crown had attained authority over the Church only through historical accident; and that Parliament had attained authority over the Church by historical accident. As a matter of compromise, the King/Queen of England wore two hats: as the (a) Head of State and (b) as the Supreme Governor of the Church (with Christ as the “Head”). “For in this Alliance, where the Religious Society is

²¹ Ibid.

²² See, e.g., Thomas Jefferson, 'A Summary View of the Rights of British America,' stating "Resolved, that it be an instruction to the said deputies, when assembled in general congress with the deputies from the other states of British America, to propose to the said congress that an humble and dutiful address be presented to his majesty.. the united complaints of his majesty's subjects in America; complaints... upon those rights which God and the laws have given equally and independently to all.... The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." And see, also, Thomas Jefferson, "The American Declaration of Independence," stating, "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them.... We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

taken under the Protection of the State, the Supreme Magistrate, as will be shewn hereafter, is acknowledge HEAD of Religion.”²³ Hence, the union between Church and State in England is an “alliance” whereby the State has agreed to protect the Church, and the Church has agreed to render services to the State and body politic. It should be noted that, within this “alliance” between Church and State, at least as Bishop Warburton conceptualized it, the Church retained its rights to regain its supremacy whenever, if ever, the State (i.e., Crown and Parliament) breached the terms of the alliance. This new “alliance” would ensure, as Bishop Warburton saw it, the Bishops’ “supremacy” governorship and supremacy over the Church of England. But this would also give the bishops, at least in theory, a significant voice over the practical affairs of new British Commonwealth and empire. According to Bishop Warburton, the Bishops’ seat in Parliament comprised a grand “alliance” between the church and the state, since the “Church, by this alliance, having given up its Supremacy to the State... the principal Churchmen are placed in a Court of Legislature, as Watchmen to prevent the mischief, and to give the Church’s Sentiments concerning Laws Ecclesiastical. But when the Alliance is broken, and the Establishment dissolved, the Church recovers its Supremacy.”²⁴

C. Bishop Warburton, the Articles of Natural Religion, and African Slavery

As previously stated, under Bishop Warburton’s theological system, (i.e. the “**Three Articles of Natural Religion**”), the civil magistrate or secular civil government must acknowledge three basic religious elements:

1. First, the being of God;
2. Second, the Providence of God over human affairs; and,
3. Third, the “natural essential difference between moral good and evil.”²⁵

Bishop Warburton referred to these three Articles of Natural Religion as the civil religion or as the “Natural Religion.”²⁶ And, it should be noted here that the new *United States Constitution* (1787), when read in light of the *American Declaration*

²³ Ibid., p. 92.

²⁴ Ibid., p. 114.

²⁵ Ibid., p. 36.

²⁶ Ibid.

of *Independence* (1776), would echo these very same fundamental principles of “**natural religion.**”²⁷ According to Bishop Warburton, in order for the State (i.e., the secular civil government) to remain true to these principles (i.e., the natural religion), the Church could not be separate from the State. Instead, the Church, which is superior to the State, must work in tandem with the State in order to ensure that the principles of this “natural religion” were correctly implemented in law and government.

Hence, here we find the blue print for the role of Christian lawyers and judges within the secular state—a matter of peculiar significance in the United States of America. Indeed, where the union of Church and State is taken seriously, and where the “law of Christ”²⁸ is applied with fidelity, the institution of slavery is generally held to be untenable. This had been the case with Queen Elizabeth I of England²⁹ and Emperor Charles V of Spain.³⁰ But this was also true of the genre of “Natural Religion” which the Anglican Whigs espoused during the 18th Century—this would later become the same “natural religion” or “natural civil religion” of the American *Declaration of Independence* (1776), which Whig-Republican Abraham Lincoln advocated, when he said:

“I have never said anything to the contrary, but I hold that notwithstanding all this, there is no reason in the world why the negro is not entitled to all the natural rights enumerated in the *Declaration of*

²⁷ See, e.g., Thomas Jefferson, 'A Summary View of the Rights of British America,' stating "Resolved, that it be an instruction to the said deputies, when assembled in general congress with the deputies from the other states of British America, to propose to the said congress that an humble and dutiful address be presented to his majesty.. the united complaints of his majesty's subjects in America; complaints... upon those rights which God and the laws have given equally and independently to all.... The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." And see, also, Thomas Jefferson, "The American Declaration of Independence," stating, "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them.... We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

²⁸ The fundamental “Law of Christ,” to wit, 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).

²⁹ Queen Elizabeth I expressly forbade Captain John Hawkins from engaging in the practice of men-stealing or from engaging in the transatlantic slave trade.

³⁰ “Slavery on the Iberian Peninsula was outlawed by Charles V's *Leyes Nuevas*, or New Laws, in 1542. These laws were rooted in Spanish theological thought and made Spain one of the first European nations to attempt to ban the institution.” https://digitalhistories.kennesaw.edu/exhibits/show/faces_of_slavery_us_morocco/political-elites/europe/charlesv

Independence--the right of *life, liberty, and the pursuit of happiness*. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas he is not my equal in many respects--certainly not in color, perhaps not in intellectual and moral endowments; but in the right to eat the bread without the leave of any body else which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man.”³¹

I would be remiss if I did not here point out that *only in places where the Church is separated from the State*, or where the latitudinal Anglican Church has had no little or no influence, or where the Christian faith is not thought to be an integral part of constitutional jurisprudence, does slavery flourish. In colonial British North America, there was no separation of Church and State, but the Church of England there lacked juridical authority and legislative influence. But in England, on the other hand, where there was an influential established Church, slavery had been universally held to violate the fundamental laws of nature. See, below, Rev. William Goodell’s description of the *Case of James Somersett (1772)*.

For it was only in the British colonies and in North America,³² where slavery was allowed to flourish, and this was largely due to the fact that the bishops of the Church of England lacked jurisdiction or influence in order to enforce this “natural religion” upon the colonies. The *Case of James Somersett (1772)*, established as the law in England, quickly became the law of New England as well. Following independence from Great Britain, the states of Massachusetts, Connecticut, Rhodes Island, New Hampshire, New York, and New Jersey moved fairly quickly toward complete abolition of African slavery, as this institution was deemed to be a contradiction of to the fundamental principles—“all men are created equal” and “life, liberty, and the pursuit of happiness”— as set forth in the American *Declaration of Independence* – which is the “natural religion” of the American body politic.³³

Similarly, this explains why Bishop William Warburton, even despite the fact that he supported a Whig government, opposed slavery on principle of the

³¹ *The Lincoln-Douglas Debates (1858)*.

³² Even in Puritan colonial New England, slavery existed and participation in the transatlantic slave trade was allowed to flourish.

³³ See, e.g., Algernon Sidney Crapsey, *Religion and Politics (1905)*.

“natural religion” and as a matter of his Christian faith. In his 1766 sermon before the Society for the Propagation of the Gospel in Foreign Parts, Bishop Warburton forewarned his fellow Englishmen about the evils of African slavery and the transatlantic slave trade. I will not hesitate in saying, at this juncture—as it is fully appropriate that I do so—that Bishop Warburton severely excoriated what may be rightly called *predatory capitalism* that was practiced by the 18th-century English merchants. In that sermon, he said:

From the free-savages I now come (the last point I propose to consider) to the savages in bonds. By these I mean the vast multitudes yearly stolen from the opposite continent, and sacrificed by the colonists to their great idol, the GOD OF GAIN. But what then, say these sincere worshippers of Mammon, they are our own property, which we offer up. Gracious God! To talk (as in herds of cattle) of property in rational creatures! Creatures endowed with all our faculties, possessing all our qualities but that of colour; our brethren both by nature and grace, shocks all the feelings of humanity, and the dictates of common sense. But, alas! What is there in the infinite abuses of society which does not shock them? Yet nothing is more certain in itself, and apparent to all, than that infamous traffic for slaves directly infringes both divine and human law. Nature created man free; and grace invites him to assert his freedom. In excuse of this violation, it hath been pretended, that though indeed these miserable outcasts of humanity be torn from their homes and native country by fraud and violence, yet they thereby become the happier, and their condition the more eligible. But who are YOU, who pretend to judge of another man’s happiness? That state, which each man, under the guidance of this maker, forms for himself; and not one man for another. To know what constitutes mine or your happiness, is the sole prerogative of him who created us, and cast us in so various and different moulds. Did your slaves ever complain to you of their unhappiness amidst their native woods and deserts? Or, rather, let me ask, did they ever cease complaining of their condition under you their lordly masters? Where they see, indeed, the accommodations of civil life, but see them all pass to others, themselves, unbeitted by them. Be

so gracious then, ye petty tyrants over human freedom, to let your slaves judge for themselves, what it is which makes their own happiness. And then see whether they do not place it in the return to their own country, rather than in the contemplation of your grandeur, of which their misery makes so large a part. A return so passionately longed for, that despairing of happiness here, that is, of escaping the chains of their cruel task masters, they console themselves with feigning it to be the gracious reward of heaven in their future state; which I do not find their haughty masters have as yet concerned themselves to invade. The less hardy indeed wait for this felicity till overwearied nature sets them free; but the more resolved have recourse even to self-violence, to force a speedier passage.

But it will be still urged, that though what is called human happiness be of so fantastic a nature, that each man's imagination creates it for himself, yet human misery is more substantial and uniform throughout all the tribes of mankind. Now, from the worst of human miseries, the savage Africans by these forced emigrations, are intirely secured, such as the being perpetually hunted down like beasts of prey or profit, by their more savage and powerful neighbors—in truth, a blessed change! From being hunted to being caught. But who are they that have set on foot this general HUNTING? Are they not these very civilized violators of humanity themselves? Who tempt the weak appetites, and provoke the wild passions o the fiercer savages to prey upon the rest.³⁴

Here we find in Bishop Warburton's sermon an exemplification of the Church of England's fundamental role within the body politic—to admonish against immorality and wrongdoing, and to promote virtue and justice. In a word, Bishop Warburton felt that the Church had an obligation to teach and to promote righteousness and virtuous living, to encourage men and women to discharge their moral and ethical duties, and to speak out against injustice.

³⁴ Quote is taken from *The Works of John Wesley* ("Thoughts upon Slavery"), Volume 11, pp. 80 – 83 (Electronic Edition produced by the University of North Carolina at Chapel Hill).

In this case, scores of English merchants had clearly violated the Church's teachings on avarice, greed, theft, and men-stealing. Bishop Warburton must have felt that the task of teaching God's moral directives on slavery and slave-trade was the Church of England's duty. This was the awesome task of religion and it is one of "religious instruction," in terms of teaching persons how to comport with the image of God—the lord of reason; and how to comport with God's other attributes: love, wisdom, justice, mercy, etc. It is for this reason that the Anglican divine Richard Hooker and the Protestant Reformers adopted the Two-Tables" theory of civil government, treating the Church as a vital and important component of the State.³⁵ The Church, in its proper role, was to function as the moral guide and conscience of the State.

The question of African slavery and the transatlantic African slave trade posed the most vexing and difficult theological, moral, constitutional and legal questions of the 18th and 19th centuries. It was believed by many orthodox Anglicans that slavery violated the fundamental laws of England—i.e., the "Natural Religion," that was espoused by Bishop Warburton and others. These fundamental laws were a part of the English common law. It is important to note here that this English common law has long remained a *friend to the cause of African liberation* and to the cause of the *abolition of both African slavery and the transatlantic African slave trade*. The English common law, in its authentic, purest Christian form, could not, and did not, tolerate the institution of chattel slavery. For example, that was the interpretation of General James Oglethorpe and the proprietors of the colony of Georgia, as historian W.E.B. Du Bois tells us:

In Georgia we have an example of a community whose philanthropic founders sought to impose upon it a code of morals higher than the colonists wished. The settlers of Georgia were of even worse moral fibre than their slave-holding and whiskey-using neighbors in Carolina and Virginia; yet Oglethorpe and the London proprietors

³⁵ It could very well be, that when the institution of the Church was removed further away from the center of American life, that the most vulnerable citizens within that body politic—the poor, the marginalized, African Americans, etc.—who needed the assistance of pastors, preachers, and churches for "moral" education, "moral" guidance, and pastoral assistance—were more likely to be punished, criminalized, and incarcerated for not "acting reasonably" (i.e., violating administrative rules or civil and criminal laws). These most vulnerable citizens—without the effective pastoral assistance from churches and pastors—were also more likely to experience the evil consequences of various failures to "act reasonably," such as broken homes, out-of-wedlock pregnancies and births, and the weakening of family and community life. Those citizens who are middle-class or affluent suffer from a different set of moral challenges: materialism, self-centeredness, racial bigotry, provincialism, and avarice. Hence, the consequences of having a legal system that operates on the basis of "law and reason" alone, without effective religious education and pastoral ministry, are crime and mass incarceration. Church and State were meant as two sides of the same coin, implementing the same basic ethical and moral standards.

prohibited from the beginning both the rum and the slave traffic, refusing to ‘suffer slavery (which is against the Gospel as well as the fundamental law of England) to be authorized under our authority.’³⁶

That was also the interpretation of the Rev. William Goodell who thus wrote³⁷:

Under no other legal sanction than this, the forcible and fraudulent seizure and transportation of slaves from Africa to the British-American Colonies was carried on till the West India and North American Colonies were stocked with slaves, and many were introduced into England, held as slaves there, and the tenure accounted legal!³⁸

But in 1772 it was decided by Lord Mansfield, in the case of James Somerset, a slave, that the whole process and tenure were illegal; that there was not, and never had been, any legal slavery in England. The chief agent in procuring it, to be applicable to the British Colonies, as well as to the mother-country, and undoubtedly it was so. The United States were then Colonies of Great Britain. But the slaves in the Colonies had no Granville Sharpe to bring their cause into the Courts, and the Courts were composed of slaveholders....³⁹

It may be proper to explain, that while these gentlemen admit that there are no express statutes of the States that are adequate to the

³⁶ W.E.B. Du Bois, “The Suppression of the African Slave Trade,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 15. (See, also, Michael Thurmond, “Why Georgia’s Founder Fought Slavery,” <https://www.savannahnow.com/article/20080215/OPINION/302159906>, stating:

These original Georgians arrived in the New World, inspired by the promise of economic opportunity embodied in the Georgia plan. This bold visionary plan established Georgia as a unique economic development and social welfare experiment.

The new colony was envisioned as an “Asylum of the Unfortunate,” a place where England’s “worthy poor” could earn a living exporting goods produced on small farms. From the outset, Oglethorpe and his colleagues found slavery inconsistent with the colony’s goals, arguing that it would undermine poor, hardworking white colonists.

Oglethorpe later asserted that he and his fellow trustees **prohibited slavery because it was “against the Gospel, as well as the fundamental law of England.”**

³⁷ William Goodell, *The American Slave Code* (New York: The American and Foreign Anti-Slavery Society, 1853), p. 259.

³⁸ *Ibid.*

³⁹ *Ibid.*

legalization of slavery, they nevertheless affect to believe that it is legalized by the common law! It is not strange that they are unwilling to go with that plea into the Courts! ... All [the case law in the United States] affirm that slavery, being without foundation in nature, is the creature of municipal law, and exists only under its jurisdiction....⁴⁰

It is undoubtedly true that the common law, if applied to the slave, would amply protect him from outrage and murder It would also protect him in his right to his earnings and to the disposal of the products of his industry, to exemption from seizure and sale: in a word, the common law, if applied to the slave, would emancipate him; for every body knows, and the Louisiana and Kentucky Courts have decided, that the slave becomes free the moment he comes under the jurisdiction of common law, by being carried by consent of his master out of the jurisdiction of the municipal law which alone binds him.⁴¹

It is for this reason that the Church of England—with its Lord Chancellor, chancery courts, ecclesiastical courts, senior bishops, chancellors and senior ecclesiastical judges—was conceptually superior to the secular tribunals of the State.⁴² The Lord Chancellor, as keeper of the king’s conscience, fashioned the law of equity, a law superior to the common law, throughout the realm.⁴³ The Church of England was also the keeper of the First Table of the Ten Commandments, which also symbolized a “Higher Law” or a “Higher Reason” which is God himself—or the “Three Articles of Natural Religion.” On the other hand, the State represented an inferior “human law,” but which was subordinate to the fundamental law of England—or the “Three Articles of Natural Religion.”

For the Christian lawyer or judge in England, England’s *equity jurisprudence* tied “human law” to “Higher Law,” and ensured that England’s courts administered substantive and meaningful justice—or the implementation no “natural religion” or equity. The English doctrine of *equity* did not allow English common law to work an injustice, without affording some form of remedy that was deeply rooted in justice and fairness. This idea that “human law” should not conflict with the “Higher Law” of God, or a higher conception of justice, was the fundamental premise and doctrine of the *Declaration of Independence*. And this

⁴⁰ Ibid., pp. 26-262.

⁴¹ Ibid., p. 185.

⁴² Ibid.

⁴³ Ibid.

conceptualization of law was exemplified in the life and works of the Bishop of Gloucester William Warburton.

CONCLUSION

The Whig revolution of the early 1700s included a motley group of interests that included Calvinists, Baptists, religious Independents, Anglicans and English financiers and merchants. Collectively, these motley groups wanted greater religious, political, and economic freedoms—i.e., the loosing of the grip of the Tory traditionalism of divine right of Crown and Church. In colonial British North America, the New England Puritans shared many of the same sentiments, and joined the Whig movement as well. But the most glaring controversy of the period was the inconsistency of African slavery and the slave trade with the traditional teachings of the Church of England, the English common law, and the catholic Christian faith. Those High-Church Anglicans, such as Bishop William Warburton, who agreed to join and promote the Whig movement, did not necessarily promote the commercial greed that also ran rampant within the Whig movement—this had the tendency to violate the “Three Articles of Natural Religion.” Nor did the “Low-Church” Anglicans-- evangelicals such as Methodists John and Charles Wesley, William Wilberforce, and Thomas Clarkson—agree with the Whig tolerance for economic greed and slavery. These Christian sentiments—the official position of the Church of England on slavery and the slave trade—were reflected in the famous Somerset case of 1772, where Lord Mansfield acknowledged that slavery had never been recognized under the English common law (i.e. the fundamental constitutional laws of England); and, therefore, the institution of slavery was illegal, and that Mr. Somerset, the African, must be set free. The Bishop of Gloucester’s anti-slavery views thus reflected the Anglican construction of the “law of Christ,”⁴⁴ to wit, that human slavery, and especially of the type of human slavery that was practiced in the British West Indies and North America, violated the fundamental law of England.

THE END

⁴⁴ The fundamental “Law of Christ,” to wit, 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).

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