

# ST. CLEMENT'S INN OF COURT

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### "A History of the Anglican Church—Part XLVII: An Essay on the Role of Christian Lawyers and Judges within the Secular State"©

By

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

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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-fourth in this series: “A History of the Anglican Church—Part LXVII.”

## INTRODUCTION<sup>1</sup>

Joseph Butler (1692 – 1752) was a bishop in the Church of England and a great champion of latitudinarian Anglicanism. As such, he advanced Whig political ideology and supported religious liberty for England’s religious dissenters. At the same time, Bishop Butler defended the authenticity of the Sacred Scriptures and the Gospels of Christ, arguing that the validity of the bible’s moral teachings were readily self-evident and apparent in the laws of nature. While defending the institution of the Church and the Sacred Scriptures, Bishop Butler also became widely known as an influential philosopher, since he dealt with a wide variety of subject matter.

He is known for his critique of Deism, Thomas Hobbes's egoism, and John Locke's theory of personal identity. The many philosophers and religious thinkers Butler influenced included David Hume, Thomas Reid, Adam Smith, Henry Sidgwick, John Henry Newman, and C. D. Broad, and is widely seen as "one of the pre-eminent English moralists." He played an important, if underestimated role in developing 18th-century economic discourse, greatly influencing the Dean of Gloucester and political economist Josiah Tucker.<sup>2</sup>

Bishop Butler’s monumental work *The Analogy of Religion, Natural and Revealed to the Constitution and Course of Nature* (1736) was written in response to Dr. Matthew Tindal’s *Christianity as Old as the Creation: or the Gospel a Republication of the Religion of Nature* (1730). Significantly, both of these works held that “Christianity is a republication of natural religion.” And both clearly demonstrates how certain words used in the American *Declaration of Independence* (1776)— e.g., “the Laws of Nature and of Nature's God,” “Life, Liberty and the pursuit of Happiness,” “appealing to the Supreme Judge of the world,” and “ with a firm reliance on the protection of divine Providence”— exemplify the “religion of nature” of which was prevalent in British theological, juridical, and political thought—particularly latitudinarian Anglicanism. For this reason, we may safely deduce from Bishop Butler’s *The Analogy of Religion* that Christianity was still the foundation of Anglo-American constitutional law and jurisprudence during the eighteenth century.

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<sup>1</sup> This paper is dedicated to the Faculty and Staff of the Whitefield Theological Seminary (Lakeland, Florida).

<sup>2</sup> [https://en.wikipedia.org/wiki/Joseph\\_Butler](https://en.wikipedia.org/wiki/Joseph_Butler)

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These “Notes on Bishop Joseph Butler’s *The Analogy of Religion, Natural and Revealed to the Constitution and Course of Nature*” have been assembled as part of the author’s doctoral dissertation defense before the Whitefield Theological Seminary. It demonstrates how 18<sup>th</sup>-century British and American lawyers conceptualized the inextricable link between the Christian religion and secular law. “Reason” is the central thread that runs throughout the complex nature of this link, and right “reason” was associated the “word” or the “spirit” of God. But right “reason” was also associated with the English common law as well. Perhaps it is for this reason, that Sir Edward Coke (1552-1634), former Chief Justice of England and Wales, in this famous *Dr. Bonham’s Case* (1610), wrote that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.” Indeed, English jurists and theologians never disassociated the divinity of Christ as the *logos*<sup>3</sup> from their theology or jurisprudence. Britain’s unwritten constitution was deeply-rooted in “the law of Christ,”<sup>4</sup> which the latitudinarian Anglicans believed to be a republication of the law of nature and the law of reason.

Using Bishop Butler’s arguments, this paper sets forth the argument that the American *Declaration of Independence* (1776) and *United States Constitution* (1787) are thoroughly Christian documents, not only because they were extracted from the British constitution and the English common law, but they are also creatures of the Church of England’s history and struggles over religious accommodation. The great 18<sup>th</sup>-century debate, throughout the British Empire, including colonial North American, was whether a reasonable interpretation of the Gospels led naturally to religious freedom for dissenters and political rights for commoners. Indeed, this paper demonstrates that the Gospels, as republications of natural law and natural religion, lay at the foundation of America’s constitutional documents.

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<sup>3</sup> “For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....” Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309; “It was this intellectual element in Plato’s religion that led Christians—notably the author of Saint John’s Gospel—to identify Christ with the Logos. Logos should be translated ‘reason’ in this connection.” Russell, *supra*, p. 289.

<sup>4</sup> 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).

Bishop Butler's *The Analogy of Religion* (1736) was written purportedly in response to Matthew Tindal's *Christianity as Old as the Creation: Or the Gospel a Republication of the Religion of Nature* (1730). Butler's response to Tindal's masterpiece should be described not as a rebuttal but rather as an endorsement of Tindal's fundamental conclusions. Indeed, Tindal had concluded that Christianity is "a republication, or restoration of that [natural] religion, which is founded on the eternal reason of things."<sup>5</sup> Similarly, Bishop Butler's *The Analogy of Religion* held that: "Christianity [is] a promulgation of the law of nature"<sup>6</sup> and that "[t]he Law of Moses then, and the Gospel of Christ, are authoritative publications of the religion of nature; they afford a proof of God's general providence, as moral Governor of the world, as well as of his particular dispensations of providence towards sinful creatures, revealed in the Law and the Gospel. As they are the only evidence of the latter, so they are an additional evidence of the former."<sup>7</sup> This was the viewpoint of the latitudinarian High-Church Anglicans during the 18<sup>th</sup> Century, and it had a profound impact upon the British Empire. For one thing, through a philosophy of "natural religion" and "natural law," it brought all of humanity underneath the governance of the God of Abraham, Isaac, Ishmael, Jacob, and Jesus of Nazareth—regardless of whether or not a person was a formal Christian or a member of an orthodox religious faith.

Natural law (and natural religion) which was God's law of creation, was deemed to be thoroughly sufficient to teach all of humanity about the fundamental difference between good and evil, and the fundamental difference between right and wrong. The latitudinarian Anglicans held that this view of natural law had been the viewpoint long held by the Christian Church since the days of St. Paul,<sup>8</sup> St. Augustine of Hippo,<sup>9</sup> and Richard Hooker. These latitudinarian Anglicans relied upon this conceptualization of natural religion and natural law to press for more civil liberties for England's religious dissenters such as the Calvinists, the Presbyterians, the Baptists, Quakers, and other non-conformists—as well as for commercial and imperial expansion unimpeded by ecclesiastical canon laws regulating commercial usury, fraud, and equity.

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<sup>5</sup> Matthew Tindal, *Christianity as Old as the Creation* (1730), pp. 303 - 304.

<sup>6</sup> Joseph Butler, *The Analogy of Religion*, p. 192.

<sup>7</sup> *Ibid.*, p. 188.

<sup>8</sup> Romans 1: 17-20; 2: 13-16.

<sup>9</sup> St. Augustine of Hippo, *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 254-256.

At the same time, the latitudinarian High-Church Anglicans, such as Bishop William Warburton (1698 – 1779)<sup>10</sup> and Bishop Joseph Butler, argued that the orthodox Church of England should be strengthened, but strengthened not to enforce a Tory-style religious orthodoxy, but rather strengthen to assist the government with carrying out a Whig-style imperial government while implementing religious freedom and global commercial expansion. The 18<sup>th</sup>-century Church of England would become a commercialized and an imperial church under the leadership of the House of Hanover and the Whigs. Even thus, the latitudinarian Anglicans and the Whigs did not wish to change the fundamental Christian structure of English law. Indeed, under the English legal tradition, the church and state had always been interwoven together as two sides of the same coin. Natural law and natural religion, then, were the foundation of the unwritten British constitution and the very basis for its common law. See, e.g., Thomas Woods' *Institutes of the Laws of England* (1720), to wit:

“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].

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<sup>10</sup> Bishop William Warburton's *Alliance of Church and State* (1736) set forth “Three Articles of Natural Religion” whereby the civil magistrate must govern, to wit:

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.”

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.

That same system of natural law was explicitly transferred to colonial British North America, and it became the foundation of American common law, American colonial charters and state constitutions, and American federal constitutional documents, to wit, the *Declaration of Independence* (1776) and the *United States Constitution* (1787). Natural law and natural religion continued to play a vital role within every aspect of American jurisprudence following the American revolutionary war. In support of this proposition, we may turn for support to William P. Sternberg's article "Natural Law in American Jurisprudence." Professor Sternberg, in summary, argued that natural law is a vital and important part of American constitutional law.<sup>11</sup> Professor Sternberg quotes Professor M. Taylor's

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<sup>11</sup> (NOTE: if Christianity is the republication of natural religion, then Christianity must also be the foundation of American constitutional jurisprudence as well).

1891 assessment of the “time honored doctrine of natural right and natural law,” stating:

‘When one reminds himself that for nearly twenty-two centuries this doctrine had practically universal acceptance, that it was the creed of Plato, Aristotle, Cicero, Marcus Aurelius, Gaius, Augustine, Aquina, Grotius, Locke, and Kant, its present forlorn state is somewhat noteworthy.’<sup>12</sup>

But Professor Sternberg slightly disagreed with Professor Taylor’s use of the words “forlorn state,” because Professor Sternberg believed that “natural law” had never been diminished or ejected from American jurisprudence. In fact, according to Professor Sternberg, natural law was predominant throughout all of American jurisprudence. He pointed out that, in reality, American judges have a tendency to “mask” natural law doctrine and principles in terms such as “equity,” “quasi-contract,” “due process of law,” “fundamental rights,” and “ordered liberty,” but the whole idea of “nature” and “reason” are inescapable and unavoidable in legal reasoning. In fact, the way the United States Constitution is written, “higher law” or the “law of reason” is tantamount to the Due Process Clause in the Fifth and Fourteenth Amendments. Professor Sternberg thus explains:

There is no case in which the language of the court can be understood to say in effect: ‘This statute contradicts the Higher Law; it contradicts the Law of Reason; but it is consistent with the Constitution.’ No court has ever entertained such an opinion....<sup>13</sup>

Since 1880 the courts have quite generally interpreted the constitution as making the same requirements as the natural law.... The Court has so infused the natural law into its theories of constitutional construction that whenever the Court finds a statute in conflict with the natural law (or what it would call the ‘Higher Law’ or the ‘Law of Reason’ or the ‘Unwritten Constitution’) then it always concludes, as Justice Field did, that the statute is in conflict with the constitution.<sup>14</sup>

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<sup>12</sup> Joseph Butler, *The Analogy of Religion*, p. 91.

<sup>13</sup> *Ibid.*, p. 99.

<sup>14</sup> *Ibid.*, p. 98.



Moreover, Professor Sternberg argued and cited the following cases in order to demonstrate that the United States Supreme Court had upheld “Higher Law” and “natural law” as the supreme law of the land, to wit: *Calder v. Ball*, 3 Dall 386 (1798)<sup>15</sup>; *Fletcher v. Peck*, 6 Cranch 87, 10 U.S. 87 (1810)<sup>16</sup>; *Terrett v. Taylor*, 13

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<sup>15</sup> E.g., *Calder v. Ball*, 3 Dall 386, 387-388 (1798)(Justice Chase writing for the majority):

Whether the legislature of any of the states can revise and correct by law a decision of any of its courts of justice, although not prohibited by the constitution of the state, is a question of very great importance, and not necessary now to be determined, because the resolution or law in question does not go so far. **I cannot subscribe to the omnipotence of a state legislature, or that it is absolute and without control, although its authority should not be expressly restrained by the constitution or fundamental law of the state.** The people of the United States erected their constitutions, or forms of government, **to establish justice, to promote the general welfare, to secure the blessings of liberty, and to protect their persons and property from violence.** The purposes for which men enter into society will determine the nature and terms of the social compact, and as they are the foundation of the legislative power, they will decide what are the proper objects of it. The nature and ends of legislative power will limit the exercise of it. **This fundamental principle flows from the very nature of our free republican governments that no man should be compelled to do what the laws do not require nor to refrain from acts which the laws permit.** There are acts which the federal or state legislature cannot do without exceeding their authority. **There are certain vital principles in our free republican governments which will determine and overrule an apparent and flagrant abuse of legislative power, as to authorize manifest injustice by positive law or to take away that security for personal liberty or private property for the protection whereof of the government was established. An act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact cannot be considered a rightful exercise of legislative authority.** The obligation of a law in governments established on express compact and on republican principles must be determined by **the nature of the power on which it is founded.**

<sup>16</sup> E.g., *Fletcher v. Peck*, 6 Cranch 87, 10 U.S. 87, 135-136 (1810)(Justice Johnson):

When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community.

**It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found if the property of an individual, fairly and honestly acquired, may be seized without compensation?**

To the Legislature all legislative power is granted, but the question whether the act of transferring the property of an individual to the public be in the nature of the legislative power is well worthy of serious reflection.

It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments. How far the power of giving the law may involve every other power, in cases where the Constitution is silent, never has been, and perhaps never can be, definitely stated.

U.S. 43 (1815)<sup>17</sup>; *Darcy v. Ketchum*, 52 U.S. 65 (1850); and *Butchers' Union, etc. Co. v Crescent, etc. Co.*, 111 U.S. 746, 756 (1883).<sup>18</sup>

Professor Sternberg rightly points out that principles of natural law have already been sewn into the common law and into equity jurisprudence. The natural law is also required in state common law cases of “first impression,” where no court has directly ruled upon the subject. The principles of common-sense fairness, honesty-in-fact, reasonableness, “the general principle of right and wrong,”<sup>19</sup> etc., etc., all come into play in a whole host of cases involving family

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The validity of this rescinding act, then, might well be doubted, were Georgia a single sovereign power. But Georgia cannot be viewed as a single, unconnected, sovereign power, on whose legislature no other restrictions are imposed than may be found in its own Constitution. She is a part of a large empire; she is a member of the American Union; and that Union has a Constitution the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several States which none claim a right to pass. The Constitution of the United States declares that no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

<sup>17</sup> E.g., *Terrett v. Taylor*, 13 U.S. 43, 52, 9 Cranch 43 (1815):

But that the legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the state or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit, and **we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the Constitution of the United States**, and upon the decisions of most respectable judicial tribunals in resisting such a doctrine. The statutes of 1798 ch. 9, and of 1801, ch. 5, are not, therefore, in our judgment, operative so far as to divest the Episcopal Church of the property acquired previous to the Revolution by purchase or by donation. In respect to the latter statute, there is this further objection that it passed after the District of Columbia was taken under the exclusive jurisdiction of Congress, and as to the corporations and property within that district, the right of Virginia to legislate no longer existed....

**On the whole, the majority of the Court is of opinion that the land in controversy belongs to the Episcopal Church of Alexandria, and has not been divested by the Revolution or any act of the legislature passed since that period;** that the plaintiffs are of ability to maintain the present bill; that the overseers of the poor of the Parish of Fairfax have no just, legal, or equitable title to the said land, and ought to be perpetually enjoined from claiming the same; and that a sale of the said land ought, for the reasons stated in the bill, to be decreed upon the assent of the minister of said church (if any there be) being given thereto; and that the present church wardens and the said James Wren ought to be decreed to convey the same to the purchaser, and the proceeds to be applied in the manner prayed for in the bill.

<sup>18</sup> This major decision held that the words “life, liberty, and the pursuit of happiness” in the Declaration of Independence constitute fundamental constitutional rights to the “liberty of occupational pursuit” guaranteeing to every American citizen the right to engage in an occupation of their own choice.

<sup>19</sup> William P. Sternberg, *Natural Law in American Jurisprudence*, 13 Notre Dame L. Rev. 89 (1938), p. 93.

law, criminal law, and commercial transactions, such that the sovereignty of “natural law” (i.e., the “law of reason” and the Golden Rule) are never discarded in the Anglo-American common-law system. Universal principles of justice are inherently sewn into the common law, and the entire English common law system is built up upon the natural law. For instance, in the case of *The Chamberlain of London v. Evans* (1767), Lord Mansfield stated:

Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.... The **common law of England**, which is only common reason or usage, knows of no prosecution for mere opinions .... There is nothing certainly more unreasonable, more inconsistent with **the rights of human nature**, more contrary to **the spirit and precepts of the Christian religion**, more iniquitous and unjust, more impolitic, than persecution. It is against **Natural Religion, Revealed Religion** and Sound Policy.

Indeed, it is for this reason that I have reached the fundamental conclusion, throughout this series on *A History of the Anglican Church*,<sup>20</sup> that American constitutional law (both state and federal) is the exemplification of latitudinal Anglicanism, which is partly reflective of the natural-law tradition of the Roman Catholic faith as well as the covenant theology of New England Calvinism. Latitudinal Anglicanism reached its stage of maturity, through the necessity of religious accommodation, during the early part of the 18<sup>th</sup>-century, throughout the British Empire, which included colonial British North America. Latitudinal Anglican thinking was the culmination of the Elizabethan Settlement, and it allowed for Calvinists, Orthodox Catholics, Presbyterians, Calvinists, Arminians, Baptists, Quakers, and Independents to co-exist underneath one Christian roof. Indeed, latitudinal Anglican thought was part and parcel of English jurisprudence as well. Hence, one might correctly state: the English common law is “republished natural law” (i.e., the law of reason) or “republished natural religion.”<sup>21</sup> And, if this is true, then using this same logic, the Christian religion is republished natural religion, and, as such, Christianity is a part of Anglo-American Common Law.<sup>22</sup>

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<sup>20</sup> Roderick O. Ford, *The Apostolate Papers* (Volume I).

<sup>21</sup> See, also, Sir Edward Coke (1552-1634), former Chief Justice of England and Wales, who says in *Dr. Bonham's Case*, that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.”

<sup>22</sup> See, e.g., John Marshall Gest, “The Influence of Biblical Texts Upon English Law,” (Address delivered before the Phi Beta Kappa and Sigma Xi Societies of the University of Pennsylvania on June 14, 1910), stating “It has been

For it was through the influence of High-Church Anglicans such as Bishop Joseph Butler who had a significant influence upon American political thought. Their emphasis upon natural religion was often referred to as “Deism,” but few persons acknowledged “Deism” as simply the natural law translation of the Christian religion. Thus, to accuse Thomas Jefferson of being a “Deist” was tantamount to accusing him of being unchristian, when, in reality, Thomas Jefferson, who was himself a practicing Anglican until his death, was simply echoing the thoughts of many High-Church Anglicans who believed that Christianity was simply a republication of the laws of nature. They concluded that the “miracles” of *The Holy Bible* were unnecessary to prove the validity of its moral lessons or of Christ’s moral teachings. They also argued in favor of absolute freedom of conscience, thought, and religion.

The great debate, or divide, however, could be seen in those Deists who were secular and unchristian, and who wished to tear down the last vestiges of the established Church of England in America. These men tended to include liberals such as Thomas Paine, James Madison<sup>23</sup>, and Thomas Jefferson (i.e., the Democratic-Republicans or Anti-Federalists). But juxtaposed against these Anti-Federalists were the Federalists George Washington, John Jay, Alexander Hamilton, and John Adams.<sup>24</sup> Following the outbreak of the French Revolution of 1789— when the King and Queen of France were beheaded and the Roman Catholic Church was desecrated—the High Church Anglicans (both Whigs and Tories) turned against the French liberals, and these Anglicans gained the sympathies of President George Washington and other American conservatives (primarily the Federalists).

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often said, indeed, that Christianity is part of the common law of England, and this is due in great measure to the authority of Sir Matthew Hale (*King v. Taylor*, 1 Vent. 293, 3 Keble 507), Blackstone and other writers, while Lord Mansfield held (*Chamberlain of London v. Evans*, 1767) that the essential principles of revealed religion are part of the common law.” See, also, *The Chamberlain of London v. Evans* (1767), Lord Mansfield stated:

Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.... The **common law of England**, which is only common reason or usage, knows of no prosecution for mere opinions .... There is nothing certainly more unreasonable, more inconsistent with **the rights of human nature**, more contrary to **the spirit and precepts of the Christian religion**, more iniquitous and unjust, more impolitic, than persecution. It is against **Natural Religion, Revealed Religion** and Sound Policy.

<sup>23</sup> James Madison was originally a Federalist and was one of the principal authors of *The Federalist Papers*, which was published during the 1780s. However, by the mid-1790s, Madison joined Thomas Jefferson and others in opposition to Washington, Jay, and Hamilton over the controversies surrounding the notorious Jay Treaty of 1794.

<sup>24</sup> The Federalists wrote and sponsored *The Federalist Papers* during the 1780s.

The Federalists wished to preserve their “English or Anglican traditions” and they readily acknowledged that the United States Constitution had been extracted from the unwritten constitution of England. According to these Federalists, the aims and goals of the radical French Revolution of 1789 were now threatening American standards and values—i.e., Christian values and traditions. They negotiated their infamous Jay Treaty of 1794 in order to form a stronger commercial and military alliance with Great Britain, in opposition to France. This caused a serious shift in American foreign policy, and it created rift between pro-French Americans such as Thomas Jefferson and pro-British Americans such as George Washington. President Washington’s Farewell Address of 1797 signaled America’s firm position that the new United States of America had been founded and deeply anchored in orthodox and latitudinarian Anglican constitutional traditions. However, American Founding Fathers Thomas Jefferson’s and James Madison’s liberal and latitudinarian Anglican traditions—which echoed the radical revolt against established Christianity symbolized in the French Revolution of 1789—has also remained within an influential force within American constitutional traditions. Regardless, it is the purpose of this paper to demonstrate how latitudinarian Anglican bishops, such as Joseph Butler, essentially laid the theoretical foundations of 18<sup>th</sup>-century American political thought.

#### **Part XLVII. Notes on Bishop Joseph Butler’s *The Analogy of Religion* (1736)**

The 18<sup>th</sup>-century Church of England faced a crisis of apostasy and challenge to its ecclesiastical authority and privileged position within English society and the British Empire. It had to respond to this crisis, and it responded with appeals to natural religion and natural law. And the latitudinarian High-Church Anglicans contended that this “natural religion” had already been revealed, prior to the establishment of any organized religion, to the entire world through “reason.”

The skeptics, Deists, atheists and the like were redirected toward the “universal moral law,” the “natural law,” and the “law of reason” in order to answer, through honest self-assessment, their own questions. In other words, non-believers were asked to consider the plain evidence of God’s creation- its harmony, beauty, structure, and order- and to consider the obvious question of creation and existence. The challenge before the Church of England then was no different that the Apostle Paul’s challenges.

## A. St. Paul's *Epistle to the Romans* (Theology of Nature)

For example, in his Epistle to the Romans, the Apostle Paul acknowledged the God's moral government—his punishment of sin and evil—is revealed through a sort of general or natural revelation to all human beings, so that no one can be without an excuse for refraining from sinful and evil deeds. Paul argued that Gentiles, who were not Jews and did not live under the law of Moses, could nevertheless, “by nature” discharge the very same obligations contained in that law. Here the Apostle Paul, through the analogy of religion, compared to natural law to the divine law, and concluded that these laws were the same laws:

For the wrath of God *is revealed* from heaven against *all ungodliness* and *unrighteousness of men*, who hold the truth in unrighteousness;

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

For the **invisible things** of him from the creation of the world are **clearly seen**, being understood by **the things that are made**, even his eternal power and Godhead; **so that they are without excuse....**<sup>25</sup>

For when the Gentiles, which have not the law, *do by nature the things contained in the law*, these, having not the law, are a law unto themselves: which shew the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another;) In the day when God shall judge the secrets of men by Jesus Christ according to my gospel.<sup>26</sup>

For this reason, Paul explained that the God of this universe is not simply the God over organized or orthodox Jewish religion, but He is also the God over all the Gentiles and over all of creation.

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<sup>25</sup> Romans 1: 17-20.

<sup>26</sup> Romans 2: 13-15.

## The Apostle Paul's Analogy of Religion

Mosaic Law or Divine Law	Natural Law or Nature
Jews (revealed through special and direct revelation from God to Moses)	Gentiles (revealed through general or natural revelation)
The Mosaic or divine law is a restatement of the natural law	The natural law (or things done by nature) are contained in the Law of Moses)

“Is he the God of the Jews only? Is he not also of the Gentiles?” asked the Apostle Paul. “Yes, of the Gentiles also: seeing it is one God....”<sup>27</sup>

This can only mean one thing: the natural law or the laws of Nature (i.e., to do by nature the things contained within the divine law) is fundamentally a Christian mandate and method to salvation,<sup>28</sup> at interpreted by the first century Christian theologian Paul of Tarsus.

The 18<sup>th</sup>-century latitudinal Anglicans adopted this specific component of St. Paul's theology on “nature” and of the “Gentiles.” The Christian Deist Matthew Tindal's *Christianity as Old as Creation* (1730) contained a reference to Bishop of London Thomas Sherlock (1678- 1760), who wrote: [t]he Religion of the Gospel is the true original Religion of Reason and Nature.... And its Precepts declarative of that original Religion, which was as old as the Creation." Bishop Warburton's *Alliance of Church and State* (1736) set forth “Three Articles of Natural Religion” whereby the civil magistrate must govern, to wit:

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**.”

Hence, the general focus during the 18<sup>th</sup>-Century was to reshape the Church of England into a more modern and global ecclesiastical body, capable of

<sup>27</sup> Romans 3: 29-30.

<sup>28</sup> See, e.g., Romans 13: 8- 10 (“Owe no man any thing, but to love one another...love is the fulfilling of the law.”)

accommodating theological diversity, while at the same time retaining Christian and catholic orthodoxy. The most important goal, at least in theory, in a general sense, was to promote virtue and to curtail vice.

### **The Mosaic Life/ Death Grid**

Virtue	Life
Vice	Death

The new 18<sup>th</sup>-century Church of England rejected Puritan fundamentalism and the Tory traditionalism in favor of Whig latitudinal Anglicanism, which focused on the growing needs for scientific inquiry, freedom of thought, and freedom of religion. Rather than enforce ecclesiastical conformity, the focus would be more or less to ensure that moral good was distinguished from evil, without compromising on the most sacred tenets of the Christian faith.

### **B. Bishop Butler’s Theology Reflects St. Paul’s Theology of Nature**

Bishop Joseph Butler’s *The Analogy of Religion* is a grand extension of the Apostle Paul’s theological argument that the revealed religion of Christianity is really and truly as republication of the natural religion.

As one of the stalwart champions of the Christian religion, Bishop Joseph Butler had argued that our entire human existence is obviously under divine moral government; and that human behavior— i.e., how human beings act—is the proper subject matter of both ethics and religion. But the laws of “cause-and-effect” clearly show, argued Bishop Butler, that the human existence is governed by a moral and just God.<sup>29</sup> God is good, moral and just. His governs this world through “certain laws or rules, in the known course of nature; known by reason together with experience.”<sup>30</sup> This is the natural revelation which God has given to all of the Gentiles of the world, and it clearly reveals—as the Apostle Paul said in Romans— God’s natural moral laws.

Bishop Butler argued in *The Analogy of Religion* that God’s moral government is manifest by the “laws of Nature”<sup>31</sup> established by the “Author of nature.”<sup>32</sup> “For the whole course of nature is a present instance of his exercising that government over us,” Bishop Butler wrote, “which implies in it rewarding and

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<sup>29</sup> Joseph Butler, *The Analogy of Religion*, pp. 168- 184.

<sup>30</sup> *Ibid.*, p. 211.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, p. 88.



punishing.”<sup>33</sup> Now the “law of Nature,” which may be understood through reason and experience, teaches us that we have the “capacity of happiness and misery” or of “pleasure and pain.”<sup>34</sup> This system is carried in the natural world in which we now live, but will in all probability be continued on throughout eternity—as the present world is merely a training ground and test for a future world to come. “A moral scheme of government,” writes Bishop Butler “then is visibly established, and, in some degree, carried into execution: and this, together with the essential tendencies of virtue and vice duly considered, naturally raise in us an apprehension, that it will be carried on further towards perfection in a future state, and that everyone shall there receive according to his deserts.”<sup>35</sup>

Thus, our future interests, Bishop Butler argued, depends upon our “present behavior”; and this, says Bishop Butler, is proof a scheme of government that the God of Nature both rewards good behavior (virtue) and punishes bad behavior (vice). The laws of nature teach us both ethical and moral duties, but they also certainly reinforce the revealed laws of the Christian religion. Human beings have some power to turn their lives toward the good and the positive, or toward the bad and the negative. “Now in the present state, all which we enjoy,” writes Bishop Butler, “and a great part of what we suffer, is put in our own power.”

Even when a person who is an atheist, a skeptic, a Deist, or a non-believer wakes up in the morning and decides what actions to take in order to improve the lives, or to pursue pleasure, the steps which they must take, in order to reach those goals, are also of ethical concern to the Christian faith—because, as Bishop Butler argued, Christ came that men and women might have life more abundantly. Bishop Butler thus reminded the skeptics that the laws of nature, which govern success and failure in life, are the laws of nature, and, therefore, the laws of God. “For pleasure and pain are the consequences of our actions; and we are endued by the Author of our nature with capacities of foreseeing these consequences.”<sup>36</sup> “[B]y thus exerting ourselves, we obtain and enjoy these objects, in which our natural good consists; or by this means God gives us the possession and enjoyment of them.”<sup>37</sup> This is the “general course of nature,” not a hard rule but a general rule that has a great degree of probability. Bishop Butler reminds us that this “natural law” is actually the voice of God:

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<sup>33</sup> Ibid., p. 90.

<sup>34</sup> Ibid., p. 85.

<sup>35</sup> Ibid., p. 182.

<sup>36</sup> Pp. 85-86.

<sup>37</sup> P. 86.

In short, every man, in every thing he does, naturally acts upon the forethought and apprehension of **avoiding evil** or **obtaining good**: and if the natural course of things be the appointment of God, and our natural faculties of knowledge and experience are given us by him; then the good and bad consequences which follow of those consequences, is a warning given us by him, how we are to act...<sup>38</sup> For the whole course of nature is a present instance of his exercising that government over us, which implies in it rewarding and punishing.<sup>39</sup>

In fact, the overlap between the rewards and punishments provided by the laws of nature and the Sacred Scriptures is obvious, according to Bishop Butler. The “consequence of men’s actions” in the present world is precisely “what Religion teaches” about the consequences of sin in the future world to come.

The consequences of misbehavior and sin are the manifestations of God’s government of the world, “in the natural course of his providence,”<sup>40</sup> wrote Bishop Butler. For example, how persons “pass their youth” have a great impact on their future “success in the world, not only in the common sense of worldly success, but their real happiness and misery.”<sup>41</sup>

For examples, the “miseries” of life often are the results of that “which men bring upon themselves by their own behavior, which they might have foreseen and avoided.”<sup>42</sup> These “miseries,” however, are often long delayed and follow “present pleasure” “intemperance” and “jollity.”<sup>43</sup> These are the “temptations” of sin, i.e., the deceptive pleasures that lead to ruination—even and often after having been long delayed.<sup>44</sup> Punishments often takes for form of “disease,” “civil punishments,” and “capital punishment.”<sup>45</sup> Thus, under God’s government of nature, “miseries, poverty, sickness, infamy, [are] naturally annexed to folly and extravagance.”<sup>46</sup>

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<sup>38</sup> P. 88.

<sup>39</sup> P. 90.

<sup>40</sup> Ibid., p. 93.

<sup>41</sup> Ibid., p. 92.

<sup>42</sup> Ibid., p. 90.

<sup>43</sup> Ibid., p. 91.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., pp. 91-92.

<sup>46</sup> Ibid., p. 92.

### C. God's Natural Government is Moral in Nature

All of this reveals God's moral government. In fact, Bishop Butler argued "that prudence and imprudence, which are of the nature of virtue and vice, must be, as they are, respectively rewarded and punished."<sup>47</sup> "Upon the whole," wrote Bishop Butler, "there is a kind of moral government implied in God's natural government: **virtue** and **vice** are naturally rewarded and punished as beneficial and mischievous to society; and rewarded and punished directly as virtue and vice. The notion then of a moral scheme of government is not fictitious, but natural; for it is suggested to our thoughts by the constitution and course of nature...for it is suggested to our thoughts, by the essential tendencies of virtue and vice."<sup>48</sup>

Bishop Butler observes that, during the natural course of human events, that "bad" things happen to good persons, and "good" things happen to bad persons; and that the wicked often succeed in life, whereas the just are often unduly punished and persecuted.<sup>49</sup> But this observation of what appears to be ironic injustices is really deceptive, first, because God has placed mankind "under a necessity" to punish only evil—not virtue and goodness. Thus *by punishing virtue* and *by failing to punish evil*, a social order, through such actions moral decadence and moral decay, must itself eventually unravel and disintegrate—much similar to St. Augustine's description in *The City of God* regarding the fall of the Roman Empire. But as to individual injustices perpetuated against the innocent individuals, Bishop Butler opines that the ultimate justice of God, which is often long delayed, will be inevitable, whether in the present world or—as *Christians believe* – in the world to come. "Religion teaches us concerning the future punishment of the wicked, so much of a piece with it, that both would naturally be expressed in the very same words, and manner of description."<sup>50</sup>

Bishop Butler insisted that the natural flow of human events show a clear pattern of punishment of evil behavior and a clear pattern of reward of good behavior, such that there is a *high probability* that the Christian belief that all evil behaviors—though unpunished in the present world—will ultimately be punished as the Final Judgment of Jesus Christ.<sup>51</sup> The moral arc of the universe bends toward justice, was Bishop Butler's response.<sup>52</sup> "But all of this [injustice] cannot

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<sup>47</sup> Ibid., p. 101.

<sup>48</sup> Ibid., pp. 118- 119.

<sup>49</sup> Ibid., pp. 102, 116.

<sup>50</sup> Ibid., p. 93.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., p. 108.

drown the voice of Nature in the conduct of Providence, plainly declaring itself for virtue,” he wrote.<sup>53</sup>

The problem, however, as Bishop Butler admitted, is that “in the present age, **a certain fearlessness**, with regard to what may be hereafter under the government of God” had grown exponentially and become omnipresent. Skeptical principles among 18<sup>th</sup>-century Britons naturally contributed to a sort of disbelief in God’s ultimate punishment— but in such a case, however, the judgment of the Almighty was assured, eventually.<sup>54</sup> Bishop Butler, however, noted that even such persons who claimed to have no fear of God or of future divine punishment often lived “some sort of uneasiness and, not uncommonly, with great disturbance and apprehension. That inward feeling, which, respecting lesser matters, and in familiar speech, we call being vexed with oneself, and in matters of importance and in more serious language, remorse; is and uneasiness naturally arising from an action of a man’s own, reflected upon by himself as wrong, unreasonable, faulty, i.e., vicious in greater or less degrees.... On the other hand, inward security and peace, and a mind open to the several gratifications of life, are the natural attendants of innocence and virtue.”<sup>55</sup> In summary, it is clear that the judgment of God is already self-executing within the very souls of persons who commit evil deeds without fear of future divine punishment.

Like the Apostle Paul, Bishop Butler also argued that this “natural theology” which clearly reveals that “God governs the world and instructs its creatures, according to certain laws or rules, in the known course of nature”<sup>56</sup> and punishing “vice” and rewarding “virtue,”<sup>57</sup> **is a part of “a scheme of divine Providence.”**<sup>58</sup> The natural religion was no different than the Christian religion in terms of their essential moral principles.<sup>59</sup> In fact, according to Bishop Butler’s approach to biblical hermeneutics, if in the Sacred Scriptures “there be found any passages, the seeming meaning of which is contrary to natural Religion; we most certainly conclude, such meaning not to be the real one.”<sup>60</sup> In other words, according to Bishop Butler, the laws of nature (i.e., “reason” and “experience”) must override

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<sup>53</sup> Ibid.

<sup>54</sup> “Revelation teaches us, that the next state of things after the present is appointed for the execution of this justice; that it shall be no longer delayed; but the mystery of God, the great mystery of his suffering vice and confusion to prevail, shall then be finished; and he will take to him his great power and will reign, by rendering to every one according to his works.” Ibid., p. 96.

<sup>55</sup> Ibid., p. 103.

<sup>56</sup> Ibid., p. 211.

<sup>57</sup> Ibid., pp. 96- 106.

<sup>58</sup> Ibid., p. 211.

<sup>59</sup> Ibid., p. 201.

<sup>60</sup> Ibid.

incredible biblical hermeneutics which lead to men and women into Christian superstition and “enthusiasm”—thus rendering, under the scheme of latitudinal Anglicanism, natural religion wholly compatible with the Christian faith. “I find no appearance of a presumption,” wrote Bishop Butler, “from the analogy of nature, against the general scheme of Christianity.”<sup>61</sup>

**D. Natural Religion and Revealed Religion Overlap and Compliment Each Other**

Hence, “the natural and the revealed dispensation of things are both from God” and “coincide with each other” and “make up one scheme of Providence.” Natural religion and the revealed religion of Christianity were interpreted as being coterminous and essentially the same. This analogy of religion was no different than that of St. Paul’s, as previously discussed, in his Epistle to the Romans.

**18<sup>th</sup>-Century Latitudinal Anglicanism: Revealed and Natural Religion**

<i>The Holy Bible</i>	<b>Science and Philosophy</b>
Revealed Religion (Christianity)	Natural Religion (Christianity)
Law of Christ <sup>62</sup>	Laws of Nature

These ideas also found their way into 18<sup>th</sup>-century British jurisprudence. For instance, in the case of *The Chamberlain of London v. Evans (1767)*, Lord Mansfield stated:

Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.... The **common law of England**, which is only common reason or usage, knows of no prosecution for mere opinions .... There is nothing certainly more unreasonable, more inconsistent with **the rights of human nature**, more contrary to **the spirit and precepts of the Christian religion**, more iniquitous and unjust, more impolitic, than persecution. It is against **Natural Religion, Revealed Religion** and Sound Policy.

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<sup>61</sup> Ibid., p. 203.

<sup>62</sup> 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).

Indeed, latitudinal Anglican thought was part and parcel of English jurisprudence as well.

**E. Latitudinal Anglicans made “Natural Religion” superior to “Revealed Religion”**

This new latitudinal Anglican approach to revealed and natural theology represented a sharp break from the traditional and orthodox thought of the Tories (e.g., the “Low Church” Anglicans) who continued to embrace the traditional catholic and conservative approach to law and theology.

<b>THE TORIES</b>	<b>THE WHIGS</b>
<b>St. Thomas Aquinas’s Classic Legal Theory and Moral Theology (13<sup>th</sup>-Century)</b>	<b>Latitudinal Anglican Legal Theory and Moral Theology(18<sup>th</sup>-Century)</b>
Eternal Law	Eternal Law
<i>Divine Law (revealed religion)</i>	<i>Natural Law (natural religion)</i>
<i>Natural Law</i>	<i>Divine Law</i>
Human Law	Human law

Here we find that “divine law” and “natural law” have been switched under the latitudinal Anglican scheme, giving natural law “supremacy” or priority over the divine law during the 18<sup>th</sup> century. This switch was in the level of priority and superiority of the natural law over the divine law certainly, in the minds of many, represented a threat to the foundations of the Church. And this “switch” occurred most rapidly and drastically in the new United States of America, where the Church of England has not been established, and where the doctrine of “Separation of Church and State” was enthroned.

**F. Natural Law: The Golden Rule**

Bishop Butler’s general theories also demonstrate how the relationship between the *Holy Bible* (i.e., the revealed law of God) and to the natural religion (i.e., laws of Nature) had been defined and was well-established within English political philosophy and jurisprudence throughout the centuries. Stated differently,

English law and jurisprudence considered the *Golden Rule* (i.e., natural law) to be a restatement of the “law of Christ,”<sup>63</sup> and vice versa, to wit:

**The Law of Nature in Anglo-American Constitutional Law**

“Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”

– Jesus of Nazareth ( 1 – 33 A.D.)

“The first branch of which rule containeth the first and fundamental *law of nature*; which is, to seek peace and follow it. The second, the sum of the right of nature; which is, by all means we can, to defend ourselves.... This is that *law of the Gospel*: whatsoever you require that others should do to you, that do ye to them.”<sup>64</sup>

– Thomas Hobbes (1588 -1679)

“The state of nature has a *law of nature* to govern it, which obliges everyone; and *reason, which is that law*, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.”<sup>65</sup>

– John Locke (1632 – 1704)

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

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

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

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

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<sup>63</sup> 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).

<sup>64</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 160 and p. 164.

<sup>65</sup> *The English Philosophers from Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 405.

In addition to the Golden Rule, which no Deist, agnostic, or atheist could successfully disprove as being the most basic and fundamental of natural laws, Bishop Butler and others argued that both “reason” and human “experience” displayed divine management of human events, proving them to exist within a “state of religion,” whereby inherently within each human being is **moral choice** between **Good** and **Evil**. Bishop Butler writes:

Now from this general observation, obvious to every one, that God had given us to understand, he has appointed satisfaction and delight to be the consequence of our acting in one manner, and pain and uneasiness in our acting in another, and of our not acting at all; and that we find the consequences, which we were beforehand informed of, uniformly to follow; we may learn, that we are at present actually under his government in the strictest and most proper sense; in such a sense, as that he rewards and punishes us for our actions. An Author of nature being supposed, it is not so much a deduction of reason, as a matter of experience, that we are thus under his government; under his government: in the same sense, as we are under the government of civil magistrates.<sup>66</sup>

### G. Natural Law: Pleasure and Pain

But to Bishop Butler and others, there was also a *scientific element* to moral choice, that of both inductive and deductive reasoning, which may be ascertained through the human experience, and that flows naturally from this presumption, that **“every man, in every thing he does, naturally acts upon the forethought and apprehension of *avoiding evil or obtaining good*.”**<sup>67</sup> This “state of religion” is further manifest, Bishop Butler argues, because both “reason” and “experience” are necessary to avoid evil and obtain good: “[a]s God governs the world and instructs his creatures, according to certain laws or rules, in the known course of nature; known by reason together with experience: so the Scripture informs us of a scheme of divine Providence, additional to this.”<sup>68</sup> Indeed, it seems that by the 18<sup>th</sup>

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<sup>66</sup> Joseph Butler, *The Analogy of Religion, Natural and Revealed to the Constitution and Course of Nature* (1736)(citation omitted)(reprinted in Columbia, SC on July 23, 2021), pp. 88 – 89.

<sup>67</sup> *Ibid.*, p. 88. (Emphasis added in either italics or bold).

<sup>68</sup> *Ibid.*, p. 211.



century, “reason” and “experience” had become the foundations for natural philosophy and theology. As Bishop George Berkeley (1685 – 1753) has observed:

We may, from the **experience** we have had of the train and succession of ideas in our minds, often make, I will not say uncertain conjectures, but sure and well-grounded predictions concerning the ideas we shall be affected with *pursuant to a great train of actions* and be *enabled to pass a right judgment of what would have appeared to us*, in case we were placed in circumstances very different from those we are in at present. Herein consists **the knowledge of nature**, which may preserve its use and certainty very consistently with what hath been said. It will be easy to apply this to whatever objections of the like sort may be drawn from the magnitude of the stars, or any other discoveries in astronomy or nature.<sup>69</sup>

The orthodox Christian world had up to the middle part of the 18<sup>th</sup> century thus connected nature, natural law (i.e., reason), and natural philosophy (i.e., science) to the “moral law” of God. Bishop Butler would later echo the same sentiments as did John Locke on the relationship of the *Holy Bible* (i.e., “revealed religion”) to the natural theology, natural philosophy, and natural law (i.e., the law of reason). But here we should not forget, as Bishop William Warburton reminds us,<sup>70</sup> that the central theme behind this “revelation vs. reason” debate was the discovery of “truth”—not the overthrow of the Christian religion; and that, from the Christian perspective, “Christ is Truth.”<sup>71</sup>

By the 18<sup>th</sup>-century, English philosophy and Anglican theology had reached the general consensus that “Truth” trumped any erroneous interpretation of the Sacred Scriptures as well as any erroneous assessments purported as human philosophy or as “reason.” And that this “Truth” was still believed to be “God,” and thus God remained sovereign at all times over the secular state, natural

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<sup>69</sup> *The English Philosophers from Bacon to Mill* (New York, NY: The Modern Library, 1967), p. 452.

<sup>70</sup> “[T]he object of Religion being Truth,” Bishop Warburton wrote, “which requires liberty; and the object of Government, peace, which demands submission; they seem naturally found to counteract one another’s operations.” *The Alliance Between Church and State or the Necessity and Equity of an Established Religion and a Test Law Demonstrated* (1736), p. 3.

<sup>71</sup> “For by consulting the Gospel we learn that Christ is Truth.” Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 645. And “Your law is truth and you are truth.” Saint Augustine, *Confessions*, New York, N.Y.: Barnes & Noble Books (2007), p. 48.

philosophy and religion, and law. Nor is there a rational basis for concluding that the words “Nature’s God,” which is found in the *American Declaration of Independence* (1776), were an abstract term of art with no religious or historical context. Indeed, the “God of Thomas Jefferson” appeared to be a real sovereign God, who governed the affairs of human beings.

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.”<sup>72</sup>

See, also, Thomas Jefferson, “Notes on the State of Virginia,” stating “There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us.... Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest.”<sup>73</sup>

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.... We, therefore, the

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<sup>72</sup> *Jefferson Writings* (New York, N.Y.: The Library of America, 1984).

<sup>73</sup> *Ibid.*

Representatives of the united States of America, in General Congress, Assembled, appealing to **the Supreme Judge of the world** for the rectitude of our intentions... And for the support of this Declaration, with a firm reliance on **the protection of divine Providence**, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”<sup>74</sup>

Jefferson’s views, as expressed in the above-quoted passages, demonstrated the latitudinarian Anglican view of God and of natural religion and natural law. This same view originated during the early part of the eighteenth century from latitudinarian High-Church Anglicans such as lawyer Dr. Matthew Tindal, Bishop Matthew Warburton, and Bishop Joseph Butler.

### H. The Christian Religion is Natural Religion

The Anglican Church also answered the skeptics and Deists by demonstrating that the Christian religion was really a profound restatement and republication of “natural religion” and the “laws of nature.”

<b>CHURCH</b>	Christian Religion and Natural Religion	Revelation Reason and Experience	Truth	Love
<b>STATE</b>	Natural Religion; Natural Law	Reason and Experience	Truth/ Science/ Philosophy	Love (Golden Rule)/ Ethics/ Law

For example, Bishop Butler’s *The Analogy of Religion* held that: “**Christianity** [is] a promulgation of **the law of nature**”<sup>75</sup> and that “[t]he **Law of Moses** then, and **the Gospel of Christ, are authoritative publications of the religion of nature**; they afford a proof of God’s general providence, as moral Governor of the world, as well as of his particular dispensations of providence towards sinful creatures, revealed in the Law and the Gospel. As they are the only evidence of the latter, so they are an additional evidence of the former.”<sup>76</sup>

<sup>74</sup> Ibid.

<sup>75</sup> Joseph Butler, *The Analogy of Religion*, p. 192.

<sup>76</sup> Ibid., p. 188.

There is, therefore, on the basis of the plain weight of historical data and evidence from the 18<sup>th</sup>- and 19<sup>th</sup>-century period, substantial proof that “natural religion” was at the foundation of the American *Declaration of Independence* (1776) and the *U.S. Constitution* (1787), and that Christian Deists and latitudinal Anglicans considered the Christian religion to be a republication of that very same “natural religion.”

## **I. Natural Religion, Political Pluralism and Religious Freedom**

Bishop Butler’s *The Analogy of Religion* (1730) was designed to win over the skeptics and the doubters who may have misconstrued the central tenets of the Christian faith. In doing so, Bishop Butler seemed to suggest that so long as a person lives virtuously and follows the dictates of conscience and natural law, then the orthodox Christian faith might be dispensable or unnecessary. In truth, Bishop Butler and the latitudinarian Anglicans did not wish to send such a message, but it was inevitable that secular humanists would draw the conclusion that the Christian religion and the establish Church of England were superfluous and redundant institutions that served no other purpose save to stifle the freedom of others.

Was latitudinarian Anglicanism a dangerous development within the British Empire— i.e., allowing the natural religion to supplant the revealed religion of the Gospels—for Church-State relations? During the early part of the 1700s, there were many traditional Tories and High-Church Anglicans who believed that it was a dangerous development. These Tories rejected latitudinarian Anglicanism because they felt it could undermine essential Christian ministry as well as the foundations of the institutional church. Amongst these Tory detractors was the influential Rev. John Wesley (1703 – 1791), a founder of Methodism. In truth, Wesley sympathized with certain aspect of latitudinarian objectives, but on the whole he rejected the latitudinarian’s systematic loosening of Christian discipline and deprecation of the efficacy of the Sacred Scriptures. These changes were having a very negative influence upon the national morals, argued Rev. Wesley. In fact, the Methodist movement was launched largely in response to this collapse in national morals. In the end, Rev. Wesley was concerned that liberal political slogans such as “We the People” would eventually cause the common man to loose sight of the essential fact that God is Sovereign—not the people and not civil institutions. For this reason, Rev. Wesley forewarned the American colonists

during the American Revolution that their objectives of political freedom would not lead to true liberty without God as sovereign.

Rev. Wesley's perspective on the negative influences of latitudinarian Anglicanism was echoed later during the early 20<sup>th</sup> century by another Anglican priest, the Rev. Algernon Sidney Crapsey (1847- 1927). Rev. Crapsey was himself a latitudinarian Anglican, but like Rev. Wesley, Crapsey certainly believed that American secularism had disfigured the true meaning of the doctrine of the Separation of Church and State. To Rev. Crapsey, the Church, as the *moral conscience* of the State and as an interpreter of both revealed and natural religion, must retain its superior position to the State, to wit:

The present separation of the religious from the civil and political life of the nation is *cause for grave apprehension* for the future of the American people....

The church without the state is a disembodied spirit; the state without the church is a putrefying corpse. When the church is true to itself and true to its God it becomes the conscience of the state. Then the state must be in subjection to the church, or the state must perish. When the church forgets its high calling, and becomes simply a function of the state, then both church and state go down in one common ruin.<sup>77</sup>

Like Bishop Warburton, Rev. Crapsey believed that there must be an alliance between the Church and the State, or else both institutions would go down in ruins.<sup>78</sup> But in the United States, the doctrine of "Separation of Church and State" had prevented the American churches and pastors from being on the front lines of government administration, education, legislation, and public-policy making. According to Rev. Crapsey, this was a tragic mistake, because the Church was the one institution that was charged with the obligation of applying the moral law and of serving as the moral conscience to the secular state.

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<sup>77</sup> Algernon Sidney Crapsey, *Religion and Politics* (New York, N.Y.: Thomas Whittaker, 1905), p. 249.

<sup>78</sup> *Ibid.*

## CONCLUSION

We may safely deduce from Bishop Butler's *The Analogy of Religion* that Christianity is the foundation of Anglo-American constitutional law. Indeed, natural law and the Christian religion had been incorporated into England's jurisprudence through the auspices of the Roman Catholic Church and the Church of England easily since the early Middle Ages. The natural law of the ancient Roman Senator Cicero (107 BC- 43 BC)<sup>79</sup> had been incorporated into the Early

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<sup>79</sup> The Roman Senator Cicero's profound influence upon Anglo-American constitutional jurisprudence has been profound. Cicero (107 BC to 43 BC) was a lawyer, statesman, philosopher, and theorist who was assassinated during the turbulent period when Caesar Augustus established the Roman Empire, just before the birth of Jesus Christ. St. Augustine has written lucidly of this period in his work, *The City of God*, describing Cicero as a righteous pagan who was assassinated because of his ideals of virtue and justice. Cicero's conception of nature, natural law and justice had a significant influence upon St. Paul and the early Christian Church, which, in turn, passed Cicero's influence on to what late became the 18<sup>th</sup>-century British Empire:

Cicero wrote in his *De Legibus* that both justice and law originate from what nature has given to humanity, from what the human mind embraces, from the function of humanity, and from what serves to unite humanity. For Cicero, natural law obliges us to contribute to the general good of the larger society. The **purpose of positive laws is to provide for 'the safety of citizens, the preservation of states, and the tranquility and happiness of human life.'** In this view, **'wicked and unjust statutes' are 'anything but "laws,"'** because **'in the very definition of the term "law" there inheres the idea and principle of choosing what is just and true.'** Law, for Cicero, **'ought to be a reformer of vice and an incentive to virtue.'** Cicero expressed the view that **'the virtues which we ought to cultivate, always tend to our own happiness, and that the best means of promoting them consists in living with men in that perfect union and charity which are cemented by mutual benefits.'**

In *De Re Publica*, he writes:

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

Cicero influenced the discussion of natural law for many centuries to come, up through the era of the American Revolution. **The jurisprudence of the Roman Empire was rooted in Cicero, who held 'an extraordinary grip ... upon the imagination of posterity' as 'the medium for the propagation of those ideas which informed the law and institutions of the empire.'** Cicero's conception of natural law **'found its way to later centuries notably through the writings of Saint Isidore of Seville and the Decretum of Gratian.'** Thomas Aquinas, in his summary of medieval natural law, quoted Cicero's statement that "nature" and "custom" were the sources of a society's laws.

The Renaissance Italian historian Leonardo Bruni praised Cicero as the person **'who carried philosophy from Greece to Italy, and nourished it with the golden river of his eloquence.'** The legal culture of Elizabethan England, exemplified by Sir Edward Coke, was **'steeped in**

Church since the days of St. Paul.<sup>80</sup> When the Roman Emperor Constantine converted to Christianity, he received counsel the Christian theologian Lactantius<sup>81</sup> and other Christians. These Christians encouraged Constantine to reconcile Roman natural-law jurisprudence with the Christian faith. Under the influence of these Constantinian Christians, natural law was deemed to be the “law of reason,” which latitudinal Anglican priests and jurists later believed to be reflected in the Decalogue and in the “law of Christ.”<sup>82</sup>

But the latitudinarian Anglicans, as exemplified in Dr. Tindal’s *Christianity as Old as the Creation* (1730), also argued that, in no uncertain terms, “reason” is the true essence of the Christian faith as well as the foundation of biblical

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Ciceronian rhetoric.’ The Scottish moral philosopher **Francis Hutcheson**, as a student at Glasgow, ‘was attracted most by Cicero, for whom he always professed the greatest admiration.’ More generally in eighteenth-century Great Britain, Cicero’s name was a household word among educated people. Likewise, ‘in the admiration of early Americans Cicero took pride of place as orator, political theorist, stylist, and moralist.’

The British polemicist **Thomas Gordon** ‘incorporated **Cicero into the radical ideological tradition that travelled from the mother country to the colonies in the course of the eighteenth century and decisively shaped early American political culture**’ Cicero’s description of the immutable, eternal, and universal natural law was quoted by **Burlamaqui** and later by the American revolutionary legal scholar **James Wilson**. Cicero became **John Adams**’s “foremost model of public service, republican virtue, and forensic eloquence’ Adams wrote of Cicero that “as all the ages of the world have not produced a greater statesman and philosopher united in the same character, his authority should have great weight.’ **Thomas Jefferson** ‘first encountered Cicero as a schoolboy while learning Latin, and continued to read his letters and discourses throughout his life. He admired him as a patriot, valued his opinions as a moral philosopher, and there is little doubt that he looked upon Cicero’s life, with his love of study and aristocratic country life, as a model for his own.’ Jefferson described Cicero as ‘the father of eloquence and philosophy.’

“Natural Law,” Wikipedia Online Encyclopedia.

[https://en.wikipedia.org/wiki/Natural\\_law#:~:text=Ancient%20Rome,-Marcus%20Tullius%20Cicero&text=For%20Cicero%2C%20natural%20law%20obliges,good%20of%20the%20larger%20society.&text=There%20is%20indeed%20a%20law,to%20do%20what%20is%20wrong](https://en.wikipedia.org/wiki/Natural_law#:~:text=Ancient%20Rome,-Marcus%20Tullius%20Cicero&text=For%20Cicero%2C%20natural%20law%20obliges,good%20of%20the%20larger%20society.&text=There%20is%20indeed%20a%20law,to%20do%20what%20is%20wrong).

<sup>80</sup> Romans 1: 17-20; Romans 2: 14 – 16.

<sup>81</sup> “Lucius Caecilius Firmianus signo Lactantius (c. 250 – c. 325) was an early Christian author who became an advisor to Roman emperor, Constantine I, guiding his Christian religious policy in its initial stages of emergence, and a tutor to his son Crispus. His most important work is the *Institutiones Divinae* (“The Divine Institutes”), an apologetic treatise intended to establish the reasonableness and truth of Christianity to pagan critics. He is best known for his apologetic works, widely read during the Renaissance by humanists who called Lactantius the “Christian Cicero”. Also often attributed to Lactantius is the poem *The Phoenix*, which is based on the myth of the phoenix from Oriental[clarification needed] mythology. Though the poem is not clearly Christian in its motifs, modern scholars have found some literary evidence in the text to suggest the author had a Christian interpretation of the eastern myth as a symbol of resurrection.” <https://en.wikipedia.org/wiki/Lactantius>

<sup>82</sup>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).

hermeneutics. In fact, within orthodox Christendom, “reason” had always been associated with the divine Logos, which is the “word of God”—Christ. And the early Christians had long associated the logos of Greco-Roman philosophy as Christ. On this point, English philosopher Bertrand Russell has noted:

For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....<sup>83</sup>

It was this intellectual element in Plato’s religion that led Christians—notably the author of Saint John’s Gospel—to identify Christ with the Logos. Logos should be translated ‘reason’ in this connection....<sup>84</sup>

In proportion as Christianity became Hellenized, it became theological. Jewish theology was always simple.... This Jewish simplicity, on the whole, still characterizes the synoptic Gospels (Matthew, Mark, and Luke), but has already disappeared in Saint John, where Christ is identified with the Platonic-Stoic Logos. It is less Christ the Man than Christ the theological figure that interests this fourth evangelist....<sup>85</sup>

[St. Augustine of Hippo] compares the Platonic philosophy with Christian doctrine. The Lord, he says, at this time provided him with ‘certain books of the Platonists.... And therein [he] read, not indeed in these words, but to the same purpose... ‘In the beginning was the Word, and the Word was with God, and the Word was God.... Broadly speaking, [St. Augustine] found in Platonists the metaphysical doctrine of the Logos....<sup>86</sup>

The Logos is the principle that brings the many back to the One, and man back to God; it is thus the Saviour of the world.<sup>87</sup>

Since “reason” or “logos” was incorporated into the Christian faith in the Early Church as early as the writing of the Gospel of St. John, and firmly acknowledged in St. Augustine’s theology, there was never any legitimate basis for skeptics such as American Founding Father Thomas Paine and other Deists to disassociate “reason” with the Holy Spirit, or the spirit of Truth, or of Christ

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<sup>83</sup> Bertrand Russell, *A History of Western Philosophy*, p. 309.

<sup>84</sup> *Ibid.*, p. 289.

<sup>85</sup> *Ibid.*, p. 326.

<sup>86</sup> *Ibid.*, p. 351.

<sup>87</sup> *Ibid.*, p. 405.



himself. Secular-oriented “Reason” and Christian-oriented “Holy Spirit” were not diametrically opposed to one another—since they represented the same idea. And so, when the “law of reason” became the foundation of England’s common law—the law of evidence, procedure, contracts, property, torts, marriage, etc., the “natural religion” and the “revealed Christian religion” were woven into that common law. Perhaps it is for this reason, that Sir Edward Coke (1552-1634), former Chief Justice of England and Wales, in this famous *Dr. Bonham’s Case* (1610), wrote that “[r]eason is the life of the law; nay, the common law itself is nothing else but reason... The law, which is perfection of reason.” During the 18<sup>th</sup> century, the latitudinarian Anglicans—Bishop William Warburton, Dr. Matthew Tindal, Bishop Joseph Butler, and many others-- who expressly equated “reason” with Christ himself; held that the “law of Christ” was a republication of “natural law”; and merged the Christian religion into “natural religion.” It is for this reason, the Anglo-American constitutional law and jurisprudence are inherently and thoroughly “Christian.”

## THE END

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