ST. LUKE'S INN OF COURT

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

By

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

INTRODUCTION[1]

Christian lawyers and judges around the world—particularly those who live in common law countries such as the United Kingdom, the United States, Canada, Australia, New Zealand, the British Commonwealth nations (e.g., South Africa, Uganda, Ghana, India, Pakistan, Jamaica, Barbados, Cayman Islands, British Virgin Islands, etc.) — may look to the life's work of Sir Edward Coke (1552-1634) with great pride and for an example of what a Christian lawyer or judge should be, do, and think. Edward Coke is one of the most significant and pivotal of all personalities in seventeenth-century British history, including Francis Bacon, Thomas Hobbes, Oliver Cromwell and John Locke. Coke framed the foundations for modern-day Anglo-American constitutional law upon the foundations of Catholic-Anglican natural-law philosophy and jurisprudence .

[1] This paper is dedicated to Kenneth Talbot, President of the **Whitefield College and Theological Seminary** in Lakeland, Florida. Dr Talbot is an ordained minister in the Reformed Presbyterian Church and a life-long student of Calvinist or Reformed-Church covenant theology, and Church-State theory, philosophy, and jurisprudence. I am honored to study with Dr. Talbot as a post-doctoral fellow at the Whitefield Theological Seminary.

Edward Coke was a theorist (legal and political) and a pragmatist (a lawyer, a jurist, and a Member of Parliament), and he was able to combine both theory and practical life into a singular genius and charismatic personality. Unlike men such as Hobbes and Locke, Coke held many official positions of public or political influence, and through those official positions Coke influenced men in political power, and helped to shape practical affairs. Simultaneously, unlike influential leaders men such as Oliver Cromwell, Coke was also a world-class intellectual, a first-rate legal theorist, and an first-rate author who had published monumental, voluminous legal treatises that would later influence the succeeding two hundred years of Anglo-American jurisprudential, political and constitutional thought. Thus, Coke arguably became the most influential personality of any other, during one of the most critical of centuries in English history, 1600-1700.

First, Coke served as Queen Elizabeth I's Solicitor General and Attorney General; he next served as King James I's chief judge of the Court of Common Pleas and King's Bench. He was then imprisoned for nine months in the Tower of London, because he dared to oppose the might and power of King James I. Coke went on to serve as a leading Member of Parliament during the reign of King Charles I, before his retirement in 1629. During the meanwhile, Coke published three of the most influential legal treatises in Anglo-American legal history: The *Reports*, the *Institutes of the Laws of England*, and the *Petition of Right* (1628).

Coke's most important and influential legal opinion as chief justice was *Dr. Bonham's Case*, which promulgated the controversial rule that any act of Parliament that was contrary to "common right and reason" was void. This opinion framed the foundations of Anglo-American constitutional law, making the natural law of "reason" (i.e., the "law of Christ")[2] the "fundamental constitutional law" governing English life. This opinion also laid the foundations for "judicial review," an idea which was later incorporated into the language and meaning of United States Constitution in the case of *Marbury v. Madison* (1803).[3] But most significantly, Coke's life and career exemplify the role of the Christian lawyer and judge within the Anglo-American constitutional or common law tradition. That Anglo-American tradition was deeply-rooted within Augustinian theology and Catholic legal theory. Coke's influential writings, perhaps more than the writings

[2] The central message of Jesus of Nazareth (i.e., the **"law of Christ"**) was 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), and that message was sown into the English common law through the canon law of the Roman Catholic Church, the Church of England, the English Inns of Court, and the law faculty of Oxford and Cambridge universities.

[3] 5 U.S. 137 (1803).

of any other jurist, established the central role of the "law of Christ" within the English common law system.

SUMMARY

The question of whether the Christian faith is the foundation of Anglo-American constitutional law and jurisprudence cannot be answered without consulting the voluminous writings and legal opinions of England's most celebrated jurist, Sir Edward Coke (1552-1634). Coke's influential writings-- *The Reports*, the *Institutes of the Laws of England*, and *Petition of Right* (1628)-- perhaps more than any other jurist, established the central role of the "law of Christ" within the English common law. But most significantly, Coke's life and career exemplify the role of the Christian lawyer and judge within the Anglo-American constitutional tradition,-- and that Anglo-American constitutional tradition was deeply-rooted with Augustinian theology and Catholic legal theory. Significantly, Coke sacrificed a distinguished career as chief judge on the Court of Common Pleas and the King's Bench in order to serve the fundamental moral law (i.e., the Higher Law of God as taught in the Sacred Scriptures and a manifest in the Magna Charta (1215) and the Common Law of England). His voluminous writings, together with his most famous rulings as Chief Judge of the Court of Common Pleas and the King's Bench, especially shaped the character of Puritan jurisprudence in colonial New England, but also of the entire American jurisprudential character.

I. A Biography of Sir Edward Coke (1552-1634)

A. The Early Years: 1552-1578

Edward Coke was born on February 1, 1552, as the only son of Robert Coke, a barrister and bencher in Lincoln's Inn. Edward had seven siblings, all sisters.

The surname "Coke" was derived from a distant relative named "William Coke" who lived during the early 12th century. The name "Coke" was pronounced "Cuk" or "Cook."

Coke's maternal grandfather was a prominent lawyer in Norfolk. His maternal uncle, Thomas Gawdy, was also a lawyer and Justice of the Court of the King's Bench (and close friend to the Earl of Arundel).

In 1560, Coke entered the Norwich Free Grammar School. And in 1567, at age 15, he entered Trinity College, Cambridge, but he eventually left a few years later without earning a degree. Instead, Coke entered Clifford's Inn of Court to learn law in 1571; and, later, he transferred to the Inner Temple in 1572.

In 1578, Coke was called to the bar.

B. Lawyer and Advocate: 1579- 1588

In 1581, Coke brought his first major case before the Court of King's Bench, *Lord Cromwell's Case* (1581). In 1581, Coke was also involved in a landmark property law case, *Shelley's Case*, which published the "rule in Shelley's Case."

In 1582, Coke became a law professor ("Reader") at the Lord's Inn of Court, where he focused on property law.

Coke married Bridget Paston in 1582, with whom he had seven sons and three daughters.

In circa 1582, Coke became the family attorney to the powerful Howard family, the Duke of Norfolk, and the Earl of Arundel.

In 1587, Coke was appointed Recorder of Coventry.

C. Member of Parliament: 1589-1605

In 1589, Coke was elected Member of Parliament.

In 1592, Coke became Solicitor General. Prior to his appointment, Coke was summoned before Queen Elizabeth I who severely scolded him for having taken on so many notorious clients and cases, prior to approving his appointment.

In 1592, Coke was elected Speaker of the House of Commons.

During Coke's tenure as House Speaker, the Puritans sponsored a bill which sought to make several changes within the Church of England.

Queen Elizabeth summoned Coke and informed him that support for the bill was tantamount to treason. Coke then worked to quash the bill.

In 1594, Coke became the Attorney General of England and Wales, beating out his rival Francis Bacon. Queen Elizabeth I had been encouraged to select Francis Bacon, but she choose Sir Edward Coke since she believed that he was best qualified.

In 1603, Queen Elizabeth I died, and King James I ascended the throne of England. Soon after James I became king, he pulled a sword from the holster of one of his guards and "knighted" Sir Edward Coke, who then Attorney General.

The Gunpowder Plot to assassinate King James I led to several arrests in 1603, including the arrest of Sir Walter Raleigh. Raleigh was charged with "conspiracy to deprive the king of his Government; to alter religion; to bring in the Roman superstition; and to procure foreign enemies to invade the kingdom."

D. Chief Justice of England and Wales: 1606-1616

In 1606, Sir Edward Coke became a Serjeant-at-Law and the Chief Justice of the Court of Common Pleas. In this position, Coke became an expert on the English common law and issued several influential decisions.

During Coke's tenure as Chief Justice of the Court of Common Pleas, Richard Bancroft, the Archbishop of Canterbury, was the Chief Judge of the Court of High Commission, an ecclesiastical court with royal prerogative and ultimate authority. For this reason, the Court of High Commission often interfered with Coke's rulings on the Court of Common Pleas.

Justice Coke issued several Writs of Prohibition against the Court of High Commission. This led to conflict between Coke and King James I.

While Justice of Common Pleas, Coke issued the landmark *Dr. Bonham's Case* (1610)[4], in which he wrote: "In many cases, the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void."

Dr. Bonham's Case struck against the heart of King James I's "divine rights of kings" theory and placed the King of England beneath the English Common Law. This case established the doctrine that not even the monarchy was above the

[4] https://www.britannica.com/event/Bonhams-Case

law and preserved what Coke and others believed had been a "constitutional monarchy" in England.

King James I disagreed with Coke's decision in *Dr. Bonham's Case*; he believed that the king had the royal prerogative to decide any case in England, especially given the fact that the king had the sole power to appoint both bishops and judges. Furthermore, James I argued with Coke, contending that the king had the right to decide all matters that had not yet been decided by a court or judge. But Coke responded to King James I by insisting that only judges should have the power to interpret the law, because a correct understanding of the common law required specialized training and years of experience (i.e., "artificial reasoning"); that common law was the collective experience and wisdom of the ages, including the wisdom of individual monarchs; that no one individual was above the common law; and, most significantly, this same common law protected and preserved the rights of the king. As a constitutional monarch, the king of England was God's vice-regent and a protector and administrator of the "royal law,"[5] which was the "law of Christ,"[6] now thoroughly the heart and soul of the English common law. But King James I disagreed with Coke's assessment of the common law, retorting that the King of England protected the common law, not the other way around. This meant, inevitably, the King James I's royal prerogative allowed him to dispense with the common law, as he saw fit, in order to achieve the common good, as he himself defined the common good. James I's ideals were not wholly without precedent: the Court of Chancery and the Court of the King's Bench had early and largely functioned as royal prerogative courts. But Coke and others felt that even these royal prerogative courts were limited by a "law of reason" that had been perfected in the English common law.

The influence of Coke's *Dr. Bonham's Case* would be long-lasting in both England and British North America.[7] First of all, it reflected a brand of

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[5] "If ye fulfill the royal law according to the scripture, Thou shalt love thy neighbor as thyself, ye do well." James 1:8.

[6] The central message of Jesus of Nazareth (i.e., the **"law of Christ"**) was 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).

[7] **Sir Edward Coke, *Bonham's Case* and "Judicial Review":** "The modern doctrine of judicial review traces its origins to the opinion Coke rendered in *Bonham's Case* (1610). Much of the vitality of this doctrine relates to the circumstances in which it was reached. Acting as chief justice, Coke struck down a law he found insupportable, and held to his decision against forceful opposition. From this history emerged *Marbury v. Madison'* and two central principles of constitutional law. The first of these is that the judges are the ultimate arbiters of what is constitutional. The second, perhaps a necessary corollary of the first, is that judges are independent of other branches of government. Coke formulated the principle of judicial review, and his defense of this proposition provided the paradigm of the independent judge." https://www.britannica.com/event/Bonhams-Case

jurisprudence which the Puritans, Baptists, Presbyterians, Independents and the Reformed Anglicans promoted. See, e.g., Table 2 "The Royalists-Parliamentarian Division in early 17th Century England."

Table 2 "The Royalists-Parliamentarian Divide in early 17th Century England"

King James I; King Charles I (Royalists)	**Sir Edward Coke (Parliamentarians)**
Theology: Divine Right of Kings (High-Church Anglican)	Theology: Sola Scriptura (Reformed Anglican)
Political View: Supremacy of the Monarchy	Political View: Supremacy of the English Common Law; Constitutional Monarchy
Political Party: Tories	Political Party: Whigs/ Tories
Constituency: High-Church Anglicans/ Roman Catholics; Royalists (House of Lords)	Constituency: Puritans/ Presbyterians/ English Baptists/ Independents/ Members of Parliament (House of Commons/ House of Lords)

In 1613, King James I, upon the advice of Sir Francis Bacon, transferred Coke to King's Bench, where he also served as the Chief Justice. The thinking behind this transfer was that since the King's Bench existed to protect the interests of the king, that Coke was no longer be a threat to the king's interests. However, James I was sadly mistaken. In the *Peacham's Case (1614)* and the *Case of the Commendams (1616)*, Justice Coke issued rulings that were unfavorable to the king.

In 1616, King James I dismissed Coke from serving as chief judge of the King's Bench. In 1617, Coke's rival Francis Bacon became Lord Chancellor. Soon thereafter, Coke, who was then a Member of Parliament, was imprisoned in

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The influence of *Dr. Bonham's Case* would have a long-lasting impact upon British North America, leading up to the American Revolution (1775- 1783). "During the legal and public campaigns against the Writs of Assistance and Stamp Acts of 1765, Bonham's Case was given as a justification for nullifying the legislation. Marbury v. Madison, the American case which forms the basis for the exercise of judicial review in the United States under Article III of the Constitution, uses the words 'void' and 'repugnant,' seen as a direct reference to Coke."

the Tower of London for "treason" against the king and for opposing the odious practice of granting of monopolies and patents.

E. Member of Parliament: 1620-1629

In 1620, Coke was re-elected as a Member of Parliament. From 1620 to 1628, Coke led the fight against monopolies and patents, which were the sources of much economic inequality and abuse.

Queen Elizabeth had reigned in and curtailed the abusive monopolies and patents that had caused so much economic hardship amongst the commoners. She had also apologized to Parliament for her mistakes in issuing those monopolies and patents. But King James I vigorously revised this odious practice.[8]

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[8] See, e.g., **Appendix C, "Statutes of Monopolies (1624)**," and the Wikipedia On-Line article, "Statute of Monopolies, https://en.wikipedia.org/wiki/Statute_of_Monopolies :

> "Historically, English patent law was based on custom and the common law, not on statute. **It began as the Crown granted patents as a form of economic protection to ensure high industrial production. As gifts from the Crown, there was no judicial review, oversight or consideration, and no actual law developed around patents.** This practice came from the guilds, groups who were controlled by the Crown and held monopolies over particular industries. By the 14th century the economy of England was lagging behind that of other European nations, with the guilds too small to control industrial production successfully. To remedy this, Edward II began encouraging foreign workmen and inventors to settle in England, offering **"letters of protection"** that protected them from guild policy on the condition that they train English apprentices and pass on their knowledge. The first recorded letter of protection was given in 1331. The letters did not grant a full monopoly; rather they acted as an extended passport, allowing foreign workers to travel to England and practice their trade. An exceptional example (considered the first full patent in England) was issued to John of Utynam on 3 April 1449, granting him a monopoly. Overseas, the practice of granting full industrial patents and monopolies became common in Italian states by the 1420s.
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> "Over the next century, the granting of full industrial patents became a more common practice in England; the next record is a letter from 1537 to Thomas Cromwell, Henry VIII's private secretary, from Antonio Guidotti, a Venetian silk-merchant. Guidotti had persuaded a group of Venetian silk-makers to practice in England, and wanted the king to grant him letters patent protecting their monopoly to grow silk for 15 or 20 years. This was granted, and Henry's son Edward VI followed up with a grant of letters patent to Henry Smyth, who hoped to introduce foreign glassworking techniques into England. This process continued after Elizabeth I came to the throne, with formal procedures set out in 1561 to issue letters patent to any new industry, allowing monopolies. The granting of these patents was highly popular with the monarch, both before and after the Statute of Monopolies, because of the potential for raising revenue. A patentee was expected to pay heavily for the patent, and unlike a tax raise (another method of raising Crown money) any public unrest as a result of the patent was normally directed at the patentee, not the monarch.
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> "**Over time, this became more and more problematic; instead of temporary monopolies on specific, imported industries, long-term monopolies came about over more common commodities, including salt and starch.** These **"odious monopolies"** led to **a showdown between the Crown and Parliament**, in which **it was agreed in 1601 to turn the power to administer patents over to the common law courts; at the same time, Elizabeth revoked a number of the more restrictive and**

In 1621, Coke established and led a "Committee of Grievances" in Parliament. The objective of this committee was to attack economic abuses stemming from monopolies. As a result of Coke's activities, he was arrested and imprisoned in the Tower of London for nine months. But Coke persevered. As a Member of Parliament, Coke worked to enact the Statute of Monopolies, which was passed on May 25, 1624. See, **Appendix C**, below.

In 1625, James I died and his son Charles I ascended the throne of England. King Charles I was even more abusive than his father. King Charles I levied taxes and created "forced loans" without the consent of Parliament. The refusal to pay either taxes or forced loans could lead to imprisonment. Those who stood to lose the most were the landed gentry, the nobility, the rising merchants, etc. Hence, a very powerful interest formed in opposition to Charles I. Coke, as a leading Member of Parliament, fought back.

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damaging monopolies. Even given a string of judicial decisions criticising and overruling such monopolies, **James I, Elizabeth I's successor, continued using patents to create monopolies. Despite the Committee of Grievances, a body chaired by Sir Edward Coke that abolished a large number of monopolies, a wave of protest occurred at the expansion of the system.** On 27 March 1621, James suggested the House of Commons draw up a list of the three most objectionable patents, and he would "give Life to it, without alteration", but by this time a statute was already being prepared by Coke. After passing on 12 May 1621 it was thrown out by the House of Lords, but a **Statute of Monopolies was finally passed by Parliament on 29 May 1624**.

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"The **Statute of Monopolies [of 1624]** was an Act of the Parliament of England notable as the first statutory expression of English patent law. Patents evolved from letters patent, issued by the monarch to grant monopolies over particular industries to skilled individuals with new techniques. Originally intended to strengthen England's economy by making it self-sufficient and promoting new industries, the system gradually became seen as a way to raise money (through charging patent-holders) without having to incur the public unpopularity of a tax. **Elizabeth I particularly used the system extensively, issuing patents for common commodities such as starch and salt. Unrest eventually persuaded her to turn the administration of patents over to the common law courts, but her successor, James I, used it even more. Despite a committee established to investigate grievances and excesses, Parliament made several efforts to further curtail the monarch's power. The result was the Statute of Monopolies, passed on 29 May 1624.**

"The statute repealed some past and future patents and monopolies but preserved exceptions: one of these was for patents for novel inventions. Seen as a key moment in the evolution of patent law, the statute has also been described as "one of the landmarks in the transition of [England's] economy from the feudal to the capitalist". Even with the statute in force, it took over a century for a comprehensive legal doctrine around patents to come into existence, and **James I's successor Charles I regularly abused the patents system by ensuring that all cases relating to his actions were heard in conciliar courts, which he controlled. The English Civil War and the resulting English Restoration finally curtailed this system.** The statute is still the basis for Australian law, and until the United Kingdom began following the European Patent Convention in 1977, was also a strong pillar of the United Kingdom's intellectual property law."

The Chief Judge of the Common Pleas ruled that King Charles I's force loans were illegal. The Chief Judge of the King's Bench also reached the same conclusion. Sir Edward Coke, as a Member of Parliament, drafted a "Resolution," stating:

> "[N]o freeman is to be committed or detained in prison, or otherwise restrained by command of the King or the Privy Council or any other, unless some lawful cause be shown… the writ of habeas corpus cannot be denied, but should be granted to every man who is committed or detained in prison or otherwise restrained by the command of the King, the Privy Council or any other…. Any freeman so committed in prison without cause being stated should be entitled to bail or be freed."

In addition, the "Resolution" provided that no tax or forced loan could be levied without Parliamentarian permission, and no private citizen could be forced into accepting soldiers into his home.

In 1628, Coke drafted the document that became the "Petition of Right," which Parliament adopted.

"The Petition remains in force in the United Kingdom, and parts of the Commonwealth. It reportedly influenced elements of the Massachussetts Body of Liberties, and the Third, Fifth, Sixth and Seventh Amendments to the Constitution of the United States."[9] "It is suggested elements appear in the Fifth, Sixth, and Seventh Amendment, primarily through the Massachusetts Body of Liberties."[10] See, below, Table 3. "Influence of the Petition of Right of 1628 upon the U.S. Constitution (1787) and Bill of Rights (1789)."

Table 3. "Influence of the Petition of Right of 1628 upon the U.S. Constitution (1787) and Bill of Rights (1789)"

PETITION OF RIGHT OF 1628	INFLUENCE UPON U. S. CONSTITUTION OF 1787; AMERICAN BILL OF RIGHTS OF 1789

[9] Wikipedia On-line Encyclopedia: "The Petition of Rights (1628)," https://en.wikipedia.org/wiki/Petition_of_Right .

[10] Ibid.

PETITION OF RIGHT (1628), Sec. X. "They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, **without common consent by act of parliament…."**	**"No Taxation, Without Representation"[11]; The Sugar Act of 1764[12]; The Stamp Act of 1765- [13]**

[11] The American slogan "No Taxation, Without Representation" finds its roots in early English history of the early 1600s. See, e.g., Wikipedia On-line Encyclopedia, "No Taxation, Without Representation," https://en.wikipedia.org/wiki/No_taxation_without_representation, stating: "**No taxation without representation**" is a political slogan originating during the 1700s that summarized one of 27 colonial grievances of the American colonists in the Thirteen Colonies, which was one of the major causes of the American Revolution. In short, **many in those colonies believed that, as they were not directly represented in the distant British Parliament, any laws it passed affecting the colonists (such as the Sugar Act and the Stamp Act) were illegal under the Bill of Rights 1689, and were a denial of their rights as Englishmen**. The firm belief that the government should not tax a populace unless that populace is somehow represented in the government developed in the English Civil War following the refusal of parliamentarian John Hampden to pay ship money tax.[1] "No taxation without representation," in the context of British American Colonial taxation, appeared for the first time in the February 1768 *London Magazine* headline, on page 89, in the printing of Lord Camden's "Speech on the Declaratory Bill of the Sovereignty of Great Britain over the Colonies."

[12] Wikipedia: The Sugar Act, https://en.wikipedia.org/wiki/Sugar_Act .

[13] Wikipedia: The Stamp Act, https://en.wikipedia.org/wiki/Stamp_Act_1765:

"The Stamp Act was passed by Parliament on 22 March 1765 with an effective date of 1 November 1765. It passed 205–49 in the House of Commons and unanimously in the House of Lords.[32] Historians Edmund and Helen Morgan describe the specifics of the tax:

The highest tax, £10, was placed ... on attorney licenses. Other papers relating to court proceedings were taxed in amounts varying from 3d. to 10s. Land grants under a hundred acres were taxed 1s. 6d., between 100 and 200 acres 2s., and from 200 to 320 acres 2s. 6d., with an additional 2s 6d. for every additional 320 acres (1.3 km^2). Cards were taxed a shilling a pack, dice ten shillings, and newspapers and pamphlets at the rate of a penny for a single sheet and a shilling for every sheet in pamphlets or papers totaling more than one sheet and fewer than six sheets in octavo, fewer than twelve in quarto, or fewer than twenty in folio (in other words, the tax on pamphlets grew in proportion to their size but ceased altogether if they became large enough to qualify as a book).[33]

The high taxes on lawyers and college students were designed to limit the growth of a professional class in the colonies.[34] The stamps had to be purchased with hard currency, which was scarce, rather than the more plentiful colonial paper currency. To avoid draining currency out of the colonies, the revenues were to be expended in America, especially for supplies and salaries of British Army units who were stationed there.[35]

Two features of the Stamp Act involving the courts attracted special attention. The tax on court documents specifically included courts "exercising ecclesiastical jurisdiction." These type of courts did not currently exist in the colonies and no bishops were currently assigned to the colonies, who would preside over the courts. Many colonists or their ancestors had fled England specifically to escape the influence and power of such state-sanctioned religious institutions, and they feared that this was the first step to reinstating the old ways in the colonies. Some Anglicans in the northern colonies were already openly advocating the appointment of such bishops, but they were opposed by both southern Anglicans and the non-Anglicans who made up the majority in the northern colonies.[36]

The Stamp Act allowed admiralty courts to have jurisdiction for trying violators, following the example established by the Sugar Act. However, admiralty courts had traditionally been limited to cases involving the high seas. The Sugar Act seemed to fall within this precedent, but the Stamp Act did not, and the colonists saw this as a further attempt to replace their local courts with courts controlled by England.[37]

PETITION OF RIGHT (1628), Sec. VI. "And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people."	**U.S. CONST., AMENDMENT III: "**No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."
PETITION OF RIGHT (1628), Sec. III. "And whereas also by the statute called [MAGNA CARTA of 1215] 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land." **PETITION OF RIGHT (1628), Sec. IV.** "And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law."	**U.S. CONST., AMENDMENT IV: "**The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
PETITION OF RIGHT (1628), Sec. III. "And whereas also by the statute called [MAGNA CARTA of 1215*]* 'The Great Charter of the Liberties of England,' *it is declare*d and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land."	**U.S. CONST., AMENDMENT V: "**No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
PETITION OF RIGHT (1628), Sec. III. "And whereas also by the statute called [MAGNA CARTA of 1215*]* 'The Great Charter of the	**U.S. CONST., AMENDMENT VI: "**In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the

Liberties of England,' *it is declare*d and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land."	State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."
PETITION OF RIGHT (1628), Sec. III. "And whereas also by the statute called [MAGNA CARTA of 1215] 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land."	**U.S. CONST., AMENDMENT VIII: "**In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."
PETITION OF RIGHT (1628), Sec. III. "And whereas also by the statute called [MAGNA CARTA of 1215] 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land." **PETITION OF RIGHT (1628), Sec. IV.** "And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law."	**U.S. CONST., AMENDMNT XIV:** "Section 1…No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In 1629, Sir Edward Coke retired from Parliament and from public life. He continued to write and publish:

> As with the *Reports*, Coke's *Institutes [of the Laws of England]* became a standard textbook in the United States, and was

> recorded in the law libraries of Harvard College in 1723 and Brown University in 1770; John Jay, John Adams, Theophilus Parsons and Thomas Jefferson were all influenced by it. John Rutledge later wrote that 'Coke's Institutes seems to be almost the foundations of our law,' while Jefferson stated that 'a sounder Whig never wrote more profound learning in the orthodox doctrine of British liberties.'[14]

In 1634, Coke died.

II. Christian Jurisprudence of Sir Edward Coke, as Chief Justice and Member of Parliament

A. Reformed-Anglican Jurisprudence

Edward Coke was fundamentally a Reformed-Anglican lawyer and jurist. He was the most influential English lawyer and jurist of early colonial America up through the period of the American Revolution (1775- 1783). Coke was himself a Reformed Anglican but he was not necessarily a "Puritan." He had been fiercely loyal to Queen Elizabeth I before she died in 1603, and he had been willing to rule against the Puritans in support of his allegiance to her. Nevertheless, Coke's jurisprudence and constitutional theory, however, would appeal to New England Puritan theology, political theory, and sensibilities. And it was through the Puritans that Coke's definition of the English common law largely became the American definition of common law. For example, **Rev. Roger Williams (1603-1683), who was a Puritan-Baptist theologian in colonial New England, would become Coke's most famous law clerk[15]**; and this same Roger Williams would go on to lay the constitutional foundations of "separation of church and state" in colonial Rhode Island and the idea of religious freedom in colonial America. And Rev. Nathaniel Hale (1578 – 1652), a Puritan lawyer and author of the *Massachusetts Body of Liberties* (1641) was believed to have been influenced by Coke's *Petition of Rights* (1628).

But perhaps Coke's greatest legacy was the impression that he left upon the American founding fathers as a whole: Coke's resistance to the first two Stuart

[14] https://en.wikipedia.org/wiki/Edward_Coke

[15] John M. Barry, *Roger Williams and the Creation of the American Soul: Church,State, and the Birth of Liberty* (New York, N.Y.: Viking Press, 2012).

monarchs was monumental; his jurisprudential ideals on the subordination of the royal prerogative to the "fundamental moral law" of England were foundational; and, his idea of judicial review was revolutionary. And I would be remiss, if I did not state here, without equivocation, that Coke's jurisprudence was thoroughly "catholic." Although this description of Coke's jurisdiction as "catholic" may seem strange to modern-day ears, in Coke's day, the English jurists were essentially Reformed-Anglican-Catholic jurists, who conceptualized God as Himself the manifestation of eternal law and as the Architect and Creator of natural law (i.e., the law of reason).

B. Thomism and Anglo-American Due Process of Law

The influence of St. Augustine of Hippo's theology and of St Thomas Aquinas' legal theory (i.e., Eternal Law --→ Divine Law --→ Natural Law --→ Human Law) had been thoroughly sewn into English constitutional law and jurisprudence for at least three centuries before the birth of Sir Edward Coke in 1552. During the thirteenth century, St. Thomas Aquinas (1225- 1274) had concluded that **God is Reason** (i.e., Divine Law), and **that man's reason or mind "is God's image."**[16] St. Thomas wrote that "Divine law proposes precepts about all those matters whereby human reason is well ordered. But this is effected by the acts of all the virtues: since the intellectual virtues set in good order the acts of the reason in themselves: while the moral virtues set in good order the acts of the reason in reference to the interior passions and exterior actions."[17] This Roman Catholic juridical wordview, as reflected in the moral theology of St. Thomas Aquinas, left its indelible mark upon the Church of England and the English legal system. In 1354, for instance, during the reign of King Edward III (1327-1377), six statutes were enacted in order to clarify and implement the Magna Charta of 1215; one of these statutes first mentioned the phrase "due process of law." This phrase "due process of law" soon became synonymous with the Roman Catholic/Thomism juridical ideal of "reason" as the supreme standard for law or human conduct.

In early seventeenth-century England, "due process of law" quickly became, under Chief Justice Edward Coke's leadership and influence, the "law of reason." For instance, in the celebrated *Dr. Thomas Bonham's Case*, Justice Coke wrote that any act of Parliament could be judicially declared void for being "against common right and reason." American jurists in the colonial era cited this case in

[16] See Apostolate Paper # 2, "Resurrecting St. Thomas Aquinas."
[17] Ibid.

support of the principle that statutes that conflict with fundamental law are void. It is often held to be the antecedent of both the doctrine of substantive due process and judicial review. And during the nineteenth century, this doctrine became the foundation of the Civil War Amendments.[18]

"As early as Bracton, England's judges had claimed that the common law was consonant with reason. What distinguishes Coke and his age is the energy with which judges used reason to assert their control over the law. Defining law as artificial reason gave tremendous authority to the judges. It allowed them to review customs, ordinances and, finally, statutes. **What they found reasonable, the judges approved; whatever failed to meet the test of reason**, they struck down:

> What was demanded . . . if English law [were] to exist as a unified system was a technique of binding precedents. Somehow, someone had to find a' principle that could be used to survey the vast array of judicial "examples" that had been accumulating since early medieval times and that would enable jurists to select those that could serve as broad precedents. Coke provided it. His definition of law as "perfect reason" became the standard against which the facts of law were measured.[19]

Sir Edward Coke, writing as the chief judge in England's highest courts, likewise reached the same assumptions regarding the primacy of "reason" within the English common law and legal systems.[20] "The *locus classicus* of Coke's

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[18] "The Fourteenth Amendment to the Constitution was ratified on July 9, 1868, and granted citizenship to 'all persons born or naturalized in the United States,' which included former slaves recently freed. In addition, it prohibited states from denying any person 'life, liberty or property, without due process of law' or denying 'any person within its jurisdiction the equal protection of the laws.' Serving on the Joint Committee on Reconstruction, Ohio Representative John Armor Bingham was the sponsor and principal framer of the Fourteenth Amendment." See https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/due-process-of-law.html

[19] See, Allen D. Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford, CA: Stanford University Press, 2003), p. 106.

[20] For Sir Edward Coke, the English common law was "the law of reason." English or Anglo-Saxon customary law did not trump the "law of reason" or the "law of Christ." For this reason, Coke's jurisprudence was reflected Thomism and the Anglican-Catholic worldview. "Coke's belief in custom was essentially skin-deep. His statements that the common law expresses custom do not cut down to the core of his way of thinking about law. He did not work out (as Davies did) a true theory of common law as customary law. When it actually came to relating custom to law, to explaining how custom and usage fit into the harder terrain of legal judgments, Coke held back. He did not tie custom to the common law; he discussed individual customs as a matter of copyhold law,' in terms of the localized practices of individual manors.' Moreover, the only common denominator of custom was that reason defined it. '[O]nly this incident inseparable every custom must have, viz. that it be consonant to reason; for how long soever it hath continued, if it be against reason, it is of no force in law.' In the final analysis, reason and not custom defined law." By "Artificial Reason," Chief Justice Coke meant that the English common law was the culmination of the collective natural reasoning of entire body politic of England, as best understood by England's

definition of artificial reason is found in his *Commentary Upon Littleton.* Here Coke wrote:

> **[R]eason is the life of the law, nay the common law itself is nothing else but reason**; which is to be understood of an artificial perfection of reason, gotten by long study, observation and experience, and not of every man's natural reason; for *Nemo nascitur artilex.* This legal reason *est summa ratio.* And therefore if all the reason that is dispersed into so many several heads, were united into one, yet could he not make such a law as the law in England is; because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men, and by long experience grown to such a perfection, for the government of this realm, as the old rule may be justly verified of it, *Neminem oportet esse sapientiorem legibus:* . No man out of his own private reason ought to be wiser than the law, which is the perfection of reason.

Not surprisingly, then, Coke's jurisprudence conceptualized the Sacred Scriptures as being part and parcel of the English Common Law. "Coke constantly reached out to buttress the common law by linking it to the Judeo-Christian moral tradition, or to the law of nature. In cataloguing his library, he listed divinity books first, followed by 'the books of the laws of England because they are derived from the laws of God."[21] As the chief judge of England and Wales, Coke grounded England's constitutional, statutory, and customary law upon an "Augustinian model" of natural law and natural justice. For instance, "[w]ith the tenor of his prose rising to sermon pitch, Coke warned of the judge's duty to be evenhanded: *Et exultate,* but yet *cum tremore,* do all these things lest ye enter into wrath, and so ye perish from the way of righteousness; whereby it appeareth, that the greatest loss a judge or magistrate can have, is to give himself over to passion, and his own corrupt will, and to lose the way of righteousness, *et pereatis de via justa.* In commenting on a line from Magna Carta, Coke tied together these disparate strands of theory:

> *Justitiam vel rectum.* We shall not sell, deny, or delay justice

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most learned men, who were its judges. "Artificial reason" essentially means "a learned understanding of complex data, phenomena, and information" that is attained through, and built upon, natural reason.

[21] Allen Dillard Boyer, "'Understanding, Authority, and Will': Sir Edward Coke and The Elizabethan Origins of Judicial Review." *Boston College Law Review* (Vol. 39; Issue 1, No. 1 (Dec. 1, 1998), pp. 43-93.

> and right. *Justitiam vel rectum,* neither the end, which is justice, nor the mean, whereby we may attain to the end, and that is the law. *Rectum,* right, is taken here for law, in the same sense that *jus,* often is so called. 1. Because it is the right line, whereby justice distributative is guided, and directed, and therefore all [judicial commissions] have this clause, *facturi quod ad justitiam pertinet, secundum legem,* and *consuetudinem Angliae,* that is; to do justice and right, according to the rule of the law and custom of England . . . . 2. The law is called *rectum,* because it discovereth, that which is tort, crooked, or wrong, for as right signifieth law, so tort, crooked or wrong, signifieth injury, and *injuria est contra jus,* against right: *recta linea est index sui, et obliqui,* hereby the crooked cord of that, which is called discretion, appeareth to be unlawful, unless you take it, as it ought to be, *discretio est discernere per legem, quid fit justum.* 3. It is called right, because it is the best birthright the subject hath, for thereby his goods, lands, wife, children, his body, life, honor, and estimation are protected from injury, and wrong: *major haereditas venit unicuiq; nostrum a jure, et legibus, quam a parentibus."*
>
> Significantly, this passage weaves together the idea of **artificial reason with moral right and natural justice**, linking both to the integrity of the judge. The process by which the law discovers wrong is the trial process through which the lawyer's artifice is applied. What appears to be the judge's right to exercise discretion is really a duty to follow the common law.

He also wrote that the keeping of brothel houses was forbidden by the law of God, 'on which the common law of England in that case is grounded,' and cited five Old Testament sources. In the Star Chamber, he argued that divine right, rather than common law, governed the succession to the crown of England."[22] See, below, Table 1. "Sir Edward Coke's Reformed-Anglican and Conservative Jurisprudence." Indeed, it was this brand of jurisprudence which influenced the Puritan founders of colonial New England and much of colonial British North America.

Table 4. Sir Edward Coke's Reformed-Anglican and Conservative Jurisprudence

[22] Ibid.

Secular Political Theory/ Anglo-American Liberalism (e.g., Whigs) 18th Century	**<u>Sir. Edward Coke's Christian Jurisprudence was Reformed-Anglican and Conservative:</u> Christian Political Theology/ Anglo-American Conservatism (e.g., Tories)**
Magna Carta of 1215; Petition of Rights of 1628; English Bill of Rights of 1689; Declaration of Independence of 1776; U.S. Constitution of 1787 ; Natural Law or the Laws of Nature	God's Divine Providence; Sacred Scriptures[23]; Magna Carta of 1215; Petition of Rights of 1628; English Bill of Rights of 1689; Declaration of Independence of 1776; U.S. Constitution of 1787 ; Natural Law or the Laws of Nature
Solon; Socrates; Plato; Aristotle; Cicero; Thomas Hobbes; John Locke; Jean Jacques Rousseau; Baron de Montesquieu; David Hume; Thomas Jefferson; American Founding Fathers, etc.	Socrates; Plato; Aristotle; Justin Martyr; St. Augustine; St. Thomas Aquinas; Richard Hooker; Martin Luther; John Calvin; Thomas Hobbes; John Locke; Sir Edward Coke; Roger Williams; John Wesley, etc.
Political Freedom; Individual Liberty	No act that is opposed to God's Law is true "Freedom"; there is "No Free Will," unless sanctioned and ordained by God's Law; or,

[23] See, e.g., John Marshall Gest, "The Influence of Biblical Texts upon English Law," An address delivered before the Phi Beta Kappa and Sigma xi Societies of the University of Pennsylvania on June 14, 1910 ("**The Old Testament was indeed considered as supplemented rather than supplanted by the New, but subject to this qualification, the Bible, although it consisted of not one book, but of many books, written at periods of time far removed from one another, and from different points of view, in divers tongues and in the literary forms peculiar to an ancient and Eastern civilization, was considered as the permanent expression of the divine will**, and almost every text as an inspired oracle for the guidance for all men in all countries and at all times. Interpretation and criticism were practically unknown; and the histories of the early Semitic tribes, their prophetic exhortations, their poetry, lyric and dramatic, and their laws were all received on the same basis; and a text of the Bible, wherever it might be found, and whatever might be its logical connection, was regarded as an infallible authority. **Indeed, in the fundamental laws of the Colonies of Massachusetts, Connecticut, New Haven and West New Jersey, the judges were commanded to inflict penalties according to the law of God. The study of the Scriptures was specifically associated with the study of law.** Chief Justice Fortescue, in his book de Laudibus, said of the judges, that after court 'when they have taken their refreshments they spend the rest of the day in the study of the laws, reading the Holy Scriptures, and other innocent amusements, at their pleasure.' All through the middle ages, and indeed for long after, men craved authority for all they thought, said and did. **The Bible was, of course, first, with the writings of the Fathers of the Church second;** but Aristotle, 'The Philosopher,' especially as his works were reconciled with Christianity through the writings of St. Thomas Aquinas, was followed with almost equal devotion; and many of the Latin poets and Cicero served in default of something better. Virgil was particularly esteemed, being regarded as almost a forerunner of Christianity; indeed St. Paul was supposed to have shed tears over Virgil's tomb in his regret that he had never seen the greatest of the poets in life.") Indeed, under the classical and orthodox Christian worldview, the **Sacred Scriptures must aid and supplement human reason and understanding**. The power of human reason and understanding is simply inadequate without divinie intervention, i.e., the Sacred Scriptures. See, e.g., St. Augustine, Confessions (New York, N.Y.: Barnes & Nobles Classics, 2007), p. 77 ("Thus, since we are too weak by unaided reason to find out truth, and since, because of this, we need the authority of the holy writings, I had now begun to believe that you would not, under any circumstances, have given such eminent authority to those scriptures throughout all lands if it had not been that through them your will may be believed in and that you might be sought…. The authority of scripture seemed to me all the more revered and worthy of devout belief because, although it was visible for all to read, it reserved the full majesty of its secret wisdom within its spiritual profundity.")

	there is no "Free Will" outside of life in Christ.

B. The English Common Law and the Bible

Sir Edward Coke was thus an expert on the English common law and, together with William Blackstone, "probably exerted more influence upon our law than any others,"[24] and Coke did not hesitate to point out the Biblical sources of the English Common Law, as follows:

- Regarding England's law on "Lepers," Chief Justice Coke cited Leviticus 13:44 ("He is a leprous man, he is unclean: the priest shall pronounce him utterly unclean; his plague is in his head.") and Numbers 5:1 ("And the LORD spake unto Moses, saying….").

- Regarding the common law on "Twelve Jurors," Coke cited the number twelve "is much respected in Holy Writ, as twelve apostles, twelve stones taken by Joshua from the midst of Jordan, twelve tribes, etc."[25]

- Regarding the law on "partition by lot," Coke cited Numbers 26:55 ("Notwithstanding the land shall be divided by lot: according to the names of the tribes of their fathers they shall inherit.") and Numbers 33:54 ("And ye shall divide the land by lot for an inheritance among your families: and to the more in heritance, and to the fewer ye shall give the less inheritance: every man's inheritance shall be in the place where his lot falleth; according to the tribes of your fathers ye shall inhereit").

- Regarding the law on "bribery," Coke cited Deuteronomy 16:19 ("Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift: for a gift doth blind the eyes of the wise, and pervert the words of the righteous.")

- Regarding the "law against dueling," Coke cited Matthew 26:52 ("Then said Jesus unto him, Put up again thy sword into his place: for all they

[24] John Marshall Guest, "The Influence of Biblical Texts Upon English Law" (An address delivered before the Phi Beta Kappa and Sigma Xi Societies of the University of Pennsylvania on June 14, 1910)(pages 15-34), p. 34.
[25] Ibid., p. 34.

that take the sword shall perish with the sword.") and Deuteronomy 32:35 ("To me belongeth vengeance, and recompence; their foot shall slide in due time: for the day of their calamity is at hand, and the things that shall come upon them make hast.")

- Regarding English "humanitarian law for the protection of refugees," Coke cited Deuteronomy 23:15-16 ("Thou shalt not deliver unto his master the servant which is escaped from his master unto thee; He shall dwell with thee, even among you, in that place which he shall choose in one of they gates, where it liketh him best: thou shalt not oppress him.")

- Regarding the common and statutory laws on "buildings," Coke cited Deuteronomy 22:8 ("When thou buildest a new house, then thou shalt make a battlement for they roof, that thou bring not blood upon thine house, if any man fall from thence.")

- Regarding the common law "right of cross examination," Coke cited John 7:51 ("Doth our law judge any man, before it hear him, and know what he doeth?).

- Regarding the law for the "exemption from jury service," Coke cited Psalms 90:10 ("The days of our years are threescore years and ten; and if by reason of strength they be fourscore years, yet is their strength labour and sorrow; for it is soon cut off, and we fly away.")

- Regarding the "circuits of the judges," Coke cited 1 Samuel 7:16 ("And he went from year to year in circuit to Bethel, and Gilgal, and Miz'peh, and judged Israel in all those places.")

- Regarding Chapter 25 of *Magna Carta*, Coke cited Deuteronomy 25:13 ("Thou shalt not have in thy bag divers weights, a great and a small.")

- Regarding England's laws against slander against the king and royal ministers, and against seditious speech, Coke cited Exodus 22:28 ("Thou shalt not revile the gods, nor curse the ruler of thy people.") [26]

- Regarding "Rape" or "Buggery," Coke wrote in the *Institutes of the Laws of England*[27] that "We have thought good next after Buggery and Rape, to speak of the stealing of women, because the apostle doth rank, after the sodomite, him that is plagiaries, so called, because lege Flavia plagis damnanetur. And we will begin with the statute of 3 H. 7. Cap. 2."[28]

- Also, regarding "Rape," Coke wrote: "[r]ape is felony by the common law, declared by parliament for the unlawful and capital knowledge and abuse of any woman above the age of ten years against her will, or of a woman child under the age of ten years with her will, or against her will, and the offender shall not have the benefit of clergy."[29] Coke cited Exodus 21:6; Deuteronomy 24:7; Deuteronomy 23:25; and 1 Timothy 1:10.[30]

- Regarding "Sodomy" or "Homosexuality," Coke wrote in *Institutes of the Laws of England* that "Britton faith, that sodomites, and miscreants shall be burnt, and so were the sodomites by Almighty God." He cited Genesis 19:9 and Romans 1:17.[31]

- Regarding "Witches" or "Witchcraft," Coke wrote in *Institutes of the Laws of England* that "Thou shalt not suffer a witch to live…. And the Holy Ghost hath compared the great offence of rebellion to the sin of

[26] Ibid., pp. 34-35 (Interestingly, Mr. Guest writes, "[t]hese examples [of Biblical authority for English law] from Lord Coke might be multiplied indefinitely….")
[27] Edward Coke, *Institutes of the Laws of England; Or A Commentary Upon Littleton, not the Name of the Author Only, but of the law Itself* (The Third Part of the Institutes).
[28] Ibid., p. 60[t].
[29] Ibid., p. 60.
[30] Ibid.
[31] Ibid.

witchcraft." He cited Exodus 22:7; Deuteronomy 18:10-12; and Numbers 23:23.[32]

C. Constitutional Law and the Law of Nature

Coke believed that England's unwritten constitution was essentially the law of nature (e.g., also called the "law of peace," the "law of reason [including science]," or the "law of Christ"), which was created by God. See, e.g., Table 5, below.

Table 5. Thomas Woods, *Institutes of the Laws of England* (1720)

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

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

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

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

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

Rules concerning *Law*

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

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*

[32] Ibid.

their Natural Order (London, England: Strahan and Woodall, 1720), pp. 4-5. [33]

These laws of nature were essential components of English jurisprudence. English judges utilized complex legal reasoning—i.e., "artificial reasoning"—that was very pragmatic and case-specific, in order to shape the common law. For Coke and others, the English Common Law was the "unwritten English constitution," and as such, this common law was the reflection and perfection of accumulated, artificial human reason—the collective wisdom of England' most learned men—as well as a sacred mirror God's will on earth. For this reason, Coke reasoned that not even King James I was above the common law; nor could the king of England rely upon royal prerogative or "divine rights" to withhold, repeal, or abolish the English common law.

[33] See, e.g., St. Augustine of Hippo's *The City of God*, wherein he defines the substance of "natural law" as follows: "**All natures**, then, inasmuch as they are, and have therefore a rank and species of their own, and **a kind of internal harmony**, are certainly good. And **when they are in the places assigned to them by the order of their nature**, **they preserve such being as they have received**. And those things which have not received everlasting being, are altered for better or for worse, ***so as to suit the wants and motions of those things to which the Creator's law has made them subservient***; and thus they tend in the divine providence to that end which is embraced in the general scheme of the government of the universe." *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 384. And, again, in another place, St. Augustine described **"nature"** as **"peace";** and **"natural law"** as the **"law of peace."** According this view, "inequality" is inherent in nature, even though all beings are equal in worth, importance, and dignity. Inequality is necessary to balance out the forces of nature and to establish the peace, tranquility (e.g., health and prosperity), and concord within every aspect of creation, including human political organizations, families, and nations. "The peace of all things is the tranquility of order," wrote St. Augustine in *The City of God* (New York, N.Y.: The Library of America, 1950), pp. 690-693. "**Order is the distribution which allots things equal and unequal**, each to its own place…. God, then, the most wise Creator **and most just Ordainer of all natures**, who placed the human race upon earth as its greatest ornament, imparted to men some good things adapted to this life, to wit, temporal peace, such as we can enjoy in this life from health and safety and human fellowship, and all things needful for the preservation and recovery of this peace…. But as this divine Master inculcates two precepts—the love of God and the love of our neighbor—and as in these precepts a man finds three things he has to love—God; himself, and his neighbor—and that he who loves God loves himself thereby, it follows that he must endeavor to get his neighbor to love God, **since he is ordered to love his neighbor as himself. He ought to make this endeavor in behalf of his wife, his children, his household, all within his reach, even as he would wish his neighbor to do the same for him if he needed it; and consequently he will be at peace, or in well-ordered concord, with all men, as far as in him lies. And this is the order of this concord that a man, in the first place, injure no one, and, in the second, do good to every one he can reach.** Primarily, therefore, his own household are his care, for **the law of nature** and **of society** gives him readier access to them and greater opportunity of serving them. And hence the apostle says, 'Now, if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.' **This is the origin of domestic peace, or the well-ordered concord of those in the family who rule and those who obey. For they who care for the rest rule—husband the wife, the parents the children, the masters the servants; and they who are cared for obey—the women their husbands, the children their parents, the servants their masters. But in the family of the just man who lies by faith and is as yet a pilgrim journeying on to the celestial city, even those who rule serve those whom they seem to command; for they rule not from a love of power, but from a sense of the duty they owe to others—not because they are proud of authority, but because they love mercy."**

The English monarch, argued Coke, was a constitutional monarchy and had been since the earliest times in English history. Thus, the English monarch must rule, as St. Augustine had divined in *The City of God*, "by using [their power] for the greatest possible extension of His worship; if they fear, love, worship God; if more than their own they love that kingdom in which they are not afraid to have partners…."[34] Accordingly, for Sir Edward Coke and others, the British monarchy had been founded and established as a Christian constitutional monarchy. Coke wrote: "[t]he King willeth that might be done according to the laws and customs of the realm; and that the statutes be put in due execution, that the subject may have no just cause of complaint for any wrong or oppression, contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience as well obliged of his just prerogative."[35]

CONCLUSION

The common law of England is the source of American constitutional law and jurisprudence. From the period 1600 to 1800, Sir Edward Coke and his influential writings largely defined and shaped the Anglo-American understanding of the English common law. Like St. Augustine of Hippo, Coke embraced the law of nature as the organic common law of England; and like St. Thomas Aquinas, he defined that organic common law as the "law of reason." According to Coke the English common law was the law of nature; and the law of nature was the law of reason. And Coke, like most of his English contemporaries, accepted the Bible as part and parcel of the English common law. But most significantly, Coke's ideal constitution was governed by the law of reason which not even the sovereign could breach. For Coke, "due process of law" meant that even acts of Parliament or decrees of the King, which violate "common right and reason," were automatically void. At all times, the "law of Christ"[36]—viz, "equity" jurisprudence — reigned supreme over the unwritten constitution of England. Under this scheme, a higher law reigned supreme throughout the English realm. For the religious person, that "higher law" was actually God; for the practical lawyer and judge, that "higher law" was the "fundamental constitutional law" and foundation of England's unwritten constitution; and, later, for the American Revolution of 1775, that "higher law," as

[34] St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 178.
[35] Sir Edward Coke, "The Petition of Right (1628)."
[36] The central message of Jesus of Nazareth (i.e., the "law of Christ") was 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), and that message was sown into the English common law through the canon law of the Roman Catholic Church, the Church of England, the English Inns of Court, and the law faculty of Oxford and Cambridge universities.

promulgated in the American *Declaration of Independence* (1776), was the justification for separation from Great Britain.

THE END

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APPENDIX A: Sir Edward Coke's "PETITION OF RIGHT (1628)"

"The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

"To the King's Most Excellent Majesty,

"Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembles, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I, commonly called Stratutum de Tellagio non Concedendo, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

"II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty, or your Privy Council, against the laws and free custom of the realm.

"III. And whereas also by the statute called 'The Great Charter of the Liberties of England,' [MAGNA CHARTA of 1215] it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

"IV. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law.

"V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

"VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people. (PETITION OF RIGHT 1628:8)

"VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

"VIII. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

"IX. And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

"X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge,

without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

"XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty, and the prosperity of this kingdom."

Appendix B: "Ancient Anglican system of Natural Law, Common Law, and Rights"

By

Roderick O. Ford, Litt.D.

The English Common Law (which comprises England's full body of laws, including statutory, customary, and constitutional laws) is founded upon the Greco-Roman idea of natural law and natural justice, as supplemented by the Catholic-Anglican-Christian religion. The common law which came from Great Britain to colonial America was unmodified and unbroken, as American lawyers and clergymen were trained in the same institutions and subject to the same discipline as their English counterparts during the seventeenth and eighteenth "Law of Reason" centuries. This fact is particularly significant when interpreting words such as "the Laws of Nature" or "the Laws of … Nature's God," which are found within the eighteenth-century *Declaration of Independence* (1776). What did this terminology mean, within an eighteenth century context and from the perspective of standard Anglo-American jurisprudence during this period?

The *Declaration of Independence* makes reference to "life, liberty, and the pursuit of happiness," as having been given to every human being by "the Laws of Nature and of Nature's God," which appear to be *higher laws* for which "governments are instituted among men," so as "[t]o secure these rights." The American Abolition and Civil Rights Movements sought to secure those same constitutional rights for African Americans, and those movements considered these constitutional rights to be deeply-rooted in an idea of *higher law*. It thus stands to reason that natural law is a *higher law* upon which the United States Constitution was authorized, "[t]o secure these rights." Indeed, as I have commented throughout this series, St. Thomas Aquinas' legal philosophy of law (Eternal Law---> Divine Law ----> Natural Law ---->Human Law) remained predominant throughout England and continental Europe during the seventeenth and eighteenth centuries. Natural law was determined to be the "Law of God" or the "Law of Reason," to which all other human laws remained subordinate, including the English common law and statutory law. In fact, the Laws of Nature were coterminous with England's unwritten constitution, and constituted its "fundamental law."

For a clearer explanation of the English legal system, Thomas Woods' classic work, *Institutes of the Laws of England* (1720) provides a detailed analysis

of how English law (customary or common law, ecclesiastical law, and natural law) incorporated all of its several component sub-parts and sub-branches that made up the collective law of eighteenth-century Great Britain, as follows:

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

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

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

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

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

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

Rules concerning *Law*

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

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.

From this description of English law, it is quite clear that Natural Law or the Laws of Nature constituted a pivotal and key component of English jurisprudence. And it is clear that the English Common Law, proper, was believed to be a combination of various laws, including the "fundamental law" of the realm, the

law of reason, the law of nature, customary law, common law, ecclesiastical law, the law of God, and the "Law of Christ."[37] In many respects, these various laws simply applied different labels to the exact same concept or understanding of law. But the general idea is that all law is a reflection of both nature and its Creator; and that the laws of nature constitute the laws of the universe. Hence, **W.E.B. Du Bois** has correctly described this law of nature, where he writes: **"[f]or it is certain that all human striving must recognize the hard limits of natural law, and that any striving, no matter how intense and earnest, which is against the constitution of the world, is vain."**[38] This idea, which is deeply-rooted in Anglo-American legal tradition, recognized the divine providence of God in nature. Dr. Russell Byrum has stated that the "providence of God may be described as being his preservation of the things he has created and his care for and direction of them to *the accomplishment of the ends of their creation*."[39] Dr. Byrum further explains that "[b]y natural providence is meant the operation of God according to the laws of nature. There he always works uniformly."[40]

It should not be forgotten that this theological worldview had a direct impact upon the institution of slavery in the United States. The Christian Church and the American Abolition Movement early and largely relied upon this system of natural law—which had been sewn into the ancient Anglican idea of fundamental law—in their arguments in favor of abolishing slavery and the slave trade. Here, it will be helpful to recall the teachings of the Roman Catholic Church on the Decalogue:

> The Ten Commandments state what is required in the love of God and the love of neighbor….
>
> The Decalogue forms a coherent whole. Each 'word' refers to each of the others and to all of them; they reciprocally condition one another….
>
> The Ten Commandments belong to God's revelation. At the same time they teach us the true humanity of man. They bring to light the essential duties, and therefore, indirectly, the fundamental rights

[37] The fundamental "Law of Christ," to wit, is to "love ye one another" (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).
[38] See, e.g., W.E.B. Du Bois, "The Conservation of Races," *Writings* (New York, N.Y.: The Library of America, 1986), p. 815.
[39] Russell R. Byrum, *Christian Theology: A Systematic Statement of Christian Doctrine for the Use of Theological Students* (Anderson, IN: Warner Press, 1976), p. 253.
[40] Ibid., p. 254.

> inherent in the nature of the human person. The Decalogue contains a privileged expression of the natural law:
>
> > From the beginning, God had implanted in the heart of man the precepts of the natural law. Then he was content to remind him of them. This was the Decalogue.
> >
> > The commandments of the Decalogue, although accessible to reason alone, have been revealed. To attain a complete and certain understanding of the requirement of the natural law, sinful humanity needed this revelation….[41]

Within Western Christendom— both the Roman Catholic and Protestant traditions—the Decalogue, or the natural law, constituted the moral order of God, and was the fundamental or supreme law of the secular body politic. In England, it was understood that even the king could not contravene this fundamental law. Throughout its history, kings had been deposed because they had tried to put themselves above this law. During the seventeenth century, the Stuart monarchy's ideas of "divine right" ran against Sir Edward Coke's ideas of the English Common Law and the fundamental law.

In colonial America, from the late seventeenth century to the end of the eighteenth century, the idea of a higher law of Nature, as reflected in the Decalogue, remained predominant throughout the period. Thoroughly incorporated within the Anglo-American constitutional and legal heritage was the idea that "[t]he citizen is obliged in conscience **not to follow** the directives of civil authorities when they are contrary to *the demands of the moral order*, to the *fundamental rights of persons* or the *teachings of the Gospel*. Refusing obedience to civil authorities, *when their demands are contrary to those of an upright conscience*, finds its justification in the distinction between serving God and serving the political community. 'Render therefore to Caesar the things that are Caesar's, and to God the things that are God's.'"[42] This was the same natural-law philosophy that undergirds Dr. Martin Luther King, Jr.'s *Letter from the Birmingham City Jail*.

Natural law is also deeply rooted in the *Pentateuch*, and especially in the Book of Genesis, which describes the Creation of the world and the beginning of

[41] *Catechism of the Catholic Church*, (New York, N.Y.: Doubleday Press, 1997), pp. 557-558.
[42] Ibid., p. 599.

time. "Creation is the divine act by which all things are caused to exist, but a continuous agency of God is required for the orderly preservation of those things."[43] Natural-law philosophy and jurisprudence next look to the works of nature for instruction and understanding as to the meaning of God's laws of nature. This is called the *teleological argument* which supports the concept of natural law: its fundamental premise is that orderly and harmonious cooperation of many separate parts can be accounted for only by the assumption of an intelligent cause; the world everywhere exhibits orderly and harmonious cooperation of all its parts; therefore, the original and absolute cause of the world is an intelligent cause.[44]

> A reasoning from the marks of design to a designer. By design is meant the selection and pursuit of ends. It is the choosing of an end to be attained, the selection of proper means to accomplish it, and the use of the means to attain the end chosen. When we see at the foot of a rocky cliff broken fragments of rock of unequal sizes, irregular and uneven shapes strewn about regardless of their relation to each other, we decide at once that size, shape, and location of them is a result of chance. But when we see hundreds of bricks of equal size, even color, and faces all bearing one imprint, laid in straight, level rows in hard mortar and forming a perpendicular wall with suitable openings for windows and doors, we decide the qualities and arrangement of them are the result of intelligent purpose or design. It is not necessary that one shall have seen the bricks manufactured and laid in the wall to know the wall is the result of design. **The very fact of orderly and useful arrangement therein is abundant proof of contrivance by an intelligent being**…. As in the works of man we reason from marks of design to an intelligent designer, so we may as properly reason from evidence of contrivance, or evidences of adaptation of means to ends, in nature, that the author of nature is intelligent. … Not only in the origin of nature as shown in the First-cause Argument must we recognize the principle of causation, but also in the orderly arrangement of nature as set forth in the Design Argument.
>
> Orderly and useful arrangement in nature is certain. Marks of design are apparent everywhere and are conclusive proof that the author of nature is an intelligent person. All science assumes that nature is rationally constructed. Huxley said, 'Science is the discovery of a

[43] Ibid.
[44] Ibid.

> rational order that pervades the universe.' Except for the uniformity which shows nature to be a system and a result of design science would be impossible. The results of chance can not be understood by the mind. *But the universe can be understood by the mind, showing clearly that it is the result of a mind*.[45]

Another great analogy, which explains the Christian idea of natural law perfectly, would be to compare the planet earth in the Milky Way Galaxy to a golden wrist watch that is found in a corn field. See, e.g., William Paley's Natural Theology, to wit:

> If in crossing a field I strike my foot against a stone and ask how it came there, I might reply that it has been there forever. But if later in my walk I find a watch and the question of the origin of the watch be raised, the answer must be very different. A casual observance of its mechanism—of its wheels with cogs exactly fitting into each other, of its springs, of the relation of part to part, and of its exact adjustment so that it exactly measures time—furnishes convincing proof that it is a reliable example of human contrivance, and not the result of chance. And even the discovery in the watch of useless, broken, and deranged parts would not invalidate the reasoning that it was designed by an intelligent mind.[46]

Nor does the doctrine of evolution diminish this teleological argument, because evolution in no way diminishes the evidence of an intelligent creator.

Disagreement between the secular and sacred viewpoints as to the general framework of natural law exists. The latter (i.e., the sacred viewpoint) maintains that natural law is uniform, that the reason for this uniformity is God's guiding hand or providence, and that God may, at any time, intervene supernaturally; whereas the former (i.e., the secular viewpoint) holds that once the uniform laws of nature (i.e., biological laws, physical laws, etc.) were established in the beginning at creation, no other force (divine or otherwise) may be safely relied upon and there is no divine providence, as though God simply created the world and then turned away from his creations and died. The secular humanists then take this argument a step further, stating: even if there was an intelligent creator, he (or she) plays no active part in human affairs! "A theory held by not a few, including all

[45] Ibid., pp. 57-58.
[46] Ibid., pp. 58-59.

deists, is that God created physical nature with inherent forces such as gravitation, cohesive attraction, chemical affinity, electricity, and magnetism, which are sufficient of themselves for the operation and guidance of nature…."[47]

The Christian Church has answered the secular humanists with arguments regarding man's moral nature. The Christian Church holds that the secularists' view that no God who governs human affairs, fails to take "human nature" into account. Man's soul must have a Cause, and thus a Creator, too. The Christian Church holds that inanimate matter cannot create human reason, human spirit, and human soul—only a higher Divine spirit or a higher Divine soul can create human reason, human spirit, and human soul. And since the human soul has a moral nature, so must its Divine creator. Secular humanists has not reasonably explained away or successfully rebutted the Christian Church's viewpoint on the cause, origin, and nature of human reason, spirit, and soul. For this reason, the scientific laws of human psychology, psychiatry, spirituality, and moral autonomy, which account for human development, desires, passions, sins, lawbreaking, altruistic deeds, charity, and the rise and fall of empires and civilizations, imply the existence of Good (God) and Evil (Sin, Hell, Satan, etc.) The internal substance of the content and quality of the human soul implies the existence of Good (God) and Evil (Sin, Hell, Satan, etc.). See, e.g., the following two scriptures:

Genesis 6:5: "And GOD saw that the wickedness of man was great in the earth, and that every imagination of the thoughts of his heart was only evil continually."

Matthew 15:19-20: "For out of the heart proceed evil thoughts, murders, adulteries, fornications, thefts, false witness, blasphemies: these are what defiles a man…."

The Christian Church thus rejects secular humanism's very restricted definition of natural law that is void of God's Providence or an intelligent, sovereign God, because this restricted humanist definition of natural law ignores the obvious nature of the human soul, human reason, and human spirituality; and, particularly for the Christian Church, this restricted humanist definition of natural law renders the Sacred Scriptures to be useless, unfounded and untrustworthy—a conclusion that is rejected by the Roman Catholics and Protestants alike. **The internal struggle between Good and Evil that is within every human soul *implies the existence of God* and *make religion necessary***. Moreover, the history

[47] Ibid., p. 255.

of the Christian Church has affirmed that God does play a role in human affairs through its publication of the texts of the Holy Scriptures. Clearly these Holy Scriptures attribute the governance of all creation to God's providence. The Roman Catholic Church, the Church of England, and the Puritans held firm to this belief in God's Divine Providence.

THE END

Appendix C: "Statute of Monopolies (1624): Economic Grievances, Monopolies, Patents, and the Law of Nature."

by

Roderick O. Ford, Litt.D.

The "laws of Nature" and the "ethical standards" imposed by the Bible, and through the Church of England, included England's economic regulation. Up to the opening of the seventeenth century, the Church of England had grappled with England's varied economic and social challenges. When James I ascended the throne of England in 1603, economic development, international trade, and the establishment of global influence and empire were within the grip of the English monarchy, and the temptation to attain these things at the expense of the moral, social and spiritual welfare of the common Englishman (and, indeed, at the expense of the various indigenous populations in Africa, India, and North America) proved great.

But the Church of England proved to be a stalwart and an influential force for good. The Church's economic analysis and social criticism had always critiqued the practical affairs of statesman and merchants. Indeed, the English common law and ecclesiastical law had, since ancient times, incorporated the entire Law of Moses, which had naturally influenced the Church of England to function as a bulwark against economic crimes and social dislocations. Key provision within the Ten Commandments naturally mandated that they do this: "I am the Lord thy God… Thou shalt not kill… Thou shalt not steal… Thou shalt not bear false witness against thy neighbor… and Thou shalt not covet (neighbor's house)(neighbor's wife) (neighbor's servants, animals, or anything else)."

And within the prophetic books interpreting the "Law of Moses," several of the Hebrew prophets had condemned unjust gains from economic oppression and exploitation of the poor: *Book of Habakkuk* (economic exploitation; bloodthirsty economic gain; and theft)[48]; *Book of Micah* (failure to establish justice; love of evil; economic oppression; and, social disintegration and corruption)[49]; *Book of Obadiah* (God will punish evil)[50]; *Book of Amos* (economic crimes (i.e., oppression of the

[48] Habakkuk 1:4, 2:6, 9-12; 3:8-14; 1:14; 1:13-17; 2:18-20; 1:5 and 2:4.

[49] Micah 3:11; 2:11; 3;4; 1:7; 5:12-13; 2:6; 7:3; 3:2; 3:9; 6;12; 2;1-3; 3:2-3.

[50] Obadiah 1:12; 1:15; and 1:1-12.

poor and the needy); indifference of the wealthy toward the economic oppression of the poor and the needy; lack of justice; perversion of judgment and justice; and, religious indifference toward the economic oppression of the poor and the needy)[51]; *Book of Hosea* (economic crime, oppression and deceit)[52]; *Book of Ezekiel* (oppression of the poor, needy, strangers, and unjust economic gain)[53] ; *Book of Jeremiah* (genuine disinterest in justice; genuine love of covetousness, deceitfulness, unrighteousness and injustice; exploitation and unjust riches)[54]; and the *Book of Isaiah* (shedding innocent blood; speaking lies and perverseness; refusing or failing to establish justice; disregarding truth; unjust gains from oppression; bribery; and oppression of the poor, needy, and innocent).[55]

As the 17th-century century rolled on, men such as lawyer and Parliamentarian Edward Coke and philosopher John Locke began to opine that "property rights" of individuals required reasonable restraints, restrictions, and limitations. These reasonable restraints primarily were designed to prevent individuals from impairing the natural rights of their fellow-citizens, including the odious consequences of impoverishment and social dislocation. Of course, all of this economic restraint and regulation—subject to the judicial review of England's common law courts— was both "natural" and "reasonable" (i.e., according to the "laws of Nature" or the "law of Christ").

The first national statute enacted to achieve this purpose was the Statute of Monopolies of 1624. It is the original source of Anglo-American patent law. The text of that statute is as follows:

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[51] Amos 1:3-15; 2:1-3; 3;1-2; 3:9; 4:1; 5:12; 5:11; 6:1-6; 6:8; 5:7; 6:12; 5:10; 5:21-24; and 5:4,14.

[52] Hosea 1:2; 8:1; 8:12; 3:20; 1:2; 3:13; 3:17; 6:9; 6:6; 4:1; 4:6; 7:7; 4:2; 12:6; 4:7-8; 4:11-12; 12:6-7; 14: 1-5 and 14:9.

[53] Ezekiel 37:1-28; 20:24; 2:3; 20:19; 5:9; 6:11; 16:1-2; 6:9; 14:3-4; 16:15-16; 16:27-43; 23:1-49; 23:3; 23:7; 23:11; 23:19; 23:37; 23:43-45; 7:11; 7:23; 8:17; 9:9; 11:6; 12:19; 22:1-6; 24:6; 24:8; 22:13; 18:12; 22:7; 22:12; 22:29; 22:27; 22:25-26; 20:24; 27:13; 34:23; 37:24-28; 18:18-23; and 19:30-32.

[54] Jeremiah 1:5; 4:1-2; 1:10-11; 2:1-3; 5:23-24; 9:13-14; 17:9-10; 4:4; 6:10; 7:23; 11:8; 13:10; 14:14; 16:12; 18:12; 22:17; 2:19; 31:33; 5:23-24; 8:8-9; 5:1; 5:28; 22:3-4; 7:5-7; 5:4; 8:6; 5:4;5:12-14; 44:9-10; 4:22; 2:32; 3:20; 4:22; 6:13; 9:4-6; 5:28; 17:11; 22:13-14; 5:8; 5:7; 23:10; 23:14; 13:27; 2:8; 23:26-27; 10:21; 5:31; 23:11; 23:30-32; 14:14; 18:15; 18:7-9; 10:10-12; 25:13-14; 4:1-2; 10:7; 16:19-21; 23:2; 33:15; and 9:25-26.

[55] Isaiah 54:5; 2:2-4; 24:5-6; 14:24-27; 45:18-19; 14:1; 14:5-6; 14:12-14; 58:3-10; 1:11-15; 18:18-19; 5:7-9; 1:21-23; 10:1-2; 5:20-23; 59:3; 59:7; 59:3; 59:13; 59:4; 59:14; 59:13; 33:15; 32:7; 10:1-2; 59:15; 33:15; 9:6-7; 11:1-10; 9:6-7; 42:1-4; 1:26-27; 37:5; 37:2; 37:6; 37:17-20; and 37:35-36.

English Statute of Monopolies of 1623, 21 Jac. 1, c. 3,

[English Statute of Monopolies of 1623, 21 Jac. 1, c. 3, The Original Source of the Anglo-American Patent Law]

An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof (z).

_____[A.D. 1623 "Forasmuch as your most excellent majesty in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God 1610 publish in print to the whole realm, and to all posterity, that all grants of monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your majesty's laws, which your majesty's declaration is truly consonant, and agreeable to the ancient and fundamental laws of this your realm: and whereas your majesty was further graciously pleased expressly to command that no suitor should presume to move your majesty for matters of that nature; yet, nevertheless, upon misinformations and untrue pretences of public good many such grants have been unduly obtained and unlawfully put in execution, to the great grievance and inconvenience of your majesty's subjects, contrary to the laws of this your realm, and contrary to your majesty's royal and blessed intention, so published as aforesaid:" for avoiding whereof and preventing of the like in time to come,

BE IT ENACTED, that all monopolies and all commissions, grants, licenses, charters, and letters patents heretofore made or granted, or hereafter to be made or granted to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of anything within this realm or the dominion of Wales, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise anything against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation, licence, or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any statute; or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money that is or shall be due by any statute before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in ure or execution.

2. And all monopolies, and all such commissions, grants, licences, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending as aforesaid, and the force and validity of them, and every of them, ought to be, and shall be for ever hereafter examined, heard, tried, and determined, **by and according to the common laws of this realm, and not otherwise**.

3. And all person and persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled, and uncapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, license, charter, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty grounded or pretended to be grounded upon them, or any of them.

4. And if any person or persons at any time after the end of forty days next after the end of this present session of parliament shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away, or detained by occasion or pretext of any monopoly, or of any such commission, grant, license, power, liberty,

faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises, that then and **in every such case the same person and persons shall and may have his and their remedy for the same at the common law by any action or actions to be grounded upon this statute**; the same action and actions to be heard and determined in **the courts of king's bench, common pleas, and exchequer, or in any of them**, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their goods or chat- tels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, or carried away, or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs: and in such suits or for the staying or delaying thereof, no essoign, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: and if any person or persons shall after notice given that the action depending is grounded upon this statute, cause or procure any action at **the common law grounded upon this statute to be stayed or delayed before judgment by colour or means of any order**, warrant, power, or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint, then the said person and persons so offending shall incur and sustain the pains, penalties, and forfeitures ordained and provided by the statute of provision and praemunire made in the sixteenth year of the reign of king Richard the second.

6 (a). Provided also, that any declaration before mentioned **shall not extend** to any letters patents

(b) and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm

(c) **to the true and first inventor**

(d) and **inventors of such manufactures**, which others at the time of making such letters patents and grants shall not use

(e), so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home, or hurt of trade, or generally inconvenient

(f): the same fourteen years to be acccounted from the date of the first letters patents or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be if this act had never been made, and of none other (g).

7. Provided also, that this act or anything therein contained shall not in any wise extend or be prejudicial to any grant or privilege, power, or authority whatsoever heretofore made, granted, allowed, or confirmed by **any act of parliament now in force**, so long as the same shall so continue in force.

8. Provided also, that this act shall not extend to any warrant or privy seal made or directed, or to be made or directed by his majesty, his heirs or successors, to the justices of the courts of the king's bench or common pleas, and barons of the exchequor, justices of assize, justices of oyer and terminer and gaol delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

9. Provided also, **that this act or anything therein contained shall not in any wise extend or be prejudicial unto the city of London**, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patent to them, or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations, companies, or fellowships of any art, trade, occupation, or mystery, or to any companies, or societies of merchants within this realm erected for the maintenance, enlargement, or ordering of any trade or merchandise; but that the same charters, customs, corporations, companies, fellowships, and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this act, and of none other; anything before in this act not contained to the contrary in any wise notwithstanding.