

“THE LAW OF GENERAL EQUITY”

An Apology in favor of

CHRISTIANITY

Being a Republication of Natural Law and Natural Religion

And the Foundation of the

DECLARATION OF INDEPENDENCE (1776)

and the

UNITED STATES CONSTITUTION (1787)

Volume Two

of

PURITANISM AND THE PRESBYTERIAN ENLIGHTENMENT:

Or The Religion of Nature as the Foundation of the U. S. Constitution ©

By

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VOLUME TWO:
“THE LAW OF GENERAL EQUITY”



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A POSTDOCTORAL STUDY

*Practical Problems in Law and Ministry:
Puritanism and the Presbyterian Enlightenment*

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Volume Two: The Law of General Equity

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The Forethought

This volume two was significantly influenced by John Norton Pomeroy's *A Treatise of Equity Jurisprudence: As Administered in the United States of America* (San Francisco, CA: A.L. Bancroft and Co., 1881), which as a law student and practicing lawyer I have read and referenced for more than a quarter century. I am now filling in the intellectual gaps between Pomeroy's classic work and my own professional experiences and personal reflections; and I am now addressing not opposing lawyers or judges—although they are part of my intended audience—but rather the Church, and fellow Christians. My objective now, in this volume, is largely to dispel the false dichotomy between the fundamental principles of the Christian religion and the basic objectives of secular American jurisprudence-- these are all the same, and they are called "general equity."

Equity jurisprudence is the *link* between the sacred (i.e., Christ, the church, etc.) and the secular (i.e., constitutional law, civil or criminal justice, etc.) within American constitutional law and jurisprudence. According to Augustinian theology, "charity," "justice and judgment," and "equity" were uttered in the poem-prophecy of Hanna, the mother of the Prophet Samuel, as being the future descriptions of the earthly reigns of the kings of ancient Israel.¹ Fundamentally, God's constitutional law, political theory, and political science revolve around justice, judgment, and equity. The federated kingdom of ancient Israel—with its constitutional system of federal judges and limited monarchy—suggests a template for other nations to follow. And the Puritans of colonial New England certainly tried to apply that template to their colonies in British North America.²

About one year before the Puritans landed in North America, in the 16th-century Geneva, the Augustinian theologian John Calvin, as a trained civil lawyer and Reformed theologian, championed general equity as the supreme law for civil polity and the church. Thus, dividing the Law of Moses into three parts—judicial laws, ceremonial laws, and moral laws—Calvin and Calvinist theologians released Christians from any obligations of carrying out the judicial and ceremonial laws of ancient Israel. The only mandatory laws within the Law of Moses were the "moral laws" of God, which Calvin called "General Equity." The Calvinists held that both the Church and the State must implement general equity in all their actions, proclamations, and enactments. And the Calvinistic-Baptist Confession of Faith of 1644 and the Calvinistic Westminster Confession of Faith of 1647 also explicitly adopted the same standard for general equity as the supreme measure of all secular laws. After all, in Calvinistic and Puritan political discourse, the Christian civil polity constituted the "spiritually-restored Israel."

Thus, equity and equity jurisprudence are the central links between secular law and religion within the Church and the State. At least one historian of England has said

¹ *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 572 – 579 ("Moreover, this 'charity,' as the Apostle John testifies, 'is of God.' Therefore to do justice and judgment is of God.")

² See, e.g., William Goodell, *The Democracy of Christianity*, supra, p. 484 ("[T]he people of Great Britain are indebted to the Puritans. What is wanting, both in England and America, to the completeness and the security of human freedom, is an undeviating fidelity to those principles of Christian democracy which the Puritans in some measure restored.... If the people desire larger measures of liberty, they have only to become more democratic, more Christian.") And see Algernon Sidney Crapsey, *Religion and Politics*, supra, p. 244 ("It was the belief of the Puritan that was the motive power of the American Revolution. It was the stern conviction of the Puritan that not King George, but God, was the rightful sovereign in America... and it was the conviction of the Puritan that sustained the people of the country through the long years of the Revolutionary War.")

that Jesus Christ himself was the very manifestation of equity, writing: [As Christ had come not to destroy the law but to fulfill it, so too] ‘Equity had come not to destroy the law but to fulfill it.’³ Hence, Churches and pastors and Christian theologians must give the implementation of equity— whether within the church or the civil polity— much attention, and this postdoctoral study even suggests that trained lawyers should be ordained as ministers and commissioned by the several churches to perform several assignments in fulfillment of this sacred obligation.

Indeed, the central theme in the Pentateuch is equity. Genesis 18:18-19 states that all of the nations of the world would be blessed through the household of Abraham which shall do “justice and judgment,” and in the eighteenth chapter of Exodus, even before there was a Levitical priesthood, Moses established a system of federal judges to help govern and judge the Children of Israel. The central theme of “equity, justice, and judgment” is repeated throughout the wisdom literature of the Psalms and Proverbs, and the Hebrew prophets constantly reiterate the duty to do justice and judgment as being more pleasing to God than the implementation of Israel’s ceremonial or liturgical laws. In the Old Testament, the history of the kings of Israel exemplify this principle of “general equity” being the higher law of God, and the fundamental law for the nation of Israel. In the New Testament, the “law of Christ” is described as general equity; and Christ’s central message is equity: (“Judge not according to the appearance, but judge righteous judgment” (John 7: 24)).

The Greek philosopher Aristotle, in his work titled *Nichomachea Ethics*, defined equity or “aequitas” as, inter alia, a counter-balance to the rigidity of statutory law and other rules.⁴ For Aristotle, equity served as a form of “corrective” justice, allowing a judge to tailor the law to fit the exigencies of individual circumstances. This conception of general equity was the same within the text of the ancient Hebrew scriptures. And during the Middle Ages, within the jurisprudence of the English common law, Christ Himself was conceptualized as the *Logos* of God and deemed to be the manifestation of equity. Equity served to correct legal insufficiencies and injustices that are otherwise imposed by hyper technical interpretations of legal rules that fomented oppressive results. In the West, Christian jurisprudence is, in essence, equity jurisprudence. And at the constitutional level, this same equity jurisprudence is called “fundamental law.”

Similarly, the history of the kings of England, particularly the histories of kings Charles I (i.e., the English Civil War, 1642 - 1651) and George III (i.e., the American Revolutionary War, 1775 - 1783) exemplify the central and superior position of “general equity” in any legal and constitutional system. The Puritans and the Calvinists thus invented written constitutions in order to more clearly set forth the essential principles of civil government and fundamental law (i.e., covenant theology) and to guarantee the proper implementation of “general equity.”

Eventually, those principles of general equity were enunciated in the Declaration of Independence (1776), in phraseology such as “Life, Liberty, and the pursuit of Happiness” and “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect

3. See, e.g., Goldwin Smith, *A Constitutional and Legal History of England* (New York, N.Y.: Dorset Press, 1990), pp. 208-209.

4 See, generally, Aristotle’s *Nichomachean Ethics* (Chicago, IL: The Univ. of Chicago Press, 2011).

their Safety and Happiness.” Within the United States Constitution (1787), we find those same equitable principles as restatements within Article IV, “Privileges and Immunities” Clause, the Bill of Rights (1791), and the “Equal Protection and Due Process” clauses within the Civil War Amendments (1865 - 1870).

Wherefore, this postdoctoral study holds that “general equity” is the both the “law of Christ” and the foundation of the constitutional law and jurisprudence in the United States of America. As such, American clergy, lawyers, and judges have shared and mutual obligations to ensure that general equity is thoroughly implemented in every aspect of American society.

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October 14, 2022

Chapter One

“General Equity: Fundamental Law and Ancient Israel”

General equity, as the fundamental law of ancient Israel, became the “law of God” within England’s ecclesiastical, chancery, and equity jurisprudence and, thereby, it became the jurisprudential inheritance of American lawyers and jurists in the United States. In the Anglo-American jurisprudential and Puritan traditions, all Christians—and especially Christian lawyers and Christian judges-- had a special obligation to ensure that “general equity”— which is spirit and personality of Christ⁵— corrects legal injustices and oppression that often results from the unjust application of laws and legal rules.⁶ The Westminster Confession of Faith of 1647 defines “general equity” as the universal moral law of God that encompasses the secular laws and constitutions of every nation upon earth.⁷ In Catholicism and Anglicanism, as well as

⁵ Matthew 7: 12 (“Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”); Matthew 22:37-40 (“Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets.”); James 2:8 (“If ye fulfil the royal law according to the scripture, Thou shalt love thy neighbour as thyself, ye do well”); Romans 10:17-18 (Here, the universal moral law means the two-fold duty to honor or obey God and love neighbor); See, also, Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017). See, also, *The English Philosophers from Bacon to Mill* (New York, N.Y.: The Modern Library, 1994), [page number omitted] quoting John Stuart Mill’s essay on *Utilitarianism*, as stating: “[i]n the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by and to love your neighbor as yourself, constitute the ideal perfection of utilitarian morality.”)

⁶ See, generally, Roderick Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, FL.: Xlibris Pub., 2015).

⁷ See, e.g., Westminster Confession of Faith (1647), § 19.4, stating: “To them also he gave sundry judicial laws, which expired together with the state of that people, not obliging any now by virtue of that institution; their *general equity* only being of moral use.”

See, also, Second London Baptist Confession of Faith (1689), § 9.4, stating: “To them also he gave sundry judicial laws, which expired together with the state of that people, not obliging any now by virtue of that institution; their *general equity* only being of moral use.”

See, also, Rev. Roger Williams, *The Bloody Tenet of Persecution* (Miami, Fla.: Hardpress, 2019), p. 332 (the civil magistrate is “a ministry indeed, magistrates are God’s ministers, Rom. Xiii 4,” whose duty it is to address injustice and oppressions of the weak. “I see not how,” wrote Rev. Williams, “according to the rule of Christ, Rom. Xiii., the magistrate may refuse to hear and help the just complaints of any such petitioners—children, wives, and servants—against oppression, &c.”)

And, see, also, Goldwin Smith, *A Constitutional and Legal History of England* (New York, N.Y.: Dorset Press,

in Reformed theology, general equity is also contained within the golden rule, which is also called the “law of Christ.”

This “divine justice” theme appears to have been inaugurated in the patriarch Abraham⁸ and continued on through the inauguration of the House of David, through the prophetic hands of the Prophet Samuel, whose own mother Hannah even prophesied the nature of the Christ King and his eternal kingdom as establishing “justice and judgment.”⁹ Thus concluded

1990), pp. 208-209:

What is equity? In its beginnings in England it was the extraordinary justice administered by the king’s Chancellor to enlarge, supplant, or override the common law system where that system had become too narrow and rigid in its scope.... The basic idea of equity was, and remains, the application of a moral governing principle to a body of circumstances in order to reach a judgment that was in accord with Christian conscience and Roman natural law, a settlement that showed the common denominations of humanity, justice, and mercy.... [As Christ had come not to destroy the law but to fulfill it, so too] ‘Equity had come not to destroy the law but to fulfill it.’

⁸ See Genesis 18: 18-19, stating:

Seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him?

For I know him, that he will command his children and his household after him, and they shall keep the way of the Lord, **to do justice and judgment**; that the Lord may bring upon Abraham that which he hath spoken of him.

⁹ See 1 Samuel 2: 8-10 (KJV), stating:

8 He raiseth up the poor out of the dust, and lifteth up the beggar from the dunghill, to set them among princes, and to make them inherit the throne of glory: for the pillars of the earth are the Lord's, and he hath set the world upon them.

9 He will keep the feet of his saints, and the wicked shall be silent in darkness; for by strength shall no man prevail.

10 The adversaries of the Lord shall be broken to pieces; out of heaven shall he thunder upon them: the Lord shall judge the ends of the earth; and he shall give strength unto his king, and exalt the horn of his anointed.

But using a slightly different translation of the Bible, Augustine of Hippo’s *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 572-573, quotes these same verses as stating:

He raiseth up the poor out of the dust, and lifteth up the beggar from the dunghill, that He may set him among the mighty of [His] people, and maketh them inherit the throne of glory; giving the vow to him that voweth, and He hath blessed the years of the just: for man is not mighty in strength. The Lord shall make His adversary weak: the Lord is holy. Let not the prudent glory in his prudence; and let not the mighty glory in his might; and let not the rich glory in his riches: but let him that glorieth glory in this, to understand and know the Lord, and **to do judgment and justice in the midst of the earth**. The Lord hath ascended into the heavens, and hath thundered: He shall judge the ends of the earth, for He is righteous: and He giveth strength to our kings, and shall exalt the horn of His Christ.

St. Augustine, this duty to do “justice and judgment” was a universal commandment given to all mankind and made the precondition of both earthly peace in this lifetime, as well as eternal salvation in the world to come.¹⁰

Nevertheless, there is a widespread misconception in the United States which strongly holds that the several churches of Jesus Christ should have no involvement, input, administration over, or influence upon the application of equity or equitable principles to the administration of justice in the courts or public policy. This is ecclesiastical-administrative malpractice; it is clearly a gross misconception of ecclesiastical jurisdiction and mission, in light of the “Covenant of Nature,” hitherto previously discussed in volume one. For as Professor Auerbach has stated, the First Amendment to the U. S. Constitution “did not repudiate the principle of a Christian state; rather, it provided an alternative means toward securing it,”¹¹ and the United States Supreme Court has likewise confirmed Professor Auerbach’s viewpoint.¹² Similarly, as this chapter shall demonstrate, the church-state of Israel

¹⁰ St. Augustine, *The City of God*, supra, pp. 577-578, stating:

Now, he does judgment and justice who live aright. But he live aright who yields obedience to God when He commands. ‘The end of the commandment,’ that is, to which the commandment has reference, ‘is charity out of a pure heart, and a good conscience, and faith unfeigned.’ Moreover, this ‘**charity**,’ as the Apostle John testifies, ‘is of God.’ Therefore to do **justice and judgment** is of God.

But what is ‘in the midst of the earth?’...Therefore, ‘in the midst of the earth,’ that is, while our soul is shut up in this earthly body, **judgment and justice** are to be done, which shall be profitable for us hereafter, when ‘every one shall receive according to that he hat done in the body, whether good or bad.’

In the same way we may suitably understand what we read in the psalm, ‘But God, our King before the worlds, hath wrought salvation in the midst of the earth;’ so that the Lord Jesus may be understood to be our God who is before the worlds, because by Him the worlds were made, working our salvation in the midst of the earth, for the Word was made flesh and dwelt in an earthly body.

¹¹ Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (New Orleans, La.: Quid Pro, LLC, 2010), p. 11. See, also, *Terrett v. Taylor*, 13 U.S. 43, 52, 9 Cranch 43 (1815)(referencing “the principles of **natural justice**, upon **the fundamental laws of every free government**”); *Vidal v. Girard’s Executors*, 2 How. 127 (1843)(the United States is “**a Christian country**”); *Holy Trinity v. United States*, 143 U.S. 457 (1892)(providing an extensive history of the influence of Christianity upon state and federal constitutional documents and traditions, and concluding that the United States is “**a Christian nation**”); and *United States v. Macintosh*, 283 U.S. 605, 625 (1931) (stating that [w]e are a **Christian people** (*Holy Trinity Church v. United States*, 143 U. S. 457, 143 U. S. 470- 471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God.”) See, also, **Appendix E**, “American Zionism: How the Puritans of Colonial New England inspired 20th Century Jewish Lawyers.”

¹² Ibid.

never disassociated secular law from the moral laws of God (i.e., equity). Similarly, the Roman Catholic and Anglican divines, and Protestant Reformers, continued to hold that ancient Israel's moral laws (i.e., the Decalogue and other moral teachings) were still applicable to modern or present-day civil polities— thus the invention of the canon law of the established churches, from which Christian equity jurisprudence was derived.

This volume addresses the practical problem of Church and State relations, particularly as it relates to the dislocation of Christian law students, Christian lawyers, and Christian judges under the United States Constitution, in light of the historical influences of the Christian religion upon Anglo-American constitutional law. Notably, the equity jurisprudence and the chancery jurisdiction of the federal and state courts in the United States constitute that body of Christian jurisprudence which the American colonists inherited from the mother country Great Britain, and which England inherited from the ancient Roman empire.¹³ Hence, equity

¹³ See, generally, John Norton Pomeroy, LL.D., *A Treatise of Equity Jurisprudence: As Administered in the United States of America* (San Francisco, CA: A.L. Bancroft and Co., 1881), pp. 2-10, 53 discussing “Aequitas in the Roman Law,” stating:

The growth and functions of equity as a part of the English law, were anticipated by a similar development of the same notions in the Roman jurisprudence. In fact, the equity administered by the early English chancellors, and the jurisdiction of their court, were confessedly borrowed from the *aequitas* and judicial powers of the Roman magistrates.... The particular rules of the Roman jurisprudence derived from this morality, called the law of nature, were termed ‘*aequitas*,’ from *aequum*, because they were supposed to be impartial in their operation, applying to all persons alike. The *lex naturae* [law of nature] was assumed to be the governing force of the world, and was regarded by the magistrates and jurists as having an absolute authority. They felt themselves, therefore, under an imperative obligation to bring the jurisprudence into harmony with this all-pervading morality, and to allow such actions and make such decisions that no moral rule should be violated. Whenever an adherence to the old *jus civile* would do a moral wrong, and produce a result inequitable (*inaequum*), the praetor, conforming his edict or his decision to the law of nature, provided a remedy by means of an appropriate action or defense. Gradually, the cases, as well as the modes in which he would thus interfere, grew more and more common and certain, and thus a body of moral principles was introduced into the Roman law, which constituted equity (*aequitas*)....

The moral law, as such, is not an element of the human law. Whatever be the name under which it is described—the moral law, the natural law, the law of nature, the principles of right and justice—this code, which is of divine origin, and which is undoubtedly compulsory upon all mankind in their personal relations, is not *per se* or *ex proprio vigore* a part of the positive jurisprudence which, under the name of the municipal law, each independent state has set for the government of its own body politic.... It is also true that human legislation ought to conform itself to and embody these jural precepts of the moral code; every legislator, whether he legislate in a Parliament or on the judicial Bench, ought to find the source and material of the rules he lays down in these principles of morality; and it is certain that the progress towards a perfection of development in every municipal law, consists in its gradually throwing off what is arbitrary, formal, and unjust, and its adopting instead those rules and doctrines which are in agreement with the eternal principles of right and morality.

jurisprudence, which remains a part and parcel of American procedural law, statutory law, and common law, is the manifestation of the “Covenant of Nature” which exemplifies the biblical justice in the Old Testament that involved several pagan rulers, and also exemplifies the illustrious pagan legal histories of the ancient world, including ancient Egypt (“ma’at”); ancient Mesopotamia (“misharum”);¹⁴ ancient Israel (“tzedakah and mishpat”); ancient China (“quangli”);¹⁵ ancient Greece and Rome (“aequitas”); and many other peoples and nations.

For instance, the Greek philosopher Aristotle, in his work titled *Ethics*, defined equity or “aequitas” as, inter alia, a counter-balance to the rigidity of statutory law and other rules.¹⁶ For Aristotle, equity served as a form of “corrective” justice, allowing a judge to tailor the law to fit

See, also, George L. Clark, *Equity: An Analysis and Discussion of Modern Equity Problems* (Columbia, Missouri: E.W. Stephens Pub., 1919), stating:

A. Brief History of Equity.

§ 1. Equity as a stage in our legal development.

The law of every country in the civilized world is based either on the Roman Law or on the English Common Law. Each of these systems shows, roughly speaking, four stages of development, equity being the third. In the first stage of archaic law, the state is so weak that it does not undertake to work out justice; it merely tries to keep the peace by buying off the injured party and thus satisfying his desire for revenge. In the second stage of strict law, the state does undertake to do justice by giving legal remedies to the injured party. In this period the law consists of rules for getting into court; these rules needed to be certain in order to avoid dispute and thus to suppress self help, because men were still much more inclined to use their fists than their reasoning powers. The emphasis during this period was thus upon remedies; while there was an attempt to work out justice, the attempt was a very crude one from our modern point of view because of the importance of certainty. As men’s sense of justice developed, such an unmoral formal system became inadequate. This brought about the third stage known **in our system as equity** and in **the Roman Law system as natural law**. This was a period in which morals were infused into the law. The emphasis came to be laid not upon remedies but upon duties and the aim of the legal system was to reach an ethical solution of controversies. In the fourth stage of the maturity of law, equity became more or less completely merged into the legal system.

¹⁴ See, e.g., Doak, Brian R., "The Origins of Social Justice in the Ancient Mesopotamian Religious Traditions" (2006). Faculty Publications – College of Christian Studies. Paper 185. <http://digitalcommons.georgefox.edu/ccs/185>

¹⁵ See, e.g., Xi Lang, “Equity in Chinese Law: Its Origins and Transformation” A thesis submitted to the Department of Government of the London School of Economics for the degree of Doctor of Philosophy, London, February 200 (“In the classical Chinese literature, it was referred to as **qingli**, which means 'social obligations' to balance the rigidity of positive laws. Like its Western counterpart, this equity entails a twofold meaning: (1) the moral principles that have been into the positive laws (which Huang referred to as 'official representation') and (2) in judicial practice, the correction of hardship that arises out of the deficiency as inherent in positive laws.”)

¹⁶ See, generally, *Aristotle’s Nichomachean Ethics* (Chicago, IL: The Univ. of Chicago Press, 2011).

the exigencies of individual circumstances.¹⁷ The ancient Roman lawyer Cicero, whose ideas have greatly influenced western jurisprudence, adopted Aristotle’s conception of equity. Cicero defined “aequitas” as, inter alia, “justice.”¹⁸ And Augustine of Hippo, whose writings greatly influenced the direction of the Western Church, saw no difference between Greco-Roman classical conceptualizations of “equity” or “justice.” Reformed theologian John Calvin wrote that “equity, because it is *natural*, cannot but be the same for all, and therefore, this same purpose ought to apply to all laws, whatever their object. Constitutions have certain circumstances upon which they in part depend. It therefore does not matter that they are different, provided all equally press toward the same goal of equity.”¹⁹ “Thus, some scholars consider that for Calvin the ‘basic ethical principle... is equity.’”²⁰ And those same definitions of equity are used in the Sacred Scriptures.²¹ Indeed, there are many references to “equity,” “justice,” and “judgment” throughout the Old Testament, to wit:

17 Ibid.

18 See “Aequitas,” Wikipedia Encyclopedia (Online): <http://en.wikipedia.org/wiki/Aequitas>. See also, “Cicero,” Wikipedia Encyclopedia (Online): <https://en.wikipedia.org/wiki/Cicero>.

Cicero was greatly admired by influential Church Fathers such as Augustine of Hippo, who credited Cicero's lost Hortensius for his eventual conversion to Christianity, and St. Jerome, who had a feverish vision in which he was accused of being "follower of Cicero and not of Christ" before the judgment seat. This influence further increased after the Early Middle Ages in Europe, which more of his writings survived than any other Latin author. Medieval philosophers were influenced by Cicero's writings on natural law and innate rights....

Internationally, Cicero the republican inspired the Founding Fathers of the United States and the revolutionaries of the French Revolution. John Adams said, "As all the ages of the world have not produced a greater statesman and philosopher united than Cicero, his authority should have great weight." Jefferson names Cicero as one of a handful of major figures who contributed to a tradition "of public right" that informed his draft of the Declaration of Independence and shaped American understandings of "the common sense" basis for the right of revolution. Camille Desmoulins said of the French republicans in 1789 that they were "mostly young people who, nourished by the reading of Cicero at school, had become passionate enthusiasts for liberty."

19 John Calvin, *The Institutes of the Christian Religion*. Books I through IV (Unabridged) (United States of America: Pantieos Press, 2017), p. 20.

20 Norman Doe, *Christianity and Natural Law* (Cambridge, U.K.: Cambridge University Press, 2017), p. 126.

21 Saint Augustine, *The City of God*, supra, p. 678 (“justice... to render to every man his due....”); 690-693 (“civil peace”); p., 699 (“justice”).

TORAH (“Tzedakah and Mishpat”) “The Fundamental Law of Ancient Israel”	
	House of Abraham
Genesis 18: 18-19	<p>“Seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him? For I know him, that he will command his children and his household after him, and they shall keep the way of the LORD, to do justice and judgment; that the LORD may bring upon Abraham that which he hath spoken of him.”</p>
NEVI’IM AND KETUVIM (“The Prophets and Other Writings”)	
	House of David
2 Samuel 8:15	<p>“And David reigned over all Israel; and David executed judgment and justice unto all his people.”</p>
1 Chronicles 18:14	<p>“So David reigned over all Israel, and executed judgment and justice among all his people.”</p>
Psalm 89:14	<p>“Justice and judgment are the habitation of thy throne: mercy and truth shall go before thy face.”</p>
Psalm 98:9	<p>“Before the LORD; for he cometh to judge the earth: with righteousness shall he judge the world, and the people with</p>

	equity.”
Psalm 99:4	“The king's strength also loveth judgment; thou dost establish equity , thou executest judgment and righteousness in Jacob.”
Proverbs 2:9	“Then shalt thou understand righteousness, and judgment, and equity ; yea, every good path.”
Proverbs 17:26	“Also to punish the just is not good, nor to strike princes for equity .”
Ecclesiastes 2:21	“For there is a man whose labour is in wisdom, and in knowledge, and in equity ; yet to a man that hath not laboured therein shall he leave it for his portion. This also is vanity and a great evil.”
Isaiah 11:4	“But with righteousness shall he judge the poor, and reprove with equity for the meek of the earth: and he shall smite the earth: with the rod of his mouth, and with the breath of his lips shall he slay the wicked.”
Isaiah 59:14	“And judgment is turned away backward, and justice standeth afar off: for truth is fallen in the street, and equity cannot enter.”
Micah 3:9	“Hear this, I pray you, ye heads of the house of Jacob, and princes of the house of Israel, that abhor judgment, and pervert all equity .”
Malachi 2:6	“The law of truth was in his mouth, and iniquity was not found in his lips: he walked with me in peace and equity , and did turn many away from iniquity.”

Indeed, although the administration of civil justice in ancient Israel involved many mundane, secular matters, it was nevertheless considered to be a divine function. The judges in ancient Israel were considered to be ministers of God. As a consequence, whenever Israel's judges failed to discharge their solemn duties to render just judgments or to establish justice, between their fellow Israelites, they were often the subject matter of diatribes from the holy prophets of Israel.²²

Notably, the ancient Hebrew prophets were also charged with the duties of interpreting the *Torah*, which served as the fundamental law of Israel.²³ These Hebrew prophets often made it clear, not only to Judah and Israel, but also to very many of Israel's surrounding nations, that the *failure to establish true justice* was a cardinal sin against the Almighty God.²⁴ These prophets admonished the kingdoms of Judah and Israel, as well as several other surrounding nations, kingdoms and empires, *to do justice and judgment* (i.e., general equity). The ancient kingdom of Israel was ordained by the LORD God to administer general equity upon the earth,²⁵ or suffer the pain, wrath, and judgment of God.²⁶ This theological viewpoint

²² Deuteronomy 18:15 (“The LORD thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren, like unto me; unto him ye shall hearken.”)

²³ Daniel J. Elazar, “Dealing with Fundamental Regime Change: The Biblical Paradigm of the Transition from Tribal Federation to Federal Monarchy Under David,” *Jerusalem Center for Public Affairs* (Elazar Papers Index)

²⁴ Ibid.

²⁵ Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523) (“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord's Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears.”

²⁶ Oxford Methodism holds that the United States of America was founded as a Noahic “church,” because it is a nation-state that was founded to mete out natural justice via the laws of Nature and of Nature's God.

is clearly demonstrated in the several books of the ancient Hebrew prophets, as explained below.

The Book of Zephaniah- Law of General Equity

The 7th-century Prophet Zephaniah noted corruption in both Israel and Judah, as well as in Assyria, Ethiopia, Moab, Ammon, and the land of the Philistines and the Cherethites.²⁷ Zephaniah forewarned several Gentile nations— not just Israel and Judah— of God’s future punishment of the sin and corruption that were being committed in all of these nations,²⁸ thus highlighting God’s enforcement of the terms of the “Covenant of Nature,” which is applicable to all the nations of the earth, because all nations have been ordained by the LORD God to function to discharge the sacred duty of meting out general equity (i.e., secular civil justice).²⁹

The Book of Habakkuk- Law of General Equity

The 6th-century Prophet Habakkuk noted that Judah’s legal system had collapsed, and that justice was not being meted out.³⁰ “Therefore the law is slacked, and judgment doth never go forth: for the wicked doth compass about the righteous; therefore wrong judgment

27 Zephaniah 1:4; 1:14-18; 2:1-15; and 3:8.

28 Zephaniah 1:14-18.

29 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority’s bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord’s Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears.”

30 Habakkuk 1:4.

proceedeth.”³¹ Habakkuk also noticed economic injustices in the southern kingdom of Judah. He proclaimed, “[w]oe to him that increaseth that which is not his!”³² “Woe to him that coveteth an evil covetousness to his house, that he may set his nest on high, that he may be delivered from the power of evil! Thou hast consulted shame to thy house by cutting off many people, and hast sinned against thy soul. For the stone shall cry out of the wall, and the beam out of the timber shall answer it. Woe to him that buildeth a town with blood, and stablisheth a city by iniquity!”³³ Significantly, the Prophet Habakkuk described the poor who were the victims of crafty economic injustices, saying “[w]as the LORD displeased... their rejoicing was as to devour the poor secretly.”³⁴ Such exploitation had turned Judah into an ocean of “fishes of the sea, as creeping things.”³⁵ Habakkuk writes:

Thou art of purer eyes than to behold evil, and canst not look on iniquity: wherefore lookest thou upon them that deal treacherously, and holdest thy tongue when the wicked devoureth the man that is more righteous than he? And makest men as the fishes of the sea, as the creeping things, that have no ruler over them? They take up all of them with the angle, they catch them in their net, and gather them in their drag: therefore they rejoyce and are glad. Therefore they sacrifice unto their net, and burn incense unto their drag; because by them their portion is fat, and their meat plenteous. Shall they therefore empty their net, and not spare continually to slay the nations?³⁶

Since we are not to suppose that the priests were expected to wield the civil sword, to arrest criminals, to establish justice through tribunals, and to enact and administer just laws, we may rightly conclude that Habakkuk’s’ prophetic warnings were directed towards kings, judges,

31 Ibid.

32 Habakkuk 2:6.

33 Habakkuk 2:9-12.

34 Habakkuk 3:8-14.

35 Habakkuk 1:14.

36 Habakkuk: 1:13-17

civil magistrates, lawyers and the like— in a word, these prophetic warnings were directed to the civil government and to the entire nation-state of the kingdom of Judah. Again, it is in this sense that we are to understand that all nations upon the earth have been ordained by the LORD God to mete out civil justice and to establish general equity.³⁷

The Book of Nahum- Law of General Equity

The 7th-century Prophet Nahum probably lived in Syria or in Nineveh as a subject of the Assyrian empire. He prophesied against Assyria, stating that it was “full of lies and robbery; the prey departeth not.”³⁸ As a result of this widespread corruption, this prophet proclaimed that God would execute judgment against Assyria. “The LORD is slow to anger,” Nahum proclaims, “and great in power, and will not at all acquit the wicked....”³⁹ Significantly, the Assyrian empire was not Hebrew or Jewish, but rather it was a Gentile nation to whom the LORD God had sent prophets Jonah and, secondly, Nahum. Clearly, the LORD God was as concerned about the welfare and holiness of the Assyrians, as with the ancient Israelites. The Assyrian empire—though Gentile—was ordained by the LORD God to establish civil justice, and it is in this sense that we are to understand that all organized nation have been ordained by the LORD God to mete out civil justice and to establish general equity.⁴⁰

37 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord’s Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears.”

38 Nahum 3:1.

39 Nahum 1:3.

40 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice,

The Book of Micah- Law of General Equity

The 8th-century Prophet Micah prophesied against the southern kingdom of Judah, because it failed to establish justice and permitted widespread economic oppression, bribery, and corruption. Micah observed that the judges and magistrates rendered justice “for sale,” and that “they may do evil with both hands earnestly, the prince asketh, and the judge asketh for a reward; and the great man, he uttereth his mischievous desire: so they wrap it up.” These Judeans “hate the good, and love the evil”⁴¹ and “abhor judgment, and pervert all equity.”⁴²

As a consequence, Micah notes that Judah’s widespread dishonesty had caused the collapse of the social fabric of Judean society.⁴³ His discourse is largely one involving political science. His prophetic warnings are deeply-rooted in the duty of nations to root out evil, crime, and immorality and to establish civil justice through general equity. To that end, all the nation upon earth have been ordained by the LORD God for that purpose.⁴⁴ For this reason, civil magistrates are therefore rightly deemed vicegerents of God.

whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service.”).

41 Micah 3:2.

42 Micah 3:9.

43 Micah 7:4-6.

44 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord’s Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears.”

The Book of Amos- Law of General Equity⁴⁵

The 8th-century Prophet Amos prophesied in the northern kingdom of Israel just a few decades prior to its Assyrian captivity. Amos criticized Israel's widespread oppression of the poor and needy,⁴⁶ and of the perversion of justice. Israel had "turned judgment into gall, and the fruit of righteousness into hemlock."⁴⁷ Amos also noticed persecution of the just and of those who spoke out for justice. "They hate him that rebuketh in the gate, and they abhor him that speaketh uprightly."⁴⁸ Notably, Amos notes that God disdained religious ritualism without the administration of substantive justice, stating "I hate, I despise your feast days, and I will not smell in your solemn assemblies. Though ye offer me burnt offerings and your meat offerings, I will not accept them: neither will I regard the peace offerings of your fat beasts. Take thou away from me the noise of thy songs; for I will not hear the melody of thy viols. But let judgment run down as waters, and righteousness as a mighty stream."⁴⁹ Again, it is in this sense that Amos's conceptualization of justice demonstrates that all nations of the world have been ordained to establish general equity.⁵⁰

45 From this great prophet we find the roots of the theology and philosophy of the Rev. Dr. Martin Luther King, Jr., Baptist leader of the American Civil Rights Movement, whose Letter from the Birmingham City Jail criticized his fellow clergymen for not being politically vocal, outspoken, and critical of racial oppression and segregation. Like Amos who felt that real justice was more important than religious rituals, Dr. King felt that unless the organized churches of Jesus Christ fulfilled this prophetic role, they risked sinking to the status of irrelevancy. Both the ancient Hebrew prophet Amos and the 20th-century American prophet Martin Luther King, Jr. conceptualized the nation-state as a sort of "church-state" wherein religious leaders had a stern duty to lead in the establishment of civil justice. Again, it is in this sense that we are to understand that all nations of the world constitute Noahic "church-states" that have been ordained by the LORD God for that sacred purpose.

46 Amos 3:9; 4:1; 5:12.

47 Amos 6:12.

48 Amos 5:10.

49 Amos 5:21-24.

50 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant "to do justice and judgment"); St. Augustine, *The City of God*, supra, p. 27 (God is the "fountain of all justice"), p. 678 ("justice, whose office it is to render every man his due"); and p. 699 ("a republic cannot be administered without justice"); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523) ("Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and

The Book of Hosea- Law of General Equity

The 8th-century Prophet Hosea also prophesied in the northern kingdom of Israel, just before its Assyrian captivity. Hosea noted that there was widespread corruption in Israel's legal system, stating "[t]hey... have devoured their judges" and Israel had become full of "swearing, and lying, and killing, and stealing, and committing adultery, they break out, and blood toucheth blood." Hosea admonished Israel to "turn thou to thy God: keep mercy and judgment, and wait on thy God continually."⁵¹ Hosea also notes widespread economic oppression throughout Israel. He described Israel as "a merchant, the balances of deceit are in his hand: he loveth to oppress... [saying] I am become rich...."⁵² Hosea tried to reform Israel, in order to persuade them to return from their wicked ways, saying "the ways of the LORD are right, and the just shall walk in them: but the transgressors shall fall therein."⁵³

Hosea's message is a discourse on both moral political philosophy and the duty to establish civil justice. Like all of the other prophets in the Sacred Scriptures, Hosea's message describes the providence and sovereignty of God, and forewarns that if a nation fails to establish true justice—specifically, rooting out dishonest judges and corrupt commercial practices—then God's punishment would be sure to follow. Clearly, the prophet Hosea's prophetic message is directed toward secular activities—that is to say, activities that do not

in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service."). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord's Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—"Life, Liberty, and the Pursuit of Happiness" being their general mandate in equity. Indeed, when they take the "Oath of Attorney" or the "Oath of Judge" (i.e., "So Help Me God"), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, "Of Lawful Oaths and Vows," stating "[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears."

51 Hosea 12:6.

52 Hosea 12:6-7. See, also, Amos 8:5 and Micah 6:11 regarding economic oppression in the form of false measures and deceitful balances.

53 Hosea 14:9.

comprise ecclesiastical functions—and the duty to establish civil justice. We are to understand, then, that civil justice is a divine and sacred function that the LORD God has entrusted to all nations of the earth, the Jew and the Gentile alike.⁵⁴

The Book of Ezekiel- Law of General Equity

The 6th-century Prophet Ezekiel prophesied in the southern kingdom of Judah, during the years when the Babylonian captivity began. Ezekiel prophesied against, among other things, widespread violence⁵⁵ and the oppression and economic exploitation of the poor and needy.⁵⁶ Ezekiel charges that many in Jerusalem committed “dishonest gain”⁵⁷; “[h]ath oppressed the poor and needy, hath spoiled by violence...”⁵⁸; have “dealt by oppression with the stranger: in thee have they vexed the fatherless and the widow”⁵⁹; and “have they taken gifts to shed blood; thou has taken usury and increase, and thou hast greedily gained of thy neighbours by extortion, and hast forgotten me, saith the Lord GOD.”⁶⁰ Ezekiel exclaimed:

54 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority's bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord’s Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears.”

55 Ezekiel 6:9; 14:3-4; 16:15-16; 16:27-43; 23:1-49; 23:3; 23:7; 23:11; 23:19; 23-37; and 23: 43-45.

56 Ibid.

57 Ezekiel 22:13.

58 Ezekiel 18:12.

59 Ezekiel 22:7.

60 Ezekiel 22:12.

“[t]he people of the land have used oppression, and exercised robbery, and have vexed the poor and needy: yea, they have oppressed the stranger wrongfully,”⁶¹ and “princes in the midst thereof are like wolves ravening the prey, to shed blood, and to destroy souls, to get dishonest gain.”⁶²

Thus, the great prophet Ezekiel’s prophecy of the “dry bones” is a political discourse about corruption within the kingdom of Judah. Here in Ezekiel’s prophecy, the kingdom of Judah’s major problems are not ecclesiastical, sacerdotal, or doctrinal, but, rather, they are constitutional, civil, governmental, and commercial— there is major corruption within the everyday activities of Jewish life. This major corruption concerns “secular” affairs, which most concerns Ezekiel. Either the kingdom of Judah must reform itself and stamp out that corruption, or suffer the wrath and punishment of the LORD God. Here we are to understand that the constitutional, civil, government, and commercial affairs of nations are of great concern to the LORD God, who regulates secular human affairs through his divine providence. It is the duty of the civil magistrates of nations, who act as God’s vicegerents, to administer and regulate those secular activities through means of general equity.⁶³

The Book of Jeremiah- Law of General Equity

61 Ezekiel 22:29.

62 Ezekiel 22:27.

63 Genesis 9:1-17 (the Noachic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority’s bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord’s Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears.”

The 6th-century Prophet Jeremiah prophesied against the southern kingdom of Judah and noted that it had a genuine disinterest in establishing true justice; a genuine love of dishonesty and corruption; and widespread sexual crimes and licentiousness. “How do ye say, We are wise, and the law of the Lord is with us? Lo, certainly in vain made he it; the pen of the scribes is in vain. The wise men are ashamed, they are dismayed and taken: lo, they have rejected the word of the LORD; and what wisdom is in them?”⁶⁴ “Run ye to and fro through the streets of Jerusalem, and see now, and know, and seek in the broad places thereof, if ye can find a man, if there be any that executeth judgment, that seeketh the truth; and I will pardon it.”⁶⁵ “[T]hey judge not the cause, the cause of the fatherless, yet they prosper; and the right of the needy do they not judge.”⁶⁶ “For from the least of the even unto the greatest of them every one is given to covetousness....”⁶⁷ “For among my people are found wicked men: they lay wait, as he that setteth snares; they set a trap, they catch men. As a cage is full of birds, so are their houses full of deceit: therefore they are become great, and waxen rich. They are waxen fat, they shine: yea, they overpass the deeds of the wicked: they judge not the cause, the cause of the fatherless, yet they prosper; and the right of the needy do they not judge.”⁶⁸ Jeremiah also noticed that many of the Jews had become mired in sexual lewdness, adulteries, fornications and the like, stating: “I have seen also the prophets of Jerusalem an horrible thing: they commit adultery, and walk in lies: they strengthen also the hands of evildoers, that none doth return from his wickedness: they are all of them unto me as Sodom, and the inhabitants thereof as Gomorrah.”⁶⁹ “Thus saith the LORD,” Jeremiah warned, “execute ye judgment and

64 Jeremiah 8:8-9.

65 Jeremiah 5:1.

66 Jeremiah 5:28.

67 Jeremiah 6:13.

68 Jeremiah 5:28.

69 Jeremiah 23:14.

righteousness, and deliver the spoiled out of the hand of the oppressor: and do no wrong, do no violence to the stranger, the fatherless, nor the widow, neither shed innocent blood in this place.”⁷⁰ “For if ye thoroughly amend your ways and your doings; if ye thoroughly execute judgment between a man and his neighbor; if ye oppress not the stranger, the fatherless, and the widow, and shed not innocent blood in this place, neither walk after other gods to our hurt: then I will cause you to dwell in this place, in the land that I gave to our fathers, forever and ever.”⁷¹

In Jeremiah’s writings we find political economy and social science as well as moral philosophy and religion. This great prophet is concerned about the treatment of the fatherless, the poor, widows, the stranger, and the oppressed. He is concerned about the failure to “execute judgment between a man and his neighbor.” This is not an ecclesiastical concern, but rather it is a secular or civil concern, which the prophet Jeremiah nevertheless proclaims to be under God’s jurisdiction and judgment. The “church” in this sense has a mandate to concern itself with the “execution of judgment between a man and his neighbor,” although that power is to be exercised exclusively by the civil magistrates whose offices have been ordained by the LORD God for that purpose. From Jeremiah’s prophetic concerns we may rightly deduce that all nations upon earth have been ordained to do general equity, and that all civil magistrates are vicegerents or ministers of God (Roman 1: 1-13).⁷²

70 Jeremiah 22:3-4.

71 Jeremiah 7:5-7.

72 Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant “to do justice and judgment”); St. Augustine, *The City of God*, supra, p. 27 (God is the “fountain of all justice”), p. 678 (“justice, whose office it is to render every man his due”); and p. 699 (“a republic cannot be administered without justice”); see, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523) (“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority’s bearing of the sword must also be divine service.”). For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord’s Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—“Life, Liberty, and the Pursuit of Happiness” being their general mandate in equity. Indeed, when they take the “Oath of Attorney” or the “Oath of Judge” (i.e., “So Help Me God”), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, “Of Lawful Oaths and Vows,” stating “[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the

The Book of Isaiah- Law of General Equity

The 7th-century Prophet Isaiah also noted that there was widespread corruption throughout the kingdom of Judah. Throughout the *Book of Isaiah* we find quite explicitly Isaiah's prosecution of crimes such as the shedding of innocent blood;⁷³ speaking lies and perverseness;⁷⁴ refusing or failing to establish justice;⁷⁵ disregarding truth;⁷⁶ intentionally planning mischief and iniquity;⁷⁷ hastily rushing to perform evil works;⁷⁸ lying against God;⁷⁹ unjust gains from oppression;⁸⁰ bribery;⁸¹ and oppression of the poor,⁸² the needy,⁸³ and the innocent ["[y]ea, truth faileth... he that departeth from evil maketh himself prey...."].⁸⁴

Significantly, the *Book of Isaiah* restates and summarizes the Noahic "Covenant of Nature" (i.e., general equity). "Behold, a king shall reign in righteousness," proclaims Isaiah, "and princes shall rule in judgment."⁸⁵ But the *Book of Isaiah* is also messianic as well, in that

truth or falsehood of what he swears."

73 Isaiah 59:3; 59:7.

74 Isaiah 59:3; 59:13.

75 Isaiah 59:4; 59:14.

76 Isaiah 59:4.

77 Isaiah 59:4.

78 Isaiah 59:7.

79 Isaiah 59:13.

80 Isaiah 33:15.

81 Isaiah 33:15.

82 Isaiah 32:7.

83 Isaiah 10:1-2.

84 Isaiah 59:15.

85 Isaiah 32: 1.

it informs us that God's ultimate plan is to send a Messiah as a future king of Israel, and that this Messiah shall establish justice and an everlasting kingdom throughout entire earth.

Behold my servant, whom I uphold; mine elect, in whom my soul delighteth; I have put my spirit upon him: **he shall bring forth judgment to the Gentiles.**

He shall not cry, nor lift up, nor cause his voice to be heard in the street.

A bruised reed shall he not break, and the smoking flax shall he not quench: he **shall bring forth judgment unto truth.**

He shall not fail nor be discouraged, **till he have set judgment in the earth: and the isles shall wait for his law.**

Thus saith God the Lord, he that created the heavens, and stretched them out; he that spread forth the earth, and that which cometh out of it; he that giveth breath unto the people upon it, and spirit to them that walk therein:

I the Lord have called thee in righteousness, and will hold thine hand, and will keep thee, and give thee for **a covenant** of the people, **for a light of the Gentiles;**

To open the blind eyes, to bring out the prisoners from the prison, and them that sit in darkness out of the prison house.

I am the Lord: that is my name: and my glory will I not give to another, neither my praise to graven images.

Behold, the former things are come to pass, and new things do I declare: before they spring forth I tell you of them....⁸⁶

For, behold, the Lord will come with fire, and with his chariots like a whirlwind, to render his anger with fury, and his rebuke with flames of fire.

For by fire and by his sword will the Lord plead with all flesh: and the slain of the Lord shall be many.

They that sanctify themselves, and purify themselves in the gardens behind one tree in the midst, eating swine's flesh, and the abomination, and the mouse, shall be consumed together, saith the Lord.

For I know their works and their thoughts: **it shall come, that I will gather all nations and tongues; and they shall come, and see my glory.**

And I will set a sign among them, and I will send those that escape of them unto the nations, to Tarshish, Pul, and Lud, that draw the bow, to Tubal, and Javan, to the isles afar off, that have not heard my fame, neither have seen my glory; **and they shall declare my glory among the Gentiles.**

And they shall bring all your brethren for an offering unto the Lord out of all nations upon horses, and in chariots, and in litters, and upon mules, and upon swift beasts, to my holy mountain Jerusalem, saith the Lord, as the children of Israel bring an offering in a clean vessel into the house of the Lord.

And **I will also take of them for priests and for Levites**, saith the Lord.

For as the new heavens and the new earth, which I will make, shall remain before me, saith the Lord, so shall your seed and your name remain.

And it shall come to pass, that from one new moon to another, and from one sabbath to another, **shall all flesh come to worship before me, saith the Lord.**

And they shall go forth, and look upon the carcasses of the men that have transgressed against me: for their worm shall not die, neither shall their fire be quenched; and they shall be an abhorring unto all flesh.⁸⁷

Isaiah's reference to a Last Judgment among all nations was repeated in the *Gospel of Matthew* in Christ's "Parable of the Sheep and the Goats"⁸⁸ and in the *Book of Revelation*.⁸⁹ Significantly, there is a general consensus among Jewish and Islamic theologians, as well as Christian theologians, that *Genesis* 18:18-19 and the "second table" of the *Decalogue* demand that all human beings and nations actually do equity, justice, and judgment; and that, as in the Biblical narrative of the Tower of Babel (as well as the Biblical narratives of the rise and fall of Egypt, Assyria, Babylon, Persia, etc.), a failure to establish equity and justice shall lead ultimately to God's wrath and divine punishment.

Given the examples of the Hebrew prophets, we may rightly deduce that the primary concern in the Old Testament is not with the ceremonial laws— i.e., whether the liturgical practices were correct, or whether a certain number of persons attended the Temple or the synagogues on the sabbath day. Rather, the primary concern in the Old Testament and in the

87 Isaiah 66: 15-24.

88 Matthew 25: 32 ("And before him shall be gathered **all nations**: and he shall separate them one from another, as a shepherd divideth his sheep from the goats."); the "Parable of the Sheep and the Goats" (Matthew 25: 31-46).

89 Revelation 21:24 ("And **the nations** of them which are saved shall walk in the light of it: and the kings of the earth do bring their glory and honour into [the holy city, the new Jerusalem].")

writings of the several prophets, was with injustice— political, constitutional, economic, and social injustices, and the lack of general equity.

The American Declaration of Independence (1776) generally incorporated ancient Israel's political theory and political science on "general equity," as expressed in the Old Testament prophets,⁹⁰ to the misdeeds of King George III (1738 - 1820). Just as the Hebrew prophets arraigned the peoples and rulers of ancient Judah and Israel, the Declaration of Independence arraigned George III. And just as the Hebrew prophets interposed and invoked the fundamental laws of God in the Torah, so does the Declaration of Independence interpose and invoke "the Laws of Nature and of Nature's God" against George III. Here, the primary emphasis in both the writings of the prophets and in the Declaration of Independence is upon the sovereignty of an Almighty God which even earthly kings and emperors must not evade or disregard.

But this emphasis upon holding earthly rulers to account for a "higher or fundamental law of God" was well established in Western political thought many centuries before the Declaration was written in 1776. For instance, Augustine of Hippo embraced this same political theory and theology in *The City of God*;⁹¹ this same political theory and political science were

⁹⁰ Genesis 9:1-17 (the Noahic covenant); see, also, Genesis 18:18-19 (the Abrahamic covenant "to do justice and judgment").

For this reason, American lawyers and judges—especially those who are Christians and taken the Sacraments of Baptism and the Lord's Supper—are vicegerents of the God of Nature who is mentioned in the American Declaration of Independence (1776)—"Life, Liberty, and the Pursuit of Happiness" being their general mandate in equity. Indeed, when they take the "Oath of Attorney" or the "Oath of Judge" (i.e., "So Help Me God"), they become, by Solemn Oath, ministers of God. See Romans 13: 4,6. See, also, Westminster Confession of Faith of 1647, Chapter 22, "Of Lawful Oaths and Vows," stating "[a] lawful oath is part of religious worship, wherein, upon just occasion, the person swearing solemnly calls God to witness what he asserts, or promises, and to judge him according to the truth or falsehood of what he swears."

⁹¹ See, e.g., St Augustine of Hippo, *The City of God*, supra, pp. 158, 319, and 476. ("[T]hat God can never be believed to have left the kingdoms of men, their dominions and servitudes, outside of the laws of His providence.") See, also, Ruben Alvarado, *Calvin and the Whigs: A Study in Historical Political Theology* (The Netherlands: Pantocrator Press, 2017), pp. 7-8:

In dating the origins of Western civilization, and consequently of its constitution, the publication of Augustine's *De Civitate Dei* [*Of the City of God*] serves as well as any for a reference point. This book was perhaps the most important ever written in the West; for a thousand years after its publication it exercised an influence unrivalled by any other, besides the Bible itself. For good reason, one writer calls it "The Charter of Christendom."

passed along throughout the centuries to many theologians such as Thomas Aquinas, John of Salisbury, and Henry de Bracton; and, finally, these were also embraced by the Protestant Reformers Martin Luther⁹² and John Calvin,⁹³ who, in turn, passed these theories and theologies on to the Puritans of colonial British North America,⁹⁴ who laid the constitutional foundations of the American Republic, to wit:

An echo of these expositions we have in our Declaration of Independence. Bracton, in his exposition of Romans xiii., had said:

‘He is called a king for ruling righteously, and not because he reigns. Wherefore he is a king when he governs with justice, but a tyrant when he oppresses the people committed to his charge.’

In nearly the same language our Declaration of Independence abjures the authority of the British monarch:

‘A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.’

These words of Jefferson seem but a paraphrase or application of Bracton’s, and Bracton’s are but his own reference from his own exposition of Paul.⁹⁵

92 Romans 13:1-4. See, also, Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523) (“Here you inquire further, whether constables, hangmen, jurists, lawyers, and others of similar function can also be Christians and in a state of salvation. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority’s bearing of the sword must also be divine service. There must be those who arrest, prosecute, execute, and destroy the wicked, and who protect, acquit, defend, and save the good. Therefore, when they perform their duties, not with the intention of seeking their own ends but only of helping the law and the governing authority function to coerce the wicked, there is no peril in that; they may use their office like anybody else would use his trade, as a means of livelihood. For, as has been said, love of neighbor is not concerned about its own; it considers not how great or humble, but how profitable and needful the works are for neighbor or community.”)

93 John Calvin, *The Institutes of the Christian Religion*. Books I through IV (Unabridged) (United States of America: Pantieos Press, 2017), p. 20. (John Calvin wrote that “equity, because it is natural, cannot but be the same for all, and therefore, this same purpose ought to apply to all laws, whatever their object. Constitutions have certain circumstances upon which they in part depend. It therefore does not matter that they are different, provided all equally press toward the same goal of equity.”)

94 See, e.g., founder of the first Baptist Church in North America, Roger Williams (1603 - 1683), who published *The Bloudy Tenet of Persecution* (Miami, Fla.: Hardpress, 2019), p. 332 (stating, the civil magistrate is “a ministry indeed, magistrates are God’s ministers, Rom. Xiii 4,” whose duty it is to address injustice and oppressions of the weak. “**I see not how,**” wrote Rev. Williams, “**according to the rule of Christ, Rom. Xiii., the magistrate may refuse to hear and help the just complaints of any such petitioners—children, wives, and servants—against oppression, &c.**”)

95 William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852), pp. 376-377.

Thus, Judea-Christian equity jurisprudence and law (i.e., the duty of the civil magistrate “to do justice and judgment”) were thus linked,⁹⁶ and thoroughly woven into, American constitutional law and jurisprudence, which originated from England’s equity jurisprudence that had been nourished and developed in the Church of England for over the course of ten centuries.⁹⁷ American constitutional doctrines such as “due process of law,” “equal protection of the law” and “fundamental rights” were derived from English common law and equity jurisprudence.⁹⁸ Wherefore, this postdoctoral study holds that the churches of Jesus Christ— and particularly through the agency of Christian lawyers— have ample historical, theological, and constitutional foundation and authority to provide input and petition to the secular governors in order to hold them accountable to fundamental doctrines of general equity.

⁹⁶ See, e.g., Algernon Sidney Crapsey, *Religion and Politics*, supra, p. 306 (while commenting on the First Amendment, U.S. Constitution, stated: “When the people of the United States decreed by constitutional amendment that the government should never by law establish any religion, they did actually establish the only religion that could comprehend in its membership the whole American people. A religion having as its basis the principles of individual liberty and obedience to righteous law is really the **religion of the golden rule.**”

⁹⁷ Indeed, theologically speaking, the American Declaration of Independence (1776), which laid the foundation for the United States Constitution, represents the culmination of a thousand years of development of the English Common Law and Christian political philosophy that was deeply rooted in the Apostle Paul’s *Epistle to the Romans* (13:1-10).

⁹⁸ See, e.g., Goldwin Smith, *A Constitutional and Legal History of England* (New York, N.Y.: Dorset Press, 1990).

Chapter Two

“General Equity: A Universal and Divine Mandate from God”

Neither ancient Israel’s or the Westminster standards on “general equity”⁹⁹ were the only source of equity jurisprudence within the English common law or subsequent Anglo-American law or jurisprudence. Throughout the ancient Roman empire, in which the Jewish theologians Philo of Alexandria (20 B.C to 50 A.D.) and the Apostle Paul of Tarsus (5 - 64 A.D.) lived, “equity” and “nature” or “natural law” had one universal meaning throughout its vast Roman provinces and dominions. These legal and philosophical terms were held to be one universal moral law that was ascertained through *right reason*. The ancient Romans held that this universal moral law was generally the same in different parts of the world. The ancient Romans tended to adopt the local laws and customs of their various subjects, but they also frequently imposed their own imperial laws upon their subjects as well. From the vantage point of these ancient Romans, they were able to observe a sort of *uniformity of common laws* amongst *all nations*. This uniformity of common law was called “nature” or “natural law” (i.e., not man-made). The Romans had several names for this law, including “equity,” “natural law,” “moral law,” “law of nature,” “universal law” and “natural justice.” Perhaps this is why the Roman Senator Cicero was able to so succinctly and accurately describe equity and universal moral law in *De Re Publica*, as follows:

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

⁹⁹ The Westminster Confession of Faith of 1647, Chapter 19, “Of the Law of God,” further explains:

To them also, as a body politick, he gave sundry judicial laws, which expired together with the state of that people, not obliging any other now, further than the **general equity** thereof may require.

In his *Epistle to the Romans*, the Apostle Paul explicitly adopted this Greco-Roman definition of nature or natural law into his Christian theology.¹⁰⁰ And in the *Book of Acts*, the council at Jerusalem had alleviated the Gentiles from the requirements of circumcision and other stringent Jewish laws and gave them express permission to adopt local laws and customs for their churches. Thus, after the Roman empire became Christian, the Roman Catholic Church simply incorporated pagan Greco-Roman notions of general equity and natural law into the general framework of the Sacred Scriptures and the canon law of the church.¹⁰¹ The basic concept of general equity and natural law, which entered into Anglo-American jurisprudence, came from the canon law of the Roman Catholic Church.¹⁰² General equity and natural law were deemed to represent divine justice that was represented by a body of equitable principles called “equity.” This body of divine equitable principles, which are intelligible through the human power of reason, constitute the *duty to honor God* by meting out *general equity and natural justice* in the earth. And within the ancient Roman empire,

100 See, also, Romans 1:14-15 (“I am debtor both to the Greeks, and to the Barbarians.... So, as much as in me is, I am ready to preach the gospel to you that are at Rome also.”); Romans 1:19-20 (“that which may be known of God is manifest in them...the invisible things of him from the creation of the world are clearly seen, being understood by the things that are made, even his eternal power and Godhead....”); Romans 2:11-16 (“when the Gentiles... do by nature the things contained in the law... shew the work of the law written in their hearts”); Romans 10:8 (“The word is nigh thee, even in thy mouth, and in thy heart”); Romans 10:18 (“But I say, Have they not heard? Yes verily, their sound went into all the earth, and their words unto the ends of the world.”) See, also, the Apostle Peter’s statement in Acts 10: 34-35, to wit: (“Then Peter opened his mouth, and said, Of a truth I perceive that God is no respecter of persons: but in every nation he that feareth him, and worketh righteousness, is accepted with him.”)

101 See, e.g., John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 71, stating:

The law of the church is called the canon law. The term itself comes from a Greek word that means a measuring rod, taken figuratively in the West to be a measure of right conduct. In the broadest sense, canons are intended to lead men and women to act justly in the world so that they may ultimately stand before God unashamed.... The canon law has thus always been connected with the ‘internal forum’ of conscience.... By design, the canons create conditions that promote harmony within the church and freedom from interference from without. But this has never been their sole aim. The canon law has also aimed higher, assuming to provide salutary rules for the lives of ordinary Christians and to exert an influence on the content of temporal law.... Nothing less than leading men and women toward God and establishing a Christian social order.”

102 Ibid.

equity was the universal natural moral law that was binding upon all peoples and nations in the earth. Equity constituted the administration of the laws of nature, which were known to all humankind through their power of reason. And this same “power of reason” distinguishes humankind from the lower brutes.

Hence, the power of reason was a gift from the gods. And according to the ancient Greeks, the divine gift of reason was the divine *logos* or word of God.¹⁰³ But within ancient Judaism, the influences of Roman law and culture brought forth revolutionary ideas regarding the exegesis of the Old Testament. According to the first-century Jewish philosopher Philo (20 B.C. to 50 A.D.), the Decalogue itself contained within it the same laws of equity or natural law which Greeks and Romans had adopted. Philo opined that the power of reason, which the Greeks had championed, demonstrated that humankind was made in the “image of God,”¹⁰⁴ which Philo also called the “Son of God” and God’s “firstborn word.”¹⁰⁵ In summation, Greco-Roman law, philosophy, and religion influenced the exegesis of the Old Testament even before the emergence of the Christian religion. So that by the time when the early Church Fathers such as Origen of Alexandria discovered the Jewish philosopher Philo’s writings, the groundwork for the Christian synthesis of Greco-Roman equity had already been laid.

Therefore, when the Early Church began to be organized, its worldview was already very broad, cosmopolitan, and universal in scope. The Early Church’s intellectual giants such as the

¹⁰³ See, also, **Appendix C**, “Jesus Christ the Logos of God, and the Foundation of Anglo-American Civil Law and Secular Jurisprudence.”

¹⁰⁴ Genesis 1: 26-27.

¹⁰⁵ Philo, “On the Confusion of the Tongues” [Ancient Manuscript: Citation omitted]. The Jewish theologian Philo wrote:

And even if there be not as yet any one who is worthy to be called a son of God, nevertheless let him labor earnestly to be adorned according to his **first-born word**, the eldest of his angels, as the great archangel of many names; for he is called, the authority, and the name of God, and **the Word**, and man **according to God's image**, and he who sees Israel. For which reason I was induced a little while ago to praise the principles of those who said, "We are all one man's Sons."^{43}{Genesis 42:11.} For even if we are not yet suitable to be called the sons of God, still we may deserve to be called **the children of his eternal image**, of his **most sacred word**; for **the image of God is his most ancient word**.

Apostles John and Paul had an advanced Greco-Roman worldview of nature and natural law. The early Christians believed that all civil magistrates— both Christian and non-Christian— equally share the same duty and obligation to mete out general equity within their dominions. For this was the only reason why the Apostles Peter and Paul could admonish all Christians to obey and honor the non-Christian Roman civil authorities. For they understood that, fundamentally, all civil magistrates were ministers of God and shared the same uniform duty to mete out equity and natural justice. The Early Church’s understanding of natural law was therefore based upon a much broader conceptualization of the Christian religion, as one which encompassed the fundamental or universal moral laws of every nation— which were the same laws which God had revealed to all nations of the earth through the Noahic covenant. Some Christians consider “equity” or “justice” as Christ himself, the co-eternal word of God.¹⁰⁶

Having thus incorporated much of the ancient Greco-Roman political theory into his own theological understanding of the constitutional theory of ancient Israel, Augustine of Hippo (354- 430, AD), in his *The City of God* (circa 427 A.D.)¹⁰⁷ opined that any civil polity may be organized in a number of ways, but that their common purpose was to implement equity and justice, the absence of which would lead to decline and ultimate collapse.

Augustine’s Political Theory (*The City of God*)

Form of Government (Virtue) ¹⁰⁸	Form of Government (Vice)
Monarchy	Tyranny
Aristocracy	Oligarchy

¹⁰⁶ John 1:1-3.

¹⁰⁷ See, also, Ruben Alvarado, *Calvin and the Whigs: A Study in Historical Political Theology* (The Netherlands: Pantocrator Press, 2017), pp. 7-8:

In dating the origins of Western civilization, and consequently of its constitution, the publication of Augustine’s *De Civitate Dei* [*Of the City of God*] serves as well as any for a reference point. This book was perhaps the most important ever written in the West; for a thousand years after its publication it exercised an influence unrivalled by any other, besides the Bible itself. For good reason, one writer calls it ‘The Charter of Christendom.’

¹⁰⁸ Ibid., p. 61.

Democracy	Anarchy
Republic (or mixed forms of government containing elements of monarchy, aristocracy, and democracy)	Imperial Republic (tyranny; oligarchy; and anarchy, often characterized with civil wars and imperial wars against other nations) ¹⁰⁹

In *The City of God*, Augustine attempted to provide a comprehensive answer to the seminal and perennial question: How should earthly civil governments prevent vice and tyranny from proliferating?¹¹⁰ According to Augustine, the Roman empire had fallen because of its own unchecked vices and wickedness.¹¹¹ Given Rome’s example, Augustine felt that the churches of Jesus Christ could co-exist with all the different forms of human government in the earth, but that they should also catechize (or encourage) civil magistrates in every nation “to do justice and judgment” (i.e., general equity).¹¹² Augustine also felt that individual Christians, whenever possible, should also participate in the civil government and hold responsible positions of authority.

Hence, while commenting on the rise and fall of the Roman empire, Augustine of Hippo wrote “that the truth is, that [a republic] cannot be governed without the most absolute justice.”¹¹³ General equity is coterminous with the “laws of Nature,” which Augustine had described as being a law of “peace.”¹¹⁴ Augustine wrote that “the universal peace which the law of nature preserves through all disturbances, and by which everyone reaches his desert in a

109 Ibid., pp. 171-173 (“Concerning the difference between true glory and the desire of dominion”).

110 Ibid., pp. 60-73 (“That the Christian religion is health-giving” “An exhortation to the Romans to renounce paganism”).

111 St. Augustine, *The City of God*, supra, pp. 126-132.

112 Ibid., p. 178 (“What was the happiness of the Christian emperors, and how far it was true happiness”; “Concerning the prosperity which God granted to the Christian emperor Constantine.”).

113 St. Augustine, *The City of God*, supra, p. 61.

114 Ibid., p. 690.

way regulated by the just Judge.”¹¹⁵ In other words, “[t]he peace of all things is the tranquility of order.”¹¹⁶ The “law of nature,” Augustine wrote, is “universal peace” and “the natural order of things.”¹¹⁷ For instance, civil discord denotes the absence of peace between citizens within a body politic. Private disputation and conflict reflect the absence of concord between man and man. Domestic discord reflects the absence of “domestic peace” between family members. Augustine felt that civil discord was often caused by various vices, which, if left unchecked, could lead to catastrophic forms of bad government.

Augustine’s *The City of God* had a most profound influence upon the Roman empire and the future development of canon law of the Western Roman Catholic Church.¹¹⁸ And for at least a thousand years, from the publication of the *Code of Justinian*,¹¹⁹ or the *Corpus Juris*

115 Ibid.

116 Ibid.

117 Ibid.

118 Ruben Alvarado, *Calvin and the Whigs: A Study in Historical Political Theology* (The Netherlands: Pantocrator Press, 2017), pp. 7-9, stating:

In dating the origins of Western civilization, and consequently of its constitution, the publication of Augustine’s *De Civitate Dei* [Of the City of God] serves as well as any for a reference point. This book was perhaps the most important ever written in the West; for a thousand years after its publication it exercised an influence unrivalled by any other, besides the Bible itself. For good reason, one writer calls it ‘The Charter of Christendom’

Thus Augustine, in a formulation which would prove absolutely fundamental to the further course of history, describes two ends to man’s existence: the temporal end of peace and the pursuit of happiness, and the eternal end of immortal life. These he does not oppose, nor rigidly separate, but rather places in coordinate relation, subordinating the temporal end to the eternal, demonstrating the definite divine intent in this arrangement: the display, through the works of the flesh-- the fruits borne in history in both the city of man and the city of God-- the wisdom and glory of God in His just judgment.

119 The Code of Justinian was a major legal publication that became the establish law of the Roman Empire and the legal foundation for Western Europe—including nations such as France, England, Spain, the Netherlands, Germany, and Austria. According to *Britannica* (online):

Code of Justinian, Latin Codex Justinianus, formally Corpus Juris Civilis (“Body of Civil Law”), collections of laws and legal interpretations developed under the sponsorship of the Byzantine emperor Justinian I from 529 to 565 CE. Strictly speaking, the works did not constitute a new legal code. Rather, Justinian’s committees of jurists provided basically two reference works containing collections of past laws and extracts of the opinions of the great Roman jurists. Also included were an elementary outline of the law and a collection of Justinian’s own new laws.

Civilis, in 529-534 A.D. to the end of Early Modern era (1800s),¹²⁰ civil law (i.e., customary law, statutory law, constitutional law, etc.) was deemed to be a divine and sacred thing. Indeed, as the *Code of Justinian* plainly demonstrate, the Christian religion was thoroughly fused into the constitutional and legal systems of ancient Rome, and that system became the constitutional foundation and heritage of both England and the rest of Europe. Two of the greatest of Protestant Reformers, Martin Luther (Germany) and John Calvin (France) studied this great *Code of Justinian* when they were law students in their respective countries.

Stated theologically—as the *Code of Justinian* itself expressly acknowledges—King Jesus of Nazareth had conquered the Roman empire and, as such, all of Britain and Western Europe, as well as northern Africa and vast stretches of territory in Asia. In Britain and Western Europe, the fundamental law of Equity (i.e., *aequitas*)— the law of Nature or the law of God or the law of Christ—reigned supreme over all secular laws.¹²¹

The Justinian code consists of four books: (1) *Codex Constitutionum*, (2) *Digesta*, or *Pandectae*, (3) *Institutiones*, and (4) *Novellae Constitutiones Post Codicem*.

Work on the *Codex Constitutionum* began soon after Justinian's accession in 527, when he appointed a 10-man commission to go through all the known ordinances, or "constitutions," issued by the emperors, weed out the contradictory and obsolescent material, and adapt all provisions to the circumstances of that time. The resultant 10-book *Codex Constitutionum* was promulgated in 529, all imperial ordinances not included in it being repealed. In 534 a new commission issued a revised *Codex* (*Codex Repetitae Praelectionis*) containing 12 books; the revisions were based partly on Justinian's own new legislation.

The *Digesta* was drawn up between 530 and 533 by a commission of 16 lawyers, under the presidency of the jurist Tribonian. They collected and examined all the known writings of all the authorized jurists; extracted from them whatever was deemed valuable, generally selecting only one extract on any given legal point; and rephrased the originals whenever necessary for clarity and conciseness. The results were published in 50 books, each book subdivided into titles. All juridical statements not selected for the *Digesta* were declared invalid and were thenceforth never to be cited at law.

The *Institutiones*, compiled and published in 533 under Tribonian's supervision and relying on such earlier texts as those of Gaius, was an elementary textbook, or outline, of legal institutions for the use of first-year law students.

The *Novellae Constitutiones Post Codicem* (or simply, in English, the *Novels*) comprised several collections of new ordinances issued by Justinian himself between 534 and 565, after publication of the revised *Codex*.

¹²⁰ The Code of Justinian, or the *Corpus Juris Civilis*, "formed the basis not only of Roman jurisprudence (including ecclesiastical Canon Law), but also influenced civil law throughout the Middle Ages and into modern nation states." <https://courses.lumenlearning.com/atd-herkimer-westerncivilization/chapter/the-justinian-code/>

¹²¹ See, generally, John Norton Pomeroy, LL.D., *A Treatise of Equity Jurisprudence: As Administered in the United States of America* (San Francisco, CA: A.L. Bancroft and Co., 1881), pp. 2-10, 53 discussing "Aequitas in

The following extract “The Enactments of Justinian” demonstrate how the Christian religion was incorporated into the Roman empire and made its official religion. The subject matter that is governed or regulated in this Enactment include both secular and sacred matters, thus indicating that there was no separation of church and state under this ancient Roman code.

THE ENACTMENTS OF JUSTINIAN.
THE CODE. (circa 529-534 A.D.)
~ Book I ~
(English Translation by S.P. Scott, The Civil Law, XII, Cincinnati, 1932).
Citation: https://droitromain.univ-grenoble-alpes.fr/Anglica/CJ1_Scott.htm#45

the Roman Law,” stating:

The growth and functions of equity as a part of the English law, were anticipated by a similar development of the same notions in the Roman jurisprudence. In fact, the equity administered by the early English chancellors, and the jurisdiction of their court, were confessedly borrowed from the *aequitas* and judicial powers of the Roman magistrates.... The particular rules of the Roman jurisprudence derived from this morality, called the law of nature, were termed ‘*aequitas*,’ from *aequum*, because they were supposed to be impartial in their operation, applying to all persons alike. The *lex naturae* [law of nature] was assumed to be the governing force of the world, and was regarded by the magistrates and jurists as having an absolute authority. They felt themselves, therefore, under an imperative obligation to bring the jurisprudence into harmony with this all-pervading morality, and to allow such actions and make such decisions that no moral rule should be violated. Whenever an adherence to the old *jus civile* would do a moral wrong, and produce a result inequitable (*inaequum*), the praetor, conforming his edict or his decision to the law of nature, provided a remedy by means of an appropriate action or defense. Gradually, the cases, as well as the modes in which he would thus interfere, grew more and more common and certain, and thus a body of moral principles was introduced into the Roman law, which constituted equity (*aequitas*)....

The moral law, as such, is not an element of the human law. Whatever be the name under which it is described—the moral law, the natural law, the law of nature, the principles of right and justice—this code, which is of divine origin, and which is undoubtedly compulsory upon all mankind in their personal relations, is not *per se* or *ex proprio vigore* a part of the positive jurisprudence which, under the name of the municipal law, each independent state has set for the government of its own body politic.... It is also true that human legislation ought to conform itself to and embody these jural precepts of the moral code; every legislator, whether he legislate in a Parliament or on the judicial Bench, ought to find the source and material of the rules he lays down in these principles of morality; and it is certain that the progress towards a perfection of development in every municipal law, consists in its gradually throwing off what is arbitrary, formal, and unjust, and its adopting instead those rules and doctrines which are in agreement with the eternal principles of right and morality.

1. Concerning the most exalted Trinity and the Catholic faith (..)
2. Concerning the most sacred churches, their property and their privileges.
3. Concerning bishops and other members of the clergy, superintendents of orphan asylums (..)
4. Concerning the Episcopal tribunal and the different charters which relate to pontifical supervision.
5. Concerning heretics, Manicheans, and Samaritans.
6. To avoid the repetition of baptism.
7. Concerning apostates.
8. No one shall be permitted to carve or paint the image of our saviour Jesus Christ upon earth (..)
9. Concerning Jews and the worshippers of the heavens.
10. No Jew or pagan shall hold, possess, or circumcise a Christian slave.
11. Concerning the pagans, their sacrifices, and their temples.
12. Concerning those who take refuge in churches; or who cry out while there (..)
13. Concerning those who are manumitted in churches.
14. Concerning the laws and constitutions of the Emperors, and edicts.
15. Concerning the Imperial Mandates.
16. Concerning Decrees of the Senate.
17. Concerning the explanations of the ancient law and the authority of the jurists (..)
18. Concerning ignorance of law and of fact.
19. Concerning the presentation of petitions to the Emperor (..)
20. When a petition presented to the Emperor causes a joinder of issue.
21. No one has a right to present a petition to the Emperor while a case is pending (..)
22. Where anything contrary to law or the public welfare is fraudulently included (..)
23. Concerning different rescripts and pragmatic sanctions.
24. Concerning statues and pictures.
25. Concerning those who take refuge at the statues of the Emperor.
26. Concerning the office of Praetorian Prefect of the East and Illyria.
27. Concerning the office of Praetorian Prefect of Africa (..)
28. Concerning the duties of the Prefect of the City.
29. Concerning the office of General of the Army.
30. Concerning the duties of Quaestor.
31. Concerning the duties of Master of the Offices.
32. Concerning the duties of Count of the Sacred Largesses.
33. Concerning the duties of Count of Private Affairs.
34. Concerning the duties of Count of the Imperial Palace.

35. Concerning the duties of Proconsul and Deputy.
36. Concerning the duties of the Count of the Imperial Patrimony.
37. Concerning the duties of Count of the East.
38. Concerning the office of Augustal Prefect.
39. Concerning the office of Vicegerent.
40. Concerning the duties of Praetor.
41. Concerning the duties of the Governor of a province.
- 42-43. The Latin texts of these two titles are missing.
44. Concerning the office of the Prefect of the Watch.
45. Concerning the duties of Civil Judges.
46. Concerning the duties of Military Judges.
47. Baths shall not be furnished to Military Counts or Tribunes.
48. Concerning the duties of various judges.
49. All judges (..) shall remain for forty days after their term of office has expired (..)
50. Concerning the duties of one who takes the place of a judge or a Governor.
51. Concerning assessors, attendants and the chancellors of judges.
52. Concerning provisions and the capitations of certain officials and their assessors (..)
53. Concerning the contracts of judges and their subordinates (..)
54. Concerning the manner in which fines shall be imposed by judges.
55. Concerning the defenders of cities.
56. Concerning municipal magistrates.
57. Concerning the office of judge of Alexandria.

Similarly, the following extract of *The Institutes of Justinian* demonstrate how the laws of ancient Rome were organized. Here it must be understood that just as the Christian religion was incorporated into the Roman empire, the laws of the ancient Roman empire were incorporated into the Christian Church and into Protestant Europe. When we consider that even in the United States, where there is an express constitutional clause the prohibits the establishment of religion, churches or religious organizations are prohibited from adopting or

carrying out religious practices that override public policy or established law,¹²² Rome’s civil regulation of religion should not be construed as wholly draconian.

Indeed, in the ancient Rome empire— i.e., all of Europe and parts of Asia and North Africa— the Christian church and the Roman state were merged into one corporate body. This means that the spirit of the Christian faith (i.e., equity) functioned as the fundamental law of ancient Rome. For instance, the *Institutes* provide that “[t]he precepts of the law are these: to live honestly, to injure no one, and to give every man his due.” This is an echo of the Apostle Paul’s prescriptions in Romans 13:8, stating “[o]we no man anything, but to love one another: for he that loveth another hath fulfilled the law.”

The *Institutes* goes on to define jurisprudence as “the knowledge of things divine and human, the science of the just and the unjust.” Especially important is that definition of “natural law” that is contained within the *Institutes*, stating, “the laws of nature, which are observed by all nations alike, are established, as it were, by divine providence, and remain ever fixed and immutable.” Thus, the ancient idea of law and jurisprudence, as organized in the ancient Roman empire, became the foundation of not only the Roman Catholic Church but also of western jurisprudence.

The *Institutes of Justinian* was a monumental achievement that had a great and profound impact upon the world, and especially the West. In this code, we find in the ancient *Institutes of Justinian* all the elements of western law and general jurisprudence, that is to say, the law of nature, customary or common law, and statutory or municipal law. Under this code, the entire Roman empire was literally converted into a giant “church-state.” The Roman Catholic Church has been called an “imperial” church, because it had an emperor, armies,

122 See, e.g., *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1 (1890)(the U.S. Supreme Court held that Congress had the power to regulate and to criminalize the practice of polygamy. Since the LDS Church continued to practice polygamy, Congress was authorized, pursuant to common law and public policy, to revoke its non-profit status and to seize its assets); *Employment Division v. Smith*, 494 U.S. 872 (1990): the U.S. Supreme Court held that religious practices may not override a state’s criminal laws. In this case, two Native Americans used sacrificial peyote at a religious ceremony, but the said peyote usage had not been exempted in the state’s criminal code. Therefore, when the state denied unemployment compensation benefits to these employees who had been discharged for “misconduct” stemming from the use of the peyote, that denial did not violate the Free Exercise Clause.)

courts, public officials, etc. Under its influence, the civil polity was thought to be divine. The Roman emperor was thought to be divine until the empire officially adopted the Christian religion, at which time the emperor and princes were anointed to reign as vicegerents of Christ.

The most influential Medieval legal theorist and theologian was Thomas Aquinas (1225-1274),¹²³ whose philosophy of law, as stated in detail in *Summa Theologica*,¹²⁴ reveals that he was significantly influenced by Augustine of Hippo's theology and philosophy of law. (I shall discuss more on this below). Perhaps the only major difference between Augustine's catholic Christian theology and Aquinas' catholic Christian theology was their incorporation of two different Greek philosophers into their various theological perspectives. Augustine gravitated towards Plato, whereas Aquinas certainly gravitated towards Aristotle, whom he affectionately referred to as "the Philosopher." However, in fairness to Augustine, understanding the major differences between Plato and Aristotle does not help to distinguish Augustine's theology from Aquinas' theology. Whatever Augustine may have lacked from not having read Aristotle was adequately substituted by his profound insight into the nature of human beings and natural phenomena—an insight which, at least from my perspective, certainly rivals Aristotle's natural philosophy.¹²⁵ Altogether, the influences of Augustine's theology and Aristotle's natural philosophy upon Aquinas were profound.

¹²³ Thomas Jefferson liked Thomas Aquinas' theological system and seemingly preferred it over Calvinism. In his "Letter to John Adams" (Monticello, April 11, 1823), *Writings* (New York, N.Y.: The Library of America, 1984), pp. 1466 – 1469, Jefferson explicitly rejected Calvinism and the "5. points" of Calvinism, stating, "[t]he being described in his 5. Points is not the God whom you and I acknowledge [sic] and adore, the Creator and benevolent governor of the world; but a daemon of malignant spirit." Jefferson liked Aristotle and St. Thomas Aquinas; he believed there was more evidence of a real God who was a Creator than proof of an atheistic conception of evolution. "So irresistible are these evidences of an intelligent and powerful Agent," wrote Jefferson, "that, of the infinite numbers of men who have existed thro' all time, they have believed, in the proportion of a million at least to Unit, in the hypotheses of an eternal pre-existent Universe. Surely this unanimous sentiment renders this more probable than that of the few in the other hypothesis. **Some early Christians indeed have believed in the coeternal pre-existence of both the Creator and the world, without changing their relation of cause and effect. That this was the opinion of St. Thomas, we are informed by Cardinal Toletto....**"

¹²⁴ St. Thomas Aquinas, *Summa Theologica* (New York, N.Y.: The Catholic Primer, 2005).

¹²⁵ I have found no evidence that Augustine of Hippo did not study Aristotle, but only that he was greatly influenced by Plato and the Platonists.

Several Catholic theologians, philosophers, and scholars have summarized and consolidated Aquinas' most important theological and philosophical ideas (i.e., Thomism) into Twenty-Four Theses, or the "24 Theses of Thomism," from which we can readily see Augustinian and Aristotelian influences. Not only do these "24 Theses" exemplify a very high quality of scholasticism, but they also reflect a very careful and thoughtful Christian theology of nature, natural law, natural justice, etc., that is the very quintessence of advanced scientific inquiry and reason. Aquinas' "24 Theses of Thomism," from which his natural law theory is derived, is comprised of the following four major components:

Ontology (Theory of Existence; Nature of Being; Existentialism);

Cosmology (Study of the Nature of the Universe; Astronomy; Physics);

Psychology (Study of the Human Mind; Human and Animal Behavior); and,

God (God's Essence; Eternity; Initial Cause; Supreme Reason).

Thus, Aquinas devised a comprehensive legal philosophy that conjoined Christianity to the verifiable truths from secular sciences and philosophy. In the ancient or medieval worlds in which Augustine and Aquinas lived, they would have understood "Greek natural law" and "Greek natural philosophy" to include a broad range of Greek philosophical subjects, such as the biological and physical sciences. Thus, when Aquinas speaks of "natural law" or "natural philosophy," he speaks of it from an Aristotelian perspective.

In Aristotle's terminology, 'natural philosophy' is a branch of philosophy examining the phenomena of the natural world, and includes fields that would be regarded today as physics, biology and other natural sciences. In modern times, the scope of philosophy has become limited to more generic or abstract inquiries, such as ethics and metaphysics, in which logic plays a major role. Today's philosophy tends to exclude empirical study of the natural world by means of the scientific method. In contrast, Aristotle's philosophical endeavors encompassed virtually all facets of intellectual inquiry.¹²⁶

Thus, it is thus important to point out here that when Aquinas spoke of "natural law" or the "laws of nature," he had in mind the ancient Greek and medieval perspective of this concept.

126 "Aristotle," Wikipedia Encyclopedia (Online): <https://en.wikipedia.org/wiki/Aristotle>.

First, Aquinas concluded that the moral precepts of the Old Testament Law belonged to, and reflected, natural law or the law of nature. He contended in *Summa Theologica* that good or proper human conduct depended upon “reason”; and that right reason required a proper understanding of nature. “Now since human morals depend on their relation to reason,” he concluded, “which is the proper principle of human acts, those morals are called good which accord with reason, and those are called bad which are discordant from reason. And as every judgment of speculative reason proceeds from the natural knowledge of first principles, so every judgment of practical reason proceeds from principles known naturally, as stated above.... from which principles one may proceed in various ways to judge of various matters.”¹²⁷

Second, Aquinas held that the Old Testament Law promoted the same “moral virtues” which were sought after by the philosophers (i.e., Aristotle, Plato, etc., etc.). Aquinas stated that “[i]t is therefore evident that the Divine law fittingly proposes precepts about the acts of all the virtues....”¹²⁸ Aquinas states in *Summa Theologica* that secular human law is primarily concerned with “justice” between persons, whereas the Old Testament law is primarily concerned with both justice and moral virtue (i.e., man’s relations to God.) Aquinas writes in *Summa Theologica* that “[t]his life in common of man with man pertains to justice, whose proper function consists in directing the human community. Wherefore human law makes precepts only about acts of justice; and if it commands acts of other virtues, this is only in so far as they assume the nature of justice, as the Philosopher explains (Ethic. v, 1). But the community for which the Divine law is ordained, is that of men in relation to God, either in this life or in the life to come.”¹²⁹ [Here we find Aquinas’ implicit assumption that the secular civil law does not need (and cannot) to regulate all moral virtues that have no bearing on the

127 St. Thomas Aquinas, *Summa Theologica* (New York, N.Y.: The Catholic Primer, 2005), pp. 1390-1391.

128 Ibid.

129 Ibid.

essential requirement to ensure “justice” between human beings.] Aquinas concludes that the Old Testament Law “proposes precepts about all those matters whereby men are well ordered in their relations to God.”¹³⁰

Significantly, Aquinas held that God is Reason (i.e., Divine law), and that man’s reasoning “is God’s image.”¹³¹ (In other words, the very act of “human reasoning” is the “image of God.” Human beings’ “ability to reason” is actually and truly the “image of God.” Reason is God; and God is reason. And as “reasoning” is an immaterial substance, so too is God without a material substance.) And Aquinas then concludes that “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.”¹³²

Third, Aquinas concluded in *Summa Theologica* that the Ten Commandments (i.e., the Decalogue) were reflections of natural law and natural reason (i.e., “first general principles”). The “first general principles, for they need no further promulgation after being once imprinted on the natural reason to which they are self-evident; as, for instance, that one should do evil to no man, and other similar principles: and again those which the careful reflection of wise men shows to be in accord with reason; since the people receive these principles from God, through being taught by wise men. Nevertheless both kinds of precepts are contained in the precepts of the Decalogue....”¹³³

Fourth, Aquinas next concluded that the Decalogue contains 6 or 7 commandments that govern man’s relations to man, and 3 or 4 which govern man’s relation to God. Thus, the whole

130 Ibid.

131 Ibid., p. 1392.

132 Ibid.

133 Ibid., p. 1395

of the Old Testament Law (i.e., the Five Books of Moses) revolves around these basic legal mandates.¹³⁴

Fifth, Aquinas continues his same train of thinking as mentioned in his Fourth conclusion, namely, as he states in the *Summa Theologica*, that “I answer... just as the precepts of human law direct man in his relations to the human community, so the precepts of the Divine law direct man in his relations to a community or commonwealth of men under God. Now in order that any man may dwell aright in a community, two things are required: the first is that he behave well to the head of the community; the other is that he behave well to those who are his fellows and partners in the community.”¹³⁵ With regards to the duty that man behave well with his fellows and partners in a community, Aquinas enunciates a legal theory that is strikingly modern, to wit: “[t]o his neighbors a man behaves himself well both in particular and in general. In particular, as to those to whom he is indebted, by paying his debts: and in this sense is to be taken the commandment about honoring one's parents. In general, as to all men, by doing harm to none, either by deed, or by word, or by thought. By deed, harm is done to one's neighbor---sometimes in his person, i.e. as to his personal existence; and this is forbidden by the words, "Thou shalt not kill": sometimes in a person united to him, as to the propagation of offspring; and this is prohibited by the words, "Thou shalt not commit adultery": sometimes in his possessions, which are directed to both the aforesaid; and with this regard to this it is said, "Thou shalt not steal." Harm done by word is forbidden when it is said, "Thou shalt not bear false witness against thy neighbor": harm done by thought is forbidden in the words, "Thou shalt not covet." The three precepts that direct man in his behavior towards God may also be differentiated in this same way. For the first refers to deeds; wherefore it is said, "Thou shalt not make . . . a graven thing": the second, to

134 Ibid.

135 Ibid., pp. 1397-1398.

words; wherefore it is said, "Thou shalt not take the name of the Lord thy God in vain": the third, to thoughts; because the sanctification of the Sabbath, as the subject of a moral precept, requires repose of the heart in God. Or, according to Augustine (In Ps. 32: Conc. 1), by the first commandment we reverence the unity of the First Principle; by the second, the Divine truth; by the third, His goodness whereby we are sanctified, and wherein we rest as in our last end."¹³⁶

Sixth, Aquinas concludes that God (Reason) is himself the end of human life and civilization. In the *Summa Theologica*, he states, "it is clear, since the order of reason begins with the end, that, for a man to be inordinately disposed towards his end, is supremely contrary to reason. Now the end of human life and society is God."¹³⁷ He concludes that the Law of Moses was designed for this objective and purpose.

Seventh, Aquinas concludes that adjudication is both a divine and a secular function, but not every act or omission is subject to both secular and divine authority. Aquinas explained in *Summa Theologica* that "Divine law and human law are differently situated as to the appointment of penalties; since the penalty of the law is inflicted only for those things which come under the judgment of the lawgiver; for the law punishes in accordance with the verdict given. Now man, the framer of human law, is competent to judge only of outward acts; because "man seeth those things that appear," according to 1 Kings 16:7: while God alone, the framer of the Divine law, is competent to judge of the inward movements of wills, according to Ps. 7:10: "The searcher of hearts and reins is God."¹³⁸

Eighth, Aquinas concludes that the additional Old Testament Laws, which were instituted by Moses and Aaron, likewise were designed to implement the first principles of the Ten Commandments, and of natural reason. As Aquinas explained in *Summa Theologica*, "the

136 Ibid.

137 Ibid.

138 Ibid., pp. 1402 - 1403.

first commandment of the decalogue forbids the worship of strange gods: and to this are added other precepts forbidding things relating to worship of idols: thus it is written (Dt. 18:10,11): 'Neither let there be found among you anyone that shall expiate his son or daughter, making them to pass through the fire: . . . neither let there be by any wizard nor charmer, nor anyone that consulteth pythonic spirits, or fortune-tellers, or that seeketh the truth from the dead.' The second commandment forbids perjury. To this is added the prohibition of blasphemy (Lev. 24:15, seq) and the prohibition of false doctrine (Dt. 13). To the third commandment are added all the ceremonial precepts. To the fourth commandment prescribing the honor due to parents, is added the precept about honoring the aged, according to Lev. 19:32: "Rise up before the hoary head, and honor the person of the aged man"; and likewise all the precepts prescribing the reverence to be observed towards our betters, or kindness towards our equals or inferiors. To the fifth commandment, which forbids murder, is added the prohibition of hatred and of any kind of violence inflicted on our neighbor, according to Lev. 19:16: "Thou shalt not stand against the blood of thy neighbor": likewise the prohibition against hating one's brother (Lev. 19:17): "Thou shalt not hate thy brother in thy heart." To the sixth commandment which forbids adultery, is added the prohibition about whoredom, according to Dt. 23:17: "There shall be no whore among the daughters of Israel, nor whoremonger among the sons of Israel"; and the prohibition against unnatural sins, according to Lev. 28:22,23: "Thou shalt not lie with mankind . . . thou shalt not copulate with any beast." To the seventh commandment which prohibits theft, is added the precept forbidding usury, according to Dt. 23:19: "Thou shalt not lend to thy brother money to usury"; and the prohibition against fraud, according to Dt. 25:13: "Thou shalt not have divers weights in thy bag"; and universally all prohibitions relating to peculations and larceny. To the eighth commandment, forbidding false testimony, is added the prohibition against false judgment, according to Ex. 23:2: "Neither shalt thou yield in judgment, to the opinion of the most part, to stray from the truth"; and the prohibition against lying (Ex. 23:7): "Thou shalt fly lying," and the prohibition against detraction, according to Lev. 19:16: "Thou shalt not be a detractor, nor a whisperer among the people." To the other two

commandments no further precepts are added, because thereby are forbidden all kinds of evil desires.”¹³⁹ In other words, under Aquinas’ legal theory, Reason or Natural Law is the foundation of the Ten Commandments, which are the foundation of the additional Laws of Moses.

Ninth, Aquinas places a high emphasis on “justice” as being the ultimate objective of the Old Testament Law. For this reason, he concludes that the true purpose and objective of the Old Testament Law is to effectuate “justice,” which is really justification. In the *Summa Theologica*, he writes “justification means first and properly the causing of justice; while secondarily and improperly, as it were, it may denote a sign of justice or a disposition thereto.” Aquinas believed that the “habit of justice” is what makes human beings “just.”¹⁴⁰

Aquinas conceptualized law as a divine mandate. In other words, in Aquinas’ worldview, all law, even secular human law, flows from God. Aquinas adopted Augustine’s view that “knowledge of the eternal law is imprinted on us.”¹⁴¹ According to Aquinas, “all men know the truth to a certain extent, at least as to the common principles of the natural law: and as to the others, they partake of the knowledge of truth, some more, some less; and in this respect are more or less cognizant of the eternal law.”¹⁴² Aquinas also believed that all other laws—natural law, divine law, and secular human law-- are derived from God’s eternal law. “Since then the eternal law is the plan of government in the Chief Governor,” he observed, “all the plans of government in the inferior governors must be derived from the eternal law. But these plans of inferior governors are all other laws besides the eternal law. Therefore, all laws, in so far as they partake of right reason, are derived from the eternal law. Hence Augustine says... that ‘in temporal law there is nothing just and lawful, but what man has drawn from the eternal

139 Ibid., pp. 1405-1406.

140 Ibid., p. 1407.

141 Ibid., pp.1343-1344.

142 Ibid.

law.”¹⁴³ Aquinas understood that eternal law to govern mankind and everything created; that mankind governed, to a greater or lesser extent, other human beings and lesser creatures; and that all things created were governed by God’s natural law, which is derived from eternal law.

Aquinas’ theory of natural law is perhaps the most important legal theory for secular jurists and lawyers. And it is perhaps of critical argument in favor of Christianity for Christian lawyers and judges to utilize, because Aquinas insists that “natural law” is actually “reason” itself. In the *Summa Theologica*, he states that “the natural law is something appointed by reason” and that “the precepts of the natural law are sometimes considered by reason actually, while sometimes they are in the reason only habitually....”¹⁴⁴ Aquinas believed that “natural law” was really “practical reason,” dealing with self-evident and less obvious matters, and requires intellectual integrity and honesty.¹⁴⁵ According to Aquinas, natural law is not simply reason, but it is also “right reason” based upon a correct comprehension of facts and phenomena, some of which are self-evident, and others not so obvious and thus requiring additional inquiry or advanced learning and education. For this reason, Aquinas also believed that “moral virtue,” was really an expression of natural law, because natural law’s end is toward the Good of all humankind. For Aquinas, moral virtue in nature is thus rooted in God’s eternal law; moral virtue is thus an expression of adherence to natural law as well as to God’s eternal law. In addition, Aquinas believed that “natural law” is universal and known by everyone. “It is therefore evident that,” he observed, “as regards the general principles whether of speculative or of practical reason, truth or rectitude is the same for all, and is equally known by all....”¹⁴⁶

As Aquinas explained in the *Summa Theologica*:

143 Ibid., pp. 1344-1345.

144 Ibid., p. 1349.

145 Ibid.

146 Ibid., p. 1353.

We may speak of virtuous acts in two ways: first, under the aspect of virtuous; secondly, as such and such acts considered in their proper species. If then we speak of acts of virtue, considered as virtuous, thus all virtuous acts belong to the natural law. For it has been stated... that to the natural law belongs everything to which a man is inclined according to his nature. Now each thing is inclined naturally to an operation that is suitable to it according to its form: thus fire is inclined to give heat. Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue. Consequently, considered thus, all acts of virtue are prescribed by the natural law: since each one's reason naturally dictates to him to act virtuously. But if we speak of virtuous acts, considered in themselves, i.e. in their proper species, thus not all virtuous acts are prescribed by the natural law: for many things are done virtuously, to which nature does not incline at first; but which, through the inquiry of reason, have been found by men to be conducive to well-living.¹⁴⁷

Interestingly, Aquinas believed that natural law in its first basic principles could not be “changed” or blotted out, although he did believe that natural law could be “subtracted from” or “added to” for the improvement of human living.¹⁴⁸ Unfortunately, he does not provide detailed examples of how he might apply his conclusions, say, to modern-day challenges to conventional human sexuality (i.e., transgender identity and homosexuality); but we may assume that the Catholic Church, which continues to uphold Thomism as establish Catholic theology, has correctly interpreted Aquinas’ views on these issues.

In conclusion, Thomas Aquinas’ legal theory, which would have a profound impact upon western law and jurisprudence, can be summarized as follows:

Eternal Law -----> Divine Law -----> Natural Law -----> Human Law

In other words, human or secular law and jurisprudence were subordinate to God’s eternal law, which contains both the law of the Sacred Scriptures (i.e., divine law) and natural law.

Hence, the *Code of Justinian*’s lasting influence upon western jurisprudence is due in large measure to the monumental legacy of Thomas Aquinas. Within this Thomist worldview, the Protestant Reformation was born. The German monk Martin Luther (1483 - 1546), when

147 Ibid., p. 1352.

148 Ibid., p. 1355-1356.

studying to become a lawyer, studied the *Code of Justinian*. The French John Calvin (1509 – 1564), when studying to become a lawyer, also studied the same *Code of Justinian*. To be sure, the discovery and promulgation of natural law predated Aquinas by several centuries, if not millennia, but Aquinas is credited with the synthesis of natural law into a systematic jurisprudence as it is currently understood within modern western and Anglo-American jurisprudence.

In the reformed Church of England, Aquinas' legal theories were officially incorporated into Anglican theology through Richard Hooker's *Of the Laws of Ecclesiastical Polity* (1594), which became established ecclesiastical authority during the reign of Queen Elizabeth I. Ever since the publication of Hooker's *Of the Laws of Ecclesiastical Polity* (1594), Aquinas' legal theories could be prominently and readily observed within England's most important legal treatises, such as William Blackstone's *Commentaries on the Laws of England* (1753).¹⁴⁹ See, also, Wood's *Institutes*, below:

Thomas Wood in *Institutes of the Laws of England* (1720)

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

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

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

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

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

Rules concerning Law

¹⁴⁹ William Blackstone, *Commentaries on the Laws of England* (1753), supra, p. 27 (“This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.”)

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.

Indeed, the common law jurisprudence of colonial British North America, the American Declaration of Independence (1776), and the U.S. Constitution were established upon Augustinian, Thomistic, and Calvinistic Puritan legal principles of the nature of customary or common law and constitutional law and related jurisprudence. For this reason, this post-doctoral study concedes that present-day American general jurisprudence was derived from, and continues to exemplify, ancient Hebrew, Roman Catholic, and Puritan legal theories on natural law (i.e., equity jurisprudence). This postdoctoral study thus holds that Christian lawyers and Christian judges may readily take notice of these historic equitable principles and apply them to real-world cases, and without violating the principle of the separation of Church and State.

Chapter Three

“General Equity: The Public Law and Ancient Israel”

The Calvinists and Puritans believed that the public laws of ancient Israel served as an appropriate example of how God desires present-day nations to organize their civil polities and to administer their public laws. As reflected in the Westminster Confession of Faith of 1647, the “Covenant of Nature” was amply reflected in the Mosaic laws of the Old Testament and especially in the Decalogue.¹⁵⁰ John Calvin’s *Institutes of the Christian Religion* argues with great cogency that the Pentateuch was the public law of ancient Israel and that it was wrought by the hand of Moses. Calvin establishes Moses’ credibility on the ground that the ancient Israelites would not have embraced his public laws if the underlying *factual predicate* was nonexistent. In other words, the story of Exodus would have been utterly rejected by those ancient Israelites, had not Moses actually performed the miracles before their very eyes. “Moses published all these things in the assembly of the people. How, then, could he possibly impose on the very eyewitnesses of what was done? Is it conceivable that he would have come forward, and, while accusing the people of unbelief, obstinacy, ingratitude, and other crimes, have boasted that his doctrine had been confirmed in their own presence by miracles, which they never saw?”¹⁵¹ For Calvin, this and “numerous proofs... fully vindicate the credibility of Moses, and place it beyond dispute, that he was in truth a messenger sent forth from God.”¹⁵²

¹⁵⁰ See, e.g., Jerold S. Aurebauch, *Rabbis and Lawyers: The Journey From Torah to Constitution*, supra, pp. 47-48:

As sacred law, Jewish law comprehensively integrates... Morality and law.... In the Torah, indiscriminately mixed, are ‘legal’ principles of trespass and damage, theft and restitution, personal injury and retribution; ‘religious’ precepts regarding sacrifice and festival observance; and ‘ethical’ admonitions regarding due care of widows, orphans, and strangers. Sacred law, because it comes from God, includes social conduct, family relationships, culinary preferences, and ritual obligation.

¹⁵¹ John Calvin, *God The Creator, God the Redeemer: Institutes of the Christian Religion* (Gainesville, FL.: BridgeLogos, 2005), p. 55.

¹⁵² Ibid.

Sir Isaac Newton's *Observations Upon The Prophecies of Daniel and The Apocalypse of St. John* also opines that the Pentateuch (i.e., the five books of Moses) constituted "the books of the law" and that "[t]hese were publick books, and therefore not written without the authority of Moses and Joshua."¹⁵³ Newton points out that the Book of Genesis contains a reference to the future kings of Israel¹⁵⁴ which points to a time period when this book was assembled much later than during Moses' lifespan.¹⁵⁵ This chapter does not argue for or against Moses' authentic authorship of the Pentateuch, but rather the objective of this chapter is to demonstrate that the Pentateuch constituted the "public law" of ancient Israel. As the "public law," the Pentateuch, which was often cited as the "Book of the Law" in the historical and prophetic writings, constituted the *fundamental law* of ancient Israel. This public fundamental law was given subsequent interpretation through the application of real-world questions, through the judicial laws as interpreted by the elders; through prophetic writings or oral pronouncements of the several Hebrew prophets; through the Jewish Talmud of subsequent generations of rabbis; and through other readings and sermons delivered in the Temple and in the synagogues.

Fundamentally, public law involves the direct relationship of the civil polity to the citizen. Within the context of the Pentateuch, the first table of the Decalogue (i.e., the duty to love God with all one's heart, mind, soul, and strength)¹⁵⁶ is honored when the civil magistrate establishes justice, equity, and "judgment in the gates."¹⁵⁷ This was, for example, recounted in the *Book of Deuteronomy*, as follows:

153 Isaac Newton, *Observations Upon The Prophecies of Daniel and The Apocalypse of St. John* (United States of America: Renaissance Classics, 2012), p. 3.

154 Genesis 36:31 ("And these are the kings that reigned in the land of Edom, before there reigned any king over the children of Israel.")

155 On the other hand, there is Scriptural evidence within the Pentateuch that Moses may have had "prophetic foreknowledge" of Israel's future kings, as in Genesis 17:16; Genesis 35:11 and Deuteronomy 17:14-15.

156 See Deuteronomy 6:4-7; Matthew 22:37; and Mark 12:30-31.

157 Amos 5:15 ("Hate the evil, and love the good, and establish judgment in the gate...."); Amos 5:21-24 ("I hate, I despise your feast days, and I will not smell in your solemn assemblies. Though ye offer me burnt offerings and

For this commandment which I command thee this day, it is not hidden from thee, neither is it far off.... But **the word** is very nigh unto thee, in thy mouth, and in thy heart, that thou mayest do it. See, I have set before thee this day life and good, and death and evil; In that I command thee this day to love the Lord thy God, to walk in his ways, and to keep his commandments and his statutes and his judgments, that thou mayest live and multiply: and the Lord thy God shall bless thee in the land whither thou goest to possess it.¹⁵⁸

Judges and officers shalt thou make thee in all thy gates, which the LORD thy God giveth thee, throughout thy tribes: and thou shalt judge the people with just judgment. 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 righteousness. That which is altogether just shalt thou follow, that thou mayest live, and inherit the land which the LORD thy God giveth thee....¹⁵⁹

Hence, the underlying objective of the Mosaic laws was anchored in “the word,”¹⁶⁰ implanted in the conscience and “not hidden from thee,” so that the will of God might be known and understood, so that the children of Israel might establish justice (i.e., pursue Virtue and Life and to avoid Vice and Death).

The Mosaic Life-Death Grid (Deuteronomy 30)

Virtue	Life
Vice	Death

your meat offerings, I will not accept them: neither will I regard the peace offerings of your fat beasts. Take thou away from me the noise of thy songs; for I will not hear the melody of thy viols. But let judgment run down as waters, and righteousness as a mighty stream.”)

¹⁵⁸ Deuteronomy 30: 11-16.

¹⁵⁹ Deuteronomy 16:18-20.

¹⁶⁰ In Romans 10: 4-8, the Apostle Paul cited Deuteronomy 30:11-16, in associated “The word” in Deuteronomy 30:8 with “Christ.” Since Deuteronomy 30:11-16 goes on to state that “the word” is the essence of general equity or complete justice, to be implemented by God’s “commandments and his statutes and his judgments,” etc.

The Law of Moses thus became the “fundamental law” of ancient Israel, to wit:

<p>HOLY BIBLE The Fundamental Law of Israel and England (“tzedakah and mishpat”)¹⁶¹</p>	
Virtue (Good)	Blessing (Life)
Vice (Evil)	Curse (Death)

The “public law” of ancient Israel was thus founded upon “general equity” (i.e., the duty “to do tzedakah and mishpat”¹⁶²). The *Nevi'im* and *Kethuvim* merely constituted amendments or additions to the *Torah's* general mandate to do justice and judgment (i.e., general equity). Therefore, all of the biblical narratives, stories, parables, proverbs and poetry in the Old Testament, which together constitute the “legislative” history of the “public law” of ancient Israel, lead us to one basic and general fundamental public law, to wit: “*to do justice and judgment*” (i.e., general equity).¹⁶³ It is therefore appropriate to compare the *Torah* to the national public laws of modern-day nation states.

For instance, national constitutional and public laws have been enacted or promulgated in modern-day nation states not by one person or a select group of persons, but rather by entire national assemblies. It is not inappropriate to construe the Old Testament as a “book of public law” sharing a series of authors who comprised the elders and senior leaders from the entire congregation of Israel. The *Torah* was a “public” law for ancient Israel. For this reason, one might argue that the title “Book of Joshua” does not mean that Joshua himself was the actual author of this book; but, rather, as a “public law” for ancient Israel, the name “Joshua” was affixed as the proper “Title” to this “book of public law.” Similar examples of this is done

¹⁶¹ Genesis 18:18-19.

¹⁶² Ibid.

¹⁶³ Ibid.

frequently in modern-day nation states.¹⁶⁴ And this logic may rightfully be applied to most historical books of the Old Testament.

Thus, Moses himself established a system of “judges and officers” to administer this fundamental law (i.e., “to do tzedakah and mishpat”). For instance, in Chapter 18 of Exodus, Moses established a system of federated courts, with Moses himself as the final arbiter, that were commissioned to judge the ancient Israelites. He selected “able men out of all Israel... rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens”¹⁶⁵ This was a federal system of judges, from which came ancient Israel’s judges.

The Constitutional Office of the Judge

In ancient Israel, the office of the judge was a constitutional office. Beneath the Eved Adonai (prime minister) and the seventy Elders was a system of federated judges which Moses had established upon the advice of his father in law.¹⁶⁶ These judges adjudicated the peoples’ “cumbrance... burden, and... strife,”¹⁶⁷ which we may conclude encompassed all sorts of mundane, worldly, and secular disputes that arose up between the people. There were several scriptural references to the duty of judges to serve nobly, honorably, and justly when discharging their duties and functions, such as:

Exodus 23: 6-9

Judges; Duty to Honestly and Fairly
Judge Cases; Duty to Provide Equality before the Law and
to Protect against Oppression of the Poor, Strangers

Leviticus 19:15, 35-37

Judges; Duty to Honestly and Fairly
Judge Cases; Duty to Provide Equality before the Law and
to Protect against Oppression of the Poor, Strangers

164 In the United States for example, the National Labor Relations Act of 1935, Public Law 74-198 (29 U.S.C.) is officially nick-named the “Wagner Act,” after U.S. Senator Robert F. Wagner (1877 – 1953) of New York. Senator Wagner was the primary sponsor of this legislation, but he was not the only Congressman who shared in the input and writing of this law. Similarly, the “books” of the Old Testament, which often cites “lost” writings, may be viewed in the same light and from the same perspective.

165 Exodus 18:25-26.

166 Exodus 18.

167 Ibid.

Hence, from the perspective of the *Torah*, the duties of judges were not only important secular duties, but they were sacred functions as well. In *Deuteronomy*, Moses described the important and sacred role of ancient Israel's judicial system as follows:

The LORD your God has multiplied you, so that today you are as numerous as the stars of heaven. May the LORD, the God of your ancestors, increase you a thousand times more and bless you, as he has promised you! But how can I bear the heavy burden of your disputes all by myself? Choose for each of your tribes individuals who are wise, discerning, and reputable to be your leaders.' You answered me, 'The plan you have proposed is a good one.' So I took the leaders of your tribes, wise and reputable individuals, and installed them as leaders over you, commanders of thousands, commanders of hundreds, commanders of fifties, commanders of tens, and officials, throughout your tribes. I charged your judges at that time: 'Give the members of your community a fair hearing, and judge rightly between one person and another, whether citizen or resident alien. You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgement is God's. Any case that is too hard for you, bring to me, and I will hear it.' So I charged you at that time with all the things that you should do.¹⁶⁸

The Levites' role would be to serve alongside of other judges by teaching the law (i.e., *Torah*) to the rest of the Israelites, to wit:

If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke, being matters of controversy within thy gates: then shalt thou arise, and get thee up into the place which the LORD thy God shall choose; And thou shalt come unto the priests the Levites, and unto the judge that shall be in those days, and enquire; and they shall shew thee the sentence of judgment: And thou shalt do according to the sentence, which they of that place which the LORD shall choose shall shew thee; and thou shalt observe to do according to all that they inform thee: According to the sentence of the law which they shall teach thee, and according to the judgment which they shall tell thee, thou shalt do: thou shalt not decline from the sentence which they shall shew thee, to the right hand, nor to the left. And the man that will do presumptuously, and will not hearken unto the priest that standeth to minister there before the LORD thy God, or unto the judge, even that man shall die: and thou shalt put away the evil from Israel.¹⁶⁹

168 Deuteronomy 1: 10-18.

169 Deuteronomy 17:8-12; Deuteronomy 27:14-26; Deuteronomy 33:8-10 ("And of Levi he said, Let thy Thum'min and thy U'rim be with thy holy one.... They shall teach Jacob thy judgments, and Israel thy law: they shall put incense before thee and whole burnt sacrifice upon thine altar.")

Hence, initially, the judge-elder (Exodus, Chapter 18) and the judge-priest (Deuteronomy, Chapter 33) constituted two classes of judges who judged Israel. But, finally, there was a third and highly important class of judge who emerged after the days of Moses, and that was the “Judge-prophet,” or a constitutional arbiter of the nation of Israel.

“The Constitutional Office of the Prophet”

Moses was not only the Eved Adonai (prime minister) of ancient Israel, but he was also a prophet. In *Deuteronomy*, Moses legitimizes the office of the prophet, and establishes it as a constitutional office in Israel.¹⁷⁰ Moses states that the LORD God shall raise up “a Prophet... like unto me,” who will go before God, who will put words in the prophet’s mouth, and who shall speak directly to the people. Moses commands the children of Israel to hearken to the voice of the Prophet (i.e., the Word of God). Moses also gave the children of Israel a litmus test for determining whether the prophet be true or false, to wit, “if the thing follow not, nor come to pass, that is the thing which the LORD hath not spoken, but the prophet hath spoke it presumptuously: thou shalt not be afraid of him.”¹⁷¹

According to Jewish scholar Dr. Daniel Elazar, the office of the prophet could “make or break a king.” Dr. Elazar writes: “The prophetic role becomes three-fold. The prophets serve as king-makers, as critics, and if necessary as king-removers, and as definers of the ideal exercise of rule (cf. Jeremiah 22:13-17), where the prophet denounces Jehoiakin, on the grounds that the king must be implementer of justice and human rights.”¹⁷²

170 Deuteronomy 18:15-22.

171 Deuteronomy 18:22.

172 Daniel J. Elazar, “Dealing with Fundamental Regime Change: The Biblical Paradigm of the Transition from Tribal Federation to Federal Monarchy Under David,” *Jerusalem Center for Public Affairs* (Elazar Papers Index) <https://www.jcpa.org/dje/index-apc.htm>

Hence, the role of the prophet was to dwell with God’s spirit and to speak God’s Word—in a word, to interpret the *Torah* or to interpret the constitution of ancient Israel and to vindicate the *Torah* by speaking out against social injustice, including against wrongdoings of the king. Significantly, a “prophet” need no be a priest or a Levite. After Saul became Israel’s first king, the prophet Samuel’s role as guardian to the *Torah* (i.e., Israel’s constitution and fundamental law) also simultaneously emerged. Subsequently, as the Prophet Nathan served King David, and throughout the histories of Judah and Israel, there were prophets who fulfilled the same constitutional function. During the period of the Babylonian captivity, the Hebrew prophet Daniel served the same function within the Babylonian and Persian empires. Christologically speaking, these prophets represented the Word of God (i.e., Christ himself) to these nations.

According to Dr. Elazar, after David ascended to the thrones of Judah and Israel, the “Office of the Prophet” became a distinct constitutional office within Israel’s constitution. Previously, during the periods of Moses, Joshua, the Judges, and the prophet Samuel, the prophetic office had been more or less merged into the functions of the Eved Adonai/ Hashem or the Shofets.¹⁷³ After David became king, however, the prophetic office was separated out from offices of the Eved Adonai/ Hashem or the Shofet. The unique role of the prophet thus becomes that of “constitutional interpretation,”¹⁷⁴ and the interpretation of the *Torah* (i.e., “the domain of the *keter torah*”).¹⁷⁵ Once this occurs, writes Dr. Elazar, ancient Israel’s constitution may be described as having “three crowns,” that is, the *keter torah*, the *keter kehunah*, and the *keter malkhut*, to wit:

173 Ibid.

174 Ibid.

175 Ibid.

The Three Crowns of the Constitution of Israel

CROWN The Keter Torah	CROWN The Keter Kehunah	CROWN The Keter Malkhut
The <i>Prophetic function</i> : to interpret the <i>Torah</i> ; “the domain of constitutional interpretation.”	The <i>Priestly function</i> : “the domain of the priesthood”; connecting people to God; the ritual and sacerdotal function.	The <i>Kingly function</i> : “the domain—literally crown—of civil rule.”
Men and Women with a Special call directly from God to speak His Word.	Kohen Gadol (Chief Priest) Priests Levites	King (Judah/ Israel) 12 Princes 70 Elders Judges/ Officers

“Thus, the basis for a tripartite division of authority between civil, priestly, and prophetic or constitutional interpretation functions was set down through subsidiary covenants early in the Biblical account of the history of Israel as a polity.”¹⁷⁶ Since the “Office of the Prophet” represents the Word of God or the actual interpretation of the *Torah*, one can make the argument that the prophet is superior in rank to both the priest and the king.

TORAH (Word of God)	
Prophet (Superior Position)	
King (Subordinate Position)	Priest (Subordinate Position)

What, then, does this say about the important constitutional “Office of the Prophet?” First, the Hebrew prophet is by virtue of his or her divine mission, a person of immense

176 Ibid.

influence or a person who is politically connected to the highest echelons of worldly power.

Throughout the Sacred Scriptures, the prophet is often seen as an adviser to kings and emperors, and an promoter of public policy and public law:

- The Prophet Joseph was an advisor to Pharaoh, King of Egypt.
- The Prophet Moses was a former prince of Egypt and the Prime Minister of ancient Israel
- The Prophet Deborah was a *Shofet* (Judge) of ancient Israel
- The Prophet Samuel was a *Shofet* (Judge) of ancient Israel
- The Prophet Nathan was a member of King David’s royal court
- The Prophet Daniel was a high-level civil servant in the ancient Babylonian Empire and, later, elevated to the position of a president in the Persian Empire.
- The Prophet Isaiah was a personal advisor to King Hezekiah of the kingdom of Judah
- The Prophet Jeremiah, though unpopular, was an advisor to King Zedekiah of the kingdom of Judah.
- The Prophet Elijah, though unpopular, was an advisor to King Ahab of the northern kingdom of Israel.

In general, the ancient Hebrew prophets interpreted and applied the *Torah* (i.e., the Adamic, Noahic, and Abrahamic covenants, etc.) to the secular socio-political conditions of their time, often criticizing, when necessary, the entire Hebrew commonwealth or policy: the people, the priests, and the king.¹⁷⁷ Hence, the constitutional nature of the *Torah* is fundamentally civil and secular, because one of the *Torah*’s primary concerns is the application of equity and justice within the secular realm.¹⁷⁸

“The Constitutional Office of the King”

The Office of the King of Israel was promulgated in the *Book of Deuteronomy*.¹⁷⁹

Significantly, this constitutional office was a limited monarchy (i.e., *nagrid*)¹⁸⁰ that remained

177 See, above, Chapter Two, Section 5, “Civil Government: General Equity and Natural Justice.”

178 Ibid.

179 Deuteronomy 17:14-20.

180 The Hebrew “king” was conceptualized by the Prophet Samuel to be a “prime minister for the LORD God” and not an absolute monarch. Hence, the Hebrew term for “king” was “nagrid,” which conceptualized the king as holding power in a limited capacity with powers limited only to doing the will of God or meting out true justice—not carrying out his own arbitrary will. See, generally, Daniel J. Elazar, “Dealing with Fundamental Regime Change: The Biblical Paradigm of the Transition from Tribal Federation to Federal Monarchy Under David,” *Jerusalem Center for Public Affairs* (Elazar Papers Index) <https://www.jcpa.org/dje/index-apc.htm>

subordinated to law of God.¹⁸¹ In *Deuteronomy*, for instance, Moses instituted the office of the king, and describes that office as a limited monarchy or as being, essentially, a chancellor for God (i.e., God's *nagid*).¹⁸² Such a king or nagrid must do tzedakah and mishpat ("justice and judgment"), and remain subordinate to the *Torah* (i.e., the fundamental law of Israel), to wit:

When thou art come unto the land which the LORD thy God giveth thee, and shalt possess it, and shalt dwell therein, and shalt say, I will set a king over me, like as all the nations that are about me;

Thou shalt in any wise set him king over thee, whom the LORD thy God shall choose: one from among thy brethren shalt thou set king over thee: thou mayest not set a stranger over thee, which is not thy brother.

But he shall not multiply horses to himself, nor cause the people to return to Egypt, to the end that he should multiply horses: forasmuch as the LORD hath said unto you, Ye shall henceforth return no more that way.

Neither shall he multiply wives to himself, that his heart turn not away: neither shall he greatly multiply to himself silver and gold.

And it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book out of that which is before the priests the Levites:

And it shall be with him, and he shall read therein all the days of his life: **that he may learn to fear the LORD his God, to keep all the words of this law and these statutes, to do them:** That **his heart be not lifted up above his brethren**, and that **he turn not aside from the commandment**, to the right hand, or to the left: to the end that he may prolong his days in his kingdom, he, and his children, in the midst of Israel.¹⁸³

Although ancient Israel did not anoint a king until more than four hundred years after the death of Moses, the scribes of Israel carefully chronicled the official actions of all of the kings and queens of the ancient Kingdoms of Judah and Israel and adjudged whether they "did

181 Ibid.

182 Daniel J. Elazar, "Dealing with Fundamental Regime Change: The Biblical Paradigm of the Transition from Tribal Federation to Federal Monarchy Under David," *Jerusalem Center for Public Affairs* (Elazar Papers Index) <https://www.jcpa.org/dje/index-apc.htm>.

183 Ibid.

good” or “did evil” in the eyes of the LORD God. Israel’s scribes and prophets chronicled the job performance of Israel’s and Judah’s kings-- whether they did “good” or “evil”-- as follows:

Kings of the United Kingdom of Israel (c 1025 - 925 BC)		
King	Relationship to Previous King	God’s Judgment
Saul	None	did evil
Ishbogheth	Son	Unknown
David	None	did good
Solomon	Son	did good in youth; but did evil in old age.
Kings of the Judah (c 925 BC – 586 B.C.)		
King	Relationship to Previous King	God’s Judgment
Rehoboam	None	did evil
Abijam	Son	did evil
Asa	None	did good
Jehoshaphat	Son	did good
Jehoram	Son	did evil
Ahaziah	Son	did evil
Athaliah	Mother	did evil
Jehoash	son of Ahaziah	did right good in youth; did evil in old age
Amaziah	Son	did right good in youth; did evil in old age
Uzziah	Son	did right/ good
Jotham	Son	did right/ good
Ahaz	Son	did evil
Hezekiah	Son	did right/ good
Manasseh	Son	did evil
Amon	Son	did evil
Josiah	Son	did right/ good
Jehoahaz III	Son	did evil
Jehoiak	son of Josiah	did evil
Jehoiachin	Son	did evil

Zedekiah	son of Josiah	did evil
Babylonian Captivity 597 B.C.		
Kings of the Israel (c 925 BC – 721 B.C.)		
King	Relationship to Previous King	God's Judgment
Jeroboam	Servant	did evil
Nadab	Son	did evil
Baasha	None	did evil
Elah	Son	did evil
Zimri	Captain	did evil
Omri	Captain	did evil
Ahab	son	did evil
Ahaziah	Son	did evil
Jehoram	son of Ahab	did evil
Jehu	Captain	did right good; did right (mixed)
Jehoahaz	Son	did evil
Joash	Son	did evil
Jeroboam II	Son	did evil
Zechariah	Son	did evil
Shallum	None	did evil
Menahem	None	did evil
Pekahiah	Son	did evil
Pekah	Captain	did evil
Hoshea	None	did evil
Assyrian Captivity 722 B.C.		

Eventually, this Office of the King prefigured the Christ or the Messiah himself.¹⁸⁴ The king of Israel was a “priestly” office and function, as he was, and King David called himself

¹⁸⁴ See, generally, the Books of Isaiah, Daniel, and Revelation.

(Psalm 110.4) , a priest after the order of Melchizedek. When Abraham avenged his nephew Lot by destroying his captors, he was given the bread and wine from this same Melchizedek. From this, this postdoctoral study concludes that the exercise of the civil sword is a divine function, ordained by God. And when the Messiah, who is the Jesus, assumed that title as the High Priest after the Order of Melchizedek, we are to assume that Christ, and his church, has some influence and power over the “civil sword.”

God would eventually establish a new covenant with both Israel and Judah, as in the Book of Jeremiah, and an everlasting kingdom, which would be led by the Christ, would be firmly established in Jerusalem. Hence, when Jesus Christ came, ministered, was crucified, rose from the dead, and returned to the right hand of his Father God, the Christian world concluded that this kingdom had come, that it presently existed, that it was universal, and that it had been diffused throughout the entire world, to both Jew and Gentile alike. This King of the Jews had thus become king of the entire universe, and all nations must eventually succumb to his divine Providence.¹⁸⁵ The Calvinists and the Puritans would later give this history a radically different interpretation as to how the church and civil society should be instituted.

“The Congregation of Israel”

The *ecclesia* (i.e., congregation) of ancient Israel has been considered to be one of the pillars of Western civilization and democracy. The “congregation of Israel” was a term that is mentioned and applied in a variety of contexts throughout the Sacred Scriptures, particularly in the Book of Exodus, Leviticus, Numbers, and Deuteronomy, and in succeeding books of the Old Testament. The “congregation” meant an organized gathering of Israel’s most important leaders and the people.¹⁸⁶ During the time of Moses, this would have included the Chief

185 Matthew 28: 18-20.

186 See, e.g., “The Church,” *New Advent* <https://www.newadvent.org/cathen/03744a.htm>, stating:

In order to understand the precise force of this word, something must first be said as to its employment by the Septuagint translators of the Old Testament. Although in one or two places (Psalm 25:5; Judith 6:21; etc.) the word is used without religious signification, **merely in the sense of "an assembly"**, this

Minister (i.e., Moses), the Chief Priest (i.e., Aaron and his sons), the Princes of the twelve tribes, the seventy elders, the federated judges, the heads of families and extended families, and the common man.¹⁸⁷ Hence, the Congregation of Israel was a representative body for the entire nation of ancient Israel, whereby Moses, Joshua, the judges, and the kings of Israel issued orders and decrees and thereby governed.¹⁸⁸ The “ecclesia” thus includes all assemblies, whether ecclesiastical (church) or legislative (state). Indeed, the Church of Israel and the ecclesia or Assembly of Israel were two sides of the same coin. They were interconnected and ultimately governed by the same divine Law.¹⁸⁹

“Influences Ancient Israel’s Public Law and Civil Polity Upon Anglo-American Constitutional Law and Legal Institutions”

It is in this sense that we may analogize the *ecclesia* (i.e., congregation) of ancient Israel to the *ecclesia* (i.e., the Parliament and Congress) of the Kingdoms of England and Great Britain and the United States).¹⁹⁰ Indeed, both the *ecclesia* of ancient Israel and of England

is not usually the case. Ordinarily it is employed as the Greek equivalent of the Hebrew qahal, i.e., **the entire community of the children of Israel viewed in their religious aspect**. Two Hebrew words are employed in the Old Testament to signify the congregation of Israel, viz. qahal 'edah. In the Septuagint these are rendered, respectively, ekklesia and synagoge. Thus in Proverbs 5:14, where the words occur together, "in the midst of the church and the congregation", the Greek rendering is en meso ekklesias kai synagoges. The distinction is indeed not rigidly observed — thus in Exodus, Leviticus and Numbers, both words are regularly represented by synagoge — but it is adhered to in the great majority of cases, and may be regarded as an established rule. In the writings of the New Testament the words are sharply distinguished. With them ecclesia denotes the Church of Christ; synagoga, the Jews still adhering to the worship of the Old Covenant. Occasionally, it is true, ecclesia is employed in its general significance of "assembly" (Acts 19:32; 1 Corinthians 14:19); and synagoga occurs once in reference to a gathering of Christians, though apparently of a non-religious character (James 2:2) But ecclesia is never used by the Apostles to denote the Jewish Church. The word as a technical expression had been transferred to the community of Christian believers.

187 Ibid.

188 Ibid.

189 Similarly, the “Early Church”—which is generally defined as churches that existed before Christianity was legalized in 313 A.D. or incorporated into the Roman empire in 380 A.D.—developed a similar method of conducting convocations, gatherings, and meetings. For example, in the Book of Acts, the Early Church met at Jerusalem in the form of a council, which consisted of the twelve apostles and the elders of the several churches. Since that time, the Early Church continued to meet in convocations and to organize a system of representation.

190 Jeremy Gregory, Editor, *The Oxford History of Anglicanism: Establishment and Empire, 1662 – 1829*, Vol. II (Oxford, U.K.: Oxford University Press, 2017), p. 69 (“the Church, its clergy, and laity retained a central place in the main governing institutions of the British state, especially the two houses of Parliament. Twenty-six bishops sat in the House of Lords, comprising some 10 per cent of its active membership—a role which required a significant commitment from these leading churchmen in an age of regular parliamentary sessions.... This was a key condition for the persistence of the view that the English state and Church were **two sides of the same**

were organized around the same fundamental laws (i.e., the word of God), and both promulgated and administered laws governing both sacred and secular affairs. Surely, the Puritans in England and in colonial New England considered Parliament and their colonial legislative assemblies to be replicas of the *ecclesia* of ancient Israel. But this was also true of most Anglicans within the Church of England. And we are not to suppose that the Congress of the United States, that sublime assembly that was devised by the American colonists, was not similarly conceived as a sort of divine *ecclesia*.¹⁹¹

coin so that Parliament could be seen as the 'lay synod' of the Church of England")

191 **United States Congress:** See, e.g., Thomas Paine, "Letter to George Washington", Paris, 30 July, 1796, *In The Writings of Thomas Paine*, ed. Moncure D. Conway, (New York: AMS Press Inc., 1967), Vol. IV, 252. ("As the [American] Federal Constitution is a copy, not quite so base as the original, of the form of the British government, an imitation of its vices was naturally to be expected.") We find this fact plainly exemplified in *The Federalist Papers*, No. 52, which was written by either Alexander Hamilton or James Madison (or co-authored by both men), and which states:

Let us consult experience, the guide that ought always to be followed whenever it can be found. The scheme of representation, as a substitute for a meeting of the citizens in person, being at most but very imperfectly known to ancient polity, it is in more modern times only that we are to expect instructive examples. And even here, in order to avoid a research too vague and diffusive, it will be proper to confine ourselves to the few examples which are best known, and which bear the greatest analogy to our particular case. The first to which this character ought to be applied, is the House of Commons in Great Britain. The history of this branch of the English Constitution, anterior to the date of Magna Charta, is too obscure to yield instruction. The very existence of it has been made a question among political antiquaries. The earliest records of subsequent date prove that parliaments were to SIT only every year; not that they were to be ELECTED every year. And even these annual sessions were left so much at the discretion of the monarch, that, under various pretexts, very long and dangerous intermissions were often contrived by royal ambition. To remedy this grievance, it was provided by a statute in the reign of Charles II. , that the intermissions should not be protracted beyond a period of three years. On the accession of William III. , when a revolution took place in the government, the subject was still more seriously resumed, and it was declared to be among the fundamental rights of the people that parliaments ought to be held FREQUENTLY. By another statute, which passed a few years later in the same reign, the term "frequently," which had alluded to the triennial period settled in the time of Charles II. , is reduced to a precise meaning, it being expressly enacted that a new parliament shall be called within three years after the termination of the former. The last change, from three to seven years, is well known to have been introduced pretty early in the present century, under an alarm for the Hanoverian succession. From these facts it appears that the greatest frequency of elections which has been deemed necessary in that kingdom, for binding the representatives to their constituents, does not exceed a triennial return of them. And if we may argue from the degree of liberty retained even under septennial elections, and all the other vicious ingredients in the parliamentary constitution, we cannot doubt that a reduction of the period from seven to three years, with the other necessary reforms, would so far extend the influence of the people over their representatives as to satisfy us that biennial elections, under the federal system, cannot possibly be dangerous to the requisite dependence of the House of Representatives on their constituents.

For a scholarly review of the Christian origins of American democracy, see William Goodell, *The Democracy of Christianity*, Vol. II (New York, N.Y.; Cady and Burgess, 1852).

In England, as on the continent of Europe where orthodox Christianity of the Roman Catholic Church reigned as the predominant religion, the Office of the King or Prince was patterned after ancient Israel's Office of the King. Conceptually, he must reign with a limited authority subject to the Law of God, which was considered the "fundamental law." Ancient Israel's Office of the Judge, together with its ethical parameters and duties, also became a model for both England's and continental Europe's judicial systems. Indeed, the enduring legacy of the judicial systems of ancient Israel is reflected in English law and jurisprudence.¹⁹² And, as a Christian kingdom, English or British judges were obliged to consider the Sacred Scriptures as a part of the fundamental law of England. ¹⁹³ And English judges frequently relied upon, and referenced, the Holy Bible in their official court opinions.¹⁹⁴ English judges such as Henry de Bracton, John Fortescue, Edward Coke, William Blackstone, and William Mansfield frequently paid homage to the plain texts of the Sacred Scriptures, within the course of discharging their official juridical or legal duties as English judges.¹⁹⁵ Like the superior courts of England, in ancient Israel, the role and function of the judge was to apply the fundamental law (i.e., constitutional law, equity, justice, etc.) to the secular affairs of the nation. And, as it turns out, the fundamental law of ancient Israel became, through the influence of the Christian religion, the fundamental law of the Kingdom of England. For the proverbial "House of Abraham" shall do "justice and judgment" (i.e., tzedakah and mishpat).¹⁹⁶ And the Kingdom of England enforced the same mandate.

192 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)

193 Ibid.

194 Ibid.

195 Ibid.

196 Genesis 18:18-19.

The kingdoms of England and Great Britain did not discard the examples set by ancient Israel.¹⁹⁷ They organized their legal and judicial offices after the sacred offices of the Mosaic Elders and priestly offices of the Levites, and for many centuries most, if not all, of England's judges were "men in holy orders" to the Church of England. It should be noted that in general, there were four broad categories of law in England:¹⁹⁸

Type of Law	Education/ Training	Professional Title/ Degree	Secular/ Church Affiliation
I. English Common Law	Inns of Court	Barristers; Solicitors; and Sergeants-at-Law. (No university training required)	Non-Clergy or Clergy.
II. Royal Law (Equity or Chancery; Statutes; Ordinances; Decrees)	Inns of Court; Inns of Chancery; Sergeant's Inn; Oxford Univ.; Univ. of Cambridge	Barristers; Solicitors; Sergeants, Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)
III. Roman Civil Law	Roman Church; Oxford; Cambridge, etc.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)
IV. Canon Law	Roman Church; Oxford; Cambridge.	Clergy; J.C.D (doctor of canon law); LL.D. (Doctor of Canon/ Civil Law).	Clergy (Roman Catholic; Church of England)

The English clergy, to be sure, was the most advanced and educated of the lawyers.

During the thirteenth and fourteenth centuries, all the English judges were clergymen.¹⁹⁹ They

197 See, generally, Frank Zinkeisen, "The Anglo-Saxon Courts of Law," *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895); "Shire Courts," Wikipedia Encyclopedia (Online) https://en.wikipedia.org/wiki/Shire_Court; Godwin Smith, *A History of England* (New York, N.Y.: Charles Scribner's Sons, 1957). From the time of King Ethelbert (560- 616 A.D.) to the year 1066 when William the Conqueror (i.e., King William I) invaded England, the English legal system was then naturally dominated by the priests and the bishops, since they were the most learned and influential men in Europe and Britain. There were two broad types of courts in England: the hundred courts and the shire courts. Bishops and priests, together with earls and sheriffs presided over both courts. See, e.g., Frank Zinkeisen, "The Anglo-Saxon Courts of Law," *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895), pp. 132-144 ("[a]s to actual judicial authority, it seems, at least in the time of [the Anglo-Saxon king] Cnut, to have lain chiefly in the hands of the bishop, who was assisted by the secular arm of the ealdorman (earl) and the executive power of the latter or his deputy, whether a sheriff or other officer.")

198 Roscoe Pound, *Legal Profession in the Middle Ages*, 3 *Notre Dame Law Review* 229, 234 (1944).

199 *Ibid.*

were trained typically in France or at Oxford or Cambridge in the Roman civil law and canon law.²⁰⁰ They typically held law degrees, which were the first university-level degrees granted: the doctor of civil or canon law.²⁰¹ Within the ecclesiastical courts of England and Europe, there were two categories of lawyers under holy orders (i.e., clergy lawyers):²⁰²

Advocate (clergy)	Doctors of Civil or Canon Law (DCL or LLD)
Juris Consult, or Law Professor (clergy)	University or Canon Law Teachers or Professors (DCL or LLD)

Indeed, both ancient Israel’s and the early Anglo-Saxon’s justice systems permitted clergymen to serve as “secular” judges on the local courts. In the case of ancient Israel, these clergymen were generally the Levites; and in England, they were bishops and priests.²⁰³ Since the secular laws of both ancient Israel and England had to comport with standards of general morality, equity, and the word of God, and since in both nations the clergymen were generally the most learned men in their societies, it was fully appropriate that these clergymen participated in court cases. Thus, in England, the office of the king/queen; the offices of the judge; the offices of priest/bishop; the offices of the members of parliament, etc.-- in both the ecclesiastical and civil in nature-- were patterned after the ancient offices of the civil polity of

200 Ibid.

201 Ibid.

202 Ibid.

203 See, generally, Frank Zinkeisen, “The Anglo-Saxon Courts of Law,” *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895); “Shire Courts,” Wikipedia Encyclopedia (Online) https://en.wikipedia.org/wiki/Shire_Court ; Godwin Smith, *A History of England* (New York, N.Y.: Charles Scribner’s Sons, 1957). From the time of King Ethelbert (560- 616 A.D.) to the year 1066 when William the Conqueror (i.e., King William I) invaded England, the English legal system was then naturally dominated by the priests and the bishops, since they were the most learned and influential men in Europe and Britain. There were two broad types of courts in England: the hundred courts and the shire courts. Bishops and priests, together with earls and sheriffs presided over both courts. See, e.g., Frank Zinkeisen, “The Anglo-Saxon Courts of Law,” *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895), pp. 132-144 (“[a]s to actual judicial authority, it seems, at least in the time of [the Anglo-Saxon king] Cnut, to have lain chiefly in the hands of the bishop, who was assisted by the secular arm of the ealdorman (earl) and the executive power of the latter or his deputy, whether a sheriff or other officer.”)

ancient Israel. And, likewise, the United States Government and the governments of its several states were patterned after both the governments of Great Britain²⁰⁴ and ancient Israel.²⁰⁵

204 See, e.g., Thomas Paine, "Letter to George Washington", Paris, 30 July, 1796, *In The Writings of Thomas Paine*, ed. Moncure D. Conway, (New York: AMS Press Inc., 1967), Vol. IV, 252. ("As the [American] Federal Constitution is a copy, not quite so base as the original, of the form of the British government, an imitation of its vices was naturally to be expected.")

205 See, e.g., "The Ancient Hebrew Polity," *The Presbyterian Quarterly* 12.2 (April 1898): 153-169, stating:

We do not here speak of the People's acceptance of this Constitution, which will be better exhibited in another connexion; but press the simple fact **that Israel was from the beginning under a Constitutional government**, in which the relations and duties of all parties under its protection were accurately defined. Such an instrument becomes not only a regulative code, but also a charter of rights. **After centuries of conflict to obtain it, modern sagacity has discovered no greater safeguard of political and civil freedom....** It would be pleasant just here, to show **the parallelism between the Hebrew Commonwealth and our own [i.e., the United States of America]** : which is so striking that in reciting the history of the one, we seem to be drawing the picture of the other. **The twelve Tribes of Israel almost re-appear in the States of this Republic**; and the weakness in the government from tribal independence was reproduced with us, compelling as in their case a closer Federal union.

All this must, however, be pretermitted to make room for the statement that, in the changes of time, so much has the danger shifted from disintegration to centralism, as to lodge the only hope of preserving **our American system** in the autonomy of the States, and in the maintenance of their right to local self-government. Can a stronger encomium be pronounced upon that feature of **the Hebrew Constitution**, which so early established a bulwark against Imperialism ? ...God, though unseen, was the acknowledged King. Whatever the outward form of the government—whether democratic, as till the close of Samuel's regency—or Monarchical, as under the kings—or Oligarchic, as after the Captivity—through all it was Theocratic. Did ever a nation possess such a bond of union before ? Did ever Majesty like this sit upon an earthly throne? Can we conceive extremes brought together, between which all friction shall be so completely removed ? How could such a King encroach upon the liberty of the subject? How could the subject find occasion to be jealous of the prerogatives of such a Monarch ? This is not all. **The Hebrew religion was thus bound up in the Hebrew nationality. The two were so welded into one by the pressure of fifteen centuries and under the discipline of an extraordinary providence, that eighteen centuries of dispersion have not separated the embrace.** So thoroughly was the Theocratic principle wrought into the texture of Hebrew thought that, without a country and without a government, their religion alone makes them a nation still. The Hebrew State is gone ; but the nationality which should have perished with it, survives unbroken in the Hebrew Church. When was such a crystal as this ever produced in the historic outworking of any other political Constitution?' ... **The Hebrew government rested upon the consent of the people, formally and constitutionally expressed. This is recognized in modern times as the corner-stone of civil liberty**, which claims for the subject not only the right to determine the character and form of the government, but also a voice in shaping the legislation. **The American Revolution**, for example, which dissolved the bands of British allegiance, turned upon the principle that taxation without the right of representation was only the exaction of tribute. We find the same principle further back as the pivot upon which **English history turns—from the wresting of Magna Charta** by the Barons from the feeble John, to the issue of the long struggle between privilege and prerogative in the expulsion of the treacherous Stuarts from the throne. If then this vital principle shall be found **incorporated in the Hebrew polity, it will justify the assertion that it was designed by the Supreme Lawgiver** to confront the old despotisms, as the working model of a free government. There is room for but a few specifications, and these in the briefest synopsis: (a) **The Constitution itself given by Jehovah** was submitted, in all its details, to the ratification of the people; and He, by public acclamation, was accepted as their Sovereign. When Joshua represented the difficulties of this service, the response was, "Nay, but we will serve the Lord : and Joshua said unto the people, ye are witnesses unto yourselves that ye have chosen you the Lord to serve Him : and they said, we are witnesses." (b) We find some of the Judges, as Jephtha, chosen by the people (Judges 11:5, 10, 11); although this extraordinary office especially reflected the Theocratic principle. (c) The great change wrought in the administration of government by the institution of hereditary Monarchy, was effected by the demand of the people, and against the remonstrances of Samuel: "Nevertheless the

For this and other reasons, American lawyers and judges may rightfully trace the source of the “fundamental law” of the American Declaration of Independence to ancient Mosaic theology which limited the authority and power of the kings of Israel to the Law of God. Likewise, the republican and democratic structure and function of the American government may be traced to the legacy and influence of ancient Israel’s civil polity and public laws which are contained within the Old Testament. And this nexus between the foundations of American government and ancient Israel was due in large measure to the Puritans of colonial New England.²⁰⁶ With their strong reliance upon the doctrine of the priesthood of all believers, these Puritans emphasized democracy, the limited powers of public officials, and accountability to Higher Law--²⁰⁷ public law and policy that exemplified the political heritage of ancient Israel.

people refused to obey the voice of Samuel; and they said, Nay, but we will have a king over us.” (1 Sam. 8:19.) (d) Both Saul and David, after being designated by God and anointed by Samuel, did not assume the functions of royalty until they were confirmed by the popular choice. (1 Sam. 11:14, 15. 2 Sam. 2:4.) (e) David was seven years king over Judah alone, before his authority was recognised by the other Tribes; who were nevertheless absolved from the charge of rebellion.

See, also, Daniel J. Elazar, “The Polity in Biblical Israel,” Jerusalem Center for Public Affairs, <http://www.jcpa.org/dje/articles3/apl-ch1.htm>; Daniel J. Elazar, “Dealing with Fundamental Regime Change: The Biblical Paradigm of the Transition from Tribal Federation to Federal Monarchy Under David,” *Jerusalem Center for Public Affairs* (Elazar Papers Index) <https://www.jcpa.org/dje/index-apc.htm>; Richard Hooker, *The Laws of Ecclesiastical Polity*, Books I- IV (Nashotah, WI: Nashotah House Press, 2012); Roscoe Pound, *Legal Profession in the Middle Ages*, 3 *Notre Dame Law Review* 229, 234 (1944); Frank Zinkeisen, “The Anglo-Saxon Courts of Law,” *Political Science Quarterly*, Vol. 10, No. 1 (Mar. 1895), pp. 132-144; Goldwin Smith, *A Constitutional and Legal History of England* (New York, N.Y.: Dorset Press, 1990). Godwin Smith, *A History of England* (New York, N.Y.: Charles Scribner’s Sons, 1957); 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); William Goodell, *The Democracy of Christianity*, Vol. II (New York, N.Y.; Cady and Burgess, 1852).

²⁰⁶ See, e.g., William Goodell, *The Democracy of Christianity*, supra, p. 484 (“[T]he people of Great Britain are indebted to the Puritans. What is wanting, both in England and America, to the completeness and the security of human freedom, is an undeviating fidelity to those principles of Christian democracy which the Puritans in some measure restored.... If the people desire larger measures of liberty, they have only to become more democratic, more Christian.”) And see Algernon Sidney Crapsey, *Religion and Politics*, supra, p. 244 (“It was the belief of the Puritan that was the motive power of the American Revolution. It was the stern conviction of the Puritan that not King George, but God, was the rightful sovereign in America... and it was the conviction of the Puritan that sustained the people of the country through the long years of the Revolutionary War.”)

²⁰⁷ For example, William Goodell states in *The Democracy of Christianity*, p. 376, that the “Puritan and Common Law expositions of Paul, in Romans xiii” became an “**echo**... in our Declaration of Independence.”

Chapter Four

“General Equity: Private Law and Ancient Israel”

As with Aristotle, whose Ethics held that the strict, rigid, and stringent nature of certain statutes or legal rules must give way to principles of natural justice, so too did the ancient Israelites follow the same juridical procedure. The judges of ancient Israel were, above all else, charged with meting out divine justice between individuals persons. The private laws of ancient Israel²⁰⁸ were divided between three basic categories of law: *moral laws*, *judicial laws*, and *ceremonial laws*.²⁰⁹ Indeed, regardless of how these laws of categorized, the Law of Moses emphasized equity, faith, and good faith and fair dealing in every aspect of civil, social, familial, and business relationships.²¹⁰ In ancient Israel, these relationships were not simply “contractual” but they were also “solemn oaths” and “covenants”²¹¹ having sacred and divine implications.²¹² The Law of Moses emphasized the important prophetic forewarning that,

²⁰⁸ See, e.g., Jerold S. Aurebauch, *Rabbis and Lawyers: The Journey From Torah to Constitution*, supra, pp. 47-48:

As sacred law, Jewish law comprehensively integrates... Morality and law... In the Torah, indiscriminately mixed, are ‘legal’ principles of trespass and damage, theft and restitution, personal injury and retribution; ‘religious’ precepts regarding sacrifice and festival observance; and ‘ethical’ admonitions regarding due care of widows, orphans, and strangers. Sacred law, because it comes from God, includes social conduct, family relationships, culinary preferences, and ritual obligation.

²⁰⁹ The Westminster Confession of Faith of 1647, Chapter 19, “Of the Law of God.” The Confession states that of these three laws, only the moral law (i.e., general equity) remain in effect today.

²¹⁰ Ralph A. Newman, *The Renaissance in Good Faith in Contracting in Anglo-American Law*, 54 CORNELL Rev. 553 (1969)(surveying the concept of good faith across different cultures. Several authors have traced the concept back to the Bible. For instance, one scholar cites the Old Testament, Leviticus 19:1 & --- “Thou shalt love thy fellow-man as thyself”—as an early reference to the obligation to act with good faith).

²¹¹ See, e.g., Friedrich Kessler & Edith Fine, *Culpa in Contrahendo, Bargaining in Good Faith, and Freedom of Contract: A Comparative Study*, 77 HARV. L. REV. 401 (1964)(tracing the concept of good faith and fair dealing through various doctrines in American contract law); Ralph A. Newman, *The Renaissance in Good Faith in Contracting in Anglo-American Law*, 54 CORNELL Rev. 553 (1969)(surveying the concept of good faith across different cultures. Several authors have traced the concept back to the Bible. For instance, one scholar cites the Old Testament, Leviticus 19:1 & --- “Thou shalt love thy fellow-man as thyself”—as an early reference to the obligation to act with good faith); Russell A. Eisenberg, *Good Faith Under the Uniform Commercial Code- A New Look at an Old Problem*, 54 MARQ. L. REV. 1, 10 (1971).

²¹² Ibid. See, also, Leviticus 19: 17-18, stating: “Thou shalt not hate thy brother in thine heart... but thou shalt love thy neighbor as thyself: I am the LORD.”

without the spirit of *agape* being infused within every aspect of these covenant relationships, the soul of ancient Israel, as well as other disobedient and sinful nations, would collapse underneath the weight of its own corruption.²¹³

Therefore, Apostle Paul's statement that "[l]ove worketh no ill to his neighbor: therefore love is the fulfilling of the law," describe the natural logic and objective of the Law of Moses. By encouraging fellow citizens to "love each other," and to treat each other in a manner in which they wished to be treated, or to show benevolence and charity towards each other, would naturally generate the legal injunctions that require fellow citizens to actually demonstrate *honesty* and *good faith* in all civil matters and civil relationships—i.e., property rights, contract rights, marriage relations, master-servant relations, etc. Otherwise, "[t]he law,' says Paul, 'is not made for a righteous man,' who invades not the rights of his neighbor."²¹⁴

213 Galatians 5:15 ("For all the law is fulfilled in one word, even in this; Thou shalt love thy neighbor as thyself. But if ye bite and devour one another, take heed that ye be not consumed one of another"). Indeed, civil polity, and civilization, could not exist without *agape*. See, also, Wilfred Parsons, "Lest Men, Like Fishes" *Traditio*, Vol. 3 (1945), pp. 380 – 388. (JSTOR: Univ. of Cambridge Press), stating:

In the second century, A.D. (c. 177), the Christian philosopher and apologist, Athenagoras, inveighing against the pagans for immoralities forbidden by their own codes, incorporated in his harangue an expression which was to have a long and interesting history in Christian literature. These are his words:

These adulterers and pederasts defame the eunuchs and the once-married, while they themselves live like fishes; for these swallow up whatever falls in their way, and the stronger pursues the weaker. Indeed, this is to feed on human flesh, to do violence to the very laws which you and your ancestors, with due care for all that is fair and right, have enacted.

In that same century (c. 180), we find St. Irenaeus using the same expression, though in a different context. He is proving that political government does not come from the devil, as some contemporary Christian anarchists apparently held, but from God:

Therefore the earthly kingdom was set up by God for the help of the gentiles (not by the devil, who is never quiet, and who does not want the nations to live in quiet), so that, fearing the human kingdom, men shall not devour one another like the fishes, but by the making of laws may strike down the manifold injustice of the gentiles.

These two passages, using the same proverbial expression about the fishes devouring one another, illustrate two traditions—one socio-moral, the other political—which are important in the history of Christian social ideas....

214 William Goodell, *The Democracy of Christianity*, Vol. II (New York, N.Y.: Cady and Burgess, 1852), p. 382 (Quoting 1 Timothy 1:8-10).

Thus, private law in ancient Israel was designed to implement general equity (i.e., *agape*) because it was designed to do “justice and judgment” (i.e., Genesis 18:19) between parties in various types of disputes.²¹⁵ That “justice and judgment” theme appears to have been inaugurated in the patriarch Abraham²¹⁶ and continued on through the inauguration of the House of David, through the prophetic hands of the Prophet Samuel, whose own mother Hannah even prophesied the nature of the Christ King and his eternal kingdom as establishing “justice and judgment.”²¹⁷ Thus concluded St. Augustine, this duty to do “justice and judgment” was a universal commandment given to all mankind and made the precondition of both earthly peace in this lifetime, as well as eternal salvation in the world to come.²¹⁸

²¹⁵ Ibid.

²¹⁶ See Genesis 18: 18-19, stating:

Seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him?

For I know him, that he will command his children and his household after him, and they shall keep the way of the Lord, **to do justice and judgment**; that the Lord may bring upon Abraham that which he hath spoken of him.

²¹⁷ See 1 Samuel 2: 8-10 (KJV), stating:

8 He raiseth up the poor out of the dust, and lifteth up the beggar from the dunghill, to set them among princes, and to make them inherit the throne of glory: for the pillars of the earth are the Lord's, and he hath set the world upon them.

9 He will keep the feet of his saints, and the wicked shall be silent in darkness; for by strength shall no man prevail.

10 The adversaries of the Lord shall be broken to pieces; out of heaven shall he thunder upon them: the Lord shall judge the ends of the earth; and he shall give strength unto his king, and exalt the horn of his anointed.

But using a slightly different translation of the Bible, Augustine of Hippo's *The City of God* (New York, N.Y.: The Modern Library, 1950), pp. 572-573, quotes these same verses as stating:

He raiseth up the poor out of the dust, and lifteth up the beggar from the dunghill, that He may set him among the mighty of [His] people, and maketh them inherit the throne of glory; giving the vow to him that voweth, and He hath blessed the years of the just: for man is not mighty in strength. The Lord shall make His adversary weak: the Lord is holy. Let not the prudent glory in his prudence; and let not the mighty glory in his might; and let not the rich glory in his riches: but let him that glorieth glory in this, to understand and know the Lord, and **to do judgment and justice in the midst of the earth**. The Lord hath ascended into the heavens, and hath thundered: He shall judge the ends of the earth, for He is righteous: and He giveth strength to our kings, and shall exalt the horn of His Christ.

²¹⁸ St. Augustine, *The City of God*, supra, pp. 577-578, stating:

Therefore, judges in ancient Israel functioned the same as modern-day judges today—they heard disputes between their fellow citizens and they render judgments. This judicial system was perhaps Israel’s first formal institution.²¹⁹ It arose out of sheer necessity, since the ancient Israelites were wanderers in the desert and desperately needed an institution to help establish civil order amongst them.²²⁰ This judicial system, which predated the institution of the Levitical priesthood,²²¹ was authorized to address and to resolve all types of legal issues that arose before the judges, including secular civil and criminal matters, to wit:

Exodus 21:1-2	Slavery; Bondservants; Sabbath Year (7 th year)
Exodus 21:1-11, 20, 27	Master and Servant relations
Exodus 21:10-15	Murder and Homicide
Exodus 21:16	Men-stealing and Slavery
Exodus 21: 18-27	Assault and Battery
Exodus 21: 29-36	Oxen, Cows; Negligent Supervision
Exodus 22: 1	Property Damage; Fire; Restitution
Exodus 22: 2-4; 7-8	Thieves, Theft; Restitution
Exodus 22: 5-6	Property Damage; Fire; Restitution

Now, he does **judgment and justice** who live aright. But he live aright who yields obedience to God when He commands. ‘The end of the commandment,’ that is, to which the commandment has reference, ‘is charity out of a pure heart, and a good conscience, and faith unfeigned.’ Moreover, this ‘**charity**,’ as the Apostle John testifies, ‘is of God.’ Therefore to do **justice and judgment** is of God.

But what is ‘in the midst of the earth?’ ...Therefore, ‘in the midst of the earth,’ that is, while our soul is shut up in this earthly body, **judgment and justice** are to be done, which shall be profitable for us hereafter, when ‘every one shall receive according to that he hat done in the body, whether good or bad.’

In the same way we may suitably understand what we read in the psalm, ‘But God, our King before the worlds, hath wrought salvation in the midst of the earth;’ so that the Lord Jesus may be understood to be our God who is before the worlds, because by Him the worlds were made, working our salvation in the midst of the earth, for the Word was made flesh and dwelt in an earthly body.

²¹⁹ Exodus, Chapter 18.

²²⁰ Ibid.

²²¹ Ibid.

Exodus 22: 9	Trespass, Theft; Restitution
Exodus 22: 10-15	Bailment, Safekeeping, Loss; Restitution
Exodus 22: 16-17	Fornication, Unwed Sexual Relations
Exodus 22: 18	Witches
Exodus 22: 19	Bestiality
Exodus 22: 21-24	Foreigners; Widows; and Orphans
Exodus 22: 25	Usury, Lending
Exodus 23: 1	Perjury, False Oaths
Exodus 23: 6-9	Judging Cases; Equality before the Law; Protection against Oppression of the Poor and Strangers
Leviticus 11:1-47	Dietary Laws; Healthy, Unhealthy Meats or Foods
Leviticus 12: 1-8	Health and Sanitation: childbirth
Leviticus 13: 1-59	Health and Sanitation: leprosy
Leviticus 14: 1-32	Health and Sanitation: leprosy
Leviticus 14: 33-57	Health and Sanitation: buildings and houses
Leviticus 15:1-33	Health and Sanitation: sexual relations, bodily fluids, and cleanliness
Leviticus 18:1-30	Consanguinity, marriage regulations; restrictions on sexual relations
Leviticus 19:9-10;	Harvest, Farms; Charitable Assistance for the Poor (Gleaners)
Leviticus 19:15, 35-37	Judges; Duty to Honestly and Fairly Judging Cases; Equality before the Law; Protect against Oppression of the Poor, Strangers
Leviticus 23:22	Harvest, Farms; Charitable Assistance for the Poor (Gleaners)
Leviticus 25: 1-40	Sabbath Year (7 th Year) of the land; Jubilee Year (50 th Year); Release from Debt, Bondage
Leviticus 25:36-37	Usury, Lending.

Leviticus 19:11, 13	Business; Contracts; Duty of Good Faith and Fair Dealing
Leviticus 25:44-55	Slavery; Bondservants; Hired servants
Deuteronomy 15:11	Charitable Assistance for the Poor
Deuteronomy 5:16-21	Second Table of the Decalogue; Prohibition Against Murder; Adultery; Theft; Perjury or Bearing False Witness; Covetousness.
Deuteronomy 15:12-15	Slavery; Bondservants; Sabbath Year (7 th Year)
Deuteronomy 16:18-20	Judges; Duty to Honestly and Fairly Judging Cases; Equality before the Law; Protect against Oppression of the Poor, Strangers
Deuteronomy 19:15	Two Witnesses Required to Convict for “any iniquity, or for any sin”
Deuteronomy 21:15	Polygamy authorized
Deuteronomy 21:18-21	Juvenile Justice
Deuteronomy 22:1-4	Civility; Good Samaritan Rule
Deuteronomy 22:5	Anti-Transvestite Rule
Deuteronomy 22:8-12	Houses; Vineyards; Plowing; Garments
Deuteronomy 22:13-30	Marriage; Divorce; Adultery; Fornication
Deuteronomy 23:17	Prostitution; Homosexuality; Sodomy
Deuteronomy 23:19	Usury
Deuteronomy 24:1-5	Marriage; Divorce; Re-marriage; Duty of Honeymoon in First Year of Marriage
Deuteronomy 24:10-13	Pledges
Deuteronomy 24:14-15	Labor and Employment
Deuteronomy 24:17-18	Judges; Duty to Honestly and Fairly Judging Cases; Equality before the Law; Protect against Oppression of the Poor, Strangers
Deuteronomy 24:20-24	Harvest, Farms; Charitable Assistance for the Poor (Gleaners)
Deuteronomy 25:1-3	Judges; Duty to Honestly and Fairly

	Judging Cases; Corporal Punishment
Deuteronomy 25:4	Oxen; Negligent Supervision
Deuteronomy 25:5-10	Death of Husband; Husband's Brother's Duty to Impregnate the Widow so that His Brother will have an Heir
Deuteronomy 25:13-19	Fraud; Oppression; Unjust Weights and Measurements
Deuteronomy 27:19	Judges; Duty to Honestly and Fairly Judging Cases
Deuteronomy 27:20-23	Consanguinity, marriage regulations; restrictions on sexual relations
Deuteronomy 27:24-25	Murder; Conspiracy to commit murder

From this example of ancient Israel's sundry judicial laws, we may rightfully deduce that the fundamental laws of God were designed to be implemented in every aspect of the human endeavor in ancient Israel. These sundry judicial laws were designed to reflect and implement the *fundamental law* (i.e., general equity). (And it is not difficult to ascertain from the Book of Deuteronomy that "general equity" (i.e., "the word")²²² was the fundamental moral law of ancient Israel.) That fundamental law required that *agape* (i.e., good faith and fair dealing; general equity; fairness; natural justice)²²³ govern every aspect of human relations in ancient Israel. In summation, the golden rule²²⁴ was ancient Israel's fundamental law and it governed of all its private transactions between its citizens.

²²² See, e.g., Deuteronomy 30: 11-16; Deuteronomy 16:18-20; and Romans 10: 4-8.

²²³ See, e.g., Friedrich Kessler & Edith Fine, *Culpa in Contrahendo, Bargaining in Good Faith, and Freedom of Contract: A Comparative Study*, 77 HARV. L. REV. 401 (1964)(tracing the concept of good faith and fair dealing through various doctrines in American contract law); Ralph A. Newman, *The Renaissance in Good Faith in Contracting in Anglo-American Law*, 54 CORNELL Rev. 553 (1969)(surveying the concept of good faith across different cultures. Several authors have traced the concept back to the Bible. For instance, one scholar cites the Old Testament, Leviticus 19:1 & --- "Thou shalt love thy fellow-man as thyself"—as an early reference to the obligation to act with good faith); Russell A. Eisenberg, *Good Faith Under the Uniform Commercial Code- A New Look at an Old Problem*, 54 MARQ. L. REV. 1, 10 (1971).

²²⁴ Leviticus 19:17-18 ("Thou shalt not hate thy brother in thine heart... but thou shalt love thy neighbor as thyself: I am the LORD."); Matthew 7:12 ("Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.")

Ancient Israel's conception of private law's primary objective of imposing a "covenant" relationship between private parties was not lost upon Christian jurists during the Medieval and Early Modern periods.²²⁵ Relying upon the canon law of the Roman Catholic Church,²²⁶ these Christian jurists persisted in interposing the "law of Christ"²²⁷ into every conceivable dispute between private parties.²²⁸ In juridical terms, particularly in England, this "law of Christ" was coterminous with "general equity," and Christ himself was the manifestation of that same general equity, as historian Goldwin Smith has succinctly pointed out:

What is equity? In its beginnings in England it was the extraordinary justice administered by the king's Chancellor to enlarge, supplant, or override the common law system where that system had become too narrow and rigid in its scope.... The basic idea of equity was, and remains, the application of a moral governing principle to a body of circumstances in order to reach a judgment that was in accord with Christian conscience and Roman natural law, a settlement that showed the common denominations of humanity, justice, and mercy.... [As Christ had come not to destroy the law but to fulfill it, so too] 'Equity had come not to destroy

225 See, e.g., John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 71, stating:

The law of the church is called the canon law. The term itself comes from a Greek word that means a measuring rod, taken figuratively in the West to be a measure of right conduct. In the broadest sense, canons are intended to lead men and women to act justly in the world so that they may ultimately stand before God unashamed.... The canon law has thus always been connected with the 'internal forum' of conscience.... By design, the canons create conditions that promote harmony within the church and freedom from interference from without. But this has never been their sole aim. The canon law has also aimed higher, assuming to provide salutary rules for the lives of ordinary Christians and to exert an influence on the content of temporal law.... Nothing less than leading men and women toward God and establishing a Christian social order."

226 Ibid.

227 1 John 4:8, 16 ("God is love"); Matthew 22:37-40 ("Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbor as thyself. On these two commandments hang all the law and the prophets."); Leviticus 19:17-18 ("[T]hou shalt not hate thy brother in thine heart.... [T]hou shalt love thy neighbor as thyself...."); Romans 13: 8, 10 ("Owe no man any thing, but to love one another: for he that loveth another hath fulfilled the law.... Love worketh no ill to his neighbor: therefore love is the fulfilling of the law"). See, also, Robert F. Cochran, Jr. and Zachary R. Calo, *Agape, Justice and Law* (Cambridge, United Kingdom: Cambridge University Press, 2017); Reinhold Niebuhr, "Love and Law in Protestantism and Catholicism," *Major Works on Religion*, supra, pp. 829 – 846; and Romans 13:1-10 ("Love worketh no ill to his neighbor: therefore love is the fulfilling of the law.") See, generally, John Witte, Jr., *Christianity and Law*, supra; Norman Doe, *Christianity and Natural Law*, supra; Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity*, supra; and Robert F. Cochran, Jr., *Agape, Justice, and Law*, supra.

228 See, e.g., John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge University Press, 2008), p. 71.

the law but to fulfill it.’²²⁹

The “law of Christ” was a more refined perfection of the golden rule-- it required private parties not only to refrain from hurting each other, but it also required good faith, honesty in fact, and agape.²³⁰ Within the Kingdom of England, the English Common Law was developed under the auspices of the canon law of Church of England, and its priests, Christian judges, and Christian lawyers-- all of whom were members of the Church of England and swore Christian Oaths of Allegiance-- upheld the doctrine that the Sacred Scriptures, and especially the “law of Christ,” must be thoroughly woven into, and govern, English law.²³¹

During the late 17th and early 18th centuries, during the period when Great Britain was emerging as the major world power, and the Church of England (Anglican) and the Church of Scotland (Presbyterian) shared the same sovereign monarch, Christian theology in both England and North American became more “latitudinarian,” meaning that it was amenable to enfranchising various sects of Protestant Christians, such as the Congregationalists, the Presbyterians, the Baptists, the Quakers, etc. The Wars of Religion²³² on the European

229. See, e.g., Goldwin Smith, *A Constitutional and Legal History of England* (New York, N.Y.: Dorset Press, 1990), pp. 208-209.

230 Roderick O. Ford, *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity* (Tampa, Fl.: Xlibris Corp., 2015), pp. 518-527 (“Jesus of Nazareth’s teachings and parables are more than religion; rather, they also constitute a universal moral law which has come down to us from ancient times and been called various names such as ‘ma’at’ (ancient Egyptian) and ‘aequitas’ (ancient Romans). In Anglo-American law, this universal moral law has been referred to as ‘equity,’ and the doctrine of equity has even carried over into American rules of civil and criminal procedure, the implied obligation of good faith and fair dealing in American contracts, and federal civil rights jurisprudence....”)

231 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)

232See, e.g., “European Wars of Religion,” https://en.wikipedia.org/wiki/European_wars_of_religion, stating:

The European wars of religion were a series of wars waged in Europe during the 16th, 17th and early 18th centuries. Fought after the Protestant Reformation began in 1517, the wars disrupted the religious and political order in the Catholic countries of Europe, or Christendom. Other motives during the wars involved revolt, territorial ambitions and great power conflicts. By the end of the Thirty Years' War (1618–1648), Catholic France had allied with the Protestant forces against the Catholic Habsburg monarchy. The wars were largely ended by the Peace of Westphalia (1648), which established a new political order that is now known as Westphalian sovereignty.

continent had left such a damper upon orthodox religious dogma that the moral teachings of the Roman Catholic Church and the Church of England no longer seemed suitable as the foundation of Anglo-American civil polity or the needs of modernity, commercial expansion, and empire of Great Britain. By the 18th century, British and American philosophers, lawyers, and theologians were more and more opining that the Mosaic law (i.e., the *Torah*, or the “word of God”) was, fundamentally, a republication of general equity and that Christianity was a republication of natural law or natural religion.²³³ They believed that their views were the natural evolution of the first generation of Protestant Reformers such as Martin Luther (1483 – 1546) and John Calvin (1509 – 1564). For instance, Calvin held that “equity, because it is *natural*, cannot but be the same for all, and therefore, this same purpose ought to apply to all laws, whatever their object. Constitutions have certain circumstances upon which they in part depend. It therefore does not matter that they are different, provided all equally press toward the same goal of equity.”²³⁴ “Thus, some scholars consider that for Calvin the ‘basic ethical principle... is equity.’”²³⁵ Similarly, the Reformed confessional standards in the Westminster

233 See, generally, the writings of the Latitudinarian Anglican and Bishop Joseph Butler (1692 -1752). https://en.wikipedia.org/wiki/Joseph_Butler. See, e.g., Joseph Butler, *The Analogy of Religion, Natural and Revealed to the Constitution and Course of Nature*, supra, pp. 152, 155, 158 (“the Author of Nature”); p. 159 (“...the Author of Nature, which is the foundation of Religion”); p. 162 (“... there is one God, the Creator and moral Governor of the world”); p. 187 (“Christianity is a republication of natural Religion”); p. 188 (“The Law of Moses then, and the Gospel of Christ, are authoritative publications of the religion of nature....”); p. 192 (“Christianity being a promulgation of the law of nature....”); p. 243 (“These passages of Scriptures ... comprehend and express the chief parts of Christ’s office, as Mediator between God and men.... First, He was, by way of eminence, the Prophet: that Prophet that should come into the world, to declare the divine will. He published anew the law of nature.... He confirmed the truth of this moral system of nature....”). See generally the writings of the Latitudinarian Anglican and Chancery Lawyer Matthew Tindal (1657 - 1733), https://en.wikipedia.org/wiki/Matthew_Tindal. See, e.g., Matthew Tindal, *Christianity as Old as the Creation, or the Gospel a Republication of the Religion of Nature* (Newburgh, England: David Deniston Pub., 1730) [Republished by Forgotten Books in 2012], pp. 52, 56, 61, 64, 72-74 (stating that Christianity is a republication of natural religion).

234 John Calvin, *The Institutes of the Christian Religion*. Books I through IV (Unabridged) (United States of America: Pantieos Press, 2017), p. 20.

235 Norman Doe, *Christianity and Natural Law* (Cambridge, U.K.: Cambridge University Press, 2017), p. 126.

Confession of Faith of 1647²³⁶ and the Baptist Confession of 1689²³⁷ have deduced that Israel's "moral law" (i.e., general equity) is the only surviving public law of Israel that remain binding upon civil societies and churches today.

Hence, by the 18th century, neo-orthodox Calvinists and latitudinarian Anglicans adopted the view that the secular, civil, and ecclesiastical laws of the Gentiles-- i.e., non-Jewish nation and church-- need not adopt the (a) ceremonial laws of the ancient Hebrew religious practices or (b) the judicial laws of the Mosaic code or related writings, such as the Talmud, etc. Inevitably, great theological debate ensued within the Church of England as to how much of the Church's canon laws and traditions could be classified as "ceremonial" or "judicial" ecclesiastical laws that were subject to being discarded by authentic, legitimate Protestant Christians. Of course, the Calvinistic Congregationalists and Presbyterians were leading Puritans in England who pressed forward with the complete obliteration of all liturgical practices that reflected Catholicism. But the radical Baptists, Quakers and other Independents went even further in that direction and sought to discard both Catholicism and Anglicanism altogether. "This did away, not with the authority, but with the sole authority, of the Bible."²³⁸ Instead, the only "law" which survived the demise of the ancient kingdoms of Judah and Israel was its "moral laws." And, in civil government, tribunals, and courts of law, these "moral laws" were conceptualized and defined as "general equity."²³⁹ More and more, the latitudinarian Anglicans such as Dr. Matthew Tindal (1657 – 1733), Bishop Joseph Butler (1692 - 1752),

236 See, e.g., Westminster Confession of Faith (1647), § 19.4, stating: "To them also he gave sundry judicial laws, which expired together with the state of that people, not obliging any now by virtue of that institution; their general equity only being of moral use."

237 See, e.g., Second London Baptist Confession of Faith (1689), § 9.4, stating: "To them also he gave sundry judicial laws, which expired together with the state of that people, not obliging any now by virtue of that institution; their general equity only being of moral use."

238 Max Weber, *The Protestant Work Ethic and the Spirit of Capitalism* (New York, N.Y.: Vigeo Press, 2017), p. 103.

239 See, e.g., the Westminster Confession of Faith (1647), § 19.4 and the Second London Baptist Confession of Faith (1689), § 9.4.

Bishop William Warburton (1698 - 1779), and Thomas Jefferson (1743 - 1826),²⁴⁰ and many others began to hold that “Christianity is republication of natural religion.” There were many implications to this new revolutionary doctrine; and perhaps the most important implication was that, in terms of “private law,” no longer would “revealed religion” or the “canons” of the Roman Catholic or Anglican Churches constitute the “binding” law of secular jurisprudence in the new United States of America after 1776.²⁴¹

Just as Calvin himself had concluded that “general equity” was the *only* essential ingredient in law and government, what mattered most to the American Founding Fathers was that “general equity” be implemented as *causa sine qua non* within “private law.” And to those same American Founding Fathers, “this “general equity” constituted the “Laws of Nature and of Nature’s God,” which both moral law of the Decalogue or the “law of Christ” had been mere republications.²⁴² In this context, the American Declaration of Independence (1776) should be understood to be fundamentally Christian-- since it is based upon natural religion, and Christianity is a republication of that same natural religion. On the continent of Europe,

²⁴⁰ See, e.g., **Appendix D**, “Of Thomas Jefferson and the Jeffersonians.”

²⁴¹ At the same time, there was nothing to prevent Christian theologians, philosophers, and political theorists to continue to influence the legal system in the United States. Nor was there any way to extract the bible-based Christian jurisprudence that had already been sewn into the English Common Law, which the courts in the United States had readily acknowledged as binding precedent. See, e.g., See, e.g., Richard C. Dale, “The Adoption of the Common Law in the American Colonies,” *The American Law Register* (September 1882), pp. 562 – 565, published by the University of Pennsylvania Law Review (explaining that the English common law—including the laws of England’s ecclesiastical and chancery courts—were thoroughly incorporated into the American common law). See, also, **Appendix F**, “The Quaker Influence Upon the United States Constitution: William Penn, Pennsylvania, and the English Common Law,” *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394 Pa. (1824).

²⁴² See, e.g., Martin Luther, *Temporal Authority: To What Extent it should be Obeyed* (1523)(“Here you inquire further, whether constables, hangmen, **jurists, lawyers, and others of similar function** can also **be Christians and in a state of salvation**. Answer: If the governing authority and its sword are a divine service, as was proved above, then everything that is essential for the authority’s **bearing of the sword must also be divine service.**”); see, e.g., Rev. Roger Williams, *The Bloudy Tenet of Persecution* (Miami, Fla.: Hardpress, 2019), p. 332 (the civil magistrate is “a ministry indeed, magistrates are God’s ministers, Rom. Xiii 4,” whose duty it is to address injustice and oppressions of the weak. “I see not how,” wrote Rev. Williams, “according to the rule of Christ, Rom. Xiii., the magistrate may refuse to hear and help the just complaints of any such petitioners—children, wives, and servants—against oppression, &c.”); see, also, St. Augustine, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 678 (“**justice**, whose office it is to render every man his due”); and p. 699 (“**a republic cannot be administered without justice**”); and see James Madison, Federal Paper No. 51 (“**Justice** is the **end of government**. It is the end of **civil society**”).

“general equity” was called Roman “natural law.”²⁴³ In England, this Roman “natural law” was called “equity.”²⁴⁴ And in the United States, both terms were incorporated into the jurisprudence of the United States. At the public law or constitutional level of the American federal government, the terms “natural law” or “Law of Nature” were generally referenced. However, at the private law or local levels of the American state or local governments, the terms “chancery,” “equity” or “equity jurisprudence” were employed.

However, in the present age, that is to say, in the late 20th and early 21st-century United States of America, **the hyper-secularization of American constitutional law and jurisprudence have all but dissevered the Judea-Christian foundations of these juridical terms in real-world litigation applying “private law,” such that “natural law” and “equity” are construed almost purely in secular, a-historical, and non-ecclesiastical terms.** Since the survival and health of the civil polity rest upon the application of a true, authentic body of natural law jurisprudence known as “general equity,” the several Christian churches, Christian judges, and Christian lawyers certainly have an opportunity, and a stern duty, to help the civil polity restore the true meaning of “equity” in

243 George L. Clark, *Equity: An Analysis and Discussion of Modern Equity Problems* (Columbia, Missouri: E.W. Stephens Pub., 1919), stating:

A. Brief History of Equity.

§ 1. Equity as a stage in our legal development.

The law of every country in the civilized world is based either on the Roman Law or on the English Common Law. Each of these systems shows, roughly speaking, four stages of development, equity being the third. In the first stage of archaic law, the state is so weak that it does not undertake to work out justice; it merely tries to keep the peace by buying off the injured party and thus satisfying his desire for revenge. In the second stage of strict law, the state does undertake to do justice by giving legal remedies to the injured party. In this period the law consists of rules for getting into court; these rules needed to be certain in order to avoid dispute and thus to suppress self help, because men were still much more inclined to use their fists than their reasoning powers. The emphasis during this period was thus upon remedies; while there was an attempt to work out justice, the attempt was a very crude one from our modern point of view because of the importance of certainty. As men’s sense of justice developed, such an unmoral formal system became inadequate. This brought about the third stage known **in our system as equity** and in **the Roman Law system as natural law**. This was a period in which morals were infused into the law. The emphasis came to be laid not upon remedies but upon duties and the aim of the legal system was to reach an ethical solution of controversies. In the fourth stage of the maturity of law, equity became more or less completely merged into the legal system.

244 Ibid.

secular private law and jurisprudence. This volume is therefore especially dedicated to that law students and to the law schools who shall shape the character of future generations of legislators and law practitioners.

— END OF VOLUME TWO —

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