PART X

THE DEVELOPMENT OF COMMON LAW IN AMERICA AND AUSTRALIA

CH. 38: AMERICAN COMMON LAW ERE THE 1776 *DECLARATION OF INDEPENDENCE*

Sydney Ahlstrom, in his book *A Religious History of the American People*, has rightly stated[1] that the American Colonies had the most thoroughly Protestant Commonwealths in the World. Most of them were both Reformed and Puritan. Indeed, Puritanism proved to be the moral and religious background of fully 75% of the people who declared independence in 1776.

Yet the ancestors of those colonists had been in America fully a century-and-a-half ere they became independent of Britain. Indeed, America had not been totally devoid of Christian influences even before that. So, we must first note also those pre-colonial developments in North America.

The Westward Christian Colonization of North America before 999 A.D.

The original European colonizers of North America ï first the Celto-Icelanders and later the Celto-Britons ï were all professing Christians. From Eurasia, they continued the general ôWestwardô Movement of Christianity ï and of civilization.

The place where the penitent Adam faithfully remained after the fall, was to the west of the garden of Eden. So too was the place where Moses later inscripturated this account. Genesis 2:8. Sacred history, both in Biblical times and beyond, has usually flowed from the East to the West.

Thus, after the great flood, the faithful Abraham moved from Ur of the Chaldees ï westward into Canaan. Genesis 11:28*f*. Yet again, Daniel (7:2-25) relates the constant ôWestward Movementô of the successive World Empires ï from Babylon, to Persia, to Greece, to Rome, and then to the Papal-Romish ólittle hornô which became a óstout hornô and then persecuted the true saints of God throughout Western Europe.

Especially from New Testament times onward, the theatre of Godôs covenant people moved away from Palestine ï and especially westbound into Europe. Later yet, particularly at and after the Protestant Reformation, the theatre moved even further to the West ï into Northwestern Europe; and into the Western Isles of Britain, yet further to the West.

It would be interesting to investigate precisely what remnants of Old Testament revelation survived among or reached the American Indians even in Pre-Christian times. There is some evidence that Pre-Christian Phoenician ships (with some Hebrew crewmen on board?) may well have reached the New World even before Christôs incarnation.

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[1] S. Ahlstrom: *A Religious History of the American People*, Image Books, Garden City, N.Y., 1975, I p. 169.

There is much greater evidence, however, that North America was settled perhaps as early as A.D. 500*f* by Christian Celts. This was probably from Ireland and/or by way of Iceland. Indeed, they left a trail through Tennessee to Minnesota.

As we read in Dr. Leathamôs book *Celtic Sunrise*, subtitled *An Outline of Celtic Christianity*[2] ï the Celts had always been sea-farers. Julius Caesar himself in B.C. 58*f* paid tribute to the size of their war-ships.

In the sixth century (A.D.), the Irish Proto-Protestant Culdee Christian, St. Brendan the Navigator, prepared for his longest voyage. He built a ship of oak large enough to contain a crew of sixty. He gazed on Hekla in Iceland. Dr. Littleôs book *Brendan the Navigator* claims he called at the Bahamas ï and reached even Florida.

According to the *Historians' History*,[3] Celto-Culdee Proto-Protestant Irish monks colonized Iceland as early as the ninth century. An Icelandic saga not only claims that the Irish preceded the Norse in Iceland. It also describes the fate of the Icelander Ari Marson ï when storm-driven to *Huitramannaland* or ñWhite Manôs Landò (alias *Irland it Mikla* or óGreater Irelandô).

In his famous *Landnamabok*, Ari wrote that he ñwas driven by a tempest to White Manôs Land, which some call Greater Ireland. It lies to the West in the Sea ï near to Vinland the Good, and six daysô sailing west from Ireland (*vi daegra sigling vestr fra Irlandi*). From thence, Ari could not get away ï and was baptized there.ò[4]

An old geographical fragment on early Iro-Icelandic visitors to America, quoted by Beamish,[5] corroborates this. It states: ñSouth from Greenland are...the Skraelings; then Markland; then Vinland the Good. Next and somewhat behind...is White Manôs Land.... There, Irishmen and Icelanders recognized Ari...of whom nothing had been heard for a long time, and who had been made a chief there by the inhabitantsò (*viz*. the Amerindians).

In 982 A.D., the Scandinavian Eric the Red discovered Greenland. In 985, about the time when all the inhabitants of Iceland as a whole embraced Christianity as their new national religion, Bjarni Herjulfsson discovered Helluland (or Labrador). Indeed, America was definitely visited in A.D. 1000 by Leif Ericcson, the Christian son of Eric the Red. He had been commissioned by King Olaf of Norway in 999 to proclaim Christianity in Greenland, and thereafter sailed westbound even to North America.

Then there is the story in the *Eyryggja Saga* about Bjarni Asbrandson, who sailed away from Iceland in 999. He was not heard of again ï until rediscovered in a strange land during 1029 by the wind-blown merchant Gudleif Gudlangson. The latter found Asbrandson living among a people who spoke Irish.

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[2] D. Leatham: *Celtic Sunrise – An Outline of Celtic Christianity*, pp. 33f (citing G.A. Littleôs *Brendan the Navigator*). See too below our Addenda 40 & 41 on Iceland and Greenland, and our Addendum 42 on *Pre-Colonial Biblical Influences on Early America* ï for an expansion of all of our following material on the Pre-Columbian Christian colonization of North America.

[3] *Historians' History*, XXI p. 402.

[4] *Id.*

[5] N.L. Beamish: *The Discovery of America by the Norsemen in the Tenth Century* (in *Hist. Hist.* XX:402 & 652).

ñIn the last years of the reign of King Olaf the Saint,ò claims the *Saga*,[6] ñGudleif undertook a trading voyage to Dublin.... He sailed then from the west of Ireland...and was driven far to the West and Southwest.... They made prayers that they might escape from the sea; and it came to pass that they saw land.

ñIt was a great land.... They found there a good harbour.... People came to them.... They spoke Irish. Soon came to them so great a number, that it made up many hundreds.... After this, Gudleif and his people put to sea, and they landed in Ireland late in harvest ï and were in Dublin for the winter.ò

The Christian colonization of North America from 1000 till 1580*f*

In 1004, Thorfinn Karlsefni, together with 160 men and some women from Greenland and Iceland, set out for America. Thus the 1075 Adam of Bremen, and the Icelandic sagas. Thorfinn had descended from Danish, Norwegian, Swedish, Irish and Scottish ancestors ï some of whom were of royal rank. On ship, they observed Christmas ï and intended to colonize the great Westland.[7]

Karlsefniôs party visited Helluland, Markland and Vinland. The first two areas were North American regions, respectively of flagstone (*cf*. Labrador) and forests (*cf*. Nova Scotia).

However, óVinlandô was a place: of wild grapes (*cf*. New England); of self-sowing wheat (alias American corn); of honeydew; and of mild winters. This may well have been in Rhode Island (thus Rafn), or at New Yorkôs Hudson River (thus Gathorne-Hardy). Some, however, place it as far south as Florida ï and yet others even connect it with the Wotan legend of white men visiting the Central American Indians long before Cortez. *Cf*. Genesis 9:27!

Together with his American-born son Snorre, Thorfinn finally returned from America to Greenland ï after leaving part of his company in the New World to establish a colony there. Snorreôs grandson Thorlak became a bishop in Iceland, and compiled there a code of law which is still extant.[8]

Then and thereafter, as perhaps also previously, there were Christian settlements in North America. In 1011, Thorfinnôs Vinland colony was augmented from Iceland. In 1059, an Irish or English Presbyter called Jon went to Vinland as the Minister of her colonists. In 1121, Bishop Eric Upsa of Greenland went to Vinland as a Missionary ï but was never heard from again.

Evaluating the above, the *Historian's History* rightly remarks that the accounts are not founded upon just one tradition or record, but upon many. There is nothing improbable in the alleged voyages, as the Irish and the Scandinavians were the best navigators in the World. The weight of probability is in favour of an Iro-Norse descent upon the northeastern coast of the American mainland at some point or at several.

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[6] *Hist. Hist.* XX pp. 403 (also cited in Beamish).
[7] *Hist. Hist.*, XXII p. 409.
[8] *Hist. Hist.* XX p. 410.

The archaeological traces are abundant in Greenland, and confirm in the most positive way the Norse occupation. Thus Justin Winsorôs *Pre-Columbian Explorations* (in his *History of America*). Missionaries have found even crosses, knowledge of the stars, a superior kind of worship, and many Norse words among the Amerindians of the northeastern coast of the New World.[9]

According to the 1124 *Annals of Morgan*, many on their way to Iceland lodged in Bristol. In 1170, the Culdee Christian Celto-Brythonic or Welsh Prince Madoc with three hundred men established a colony in the New World. This is sufficiently documented. Indeed, after copious research into ancient manuscripts, also the famous Welshman Rev. Sir Richard Hakluyt wrote his 1582 book *Divers Voyages touching the Discovery of America* ï before himself then becoming involved in the British settlement of Virginia.

Explained Hakluyt:[10] ñMadoc, another of Owen Gwynethôs sons, left the land [of Wales].... Leaving the coast of Ireland to the north, he came to a land unknown where he saw many strange things. This land must needs be some part of the country of which the Spaniards affirm themselves to be the first finders.... [Yet] it is manifest that that country was discovered by Britons, long before Christopher Columbus led any Spaniards thitherò in 1492.

Fifty years before Columbus, from 1436 onward there are many records of Welshmen and Englishmen from Bristol ï men such as Richard Ap-Meric or **Ameryk** in the good ship *Trinity* ï sailing westbound even to óBrasile.ô This was before even Amerigo Vespucci ï the other explorer after whom it is sometimes claimed óAmericaô was named ï is alleged to have discovered the óNew Indies.ô See Ian Wilsonôs 1991 book *The Columbus Myth – Did Men of Bristol Reach America Before Columbus?*

Even Columbus, we may add ï though indeed an Italian ï does seem to have been a godly Christian.[11] He, after his trip to the Americas at the very end of the fifteenth century, was as good as his name. For óChristopherô means óthe one who uplifts Christôï and Columbus then praised God.

Five years later, in 1497, another Briton like Madoc ï this time the Welsh-Tudor King Henry VII of England ï sent the Bristol fleet of John Cabot toward North America. This resulted in the discovery of Newfoundland. Indeed, from around 1500 onward, some of the more godly and progressive elements of Western European and British society moved westward ï across the Atlantic, to America. Several such parties even established colonies there.

French-speaking Reformed Missionaries ï sent out by Calvin himself ï were the first to reach Brazil (in August 1555). French Calvinistic settlers were the first

[9] *Hist. Hist.*, XXII p. 411.
[10] *Historians' History*, XXII pp. 400f & 652.
[11] In his log-book, Columbus states his purpose for having sought ñundiscovered worldsò ï as having been to ñbring the Gospel of Jesus Christ to the heathens.... It was the Lord Who put into my mind...that it would be possible to sail from here to the Indies.... I am the most unworthy sinner, but I have cried out to the Lord for grace and mercy ï and they have covered me completely.... No one should fear to undertake any task in the Name of our Saviour, if it is just ï and if the intention is purely for His holy service.ò See C. Columbus: *Book of Prophecies*, in *Our Christian Heritage*, Plymouth Rock Foundation, Marlborough N.H., May 1990, p. 1.

Protestants to colonize also North America ï temporarily ï in the Carolinas in 1562; and at St. Augustine, Florida, in 1565. Indeed, Huguenot refugees called Walloons and living in the Netherlands founded New Amsterdam [the later New York] in 1623. Other small colonies later settled in Massachusetts, Maryland, Virginia, and South Carolina.[12]

The new beginnings of the British colonization of North America from 1583*f*

Already in 1559, John Knox had returned from Calvinôs Geneva to his native Scotland. The next year, 1560, the English-language *Geneva Bible* appeared. It was produced by John Knox and William Whittingham (Mrs. John Calvinôs brother-in-law). This was thoroughly Calvinistic, anti-Romish, and theocratic. It soon saturated both Scotland and England ï and much strengthened that mighty movement known as Puritanism.

Even the British Protestant óGood Queen Bessô was herself more and more influenced by the rising tide of Puritanism in Britain. She massively aided the Protestant cause internationally. And she stoutly promoted Protestant Britainôs colonial expansion.

Thus Elizabeth gave *Letters Patent* to Gilbert, who took possession of Newfoundland in 1583. The next year, Raleigh named the American coast ñVirginiaò after the British Protestant Virgin Queen, Elizabeth I.

Also in 1584, the Protestant Rev. Sir Richard Hakluyt promoted the British colonization of Virginia. He did so, ñto abate the pride of Spain and the supporters of the great Antichrist of Rome.ò

Hakluyt added: ñWe shall, by planting, enlarge this Gospel ï and provide a safe and sure place to receive people from all parts of the World that are forced to flee for the truth of Godôs Word.ò Indeed, with Protestant Britainôs destruction of the Spanish Armada in 1588, the way was now wide open ï for rapid Protestant British expansion, especially in North America.

The various Crown Charters for the British Colonial Companies in America invariably refer to God and His great attributes. Thus the 1606 *First Charter of Virginia*, granted by King James the First himself. It greatly commends the desires of the Virginia Company ñfor the furtherance of so noble a work which may by the Providence of Almighty God hereafter tend to the Glory of His Divine Majesty ï in [the] propagating of Christian religion to such people as yet live in darkness and miserable ignorance of the true knowledge and worship of God and may in time bring the [American Indian] infidels and savages living in those parts to human civility and to a settled and quiet government.ò

Indeed, King Jamesôs 1609 *Second Charter of Virginia* even stated: ñIt shall be necessary for all such our loving subjects as shall inhabit within the said precincts of

[12] See J. Williamsôs art. *The Contribution of Presbyterian Theology and Government to Early American History*, I (in *The Counsel of Chalcedon*, Atlanta, Sept. 1986, pp. 9 & 30).

Virginia aforesaid, to determine to live together in the fear and true worship of Almighty God, Christian peace, and civil quietness.... The principal effect which we can desire or expect of the action, is the conversion and reduction of the people in those parts unto the true worship of God and Christian religion.ò

Well did the great philosopher Bishop Berkeley remark: ñWestward the course of empire takes its way!ò Well did the famous Dutch Theologian Dr. Abraham Kuyper see America as the greatest fulfilment of the Western Japhethites living in the spiritual tents of Shem! Genesis 9:27 *cf*. 10:1-5. Well did the great German Historian Leopold von Ranke declare: ñJohn Calvin was the virtual founder of America!ò

Well too did the famous American Historian George Bancroft remark: ñHe that will not honor the memory and respect the influence of Calvin, knows but little of the origin of American liberty.ò And well did the great Swiss Church Historian Rev. Professor Dr. Philip Schaff insist: ñThe principles of the Republic of the United States can be traced through the intervening link of Puritanism, to Calvinism.ò

The 1607*f* British 'Pilgrims' and their life in Holland before going to America

According to the article óCommon Lawô in the 1980 *New Illustrated Columbia Encyclopedia*, all Canada (except Quebec) ï and all of the United States except Louisiana, Puerto Rico, and the Virgin Islands ï today follow (British) Common Law. U.S. Statutes usually provide that the Common Law and equity and statutes in effect in England in 1603 ï shall be deemed part of the law of the jurisdiction. For 1603 was the first year of the reign of James the First, who authorized the British settlement of North America (and also the King James Version of the English Bible).

From that time of King James the First onward, one North American Colony after the other was given a wide measure of self-government. Sometimes this even controlled the appointment of the Colonyôs Governor. In other cases it granted the Colony the power of vetoing legislation proposed in Britain.

The third Virginia Company, for example, in 1619 established the first Colonial Assembly elected in North America. Plymouth-Boston alias Massachusetts followed in 1635 ï and then the rest of the New England Colonies, and also the Southern Plantation Colonies.

When harried by King James the First for their Nonconformity, the British Calvinistic óPilgrimsô left England in detachments, from about 1607 onward. They then lived in Holland for about thirteen years, before going on to America. This was even as the *Dedication* to the 1611 King James Bible was calling Britain ñour Zionò ï and identifying ñPopish Personsò as the Pauline óman of sin.ô Prior to leaving England from Lincolnshire for Holland, many of these emigrants had worshipped in William Brewsterôs Scrooby home in Nottinghamshire (on the southern border of Britainôs Biblical bastion of ancient óGreater Cumbriaô).

William Bradford, later to become Governor of Plymouth in Massachusetts, gives an illuminating description of their leaving Northern England and of their subsequent life in Holland ï before going on to America. When only twelve, he himself had read

through the entire Bible. Later he taught himself to read Greek, Latin and Hebrew.[13] When he finally arrived in America ï where he served as Governor for thirty-three years ï he recalled and wrote:[14]

ñGodly and zealous preachers...in the North Part [of England]...began by His grace to reform their lives, and...to see further into things by the light of the Word of God.... They shook off this yoke of antichristian bondage, and as the Lordôs free people joined themselves (by a covenant of the Lord) into a church estate in the fellowship of the Gospel...to go into a country [Holland] they knew not (but by hearsay), where they must learn a new language...subject to the miseries of war....

ñBut these things did not dismay them.... For their desires were set on the ways of God, and to enjoy His ordinances. But they rested on His providence, and knew Whom they had believed....

ñThey were driven near the coast of Norway..., sinking without recovery.... With what fervent prayers they cried unto the Lord in this great distress.... ôLord, Thou canst save!ô... Upon which, the ship did not only recover, but...the Lord...brought them to their desired haven (*cf.* Psalm 107:23-30).... Their godly carriage and Christian behavior was such as left a deep impression in the minds of many....

ñBeing now come into the Low Countries (or the Netherlands)..., they heard a strange and uncouth language, and beheld the different manners and customs of the people.... They saw the grim and grisly face of poverty coming upon them like an armed man.... Yet, by Godôs assistance, they prevailed and got the victory.... They grew in knowledge and other gifts and graces of the Spirit of God.... There was none so poor, but if they were known to be of that congregation ï the Dutch (either bakers or others) would trust them.ò

Yet, explained Bradford of the life in Holland of the British Pilgrims, ñthey saw and found by experience the hardness of the place and country.... Old age began to steal [or to creep up] on many of them.... Of all sorrows most heavy to be borne, was that many of their children ï by...the great licentiousness of youth in that country and the manifold temptations of the place ï were drawn away by evil examples.ò

Still, they maintained their ñgreat hope and inward zeal...for the propagating and advancing the Gospel of the Kingdom of Christ in those remote [American] parts of the World; yea, though they should be but even as stepping-stones unto others for the performing of so great a work.... God brought them along, notwithstanding all their weaknesses and infirmities.... So, being ready to depart, they had a day of solemn humiliation.ò

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[13] R.B. Collette: *America is a Nation Standing Under God* (in *Christian Observer*, Manassas Va., Oct. 2nd 1992), p. 37.
[14] Here and hereinafter, see V.M. Hallôs *op. cit.*, I pp. 185f.

Rev. John Robinson's speech to the Mayflower Pilgrims before they left Holland

The departure of the good ship Mayflower from Holland with its cargo of British Pilgrims bound for America, had tremendous political implications. While resident in Holland from 1607 till 1620, they had doubtless noted the ôTULIPô decisions of the international Calvinistic Synod of Dordt in 1617-18.

In addition, they and their leader John Robinson had, through the óLow Germanô Netherlands, also absorbed the 1610 views of the great ótriuneô (or óone-and-manyô) Anti-Aristotelian and Anti-Absolutistic High-German Calvinist Johannes Althusius. For the latterôs views anent the sphere-sovereignty of confederating social structures, certainly characterized their later politics in New England ï and indeed even that of the later U.S.A. itself.

When leaving the Netherlands for America, the Pilgrimsô pastor Rev. John Robinson read from Ezra 8:21-22. He urged the increase of Protestantism, *versus* the Romish Antichrist, in the power of the Word of the Lord.

Said Robinson to his Pilgrims: ñLoving Christian friends, I do heartily and in the Lord salute you all.... We are daily to renew our repentance with our God.... After this heavenly peace with God and our own consciences, we are carefully to provide for peace with all men.... Offences come; yet woe unto the man, or woman either, by whom the offence cometh....

ñHeed is to be taken that we take not offence at God Himself ï which yet we certainly do, so oft as we do murmur at His providence.... Store up therefore patience against the evil day; without which [patience] we take offence at the Lord Himself in His holy and just works!... I beseech you, brethren, be much more careful ï [so] that the house of God which you are said to be, be not shaken with unnecessary novelties!...

ñLastly,ò concluded Robinson, as soon as ñyou are become a body politic using amongst yourselves civil government...let your wisdom and godliness appear not only in choosing such persons as do entirely love and will promote the common good ï but also in yielding unto them all due honor and obedience!... You know that the image of the Lordôs power and authority which the Magistrate beareth, is honourable....

ñI do earnestly commend unto your care and conscience, joining therewith my daily incessant prayers unto the Lord ï that He Who made the Heavens and the Earth, the sea and all rivers of waters; and Whose providence is over all His works, especially over all His dear children for good ï would so guide and guard you in your ways, as inwardly by His Spirit, so outwardly by the hand of His power, as that both you and we also, for and with you, may have after[ward ï material or] matter of praising His Name all the days of your and our lives!ò

It is interesting to note that this Robinson was a thorough-going ôTULIPô Calvinist. Just see, for example, his 1624 treatise[15] entitled *A Defence of the Doctrine Propounded by the Synod of Dordt* (in 1618-19).

The 'Mayflower Compact' of the British Pilgrims when on their way to America

King James the First granted the *Charter of the Plymouth Council* ï on November 3rd 1620. The stated reason for this, was ñin the hope thereby to advance the enlargement of the Christian religion ï to the glory of God Almighty.ò[16]

Just after that, the Mayflower Pilgrims made their pact with Almighty God ï on their voyage to America. They had a stormy trip. They later had an unencouraging arrival. They would soon have an even more rigorous winter.

Related eyewitness Bradford: ñWhat could now sustain them, but the Spirit of God and His grace? May not and ought not the children of these fathers rightly say (*cf*. Joshua 24:2*f* & Ezekiel 16:3): ówOur fathers were Englishmen who came over this great ocean, and were ready to perish in this [American] wilderness. But they cried unto the Lord. And He heard their voice, and looked on their adversity, *&c*.

ñLet them therefore praise the Lord, because He is good, & His mercies endure for ever! Yea, let them who have been redeemed by the Lord, shew how He hath delivered them.... Let them confess before the Lord His lovingkindness, and His wonderful works before the sons of men!ò

Bradford next described the *Mayflower Compact*, signed by the voyagers while still on the ship: ñIn the Name of God, Amen! We whose names are underwritten, the loyal subjects of our dread sovereign Lord King James ï by the grace of God King of Great Britain, France and Ireland, Defender of the faith, *etc*. ï having undertaken for the glory of God and advancement of the Christian faith and honour of our king and country a voyage to plant the first colony in the northern parts of Virginia, do by these presents, solemnly and mutually and in the presence of God and of one another covenant and combine ourselves together into a civil body politic, for our better ordering and preservation & furtherance of the ends aforesaid.... In witness whereof we have hereunder subscribed our names at Cape Cod, the 11th of November.... In the year of our Lord 1620.ò

Concluded Bradford: ñBeing thus arrived and brought safe to land [not as expected in Northern Virginia but at New Plymouth in New England], they fell upon their knees and blessed the God of Heaven.ò There, Bradford also expressed the fervent desire that Christôs colonists may ñhereafter tend to the glory of His Divine Majesty in propagating the Christian religion to such people as yet live in darknessò (*viz*. especially the American Indians).

[15] J. Williams: *op. cit.*, Aug. 1986, p. 11.
[16] See *Our Christ. Herit.*, p. 1.

There, in North America, Puritanism would then take root. For these Pilgrims had covenanted with God to rule their lives in, and for, **this** World, which is the Lordôs ï under His Holy Law.

As Hutchinson observed in his *History of the Colony and Province of Massachusetts Bay*,[17] the influence on the New Worldôs Plymouth Colony of the 1575 renowned English Presbyterian Rev. Professor Dr. Thomas Cartwright of Cambridge University, was great. ñCartwright, who had a chief hand in reducing Puritanism to a systemò ï explained Hutchinson ï ñheld that the magistrate was bound to adhere to the judicial laws of Moses, and might not punish or pardon otherwise than they prescribed. And him the Massachusetts people followed.ò

As the 1929 *Encyclopaedia Britannica* rightly remarked,[18] the Pilgrim Fathers took the Common Law with them to America in 1620 ï even as they took the English speech. Consequently, that Common Law is the very foundation of the United States. Nowhere has it been studied more admirably.

To that, the 1951 *Encyclopedia Americana* added that the English Colonists carried the Common Law with them to America as a cherished heritage. For they brought with them to the New World both their Geneva Bible with its emphasis on the Law of God (edited by the exiled British Calvinists in Switzerland) ï as well as their British Common Law.

The Pilgrim Fathers reject "the communist experiment" made in America

Impoverished and weakened by a gruelling winter on the harsh American Continent, the Pilgrims backslid. For they tried ócommunal sharingô ï before they finally rejected it.

Bradford then wrote how the Pilgrims had ñconfirmed Mr. John Carver, a man godly and well approved amongst them [to be] their Governor for that year.... Being infected with the scurvy and other diseases..., of 100-odd persons, scarce 50 remained....

ñMr. William Brewster their reverend Elder and Miles Standish their Captain and Military Commander...the Lord so upheld.... The spring being now approaching, it pleased God [that] the mortality began to cease among them, and the sick and lame recovered apace.... It was the Lord Who upheld them. A manôs way is not in his own power. God can make the weak to stand.ò

However, in their great distress, the Pilgrims ï who, unlike the somewhat later and far more influential American Puritans, were not totally uninfected with Anabaptist egalitarianism ï slipped back from Godôs Eighth Commandment. For they then lapsed away from private property in land and in crops.

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[17] T. Hutchinson: *History of the Colony and Province of Massachusetts Bay*, Kraus rep., New York, 1970 [1736-64], II, p. 354.
[18] ó Common Lawô (in *Enc. Brit.*, 14th ed., 1929, III:687; and in *Enc. Amer.*, 1951, 7:413f).

Yet they were soon to realize their error. For, after ósharingô their meagre resources ócommunisticallyô for a few years, the Pilgrims ï continued eye-witness Bradford ï were to ñlanguish in their misery.ò

Explained Bradford: ñAt length, after much debate of things, the Governor (with the advice of the chiefest amongst them), gave way that they should set corn every man for his **own** particular, and in that regard trust to themselves.ò In that way, the Governor ñassigned to every family a parcel of landò ï one parcel for each family ï and no longer all families together farming the same undivided large piece of cultivated land.

ñThis had very good success.... It made all hands very industrious.... Much **more** corn was planted than otherwise would have been.... The experience [of ócommunismô], which was bad, in this...may well evince the **vanity** of that conceit of Platoôs and other ancients (applauded by some of later time): [namely] that the taking away of **[private]** property and bringing **community** [of property] into a commonwealth ï would make them happy and flourishing ï as if they were wiser than God!ò *Cf.* First Timothy 5:13-18; First Thessalonians 4:11-12; Second Thessalonians 3:6-14.

Yet ñGod in His wisdom saw **another** course fitted for them.... After **this** course [was] settled and...their [**own**] corn was planted...they were only to rest on Godôs providence...that God would give them **their** [own] daily bread.ò

The result of the Pilgrimsô final repudiation of ócommunismô ï was predictable. For God always blesses private enterprise, when conducted in obedience to His Fourth and Eighth Commandments.

Observed eye-witness Bradford: ñInstead of famine, God now gave them plenty...for which they blessed God.... The ships that came...brought over many godly persons to begin the plantations and churches of Christ ï there, and in the Bay of Massachusetts.ò

This was ñthe beginning of a larger harvest unto the Lord...[so] that here should be a resting place for so many of the Lordôs people...and Christian care in performing their promises and covenants.... The branch of the wicked shall be cut off before his day, Job 15:32. And the bloody and deceitful men shall not live out half their days, Psalm 55:23.ò

One should note that Governor Carver had the courage to admit that, though a Christian, he had temporarily gone astray on the matter anent the communal farming of the land *etc*. One should further note that he rectified his error. Would that the Neo-Anabaptist Evangelicals today ï so bent upon Christians ñsharingò everything ï would do the same!

After the death of Governor Carver within a year after his arrival in the New World, he was succeeded by William Bradford as Governor in (New) Plymouth.

Meantime, in Virginia, legislation was enacted in 1623 ñto see that the Sabbath was not profaned by working; or any employments; or journeying from place to place.ò[19]

One should note ï as pointed out by Dr. Boettner in his famous book *The Reformed Doctrine of Predestination*[20] ï that many of the leaders or founders of the American colonies at that time were not just Christians in general. Indeed, most were specifically Calvinistic Christians alias Puritans.

Thus: John Endicott and John Winthrop, respectively the first and the second Governors of the Massachusetts Bay Colony; Thomas Hooker, the founder of Connecticut; John Davenport, the founder of the New Haven Colony; and Roger Williams (the Calvinistic Baptist), who founded Rhode Island. Indeed, even the founder of Pennsylvania (William Penn) ï was a disciple of the Huguenots.

Calvinistic Puritanism has had a vast influence especially on the United States. See Atlanta Law Professor H.J. Bermanôs *Love for Justice: The Influence of Christianity upon the Development of Law*.

There, Berman rightly insists[21] that Puritan theocracy has left its mark upon Americaôs history, theology, and jurisprudence. Significantly, Berman ï a Jew converted to Anglicanism ï then adds: ñIt is the task of Christians today to influence legal development ï so that the law teaches Christian truth, and not paganism; Christian love, and not merely secular social welfare.ò

English History Professor J.R. Green observed[22] it was during the years of tyranny which followed the third Parliament of Charles the First in 1628, that a great **Puritan** emigration ófoundedô the States of New England. Yet the Puritans were far from being the earliest among the English colonists.

They were preceded by the Pilgrims, and the latter in turn by the Anglicans. Indeed, the laws and representative institutions of England were first introduced into the New World ï in the Anglican settlement of Virginia. Nevertheless, it was the Puritans who would soon become the most influential of all the early Colonists.

Ongoing 1628*f* colonization of North America by the 17th-century Puritans

In 1628, English libertarians presented their *Petition of Right* against the absolutism of King Charles the First. But when Laud in the same year became Archbishop of Canterbury, he began eliminating all churchmen suspected of Puritanism ï and started promoting even their imprisonment.

Events in England, especially from that time onward, greatly aided the Puritan colonization of New England. The Puritan John Endicott went to Salem in

[19] *Our Christ. Herit.*, p. 1.
[20] L. Boettner: *The Reformed Doctrine of Predestination*, Presb. & Ref. Pub. Co., Phillipsburg N.J., 1981 ed., p. 382.
[21] H.J. Bermanôs *Love for Justice: The Influence of Christianity upon the Development of Law* (in *Oklahoma Law Review* 12 Feb. 1959 pp. 95 & 97).
[22] *Ib.*, pp. 505f.

Massachusetts during 1628 ï as the Deputy-Governor of eight settlements started four years earlier by the Puritansô Dorchester Company.

The next year, in 1629 ï sailing on the good ship Talbot ï Francis Higginson declared: ñFarewell, dear England, and all the Christian friends there! We do not go to New England as Separatists from the Church of England ï though we cannot but separate from the corruption in it.ò

As the great American historian Perry Miller has stated in his famous book *The American Puritans*,[23] the majority of English Puritans believed that the pure church should be ónationalô ï made up of geographical parish units. Their National Church was to be Presbyterian, on the model of Calvinôs system in Geneva or the Church of Scotland. Many of these people now migrated to America ï together with those ideas.

There was, then, an ongoing Christian colonization of America ï especially from 1628. That year, in England, there was a *Proclamation for Colonizing New England*. It made the following declaration:

ñAll you people of Christ that are here oppressed!... Gather yourselves together, your wives and little ones!... You shall be shipped for His service, in[to] the Western World.... There you are to attend to the service of the King of kings, upon the divulging of the proclamation by His heralds at arms.... This is the place where the Lord will create a New Heaven and a New Earth ï in new churches and a new Commonwealth together.ò

In 1628, the *Charter to the Settlement of Massachusetts* was drawn up, already in England. It boldly urged that the settlers ñthere may be so religiously peaceable and civilly governed, as their good life and orderly conversation may win and incite the natives of that country to the knowledge and obedience of the only true God and Savior of mankind and the Christian faith which...is the principal end of this plantation.ò

More importantly still. In the very same year, John Winthrop ï while yet in England, and before in 1630 leaving with a *Charter of Christian Government* to become the first Governor of Massachusetts Colony ï made a most significant declaration. In his *Reasons* for leaving England, he said:[24]

ñIt will be a service to the Church of great consequence to carry the Gospel into those [American] parts of the World ï to help on the coming of the fullness of the Gentiles [Romans 11:25], and to raise a bulwark against the kingdom of Antichrist [Second Thessalonians 2:3-8]....

ñThe whole Earth is the Lordôs garden [*cf*. Genesis 1:26 to 2:17].... He hath given it to the sons of men with a general commission, Genesis 1:28 [*cf*. Matthew 28:19], óincrease and multiply and replenish the earth and subdue itô ï which was again renewed to Noah [Genesis 9:1-7].ò

[23] P. Miller: *The American Puritans*, Doubleday Anchor Books, Garden City, 1956, pp. 14f.
[24] R.C. Winthrop: *Life and Letters*, Boston, 1864 ed., I pp. 309-11.

This was done, ñso that God might have His due glory from the creature. Why then should we stand striving here [in England] for places of habitationò ï while ñin the meantime suffer a whole continent [America], as fruitful and convenient for the use of man, to lie waste without any improvement?ò

Dr. Gregg Singer rightly states[25] the Puritans of New England went there for the express purpose of setting up a Commonwealth. This would give full expression to that life-and-world-view inherent in their Calvinistic theology.

Also Pat Brooks points out[26] in respect of the voyage to America of Winthropôs company on the good ship *Arbella* that, in order to train the whole population for the óBible Stateô ï Catechisms were used. On the voyage, the clergy catechized their people on Sundays.

Soon after the landing of the large fleet carrying the colonists for the plantation ï the Puritans set apart certain Ministers as Catechists and Teachers. Later in 1629, they voted the sum of three shillings for ñ2 dussen and 10 catechisms.ò

Rev. John Eliot, a Graduate of Cambridge in England, emigrated to America in 1631. There he pastored a Presbyterian Church near Boston, and then established fourteen townships of ópraying Indiansô ï on the model of the Jewish theocracy in Exodus.[27]

In his 1659 work *The Christian Commonwealth*, Eliot argued both from Moses (Exodus 18:12-26 & Deuteronomy 1:13-17) and from Jesus (Matthew 14:21 & Mark 6:40) that society should be organized into households supervised by elders-over-ten, elders-over-fifty, and elders-over-hundred *etc*. Significantly, in 1675, the office of *tithingman* was developed ï dividing Massachusetts into groups of ten familes each (for governmental purposes).[28]

The 1629 *Charter of Massachusetts* and the 1632 *Charter of Maryland*

The citizens of Salem swore together in 1629: ñWe covenant with the Lord and one with another, and do bind ourselves in the presence of God to walk together in all His ways, according as He is pleased to reveal Himself unto us in His blessed Word.ò In that same year, the *Charter of Massachusetts* declared that the colonists there could make laws ñnot contrary or repugnant to the Laws [and] Statutes of Englandò ï *viz*. ñfor the directing...of all other matters and things whereby our said people...may be so religiously, peaceably and civilly governed ï as [that] their good life and orderly conversation may win and incite the [American Indian] natives of [the] country to the

[25] G.G. Singer: *A Theological Interpretation of American History*, Presbyterian and Reformed Pub. Co., Philadelphia, 1964, p. 9.
[26] P. Brooks: *The Return of the Puritans*, Whitaker, Springdale Pa., 1976, p. 49 (*cf.* pp. 36-42).
[27] Thus R.T. Missenden: *Christian World Mission*, Queensland Presbyterian Theological Hall, Brisbane, 1987, p. 13.
[28] See E.S. Morganôs *Puritan Family*, Harper, New York, 1966, pp. 148f.

knowledge and obedience of the only true God and Savior of mankind and the Christian faith. This is our royal intention, and...the principal end of this plantation.ò[29]

Some years later, George Calvert ï one of the best of the Stuart counsellors ï revealed that he had become a Romanist. King Charles the First then promptly elevated him to the peerage, making him the first Baron of Baltimore in Britain. Yet Lord Baltimore was nevertheless ultimately forced ï as a result of his conversion to Romanism ï to seek a shelter for himself (and also for others of his new faith) on the other side of the Atlantic Ocean in the district across the Potomac.

Maryland, founded in 1632 as a proprietary colony by King Charles the First, and named for his Romish wife Mary, was intended principally for British Romanists under the Catholic Baron of Baltimore. Yet Lord Baltimore resolved to open the new colony to men of every kind who professed Trinitarian Christianity.

The 1632 *Charter of Maryland* declares that the founder of that colony, the Baron of Baltimore, was ñanimated with a laudable and pious zeal for extending the Christian religion...in the parts of America...partly occupied by savages having no knowledge of the Divine Being.ò Maryland would tolerate Non-Romish Trinitarians. It would not, however, tolerate Unitarians (including Judaists and Muslims).

Before Lord Baltimoreôs settlement in Maryland, the Church of Brownist or Independent refugees had been driven to Amsterdam in the reign of James the First. There, it later resolved to quit Holland, and find a home in the wilds of the New World.

ñWe are well weanedò ï wrote their minister, John Robinson ï ñfrom the delicate milk of the mother-country, and inured to the difficulties of a strange land. The people [of Holland] are industrious and frugal. We are knit together as a body in a most sacred covenant of the Lord, of the violation whereof we make great conscience ï and by virtue whereof we hold ourselves strictly tied to all care of each otherôs good and of the whole. It is not with us, as with men whom small things can discourage!ò

When he was dissolving his Third Parliament in 1629, Charles the First granted the Charter which established the Colony of Massachusetts. By the Puritans at large, this grant was at once regarded as a call of Providence.

The two hundred who first sailed for Salem, were soon followed by John Winthrop with eight hundred men. Yet seven hundred more next followed.

These emigrants were not like the earlier colonists of the South ï ôbroken menô (adventurers, bankrupts, or criminals). Nor were they simply poor men and artisans, like the Pilgrim Fathers of the *Mayflower*. They were in great part men of the professional and middle classes.

Some of them were men of large landed estates. Some were zealous clergymen ï like Cotton, Hooker and Roger Williams. Indeed, some were shrewd lawyers from

[29] *Our Christ. Herit.*, p. 1. *Cf.* too J. Witteôs *How to Govern a City on a Hill – The Early Puritan Contribution to American Constitutionalism*, in *Emory Law Journal*, Vol. 39, 1990, p. 45.

London ï or young scholars from Oxford. The bulk, however, were God-fearing farmers from Lincolnshire and the Eastern Counties.

Professor Green then concluded[30] that the bitter resentment stirred up in the emigrants to Massachusetts by persecution in England ï was seen in their rejection of Episcopacy and their prohibition of the use of the *Book of Common Prayer*, once they settled down in the New World. The intensity of its religious sentiments, turned the Colony into a theocracy.

In England, it had by then been ordered that for the time to come no men would be admitted to the freedom of the House of Commons ï but such as were members of some of the churches within the bounds of the same. As the contest grew hotter in England, the number of Puritan emigrants rose fast.

Three thousand new colonists arrived from England in a single year. The growing stream of emigrants indicates the terrible pressure of the time. Between the sailing of Winthropôs expedition in 1630 and the assembly of the Long Parliament in 1640*f* ï that is, in just ten years ï two hundred emigrant ships had crossed the Atlantic, and twenty thousand Englishmen had found a refuge in North America.

The Englishman Rev. John Cotton's 1633*f* theocracy in New England

Like Eliot, also Cotton was a British theologian and graduate of Cambridge University. He was a keen student of Calvin, Beza, Ames, Perkins, and Sibbes. Cotton ministered at Englandôs Boston in Lincolnshire ï from 1612 to 1633.

In 1630, he had preached to the passengers of Winthropôs Fleet ï as they left Britain (without him). His text was from Second Samuel 7:10, *viz.*: ñI will appoint a place for my people Israel, and will plant it ï [so] that they may dwell in a place of their own.... Neither shall wicked people trouble them any more as before.ò

That text, Cotton applied to the Puritan migrations into New England. Then, in 1633, he himself migrated to and pastored a church at Americaôs Boston in Massachusetts. There, he soon became the great patriarch of that entire colony.

Cotton combined Amesôs congregationalism with Robinsonôs covenant theology and with Barrowôs presbyterial stress on the continuity of the ruling eldership. Indeed, in his work *Democracy as Detrimental to Church and State*,[31] Cotton insisted: ñDemocracy I do not conceive that God ever did ordain as a fit government for Church or for Commonwealth. If the people be governors, who shall be governed?ò Instead, ñScripture...referreth the sovereignty to **Himself**, and setteth up theocracy in both as the best form of government ï in the Commonwealth, as well as in the Church.ò

In 1633, before himself leaving England, Cotton told prospective emigrants that the Law of Moses was to be applied in New England. Said he: ñAmong the people of Israel, the Lord God was their Governor (Isaiah 33:22).... óAll the ends of the World

[30] *Ib.*, p. 514.
[31] J. Cotton: *Democracy as Detrimental to Church and State*. See *The Annals of America,* in *Enc. Brit.*, 1968 ed., p. 153.

shall remember Him and turn unto the Lord, and all the kindreds of the nations shall worship.... A seed shall serve Himô (Psalm 22:27-30)....

ñTheocracy, or to make the Lord God our Governor, is the best form of government in a Christian Commonwealth, and...is the form which was received and established among the people of Israel whilst the Lord God was their Governor.... That form of government which giveth unto Christ His due pre-eminence, is the best form of government in a Christian Commonwealth.... Colossians 1:15 to 19, with Ephesians 1:21-22....

ñHe [God the Father] hath made all things subject under His [Christôs] feet, and hath given Him over all things to be Head of the Church, so that in **all** things He might have the pre-eminence [Psalm 2:10-12 *cf.* First Corinthians 15:24-28].... In Psalm 2:10-12 you have a description of those that are fitted to order civil affairs in their magistracy to Christôs ends....

ñThe Lord...moulded a communion among His Own people wherein all civil administrations should serve to holy ends. He described the men to whom that trust should be committed, by certain properties which also qualified them for fellowship in church ordinances ï as men of ability and power over their own affections; secondly, fearing God, truly religious, men of courage, hating covetousness, men of wisdom, men of understanding, and men known or approved of among the people of God and chosen by the Lord from among their brethren [Exodus 18:12-25 *cf.* Deuteronomy 1:13-16].... The question is, of the Christian Commonwealth, that [the people] should **willingly** subject themselves to Christ.ò

Significantly, John Cottonôs theocratic views ï as set out in his work *Moses and his Judicials* ï were consistently applied. Thoroughly digesting Calvinôs *Commentary on the Harmony of the Pentateuch*, Cotton wrote: ñI have read the fathers and the schoolmen, and Calvin too; but I find that he who has Calvin, has them all.... I love to sweeten my mouth with a piece of Calvin before I go to sleep!ò[32]

Predictably, this brought about the Biblical regulation of all commerce and politics in Massachusetts. Boston became a second Geneva. Indeed, Cottonôs famous 1641 *Abstract of the Laws of New England as They are now Established*[33] ï is little more than a concatenation of Mosaic and other Biblical Laws.

As there cited by Cotton, these include *seriatim*: Deuteronomy 1:13-17 (Ecclesiastes 10:17 & Jeremiah 30:21 & Joshua 24:1); Numbers 11:14-16; Deuteronomy 17:8-9; 12:5; Exodus 23:35-37 (Proverbs 24:5); Exodus 18:22; Deuteronomy 16 & 18 (Jeremiah 36:10-12); Acts 5:26-27; Deuteronomy 14:28; Numbers 12:14-15; Exodus 21:15-17; Leviticus 20:9; Exodus 21:12-13; Numbers 35:16-33 (Genesis 9:6); Leviticus 20:10; Deuteronomy 22:20-21; Exodus 21:16; Deuteronomy 22:25; Exodus 21:18-19; Leviticus 24:19-20; Exodus 21:26-27; 22:1,4; 22:2; 20:10-11 (Second Samuel 20:18-19); Deuteronomy 20:2-8; 24:5; 23:9,14

[32] Cited in R.T. Kendallôs *John Cotton* (in *The Puritan Experiment in the New World*, Hunt Printers, Rushden Northants, 1976, p. 42). Further elaborated in J. Cottonôs *Discourse about Civil Government in a New Plantation whose Design is Religion*, Cambridge, 1663, pp. 14-17.

[33] J. Cotton: *Abstract of the Laws of New England as They are now Established*, S. Hall, Boston, 1798 ed. [1641], pp. 173-87.

(Second Chronicles 25:7-8); Deuteronomy 10:14,19-20; Numbers 31:27-29,47 (Isaiah 33:22); *etc*.

John Cottonôs New England, with a larger population and more óCromwellian Puritanô than the South, took an active part in the disputes with King Charles the First (1625-49). Indeed, **New England practically declared itself independent of the Crown when it formed its first federation – the 1643 New England Confederation (of Massachusetts and Connecticut)**.

Cottonôs American views delighted Cromwell and the British Puritans. In 1642 ï together with his fellow Americans Hooker and Davenport ï Cotton was invited to be one of the participating divines at the Westminster Assembly itself, and to help draw up the *Westminster Standards* of British Calvinism.

Indeed, Cottonôs theocratic views are faithfully reflected in Questions 19 to 26 of the *Westminster Confession of Faith* and in Questions 91 to 151 of the *Westminster Larger Catechism*. This is why Cotton and other American divines had these *Westminster Standards* adopted at the 1646*f* Cambridge Synod of the New England Churches in America itself.

The 1639*f* Puritan-American Confederations in Connecticut and Massachusetts

The extant works of several other then-contemporary American Puritans, reveal theocratic views quite similar to those of Cotton. Thus, for example, also Rev. Thomas Shepard of Newtown in Massachusetts.

Shepard wrote soon before his death in 1649 that ñall laws, whether ceremonial or judicial, may be referred to the Decalogue ï as appendices to it, or applications of it, and so to comprehend all other laws as their summary.... The judicial laws, some of them being hedges and fences to safeguard both moral and ceremonial precepts, their binding power was therefore mixed and various. For those which did safeguard any Moral Law (which is perpetual), whether by just punishments or otherwise, do still morally bind all nations....

Hence God would have all nations preserve their fences forever, [just] as He would have that Law preserved forever which these safeguard.... As, on the contrary, the morals abiding ï why should not their judicials and fences remain? The learned generally doubt not to affirm that Mosesô judicials bind all nations ï so far as they contain any moral equity in them....

ñMoral equity doth appear not only in respect to the end of the law when it is ordered for common and universal good, but chiefly in respect of the Law which they safeguard and fence.... If it be moral, it is most just and equal that either the same or like judicial fence (according to some fit proportion) should preserve it still ï because it is but just and equal that a moral and universal law should be universally preserved.ò *Works*, III pp. 49-53*f*.

Back in Britain in the year 1639, the **Scottish** Congregations had **confederated** with one another in their Presbyteries ï into a **connectional** Presbyterianism ï and

against both Papacy and Episcopacy. The next year, the Scottish Estates of Parliament in *National Covenant* ratified and approved that confession of faith ï and ordained it to be subscribed to by all Scottish ñsubjects of whatsoever rank and quality.ò

In the New World, during the same year 1639, an early **Confederation** of **Political** Government in North America ï went hand in hand with the early **Confederation** of **Church** Government. Thus, the ***Fundamental Orders of Connecticut*** stated that ñwhere a people are gathered together, the Word of God requires that to maintain the peace and union of such a people, there should be an orderly and decent government established according to God.... The Word of God shall be the only rule to be attended to in ordering the affairs of government in this plantation.ò[34] Genesis 9:6 & First Corinthians 14:40 & Romans 13:1-7.

The *Fundamental Orders* continued: ñWe the inhabitants and residents of Windsor, Hartford and Wethersfield...do therefore **associate** and **con-join** ourselves to be as one Public State or Commonwealth, and do for ourselves and our successors and such as be adjoined to us at any time hereafter, enter into combination and **confederation** together ï to maintain and preserve the liberty and purity of the gospel of our Lord Jesus which we now profess, as also the discipline of the churches which according to the truth of the said Gospel is now practised amongst usò; and ñ**also** in our **civil** affairs to be guided and governed according to such Laws, Rules and Orders as shall be made, ordered, and decreed.ò

Here, the principle of religious association is similarly extended to political affairs ï in terms of mutual **Confederation** under the **Law of God** and the ñ**Gospel** of our Lord **Jesus**.ò At the same time, the citizens in the adjoining territory, who had been supplementing the British Common Law straight from the Old Testament judicial laws, now began to request a *Code of Laws* for Massachusetts.

Not surprisingly, the similar 1640 *Massachusetts Civil Bay Code* ï repeatedly referring to Biblical Law ï became the prototype for all Colonial Civil Law. So, in 1641, the *Massachusetts Body of Liberties* recognized that ñthe free fruition of such liberties, immunities and privileges as humanity, civility and Christianity call forò ï ñhath **ever** been, and ever **will** be, in the tranquillity and stability of Churches and Commonwealths.ò

In 1641, New Haven Colony further adopted the Mosaic Law as its own political legislation. The *Records of the Colony and Plantation of New Haven from 1638 to 1649* state[35] for March 2 1641/2 that, ñaccording to the fundamental agreement made and published by full and general consent when the plantation began and government was settled...**the judicial law of God given by Moses and expounded in other parts of Scripture, so far as it is a hedge and a fence to the Moral Law and neither ceremonial nor typical nor had any reference to Canaan, hath an everlasting equity in it and should be the rule of their proceedings**.ò

Indeed, it is precisely this very doctrine which was so faithfully reflected just a few years later in the *Westminster Confession of Faith* 19:4-7. That, it will be recalled,

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[34] 10 *Enc. Amer.*, New Haven Colony (Osborn) ï as cited in H.B. Clarkôs *op. cit.*, p. 24 at n. 24.
[35] C. Hoadly (ed.): *Records of the Colony and Plantation of New Haven from 1638 to 1649*, Hartford, Conn., 1857, pp. 69 & 130.

was formulated by the 1643*f* Westminster Assembly ï which the Americans Cotton and Hooker and Davenport had all been invited to attend.

The 1643*f* "New England Confederation" between Connecticut and Massachusetts

Of vital importance is the 1643 ***New England Confederation*** between Connecticut and Massachusetts. It declares: ñWe all came into these parts of America with one and the same end and aim, namely to advance the Kingdom of our Lord Jesus Christ.... We therefore do conceive it our bounden duty, without delay, to enter into a present **con-soci-ation** among ourselves, [so] that, in nation and religion, as in other respects, we be and continue one.ò

The oneness of nationhood and of religion was both accepted as a present fact, as well as propounded as a condition to be continued in. There was to be ñno intermeddlingò by Massachusetts in the domestic affairs of Connecticut, nor *vice-versa*. The several States were to ñchoose a Presidentò of the ñConfederation.ò And they were severally to ñestablish rights...of a civil natureò to govern that Confederation.

On April 3rd 1644, New Haven Colony adopted its *Charter*. There, ñit was ordered that **the judicial laws of God** as they were delivered by Moses...be a **rule** to **all** the **courts** in this **jurisdiction**, in their proceedings against offenders.ò

Indeed, just a few years later, Article 28 of the 1656 *New Haven Code* even enacted that ñwhosoever shall profane the Lordôs Day or any part of it by work or sport shall be punished by fine or corporally. But if the court by clear evidence find that the sin was proudly, presumptuously, and even with a high hand committed against the command and authority of the blessed God ï such person therein despising and reproaching the Lord shall be put to death. Numbers 15:30-36.ò[36]

The New England **congregations** followed suit, and similarly **confederated** themselves together ï as churches, into a ótriuneô Church. In 1646-48, they too (at the óCambridge Synodô), **as-soci-ated** themselves into a **Confederation** ï on the basis of the *Westminster Confession of Faith*.

That Cambridge Synod clearly stated that ñit is unlawful for church officers to meddle with the sword of the magistratesò; nor should the latter ñmeddle with the work proper to church officers...[or] compel their subjects to become church members.ò Yet the civil authorities were urged to maintain **both** Tables of the Decalogue, and to punish even ñidolatry, blasphemy, heresy..., contempt of the Word preached, profanation of the Lordôs Day..., and the like.ò For ñsaints by calling must have a Visible Political Union amongst themselves,ò and form a company of professed believers ecclesiastically ñ**Con-foeder-at**.ò

That ecclesiastical confederation was the basis also of their political confederation. Pastors and Elders and Deacons, though distinct, were confederated together in

[36] Cited in J.N. Andrews and J.R. Conradi: *History of the Sabbath*, Review & Herald, Washington D.C., 1912, pp. 707f.

congregations ï and congregations in turn were confederated with other congregations. So too, executive and legislative and judical officers were confederated together into political communities ï and those political communities in turn were confederated together with other political communities, into confederated commonwealths.

These were not populist mobocracies, but representative republics. *Mutatis mutandis*, they were the political counterparts of ecclesiastical confederacies. As the 1648 *Cambridge Synod and Platform* declared: ñThis...is a **mixed** government. In respect of Christ the Head and King...it is a **Monarchy**. In respect of the body...it resembles a **Democracy** [by which was then meant non-mobocratic representative government]. In respect of **Presbytery**...it is an **Aristocracy**.

Later Christian Codes in Massachusetts, Maryland, and Connecticut (1648-55)

As the historian Hutchinson pointed out,[37] the 1648 *Massachusetts Code* ï like the Common Law of England at that time ï regarded murder, sodomy, witchcraft, arson and child rape as capital crimes. The *Massachusetts Code* further extended capital punishment to idolatry, blasphemy, kidnapping, perjury intending to bring about the death of another, unprovoked cursing or striking of parents by children over sixteen, and adultery (in respect of which several were put to death). If repeatedly perpetrated, several other lesser crimes too became capital.

Reflecting Biblical Common Law and anticipating the later American *Bill of Rights*, the 1648 *Laws and Liberties of Massachusetts* stated: ñNo manôs life shall be taken away; no manôs honour or good name shall be stained; no manôs person shall be arrested, restrained, banished, dismembered nor anyways punished; no man shall be deprived of his wife or children; no manôs goods or estate shall be taken away from him nor anyways endamaged under colour of law or countenance of authority ï unless it be by virtue or equity of some express law of this country warranting the same by a General Court and sufficiently published; or in case of the defect of a law, in any particular case by the Word of God.ò

Thus, for example, multiple restitution was prescribed ï to thwart thefts. One Josias Plaistowe ï for stealing four baskets of corn from the Indians ï was ordered to return them eight baskets. *Cf.* Exodus 22:4 *cf.* Luke 19:8*f.*

As the 1930 *Iowa Law Review* itself insisted:[38] ñMassachusetts was to be a Bible Commonwealth, a theocracy, the Genevan experiment writ large. Without question, the law and theory of the Ancient Hebrew order were large factors in shaping and guiding the public polity of the Bay Colony. The influence of the Scriptural element, is clearly evident in the book of laws (of 1648).ò Also see, in the same vein, the 1931 *China Law Review*.[39]

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[37] *Op. cit.*, I pp. 367 & 371f.
[38] 15 *Iowa Law Review*, (1930) 181 (Root).
[39] 4 *China Law Review*, (1931) 360 (as cited in H.B. Clarkôs *op. cit.* p. 44 n. 23).

Nor were legal provisions such as those above, confined only to Massachusetts in New England. As Perry Miller pointed out in his *Data of Jurisprudence*:[40] ñSeveral of the [American] colonies formerly adopted provisions of Mosaic Law.ò

Even the more tolerant Maryland ï a largely-Romish but maverick Colony surrounded by a sea of Protestant plantations ï did not tolerate non-trinitarian beliefs. Instead, it too roundly promoted only ï and specifically ï Christianity alone.

As one reads in the 1649 *Maryland Toleration Act*: ñBe it therefore...enacted...that no person or persons whatsoever within this province...**professing to believe in Jesus Christ** shall henceforth be any ways troubled, molested (or disapproved of)...in respect of his or her religion nor in the free exercise thereof.ò[41]

Of course, even in a Puritan State like seventeenth-century Connecticut, not everyone was a Christian. Yet the Old and New Testaments were certainly upheld as **the** standards in politics, as well as in matters ecclesiastical. Indeed, as Newman pointed out in his rather imprecisely-named book *Jewish Influence on Christian Reform Movements*[42] ï by ñJewishò meaning ñOlder Testament Influenceò (*etc.*) ï Connecticut in 1655 adopted a Code in which 47 out of 79 topical statutes were based on the Bible.

Israeli Scholar Dr. Sivan on the massive Mosaic influences in colonial America

Thus, among the Puritans of New England (observed the Israeli Jewish scholar Dr. Gabriel Sivan),[43] not just Christian or New Testamentary but also Hebraic alias Old Testamentary legal norms were closely followed by many of the colonists. Cotton Mather was later to declare that, as with the Israelites in the wilderness, these new settlersô ñlaws were still enacted, and their wars were still directed, by the voice of God (as far as they understood it) speaking from the Oracle of the Scriptures.ò Their notion of government was a theocratic one. Their ideal was a Commonwealth ruled by the Mosaic Code.

An *Order of the General Court of Massachusetts* in 1636 (and also the *General Laws of Plymouth Colony* in 1658), laid down that ecclesiastical divines, and civil magistrates (as laymen trained in Hebrew) ï should decide cases as far as possible in accordance with the Law of God or of Moses. English Common Law was checked for its agreement with ôthe Word of God.ô The *Foreword* to the 1658 laws of Plymouth explains that the rightness of actions is determined by natural law ï which God has written on human hearts and rewritten in Holy Scripture, which sets forth ñprinciples of moral equity.ò

Cases were often decided by reference to Scripture. As the early records show, arguments of counsel and even deliberations of the general court (or legislature) took

[40] P. Miller: *Data of Jurisprudence*, p. 416 (as cited in H.B. Clarkôs *Biblical Law*, Binfords & Mort, Portland, 1944, p. 44).
[41] *Our Chr. Herit.*, p. 2.
[42] N. Newman: *Jewish Influence on Christian Reform Movements*, p. 642 (as cited in H.B. Clarkôs *op. cit.* p. 44 n. 23).
[43] *Op. cit.*, pp. 134f.

more heed of Mosaic injunction or Prophetic wisdom ï than of the Lord High Chancellorôs decisions. *Cf.* Matthew 5:17*f.*

In Pennsylvania, an eldest son at one time inherited a double portion of the estate. *Cf.* Deuteronomy 21:17. In New Haven (Connecticut), prisoners were cautioned with the text: ñHe that covereth his transgressions, shall not prosper; but whoso[ever] confesseth and forsaketh them, shall obtain mercy.ò Proverbs 28:13. Officials were read appropriate passages such as Exodus 18:13-26, before being installed formally. In Massachusetts, Connecticut, New Haven, and West New Jersey ï judges were instructed to inflict the penalties ordained in the Law of God.

In Massachusetts, as in New Haven, the courts gave Biblical rulings. For the Puritans of New England, the Pentateuch was **the** authoritative Statute Book. This explains the preponderance of Scriptural ordinances in Nathaniel Wardôs *Body of Liberties* ï Americaôs first law book.

This 1641 *Body of Liberties* laid down that magistrates be guided by the Word of God. Americaôs first law book contained a chapter entitled óCapital Lawô ï and this too included marginal notes referring to the Pentateuch.

Of its forty-eight laws, all but two were taken directly from the Hebrew Bible. When former Puritan generals from Britain sought refuge in the New World after the Restoration of 1660, John Davenport ï whom, it will be recalled, had earlier been invited to become a Commissioner to the Westminster Assembly ï successfully invoked Scripture in their defence. He quoted Isaiah 16:3*f* ï ñHide the outcasts; do not betray the fugitive; let My outcasts dwell with you!ò

Even more than a century later, observed Dr. Sivan,[44] when the British soldiers responsible for the massacre at Boston were tried there in 1770 ï Justice Oliver cautioned the jury against deciding the case on a misunderstanding of the Biblical principle that ñwhosoever sheds manôs blood, by man shall his blood be shedò (Genesis 9:6). The Israelites of old, he observed, had cities of refuge to which a manslayer might flee from the avenger of blood (Numbers 35:6-15); and Moses had designated this sanctuary for those who killed [non-murderously] without enmity or premeditation.

The theocratic vision for confederating churches and states in America did not wane with the death of Cromwell in Britain in 1658. For in 1659, the great colonial Missionary to the American Indians Rev. John Eliot even advocated an international World Christian Order.

Declared Eliot: ñThe government of the Lord Jesus...in the Holy Scriptures, shall order all affairs among men. And great shall be His dominion..., all men submitting to be ruled by the Word in **civil** as well as church affairs.... The Lordôs time is come to advance and spread His blessed Kingdom, which shall (in His season) fill all the Earth...over all the nations of the Earth in His due time.... All nations shall become the nations and kingdoms of the Lord and of His Christ.ò Revelation 11:15; 15:4; 21:24; 22:2.

[44] *Op. cit.*, p. 136.

The ongoing theocratic vision in America even after the Restoration in England

Even after the 1660-85 Restoration in England under King Charles the Second, yet more Protestant colonies were formed in North America. Thus the Dutch colony of New Amsterdam (alias New York), the Scandinavian colony of New Jersey (populated by Frisians and Finns *etc*.), and the Swedish colony of Delaware ï wedged between the óindependentô New England North and the colonial Plantation South ï now all became British proprietary colonies.

Further, also the Carolinaôs ï both North and South ï were granted local government. So too was the óQuaker Stateô of Pennsylvania. Truly, not just as previously during the reign of Charles the First (1625-49) but even during that of Charles the Second (1660-85) ï **there was far more <u>legal</u> and <u>political</u> freedom in the American colonies than in England herself**.

The *Charter of Connecticut* had been drawn up by Governor John Winthrop Jr., and signed by King Charles II as far back as 1662. It granted virtual independence. Indeed, it guaranteed the colonists so much freedom to chose their governor and magistrates and representatives and to enact their own laws ï that Connecticut did not adopt a new State Constitution until 1818. And 1818 was long after Connecticut had confederated with the other independent United States in America from 1777 to 1789!

Similarly, the same Charles II gave a Charter also to Rhode Island ï in 1663. Under that Charter, the Rhode Island government continued functioning long after that Stateôs own May 1776 *Rhode Island Declaration of Independence* from Britain. Moreover, it was not till 1790 that Rhode Island ratified the *Constitution of the United States*. Indeed, even thereafter ï Rhode Island did not enact a new State Constitution until 1842.

From 1664 onward, the American colonies grew rapidly ï as too did their liberties and their self-government. Thus the 1682 *Great Law* of the Quaker State of Pennsylvania provided to ñestablish such laws as shall best preserve true <u>Christian civil liberty</u>.ò

It did so, by ensuring that ñall persons who profess to believe in Jesus Christ as the Savior of the World, shall be capable...to <u>serve</u> this government in <u>any</u> capacity.ò Indeed, the *Great Law* further provided that ñwhereas the glory of Almighty God and the good of mankind is the reason and the end of government..., therefore government itself is a venerable ordinance of God.ò

The blessed results of the 1688 Glorious Revolution in Britain, were almost immediately appreciated also in Colonial America. As Richard Frothingham wrote in his book *The Rise of the Republic of the United States*,[45] the tyranny of James the Second had fallen upon his English and his Transatlantic subjects alike. Neither were of a temper tamely to submit to it, and both were delighted to welcome the advent of William and Mary.

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[45] R. Frothingham: *The Rise of the Republic of the United States* (in V.M. Hallôs *Christian History of the Constitution of the United States of America*, American Christian Constitution Press, San Francisco: 1966 ed., I p. 290).

When the report reached Boston that the Prince of Orange had landed in England, an uprising against the existing rule of James the Second was planned and consummated. A Provisional Government, in the name of William and Mary, was established. In all the colonies, their right of local government had been violated by James. In all of them, William and Mary were joyfully proclaimed.

The plaque on Cromwellôs tomb had declared: ñChrist, not man, is King.ò One generation after the 1660 Restoration of the Stuart monarchy, the Puritans had finally won the English Civil War. Indeed, they had won it not just in Old but especially in New England.

By 1700, John Locke was insisting that one of the chief ends of government is to preserve property under Godôs ñLaw of Nature.ò Indeed, as Professor J.R. Green observed of the American Colonies[46] ï their whole population amounted in the middle of the eighteenth century to about 1,200,000 (nearly a fourth of that of the mother country). The wealth of the colonists was growing even faster than their numbers, especially in the South.

Yet in education and political activity, New England stood far ahead of its fellow colonies. There it was enacted that ñevery township, after the Lord hath increased them to the number of fifty householders, shall appoint one to teach all children to write and read; and when any town shall increase to the number of a hundred families, they shall set up a grammar school.ò *Cf.* the elders-over-fifties and the elders-over-hundreds in Exodus 18:12-25f & Deuteronomy 1:13-16.

New England was a Puritan stronghold. In the South, the Episcopalians were established by law. Romanists formed a large part of the population in Maryland. Pennsylvania was the Quaker State. Presbyterians and Baptists colonized New Jersey. Lutherans and Moravians migrated to Carolina and Georgia.

With all these creeds, religious persecution was extremely minimal. Indeed, with the appointment of governors of each colony and its House of Assembly elected by the people at large ï all administrative interference on the part of the British Government practically ended.

The creation of the first American Presbytery of the Presbyterian Church

A vitally important **political** factor, was the creation of the first American Presbytery ï the Presbytery of Philadelphia ï in 1706. Of course, already during 1562, French Presbyterians had settled temporarily in the Carolinas (even before the death of Calvin in 1564) ï and in Florida during 1565. Again, during 1617, the first Dutch Presbyterian or Reformed **Congregation** had been formed in New York City.

It was only subsequently that Rev. Francis Mackemie came from Ireland, and in 1684 organized congregations ï from isolated though previously-scattered Presbyterians in Maryland. Indeed, it was not till 1706 that some of those new

[46] *Op. cit.*, pp. 758-60.

Presbyterian congregations were themselves formally **confederated** into the first American Presbytery.

This latter action had profound political implications, psychologically. As Professor Dr. Loraine Boettner pointed out,[47] it made the Presbyterian Church as an organized institution itself the oldest American ôRe-publicô ï the oldest government ô**for the people**ô alias ô*re[s]-publica*.ô

Presbyterianism is not a demo-cracy. It is **not** government **by** the people. Yet it **is** indeed government **from** the people ï and also government by the ô**best**ô of the peopleô (*hois aristois*).

In that sense, it is also Americaôs oldest aristo-cracy. Indeed, from 1706 till 1774 the Presbyterian Church was also the only example of a federal alias a **con-feder-ated** ôRepublicô in America ï and an ôaristocraticô one at that.

In 1710, there was a massive Scots-Irish Protestant exodus from Ulster ï especially to North America. This would provide the basis for the leadership in the American War for Independence ï just over half a century later.

The Puritan-American predictions of Cotton Mather and Jonathan Edwards

At the beginning of the eighteenth century, Rev. Dr. Cotton Mather and Rev. Professor Dr. Jonathan Edwards both predicted the later christianization of the American wilderness. Indeed, they further predicted the ultimate christianization even of the whole World.

Said Bostonôs Mather in 1709: ñOur glorious Lord will have a holy city in America.... We have by a true and plain history secured the story of our successes against all the Ogs in this woody country....

ñThere is a ôrevolutionô and a reformation at the very door, which will be vastly more wonderful than any of the deliverances yet seen by the Church of God from the beginning of the World.... God will not allow America to remain ôa place for dragonsô (*cf.* Isaiah 35:1-7). Has it not been promised unto a great Savior: ôI will give Thee the uttermost parts of the Earth for Thy possessionô (Psalm 2:7-12)? ... America is legible in these promises!ò

Even to the above end, Mather promoted the protection and the increase of private property ï also against its usual decrease through debilitating gambling. Commenting on Zechariah 5:1-5, Mather said:[48] ñWhen God has bestowed an estate upon a man, for him to make it a question whether he shall have it or not, and refer unto the shuffling of a card or the casting of a die whether it shall be his own or not ï such a man steals from himself, and from his family, and from those whom God has directed to spend his revenues on.ò

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[47] *Op. cit.*, pp. 385f.

[48] C. Mather: *A Flying Roll...the Crime and the Doom of the Thief Declared*, 1713, 14. See too Zech. 5:1-4.

Notwithstanding the above, as Dr. Gary North has rightly pointed out,[49] from John Cotton to his grandson Cotton Mather ï Puritans were careful to remind the saints that the outward financial conditions of an individual are not clues to his inward condition. Only the long-run condition of a collective people ï and no one can be sure how long this is ï can testify to the spiritual condition of a majority of its citizens.

Thus, honest men could, through the providence of God, be blasted with affliction. No absolute law of prosperity guarantees outward blessings to each diligent saint. It is the heresy of the magician that makes him believe that manipulation of earthly things can bring Godôs power into play. Cotton Mather, opposed to witchcraft, was no friend of magicians!

Georgia was the last of the **original thirteen American Colonies** to receive her Governmental Charter, in 1732. She was settled in 1733, as an outgrowth of an organization know as the Society for the Propagation of the Gospel in Foreign Parts. This wanted to relieve the plight especially of persecuted dissenters in England, Ireland, Scotland and Wales.

The settlement grew rapidly. Persecuted Protestants also from Europe ï notably Lutheran Salzburgers and Moravians ï poured into the Colony.[50]

Now these various colonial governments from Massachusetts to Georgia, indeed did differ with one another ï according to the provisions of their several charters. But all had elected Assemblies; all had powers of legislation and taxation (wider than those then given to Canada); all could determine the salaries of their officials; and all had some control over their own governors.

Consequently, the thirteen colonies developed their prosperity independently not only of one another but also and indeed especially of Britain ï even before 1776. This prosperity was a fruit of their Common Law ï and also especially of the Anti-Romish and Protestant preaching of the Gospel.

Remarked the great 1739 Rev. Professor Dr. Jonathan Edwards:[51] ñSome of the nations of Indians, when the Europeans first came into America, had a tradition among them that their God first led them into this Continent and went before them in an ark.... In later times, God has sent the Gospel into these parts of the World....

ñThe Christian Church is set up here in New England and in other parts of America where before had been nothing but the grossest heathenish darkness. A great part of America is now full of Bibles, and full of at least the form of the worship of the true God and Jesus Christ....

ñI think we may well look upon the discovery of so great a part of the World as America, and bringing the Gospel into it, as one thing by which divine Providence is preparing the way for the future glorious times of the Church ï when Satanôs kingdom

[49] G. Northôs *Pietism and Secularism 1691-1720* (in *Journal of Christian Reconstruction* VI:2 1980 p. 160).
[50] Collette: *op. cit.*, p. 38.
[51] J. Edwards: *The History of Redemption,* Sovereign Grace Book Club, Evanston Ind., 1959 rep., pp. 284-324f.

shall be overthrown not only throughout the Roman Empire, but throughout the whole habitable Globe on every side and on all its Continents....

ñThe way that...Antichrist should arise, is foretold. *Viz.*, not among the heathen or those nations that never professed Christianity...but...by the apostasy and falling away of the Christian Church into a corrupt state. Second Thessalonians 2:3.... All this is exactly come to pass in the Church of Rome.... Many other things which were foretold of Antichrist...(so often spoken of in Scripture)...show that they were fulfilled most exactly in the pope and the Church of Rome....

ñAs the children of Israel were gradually brought out of the Babylonish captivity, first one company and then another, and gradually rebuilt their city and temple; and as the heathen Roman Empire was destroyed by a gradual though a very swift prevalency of the Gospel ï so...all will not be accomplished at once, as by some great miracle..... This is a work which will be accomplished by means ï by the preaching of the Gospel.... The Gospel shall be preached to every tongue and kindred and nation and people, before the fall of Antichrist.....

ñThe kingdom of Antichrist shall be utterly overthrown. His kingdom and dominion has been much brought down already, by the vial poured out on his throne in the Reformation [Revelation 16:10]. But then, it shall be utterly destroyed.... Then shall be accomplished concerning Antichrist the things which are written in the eighteenth chapter of Revelation of the spiritual Babylon, that great city Rome or the idolatrous Roman government that has for so many ages been the great enemy of the Christian Church ï first under heathenism, then under popery....

ñBefore Babylon falls, the Gospel shall be powerfully preached and propagated in the World.... Many will turn from heresy and from popery and from other false religions.... Christ and His Church shall in this battle obtain a complete and entire victory over their enemies.... The visible kingdom of Satan shall be overthrown and the Kingdom of Christ set up on the ruins of it ï everywhere ï throughout the whole habitable Globe.... All the families of the Earth shall be blessed....

ñThen shall the many nations of Africa...be enlightened with glorious light.... Then shall the vast Continent of America...be everywhere covered with glorious Gospel light.... Great knowledge shall prevail everywhere....

ñMany of the Negroes and Indians will be divines.... Excellent books will be published in Africa, in Ethiopia, in Tartary, and other now the most barbarous countries.... The duration of this state of the Churchôs prosperity, is to be of long continuance..., a joy of many generations..., to revive the true religion in all parts of Christendom and to deliver all nations...and bless them...and fill the whole Earth with His glory.ò

Dr. R.J. Rushdoony on the trinitarian nature of Early American Government

Rev. Professor Dr. Cornelius Van Til has shown that the one-ness of God and the many-ness of the three Divine Persons inhere in the Holy Trinity from all eternity past and unto all eternity future. Genesis 1:1-3,26; John 1:1-5 & 17:1-5,24; Hebrews 9:14.

Van Tilôs disciple, the noteworthy American historian Dr. Rousas John Rushdoony ï a disciple who gives Van Til a concrete application, and in some respect goes far beyond him ï has shown that this great truth has important political implications. Thus it has political ramifications even for the U.S. Government with its óoneô Federal Government and its ómanyô States. First Corinthians 12:12*f cf.* Psalms 78 & 80 & 83 & 122.

As Rushdoony points out in his important book *The One and the Many*,[52] the differences between Christianity and Atheism are basic. Even within Christianity, there are far lesser differences *inter se* between Russian Orthodoxy, Roman Catholicism, Anglicanism, Lutheranism and Calvinism. Each, however, has its own characteristic culture or consequence in the social and political action produced by its own presuppositions.

Now óthe one and manyô is perhaps the basic question of philosophy. If óthe oneô is the reality, tyrannical unity must gain priority over individualism. If óthe manyô best describes ultimate reality ï then state, church, or society are subordinate to the will of the citizen: so that anarchy prevails.

The Father, the Son, and the Holy Ghost are each a Personality. God is totally Self-conscious ï meaning there are no aspects of His being unknown to Him. Each Person of the Trinity is equally God. In God, the óoneô and ómanyô are equally ultimate. Unity in God is not more fundamental than diversity, and diversity in God is not more fundamental than unity.

Mohammedanism, because of its Unitarianism ï just like New England Transcendentalism ï has yielded primarily a monolithic Statist Order. However, law and liberty coincide in the Ontological Trinity. In the Triune God, we have a concrete Universal and concrete Particulars.

Even in the incarnation of Jesus Christ,[53] the human and the divine were in union without confusion. By de-divinizing the World, Christianity placed all created orders ï including church and state ï alike under God. By denying divinity to all creatures and by reserving it only to the Triune God, all created orders were freed from one another and made independent of each other. Together, they are all interdependent with one another ï in their total dependence on God. Church and State alike are to be Christian, but neither are to be totalitarian over one another.

The individual lives within community. The community itself flourishes, as the individual finds himself. To the extent that Augustinianism and Calvinism have been followed, Western culture has developed both freedom and order.

Both the earlier Pagan-Roman and the later Semi-Pagan Roman Emperors were intensely aware of this fact. To promote Statism, they supported Arianism. Modern Statism is a descendant of this faith. Democracy, Communism and the United Nations all see the fulfilment of man in terms of the State. There is no law beyond it.

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[52] R.J. Rushdoony: *The One and the Many*, Craig, Nutley N.J., 1971, pp. 1f.
[53] *Ib.*, p. 124.

Against this impasse, orthodox Chalcedonian Trinitarianism asserts the transcendence of sovereignty ï which rests in the Triune God. In civil government ï to cite just one instance of a temporal óoneô and ómanyô ï this means that there is a division of powers, a general diffusion of authority, and a balance of controls throughout the entire structure of civil government. Both liberties and powers are alike limited ï under God, and hence under law[54]

The Enlightenment, Deism and Illuminism all exalted the principle of the óoneô at the expense of the ómany.ô This faith received a major setback in the American Revolution ï which was, in fact, a Christian counter-revolution. But today it is again prevalent, and has its great institutional formulation in the United Nations.

The problem of the one and the many cannot be avoided in life. Is the state more important than the individual ï or does the individual have a reality which the state does not possess? What is the *locus* of Christianity ï the believer, or the church? Does marriage have a reality which makes its condition mandatory ï irrespective of the condition of the husband and wife? Or do the persons in the marriage take priority, in their wishes, above the marriage itself? Thus Rushdoony.

In his other book *This Independent Republic,* Rushdoony insists[55] that the Pre-Independence American colonies were demanding the rights of freeborn Englishmen ï right down till 1776. They were fully aware of the nature of English liberties in the past. They knew that the ancient *Magna Carta* relationship between freeborn Englishmen and their king was a **feud-al** alias a ó**foed-er-al**ô or **coven-ant-al** and **con-tract-ual** or ó**con-fed-erate**ô one. Their charge was that King George had ceased to be **such** a king.

Again, Parliament had originally been a non-statist feud-al body, a court of contract and law between king and vassals. Representation had been based on feud-al classes. However, by 1776 the British Parliament had become a statist body.

It was the colonial legislatures that were the American Parliaments. No other parliament had any jurisdiction over them. **Each American colony was a <u>Free English State</u>** ï directly under its king. Their relationship to him, was feudal and contractual. The *Declaration of Independence* was thus a <u>con-stitu-tional</u> document ï an assertion that a fundamental contract which had governed the colonies, had been broken by their king (acting on the bad and **alien** advice of his British Parliament).

Massachusetts had refused, already in Cromwellôs day, to accept the sovereignty of the British Parliament. John Cotton very early had stated the Puritan thesis clearly. He had declared it wrong to give unlimited or unconditional power or authority to any ï whether in church, or state. Thus Rushdoony.

Held Cotton: ñIt is necessary therefore that all power on Earth be limited, church power or other.... It is therefore fit for every man to be studious of the bounds which the Lord hath set: and for the people in whom fundamentally all power lies, to give as much power as God in His Word gives to men....

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[54] *Ib.*, pp. 6f.
[55] R.J. Rushdoony: *This Independent Republic*, Craig, Nutley N.J., 1964., pp. 18f.

ñIt is meet that magistrates in the commonwealth, and so officers in churches, should desire to know the utmost bounds of their own power.... All entrenchment[s] upon the bounds which God hath not given...are not enlargement[s] but burdens and snares. They will certainly lead the spirit of a man out of his way, sooner or later.ò[56]

Blackstone's 1765 preparation of modern American Law (and its esteem of him)

Let us now look at Sir William Blackstone, quite the most famous of all of the Common Law jurists. Rightly so, his name is legend in legal circles ï in England; throughout the British Commonwealth; and especially in the United States of America.

Blackstoneôs 1765-69 four-volume *Commentaries on the Laws of England* ï completed only seven years before the American War for Independence, and a mere twenty-four years before Article VII of the U.S. *Bill of Rights* upheld ñthe rules of the common lawò ï traces the latter back to creation itself. In addition, however, it even anticipates its further development and improvement ï also in the Common Law of the United States of America.

Blackstone drew heavily on the great Calvinistic jurist and Puritan theologian ï the 1671*f* Lord Chief Justice Sir Matthew Hale. However, in addition, Sir William himself insisted that municipal or positive laws derive all their validity only from their conformity to the Law of God. Twice elected a Member of Parliament, Blackstone was also offered the post of English Solicitor-General.

Blackstone was understandably branded as an ultra-conservative ï by his ó utilitarianô rival, Jeremy Bentham. The latter then betrayed Britainôs godly heritage ï by becoming legal adviser to and the tool of the ungodly French Revolutionists. Indeed, Bentham even became a citizen of Revolutionary France, and an influential corruptor and mentor of later humanistic and socialistic jurists throughout the world. The latter, consequently, even today still deceptively misinterpret the Common Law ï and/or urge its replacement by new socialistic statutes.

However, Dr. Stanley N. Katz (the celebrated modern Jewish Scholar who is Professor of Legal History at Princeton University) gives us a much better perspective ï in his *Introduction* to the 1979 University of Chicago edition of Blackstoneôs four-volume masterpiece. There, Law Professor Katz remarks:[57] ñ**Sir William Blackstone's *Commentaries on the Laws of England* (1765-69) is the most important legal treatise <u>ever</u> written in the English language**.ò

It was the dominant lawbook in England and America in the century after its publication ï and played a unique role in the development of the fledgling American legal system. With the establishment of the new American nation in 1789, Americans increasingly turned to Blackstoneôs *Commentaries* as their model.[58]

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[56] J. Cotton, as cited in *Ib.* p. 28.
[57] 1979 rep., I pp. iii-iv & 476.
[58] *Ib.*, I, pp. iv, v & xii.

John W. Whitehead explains in his 1984 book *The Second American Revolution*[59] that Blackstone was a Christian, and that he believed the fear of the Lord was the beginning of wisdom. He opened his *Commentaries* with a careful analysis of the Law of God as revealed in the Bible. That opening analysis concluded: ñThe doctrines thus delivered, we call the Revealed or Divine Law; and they are to be found only in the Holy Scriptures.ò

In the light of that Law of Scripture, Blackstone then approached the Law of Nature. ñUpon these two foundations ï the Law of Nature and the Law of Revelation ï depend all human laws. That is to say, no human laws should be suffered to contradict these.ò

The *Commentaries* were popular in Great Britain. However, by 1775 ï the year before Americaôs *Declaration of Independence* ï more copies had been sold in America than in all England. So influential were they, that historian Daniel Boorstin wrote: ñIn the first century of American Independence, the *Commentaries* were not merely an approach to the study of the law. For most lawyers, they constituted all there was of the law.ò

The Englishman Sir William Blackstone died in 1680 ï just four years after America began to re-assert her British Common Law rights by claiming her independence. Princeton Law Professor Katz rightly characterizes[60] Blackstoneôs work as the most original intellectual contribution of the American Revolution to Public Law. To Katz, Blackstone had even conceptualized the *Constitution* [of Great Britain and her American colonies] as Fundamental Law. The following citation from Blackstone himself, helps to explain why.

Stated the Englishman Blackstone (**in <u>1765</u>**): ñOur more distant plantations in America...are also in some respects subject to English laws.... If an uninhabited country be discovered and planted by English subjects, all the English laws are immediately then in force. For as the law is the birthright of every subject, so wherever they go they carry their laws with them. But in conquered or ceded countries that already have laws of their ownò ï their laws are not *ipso facto* abrogated simply because English subjects subsequently colonize those lands.

ñThe king may indeed alter and change those laws; but, till he does actually change them, the antient laws of the country remain ï unless such as are against the Law of God, as in the case of an infidel country. 7 *Rep.* 17b. [Robert] Calvinôs case.

ñ**Our American plantations are...no part of the mother country, but distinct...dominions**.... The form of government in most of them, is borrowed from that of England. They have a governor.... **They have courts of justice of their own.... <u>Their</u> General Assemblies...are <u>their</u> House[s] of Commons**. Together with their Council of State, being their Upper House ï [and] with the concurrence of...the governor ï **[<u>they</u>] make laws suited to their <u>own</u> emergencies**.ò[61]

[59] J.W. Whitehead: *The Second American Revolution*, David C. Cook, Elgin Ill., 1984, p. 30f.
[60] *Op. cit.*, I pp. xi-xii.
[61] *Op. cit.*, I pp. 104f & 363.

The fame of Blackstone, remarks the *Encyclopaedia Britannica*,[62] is greater in the United States than it is in his native land. It bids fair to continue to be ï and justly so. For both before and after the 1776 *Declaration of Independence*, Blackstoneôs 1765 *Commentaries* were the chief ï and in many parts of the country almost the only ï source of the knowledge of English Law for the great American Commonwealth. A text-book as old as the U.S.A. herself, it became her oracle of law.

The greatness of Blackstoneôs renown in the English-speaking World was clearly revealed in July 1924. Then, on the memorable joint visit of the American and Canadian Law Associations to England ï the American lawyers presented to the law courts of London a statue of Blackstone executed in marble.

The British *Stamp Act* of 1765 as the match which ignited America

The trend toward Britainôs unconstitutional government over America began in 1753-64. The colonists then became alarmed, increasingly, by the rise of the new so-called óAdministrative Lawô (over-riding the historic Common Law) suddenly exercised by the British Admiralty especially during **and after** the 1754-63 French and Indian War. Britain at that time created war powers. These allowed Britain to waive *habeas corpus*, and to impose unpopular taxes and send Americans to jail ï quite apart from any jury verdict based on the Common Law.

The war powers were not relinquished in 1763. This fact allowed the British Central Government to continue operating outside and even against the rights of American-born Englishmen ï even though those rights were secured in the British Constitution, as well as in the American Colonial Charters, and also under the Common Law. Sadly, those war strictures were thus not lifted in North America after the end of the War Between Britain and France.

So the American *Declaration and Resolves* of the first Continental Congress analyzed the unconstitutional character of that rule on October 14th 1774. The Congress then established that Britain had continued ruling with war powers declared during the French and Indian War.

By 1776, the Americans had endured years of unconstitutional taxes, kidnapping of sailors on the high seas, and intolerable quartering of troops. Indeed, in that regard the 1776 *Declaration of Independence* was substantially a re-iteration of the 1774 document.

Then there was also the *Stamp Act*. English History Professor J.S. Brewer noted the momentous consequences which ensued when the English Prime Minister Grenville extended the British *Stamp Act* to North America in 1765. Significantly, Grenville had first consulted with some of the London agents of the several North American colonies.

Thereby, however, he inadvertently acknowledged the jurisdiction of the thirteen colonial legislatures. Explained the Englishman Brewer: ñEach of these colonies was

[62] Art. *Common Law* (in *Enc. Brit.*, 14th ed., 1929, III:687).

governed on the English model, and had a House of Assembly elected by the people.ò[63]

Again according to the Englishman Brewer, hitherto the Mother Country and her Colonies had lived in tolerable harmony. But at this time, the Americans were in a distressed and irritable condition. They were suffering from the effects of a terrible border war with the Indians. They considered themselves aggrieved by new duties imposed on their foreign trade.

All were opposed to a *Stamp Act*, which was a sort of local excise. There should be no taxation without representation. The Americans were not represented in the House of Commons in Great Britain ï the body which had enacted that *Stamp Act*. For not one or more of the then-existing American legislatures but precisely the British Parliament ï in breach of the practice and prerogative of the colonial legislatures ï had now itself gone and purported to levy this local tax upon the Americans.

America instantly exploded, especially Virginia. Its House of Representatives drew up a series of resolutions, accompanied by a *Petition* to the king. This denied the right of the Mother Country to tax the Colonists without their consent. Most of the other Colonial Assemblies followed suit.

The British Prime Minister ï George Grenville ï fell from power. His successor, Lord Rockingham, soon repealed the *Act*. However, the damage had been done. Back in America, Francis Lightfoot Lee of Virginia had signed the American *Westmoreland Declaration* against the British *Stamp Act*. A decade later, he and others would sign also the *Declaration of Independence* of the United States of America.

The crucial role of Presbyterians and Princeton in the founding of the U.S.A.

Americaôs greatest Calvinist, Rev. Jonathan Edwards, had been President of Princeton till his death in 1758. Soon thereafter, Rev. John Witherspoon assumed Princetonôs Presidency.

As Wheaton History Professor Dr. Mark Noll has stated in his article *James Madison: from Evangelical Princeton to the Constitutional Convention*[64] ï John Witherspoon served twenty-six years as the President of Princeton University College. He devoted great energies to his Presbyterian Church, and was a New Jersey Delegate to the Continental Congress in July 1776 ï to help formulate the *Constitution of the U.S.A*. in 1776.

Witherspoon was a warm and a convincing Evangelical. In educational matters, he pushed Princeton to the forefront of contemporary learning ï by emphasizing History, Public Speaking, Natural Science, Hebrew and French (as well as the traditional Classical Curriculum).

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[63] *Op. cit.*, pp. 611-16.

[64] M. Noll: *James Madison: from Evangelical Princeton to the Constitutional Convention*, Dordt College, Sioux Center Ia., Dec. 1987, pp. 2f.

During his tenure, while the average size of graduating classes was only nineteen, the college trained one future President of the United States (James Madison), one Vice-President (Aaron Burr), thirty-nine Congressmen, twenty-one Senators, twelve Governors, ten Members of the Cabinet, several Supreme Court Judges, and holders of many high State Offices too numerous to mention.[65]

The Princeton to which the later drafter of the *U.S. Constitution* James Madison came in the fall of 1769, was a young but determinedly Christian College. It had been founded in 1746 by a group of Ministers, and merchants, who wanted to do what Calvinist Colleges in the nineteenth and twentieth centuries have sought to do ï *viz*. to develop a Biblical curriculum and train leaders to promote Christianity in every field of human endeavour.

Princetonôs founders sought to honour the Scriptures; to inculcate true religion; to pursue the liberal arts; and to graduate men who would serve honourably in church and society. Madison graduated from Princeton College when it was still a self-consciously Christian institution. He was the real father of the *Constitution*; a thoughtful reader of theology (right into his early thirties) ï and of the Scriptures (for his whole life). Thus Noll.

In their interesting 1936 book *John Calvin and the Modern World*, the Australian Presbyterians Dixon and Jamieson discuss[66] the testimony of the United States of America. The Church of Scotland had given to the great Republic its Constitution ï by way of the Presbyterian *Book of Common Order* so copiously used to educate Alexander Hamilton. The Presbyterian Rev. Professor Dr. John Witherspoon, a descendant of John Knox, was the one divine of whatever denomination who actually signed the 1776 *Declaration of Independence* ï and also the 1781 *Articles of Confederation*.

An absolute majority of the Presidents of the United States have been Presbyterians, and at times an absolute majority of the Governors of the States. All but one of President Harrisonôs Cabinet were Presbyterians; of President Grover Clevelandôs, all but three. President Theodore Roosevelt was a Lay Preacher in the Dutch Reformed branch of the Presbyterian Church. It is noteworthy that President Woodrow Wilson was an Elder in the Presbyterian Church, and a descendant of the Covenanters. Thereafter, President Calvin Coolidge was a Calvinistic Congregationalist.

It is well-known that when the U.S. *Declaration of Independence* was reported to King George III and to the English Prime Minister, it elicited the exclamation: ñCousin America has run off with a Presbyterian Parson!ò Little wonder that the New York *Herald*, one of the leading American journals, should have exclaimed in the 1930ôs: ñThese Presbyterians are still running the United States of America.ò Indeed, even since then, yet more Presbyterian Presidents have come along ï in the persons of Eisenhower, Nixon, and Reagan.

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[65] *Id.* and Whiteheadôs *op. cit.* p. 28 (as cited in J. Williamsôs *op. cit.*, Oct. 1986, p. 19) and R.J. Rushdoony: *The Biblical Philosophy of History*, Presbyterian & Reformed, Nutley N.J., 1969, pp. 128f.
[66] *Op. cit.*, pp. 30f (*cf.* J. Witherspoonôs *Works*, Woodward, Philadelphia, 1800 ed., III pp. 356f).

So, by the beginning of 1776, New Jerseyôs most famous clergyman was getting ready to sign the American *Declaration of Independence*. That clergyman was the Presbyterian Minister Rev. Dr. John Witherspoon ï President of Princeton University College.

Witherspoon took also the Mosaic Law very seriously. He wrote: ñMany things are copied from the Law of Moses into the laws of modern nations.... The *lex talionis* in the case of injuries ï an eye for an eye and a tooth for a tooth *etc*. ï [have]...many instances in which it would be very proper....

ñIt is very proper for the eye-for-an-eye *lex talionis* and many other things to be copied from the Law of Moses into the laws of modern nations.... We plead the cause that shall finally prevail. Religion shall rise from its ruins. And its oppressed state at present should not only excite us to pray, but encourage us to hope for its speedy revival.ò

W.W. Sweet declared in his book *The Story of Religion in America*[67] that Witherspoon applied the Presbyterian theories of órepublicanismô (alias responsible representative government) to the constitution of the new civil governments. Rushdoony states[68] that Witherspoon was a philosopher, theologian and economist whose influence on his pupils has been called very óprofoundô... His devoted students were influential in every area of life, and many were present in the Constitutional Convention.

Sphere-sovereignty impelled men toward the 1776 *Declaration of Independence*

We have already seen the influence of the ósphere-sovereigntyô views of the great German Calvinist Jurist Johann Althusius upon the Pilgrims in Holland, before they came to America. Then, after quite some friction between the several State Governments in the thirteen American Colonies on the one hand and the Imperial Government in Britain on the other, the Americans now moved toward declaring themselves ósovereign in their own sphereô and independent of the distinctly-different British Government in London. Predictably, it was the Calvinists who spearheaded this declaration of their own sphere-sovereignty in America.

Britain needed extra income to help finance the fighting of her various European Wars and also her response to the 1754-63 French and Indian Wars in North America. So the British Parliament now tried to extract some of that needed revenue precisely from her own American colonies. Consequently, Britain cracked down against ósmugglersô in North America ï who were circumventing Britainôs imposts and taxes there.

Colonial juries resisted this, alleging that only the American legislatures had that power to tax within their own territories. But the British Parliament now granted power to her own agents in the New World to seize Americans without warrant, and

[67] W.W. Sweet: *The Story of Religion in America*, Baker, Grand Rapids, 1975, pp. 178-79.
[68] R.J. Rushdoony: *Bibl. Phil of Hist.*, pp. 128f.

to defy the *Habeas Corpus Act* of 1679 by removing trials away from the vicinities of alleged crimes in America.

Britainôs 1765 *Stamp Act* attempted to circumvent the American Parliaments. For here it was an external authority which levied an internal tax! The Boston Tea Party erupted in 1773. When the Americans blamed King George III (instead of his British Parliament whose bidding he was obligated to execute) ï serious friction developed between Britain and the American Colonies.

From 1774 onward, the American Continental Congress in Philadelphia sought the legal grounds for her controversy against the British King and Parliament ï especially as regards óno taxation without representationô and óthe right to trial by jury.ô The Americans sought these legal grounds in the British Constitution, in the Colonial Charters, in the Law of Nature, and above all in the Law of Natureôs God ï the Natural Law of God, alias His Ten Commandments.

On June 1st 1774, the Burgesses of Virginia passed a resolution proclaiming a fast ï to ñimplore the Divine Interpositionò against the British Parliament for ordering an embargo on the Port of Boston. George Washington then wrote in his diary: ñWent to Church and fasted all day.ò[69]

On September 3rd 1774, at the First Continental Congress, the following *Continental Declaration* was signed by representatives from twelve of the American Colonies. It was signed over the signatures of men like John Jay, Patrick Henry, Richard Henry Lee, and George Washington.

States the 1774 *Continental Declaration*: ñThe good people of the several Colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle [and] Kent and Sussex on [the] Delaware, Maryland, Virginia, North-Carolina and South-Carolina ï justly alarmed at these arbitrary proceedings of [the British] Parliament and Administration ï have severally elected, constituted and appointed deputies to meet and sit in general Congress in the city of Philadelphia in order to obtain such establishment as that their religion, laws and liberties may not be subverted....

ñThe deputies so appointed being now assembled...do in the first place ï **as Englishmen their ancestors in like cases have usually done for asserting and vindicating their rights and liberties** ï DECLARE that the inhabitants of the English Colonies in North-America, by the immutable **Laws of Nature**, the principles of the **English Constitution**, and the several **Charters or Compacts**, have the following rights....

ñThey are entitled to life, liberty, and property.... They have never ceded to any sovereign power whatever, a right to dispose of either, without their consent.... Our ancestors, who first settled these Colonies, were at the time of their emigration from the Mother Country, entitled to all the rights, liberties and immunities of free and natural-born subjects within the realm of England....

[69] D. Prince: *Shaping History through Prayer and Fasting*, Fleming H. Revell Co., Old Tappan N.J., 1973, p. 137.

ñBy such emigration they by no means forfeited, surrendered, or lost any of those rights.... They were, and their descendants now are, entitled to the exercise of all such of them as their local and other circumstances enable them to exercise and enjoy.

ñThe foundation of English liberty, and of all free government, is a right in the people to participate in their Legislative Council.... As the English Colonists [in America] are not represented, and from their local and other circumstances cannot properly be represented, in the British Parliament ï they are entitled to a free and exclusive power of legislation in their several Provincial Legislatures where their right of representation can alone be preserved in all cases of taxation and internal polity....

ñThe **respective Colonies are entitled to the Common Law of England**, and more especially to the great and inestimable privilege of being **tried by their peers**...according to the course of that law.ò Thus it was ñresolved...that the following Acts of [the British] Parliament are infringements and violations of the rights of the Colonists; and that the repeal of them is essentially necessary in order to restore harmony between Great Britain and the American Colonies, *viz.*:

ñThe several *Acts*...which impose duties for the purpose of raising a revenue in America; extend the powers of the Admiralty Courts beyond their ancient limits; [and] deprive the American subject of trial by jury; [and] authorize the Judges Certificate to indemnify the Prosecutor from damages that he might otherwise be liable to....

ñAlso the three *Acts* passed in the last Session of [the British] Parliament: for stopping the port and blocking up the harbour of Boston; for altering the Charter and Government of the Massachusetts-Bay; and that which is entitled *An Act for the Better Administration of Justice Etc*. Also **the Act passed the same Session for establishing the Roman Catholick Religion in the Province of Quebec, [and** abolishing the equitable system of English Laws and erecting a tyranny there] ï to the great danger (from so great a dissimilarity of Religion, Law, and Government) of the neighouring British Coloniesò in New England.

The 1775 Oration of Massachusetts Provincial Congress President Joseph Warren

On March 6th 1775 ï at the second anniversary after the ó*Boston Massacre*ô [by the British invaders] ï Provincial Congress President Joseph Warren of Massachusetts gave his famous oration on the circumstances of *The Settlement of America*. There, he reminded[70] his fellow Americans:

ñThis country, having been discovered by an English subject in the year 1620, was...deemed the property of the Crown of England. Our ancestors, when they resolved to quit their native soil, obtained from King James a grant of certain lands in North America.... Having become the honest proprietors of the soil, they immediately applied themselves to the cultivation of it.

[70] J. Warren: *The Settlement of America* (In *Young Folks' Library*, Hall & Locke, Boston, 1902, XVIII:250f).

ñThe British nation...boasted a race of British kings whose names should echo through those realms where Cyrus, Alexander, and the Caesars were unknown. Princes for whom millions of grateful subjects redeemed from slavery and pagan ignorance should, with thankful tongues, offer up their prayers and praises to that transcendently great and beneficent Being ðby Whom kings reign and princes decree justiceô [Proverbs 8:15].

ñThese pleasing connections might have continued. These delightful prospects might have been every day extended.... Even the reveries of the most warm imagination, might have been realized... But ï unhappily for us, unhappily for Britain ï the madness of an avaricious Minister of State [in England] has drawn a sable curtain over the charming scene, and in its stead has brought upon the stage discord.

ñSome demon, in an evil hour, suggested to a short-sighted financier the hateful project of transferring the whole property of the kingôs subjects in America ï to his subjects in Britain. The claim of the British Parliament to tax the colonies, can never be supported by such a transfer.

ñFor the right of the House of Commons of Great Britain to originate any tax or grant money, is altogether derived from their being elected by the people of Great Britain to act for them.... The people of Great Britain cannot confer on their representatives a right to give or grant anything which they themselves have not a right to give or grant personally.

ñThe hearts of Britons and Americans ï which lately felt the generous glow of mutual confidence and love ï now burn with jealousy and rage. Though but of yesterday, I recollect (deeply affected at the ill-boding change) the happy hours that passed whilst Britain and America rejoiced in the prosperity and greatness of each other. Heaven grant those halcyon days may soon return!

ñBut now, the Briton too often looks on the American with an envious eye.... The American beholds the Briton as the ruffian ï ready first to take away his property, and next (what is still dearer to every virtuous man) the liberty of his country.ò

Patrick Henry's famous 1775 *Oration* in the Virginia Convention

Just seventeen days later, Patrick Henry delivered his immortal *Liberty or Death* address in the Virginia Convention. The Delegates there must, urged Henry,[71] ñarrive at truth and fulfil the great responsibility which we hold to God and our country. Should I keep back my opinion at such a time, through fear of giving offence ï I would consider myself as guilty of treason toward my country, and...disloyalty toward the Majesty of Heaven which I revere above all earthly kings.

ñShall we try argument? Sir, we have been trying that for the last ten years [from the 1765 British *Stamp Act*, till Patrick Henryôs present speech in 1775]. Have we anything new to offer upon the subject? Nothing! We have held the subject up, in every light of which it is capable.... Let us not...deceive ourselves longer. Sir, we have done everything that could be done to avert the storm which is now coming on. We

[71] P. Henry: *Liberty or Death* (in *Young Folks' Library*, XVIII:259f).

have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the [British] throne ï and have implored its interposition to arrest the tyrannical hands of the [British] Ministry and Parliament.

ñSir, we must fight. An appeal to arms and to the God of hosts, is all that is left us.... We are not weak, if we make a proper use of those means which the God of nature hath placed in our power.... **There is a just God Who presides over the destinies of nations**.... Gentlemen may cry, óPeace! Peace!ô But there is no peace! The war is actually begun....

ñIs life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take ï but as for me, give me liberty, or give me death!ò

Nearly all Framers of the American Republic were not Deists but Calvinists

It is true that the political philosophy of the Englishman John Locke ï himself a product of Puritanism ï was very important in the thinking of the Framers of the *U.S. Constitution*. English History Professor Green[72] called Locke the foremost political thinker of the Restoration, deriving governmental authority from the consent of the governed. His philosophy was little more than the conclusion most Englishmen had drawn from the English Civil War. Princes were responsible to their subjects for a due execution of their trust, and legislative assemblies were regarded as the voice of the people itself.

In 1690, Locke published his *Two Treatises on Civil Government*. There he justified the Glorious Revolution of 1688 which had brought the Presbyterians William and Mary to the throne of England. To Locke, manôs original condition in the state of nature was happy and reasonable ï when his ñlife, health, liberty or possessionsò were all sacrosanct.

After the fall, the State was formed by social contract or covenant ï to be guided by Natural Law; to secure property rights and the fruits of human labour; and to protect people against óout-lawsô who live outside the Law of Nature. Locke wrote the *Fundamental Constitutions of the Carolinas*, and set out the policy of checks and balances later followed in the *U.S. Constitution*.

In his 1695 *Reasonableness of Christianity*, Locke emphasized ethics. He also argued for toleration of different denominations. Yet he advocated legislation against Atheism and Romanism, because he regarded both of them as being inimical to religion and to the state.[73]

Memphis State University political scientist William R. Marty gave an excellent address at the 1987 annual meeting of the American Political Science Association. It was titled *Religion, Constitution, and Modern Rivals – Our Founders, and Theirs*.

[72] *Op. cit.*, pp. 615f.
[73] Art. *Locke, John*, in *NICE* 13:3980.

Locke, declared Marty, did not provide the first contract theory justification of the right to elect civil governments. Consider the dates. The Puritan Long Parliament, which met from 1640 to 1660, preceded Lockeôs 1690 *Two Treatises on Government*.

Even the English Civil War, deriving largely from Calvinist claims, was preceded by the 1620 Mayflower Compact and by the Massachusetts Bay Colony with its 1629 Charter (and internal covenants and contracts). Americans were using contract theory to govern themselves by compact and consent in terms of their understanding of God-given rights ï long before Locke wrote.

The Calvinistic emphasis upon covenants, upon the right to form the ecclesiastical polity by coming together and basing it upon sacred contracts, much predated Locke. So too did the Calvinist civil polity ï to elect or approve political ministers; to remove them upon manifest unworthiness; and to elect and remove civil magistrates as well. It helped to form the republican mind, as well as establish republican practice.

Let it then not be thought, as do modern humanistic historians in America and elsewhere, that the Founding Fathers were Deists rather than Christians. As Attorney John Eidsmoe recently pointed out in his excellent book *Christianity and the Constitution: the Faith of Our Founding Fathers*[74] ï Patrick Henry believed in christianizing the American Indians and in treating them honestly. Too, George Washington wrote a very devout book of prayers which is totally orthodox.

Indeed, as M.E. Bradford pointed out in his book *A Worthy Company: Brief Lives of the Framers of the United States Constitution*[75] ï with no more than at the most five exceptions (and perhaps no more than three), they were orthodox members of one of the established Christian communions. Of those Framers of the Constitution, approximately 29 were Episcopalians ï of whom many were Puritans.

In addition; 16 to 18 were Presbyterians; two were Methodists; two Lutherans; two Roman Catholics; one a lapsed Quaker and sometime Anglican; and a self-professed Deist. Even the latter, Dr. Benjamin Franklin ï attended every kind of Christian worship; called for public prayer; and contributed to all denominations.

The epoch-making 1775 *Mecklenburg Declaration* of North Carolina Calvinists

By April 17th, 1775, sporadic fighting had broken out between Britain and America. Then, the Calvinists of Mecklenburg in North Carolina acted with decisiveness ï and thus foreshadowed the coming *U.S. Declaration of Independence* itself.

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[74] J. Eidsmoe: *Christianity and the Constitution – the Faith of Our Founding Fathers*, Baker, Grand Rapids, 1987, p. 415. See too R.J. Rushdoonyôs *Video, Evangelism and Other Vitals* (in *Chalcedon Report*, May 1988, p. 16).

[75] M.E. Bradford: *A Worthy Company – Brief Lives of the Framers of the United States Constitution*, Plymouth Rock Foundation, Marlborough N.H., 1982 (cited in J. Loftonôs *American History's Memory Hole*, in *Chalcedon Report*, July 1988, pp. 12f).

In 1775, Presbyterian North Carolinaôs *Mecklenburg Declaration* was signed precisely by Calvinists in that American State. Indeed, there is enormous evidence that even Jefferson borrowed from this óPresbyterianô document ï when later helping to write the *Declaration of Independence* the following year in 1776.

For on May 20th 1775, twenty-seven thorough-going Calvinistic Scotch-Irish Presbyterians of Mecklenburg County in North Carolina ï offspring of the Scottish Covenanters ï met in Charlotte and made their own following *Mecklenburg Declaration of Independence* from Great Britain. There they declared:

ñWe do hereby dissolve the political bands which have connected us with the Mother Country, and hereby absolve ourselves from all allegiance to the British Crown.... We hereby declare ourselves a free and independent people; are, and of right ought to be, a sovereign and self-governing association under control of no power other than that of our God and the general government of Congress; to the maintenance of which we solemnly pledge to each other our mutual cooperation and our lives, our future, and our most sacred honor.ò

In addition to other Presbyterian ólaymenô there ï a large part of that Assembly, including the President and the Secretary, were Presbyterian Elders ï and one was a Presbyterian Minister. The Secretaryôs brother Adam Brevard reportedly used a copy of the *Westminster Standards*, containing the Scottish Covenants, to help draw up the document.

It was then sent to Philadelphia, where Congress was in session; circulated throughout the Colonies; and sent to England. Indeed, in several places of the first draft of the *Declaration of Independence* of the following year, Jefferson himself would insert words previously found in this *Mecklenberg Declaration*.[76]

The very next month, in June 1775, the Continental Congress issued a call to all citizens to fast and pray and to confess their sin ï so that the Lord God might bless their land. Urged the proclamation: ñIt is recommended to Christians of all denominations, to assemble for public worship ï and to abstain from servile labor and recreation on said day.ò[77]

The Christian background of the various State Constitutions just before 1776

We also need to see that both the 1776 American *Declaration of Independence* and the 1789 *U.S. Constitution* no way exclude but far rather presuppose specifically the Christian religion as their (non-denominational) background. All thirteen of the autonomous Christian States which either originally or soon thereafter confederated themselves into (and thus constituted) independent America, had themselves previously possessed ï and indeed would also continue to possess ï specifically óChristianô State Constitutions.

[76] See J. Williamsôs *op. cit.*, in Nov. 1986 *Counsel of Chalcedon*, pp. 17f. For the dispute as to the authenticity of the above text of the *Mecklenburg Declaration*, see the standard works of Moore (for) and Hoyt (against).
[77] See *Our Chr. Herit.*, p. 3.

This was especially true: of the óPuritan-Calvinisticô States of Massachusetts, New Hampshire, and Connecticut; also of the óPresbyterianô States North Carolina and South Carolina; and of the óDutch Reformedô State of New York. Yet it was also true of the óProtestantô States of New Jersey, Delaware and Georgia; of the óBaptistô State of Rhode Island; and of the óEpiscopalianô State of Virginia.

Indeed, it should be remembered that even Maryland ï established under its 1632 *Charter* by the Romanist Lord Baltimore ï tolerated various other forms of professed Christianity (but no denial of the Trinity). Even the 1649 *Maryland Act of Religious Toleration* granted ñtoleration in religion to all who professed faith in Christò ï but not to those who made no such profession.

Even in the Quaker State of Pennsylvania, William Penn himself had agreed to the 1701 *Pennsylvania Charter of Privileges*. That remained in effect until the 1776 *Declaration of Independence*. Careful inspection of the former, reveals that it guaranteed religious toleration of all Monotheists (but not of any Non-Monotheists). It enfranchised, however, only those who profess faith in Christ.

States that 1701 *Pennsylvania Charter*: ñNo People can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences as to their religious profession and worship.... No person or persons inhabiting in this province or territory who shall confess and **acknowledge One Almighty God** ï the Creator, Upholder and Ruler of the World ï and profess him[self] or themselves obliged to live quietly under the civil government, shall be in any case molested or prejudiced...nor be compelled to frequent or maintain any religious worship, place or ministry contrary to his or their mind.... **All persons who also profess to believe in Jesus Christ the Saviour of the World, shall be capable (notwithstanding their other persuasions and practices in point of conscience and religion) to service this government in any capacity, both legislatively and executively**.ò[78]

So then, as David Barton declared in his article *The Key to Good Government*,[79] by the mid-1700ôs the Founding Fathers understood not only what the Scriptures taught about good government. They understood also the lessons of history. Consequently, they emphasized a manôs private character and personal religious beliefs as a pre-requisite for public service. This is illustrated by the requirements they placed on office-holders in their various State Constitutions.

The God-ordained course of the 1776-81 War for American Independence

According to Professor Dr. Loraine Boettner in his book *The Reformed Doctrine of Predestination*,[80] of the estimated three million Americans at the time of the Revolutionary War: just less than one million were either Scots or Scots-Irish; just over half a million were Puritan English; and just under half a million were either

[78] H.C. Syrett (ed.): *American Historical Documents*, Barnes & Noble, New York, 1960, pp. 64f.
[79] D. Barton: *The Key to Good Government* (art. in *The Bell Ringer*, SCCEC, North Hills, Ca., Summer 1992, p. 6).
[80] *Op. cit.*, pp. 382f.

German or Dutch Reformed. Together with an additional couple of hundred thousand French Huguenots and Protestant Episcopalians, approximately two-thirds of the total population was then Calvinistic.

Consequently, the historian Bancroft could rightly claim that the American Revolution of 1776 was a Presbyterian measure. It was the natural outgrowth of the principles which the Presbyterianism of the Old World planted in her sons the English Puritans, the Scottish Covenanters, the French Huguenots, the Dutch Calvinists and the Presbyterians of Ulster.[81]

Thus, as Archie P. Jones explains in his study *The Christian Roots of the War for Independence*,[82] Congregationalists furnished a large portion of the Revolutionary leadership in the New England area ï while Presbyterians furnished a large proportion of the leadership in the Middle and Southern Colonies. Presbyterians, the most widely-distributed denomination, were even more vocal in preaching the principles of American Independence from the British Government.

As a consequence, during the course of the war, the British destroyed more than fifty Presbyterian churches and defaced many others. As the German historian Leopold von Ranke declared: ñJohn Calvin was the virtual Founder of America.ò

In April 1776, Paul Revere rode from Boston to Concord, where skirmishes broke out (as too at Lexington). In May 1776, the Second Continental Congress raised an American Army. It elected George Washington as its Commander-in-Chief; decided to publish a *Declaration of Independence*; urged the several Colonial States themselves to formulate Instruments of Government; and boldly announced a plan not for a Union but for a **Confederation**.

Events now moved rapidly, especially in Virginia. There, a decade earlier, Francis Lightfoot Lee had signed the *Westmoreland Declaration* against the 1765 British *Stamp Act*. In the very year of the publication of Blackstoneôs *Commentaries on the Laws of England*, that British *Stamp Act* had proposed to levy taxes on various American documents. But this was illegal. For those taxes could legally have been levied only by the American Representatives in their own existing Colonial Parliaments. So Lee objected.

Now, a decade later, on June 7th 1776, his brother ï the British-educated Virginia Representative Richard Henry Lee ï moved the famous resolution in the Continental Congress of the thirteen united States in America ñthat these United Colonies are, and of right ought to be, free and independent states [**plural!**] ; that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved...; (and) that a plan of **CONFEDERATION** be prepared and transmitted to the respective Colonies for their consideration.ò

Francis Lightfoot Lee and his brother Richard Henry Lee were both among the fifty-six who co-signed the *Declaration of Independence of the U.S.A.* one month later. Their cousinôs son, General Henry Lee (ñLight Horse Harryò) ï father of the

[81] Cited in *ib.*, pp. 383f.
[82] A.P. Jones: *The Christian Roots of the War for Independence* (in *Journal of Christian Reconstruction*, Vallecito Ca., III:1, 1976, pp. 14-19).

great General Robert E. Lee ï was himself too a Representative at the **Confederation Congress**. General Henry Lee, the later Governor of Virginia, became Washingtonôs right hand man in the War for Independence.

On June 12th, 1776, the Virginia *Bill of Rights* asserted among other things also the free exercise of religion and the duty of all to practise Christian forbearance. It is the chief basis of the July 1776 *U.S. Declaration of Independence* (**under** God and therefore **from** Britain).

It is also the basis of the 1791 *U.S. Bill of Rights*, alias the first Ten Amendments to the 1787 *U.S. Constitution*. Indeed, it also served as a model for all the rest of the thirteen American Colonies which were similarly and collectively about to declare themselves independent of Britain on July 4th 1776.

Declared Virginia[83] on June 12th 1776: ñAll men are by nature equally free and independent, and have certain inherent rights of which...they cannot by any compact deprive or divest their posterity; namely the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.... All power is vested in...the people.... Magistrates are their trustees and servants, and at all times amenable to them....

ñThe legislative and executive powers of the State should be separate and distinct from the judiciary.... Elections of Members to serve as Representatives of the people in Assembly, ought to be free.... All men having **sufficient**...attachment to the community, have the **right of suffrage** and cannot be taxed or deprived of their property for public uses without their own consent or that of their Representatives so elected.ò

The Virginian document continues: ñIn all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusations...and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty.... Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.... The ancient trial by jury is preferable to any other, and ought to be held sacred.... The military should be under strict subordination to and governed by the civil power.ò

Whence come and wherein root these óancientô and ósacredô rights? They come from the Creator ï and, *via* Christ who re-affirmed them even after the fall, they root in Christianity! The above section of the June 12th 1776 Virginia *Bill of Rights* therefore closes with the following memorable words: ñNo free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles....

ñReligion, or the duty which we owe to our Creator, can be directed only by reason and conviction.... All men are equally entitled to the free exercise of religion, according to the dictates of conscience.... It is the mutual **duty of all** to practise

[83] F.N. Thorpe (ed.): *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories and Colonies now or heretofore forming the United States of America*, Washington, 1909, VIII:3813f.

Christian forbearance, love and charity toward each other.ò Note, **not** monotheistic but specifically **Christian** forbearance!

Within a month, thirteen American States declared themselves independent of Britain. A bloody war ensued. The hostilities lasted till Britainôs General Cornwallis surrendered to the Americans at Yorktown in 1781. A peace treaty was finally signed in Paris during 1783. A detailed legal analysis of that *Declaration of Independence*, and later also of the *Paris Peace Treaty*, is now appropriate.

The 1776 *Declaration of Independence* of the United States of America

We now turn to the unanimous *Declaration of Independence* of the thirteen States of America united forthat purpose ï signed on behalf of those several States *inter alios* by the outspoken Calvinists Benjamin Rush, John Witherspoon and James Wilson ï as well as by Virginiaôs Christian Constitutionalists Francis Lightfoot Lee and Richard Henry Lee.

The latter Lee had the previous month moved in the Continental Congress ñthat a plan of **confederation** be prepared and transmitted to the respective Colonies for their consideration.ò Then, in Congress, on July 4th 1776, he and more than fifty other Delegates signed *inter alia* the following propositions:

ñIn the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the Earth the separate and equal station to which the laws of nature and of Natureôs God entitle them.ò

Here, the *Declaration* at its very outset assumes: the unilateral right of one dissatisfied people [*viz*. each of the American Colonies] to secede from another [*viz*. Britain]; the rightness of each nation which so desires, to be ñseparateò; the ñequal stationò which all separated peoples should enjoy alongside of those from whom they have separated; and ñthe laws of natureò and ñnatureôs Godò as the just grounds of such separation and such equal station.

If the above propositions are true ï and they are ï then each of the thirteen American States indeed had the right unilaterally to separate from Britain. They also each had the further rights: to associate themselves with any other state in a **confederacy**; to unite with at least eight of the others as the U.S.A.; and also to attain to a separate and equal station alongside of Britain in 1776.

Indeed, Massachusetts and Connecticut had already entered into a **confederation** with one another in 1639 ï independently of Britain. And that, fully 137 years before both of them ï jointly and separately and unilaterally ï declared themselves to be independent of Britain.

So then, by the same inexorable logic ï and in the continuing absence of any legal prohibition against secession ï also the Southern States must have had **the same right** later to **secede unilaterally** in 1861 from the then-yankified United States Federal Government. Those seceded Southern States must also have had the right then to

confederate themselves together as the C.S.A. And that Confederacy must also have had the right then to attain to a separate and equal station alongside **the northern rump** of what till then had been known as the United States.

Similarly, also White or Black Americans ï not to speak of the American Indians and the Hispanics ï would, if acting through duly constituted Legislatures, today likewise be able to exert their similar right to become separate and equal nations even in dissociation from the U.S. Federation. To seek to deny such a right of self-determination today, is to undermine the very ground on which the United States separated from Britain in 1776 ï and on which the South separated from the U.S.A. in 1861.

Furthermore, the ñU.S.Aò **at its very inception** was never stated to be an ñindissoluble unionò (such as the 1901 Commonwealth of Australia). Frankly, however, even in the ñindissoluble unionò of the Commonwealth of Australia, it is certainly arguable that an unwilling Queensland could ñsecedeò ï **if** the rest of Australia were to break compact with the Queen and with the *Constitution* by becoming a ñDemocratic Peoplesô Republic.ò

Now the *U.S. Declaration of Independence* clearly asserts that ñthe laws of nature and of natureôs God **ENTITLE**ò any ñpeople to dissolve the political bands which have connected them with another.ò This is so because, formally at least, all peoples alias ñall men are created equalò ï and have thereby *ipso facto* been ñendowed by their Creator with certain unalienable rights.ò One such is clearly their right to ñdissolve the political bands which have connected them with anotherò ï alias **the right to secede**.

One month before the *Declaration*, George Mason (the author of the Virginia *Bill of Rights*) had declared to the General Court of Virginia: ñThe laws of nature are **the Laws of God, Whose authority can be superseded by no power on Earth**.ò This is the context in which the phrase ñthe laws of nature and natureôs Godò was now being incorporated into the *Declaration of Independence* itself.[84]

This is born out by Samuel Westôs 1776 sermon *On the Right to Rebel Against Governors*, in which he declared that ña state of nature is properly a state of law and government.... Sooner shall Heaven and Earth pass away, and the whole frame of nature be dissolved ï than any part, even the smallest iota, of this law shall ever be abrogated. It is unchangeable as the Deity Himself, being a transcript of His moral perfections.ò

This means that, seeing the thirteen States were asserted to have a ñright to rebelò against the tyrannical Parliament of Britain in 1776 ï the Southern States be the same token had a similar ñright to órebelôò (*sic*) against the tyranny of Lincoln in 1859*f*. For, what was sauce also for the goose of the Northern States in 1776 ï must *ipso facto* also be sauce for the gander of the Southern States in 1859*f*.

So, according to the *Declaration of Independence*, ñthe laws...of natureôs Godò even in the twentieth and twenty-first centuries actually ñentitleò one nation (such as the Bosnians or White South Africans or the black Tutsis) to separate from another

[84] See *Our Chr. Herit.*, p. 3.

nation (such as those within Yugoslavia or Azania/Southafrica or Rwanda-Burundi). *Cf.* Genesis 11:1-9; Deuteronomy 32:8; Acts 17:24*f.*

This is so because, even at the national level such as in Britain and America, human ñlifeò and ñliberty and the pursuit of happinessò are all truly ñunalienable rightsò with which ñall men are createdò and ñendowed by their Creatorò ï Who is also ñthe Supreme Judge of the Worldò (as stated in the 1776 *Declaration of Independence*). Yet these are rights, not because they are mentioned in the *Declaration*. To the contrary, the 1776 *Declaration* mentions these rights precisely because they always have been such ï *via* **rights**.

It was thus the Biblical and Christian doctrine of the God-given rights of man as the very image of his Creator ï which led to the formulation of those mentioned in the 1776 *Declaration of Independence*. It also led to the formulation of the rights ñretained by the peopleò and the powers ñreserved to...the peopleò *vis-a-vis* the United States itself, as mentioned in the 1791 Ninth and Tenth Articles in the U.S. *Bill of Rights*. Indeed, the 1776 *Declaration* itself specifically refers to the ñunalienable rightsò of human ñlifeò and ñliberty and the pursuit of happinessò with which ñall men are createdò and ñendowed by their Creator.ò *Cf.* Genesis 1:26-28 & 9:5-6 and James 3:8-9.

It needs to be understood once and for all that the 1776 *Declaration of Independence* was **not creating a unified political government** for a thenceforth independent North America. To the contrary. The diverse and long-standing legislatures of thirteen different American States were simply uniting against the tyranny of the British Government in order to assert their several independences **plural**, as of right, against the usurpations of a then-ever-centralizing foreign government headquartered in London. The very title of the document is not ótheDeclaration of the new Federal Government [singular] in Americaô ï but ñThe unanimous Declaration of the thirteen United States [plural] of America.ò

The later *Constitution* of that new entity ñThe United States of Americaò did not take effect until ratified by its ninth constituent state in 1788. Rhode Island did not enter that new Union until 1790. Yet Rhode Island, like the rest of the American Colonies, has **already** declared herself independent of Britain way back in 1776. Consequently, Rhode Island would have remained independent of both Britain and the U.S.A. even if she had never adopted the 1787 U.S. Constitution.

Indeed, also the very last paragraph of the 1776 *Declaration* begins: ñWe, therefore ï the Representatives of the United States [plural]...by authority of the good people of these Colonies [plural] ï solemnly publish and declare that these United Colonies [plural] are and of right ought to be free and independent States [plural]; that they [plural] are absolved from all allegiance to the British Crown; and that all political connexion between them [plural] and the State [singular] of Great Britain is and ought to be totally dissolved; and that as free and independent States [plural] they [plural] have full power to levy war...and to do all other acts and things which independent States [plural] may of right do.ò

The 1776 *Declaration* of the official representatives delegated by thirteen American States assembled at the Continental Congress, then ends in an appropriate manner. ñWe, therefore, the Representatives of the United States of America in

General Congress Assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions..., with a firm reliance on the protection of Divine Providence..., mutually pledge to each other our lives, our fortunes, and our sacred honour.ò

Was the American *Declaration of Independence* legal (under Common Law)?

The gist of the 1776 American *Declaration of Independence* is hardly original. It purportedly represents the united opposition of thirteen different American Legislatures, as Representatives of the people of those States, against their misinformed king (George III) **as maladvised** by an arrogant alien tyrant (the British Parliament in London). In actual fact, however, the *Declaration* was little more than an American version of *Magna Carta*: a re-assertion of the ancient Anglo-British **rights at Common Law** against a legal entity deemed to be a short-term temporary tyrant.

The mild-mannered impotent and innocuous George III himself was quite unlike ótheFather of Common Lawôï the B.C. 510 mighty and crime-combatting Brython, King Dunvallo Moelmud. According to the mediaeval Christian Welsh historian Geoffrey Arthur, in his important record *The History of Britain's Kings*,[85] Moelmud ñestablished among the Britons the laws that were called the Molmutine Laws.... He ordained that the temples of God and the cities should enjoy such privileges as that, in case any runaway or guilty man should take refuge therein, he should depart thence.ò *Cf.* Numbers chapter 35.

ñMoreover, he ordained that the roads...should be held inviolable.... In his days, the knife of the cut-throat was blunted and the cruelties of the robber ceased in the land.... Even and stedfast justice should be done throughout the realm.... As of his **Common Law**...condign punishment should be inflicted on any that do violence.ò

Later, in the Middle Ages, precisely these ancient Common Law rights were infringed by the English tyrant King John (A.D. 1199-1216). *Magna Carta* then (re-)secured very important liberties and privileges to every order of men in the kingdom. The civil rights of individuals were protected by that venerable body of ancient customs which, under the name of the Common Law, still obtains [or should do] in the courts of justice.

Later yet, when the tyrannical British Parliament of the beleaguered George III thwarted the Common Law rights of their fellow Englishmen then resident in America ï the latter ultimately re-asserted those **ancient rights**. They did so: first, within the 1776 *Declaration of Independence*; second, as part of the 1787 *Constitution of the United States of America*; and third, in the 1791 *Bill of Rights*.

The 1776 *Declaration of Independence* insists that ñthe legislative powersò of the ñRepresentative Housesò alias **the Parliaments [plural] of the several American States** ï are ñincapable of annihilation.ò Before then, all the then-recent attempts of

[85] *Op. cit.*, II:17 to III:5.

the British Parliament to subject Americans ñto a jurisdiction foreign to **our constitution** and unacknowledged by our lawsò had been futile.

For the as-then-still-unwritten (Anglo-American) **constitution** of Ancient-British Common Law, still obtained ï pre-writtenly. The British Parliament had then recently set about ñabolishing the **free system of English Laws**ò in North America ï including ñthe **free system**ò of Common Law then and there in place. But it had failed to achieve this.

For those ñEnglish Lawsò in North America (which the American *Declaration* calls ñ**our laws**ò), had previously been enshrined in what the *Declaration* also calls ñ**our Charters**ò ï bestowed by Britain upon the American Colonies in earlier years. Those Charters, insists the American *Declaration*, contain ñour most **valuable laws**.ò Fundamentally, they refer to ñthe forms of our governmentò upheld in Pre-Independence America by ñ**our own legislatures**.ò

The godly and law-abiding American ôRevolutionô initiated by the 1776 *Declaration of Independence*, is therefore totally dissimilar to the atheistic and the lawless French Revolution of 1789 ï and the latterôs daughter, the Russian Revolution of 1917. The French Revolutionists and the Russian Communists sought to smash the systems of law respectively of Pre-Revolutionary France and of Pre-Communist Christian Russia. The American Patriots, however, undertook to uphold the ancient Anglo-American Common Law of Christian Britain ï against the tyrannical tirades of the misinformed British Parliament of George the Third.

The thirteen free and independent United States of America, were then in 1776 **declaring** themselves **as** independent from Britain ï and preparing soon to discuss and adopt the 1777*f Articles of Confederation*. The States thus all constituted ï from and for and by themselves, in one covenanted act each with one another ï a declaration of independence from Britain.

They did so, as States then united together specifically to achieve that purpose ï and that purpose **alone**. They did this by and from their many State Legislatures, which then existed and which thereafter continued to exist ï and still do, right down till this present day.

Only in 1781, when adequately ratified, did those thirteen States have a binding **Confederation**. Only in 1787 would they further decide and only in 1788 would nine of those thirteen States constitute a governmental **Union**, in the *Constitution of the United States of America*. Only then would they become both ôthe one and the manyô governmentally ï *e pluribus unum*. Compare First Corinthians 12:12-14.

Already in 1776, they declared themselves to be regionally sovereign ï and ñseparateò from but ñequalò to the British Parliament in London. They also separated themselves from all unrighteousness ï and from an unrighteous regime headquartered in Britain.

The French and Soviet systems, however, are centralistic. There, the one central government dominates its many departments ï separated from the righteous laws of nature (and from the laws of natureôs Triune God).

Legality of the American *Declaration of Independence* (continued)

In ñthe Unanimous Declaration of the Thirteen United States of America,ò the ñRepresentatives of the United States of America in General Congressò twice declared themselves to be ñFree and Independent States.ò Three times did they declare that they were also ñUnited Statesò; and at least four or five times did they declare that they were United States of ñpeopleò entitled to ñseparationò and to a ñseparate and equalò station alongside of Britain *etc*.

Either explicitly or implicitly, there are five references to God in the *U.S. Declaration of Independence*. Thus, it affirmed: the thirteen independent States in America were entitled to separate from óour British brethrenô by ñNatureôs **God**ò; that ñall men were ñ**created** equalò; further that they have been ñendowed by their **Creator** with certain unalienable Rightsò; that the Americans appealed ñto the **Supreme Judge** of the Worldò; and that they firmly relied ñon the protection of **Divine Providence**.ò

Yet what is often overlooked in the *Declaration*, is the constant rehearsal of **the Rule of Law** ï or **the rights** then being disregarded by the tyrannical British Parliament. In our opinion, this is the greatest difference between the 1776 American *Declaration* on the one hand and the French Revolution of 1789 and the Russian Revolution of 1917 on the other hand.

Thus, the *U.S. Declaration of Independence* grounded itself in ñthe **laws** of natureò (which are themselves asserted to root in ñnatureôs Godò). It spoke of ñcertain unalienable **rights**ò ï such as **the Common Law rights** of ñlife, liberty and the pursuits of happiness.ò It declared that ñgovernments are instituted among menò precisely in order ñto secure these **rights**.ò

It suggested that people should in prudence first suffer inequities ï before finally resolving ñto **right** themselves, by abolishing the forms to which they are accustomed.ò Yet it also insisted that when after ña long train of abuses and usurpationsò a tyrant ñevinces a design to reduce them under absolute despotism ï it is their **right**, it is their duty, to throw off such government, and to provide new guards for their future security.ò

The claim was next made that ñthe history of the present King of Great Britain is a history of repeated **in-jur-ies** [or **un-right-eous-nesses**] and usurpations ï all purposing the establishment of an absolute tyranny over these Statesò in free and independent America. The acts of that present tyrant [the British Parliament of George III] were then set out.

For the king had ñrefused his assent to [American] **laws**, the most wholesome and necessary for the public good.... He has forbidden his governors to pass **laws** of immediate and pressing importance.... He has refused to pass other **laws** for the accommodation of large districts of people, unless those people would relinquish the **right** of representation in the legislature ï a **right** inestimable to them, and formidable to tyrants only.

ñHe has called together **legislative** bodies at places unusual, uncomfortable, and distant.... He has dissolved **Representative Houses** [alias meetings of **the (plural!)**

American Parliaments] repeatedly, for opposing with manly firmness his invasions on the **rights** of the people. He has refused for a long time, after such dissolutions, to cause others to be elected ï whereby **the legislative powers** incapable of annihilation have returned to the people at large for their exercise....

ñHe has obstructed the administration of **justice**, by refusing his assent to **laws** for establishing **judiciary** powers. He has made **judges** dependent on his will alone for the tenure of their offices.... He has affected to render the military independent of and superior to **the civil power**.

ñHe has combined with others to subject us to a **jurisdiction** foreign to our **constitution** and unacknowledged by **our laws** ï giving his assent to their [foreign] acts of **pretended legislation**...for imposing **taxes** on us without our consent; for depriving us in many cases of the benefits of **trial by jury**...; for **abolishing the free [Common Law] system of English laws** in a neighbouring province...; for taking away **our charters**, abolishing our most **valuable laws** and altering fundamentally the forms of **our governments**; for suspending **our own legislatures**.ò

The *Declaration* then concluded: ñIn every stage of these oppressions, we have **petitioned** for redress in the most humble terms. Our repeated petitions have been answered only by repeated **in-jury** [or un-right-eous-ness]. 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.... We, therefore, the **Representatives** of the United **States** of America, in General **Congress** assembled, appealing to the **Supreme Judge** of the World for the **rectitude** of our intentions, do...declare that these United Colonies are and of **right** ought to be free and independent States.ò

Dr. Rushdoony explains[86] that the question of legality was an important one to Colonial Americans. The 1643 *Westminster Confession of Faith*, in its chapter ó*Of the Civil Magistrate*ôï in common with other religious affirmations on the subject ï made civil obedience a Christian duty. Both obedience and disobedience had to be grounded on Fundamental Law ï on Godôs Law. Anything else was sin.

The American Revolutionists were by no means perfect men. But their principles were nevertheless real. They were thus opposed to the deliberate disruption of law and order which later characterized France. Important in this context of legality or revolution was the influence of the 1579 Huguenot document *Vindicia Contra Tyrannos*. Thoroughly Calvinistic, it was held by the second U.S. President, John Adams, to be one of the most influential books in America on the eve of 1776.

The *Vindicia* held, among other things, to the following doctrines. First, any ruler who commands anything contrary to the Law of God ï thereby forfeits his realm. Second, rebellion is refusal to obey God ï for we ought to obey God rather than man. To obey the ruler when he commands what is against Godôs Law, is thus truly rebellion. Third, since Godôs Law is the Fundamental Law and the only true source of law, and neither king nor subject is exempt from it ï war is sometimes required in order to defend Godôs Law against the ruler. A fourth tenet also characterized this position: legal rebellion required the leadership of Lesser Magistrates to oppose, in the name of the Law, the royal dissolution or contempt of Law.

[86] R.J. Rushdoony: *This Independent Republic*, Craig, Nutley N.J., 1964, pp. 24f.

Protestant and Presbyterian character of the *Declaration of Independence*

In that 1776 *Declaration of Independence*, the several ñfree and independent Statesò (plural) proclaimed that they were in at least one important respect ñunitedò (singular) ï *viz*. in their freedom from Britain, under God. This unique plurality (the ñUnited Statesò) reflected the ñOneò God and the ñManyò Persons of the Holy Trinity. The Representatives of the several States appealed to ñthe Laws of Natureò (plural) and to ñNatureôs Godò (singular) ï and they also insisted ñthat all men...are endowed by their Creator [singular] with unalienable rightsò [plural].

They spoke patiently of ñour British brethrenò ï despite ñattempts by their legislature [the Parliament of Britain] to extend an unwarrantable jurisdiction over us.ò They asserted that ñthese United Coloniesò in ñAmericaò (singular) are ñfree and independent Statesò (plural). Indeed, they concluded ï ñwith a firm reliance on the protection of divine Providenceò (singular) ï to ñpledge to each other our lives, our fortunes [plural], and our sacred honorò [singular]. So, throughout, there was an emphasis both on óthe oneô (singular) and on óthe manyô (plural). First Corinthians 12:12-20.

The report of that shot, went around the world. In London, probably thinking of Princetonôs President Rev. Professor Dr. Witherspoon who signed that American *Declaration of Independence*, British Prime Minister Walpole rightly remarked that ñcousin America has run off with a Presbyterian parson.ò

A North American supporter of the king sent a letter to Britain putting ñall the blame for these extraordinary proceedings upon the Presbyterians.ò A British agent in America at that time described the colonial resistance as a Scots-Irish Presbyterian Rebellion. So, it was especially the Presbyterian Churches in America that the British then targeted for destruction.

Rushdoony says[87] even Episcopalian American leaders ï leaders such as Washington and ñLight Horseò Harry Lee (Robert E.ôs father) ï were theologically nevertheless by and large Reformed. For they were descendants of those Anglican Puritans who had migrated from Britain to America in order to escape persecution from Highchurchmen in the previous century. Indeed, almost two-thirds of all the American Colonists in 1776 ï had been trained in the Calvinistic system. Thus Professor Dr. Loraine Boettner,[88] in his famous book *The Reformed Doctrine of Predestination*.

The American *Declaration of Independence* of 1776 stood for the Puritansô ñLaw of Natureò ï the Law ñof Natureôs God.ò It stood firmly on the ólight of natureô and the ólaw of natureô given by óthe God of nature.ô See six such places in the 1643f

[87] See R.J. Rushdoony and O. Scottôs 1992 *From the Easy Chair*, Presbyterian Theological Centre, Sydney, Australia (Foundation for the Advancement of Christian Studies, Engadine, NSW).
[88] L. Boettner: *Reformed Doctrine of Predestination*, Presbyt. & Reformed Pub. Co., Phillipsburg N.J., 1981 ed., pp. 382-83.

Westminster Confession of Faith,[89] and three such places in the *Westminster Larger Catechism*.[90]

Indeed, the 1776 *Declaration* ï just like the *Westminster Standards* before it ï derived this ñLaw of Nature and of Natureôs Godò not from Deism but from Christianity (in Scripture and in Church Doctrine). See Exodus 20:8*f*; Psalm 19:1-3; Jeremiah 10:7; Acts 17:24*f*,28; Romans 1:19-20,26-27,32 & 2:1,14-15; and First Corinthians 1:20-24 & 11:13-14 ï as cited in the *Westminster Confession* and the *Westminster Larger Catechism*.

Thus, in this regard, the 1776 American *Declaration of Independence* was quite like the *Westminster Standards*.[91] Indeed, both of them were quite unlike the very different and later French Revolution of 1789 (which would stand for ñthe rights of MANò under ñNO God and no Masterò).

Even the British Parliamentôs famous anti-revolutionary conservative, the Irishman Edmund Burke, supported the *Declaration of Independence*. As an eye-witness of the 1776 American *Declaration* (which he defended) as well as of the 1789 French Revolution (which he detested) ï Burke commented also on the earlier Glorious Revolution in Britain during 1688.

Held Burke: ñOur Revolution [of 1688] and that of France [in 1789] are just the reverse of each other in almost every particular and in the whole spirit of transaction. For the French Revolution is the turning upside down of society, and her system is an antichristian doctrine.ò

So too the great Dutch Calvinist Rev. Professor Dr. Abraham Kuyper (Sr.) ï in his *Calvinism the Origin and Guarantee of Our Constitutional Freedoms*; his *Varia Americana*; and his (*Stone*) *Lectures on Calvinism*.[92] Compare too the motto of Kuyperôs great Dutch Presbyterian predecessor Groen Van Prinsterer: ñOppose the [Protestant] Reformation to the [French] Revolution!ò

The Christian character of American State Constitutions since 1776

After the May 1776 Continental Congress, most of the American States concerned afresh formulated its own instruments of government. It did so, in view of the pending *Declaration of Independence* of the U.S.A. and the further *Articles of Confederation* of 1777*f*.

Connecticut and Rhode Island, however, did not then adopt fresh Constitutions. Instead, they both chose to continue operating ï for a time ï under their old Christian Charters.

Let us now look at the fresh Christian Constitutions then produced by the other original States forming the American Union at the times of the 1776 *Declaration of*

[89] *WCF* 1:1[a]; 1:6[o]; 10:4[s]; 20:4[pq]; 21:1[a]; 21:7[k].
[90] *WLC* QQ. 2[c]; 60[q]; and 151.3[w].
[91] See nn. 89 & 90.
[92] *Calv. Orig. Const. Freed.*, p. 61; *Varia Americana*, Hoeveker & Wormser, Amsterdam, n.d.; and *(Stone) Lectures on Calvinism*, Eerdmans, Grand Rapids, 1931 rep.

Independence and of the 1787 *Constitution of the U.S.A*. These Christian State Constitutions were all enacted between 1776 and 1780.

New Hampshire had already in January 1776 put the first new American State Constitution into operation. This was revised in 1894. But it was not till 1902 that it dropped the word ñ**Protestant**ò (and not till 1926 that it revised and dropped the word ñ**Christian**ò therefrom).

On June 12th 1776, the Virginia State Constitution was completed. It specified, in its Section 16, ñthat religion or the **duty** which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction.... It is the mutual duty of **all** to practice **Christian** forbearance, love, and charity toward each other.ò

The new Constitutions of óPresbyterianô South Carolina, of Presbyterian Rev. John Witherspoonôs New Jersey, and of the State of Delaware, similarly followed in the next few weeks. The 1776 Constitution of North Carolina excluded from office all who did not profess the **Protestant** religion or the divine authority of the Old or New Testament. And Article 38 of South Carolinaôs 1778 Constitution declared the ñ**Christian Protestant** religionò to be the ñ**established** religion of this State.ò[93]

Indeed, Section 3 of the 1776 Delaware State Constitution clearly states ñthat all persons professing the **Christian** religion ought forever to enjoy equal rights and privileges in this State.ò Under Section 22, the **Trinitarian** oath declares that ñevery person who shall be chosen a Member of either House, or appointed to any office or place of trust...shall...make and subscribe the following declaration, to wit: óI _____ , do profess faith in **God the Father, and in Jesus Christ His only Son, and in the Holy Ghost** ï one God, blessed for evermore. And I do **acknowledge the Holy Scriptures of the Old and New Testament** to be given by divine inspiration.ôò

The next few months of the same year 1776 saw the ratification of further State Constitutions ï namely for Pennsylvania and Maryland. That of Pennsylvania ï building further upon that Stateôs 1682 Christian *Great Charter*[94] ï declares (in Article II) ñthat all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding.ò

The 1776 State Constitution of Maryland, with its many Roman Catholics ï while granting ñtoleration in religion to all who professed faith in **Christ**ò ï also required a ñdeclaration of belief in the **Christian** religionò from all would-be office-holders. Art. XXXIII provides that ñit is the **duty** of every man to worship God,ò and that ñall persons professing the **Christian** religion are equally entitled to protection in their religious liberty.ò

In 1777, Georgia, New York and Vermont enacted their State Constitutions. That of Georgia ï whose Preamble relies ñupon the protection...of Almighty Godò ï was in respect of a State previously established by and named after King George (to be a refuge specifically for Nonconformist Protestants). That of New York was for the State that grew up round the first Christian denomination to get permanently settled in North America ï the Dutch Presbyterian or Reformed Church.

[93] H.B. Clark: *op. cit.*, p. 46.
[94] See our text at between nn. 44 & 45 above.

That of Vermont (Article III) specifically provides ñthat all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding, **regulated by the Word of God**... Every sect or denomination of people ought to observe the Sabbath or the **Lord's Day**, and keep up and support some sort of religious worship which to them shall seem most agreeable to the revealed will of God.ò

The 1778-80 adoption of the State Constitution for the ópilgrim-Puritanô State of Massachusetts, is even more interesting. Article II provides that ñit is the right as well as the **duty** of all men in society publicly and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe.ò Indeed, that Constitution also provides ï thus anticipating the similar 1791 First Amendment to the later *U.S. Constitution* ï that ñno subordination of any one sect or denomination to another shall ever be established by law.ò[95]

In 1807 Judge Sedgwick declared in *Avery* v. *People of Tryingham*[96] that the Massachusetts Constitution establishes ñthe religion of **Protestant Christians**.ò **Massachusetts** continued to have an established **State Church** until 1832 ï long after the adoption of the First Amendment (which thus then had no bearing whatsoever on such State Constitutions).

The first Constitutions of Maryland, Massachusetts and New Hampshire ï and later of Connecticut ï all provided for the support by taxation or otherwise of the ñ**Christian**ò or [otherwise the] ñ**Protestant Christian**ò religion. Even the later Constitution of the Cajun Country provides: ñWe, the people of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties we enjoy, and desiring to secure the continuance of these blessings, do ordain and establish this Constitution.ò[97]

It is therefore merely in respect of **federal** office under the federal government, that the 1787 Article VI of the *U.S. Constitution* prohibited and still prohibits the religious testing of candidates. It does not and could not and cannot prohibit the religious testing of candidates for public office in the several sphere-sovereign State governments. For that is not at all a federal matter, but one solely for each State itself.

It is, of course, quite true that those Americans who later came under the influence of the atheistic French Revolution of 1789 have subsequently sought to change either the *U.S. Constitution* or its correct interpretation (or both). Thus ï after the centralizing and radicalizing War of Northern Aggression against the Southern States of the American Confederation ï the *Constitution* was forcibly perverted by the purported 14th Amendment, in 1865.

We say the ópurportedô 14th Amendment ï because it was never ratified in the way required by the *U.S. Constitution*. Yet even this purported Amendment says nothing at all about or against **religious** qualifications which the several autonomous State Governments at their own discretion may (or may not) still require in State affairs.

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[95] See F.N. Thorpe: *op. cit.*, III:1888.
[96] *Avery* v. *People of Tryingham*, 3 Mass. 160, 3 A.D. 105.
[97] H.B. Clark: *op. cit.*, pp. 45f.

Indeed, even the **Northern** State of New Hampshire continued to use the word ñProtestantò in its own State affairs, long after the 1865 purported ñ14th Amendmentò to the *U.S. Constitution* ï without ever being challenged about this. Only in 1902 did New Hampshire change this word ñProtestantò to ñChristianò in its own Stateôs *Bill of Rights*. Moreover, it refused to scrap this word ñChristianò in 1912. Only in 1926 was this done.

The Common Law preserved in both the several States and the U.S. since 1776

In his study *The Christian Roots of the War for Independence*, Jones rightly remarks[98] that in Britain ï whence Americaôs dominant tradition had sprung forth ï Biblical Law and a largely Christian understanding of Natural Law formed the theological and philosophical framework of justice upon which judges drew. They did so, in order to blend custom with universal principle ï in the formation of the cherished Common Law.

Thus, in the *Common Law* ï Biblical morality joined with ancient ways, to form a complex body of legal precedents continually refined in the crucible of experience upon which future judges are to base their decisions. Sanctioned by popular assent to its fairness, the Common Law was the basis of order in England and America.

Also the great Presbyterian theologian Rev. Professor Dr. A.A. Hodge has stated in his 1887 article *The Christian Foundation of American Politics*:[99] ñThis is a Christian country, in the sense that Christianity is an original and essential element of the law of the land.... The English element...absorbed and dominated all the rest, and consequently brought the English traditional Common Law into active force in all the territories covered by the Charters of the original Colonies.

ñThat Common Law is consequently the basis of civil and political life throughout our whole land.... It is so recognized in all our Courts, State and Federal.... That this **English Common Law is the creature of Christianity**, has never been questioned. This has grown and been confirmed by the habits and legislation of our really Christian people, through the two hundred and fifty years in which our institutions have been growing on American soil.ò

Professor Seagle states in his article *Common Law*[100] that the American colonists had brought the Common Law of England with them to America, as a birthright. Despite the hostility toward England engendered by the American Revolution, the American States even after Union generally retained the Common Law of England: by inserting into their fresh Constitutions provisions that the Common Law of England as of July 4th 1776 would keep on applying.

In addition, the Seventh Amendment to the *U.S. Constitution* ï in its 1791 *Bill of Rights* ï should also be noted. This is one of the original Ten Amendments to the

[98] *Op. cit.*, in *Journ Chr. Recon.*, III:1, 1976, p. 29.
[99] A.A. Hodge: *The Christian Foundation of American Politics* (in 1887 *Princeton Review* III:1, as cited in *1976 Journ. Chr. Recon.* III:1 pp. 36f).
[100] W. Seagle: *Common Law* (art. in the *American Peoples' Encyclopedia* 5:320).

Constitution of the U.S.A. It expressly provides that ñin suits at **Common Law**...the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the **Common Law**.ò

As Pfeil declares in his 1951 *Encyclopedia Americana* article on óCommon Lawô: ñThe Common Law as it existed at the time of the *Declaration of Independence*, including the acts of [the British] Parliament in so far as they were not repugnant to the rights and liberties contained in their respective Constitutions, was formally adopted in all the original States of the [American] Union and by most of the Commonwealths subsequently admitted as States.ò[101]

The War for Independence was to conserve and not to revolt against Christianity

Dr. Rushdoony rightly states in his book *The Nature of the American System*[102] that the godly 1776*f* American Revolution was not a revolt against God and His Word. Only after the ungodly 1789 French Revolution, did the term óRevolutionô gain that new and bad connotation. Before then, as in Acts 17:6b, the term or concept rather implied overturning an ungodly situation precisely by means of the Word of God.

This old meaning can also be seen in the innocuous use of the term in Britainôs 1688 Glorious Revolution of the Presbyterian William III. The same applies to its meaning in the 1776*f* American Revolution. The Christian religion was a fundamental cause of the American Revolution. Indeed, the latter helped conserve the former.

Both before and long after the American Revolution, every North American colony had its own form of Christian establishment or settlement. Every one was a particular kind of **Christian** óRepublicô (in the **representative** or non-antimonarchical meaning of that word). It was then to them a monstrous idea ï to Anglicans as well as to Congregationalists and Presbyterians ï for an alien body such as the British Parliament (or even the later U.S. Federal Congress!) to impose upon them a religious establishment which had not been agreed to by the governmental Representatives of the specific colony itself.

All of the colonies in North America were by nature and by history, **Christian**. Not only the religious settlements of New England and the Central States but also those of the Southern colonies in North America, had their specifically-Christian purpose and character.

Later, the 1787 *Constitution of the U.S.A*. would be implemented to perpetuate (now for the first time at the federal level) this Christian social order which had long previously been created by the several States themselves. Every constituent State of the American Confederation already had some form of Christian establishment or settlement. This, it jealously guarded. It was an area of Statesô rights ï not of Federal control.

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[101] *Enc. Amer.*, 1951 ed., 7:413f.
[102] R.J. Rushdoony: *The Nature of the American System*, Craig, Nutley N.J., 1965, pp. 2f.

The 1776 *Declaration of Independence* of the thirteen United States of America ï while rightly saying much about God and His Laws ï also rightly says nothing about Churches alias Denominations. Also the 1787 *U.S. Constitution*, by its doctrine of express powers, would from its very inception onward bar the Federal Government from any jurisdiction over the Churches. It would do so, by omission of reference to them in the grants of powers from the States to the Federal Government.

Yet many clergymen as well as others were fearful of ultimate control of the States and of the local churches by the U.S. Federal Government. So in 1791 a *Bill of Rights* was demanded. Also demanded was the exclusion of denominational establishments not from the affairs of the several States but indeed from the strictly-limited domain of the Federal Government.

The First Amendment to the *U.S. Constitution* answered these demands. It decreed anent the new Federal Parliament: ó Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof.ô

Here it should be noted, first, that nothing is here said about any separation between Church and State. No such separation of Church and State, and still less of Christianity from Government, existed anywhere in the United States before the ratification of this Amendment.

Second, such separation did not exist in America at the 1791 ratification of the First Amendment ï nor for generations thereafter. Only in France was that then the case ï as a result of its ungodly French Revolution in 1789.

Third, the Federal Government did not secularize itself. The Federal Congress, both before and after the ratification of this First Amendment, began its sessions with divine worship of a **Christian** character. Thus did it exercise its Christian faith, in a **professedly-Christian North America.**

Fourth, the freedom of the First Amendment from interference by the Federal Government is not freedom from religion ï but freedom for religion, in the constituent States. The establishments and settlements in the constituent States, were definitely and specifically Christian. In most States, single or plural establishments prevailed. Even where no State Church was established, Christianity as such was nevertheless firmly established.

Fifth, at the State level, there formerly had been ï and still continued to be ï religious requirements for citizenship and suffrage, religious oaths, laws prohibiting blasphemy, laws requiring a trinitarian faith or a firm belief in the infallibility of the Holy Scriptures, and laws barring unbelievers as witnesses in Court. Court decisions sometimes cited Biblical Law when and where civil law did not entirely fit the case. For an example of this, in a New Hampshire divorce case even as late as 1836, see J.W. Ehrlichôs book *The Holy Bible and the Law*.[103]

[103] J.W. Ehrlichôs *The Holy Bible and the Law*, Oceana, New York, 1962, pp. 64-69.

The American Revolution completes British Civil War and 'Glorious Revolution'

Early in the nineteenth century, U.S. Supreme Court Justice Joseph Story wrote his monumental (1832*f*) *Commentaries on the Constitution of the United States*. There, he explained:[104] ñThe promulgation of the great doctrines of religion; the Being and Attributes and Providence of Almighty God; the responsibility to Him for our actions, founded upon moral freedom and accountability; a future state of rewards and punishments; the cultivation of all the personal, social and benevolent virtues ï these can never be a matter of indifference in any well-ordered community.

ñIt is, indeed, difficult to conceive how any civilized society can well exist without them. And at all events, it is impossible for those who believe in the truth of Christianity as a divine revelation ï to doubt that it is the especial duty of government to foster and encourage it among all the citizens and subjects.ò

Story continued:[105] ñ**Every colony**, from its [Puritan] foundation down to the [American] óRevolutionô..did openly, by the whole course of its laws and institutions, support and sustain in some form **the Christian religion**.... Indeed, in a Republic, there would seem to be a peculiar propriety in viewing the Christian religion as the great basis on which it must rest for its support and permanence.ò

So too, the conservative French historian Alexis de Tocqueville noted the same in his 1834 book *Democracy in America*. Having observed the United States first-hand, he declared:[106] ñAmong the Anglo-Americans, there are some who profess Christian dogmas because they believe them, and others who do so because they are afraid to look as though they did not believe them. So Christianity reigns without obstacles, by universal consent.ò

This may well permit quite a degree of hypocrisy. But it also achieves community approval for the desirability of maintaining specifically-Christian social standards.

Also the modern Chicago Law Professor Palmer Edmunds explains[107] that certain events in the history of the Ancient Hebrews were very much in the minds of the Founding Fathers of the American Republic as they deliberated in Philadelphia. The same day the *Declaration of Independence* was adopted, a Committee was appointed ï consisting of Jefferson, Franklin and Adams ï to prepare a proposal for the Great Seal of the United States. They proposed a depiction of a crowned Pharaoh with drawn sword (representing Britain) ï passing through the dividing waters of the Red Sea in pursuit of the Israelites (representing the Americans).

On that seal, it was further proposed there also be rays from a pillar of fire beaming on Moses. He was to be represented as standing on the shore, extending his hand over the sea ï and causing it to overwhelm Pharaoh. Indeed, underneath the motto it was to read: ñRebellion to tyrants is obedience to God!ò

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[104] J. Story: *Commentaries on the Constitution of the United States*, 1832f, sec. 1871.
[105] *Op. cit.*, sec. 1873.
[106] A. de Tocqueville: *Democracy in America*, 1834, p. 292.
[107] *Op. cit.*, p. 193.

More significant yet. The chief textbook of the Constitutional Fathers, was Sir Algernon Sidneyôs posthumously-published 1698 *Discourses Concerning Government*. Sidney, the son of the Earl of Leicester, had served in the Parliamentary Army during the English Civil War. In 1652, he had been a Member of Cromwellôs Parliament ï though he subsequently opposed the setting up of Cromwellôs Protectorate. Yet later, he similarly opposed Charles IIôs tyranny; was tried and executed by the notorious Judge Jeffreys; but had his name cleared in 1689 after the Glorious Revolution.[108]

Sidney was a student of the Hebrew Commonwealth, and analyzed its government discriminatingly. His works were to be found in the libraries of Franklin, Adams, Jefferson ï and many others of the scholars, statesmen and divines in America at the time she declared her Independence.

It is also significant that the great French Huguenot Calvinist work *Vindicia Contra Tyrannos*, written under the apparent *nom de plume* of Junius Brutus and perhaps by Duplessis Mornay, had a great influence on George Washington and the American War for Independence. This work, explains Rushdoony in his own book *This Independent Republic*, was held by John Adams to be one of the most influential books in America on the eve of the Revolution.

The *Vindicia* clearly teaches that the people under God, are above their king. For ñhe who is established by another, is accounted under him who has established him.... He who receives his authority from another, is less than he from whom he derives power.ò Kings and other political governments ñshould acknowledge that for them, they as it were **borrow** their power and authority.ò

American Romanist Archbishop admits the rightness of America's independence

John Ireland was the later Roman Catholic Archbishop of St. Paul (and Civil War Chaplain of the Fifth Minnesota Regiment). In his famous speech *The Duty and Value of Patriotism*, he recognized the rightness of Americaôs *Declaration of Independence* as being within Godôs plan of world history.

Explained Archbishop Ireland:[109] ñCountries are of divine appointment. The Most High ódivided the nations, separated the sons of Adam, and appointed the bounds of peoplesô [*cf.* Deuteronomy 32:8 & Acts 17:26]. The physical and moral necessities of Godôs creatures, are revelations of His will and laws.

ñMan is born a social being. A condition of his existence and of his growth to mature age, is the family [Genesis 2:24*f*]. Nor does the family suffice to itself. A larger social organism is needed [the nation and its State(s)], into which families gather ï so as to obtain from one another security to life and property.ò

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[108] Art. *Sidney, Algernon* (in *NICE* 20:6217). *Cf.* too J. Brutus: *Vindicia Contra Tyrannos* (1689). Edmonton: Still Waters, 1989 rep.

[109] J. Ireland: *America and Patriotism* (in *Young Folks' Library*, 1902, XVIII pp. 27f).

The Romish Archbishop John Ireland of Minnesota then associated himself with the previous sentiments of Erinôs famous Protestant Bishop George Berkeley. That Irish Bishop Berkeley (1685-1753) had remarked that the first four World-Kingdoms in Danielôs predictions ï Babylon, Persia, Greece and Rome ï had come and gone. The fifth ï Christôs continuing Kingdom ï would expand especially westward (even into America), and stand for ever.

This is why Berkeley visited Rhode Island and stirred up those Colonists to evangelize the American Indians ï so that Christôs Kingdom would stand for ever also in America. That is also what George Berkeley predicted. Later, proclaimed Archbishop John Ireland, this mood could be seen especially at Americaôs *Declaration of Independence*.

Explained Archbishop John Ireland, after the middle of the nineteenth century: ñMore than a century ago, a trans-Atlantic poet and philosopher [George Berkeley] ï reading well the signs ï wrote: ôWestward the course of empire takes its way; the first four acts already past. A fifth shall close the drama with The Day: timeôs noblest offspring, is the last!ô

ñBerkeleyôs prophetic eye, had descried America.... America, born into the family of nations in these latter times, is...the crowning effort of ages, in the aggrandizement of man. Unless we take her in this altitude, we do not comprehend her ï we belittle her towering stature and conceal the singular design of Providence in her creation. America is the country of human dignity and human liberty.... We have over us no Louis XIV, saying *L'etat c'est moi*; no Hohenzollern, announcing that in his acts as sovereign he is responsible only to his conscience and to God.ò

Here the Romish Archbishop John Ireland of Minnesota sounds almost like a Protestant. At the very least, he certainly sounds like an American steeped in the spirit of Protestantism.

First prayer in American Congress petitions God for victory in Christ's Name

From 1776 onward, the Americans fought their War for Independence in the Name of God. This is seen not only in the prayers of the great American Leader, General George Washington. Even more importantly, it is seen also at the constitutional level.

On November 1st 1777, by order of Congress, the President of the Continental Congress published the *First National Thanksgiving Proclamation* of the United States of America. It declared:

ñForasmuch as it is the indispensable duty of all men to adore the superintending Providence of Almighty God; to acknowledge with gratitude their obligation to Him for benefits received, and to implore such farther blessings as they stand in need of, and it having pleased Him in His abundant mercy not only to continue to us the innumerable bounties of His common Providence....

ñIt is therefore recommended to the legislative or executive powers of these United States to set apart Thursday...for solemn thanksgiving and praise; that with one heart

and one voice the good people may express the grateful feelings of their hearts, and consecrate themselves to the service of their Divine Benefactor; and that...they may join the penitent confession of their manifold sins...[so] that it may please God **through the merits of Jesus Christ** mercifully to forgive and blot them out of remembrance....

ñThat it may please Him to prosper the trade and manufactures of the people and the labour of the husbandman, [so] that our land may yet yield its increase..., and to prosper the means of religion for the promotion and enlargement of that Kingdom which consisteth ón righteousness, peace and joy in the Holy Ghostô [Romans 14:17]...it is further recommended that servile labour, and such recreation as, though at other times innocent, may be unbecoming the purpose of this appointment ï be omitted on so solemn an occasion.ò[110]

Moreover, one should consider the first public prayer ever uttered in the American Congress. It contained the following petition: ñO Lord our heavenly Father Who reignest with power supreme and uncontrolled over all the kingdoms, emperors, and governments! Look down in mercy on these American people who have fled to Thee from the rod of the oppressor.... Give them wisdom in council, and valor in the field.... O God of wisdom, direct the councils of this honorable Assembly, [so] that...religion and piety [may] prevail and flourish!ò Significantly, the prayer was concluded: **for Christ's sake**.

Summary of American Common Law ere the 1776 *Declaration of Independence*

We summarize. There was an increasingly westward expansion of Christianity, ever since Christôs incarnation. Proto-Protestant Celto-British Christians probably reached the New World by A.D. 560*f*. They had almost certainly established colonies in North America by 830. Celto-Icelandic Christians were demonstrably doing so, by 985*f*. A Colony of 300 Culdee Christian Celto-Brythonic Welshmen under Prince Madoc, was started in America around 1170. Later, after the Reformation, Protestant Calvinists moved Westward ï through Europe and Britain, and toward the great New World.

British Calvinists began planning their colonization of North America even around 1583f. From 1607 onward, there was a refugee exodus of British Pilgrims ï *via* Holland ï to the huge Western Continent of North America. John Robinson gave Christian encouragement to these Pilgrims. The Mayflower Compact reflects their Christian faith. So too does their final rejection of socialism and communism ï in the óbrave new worldô of 1620*f*. For into New England ï they had brought along with them also the English Common Law.

This was very soon followed by an ongoing colonization of North America on the part of 17th-century Puritans. It can be seen already in the 1629 *Charter of Massachusetts*. The early Puritan influx into New England zenithed: in John Cottonôs 1633 theocracy; in the 1639*f* North American municipal confederations of local

[110] Cited in *Christian Beacon*, Collingswood N.J., Nov. 10th 1988, p. 1.

government; in the 1643*f* ñNew England Confederationò between Connecticut and Massachusetts; and in the various 1648-55 New England *Codes*.

Modern Israeli Scholar Dr. Gabriel Sivan has rightly remarked on the massive Mosaic influences in Colonial America. This ongoing theocratic vision continued in America ï even after the 1660*f* Restoration in England. It was assisted by the creation of the first American Presbytery of the Presbyterian Church in 1706 ï and also by the bright eschatological predictions of Cotton Mather in 1709 and especially of Jonathan Edwards in 1739.

Eighteenth-century New England was by-and-large spared the humanistic European Enlightenment, and Rushdoony has rightly noted the abiding trinitarian nature of Early American Government. In 1765, the great Sir William Blackstone prepared the way for the modern America. Nowhere else is that English Common Law Jurist more highly esteemed.

Thoroughly grounded in English Common Law, the American colonial legislatures ï all themselves at earlier dates created by British Royal Charters ï perceived that the 1765 *Stamp Act* of the British Parliament was illegal. That perception was the match which ignited the New World. In that ignition, the Presbyterians of Princeton played a leading role.

It was the Calvinistic doctrine of sphere-sovereignty which was impelling Americans ever onward ï toward their 1776 *Declaration of Independence*. Indeed, it was the political spin-off of this doctrine which produced the 1775 orations of Joseph Warren in Massachusetts and Patrick Henry in Virginia. Even in Old England, Deism had already peaked ï and had by then started to die. In New England, not Deism but Calvinism was alive and well.

Nearly all the Framers of the American Republic were Calvinists. It was the Calvinists who authored the epoch-making 1775 *Mecklenburg Declaration* of North Carolina ï the immediate ancestor of the 1776 Virginia *Bill of Rights* and the *Declaration of Independence of the U.S.A*. Every one of the various State Constitutions just before 1776 had a Christian, and nearly all a Calvinistic, background.

We then looked at the God-ordained course of the 1776-81 War for Independence, and especially at the meaning and consequences of the 1776 *Declaration of Independence* of the United States of America. The latter was juridically legal, and breathes a strongly Protestant and Presbyterian character. Even since 1776, that Christian character was preserved in the various American State Constitutions. For the Common Law was preserved both in the U.S.A. as well as in her several constituting States ï also since 1776.

The purpose of the American War for Independence against Britain was to conserve and not to reject Bible-believing Christianity and its Common Law. Thus the American Revolution completes the 1642*f* English Civil War and Britainôs own Glorious Revolution of 1688*f*.

Even the later American Romanist, the Minnesotan Archbishop John Ireland of St. Paul, admitted the rightness of Americaôs *Declaration of Independence*. Indeed, the

first prayer ever uttered in the American Congress, petitioned God for victory ï **in Christ's Name**.

It was British Common Law and the Calvinistic doctrine of ósphere-sovereigntyô which led: to the 1776 American *Declaration of Independence*. It also led to the 1787 *U.S. Constitution*; to the 1791 *U.S. Bill of Rights*; and to Americaôs subsequent prosperity.

After the Continental Congress in May 1776, Rhode Island and Connecticut still chose to operate for a time under their old Christian Charters. Every single one of the rest of the thirteen States which ócreatedô the United States in July 1776*f*, itself freshly enacted 1776-84*f* Christian Constitutions. Indeed, they did so immediately prior to the formulation and adoption of the *U.S. Constitution* in 1787.

The Frenchman Baron Montesquieu once said in his 1748 *Spirit of the Laws* that there should be triadic legislative-executive-judicial powers within a nation (trinitarianly). The Englishman Sir William Blackstone wrote in 1765 that those powers should never be amalgamated (unitarianistically), but need to be kept discrete.

So the 1787 *Constitution of the United States of America* proceeded to do just that. In our next chapter, we shall see how that was accomplished ï and also sustained.

CH. 39: THE COMMON LAW IN INDEPENDENT AMERICA TILL A.D. 1800

America in principle started to receive some of its Common Law already from different little groups of Celto-Culdee colonists, between A.D. 560 and 1170*f*. The vast bulk of its Common Law, however, was received from later British and especially English and Scots-Irish and Scottish colonists ï from about 1583 and particularly since 1620 onward.

This is clearly presupposed in the various colonial charters. It was recognized by the 1765 English Jurist Sir William Blackstone. Indeed, it clearly undergirds the 1776 unanimous *Declaration of Independence of the Thirteen United States of America*.

After that action of the Continental Congressôs representatives of the various colonial Legislatures ï even during the ongoing War for American Independence, the Continental Congress started preparing a *Plan of Confederation* for the thirteen united American States. That plan would quickly be finalized, and then approved in 1781. It in turn would be the preparation toward a ñmore perfect unionò ï as reflected by the *Constitution of the United States of America* in 1787, and its *Bill of Rights* in 1791.

The 1776-77 preparation of the 1781 North American *Articles of Confederation*

As a result of the resolutions proposed by Richard Henry Lee on June 7th 1776, a Committee of the Continental Congress was appointed (on June 12th 1776) to prepare a plan of confederation. Although it reported back a month later, it took till November 15th 1777 ï before the Continental Congress approved the draft of the *Articles of Confederation*.

It was then that these American ***Articles of Confederation*** were signed by the representatives of most of the States (such as Rev. John Witherspoon of New Jersey and Richard Henry Lee and Francis Lightfoot Lee of Virginia). As that time, the *Articles* were adopted ñon the fifteenth day of November **in the year of our Lord** one thousand seven hundred and seventy-seven, and in the second year of the independence of America.ò

The text was ratified by the adequate minimum number of States, and then signed as ratified at the 1778 Continental Congress in Philadelphia. Here are some excerpts from that historic document:

ñTo all to whom these presents shall come, we, the undersigned Delegates of the States affixed to our names, send greeting. Whereas the Delegates of the United States of America in Congress assembled did, on the fifteenth day of November in the year of our Lord 1777...agree to certain Articles of **Confederation** and perpetual Union between the States....

ñThe Stile of this **confederacy** shall be ôThe United States of America.ô **Each State retains its sovereignty**, freedom and independence.... The said States hereby

severally enter into a firm **league of friendship** with each other.... If any person guilty of or charged with treason, felony, or other high misdeameanor in any State, shall flee from justice and be found in any of the United States, he shall upon demand of the Governor or Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence....

ñFor the more convenient management of the general interests of the United States, Delegates shall be annually appointed in such manner as the legislature of each State shall direct..., with a power reserved to each State to recall its Delegates or any of them at any time.... Each State shall maintain its own Delegates in a meeting of the States.... The Committee of the States, or any nine of them, shall be authorized to execute in the recess of Congress, such of the powers of Congress as the United States in Congress Assembled by the consent of nine States shall from time to time think expedient to vest them with....

ñWhereas it hath pleased **the Great Governor of the World** to incline the hearts of the Legislatures, we respectively represent in Congress to approve of and to authorize us to ratify the said ***Articles of Confederation* and perpetual Union**.... Done at Philadelphia in the State of Pennsylvania the ninth day of July **in the year of our Lord 1778**.ò

By 1779, all States had ratified it except Maryland. That State did so on February 27th 1781. The *Articles of Confederation* then went into effect on March 1st of that year.

Now it was precisely these *Articles of* ***Confederation*** which set up the Federal Government of the U.S.A. in 1778. Indeed, the two terms ñConfederationò and ñFederationò were **then** regarded as mutually interchangeable.

The above *Articles of Confederation* not only rightly protected Statesô rights. The *Articles* also promoted a ñperpetual Unionò of the American States ï albeit one of very weak central powers. For this reason, it cannot be accused of fragmentative or ótritheisticô tendencies.

Nevertheless, after the signing of the 1783 *Peace Treaty of Paris* between Britain and the U.S.A., that ñperpetual Unionò would cease to exist after 1787*f* ratification of the decisions of Delegates from the States who met in Maryland and there agreed to devise a ñmore perfectò Union. This was so, even after Alexander Hamilton had called the old Confederation: ñthe Federal Government.ò

The *Articles of Confederation* must be regarded as not only hotly anti-unitary (and anti-unitarian), but also as at least incipiently trinitarian in their governmental structure. Nevertheless, inasmuch as they insist that ñeach State retains its sovereigntyò even after confederation ï the *Articles* at least implicitly suggest that the ñperpetual Union between the Statesò was still terminable if a Member-State wished to withdraw, if and when it came to believe that the Union was illegally undermining the required preservation of the ongoing sovereignty of each State.

Mutatis mutandis, it is certainly arguable that the same could be said also of the 1901 Australian Federation. And this, in spite of it being constituted as ñone indissoluble Federal Commonwealth.ò

Now the successor to the 1781 American *Articles of Confederation*, namely the 1787 American *Constitution*, is clearly trinitarian at least regarding its governmental structure. This was then so understood by all thirteen States.

The much later Yankee misunderstanding thereof, only arose after the Northern States had become *de facto* unitarian and centralistic some time before the outbreak of the War of Northern Aggression in 1861. That misunderstanding, however, was at variance with the earlier and correct trinitarian understanding of the *Constitution* on the part also of the North.

Now the independent American Colonies at first had very little enthusiasm for their own newly-established 1777*f* Federal Government. It was originally but a creature of necessity, set up in order to co-ordinate supplies to the Colonial Armies especially during their common war for independence. There was no central executive or judiciary or legislature; no confederated power to tax; no federal customs duty. It lacked many elements of national government.

The 1776*f* *Articles of Confederation* were sufficiently approved in November 1777, and finally ratified in 1781. It was agreed that ñno State shall be represented in [Confederate] Congress by less than two nor by more than seven Members.ò All States then desired a trinitarian Confederacy. Not a single State then wanted a unitary Federal Government. Indeed, that original trinitarian and non-unitarian desire was later preserved also in the 1787 *Constitution of the United States of America*.

Even the liberal text-book titled *The Making of American Democracy* describes[1] ñthe *Articles of Confederation*ò of 1781 as ñmarking a distinct step forward in the theory of federal government.ò Yet, as the American Christian Historian V.M. Hall has stated,[2] while the *Articles of Confederation* indeed recognized the historic phenomenon of local self-government ï they inadequately embodied the idea of national union.

This form ultimately proved incompetent to secure the blessings achieved by the American Revolution. Yet, both ideas (*viz.* the *Declaration of Independence* and that of the *Articles of Confederation*) were later recognized at the time of ôThe More Perfect Unionôand incorporated into that of the 1787 *Constitution of the United States of America.*

1782-83 Continental Congress President Boudinot's *Thanksgiving Proclamation*

The French-American Elias Boudinot is sometimes called ñthe President of the United States before Washington.ò Boudinot was born in Philadelphia, and educated at Princeton. He practised law in Elizabeth, New Jersey, before becoming a Member of the North American Continental Congress both before and after the adoption of the *Articles of Confederation* in 1777-78 and 1781-84.

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[1] Billington & Others: *op. cit.*, I p. 94.
[2] V.M. Hall: *Self-Government With Union*, American Christian Constitution Press, San Francisco, 1962, II p. 306.

He served as President of the United States from 1782 till 1783, and as such he endorsed the *Paris Peace Treaty* between Britain and the United States. Later, he helped get New Jersey ratify the 1787 *U.S. Constitution*.

Elias Boudinot was a godly Calvinist. In 1790, he wrote *The Age of Revelation* ï to counteract the 1789 French Revolution and Thomas Paineôs atheistic books culminating in the latterôs *Rights of Man* and *Age of Reason*.

In 1815, Boudinot published his *Second Advent of the Messiah*, and in 1816 his *Star of the West*. The latter book claimed that the American Indians had descended from the ten lost tribes of Israel. From 1816 till his death in 1821, he became the first president of the American Bible Society.[3]

Now Elias Boudinot was the First Interim President of the United States before George Washingtonôs Presidency. Boudinot was President of the Continental Congress from 1782 till 1783.

Elias Boudinot was also the First President of the Trustees of the General Assembly of the Presbyterian Church in America. Too, he was the brother-in-law of Rev. Dr. Witherspoonôs associate, Elder Richard Stockton. The latter too was himself a Presbyterian, and indeed also one of the signers of the *U.S. Declaration of Independence*.

In reporting that the U.S. Congress was recommending to the several States that they each decide to set apart a day of public thanksgiving, President Boudinot explained that God ñhath so far crowned our united efforts with success... He hath prospered the labors of our husbandmen with plentiful harvests. And **above all**, He hath been pleased to continue unto us **the light of the blessed Gospel**...: to bless us in our husbandry; our commerce and navigation...; to cause pure religion and virtue to flourish; to give peace to all nations; and to fill the whole World with His glory.ò

Concluded the President: ñAre not the prophecies of ancient times hastening to a fulfillment ï when this [American] wilderness shall blossom as a rose [*cf.* Isaiah 35], the heathen be given to the great Redeemer as His inheritance [*cf.* Psalm 72], and these uttermost parts of the Earth for His possession [*cf.* Psalm 2]? Who knows ï but the country for which we have fought and bled, may hereafter become a theater of **greater events** than **yet** have been **known to mankind**.... And may these principles, in the end, become instrumental in bringing about that happy state of the Worldò ï the future golden age of gospel prosperity!

The 1783 Trinitarian *Paris Peace Treaty* between Britain and America

When the British General Cornwallis surrendered at Yorktown in October 1781, all but one of the Colonels of the American Army were Presbyterian Elders. More than one-half of the soldiers and officers were Presbyterians. George Washington himself ï though an Episcopalian ï then gave $40,000 to establish a Presbyterian College to be

[3] Arts. *Boudinot, Elias* (in *Enc. Amer.* 4:322 & *NICE* 3:896).

called Washington College.[4] Indeed, after the War for Independence, the United States ï through grants like these ï saw political peace and prosperity.

In 1783, a Peace Pact was signed between Great Britain and the United States of America. It is known as the *Treaty of Paris*. It commences ñin the Name of the most holy and undivided Trinity.ò[5] If Britain had perhaps just recently adopted a somewhat ónitarianizingô and dominating attitude toward the American States, henceforth their relationship would be trinitarian. Each nation would now be co-equal to the other. Indeed, both would uphold one and the same undivided Common Law ï ñin the Name of the...Trinity.ò

The two Christian countries now undertook ñto forget all past misunderstandings and differences.ò Indeed, as trinitarian nations baptized into the bond of the same undivided Trinity (*cf*. Matthew 28:19) ï they further agreed ñto establish such a beneficial and satisfactory intercourse between the two countries upon the ground of reciprocal advantages and mutual convenience as may promote and secure to both, perpetual peace and harmony.ò

In the 5th Article of the *Treaty*: ñIt is agreed that the [U.S.] Congress shall earnestly recommend it to the Legislatures of the respective States to provide for the restitution of all estates, rights and properties which have been confiscated belonging to real British subjectsò *etc*. For at least three reasons, this is a most interesting provision.

First. It shows that in 1783 the U.S. Congress then lacked the legal capacity itself to compensate expropriated Britons. Still less could Congress then direct the several States to do so. Congress could then merely recommend it to the respective State Legislatures ï and trust that they themselves might sovereignly agree to do this. State Rights, all the way!

Second. It shows that the power to compensate (and hence the prerequisite power to tax) resided not in the Federal Government but in the Legislatures of the respective States. The infamous central taxing abilities of the modern U.S. Federal Government, were then still unthinkable.

Third. It shows that Christian countries did not (and indeed should not) ask their own expropriated citizens to suffer in silence. The commitment of Christian Britain and especially of Christian America to biblionomic ethics at that time, demanded that ñrestitutionò be made to all expropriated Britons in respect of their forfeited American properties. See Matthew 5:26.

Indeed, the same 5th Article of the *Treaty* further provided ñthat Congress shall also earnestly recommend to the several States a reconsideration and revision of all Acts or Laws regarding the premises.ò This would then ñrender the said Laws or Acts **perfectly consistent not only with justice and equity – but with that Spirit of conciliation which, on the return of the blessings of peace, should universally prevail**....

[4] Boettner: *op. cit.*, pp. 384 & 387.
[5] See the text of the 1783 *Treaty of Paris* (fully stated in R.B. Morrisôs *op. cit.* pp. 461f).

ñCongress shall also earnestly recommend to the several States, that the estates...of such last-mentioned persons shall be restored to them ï they refunding to any persons who may be now in possession, the *bona fide* price...which such persons may have paid on purchasing any of the said lands...or properties since the confiscation.... It is agreed that all persons who have any interest in confiscated lands ï either by debts, marriage settlements or otherwise ï shall meet with no lawful impediment in the prosecution of their just rights.ò

All of the above was most Trinitarianly alias Christianly concluded. For it was executed ñin the Name of the most holy and undivided Trinityò ï and ñdone at Paris, this third day of September, **in the year of our Lord one thousand seven hundred and eighty-three**.ò As a Christian-Trinitarian document, it was signed, officially, by the representatives of the Christian-Trinitarian Great Britain (*viz.* Hartley) and the Christian-Trinitarian U.S.A. (*viz*. John Adams, B. Franklin and John Jay).

The latter, be it noted, was not only a professing Christian and Trinitarian, but even a most outspoken Calvinist. He was also the first Chief Justice of the United States Supreme Court.

The 1783*f* post-war peace and prosperity in independent North America

At that time, Rev. Dr. Ezra Stiles, President of Yale University, preached a sermon before the Governor of Connecticut. It was taken from Deuteronomy 26:29, and it was applied to the United States of America.

Said Stiles: ñThis branch of the posterity of Abraham shall be nationally collected; and become a very distinguished and glorious people under the great Messiah, the Prince of Peace.... Europe was settled by Japheth (Genesis 10:1-5); America is settling from Europe....

ñPerhaps this second enlargement (*cf*. Genesis 9:27) bids fair to surpass the first. For we are to consider all the European settlements of America collectively, as springing from and transfused with the blood of Japheth....

ñThe principal increase was first in Europe; westward from Scythia, the residence of the family of Japheth...to the southward of the Caspian.... He dwelt in the tents of Shem [Genesis 9:27].... Now the other part of the prophecy is fulfilling, in a new enlargement.... The population of this land [America] will probably become very great, and Japheth become more numerous.... The Lord shall have made His American Israel high above all nations which He has made.ò

For ñGod in His providence has ordered that, at the Reformation, the English translation of the Bible should be made with very great accuracy.... It may have been designed by Providence for the future perusal of more millions of the human race than ever were able to read one book ï and for their use to the millennial ages....

ñNavigation will carry the American flag around the globe itself, and display the thirteen stripes.... That prophecy of Daniel (12:4) is now literally fulfilling ï there shall be a universal travelling to and fro, and knowledge shall be increased. This

knowledge will be brought home and treasured up in America and ï being here digested and carried to the highest perfection ï may reblaze back from America to Europe, Asia, and Africa and illumine the World with truth and liberty.ò

Stiles then concluded: ñThe United States will embosom all the religious...denominations in Christendom.... Revelation will be found to stand the test, to the ten thousandth examination.... And thus the American Republic, by illuminating the World with truth and liberty, would be exalted and made high among the nations....

ñThe zeal of the Lord of hosts will accomplish this.... We must become a holy people, in reality.... The more Christianity prevails in a country, [the more] civil society will be advanced.ò

Did the heterodox Jefferson and Franklin badly influence the U.S. Government?

At this point, it may be objected that also Benjamin Franklin and Thomas Jefferson greatly influenced the early United States ï and that they themselves could hardly be considered as Christians. Yet the degree of Jeffersonôs and Franklinôs heterodoxy ï and especially the extent of their possible bad influence on early U.S. government ï should never be exaggerated.

It is true they were both to some degree under deistic influence. However, it is not true that either of them were Deists as such.

For a fully-fledged deist would hardly write a *Life of Jesus*; nor introduce the *Virginia Statute of Religious Freedom* by mentioning ñAlmighty Godò; nor produce at least a Semi-Christian draft for the infant University of Virginia. Yet Jefferson did all these things.

In the latter draft for the University of Virginia, Jefferson wrote that ñthe proofs of God ï the Creator, Preserver, and Supreme Ruler of the Universe ï the Author of all the relations of morality and of the laws and obligations these infer ï will be within the province of the Professor of Ethics.ò To this must be added the ñmoral obligations of those in which all sects agreeò ï together ñwith a knowledge of Hebrew, Greek and Latin.ò

Moreover, even Jefferson ï born and bred in an environment of American Puritanism ï apparently assumed the accuracy of the doctrine of the total depravity of fallen man. Thus he declared that ñtrue government is founded on jealousy, not on confidence. It is jealousy and not confidence which prescribes limited constitutions to bind those we are obliged to trust with power. In questions of power, let no more be heard of confidence in man ï but bind him down from mischief by the chains of the *Constitution*!ò[6]

Similarly, neither was Franklin ï though certainly not orthodox ï a Deist. Whitefieldôs preaching was anathema to Deists; but Franklin enjoyed it. Nor do Deists

[6] Cited in *Christian Beacon*, July 14th 1988, p. 8.

pray; for they do not believe that God can be swayed by manôs petitions even in the Name and for the sake of Jesus Christ. Yet Franklin moved that even daily prayers should be rendered at the 1787 Federal Convention. Consequently, so they were ï and indeed precisely in the Name of Christ and for His sake.

Exclaimed Franklin himself: ñLet us invoke the divine guidance of the Father of lights upon our proceedings [*cf.* James 1:17]!... In the beginning of the contest with Britain, when we were sensible of danger, we had daily prayers in this room for the divine protection....

ñThe longer I live, and the more I know ï the more I believe that God governs in the affairs of men [Daniel 4:32]. And, if the sparrow cannot fall without His notice [*cf.* Matthew 10:29] ï is it probable that an empire can rise without His assistance? ó*Except the Lord build the house, they labor in vain that build it*ô [Psalm 127]! I firmly believe this. And I also believe that, without His concurring aid ï we shall succeed in our political building no better than the builders of Babel [*cf.* Genesis 11].ò

The 'adversary concept' in the setting up of the U.S. Government

Paul Kroll ï in his article on the genesis of the *U.S. Constitution* (sub-titled *To Form a More Perfect Union*) ï stressed[7] that the 1787 Philadelphia Convention originally met for the purpose of ñrevising the *Articles of Confederation*. The delegates set out to create a pragmatic government, made to curb the abuse of power ï whether that abuse came from the top, the bottom, or anywhere in the middle.ò

Their goal could only be achieved, wrote Constitution Scholar Alphaeus T. Mason, ñby a constitutional arrangement setting interest against interest.ò This is the ó*adversary conceptô* ï the institutionalized setting of governmental ñambition against ambition; power against power.ò

One of the Founding Fathers, the later U.S. President James Madison, declared: ñAmbition must be made to counteract ambition..., supplying by opposite and rival interests the defect of better motives.... A degree of depravity in mankind requires a certain degree of circumspection and distrustò ï on account of ñthe folly and wickedness of mankindò (thus Alexander Hamilton). Thus, especially the *U.S. Constitution* created a ó*federalismô* of adversaries with often-opposing interests.

The Delegates, explained Kroll, subscribed to a basic motto taken from the ideas of the conservative French political philosopher Montesquieu. He had written in his book *Spirit of the Laws*: ñEvery man invested with power, is apt to abuse it.... There can be no liberty where the legislative and executive powers are united in the same person or body of magistrates.ò

The leading Delegates, meeting in Philadelphia, had to contend with a two-headed political monster. Their problem was to balance strong central power against individual human liberty and the common good. They needed a central government. In turn, this same controlling government would somehow itself have to be controlled.

[7] P. Kroll: *To Form a More Perfect Union* (art. In *The Plain Truth*, Wilke, Melbourne, Sept. 1987, pp. 5f).

To them, the ñtemple of tyranny had two doorsò: unlimited monarchy and unlimited democracy. There was a fundamental distrust of monarchy, because of its history of despotism. Too, the Delegates were fearful of unchecked democracy. That, they equated with ómob rule.ô Compare the Greek *demos* (óa mobô) plus *kratei* (óit rulesô). Whence: ó*demos kratei*ôï the mob rules.

The lawyer John Adams, Second President of the United States, warned against democracy. ñRemember,ò he urged, ñdemocracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy yet, that did not commit suicide.ò Plutocracy or tyranny then follows.

The *Northwest Ordinance* just two months before the *Constitution of the U.S.*

Two months before the convention of Representatives of the several States adopted the text of the *Constitution of the United States of America* on September 17th 1787, the Continental Congress of **Confederation** passed the *Northwest Ordinance* on July 13th 1787. It governed the administration of all lands north of the Ohio and south of the Great Lakes and west of Pennsylvania yet east of the Mississippi ceded to the United States (whether by France, by Britain, or by some of the northeasternmost American States themselves).

The territory now ceded to the **Confederation** was called the Northwest Territory ï with the intention that in due time it should be admitted into the Union as new States, with equal rights and privileges of the original thirteen. Indeed, the Continental Congress itself at its own last roll-call on October 10th 1788, wisely provided for the admission of the Northwest Territory into the Union.[8]

We now deal with certain relevant passages of this *Northwest Ordinance*. For they shed light on the probable meaning of phrases in the two-months-later U.S. *Constitution* of 1787, and even the 1791 *U.S. Bill of Rights* itself,

The *Ordinance* contains its own Bill of Rights, guaranteeing the frontiersmen freedom from governmental tyranny. Significantly, in its Preamble, the *Ordinance* stated that its contents ñshall be considered as Articles of compact between the Original States and the people and States in the said Territory ï and forever remain unalterable unless by common consent.ò

Article the First then provides: ñNo person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory.ò This is not toleration of irreligious atheism, nor of hideous idolatry, nor of non-trinitarian monotheism such as Judaism or Islam. This is a provision guaranteeing within the Northwest Territory the toleration of Christian worship and of Christian opinion ï regardless of denominational mode. For that is what was then paramount in each of the United States, as well as in the Northwest Territory itself.

[8] See arts. *Ordinance of 1787* (in *NICE* 16:4998) and *Northwest Territory* (in *Enc. Amer.*, 1951, 20:432).

Article the Second provides that ñthe inhabitants of the said territory shall always be entitled to the benefits of the writ of ***habeas corpus***, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the Common Law.ò It also condemns ñcapital offencesò as well as ñcruel or unusual punishmentsò ï and further provides that ñno man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land.ò

Article the Third declares that ñreligion, morality and knowledgeò are ñ*necessary to good government and the happiness of mankind*.ò The latter words are **thus italicized in the *Ordinance* itself**. Hence: ñSchools and the means of education shall forever be encouraged.ò

Moreover: ñThe utmost faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights and liberty ï they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them and for preserving peace and friendship with them.ò However inconsistently maintained, such was the agreed ideal.

Article the Fourth provides: ñThe said territory and the States which may be formed therein shall forever remain a part of this **Confederacy** of the United States of America.ò However, this was to be ñsubject to the ***Articles of Confederation***, and to such alterations as shall be constitutionally made.ò

This raises interesting questions as to secedability, for whatever reason, from **that** Confederacy. All of the States and the Territory would soon ï without objection from any of the parties concerned ï secede from that 1777*f* Confederacy, and join the new 1787*f* Union. To the extent to which the later 1861 Confederate States of America modelled themselves upon the 1777-81 *Articles of Confederation* or the 1787 *Northwest Ordinance* and the 1787 *Constitution of the U.S.A.*, the same question needs to be asked. For many in Georgia threatened to secede from the C.S.A. even during the 1861-65 War of Northern Aggression against the Confederacy.

Article the Sixth of the 1787 *Northwest Ordinance* provided: ñThere shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes, whereof the party shall have been duly convicted. Provided always that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.ò

The two different words ñshallò (in the first line) of the last paragraph and ñmayò toward the end of that paragraph, should be weighed most carefully. Issues proceeding from the understanding of this Article, later became a real bone of contention between the North and the South. Misinterpretations of it much contributed toward the outbreak of the 1861-65 War Between the States.

This is seen especially in the 1854 Kansas-Nebraska Act. Thereby, the U.S. Congress itself enacted that the unorganized Western Territories themselves should decide whether or not they wanted slavery.

A further problem here arose in the 1857 case of *Dred Scott* v. *Sandford*. There, a Missouri slave who had resided in the óFree Territoryô of Minnesota and also in the óFree Stateô of Illinois unsuccessfully sued for his freedom before the U.S. Supreme Court ï after fleeing from his owner (a citizen of the Northern State of New York).

The early triumphs of the godly Federalists against the populist Democrats

The new Convention met in Philadelphia in May 1787, to discuss ñall such **alterations** [to the 1778 *Articles of Confederation*] and **further** provisions as may be necessary to render **the [Con-]Federal Constitution** adequate to the exigences of the Union.ò Thus, the very Convention which framed the 1787 *Constitution of the United States*, equally called the 1778 *Articles of Confederation* a ñFederal Constitution.ò Emphases mine ï F.N. Lee.

Thus, it was from a ñFederal Governmentò that the thirteen States seceded when they in 1787 decided to adopt the present *Constitution of the United States*. None of those States were either then or later ever accused of treason for so doing. Northern States of 1861-65, note well!

Moreover, the present 1787 *U.S. Constitution* would become operational only if and when nine of the States should adopt it. Not all thirteen of the federated States would have to agree to this. Had the final four of the thirteen stayed out of the 1787*f* Union, they would have been separate countries ï separate from Britain; separate from the 1787*f* U.S.A. , and indeed separate also from one another. They would then have been free, later: so to remain; to join the new Union; to enter into a rival confederacy; or to exercise all of those options, in succession. Northern States of 1861-65, note well!

The most important rationale for the 1787 *Constitution of the U.S.A.*, is stated in its Preamble. That reads: ñWe the people of the United States ï in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity ï do ordain and establish this CONSTITUTION for the United States of America.ò

The words ñ**the people**ò in the above statementôs phrase ñWe the people of the United **States**ò ï clearly mean the people of each of the thirteen States which had united in 1776 to declare each of those thirteen States to be independent of Britain and to be united in maintaining that independence. Those same words ñ**the people**ò mean the people of each of those independent States ï each group of such people acting through its own State Legislature. And as many of those thirteen States which might then soon ratify the 1789 Constitution, would thus remain so united ï albeit thenceforth under a new Constitution.

Now the word ñ**more**ò (in the above expression ñin order to establish a more perfect Unionò), clearly shows that the 1787 *Constitution* itself recognizes that the 1877*f* Confederation was itself a Union. These two terms should therefore never be

ranged against one another (in the way the later 1861*f* Yankees did). Too, the above word ñblessingsò implicitly recognizes the very One Who blesses.

Moreover, especially the above-mentioned concepts of ñorderò and ñunionò and ñjusticeò and ñtranquillityòï are clearly elaborated shortly thereafter in Article I. Each of those words is meaningful. Indeed, each of those words was very meaningful ï especially at that time of the seventeen-eighties. For, just before those words were written in 1786-87, there had been an armed insurrection by debt-ridden farmers in Western Massachusetts against the State Government ï in an attempt to halt the foreclosure of mortgages on their properties.

At that time, armed insurgents under the leadership of one Daniel Shays forcibly began to prevent the county courts from sitting and making judgments for debt. The rebellion was routed, but Shays escaped into Vermont. As a result, Massachusetts was soon persuaded to ratify the proposed *U.S. Constitution*[9] ï which then gave that State the right to demand extradition from Vermont of the refugee rebels who had fled there from Massachusetts. 1857*f* fugitive slave Dred Scott, and 1861*f* furtive Yankees ï note well!

The above-mentioned events in eighteenth-century Massachusetts had been precipitated by new legislation of a somewhat socialistic character in several of the States ï legislation aiding debtors in situations where the lower classes had gained control. This had helped to convince conservatives, by way of re-action, that the *Articles of Confederation* were inadequate to protect creditors against their debtors (especially when the latter had fled into other confederated States).

It was perceived by conservatives that a much stronger central government was needed ï in order to keep democratic ñmobocracyò in check. In that regard, the **Southerner** George Washington spoke up for conservative governmental leaders ï in a letter to that effect which he wrote to his friend Congressman Henry Lee (the father of the later General Robert E. Lee).

Wrote Washington to Lee in 1786: ñThe commotions and temper of numerous bodies in the Eastern States [meaning the **Northern** óEastern Statesô!], are equally to be lamented and deprecated. They exhibit a melancholy proof...that mankind, when left to themselves, are unfit for their own government....

ñYou talk, my good Sir, of employing influence to appease the present tumults in Massachusetts. I know not where that influence is to be found ï or, if attainable, that it would be a proper remedy for the disorders. **Influence** is no **government**! Let us have one by which our lives, liberties and properties will be **secured**!....

ñThere is a call for decision. Know precisely what the insurgents aim at! If they have **real** grievances, redress them if possible.... If they have not, employ the force of government against them at once!ò

However, nowhere was the truly revolutionary nature of populist democracy better exposed and excoriated ï than in John Adamsôs *Defense of the Constitutions of*

[9] *Shay's Rebellion,* art. in *NICE* 20:6174; compare Billington & Others: *op. cit.*, pp. 98f & 127f. See too ed. C.F. Adamsôs *The Works of John Adams,* Boston, 1851, pp. 8f & 65f.

Government of the United States of America. Note his plural word ñ*Constitution**s***ò ï meaning those of the thirteen States, as well as the federal constitutions of 1778 (*re* the confederation) and of 1787 (*re* the more perfect Union).

Adams was a conservative. He had signed the 1783 *Peace Treaty* with Britain on behalf of the United States ñin the Name of the most holy and **undivided Trinity**.ò

A staunch Federalist, just before Washington became President (with Adams himself becoming Vice-President) ï the latter almost prophetically defended the godly 1787 *U.S. Constitution* against the ungodly French Radicals who soon took over France at her bloodthirsty Revolution in 1789. Wrote Adams in his *Defense of the Constitution*:

ñProperty is surely a right of mankind, as really as liberty. Perhaps at first prejudice, habit, shame or fear, principle or religion would restrain the poor from attacking the rich ï and the idle from usurping on the industrious. But the time would not be long, before...pretexts be invented by degrees to countenance the majority in dividing all the property among them or at least in sharing it equally with its present possessors. Debts would be abolished first; taxes laid heavily on the rich, and not at all on the others; and at least a downright equal division of everything be demanded, and voted.

ñWhat would be the consequence of this? The idle, the vicious, the intemperate would rush into the utmost extravagance of debauchery; sell and spend all their share ï and then demand a new division of those who purchased from them. The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it ï anarchy and tyranny commence. [Even] If ôthou shalt not covetô and ôthou shalt not stealô **were** not Commandments of Heaven ï they must [or would need to] be made inviolable precepts in every society, before it can be civilized or made free....

ñIndolence is the natural character of [fallen] man to such a degree that nothing but the necessities of hunger, thirst and other wants equally pressing can stimulate him to action ï until education is introduced in civilized societies; and the strongest motives of ambition to excel in arts, trades and professions are established in the minds of all men. Until this emulation is introduced ï the lazy savage holds property in too little estimation to give himself trouble for the preservation or acquisition of it.

ñIt is agreed that ôthe end of all government is the good and ease of the people in a secure enjoyment of their rights without oppression.ô But it must be remembered that the rich are **people**, as well as the poor; that they [too] have rights, as well as others; that they have as clear and as **sacred** a right to their large property, as others have to theirs which is smaller; that oppression to them is as possible and as wicked as [it is] to others; that stealing, robbing, cheating are the same crimes and sins ï whether committed against them, or others.

ñThe rich, therefore, ought to have an effectual barrier in the *Constitution* against being robbed, plundered and murdered ï as well as the poor.... This can never be, without an independent Senate. The poor should have a bulwark against the same dangers and oppressions.... This can never be, without a House of Representatives of the people. But neither the rich nor the poor can be defended by their respective

guardians in the *Constitution*, without an executive power vested with a negative [veto] equal to either ï to hold the balance even between them, and decide when they cannot agree.ò

Immediate reasons for the1787 *Constitution of the U.S.A.* found in its Article I

For thirteen years after Shaysô Rebellion, the American political pendulum swung to the right ï even down till 1800. At the beginning of that period, fifty-five conservative delegates from the several States had met in Philadelphia to frame the 1787 *Constitution of the U.S.A*.

Of those fifty-five delegates, at least fifty and perhaps even fifty-two were professing Christians.[10] One of those who actually drafted the U.S.ôs 1789 *Constitution*, was John Jay ï the first Chief Justice of the Supreme Court of the United States.

Jay had been one of the three American signers of the 1783 *Peace Treaty* with Britain ñin the Name of the most holy and undivided Trinity.ò A French-American Calvinist, Jay himself declared:[11] ñProvidence has given to our people the choice of their rulers, and it is the duty of a Christian nation to select and prepare Christians for their rulers.ò

Then, not a single State desired a unitary National Government. The mood of the 1787 Constitutional Convention was overwhelmingly conservative ï as can be seen from the language throughout Article I of the *Constitution* itself.

In the 1787 *Constitution of the United States*, it was enacted in Article I Section 1 that ñall legislative powers herein granted [by the United States to the Federal Government as their creature] shall be vested in a Congress of the United States which shall consist [firstly] of a [States-rightsô] Senate and [secondly] of a [popular-vote] House of Representatives.ò

In that latter Lower Federal House, ñthe number of Representatives shall not exceed one for every thirty thousand.ò However, ñeach State shall have at least one Representative.ò Article I Section 2.

Now the 1787 *U.S. Constitution* upholds precisely a bicameral Congress. There, the House of Representatives reflects voting strengths by *per capita* population. On the other hand, the equal rights of the States is entrenched by allocating exactly two Senators for each State ï whether populous (like New York) or ócemptyô (like Vermont); whether tiny (like Rhode Island) or huge (like Alaska); or whether densely-populated (like New Jersey) or sparsely-populated (like Nevada).

[10] See M.E. Bradfordôs *A Worthy Company*, Plymouth Rock Foundation, 1982 (cited in *Our Chr. Herit.* p. 4).
[11] D. Barton: *The Myth of Separation* (as cited by John Holmes in his art. *Our Inalienable Rights*, in *The Bell Ringer*, Southern California Constitution Education Committee, North Hills Ca., Nov./Dec. 1992, p. 7).

The U.S. Congress was to have legislative powers which could not be delegated. Those powers were to be exercised bicamerally in a óLowerô House of popular Representatives, and in an óUpper Houseô or Senate of equally-represented States. Statesô rights were thus strongly entrenched in the 1787 *U.S. Constitution*. Article I Section 3.

Strong State powers were vested in the Upper House alias the Senate. Too, the Senate: shares the work-load between itself and the President; approves treaties; and initiates impeachment procedures. Article I Section 3; and Article II Sections 1 & 2. Significantly, all Senators are to rest ósabbaticallyô after six years service. Article I Section 3.

The issue of slavery was very carefully avoided. Even the initial number of Representatives for the Lower House per State was to be calculated ñby adding to the whole number of free persons [meaning adult male freemen], including those bound to servitude for a terms of years and excluding Indians not taxed, three-fifths of all other persons.ò Article I Section 2.

It should be remembered that not only adult male slaves and slave women (together with their slave children) but also free women (and their minor children) were not then enfranchised. Such adults would not be granted the vote for yet many decades to come.

The same provision specifies that Delaware and Rhode Island were originally entitled to only 1 Representative each; New Hampshire and Georgia, each to 3; New Jersey, to 4; Connecticut, North Carolina and South Carolina, each to 5; Maryland and New York, each to 6; Massachusetts and Pennsylvania, each to 8 ï and the great State of Virginia (where slaves outnumbered freemen) to fully 10. Even the slave trade, though immediately taxable, was declared to be unabolishable by the United States Congress until at least A.D. 1808 (and **not necessarily** to be abolished even then). Article I Section 9.

Although Article I Section 8 gives the U.S. Congress power to levy and collect taxes, Article I Section 9 holds that ñno capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken.ò So, the U.S. Supreme Court in 1895 rightly held that taxes on incomes from real property or personal property were ódirect taxesô and that the *Income Tax Act* of 1894 was therefore unconstitutional.

Only in 1913 was this constitutional provision repealed. Then, in the Sixteenth Amendment, it was finally ratified that ñthe Congress shall have power to lay and collect taxes on incomes from whatever source derived ï without apportionment among the several States.ò

Very clearly, according to the U.S. Supreme Court in 1895, the *Income Tax Act* of 1894 (later to be recycled into the so-called Sixteenth Amendment of 1913) was contrary to the original 1787 *Constitution of the U.S.* It remained so, right down to just beyond 1912. (So, comrades, if you donôt like the original 1787 *U.S. Constitution* ï just amend it, to get it to teach the opposite!)

Article I Section 9 similarly upholds the writ of *Habeas Corpus*. It also prohibits bills of attainer (alias punishment without trial) ï and all *ex post facto* laws (of retroactive effect). Finally, Article I Section 10 reserves to the Federal Government the rights to enter into treaty, coin money, or impose customs duties.

Articles II through VII of the 1787 *Constitution of the U.S.A.*

Article II deals with the executive powers of the U.S. President. Both then and now, they were and are considerably greater than those of the King or Queen of England both then and now. Just consider the military, pardoning, treaty-making, and judge- and ambassador- and even Senator-appointing powers authorized to the President in Article II Section 2! However, just like Britainôs previous seventeenth-century (and even earlier) monarchs Charles I and James II, also U.S. Presidents are removable ï *viz*. by impeachment. Article II Sections 2 & 4.

Article III regulates the judicial power of the U.S. Supreme Court anent all controversies between the United States and foreign parties. It also declares that ñthe judicial power shall extend to all cases in law and equity...; to controversies in which the United States shall be a partyò; and ñto controversies between two or more Statesò of that Union. ñThe trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed.ò Articles III Sections 1 & 2.

In the above-mentioned Articles II & III, the Founding Fathers clearly and deliberately distributed the power ï among the legislative Congress and the executive President and the judicial Supreme Court ï on a ótrinitarianô basis. It implies that each is master in its own area, and sovereign in its own sphere. Its delicate structure of checks and balances is the guarantee of constitutional freedom from tyranny for all U.S. citizens.

Article IV Section 2, deals with the relation of the States to each other. It provides for: Inter-State co-operation and Inter-State extradition. This means that runaway persons (such as slaves) charged with crimes in any State, had on demand to be delivered up by the State of refuge to the State having jurisdiction. Article IV sections 3 and 4 comprehend: the admission of new States to the Union; the Federal Governmentôs protection of the ñrepublican form of governmentò to ñevery State in this Unionò; and its further protection of each State against invasion.

Article V provides for ñamendments to this constitution...when ratified by the legislatures of three-fourths of the several States.ò Yet ñno State, without its consent, shall be deprived of its equal suffrage in the Senate.ò

Article VI provides for the recognition of ñthis constitution and the laws of the United States...and all treaties made...under the authority of the United Statesò as ñthe supreme law of the land.ò Though the *Constitution* in no words adopts the Common Law, its provisions no less recognize the existence and continuance thereof as the law of the States with which the national government might not interfere.[12] Indeed, this is made quite evident especially in the Seventh Amendment within the 1791 *U.S. Bill of*

[12] See *Enc. Amer.*, 1951, 7:413f.

Rights ï without which latter even the 1787 *Constitution* itself could not have been enacted (requiring as it did approval by at least nine of the thirteen independent North American States).

Thus, back in Article III, the judicial power of the United States is vested in the Supreme Court ï and also in such inferior courts as the Congress may from time to time ordain. The judicial power extends to all cases in law and equity between two or more States. The trial of all crimes, except in cases of impeachment, shall be by jury. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act or on confession in open court. See: Deuteronomy 19:15 & Second Corinthians 13:1 & First Timothy 5:19.

(Indeed, as stated also in the 1791 Seventh Amendment to the *Constitution*, ñin suits at Common Law..., the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the Common Law.ò)

Article VII deals with the ratification procedure. It was agreed that not less than ñthe conventions of nine Statesò of the original thirteen, would be sufficient to establish the *Constitution* between the States so ratifying. All of the above Articles were then affirmed in Convention by the unanimous consent of the States present, ñthe seventeenth day of September in the year of our Lord 1787.ò

This latter shows the 1787 *U.S. Constitution* to be a Christian document ï signed as it was ñin the year of our Lord 1787ò; and with ñSundaysò distinguished from ordinary working-days (Article I Section 7). By way of contrast, it should be remembered that the 1789 French Revolution sought to abolish the Christian Sunday ï and also to abolish the Christian Year Calendar!

The 1787 *U.S. Constitution* became effective when the ninth of the original thirteen States ratified it: on 21st June 1788. It was 1789 before the *Constitution* actually became operational ï by which time eleven of the States had ratified it. Only in 1790 did the thirteenth State (Rhode Island) ratify it ï in respect of that State itself.

Indeed, **certain States had ratified the 1787 *U.S. Constitution* only on condition that the States reserved the right to re-assume powers delegated by them to the Federal Government**.[13] The subsequent 1791 *Bill of Rights* (alias the first Ten Amendments) represents the ratifying conditions demanded by several of the sovereign States which created the Union ï before they had ever become willing to sign the new 1787 *Constitution*.

These were States such as Massachusetts, New York, North Carolina, Rhode Island and Virginia. Without the agreement of those five States, also the other eight of the original thirteen States could not themselves have constituted the 1787 *Constitution* ï and would then have been left participating in the earlier *Articles of Confederation* which made no provision for secession from that ñperpetual Union!ò

[13] See art. *Constitution of the United States*, in *The American Peoples Encyclopedia*, Grolier, New York, 1966, 5:432.

As we shall see later, the 1791 *U.S. Bill of Rights* was and is a Christian document. It denies the Federal Government any ability to establish a denominational religion. It further protects to the hilt the Anglo-American Common Law rights of the individual, against central government tyranny ï and also the rights of each of the several States and its people, *vis-a-vis* the Federal Government.

The thoroughly-Christian background of the *U.S. Constitution*

The 1787 *Constitution of the U.S.A*. was completed and signed on the 17th of September of that year. It went into operation on June 21st 1788, when New Hampshire became the required ninth State to vote for ratification (in terms of Article VII).

As Dr. Ken Gentry rightly points out in his two articles on *The U.S. Constitution: A Christian Document*[14] ï the latter had a Christian historical environment. Christian political traditions had influenced the Constitutional Convention; the Christian philosophy of government pervades it; and there are even express Christian intimations in it.

The 1787 *Constitution of the United States of America* is steeped in Christian presuppositions. In that regard, it was a predictable extension of the 1776 *Declaration of Independence* and the 1787 *Northwest Ordinance*.

In 1776, the *Declaration of Independence* had spoken of the ñCreatorò (*cf*. Genesis 1:1 & Ecclesiastes 12:1) and of ñdivine Providenceò (*cf*. Psalms 103 to 104 & Proverbs 16). On July 13th 1787, the Congress of Confederation passed the *Northwest Ordinance* for lands north of the Ohio and east of the Mississippi, there stating[15] that ñreligion, morality and knowledge are necessary to good governmentò (*cf*. Deuteronomy 17:14-20 & Proverbs 14:28-34).

Two months later, on September 17th 1787 the convention of representatives from the several States unanimously approved the text of the *Constitution of the United States of America*. The very next year saw the *U.S. Constitution* go into operation ï on June 21st 1788. Even its very Preamble speaks of the Biblical ñblessing of liberty to ourselves and our posterityò (Genesis 1:28 & 27:25*f cf*. James 1:25*f*). This is the ôblessingô and ñdivine Providenceò of the very ñCreatorò referred to by the 1776 *Declaration of Independence*.

After the ñblessing of libertyò the 1787 *U.S. Constitution* next guarantees the additional blessing of the separation of powers. For they are thereby distinctly demarcated into legislative, executive and judiciary branches of political government. Articles I-III, *cf*. Exodus 18:14-26 & Romans 13:1.

The *Constitution* also guarantees the following. First, an anti-absolutistic bicameral legislature. Article I:1, *cf*. Numbers 10:2-4. Second, age and residential qualifications in respect of the candidates for legislative office. Article I:2 *cf*. Numbers 4:3 & Joshua 20:4. Third, non-populist and non-oligarchical two-year-long and limited-number (yet

[14] K. Gentry: *The U.S. Constitution – A Christian Document* (in *The Counsel of Chalcedon*, Atlanta Dec. 1986 to Jan. 1987).
[15] *Northwest Ordinance*, art. III.

adequate) representation of qualified voters in the House of Representatives. Articles I:2 & I:9, *cf.* First Chronicles 24:3-19 & Luke 1:8 & First Timothy 3:13. Fourth, equal senatorial representation for each State ï two Senators apiece, each for six years, and with the Senate as such to have the sole power of impeachments. Article I:3, *cf.* Numbers 7:2-3 & Leviticus 25:2-4.

Further, the *Constitution* also provides for (overridable) presidential power to veto all legislation. Article I:7 *cf.* Exodus 18:26 & Deuteronomy 17:15*f.* It prescribes the exclusion of Sundays from legislative days. Article I:7, *cf.* Exodus 20:8-11 & First Corinthians 16:1*f.* It makes provision for the eligibility to a four-year term of an executive President nominated by State-appointed electors equal to the number of its Congressional Senators and Representatives. Article II:2, *cf.* Exodus 18:12*f* & Acts 6:1-7. Indeed, it grants the President power to declare war, to grant reprieves, and (with senatorial consent) to make treaties and to appoint ambassadors and judges. Article III:2, *cf.* Exodus 17:9*f* & Deuteronomy 20:1*f.*

Again, the 1787 *Constitution* provides for judicial power to be vested in one Supreme Court and in such inferior courts as Congress may establish. Article III:1, *cf.* Deuteronomy 16:18*f* & 17:8*f.* It urges trial by jury. Article III:2, *cf.* Acts 1:15-26 & First Corinthians 6:1-6. It requires criminals to be extradited from one State to another. Article IV:2, *cf.* Numbers 35:12-25 & Deuteronomy chapters 16 to 17. Indeed, in Article I:8-10 (*cf.* Isaiah 1:25), it even restrains inflation ï by providing that not the banks but only Congress can coin money, and by decreeing that ñno State shall...make any thing but gold and silver coin a tender in payment of debts.ò

The *U.S. Constitution* further ñguarantees to every State in this Union a republican form of government.ò Article IV:4, *cf.* Exodus 18:12*f* & Acts 6:1-6. It makes provision for its own amendment. Article V, *cf.* Deuteronomy 17:14*f* & Acts 17:11*f.* It declares itself to be the supreme law of the land. Article VI, *cf.* Exodus 14:49 & Numbers 15:15-16.

It also guarantees that ñno religious test shall ever be required as a qualification to any office or public trust under the United States.ò This did and does not mean the acceptability of applications for federal offices from professing Atheists or Communists or Socialists or Humanists or Non-Trinitarians or Non-Christians, such as Judaists and Muslims. But it meant and means that there is to be no denominational test of allegedly-Christian applicants as regards holding office in the Federal Government as distinct from in the State Governments. Article VI, *cf.* Mark 9:38*f* & Luke 9:49*f etc.*

Finally, the *Constitution* derives its authority only from its subsequent ratification by the sovereign ñconvention of nine Statesò (at least) of the original thirteen. Article VII, *cf.* Exodus 24:7*f* & Deuteronomy 31:11-28*f.* All this was done ñin convention, by the unanimous consent of the States present, the seventeenth day of September **in the year of our Lord** [**Jesus Christ**] one thousand seven hundred and eighty-seven.ò

This latter means 1787, *Anno Domini*. For it was done in the 1787th ñyear of our Lordò ï in that year of the dominion of the great Ruler, the Lord Jesus Christ.

Expressly Christian passages or phrases in the *U.S. Constitution*

In Article I Section 7, we are told that if any Congressional Bill ñshall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law.ò Here, the word ñSundayò is extremely significant.

As Gentry observes,[16] were America a **Jewish** country ï doubtless **Saturday** would have been the day set aside (as in Israel today). Were America a **Muslim** land, **Friday** would have been reserved ï as in Islamic nations today. Were it a secular humanist state ï no day would have been set aside (as in Red China). But instead, the1787 *U.S. Constitution* reserves **Sunday** ï the worship day specifically of **Christianity**.

Significantly, the 1787 *U.S. Constitution* was ñdone in Convention...in the year of **our Lord** 1787.ò Article 7, *cf.* Luke 1:35*f* & 2:1-7 & 3:1-4 & 4:19-21. As Gentry again observes, this phraseology is not found in the *Soviet Constitution*. It is not found in Buddhist, Shinto, or Muslim Constitutions. Nor, we may add, is it found in Judaistic or Humanistic or Socialist Constitutions either.

The Biblical doctrine of manôs innate depravity is behind the Constitutionôs doctrine of governmental checks and balances. Thus, it establishes a tri-partite (or ótrinitarianô) government of diffused powers, counter-balancing manôs lust for power. Articles I-III distribute power among the executive, legislative, and judicial branches of political government.

Further, ñthe United States shall guaranty to every State in this Union a republican form of government.ò Article IV Section 4. This means no unelected tyranny, or one-human-one-vote democratic mob rule, but a government of graduated authority in which the U.S. Federal Government (ñthe United Statesò) guarantees to uphold in every State a representative State Government of the people and for the people of that particular State.

The word ñrepublicò is derived from two words, *res* and *publica*. It means óthe thing of the people.ô And in 1787 North America, ñthe peopleò professed to be a **Christian** people. Indeed, despite much backsliding since then ï they still do!

Mandated government, according to the Bible, was similarly re-publican (alias always by consent of the people). Deuteronomy 1:13; 17:14*f*; Judges 9:6; First Samuel 11:15; First Chronicles 12:38; Acts 6:3,5. Indeed, even the U.S. graded court system (*cf.* Article III Section 1) reflects the Bible. See: Exodus 18:12,18-22; Deuteronomy 1:13-17; 16:18*f*; 17:6*f*; 19:4-18; 21:1-8; Matthew 18:15-18.

In 1823, U.S. Supreme Court Justice William Johnson referred to the *U.S. Constitution* as ñthe most wonderful instrument ever drawn by the hand of man.ò[17] Indeed, in our twentieth century, U.S. President Woodrow Wilson compared it to the British *Magna Carta*.

[16] *Op. cit.*, II p. 22.
[17] Cited in *The Plain Truth*, Wilke, Melbourne, Sept. 1987, pp. 5f.

In 1833, U.S. Supreme Court Justice Joseph Story wrote about it in his *Commentaries on the Constitution of the United States*. There he claimed:[18] ñAt the time of the adoption of the *Constitution*...the general if not the universal sentiment in America was that Christianity ought to receive encouragement from the state.ò

Even as late as 1834, the great French historian Alexis de Tocqueville wrote[19] in his book *Democracy in America* that among the Anglo-Americans there are some who profess Christian dogmas because they believe them. Others do so because afraid to look as though they did not believe them. He then added: ñSo Christianity reigns without obstacles, by universal consent.... Everything in the moral field is certain and fixed.... In the United States of America, the sovereign authority is religious.... There is no country in the World in which the Christian religion retains a greater influence over the souls of men, than in America....

ñI sought for the greatness and genius of America in her commodious harbours and her ample rivers, and it was not there; in her fertile fields and boundless prairies, and it was not there; in her rich mines and her vast world commerce, and it was not there. Not until I went to the churches of America and heard her pulpits aflame with righteousness, did I understand the secret of her genius and power. America is great because she is good; and if America ever ceases to be good, America will cease to be great....

ñGod,ò concluded de Tocqueville, ñgave...liberty. Can the liberties of a nation be secure, when we have removed a conviction that these liberties are the gift of God?ò

William E. Gladstone (1809-1898) ï himself author of the book *The Impregnable Rock of Holy Scripture* ï was four times British Prime Minister in Victorian England. He also made an often-quoted observation about the two ócConstitutionsôï the British and the American.

In an 1878 essay titled *[Our] Kin Beyond [the] Sea*, Gladstone wrote: ñThe *British Constitution* is the most subtile organism which had ever proceeded from the womb and the long gestation of progressive history.... The *American Constitution* is...the most wonderful work ever struck off at a given time by the brain and purpose of man.ò[20]

Less rhetorical yet more historical, is the view of the great Law Professor Sir Henry Maine. He rightly stated[21] that the ñ*Constitution of the United States* is a modified version of the [1688] *British Constitution*...between 1760 and 1787.ò

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[18] *Cf.* C.G. Singerôs *Theological Interpretation of American History*, Craig, Nutley N.J., 1969, p. 7.
[19] A. de Tocqueville: *Democracy in America* [1834], Doubleday, Garden City N.Y., 1969 rep., pp. 28 & 292. See too *Our Chr. Herit.*, p. 6; and D. Scarboroughôs *Freedom for South Africa*, Gospel Defence League, Cape Town, July 1992, p. 2.
[20] *Id.* (from Gladstoneôs *Kin Beyond Sea* in his *Gleanings of Past Years*).
[21] Sir H. Maine: *Popular Government*.

The trinitarian structure and republican character of the *U.S. Constitution*

The 1789 *U.S. Constitution* has a non-deistic ñtrinitarianò structure and a ñrepublicanò character. Indeed, we have already seen the ñtriuneò checks and balances between its several legislative, executive and judicial powers.

Rightly has Rushdoony written in his book *The Nature of the American System*[22] that the concept of a secular state was virtually non-existent in 1776 ï when America declared her independence of Britain. That was still the case in 1787 when the *Constitution of the U.S.A.* was written. Indeed, even after the French Revolution of 1789, it was no less so in the U.S.A. and Britain ï at the 1791 adoption of the American *Bill of Rights* (already foreshadowed by the 1787 American *Northwest Ordinance*).

The *U.S. Constitution* was designed to perpetuate a Christian order. The American *Bill of Rights* alias the first Ten Amendments of 1791 should be viewed as a Christian reaction to the ungodly French Revolution of 1789 ï especially in the latterôs capacity as a reaction against also the American *Constitution* ñin the year of **our Lord** one thousand seven hundred and eighty-seven.ò

Consider the 1787 *U.S. Constitution*ôs Articles against the depravity of fallen man. First, there are the federal checks and balances. See Articles I:1 & II:1 & III:1. Then, there is the emphasis on individual personal liberty ï over against the Federal Government of the United States. See the Ninth Amendment. Next, there is the stress on Statesô rights. See Article III:2, and the Tenth Amendment.

The 1787 *U.S. Constitution* was largely framed by Alexander Hamilton. He was of Calvinistic French-Huguenot descent. He had learned the *Presbyterian Church Order* from his benefactor, Rev. Hugh Knox. Hamilton diligently applied it to his drafting of the American *Constitution*.

Indeed, in so doing, Hamilton was also preserving the best of British Common Law. For, even according to Jefferson, Hamilton still considered the *British Constitution* ï in spite of all the corruption in its administration at that time ï as the most perfect model of Government.[23]

Said Hamilton in 1788, at the New York Convention: ñThe rights of a State are defined by the *Constitution*, and cannot be invaded without violation of it.... The gentlemen are afraid that the State Governments will be abolished. But, sir, their existence does not depend upon the laws of the United States. Congress can no more abolish the State Governments, than they can dissolve the Union....

ñThe States can never lose their powers, till the whole people of America are robbed of their liberties. They must go together; they must support each other.... The laws of the United States are supreme as to all their proper constitutional objects. The laws of the States are supreme in the same way. The supreme laws may act on

[22] Thoburn, Fairfax Va., 1965, p. 2.
[23] Thus A. Kuyper Sr., in his *Calvinism the Origin and Guarantee of our Constitutional Freedoms*, Vanderland, Amsterdam, 1874, pp. 17 n. 12 & 68 n. 12, citing Washingtonôs *Writings*, IX p. 48.

different objects without clashing, or they may operate on different parts of the same common object with perfect harmony.ò

Thus, originally, the State Governments and the United States Government intermesh harmoniously ï just as in ecclesiastical affairs several Presbyteries intermesh with the General Assembly in a Presbyterian Church. Both, in turn, should attempt to reflect the harmonious governmental operation of the several divine Persons within the one Being of the Triune God Himself. For **politics** should reflect the **most holy** and **undivided Trinity** ï as did the Preamble to the 1783 *Peace Treaty* reconciling the two Christian countries of Great Britain and the United States.

The 1788 *Federalist Papers* on the *United States' Constitution*

The 1788 *Federalist Papers* were and are an authoritative comment on the 1787 *U.S. Constitution* framed just one year earlier. They were co-authored by Alexander Hamilton, John Jay and James Madison.

Hamilton mentioned ñthe folly and wickedness of mankindò ever since the fall. In *The Federalist No. 31*, he hoped America would ñpreserve the constitutional equilibrium between the general and the state governments.ò

In *The Federalist No. 32*, he further declared: ñAn entire consolidation of the States into one national sovereignty, would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the state governments would clearly retain all rights of sovereignty which they before had and which were not by that act exclusively delegated to the United States.ò

The Calvinist Jay (co-signer of the 1783 *Peace Treaty* between Great Britain and the U.S.A. as well as the first American Supreme Court Chief Justice) insisted that fallen men tend ñto swerve from good faith and justice.ò[24] Madison, a later U.S. President, had studied Hebrew and Theology at Princeton University ï under its great Presbyterian President Rev. Professor Dr. John Witherspoon himself.

The 1788 *Federalist Papers* are, of course, the most accurate extant commentary on the original intent of the 1787 federal *Constitution of the United States*. Those *Papers* warn against the dangers of one-man-one-vote democracy, and acknowledge the Biblical truth that ñyou must not follow a multitude to do evil.ò Exodus 23:2.

They comment on Article I Section 2 ï which provides that ñthe number of Representatives shall not exceed one for every 30,000.ò They also comment on Article IV Section 4, which provides that ñthe United States shall guarantee to every State in this Union a republican form of government.ò

[24] Cited in K.L. Gentryôs *The Rise and Fall of American Liberty* (in *The Counsel of Chalcedon*, Marietta Ga., Oct. 1969, p. 4).

Commented the later President James Madison in the *Federalist Papers*:[25] ñA pure democracy...can admit of no cure for the mischief of faction[s].... A republic opens a different prospect.... The delegation of the government to a small number of citizens elected by the rest...to refine...the public views by passing them through the medium of a chosen body of citizens, will be more consonant to the public good than if pronounced by the people themselves.ò

The *Federalist Papers* give a very good reason for the above statement. This is so ï because, even when Christians, **fallen** ñmen of factious tempers, of local prejudices, or of sinister designs may by intrigue...destroy the interests of the people.ò Thus, democracy leads to demagogy.

John Marshall, U.S. Chief Justice from 1801 to 1835, agreed with the *Federalist Papers*. Indeed, he rightly observed: ñBetween a balanced republic and a democracy, the difference is like that between order and chaos.ò

Moreover, the larger the republic and the smaller the number of representatives ï the less its likelihood of getting manipulated locally. This, explain the *Federalist Papers*, ñrenders factious combinations less to be dreaded.... Variety spread over the entire face of the Confederacy, must secure the national council against any danger from that source.ò

James Madison further wrote in *The Federalist*[26] that ñeach state...is considered as a sovereign body, independent of all others...bond[ed] by its own voluntary act.ò Furthermore, there is a ñdegree of depravity in mankind which requires a certain degree of circumspection and distrustò ï because of the ñcaprice and wickedness of man.ò Clearly, Madison strongly affirmed the Calvinist doctrine of the total depravity of fallen man even when ï if not especially when ï wielding political power.

As a drafter of the *U.S. Constitution*, Madison declared: ñWe have staked the whole future of American civilization not upon the power of government. Far from it. We have staked the future of all of our political institutions upon the capacity of mankind for self-government ï upon the capacity of each and all of us to **govern** ourselves; to control ourselves; to sustain ourselves **according to the Ten Commandments of God**.ò

Indeed, if Madison here erred at all ï he erred not in overestimating fallen manôs depravity. If he here erred at all, he erred in underestimating fallen manôs ability even to desire to keep the Decalogue. In the latter regard, precisely todayôs antinomian ŒEvanjellyfishô are Exhibit A!

Finally, in the final and 85th article of the *Federalist*, Alexander Hamilton rightly wrote: ñThe compacts which are to embrace thirteen distinct states in a common bond of amity and union, must necessarily be compromises.... The moment an alteration is made in the present plan, it becomes to the purpose of adoption a new one ï and must undergo a new decision of each state. To its complete establishment throughout the union, it will therefore require the concurrence of **thirteen states**ò ï and not of 51%

[25] J. Madison: *Essay No. 10* (in the *Federalist Papers*).
[26] J. Madison: *The Federalist Papers*, Nos. 39, 55 & 78.

of that modern fiction now called ôthe American peopleô (or rather such a media-motivated fragment thereof that even bothers to vote at elections).

States' provisions to secede (before ratifying the proposed *Constitution*)

If, as seen above, even the Federalists were jealous of preserving the sovereignty of the States after Union ï the Anti-Federalists like Jefferson and Patrick Henry were even more so. For it is vital to note that the great Anti-Federalists of the influential Virginia (then by far the most important State in the Union) went very much further in this regard.

They insisted that ñthe powers granted [by each State to the Federal Government] under the *Constitution*, being derived from the people of the United State**s** [plural], may be resumed by them whensoever the same may be promoted to their injury or oppression.ò Significantly, this was inserted into Virginiaôs ratification of the proposed 1787 *U.S. Constitution*.

North Carolina urged as an amendment: ñThat each State in the Union shall **respectively** [**not aggregately**] retain every power, jurisdiction, and right which is not by this *Constitution* delegated to the Congress of the United States, or the department of the Federal Government.ò

Massachusetts stated: ñIt is explicitly declared, that all powers not delegated by the aforesaid *Constitution* are reserved to the several States, to be by them exercised.ò New York and Rhode Island used similar language in their ratifications. South Carolina then even further declared that ñno section or paragraph [of the proposed 1787 *U.S. Constitution*] warrants the construction that the States do not retain every power not expressly relinquished by them.ò

Like Massachusetts and other States, also South Carolina insisted on a *Bill of Rights* to check the powers of the federal government of the United States. That *Bill* included the Tenth Amendment, reserving unenumerated rights to the States and to the people.

Patrick Henry of Virginia would even have preferred that the very first words of the proposed 1787 *U.S. Constitution* had started off ñWe the State**s** [plural] of America [singular]ò ï rather than ñWe the people of the United Statesò *etc*. Why the latter? he asked.

His colleague Jefferson re-assuringly responded with the *Virginia and Kentucky Resolutions*. These declared that the acts of the then-to-be-created national government would be ñunauthoritative and void and of no force whenever the government assumed powers not specifically delegated by the *Constitution*.ò

We ourselves would add that not ñWe the States of Americaò but precisely ñWe the people of the United Statesò ï though perhaps yet better, lower case óunitedô rather than upper case óUnitedô! ï was indeed the needed expression. For even after the ninth State subsequently ratified the 1787 *Constitution*, the remaining four of the thirteen original States might not do so.

In that case, there would indeed have been an operative 1787 *Constitution of the United States* ï but not of all thirteen States. The chosen wording ñWe the people of the United Statesò (*viz*. through each Stateôs own representative Legislature), meaning ówe the people of such States as wish to be united thusô ï adroitly side-stepped that possible hurdle.

For the U.S. federal government was and is the creature of **those** States which compacted together to create and to sustain it. As the Virginians declared in 1798: ñEach State acceded as a State, and is an integral party. This [U.S. federal] government created by that *Compact*, was not made the final judge of the powers delegated to itself. Each party [that is each of the uniting States themselves], as well as the [U.S. federal or] national government, has an equal right to judge for itself as well of its infraction as well as of the mode of its redressò ï *viz*. of all breaches of the 1787 *U.S. Constitution* either by the federal government or even by one or more of the constituent States.

On the basis of the above, Jefferson Davis (the first President of the later Confederate States of America) subsequently drew the correct conclusion. For he saw and stated that the right to secede is not prohibited to the States in the 1787 *U.S. Constitution* which they themselves had created. The *U.S. Constitution* did and does not expressly delegate to the federal government specific powers of prohibiting States from seceding. So such a right to secede remains reserved to the States or the people of those States (both individually and severally).

As we shall see in our next chapter, even the **Northern** States themselves ï at least until after the outbreak of the War of Northern Aggression against the Southern States! ï drew this correct conclusion. Indeed, they too said so ï long before the South or its later Confederacy did.

Also the North **at that time** clearly understood that the *U.S. Constitution* had been **ratified** not by that later idolatrous fiction now called ñthe American peopleò (*sic*) ï but instead by the **Legislature** of each **State**. So not the Federal Government but the **Legislature** of each **State** alone was the body which could decide on its possible **secession** from the Union.

J. Mark Jacobson's secularistic assessment of the 1787 *U.S. Constitution*

The 1787 *U.S. Constitution*, then, did not move along the path toward democracy. Secularistically summarizing the judgment of scholars, J. Mark Jacobson has presented a thought-provoking picture in his book *The Development of American Political Thought*.[27]

According to Jacobson, the framers of the 1787 *U.S. Constitution* opposed popular democracy. Indeed, they wrote their own conservative economic and social views into that document.

[27] J.M. Jacobson: *The Development of American Political Thought: A Documentary History*, The Century Co., Appleton-Century-Crofts, 1932, pp. 164-79 (as excerpted in Billington & Othersô *op. cit.* pp. 106f).

They called the masses ñturbulent and changing.ò Thus they adopted the provision that ñthe electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatureò ï when almost every State had **property** qualifications for **voting**.

They also adopted a bicameral system. Thus, the permanency of the Senate would be able to check the possible impetuosities of the House of Representatives. To the independent executive, they gave a strong veto. Indeed, Congress itself was subjected to judicial control. The framers of the *Constitution* intended that the Supreme Court should act as a check upon Congress. Limited suffrage, bicameralism, executive veto and judicial review were all to serve as safeguards against any populist legislation.

The makers of the *Constitution* not only disliked democracy. They also desired stability. The system of balances was devised to prevent the mere majority from ever dominating those who held property.

Each State was to choose a body of men as its college to elect the President and the Vice-President. The House of Representatives was given a two-year term; but the Senate was to stay in office for six years, only one-third retiring biennially. This rendered the government virtually safe from the dangers of popular domination.

The method of constitutional amendment would operate with difficulty. A constitutional órevolutionô must secure the sanction of two-thirds of the House of Representatives, two-thirds of the States-controlled Senate, and both legislative branches in three-fourths of the States. As Madison remarked: ñThe government we mean to erect, is intended to last for ages.ò

The Biblical and Christian and Common Law roots of the 1787 *U.S. Constitution*

Sometime Republican Candidate for the United States Congress Rev. Dr. J.C. Morecraft III has written an article titled *The Religious Roots of the U.S. Constitution*. There, he rightly reasons[28] that the Church must be kept functionally distinct from the State. First Samuel chapter 13 & Second Chronicles 26:16*f*.

Morecraft explains[29] that Israel in the Old Testament was a theocracy. Yet in this theocracy, there was the institutional separation of Church and State. The kings came from the tribe of Judah, and the priests from Levi. When King Saul, King David and King Uzziah tried to usurp priestly church functions and authority ï they were rebuked. There was Moses the prophet, and Aaron the priest; Nehemiah the governor, and Ezra the scribe.

Also the First Amendment recognizes this ótwo-kingdom conceptô in this óone nation under God.ô In 1833, Supreme Court Justice Joseph Story wrote in his *Commentaries on the Constitution of the United States*: ñThe real object of the First Amendment was **not to countenance**, much less to advance, **Mohammedanism or**

[28] J.C. Morecraft III: *The Religious Roots of the U.S. Constitution* (in *The Counsel of Chalcedon*, Marietta Ga., January 1988, pp. 4f).
[29] *Ib.*, pp. 6f.

Judaism or infidelity by prostrating **Christianity**; but to exclude all **rivalry** among Christian **sects**, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government.ò

Thus 1833 U.S. Supreme Court Justice Joseph Story. See further, and similarly, 1989 Ex-Harvard Law Professor Dr. Harold Bermanôs illuminating article: *The Religious Clauses of the First Amendment in Historical Perspective*.[30] Very significantly, Professor Berman is an Ex-Judaistic Episcopalian Christian ï and an honest investigator of both American Law and the history of the Common Law.

Thus, at the time of the adoption of the 1787 *U.S. Constitution*, the general if not the universal sentiment was that Christianity ought to receive encouragement from the State. An attempt to level all religions and to make it a matter of state policy to hold all in utter indifference, would then have created universal disapprobation if not universal indignation.

In his *Farewell Address*, First President of the U.S.A. George Washington said: ñOf all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports.... Let it be simply asked: where is the security for property, for reputation, for life ï if the sense of religious obligation desert the oaths which are the instrument of investigation in courts...? And let us with caution indulge the supposition that morality can be maintained without religion.ò

It is obvious from Washingtonôs own words that when he spoke of ñreligionò ï he meant the **Christian** religion. In 1776, when leading the Continental Army, General Washington said to his chaplains: ñThe general hopes and trusts, that every officer and man will endeavor so to live and act as becomes a **Christian** soldier.ò In 1779, he said: ñYou will do well to wish to learn our ways of life, and above all, the **religion** of **Jesus Christ**. These will make you a greater and happier people than you are.ò

Also the Second President of the U.S.A. John Adams said: ñOur constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other.ò

Even Jefferson himself encouraged the Bible and a hymnal to be used in teaching students to read. Indeed, he did so ï precisely when heading up the District of Columbia School Board.

The Presbyterian Churches in North America until 1776

Before the setting up of the Federal Government (of the U.S.A.) in 1787, there were several different denominations of Presbyterians even in Canada. This was particularly the case, however, especially in that other part of North America which from 1776-87 became the U.S.A.

We here restrict ourselves only to the denominations in the latter region. At the time of the American Revolution, we may distinguish what we shall call: 1, the Reformed Presbyterian Church in North America (R.P.C.N.A.); 2, the Presbyterian

[30] H. Berman: *The Religious Clauses of the First Amendment in Historical Perspective* (in *Religion and Politics*, 1989, p. 63).

Reformed Church in North America General Synod (P.R.C.N.A.G.S.); 3, the United Presbyterian Church of North America (U.P.C.N.A.); and 4, especially the Presbyterian Church in America (P.C.A.).

The R.P.C.N.A. kept its name unchanged, even after its first presbytery was constituted in 1798 (a decade after the creation of the U.S.A.). The P.R.G.N.A.G.S. kept its name unchanged, even after constituting its first presbytery in 1774. The U.P.C.N.A. likewise kept its name unchanged, after constituting its first presbytery also in 1774.

However, the very much larger P.C.A. changed its name from P.C.A. to P.C.U.S.A. (Presbyterian Church in the United States of America) ï contemporaneously with its new countryôs adoption of the 1787 *Constitution of the U.S.A*. Hereinafter we almost invariably confine our attention only to this latter body (the P.C.U.S.A.) ï **which alone amended the *Westminster Confession* during the eighteenth century**.

It needs to be understood, however, that the roots of the P.C.A./P.C.U.S.A. in America go right back to the seventeenth century. It is arguable that many New England Ministers in the 1648 Cambridge Synod and the 1662 Boston Synod of the Congregationalists were at least *de facto* Presbyterians. Especially in Connecticut, con-feder-ated **Con-soci-ation-ism** ï a modified form of Presbyterianism ï had prevailed.

Thus the 1799 Hartford North Association affirmed ñthat the Constitution of the churches in the State of Connecticut is not Congregational, but contains the essentials of the government of the Church of Scotland or Presbyterian Church in America.ò

Already in 1705, some such congregations constituted themselves into the Presbytery of Philadelphia ï the first in the New World. Next year, the first Presbyterian ordination in America took place. By 1716, three presbyteries constituted themselves into the Synod of Philadelphia. Finally, in 1729, the first General Assembly in America was constituted.

By its 1729 *Adopting Act*, that General Assembly made the unamended *Westminster Confession of Faith*, the *Larger Catechism* and the *Shorter Catechism* its standards. It there and then resolved that nobody should be ordained to its ministry who had any scruples as to any part of the *Confession*. Indeed, in spite of a division into Old Side and New Side denominations in 1745 and their re-amalgamation in 1758, those standards remained unamended. This continued until the change of the denominationôs name from P.C.A. to P.C.U.S.A. in May 1789 ï contemporaneously with the first Congress of the United States of America.[31]

In 1775, the Synod met soon before the expected 1776 *Declaration of Independence of the thirteen United States of America* from Great Britain. In that year (1775), the Presbyterian Church in America earnestly exhorted its constituency.

[31] A.A. Hodge: *The Confession of Faith*, Banner of Truth, London, 1958 ed., pp. 21f. See too art. *Presbyterian Churches* (in Schaff-Herzog *ERK* III pp. 1905f).

Urged the denomination:[32] ñIn carrying on this important struggle, let every opportunity be taken to express **your attachment and respect to our sovereign King George – and to the [1688-1714*f* Glorious] Revolution principles** by which his august family was seated on the British throne.... Let it ever appear that you only desire the preservation and security of those rights which belong to you as freemen and **Britons**.... We conclude with our most earnest prayer that the God of Heaven may bless you in your temporal and spiritual concerns, and that the present unnatural dispute may be terminated speedily by an equitable and lasting settlement on constitutional principles.ò

The Presbyterian Church in America between 1776 and 1787

Right after the 1776 *Declaration of Independence* of the U.S.A., however, another important event occurred. The Presbytery of Hanover presented its *Memorial to the Legislature of Virginia* ï endorsing that *Declaration*.

The *Memorial* stated:[33] ñYour memorialists are governed by the same sentiments which have inspired the United States of America.... Our many and grievous oppressions by our Mother Country have laid this Continent under the necessity of casting off the yoke of tyranny and of forming independent governments upon equitable foundations.... This we are the more strongly encouraged to expect, by the declaration of rights so universally applauded...and the prerogatives of human nature...which we embrace as the *Magna Charta* of our Commonwealth.ò

After the victory and the cessation of international hostilities, the Synod in 1783 wrote in a pastoral letter to its constituents:[34] ñWe cannot help congratulating you on the general and almost universal attachment of the Presbyterian body to the cause of liberty and the rights of mankind. This has been visible in their conduct....

ñSuch a circumstance ought...to increase our gratitude to God for the happy issue of the war. Had it been unsuccessful, we must have drunk deeply of the cup of suffering. Our burnt and wasted churches and our plundered dwellings in such places as fell under the power of our adversaries, are but an earnest of what we must have suffered ï had they finally prevailed. The Synod therefore request[s] you to render thanks to Almighty God for all His mercies spiritual and temporal; and in a particular manner for establishing the independence of the United States of America.ò

There is no doubt that the P.C.A. stoutly defended the principles of civil and religious liberty, and contributed very largely toward the triumph of the Americans over the British. This patriotism quickly promoted the rapid expansion of the denomination. As a result, the greatly increased Church resolved in 1786 to trifurcate the Synod into three (or more) ï and then to confederate those Synods into one General Assembly.

Rev. Professor Dr. Witherspoon and others were to prepare a proposed *Constitution* for the new óPresbyterian Church in the United States of Americaôï the

[32] Cited in C. Hodge: *The Constitutional History of the Presbyterian Church in the United States of America*, Presbyterian Board of Education, Philadelphia, 1851, II, pp. 401f.
[33] In *ib.*, p. 407.
[34] *Ib.*, pp. 407f.

P.C.U.S.A. In 1787, presbyteries were invited to respond to the proposals ï and yet later to consider them, when subsequently finalized.[35]

Perhaps overreacting to the original [Non-Scottish] 1643*f* English formulations of certain passages in the *Westminster Confession*, the Presbyterian Church in the U.S.A. then ñtook into considerationò the last paragraph of the twentieth chapter of the *Westminster Confession*. It also ñtook into considerationò the third paragraph of the twenty-third chapter; and the first paragraph of the thirty-first chapter. Then, having recommended some alterations, it agreed ñthat the said paragraphs as now altered be printed for consideration.ò

The endorsement of these proposals by the presbyteries of the Presbyterian Church in America, was not unanimous. Even within the Presbyterian Church in America (then on the point of becoming the P.C.U.S.A.), the Presbytery of Suffolk promptly prayed to dissolve its union with the Synod ï and even that the Synod itself be dissolved. *A fortiori*, the three other and much smaller American Presbyterian denominations all then continued to hold to the *Westminster Confession* **unamendedly**.

Yet the Presbyterian Church in America had now proposed, in 1787, to amend its own *Westminster Confession*. Then the thus-amended Standards were adopted in 1788 ï to become part of the *Constitution of the Presbyterian Church in the United States of America*. This became operational in 1789, at the first General Assembly of that denomination.[36]

Be it noted, however, that there was at that time **no amendment of the *Westminster Confession* 23:4 or 25:6**. The Popeôs alleged civil jurisdiction was then still rightly renounced. Second Thessalonians 2:4 & Revelation 13:15-17. Indeed, the Presbyterian Church in the U.S.A. also still officially regarded ñthe Pope of Rome as that antichrist...that exalteth himself in the Church against Christ. Matthew 12:8-10; Second Thessalonians 2:3-9; Revelation 13:6.ò Only in the twentieth century, did both the (Northern) Presbyterian Church in the U.S.A.[37] and the (Southern) Presbyterian Church in the United States[38] finally repudiate this latter assertion.

The 1788-89 P.C.U.S.A. Amendments to the *W.C.F.* chapters 20 & 23 & 31

Before dealing with the 1791 amendments to the 1787 *U.S. Constitution* requisite to lubricate its very adoption by at least nine of the very concerned original thirteen independent States in North America, we should first deal with the 1788 P.C.U.S.A. amendments to the *Westminster Confession of Faith*. Very much caught up in the gale of political developments, most but not all American Presbyterian Churches in 1788 ï right between the adoption of the 1787 *U.S. Constitution* and the 1791 adoption of the

[35] *Ib.*, pp. 409f.
[36] A.A. Hodge: *Confession*, pp. 21f.
[37] In 1902-03. Thus *The Constitution of the Presbyterian Church in the United States of America*, Presbyterian Board of Publication, Philadelphia, 1908, p. 4.
[38] In 1939. See M.H. Smith: *How is the Gold Become Dim*, Premier, Jackson MS., 1973, pp. 49-51.

American *Bill of Rights* (alias the first Ten Amendments) ï themselves somewhat amended the 1729 *Constitution of the Presbyterian Church in America*.

It is vital that we not misunderstand the nature of both the 1729 interpretation of and the 1788 amendments to the original British version especially of chapters twenty and twenty-three of the *Westminster Confession of Faith*. That original version was adopted by the Scottish General Assembly in 1647, and endorsed by the Scottish Parliament in 1649 and in 1690. Then, in 1729, the first Synod of the Presbyterian Church in America in its *Adopting Act* re-endorsed the *Westminster Standards*.

Although **Westminster itself <u>rejected</u> all subordination of the Church to the State**, the view on church establishments was even more particularized by the American Assembly. Hence the 1729 *Adopting Act* **unnecessarily** yet clearly declared it did not receive the clauses relating to this subject (*WCF* 20:4 & 23:3) ñin any such sense as to suppose the civil magistrate hath a controlling power over Synods with respect to their exercise of ministerial authority; or power to persecute any for their religion; **or in any sense contrary to the <u>Protestant</u> succession to the throne of Great Britain**.ò

When the Presbyterian Church in Americaôs Synod revised the *Westminster Standards* in 1787, in order to get re-organized as the first General Assembly of the Presbyterian Church in the U.S.A., ñit took into consideration the last paragraph of the twentieth chapter of the Westminster Confession of Faith; the third paragraph of the twenty-third chapter, and the first paragraph of the thirty-first chapter; and, having made some alterations, agreed that the said paragraphs as now altered be printed for consideration.ò

Treated in this way, the *Confession* and the *Catechisms* were then amended for the use of that particular denomination ï and then adopted as so amended ï into the doctrinal part of the *PCUSA Constitution*. It so remained, till the 1861*f* War of the Northern States of the U.S.A. against the Southern States which had just seceded of the U.S.A. Indeed, it still so remained ï even after 1861*f*, both in the continuing P.C.U.S.A. and also in the new [Southern] P.C.U.S.

At the outbreak of the 1861 War, Presbyterians in some of the Southern States still in the P.C.U.S.A. seceded therefrom ï and then reconstituted themselves as the ñPresbyterian Church in the Confederate States of Americaò (the P.C.C.S.A.). After the later defeat of the South, that denomination was renamed ñPresbyterian Church in the United Statesò (P.C.U.S.).

In the North, the old P.C.U.S.A. continued both during and after the War. However, the 1787 amended version of the *Westminster Confession* still continued to be used long thereafter ï both in the now-truncated ñNorthernò Presbyterian Church (P.C.U.S.A.) and especially also in the new ñSouthernò Presbyterian Church (P.C.U.S.).[39]

Yet the thus-amended chapters of the *Westminster Confession* were not at all amended by the <u>rest</u> of the 1788 American Presbyterian denominations! They were

[39] See *The Confession of Faith of the Presbyterian Church in the United States*, Board of Christian Education of the PCUS, Richmond, 1971, pp. 18f.

then amended by only one American denomination ï that known as ótThe Presbyterian Church in Americaô (until, at its 1788 Synod, it became the óPresbyterian Church in the U.S.A.ô). Even today, these amendments are upheld by the modern offshoots of only that one particular denomination ï to the exclusion of all other denominations of American Presbyterians.

Elsewhere in the World, most conservative Presbyterian denominations have never amended these chapters. For example: the Free Church of Scotland, the Free Presbyterian Church in Scotland, the Westminster Standard Presbyterian Church of New Zealand, the Presbyterian Church of Australia, the Evangelical Presbyterian Church of Australia, the Reformed Presbyterian Church in Australia, and the Presbyterian Church of Eastern Australia, *etc*.

Even in the United States itself, other Presbyterian denominations ï such as the Reformed Presbyterian Church of North America (Covenanter), and the Free Presbyterians ï have never amended the original wording. They still uphold the latter ï in all of its pristine glory, right down to the present day.

Moreover, at least one offshoot even of ótThe Presbyterian Church in Americaô (1788) ï the Reformed Presbyterian Church in the United States ï has recently re-amended the 1788 amendment of chapter twenty-three. In so doing, the R.P.C.U.S. has at this point brought itself back into line with the original Westminster wording ï and thus also into agreement with the non-amended versions of this chapter always upheld by the other conservative Presbyterian Churches previously mentioned.

It is true, then, that the 1788 North American Synod of the large denomination then known as ótThe Presbyterian Church in Americaô indeed somewhat amended chapters twenty and twenty-three and thirty-one of the original 1643*f* British *Westminster Confession of Faith*. However, it is important to note precisely **what** was amended by that one American Presbyterian denomination.

There was no amendment anent the role of the Christian State to uphold Christianity. This is apparent even from the 1788 amended version of chapters 20 and 23 of the *Westminster Confession* effected in 1788 by the P.C.A. just as it was reconstituting itself into ótThe Presbyterian Church in the United States of Americaô (P.C.U.S.A.).

Nor was there ever, either then or later, any óAmericanô amendment purporting to quit applying the Biblical punishments for certain specified crimes. For those crimes, as well as their specified punishments, are still listed by all of the various American Presbyterian denominations even today in their (never amended) *Westminster Larger Catechism*. **This we shall demonstrate below, in just a few paragraphs' time**.

The 1788 P.C.U.S.A. Amendments to the *W.C.F.* at its chapter 20

As regards chapter 20 of the *Confession*, both the 1643*f* original and the 1788 amended versions are in complete agreement with one another ï except for the last eight words of the original and its corresponding footnote ñrò (which the amendment drops). Both versions thus maintain that all those who oppose ñany lawful power,ò regardless ñwhether it be civil or ecclesiasticalò ï by ñpublishing...opinions or

maintaining practices contrary to the light of natureò alias Godôs Moral Law, or contrary ñto the known principles of Christianity ï whether concerning faith, worship or conversationò alias walk of life ï ñmay lawfully be called to account and proceeded against by the censures of the Churchò (and by the power of the civil magistrate).

In the previous paragraph, only the last eight words (in parentheses) ï together with their relevant footnote ñ*r*ò ï are omitted in the 1788 amendment. For the rest, even the 1788 amendment continues to display the original footnotes specifying many examples of those pernicious practices and opinions for which men are lawfully accountable. Even the amended version (in its unamended footnote ñ*q*ò) thus specifies many punishable misdemeanours.

Such include: idolatry, sodomy and lesbianism (ñRomans 1:32, ódknowing the judgment of God that those which commit such things are worthy of deathôòò). They include: incest, fornication, covetousness, railing, drunkenness and extortion (ñFirst Corinthians 5:1,5,11ò). They include: antichristian doctrine (ñII John 10-11ò); disobedience (ñSecond Thessalonians 3:14ò); ungodliness (ñFirst Timothy 6:3-5ò); vain talk and deceit (ñTitus 1:10-13ò); church-splitting alias heresy (ñTitus 3:10ò); blasphemy (ñFirst Timothy 1:19-20ò); and irreconcilability (ñMatthew 18:15-17ò). They also include: evil lies; Balaam-like opposition to covenant-keeping; Nicolaitan-like antinomianism; Jezebel-like instruction in seduction; and Satanism *etc*. (ñRevelation 2:2,14,14,20ò & ñRevelation 3:9ò).

At chapter twenty-three of the original 1643*f* version of the *Confession* (23:3*ef*), it can be seen that the magistrates there authorize the Church to clean up her own ecclesiastical iniquities. There, in addition, the magistrates themselves are to settle and administer and observe all the political ordinances of God in the different and Non-Church realm of the State.

Thus Westminster states that ñthe civil magistrate...hath authority and it is his duty to take order: that unity and peace be preserved in the Church; that the truth of God be kept pure and entire; that all blasphemies and heresies be suppressed; [that] all corruptions and abuses in worship and discipline [be] prevented or reformed [by the Church]; and [that] all the ordinances of God [be] duly settled, administered and observed [by the State]. Isaiah 49:23; Psalm 122:9; Ezra 7:23-28; Leviticus 24:16; Deuteronomy 13:5-6,12; Second Kings 18:4; First Chronicles 13:1-9; Second Kings 24:1-26; Second Chronicles 34:33 & 15:12-13ò *etc*.

The above-mentioned Bible proof-texts in the footnotes of this original British version of the *Westminster Confession*, clearly evidence sweeping penalties for disobedience to ñmagistrates and judges (Ezra 7:23)ò even in the 1643*f* times of the original *Confession* ï long after Christôs finished work of redemption at Calvary. Here in the *Confession*, the magistrates are to ñtake orderò alias to see to it that the Church be encouraged to clean up its own ecclesiastical iniquities ï while the Magistrates themselves are to settle and administer and observe all the political ordinances of God, in the different and Non-Church realm of the State.

ñWhosoever will not do the Law of thy God and the law of the kingò ï the *Confession* here footnotes ï ñlet judgment be executed speedily upon him, whether it be unto death, or to banishment, or to confiscation of goods, or to imprisonment (Ezra 7:26)!ò Too, continues the *Confession*, ñhe that blasphemeth the Name of the

Lord...shall surely be put to death (Leviticus 24:6).ò Similarly, it goes on to say that the false ñprophet...shall be put to death (Deuteronomy 13:5).ò For thus it was, the original *Confession* concludes, even when all Judah and Benjamin ñentered into a covenant to seek the Lord...that whosoever would not seek the Lord God of Israel, should be put to death ï whether man or woman (Second Chronicles 15:12-13).ò

The 1788 P.C.U.S.A. Amendments to the *W.C.F.* at its chapter 23

Now only one out of the four then-existing American Presbyterian denominations in 1788*f* amended even the twenty-third chapter of the original British *Westminster Confession*. The **text** of 23:1 and 23:2 of the *Confession*, is the same in **both** renditions. However, at 23:2 the British originalôs **footnotes** Psalm 2:10-12 & Acts 10:1-2 & First Timothy 2:2 & First Peter 2:13 & Revelation 17:14,16 were dropped; the British originalôs footnotes Psalm 82:3-4 & Second Samuel 23:3 & Luke 3:14 & Romans 13:4 & Matthew 8:9-10 were kept; and the new P.C.U.S.A. footnote Psalm 101 was added.

The text of chapter 23 of the *Confession* was amended only at 23:3, and solely in part. For even the 1788 amendment preserves the original British opening statement of this third section, namely that ñthe civil magistrate may not assume to himself the administration of the Word and Sacraments or the power of the keys of the Kingdom of Heaven.ò Of the original footnotes here, the P.C.U.S.A. revision retains only ñMatthew 16:19ò and ñFirst Corinthians 4:1-2.ò However, the revision here adds: ñor, in the least, interfere in matters of faith (John 18:36; Acts 5:29; Ephesians 4:11-12).ò

That part of the original text amended here, was replaced by the 1788 P.C.U.S.A.ôs version. The latter was still being upheld in 1973 and thereafter ï by the re-constituted twentieth-century ôPresbyterian Church in Americaô (P.C.A.).

In the first sentence, the original version reads: ñThe civil magistrate may not assume to himself the administration of the Word and Sacraments, or the power of the keys of the Kingdom of Heaven. Second Chronicles 26:18; Matthew 18:17; Matthew 16:19; First Corinthians 12:28-29; Ephesians 4:11-12; First Corinthians 4:1-2; Romans 10:15; Hebrews 5:4.ò

The 1788 P.C.U.S.A. amended version, is here the same ï except that the originalôs word ñmagistrateò was changed to read ñmagistrates.ò Yet all of the above original proof-texts are omitted in the amended version (except Matthew 16:19 and First Corinthians 4:1-2).

Yet in the twentieth-century version of the Orthodox Presbyterian Church in America and of the U.S. Presbyterian Church in America, all of the original proof-texts are here restored ï except that First Corinthians 4:1-2 is now rendered: ñ 4:1,12ò (possibly misprinted). Moreover, these modern American versions here add the words: ñor, in the least, interfere in matters of faith. John 18:36; Acts 5:29; Ephesians 4:11-12.ò

But why was the originalôs word ñmagistrateò (singular) here changed by the P.C.U.S.A. to ñmagistratesò (plural)? Indeed, why were most of the originalôs proof-texts omitted at this point?

Before 1787, even in America there had been only one sovereign earthly magistrate (singular) ï *viz.* the King of America (who happened to be king also of England). However, in 1776*f*, America not only exchanged her singular earthly chief magistrate (the King) for a new one (the President), but in fact then also became a **plural confederation of republics** (plural).

Moreover, in America **from 1776 and especially from 1789 onward** ï and particularly as Britain more and more recognized this from 1781-83 onward ï there were now many magistrate**s** (plural), and indeed also many independent American State**s** (plural). For in the 1777*f* American Confederation and its successor the 1787f American Federation with its republican government, elected representatives now ruled for the people in that one (con)federated nation under God.[40]

The next batch of phrases in the original British *Westminster Confession* anent the civil magistrate, are omitted in the 1788 American version. The omitted words are found in the originalôs statement that the magistrate ñhath authority, and it is his duty to take order: that unity and peace be preserved in the Church; that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed; [that] all corruptions and abuses in worship and discipline [be] prevented or reformed; and [that] all the ordinances of God duly [be] settled, administered, and observed.ò

The prooftexts here supplied in the original British text to prove the above, are: ñIsaiah 43:23; Psalm 122:9; Ezra 7:23-28; Leviticus 24:16; Deuteronomy 13:5,6,12; Second Kings 18:4; First Chronicles 13:1-9; Second Kings 24:1-26; Second Chronicles 34:33; Second Chronicles 15:12-13.ò The original then continues: ñFor the better effecting whereof, he [the civil magistrate] hath power: to call Synods; to be present at them; and to provide that whatsoever is transacted in them be according to the mind of God. Second Chronicles 19:8-11; Second Chronicles chapters 29 & 30; Matthew 2:4-5.ò

In place of the immediately-previous paragraph, the 1788 American P.C.U.S.A. amended version runs: ñAs nursing fathers, it is the duty of civil magistrates to protect the Church of our common Lord, without giving the preference to any denominations of Christians above the rest, in such a manner that all ecclesiastical persons whatever shall enjoy the full, free and unquestioned liberty of discharging every part of their sacred functions without violence or danger. Isaiah 49:23. See Romans 13:1-6.ò

Here, not just the original British text but also all of the originalôs footnotes (except Isaiah 49:23) are dropped. Only one new further footnote was adopted ï *viz*. Romans 13:1-6.

The American P.C.U.S.A. versionôs amended passage continues: ñAs Jesus Christ hath appointed a regular government and discipline in His Church ï no law of any Commonwealth should interfere with, let, or hinder the due exercise thereof among the voluntary members of any denomination of Christians according to their own profession and belief. Psalm 105:15. See Acts 18:14-16.

ñIt is the duty of civil magistrates to protect the person and good name of all their people in such an effectual manner as that no person be suffered, either upon pretence

[40] See J.W. Williams: *op. cit.*, I, p. 9.

of religion or of infidelity, to offer any indignity, violence, abuse or injury to any other person whatsoever: and to take order [or to provide] that all religious and ecclesiastical assemblies be held without molestation or disturbance. Second Samuel 23:3 & Romans 13:4.ò

From the above amendment, twentieth-century American versions further subtracted Second Samuel 23:3. Yet to that 1788 amendment, they also added: First Timothy 2:2.

As regards chapter 23:4 of the *Confession*, the text is identical in both the original British text and the 1788 American P.C.U.S.A. amended version. Yet there, the original British textôs footnotes First Kings 2:35 & First Peter 2:17 & Second Peter 2:1,10-11 & Jude 8-11 & Second Thessalonians 2:4 & Revelation 13:15-17 were dropped. The originalôs footnotes First Timothy 2:1-2 & First Peter 2:13-17 & Romans 13:5-7 & Titus 3:1 were kept. Indeed, the new footnotes Matthew 22:21 & First Timothy 2:3 & Second Timothy 2:4 & First Peter 5:3 were added.

The 1788 P.C.U.S.A. Amendments to the *W.C.F.* chapter 23 (continued)

Now the original British text, as well as the 1788 amendment by ó The Presbyterian Church in Americaô (alias the new ó Presbyterian Church in the U.S.A.ô) to chapter twenty-three of the *Confession*, both have very much in common with one another. Both versions clearly enunciate the inescapable duties of the civil magistrate to protect and to promote and to provide for the worship of the ñChurch of our common Lordò (Jehovah-Jesus), and to protect and to promote and to provide for ñecclesiastical assembliesò (of Christians) ï even ñas Jesus Christ hath appointed.ò

Indeed, this requirement is even more conspicuous in the 1788 P.C.U.S.A. amended version adopted by the 1973*f* ó Presbyterian Church in Americaô (alias the P.C.A.) ï than it was and is in the original British text. *Cf.* the 1977*f* version of the *Confession* at its chapter 23:3*ghi* professed by the modern Presbyterian Church in America and the modern Orthodox Presbyterian Church in the U.S.A.

Moreover, the 1788 amendment **never** replaced some of the original words of the chapter with the **intention** of denying or downplaying the magistrateôs obligation to enforce the Ten Commandments in political life. For this requirement is **still** taught **elsewhere** even in the amended **1788** P.C.U.S.A. version of the *Westminster Standards* (and indeed even in the later yet-further-amended versions thereof).

See the never-amended Westminster Confession of Faith chapter 19:4, and compare too the original version of its chapters 20:4*q*f & 23:1-3! Also consult the *Westminster Larger Catechism* 99:7*a* & 124*fg* & 127*q* & 128*b* & 129*pqrs* & 130*defo* & 135*fg* & 136*cgwx* & 145*cg etc*! Thus, the result of the 1788 P.C.U.S.A. amendment ï was simply to make the actual intention of the original version even clearer than the British text had done.

As the North American Synod had already pointed out in 1729, even the original section (chapter 23:3) of the *Confession* was not intended nor to be understood ñin

any such sense as to suppose the civil magistrate hath a **controlling** power over Synods with respect to the exercise of their ministerial authority.ò For the *Adopting Acts* of the 1729 original Synod of the Presbyterian Church in America had re-emphasized precisely its continuity with the British understanding of the *Confession* at this very point.

Indeed, those American Presbyterians even declared in 1729 that they did not receive chapter 23:3 of the *Confession* ñin any sense contrary to the Protestant succession to the throne of Great Britain.ò[41] Thus, in all this, the 1729 American Presbyterian Synod was only saying in its own words what the Church of Scotland itself declared in 1647 anent the power of the civil magistrate to call synods only in respect of ókirks not settled.ô

Accordingly, also the 1788 American P.C.U.S.A. amendment to chapter twenty-three only intended to re-inforce non-denominationalistic disestablishmentarianism. Indeed, especially such óAnti-Erastianismô was already present even in the original 1645*f* British text of the Puritansô *Westminster Confession*.[42]

Sadly, however, the British Puritans had lost political and ecclesiastical power after the death of Cromwell and at the 1660 Restoration of the British monarchy. To some extent, they regained those powers in 1688*f*. Yet even after that, also Anglicanism ï though now restrained by the 1688 British *Bill of Rights* ï had become very firmly entrenched as the State Religion in England, especially since the beginning of the eighteenth century.

So the American P.C.U.S.A. amendment even more strenuously strove to preclude any possibility of the State dominating the Church or *vice-versa* ï as had indeed occurred in England after the Post-Puritan Restoration and the subsequent erection of an Anglicanistic monarchy. Yet the American P.C.U.S.A. amendment never intended nor suggested that the various United States ï either severally or federally ï might ever be excused from the duty of enacting and enforcing laws applying Biblical penalties against specified crimes.

Modern liberals and their dispensationalistic allies may indeed ï dishonestly ï attempt to re-interpret the 1788 P.C.A./P.C.U.S.A. amendments to the *Confession*. Indeed, many of them in fact do so ï from the perspective of their own apostate views advocating an allegedly neutral yet essentially Non-Christian State which disregards the Biblical penalties against specified crimes (and sometimes even enacts measures directly opposed to the Biblical penalties).

But truth demands that the 1788 P.C.A./P.C.U.S.A. amendments to chapter twenty-three of the *Confession*, be interpreted in the sense in which they were intended at that time. Truly, those amendments then advocated merely a functional separation between an essentially Christian ñChurch of our common Lordò (regardless of denomination) and an essentially Christian State.

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[41] See A.A. Hodge: *The Confession of Faith*, Banner of Truth Trust, London, 1958 reprint of the original 1869 edition, p. 21.

[42] See F.N. Leeôs *Are the Mosaic Laws for Today?* (Jesus Lives, Tallahassee Fla., 1977, p. 25); and also Morseôs op. cit., pp.13f.

The 1788 amended P.C.A./P.C.U.S.A. version of this chapter of the *Westminster Confession*, is in essential agreement with the 1643*f* original British text. Both make it clear that even Christian political government officials are never to interfere in the internal affairs of Christôs Church. However, the 1788 PCUSA-version (23:3*e*) does so even more clearly.

Yet the immediately-preceding 1643*f* original section as well as the 1788 amended section of the *Confession* 23:1, make one point clear. They both insist that magistrates or civil governments are to wield ñthe power of the swordò ï in their God-ordained ñdefence and encouragement of them that are good, and for the punishment of evil-doers.ò Romans 13:1-4 & 13:5-10.

We have already seen that the 1788 PCUSA-amendments to chapter 23:3 of the *Confession* sought only to clarify that the magistrate has no controlling power over Synods ï with respect to the exercise of the ecclesiastical authority of the latter. Indeed, the amendment does not at all purport to disapprove of the original 1643*f* British text of chapter 23:3.

The latter states: that the magistrate also has the duty ñto take order that unity and peace be preserved in the Church; that the truth of God be kept pure and entire; that all blasphemies and heresies be suppressed; [that] all corruptions and abuses in worship and discipline [be] prevented or reformed; and [that] all the ordinances of God duly [be] settled, administered, and observed. Isaiah 49:23; Psalm 122:9; Ezra 7:23-28; Leviticus 24:16; Deuteronomy 13:5,6,12,*&c.*; Second Kings 18:4; First Chronicles 13:1-9; Second Kings 24:1-26; Second Chronicles 34:33; Second Chronicles 15:12-13ò ï *q.v.*!

Conclusion of 1788 P.C.U.S.A. Amendments to the *W.C.F.* chapters 23 and 31

So the *Westminster Confession* at 23:1-2 describes the magistrateôs direct political actions. Too, both the 1643*f* original and the 1788 amended *Confession* at 23:3 also describe the magistrateôs indirect promotion of the Christian religion. This has nothing to do with enforcing Christian worship upon the unwilling. For also the original 1643*f* text of 23:3, nowhere advocates that.

An American Presbyterian, Columbia Theological Seminaryôs Rev. Professor Dr. James Benjamin Green, made a careful comment on this chapter in his famous book *A Harmony of the Westminster Presbyterian Standards*. Explained Green:[43] ñWhen called to the office of magistrate, it is the **duty** of the **Christian** to use his office ó to...establish **justice**, insure domestic **tranquillity**, provide for the common **defense**, promote the general **welfare**, and secure the blessing of **liberty**.ô (*Preamble to the Constitution of the United States.*)ò

Significantly, this is also how the 1788 PCUSA-amended version of the *Confession* (at 23:3) was understood by the great American Presbyterian Rev. Professor Dr. A.A.

[43] See J.B. Greenôs remarks on this chapter in his famous book *A Harmony of the Westminster Presbyterian Standards*, Collins, 1976, p. 181.

Hodge ï even eight decades after its enactment.[44] In addition, the original 1643*f* text of the *Confession* (at 20:4*r* & 23:3*fg*) also describes the magistrateôs punishment of crimes according to the Biblical correctives. So too does the *Westminster Larger Catechism* ï at 99.7*a* & 124*cdefg* & 127*q* & 128*bcdef* & 129*rs* & 136*cd* & 139*q* & 141*m* & 151.1*nt* & 151.2*xf* ï **in both the original 1643*f* and the later 1788 versions**.

The 1643*f* original and the 1788 amended versions of the *Westminster Confession* both imply (at their chapter 23:1*a*) that ñthem that are goodò are Commandment-keepers, while the ñevil-doersò are Commandment-breakers. See too First John 3:4,12. Too, the 1788 version ï just like Calvin of old ï requires the magistrates ñto maintain piety, justice, and peace.ò Indeed, as ñnursing fathers,ò they are even to ñprotect the Church of our common Lord.ò See chapter 23:2*c* (common to both versions) ï as well as the 1788 versionôs 23:3*g*.

Still more. The *Confession* even insists (23:2*c* compare Second Samuel 23:3) that the magistrates themselves ñmust be just, ruling in the fear of God.ò See too Exodus 18:21-26 & Ecclesiastes 12:13-14. According to the *Confession*, this means that the magistrates must also themselves personally observe ï the First, Sixth, Eighth, Ninth and Tenth Commandments. This they should do, by respectively: fearing God devoutly; abhorring violence; giving alms to the people; shunning false accusations; and being content with their own wages. See the *Confession* at 23:2*d*, which here quotes Luke 3:14 & Acts 10:1-2.

This 1788 PCUSA-amended version (of 23:3) cited above, should carefully be compared with the original 1643*f* British text of ch. 23:3 of the *Westminster Confession*. For in both versions ï as elsewhere too in the *Westminster Standards* ï it is clear that the Moral Law is the only unchanging standard of goodness and justice in the World. For example, see the *Larger Catechism* QQ. 93-98*f*.

The 1788 amendment to 31:1-2 simply redefines the procedure for calling Church Synods and their relation to individual congregations. There, the P.C.U.S.A. simply said in its own words in 1788 ï what the Church of Scotland had said way back in 1647.

All in all, and throughout ï even the 1788 amendments thus maintain all the ongoing **political** significance of **the Law of God**. So it must necessarily follow (as the never-amended *Larger Catechism* also implies[45] at its QQ. 124[g] & 151.2) ï that also the **Civil** Authorities are perpetually required by God to uphold the Decalogue as such. Indeed, this they must do all the time ï both in their own private lives, as well as in their affairs of State.

The great American Presbyterian Charles Hodge on the Magistrate in the *W.C.F.*

The great American Presbyterian Theologian Rev. Professor Dr. Charles Hodge (PCUSA) in his 1879 book *The Church and Its Polity* discusses the 1788 PCUSA versionôs omission of the original words anent the magistrate. Those words say: ñhe

[44] See three paragraphs below and also at n. 45.
[45] See three paragraphs above and at n. 44.

hath authority, and it is his duty, to take order that unity and peace be preserved in the Church; that the truth of God be kept pure and entire; that all blasphemies and heresies be suppressed; [that] all corruptions and abuses in worship and discipline [be] prevented or reformed; and [that] all the ordinances of God duly [be] settled, administered, and observed.ò

Explained Hodge:[46] ñWhen this *[Westminster] Confession* was adopted by our [American] Church in 1729, this clause [in 23:3] was excepted or adopted only in a qualified manner.... When our present Constitution was adopted in 1789, it and the corresponding passages...were omitted.

ñIt has, however, always been part of the *Confession of the Church of Scotland*, and was (it is believed) retained in the [1648] *Cambridge* and [1708] *Saybrook Platforms* as adopted in New England [by the Congregationalists].... In that branch of the Reformed Church which was transported to this country by the Puritans and established in New England, this same doctrine as to the duty of the magistrate and relation to the Church and State was taught....

ñ**The New England theory was more that of a theocracy**. All civil power was confined to the members of the Church ï no person [civilly] being either eligible to office or entitled to the right of suffrage, who was not in full communion of some Church....

ñThe theory on which **this doctrine** of the **Reformed Church** is founded, is, 1. That the State is a divine institution, designed for promoting the general welfare of society; and, as religion is necessary to that welfare, religion falls legitimately within the sphere of the State. 2. That the magistrate as representing the State is by divine appointment the guardian of the law, to take vengeance on those who transgress and for the praise of those who obey [*cf*. Romans 13:1-7].... As **the Law consists of two tables**, one relating to our duties to God and the other to our duties to men ï **the magistrate is *ex officio* the guardian of both Tables**, and bound to punish the infractions of the one as well as of the other.

ñ3. That the Word of God determines the limits of the magistrateôs office in reference to both classes of his duties.... As under the Old Testament there was a form of religion with its rites and offices prescribed, which the magistrate could not change ï so there is under the New. But under the Old, we find with this church government [that] the kings were required to do and in fact did do much for the support and reformation of religion and the punishment of idolaters. So they are **now** bound to act on the **same** principles, making the pious kings of the Old Testament their **model**.ò

Hodge concludes by giving his own understanding: ñThe State, the Family, and the Church are all divine institutions ï having the same general end in view, but designed to accomplish that end by different means.... God has instituted the family for domestic training and government; the State, that we may lead quiet and peaceable lives; and the Church, for the promotion and extension of true religion.... The relative duties of these several institutions...must be determined from the Word of God.... Our conclusions from the New Testament...find there taught...that Christ did institute a Church separate from the State, giving it separate laws and officers.ò

[46] C. Hodge: *The Church and Its Polity*, Nelson, London, 1879, pp. 115-17.

In rightly teaching óseparationô (or rather functional distinction) between Church and State, Charles Hodge naturally assumed that the State should submit not to the Church but directly to the Law of God Triune. This is clear from his 1874 *Systematic Theology*.

There, he declared[47] that ñmany of the judicial or civil laws of the ancient theocracy ï laws regulating the distribution of property, the duties of husbands and wives, the punishment of crimesò (*etc.*) ï ñwere the application of general principles of justice and right to the peculiar circumstances of the Hebrew people.... If it be asked, How are we to determine whether any judicial law of the Old Testament is still in force? ï the answer is first, when the continued authority of such a law is recognized in the New Testament...; and secondly, if the reasons or ground for a given law is permanent....

ñThe people of this country...being Christians and Protestants, **the government must be administered according to the principles of Protestant Christianity**.... The proposition that **the United States of America are a Christian and Protestant nation**, is...the statement of a fact.... This country was settled by Protestants. For the first hundred years of our history, they constituted almost the only element of our population.... They were governed by their religion as individuals; in their families; and in all their associations for business; and for municipal, State and national government....

ñ**Protestant Christianity is the law of the land**, and has been from the beginning. As the great majority of the early settlers of the country were from Great Britain, they declared that **the Common Law of England should be the law here**. But **Christianity is the basis of the Common Law of England**, and is **therefore of the law of this country** [the U.S.A.].... So our courts have repeatedly decided.... The laws of all the States conform in this matter to the Protestant rule.... From Maine to Georgia, from Ocean to Ocean, one day in the week by the Law of God and by the law of the land the people rest....

ñWhen Protestant Christians came to this country, they possessed and subdued the land. They worshipped God and His Son Jesus Christ as the Saviour of the World, and acknowledged the Scriptures to be the rule of their faith and practice. They introduced their religion into their families, their schools, and their colleges.... They formed themselves as Christians into municipal and state organizations.

ñThey acknowledged God in their legislative assemblies. They prescribed oaths to be taken in His Name. They closed their courts, their places of business, their legislatures, and all places under the public control, on the Lordôs Day. They declared Christianity to be part of the Common Law of the land.... The demands of those who require that religion, and especially Christianity, should be ignored in our national, state and municipal laws ï are not only unreasonable but...unjust and tyrannical.ò

The 1874 Hodge is here implying that the American Presbyterian view on these matters remained the same both before and after 1788. This is evident also from the way other leading nineteenth-century conservative American Presbyterian Theologians ï themselves too fully subscribing to the 1788 P.C.U.S.A. amendments

[47] C. Hodge: *Systematic Theology*, Nelson, London, 1874, III:268f,342-46.

of the *Westminster Confession* ï maintained the political applicability of the Decalogue. Nowhere is this more apparent than on both sides of the Mason-Dixon line during the 1861-65 War Between the American States (about which later).

Later American amendments to *W.C.F.* chs. 24 & 25 do not affect the Magistracy

Later American amendments to the *Westminster Confession*, do not materially affect the applicability even of those amended versions to the realm of political government. Thus, the 1886-87 amendment to chapter 24:4 of the *Confession* ï simply attempts to re-define incest. The unamended 24:4 had condemned it by there appealing only to Leviticus chapter 18:19-21. In the amendment of 24:4, incest was now condemned[48] with references to Mark 6:18 and Leviticus 18:24-28. Even in its 1959 amendment of 26:3 (alias 24:3) to the *Confession*, the Southern Presbyterian Church condemned incest[49] with a yet further reference. ñFirst Corinthians 5:1.ò See too Amos 2:7.

The importance of taking oaths in the Name of God was still emphasised in the further 1902-03 PCUSA amendments of the *Confession* at chapter 22:3 (*cf.* 22:2) ï citing Genesis 24:2,3,9. More important was the change to chapter 25:6 (effected 1902-03 by the Northern Presbyterians and in 1939 by the Southern Presbyterians). Yet here too it had no effect on the applicability of the amendment to civil government.

The amendments to chapter 25:6, merely caution against making a specific identification of the Antichrist. The original version stated: ñThere is no other Head of the Church but the Lord Jesus Christ. Nor can the pope of Rome in any sense be head thereof; but is that Antichrist, that man of sin and son of perdition that exalteth himself in the Church against Christ and all that is called God.ò

Note that this original British text never taught that nobody but the pope ï and still less that any particular pope ï is antichrist(ian). It taught, and still teaches, that ñthe pope of Rome...is **that** Antichrist...that exalteth himself **in the Church**ò *etc*. Second Thessalonians 2:3*f*, as distinct from First John 2:18*f*.

The 1902-03 Northern Presbyterian amendment stated: ñThe Lord Jesus Christ is the only Head of the Church, and the claim of any man to be the vicar of Christ and the Head of the Church is unscriptural, without warrant in fact, and is a usurpation dishonoring to the Lord Jesus Christ. Matthew 23:8-10; First Peter 5:2-4; Second Thessalonians 2:3-4.ò

The 1939 Southern Presbyterian amendment stated: ñThe Lord Jesus Christ is the only Head of the Church; and the claim of any man to be the vicar of Christ and the Head of the Church is without warrant in fact or in Scripture, even Anti-Christian, a usurpation dishonoring to the Lord Jesus Christ.ò

[48] *Const. of the PCUSA*, pp. 4 & 112; compare M.H. Smith: *op. cit.*, p. 49.
[49] See M.H. Smith: *op. cit.*, p. 251.

Sadly, the Southern Church here watered down its footnotes only to ñColossians 1:18; First John 1:3; Ephesians 3:16-19; John 1:16; Philippians 3:10; Romans 6:5-6; Romans 8:17; Ephesians 4:15-16; First John 1:3,7.ò On the other hand, the 1939 Southern Presbyterian Church still implied that the papacy was ñAnti-Christianò ï which the Northern Presbyterian Church no longer did, even as from 1902*f*.

Again the Southern Church (in 1939) inserted the softening word ñapparentlyò before the phrase ñno churches of Christò ï and struck out the next phrase ñbut synagogues of Satanò in chapter 25:5 of the *Confession*. Interestingly, the Southern Presbyterian Churchôs footnote here referred to ñRomans 11:18-22 & Revelation 18:2.ò Yet, though indeed a sad sign of unwarranted accommodation toward Romanism since the First World War ï even this amendment did not in any way affect its applicability to law and politics.

The 1791 *Bill of Rights* (alias first ten amendments of the *U.S. Constitution*)

We are now able to proceed beyond the previously-mentioned 1787 *Constitution of the United States of America*, and also further beyond the immediately-abovementioned 1788 *Constitution of the Presbyterian Church in the United States of America* ï to the 1791 *U.S. Bill of Rights*. Indeed, the latter (alias the first Ten Amendments to the *U.S. Constitution*) represent the conditions demanded by many of the sovereign American States which had co-constituted the original U.S. Con-Federation a decade or so earlier ï before they had started preparing to exchange the 1777-81 *Articles of Confederation* for the 1787 *U.S. Constitution* ñin order to form a more perfect union.ò

Massachusetts, New York, North Carolina, Rhode Island and Virginia were just not willing to sign and ratify the 1787 *U.S. Constitution* as is ï at all. They first demanded further safeguards against federal centralization at the expense of the sovereign States. Such safeguards would first need to be co-enacted by the confederated and then-refederating States themselves.

Those further safeguards required by a critical number of the confederated States, before they would be satisfied with the proposed federation as a ñmore perfect Unionò ï were therefore to be enshrined by way of a *Bill of Rights*. That consisted of ten amendments to the *U.S. Constitution* of 1787.

All of those first ten amendments derived from British Common Law. They were concurrently passed in 1791, just four years after the pre-ratificatory adoption of the first seven Articles of the original *U.S. Constitution* itself. Indeed, those amendments are all truly excellent measures.

The First Amendment provides that the federal ñCongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievancesò (Numbers 1:4f *cf*. Deuteronomy 17:14*f*).

The very possibility of making such laws, even if desired, was to remain the prerogative only of the various State Governments. But they were just not willing to entrust the Federal Government with similar powers.

The Second Amendment to the *U.S. Constitution* stresses the great necessity of having ña well-regulated militiaò for ñthe security of a free **State**ò ï and not for the security of the **Federal** Government of a group of óunitedô free States! It also guarantees ñthe right of **the people** to **keep** and **bear** arms.ò

In the Second Amendment, the emphasis was and is on a free **State's** own militia for its own security as a free State. Nothing at all is here said about the creation and maintenance of a **Federal** Militia. In fact, the same U.S. Congress which passed this Second Amendment, soon thereafter also passed the *Militia Act* of 1792. That latter required **every free male citizen of fighting age** to own the same type of military rifles as were used by the Continental Army.

Indeed, in the Second Amendment itself, the words ñ**the people**ò in the phrase ñthe right of **the people** to **keep** and **bear** armsò cannot mean ó**all** peopleô in the U.S.A. (Even the later 1868 Article XIV Section 2 of the Constitution limits itself only to ñthe **male** inhabitants of such State, being **twenty-one** years of age, and **citizens** of the United Statesò as distinct from mere residents.)

Note that the Second Amendment does not speak of some or other ñrightò and still less of a licensed statist óprivilegeô to keep and bear arms. No! Instead, it speaks of ñ**the** rightò of the people to keep and bear armsò ï a right always acknowledged by the Pre-1791 thirteen Colonial Governments that declared their independence from Britain in 1776.

Indeed, most if not all of those Pre-1791 thirteen Colonial Governments actually **required** all able-bodied free male citizens to acquire and maintain in their homes ï and where necessary to **use** ï their own firearms. Yet none of those Pre-1791 thirteen Colonial Governments **created** such a right or duty. They merely recognized in their Statutes, the prior Common Law rights derived from ñthe laws of nature and of natureôs **God**ò (as the 1776 *Declaration of Independence* so eloquently insists).

Each of the Pre-1791 thirteen Colonial Governments recruited its ñwell-regulated militiaò from its own free adult male citizens who themselves each owned and used their very own firearms also for self-protection and hunting and other purposes. For, in the words of the Second Amendment itself, each such Pre-1791 thirteen Colonial Government had ña well-regulated militiaò for ñthe security of a free **State**ò as both claimed and exercised in the *Declaration of Independence* itself.

At least from 1776 onward, those thirteen Governments announced to the whole World that each was a ñfree Stateò (*cf.* the Second Amendment itself). And one such characteristic of a ñfree Stateò is its recognizing the right of its qualified citizens to keep and bear arms.

Now the United Statesô Second Amendment neither authorizes nor prohibits the **use** of firearms or of any other type of arms (such as daggers as sidearms). Nor does it either authorize or prohibit the keeping or the bearing of arms by free women, or by minors (whose parents or guardians would need to regulate such). It simply states that

the pre-existing ñ**right** of **the people** to keep and bear arms shall **not** be **infringed**ò (*viz*. by the U.S. Federal Government).

Who then are ñ**the people**ò in Article II? It is submitted that, at the time of enactment, it could only mean the people of each of the thirteen constituting States acting through each Stateôs ñRepresentativesò (as also at the end of the 1776 *Declaration of Independence*). Indeed, that seems to be the meaning of the words ñ**the people**ò in the very Preamble of the 1787 *Constitution* itself. We refer to its phrase ñWe **the people** of the United States...do ordain and establish this CONSTITUTION for the United States of Americaò ï meaning adult male ñfree persons including those bound to service for a term of years and excluding Indians not taxed...[and] other personsò in Article I Section 2.

In the American *Bill of Rights* enacted in 1791 as an integral part of the **federal** *Constitution* proposed in 1787, its simultaneously-enacted ten Amendments carefully distinguish between the federal ñ**Congress**ò in Article I and each constituting ñ**State**ò in Articles II & VI & X on the one hand and ñ**the people**ò in Articles I & II & IV & IX & X on the other hand. Indeed, especially Article X clearly distinguishes powers delegated to ñthe **United** Statesò from powers reserved to ñthe **States**ò ï and also from powers reserved to ñ**the people**.ò

So all of this can only mean that in Article II, the United States did not rescindably enact ñthe right of the people to keep and bear arms.ò Indeed, that right **pre-existed** the United States, and was recognized by each the constituting States, each of which regulated its own militia.

Nor did even those States themselves create such rights. Those rights pre-existed also the thirteen constituting States, and were God-given rights to bear arms. They were not limited to firearms, and included also all types of sidearms (*etc*.) ï regardless as to whether the pre-united States sought either to guarantee or to restrict their use or not.

Were such rights God-given and unalienable? *Cf*. Exodus 32:37 (ñevery **man** his **sword** at his sideò)! Also note the guided missiles in Second Chronicles 26:14-15! And what is an arrow in a bow ï if not a **guided missile**?

Further note the words of the **Lord Jesus** to His **adult male disciples**! ñHe who has no **sword** ï let him sell his garment, and **buy one**!ò Luke 22:36. Also: ñWhen an **armed** strong man guards his palace, his goods are safe.ò Luke 11:21. And again: ñNobody can enter into a **strong** manôs home and despoil his goods, unless he will first bind the strong man ï and then he will despoil his home!ò Mark 3:27.

Indeed, the Pre-American British right of Protestants to own and bear arms, as guaranteed in the 1689 British *Bill of Rights* ï is itself rooted in the earlier Common Law. Thus the 98 A.D. Tacitus (in his *Germania* 13) describes how at Common Law the Anglo-Saxons gave **spears** and shields to all their **male youths** on their **attainment of puberty**.

Again, in the 880 *Code of King Alfred* (19 & 36 & 42), each Englishman was expected to have ñ**his** weapon.ò Indeed, he was free even to be ñcarrying his spearò ï if ñlevelò and ñwithout danger.ò For all freemen then had the right not just to own but

also to bear arms. See *Historians' History of the World*, The Times, London, 1907, XVIII, page 160.

The 1215 *Magna Carta* (12 & 37 & 61) restored the Common Law rights of Englishmen infringed by the tyrannical government of King John, and reasserted the private right to possess arrows and knives and shields. It prohibited all further seizure of such and other possessions. It guaranteed the privacy of the home. And it justified rebellion against tyranny.

Too, the 1285 *Statute of Winchester* re-activated in the local ñHundred, the Common Law duty of watch and war ï and the gathering of the Militia. **Every man** was **required** to hold himself in readiness, **duly armed**...in case of invasion or revolt, and to **pursue** felons when hue and cry were raised after them.ò *Cf.* Exodus 18:21*f* & 32:37 with Deuteronomy 1:15*f* & 19:3-12*f*.

Thus too, after the overthrow of the tyrant King James the Second, also the 1688 *British Bill of Rights* (article 7) recognized that specifically ñthe subjects which are Protestants may have arms for their defence as allowed by law.ò Allowed, as in **recognized**; not ówas rescindably permitted by statutory whim.ô Compare once again *Alfred* 19 & 36 & 42 and *Magna Carta* 12 & 37 & 61 *etc*!

Now an Englishmanôs home is his castle. So too is an Americanôs ï and an Australianôs. Exodus 21:22*f* & 22:3 & John 2:13-16.

Faithful Presbyterians believe with the *Westminster Larger Catechism* QQ. & AA. 135*f* that ñthe sins forbidden in the sixth commandment (thou shalt not kill) are all taking away the life of ourselves or of others except in case of publick justice, lawful war [and] of necessary defence.... The duties requiredò include ñjust defenceé . against violence.ò

Too, Psalm 82 says ñsave the poor and needy; rid them out of the hand of the wicked!ò And also Proverbs 24 says ñif you neglect to save those that are...ready to be slain..., does He Who weighs the heart not notice this?ò

So too therefore, also the 1787-91 *Constitution of the United States of America*. For at its Second Amendment, it too emphasizes that ñthe right of the people to keep and bear arms shall not be infringed.ò

It is a **right** ï a right ñnot be infringed.ò In the America of 1787, in terms of Article I Section 2 of the U.S. Constitution itself, this meant an uninfringible right of ñfree persons including those bound to service for a term of years and excluding Indians not taxed...[and] other persons.ò

Indeed, even in the America of 1868, in terms of Article XIV Section 2 it meant an uninfringible right of all ñthe **male** inhabitants ò of each ñState, being **twenty-one** years of age, and **citizens** of the United States ò An uninfringible right not of the Federal Government, nor even of each **State**, but indeed of **the people** themselves to keep and bear **arms**!

Uninfringible! And hence, to borrow a phrase from the earlier *Declaration of Independence*, one of the ñunalienable Rights.ò Indeed, at the Seventh Amendment, it

is implied that also this right has been derived from, and is to be exercised according to, ñthe rules of the Common Lawò of England.

The Third and Fourth Amendments ï just like *Magna Carta* ï ñin the manner prescribed by lawò protect peopleôs privacy against peace-time quartering of soldiers in their homes, and against unreasonable searches and seizures without warrants (*cf*. Jeremiah 17:22). Though this by no means concedes that a State Government might do so, these provisions are particularly concerned to prevent the Federal Government from so doing.

Indeed, the Fourth Amendment comes from Deuteronomy 24:10-11. That says: ñWhen you lend your brother anything, you shall not go into his home to fetch his pledge. You shall stand outside, and the man to whom you lend shall bring you the pledge outside.ò

The Fifth and Sixth Amendments guarantee the right to a grand Jury in respect of capital crimes; protect any accused from being forced to testify against himself; prevent deprivation of life and liberty or property ñwithout due process of lawò; require ñjust compensationò (generally at three times the normal value) for private property taken for public use; and enshrine the right to a speedy and public trial ñascertained by law.ò

Here, the Biblical concept of the ñjuryò is enshrined ï and also the Biblical distinction between ñcapital crimesò on the one hand and crimes not capital on the other. Here too, the amendments uphold the Biblical principle of ñdue process of lawò; the Biblical right ñto a speedy and public trialò; and the Biblical requirement of multiple ñcompensationò (*cf*. Exodus 22:1*f* & Luke 19:8*f etc*.).

The Seventh and Eighth Amendments: uphold Anglo-American Biblical ñsuits at Common Lawò; preserve ñtrial by jury...according to rules of the Common Lawò; and prohibit ñexcessive bailò as well as ñcruel and unusual *punishments" (cf. Exodus chapters 20f* through Deuteronomy chapters 25*f*). Here, the double demand for the maintenance of Common Law says it all.

Indeed, the Eighth Amendment originates in Deuteronomy 15:2-3. That says: ñEvery creditor who lends anything, shall release it to his neighbour; he shall not exact it from his neighbour nor from his brother, because it is called the Lordôs release. From a foreigner you may exact it back; but your hand shall release that which is yours that is with your brother.ò

Finally, the Ninth and Tenth Amendments declare that the enumeration of rights in the *Constitution* does not ñdisparage others retained by the people.ò They specify that all ñpowers not delegated to the United States by the *Constitution* nor prohibited by it to the States, are reserved to the States respectively, or to the people.ò

These last two Amendments imply that man is pre-eminently Godôs free creature ï and only secondly a citizen of various political governments (whether State or Federal). The latter governments are themselves all answerable to the Almighty Creator. Indeed, the last two amendments also deny many powers specifically to the Federal Government ï and reserve such powers instead to the several States, and their people. *Cf*. Deuteronomy 19:12*f*; Luke 23:2-11; Acts 23:26-30; Romans 13:1*f*.

The word ñdelegatedò at the end of the *Bill of Rights*, is of particular importance. For the Tenth Amendment reserves all powers not specifically delegated to the United States [Federal Government] by the *Constitution* ï to the several States, and to their people.

Thus, the Federal Government did not create such rights ï but had them ñdelegatedò to it by the States. Moreover, even the State Governments did not create such rights. For also the State Governments had those rights delegated to them ï by their people. Indeed, even the people did not create those rights. For the people in turn had those rights delegated to them ï chiefly *via* the Common Law ï by the Almighty Triune God.

At the human governmental level, therefore, ñcertain rightsò: are ñretained by the peopleò; are ñ**not delegated** to the United Statesò; but ñare reserved to the States respectively, or to the people.ò Thus the Tenth Amendment. See Exodus 21:2; 22:3,11,26; Deuteronomy chapters 14 to 16*f*; and First Samuel 1:6-22.

Even the first couple of the yet-later Amendments, have much merit. Thus the Eleventh Amendment, of 1798, guarantees that ñthe judicial power of the United States [Federal Government] shall not...extend...against any one of the United Statesò ï a provision savagely to be overridden during the unconstitutional 1861-65 War of Northern Aggression against those States in the South which had just then seceded. Also, the Twelfth Amendment of 1804 wisely demarcates qualifications for the Vice-Presidency ï especially in the event of his possibly becoming President during the same term.

However, after the unconstitutional 1861-65 War of Northern Aggression against the seceded States of the South, the Thirteenth Amendment of 1865 set aside the original 1787 *U.S. Constitution*. For, **against** that original *U.S. Constitution* ï see Article I Section 2 and Article IV Section 2 ï the Thirteenth Amendment purported to enact that ñneither slavery nor involuntary servitude...shall exist within the United States.ò

Indeed, also the (illegal) purported Fourteenth Amendment of 1868 ï which was never ratified constitutionally ï heralded the termination of the authority of the original United States. Indeed, it marked the beginning of a whole series of subsequent amendments mostly of a very questionable if not increasingly-socialistic nature.

However, certainly until 1804 ï and perhaps even till 1861 ï the American *Constitution* was perhaps the best of any country in the history of the World. Its progressive prostitution thereafter, however, is one of the great tragedies in the history of mankind.

The derivation of the 1791 American *Bill of Rights* from the Common Law

What are the historical roots of the first ten amendments in the 1787 *U.S. Constitution*, all enacted in the 1791 U.S. *Bill of Rights*? They were not derived ï as

some modern humanists most untruthfully allege ï from the (ungodly and humanistic) French Revolution and its so-called órights of manô (all of which post-dated the *U.S. Constitution*). To the contrary, the first ten amendments were all initially derived from the Law of God.

Immediately, however, the American *Bill of Rights* of 1791 was derived ï *via* the *U.S. Constitution* of 1787, the *Articles of Confederation* of 1777-81, and the U.S. *Declaration of Independence* of 1776 ï from the 1688 British *Bill of Rights* at its Neo-Puritan Glorious Revolution (and from the antecedent British Common Law as **its** ancient foundation). Significantly, the leading British Christian Parliamentarian Edmund Burke and the later Prime Minister William Ewart Gladstone both highly praised the American *Bill of Rights*.

Israeli Law Professor Dr. Sivan comments[50] that the supremacy of law, a basic tenet of Anglo-American legislation, can be traced to older procedure. The *U.S. Constitution*ôs Fifth Amendment ï *viz.* that ñno person...shall be deprived of life, liberty, or property without due process of lawò ï is derived from the thirty-ninth clause of *Magna Carta*.ò That, in turn, is itself derived from Holy Scripture. Exodus 22:1; Deuteronomy 19:14*f*; Acts 22:25.

Indeed, most of the ideas and **even many of the very words** of the rights at Christian Common Law in the 1688 **British** *Bill of Rights*, are again repeated in the 1791 **American** *Bill of Rights*. These include: freedom of speech and religion; the rights of citizens to bear arms; and prohibitions against the billeting of soldiers in private homes.

Also included are: the right against searches without warrants; presumed innocence before conviction of crimes by judges at speedy and public trials; no deprivation of life or liberty or property without due process of law ñaccording to the rules of the Common Lawò; and prohibition against excessive bail and cruel and unusual punishments.

Indeed, the 1791 American *Bill of Rights* even reminds us that all ñpowers not delegatedò to the Union ñby the *Constitution* nor prohibited by it to the States ï are reserved to the States respectively, or to the people.ò For all other rights have been, and are, ñretained by the people.ò

The U.S. *Bill of Rights*, **by its own admission**, derives from ñthe rules of the Common Lawò of Britain. That British Common Law aimed, and still aims, to restrain human lawmakers and judges and the people from all innovations foreign to **the Laws of** natureôs **God**. This had been recognized for many ages, and had also been handed down from and guaranteed by the Holy Bible itself.

According to the *Encyclopedia Americana*,[51] when the American Colonies had achieved their independence ï Blackstoneôs *Commentaries on the Laws of England* had not long been off the press. Horne Tooke called it ña good gentlemanôs law-book.ò For it was ñclearò ï even if ñnot deep.ò

[50] *Op. cit.*, pp. 136f.
[51] See S. Pfeilôs art. *Common Law* (in 1951 *Enc. Amer.* 7:414).

Yet Blackstone helped preserve the Common Law in his own day. He did for it, at the end of the eighteenth century, what Coke had done for it at the beginning of the seventeenth. For Blackstone gave an exceedingly good account of the law as a whole ï an account capable of being studied with interest and profit.

Another rich mine of the Common Law was laid open to the young American Commonwealth in the decisions of Lord Mansfield. He, during his 30 yearsô service in the office of Chief Justice of England (1756-88), reduced the Mercantile Law to a systematic and harmonious form.

Mansfield did for the commercial branches of Common Law what his contemporary Blackstone had just done for the Common Law in general. Thus the future of the Common Law was given a new lease of life ï not just in Old England, but even more particularly in the adolescent American Republic.

The Common Law derivation of the true original meaning of the First Amendment

We now come to assess the true meaning of the much-discussed 1791 First Amendment to the 1787 federal *Constitution of the United States*. It declares, *inter alia*, that the federal ñCongress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.ò

Significantly, in the federal *Constitution of the United States*, its First Amendment immediately follows Article VII of the *Constitution* ï with the latterôs closing reference to ñthe year of our Lord one thousand seven hundred and eighty-seven.ò This First Amendment therefore roots in a specifically Christian context. Indeed, far from barring Christianity, it simply states that the federal ñCongress shall make no law respecting an establishment of religion ï or prohibiting the free exercise thereofò ï at the federal level.

This requires the Federal Government, at least till the First Amendment might constitutionally ever get rescinded, not to ñestablishò (or give preferential treatment to) any specific Christian Church or Denomination on the one hand ï or to any specific Non-Christian religion (such as that of anti-Christian Humanism) on the other. Indeed, it clearly implies the subjection of all Churches and of all Non-Christian religions and even of the U.S. Federal Government itself to ñour Lordò Jesus Christ ï as mentioned in the immediately-previous sentence of the *U.S. Constitution* at its Article VII.

For ñour Lordò is the Lord ï alias the Lord! And the Lord of the Founding Fathers is neither King George Brunswick the Third of England; nor George Washington the First of Virginia; nor óKing Democracyô the First, of Pagan Greece. Instead, it is the First and the Last, King Jesus the Lord ï alias the ñLordò of the *U.S. Constitution* in its phrase ñin the year of our Lord one thousand seven hundred and eighty-seven.ò Indeed, Christ the Lord is Jesus ñ**our** Lordò ï according to the ***U.S.*** *Constitution* itself!

It is important to understand that the stated purpose of the First Amendment of 1791 is not at all to discourage true Christianity at the federal level. Instead, its stated purpose is simply to guarantee ï at the federal level ï freedom of thought.

For federal laws limiting free speech would not prevent error, but only establish error ï federally! This is why the Amendment declares: ñCongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.ò

Thus, the First Amendment quite properly prohibited ï and still prohibits ï the Federal Congress from proclaiming the ñestablishment of religion.ò It also properly prohibited ï and still prohibits ï the Federal Congress from ñprohibiting the free exerciseò of religion even at the federal level. But it did not and could not regulate this at state level.

It says nothing whatsoever about any separation between Church and State. However, we would certainly agree it implies that prior membership in a Church denomination is not required in order to be able to hold political office in the U.S. **Federal** Government.

Yet membership in a Visible Church (or Denomination) may certainly still be required ï in order to hold office in a **State** Government. For the *U.S. Constitution* does not and cannot prohibit the States which constituted (or created) it ï from having specifically ñProtestantò Bills of Rights in their own State Constitutions. This, New Hampshire did ï right down till 1902. The First Amendment to the *U.S. Constitution*, however, simply provides that the **Federal** Congress cannot establish any Christian Denomination ï and still less any Non-Christian religion such as Humanism ï as the **federally-**preferred variety of religion.

It was in response to the fears of especially five of the States ï Massachusetts, North Carolina, Rhode Island, South Carolina and Virginia ï that the 1791 first Ten Amendments were added to the *U.S. Constitution* which those States had only óconditionallyô ratified. Indeed, **all thirteen States** at that time had a **specifically-Christian** State Constitution.

So it is unthinkable that any of those thirteen States ï then decidedly-Christian ï would ever have accepted and still less campaigned for anything like the modern óseparationistô misinterpretation of the First Amendment. There is no doctrine of óseparation between Church and Stateô whatsoever, in the wording of the First Amendment as such (however misinterpreted).

The First Amendment merely insists that the federal ñCongress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.ò Referring to America, 1811*f* U.S. Supreme Court Justice Joseph Story explained in his *Institutes of International Law* that ñone of the beautiful traits of our municipal jurisprudence is that **Christianity** is part of the Common Law.ò[52]

[52] Cited in Gentry: *op. cit.*, I p. 16.

The word ñreligionò in the 1791 First Amendment signifies Christianity, and nothing else. On March 19th 1782, the Continental Congress had urged men to ñpray that the religion of our divine **Redeemer** with all its divine influences ï may cover the Earth as the waters cover the seas.ò That 1782 resolution of the Continental Congress was not just clearly Christian ï but also patently postmillennial. *Cf.* Isaiah 11:9 & Habakkuk 2:14.

Needless to say, the óChristianô 1791 First Amendment offered no protection to Mormon polygamists and polytheists ï until its re-interpretation around 1907 (anent the admission of the first U.S. Mormon Senator Reed Smoot from Utah). For in the 1800ôs, Mormon polygamy had rightly been outlawed in the United States. Only in 1896 was Utah received into the Union ï after the Mormons officially abandoned polygamy in 1890.

Regarding the polytheism of Mormons and others, even as late as 1892 also **the U.S. Supreme Court** was still saying (in the *Trinity Church* case): ñThis is a **Christian** nation!ò Moreover, in New Hampshire, until 1902 the word óProtestantô remained in the Stateôs own *Bill of Rights*. Though then changed to óChristianô ï that latter word was maintained right down to 1926. All this, notwithstanding the enduring force of the First Amendment of 1791.

The First Amendment, prohibiting the Federal Congress from making laws establishing religion or preventing the free exercise thereof, was and is certainly non-sectarian. Yet it was ï and, properly interpreted, still is ï in fact **Pan-Christian**. For the very colonies which adopted it, upheld Biblical laws prohibiting blasphemy and witchcraft and also sabbath desecration. The 1787 *U.S. Constitution* itself[53] somewhat sanctifies Sunday. Indeed, Sunday closing laws continued in South Carolina ï right down till 1987.

Detailed analysis of the much-misrepresented First Amendment of 1791

At the time of the 1791 enactment of the First Amendment, eleven of the then thirteen States in the American Union required a profession of **faith in Jesus Christ and a commitment to the Bible as qualifications for holding public office**.[54] Also thereafter, they long continued so to require. Indeed, even the two States that did not then require it, still encouraged and expected it.

As pointed out by Jonesôs article *The Myth of Political Polytheism*,[55] the very movers of the First Amendment operated within a strictly-Christian framework. For it was proposed by Charles Pinckney III, an Episcopalian from South Carolina. It was seconded by Gouveneur Morris, an Episcopalian from Pennsylvania. Indeed, it was further seconded by General Charles C. Pinckney ï who was for fifteen years President of the Charleston Bible Society.

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[53] *U.S. Const.*, I:7.
[54] See *Our Chr. Herit.*, p. 4.
[55] A.P. Jones *The Myth of Political Polytheism* (in *The Counsel of Chalcedon*, Atlanta, Oct. 1990, p. 11).

ñAt the time of the [1788] adoption of the *Constitution* and of the [1791 *First*] *Amendment* to it,ò Judge Story declared in his (1832*f*) *Commentaries on the Constitution of the United States*,[56] ñthe general if not the universal sentiment in America was that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference ï would have created universal disapprobation, if not universal indignation.ò

Also Michigan University Law Professor and Supreme Court Judge Cooley, in his 1898 *General Principles of Constitutional Law*, there stated:[57] ñBy óestablishment of religionô is meant [in the First Amendment] the setting up or recognition nationally of a óState Churchô ï or at least the conferring upon one Church of special favors and advantages which are denied to others.... It was never intended by the *Constitution* that the [Federal] Government should be prohibited from recognizing óreligionô ï or that religious worship should never be provided in cases where a proper recognition of Divine Providence in the working of government might seem to require it.ò

The 1791 First Amendment was a federal law. It had no application in the several States. Thus, in the 1811 case *People* v. *Ruggles*, Justice James Kent upheld a stiff fine for blaspheming the Trinity in the State of New York. There, Kent noted that ñthe people of this State, in common with the people of this country, profess the general doctrines of Christianity.ò[58]

The 1833 case of *Barron* v. *Baltimore* rightly held that the First Amendment was not binding upon **State** Legislatures. Not till 1925 (in *Gitlow* v. *New York*) ï under the strong sociological influences of the growing new religion of Humanism ï was this changed. Indeed, also in the 1962 *Engel* v. *Vitale*, even the liberal Justice Hugo Black admitted that in 1776 there were **established** Churches [alias denominations] in eight of the thirteen Colonies ï and established religions (*viz*. Christianity) in at least four of the other five.

The wayward U.S. Supreme Court misdecided *Engel* v. *Vitale*, when it ended up prohibiting oral prayers in public schools. Yet even concurring Justice Douglas rightly stated there, that ñthe First Amendmentò ï which indeed denies any Church ña preferred positionò at the federal level ï was and is not opposed to Christianity as such. Consequently, Douglas concluded rightly (at least as regards this one particular): ñI cannot say that to authorize this prayer is to establish a religion.ò

Indeed, the ñreligionò whose free exercise is guaranteed in the First Amendment ï is clearly **Christianity**. For, as 1811-45 U.S. Supreme Court Justice Joseph Story noted in his *Commentaries on the Constitution of the United States*:[59] ñChristianity ought to receive encouragement from the state.... **The real object of the Amendment was not to countenance...Mahometanism or Judaism or infidelity by prostrating Christianity, but to exclude all rivalry among Christian sects** and to prevent any

[56] *Op. cit.*, sec. 1874.
[57] *Op. cit.*, pp. 224f (as cited in Gentryôs *op. cit.* I pp. 22f).
[58] See P. Miller: *The Life of the Mind in America*, Gollancz, London, 1966, pp. 123f.
[59] *Op. cit.*, 2:593f.

national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government.ò

Proof of the above is evidenced by the various original State Constitutions. Thus the North Carolina Constitution **until 1876** provided[60] that ñno person who shall deny the being of God or the truth of the **Protestant** religion or the divine authority of the **Old or New Testaments**...shall be capable of holding any Office or place of trust or profit in the civil department within this State.ò

That of New Hampshire ï already discussed earlier ï was similar. Indeed, even in 1912 it refused to eliminate the word ñ**Christian**ò from its own *Bill of Rights*. It went on so refusing, **until even 1926**.

Moreover, the First Amendment itself ï unlike the many modern Humanists who seek to pervert its true meaning ï knows nothing of any **moral** separation between the Triune Creator Who endowed all things on the one hand, and that creature known as the Federal Government on the other. Properly interpreted, the First Amendment rather presupposes that the Triune God (Father, Son and Spirit) ï in the words of the 1776 *Declaration of Independence* ï is the ñCreatorò by Whom ñall men...are endowed...with certain unalienable rights.ò So He should be recognized, also regarding the First Amendment in the *Bill of Rights*, as the ñCreatorò Who ï *via* the Legislatures of the States and their Christian Constitutions! ï has ñendowedò even the U.S. Federal Government with its 1791 *Bill of Rights*.

Indeed, Christianity ï alias the recognition of the Father, Son and Spirit ï did (and should) pervade the laws and institutions not just of the then-Christian State Governments. It did and should permeate even the Federal Government of the United States of America.

For the U.S. Government was instituted by and depended upon (and still depends upon) those State Governments which constitute(d) it. All of them were then Christian Governments. Indeed, it was precisely thirteen different Christian States which instituted ï nay more, which constituted ï the U.S. Federal Government!

The searching First Amendment views of Professor Dr. L. John Van Til

We agree with the following observations of History Professor L. John Van Til in his book *Liberty of Conscience: The History of a Puritan Idea*. He claims[61] that the 1791 First Amendment to the *U.S. Constitution* ï just like the 1778-80 *Massachusetts Constitution* with its remnantal Protestant Puritanism ï prevented political interference by the Federal Government in the area of the (prior) establishments of State Governments and even State Churches.

[60] See G. De Marôs *God and Government: A Biblical and Historical Study*, American Vision Press, Atlanta, 1982, p. 165.
[61] L.J. Van Tilôs *Liberty of Conscience: The History of a Puritan Idea*, Craig Press, Nutley N.J., 1972, pp. 177-79.

The States themselves encouraged religion. So the question arises whether the First Amendment also encouraged religion. Regardless as to whether the phrase ñor prohibiting the free exercise thereofò in the First Amendment is read with or without reference to the equation of ñreligionò and ñconscienceò ï it is obvious the restriction against the Federal Congress encourages religion. The difference between Massachusettsô strong encouragement of religion and the First Amendmentôs mild provision for religion ï does not alter the basic stance. For, in each case, the standard finally rests on the operation of conscience.

Appreciation of the place of conscience in the formulation of the First Amendment requires some adjustments in the currently-accepted attitudes toward the amendment. This is so, particularly in the case of the modern and thoroughly-false óseparationist doctrine.ô

Borrowing from a view stated not by the First Amendment but instead by Thomas Jefferson in an 1802 letter to the Danbury Baptistsô Association a decade **after** the First Amendment was ratified ï the separationist doctrine talks about óa wall of separation.ô Often the phrase is used today in argument directed toward attempting to eliminate prayers in Congress, or in trying to liquidate the motto óIn God we trustô from coins.

Also Jeffersonôs famous ówall of separationôis one between Church and State ï but not between Religion and State. óReligionô is understood to mean any expressions or actions that refer to God, such as the prayers in Congress or the motto on coins. Jeffersonôs letter simply stated: ñBelieving with you that religion is a matter which lies solely between man and his God..., **I contemplate with sovereign reverence** that act of the whole American people which declared that their legislature should ómake no law respecting the establishment of religion or prohibiting the free exercise thereofôï thus building a wall of separation between Church and State.ò

Van Til next makes some very important comments about Jefferson on the First Amendment. Clearly, explains Van Til, Jefferson believed that the First Amendment placed a wall of separation between Church and State. But he used the word ñChurchò in a different way than he used the word ñreligionò in this letter to the Danbury Baptistsô Association.

To Jefferson, the word ñChurchò here refers to ñan establishmentò of religion at the Federal Government level. In this, he was consistent with his contemporariesô use of the word. Jeffersonôs use of the word ñreligionò in this letter, makes even more sense ï if it is read with an eye to the place of **conscience** in the whole affair.

For, In his *Notes on Virginia*, Jefferson demonstrated that he assumed conscience was normative in religion. Speaking of religion, he then said: ñOur rulers can have no authority over such. Because óthe rights of conscienceô we never submitted; we could not submit.ò

Van Til then concludes that when the expression ñwall of separationò is understood in the sense in which Jefferson used it, to describe the relationship between the federal government and churches ï it is obvious that the modern óseparationistô view of religion is different from that used in the formulation of the First Amendment. Indeed, the **modern** ñwall of separationò doctrine is also far more radical than the much

milder view of even Jefferson ï who himself understood the First Amendment in a much more generous fashion than did the rest of the Founding Fathers.

As Rushdoony insists in his book *This Independent Republic*,[62] the concept of a secular state in North America was unknown in 1776 (when the *Declaration of Independence* was made) and in 1777 (when the *Articles of Confederation* were drafted) ï as well as in 1787 (when the *U.S. Constitution* was written). Outside of Revolutionary France in 1789*f*, the concept of a secular state was still virtually non-existent anywhere in the West during 1791 (when the *U.S. Bill of Rights* was adopted).

To read the *U.S. Constitution* as the charter for a secular state ï is to misread history ï and to misread it radically. The *Constitution* was designed to perpetuate a Christian order.

Indeed, as Rev. Professor Dr. Harold O.J. Brown states in his book *The Reconstruction of the Republic*,[63] the Constitution of each State ï from Delaware (the first to join the Union in 1787) to Hawaii (the last to be admitted 170 years later) ï makes at least some devout reference to God. Even more importantly, however, all of the constitutions of the American States federating in 1787*f* ï were specifically Christian.

Biblical nature of 1776 *Declaration*, 1787 *Constitution*, and 1791 *Bill of Rights*

The 1776 *Declaration of Independence* and the 1787 *Constitution of the United States* both give important emphases. Such include those on: divine providence; the Law of natureôs God; His work of creation; God-given human rights; rule by consent; republican government; the rights of defendants; private ownership of property; the sanctity of contract; the necessity of two witnesses in judicial procedures; and separation between Church and State.

Thus, when the Founding Fathers wrote about all men being created equal ï they clearly stated exactly what they meant. For they did not specify that this was so in respect of talents, but indeed as regards: their ñlifeò from conception onward (*vs.* abortion); their ñlibertyò (*vs.* the dictatorship of democracy); and their ñpursuit of happinessò (*vs.* statist planning). See: Exodus 23:2 & 23:6, and Acts 10:34.

As even Abraham Lincoln rightly noted, the authors of the *Declaration of Independence* ñdid not intend to declare all men equal in all respects. They defined, with tolerable distinctness, in what rights they did consider all men created equal ï equal in ócertain unalienable rights among which are life, liberty and the pursuit of happiness.ôò

American órule by consentô rests upon Deuteronomy 1:13-14; 16:18; Judges 8:22; Second Samuel 16:18; and Acts 6:3-5. The órepublican governmentô of the

[62] *Op. cit.*, p. 2.
[63] H.O.J. Brown: *The Reconstruction of the Republic*, Arlington, New Rochelle N.Y., 1977, p. 30.

Constitution,[64] rests upon covenanting. Genesis 17:1*f cf*. Deuteronomy 12:32. It differs from mob rule, alias demo(n)-cratic mob-ocracy.

American Republicanism is, indirectly, also representative government ï but quite distinct from majority rule. For Republicanism restricts mobocracy ï through constitutional safeguards. It is government by law, and not by claw. It respects individual rights, even contrary to public policy and popular wishes and ñpolitical correctness.ò

Those accused of crimes, are to be deemed innocent till proven guilty ï at public trials. Exodus 23:1-8; Deuteronomy 1:13*f*; 17:6*f*; 19:15*f*. Property rights are to be protected to the hilt. Genesis 2:17 & Exodus 20:9,15,17 ï *cf*. the Fifth Amendment. Contracts are to be regarded as sacred, Psalm 15:1-4 ï *cf*. Article I Section 10 Paragraph 1. Indeed, there must be no conviction without two witnesses. Deuteronomy 17:6 & 19:15 & Numbers 35:30 ï *cf*. Article III Section 3 Paragraph 1.

Now the First Ten Amendments were all enacted in 1791 ï apparently in part also as a Christian reaction against the ungodly French Revolution of 1789. So too the Eleventh and Twelfth Amendments were enacted soon thereafter, in 1798 and 1804 ï and once again against foreign attempts to interfere within the domestic affairs of the Christian American Republic.

Thereafter, there were no purported amendments to the *U.S. Constitution* for more than sixty years ï Americaôs golden age! Significantly, the next ñamend-mentò was rather a ósuspend-mentôï marking a radicalistic departure from the *Constitution* itself. Indeed, it could only occur ï after unitarianized Yankees had <u>unconstitutionally</u> and forcibly suppressed the trinitarian South (in 1861-65).

The overwhelming Christian commitment of the first U.S. Presidents

There was also an overwhelming religious commitment of all of the first U.S. Presidents to the Christianity of the American Republic. Very briefly, we shall show this from statements made by the first four Presidents ï George Washington, John Adams, Thomas Jefferson, and James Madison ï who served as such from 1789 through 1817.

Already in 1787, Washington encouraged American Indians to accept Christianity. Addressing the Delaware chiefs on May 12th of that year, he stated: ñYou do well to wish to learn our arts and ways of life ï and, above all, **the religion of <u>Jesus Christ</u>**.ò

The first President, Washington, gave a princely sum of forty thousand dollars for a **specifically-Christian** enterprise. That was for the purpose of establishing a **Presbyterian School** to be called ôWashington College.ô[65]

Himself always an Episcopalian, in his *First Inaugural Address* hr offered his ñfervent supplications to that Almighty Being Who rules over the Universe; Who presides in the councils of nations; and Whose providential aid can supply every human defectò ï while dedicating himself also to ñthe preservation...of the republican

[64] *U.S. Const.*, Art. IV Sec. 4, *cf*. 10th Amendment.
[65] Thus L. Boettner: *op. cit.*, pp. 384 & 387.

model of government.ò He added that ñthe propitious smiles of Heaven can never be expected ï on a nation that disregards the eternal rules of order and right which Heaven itself has ordained.ò[66]

Washington further declared, on October 3rd 1789: ñI do recommend and assign Thursday the 26th day of November next to be devoted by the people of these States to the service of that great and glorious Being Who is the beneficent Author of all the good that was, that is, or that will be.... And also, that we may then unite in most humbly offering our prayers and supplications unto the great Lord and Ruler of nations, and beseech Him to pardon our national and other transgressions..., to promote the knowledge and practice of true religion and virtue, and the increase of science among them and us; and, generally, to grant unto all mankind such a degree of temporal prosperity as He alone knows to be best.ò

The second U.S. President, John Adams, had in 1775 frequently attended the Third Presbyterian Church when at the Continental Congress.[67] Adams himself stated in his own 1797 *Inaugural Address* that he had ña veneration for the religion of a people who profess and call themselves **Christians**, and a fixed resolution to consider a decent respect for **Christianity** among the best recommendations for the public service.ò

The next year, with America on the verge of war with a radicalized France, Adams proclaimed May 9th a day of fasting. He declared[68] that ñthe safety and prosperity of nations ultimately depend on the protection and the blessing of Almighty God.... The national acknowledgment of the truth is...an indispensable duty which people owe to Him..., without which social happiness cannot exist nor the blessings of free government be enjoyed.ò

According to Dr. Rushdoony,[69] Adams held to original sin as basic to Christianity. He trusted no group. In religion, Adams was Arminian; but in politics, Augustinian and Calvinist. He reflected at many points philosophical Calvinism, giving priority to the doctrine of creation. This respect for the complexity of life, had more than Calvinistic roots. It was deeply imbedded in the Augustinian and feudal inheritance of the colonists.

The third U.S. President, Thomas Jefferson ï whom, it will be remembered, drew from the Presbyterian *Mecklenberg Declaration* in his co-framing of the *Declaration of Independence* ï was at least somewhat influenced also by Deism. Significantly, he is often remembered as the founder of the American óDemocratic Party.ô Yet in addition, he was also greatly influenced by Christianity.

When still Governor of Virginia, Jefferson issued proclamations decreeing days of ñpublic and solemn thanksgiving and prayer to Almighty God.ò He also stated: ñAll the sects of the United States are comprised within the great unity of **Christianity**, and **Christian** morality is everywhere the same.ò

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[66] Cited in *Our Chr. Herit.*. pp. 4-5.
[67] W.W. Sweet: *op. cit.*. pp. 179f.
[68] *U.S. Statutes At Large*, Vol. 11, Appendix No. 14 (cited in *Chalcedon Report*, Dec. 1992, pp. 6 & 24f).
[69] R.J. Rushdoony: *Chalcedon Position Paper No. 4*, Vallecito Ca., 1985, p. 2.

Jefferson wrote also the preamble to the 1786 *Statute for Establishing Religious Freedom*, ñenacted into law by the Virginia General Assembly. There, he declared that ñAlmighty God hath created the mind free, and manifested by His supreme will that free it shall remain ï by making it altogether insusceptible of restraint; that all attempts to influence it...are a departure from the plan of the Holy Author of our religion Who, being Lord both of body and mind, yet chose not to propagate it by coercions...as was [within] His Almighty power to do, but to extend it by influence on reason alone.ò

In his *First Inaugural Address*, President Jefferson did not once use the word ódemocracy.ô Instead, he frequently referred to the American Republic, or to Americaôs republican form of government. He worshipped, in Congress ï together with Christian clergymen ï throughout his first term.

In his 1805 *Second Inaugural Address*, he said: ñI shall need too the favor of that Being in Whose hands we are; Who led our fathers, as Israel of old, from their native land and planted them in a country flowing with all the necessaries and comforts of life; Who has covered our infancy with His providence, and our riper years with His wisdom and power; and to Whose goodness I ask you to join with me in supplication, that He will so enlighten the minds of your servants...that whatsoever they do shall result in your good.ò

Clearly, also these words do not evidence an undiluted Deism. Instead, they evidence Jeffersonôs recognition of the providential God of Israel.

Jefferson even proclaimed publically in his *National Prayer*:[70] ñAlmighty God, Who hast given us this good land for our heritage, we humbly beseech Thee that we may always prove ourselves a people mindful of Thy favor.... Endow with Thy Spirit of wisdom those to whom in Thy Name we entrust the authority of government, that there may be justice and peace at home, and that through obedience to Thy Law we may show forth Thy praise among the nations of the Earth.... All of which we ask through **Jesus Christ our Lord**.ò

The latter prayer even seems to be trinitarian in structure. Indeed, the undenominational Jefferson further stated that the only basis of a nationôs liberty is ña conviction in the minds of a people that their liberties are a gift from God.ò[71] Moreover, he even wrote:[72] ñI am a real Christian, that is to say, a disciple of the doctrines of Jesus.ò

We do not say Jefferson was a Christian. But he had a most Calvinistic perception of the total depravity of fallen human nature. That is why he instinctively mistrusted fallen human nature; anti-federalistically hated any move toward the centralization of power in Washington D.C.; and insisted on the primacy of the power of small wards. *Cf.* Exodus 18:21*f*.

The fourth U.S. President, James Madison, had, while a student of Hebrew and theology at Princeton, sat at the feet of its great Presbyterian President Rev. Dr.

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[70] Cited in *Our Chr. Herit.*, p. 5.
[71] *Id.*
[72] T. Jeffersonôs 1816 *Letter to Charles Thomson* (Secretary of the Continental Congress).

Witherspoon. Madison co-authored the famous *Federalist Papers*, together with the Presbyterian Hamilton and the Calvinist Jay.

Architect of the 1787 *Constitution of the United States*, Madison had then stated: ñWe have staked the whole future of American civilization not upon the power of government. Far from it. We have staked the future...upon the capacity of each and all of us to govern ourselves, to sustain ourselves, according to **the Ten Commandments of God**.ò[73]

In his 1809 *Inaugural Address*, he said his ñconfidence will in every difficulty be best placed next to...that Almighty Being Whose power regulates the destiny of nations; Whose blessings have been so conspicuously dispensed to this rising Republic; and to Whom we are bound to address our devout gratitude for the past...and best hopes for the future.ò

Clearly, Madisonôs God was ñAlmighty.ò He was also very personal ï a God Who gives ñblessingsò; and a God to Whom we should ñaddress our gratitude.ò

In 1815, when the United States was at war, Madison proclaimed[74] that a day ñbe observed by the people of the United States as a day of public humiliation and fasting and of prayer to Almighty God for the safety and welfare of these States; His blessing on their arms; and a speedy restoration of peace.ò He urged the people to bring profession of ñtheir humble adoration to the great Sovereign of the Universe; of confessing their sins and transgressions; and of strengthening their vows of repentance and amendment.ò

After the above proclamation, and four days before the date set, the last battle of that war was won by the United States. Madison promptly ordered[75] a day of public thanksgiving, declaring: ñIt is for blessings such as these, and especially for the restoration of the blessing of peace, that I now recommend that the second Thursday in April next be set apart as a day on which the people of every religious denomination may, in their solemn assemblies, unite their hearts and their voices in a free-will offering to their heavenly Benefactor of their homage of thanksgiving and of their songs of praise.ò

Summary: Common Law in Independent America till the end of the 18th Century

Summarizing, in this chapter, we first looked at the 1776-77 preparation of the 1781 American *Articles of Confederation* ï which purported to protect the rights of each State to the hilt. We then noted the *Thanksgiving Proclamation* of the godly 1782-83 Continental Congress U.S. President, the Presbyterian Elias Boudinot (the U.S. President before Washington). Indeed, we also observed that Boudinot later became the first president also of the American Bible Society.

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[73] In *Our Ch. Herit.*, p. 4.
[74] *U.S. Statutes At Large*, Vol. 11, Appdx. No. 14 (cited in *Chalc. Report*, Dec. 1992, p. 6).
[75] *U.S. Statutes At Large*, Vol. 11, Appendix No. 16 (cited in *Chalc. Report*, Dec. 1992, p. 6).

After the 1783 trinitarian *Paris Peace Treaty* between Britain and America, there was post-war prosperity in the independent U.S.A. It should not be assumed the heterodox Jefferson and Franklin unduly influenced the U.S. For the conservative Federalists saw to it that the óadversary conceptô was thoroughly incorporated in the setting up of the original Federal Government. Indeed, John Adamsôs godly 1788 *Defense of the Constitutions of Government of the United States of America* recoils with horror ï in anticipating the ungodly rumblings of the 1789 French Revolution.

The legislative passage of the *Northwest Ordinance*, two months before the enactment of the 1787 *Constitution of the U.S.*, provided for the necessity of religion also in the unorganized territories not yet admitted as States. The immediate reason for the drawing up of the *Constitution of the U.S.A.* are found in its Preamble ï *viz*. to ñform a more perfect unionò than had till then existed. Articles II through VII next put into place the essential checks and balances between the triune legislative, executive and judicial departments of the Federal Government.

The *U.S. Constitution* has a thoroughly Christian background. It even has expressly Christian passages or phrases. It exhibits a trinitarian structure, and professes itself to be not democratic but rather republican by nature. The 1788 *Federalist Papers* clarify that the *Constitution* is indeed a conservative document. Significantly, this is conceded even by the twentieth-century secularist J. Mark Jacobson.

The *Constitution* manifests both Biblical and Christian Common Law at its roots. Together with its finalization ï the Presbyterian Church in America, always conservative before 1787 when it became the P.C.U.S.A., in that year itself sought to improve its own *Westminster Confession* at the latterôs chapters 20 & 23 & 31. The later American Presbyterian Rev. Professor Dr. Charles Hodge shows this did not ódetheocratizeô the civil government. Indeed, even later American amendments to chapters 24 & 25 did and do not affect the religious duties of the magistracy in politics.

We then dealt with the 1791 *Bill of Rights* (the first ten amendments to the *U.S. Constitution*). It was seen they were all derived from the Common Law ï which is twice mentioned in the Seventh Amendment. Indeed, Christianity is implicit also in the much misrepresented First Amendment (thus Professor Van Til). For the facts show that the 1776 *Declaration*, the 1787 *Constitution* and the 1791 *Bill of Rights* ï all manifest a Biblical character.

This is further evidenced by the always significant and in some cases overwhelmingly Christian commitment of the first U.S. Presidents ï Washington, Adams, Jefferson and Madison. The influence of Franklin and Jefferson, though not orthodox, was not deistic (as frequently misalleged). For constitutional government in the U.S. Christian Republic, though rightly non-denominational, was also trinitarian in nature. Indeed, the First Amendment of 1791 ï while rightly prohibiting the federal establishment of any specific religious denomination ï clearly presupposes Trinitarian Christianity, and promotes its free exercise also in public life.

All of the above is clearly seen from the Christian derivation of the *U.S. Bill of Rights*. It is further seen from the overwhelming commitment to Christianity of the first U.S. Presidents. It is also seen from the 1788 First Synod of the Presbyterian Church in the United States of America ï which indeed Anti-Erastianly yet also very

Christocratically upheld the concept of a Christian State also for the Federal Government of the U.S.A.

It could still be seen almost a century thereafter, in the 1860*f* Southern Presbyterians. For men like Dabney upheld capital punishments for capital crimes, and men like Thornwell pressed even for the explicit acknowledgment of the Lord Jesus Christ as the Supreme Head of the American Confederacy. It is also to be seen even in the *post-bellum* Christian statesmanship of Northern Presbyterian Constitutionalists like Rev. Professor Dr. A.A. Hodge. But most relevantly of all, it can be seen quite centrally ï as we shall demonstrate in our following chapter ï also in hosts of legal opinions throughout the history of the United States.

CH. 40: U.S. COMMON LAW DURING THE 19TH AND 20TH CENTURIES

In Colonial America, Godôs Decalogue was the law of the land. Indeed, in the 1736 Virginian case of *Anderson* v. *Winston*, it was held that Godôs Moral Law was ñeternally and universally binding upon mankind.ò

This remained the situation also from the time of the 1776 War for Independence until well after the enactment of the 1787 *U.S. Constitution*. Indeed, even after the 1789 French Revolution and until well into the nineteenth century ï the Biblical foundations of American Common Law continued to dominate decisions even in the U.S. Supreme Court.

Then too, Godôs Word was not infrequently quoted in forensic argumentation. There is no doubt that America then was exactly what her courts themselves frequently claimed she was ï a Christian country.

The famous 1899 West Virginia case of *Moore* v. *Strickling* (46 W.Va. at 515) cited with approval Judge Dillonôs 1894 *Commentary on the Laws and Jurisprudence of England and America*. Dillon (1831-1914) had declared: ñNot less wondrous than the revelation of the starry Heavens (and much more important)...is the Moral Law.... This Moral Law holds its dominion by divine ordination over us all, from which escape or evasion is impossible. This Moral Law is the eternal and indestructible sense of justice and right, written by God on the living tablets of the human heart and revealed in His Holy Word.ò

Moore's case argued that, without the Decalogue, society disintegrates. ñThese Commandments which, like a collection of diamonds, bear testimony to their own intrinsic worth ï in themselves appeal to us as coming from a superhuman or divine source; and no conscientious or reasonable man has yet been able to find a flaw in them. Absolutely flawless, negative in terms but positive in meaning, they easily stand at the head of our whole moral system; and no nation or people can long continue a happy existence, in open violation of them.ò

Very significantly, Thomas Jeffersonôs 1800*f* Vice-President of the United States, Aaron Burr ï when put on trial for treason ï was found not guilty. U.S. Chief Justice Marshall decided the case according to the Common Law ï referring to that ñgenerally recognized and long-established law which forms the substratum of the laws of every state.ò See *United States* v. *Burr* ï and Robertsonôs *Report of the Trial of Aaron Burr*.

Also in the case *United States* v. *Madison* (2 Dallas 384 & Cranch. 32), Mr. Justice Chase observed: ñIf the United States can...be supposed to have a Common Law, it must I presume be English Law.... It is coeval probably with the formation of a limited government; belongs to a system of Universal Law; and may as well support the assumption of...the Common Law of England.ò

The tension in American Judgments during the nineteenth and twentieth centuries

Nevertheless, the principles of the French Revolution of 1789 almost immediately began to influence even America. At first, this was only on a small scale. For America was then still a Calvinistic country, and stoutly resisted humanistic innovations ï even in the Northern States.

Thus, as late as in the 1859 Massachusetts case of *Commonwealth* v. *Cooke* ï the teaching of the Decalogue was declared permitted also in the public schools. However, with the then constantly-increasing plague of New England Transcendentalism and Unitarianism, an increasing change began to occur especially just before 1860.

Thereafter, and notably since the defeat of the South in the 1861-65 War of Northern Aggression ï there have been dramatic and radical amendments to the *U.S. Constitution*. Yet even deep into the twentieth century, ongoing respect for the Bible and the Common Law could still be seen. Indeed, even in that most secularized of all the Union States ï Abraham Lincolnôs Illinois ï the singing of Christian hymns used to be permitted. This was the situation right down till and into the twentieth century. See *People* v. *Board of Education* (1910).

In 1912, Texas Judge Jenkins called the óGolden Ruleô (Matthew 7:12) the most perfect expression of the Moral Law. ñBefore human statutes were written, before the [Mosaic] Law was given at Sinai, the Law of God had written upon the hearts of all men the injunction not to harm his fellow man.ò *Furst-Edwards & Co*. v. *St. Louis Southwestern R. Co*. (1912) 146 SW at 1024-28.

In 1914, the *Washington Law Review* insisted that America ñis a religious nation, a Christian peopleò (Barnard at 772). Indeed, in 1915, the *Harvard Law Review* (612) cited the Lutheran Reformer Melanchthon as authority that the whole of Natural Law ï perhaps the chief basis of the *U.S. Declaration of Independence* ï can be deduced from the Ten Commandments.

Even as late at 1916, it was argued that human law is the offspring of Divine Law, and that the municipal laws of nations were originally no other than the rules of being ï given us by God. See the Oklahoma case *Equitable Life Assurance Society* v. *Weightman*, 61 Okla. 106 & 160. In the 1918 Iowa case of *Knowlton* v. *Baumhover*, Judge Weaver ordered the Lordôs Prayer might indeed be read in public.

In the 1921 California case of *Hardwick* v. *Fruitridge School District*, a regulation requiring dancing was struck down as inapplicable to the children of such taxpayers whose religious convictions were offended thereby. In the 1943 case of *Board of Education (West Virginia)* v. *Barnette*, it was argued that the religious consciences of some parents rebel at the absence of any Bible-reading in the schools.

Nevertheless, a very dramatic change has occurred in the United States since the end of World War I in 1918 ï a change which became increasingly apparent especially since the end of World War II in 1945. For today ï under the dominant modern religion of anti-christ-ian óHumanismô (*sic*) ï the Bible has now been banished from the U.S. Public Schools.

This modern Humanism, it should be recognized, is the Jacobite product of the anti-christ-ian French Revolution of 1789. As the *Californian Law Review* noted already in 1921 ï a new State Law then forbidding Bible-reading in public schools ñharks back to a conception of religious liberty that is Jacobinical rather than American.ò

This dramatic swing to the left in the legal history of America, has gained momentum especially since the Second World War. This has been reflected in dreadful U.S. Supreme Court decisions such as: *Madalyn Murray O'Hair's case* (which banned prayer and Bible-reading from the nationôs public schools in 1963); *Everson* v. *Board of Education* (which in 1947 per Justice Hugo L. Black developed the novel notion of ña wall of separation between Church and Stateò); *Furman* v. *Georgia* (which in 1972 declared the death penalty óunconstitutionalô); and especially *Roe* v. *Wade* (which in 1973 turned a blind eye at the cruel murders of innocent tiny Americans).

Yet Biblical Religion has refused to die in the United States. Thus, we also find it stated by U.S. Supreme Court Justice George Sutherland in the 1931 case of *U.S*. v. *MacIntosh*: ñWe are a Christian people...acknowledging with reverence the duty of obedience to the will of God.ò

Also in *Zorach* v. *Clauson*, the 1952 U.S. Supreme Court declared that ñour institutions presuppose a Supreme Being.ò Indeed, in *Marsh* v. *Chambers*, the 1983 U.S. Supreme Court still upheld the time-honoured practice of having chaplains open Sessions of State Legislatures with prayer.

The onslaught of humanism has been ferocious indeed. Yet even at the end of the twentieth century, the Bible and Common Law were still alive and alert ï if not wholly well ï also in the United States of America.

Early American Judgments on the Christian Common Law character of the U.S.A.

The abiding obligatoriness of the Common Law is seen not just in the *Bill of Rights* of the *U.S. Constitution* and also in that of each of the original constituting States. It is apparent even in the U.S. Federal Courts themselves ï and is re-inforced by the opinions of various early American Judges.

This can be seen not only during the 1777-87 regime under the **Confederation** of the United States of America. It can be seen further also under the 1787*f* articles of the (con)federal **Union** created by the *U.S. Constitution*. Indeed, it is seen also from the appointment of the French-American Calvinist John Jay as the first Chief Justice of the U.S.A.

Then, in 1799, also Justice Chase gave a very important decision in the Maryland case of *Runkel* v. *Winemiller*. ñBy our form of government,ò[1] he explained, ñthe **Christian** religion is the **established** religion.ò

[1] *Runkel* v. *Winemiller* (1799) 4 Harris & McHenry (Md.) 429 1 AD 411 & 417.

Similarly, in 1802, while speaking of the Christian system, Judge Nathaniel Freeman charged the Massachusetts Grand Jury:[2] ñThe laws of the Christian system as embraced by the Bible must be respected as of high authority in all our courts.... It cannot be thought improper for the officers of such government [as ours] to acknowledge their obligation to be governed by its rules.ò Our government ñoriginated in the voluntary compact of a people who in that very instrument profess the Christian religion.ò Indeed, America ñmay be considered not [like pre-imperial Rome] as a pagan but as a Christian Republicò rather akin to the Old-Hebrew Commonwealth.

Practising Attorney Dr. J.W. Whitehead (Jur. Dr.) rightly insists in his book *The Second American Revolution*[3] that Early-American Jurists had great reverence for the Common Law. Said 1803 U.S. Supreme Court Chief Justice John Marshall: ñThe government of the United States has emphatically been termed a government of laws and not of men.ò See *Marbury* v. *Madison*.[4]

In *Avery* v. *People of Tryingham* (1807), Mr. Justice Sedgwick gave a resounding opinion. He insisted that the Massachusetts Constitution ñin language strong and energeticò had established ñthe religion of Protestant Christians.ò[5]

Similarly, in 1811, Justice Allen of the Supreme Court of New York delivered the unanimous opinion that ñChristianity is part of the Common Law of this State.... It is entitled to respect and protection, as the acknowledged religion of the people.ò[6]

The Christian Common Law viewpoint of Chancellor and Chief Justice James Kent

Also Chancellor James Kent was so deferential to the general oracles of the Common Law, that he would listen to them with delight and instruction.[7] Yet Chancellor Kent not only wrote about Common Law theory. He also applied the Common Law in the practical decisions of his court.

For example, in 1811 there came an appeal from a lower New York Court to Chancellor Kent ï the case of *People* v. *Ruggles*. After heavily partaking of liquor in a local tavern, Ruggles had been accused of standing before its door ï and in a loud voice blaspheming God, Christ, and the Holy Spirit. Kent upheld the stiff fine that had been levied on Ruggles ï citing Sir William Blackstoneôs statement that open blasphemy is an offence at Common Law.

Kent reasoned that the ñpeople of this State [New York], in common with the people of this country [the United States of America], profess the general doctrines of

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[2] Judge Nathaniel Freemanôs Charge to the Grand Jury of General Sessions of the Peace, holden at Barnstable Mass., March Term 1802. Cited in H.B. Clarkôs *op. cit.* pp. 44f at its nn. 26 & 38, and also in *Our Chr. Herit.* p. 5.
[3] J.W. Whitehead: *The Second American Revolution*, David C. Cook, Elgin Ill., 1984 ed., p. 197.
[4] *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 & 163 (1803).
[5] *Avery* v. *People of Tryingham* (1807) 3 Mass. 160 3 AD 105.
[6] Cited in A.A. Hodgeôs *Chr. Found. of Amer. Pol.*, p. 45.
[7] J.W. Whitehead: *op. cit.*, p. 197.

Christianity.ò Therefore, publically ñto scandalize the Author of these doctrines...is a gross violation of decency and good order.ò

Kent noted that the *New York Constitution* guarantees ñthe free, equal and undisturbed enjoyment of religious opinion ï and the free and decent discussion on any religious subject.ò But to revile with contempt ñthe religion professed by almost the whole communityò ï was to commit an offence ñinconsistent with the peace and safety of the State.ò

Indeed, Chief Justice Kent then further declared: ñWe are a Christian people, and the morality of the country is deeply ingrafted upon Christianity.ò[8] Not surprisingly, even ten years later, the 1821 New York State Convention declared that ñthe Christian religion is the law of the land, and to be preferred over all other religions.ò[9]

Also in Pennsylvania, in 1822 a blasphemy conviction was obtained against a man who alleged that the ñHoly Scriptures were a mere fableò and ñcontained a great many lies.ò Held the Court: ñChristianity, general Christianity, is and always has been a part of the Common Law of Pennsylvania.ò[10] Also Judge Parsons of Massachusetts delivered an opinion to the same effect.[11]

Then there are the various sabbath cases. Thus, in the 1826 case of *People* v. *Ramsay*, Justice Heffernan of New York declared:[12] ñSunday is a day set apart for cessation from all secular employment by the Christian World.... Viewed merely from a legal standpoint, it is a day of rest.ò

Similarly, also Justice Appleton of Maine declared in the 1854 case of *Donahoe* v. *Richards*[13] that ña State may establish a day of rest as a civil institution.ò See too: the 1829 New York case of *People* v. *Mantel*; the 1858 California case *ex parte Newman*; and the 1866 Illinois case *Scammon* v. *Chicago*.[14]

Kent published his *Commentaries on American Law* in four volumes, between 1826 and 1830. Those *Commentaries* were considered the most towering achievement of American law up to that date. They were thoroughly infused with the principles and precedents of the Common Law.

Even the Northerner and New Yorker Kent foreshadowed the possibility, and indeed certainly the permissibility, also of secession itself ï from a morally depraved Union (such as the 1776 United Kingdom or the 1860 United States). For Kent declared: ñWhen the government established over any people becomes incompetent to fulfill its purpose, or destructive to the essential ends for which it was instituted ï it is

[8] *People* v. *Ruggles* (1811) 8 Johns. 290 & 295.
[9] See H.J. Bermanôs paper *Interaction of Law and Religion* (in *Capital University Law Review* 8:3, 1979).
[10] *Updegraph* v. *The Commonwealth*, 11 Serg. & Rawl. 393, 394, 399 (Pa. 1822).
[11] Thus A.A. Hodgeôs *Chr. Found. of Amer. Pol.*, p. 45. Hodge gives the date of the Pennsylvania case as 1824.
[12] *People* v. *Ramsay* (1826) 128 (NY) Misc. Rep. 39 & 217 NYS 799.
[13] *Donahoe* v. *Richards* (1854) 38 Me. 379 61 AD 256 & 273.
[14] *People* v. *Mantel* (1829) 134 (NY) Misc. Rep. 529 & 23 6 NYS 122; *Ex parte Newman* (1858) 9 Cal. 502 & 520; *Scammon* v. *Chicago* (1866) 40 Ill. 146 & 148.

the right of that people...to throw off such government and provide new guards for their future security....

ñThe State governments would clearly retain all those rights of sovereignty which they had before the adoption of the *Constitution*...and which were not by that *Constitution* exclusively delegated to the Union.... For on the concurrence and good will of the parts, the stability of the whole depends.ò Kentôs *Commentaries on American Law* (I pp. 195*f*, 363 & 369).

So Kent viewed American Common Law as being anchored in Christianity. Precisely the same stance as to the Christian nature of American Common Law, was taken also by one of Kentôs even more illustrious contemporaries. We mean Supreme Court Justice Joseph Story.

The Christian Common Law views of U.S. Supreme Court Justice Joseph Story

Judge Joseph Story was appointed by President Madison to the U.S. Supreme Court in 1811, when only thirty-two. Story noted the Biblical basis of the Common Law in his inaugural address as Professor of Law at Harvard in 1829. There, he remarked: ñThere never has been a period of history in which the Common Law did not recognize Christianity as lying at its foundation.ò

Indeed, in 1833, Story further declared that the ñobject of the [First] Amendment was not to countenance much less to advance Mahometanism or Judaism or infidelity by prostrating Christianity ï but to exclude all rivalry among Christian sects.ò[15] Here, Story cannot be dismissed as a bigoted segregationist from the South. For he was in fact from the North ï and also an outspoken opponent of slavery.

Story even wrote to an English judge some years later:[16] ñWhat nobler triumph has England achieved, or can she achieve ï than the proud fact that her Common Law exerts a universal sway over this country, by free suffrage of all its citizens? That every lawyer feels that Westminster Hall is in some sort, his own?!ò Indeed, in the 1844 case of *Vidal* v. *Girard's Executors*, U.S. Supreme Court Justice Story stated[17] ï in a unanimous decision ï that ñthe Christian religion is part of the Common Law of Pennsylvania.ò

Story put it very well also in his *Institutes of International Law*. There he wrote:[18] ñOne of the beautiful traits of our municipal jurisprudence is that **Christianity is part of the Common Law** ï from which it sees the sanction of its rights; and by which it endeavors to regulate its doctrine.ò

The New York Legislature declared in 1838: ñThis is a Christian nation.... **Our government depends for its being, on the virtue of its people – on the virtue that**

[15] H. Berman: *The Religious Clauses of the First Amendment in Historical Perspective* (in *Religion and Politics*, 1989, p. 63).
[16] *Viz.*, in 1840.
[17] *Vidal* v. *Girard's Executors* (1844) 2 Howard (U.S.) 127 & 198, 11 L ed. 205 & 234.
[18] Cited in A.A. Hodgeôs *Chr. Found. Amer. Pol.*, p. 45.

has its foundation in the morality of the Christian religion.... That religion is the common and prevailing faith of the people.ò[19]

It was the same even in the Quaker State. In the 1855 Pennsylvania case of *Mohney* v. *Cook*, the Court held:[20] ñThe declaration that Christianity is part of the law of the land is a summary description of an existing and very obvious condition of our institutions. We are a Christian people.... Even those among us who reject Christianity, cannot possibly get clear of its influence or reject those sentiments, customs and principles which it has spread among the people ï so that, like the air we breathe, they have become the common stock of the whole country and essential elements of its life.ò

In California, Field J. declared in *ex parte Newman* (1858),[21]: ñThere is no nation possessing any degree of civilization where the rule is not observed, either from the sanctions of law or the sanctions of religion.... Christianity is the prevailing faith of our people. It is the basis of our civilization. Its spirit should infuse itself into and humanize our laws.ò

Again, in the 1859 Massachusetts case of *Commonwealth* v. *Cooke*, the teaching of the Decalogue was declared permitted in the public schools. Indeed, also in the 1861 New York case of *Lindemuller* v. *The People*, the Court said:[22] ñChristianity may be conceded to be the established religion.ò

It will be noted, however, that all of the above decisions were taken before the 1861-65 War of Aggression ï promoted by the then-unitarianizing North against many of the States in the Christian South. That event not only led to the defeat of the still-trinitarian Southland. Far worse, it led also to great changes in the *U.S. Constitution* itself ï changes neither approved nor foreseen by the Founding Fathers.

1837*f* North-South tensions begin warping Christianity and U.S. Common Law

In 1837, Marylandôs Taney, fifth Chief Justice of the United States, rightly insisted that ñwe adopt and adhere to the rules of construction known to the English Common Law...without exception.ò[23] Taney felt the policing power of any American State entitled it to make reasonable regulatory laws ï even if they appeared to override provisions of the *U.S. Constitution*.

However, North-South tensions on issues like Statesô rights and secession and slavery now increasingly began to obscure both the Common Law and the *U.S. Constitution*. The aftermath of the 1789 French Revolution now radicalized ï in France, Germany and even Belgium.

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[19] Cited in A.A. Hodge: *Chr. Found. Amer. Pol*., p. 42.
[20] *Mohney* v. *Cook*, (1855) 26 Pa.St. 342 & 67 A.D. 419.
[21] *Ex parte Newman*, (1858) 9 Cal. 502, 520 & 523.
[22] *Lindemuller* v. *The People*, 33 Barb. 548 & 562 (N.Y. 1861).
[23] Cited in *The Plain Truth*, Wilke, Melbourne, Sept. 1987, pp. 5f.

By 1848, thwarted European Communist Revolutionaries went underground, some migrating even to the Northern States of the U.S.A. In addition, especially through New England Transcendentalism, the Northôs own native apostasy from the Triune God had created a fertile field for the seeds of socialism.

In this way, wrote Rev. Professor Dr. Robert L. Dabney,[24] the Northern United States swiftly became infiltrated by ñexcrementò from the leftist ñsewerò of Europe. Indeed, some European Communist refugees even became Yankee Generals.

During the eighteen-fifties, those leftist migrants to the Northern United States promoted hatred of Christian Common Law (especially south of the Mason-Dixon line). By 1855, also homegrown Unitarian Yankee radicals were agitating for the destruction of the Trinitarian Christian Southland. This precipitated, among other developments, also the 1857 *Dred Scott case*.

Yet there, even U.S. Supreme Court Justice Taney held that the federal Congress of the United States could not forbid slavery in the ñTerritoriesò of the United States ï and that orders for the extradition of those suspected of being criminals, including slaves **illegally** fleeing from one State to another, remained enforceable. See the *U.S. Constitution*, Article IV Section 2.

This decision infuriated Lincoln. He became even more enraged in 1861, during the War of Northern Aggression, when the same Non-Confederate United States Chief Justice Taney in *ex parte Merryman* ruled against President Lincolnôs **suspension of Common Law rights under *habeas corpus***.

There, the Unionôs Commanding General in Maryland had refused to respect an issued writ of *habeas corpus* obtained by the Marylander Merryman, who had been imprisoned on suspicion of favouring the Confederacy. When that General alleged President Lincoln had enjoined him to suspend the writ, Taney held that Article 1 Section 9 of the *U.S. Constitution* gave that power not to the President but to Congress alone ï so that Lincolnôs action had been an unwarranted threat to the liberties of all Americans.

Dictator Lincoln, however, ignored Taneyôs decision. Instead, the Northern President continued to adhere to the same unconstitutional practice ï throughout his War of Aggression.[25]

The constitutional right of the several States to secede from the U.S.A.

Now none of the original thirteen American Colonies ever questioned one anotherôs right to secede from the overbridging government of Great Britain, in 1776. And thereafter, none of them ever regarded their own ñperpetual Unionò with one another under the 1778 *Articles of Confederation* as absolutely irrescindable by any of the thirteen States ï until the outbreak of the 1861-65 War of Northern Aggression.

[24] R.L. Dabney: *Life of Gen. (Stonewall) Jackson*, Sprinkle, Harrisonburg Va., 1976 rep., pp. 159-61 (ñthe *colluvies gentium*ò and ñthis *cloaca populorum*ò).
[25] See arts. *Taney, Roger Brooke* and *Merryman, ex parte* (in *NICE* 14:4354 & 22:6642).

Indeed, it was from the 1778 Union or Confederation that each of the thirteen constituting States implicitly seceded ï when they one by one abandoned that original ñFederal Governmentò (as Alexander Hamilton rightly called it), and explicitly entered into a new (con)federation in terms of the later 1787 *Constitution of the U.S.A*. The latter became operational when the ninth of the thirteen States itself ratified that new *Constitution*.

It was precisely the implicit secession of the ninth State from the original ñFederal Governmentò of 1778*f*, and its explicit entry into the new Union of 1787*f*, which validated the latter. *A fortiori*, it was not just nine but fully thirteen States which explicitly seceded from the 1787*f* Union and later explicitly entered into the Confederate States of America in 1861 ï as an updated reconstitution of the original 1778 *Articles of Confederation* of several of the free States in North America.

Even under the 1787 *Constitution*, the several States had at least the implicit right to secede. Indeed, that right is stated almost explicitly in the language of Article IV Section 1 of the 1787 *Constitution of the U.S.A*.

This provides that ña person charged in any State with treason, felony or other crime who shall flee from justice and be found in another State shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.ò

This clearly means that **also a slave** charged with having committed whatever felony anywhere within the United States, who then fled to any anti-slave State of the Union ï would need to be handed over for trial to the State where the felony was alleged to have been committed. Compare, in the **New** Testament, the case of the runaway slave noted in Philemon 10-12.

However, many (mostly Northern) States broke this requirement of Holy Scripture ï and indeed of the Newer Testament itself and also of the *U.S. Constitution* ï whenever they themselves condoned the so-called **Underground Railway's** capital crimes of kidnapping slaves, or refused to remit runaway slaves to those *ante-bellum* States which permitted slavery. In this way, such remiss States themselves **broke the Constitutional Compact** with all of the other States of the Union ï long before the South itself unwillingly seceded.

Upon such breach of contract by the renegade North, it fractured the *Constitution* itself. It also nullified it, save at the discretionary pardon of the other States. This underlines the latterôs own inherent right, if they wished, to secede from that northernly-vitiated Compact.

Yet there were also other grounds for secession. In 1803, the Massachusetts Legislature almost seceded from the Union over the acquisition of Louisiana ï and later again in 1845, over the Unionôs 1844 annexation of Texas (see at endnotes 30*f* below).

Massachusetts herself declared in 1803 ñthat the annexation of Louisiana to the Union, transcends the constitutional power of the Government of the United States. It had constituted a new [1803] Confederacy ï to which the States united by the former

[1787*f*] Compact are **not bound to adhere**.ò[26] Let the modern U.S., and the European Union with its obsession to co-opt Islamic Turkey into it, note well!

In 1814, several of the Eastern States ï upon the call of Massachusetts ï assembled by their deputies in New England at the *Hartford Convention*. These States were much disaffected toward the Federal Administration. During Americaôs 1812*f* international war against Britain, they conceived their interest to be improperly sacrificed by the policy then being pursued.

So they issued an address to the Federal authorities in Washington, declaring: ñIt is as much the duty of the State authorities to watch over the rights reserved, as of the United States to exercise the powers which are delegated.... States which have no common umpire, must be their own judges; and execute their own decisions.ò

On July 4th 1821, U.S. President John Quincy Adams declared:[27] ñThe highest glory of the American Revolution, was this. It connected, in one indissoluble bond, the principles of civil government with the principles of Christianity.... From the day of the *Declaration*...they [the American people] were bound by the laws of God which they all, and by the laws of the Gospel which they nearly all, acknowledged as the rules of their conduct.ò

Yet during the next decade, this Northerner (President Adams) dutifully though reluctantly drew up a petition for the dissolution of the Union. For the petitioner had a right to make the request; and it was the duty of the officer concerned ï *viz*. the U.S. President himself ï to present it.

Indeed, in a later address before the New York Historical Society in 1839, that then Ex-President Adams roundly declared:[28] ñIf the day should ever come...when the affection of the people of these [United] States shall be alienated from each otherò ï then ñfar better will it be for the people of the dis-United States to part in friendship from each other than to be held together by constraint. Then will be the time for reverting to the precedents which occurred at the formation and adoption of the *Constitution* ï to form again a more perfect Union by dissolving that which could no longer bind, and to leave the separated parts to be re-united by the law of political gravitation to the center.ò

Important is the Nullification Controversy which broke out over the Tariff of 1828 (which was designed to promote Northern industry at the expense of Southern agriculture). Standing on the principles of Jefferson of Virginia and Calhoun of South Carolina, the latter State declared the Tariff void.

In 1833, Calhoun warned President Jackson against coercing South Carolina into obedience. Such forceful measures, he added, would be the bond between master and slave. It would, we ourselves may add, be analogous to the only-recently broken bond between the Soviet Union on the one hand ï and Lithuania and Latvia and Estonia and Armenia and Chechnya *etc*. on the other.

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[26] In A.H. Stephens: *A Constitutional View of the Late War Between the States*, National Pub. Co., Philadelphia, 1868, I p. 510.
[27] Cited in *Our Chr. Herit.*, p. 5.
[28] Stephens: *op. cit.*, I, pp. 527f.

Nobody was ever more outspoken in preservation of the Union than the great Massachusetts lawyer Senator Daniel Webster. Yet he too told[29] the U.S. Senate in 1833 that ñwhere sovereign communities are parties ï there is no essential difference between a compact, a confederation, and a league.... If, in the opinion of either party, it be violated ï such party may say that he will no longer fulfil its obligations on his part, but will consider the whole league or compact at an end.... Upon this principle the Congress of the United States in 1798 declared null and void the treaty of alliance between the United States and France, though it professed to be a perpetual alliance.ò

Accordingly, conceded Webster, a situation could arise where a constituent State opines it is the duty of Federal Congress to pass and maintain laws ï but that by the Federal Congress omitting to pass and maintain them, the constituting Stateôs own Constitutional obligation would be grossly disregarded. The Federal Government herself would then have relinquished the power of protection owed by her to the constituting State.

ñIf Congress now refuse to exercise it, Congress does...break the condition of the grant and thus manifestly violates the Constitution.... Virginia may secede, and hold the fortresses in the Chesapeake.... Louisiana may secede, if she choose; form a foreign alliance; and hold the mouth of the Mississippi.... If Carolina now shall effectually resist the laws of Congress; if she shall be her own judge, take her remedy into her own hands..., she will relieve herself from a paramount power as distinctly as the American colonies did the same thing [from Great Britain] in 1776.ò

Thus the eminent Yankee Senator Daniel Webster. Yet *a fortiori*, one should add with Admiral Raphael Semmes (Captain of the *CSS Alabama*): ñThe thirteen **original** Colonies...exercised the right of **revolution** when **they** withdrew their allegiance from the parent country. **Not so** the Southern States when they withdrew from their copartnership with the Northern States! **They** [the Southern States] exercised a higher right.... They were sovereign, equally with the Northern States, from whom they withdrew ï and they exercised, as they believed, **a peaceful right** instead of a right of revolution!ò

The 1825 Northerner William Rawle (LL.D.) on the nature of the *Constitution*

Dr. William Rawle (LL.D.) was born in Pennsylvania in 1757. He was quite devoid of sympathies toward the South. Yet even he was honest enough to defend the right (though not the desirability) of secession from the American Union, on the part of any and all aggrieved States.

Rawle was elected to the Pennsylvania State Legislature in 1789. He was a personal friend of Washington and Franklin. In 1791, Dr. Rawle became Attorney for Pennsylvania. He also became President of the Maryland Society for Promoting the Abolition of Slavery in 1818 ï until his death in 1836.

In 1825, Rawle wrote his famous book *A View of the Constitution of the United States of America*. Both C.S.A. President Jefferson Davis and Confederate General

[29] *Ib.*, pp. 298f, 308f & 497f.

Fitzhugh Lee insisted it was the legal texbook at West Point also when Generals Robert E. Lee and Stonewall Jackson and Joseph E. Johnston were cadets there. See W.D. Kennedy & J.T. Kennedy: *Foreword to Rawle* ï in the 1993 edition of Rawleôs *View of the Constitution* (pp. 4*f* & 15). Very significantly, **though an anti-slavery Northerner, Rawle defended the constitutional right of every State to secede from the American Union** (pp. 9*f*).

In his introduction, Rawle observed of North America before the coming into being of the United States: ñThe common danger suggested the idea of an union for common defense. A precedent for a congress of the provinces was not wanting. In the year 1753 [at the start of the French and Indian War], deputies from several of them had assembled at Albany for a different purpose. The apprehensions of a war between France and Great Britain, in which...the colonies of each would be necessarily involved, led to this assembly.ò

In his first chapter (on ówThe Constitution of the United Statesô), Rawle further noted: ñAlthough the principles of a confederation are...relinquished in the manner of giving their votes, it is preserved in the equality of representation of the States.... **Every State must be viewed as entirely sovereign in all points not transferred by the people who compose it to the government of the Union, and every exposition that may be given to the *Constitution* inconsistent with this principle must be unsound**.ò

Toward the end of his ninth chapter (titled óOf the enumerated Powers of Congressô), Rawle broached the important subjects of the functioning of the Common Law and the Law of Nations within the United States. There he declared: ñFelony is a term derived from the Common Law of England, and when committed on the high seas amounts to piracy.... The Law of Nations forms a part of the Common Law of every civilized country. Violations of it may be committed as well on land as at sea.... While the jurisdiction of the separate states is admitted to be withdrawn from them in regard to acts committed on the sea, it does not seem to follow that it is superseded as to those on shore.ò

Dr. Rawle on the nature of the *Bill of Rights* in the *U.S. Constitution*

Dr. Rawleôs tenth chapter is titled óOf the restrictions on the Powers of Congressô *etc*. There, he dealt with the *U.S. Bill of Rights*; the residual powers of the States and their people; and **the <u>resumable</u> powers of the States delegated to the Union**.

Firstly, in there dealing with the slave trade, the anti-slavery Northerner Rawle rightly declared: ñIt was foreseen that the general power to regulate commerce would include a traffic now justly reprobated by most Christian nations. But some interests and opinions were to be respected.... While the power to abolish the slave trade entirely was indirectly conceded, the exercise of it till the year 1808 otherwise than by laying a tax or duty of ten dollars on each person imported, was prohibited.ò

Thus, the Northerner Rawle here admitted that the 1787 *U.S. Constitution* prohibited Congress from abolishing the importation of fresh slaves until at least 1808. (Indeed, the *Constitution* did not in 1787 explicitly ban such further importation even after 1808.)

Secondly, in dealing with ñthe writ of *habeas corpus*,ò Rawle rightly remarked: ñIf Congress never made any provision for issuing writs of *habeas corpus*, either the State judges must issue them or the individual be without redress.... This writ is believed to be known only in countries governed by the Common Law, as it is established in England.... In this country, it cannot be suspended even in cases of rebellion or invasion ï unless the public safety shall require it.ò

Thirdly, ñno bill of attainder nor *ex post facto* law shall be passed. Bills of attainder are those by which a person without a judicial trial is declared by the legislature to be guilty of some particular crime. The statement alone shows the atrocity of the act. Such laws are never passed but in times of wild commotion or arbitrary misrule.ò

Fourthly, Rawle then dealt with the 1791 *U.S. Bill of Rights*. He declared: ñOf the amendments already adopted...the whole are highly valuable....

ñThe First Amendment prohibits Congress from passing any law respecting an establishment of religion, or preventing the free exercise of it.... Individual States [such as Maryland and Pennsylvania and South Carolina] whose legislatures are not restrained by their own constitutions, have been occasionally found to make some distinction.ò

Two States in the Union had constitutions with exclusive provisions regarding religion. In Maryland, no one who did not believe in the Christian religion could be admitted to an office of trust or profit. In North Carolina, the exclusion was extended to all who denied the truth of Protestantism.

The same continued to be the case also in New Hampshire, throughout the nineteenth century and until a decade after the First World War. Indeed, in Rawleôs own Pennsylvania, even in 1776 only Christians were admitted to public office ï and also thereafter, in 1825, belief in God was required to seek and to hold public office there.

Explained Rawle: ñIn tracing the annals of some of the provinces, it is pleasing to observe that in the very outset their enlightened founders publicly recognized the perfect freedom of conscience. There was indeed...the **occlusion** of **public offices** to **all but Christians**, which was the case in **Pennsylvania**....

ñIn the constitution adopted by that State in 1776, the same...was retained ï but in her present constitution nothing abridges...the original declaration. Both the elector and the elected are entitled, whatever their religious tenets may be, to the fullest enjoyment of political rights ï **provided in the latter description the party publicly declares his belief in the being of a God and a future state of rewards and punishments**....

ñThe liberty of speech and of the press may be abused, and so may every human institution.... **The punishment of dangerous or offensive publications which on a fair and impartial trial are found to have pernicious tendency, is necessary for the peace and order of government and religion which are the solid foundations of civil liberty**....

ñThe preceding article expressly refers to the powers of [the Federal] Congress alone.... They form parts of the declared rights of the people, of which neither the State powers nor those of the Union can ever deprive them.... The constitutions of some of the States contain bills of rights; others do not.ò

In *Barron* v. *Baltimore* (77 Peters 243), the 1833 U.S. Supreme Court ruled that the limitations imposed by the *U.S. Bill of Rights* ñcontain no expression indicating an intention to apply them to the State governments.ò Yet added Rawle, ñ**each State is obliged, while it remains a member of the Union, to preserve the republican form of government**....

ñThe right of the people to keep and bear arms shall not be infringed.... No clause in the *Constitution* could by any rule of construction be conceived to give to Congress a power to **disarm** the people. Such a flagitious attempt could only be made, under some general pretence, by a State Legislature. But if in any blind pursuit of inordinate power, either should attempt it ï this amendment may be appealed to as a restraint....

ñIn all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed.... The residue of the article, *viz*. that the accused shall be informed of the nature and cause of the accusation, be confronted with the witnesses against him, have compulsory process for obtaining witnesses in his favor, and the assistance of counsel for his defense ï and the Eighth Article, that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted ï are founded on the plainest principles of justice....

ñThe Seventh [Amendment] applies to the United States only, and is a joint restraint on the legislative and judicial power. In trials at Common Law...the right of trial by jury shall be preserved ï and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the Common Law....

ñCongress was disabled from ever taking it away.... Neither a law can be passed by them, nor a practice adopted by the courts, to re-examine facts tried by a jury, otherwise than according to the rules of the Common Law.ò

Indeed, at the end of Dr. Rawleôs twenty-eighth chapter (titled óOf the Rules of Decisionô) he declared that ñif any Common Law was intended by the *Constitution* to be adopted as a rule of actions, it was the Common Law of England.ò For the bulk of the United States Civil and Criminal Laws originate from the English Common Law.

Dr. Rawle on the right of the States to secede under the *U.S. Constitution*

At the very end of Dr. Rawleôs book, in his chapter titled óOf the Unionô, he discussed the right of the States to secede. Conceded the anti-secessionistic Northerner Rawle: ñThe secession of a State from the Union depends on the will of the people of such State. The people alone, as we have already seen, hold the power to alter their constitution....

ñIn any manner by which a secession is to take place nothing is more certain than that the act should be deliberate, clear, and unequivocal.... The secession must in such case be distinctly and peremptorily declared to take place.... In either case, the people is the only moving power....

ñUnder the [1777] *Articles of Confederation* the concurrence of nine States was requisite for many purposes. If five States had withdrawn from that Union, it would have been dissolved. In the present constitution [1787], there is no specification of numbers after the first formation.... **A State might withdraw itself**....

ñTo withdraw from the Union is a solemn, serious act. Whenever it may appear expedient to the people of a State, it must be manifested in a direct and unequivocal manner.... A State cannot be compelled by other States to withdraw from the Union.... Therefore, if two or more determine to remain united ï although all the others desert them ï nothing can be discovered in the *Constitution* to prevent it.

ñThe consequences of an absolute secession cannot be mistaken, and they would be serious and afflicting. The seceding State, whatever might be its relative magnitude, would speedily and distinctly feel the loss of the aid and countenance of the Union. The Union, losing a proportion of the national revenue, would be entitled to demand from it a proportion of the national debt. It would be entitled to treat the inhabitants and the commerce of the separated State, as appertaining to a foreign country.ò

This book *A View of the Constitution* by the anti-slavery and anti-secessionist Northerner Dr. William Rawle (LL.D.) was the standard text-book even at West Point right down until at least 1840. Thus even Charles Francis Adams, the grandson of the Northern President John Quincy Adams, in his 1909 booklet *The Ethics of Secession*, stated that the ñofficialò use of ñRawleôs *View* as a textbook at West Point covered the time span stretching from 1825 through 1840.ò

Explained Adams: ñBetween 1825 and 1832, the question of Nullification and the Right of Secession were freely discussed among the students.... Rawleôs view was certainly accepted by the Southern students, and in all probability by the mass of both students and instructors. I have equally little question that frequent reference was made to the book.ò

The right of the States to secede from the Union was taught at West Point until at least 1840. So, as the university graduates W.D. Kennedy and J.R. Kennedy insist in the title of their 1991 book ï *The South was Right!*

The right of States to secede never challenged even from 1835 till 1861

In his 1835 book *Democracy in America*, the famous French Scholar Alexis De Tocqueville wrote[30] that the American ñUnion was formed by the voluntary agreement of the States; and these, in uniting together, have not forfeited their nationality, nor have they been reduced to the condition of one and the same people. If

[30] A. de Tocqueville: *Democracy in America*, 1835, I p. 498.

one of the States chose to withdraw its name from the contract, it would be difficult to disprove its right of doing so, and the Federal Government would have no means of maintaining its claims directly, either by force or by right.ò

In 1844, the Legislature of Massachusetts passed a series of Resolutions upon the annexation of Texas. They read in part: ñResolved...that the project of the annexation of Texas, unless arrested on the threshold, may drive these States into a dissolution of the Union.ò

In 1845 Massachusetts resolved that, ñas the powers of legislation granted in the *Constitution of the United States* to [Federal] Congress do not embrace the case of the admission of a foreign State or foreign territory by legislation into the Union ï such an act of admission would have no binding force whatever on the people of Massachusetts.ò

It is true that Massachusetts did not then secede. Yet she clearly (at that time) asserted her right to do so.

Indeed, almost at the threshold of the tragic War between the American States, the great Northern Lawyer and U.S. Ex-Senator Rufus Choate of Massachusetts still evaluated America and its several States in terms of her trinitarian framework (grounded in the Triune God). He did so, in his Independence Day 1858 *Oration on American Nationality* in Boston.

Choate was a lover of the Union, and an opponent of secession. Arguing also against segregation and in favour of a common American nationality during the nineteenth century,[31] he nevertheless conceded the priority of State rights to Federal rights.

Declared Choate: ñIt was a federative system we had to adopt [in 1787*f*].... There the States were, when we became a nation. There they had been...for one hundred and seventy years [since around 1620*f* A.D.]. Some power, it was agreed on all hands, we must delegate to the new governmentò ï from the pre-existing colonial States, to the newly-established Federal Government, in 1787.

ñBut when this was done, there were the States still! In the scheme of every Statesman, they remained a component part ï unannihilated, indestructible.... They were retained, and they were valued for it, to hinder and to disarm that centralization which had been found to be the danger and the weakness of federal liberty.ò

Mercifully, God allowed Choate to die in 1859 ï a year or so before the State rights he himself asserted, were exercised by those Southern States which then elected to resume the powers they had delegated to the Central Government in 1787-91. One cannot but wonder how Choate would have felt when the centralistic dictator

[31] Declared Rufus Choate: ñBut there is another antagonism to such a national life.... That is, the element of sections. This, too, is old; older than the States.... Black or white, as you are Americans ï dread it, shun it! ... But now, by the side of this and all antagonisms ï higher than they, stronger than they ï there rises colossal the fine sweet spirit of nationality, the nationality of America! See there the pillar of fire which God has kindled and lifted, and moved for our hosts and our ages!ò Cited in *Young Folks' Library,* Hall & Locke, Boston, 1902, XVIII pp. 69f.

Abraham Lincoln then soon sought to subjugate the recently-seceded Southern States into unwilling submission.

Causes of the 1861-65 War of Northern Aggression against the Southern U.S.A.

The reasons for the 1861-65 War, are both remote and immediate. The remote causes were the chronic but steady lapse of many Northern States into Unitarianism ï and therefore their increasing apostasy from the Trinitarian background of the 1787 *U.S. Constitution* and its 1791 *Bill of Rights*.

The immediate cause was the election (from a minority of the popular votes cast) of the anti-secessionistic Centralist Abraham Lincoln as U.S. President in November 1860. By way of reaction, this then resulted on December 20th 1860 in secession from the Union by South Carolina ï soon to be followed by Mississippi, Florida, Alabama, Georgia, Louisiana and Texas.

On February 4th 1861, the seven seceded States organized a Provisional Confederate Government and drafted the *Constitution of the Confederate States of America*. This was adopted on March 11th of that same year.[32]

When South Carolina seceded from the U.S.A. in December 1860, it at that very time adopted a *Declaration of the Causes of Secession*. This was next immediately circulated throughout the South.

That document made[33] also the following declaration. ñWe maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other.ò

In 1787-90, thirteen independent States had contracted to enter into a compact with one another (and with all others who would later affirm that compact). However, some of the States (in the North) had subsequently failed to perform their obligation toward others of them (in the South).

The 1860 South Carolina *Declaration* then goes on to ñassert that fourteen of the [then thirty-four] States have deliberately refused for years past, to fulfill their constitutional obligations.... We refer to their own statutes for the proof.ò

Yet against such eighteenth-century statutes of those fourteen Northern States, stands the earlier 1787 *U.S. Constitution* itself. That declares: ñThis constitution...shall be the supreme law of the land.ò Article VI. Continues the 1860 South Carolina *Declaration*: ñThe *Constitution of the United States*, in its fourth Article, provides as follows: ôNo person held to service or labor in one State under the laws thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labor but shall be delivered up on claim of the party to whom such service or labour may be due.ô

[32] Art. *Confederacy,* in *NICE* 6:1584.
[33] Text in Billington & Others: *op. cit.*, pp. 351f.

ñThis stipulation was so material to the compact [creating the 1787 *U.S. Constitution* in 1787*f*], that without it ï that compact would not have been concluded. The greater number of the contracting parties held slaves [in 1788], and they had previously evinced their estimate of the value of such a stipulation by making it a condition in the *Ordinance* for the government of the Territory [of the District of Columbia] ceded by Virginia [to the U.S.A.] ï which obligations, and the laws of the General Government [in D.C.], have ceased to effect the objects of the *Constitution*....

ñOn the 4th of March [1861] next, this party [of President-Elect Lincoln, rejecting Article IV of the *U.S. Constitution*], will take possession of the [U.S. Federal] Government. It has announced that the South shall be excluded from the Common Territory [D.C.]; that the judicial tribunal shall be made sectional; and that a war must be waged against slavery until it shall cease throughout the United States.

ñThe guarantees of the *Constitution* will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government or self-protection, and the Federal Government will have become their enemy.ò

States the *Historians' History of the World*:[34] ñNever was a presidential inauguration awaited with such intense interest as that of Abraham Lincoln, March 4th 1861.... He declared that he had neither the intention nor the right of interfering with slavery where it existed. He even expressed his willingness to accept the *Fugitive Slave Law*. Not a word was said as to the restriction of slavery extension.

ñBut with the question of the preservation of the Union, he was more explicit. ó**No State** upon its **own** mere motion,ô he declared, ó**can** lawfully **get out** of the **Union**.ôò Thus the *Historians' History of the World.*

All emphases in the previous two paragraphs, are our own. Every one of the undertakings given by Lincoln in the emphasized words in the previous paragraph but one, would soon be broken by the new President.

For, after his inauguration in 1861, Lincoln proceeded to condemn the secessions and initiate the use of force. He then sent units of the Union Armies into seceded South Carolina, in order to try to hold on to what previously had been federal installations there (at Fort Sumter).

When told to do so by both South Carolina and the Confederacy, the Union Garrison in Fort Sumter refused to vacate those premises in South Carolina. Thereupon Confederate General Beauregard attacked it, after both South Carolina and the Confederacy had resolved to terminate the by-then-illegal federal occupation of Fort Sumter.

This forcible termination started occurring on April 12th 1861 – **fully five months after** the Sovereign State of South Carolina had **seceded from** the unitarianizing **Union**. Three days earlier, on April 8th 1861, the Northern President Abraham Lincoln informed South Carolinaôs Governor F.W. Pickens that a naval expedition would soon provision the beleaguered garrison. So on April 12th, the Confederate

[34] *Historians' History*, XXIII p. 413.

General Beauregard started a 34-hour-long bombardment ï after which the Union forces in Fort Sumter surrendered.

At the Southôs termination of the by-then-illegal Northern occupation of Fort Sumter S.C., Lincoln immediately called up troops throughout the Union **to be used against all seven seceded States**. Consequently, Arkansas, North Carolina, Virginia and Tennessee ï fearful of a soon and similar infringement also of their own rights by the Union Armies ï themselves too joined the Confederacy.[35] Here is what brought about this latter event.

Article IV Section 4 of the 1787 *U.S. Constitution* requires the Federal Government to protect each State from domestic violence **upon application to the Federal Government by the State Legislature or its Governor**. Without such application, no federal troops could legally ever be sent into a State. For that would then constitute the military invasion of one independent and sovereign body by another.

Lincoln called for seventy-five thousand volunteers from throughout the Union States to invade South Carolina **and the six other States** which had by then seceded. The response from the Governors of several till-then-impartial States which were still within the Union, was swift.

Kentucky was Lincolnôs own Home State. Yet its Governor Magoffin replied to the U.S. President: ñI say emphatically, Kentucky will furnish no troops for the wicked purpose of subduing her sister Southern States.ò

Governor Jackson of Missouri replied: ñRequisition is illegal, unconstitutional, revolutionary, inhuman, diabolical, and cannot be complied with.ò These remarks of Magoffin and Jackson cannot be ascribed to any kind of pro-confederate prejudice. For both Kentucky and Missouri nevertheless stayed on within the Union throughout the War of Northern Aggression.

Governor Ellis of North Carolina told Lincoln: ñI regard the levy of troops made by the [Federal] Administration for the purpose of subjugating the States of the South, as in **violation of the Constitution** and a usurpation of power. I can be no party to this **wicked violation of the laws of the country**, and to this war upon the liberties of a free people. You can get no troops from North Carolina!ò

Governor Harris replied to Lincoln even more vigorously ï on behalf of the great Volunteer State. He declared: ñTennessee will not furnish a single man for coercion ï **but fifty thousand if necessary for the defense of our rights, or those of our Southern brothers**.ò Thus, no volunteers from the Volunteer State for the unitarizing Union ï but volunteers only for the trinitarian brothers in the South.[36]

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[35] Arts. *Civil War* and *Lincoln, Abraham* (in *NICE* 5:1447f & 13:3942).
[36] J. Davis: *The Rise and Fall of the Confederate Government*, Thos. Yoseloff, 1881, rep. 1958, I pp. 412f.

Robert E. Lee's assessment of Lincoln's unconstitutional and unethical actions

General Robert E. Lee was the son of the Federal Congressman General Henry Lee, sometime Governor of Virginia and George Washingtonôs right-hand man in the American War of Independence against Britain. Already a famous soldier, and probably the best officer in the U.S.A. at the time of the secessions, Robert E. Lee declined Lincolnôs unprincipled invitation for Lee himself unconstitutionally and therefore illegally to lead the unitarianizing Union Armies against the trinitarian American States of the South.

Instead, Lee chose rather to be a simple soldier under the thirteen-star flag of the South ï the Presbyterian flag of Scotlandôs St. Andrewôs Cross, suitably adapted as the Stars and Bars. Under that banner, the South set itself the task of re-asserting the independence of the sovereign States of the first American Confederacy of 1777-81 and of the *U.S. Constitution* of 1787-91. Only later did Lee ultimately become General-in-Chief of the Armies of the Confederate States of America.

Lee saw it as his duty to defend his own State of Virginia ï during the tyrannical and unconstitutional War of Northern Aggression against the Autonomous States of the American Southland. To Robert E. Lee, it was the War of Independence all over again ï but with one essential difference.

In 1776, it had been the British who had sought to deprive the Americans of their constitutional rights. In 1861, it was the Yankees who had stepped into the shoes of the former British aggressor. Indeed, the Yankees were now attempting to enslave all Americans (whether black or red or white) both North and South of the Mason-Dixon Line ï to the centralistic tyranny which had by then unconstitutionally usurped control over the U.S. Federal Government.

In the Southôs secession ï ósphere-sovereigntyô rode again. Yet sadly, after four years of determined defence, the badly-outnumbered South ultimately lost the War. So Lee finally surrendered to the Union in 1865.

The next day, Lee told his troops:[37] ñAfter four years of arduous service, marked by unsurpassed courage and fortitude, the Army of Northern Virginia has been compelled to yield to **overwhelming numbers and resources**.... You will take with you the satisfaction that proceeds from the consciousness of duty faithfully performed.... **I earnestly pray that a merciful God will extend to you His blessing and protection**. With an increasing admiration of your constancy and devotion to your country [the C.S.A.], and a grateful remembrance of your kind and generous consideration of myself ï I bid you an affectionate farewell.ò

Nevertheless, even after the defeat of the South ï outnumbered by more than four to one by the overwhelming hordes of Yankees ï the great Southern Military Leader made an important observation in 1869. ñI could take no other course,ò explained Lee, ñwithout dishonor. And if it were all to be gone over again ï I should act in precisely the same manner.ò

[37] Cited in Billington & Others: *op. cit.*, pp. 369f.

In passing, one should observe that the (1862*f*) *Quebec Conferences* (of all the mainland Canadian Provinces together with Newfoundland) ï following the 1862*f* American Federal rather than the Confederate or the British models ï endorsed the principle of a strong federal union for Canada. Indeed, in reaction against what were Canadianly perceived to be the fragmentative tendencies of the Southern Confederacy, all residual powers (not specifically allocated by Law either to the Federal or to the Provincial Parliaments) ï would belong to the Canadian Federal Parliament.

The various Colonies in the Continent of Australia, however, did **not** follow the Canadian example. Both then and forty years later, the Australians looked rather toward the **original** confederated U.S. model of 1781-87*f* as their inspiration ï in working toward their own coming Federation (in 1901). Consequently, the *Australian Constitution* would reserve to the States all rights ï save those specifically entrusted by the *Constitution* and/or by the States to the Australian Federal Government.[38]

Thornwell on the 1861 *Constitution of the Confederate States of America*

The promotion of the rapid unitarianization of northern States in the North American Continent during the first half of the eighteenth century, was **the basic issue** in their War of Aggression against the preservation and expansion of Trinitarian Christianity by the American States in the South. The disappearance of slavery was not at all the main concern either north or south of the Mason-Dixon Line. Indeed, the Union own Mrs. Mary Todd Lincoln of Kentucky (the wife of the segregationistic U.S. President Abraham Lincoln) kept all of her own slaves right through to the 1865 end of the War of Northern Aggression ï and beyond!

Furthermore, the March 11th 1861 *Constitution of the Confederate States of America* itself stated:[39] ñThe importation of negroes of the African race from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden.... [The Confederate] Congress is required to pass such laws as shall effectually prevent the same.ò

The Confederacyôs Congress itself banned further importation of foreign negroes into any Confederate State ï from any alien land, except the slave-holding areas still within the neighbouring but by-then-foreign U.S.A. Further: ñ[The Confederate] Congress shall also have power to prohibit the introduction of slaves [of whatsoever race] from any State not a member of or Territory not belonging to this Confederacy.ò

Generally, the C.S.A. made a great overall effort to reverse the trend toward the ongoing centralization of power. Statesô rights were protected to the hilt. Indeed, even the Confederate President ï unlike the despotizing U.S. Presidents at that time ï was prohibited from seeking re-election to a second term.

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[38] See art. *Constitution, Australian* (in *The Concise Encyclopedia of Australia and New Zealand*, Horwitz Graeme, Cammeray NSW, 1982, I:54,295). See too *Australian Constitution* Chapter I Part V.51 (xxxvii-viii) & Chapter V,106f.

[39] *Constitution of the Confederate States of America*, Art. I Sec. 9.

Just think of it! If Arkansas had only remained in the C.S.A., Clinton could never have been elected to a second term in the (con)federal government. And probably not even to a first term!

As Thornwell Theological Seminaryôs Rev. Professor Dr. Morton Smith rightly maintains,[40] the great nineteenth-century Southern Presbyterian Theologian Rev. Professor Dr. James Henley Thornwell himself indeed believed in the strict demarcation of Church and State on the basis of different functions and designs. Nevertheless, Thornwell also believed that since the American people were essentially a Christian people, it was appropriate for the State to acknowledge **the Lord Jesus** as Head over the nation.

Thornwell maintained that the original United States had been governed by the Biblical principles of law and justice. At the time the Presbyterian Church in the Confederate States of America was founded, he drew up a memorial to be sent to the Congress of the Confederate States ï in which an amendment to the *Confederate Constitution* of the new nation was requested.

We pray, petitioned Thornwell,[41] ñthat the *Constitution* may be amended so as to express the precise relations which the Government of these [Confederate] States ought to sustain to the religion of Jesus Christ.... All just government, is the ordinance of God.... Magistrates are His Ministers, who must answer to Him for the execution of their trust....

ñ**The worst of all possible forms of government, a democratic absolutism**..., does not scruple to annul the most solemn compacts and to cancel the most sacred obligations.ò There, ñthe will of majorities must become the supreme law.... **The voice of 'the people' is [then] to be regarded as the voice of God**.

ñWe must contemplate people and rulers as alike subject to the authority of God. His will is the true supreme.... The State is a moral person.... It must needs be under moral obligation.... It is not enough for a State which enjoys the light of Divine Revelation to acknowledge in general terms the supremacy of God. It must also acknowledge the supremacy of His Son, Whom He hath appointed heir of all things ï by Whom also He made the Worlds. To Jesus Christ all power in Heaven and Earth is committed. To Him every knee shall bow, and every tongue confess. He is the Ruler of the nations, the King of kings, and Lord of lords.

ñJesus Christ is the Supreme Ruler of the nations.... The State is lord of no manôs conscience.... By óaccepting the Scripturesô..is meant that the State may itself believe them to be true, and regulate its own conduct and legislation in conformity with their teachings... Public conscience...is clearly the sum of those convictions of right...which legislators feel themselves bound to obey in the structure of governments and the enactment of laws. It is a reflection of the Law of God....

ñWhen that Law is enunciated with authoritative clearness, as it is in the Scriptures, it becomes only the more solemnly imperative. And as the eternal rule of justice, the State should acknowledge it.... The State...has an organic life apart from

[40] M.H. Smith: *Studies in Southern Presbyterian Theology*, Van Campen, Amsterdam, 1962, p. 178.
[41] J.H. Thornwell: *Collected Writings*, Banner of Truth Trust, Edinburgh, 1974 rep., IV p. 550f.

the aggregate life of the individuals who compose it; and in that organic life, it is under the authority of Jesus Christ and the restraints of His Holy Word.

ñA **Jew** might be our chief magistrate,ò continued Thornwell in respect of the Confederate States of America, ñ**provided** he would come under the obligation to do nothing in the office inconsistent with the **Christian** Religion.... The separation of Church and State is a very different thing from the separation of Religion and the State....

ñThe overwhelming majority of the Christian people of these Confederate States...crave that a country which they love should be made yet dearer to them, and that the Government which they have helped to frame they may confidently commend to their Saviour and their God under the cheering promise that those who honour Him He will honour [First Samuel 2:30].... God is the Ruler among the nations; and the people who refuse Him their allegiance shall be broken with a rod of iron or dashed in pieces like a potterôs vessel.

ñ**Our [confederate] republic** will perish like the pagan republics of Greece and Rome ï unless we **baptize it into the Name of Christ**. óBe wise now, therefore, o ye kings; be instructed, ye judges of the earth; kiss the Son, lest He be angry!ôò Psalm 2:10-12, *cf.* Matthew 28:19 and its **triune baptism**.

Concludes Thornwell: ñThe whole substance of what we desire, may be expressed in the following or equivalent terms ï to be added to the section providing for liberty of conscience: óNevertheless we the people of these Confederate States distinctly acknowledge our responsibility to God and the supremacy of His Son Jesus Christ as King of kings and Lord of lords; and hereby ordain that no law shall be passed by the Congress of these Confederate States inconsistent with the will of God as revealed in the Holy Scriptures.ôò

Indeed, already before the War of Northern Aggression, Thornwell had in 1859 urged the Christian Church to ñbe in earnest after greater holiness in her own members ï and in faith and love undertake the conquest of the World.ò That, he knew, would ñsoon settle the question whether her resources are competent to change the face of the Earth.ò

Of course they are competent! ñIf the Church could be aroused to a deeper sense of the glory that awaits her,ò explained Thornwell,[42] ñshe would enter with a warmer spirit into the struggles that are before her. Hope would inspire ardour. She would even now rise from the dust, and like the eagle plume her pinions for loftier flights than she has yet taken.ò

Sadly, however, Thornwell was not heeded. The Confederate Congress did not incorporate his proposed amendment into its *Constitution*. Even his own Southern Presbyterian Church slowly lapsed first into eschatological irrelevance, and finally into liberalism.

Predictably, the South then lost her War for Independence. Also the Southern Presbyterian Church lost its saltiness, and was absorbed into oblivion by a twentieth-

[42] Thornwellôs *op. cit.*, II pp. 48f.

century Northern ôPresbyterianô Church which had itself previously swallowed the ôSocial Gospelô of Gospelless Socialism.

Dabney on the War of Northern Aggression against the *U.S. Constitution*

The War of Northern Aggression Between the States (1861 to 1865), is often erroneously called the American Civil War alias the Southern Rebellion. In actual fact, however, it was fought by the Southerners not in defence of slavery but precisely for the maintenance of their beloved 1787 *U.S. Constitution* ï which influential elements in the North were then bent on destroying.

As already pointed out, the first shots were fired ï by the South ï in April 1861. This was to dislodge dramatically-increased (and constantly yet-increasing) federal forces ï from continuing their illegal occupation of Fort Sumter in South Carolina, after that sovereign State had withdrawn from the unitarianizing U.S.A. fully five months earlier in December 1860.

As New York History Professor Harold C. Syrett rightly observed in his book *American Historical Documents*,[43] from the very beginning of the war Lincoln was under pressure from the radical Republicans to make slavery the principal issue. He was for a time successful in resisting such pressure.

Yet, public opinion ï as well as his desire to influence opinion abroad ï gradually forced him to abandon his original position that the primary object of the war was to preserve the Union. Consequently, he then issued his *Preliminary Proclamation [of the Emancipation of Slavery]* on September 22nd 1862 ï and the *Proclamation* itself on New Yearôs Day 1863.

The real issue in the 1861-65 War Between the American States, as the freethinker Lincoln himself knew, was not slavery. It was whether the Law of God on the one hand or the humanistic laws of New England Unitarianism on the other should dominate the whole of what till then had been the United States.

Lincoln well knew the United States had originally been constituted on the basis of the Law of God. He also well knew, or at the very least should have known, that Northern Unitarianism had been a later departure therefrom. However, we shall let Rev. Professor Dr. Robert Lewis Dabney ï the great Confederate Army Chaplain and 1853-83 Southern Presbyterian Theologian at Virginiaôs Union Theological Seminary ï tell the story.

It was the wretched atheistic French Revolution of 1789 and the unsuccessful communistic European Revolutions of 1848*f* (right after the publication of Karl Marxôs *Communist Manifesto*) which had humanistically challenged the above. It was they which had precipitated the War of Northern Aggression for the undermining of the 1787 *U.S. Constitution* and the destruction of the constitutionalistic Southern States of the American Union.

[43] H.C. Syrett: *American Historical Documents*, Barnes & Noble, New York, 1963, p. 279.

Explained Dabney:[44] ñHistory will some day place the position of these Confederate States...in the clearest light of her glory. The cause they undertook to defend, was that of regulated constitutional liberty ï and of fidelity to law and covenants ï against the licentious violence of physical power. The assumptions they resisted ï were precisely those of that radical democracy which deluged Europe with blood at the close of the eighteenth century, and which shook its throne again in the convulsions of 1848....

ñThis power, which the old States of Europe expended such rivers of treasure and blood to curb ï at the beginning of the [nineteenth] century had [after the French Revolution] transferred its immediate designs across the Atlantic..., consolidating itself anew in the Northern States of America.... Hither flowed the radicalism, discontent, crime, and poverty of Europe ï until the people of the Northern States became, like the rabble of Imperial Rome, the *colluvies gentium*ò alias ótheexcrements of the pagans.ô

ñThe miseries and vices of their early homes had alike taught them to mistake license for liberty.... They were incapable of comprehending ï much more of loving ï the enlightened structure of English or Virginian freedom.

ñThe first step in their vast designs, was to overwhelm the Confederate States of the South. This done, they boasted that they would proceed ï first, to engross the whole of the American continent; and then to emancipate Ireland, to turn Great Britain into a democracy, to enthrone Red Republicanism in France, and to give the crowns of Germany to the pantheistic humanitarians of that race.... This, in truth, was the monster whose terrific pathway among the nations, the Confederate States undertook to obstruct ï in behalf not only of their own children, but of all the children of men.

ñTo fight this battle, eleven million [of Southerners], of whom four millions were the poor Africans..., prepared to meet twenty millions [of Northerners].... Our country has to wage this strife only on these cruel terms.... The blood of her chivalrous sons shall be matched ï against the sordid streams of this *cloaca populorum*ò alias this [Northern] ósewer of mobs.ô

For a further treatment of Dabneyôs views on the above, we refer to our Addendum 45 below: *Dabney on Slavery, Secession, and the New South*. Here, we now proceed directly to Dabneyôs defence of Biblical Law and Common Law in the South ï against the increasing infidelity of the Northern States.

Dabney on historic capital punishments against the humanism of the North

Dabney the Theocrat was a firm upholder of the Anglo-American Christian Common Law then being assailed by apostates in the North. He clearly insisted:[45] ñIf

[44] R.L. Dabneyôs 1878 *Lectures in Systematic Theology* (Zondervan, Grand Rapids, 1976 rep., pp. 505, 420 & 524f); and his *Life of Stonewall Jackson*, pp. 159-61 (*cf.* too n. 24 above).

[45] R.L. Dabneyôs *Lect. in Syst. Theol.* pp. 402-414; and his *Practical Philosophy* (Sprinkle, Harrisonburg Va., 1984 rep., pp. 513f).

law subsequently has its just course, the murderer ï after his guilty success ï will have to die for it....

ñThe Scriptures expressly confirm us. The right of slaying the house-breaker clearly implies a right of self-defence. Exodus 22:2. The law of the cities of refuge contains the same right. Numbers 35:22. The effect of this permission is evaded indeed by the pretence that Mosesô legislation was imperfect and barbarous, and is corrected by the milder instruction of our Saviour. Matthew 5:39. But I [Dabney] have taught you the falsehood of this notion, and showed you that the Old Testament teaches precisely the same morality with the New.

ñAs to the delegation of the right of capital punishment for flagrant crimes, the feeble attempt has been made to represent the injunction of Genesis 9:6 as not a precept, but a prediction; not as Godôs instruction [as to] what ought to be done to the murderer, but His prophecy of what human vindictiveness would do. The context refutes this. This command for the capital punishment of the murderer, having been given to Noah the second father of mankind and before there was a chosen people, is of course universal.ò

Dabney then asked folks to ñlook also at the express injunction of capital punishments for several crimes in the Pentateuch ï for murder, Numbers 35:31; for striking a parent, Exodus 21:15; for adultery, Leviticus 20:10; [and] for religious imposture, Deuteronomy 13:5, *etc*. In Numbers 35:33, a reason is given which on general principles necessitates the capital punishment of murder: óFor blood, it defileth a land, and the land cannot be cleansed of the blood that is shed therein but by the blood of him that shed it.ô

ñCapital punishment**s** [plural!] are also authorized in the New Testament. Romans 13 assures us that the magistrate óbeareth not the sword in vainô... He is Godôs minister to execute wrath upon the evil-doer....

ñDefensive war [is] lawful.... Their appeal to arms is necessary for the defense of just and vital rights.... The Scriptures teach this. They give no countenance to the weak fanaticism which commands governments to practice a passive non-resistance in such a World as this.... God has therefore both permitted and instructed rulers, when thus unjustly assailed, to retort these miseries upon the assailants who introduce them....

ñIt is perfectly clear that Sacred Scripture legalizes such defensive war. Abram, Moses, Joshua, Samuel, David, Josiah, the Maccabees, were such warriors: and they were Godôs chosen saints. It was óthrough faith they waxed valiant in fight, turned to flight the armies of the aliens.ô Hebrews 11:34. God fought for and with them by giving, in their battles, answers to their prayers ï and miraculous assistance to their arms.

ñUnder the New Testament, when Christôs forerunner was preaching the baptism of repentance, he did not enjoin on soldiers the surrender of their profession as sinful, but only the restricting of themselves to its lawful duties. The New Testament tells us of a centurion affectionately commended by our Redeemer as possessed of ógreat faithô; and of a Cornelius who was óaccepted with God as fearing Him and working righteousness.ô Luke 3:14; 7:9; Acts 10:35.

ñThe apostle Paul, Romans 13:4, tells us that the magistrate ôbeareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil.ô It would be strange indeed if the ruler who is armed by God with the power of capital punishment against the domestic murderer could not justly inflict the same doom on the foreign criminal who invades our soil unprovoked for the purpose of shedding blood....

ñFor the usual details of the sins embraced under the capital instance, adultery, I refer you to your catechisms.... Let the crime of the adulterer be tried by its effects upon the family it invades.... The success of the seducer plunges the husband into agonies of revenge, despair and wounded affection; the guilty wife into a shame and remorse deeper than the grave; the children into privation of a mother, and all the parties into a bereavement at least as irreparable as that of a death, and far more bitter. It would have been, in some aspect, a less[er] crime to murder the mother while innocent.

ñThe laws of Moses therefore, very properly, made adultery a capital crime. Nor does our Saviour, in the incident of the woman taken in adultery, repeal that statute, or disallow its justice. The legislation of modern, nominally óChristianô nations, is drawn rather from the grossness of pagan sources than from Bible principles....

ñA usage which is as fully recognized both in England and Virginia as any common law, entitles juries to acquit the injured husband of murder who slays the violator of his bed in heat of blood. This seems to be a recognition of the capital guilt of the crime of adultery....

ñThe light of nature, as revealed in the sentiments of nearly all mankind, teaches that there are degrees of relationship between which marriage would be unnatural and monstrous. Thus, most commonwealths make incest penal. The only place in the Scriptures where these degrees are laid down, is Leviticus 18. Concerning this place, two important questions arise: 1, Is this law still binding? 2, How is it to be expounded?

ñWe hold that this law, although found in the Hebrew code, has not passed away; because neither ceremonial nor typical, and because founded in traits of man and society common to all races and ages. We argue also, presumptively, that if this law is a dead one ï then the Scriptures contain nowhere a distinct legislation against this great crime of incest.

ñBut we have more positive proof. In the law itself, it is extended to foreigners dwelling in Israel (Leviticus 18:26) and to all pagan nations equally with the Hebrew (verses 24 to 27). In the New Testament, we find the same law enforced by the apostle Paul. First Corinthians 5:1.... Every Christian Church and Commonwealth has acted on the belief that this Levitical law fixes, for all subsequent time, the degrees within which marriage is lawful....

ñRome and many other corrupt Churches, while allowing marriage to be lawful for laymen, yet exalt celibacy as a state of superior purity and excellence. She seeks to find ground for this in such passages as Matthew 19:11-13 [and] First Corinthians 7:34. We set her plea aside, by showing that the New Testament only advises celibacy as a matter of prudence (not of sanctity) in times of persecution and uncertainty.

Romeôs doctrine finds its real origin in the philosophy of the Gnostics and Manichaeans, who regarded the flesh as the source of all evil, and hence its propagation as unholy.ò

Finally, in his *Practical Philosophy*, the great Virginian added: ñThe application of the *lex talionis* made by Moses against false witnesses was the most appropriate and equitable ever invented. Whatever pain or penalty the false swearing would have brought on the innocent man maligned ï had the law followed the false witness unprotected, that penalty must be visited on the perjurer maligning him.

ñLet the student compare the admirable symmetry of Mosesô provision ï with the bungling operation of our [modern] statute against perjury. He [Moses] discriminates the different grades of guilt with exact justice. We [today wrongly] punish the perjurer who swears away his neighborôs cow with imprisonment ï and the perjurer who swears away his neighborôs honor and life, still with imprisonment!ò

To Dabney, this then was at the heart of the War Between the States. To him, that conflict was at bottom an attempt of the humanisticizing North to replace the Biblical Law and the Common Law of the South.

The prostitution of the *U.S. Constitution* following the rape of the South

The basic issue in the 1861-65 War of Northern Aggression between a unitarianizing Union and a trinitarian South, then, was the lawlessness of humanism *versus* abiding by the Law of God. This is apparent even from the writings of that gracious and mild-mannered Northerner, the Presbyterian Rev. Professor Dr. William Swan Plumer (D.D., LL.D.).

Plumer was born in Greersburg (Darlington) Pennsylvania, where he became Professor of Didactic Theology at Western Theological Seminary in Alleghany from 1854 onward. After the War Between the States, he became Professor of Didactic and Polemical Theology at Columbia Theological Seminary in South Carolina from 1868 onward.[46]

During the War, Plumer rightly declared in 1864 that ñthe understanding of the Christian World has long been that the law of incest laid down in the eighteenth chapter of Leviticus is still binding.... Let men remember that if the rules there given, be not binding ï the whole World is left at large, without any Law of God prohibiting even brother and sister from marrying.ò[47]

Too, ñthe Bible opposes the system of debt and credit.... óOwe no man any thing but to love one another,ô Romans 13:8.... Never begin the ruinous practice of paying usurious interest.... As fast as you can collect, pay over to those you owe.... Pursue this course diligently and sincerely for seven years.ò Compare too especially Exodus 22:5-27; Deuteronomy 15:1-9; 28:12; Psalm 37:21 & Matthew 5:26.

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[46] See M.D. Hoge: *Plumer, William Swan* (in 1883 Schaff-Herzog *ERK* III:1855).

[47] W.S. Plumer: *The Law of God as Contained in the Ten Commandments Explained & Enforced*, Presbyterian Board of Education, Philadelphia, 1864, pp. 505, 520 & 524f.

However, after the defeat of the South in the 1861-65 War Between the States ï the whole system of values radically and rapidly changed. Christian soteriology was increasingly replaced by socialistic ideology. In America, the *Thirteenth* through the *Seventeenth Amendments* (1865 to 1913) rapidly and radically transformed the *U.S. Constitution*. All of these measures helped change the United States from being a Christian Republic toward becoming a Socialist Democracy.

The South surrendered in April 1865. By December 1865, the *Thirteenth Amendment* ï in the teeth of ongoing objections from the defeated Alabama and South Carolina ï became ratified by a sufficient number of States. It purported to prohibit slavery from existing anywhere ñwithin the United Statesò ï even though George Washington, the Father of the American Republic, had himself owned slaves both before and after the enactment of both the *U.S. Constitution* and its *Bill of Rights*. And even though the Northerner Mrs. Lincoln ï ñHonest Abeôsò wife ï was still owning her slaves beyond the end of the War in 1865. Compare too: Genesis 14:3-15; 15:2; 17:27; 24:2; Galatians 3:27-29; Philemon 10-19.

The *Thirteenth Amendment* in turn set the stage for the purported enactment of the *Fourteenth Amendment*. That was illegally[48] ratified in July 1868. It purports to provide that ñrepresentatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians.ò

This not only violated the ñrepublican form of Governmentò with its qualified franchise enshrined in Article I Section 2 and in Article IV Section 4 of the *Constitution*. At the time of its purported enactment, the so-called *Fourteenth Amendment* also sought to enfranchise Blacks **but NOT Amerindians** ï and to **dis**-enfranchise all diehard White Southerners.

Of course, the Amerindian General Stand Watee of the Indian Territorites had fought for the **confederated** South ï at a time when the North had not a single Amerindian in its armed forces. So much for the racialism of the North in the middle of the eighteenth century!

The *Fourteenth Amendment* also provided that ñneither the United States nor any State shall assume or pay...any claim for the loss or emancipation of any slave.ò This is uncompensated dispossession (or theft) by a political government: and a breach of Godôs Eighth Commandment against its own citizens.

It involves the statist expropriation and destruction of private property, and also the federal non-indemnification of Southern slave-owners in respect of the federal expropriation of their very own slaves. The Amendment centralistically further purports that those ñnaturalized in the United States...are citizens of the United States and of the State wherein they reside.ò

The óAmendmentô also interferes with State provisions anent the right to vote for the U.S. Presidency. For it provides that ñwhen the right to vote at any election for the choice of electors for President...is denied to any of the male inhabitants of such State

[48] See J.B. James: *The Framing of the Fourteenth Amendment*, University of Illinois Press, 1956, pp. 192f.

being twenty-one years of age and citizens of the United States..., except for participation in rebellion or other crime, the basis of representation therein shall be reduced....

ñNo person shall be a Senator or Representive in Congress, or elector of President and Vice President, or hold any Office, civil or military, under the United States or under any State, who, having previously [*viz*. prior to 1861] taken an oath...to support the *Constitution of the United States*, shall have engaged in insurrection or rebellion against the same [such as during the 1861-65 War Against Northern Aggression], or given aid or comfort to the enemies thereofò: *i.e*., given aid to the enemies of the Northern Aggressors. What a prime example of retroactive legislation!

As previously stated, the ratification of this purported *Fourteenth Amendment*, was illegally accomplished. Some ócratifyingô Southern States, then saddled with Northern carpet-baggers or with federal military governments, were not then qualified to do so. However, even in those States that had never belonged to the Southern Confederacy ï California never committed itself; and Delaware, Kentucky and Maryland formally rejected the amendment.

Of the thirty-three States finally listed as ratifying, ten were States in name only. The eleventh Seceding State, Tennessee, had ratified under duress and by a highly improper procedure.

The Northern States of Ohio and New Jersey first ratified ï but later sought to rescind ratification. The Northern State of Oregon ratified dubiously, and then tried to reverse this ï fairly claiming the Proclamation depended on improperly-counted certifications from coerced Southern States, and was therefore invalid.

The rape of the *Constitution* itself after the reconstruction of the South

Two years later, the ócreconstructionô of the Old South ï and indeed also of the 1787 *U.S. Constitution* ï was completed. It was accomplished in 1870 by the sufficient ratification (even by some of the browbeaten and subservient Southern States) of the *Fifteenth Amendment*.

This declares that ñthe right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitudeò ï but, significantly, **not** on account of **gender**. It also decrees that the U.S. Federal ñCongress shall have power to enforce this article by appropriate legislation.ò

This not only runs counter to Article I Section 2 of the *U.S. Constitution* ï which contrasts ñfree personsò to ñIndians not taxedò and also ñall other persons.ò It also involves yet another unconstitutional interference by the Federal Government in the internal affairs of the sovereign States.

Pursuant to the *Fourteenth Amendment*, another federal attempt was made (against the unanimous 1833 verdict in *Barron* v. *Baltimore*) to make the *U.S. Bill of Rights*

applicable to the States themselves. This arose in the 1873 *Slaughter-House Cases*. There, fortunately, this claim was dismissed.

Yet that was again somewhat reversed in the 1897 case of *CB&Q RR* v. *Chicago*, at least regarding the *Fifth Amendment*. There was also a yet-later further extension in the 1937 case of *Palko* v. *Connecticut*. Still, in *Adamson* v. *California* (1947), none of the guarantees to defendants in criminal trials before the Federal Courts were found to be **fully** applicable to the States.

The *Sixteenth Amendment* of 1913 institutionalized the Federal Income Tax. It states: ñThe Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States.ò

This ñauthorizesò the previously-unpermitted collection by the Federal Government of federal taxes on incomes and property and capital gains. Here, the power to tax is the power to destroy. Significantly, the *Federal Reserve Act* the same year created the Federal Reserve System as the nationôs central bank. This unleashed a statist inflation eventually to become the national way of life ï or rather the national óway of death.ô

Also in 1913, the *Seventeenth Amendment* **democratizingly** provided that the ñtwo Senators from each Stateò for the Federal Senate be ñelected by the people thereof.ò This infringed the **republican** Article I Section 3 of the 1787 *U.S. Constitution*. Till then, the latter had required the ñtwo Senators from each Stateò be ñchosen by the Legislature thereof.ò

This was then followed by the *Eighteenth Amendment*, prohibiting the manufacture and sale and transportation of intoxicating liquors; by the *Nineteenth Amendment*, forcing the States to extend the franchise to all women; by the *Twenty-first Amendment*, repealing the Eighteenth; and by the *Twenty-second*, limiting the Presidency to two terms ï after the ñDemocratò Franklin Roosevelt had tyrannically broken this American tradition first established by George Washington himself.

We shall not here bother to look at any of the further so-called ñAmendmentsò to what is left of the 1787 *U.S. Constitution*. For many Southerners and also acute Northerners today all say that the 1787 *U.S. Constitution* itself died ï right after the War of Northern Aggression. It died with the enactment of the *Thirteenth* through the *Fifteenth Amendments* (in 1865, 1868, and 1870).

Be that as it may, very many Southerners and almost all Christian Northerners would rightly point out that ï had the *Constitution* not been violated ï the preservation of the 1777-87*f* original (con)federate union would have been mandatory. All actual secession would then have been just as unthinkable as the dismemberment of the Trinity by any Divine Person or Persons ever seceding therefrom, or the destruction of a happy marriage unilaterally by divorce. Significantly, the *Confederate Constitution* of the Christian Southern States itself made no provision for secession from the Confederacy.

Indeed, the 1776 *Declaration of Independence* (from Britain) set up the United States as ñone peopleò from many States ï each and all under God (*viz*. the Tri-une God). It was as such ï ñone peopleò under the Triune God ï that ñweò the people of

the United States of Christian America then proceeded ñto dissolve the political bands which have connected them with another [Great Britain], and to assume among the powers of the Earth the separate and equal station to which the Laws of Nature and of Natureôs God entitle them.ò

This was a secession indeed from the tyrannical Parliament of Britain and her King ï but not from the Triune God. For the 1783 *Peace Treaty* between Britain and the United States was concluded ï thus its very *Preamble* ï ñin the Name of the most holy and undivided Trinity.ò

Nor was this a secession from British Common Law (of which the Law of God is an integral part). For Article VII of the 1791 American *Bill of Rights* in the 1787 *U.S. Constitution* itself upholds the Common Law in the United States ï after the *Constitution* itself was signed ñin the year of **our Lord** one thousand seven hundred and eighty-sevenò ï ***A.D.***

Yet even the earlier *Articles of Confederation*, ratified in A.D. 1781, constituted ñthe United States of Americaò as ña firm league of friendship with each other..., binding themselves to assist each other.... No State without the consent of the United States in Congress assembled shall send any embassy to or receive any embassy from...any king, prince, or States.... No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress.... No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in Congress.... No State shall engage in any war without the consent of the United States.ò *etc*. The **Preamble**, ñin the year of our Lord 1777,ò calls this a ñ**Confederation** and **perpetual Union** between the States.ò

Again, the 1787 *Constitution of the United States* resolved to ñform a more perfect **union**ò which itself made no provision for secession ï and which forbad all the constituent States from entering into treaties or confederations, coining money or keeping troops without the express approval of the U.S. Congress. Article I Section 10. Indeed, as Article VI states, ñthis constitution...shall be the supreme law of the landò (singular).

Naturally, this would not prohibit constituent States from seceding from the American Union ï as Massachusetts herself repeatedly threatened to do long before and as New York threatened to do at the outset of the 1861 War of Northern Aggression. Nor could this prohibit seceded States, after their secession from the Union, from reconfederating together in a different compact (such as the Confederate States of America). For such seceded States would, after secession, then no longer be ñconstituent Statesò of the American Union from which they had seceded.

Christian statesmanship by great Northern Calvinists to heal the torn nation

Even during the American War of Northern Aggression, an interdenominational ôNational Reform Associationô was organized at a *Convention of Christian Citizens* held at Xenia in Ohio. Its noble purpose was ñto Maintain Existing Christian Features in the American Government.ò

It declared[49] that ñAlmighty God is the Source of all power and authority in civil government; the Lord Jesus Christ is the divinely-appointed Ruler of nations; and His will, revealed in the Holy Scriptures, is of supreme authority in civil affairs.... Perceiving the subtle and persevering attempts which are made to prohibit the reading of the Bible in our Public Schools, to overthrow our Sabbath Laws, to abolish the Oath [and] Prayer in our National and State Legislatures [and to abolish] Days of Fasting and Thanksgiving and other Christian features of our institutions and so to divorce the American Government from all connection with the Christian religion..., this Association seeks such an Amendment to the *Constitution of the United States* as will indicate that this is a Christian nation ï and place all the Christian laws, institutions, and usages of our government on an undeniable legal basis in the fundamental law of the land.ò

The above statement was greatly influenced by the views of the great Scottish Reformed Presbyterian, Rev. Professor Dr. William Symington ï in his 1838 book *Messiah the Prince*.[50] Indeed, the views of the great Northern Presbyterian Rev. Professor Dr. A.A. Hodge of Princeton (N.J.) ï himself a Vice President of the *National Reform Association*[51] ï suitably present the correct understanding of God and good government in the U.S.A., also after the War of Northern Aggression.

Professor Hodge wrote in his book *Evangelical Theology*[52] that if Adam had not apostasized, the entire course of human history would have been a normal development in fellowship with God. The central principle of loyalty to God would then have been preserved intact, and the whole moral nature of man would have grown healthily. But since sin introduced rebellion against the supreme authority of God, human character has been corrupted radically ï and human society disorganized.

Consequently, God has set up a Kingdom in antagonism to that of Satan and to all temporal kingdoms organized in Satanôs interest. Genesis 3:15*f.* Godôs Kingdom shall never be destroyed but, breaking in pieces all its antagonists, shall stand for ever. His Kingdom was introduced immediately after the fall. It is to endure for ever; gradually to embrace all the inhabitants of the Earth; and finally the entire moral government in Heaven and on Earth. Ephesians 1:10 to 3:21.

The little stone which breaks the image will become a great mountain, and fill the whole Earth. Daniel 2:35. This gospel of the Kingdom is to be preached to all nations. Matthew 28:19. Then all the kingdoms of this World shall become the kingdoms of our Lord, and of His Christ; and He shall reign for ever and ever. Revelation 11:15.

The process by which this Kingdom grows through its successive stages toward its ultimate completion, can be understood by us only very inadequately. It implies the ceaseless operation of the mighty power of God working through all the forces and laws of nature, and culminating in the supernatural manifestations of grace.

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[49] See in W. Symington: *Messiah the Prince*, The Christian Statesman Pub. Co., Philadelphia, 1884, pp. 355f.
[50] *Id.*, excerpted in an Addendum here below, to which reference is here made.
[51] *Ib.*, p. 356.
[52] A.A. Hodge: *Evangelical Theology*, Banner of Truth Trust, London, 1976 rep., pp. 252-56,271,282-89.

This Kingdom from the beginning and in the whole circle of human history, has always been coming. Its advance has been marked by great epochs. The chiefest of these have been: the giving of the Law; the incarnation, crucifixion, resurrection, ascension, and session of the King on the right hand of the Father; and the mission of the Holy Ghost.

The great end in which all the providential activities of God culminate in this World, is the establishment of a universal Kingdom of righteousness, which is to embrace all mankind. That the Moral Law still binds the unregenerate, and must be enforced upon them rigorously, has always been clearly admitted by Christians. It should ever continue. Thus Hodge.

Rousing call unto Christian conquest by the Northern Presbyterian A.A. Hodge

He further remarks: ñSince the Kingdom of God on Earth is not confined to the mere ecclesiastical sphere, but aims at absolute universality, and extends its supreme reign over every department of human life ï it is the duty of every loyal subject to endeavour to bring all human society, social and political as well as ecclesiastical, into obedience to its Law of righteousness. It is our duty, as far as lies in our power, immediately to organize human society and all its institutions upon a distinctively Christian basis.

ñIndifference or impartiality here between the Law of the Kingdom and the law of the world or its prince the devil ï is utter treason to the King of Righteousness. The Bible, the great statute-book of the Kingdom, explicitly lays down principles which when candidly applied will regulate the action of every human being in all relations.

ñThere can be no compromise. The King said with regard to all descriptions of moral agents in all spheres of activity, ðhe that is not with is against Me!ô If the national life in general is organized upon Non-Christian principles, the churches which are embraced within the universal assimilating power of that nation will not long be able to preserve their integrity....

ñFor a free republic like ours, there is no salvation except in obedience to the principles of the Kingdom of God. That Kingdom rests ultimately upon the Fatherhood of God, and the elder brotherhood and the redeeming blood of Christ....

ñSocialism is opposed to religion and the inviolable sacredness of the family tie.... Religion and the holiness of the marriage bond are the great weapons with which to fight socialism. Carry the cross and the love of Christ into every home...[and] the dark clouds of threatened anarchy will melt away....

ñThere lie before us now only the two alternatives ï either a war between the forces which will shatter the social fabric and end in anarchy, or the supremacy of the reign of the Kingdom of God.... To our fellow-countrymen of this generation, God has committed this tremendous trust of forwarding or of retarding by centuries the coming of the Kingdom of Heaven in all the World. He has placed us in the center of the field, and at the crisis of the battle on which the fate of the Kingdom ï for ages ï turns.

ñWhen human society was reconstructed after the destruction by the flood [Genesis 9:1-7*f*], the laws of differentiation and dispersion prevailed for milleniums. At the tower of Babel, the languages were confused and multiplied, and the children of men driven in all directions over the face of the Earth [Genesis chapter 11]....

ñBut when Christ assumed the reins of His Kingdom at the right hand of the Majesty on high, the tendency was instantly reversed. His commission was, ógo, disciple all nations, baptizing them, teaching them; and lo, I am with you, to the end of the ages!ôò Matthew 28:19*f*.

ñThe banner of the Kingdom was set up in Jerusalem and carried throughout the Roman Empire; then throughout Europe; thence throughout the World.... Beyond the shores of our Pacific...the Occident and the Orient stand face to face.... The Kingdom is to be consummated in the reunion of all the varieties of the long-rent family of man....

ñGod sifted the foremost nations of Christendom and sowed our [American] soil with the finest of the wheat. The Puritans, Huguenots, Dutch, Scotch-Irish, Episcopalians, German Reformed of the old Palatine [Heidelberg] stock, and the best of the Roman Catholics [Maryland] ï laid the foundations of our empire.

ñDuring the first ages, religion controlled the development of the State. It was established at first in nearly all the colonies in some definite form of church government. It was recognized in the colonial *Charters*, and in the *Constitutions* of the first States. For nearly two hundred years, every college and almost every academy was founded and administered by Calvinists....

ñMen of this generation..., we stretch our hand into the future ï with power to mold the destinies of unborn millions. We of this generation occupy the Gibraltar of the ages, which commands the Worldôs future!ò Thus Hodge.

He concludes also his great essay *On Christ's Kingdom*[53] with the following plea to late-nineteenth-century American Christians: ñI am as sure as I am of Christôs reign, that a comprehensive and centralized system of national education separated from religion, as is now commonly proposed, will prove the most appalling enginery for the propagation of Anti-Christian and atheistic unbelief and of anti-social nihilistic ethics ï individual, social and political ï which this sin-rent World has ever seen....

ñIn the name of your own interests, I plead with you; in the name of your treasure-houses and barns, of your rich farms and cities, of your accumulations in the past and your hopes in the future ï I charge you! You never will be secure ï if you do not faithfully maintain all the crown-rights of Jesus the King of men. In the name of your children and their inheritance of the precious Christian civilization you in turn have received from your sires; in the name of the Christian Church ï I charge you that its sacred franchise, religious liberty, cannot be retained by men who in civil matters deny their allegiance to the King.

[53] A.A. Hodge: *On Christ's Kingdom* (in his *Popular Lectures on Theological Themes*, Presbyterian Board of Publications, Philadephia, 1887, pp. 283f).

ñIn the name of your own soul and its salvation; in the Name of the adorable Victim of that bloody and agonizing sacrifice whence you draw all your hopes of salvation; by Gethsemane and Calvary ï I charge you, citizens of the United States, afloat on your wild sea of politics ï there is another King, one Jesus! The safety of the state can be secured only in the way of humble and whole-souled loyalty to His Person ï and of obedience to His Law.ò

Christian statesmanship of the Northern Calvinists A.A. Hodge & R.S. Storrs

Like his equally famous father Charles Hodge, A.A. Hodge too fully subscribed to the 1788 amended version of the *Westminster Confession* 23:3. Hence he rightly stated[54] that ñGod as Creator, as revealed in the **light of nature**, has established civil government among men from the beginning ï and among all peoples and nations, of all ages and generations. But in the development of the plan of redemption, the God-man [Jesus Christ], as mediatorial King, has assumed the government of the Universe. Matthew 28:18; Philippians 2:9-11; Ephesians 1:17-23.

ñAs the Universe constitutes one physical and moral system, it was necessary that His Headship as Mediator should extend to the whole and to every department thereof ï in order that all things should work together for good to His people and for His glory; that all His enemies should be subdued and finally judged; and that all creatures should worship Him, as His Father had determined. Romans 8:28; First Corinthians 15:25; Hebrews 10:13; 1:6; Revelation 5:9-13.

ñHence the present providential Governor of the physical Universe and óRuler among the nationsô is Jesus of Nazareth, the King of the Jews ï to Whose will all laws should be conformed, and Whom all nations and all rulers of men should acknowledge and serve. óHe hath on His vesture and on His thigh a Name written, ñKing of kings, and Lord of lords!òô Revelation 19:16. The proximate end for which God has ordained magistrates, is the promotion of the public good; and the ultimate end is the promotion of His own glory....

ñThe specific way in which the civil magistrate is to endeavor to advance the glory of God, is through the promotion of the good of the community (Romans 13:4) in temporal concerns ï including education, morals, physical prosperity, the protection of life and property, and the preservation of order...by the explicit recognition of God and of Jesus Christ as óRuler among the nationsô ï and by the enactment and enforcement of all laws conceived in the true Spirit of the Gospel touching all questions upon which the Scriptures indicate the will of God specifically or in general principle; and especially as touching questions of the Sabbath-day, the oath, marriage and divorce, and capital punishments, *etc*.ò

Now Hodgeôs above-mentioned ñ**light of nature**ò in respect of which ñGod the Creator has established civil governmentò ï is verifiable in Scripture. Consequently, the (1643*f) Westminster Confession*[55] and the *Westminster Larger Catechism*[56] both

[54] A.A. Hodge: *The Conf. of Faith*, pp. 294-95.
[55] *WCF* 1:1a; 1:6o; 10:4s; 19:1ab; 19:5hi; 20:4q; 21:1a & 21:7k.
[56] *WLC* 17rs; 20n; 92o; 93pr; 94t; 95vw; 96b; 97i-l & 99o *etc*.

repeatedly appeal to the ñlight of natureò and to the ñlaw of natureò (quoting Romans 2:14-15 & Ecclesiastes 7:29 *etc*.). Indeed, also the very first paragraph of the 1776 *U.S. Declaration of Independence* grounds itself in the ñLaws of natureò ï and ñnatureôs God.ò

These concepts of British and American Common Law are also further developed in the 1787 *U.S. Constitution* and its *Bill of Rights* ï both of which grew largely out of the soil of Scripture. For Scripture declares that even ñthe Gentiles...by nature...shew the works of the Law written on their hearts.ò Romans 2:14*f cf*. Ecclesiastes 7:29 & Acts 14:11-18.

American Common Law in its turn derives, *via* British Common Law, from the laws of nature and the laws of Scripture. See the American Lawyer Howard Randôs[57] *Digest of the Divine Law* ï and also Chicago Law Faculty Professor Palmer Edmundsôs[58] *Law and Civilization*.

In the decade following the awful tragedy of the 1861-65 American War Between the States, also the renowned Northern Congregationalist Rev. Richard Salter Storrs attempted to heal the torn and wounded nation. This can be seen from his famous reconciliatory *Centennial Oration* in New York ï on Independence Day, 1876.

Storrs had studied law with Rufus Choate. Thereafter, he pastored the óChurch of the Pilgrimsô in Brooklyn for more than fifty years. During that time, he wrote about Genesis, Wycliffe, Preaching, and on the *U.S. Constitution*.

Declared Storrs:[59] ñLet us seek the unity of all sections of the Republic ï through the prevalence in all of mutual respect; through the assurance in all of local freedom; through the mastery in all of that supreme spirit which flashed from the lips of Patrick Henry when he said, in the first Continental Congress, ól am not [only] a Virginian but [also] an American!ô

ñLet us live as those for whom God...commits the magnificent trust of blessing peoples many and far ï by the truths which He has made our life; and by the history which He helps us to accomplish.... God made us faithful to the work and to Him ï so that...the land in all its future may reflect an influence from this anniversary and...[be] expanded and multiplied till all the land blooms at its touch...because still pacific, Christian, free!ò

U.S. Common Law at the end of the 19th and start of the 20th centuries

In 1890, in the Wisconsin case of *State* v. *District School Board of Edgerton*, it was held:[60] ñThe New Testament...reaffirms and emphasizes the moral obligations laid down in the Ten Commandments.... The Christian religion is part of the Common Law of England.... It was brought to this country [the U.S.A.] by the Colonists....

[57] H. Rand: *Digest of the Divine Law*, Destiny Pub., Birmingham England, 1943, pp. 52 & 100.
[58] *Op. cit.*, pp. 343 & 353.
[59] R.S. Storrs: *1876 Reconciliatory Oration* (in *Young Folks' Library* XVIII:89f).
[60] *State* v. *District School Board of Edgerton*, [1890] 76 Wisc. 117. 20 ASR 41 & 46.

ñThis religious element or principle was incorporated in the various State Constitutions, and in the *Ordinance of 1787 for the Government of the Northwest Territory* ï by virtue of which *Ordinance* it became the fundamental law of the [then] Territory of Wisconsin.ò Interestingly, Judge Lyon even insisted: ñThe New Testament...reaffirms and emphasizes the moral obligations laid down in the Ten Commandments.ò

This was still so not just in Wisconsin and the newer States, but also as regards the U.S.A. as a whole. Consequently, in the 1890 case of *Church of Latter-Day Saints* v. *United States* ï the Supreme Court held Mormon polygamy to be illegal ï and ñcontrary to the spirit of **Christianity**.ò

Indeed, even as late as 1892, the Supreme Court determined[61] in *Church of the Holy Trinity* v. *United States* that America was a Christian nation from its earliest days. The Courtôs opinion, delivered by Justice Josiah Brewer, was an exhaustive study of the historical and legal evidence for Americaôs Christian Heritage. It came to the following conclusion:

ñOur laws and our institutions must necessarily be based upon and embody the teachings of the **Redeemer** of mankind. It is impossible that it should be otherwise.... Our civilization and our institutions are **emphatically Christian**.... This is a religious people.... From the discovery of this Continent to the present hour these, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that **this is a Christian nation**.ò

Chief Justice Baldwin stated in the 1909 *Appeal of Allyn*:[62] ñThe Preamble of the *Constitution of Connecticut*, gratefully acknowledging the good providence of God in having permitted them to enjoy a free government, is a recognition of God as the source of that government.ò The same applies to the *Constitution of the United States of America*.

Indeed, also the 1914 *Washington Law Review* reported that ñlawyers and judges frequently refer to and quote from the Bible in the trial of casesò[63] ï and that ñthis nation is a religious nation, a **Christian** people.ò For, as pointed out even in the 1915 case of *Herold* v. *Parish School Directors*, in the *Declaration of Independence* God is acknowledged as over all ï and as the Giver of all good gifts.[64]

As late as 1912, New Hampshire had refused to eliminate the word ñChristianò from its own *Bill of Rights*. Not so, however, in 1926. So **why the change then**?

It must be remembered that the 1917 Communist Revolution in Russia ï the direct result of the atheistic French Revolution of 1789 and the unsuccessful communist European Revolutions of 1848 ï massively and quickly spread its venom Worldwide ï and soon influenced even the United States. See the American Communist John Reedôs 1919 famous book *Ten Days that Shook the World* ï on the 1917 Russian Revolution.

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[61] See in R. Smith: *God's Law in America* (in *The Counsel of Chalcedon*, Marietta Ga., January 1988, pp. 9f).
[62] *Allyn's Appeal* (1909) 81 Conn. 534 71 A 794 23 LRANS 630f.
[63] *Washington Law Review* (1914) 771f.
[64] *Herold* v. *Parish School Directors* (1915) 136 La. 1034 68 So. 116 LRA1915D 941 & 945.

Another reason is the massive influx into the United States of Non-Christian alien migrants from Europe before and from Asia since the Second World War. Very few such migrants adopted Christianity after their arrival in the U.S. Indeed, some of them, once settled in the U.S., have manifested an increasing hostility toward its Christianity..

Yet Christianity and the Common Law have still continued. For, as the *Encyclopedia Americana* stated during the second half of our own century,[65] the Common Law as it existed at the time of the *Declaration of Independence* ï including the Acts of Parliament in so far as they were not repugnant to the rights and liberties contained in their respective [State] constitutions ï was formally adopted in all of the original States of the Union and by most of the Commonwealths subsequently admitted as States.

More pointedly, the *Americana* then adds: ñThough the *Constitution of the United States* in no words adopts the Common Law, its provisions no less recognize the existence and continuance thereof as the Law of the States with which the National Government might not interfere.ò See, for example, the *Constitution's* 1791 Seventh Amendment ï which twice upholds ñ**Common Law**.ò

Yet there is much more. *A fortiori*, the unamended ***Bill of Rights*** in the *U.S. Constitution* refers to ñsuits at Common Lawò ï *viz.* before the various State Courts. In respect thereof, it then adds that such proceedings can be re-examined in ñany court of the United Statesò ï but only ñaccording to the rules of the **Common Law**.ò[66]

Yet Dispensationalism, with its opposition to the Ten Commandments as the Christianôs rule of life, had greatly corrupted the American Churches already in the nineteenth century. It would do so increasing in the first half also of the twentieth. Consequently, as Rev. Professor Dr. J.G. Machen of Princeton stated in his famous book *What is Faith?* ï ña new and more powerful proclamation of that Law is perhaps the most pressing need of the hour.ò

For also the principles of the 1919 Russian Revolution, after World War I, slowly began to infiltrate even into the United States. Especially is this seen in the spread of secularism in America. See the 1925 case[67] of *Gitlow* v. *New York*. World War II and the American alliance with the Communist Soviet Union at that time, only accelerated this trend.

The increasing humanistic and communistic infiltration not only of the United States but also of the 1944*f* United Nations Organization now began to besiege Anglo-American Christian British Common Law in earnest. This has increasingly been the case especially since the Second World War.

Thus, in 1947, a modern misinterpretation and radicalization of Jeffersonôs earlier (yet **then**-novel) notion of ña wall of separation between Church and Stateò began to take root in the U.S. Supreme Court. See *Everson* v. *Board of Education*. There, the U.S. Supreme Court constitutionally held that the U.S. Government could not in terms

[65] *Enc. Amer.*, 1951, VIII:414.
[66] Unamended Article VII in the 1791 *Bill of Rights*.
[67] See ch. 39 at n. 58.

of the *First Amendment* provide financial aid to any religion. But it also unconstitutionally held (in terms of the illegally-ratified so-called *Fourteenth Amendment*) that the same applied to the constituting States.

Henceforth, this alien and unconstitutional concept would increasingly be employed to pervert the correct interpretation of the *Constitution of the United States*. This would move the interpretation of the latter increasingly further away from its historical and Christian meaning.[68]

There were still to be some oases, even as America wandered off ever deeper into the desert. Thus the U.S. Supreme Court still decided[69] in the 1952 case *Zorach* v. *Clauson* that ñwe are a religious people and our institutions presuppose a Supreme Being.ò

Even in 1954 the Presbyterian President Dwight D. Eisenhower stated that ñthe purpose of a devout and united people was set forth in the pages of the Bible...(1) to live in freedom, (2) to work in a prosperous land...and (3) to **obey the Commandments of God**.... This Biblical story of the promised land, inspired the founders of America. It continues to inspire us.ò[70]

Again, in 1954 nobody could or did successfully challenge Congress for inserting the words ñunder Godò in the ópledge of allegiance to the flag of the United States of America and to the Republic for which it stands. The allegiance is to the many United States (plural), and to the one (con)federal Republic. For America is one nation under Godò ï under that God Who is necessarily Tri-une.

Indeed, even as late as 1959, the famous Law Professor Dr. H.J. Berman ï though himself born and raised a Jew ï wrote in the *Oklahoma Law Review* that ñPuritan theocracy has left its mark...upon our jurisprudence.... It is the task of Christians today to influence legal development ï so that the law teaches Christian truth, and not Paganism; Christian love, and not merely secular social welfare.ò[71]

Apostasy from the Common Law in the U.S. Supreme Court since the mid-1950's

However, an increasingly alien element now began to gain control of the U.S. Supreme Court. This was an element that was soft on, if not sympathetic toward, socialism and even communism ï and increasingly indifferent toward and sometimes even hostile against Christianity and its Common Law.

U.S. Congressional interrogation practices (especially against communism) and State sedition laws, now came under severe scrutiny by the U.S. Supreme Court. Led

[68] *Everson* v. *Board of Education* (1947) 335 US 1.
[69] *Zorach* v. *Clauson* (1952) 343 US 307 & 313 (Douglas J.) in *Our Chr. Herit.*, p. 7.
[70] Cited in *Our Chr. Herit.*, p. 7.
[71] H.J. Berman: *Love for Justice: The Influence of Christianity upon the Development of Law* (in *Oklahoma Law Review* 12, Feb. 1959, pp. 95 & 97).

by Chief Justice Earl Warren, it further infringed State rights ï by ordering the compulsory desegregation of Southern public schools.[72]

Beginning in 1960, the Warren Court overruled the 1947 case of *Adamson* v. *California*. In 1964, it held in *Malloy* v. *Hogan* that the self-incrimination privileges under the 1787 *U.S. Bill of Rights* were applicable against the States by way of the due process clause. Indeed, by 1968, Supreme Court Justice Hugo L. Black (in *Duncan* v. *Louisiana*) was even trying to justify this as being quite consistent with the language and intent of the framers of the (illegally ratified) *Fourteenth Amendment*.

Matters had not been helped by the election in 1961 of Americaôs youngest and first-ever Romish President, the wayward John F. Kennedy. He immediately set about implementing his New Frontier programme of tax reform ï giving federal aid to education; expanding social security hand-outs; and enlarging ócivil rightsô through so-called executive action. The latter led to his assisting Freedom Ride demonstrations ï and his employment of Federal Troops in Mississippi and Alabama to inflict his own educational and political views upon those Southern States.[73]

On the one hand, left-leaning President Kennedy unconstitutionally gave federal aid to promote bus rides to racially-integrated public schools. On the other hand, he hypocritically moved to prohibit local communities from providing bus rides to non-public schoolchildren.

Said Kennedy in 1961: ñThe *Everson case* [1947], which is probably the most celebrated case, provided ï only by a 5 to 4 decision ï [that] it was possible for a local community to provide bus rides to nonpublic schoolchildren. But all through the majority and minority statements on that particular question, there was a very clear prohibition against aid to the school direct.

ñThe Supreme Court made its decision in *Everson's case* by determining that the aid was to the child, not to the school. Aid to the school is ï there isnôt any room for debate on that subject! It is prohibited.... And therefore there would be no possibility of our recommending it.ò See too the 1971 case of *Tilton* v. *Richardson* 403 U.S. 672 & 690.

Especially from the time of President Kennedy onward, there has been an increasingly-great turning-away from Godôs Law and from the Common Law ï in many U.S. Supreme Court decisions. Thus, in the 1962*f* watershed case of *Engel* v. *Vitale*, the U.S. Supreme Court ruled that prayers should be completely removed from the public schools. As the *World Book Encyclopedia* noted, this was the first time America ever separated religion from state affairs.

On June 17th 1963, the decision was handed down in *Madalyn Murray O'Hair's case*. There, the U.S. Supreme Court banned all prayers and Bible-readings from the nationôs public schools.

In 1972, the death penalty was declared óunconstitutionalô in *Furman* v. *Georgia*. This declaration is itself most unconstitutional, in view of the still-unrescinded Article

[72] Art. *Supreme Court, United States* (in *NICE* 21:6566).
[73] Art. *Kennedy, John Fitzgerald* (in *NICE* 12:3652).

V of the *Bill of Rights* in the *Constitution of the U.S.* itself ï which provides for the punishment of ña capital or otherwise infamous crime.ò

Then, in 1973, came the legalization of what amounts to the cruel murder of defenceless and guiltless Americans during the first months of their lives. This was authorized by a majority decision of the U.S. Supreme Court itself ï in *Roe* v. *Wade*.

Once again, this decision is itself highly unconstitutional. For Article VIII of the *Bills of Rights* ï outlawing ñcruel and unusual punishmentsò (especially of innocent victims) ï still remains unrescinded.

Remarkably, the U.S. Supreme Court further ruled (by 5 to 4) in 1980 ï that the Ten Commandments cannot be posted in the public schools. The Court seemed to reason that if pupils were then to read them there, they might obey them ï which would then be unconstitutional.

This too is indeed truly an astonishing ruling. For in plain view, in the main chambers where this decision was itself handed down, a plaque hangs on the wall above and behind the Supreme Courtôs Chief Justice ï on which are written precisely the Ten Commandments.[74]

But enough! Against all such apostasy from the Living God and His Holy Decalogue, the great Christian Anglo-American tradition of the Westminster Assembly still stands. It was re-iterated in 1973 by Rev. Professor Dr. Morton H. Smith, óOld Schoolô Southern Presbyterian Founder of Reformed Theological Seminary in Jackson (Mississippi) ï and later of Thornwell Theological Seminary in Greenville (South Carolina).

Wrote Professor Smith:[75] ñI am noted at the Seminary for taking a puritanical position.... That position is the position of the *Westminster Confession* and *Catechisms*.... What we need...is a genuine Biblically-based Reformation.... When the Law goes forth, it must go forth from Zion [or the Christian community].... We are resolved neither to rest nor to hold our peace, till out of Zion shall go forth the Law....

ñWhat we want is faith ï faith in the divine promises.... What is desperately needed in America today is a true Presbyterian Church that will set forth afresh these principles and, using the instruments that God has ordained, carry forth the Gospel even more effectively than it has ever been done before.... If this were truly done, then surely we would see the Church in the twentieth century revived with the power of the Church of the first century, going forth to conquer in the Name of Christ [Revelation 6:2 *cf*. 19:10-21].ò

Following the above, in 1978 ï the continuing Presbyterian Church in America ï true to the Scriptures, to Calvin, to the *Westminster Standards*, and to the American Presbyterian heritage ï determined to oppose the abortionistic legislation of modern nations based on ñthe grossness of pagan sources.ò It resolved to resurrect Biblical principles in this field too.

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[74] R. Smith: *God's Law in America* (in *The Counsel of Chalcedon*), Marietta Ga., January 1988, pp. 9f.
[75] M.H. Smith: *How is the Gold Become Dim! – Lam. 4:1*, Office of Information, 3436 Wellington Rd., Montgomery AL., n.d. [1973], p. 11.

Accordingly, it declared[76] that the Saviourôs Great Commission enjoining His apostles to disciple the nations ï requires ñteaching them to observe allò that Christ commands in Matthew 28:19-20. Moreover, it ñimplies that we...are to proclaim His Word of both Law and Gospelò ï while ñrelating the universality of Godôs Law for His creation.ò

Though ñthe government of the United Statesò today falls ñshort of bringing its sphere of responsibility under Godôs Lawò ï continued the Presbyterian Church ï it ñought to conform to Godôs Law.... Clearly, there is the responsibility of government to obey Godôs Law.... We as citizens must do all we can to assure the stateôs conformity to that Law.ò For ñthe state is not exempt from the authority of God. Godôs Law is directed to both institutions, Church and State, as regards their respective functions....

ñThe civil magistrate is responsible to God.ò The magistrate ñis to discharge his duty according to Godôs will.... The Church is culpable if she does not inform the State about Godôs will.... Consequently, when the civil magistrate trespasses the limits of his authority..., when laws are proposed or enacted which are contrary to the Law of God ï it is the duty of the Church to oppose them and expose their iniquity.ò Thus the Presbyterian Church in America during 1978.

Law Professor Berman & President Ronald Reagan on America's Biblical heritage

As Law Professor Seagle explained,[77] the States have modified the Common Law both by judicial decision and legislative enactment. Since about 1925, the States have tended to codify the principles of the Common Law and Statutes together.

Together with Robert D. Hursh, Associate Editor of the magazine *United States Supreme Court*, Professor Seagle further described[78] the modern movement for the socialization of law. According to Hursh and Seagle, the social conditions produced by the recurrent crises of capitalism ï led in the last quarter of the nineteenth century to a reaction against the system of *laissez faire*. The movement for socialization concentrated on the labour contract.

Social legislation was labour legislation ï and legislation regulating the activities of corporations (particularly public utilities). The movement for socialization was reflected in the philosophy of law. The dominant modern school is the sociological school, which emphasizes that law is a social science. However, with the recent collapse of communism and the progressive privatization of socialist showpieces ï the time is now ripe as never before for a reassertion of the merits of the Common Law.

Ex-Harvard Law Professor Berman is not only a top American Jurist. He is also a Jew who converted from Judaism to Christianity. He rightly wrote in 1979: ñIn the past two generations, the public philosophy of America has shifted radically from a religious to a secular theory of law.... This view of law, founded on utilitarianism,

[76] Presbyterian Church in America: *Minutes of the 6th General Assembly*, 1978, pp.72 & 277-80.
[77] Art. *Common Law* (in the *American Peoples Encyclopedia* 5:320).
[78] R.D. Hursh & W. Seagle: *Law* (art. in *Amer. Peop. Enc.*, 1966, 11:294f).

goes back to the Enlightenment of the late-eighteenth century and to the French...Revolution.ò[79]

However, ñfifty years ago [in 1929], if you had asked whether the U.S. is a óChristianô country, the overwhelming majority of Americans would have said yes. That was certainly what I was taught as a young boy at the Noah Webster School in Hartford, Connecticut....

ñWhen at the Wednesday morning assemblies, together with readings from the Old and New Testaments, the hymn was óOnward Christian Soldiersô ï the few of us kids who were Jewish would sing at the top of our lungs, óOnward *Jewish* Soldiers.ô We knew even better than the rest that America professed itself to be a **Christian** country.ò

Since then, times have changed dramatically. However, on October 4th 1982, the Federal Congress of the U.S.A. still passed a Joint Resolution ï authorizing and requesting U.S. President Ronald Reagan to proclaim 1983 as the *Year of the Bible*. Here is the full text of that Joint Resolution.[80]

ñWhereas the Bible, the Word of God, has made a unique contribution in shaping the United States as a distinctive and blessed nation and people; Whereas deeply-held religious convictions springing from the Holy Scriptures led to the early settlement of our Nation; Whereas Biblical teachings inspired concepts of civil government that are contained in our *Declaration of Independence* and the *Constitution of the United States*; Whereas many of our great national leaders ï among them Presidents Washington, Jackson, Lincoln and Wilson ï paid tribute to the surpassing influence of the Bible in our countryôs development, as in the words of President Jackson that the Bible is óthe rock on which our Republic restsô; Whereas the history of our Nation clearly illustrates the value of voluntarily applying the teachings of the Scriptures in the lives of individuals, families, and societies; Whereas this Nation now faces great challenges that will test this Nation as it has never been tested before; and Whereas that renewing our knowledge of and faith in God through Holy Scripture can strengthen us as a nation and a people:

ñNow, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate 1983 as a national *Year of the Bible*, in recognition of both the formative influence the Bible has been for our Nation, and our national need to study and apply the teachings of the Holy Scriptures.ò

One might further point out that the above-mentioned President Andrew Jackson also said that Americaôs Founding Fathers ñcherished a great hope and inward zeal of laying good foundations...for the propagation and advance of the **Gospel** of the Kingdom of **Christ** in the remote parts of the **World**.ò One might also again recall that the very first President (before George Washington) ï the Calvinist Elias Boudinot ï was President also of the American Bible Society.

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[79] H.J. Berman: *Interaction of Law and Religion* (in *Capital University Law Review* 8:3, 1979, pp. 349f).

[80] Full text in V. Hall & R.J. Slater: *The Bible and the Constitution of the United States of America*, Foundation for America Christian Education, San Francisco, 1983, pp. xxi-xxii.

But enough! Time would fail to quote every Christian statement of every Christian President of the United States.

It is possible that the above-mentioned 1982 Presidential Proclamation of a national *Year of the Bible* ï had some impact on the importance case of *Marsh* v. *Chambers* in 1983. There, the U.S. Supreme Court upheld the time-honoured practice of having chaplains open State Legislative Sessions with prayer.

Explained even Chief Justice Warren E. Burger: ñThe men who wrote the First Amendment religion clause, did not view paid legislative chaplains and opening prayers as a violation of that amendment.... The practice of opening sessions with prayer, has continued without interruption ever since that early session of Congress.ò[81]

The bicentennial signs of the times (alias time for *Time* to change)

However, notwithstanding the latter developments, Dr. Ken Gentry in his article *The Rise and Fall of American Liberty* well declares[82] that a bastion of freedom ï the once-Christian American Republic ï has now devolved into a socialistic democracy. Explains Gentry: ñThe *Constitution* is today being remodeled into a tool for the promotion of the socialist democratic ideal, rather than remaining a bedrock of binding republican law.ò

Confusion even about the very nature of government, is now increasingly epidemic. Nowhere is this confusion more evident, than in the July 6th 1987 *Time* article ótThe Ark of Americaô ï about the value of the 1787 *U.S. Constitution*, in Americaôs bicentennial year.

States that article[83] anent the *Constitution*, and most objectionably: ñIt has sometimes countenanced filthy deeds ï most notoriously, the owning of slaves.ò *Time* then marches on, and treats its readers to the radical reasonings of one Thurgood Marshall.

ñA few weeks ago,ò explained *Time* in 1987, ñSupreme Court Justice Thurgood Marshall objected to some of the pietism attending the 200th anniversary of the *Constitution*.... Marshall said the document had been ódefective from the start.ô

ñThe fact that Marshall is the great-grandson of a slave, sharpened his point.... The document required óseveral amendments, a civil war and momentous social transformation [alleged Thurgood Marshall] ï to attain the system of constitutional government and its respect for the individual freedoms and human rights we hold as fundamental today.ôò

Time then droned on: ñThe country has gone on inventing and reinventing itself ï the *Constitution* shaping the nation; a changing America rethinking the *Constitution*.

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[81] *Marsh* v. *Chambers* 1983. Cited in *Our Chr. Herit.*, p. 8.
[82] K. Gentry: *The Rise and Fall of American Liberty* (in *The Counsel of Chalcedon*, Georgia, Oct. 1989, pp. 2 & 4).
[83] Art. *The Ark of America*, in *Time*, International ed., July 6 1987.

The one time the *Constitution* proved inadequate to the task, in the 1860s, half a million died in order to improve the document.

ñThe Civil War amounted to a Second Constitutional Convention.... Notes Federal Appeals Court Judge Irving Kaufman: óI regard reliance on original intent, to be a largely specious mode of interpretation.... The framersô legacy to modern times is the language and spirit of the *Constitution* ï not the conflict and dated conceptions that lay beneath that language.ôò *Per contra*, however, Matthew 5:18 & Luke 16:17!

Time also objected to the *U.S. Constitution* as such. It sneered: ñIn a speech in July 1985, Attorney-General Edwin Meese argued that the Supreme Court has allowed the *Constitution* to become far too organic. He criticized the Court for making the law, rather than merely applying the law ï as it had been set down by the founders. óThe Justices,ô said Meese, óshould stick closely to the views of the men who wrote the *Constitution*; they should practice today a ójurisprudence of original intention.ôò

Meese was quite right. But the anti-theocratic and pro-democratic *Time* then retorted: ñTodayôs interpreters of the *Constitution*...would never tolerate the brutality of the criminal punishments that were prevalent 200 years ago.ò

Time next tried to use the very opening words of the *U.S. Constitution* to promote modern democratic socialism ï against the republicanism of the framers of that document. For, observed *Time* (deifying the people): ñThe founders began, ówe the People.ôò

However, by this latter phrase the *Constitution* itself does not mean: ówe the Universally-Enfranchized Mob.ô It means: ówe elected people as the qualified representatives of the several State Governments **confederately** united in Constitutional Convention and about to give careful consideration to the draft of the *U.S. Constitution*ô then being proposed.

Time, however, here chose to misinterpret the phrase ówe the peopleô to mean: the ódeified Demo-cratic Mob.ô For *Time* next **feministically and racistically and socialistically** bemoaned: ñAnd yet, óthe Peopleô had very little to do with writing the thing. The framers, working behind closed doors and shut windows, were highly literate **white males** ï landowners, military heroes, merchants, accomplished lawyers. Hardly a word was heard from the common folkò alias the ódemo-craticô mob: the ñ**God**ò of *Time*.

Yet even the demo-cratic *Time* finally played into the hands of theo-cratic constitutionalists. For that proletarian periodical next proudly pontificated: ñIf there is any matter on which the original intent of the founders is clear, it is the issue of slavery.

ñSays Columbia Law Professor Jack Greenberg, former Director-Counsel of the N.A.A.C.P. Legal Defense and Education Fund: óThe original *Constitution* not only accepted slavery, but it gave the South a bonus for itô ï the stipulation in Article I Section 3 that in apportioning Representatives for the House, óthree fifths of all other personsô should be added to the ówhole number of free persons.ôò

Rather pathetically, it would seem that Columbia óLaw Professorô Greenberg here confuses Article I Section **2** of the *U.S. Constitution* with its Section **3**. Even more pathetically, the unconstitutional *Time* here certainly publicized this ï as well as other confusion.

Time marches on – but not fast enough for Law Professor Laurence Tribe

Hovering on the brink of rebellion, *Time* then again marched on ï and still marches on. While so marching, it next muddledly muttered: ñDeeds as well as words have made the *Constitution* sometimes deeds that were considered illegal.ò

This new nugget of nonsense, *Time* then elucidated as follows: ñAs Harvard Law Professor Laurence Tribe remarks, ó'The framing of the *Constitution* has been a continuous process. I think the real framers were not only the gentlemen who met in Philadelphia and those who drafted and ratified the crucial amendments, such as the amendments following the Civil War, but also the many people who often in the roles of dissent and rebellion, sat in, or marched and sang, or sometimes gave their lives, in order to translate their vision of what the *Constitution* might be and how it should be understood ï into political and legal reality.'ôò

The anti-theocratic *Time* then quite rightly concluded: ñAmerica now is incomparably more democratic than it was 200 years ago. Originally, only the House of Representatives was elected directly by the peopleò ï and indeed, only by those sufficiently qualified and enfranchised (we ourselves may add).

ñNow,ò however, explained *Time*, ñthe Senate is directly elected and sees itself as responsive to the peopleò ï who are now more broadly enfranchised, yet more unqualified than qualified. In other words, *Time* regards the Senate as now no longer responsible to the State Legislatures which ï according to the original *U.S. Constitution* ï were empowered, in terms of Article I Section 3, to chose that Stateôs Senators.

The same is now true also of the President, triumphs *Time*. ñThe President is in effect directly elected by the people, not by the vestigial Electoral College that the founders invented. Even the Supreme Court has long since taken on a representative [meaning a ódemo-craticô] character. Said Supreme Court Justice Thurgood Marshall of the founders: ó'They could not have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court ï to which had been appointed a woman, and the descendant of an African slave.'ôò

Fortunately, however, as even *Time* recognized, theocratic ñforces have been agitating for changes.... In Congress, a group of conservative Republicans, led by Jesse Helms of North Carolina and Orrin Hatch of Utah in the Senate and by Philip Crane of Illinois in the House, has been trying to reduce the [democratic] Supreme Courtôs authority, by introducing so-called court-stripping bills. The bills may be constitutional, under Article III Section 2, which provides that Congress may set limits on the Supreme Courtôs appellate jurisdiction.ò

Declares the *Constitution* in that place: ñThe supreme court shall have appellate jurisdiction, both as to law and fact ï with such exceptions, and under such regulations as the Congress shall make.ò Here, there is a capital óCô in the word ñCongressò ï and the words ñsupreme courtò need to be commenced with a small ósô (and a small ócô).

Time concluded, it seems with obvious disapproval, that ñHelms proclaims his purposes clearly: óArticle III Section 2 is the fundamental key for Congressional efforts to restrain federal judges who distort rather than enforce the *Constitution*.ô A prime target: abortion cases. óThrough similar legislative enactments,ô Helms said, óCongress could restore voluntary school prayer and severely limit enforced busing. There are other areas in which Congress could act, as well.ôò

Time could also have mentioned (but did not) that the Harvard Law Professor Laurence Tribe it quotes, previously defended the Supreme Courtôs 1973 decision in *Roe* v. *Wade* ï granting a woman the óconstitutional rightô to abort her own baby, on the ground that the ñdistinctly-sectarian religious controversyò over abortion influenced the Courtôs ruling in order to ñprevent a óunion of government and religion.ôò See Tribeôs *Forward Toward a Model of Roles in the Due Process of Law and Life*.

However, fifteen years later, Tribe came to his senses on this point ï and changed his mind. For in the 1988 second edition of his book *American Constitutional Law* (page 1350), he conceded that his earlier view would have deprived religious groups of their right freely to participate in the nationôs political life ï as guaranteed by the *U.S. Constitution* in its 1791 First Amendment.

Even in 1986, Tribeôs earlier strict separationist position did not influence the majority of judges in the Supreme Court. For in *Bowers* v. *Hardwick*, the majority then upheld the constitutionality of Georgiaôs criminal sodomy statute.

Justice Harry Blackmun then wrote, in a dissent on behalf of himself and three colleagues: ñThe assertion that ótraditional Judeo-Christian values proscribeô the conduct, cannot provide an adequate justificationò of the statute. ñThe legitimacy of secular legislation depends instead on whether the State can advance some justification for its law beyond its conformity to religious doctrine.ò Yet the majority of the Supreme Court still disagreed with Blackmun about this.

Moreover, one of those minority Justices in the Supreme Court who in 1986 agreed with Blackmun, unsuccessfully continued to state this óstrict separationistô view even in 1990. Justice John Paul Stevens, dissenting from an opinion upholding a Missouri statute limiting life and death decisions involving comatose relatives in a euthanasia case, without success claimed it ñis not within the province of secular government to circumscribe the liberties of the people by regulations designed wholly for the purposes of establishing a sectarian definition of life.ò See *Cruzan* v. *Director of the Missouri Department of Health*.

This 1990 decision means that State statutes are not overridable by a (radical mis)construction of the *U.S. Constitution* as amended. So, though much weakened by the modern sociology of law (if not also by socialisticizing misinterpretations of precedents) ï the basic and unanimous decision by the U.S. Supreme Court in the

1833 case of *Barron* v. *Baltimore*, and its decision in the 1873 *Slaughter-House Cases*, were still being followed by a majority in that Court even during 1990.

For the *U.S. Bill of Rights* does not, *ipso facto*, bind the States. Moreover, constitutional law is still to be sought in the written texts. It is not to be sought in any real or imagined *mens rea* therebehind ï nor in any modern ójudicialô reinterpretation thereof. See: *Barron* v. *Baltimore* (discussed at length in our footnote).[84]

So down with euthanasia! Down with abortion! Down with busing! Down with demo-cratic alias mob-rule judges! Up with republican statesmen! Down with the Clinton-ated state of America! Up with the United **States** of America! Up with

[84] In 1833, Barron sued Baltimore City, claiming it had impaired the value of his wharf in the harbour ï without compensating him. He contended that this action violated the *U.S. Constitution*, because the city had taken his property without giving him compensation ï in violation of the ñtakingsò clause in Article 5 of the *U.S. Bill of Rights*.

Barron claimed the *U.S. Bill of Rights* restrained ñthe legislative power of the State, as well as of that of the United States.ò Chief Justice John Marshall, however ï writing for an unanimous Court, replied that the *U.S. Bill of Rights* applied only to the federal government of the United States ï and not to those of the States.

In his short opinion, U.S. Supreme Court Chief Justice Marshall noted in respect of the Preamble that ñthe *Constitution* was ordained and established by the people of the United States for themselves ï for their own government, and not for the government of the individual States.ò He added that ñeach State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its [own] particular government as its judgment dictated.ò

Marshall drew attention to Article I Section 9ôs reference to ñCongressò in the the *U.S. Constitution*, showing that the limitations therein mentioned apply to the Federal Government and not to the State governments subject to their own constitutions. He then turned to the *U.S. Bill of Rights* and noted:

ñIf the original *[U.S.] Constitution*...draws this plain and marked line of discrimination between the limitations it imposes on the powers of the general government and on that of the States; if, on every inhibition intended to act on State power, words are employed which directly express that intent ï [then] some strong reason must be assigned for [now] departing from this safe and judicious course in framing the amendments before that departure can be assumed.ò

Yet the First Amendment in the *U.S. Bill of Rights* itself, in its own reference to the [U.S.] ñCongress,ò repeats the precise pattern of Article I Section 9 of the *U.S. Constitution*. Indeed, also the rest of the *U.S. Bill of Rights* declares limitations which can only be applied to the U.S. Federal Government and not to those of the States as such.

Marshall therefore concluded: ñHad [the U.S.] Congress engaged in the extraordinary occupation of improving the constitutions of the several States by affording the people additional protection from the exercise of power by their own [State] governments in matters which concerned themselves aloneò ï the U.S. Congress itself ñwould have declared this purpose in plain and intelligible language.ò *Barron* v. *Baltimore*, 32 U.S. (7 Pet.) 243 (1833).

Thirty-five years later, the U.S. Congress had this very opportunity, when it addressed the carefully-worded proposed *Fourteenth Amendment*. Yet also in the 1873 *Slaughter-House Cases*, the Supreme Court again followed the previous legacy of John Marshall that constitutional law was found in the written text ï not in the original intent of the framers, and still less in some or other real or imagined judicial scheme of ordered liberty. See: *The Forecast* for December 15th 1993, edited by Dr. Herb Titus (J.D.), Virginia Beach, Va., pp. 6f.

Incidentally, a majority in the U.S. Supreme Court did exactly the same in the 1986 case of *Bowers* v. *Hardwick* ï and again in the 1990 case of *Cruzan* v. *Missouri Department of Health*. Nevertheless, a strong minority of U.S. Supreme Court judges dissented from these recent decisions of their own Supreme Court.

Thus, it is a very long way from the 1833 U.S. Supreme Courtôs Chief Justice John Marshall with his reverential respect for the *U.S. Constitution* as written (in the unanimous decision in *Barron* v. *Baltimore*) ï to modern maverick Supreme Court judges like Thurgood Marshall, who in 1987 stated that the *U.S. Constitution* was ñdefective from the startò (see our n. 83 above).

voluntary school prayer! Up with the ***Constitution***! Up with its ultimate basis ï the **Ten Commandments** of the theo-cratic **Holy Bible**!

Summary: U.S. Common Law during the nineteenth and twentieth centuries

Summarizing, judgments in early court cases in the United States often stressed the Christian Common Law character of the U.S.A. This was endorsed by Chancellor and Chief Justice James Kent, and especially by U.S. Supreme Court Justice Joseph Story.

It is true that even from 1837 onward, North-South tensions begin warping Christianity and U.S. Common Law. Yet law was still king ï *lex rex*. Hence the **constitutional right of the States to secede** from the U.S was then **stressed especially by Northerners**. That legal right was never challenged even from 1837 onward ï until 1861.

Causes of the 1861-65 War of Northern Aggression against the Southern States, were basically related to the then-unitarianizing Northôs desire to preserve a then-unitarianizing Union ï rather than to the issue of slavery. General Robert E. Lee rightly assessed Lincolnôs unconstitutional and unethical actions, and refused to accept the Presidentôs offer for Lee to lead the misdirected Northern Union Armies against the confederated States of the South.

Professor J.H. Thornwell did his best to get Christ acknowledged in the 1861 *Constitution of the Confederate States of America*. Significantly, Professor R.L. Dabney upheld capital punishments for capital crimes ï and regarded the War of Northern Aggression against the *U.S. Constitution* as being engineered by Christ-hating socialists.

Following the rape of the South by Northern Radicals, the latter rapidly and progressively prostituted the *U.S. Constitution* itself ï by enacting more and more purported and actual amendments which constantly steered the U.S.A. toward socialism. Yet Christian statesmanship was exercised excellently by great Northern Calvinists like A.A. Hodge & R.S. Storrs ï who tried to heal the war-torn nation.

Consequently, U.S. Common Law was still very much alive ï though indeed not wholly well ï at the end of the 19th and even at the beginning of the 20th centuries. It is true that since then there has been further apostasy from the Common Law, also in the U.S. Supreme Court, since the mid-1950ôs. Yet Law Professor Harold Berman and U.S. President Ronald Reagan subsequently re-emphasized Americaôs Biblical heritage.

In the bicentennial year 1989, one ominously saw the signs of the times. Yet even *Time* could then have changed for the better ï in the few remaining years ñB.C.ò (alias ñBefore Clintonò). For now, with Clinton, homosexuality has been destigmatized ï and, with the ólegalizationô of ópart-birth abortionô alias the murder of babies during their birth, also infanticide has been made even more accessible.

[This dissertation was completed in 1993, and revised in and until 1997. With the advent of the third millennium and the Bush years, let us here simply insert the recent

observation that the humanist onslaught against Christianity is still very much with us. The issues raised by ongoing abortions, deficits, euthanasia, free trade, gay marriages, global warming, stem cell research, terrorism, and óforgivingô third world debts, *etc*., are all **moral issues**. The 2005 U.S. Supreme Courtôs 5-4 decision against the public displaying of the **Moral Law** alias the Ten Commandments in Kentucky, screams out for the impeachment of those five Supreme Court Justices ï and their replacement by new judges who would uphold the *U.S. Constitution* and its Common Law.]

We close. The U.S. system of government embraces the following Biblical ideas. First, it has a trinitarian structure (separation of the triune governmental powers) ï and a Christian background (Puritan-Presbyterian political theory). Second, it makes full allowance for the doctrine of total depravity (by its limited government, its bicameral legislatures, its Statesô rights reserved by the Tenth Amendment, and its built-in checks and balances).

Third, the *Constitution* ï derived from Hamiltonôs Presbyterian *Book of Church Order* ï requires the Union to have a representative and therefore non-democratic and non-autocratic alias a truly republican form of government, which it also guarantees to each of the several constituting States. This provides for a óPresbyterian aristocracyôï and safeguards against ópopularistic mob ruleô as well as ópapal tyranny.ô

Finally, the original *U.S. Constitution* is a good model for export (subject to all necessary adaptations). This can be seen in the Seventh Article of the *Bill of Rights* in the *Constitution of the U.S.A.* ï which upholds the Common Law in all the courts of the land. Its international usefulness can be seen also from its strong influence on the establishment of the Australian Colonies and State Governments from 1788 onward ï and especially at and since the establishment of the Australian Federal Government in 1901.

As the modern Chicago Law Professor Palmer Edmunds has written,[85] the Common Law plunges its millenary roots into the era of feudal agriculturalism ï yet it flourishes in the shadow of skyscrapers, and is fertilized by the black soot of steel mills. Changing and yet unchanged for a thousand years, hoary with age yet contemporaneous in effectiveness, it seems to defy the rhythm of growth and decay. It has produced no finer fruit than the constitutional system of the United States, embodying in clear-cut terms a full quota of individual spiritual rights, and buttressing them and other basic Common Law and statutory rights with procedures insuring as adamant protection and vindication as appears humanly possible.

After running for the U.S. Congress, Rev. Dr Joseph C. Morecraft III wrote an illuminating article on *The Church and Violence*. There, he rightly claims that a free society is based on the **rule of law** and the **Common Law**. An unfree society is based on the rule of men, and discretionary lawlessness.[86]

As Elijah said to the people on Mt. Carmel: ñHow long will you keep on halting between two opinions? If the Lord be God, follow Him; but if Baal ï then follow him!ò First Kings 18:21.

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[85] *Op. cit*., p. 473.

[86] J.C. Morecraft III: *The Church and Violence* (in *The Counsel of Chalcedon*, Dunwoody Ga., 1988, p. 13).

Enjoined Joshua (24:15): ñChoose today whom you will serve! But as for me and my household ï we will serve the Lord!ò

That is then the challenge also to our own generation ï today. To the above question of Elijah, may we then indeed give the above answer of Joshua.

May we further also heed the clarion call of Isaiah (8:20). ñTo the Law and the testimony! If they do not speak according to this word ï it is because there is no light in them.ò

CH. 41: THE COMMON LAW IN AUSTRALIA FROM A.D. 1788 TO 1993

Professor F.L.W. Wood, the well-known author of *The Constitutional Development of Australia*, indicates in his *Concise History of Australia*[1] that already in Pre-Christian times the Greeks presumed there might well be such a great Southern Continent. Perhaps then, suggests Wood, some descendants of Adam might have travelled as far as the Antipodes and flourished there. Thus too thought Albert the Great (1193-1280) and Roger Bacon (1214-1294).

Even stories from Marco Polo, who returned from China to Venice in 1295, confirmed the Greek presumption that *Terra Australis* alias Australasia might very well exist. Renaissance researches in astronomy and hydrography further confirmed the presumption. Thus, by the fifteenth and sixteenth centuries ï European experts knew that there must be a great Southern Continent.

By 1603*f*, King James the First of England and Scotland had created the ñGreater Unionò flag ï combining Englandôs St. Georgeôs cross with Scotlandôs St. Andrewôs cross. Then, in 1605 ï just a decade before the Synod of Dordt ï the Dutchman Jansz, sent by the Calvinistic Dutch East India Company to explore what is now the southern coast[2] of Indonesia, entered Australiaôs Gulf of Carpenteria in his ship *Duyfken* ï and followed the coast to Cape Keer-Weer (or ôTurn-Backô) in Queensland.

In 1607, Quiros from Peru discovered the Australasian New Hebrides (just over a thousand miles to the east of Australia) ï which he named:[3] **Land of the Holy Spirit**. Then, in 1616, the Dutch Calvinist Dirck Hartog,[4] in his ship *Eendracht*, discovered the west coast of Australia.

The American Rev. Dr. Jonathan Edwards's 1739 predictions about Australasia

Also the English were not idle. In 1622, Captain Brooke of the good ship *Tryal* sighted Point Cloates. That was less than 300 kilometres (or about 200 miles) to the northeast of the westernmost part of Western Australia.

However, when subsequently the ship was wrecked, some thirty-six survivors reached and spent a week on one of the Monte Bello Islands ï about 200 kilometres northeast of North West Cape, in the middle of Western Australiaôs westernmost

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[1] F.L.W. Wood: *Concise History of Australia*, Dymockôs Book Arcade, Sydney, 1936, pp. 1-5. See too his *Constitutional Development of Australia*, 1933.

[2] Art. *Jansz, Willem*, in *Concise Encyclopedia of Australia and New Zealand [CEANZ]*, Horwitz Grahame, Cammeray N.S.W. Australia, I p. 504.

[3] See C.M.H. Clark: *A History of Australia*, University Press, Melbourne, I pp. 14-16.

[4] *Id*. ñUntil the refutation of Dr. Moranôs views by E. OôBrien, children in Catholic schools were taught that Quiros discovered Australia, while in the Protestant and State Schools the honour was given to the Dutch ï to Jansz or Hartog.... OôBrien thus followed [Captain] Cook not only in his opinion of the site of *Austrialia del Espiritu Santo* [namely in the New Hebrides], but also in his estimate of the significance of the Dutch. So Quiros lost that sort of pre-eminence.ò

coastline. These were **the first Britons** ï and indeed **also the first Westerners** ï known to have reached and **set foot in Australasia**.

Thus did **British Common Law**, rather than Spanish Civil Law or Roman-Dutch Law *etc.*, first come to that Continent. (The notions of any pre-existing allegedly ónindigenousô or óAboriginal Lawô and the legal doctrine of *terra nullius* shall be dealt with later below.)

Now by óAustralasiaô is meant Australia, Tasmania, New Zealand and their former and current Dependencies ï in the southwestern quadrant of the Pacific Ocean. By extension, that would include also more than half of Antarctica.

As such, even Greater Australia alone ï without New Zealand and her current Dependencies ï totals 14,082,492 square kilometres alias about 8,801,580 square miles. This makes Greater Australia by far the biggest country in the World ï compared to: the old Soviet Union (8,570,600 square miles); the current Russian Federation (6,501,500 square miles); and all 50 of the United States (3,615,211 square miles). See *Hammond Citation World Atlas*, Maplewood, New Jersey, 1966, pages 5 & 49 & 89 & 189.

Now twenty years after the Britons on the good ship *Tryal* had occupied one of Australiaôs Monte Bello Islands ï an important event occurred. It happened in the very year of the beginning of the English Civil War, and the year before the Calvinist Westminster Assembly met in London.

For in 1642, the Dutch Reformed Presbyterian Abel Tasman dedicated to Almighty God his voyage toward óNew Hollandô (alias Australia). At length, he discovered and named Van Diemenôs Land (subsequently renamed Tasman-ia) ï as well as Staten Landt (alias the South Island of New Zealand).

Wrote the Calvinist Tasman in his diary before leaving his old Holland for óNew Hollandô: ñMay God Almighty vouchsafe His blessing on this work!ò Later, after departing from off the coast of Tasmania, he further wrote: ñGod be praised and thanked for His happy voyage!ò[5]

In 1688 and again in 1699, the Englishman William Dampier visited the northwestern coast of Australia. He was not impressed by what he saw. So it was not till 1769 that another Englishman, James Cook, visited New Zealand in Australasia ï and then discovered the East Coast of Australia and claimed it for Britain in 1770.

Yet quite some three decades earlier, the great American Puritan Rev. Professor Dr. Jonathan Edwards (Sr.) ï later to become the President of Princeton University ï had already expostulated concerning Britain, Ireland and the great Southern Continent of Australasia. Fascinating indeed are his predictions concerning what he himself called ñ*Hollandia Nova Incognita*ò (or unknown New Holland alias Australia) and ñ*Terra Australis*ò (or Australasia). Fascinating too are his predictions about the year A.D. 2000.

[5] *Ib.*, pp. 29 & 34.

For in his *Apocalyptic Writings*, the A.D. 1703-58 Edwards proclaimed:[6] ñThere are three Continents of the Earth: the Old Continent [alias the land-mass of Europe-Africa-Asia], America [North-Central-South], and *Terra Australis* [or Australasia].... The Mediterranean Sea...opens the way from Canaan...straight to *Terra Australis* the Third Continentò ï which is also located ñto the West side of America through...the great South Sea into *Terra Australis* by the Indian Ocean....

ñWhat advantage has it been to America, that the Mediterranean Sea opens from them to us? Or what advantage has *Hollandia Nova* [alias Australia] or *Terra Australis Incognita* [alias unknown Australasia], from the Indian Oceanôs reaching from them even to this land? Wherefore, we do believe that the most glorious part of the Church will hereafter be there, at the centre of the Kingdom of Christ, communicating influences to all other parts....

ñThere are these remarkable periods of time: [1] when Abraham was called, in the year of the world 2000; [2] Solomonôs glorious Kingdom settled, and temple finished, in the year of the world 3000; [3] Christ born in the year 4000; and [4] the millennium to begin in the year 6000.ò By the latter, Edwards meant 2000 A.D. as the year around which his own [postmillennial] understanding would commence.

Very significant is Edwardsôs understanding of ñIsaiah 42:4ò ï in which God predicted, around B.C. 740, that ñ**the isles shall wait for His Law**. This and such prophecies of the gospelizing of islands [*cf.* too Genesis 9:27 and 10:2-5]ò ï explains Edwards ï ñI believe to have a threefold accomplishment, to each of which the prophecies had an eye.

ñBy óislesô is meant...particularly Europe.... The conversion of that, is principally aimed at in these prophecies.... Then they have a glorious accomplishment in the **gospelizing of the isles of Britain and Ireland**, and making of them **so glorious a part of the Church** [*cf.* Isaiah 49:1-6 & 49:12]....

ñBut by these glorious times they speak of, is intended **also the times of the Church's triumph at the millennium – and the times immediately foregoing**, wherein these prophecies will be **much the most notably accomplished**. And what is peculiarly glorious...is the gospelizing of the new and before-unknown world ï that which is so remote, so unknown, where the devil had reigned quietly from the beginning of the world, which is larger ï taking in America, *Terra Australis Incognita* [or unknown Australasia], *Hollandia Nova* [alias Australia], and all those yet undiscovered tracts of land....

ñ**There must be an amazing and unparalleled progress of the work and manifestation of divine power** ï to bring so much to pass, **by the year 2000**.... In the next whole century [from A.D. 2000 to 2100?], the whole heathen world should be enlightened and converted to the Christian faith throughout all parts of Africa, Asia, America and *Terra Australis* ï and be **thoroughly settled in Christian faith and order**.ò

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[6] J. Edwards: *Apocalyptic Writings*, ed. Stein, Yale Univ. Press, New Haven, 1977, pp. 133-35, 143 & 411. See too F.D. Whiteôs M.Th. dissertation *The Reformation Roots and Edwardsean Fruits of the Missiology of Jonathan Edwards' Interleaved Bible*, Westminster Theological Seminary, Philadelphia, 1991, pp. 59f.

All the emphases above are mine ï F.N. Lee. Thus the great Jonathan Edwards ï already around A.D. 1739!

From the first Britons who reached till the first who colonized Australia

During the next decade, the Anglican Yorkshireman[7] James Cook (1728-79) went to sea from Whitby.[8] This is the very place where the godly Hilda had operated the famous Proto-Protestant Culdee Christian College, back in A.D. 660*f.*

In 1755, Cook joined the Royal Navy. There, when a captain, he never allowed profanity on board. There, he encouraged his men to wear clean clothes at divine worship on Sundays. Captain Cookôs wife gave him a prayer-book, from which he named several places discovered on significant days ï such as the Whitsundays, Trinity Bay, and the Pentecost Islands. Their son Hugh was just about to enter the Ministry of the Word and Sacraments ï when he suddenly died as a young adult.

James Cook went to Canada in 1758, where he soon showed marvellous skill in map-making. By 1768 he was sailing to explore the South Pacific. In 1770, he annexed both the North Island and the South Island of New Zealand for Britain; discovered the east coast of Australia; sailed through the Great Barrier Reef opposite Queensland; and hoisted the British flag on Possession Island off Cape York, claiming the whole of the eastern coast of Australia for Britain. Accordingly, it is from no later than that very moment onward ï that British Common Law began to operate ôDown Under.ô

During his second voyage (1772-75), Captain Cook almost circumnavigated the World. This time, he bypassed the southern coast of Australia even south of the Antarctic Circle. After exploring the South Pacific, during 1777 he landed in Tasmania (thereby asserting Britainôs authority there too). Thereafter, he continued to chart the Pacific ï and died during 1779 in Hawaii. That place, though now a Republic and part of the U.S.A., still brandishes Britainôs Union Jack in the top left-hand corner of its own State Flag, to this very day.

The next year, 1780, the great British jurist Sir William Blackstone died. This was just three years after Captain Cook had visited Tasmania ï and only eight years before the later establishment of the first British Common Law Colony in Australia.

Well does University of Queensland Law Professor R.D. Lumb declare in his valuable book *Australian Constitutionalism*[9] that it was left to Solicitor-General Sir William Blackstone ï a judge, scholar and Parliamentarian ï to portray the operation of the rights of *Magna Carta*. Indeed, it is beyond doubt that they were certainly the rights of eighteenth-century Englishmen ï including those who from then on would settle in Australia.

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[7] *CEANZ*, I p. 198.
[8] F.L.W. Wood: *op. cit.*, pp. 24f; and esp. G. McLennanôs *Additional Notes* (in his *Understanding our Christian Heritage*, Christian History Research Institute, Orange N.S.W., n.d., p. 25).
[9] R.D. Lumb: *Australian Constitutionalism*, Butterworths, Brisbane, 1983, pp. 24.

Lumb further explains that the ñliberties of Englishmenò were considered to flow from the Common Law, as confirmed by *Magna Carta*. Blackstone considered that the Common Law reflected in broad outline the Natural Law which gave protection to these rights.[10]

Significantly, continues Lumb,[11] Blackstoneôs *Commentaries* were published in 1765. That was less than a decade before Captain Cook proclaimed His Majestyôs sovereignty over the Eastern Coast of Australia, and just a little more than twenty years before English Colonists permanently set foot on Australian soil. Blackstoneôs general outline of the constitution and laws of England was to influence profoundly the understanding of these laws in the Australian Colonies. For they were to adopt the principles embodied therein ï the principles of the Common Law.

The beginning of the transportation of convicts from Britain to Australia

Events in America now had an interesting impact on Australia. After the outbreak of the American War for Independence in 1776, it was no longer possible for Britain to continue sending many of her convicts there ï where the American settlers had been buying their services. One of the American Loyalists, Magra (or Matra), had been with Captain Cook in Eastern Australia. So in 1779, it was suggested that American Loyalists faithful to Britain during the 1776*f* War for American Independence be sent to New South Wales ï together with soldiers and Britainôs accumulating convicts.[12]

The convicts sent to Australia in 1788, were a very mixed group. Many were poachers (similar to Jean Valjean in Victor Hugoôs *Les Miserables*), who had stolen food to feed their starving families.

Many others were petty offenders, including women and children. A naval surgeon, William Redfern, who was transported because when nineteen he gave friendly advice to some mutineers ï later became one of the best doctors in Sydney.

An elderly scholar, transported for cheating the Post Office of tenpence in order to oblige a fellow clergyman ï at length became Sydneyôs leading Schoolmaster. Early governors of New South Wales testified that many of the convicts were as well-behaved and hard-working as freemen.

Among the convicts, there were also political prisoners. Such included the ñScottish Martyrsò ï who were transported for urging that Scots be given more influence in the British Parliament. Hundreds of Irishmen were transported for similar offences, sometimes religiously motivated by a hearty papal dislike of Britainôs Protestant Monarchy. For similar reasons, a hundred French Canadians were transported óDown Underô in 1839*f*.

[10] W. Blackstone: *Commentaries*, Bk I, Ch 1, pp. 121 *et seq.*
[11] *Op. cit.*, p. 25.
[12] F.L.W. Wood: *op. cit.*, pp. 36f.

Later, also many Scottish Presbyterians arrived as free settlers. Whether bond or free, with so many Irish Romanists and Scottish Presbyterians ï the Celtic contribution to Australia *vis-a-vis* the English element, was thus very pronounced.

Yet there were many convicts and some free settlers also from England ï in addition to the English soldiers who maintained law and order. Also banished to Australia were many labour agitators who had tried to organize workmen into unions in Britain. Some from Tolpuddle in Dorsetshire were the best known of those in this category.

Finally, there were also felons such as thieves and murderers. These are they whom New South Wales Governor Phillip called ñcomplete rascalsò and ñthe most infamous of mankind.ò

The latter was a very small fraction of the original settlers. For, till about 1790, most perpetrators of capital crimes were executed according to the Common Law ï and, indeed, so executed within England itself.

However, with the rise of socialism in Britain ï especially following the abolition of slavery throughout the British Empire in 1833 ï many felons were no longer executed. Along with other minor offenders, they were instead sent to New South Wales.

Fortunately, however, there was by then a big free population in Australia ï as well as many Emancipists. Consequently, the influence there of the bad qualities of the new waves of convict-immigrants ï was minimal.[13]

A lot of violence in Australia was held in check by the vigorous ï and sometimes not sufficiently merciful ï application of much of the Common Law. Too, the early governors had great power to affect the life of a convict. Thus, many fared well under Governor Macquarie (a humane Presbyterian).

Indeed, such as behaved themselves and were diligent ï like the one who painted beautiful artifacts for churches ï were advanced and given preferential treatment. In general, convicts who became obedient and well-behaved ï would usually win freedom and happiness before those who constantly rebelled and then committed fresh crimes.[14]

There was also the influence of Christianity. Already in 1786, the Evangelical Rev. Richard Johns(t)on was offered the Chaplaincy of New South Wales ï and took Bibles and Psalters to Australia. Indeed, when the First Fleet arrived at Botany Bay in 1788 to establish the first British Colony in Australia ï Governor Phillip, an eminently fair and impartial person, upheld the **Bible's Decalogue** especially in **public life**.

[13] *Op. cit.*, pp. 39 & 46f.
[14] *Op. cit.*, pp. 49-51.

The Britons brought their Common Law with them to Australia in 1788

Now it was Anglo-British Common Law ï itself structured round the Bible and Godôs Ten Commandments ï that was taken by the first colonists to Botany Bay in New South Wales from 1788 onward. This was the system of law seen in the 1765 Sir William Blackstoneôs *Commentaries on the Laws of England*.

That system was predestined to become the law of the new Colony in New South Wales just two decades later in 1788. Indeed, it was the system of law also predestined to govern the Commonwealth of Australia from 1901 onward.

Very significantly, only after the American *Declaration of Independence* ï indeed, only after the Botany Bay founding of Australia under Anglo-British Common Law in 1788 ï did the iniquitous French Revolution occur in 1789. In that very year, the utilitarian Jeremy Bentham published (partly in France) his two-volume *Introduction to the Principles of Morals and Legislation*.

Later followed Benthamôs three volumes of *Treatises on Civil and Penal Legislation* (Paris 1802). Only in 1823 did his Anti-Blackstonian[15] *Fragments on Government* appear in his own name ï which *Fragments* he had previously published anonymously, already in 1776.

On the latter work, the *Encyclopaedia Britannica* correctly comments[16] that the first fruits of Benthamôs studies ï the *Fragments of Government* ï appeared anonymously in 1776. The subtitle ï ó*an examination of what is delivered on the subject of government in the Introduction* to William Blackstoneôs *Commentaries*ô ï indicates the nature of the work.

Blackstoneôs own *Introduction*[17] in his *Commentaries on the Laws of England*, had traced the Common Law back to the Irish Brehons, the Celtic Britons and the Ancient Germans ï through Coke, Selden, Littleton, Fortescue, Edward the Confessor and Good King Alfred. More particularly, Blackstone had grounded British Common Law in the Law of Nature and in the Christian Bible (as too had Good King Alfred). It was this feature of Blackstone that Bentham particularly assailed.

However, Bentham spurned also Littleton and Coke ï together with Blackstone. Even when a law student, explains the *Britannica*,[18] Bentham spent his time in making chemical experiments and in speculating upon legal abuses ï rather than in reading Coke upon Littleton and the *Reports*. Nevertheless, in his anonymous diatribe against the great Blackstone, the young Bentham declared the ñgrand and fundamentalò fault of Blackstoneôs *Commentaries* to be his ñantipathy to reform.ò

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[15] Art. *Bentham, Jeremy* (in *Enc. Amer.* 1951 3:525): ñHis ó*Fragments on Government*,ô in opposition to Blackstone, appeared anonymously in 1776, and with his name, London 1823.... At his death, Mr. Bentham bequeathed his body to be dissected.... He was a man of primitive manners.ò
[16] Art. *Bentham, Jeremy* (in *Enc. Brit.* 1929 3:417).
[17] *Op. cit.*, I pp. 4-112.
[18] Art. *Bentham, Jeremy* (in *Enc. Brit.* 1929 3:416f).

This book of Bentham's ï explains the *Britannica* ï may be said to mark the beginning of philosophic radicalism. Bentham was made a French citizen in 1792. That was just three years after the French Revolution ï almost the worst calamity ever, since the fall of man.

In the above-mentioned works, Bentham transmitted the ideas of the influential infidel and (Pre-)Revolutionary French Humanist Helvetius into Christian Britain. Thus did Bentham begin progressively to infect Britain too ï with the democratic or ótutilitarianô philosophy.

That latter holds that laws do not finally derive from God at all, but from man. It further holds that the greatest happiness of the greatest number ï alias 50%-plus of those who bother to indicate their views ï is the fundamental and self-evident principle of human morality.

That median morality, held Bentham, should be reflected by Parliaments in their enactments ï and by judges in their legal interpretations thereof. Thus, in ñthe Ungospel according to Benthamò ï not ógodô (with a small ñgò) but Judges [with a capital ñJò] make law. Humanistic judges thus actually make law ï the law of humanistic man.

Fortunately, however, Bentham long had very little influence in Early Australian Courts. There, the influence of Blackstone was very firmly entrenched. For already in 1792, Christian education had commenced in Australia (under Governor Phillip and Revs. Johnson & Marsden).

Rev. Johnson had been recommended to the Home Office by the Society for the Propagation of the Gospel. His sponsors trusted that as Chaplain to New South Wales he would prove a blessing to lost creatures, and hasten the coming of that day when the wilderness became a fruitful field ï when the heathen would put off their savageness, and put on the graces of the Spirit.

In addition to Bibles, Books of Common Prayer and Psalters ï Johnson took with him Kettlewellôs offices for the penitent; copies of exercises against lying; of cautions to profane swearers; of exhortations to chastity; of dissuasions from stealing ï together with the most fervent wishes from the Board of the Society, that the divine blessing might go with him.[19]

Thus even Australiaôs greatest socialist historian, Professor Manning Clark.[20] Significantly, all of the above are closely intermeshed with the upholding of the **Common Law** and its **Deuteronomic Decalogue**.

On the second Sunday after leaving Britain, Johnson preached on the ship to the convicts against swearing. For days thereafter, they refrained from coarseness.

After their arrival in Australia, on Sunday 3rd February 1788, Johnson preached his first sermon óDown Underô ï to a congregation of soldiers and convicts. He preached from Psalm 116:12*f*. ñWhat shall I render unto the Lord for all His benefits

[19] G. McLennan: *Faith of the Fathers*, in *Understanding our Christian Heritage*, pp. 8f.
[20] C.M.H. Clark: *op. cit.*, I p. 75.

toward me? I will take the cup of salvation, and call upon the Name of the Lord! I will pay my vows unto the Lord now!ò

Australia's first dayschools were specifically Christian Dayschools

Rev. Richard Johnson organized the first schools in Australia. They were Christian academies, and preceded the many denominational schools which followed. Only in 1848 were state schools established, paid for entirely by the Government. At the same time, however, even thereafter the Government still continued to help the older church schools ï and does so throughout Australia, even today.[21]

The 1798 *Rules or Articles to be Observed Respecting the School at Sydney* ï laid down by Rev. Johnson and now kept in the archives of the Society for the Propagation of the Gospel which sent him to Australia ï are full of instruction. Among other things, they provide[22] that:

ñAny child or children guilty of swearing, lying, stealing or any other idle or wicked habit at school are to undergo such punishment as the master (first acquainting Mr. Johnson with the crime and having his concurrence) shall think proper to inflict. If after frequent correction no reformation be effected, that child [is] to be turned from school.

ñAll children belonging to this school are regularly to attend public worship on the Sabbath Day (except upon necessary and proper occasions they may be prevented) and to appear clean and decent. The different masters, two at least, [are] likewise to attend; to mark those that are absent; and to report the same to Mr. Johnson on Monday morning.

ñThe children to be **catechized** and to sing one of Dr. Wattôs *Hymns for Children* every Sunday forenoon, and to be catechized at Church at such times as Mr. Johnson or the clergyman officiating may find convenient. Such parents as neglect or refuse to send their children [are] to be thus instructed, [and] to be deprived of the privilege of the school.ò

Hence, already in 1792, Johnson reported that schools had been opened in Sydney and Parramatta ï as well as on Norfolk Island. There, children were instructed in religion and morality ï as well as in reading, writing and arithmetic. Many were the children of criminals. Each Christmas, the scholars were examined by the governor; given a suit of clothing; and addressed on the desirability of acquiring a moral and religious education which imparted a sense of duty to their country and to God.[23]

On his second Sunday in Australia, Johnson performed fourteen weddings. Then, three days later, Governor Phillip swore on the Bible before the Judge Advocate: ñI,

[21] F.L.W. Wood: *op. cit.*, p. 335.
[22] Cited in McLennanôs *op. cit.*, p. 26.
[23] C.M.H. Clark: *op. cit.*, I pp. 257-59.

Arthur Phillip, do declare that I do believe that there is not any transubstantiation in the Sacrament of the Lordôs Supper.ò Next Sunday the latter was celebrated.[24]

Governor Phillip nevertheless granted full liberty of conscience, and also the free exercise of all modes of religious worship not prohibited by law. Significantly, however ï thus Professor Manning Clark[25] ï Phillip was to cause the laws against blasphemy, profaneness, adultery, fornication, polygamy, incest, profanation of the Lordôs Day, swearing and drunkenness to be executed rigorously. Moreover, he saw to it that the *Book of Common Prayer* as by law established be read each Sunday.

When Phillip left New South Wales in 1792, his remaining Lieutenant-Governor ï Major Francis Grose ï almost wrecked the Colony. He allowed undisciplined soldiers to run riot; farmed out convicts to his military friends at government expense; cancelled all of Phillipôs orderly regulations; and permitted if not promoted the beginning of the rum trade.

Fortunately, Grose was soon replaced by John Hunter ï an honest and well-meaning Scot, who promptly encouraged the convicts to attend church services. Governor Hunter did everything he could to promote public morality. He set up anew the law courts which Grose had destroyed, and made it plain that soldiers were not above the law.[26] Such soldiers as had broken the law were, if anything, worse than the convicts ï and were henceforth themselves to be treated with the appropriate righteous severity.

The assistant chaplain ï the evangelical Rev. Samuel Marsden ï himself accepted the position of civil magistrate from the Colonyôs new governor. Hunter himself looked to Providence for support, and wrote and spoke of Christ as his Saviour.[27] The seed sown by Jonathan Edwards now began to grow!

Not just Governor Hunter and Reverend Marsden but also the fledgling *Sydney Gazette* taught its readers to detect the divine plan in all human events. There, Marsden reminded them in a sermon that while in the sight of the unwise the decision to found a settlement at Botany Bay in Australia was motivated by the need to find a receptacle for the criminal population of Britain ï He Who governed the Universe had had another object in view. God had provoked the Americans against the English in 1776, because the time had drawn near for the poor heathen nations of the South Seas to be favoured with the knowledge of divine revelation. Thus Manning Clark.[28]

To illustrate Marsdenôs faith in the future, here are excerpts from two of his letters. One dates from 1796, and the other from 1811.

In 1796, Marsden wrote to a lady: ñIt is an unspeakable happiness to see the kind hand of Providence superintending all our ways.... I have much to occupy my time, and a great variety of duties to perform. I am a gardener, a farmer, a magistrate and a minister ï so that when one duty does not call me, another always does....

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[24] *Ib.*, I pp. 83 & 87 & 89.
[25] As cited by McLennan in his *op. cit.*, p. 9.
[26] F.L.W. Wood: *op. cit.*, pp. 54f.
[27] C.M.H. Clark: *op. cit.*, I pp. 142f.
[28] *Ib.*, p. 256.

ñIt is my opinion that God will ere long visit New South Wales with His heavenly grace. Out of these stones, He will raise up children unto Abraham. There has not been any shaking yet among the dry bones ï but the son of man is commanded to prophesy, and I hope by and by the Lord will command the wind to blow. Stir up Thy strength, O God, and come amongst us!ò[29]

Then again, on 26th November 1811, Marsden wrote:[30] ñI have sent to England four to five thousand pounds of wool. This will be the beginning of the commerce of this new world. Many think nothing of these things now. They cannot see any advantage to be derived to them, their children, or this settlement ï by improving the fleeces of our sheep. But I anticipate immense national wealth to spring from this source of commerce....

ñIt is our duty to leave future events to the wisdom of Him Who knows all things from the beginning ï and to act for the present moment. My views may be too extended ï when they anticipate the greatness and wealth of this country in future, the civilization of the surrounding savage nations and the cultivation of their islands.... This will add greatly to...civilization and comfort, and prepare the way for greater blessings!ò

The godly Governors of New South Wales Lauchlin Macquarie and Thomas Brisbane

In 1809, the new Governor of New South Wales (Lauchlin Macquarie) and his new Judge-Advocate (Ellis Bent) had sailed for Australia. On the first Sunday of the voyage, the Protestant Bent read prayers publically.

Later, in Australia, Judge-Advocate Ellis Bent would remind the guilty in his Courtroom of **the connection between the law and morality**. Thus, when sentencing Terence Flynn to death for murder, Bent admonished him to **repent** ï and to prepare himself speedily for the eternal world into which he would soon be despatched.[31]

Governor Lauchlin Macquarie himself was from the Outer Hebrides; a colonel of the 73rd Highland Regiment;[32] and **a dedicated Presbyterian**. He promoted **Christian dayschools and chaplains** ï and **also the Bible Society**, and **Christian Sunday Schools**.

Of Macquarie, even the agnostic and socialistic History Professor Manning Clark conceded[33] that in order to instruct the rising generation in those principles which he believed could alone render them dutiful and useful members of society and **good Christians** ï he established several schools in Sydney and the subordinate settlements. Within a few months he wanted chaplains of respectable, good and pious character to minister to the people who were dispersed over the country.

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[29] Cited in McLennanôs *op. cit.*, p. 27.
[30] *Ib.*, p. 28.
[31] *Ib.*, pp. 265f & 257.
[32] F.L.W. Wood: *op. cit.*, p. 81.
[33] C.M.H. Clark: *op. cit.*, I p. 269 & 280f.

Macquarie issued an order that convicts of all religious persuasions must attend divine worship on Sundays, with instructions to the constables to arrest all vagrants on the sabbath and to commit to gaol all people drinking or rioting in disorderly houses during the hours of divine service. On the first Sunday of compulsory church for the convicts, Macquarie attended their service in person ï when he was pleased to bestow the highest commendation upon the whole convict body for their clean and neat appearance.

Governor Macquarie continued with unflagging zeal to promote the moral well-being of the inhabitants, explains Manning Clark. He built school-houses, believing that the establishment of respectable clergymen and schoolmasters greatly contributed to the morals of the lower orders of the people, and to the implanting of religious principles in the minds of the rising generation. The children in the settlements of New South Wales and its dependencies were encouraged to attend Sunday School, where they sang the words:

> ôHappy the child whose tender years receive instruction well;
> who hates the sinnerôs path, and fears the road that leads to hell!ô

Lauchlin Macquarie was succeeded in 1821 by Governor Sir Thomas Brisbane. He too was a Scot; a graduate of the University of Edinburgh; and an enthusiastic mathematician and astronomer. According to Manning Clark,[34] from the earliest days Brisbane had lifted up his eyes toward the Heavens in more senses than one. Those who judged by appearances and what a man gave out about himself ï took him as a **Christian**, a scholar and a gentleman.

For his mind was set on the heavenly prize ï for that peace which the world could neither give nor take away. His great interest in life was that when the actions of all men were weighed in the balance of eternal doom ï his would not be found altogether wanting. Each week he renewed his covenant to be the Lordôs, to all eternity.

For him, an immortal soul was the unspeakable object of value in human life. He, **through the merits of Jesus Christ**, would be freely forgiven for all the sins of his life. His maxim was *nil desperandum; auspice Deo* [never despair; aspire to God]! Thus he hoped to give satisfaction to all classes, and see them reconciled.

The first colonization of Tasmania not with revelry but with worship

In 1804, the Lieutenant-Governor of New South Wales had authorized the settlement of Tasmania. Historian Manning Clark explains[35] that the landing was not celebrated by the drinking and the festivities which had marked the arrival at Sydney. At ten oôclock on the Sunday morning the military, convicts, settlers, officers and the Lieutenant-Governor ï all assembled to hear the Reverend Knopwood read divine service, preach on the prosperity of the new settlement, and pray to God for a blessing upon the increase of it.

[34] *Ib.*, II pp. 21-23.
[35] *Ib.*, I p. 193.

It seems that the 1824*f* Lieutenant-Governor of Tasmania, George Arthur, had become a Christian some ten years earlier ï when in Honduras in 1814. In the words of the somewhat cynical agnostic Manning Clark:[36] ñThen, while reading the Scriptures, he had begun to be weighed down with guilt for a detestable sin against his most Holy Maker, and to know that the heart of every man was desperately wicked and altogether in enmity with God.

ñHappily for him, in the midst of this conviction and abasement, it had pleased God to convey to his soul the most cheering reflections. In Honduras, he had read of the all-sufficient atonement by Christ ï and had become perfectly tranquil, perfectly cheerful and perfectly happy. Through the free grace of God, he had come to believe he would one day enter into eternal life.ò

A decade after Arthurôs experience in Honduras, the Legal Adviser in the British Colonial Office was the powerful evangelical James Stephen. According to Manning Clark,[37] even then Stephen thought of Benthamism as a subtle enemy of Christianity.

Early in 1824, Stephen told the appointed Lieutenant-Governor of Van Diemenôs Land, George Arthur, that he had an opportunity to make Tasmania a branch of a great and powerful nation which must exercise a mighty influence for good or evil over a vast region of the Earth. He told him of the importance of his mission to establish a Christian, virtuous and enlightened State in the centre of the Eastern Hemisphere and within reach of the Chinese, Hindu and Mohammedan nations which surrounded him.

The problem was how to render it Christian, virtuous and enlightened. Jonathan Edwards rides again!

Modified British Christian Common Law the only legal system of Australia

Already in 1765, Sir William Blackstone had pointed out[38] that British settlers in a previously-unsettled territory bring with them as much of the English Common Law as is applicable to the condition of the new colony. The same applies to a previously-inhabited region with no proclaimed system of law over that region ï when neither conquered nor acquired by Britain from another political power (such as France or Holland).

However, sometimes Britain acquired or conquered from another political power a previously-settled region which at that time already had its own previously-proclaimed system of law. In such situations, the British settlers there became subject to that previously-proclaimed system (such as French Law or Dutch Law).

British Antarctica, Norfolk Island and Pitcairn Island were and are examples of previously-unsettled territories ï so that British settlements there are subject only to British Common Law. Colonial New England in America and Colonial New South

[36] *Ib.*, II p. 110.
[37] *Op. cit.*, II pp. 83 (*cf.* 327) & 110.
[38] *Comm.*, I p. 107.

Wales in Australia, however, are examples of regions indeed previously inhabited (*viz*. by unconfederated nomadic tribes).

Yet American New England and Australian New South Wales were neither conquered nor acquired from another political power. British settlers there were subject only to British Common Law ï and indeed also only to as much of it as was applicable to those Colonies.

Britain did not conquer Australia from ñanother powerò such as France or Holland (thus Blackstone). Nor did Britain conquer Australia from land-holding native peoples.

Indeed, Britain could not possibly have done so ï for none of the native tribes of Australia then either kept cattle, or planted crops, or held land. Britain merely settled Australia at a time when that land-mass contained only very sparse numbers of small and peregrinatory tribal clans.

The whole medley of so-called ñaboriginalò Amerindian tribes in America before 1620, and so-called ñaboriginalò tribes in Australia before 1788 ï and, yet earlier, of pre-ñaboriginalô negrito tribes of (Black Tasmanian) Mimi people previously on the Australian Mainland ï do not constitute what Blackstone called ñanother power.ò Nor did such a whole medley of so-called ñ**aboriginal**ò tribes in Australia **ever** have either one or any previously-proclaimed system of **law** over a fixed discrete territory ï all modern anti-colonial revisionists notwithstanding![39]

Quebec and Louisiana, on the other hand, are examples of regions acquired by Anglo-Saxons from ñanother power (France). For both before and after those acquisitions, British and/or American settlers there became subject to the previously-proclaimed French Law (and/or of the combination of French Law and Spanish Law in Louisiana).

Similarly, the Cape of Good Hope (in South Africa) and Ceylon (in Southern Asia) were conquered or acquired by Britain from Holland. New British settlers there, then became subject to the previously-proclaimed Roman-Dutch Law ï and were thenceforth no longer subject to British Common Law.

Indeed, when British settlers later still moved from the Cape of Good Hope into Rhodesia (alias Zimbabwe), they took with them not British Common Law. Instead, they then took into Zimbabwe the Roman-Dutch Law of the Cape of Good Hope.

Now New South Wales in 1788 was not, like Quebec, a colony conquered by Britain from another country such as France (thereby inheriting the latterôs pre-existing legal system there). New South Wales was simply annexed by the British.

In so doing, the annexing British brought their own (duly-modified) British Christian Common Law with them ï as the only system of law Australia had and has ever enjoyed. Thus the 1978*f* High Court of Australia case of *State Government*

[39] M.J. Detmoldôs book *The Australian Commonwealth*, 1985, ch. 4.

Insurance Commission v. *Trigwell*[40] ï and even the 1992 *Mabo case* (about which later).

The 1823 establishment of a Legislative Council in Australia

Britain set up a Legislative Council for New South Wales in 1823. At the time ï the latter still included what subsequently became the separate States of Tasmania, Victoria, Queensland and a large part of South Australia and the Northern Territory.

Throughout that whole region, modified British Common Law alone then held sway ï and still does. This is so for at least four reasons.

First. Captain Cook on Possession Island (just North of the Northernmost point in Queensland) on 22nd August 1770 took possession of a specific territory for Britain. For he then so took possession of the whole of the Eastern Coast ï right down to the 38th Degree South Latitude.

Second. Governor Phillip claimed the 135th Degree East Longitude as the western boundary of the Colony in 1786.

Third. New South Wales Governor Phillipôs 1787 jurisdiction included Tasmania ï over which the British flag was hoisted even before its first colonization in 1803*f.*

Fourth. All of these 1770-87 events transpired before the establishment of Britainôs first colony within Australia.[41] That latter event occurred only in 1788.

Now in 1823, a Legislative Council in New South Wales was set up by Act of the British Parliament ï giving that Council power to make any laws consistent with those of England. It set up a system of law courts on the English model, allowing some cases to be tried by jury. However, convicts and ñemancipistsò (alias convicts pardoned by the governor) were not allowed to be jurymen.[42]

Moreover, the power to make new laws for the Colony was vested not in the king but in the Parliament.[43] This means that in Australia the crown (as distinct from Parliament) could not legislate by prerogative with respect to New South Wales (as a settled colony) in the way that it lawfully could do elsewhere as regards conquered territories.

This important fact itself largely secured **the rule of law**.[44] Had the New South Wales Legislature not itself been set up in 1823 with power to legislate, the Church of England would have continued to enjoy also in New South Wales the preferred status which it then had and still has in England.

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[40] See *State Government Insurance Commission* v. *Trigwell* (1978-79) 142 C.L.R. 617 & 623-25 ï and the cases cited in Detmoldôs *op. cit.*, ch. 4. See too art. *Tasmania, Settlement of* (in *CEANZ* II p. 849).
[41] F.L.W. Wood: *op. cit.*, p. 258.
[42] *Ib.*, p. 101.
[43] E.C.S. Wade & O.G. Phillips: *Constitutional Law*, 6th ed., p. 390, n. 2.
[44] D.P. OôConnell & A. Riordan: *Opinions on Imperial Constitutional Law*, 1971.

However, even with the setting up of the New South Wales Legislature in 1823, **the dominant significance of the Christian religion within the Colony continued**.[45] See the 1948 case of *Wylde* v. *Attorney-General*.[46]

In 1825, New South Wales Governor Darling extended the western boundary of the colony from the 135th to the 129th degree east longitude. Consequently, British Common Law from that date onward was extended over the entirety of modern Australia ï except over the as-then-not-yet-claimed territory now known as Western Australia (which, however, Britons had occupied at its Monte Bello Islands already in 1622).

Tasmania, called Van Diemenôs Land till 1856, was separated precisely from New South Wales in 1825. South Australia separated in 1836; Victoria in 1851; Queensland in 1859-62; and the Northern Territory in 1863 (whereafter it was annexed to South Australia until 1911).

Indeed, certainly since Britain in 1829 took formal possession also of Western Australia as such,[47] the whole of the Australian Continent (including Tasmania) has been under modified British Common Law ever since then. Right down until today.

Common Law remained in Australia after cut-off date for fresh British Statutes

There remains the question as to the cut-off date for the reception of new British statutes within New South Wales since 1788. The first (1823-37) Chief Justice of New South Wales, Sir Francis Forbes, favouring a reasonable amount of self-government for that Colony, practically drew up an Act of Parliament in 1828 to bring this about.

At the same time, the Imperial Parliament enacted the *Australian Courts Act*. This *Act* determined 1828 as the cut-off date for the reception of fresh British laws ï in Britainôs till-then two Australian colonies (New South Wales and Tasmania).

The *Act* was later applied to Queensland and Victoria.[48] In the other remaining areas of Australia, the situation was determined according to Blackstoneôs rules of Common Law ï the date of settlement being the dates when those colonies were settled by Britons.

This means 1827-29 for Western Australia[49] (Albany 1827 and Perth 1829), and 1836 for South Australia. On the latter, see the 1978*f* case of *State Government Insurance Commission* v. *Trigwell* ï as per the High Court of Australia Judge Sir Harry Gibbs.[50]

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[45] A.C. Castles: *An Australian Legal History*, 1982, pp. 46 & 67f.
[46] *Wylde* v. *Attorney-General* (1948) 78 C.L.R. 224 & 257, *per* Latham C.J.
[47] F.L.W. Wood: *op. cit.*, p. 258.
[48] See Castles: *op. cit.*, p. 398.
[49] F.L.W. Wood: *op. cit.*, pp. 105f & 258.
[50] 142 C.L.R. 617 & 625. Sir Harry Gibbs here gives South Australiaôs date as 28th December 1836. See too F.L.W. Wood: *op. cit.*, pp. 115f & 258.

All statutes made in Britain after those cut-off dates (respectively 1828 & 1829 & 1836), are inapplicable[51] in Australia. Pre-statutory British Common Law, however ï and indeed also all British statutes until those cut-off dates ï still continue to obtain throughout the whole region of Australia, unless specifically rescinded by the Australian Legislature(s).

However, such British laws as have been either ñenactedò or misinterpreted(!) in Britain since those dates ï do not obtain[52] in Australia. **This is wonderfully providential, for it conserves the Ancient Common Law – by excluding from Australia all recent misinterpretations of the Common Law by recent humanistic jurists in Britain**. Indeed, it freezes the Common Law within Australia into the **Christian** condition it was in before the above cut-off dates ï except to the extent only very recently (mis)interpreted by certain Australian cases themselves.

In those situations where there is indeed also Australian authority itself ï this factor alone does not stultify, where compatible, the applicability in Australia also of recent British Common Law decisions after the ñcut-offò date(s). The same applies to the applicability in Australia even of modern American decisions interpreting the Common Law.[53]

Yet, as New South Wales Government Solicitor Greg Booth, LL.M. (Hons.), has pointed out[54] ï the tremendous advantage of the cut-off date of 1828-36 to Australia, is that it preserves the Common Law from the degenerative influences of modernism and relativism. Thus it has come to pass that by the grace of God Australia has inherited, in all its richness, a body of English Common Law capable of unrivalled adaptation ï but preserved from those developments which would be regarded as degenerative by those who cherish a Christian Faith which was more widely esteemed at the point determined for reception of that body of law than it would to some appear to be the case in Britain today.

Already on Christmas Day 1826, Major Lockyer with his forty-four soldiers and convicts took possession of the Western Portion of Australia for Britain ï so that the latter then and thereafter possessed the whole Continent. Then Stirling and Peel proposed to take ten thousand free emigrants to the Swan River as farmers. As a result, the Colony of Western Australia was proclaimed in 1829.

The sending of any convicts there (other than the less than fifty in 1826) was resisted till 1849. Then, however, in order to promote its economic development ï the region became a penal colony.

From that time onward, it was agreed that equal numbers of freemen and convicts could thenceforth be sent out there. By 1868, when the practice was discontinued ï almost ten thousand convicts had been transported to Western Australia since 1849.

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[51] Except in those rare cases where the Imperial Parliament expressly or necessarily intends to make them applicable.

[52] See *Rex* v. *Farrell*, 1 Legge 510. *Per contra*, the dissentient Murphy J., in *Dugan* v. *Mirror Newspapers* (1978) 12 C.L.R. 609.

[53] See 1978 *Dugan's case* at pp. 583 & 586. *Cf.* too the dissentient judgment of Murphy J. in the High Court of Australia case *Attorney-General N.S.W.* v. *Grant* (1976) 135 C.L.R., where he cites several pertinent American cases (such as *Watson* v. *James* and *Kedroff* v. *St. Nicholas Cathedral*).

[54] G. Booth: *Our Christian Heritage* (in McLennanôs *op. cit.* pp. 33f).

This cheap labour assisted in the economic development there. However, till 1890, it also greatly retarded the extension of self-government to Western Australia.[55]

In the east of Australia, self-government came much earlier ï largely because the transportation of convicts there was abolished at early dates. This occurred in New South Wales during 1840, and in Tasmania during 1852.

Convicts were never admitted to South Australia (colonized in 1836). Nor were they admitted after 1840 into those former areas of New South Wales which became Victoria during 1851, Queensland in 1859-62, and the Northern Territory (after annexation by South Australia) in 1863-1911.

The great influence in Australia of the renowned Presbyterian Rev. Dr. Lang

Already from 1823 onward, the tremendous political and religious and social influence in Australia of the famous Presbyterian Minister Rev. Dr. John Dunmore Lang should be noted. A Scot by birth and a graduate of the University of Glasgow, he had been influenced by the leading Evangelicals Thomas Chalmers and Rev. Professor Dr. Stevenson Macgill.[56]

Lang arrived in Sydney during 1823. He believed profoundly that the character of a nation is determined by that of the people. So he bent himself to secure immigrants in whom religion, education and industry would be displayed.[57]

In 1831, Lang established a family emigration scheme. He urged Brisbane Town to establish a *Constitution*, with convicts not welcome. He recruited Ministers from Europe for what is now Queensland, and urged its separation (and that of Victoria) from New South Wales. Indeed, it soon came to pass that the penal settlement near Brisbane was closed down and the last convicts evacuated. The area was opened up to free immigrants, from 1842 onward.

Even when there were still less than three thousand Whites in the region, Lang preached in Ipswich (Queensland) in 1845: ñGive me the apostolic practice, and men who will exemplify it thoroughly in their own character as the only specific for the moral welfare and advancement of this colony!ò[58]

In 1847, Lang suggested that Northeast Australia secede from New South Wales and be called Cooksland. This largely came to pass in 1859-62, with the creation of Queensland.

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[55] F.L.W. Wood: *op. cit.*, pp. 105f. See too *Western Australia, Settlement of* (art. in *CEANZ* II p. 920).
[56] R.S. Ward: *The Bush Still Burns – the Presbyterian and Reformed Faith in Australia*, Globe, Brunswick Vic., 1989, p. 34.
[57] R. Bardon: *Centenary History of the Presbyterian Church of Queensland 1849 to 1949*, Smith & Paterson, Brisbane, 1949, p. 12.
[58] *Ib.* pp. 13f. See too art *Lang, John Dunmore* (in *CEANZ* I p. 546).

As a strong Scottish Nationalist and admirer of the United States, Lang also advocated independence for the whole of Australia. That too came to pass, in its final form, with the *Statute of Westminster*[59] in 1931.

Now Jeremy Bentham, the utilitarian citizen of Revolutionary France, has died in 1832 ï the very year which saw the passage of Britainôs *Reform Law* (of which he was the ultimate author). That year also marked the appearance of the Benthamite Professor John Austinôs book *The Province of Jurisprudence Determined* ï later to be followed by his famous 1869 *Lectures on Jurisprudence*.

Austin had absorbed much regard for Roman Law, while studying in Germany. Thereafter, though still clinging to the concept of sovereign authority in law, he now severed it from religion and ethics ï and prepared the way for the much further radicalism of John Stuart Mill. Fortunately, however, Australian judges were then ï and to some extent still are ï very conservative. So the Common Law refused to die, Down Under.

Nevertheless, a struggle had broken out in New South Wales during the early eighteen-thirties between Wentworthôs liberal ñEmancipistsò on the one hand ï and, on the other, the ñExclusionistsò (who wished to resist self-government for New South Wales as long as it was still a convict colony). Governor Bourke tended to agree with the ñEmancipistsò ï as can be seen from his 1832*f* laws (that trial by jury be allowed in every case). Transportation of convicts to New South Wales was accordingly abolished in 1840. Then, in 1842, the Colony was given partial self-government.[60]

Full self-government would follow, largely as one of the results of the 1851*f* gold rushes in the middle of the nineteenth century. All transportation of convicts from Britain to any part of the east of Australia ceased in 1852. A new *Constitution* was enacted for New South Wales in 1855. Rev. Dr. Lang felt it favoured the squatters ï and that it gave far too little influence to the working men in the cities and the goldfields.[61]

Almost everyone who lived in the North, around Brisbane, wanted separation from New South Wales ï together with self-government. Even though he was living in Sydney, Rev. Dr. Lang agreed. He had established the Presbyterian Church ôDown Underô; founded a Presbyterian School; encouraged the immigration of Scottish Presbyterians to Australia; edited a newspaper; deeply influenced New South Wales politics; and helped win independence for Victoria. Now, he would do the same for Queensland.

Queensland, with a civilized population of only twenty-five thousand, was given full self-government in December 1859. Its *Constitution* provided for an Assembly elected by the people, and a Council nominated by the Governor.

Very representatively, it was provided that if the Council twice rejected a bill passed by the Assembly ï the bill might then be put straight before the people in a

[59] F.L.W. Wood: *op. cit.*, p. 325.
[60] F.L.W. Wood: *op. cit.*, pp. 139f.
[61] *Ib.*, pp. 189f.

referendum. Then, if the people accepted it, this would ï in spite of the Councilôs resistance ï become law in Queensland. (Recently at the end of the twentieth century, the same principle was seen in action ï when in a *referendum* Queensland voters rejected a ñdaylight savingsò scheme then being pushed by their own Queensland Government.)

Here is the instruction given to Sir George Ferguson Bowen, the first Governor of Queensland. It was enjoined in 1859, precisely when Queen Victoria established that great State and named it after herself. Her Majesty ordered:

ñIt is our further will and pleasure that you to the utmost of your power promote religion and education among the native inhabitants of our said Colony, or of the lands and islands thereto adjoining, and that you do especially take care to protect them in their persons and in the free enjoyment of their possessions, and that you do by all lawful means prevent and restrain all violence and injustice which may in any manner be practised or attempted against them, **and that you take such measure as may appear to you to be necessary for their conversion to the Christian Faith** and for their advancement in civilization.ò[62]

The influence of Christianity on Australian life from 1860 to 1875*f*

The increasing influence on Australia of the United States of America and its 1787*f* *Constitution*, became apparent from the middle of the nineteenth century onward. Yet the 1861-65 American War Between the States ï the war waged by the Yankee Northerners against the Dixie Southerners ï understandably made Australians very cautious about themselves proceeding, without the utmost circumspection, towards their own independence.

With the movement toward Federation in Australia from 1860 till 1900, and with the disestablishment of Anglicanism as the ñstate religionò ï the question as to the place of Christianity as such in the law and life of Australia inevitably needed to be addressed. Indeed, the fact that the Colonies were open equally to persons of different religions, was held in 1861 to have precluded the possibility of ecclesiastical law forming part of the received law of the Colonies. Moreover, the absence of a statutory system of ecclesiastical courts had rendered it inoperable. See the 1861 case *ex parte Rev. George King*.[63]

The withdrawal of state aid to the Church of England the following year, reduced that denomination to the same basis as that of other Christians. Disestablished Anglicanism too thereby became a voluntary association, **bound by the *Common Law* to adhere to its own constitution or rules**. See: the various (1908*f*) *Frackelton* cases; *Wylde's case* (1948); and the 1992 case *Bartholomew & Others* v. *Presbyterian Church of Australia*.[64] (As regards the latter case, the present writer was himself

[62] *Ib.*, pp. 211f. See too *Eddie Mabo & Ors.* v. *The State of Queensland*, S.C. 90/409 (Q.S.C. 1990 Vol. 14 No. 409, II p. 5).
[63] *Ex parte Rev. George King* (1861) 2 Legge 1307 & 1321, *per* Wise J. and Dickinson C.J. at 1313.
[64] See Frackeltonôs 1907 writ against the Presbytery of Brisbane; *Frackelton* v. *Macqueen & Ors.* St. R. Qd. [1909]; *Macqueen* v. *Frackelton* [1909] 8 C.L.R.; *Frackelton* v. *Atthow & Ors.* [1909] 10 C.L.R.; *Wylde* v. *Attorney-General* (1948) 78 C.L.R.; *Bartholomew & Hobbs & Somerville* v. *Ramage & Ors.* (representing the 1991 General Assembly of the Presbyterian Church of Australia), Sup. Ct. NSW,

summonsed on Christmas Eve 1991 as a defendant in what was there and then stated to be *Bartholomew & Hobbs & Somerville* v. *Harman & Lee & Mills*.)

The civil courts will restrain departures from such rules involving loss of livelihood. See *ex parte King* (1861) ï and the 1962 case of *Baker* v. *Gough*. They will do the same where property is involved. See: *Attorney-General N.S.W.* v. *Grant* (1976), and the 1978 case of *Presbyterian Church (N.S.W.) Property Trust* v. *Ryde Municipal Council*.[65]

Yet ñabstract questions involving religious dogma, and resulting in no civil consequences, do not justify the interposition of a civil court.ò Thus Rich J. in *Wylde's case*. Further, if a church sets up its own system of ecclesiastical courts to administer its own internal law, those ecclesiastical courts stand wholly outside the Stateôs legal system, unless livelihood or property rights are involved. Thus the 1897 case *ex parte Hay*.[66]

As in England, so too in Australia there has been judicial recognition that **Christianity is part of the law of the land**. Thus, in the 1866 case of *Regina* v. *Murphy*,[67] a drunkard who entered a Congregational Church in Burwood (New South Wales) and who therein then repeatedly shouted out: ñCome in, and let us hear the Word of God!ò ï was sentenced to four monthsô imprisonment. Significantly, Mr. Justice Hargraveôs note-book recorded that this was an offence at **Common Law** ï and not just an offence constituted solely by statute.

Also, in 1874 ï in *ex parte Thackeray*[68] ï it was stated that **the Law of God is part of the law of the Colony of New South Wales**. There, Mr. Justice Hargrave made a very important statement about the character of the law established in Australia in 1788. His Honour stated:

ñWe, the colonists of New South Wales, ótake out with usô (to adopt the words of *Blackstone*) this first great Common Law maxim distinctly handed down by *Coke* and *Blackstone* and every other English judge long before any of our colonies were in legal existence or even thought of, that ó**Christianity** is **part and parcel** of our **general lawsô**; and that all the revealed or **divine law**, so far as enacted by **the Holy Scriptures** to be of **universal obligation**, is part of our **colonial law** ï as clearly explained by *Blackstone*, Vol. I, pp. 42-3; and Vol. IV., pp. 43-60.ò

In those passages, Blackstone stated *inter alia*: ñThe doctrines...we call the revealed or **divine law**...in the **Holy Scriptures**...are found upon comparison to be really a part of the **original law of nature**.... The moral precepts of this law are

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unrep., 1992. The present writer has a vested interest in the latter case, inasmuch as he himself was originally summonsed on Christmas Eve 1991 to defend in *Bartholomew & Hobbs & Somerville* v. *Harman & Lee & Mills*. The Supreme Court of N.S.W., however, ordered the plaintiffs to refrain from pursuing that particular litigation. See F.N. Lee: *Women Ministers? Law and Litigation in Australia*, Doctor of Jurisprudence dissertation (J.D.), Rutherford School of Law, Florida, 1992.

[65] *Baker* v. *Gough* (1962) 80 Weekly Notes (W.N.) N.S.W. 1263. See too *Attorney-General N.S.W.* v. *Grant* (1976) 51 A.L.J.R.; *Presbyterian Church (N.S.W.) Property Trust* v. *Ryde Municipal Council* (1978) 2 N.S.W.L.R. 387.

[66] *Wylde's case* at 282, and *ex parte Hay* (1897) 13 W.N. (N.S.W.) 186.

[67] *R.* v. *Murphy*, Wilke Aust. Mag. 757 (cited in *R.* v. *Darling* NSWLR 884 5 at 407-10).

[68] *Ex parte Thackeray*, 13 S.C.R. (N.S.W.) 1 & 61 *per* Hargrave J.

indeed of the same original with those of the law of nature.... Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, **no human laws should be suffered to contradict these**.... To instance in the case of **murder**..., if any **human** law should allow or injoin us to **commit** it ï we are bound to **transgress** that human law....

ñThe belief of a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the Supreme Being, and a firm persuasion that He superintends and will finally compensate every action in human life ï all which are clearly revealed in the doctrines and forcibly inculcated by the precepts of **our Saviour Christ** ï these are the grand foundations of all judicial oaths....

ñOffences against the see of Rome are not heresy...[but it is] proper for the civil magistrate...to interpose with regard to one species of heresy very prevalent in modern times.... If any person educated in the Christian religion or professing the same shall by writing, printing, teaching or advised speaking **deny** any one of the Persons in the **Holy Trinity** to be God, or maintain that there are more Gods than one ï he shall undergo the same **penalties** and incapacities which were just now mentioned....

ñAs to *papists*..., if once they could be brought to renounce the supremacy of the pope ï they might quietly enjoy their seven sacraments, their purgatory, and auricular confession; their worship of reliques and images; nay even their transubstantiation. But while they acknowledge a foreign power superior to the sovereignty of the kingdom ï they cannot complain if the laws of that kingdom will not treat them upon the footing of good subjects.

ñ***Blasphemy*** against the Almighty by denying His being or providence; or by contumelious reproaches **of our Saviour Christ**...[and] all profane scoffing at the Holy Scripture or exposing it to contempt and ridicule...are offences **punishable** at Common Law by fine and imprisonment or other infamous corporal punishment. For **Christianity is part of the law**.... If in any **stage play**, interlude or shew, the Name of the **Holy Trinity** or any of the Persons therein be jestingly or **profanely** used ï the offender shall forfeitò *etc*.

Thus the passages in Blackstone approvingly referred to by Judge Hargrave in New South Wales. Hollywood, take note ï and beware!

The influence of Christianity on Australian Law even since 1884

In the 1884 New South Wales case of *Regina* v. *Darling & Others*,[69] it was deemed ñan **offence at Common Law**, punishable by fine or imprisonment or both, wilfully to disturb a congregation assembled for the purpose of religious worship. The defendants were convicted of wilfully and contemptuously disturbing a certain congregation of the Salvation Army there lawfully assembled for the purpose of public worship. The disturbance was created by the defendants assembled in the vicinity of the building where the Salvation Army was conducting a religious service. After being convicted by Windeyer J., the defendants had appealed.

[69] *R.* v. *Darling* NSWLR 884 5 at 405 & 411.

On appeal, Sir J. Martin C.J. stated: ñ**An opinion has been expressed that the Christian religion in any of its forms is not recognised by the law of this country. No greater mistake can be made**. It has been frequently and correctly stated both in England and here that **Christianity is part of the Common Law**, that our laws are based upon its principles, and that our Common Law can be traced back to those principles which run through the whole course of our statute law as well.... **Christianity is part of the Common Law of England, and part of the law of this Colony**....

ñPeople engaged in religious services are not to be disturbed by persons irreverently and immodestly bearing themselves in or about **a church**. It does not matter where such conduct takes place. If either inside or near to the place of worship, disturbance is created ï **it is an offence punishable at Common Law**.ò

Faucett J. concurred. Even more strongly, so too did his Honour Sir G. Innes. So the conviction was upheld ï in a unanimous decision.

Australia legally still upholds the Law of God. Thus, according to section 574 of the 1900 New South Wales *Crimes Act*, blasphemy is even a statutory offence. Yet in England it has allegedly come to be held that ñthe law now draws no distinction between the propagation of Christian, non-Christian, or anti-Christian opinions.ò Thus even Sir William Holdsworth in the 1922 edition of his *History of English Law*.[70] Fortunately, however, the 1828-36 cut-off date precludes Australian courts from needing to give serious consideration anent possibly following this frightful new alleged precedent.[71]

Nevertheless, there has subsequently been a weakening of Australiaôs historic position, to the extent that charges brought under narrower statutes rather than under the more general Common Law ï have sometimes been unsuccessful. Yet, even as late as 1984, His Honour Zelling J. remarked *obiter* in the famous South Australian case of *Grace Bible Church* v. *Reedman*: ñTo this day, the monarch and heir to the throne and anybody whom either of them marries must be a **Protestant**. See the *Acts of Settlement* (1707) 12 & 13 Wm. III ch. 2 ss. II & III.ò[72]

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[70] *Op. cit.*, VIII:416.

[71] See Booth: *Our Chr. Herit.*, p. 34.

[72] *Grace Bible Church* v. *Reedman* 36 SA SR 1984, 379f. It is true that this court found the operators of an unregistered day-school guilty of a statutory offence in South Australia. However, as the court then observed, it had to apply the Statute Law the way it was (and not the way the court might well have wished it to be).

Earlier, in *Goodson* v. *MacNamara* [1907] V.L.R. 89, the sabbath-desecrating defendant was successfully charged with having behaved in an insulting manner in a building where ódivine serviceô was alleged to have been held. The defence pleaded the right to exercise its religion freedom, but the court held that a Bible-reading and the singing of a hymn or two could not change the character of what was essentially a Sunday vaudeville show (to which entrance tickets were sold) into that of a religious worship service within the meaning of the Act.

On the other hand, in *Macrae* v. *Joliffe* [1970] V.R. 61f, His Honour Sir James Starke held that a disrupted Billy Graham Park Meeting in Melbourne (at which several were drunk), was not a religious worship service within the meaning of the Statute. Consequently, raucous remarks made by Ms. Joliffe were certainly ñunladylikeò but not a criminal offence.

Role of the Presbyterian Church in promoting confederation within Australia

The separation of Queensland from New South Wales in 1859 stressed the independence of the new Colony. Yet it also reminded both, of their joint roots in the common soil of Australia.

Moreover, even within Queensland, the dozen or so Presbyterian Congregations there ï now desired to confederate into a General Assembly of Queensland. Similar church confederations were already under way also in the other Colonies.[73] They too would soon begin to think of wider confederation with their neighbours in the other Colonies within Australia.

So too, at the political level, did both Presbyterians and Non-Presbyterians ï throughout Australia. Indeed, citizens of all the Colonies in the Continent were now becoming conscious not only of their allegiance toward their own Colony ï but also of their living together with the citizens also of the other Colonies within Australia.

On 3rd July 1863, the Hon. Gilbert Elliott presided over a meeting to confer about union among Queensland Presbyterians (whether of Church of Scotland or of Free Church origin). Achieving success here before their brethren in New South Wales, the Queensland Presbyterians unanimously resolved that ñit is not only the duty of all Presbyterians adhering to the same common standards to cultivate friendly intercourse and co-operation, but that there is a loud call in Providence at the present time in Queensland to carry that object into effect by union...for the advancement of Christôs Cause and Kingdom in this Colony.ò[74]

On 24th November 1863, the Queensland Presbyterian *Basis of Union* was unanimously adopted by preachers and elders ñin conference assembled.ò This recognized, *inter alia*:

ñ1. That the Word of God contained in the Scriptures of the Old and New Testaments, is the only rule of faith and practice. 2. That the *Westminster Confession of Faith* [1643*f*], the *Larger* and *Shorter Catechism*(*s*) [1644*f*], the *Form of Presbyterian Church Government* [1645], the *Directory for Public Worship* [1645] and the *Second Book of Discipline* [1578], are the subordinate standards and formularies of this Church.ò

Consequently, the Queensland Presbyterians thereupon resolved: ñThat the ministers and elders now assembled...on the Basis of Union adopted...do, in the name of the Lord Jesus Christ, the Head of the Church, constitute themselves into the Synod of the Presbyterian Church of Queensland.ò That new body later, in 1868, further resolved itself into the General Assembly of the Presbyterian Church of Queensland.[75]

Similar developments within the other Australian Colonies would soon lead to meetings of a General Conference of the Presbyterian Churches of Australasia ï in 1882. That meeting was attended by representatives from respectively the

[73] R. Bardon: *op. cit.*, p. 29.
[74] *Ib.*, pp. 30f.
[75] *Ib.*, pp. 31f.

Presbyterian Churches of New South Wales, South Australia, Victoria and Western Australia.

From 1886 till 1901, a new body existed ï the Federal Assembly of the Presbyterian Churches of Australia and Tasmania. It provided a platform on which the various Presbyterian Churches in the six Australian Colonies might unite. The thought was to do so by way of confederation, and thus still to preserve their previous regional identities.

In 1894, the Federal Assembly proposed that ñthe Subordinate Standards of the United Church shall be the *Westminster Confession of Faith* and the *Shorter Catechism*, read in the light of a *Declaratory Statement* such as that in use in the Church of Victoria.ò The latter was a conservative declaration designed to prevent the inroads of modernism into the Victorian Church.

In 1899, the Federal Assembly decided anent the *Proposed Basis of Union* (III:IV) that, ñwith the view of protecting any minority of a fifth or more of the congregations which may protest against any change in the *Basis of Union*, Articles shall be duly framed to secure their rights and the relation of their congregation property.ò

In 1900, the Federal Assembly adopted Sections III-V of the proposed *Basis of Union*. These related to: parameters of possible changes in doctrine; procedures necessary to effect this; and provision for those unable to accept such contingencies.[76]

The Federal Assembly of the Presbyterian Churches finally drew up a *Scheme of Union*. Then, on the 24th July 1901, the Presbyterian Church of Australia was constituted when each of the Moderators of the Presbyterian Churches of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia on behalf of their State Churches signed the *Scheme of Union*.

That provides, *inter alia*, that: ñThe Supreme Standard of the United Church shall be the Word of God contained in the Scriptures of the Old and New Testaments.ò Section I. It also provides that: ñThe Subordinate Standard of the United Church shall be the Westminster Confession of Faith, read in the light of the *Declaratory Statement*.ò Section II.

Indeed, the *Constitution* of the Presbyterian Church of Australia then so declares *inter alia* that ñwhile none are saved except through the mediation of Christ and by the grace of the Holy Spirit..., this Church also maintains that there remain tokens of manôs greatness as created in the image of God; that he possesses a knowledge of God and of duty; that he is responsible for compliance with the Moral Law and the call of the Gospelò; and that ñthe Lord Jesus Christ is the only King and Head of the Church ónand Head over all thingsô to the Church.ò *Basis of Union*, Section II:iii-vi.

The *Scheme of Union* also provides that ñon any change being made in the Basis of Union..., if any Congregation thereupon refuses to acquiesce in the change and determines to adhere to the original Basis of Union, the General Assembly is

[76] See F.N. Lee: *I Confess! Holy Scripture, the Westminster Confession, and the Declaratory Statement – Their Relationship to One Another in the Presbyterian Church of Australia*, 3 Kenya St., Wavell Heights, Q. 4012, Australia, 1991, pp. 49-51.

empowered (1) to allow such Congregation to retain all its congregational property, or (2) to deal in such other way with the said property as to the Assembly may seem just and equitable.ò *Basis of Union*, Section IV.

The second part of the *Scheme of Union* signed that day, comprises the (amendable) *Articles of Agreement*. There, Article IV allocates supremacy to the federal General Assembly of Australia as regards ñfunctions legislative, administrative and judicial...with regard to the Doctrine, Worship and Discipline of the Churchò *etc*. This clearly implies that the powers of Government referred to in the Preamble, were being reserved to the constituting State Assemblies. Indeed, Article XII specifically declares: ñThe State General Assemblies shall retain their present names, and their autonomy shall not be further interfered with than is needful to give effect to the Basis of Union and the Articles of Agreement.ò[77]

Throughout, the above movement toward the confederation of Presbyterian Churches throughout Australia from 1859 to 1901, went hand in hand with the parallel movement toward the confederation of the several Colonies into the States of the Commonwealth of Australia from 1859 to 1901. It is to that latter matter which we now turn.

British and U.S. influences toward the 1901 *Australian Constitution*

The British *Historians' History of the World* states that as regards public education, the Australian Colonies were far in advance of the Mother Country. Some of the problems which were still agitating England at the end of the first decade of the twentieth century, were settled in Australia before the nineteenth century had entered its final quarter.

In New South Wales, systems of denominational and State-aided education were viewed by the 1866 Colonial Secretary (and later New South Wales Premier) Henry Parkes in a manner that anticipated Forsterôs legislation in England four years later. Facilities were given to religious denominations to give instruction in their own doctrines, with the consent of the parents of the children, in every public elementary school during one hour per day which was set apart for the purpose. The Universities date from the period which gave self-government.

The role of specifically the Presbyterian Church (and also of other Churches) in promoting education in Australia ï as too in the United States ï was tremendous. Thus the Queensland Presbyterian Theological College in Brisbane was the forerunner of the University of Queensland.[78]

The well-known Law Professor R.D. Lumb of the University of Queensland explains in his book *Australian Constitutionalism*[79] that the latter had its institutional beginning in 1788, with the foundation of New South Wales. English Law then

[77] *Constitution and Procedure and Practice*, Board of Religious Education of the General Assembly of Australia, Melbourne, 1950, pp. 20-34.
[78] *Hist. Hist.* XII pp. 36a-37a. See too Bardon: *op. cit.*, p. 35.
[79] R.D. Lumb: *Australian Constitutionalism*, Butterworths, Brisbane, 1983, pp. vii-viii. On *Cooper* v. *Stuart* (1889) 14 App Cas 286, see Lumbôs *op. cit.* p. ix n. 3 and pp. 39 & 49 n. 2.

became fundamental to the Colony, and the Common Law and statutes were the staple law. See the 1889 case *Cooper* v. *Stuart*.

Though Representative Government came in the 1820s, Responsible Government came only in the 1850s. Indeed, it was fully fifty years later before the Australian Colonies were conjoined into a federal system.

The Australian system is both British and American in origin and in imitation. From the British have come the concepts of representive and responsible government; from the Americans the concepts of federation and the judicial review of legislation.

Underlying these concepts is a basic theme or principle: the concept of the rule of law, or government under law. Both Britain and America claim *Magna Carta* as their own. Both systems have grown up with a philosophy of constitutionalism based on a doctrine of a higher law: the American associated with the *Declaration of Independence*; the British with a longer history from feudal times at least.

As Lumb further acknowledges,[80] basic to constitutionalism are the concepts of representation and consent and participation. See Ullmannôs *Law and Politics in the Middle Ages*. Yet it is generally agreed that the beginnings of constitutionalism were associated more with aristocracy than with democracy. See Friedrichôs *Constitutional Government and Democracy*, and also his *Limited Government*. Indeed, the modern formulation of democracy as meaning specifically: ñone vote, one valueò ï is but a twentieth-century concept.

Common Law is the essential pillar of jurisprudence in England and America, as well as Australia. It is based on custom, not on statute.[81] Statutes only confirm the Common Law. As McIlwain states in his *Magna Carta and Common Law*,[82] the latter is in a very real sense a fundamental law. The A.D. 1215 *Magna Carta* only recognized it as **pre**-existing.

Thus the English mediaeval jurist Bracton[83] declared that ñ**the king himself ought...to be...subject to God and the Law**. For the Law makes the kingò ï *Lex rex*. Also Sir John Fortescue insisted, in his 1470 *Praises of the Laws of England*, that the king can neither change the laws nor take from the people what is theirs ï against their consent.

Under the 1558-1603 Tudor Queen Elizabeth I, it was decided in *Bonham's case* that the Common Law could invalidate even Acts of Parliament. Indeed, the next monarch of England ï the 1603-25 Stuart, King James I ï was frequently resisted in

[80] *Ib.*, pp. 4f, citing W. Ullmannôs *Law and Politics in the Middle Ages* (The Source of History Ltd., London, 1975, pp. 30f) and C. Friedrichôs *Constitutional Government and Democracy* (Blaisdell, Waltman Mass., 1968, pp. 31f) and his *Limited Government – A Comparison* (Prentice-Hall, Englewood Cliffs N.J., 1974, p. 35).
[81] Lumb: *op. cit.*, pp. 17f.
[82] C.H. McIlwain: *Magna Carta and Common Law*, in *Constitutionalism and the Changing World* (Univ. Press, Cambridge, 1939, pp. 127f & esp. p. 135).
[83] H. Bracton: *On the Laws and Customs of England* f 5b (as cited in E.S. Corwinôs *The 'Higher Law' Background of American Constitutional Law*, 42 *Harvard Law Review*, 1928-29, pp. 149 & 265).

the name of God and the Common Law, by the great Lord Chief Justice Sir Edward Coke.[84]

Australian Law Professor Lumb explains[85] that the fundamental law to which Bracton and Coke appealed, was first to transform the legal system of the American colonies in 1776*f* ï to create there a new federalist structure; to produce a *Bill of Rights*; and to lay the foundations for a doctrine of judicial review. Some of that American tradition of constitutionalism would then enter Australia at a later stage.

That would occur through the 1847*f* federation debates, and especially through the subsequent movement toward the 1901 *Australian Constitution*. However, almost all that is common in the three legal systems ï and absolutely everything that is good in the laws of Australia and the United States and Great Britain ï is ultimately derived from the Common Law (and the teaching of the Christian Bible at the base of the latter).

Fifty years of movement toward political federation in Australia

Already from 1847 onward, Federation was mooted as a possible way of preventing the Australian Colonies from quarrelling with one another.[86] In 1857, Wentworth suggested an idea of federation through a plan to be drawn up by a conference representing all the Australian Colonies.

Indeed, especially the great Australian Presbyterian Rev. Dr. John Dunmore Lang strongly urged that something similar should be done. Meantime, the Colonies co-operated chiefly to restrict the number of Chinese coming to Australia, in terms of the latterôs tacit ôWhite Australia Policy.ô

The Australian colonies were certainly appreciative of the many benefits of the 1777*f* American Confederation (and its 1787*f* Union). However, mindful of the catastrophe of the 1861-65 American War Between the States, both then and later Australia would follow not the 1861-65*f* model (with its Thirteenth and Fourteenth Amendments) but the <u>original</u> seventeenth-century U.S. constitutional models.

Thus, all power not specifically delegated to the Australian Federal Commonwealth Government would be entrenched ï firmly ï in the several Australian States. For, in the decades during which Australia was moving forward in the direction of her own 1901 *Commonwealth Constitution* ï <u>only</u> the power to control customs and excise would in the end be vested exclusively in the Federal

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[84] Lumb: *op. cit.*, pp. 18-21. See too *Bonham's case* (Coke). There, the Royal College of Physicians had caused the imprisonment of the plaintiff for refusing to pay a fine imposed by it for practising medicine without a licence issued by it. Coke L.C.J. held it was contrary to law to permit the same body that issues licences, also to impose fines on physicians who resist the licensing requirement. For then the College would be in effect a judge in its own cause. 77 *Eng. Rep.* 638,645-46 (K.B. 1611).

Bonham's case most importantly further held: ñAnd it appears in our books, that in many cases the Common Law will control Acts of Parliament and sometimes adjudge them to be utterly void. For when an Act of Parliament is against common right and reason or repugnant or impossible to be performed, the Common Law will control it and adjudge such Act to be void.ò See *Bonham's case*, 8 Co, Rep. 1070, 118a; 77 ER 638 & 652.

[85] *Op. cit.*, p. 25.

[86] F.L.W. Wood: *op. cit.*, pp. 259f.

Government. The judicial systems, railways, aviation, hospitals, education and (initially) even taxation ï would all be vested not in the Federal but in the State Governments.

The 1865 enactment of the *Colonial Laws Validity Act* by the British Parliament ï if any was actually needed after the 1828-36 ñcut-offò date ï ensured that the doctrine of paramount power could apply only to such imperial legislation as extended expressly or by necessary implication to the colonies. This became the ñCharter of Independenceò of self-governing colonies. It gave a boost not only to the importance of the colonies in Australia, but also to their movement toward federation.[87]

Around 1880 the Pacific began to fill up with Frenchmen and Germans. They were bent on building their own colonies all too close to Australia ï especially in New Caledonia and New Guinea. A strong bulwark had to be erected against this ï in Australia. So a Federal Council of Australasia was launched ï by an Act of the British Parliament ï in 1885.

Law Professor Lumb has grasped the situation exactly. The mere co-existence of six colonies on the Australian Continent independent of each other in local policies, although united by Common Law and similar institutions of government ï could not be the basis for a permanent constitutional system.

The lessons of 1776*f* Post-Revolution events in America had not been lost. The 1781 American Confederation had been replaced by an 1787*f* American Federation. In Australia after 1885, the common needs of defence and trade and the requirement of a national Court of Appeal ï became pressing.[88]

At the Australian National Convention of 1891, all agreed a strong Government over the whole of Australia was needed. All the Colonies were willing to yield some of their rights, but none of them all of their rights, to such a government.

It became obvious that Australia would not adopt a unitary government like the United Kingdom or the Union of South Africa ï nor an overly-centralized Federation like Canada. Australia would adopt a confederal system like Switzerland ï or like the U.S.A. as originally constituted, or as improved in the later Confederacy of American States in the South (C.S.A.).[89]

So, at that 1891 National Convention, the proportional representation advocated was defined in terms of the States ï and **not** in terms of the electorates. This was, if anything, yet more conservative than the corresponding section of even the *U.S. Constitution* itself at that time.

It was then well known in Australia that the 1787 *U.S. Constitution* commences: ñWe the people of the United States...do ordain and establish this CONSTITUTION.ò So the Australian Delegates worked toward a better formulation ï more conservative, both theologically and as regards statesô rights.

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[87] Lumb: *op. cit.*, p. 46.
[88] *Ib.*, p. 47.
[89] Wood: *op. cit.*, pp. 264f.

The 1901 *Australian Constitution* therefore did not say: ñWe the people of Australiaò (*etc*). It was crafted instead (like that of the C.S.A.) to declare that ñthe people of New South Wales, Victoria, South Australia, Queensland and Tasmania [*etc.*], humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluable Federal Commonwealth under the Crownò *etc*. (All emphases here are mine ï F.N. Lee.)

Another Australian National Convention was held in 1897-98 (along the lines of a U.S. constitutional convention). It drew up the proposed *Constitution* for the Commonwealth of Australia. By and large, it followed the American pattern ï while recognizing the British system of responsible government.

There would be a bicameral Legislature, with a strong Senate to safeguard the interests of the several Colonies about to become States. All legislative power not vested in the new Federal Parliament, would remain with the States.

A formal allocation of powers would be embodied at Sections 1 & 61 and 71 (along the lines of the *U.S. Constitution*). The courts would be independent in the exercise of their powers of judicial review.[90] Very clearly, the Australian would incorporate features of both the American and the British Constitutions.

At the 1897*f* Australian National Convention, the emergent *Australian Constitution* was massively made to rest upon both the 1787 *U.S. Constitution* and the much older *British Constitution*. See University of Queensland Law Lecturer Nicholas Aroneyôs 1997 article *Australian Federalism* (pp. 15*f*), explaining how Sir Edmund Barton (then soon to become the first Prime Minister of Australia) favourably cited and successfully persuaded the 1897*f* Australian National Convention to view with general approval the perception of the famous English Historian E.A. Freeman.

Freeman had said: ñIn the institutions of...the Swiss Cantons...we may see the institutions of our own forefathers.... They answer in our own land not to the assemblies of the whole kingdom but to the lesser assemblies of [the Germanic *mark* and] the shire [and/]or hundred [*cf*. Exodus 18:12-21]....

ñYorkshire by that name is younger than England, but Yorkshire by its elder name of Deira is older than England; and Yorkshire or Deira itself is younger than the smaller districts of which it is made up ï Craven, Cleveland, Holderness, and others. For the political unit, for the atom which joined with its fellow atoms to form the political whole, we must go to areas yet smaller....

ñThat unit, that atom, the true kernel of all our political life must be looked for...in England...in the parish vestry!ò To which I (F.N. Lee) would add that the molecule of the parish vestry itself is but a parliament of atomic families each under the leadership of an adult male. Exodus 18:12-21 and Deuteronomy 1:13-17. Indeed, compare with this the great German Calvinist Jurist Althusiusôs concepts of *symbiosis* and sphere-sovereignty (in his 1610 work *Politica*).

Queensland did not take part in the 1897 Convention. Yet the main resistance to Federation came from New South Wales. However, Dr. John Quick and Sir Henry

[90] Lumb: *op. cit.*, pp. 47f & 68.

Parkes then wisely decided to push things along by way of a popular referendum thereon ï in each of the Colonies. Victoria, Tasmania and South Australia then accepted it ï by large majorities.[91]

Yet New South Wales still hesitated, until the other States agreed to build the Federal Capital in an óAustralian Capital Territoryô located within was then still part of New South Wales. The latter then adopted the idea of federation, in June 1899.

When Victoria, Tasmania and South Australia again confirmed it ï Queensland too adopted it. Western Australia still held out ï until those in her rich goldfields threatened secession from Western Australia unless she ratified it! This she did in July 1900. Thereupon the Queen issued a proclamation, setting up the Commonwealth of Australia ï effective 1st January 1901.

The 1901 *Constitution of the Commonwealth of Australia* (as then framed)

We now come to the *Commonwealth of Australia Constitution Act*. As stated in its Preamble, this was ñAn Act to constitute the Commonwealth of Australiaò ï precisely ñwhereas **the people** of New South Wales, Victoria, South Australia, Queensland and Tasmania ï **humbly relying** on the blessing of **Almighty God** ï **have agreed to unite** in one indissoluble Federal Commonwealth under the Crown.ò

The above Australian words ñAlmighty Godò are **not** to be found anywhere in the 1787 **U.S.A.** Constitution! Yet those Australian words may here well have been taken from those same words in the 1861 ***Constitution of the C.S.A***. For the latter ran: ñWe, **the People** of the Confederate States, each State acting in its Sovereign and Independent character, in order to form a Permanent Federal Government...invoking the favor and guidance of **Almighty God** ï do ordain and establish this Constitution of the **Confederate States of America**.ò

Paragraph 3 of the *Commonwealth of Australia Constitution* then adds that ñthe Queen, with the advice of the Privy Council,ò could ñdeclare by proclamation that on and after a day therein appointedò the people of the above-mentioned Colonies ï ñand also, if her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australiaò ï shall ñbe united in a Federal Commonwealth under the name of the Commonwealth of Australia.ò The day appointed by proclamation was 1st January 1901. Western Australia then, along with the other five Colonies, became States within the Commonwealth of Australia.[92]

The *Constitution of the Commonwealth of Australia* then unfolds in eight chapters, followed by ñThe Scheduleò containing an ñOATHò (just as follows): ñI, *A.B.*, do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors **according to law**. **So help me God**! (NOTE. The name of

[91] Wood: *op. cit.*, pp. 266f.
[92] P.H. Lane: *Some Principles and Sources of Australian Constitutional Law*, The Law Book Company of Australasia Pty. Ltd., Brisbane, 1964, p. 259.

the king or queen...for the time being, is to be substituted from time to time.)ò[93] This oath ï or an affirmation *in lieu* thereof ï is still sworn also by all migrants who later become citizens of Australia.

Australiaôs *Constitution* is certainly grounded in Christianity. According to its very Preamble, it was brought into being on ñ9th July, 1900ò ï ***Anno Domino***, or in the year of our Lord (Jesus Christ). That Preamble at its very outset expresses how the people of the constituting Colonies, in then contemplating the setting up of the Commonwealth of Australia, were ñhumbly relying on the blessing of **Almighty God**ò ï alias the one and only Triune God (alongside of Whom there is no other). Indeed, even the closing Schedule of the original *Australian Constitution* contains an Oath ï swearing to be faithful ñaccording to law. **So help me God!**ò

Let us now look as the eight chapters of the *Constitution*. Chapter I, under five Parts, concerns the Federal Parliament. Part I is General ï concerning the legislative power; the Governor-General; his salary; his provisions; the sessions of Parliament and its Prorogation and Dissolution; Summoning Parliament; its first session; and its yearly sessions.

Part II concerns the Senate. This deals with: its composition; the qualifications of electors; the method of election; its times and places; the application of State laws; the failure to choose Senators; the issue of writs; the rotation of Senators; further provisions; casual vacancies; the qualifications of Senators; the election and absence of the President; resignations and vacancies; and the quorum and voting in the Senate.

Part III concerns the House of Representatives. This deals with: its constitution; provision as to races disqualified from voting; the Representatives in the first Parliament; the alteration of the number of Members; the duration of the House of Representatives; the electoral divisions; the qualification of electors; application of State laws; writs for general elections and for vacancies; the qualifications of Members; the election of the Speaker and his absence; the resignations and vacancies of Members; and the quorum and voting in the House of Representatives.

Part IV concerns both Houses of Parliament. This deals with: the rights of the electors of States; the oath or affirmation of allegiance; the ineligibility of the Members of one House for membership in the other; disqualifications; vacancies on the happenings of disqualifications; penalties for sitting when disqualified; disputed elections; allowances to Members; the privileges &c. of the Houses; and rules and orders.

Part V concerns the powers of the Parliament. It deals with: legislative powers (trade, taxation, bounties, borrowings, postal matters, the militia, lighthouses *etc*., astronomical and meteorological observations; quarantine, fisheries, census and statistics, currency, banking other than State banking, insurance other than State insurance, weights and measures, bills of exchange, bankruptcy, copyrights, naturalization, foreign corporations, marriage, divorce, pensions, maternity allowances *etc*., service of criminal process, special laws for races other than

[93] *Ib.* pp. 260 & 281. It would seem that in lieu of the above Oath, the following similar AFFIRMATION may be substituted, for its text too appears in the Schedule, *viz.*: ñI, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors according to law.ò

aboriginals, immigration, influx of criminals, external affairs; Pacific relations; property acquisitions from any State; railway construction; conciliation and arbitration, other matters, references from the States, concurrences & incidentals; exclusive powers; powers of the Houses in respect of legislation; Appropriation Bills; Tax Bills; recommendation of money votes; disagreement between the Houses; Royal Assent to Bills; recommendations by the Governor-General; disallowance by the Queen; and signification of the Queenôs pleasure on Bills reserved.

Chapter II concerns the Executive Government. This deals with: executive power; the Federal Executive Council; provisions referring to the Governor-General; Ministers of State; Ministers to sit in Parliament; number of Ministers; salaries of Ministers; appointment of civil servants; command of naval and military forces; transfer of certain departments; and certain powers of Governors to vest in the Governor-General.

Chapter III concerns the Judicature. This deals with: judicial power and the courts; judgesô appointment, tenure and remuneration; the appellate jurisdiction of the High Court; appeals to the Queen in Council; the original jurisdiction of the High Court; additional original jurisdiction; the power to define jurisdiction; proceedings against the Commonwealth or a State; the number of judges; and trial by jury.

Chapter IV concerns Finance and Trade. This deals with: the Consolidated Revenue Fund; expenditure charged thereon; money to be appropriated by law; transfer of officers; transfer of property of a State; uniform duties of customs; payment to States before uniform duties; exclusive power over customs, excise and bounties; exceptions as to bounties; trade within the Commonwealth to be free; payment to States for five years after uniform tariffs; distributions of surplus; customs duties of Western Australia; financial assistance to the States; audit; trade and commerce to include navigation and State Railways; Commonwealth not to give preference nor abridge the right to use water; Inter-State Commissions; Parliament may forbid preferences by a State; Commissionersô appointment, tenure and remuneration; savings of certain rates; and taking over public debts from the States.

Chapter V concerns the States. This deals with: the saving of the State Constitutions; the saving of the power of the State Parliaments; the saving of the State laws; inconsistency of laws; provisions referring to the Governor; the Statesô ability to surrender territory; the Statesô ability to levy charges for inspection laws; intoxicating liquids; prohibition of the Statesô raising forces and taxing property of the Commonwealth (and of the Commonwealth taxing property of the States); the States not to coin money; the Commonwealth not to legislate in respect of religion; rights of residents in the States; recognition of laws *etc*. of the States; protection of States from invasion and violence; and custody of offenders against laws of the Commonwealth.

Chapter VI concerns New States. This provides that New States may be admitted or established; and also provides for the government of Territories. It further provides for the alteration of the limits of the States; and for the formation of new States.

Chapter VII concerns Miscellaneous Matters. This deals with: the seat of the Federal Government (which ñshall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred

miles from Sydneyò); the power to her Majesty to authorize the Governor-General to appoint deputies; and the Aborigines not to be counted in reckoning the population.

Finally, Chapter VIII concerns Alteration of the Constitution (discussing its mode). Then the Schedule at the end of the *Constitution* records the Oath to be sworn by all Federal Members of Parliament, to uphold the Queen and her successors according to law ï ñ**so help me God!**ò

Is the 1901 *Constitution of the Commonwealth of Australia* really Christian?

In the University of Queenslandôs Australian Law Lecturer Nicholas Aroneyôs 1997 article *Federal Representation and the Framers of the Australian Constitution* (pp. 3 & 6 & 24*f* & 39), he shows how at the Philadelphia Convention in 1787, the 1639 *Fundamental Orders of Connecticut* (providing for the combination of autonomous towns into a colony-wide government) became a necessary principle of the U.S. Federal Government. That principle was adopted later, also by a majority of the framers of the *Australian Constitution*.

The framers of the *Australian Constitution* (sections 7 & 24 & 29), on the whole, thought federalism requires federal representation in the National Parliament and involves a qualification of national majoritarianism. Thus the National Parliament is comprised of a Senate in which ñthe people of the Stateò elect an equal number of ñsenators for each State.ò

This extends even to the Australian Federal **House of Representatives**. There ñthe number of such members shall be, as nearly as practicable, [only] twice the number of the senatorsò ï since also there each State is guaranteed a representation (of ñfive members at leastò). Indeed, far more explicit than in the *U.S. Constitution* ï in Australia, ñthe Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division.ò

This provision in the Australian Constitution upset Australian Centralists. Thus Isaacs criticised the above 2:1 nexus between the Australian Federal House of Representatives and the Australian Federal Senate as being ñ**anti**-popularò and **more** ñconservativeò than even the British Government of that time.

However, Isaacsôs criticisms were unsuccessful ï and disregarded. All emphases here above, are mine ï F.N. Lee.

Now the Australian Constitution of 1901 follows very closely the lines laid down under the leadership of the ôFather of the Federationô Sir Henry Parkes in 1891. Already in 1849, when Parkes was still a young man, he had opposed the re-introduction of convict labour. He had established the *Empire* newspaper in 1850; become a Member of the New South Wales Parliament in 1854; and advocated free trade from 1861 onward.

Parkes had initiated compulsory education in New South Wales during 1866. He introduced an Act in 1880 for children in the **public** schools **there** there to attend

voluntary **Scripture Classes**. Indeed, Parkes was elected Premier of New South Wales five times (from 1872 to 1891).

Sir Henry identified himself not only with his British roots but, far more importantly, also with Christianity ï and indeed also with the Christian institutions which had rooted so deeply in Britain. According to the *Sydney Morning Herald* for 26th August 1885, Parkes then declared: ñAs we are a British people ï are pre-eminently **a Christian people** ï as our laws, our whole system of jurisprudence, our Constitution...are based upon and interwoven with **our Christian belief**, and as we are immensely in the majority, we have a fair claim to be spoken of at all times with **respect** and deference.ò

It was Parkes who had presided at the 1891 National Convention. Indeed, at the 1893 meeting of the Australian Nativesô Association ï it is again Parkes who had suggested that a constitution be drawn up for a Commonwealth of Australia.[94]

It should be observed that the original Section 51(xxvi) of the *Constitution* was amended subsequently by the later removal of the words ñother than the aboriginal race in any State.ò It should also be observed that in 1929 a new Section 105A was inserted pertaining to agreements with respect to State debts. It should further be observed that the original Section 127 was rescinded, which provided that Aborigines are not to be counted in reckoning population.

On the other hand, there has been no amendment of the Christian Preamble enacted in A.D. ñ9th July 1900ò and ñhumbly relying on the blessing of Almighty Godò at the very beginning of the *Australian Constitution*. Indeed, how could there be? For therein, soon to be followed by the people of Western Australia, ñthe people of New South Wales, Victoria, South Australia, Queensland and Tasmania ï humbly relying on the blessing of Almighty God ï have agreed to unite in one indissoluble Federal Commonwealth under the Crownò *etc*.

The fact is, this Christian Preamble seems to be just as indissoluble as is the Federal Commonwealth itself ï and as is the connection between the Federal Commonwealth and the Crown under which it was thus constituted. Nor has there been any amendment of the Christian Schedule (ñ**So help me God!**ò) at the very end of the *Australian Constitution*. Once again ï how could there be?

New South Wales Government Solicitor Greg Booth, LL.M. (Hons.), rightly remarks[95] that an examination of the Australian Commonwealth Constitution immediately demonstrates an awareness that ñthe supremacy of the newly-created Parliament was to be exercised **under God**ò ï and that it was brought into being by an imperial statute ñassented to on 9th July 1900 and cited as the *Commonwealth of Australia Constitution Act*ò in which ñexpression was being made of a peopleôs **reliance** on **Almighty God**.ò

Dr. John Quick was one of the Founding Fathers of the 1901 *Constitution of the Commonwealth of Australia*. In the 1901 *Annotated Constitution of the Australian*

[94] Art. *Parkes, Sir Henry* (in *CEANZ*, II p. 699).
[95] Greg Booth: *The Australian Constitution* (in McLennanôs *op. cit.* p. 36).

Commonwealth by J. Quick & R.R. Garran, we read[96] that this appeal to the **Deity** was inserted in the *Constitution* at the suggestion of most of the Colonial **Legislative Chambers**, and in response to numerous and largely signed petitions received from the people of every Colony represented in the Federal Convention which framed the text submitted to the Imperial Parliament for enactment.

Note again the above words of Quick and Garran: ñ**This appeal to the Deity was inserted in the *Constitution* at the suggestion of most of the Colonial Legislative Chambers**ò *etc*. Emphases mine ï F.N. Lee.

The above words are a great embarrassment to certain humanistic politicians in Australia today. A couple of years ago, a public debate took place in Brisbane between a very prominent Federal Member of Parliament and Frontbencher belonging to the Australian Labor Party ï and the godly Australian Presbyterian lawyer Rev. Dr. David Mitchell (sometime Attorney-General of Lesotho).

During question time at that public debate, this present writer (F.N. Lee) confronted the Member of Parliament about these words in our Preamble. Awkwardly, the Member simply tried to shrug them off.

However, as New South Wales Government Solicitor Booth rightly remarks: ñOrgans of government may not recognize the significance of the Preamble. Modern revisionists may seek to modify it. But, for all that, the words stand as a historic monument to the overwhelming recognition of Almighty God as the foundation of the political union.

ñAt the ethical level, the philosophical and historical levels are transcended ï to produce an unassailable justification for opposition to any brand of totalitarianism. Power [in the Federal Government] is not total; it is exercisable only under One Who is all-powerful, the Almightyò[97] ï *viz*., in the words of the *Australian Constitution* itself, ñ**humbly relying** on the **blessing** of **Almighty God**.ò

Section 42 of the *Constitution of the Commonwealth of Australia*, moreover, provides that ñevery Senator and every Member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General [as the Queenôs own representative], or some person authorized by him, an oath or affirmation of allegiance in the form set forth in the schedule to the Constitution.ò As already noted, that oath provides: ñI, *A.B.*, do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors according to law. **So help me God!**ò ï with the substitution of ñthe name of the King or Queen...for the time beingò in the place of ñQueen Victoriaò *etc*.

Section 61 of the *Australian Constitution*, furthermore, clearly declares: ñThe executive power of the Commonwealth is vested in the Queen.ò It does not declare that the executive power of the Australian Commonwealth is vested in the Prime Minister ï nor even in Parliament.

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[96] J. Quick & R.R. Garran: *The Annotated Constitution of the Australian Commonwealth*, 1976 rep., p. 287.
[97] *The Austral. Const.*, p. 36.

Indeed, the *Australian Constitution* does not even mention either the Prime Minister ï or the Cabinet. Accordingly, it is very impertinent for any agnostic Australian Prime Minister or Governor-General to talk about ñmy Governmentò ï when the *Australian Constitution* itself vests the government in the **Queen** of Australia ï and when the Australian Coronation Oath itself in turn declares that the Queenôs Government is subject to the Empire of **Christ**.[98]

Neither the Federal Government nor the States can, legally, totalitarianize their powers. For there has been frequent litigation in connection with Section 92 of the *Australian Constitution*. It specifies that trade within the Commonwealth is to be free. This is a virtual guarantee of the freedom of trade between the States.

As such, this is an implicit yet clear safeguard against both totalitarian Centralism as well as tyrannical socialism. For God alone is totalitarian.

How so? Because, in the pre-ambulatory words at the very beginning of the *Australian Constitution*, He alone is ñ**Almighty** God.ò Emphasis mine ï F.N. Lee.

In Law, that which is ambulatory ï is alterable. So that which is pre-ambulatory ï such as the Preamble in the *Australian Constitution* ï is pre-alterable or un-alterable, and indeed constitutive of the rest of the *Constitution* itself. This means that the Preamble (as distinct from the rest of the Constitution) can no more be altered than can the unalterable ñAlmighty Godò to Whom it refers. Malachi 3:6 and James 1:17.

Australia's "1st Amendment": Section 116 of the *Constitution*

Section 116 is an original part of the *Australian Constitution*. It shows clear influence from the 1791 First Amendment in the *U.S. Constitution*. Section 116 declares: ñThe Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.ò

Now Section 116 was inserted into the draft of the *Australian Constitution* at the proposal of the Non-Labor politician, Henry Bournes Higgins.[99] He was a moderate, and opposed permitting strikes whenever matters were *sub judice* ï or during national emergencies. Later, he became a judge of the (conservative) High Court of Australia.[100]

It must also be remembered that **Australian Law was manifestly Christian** at the time the *Australian Constitution* was written in 1901. This is still the case. Those who framed the *Constitution*, expressed their **humble reliance** on **Almighty God** in its very Preamble. They also expressed their acceptance of the one who was then their Christian monarch by the grace of **God**.

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[98] R. Eason: *Australia is a Christian Nation* (art. in McLennanôs *op. cit.*, p. 44).
[99] Art. *Higgins, Henry Bournes* (in *CEANZ* I p. 470).
[100] Thus J. & R. Ely: *Lionel Murphy – the Rule of Law*, Akron, Sydney, 1986, p. 290. See too the Appendix to J.A. Thomsonôs *Constitutional Interpretation – History and the High Court – A Bibliographical Survey* (in *Univ. of N.S.W. Law Journa1*, Vol. 5, No. 2, 1982, pp. 324-26). Also see ed. A.W. Martinôs *Essays in Australian Federation*, Melbourne, 1969, pp. 57f.

Furthermore, all federal politicians were then (and still are) required under section 42 of the *Australian Constitution* to swear an oath or make a solemn affirmation of allegiance to the Christian monarch ï and to ñher heirs and successors **according to law. So help me God**!ò Emphases mine ï F.N. Lee.

Moreover, that Christian monarch had personally declared at her Coronation Service that ñthe whole world is subject to the power and empire of **Christ our Redeemer**.ò Her successors still do. Indeed, according to its Preamble, the *Australian Constitution* was signed into law by Queen Victoria on ñ9th July 1900ò **in the year of our Lord** Jesus Christ.

There have been several test cases in relation to Section 116. Such have been connected chiefly with ñconscientious objectionò to bearing arms during World Wars ï and with the ñreligiousò right not to vote in compulsory Australian elections. These cases include the 1912 case of *Krygger* v. *Williams*; the 1926 case of *Judd* v. *McKeon*; and the 1943 case of *Adelaide Company of Jehovah's Witnesses Inc*. v. *Commonwealth*.[101]

In *Krygger's case*, the defendant attempted to refuse to undertake military training. Relying on his own misunderstanding of Section 116 of the *Australian Constitution*, he stated: ñAttendance at drill is against my conscience and the Word of God.... Anything therefore such as compulsory military training, is anti-Christ.... I put military training on the same footing as gambling.... I have been taught to go forth and do the same works as Jesus did: destroy the works of the devil ï not with armies and navies, but with the power of the Word. Military training would cut me off from God. Sixty-four hours drill a year would prohibit the free exercise of my religion.ò[102]

To this the Chief Justice, Sir Samuel Griffith ï himself one of the Founding Fathers of the *Australian Constitution*[103] **and of its Section 116** ï simply responded: ñSection 116 of the Constitution provides that ótheô Commonwealth shall not make any law for...prohibiting the free exercise of any religionôï that is, prohibiting the practice of religion ï the doing of acts which are done in the practice of religion. To require a man to do a thing which has nothing at all to do with religion, is not prohibiting him from a free exercise of religion. It may be that a law requiring a man to do an act which his religion forbids would be objectionable on moral grounds, but it does not come within the prohibition of sec. 116, and the justification for a refusal to obey a law of that kind must be found elsewhere. The constitutional objection entirely fails.ò[104]

We should point out that the above opinion no way rested upon any kind of humanistic tendency within Sir Samuel. To the contrary, he himself was rooted firmly within the Christian tradition which prevailed within America, Australia and the British Empire in his own day. Indeed, this can be seen very clearly also from his own judgment in the 1904 case of *D'Emden* v. *Pedder* (to be discussed below).[105]

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[101] *Krygger* v. *Williams* (1912) 15 C.L.R. 366f; *Judd* v. *McKeon* (1926) C.L.R. 380; *Adelaide Company of Jehovah's Witnesses Inc.* v. *Commonwealth* (1943) 67 C.L.R., 116 at 148.
[102] *Krygger's case*, p. 367.
[103] See J. & R. Ely: *op. cit.*, p. 302.
[104] *Krygger's case*, p. 369.
[105] See our text below at its n. 116.

In *Judd's case*, the High Court of Australia considered what is a ñvalid and sufficient reasonò under section 128 of the 1918-35 *Electoral Act* ï for refusal to vote. No religious question arose on the facts. However, Higgins J. said *obiter*:[106] ñIf abstention from voting were part of the electorôs religious duty...this would be a valid and sufficient reason for his failure to vote (s. 116 of the Constitution).ò

In his *Cases on the Constitution of the Commonwealth of Australia*, Law Professor Sawer rightly concedes[107] that it is possible Higgins J. meant only that in view of Section 116, religious objections might be regarded as ñvalidò for the purpose of section 128 of the *Electoral Act*. Sawer then adds that notwithstanding the differences in text and context between the First Amendment of the *U.S. Constitution* and section 116 of the *Australian Constitution*, the American decisions in this field are likely to be of persuasive authority in the High Court. See Freundôs *Constitutional Law Cases and Other Problems*.[108]

We ourselves would add that, preferably restricting the U.S. decisions largely to those given **before** a cut-off date of 1901 (the date of the enactment of the *Australian Constitution*) ï there is really no doubt that the latterôs Section 116 should be interpreted from the perspective of Christianity. For see the American decisions hereanent up till and including the 1892 U.S. Supreme Court *Holy Trinity case* (which re-affirmed that the U.S. was then ña **Christian** nationò).

As Chief Justice Latham said in the *Jehovah's Witnesses case*:[109] ñThere is, therefore, full legal justification for adopting in Australia an interpretation of s. 116 [of the *Australian Constitution*] which had, before the [1901] enactment of the *Commonwealth Constitution*, already been given to similar words in the United States.ò Here, His Honourôs operative word is ñbeforeò ï both emphases mine (F.N. Lee).

The main issue in this 1943 *Jehovah's Witnesses* case, however, is somewhat different ï though very illuminating. It will therefore be dealt with at that date (1943) ï and indeed at some little length ï later below.

In passing, we observe at this point that Australian Constitutional Law Lecturer P.H. Lane opines[110] that a law under Section 96 making a Commonwealth grant to States on condition they aid **church** schools ï is not likely to offend Section 116. This is so, even if the ultimate beneficiaries be individual persons or bodies (such as independent schools) within the grantee State.[111] See the 1957 case *State of Victoria* v. *The Commonwealth*.[112]

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[106] *Judd's case*, p. 387.
[107] *Op. cit.*, p. 158.
[108] *Ib.* pp. xvii & 158. See too Freund, Sutherland, Howe and Brown: *Constitutional Law Cases and Other Problems*, Little Brown & Co., 2nd ed., 1961, II pp. 1694.
[109] *Op. cit.*, pp. 116 & 131.
[110] See P.H. Laneôs *Commonwealth Reimbursement for Fees at Non-State Schools* (in 1964) 38 A.L.J. 130), and his *Princs. & Sources of Austral. Const. Law* p. 221 & n. 885.
[111] *Idem*. See too G. Sawer: *Cases on the Constitution of the Commonwealth of Australia*, The Law Book Co. of Australasia Pty. Ltd., Brisbane, 1964, pp. 99-101.
[112] *State of Victoria* v. *The Commonwealth* (1957) 99 C.L.R. 575 at pp. 607-10.

Also as recently as 1984, the Supreme Court of South Australia[113] admitted that Section 116 of the *Australian Constitution* is indeed a prohibition against the ñ**Commonwealth**ò alias the Australian Federal Government making enactments about religion. But that it says nothing at all regarding the States so enacting.

Indeed, the State of Tasmania[114] is not able to prohibit the free exercise of religion. Nor did Queensland, under Sir Joh Bjelke-Petersen and until its change of government in 1990, refrain from offering a creationistic perspective on the teaching of science in its own public school system.

Christian background of Section 116 of the *Australian Constitution*

Quick and Garran ï eyewitnesses and earwitnesses ï in their 1901 ***Annotated Constitution of the Australian Commonwealth***, explain[115] that an earlier draft of the *Australian Constitution* proposed making Section 116 thereof binding on the States as well as the then-to-be-created Commonwealth Government. However, that proposed ó State clauseô was rejected ï thus recognizing that States like Tasmania indeed had the ongoing right in their State constitutions to guarantee religious freedom, regardless as to whether the Commonwealth Government itself might do so or not.

Indeed, **Quick and Garran** further insist that (even at the federal level) **this Section 116 of the *Australian Constitution* was and "is not intended to prohibit the Federal Government from recognizing religion or religious worship. The Christian religion is, in most English-speaking countries, recognized as part of the Common Law**.ò Thus Quick and Garran. Emphases mine ï F.N. Lee.

This recognition of specifically Christianity as being part of the Common Law, was the case especially up to and throughout the nineteenth century. Consequently, it is not credible that the original *Australian Constitution* of 1901 (just after the end of the nineteenth century) ï particularly in view of its humble yet outspoken acknowledgement of ñAlmighty Godò in its own Preamble ï could possibly have intended (and still less have succeeded) at the contemporaneously-enacted Section 116, to override that pre-ambulatory and therefore pre-emptive acknowledgement.

One of the framers of the *Australian Constitution*, was the former Queensland Premier and Queensland Chief Justice ï the renowned Sir Samuel Griffith. He became the first Chief Justice of the High Court of Australia. Because he is the one credited with putting together the first effective draft of the *Australian Constitution*, his views thereanent are particularly pertinent.

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[113] See *Grace Bible Church* v. *Reedman* 36 SA SR 1984. This recent law anent school registration before the Supreme Court of South Australia was a State law, not a Commonwealth one. Section 116 was raised in this connection in a then Labor-dominated State, possibly from sympathy for the *obiter* statement anent Section 116 made by A.L.P.-appointee Murphy J. in the Presbyterian case *Attorney-General N.S.W. (ex rel. MacLeod)* v. *Grant* (1976) 51 A.L.J.R. 10,20. There, Murphy J. regarded litigation between warring Presbyterian and Ex-Presbyterian factions in New South Wales anent a new State Law as unjusticeable at civil law ï because of section 116 of the *Australian Constitution*. However, it is clear from 1976 C.L.R. 612-14 that Murphyôs was a dissenting judgment. A.L.P. Senator Murphy resigned from the Senate just one day before his elevation to the High Court Bench. See J. & R. Ely: *op. cit.*, p. 2.

[114] Section 46 of the *Tasmanian Constitution* guarantees a measure of religious freedom.

[115] *Op. cit.*, Legal Books, Sydney [1901], 1976 rep. 951.

Griffith made a very clear and relevant declaration in the 1904 case of *D'Emden* v. *Pedder*.[116] Explained Sir Samuel: ñSo far therefore as the *United States Constitution* and the *Constitution of the Commonwealth [of Australia]* are similar, the construction put upon the former by the Supreme Court of the United States may well be regarded by us in construing the Constitution of the Commonwealth ï not as an infallible guide, but as a most welcome aid and assistance....

ñWe cannot disregard the fact that the Constitution of the Commonwealth was framed by a Convention of Representatives from the several Colonies. We think that sitting here, we are entitled to assume ï what, after all, is a fact of public notoriety ï that some if not all of the framers of that Constitution were familiar not only with the Constitution of the United States but with that of the Canadian Dominion and those of the British Colonies.

ñWhen therefore under these circumstances we find embodied in the *[Australian] Constitution* provisions of the Constitution of the United States **which had long since <u>been</u> judicially interpret<u>ed</u>** by the Supreme Court of that Republic, it is not an unreasonable inference [from the *Australian Constitution*] that its framers intended that like provisions should receive like interpretation.ò Emphases mine ï F.N. Lee.

In the latter connection, it should be noted that the United States Supreme Court gave a <u>Christian</u> interpretation to the 1787 *U.S. Constitution* right up until and even beyond the time of the enactment of the *Australian Constitution* in 1901. This, in agreement with the reasoning of Australiaôs first Chief Justice Sir Samuel Griffith in *Pedder's case* (1904), implies that also the 1901 *Australian Constitution* was to be given a Christian interpretation both then and soon thereafter (in 1904).

The situation in Australia is therefore well summarized by Howard Carter, in his article *Constitutionalism and Religious Freedom*. There, Carter explains:[117]

In 1900, after more than twenty years of public debate and discussion, followed by a national referendum, the *Australian Constitution* was enacted. Unlike the constitutions of republics such as the United States, the *Australian Constitution* does not include a declaration of the rights of citizens.

Such rights, however, are protected quite adequately under the Common Law (inherited from Great Britain and based originally upon the Ten Commandments) ï and also under Statute Law. Those rights are also quite sufficiently summarized in the *Bill of Rights* of 1688*f*, as an integral part of Australian Common Law.

The *Australian Constitution* is a compact between the States of Australia for their co-operation in certain limited functions which are most efficiently conducted on a federal basis. It is based on the principle that power is best diffused, rather than centralized.

Over the years, however, unscrupulous politicians have sought to alter the *Australian Constitution*. Yet the ongoing resistance of the Australian people to

[116] *D'Emden* v. *Pedder* (1904) 1 C.L.R. 91 & 112.
[117] H. Carter: *Constitutionalism and Religious Freedom* (in *Chalcedon Report*, Vallecito, Ca., Feb. 1989, pp. 9f).

constitutional change has become increasingly frustrating to sometimes democratic-socialistic central governments.

The framers of the *Constitution of the United States* fashioned the *American Constitution* in the context of the United States being a Christian nation. There is nothing in the *American Constitution* which allows Congress to legislate that all citizens must **practise** the Christian religion. There was, however, the clear understanding that the nation would reflect the values of the Christian religion in its government, its legislation, its education, its public morality, and so on.

The same is true of the *Australian Constitution* ï a ótriuneô blend in 1901 of Australian Christian values, British Common Law, and the federal features of the *Constitution of the United States*. The debate surrounding the inclusions of the ófree exercise of religionô clause in the *Australian Constitution* (at Section 116), reflected this same sentiment: that Australia, as a nation, is based upon the Christian religion.

Under the present *Australian Constitution* (Section 116), the federal government is not permitted to make any law for establishing any religion or for imposing any religious observance, or for prohibiting the free exercise of any religion. Furthermore, when the *Australian Constitution* was being drafted, several large petitions were received by the Committee ï urging that Almighty God be recognized in the *[Australian] Constitution*. Finally, a proposal to insert in the Preamble of the *Australian Constitution* the words ñhumbly relying on the blessing of Almighty Godò was agreed to.

Here, the words ñAlmighty Godò make the 1861 *Confederate Constitution* and the 1901 *Australian Constitution* ógodlierô documents than the 1787 *U.S. Constitution*. For the latter does not refer to God ï as distinct from ñour Lord [Jesus]ò ï at all.

Carter concludes that the issue of constitutional reform is one of Christian concern. The centralization of power is a Christian issue ï because decentralization, and checks and balances, are Christian principles. The *Australian Constitution* itself is a Christian document, and thus any proposed revision of it is a Christian issue.

Characterization of the 1901 *Constitution of the Commonwealth of Australia*

The head of the Australian Federal Government is the Governor-General as the Official Representative of the Queen of **Australia** (as distinct from her other realms such as Britain and Canada and New Zealand *etc*.). In other respects, he has much the same duties as did the Colonial Governors before Federation.

His Ministers are controlled by a Federal Parliament of two Houses. The Lower House, or House of Representatives, is elected in the same way as the Assemblies of the Colonies which then became States in 1901. They represent the people, as fully as is manageable.

Already in 1902, there was universal adult franchise for every man and woman as regards the Commonwealth of Australia. This was so, even though the State of Western Australia waited until 1907 before itself so enacting there.

The Upper House or Senate, consists of six Federal Senators from each State, who have the duty of protecting the rights of the States and checking and braking the Lower House. In the event of deadlock, Joint Sittings of both Houses are held.

In the Swiss Confederation as well as in the U.S.A., the Federal Government was given certain powers carefully defined ï with all other powers reserved to the States. In Canada, it is the powers of the States which were defined ï the Federal Government being given authority to deal with any other matter.

Australia herein followed not Britain and Canada but Switzerland and the U.S.A. For the Australian Federal Government was given only certain powers (as described in the *Australian Constitution*).

It is true that the powers handed over in Australia during 1901 to the new Commonwealth Government, were more important than those handed over in America during 1787. It is also true that the Australian States have agreed since 1901 to increase the power of the Federal Government. Yet it is also so that the U.S.A. has become much more centralized since 1901 than has Australia. Consequently, the rights of the States are stronger in Australia than in America at the end of the twentieth century (and also in 2001*f* a century after the confederation of Australia).

In Australia ï not the Federal Government but the State Governments control Police, Land Development, Education, Roads, Local Government, Social Services, Irrigation and Water Conservation, State Railways and Land Transport, Harbours and Rivers, and Mining.

The Australian State Governments and the Federal Commonwealth Government jointly control: Justice, Public Health, Taxation, Public Borrowing, Banking, Insurance, Industrial Arbitration, Aborigines, Companies, Weights and Measures, Statistics, Housing, and Fisheries.

To the Australian Commonwealth Government, the State Governments have relinquished control of Defence, Customs and Excise, Currency, External Relations, Overseas and Inter-State Trade, Immigration Control, Posts and Telegraphs and Telephones. They have also relinquished control of Territories, Quarantine, Lighthouses and Shipping, Inter-State or Trans-Continental and Territorial Railways, Air Transport, and Old Age and Invalid Pensions.

Papuan Native Law *vis-a-vis* Australian Common Law in 1906-1908

By Section 122 of the *Australian Constitution*, the Federal Government of the Commonwealth of Australia has authority over any territory handed over to it either by a State within Australia or by any other government (such as that of Great Britain). Today, the Commonwealth of Australia ï which includes the huge Australian Antarctic Territory ï is by far the largest land, and also by far the biggest Common Law country, on Earth.

In 1906-1908, at Britainôs behest, Australia started administering Papua (the old British New Guinea) ï which at an earlier time had been annexed by Queensland

(temporarily). The first Australian Lieutenant-Governor of Papua, Australian-born Sir Hubert Murray, found it difficult to administer justice there.

For, according to Australian Common Law, it is a crime to murder anyone. Indeed, according to Common Law, murderers were then (in 1908) ï as always previously before that ï to be punished with death.

According to Holy Scripture (as an integral part of our Common Law) ï right after the Great Flood, the Lord said to **all mankind**: ñSurely your blood of your lives will I requite. At the hand of every beast will I requite it, and **at the hand of man**. At the hand of every manôs brother, I will requite the life of man. Whosoever sheds manôs blood ï **by man** shall his blood be shed. For God made man in His image.ò Genesis 9:5-6, emphases mine ï F.N. Lee.

According to Native Papuan Law in 1908, however ï it was regarded as a duty for one native sometimes to murder another. Nevertheless, the Australian Government at that time rightly determined that our own Common Law should then be **enforced** in Papua, **against** the opposite duty then required by Native Papuan Law ï also because Common Law would, in the end, even be acknowledged in Papua to be the best system under which those natives could live.

The situation was similar to the north of Papua, in the old German New Guinea. That too was annexed by Australia during the First World War.

Sir Hubert Murray long ruled Papua as her Lieutenant-Governor, from 1908 till 1940. He became so knowledgeable in things Papuan, that there was then hardly any development within that land in which he did not play a leading role.

He was determined to advance the natives, and to improve the lot of the Papuans. According to Sir Hubert, they would certainly perish ï unless they embraced the standards of Western Civilization.[118]

It should be recognized everywhere that the Murray Islands are an integral part of the State of Queensland within the Commonwealth of Australia. Those Islands were recently made famous in the 1992 *Mabo case* (about which later below). The Murray Islands are, indeed, only 120 miles southeast of the western part of Papua New Guinea.

Now, after Mabo ï even modern humanists will one day yet come to see that there is no long-term security either for savages or for cosmopolitans ï without the Christian Bible and the Common Law of Western Civilization. For the same Common Law which protects ancestral lands and prohibits ritual murder and sexual crimes ï also prohibits theft of tribal lands by whomsoever.

ñHonour your father and your mother, so that your days may be long upon the land which the Lord your God keeps on giving you! You shall not kill! You shall not commit adultery! You shall not steal!ò Exodus 20:12-15*f* (an integral part of Australian Common Law).

[118] F.L.W. Wood: *op. cit.*, pp. 268f.

Now Papua New Guinea ï 475,369 square kilometres ï is bigger than South Australia. It became independent of Australia in 1975. Nevertheless, other Australian territories still remain such. These include: the Northern Territory (with more than a quarter of its population so-called óAboriginesô); the Australian Capital Territory (consisting of Canberra and Jervis Bay); Norfolk Island; the Cocos Islands; Christmas Island; the Heard and McDonald Islands; the Coral Sea Islands; and the Australian Antarctic Territory.

Quite apart from Mainland Australia (7,614,500 square kilometres) and the State of Tasmania (67,800 square kilometres) ï the external Territories alone still comprise 6,400,192 square kilometres. This means that Greater Australia (totalling 14,082,492 square kilometres) is presently still subject to Australian Common Law. Of that huge area, the internal Northern Territory (1,346,200 square kilometres) is soon destined for Statehood.[119]

Greater Australia is thus by far the largest country in the World ï even bigger than the Russian Federation. Consequently, Greater Australia also represents by far the biggest Common Law jurisdiction on our great planet Earth. All of the 14,082,492 square kilometres of Greater Australia ï are subject to the *Australian Constitution* and its undergirding Common Law.

University of New South Wales Political Science Lecturer John B. Paul rightly observed in his 1975 article *Australian Federalism*[120] that the role of the British Parliament in drafting the 1901 *Constitution of the Commonwealth of Australia*, was minimal. Instead, it was very much the handiwork in the leading politicians of the Australian Colonies themselves ï during the 1890s.

Thus the 1901 *Australian Constitution* reflects an altogether antipodean attitude toward the pre-existing federal constitutions of Switzerland, Canada and the United States of America ï **and** toward the different unitary constitution of the United Kingdom. It also reflects Australian co-operation with Britain, on the basis of a joint Common Law ï and, on the American federal model, a compromise between the various Australian Colonies (which had proceeded from hard-fought rivalries between them during the latter half of the nineteenth century).

Australia's Judge Murphy on Australia's Common Law before and since 1901

It is plain that the Common Law of Britain (before 1828-36 A.D.) ï to the extent applicable to the conditions of antipodean Australasia ï was affirmed over the whole of Australia and all her territories by the 1901 *Commonwealth Constitution*. Indeed, even quite the most radical Australian High Court Judge of recent times ï the late Mr. Justice Lionel Murphy ï has admitted this.

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[119] *CEANZ*, I p. 67.
[120] J.B. Paul: *Australian Federalism*, art. in ed. R. Lucyôs *The Pieces of Politics*, Pre Press, Melbourne, 1975, pp. X & 322.

Murphy had an interesting background. His old schoolmates included John Hirshman, later President of the Humanist Society and Director of the World Health Organisation (Western Pacific) ï and Edwin Salpeter, a Jewish lad from Vienna.

Lionel Murphy became a barrister in 1947; an avid Australian Labor Party Member of Parliament and Federal Cabinet Minister; and finally, since 1975, a High Court Justice then appointed by the Australian Labor Party Federal Government[121] Murphy has never been noted as a cherisher of Sir William Blackstoneôs Common Law tradition. Yet even Murphy made the following statements.

ñA criminal trial is not conducted as a contest between guilt and innocence.... It begins with the presumption that the accused is innocent.... Blackstone stated: óIf the jury therefore find the prisoner not guilty, he is then forever quit and discharged of the accusationô (*Laws of England*, Vol. 4, p. 361).... This is our legal heritage.ò Thus Judge Murphy, in the 1982 *Darby case*.[122]

Again: ñEnglish colonists brought, to New South Wales ï English Law (both Statute and Common or Decisional) that was suitable to the conditions of the colony (see Blackstone, *Commentaries*, Vol. 1). Later United Kingdom *Acts* passed during the colonial era only applied in New South Wales if they were expressly or impliedly intended to....

ñThe United Kingdom has no legislative or executive authority over Australia (or any part of it). Any authority over the people of a State would be incompatible with the integrity of the Australian nation which is an indissoluble union of the people of the Commonwealth. The constitutions of the States now have their source in s. 106 and following sections of the *Commonwealth of Australia Constitution Act*.ò Thus Judge Murphy in the 1976 *Bistricic's case*.[123]

Murphyôs claim in his very last sentence above, is inaccurate. For the constitutions of the Australian States still have their source in their Common Law, rather than in the federal Australian Constitution as their creature. Yet the rest of the above last two paragraphs of his are correct, on the whole.

Once more: ñThe framers of the *Australian Constitution* [Section 24], in adopting the precise words of the *United States Constitution*, were certainly aware of United States history. The struggles for independence, the *Declaration of Independence*, the Revolutionary War, the framing of the *United States Constitution*, as well as the contributions to the liberty of man by the great figures of the United States are part of the history of the English-speaking peoples. This history is part of our cultural heritage.ò Thus Judge Murphy in the 1975 *McKinlay's case*.[124]

Yet again: ñIn the seventeenth century, the jury emerged as a safeguard in England against arbitrary power. Blackstone stated that the jury was a part of a óstrong and two-fold barrier...between the liberties of the people and the prerogative of the Crownô.... The liberties of England cannot but subsist, so long as this palladium

[121] J. & R. Ely: *op. cit.*, pp. xvii-xviii & p. 2.
[122] *The Queen* v. *Darby* (1982), 148 C.L.R. 668 at 678.
[123] *Bistricic* v. *Rokov & Ors.* (1976), 135 C.L.R. 552 at 56.
[124] Judge Murphy in the 1975 case of *Attorney-General for Australia (at the Relation of McKinlay) and Others* v. *Commonwealth of Australia and Others* (1975), 135 C.L.R. 1 at 63.

remains sacred and inviolate.... Inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitutionô... (4 Blackstone, *Commentaries on the Laws of England*, pp. 349-350).ò Thus Judge Murphy, in the 1978 *Rankin's case*,[125] while discussing Section 80 of the *Australian Constitution* (requiring that Commonwealth criminal trials be by jury).

Finally: ñTrial by jury is our legal heritage. At State level we derived it directly from Britain. At federal level we adopted it from the U.S.ò Judge Murphy, in his 1986 *Paper to the Canberra Conference of the Australian Institute of Criminology.*[126]

The significance of the adoption of the Australia flag in 1903

In 1901, the new Australian Federal Government organized a competition to design a flag for the Commonwealth of Australia. Representatives from Army, Navy, Parliamentary, Mercantile Marine and Pilot Services judged more than thirty-two thousand entries exhibited in the Melbourne Exhibition Hall.

On 3rd September 1901, Prime Minister Edmund Barton announced the winning design ï which was independently entered by four or five people. In 1903, the design was approved by the new Australian monarch, King Edward VII.

Against a deep blue background, the successful 1901-03 design consisted of three distinct elements. There were: (1) in the top left-hand corner, the English flag of St. George and the Irish flag of St. Patrick and the Scottish flag of St. Andrew combined, representing the ancestral countries of most Australians; (2) in the right-hand half, the four large and the one small star of the constellation known as the Southern Cross; and (3) in the bottom left-hand corner, the large Commonwealth Star with its six points, to represent the then-confederating States of New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia.

In 1909, a seventh point was added to the large Commonwealth Star ï to symbolize Papua and **subsequent Territories** such as the 1961*f* Australian Antarctic Territory *etc*.[127]

It needs to be remembered that the Australian flag unites the three **Christian crosses** of England, Ireland and Scotland in the Union Jack ï the Christian **crosses** of St George, St Patrick and St Andrew ï together with **the Southern Cross**. Indeed, it is **hard to imagine the flag of any country** with a **more graphic Christian significance**.

For on the one hand, in the top left corner, it depicts the early Christian history of the various parts of the British Isles ï as the womb which shaped the later civilization of Australia. On the other hand, in the right side of the field, it depicts the astronomical constellation so characteristic of Australia herself ï the Southern **Cross**.

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[125] *Li Chia Hsing* v. *Rankin* (1978) 23 A.L.R. 151 at 160.
[126] L. Murphyôs May 1986 *Paper to the Canberra Conference of the Australian Institute of Criminology* (as cited in J. & R. Elyôs *op. cit.* p. 273).
[127] See art. *Flag*, in *CEANZ*, I pp. 172f & 389.

This, the Christian Astronomer-Royal Sir William Herschel once claimed, has the most blood-red star in the whole sky ï precisely in the head of that cross.

It needs to be remembered too that the monarchy of the Anglo-Saxons absorbed their kindred Brythonic Celts and became an Anglo-British kingdom (of England and Wales). Indeed, England itself was later dominated by the Welsh House of Tudor throughout the century of the Protestant Reformation.

That United Kingdom of England and Wales was then further united with the Kingdom of Scotland in 1707, and again with Ireland in 1801. Indeed, it was this United Kingdom which then ruled over Australia until 1828-36 ï and thereafter more and more promoted Australiaôs independence, and fully recognized it in 1901-31.

Yet the monarch of a sovereign Australia, even since the *Statute of Westminster* in 1931, has continued to be crowned in Britain. Why so?

Precisely because that person is limited monarch also of many other countries within the Commonwealth of independent nations all maternally generated by Britain. Hence, throughout, the Christian crosses and the Christian Monarchy are a strong link between the Ancient Common Law of Britain and the modern Common Law of Australia under the Southern Cross.

Just three decades after the setting up of the independent Commonwealth of Australia, full self-government was acknowledged internationally in 1931. Already in 1870 there had been plans for an imperial Union alias a United Empire, and even for an imperial Federation. That was to have consisted of individual sister countries within a maternal though International British Federation. They would then have been a sorority, akin to one another ï somewhat like the relationship between the States within the earlier U.S.A., or like the States within the later Australian Commonwealth itself.

However, the younger lands rather saw themselves not as housebound spinsters still continuing to live within their parentôs abode, but more like married daughters who had moved away from the mother country ï without ever denying their mother. They felt they had thus been predestinated to become mistresses of their own homes, further afield (and indeed even overseas). See Genesis 2:24; 9:27; 10:2-5; 11:9*f*; Deuteronomy 32:6-14 (especially verse 8) and Acts 17:24-28 (especially verse 26).

The younger lands assisted the mother country in her various wars, and wanted to be treated as equals by Britain. When they took over the control of their own defence, they became dominions. Soon they were given full information concerning Foreign Affairs, and after the First World War they were regarded as distinctly different nations.

Especially the Union of South Africa and the Irish Free State vehemently asserted their independence. This resulted in the Imperial Conferences of 1926 and 1930. The latter was followed by the *Statute of Westminster* in 1931, whereby Britain formally renounced the right to run the affairs of any of the dominions. Each part of the British Empire was thenceforth free to go its own way.

But what of the domestic scene? Sadly, since 1931 ï the balance of power between the Commonwealth Government in Canberra and the several States within Australia has progressively been altered in favour of Canberra. Some have wished even to abolish the Federation, and to replace it with a centralized Union like Britain (or a unitary republic like Eire or France). Yet all such notions were, and are, strongly resisted. In a huge land like Australia, fresh problems can best be handled by self-reliant locals ï on site.

Perhaps as an over-reaction, many in Tasmania and South Australia later regretted ever having joined the federal Australian Commonwealth in the first place. Indeed, during 1933, the Western Australians became so discontented with the policies of Canberra ï that they carried with a large majority a referendum as to whether they wished to leave the Commonwealth. If given the chance, the South Australians and the Tasmanians would very likely have followed suit.

However, the *Commonwealth Constitution* in its Preamble declares that ñthe peopleò of the former Colonies and the present States on this Continent, ñhumbly relying on the blessing of Almighty God,ò have agreed to unite in one ñ**indissoluble** Federal Commonwealth under the Crownò *etc*. What, then, is the force of the above expression?

Taken at face value, as seems proper, the above expression means that the Commonwealth was established neither by the Federal nor by the State Governments. To the contrary, it was established by the Queen at the request of ñ**the people**ò of the several constituting **Colonies** in Australia *via* their **Legislatures** ï each ñhumbly relying on the blessing of Almighty God.ò

Now, secession from humble reliance on Almighty God is legally impossible! Also, while still ñrelying on Almighty Godò ï changing the Federation into a Union is also legally impossible. Indeed, abandoning ñthe Crownò under Almighty God ï and becoming any kind of a Republic ï is likewise legally impossible.

How can one ever legally amend, in the words of the Preamble, an ñindissoluble Federal Commonwealth under the Crownò? The above expression in our *Australian Constitution* thus promotes conservatism ï and gives great stability to our nation.

Indeed, even the rest of the *Commonwealth Constitution* following the Preamble, has proved very difficult to amend. Every change needs to be approved in a popular referendum. Only three out of seventeen proposed changes were accepted in the nine referenda held before the *Statute of Westminster*. Of those three changes, two were very formal and unimportant.

Australians simply dislike unnecessary change. As far as political stability is concerned, this has been a very good thing.[128]

[128] F.L.W. Wood: *op. cit.*, pp. 305-30.

The 1943 *Jehovah's Witnesses case* and Section 116 of the *Constitution*

Under defence regulations in the Second World War, Commonwealth officers excluded the Adelaide Company of Jehovahôs Witnesses from their own óKingdom Hallô ï because deeming them to be prejudicial to the defence of Australia and the effective prosecution of the war effort. This was chiefly because the Jehovahôs Witnesses refused to give allegiance to any human authority.[129]

In this case, Williams J. declared:[130] ñThe Association of Jehovahôs Witnesses is a religious sect professing [what it considers to be] primitive Christian beliefs, one of these being that the nations of the Earth including the British Commonwealth of nations are under the control of Satan, and that it will be necessary for Jesus Christ (whose second coming on Earth has already begun) through His true followers to overthrow all these satanic governments in order to establish His Kingdom on Earth. Because the Government of the Commonwealth is [alleged to be] a satanic government, the Witnesses object to take the oath of allegiance or to assist in the defence of the Commonwealth in time of war....

ñOn these facts, my brother Starke [J.] has found that the plaintiff and the association of persons known as Jehovahôs Witnesses proclaim and teach matter prejudicial to the defence of the Commonwealth and the efficient prosecution of the war. But that otherwise, their doctrines or beliefs are primitive religious beliefs....

ñThe plaintiff contends that (1) these Regulations are invalid in all cases. Or at least as against the plaintiff, because they contravene s. 116 of the *Constitution*....

ñAs to the first contention.... The meaning and scope of the powers conferred upon the Parliament of the Commonwealth by the *Constitution*, however absolute their terms, must be ascertained ï as in any other document ï in the context of the whole of the *Constitution*.... So, the meaning and scope of s. 116 must be determined not as an isolated enactment but as one of a number of sections intended to provide in their inter-relation a practical instrument of government within the framework of which laws can be passed for organizing the citizens of the Commonwealth in national affairs into a civilized community not only enjoying religious tolerance but also possessing adequate laws relating to those subjects upon which the *Constitution* recognizes that the Commonwealth Parliament should be empowered to legislate in order to regulate its internal and external affairs.

ñThe determination of the meaning of an ordinary English phrase or word in a statute is a question of fact. The problem being to ascertain what the phrase or word meant in its ordinary popular acceptation at the date the statute was passed.

ñAt the date of the *Constitution* it would not have been considered in a popular sense to have been an interference with the free exercise of religion for the legislation of the States to have included laws (as in fact it did) making polygamy or murder a crime, although it was still a tenet of some religious beliefs to practise polygamy or

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[129] See G. Boothôs art. *The Australian Constitution* (in McLennanôs *op. cit.*, p. 38).
[130] *Adelaide Company of Jehovah's Witnesses Incorporated* v. *Commonwealth* (1943) 67 C.L.R. 116. Cited either in Booth (see n. 129) or in Sawer (*op. cit.* pp. 149-58) as shown in our text below.

human sacrifice. Such laws would be classified as ordinary secular laws relating to the worldly organization of the community, even if their indirect effect might be to prevent some religious sects indulging in practices which in the ordinary popular acceptation would be regarded as crimes and as having no connection with any observance which an enlightened British community would consider to be an exercise of religion.ò

However, the Governmentôs own Regulations were nevertheless held by the Court to be invalid. This meant that the Commonwealth officers had illegally trespassed upon the premises of the Jehovahôs Witnesses.

For, continued Williams J., regarding the scope of ñthe religion of Jehovahôs Witnessesò in terms of the questionable government regulations, ñthe declaration [by the Commonwealth Officers] that the association [of Jehovahôs Witnesses] is an unlawful body, has the effect of making the advocacy of the principles and doctrines of [what such advocates consider to be] the Christian religion, unlawful ï and every church service held by believers in the birth of Christ, an unlawful assembly. Apart from s. 116, such a law could not possibly be justified by the exigencies and course of the war. But it is also prohibited by s. 116.ò

Latham C.J., Rich, Starke and McTiernan JJ. delivered separate opinions. Each agreed in substance with Williams J. as to the interpretation and application of Section 116 of the *Australian Constitution*.

Chief Justice Latham said:[131] ñIt would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist or have existed in the world.ò Nevertheless: ñFree speech...means speech hedged in by all the laws against defamation, blasphemy, sedition and so forth; it means freedom governed by law, as was pointed out in *McArthur's case* (1920) 28 C.L.R. 530.... There is, therefore, full legal justification for adopting in Australia an interpretation of s. 116 which had, before the enactment of the *Commonwealth Constitution*, already been given to similar words in the United States.ò

Starke J. opined:[132] ñThe liberty and freedom predicated in s. 116 of the *Constitution* is liberty and freedom in a community organized under the *Constitution*. The constitutional provision does not protect unsocial actions or actions subversive of the community itself.... Therefore there is no difficulty in affirming that laws or regulations may be lawfully made by the Commonwealth controlling the activities of religious bodies that are seditious, subversive or prejudicial to the defence of the Commonwealth or the efficient prosecution of the war.ò

Nevertheless, also Starke found the specific regulations concerned ï to be invalid. Starke (and Rich J.) accordingly agreed in substance with Williams J. as to the invalidity of the regulations.

[131] 67 C.L.R., pp. 123, 126f & 131.
[132] In Booth: *op. cit.*, p. 39.

Latham C.J. and McTiernan J. held the regulations valid. So, in a 3-2 decision, the Jehovahôs Witnesses were vindicated as to the invalidity of the regulations whereby they had been dispossessed of the occupation of their own meeting-place.

However, by a 5-0 decision, the unitarianistic Jehovahôs Witnesses were not vindicated as regards their misinterpretation of section 116 of the *Australian Constitution*. As we ourselves have already argued previously, the *Australian Constitution* is clearly **Christian** (and **therefore** implicitly **Trinitarian**).

For Chief Justice Lathamôs interpretation of section 116 of the *Australian Constitution* of 1901 in the light of the interpretation previously given by American courts to similar words in the *U.S. Constitution* ï clearly places section 116 in a **Christian** context. Indeed, right down till 1901 (and beyond), the U.S. courts themselves consistently and constitutionally declared that also America is a **Christian** country.

The 1943 *Adelaide Company of Jehovah's Witnesses's case* is as relevant today as it was back during the Second World War. For, especially since the 9/11 terrorism of the new millennium (A.D. 2000*f*) ï Australia, like America, is again at war.

This time, however, not against Nazi Germany ï nor against unitarian Jehovah witnesses (or Judaists). But at war against equally-unitarian and anti-trinitarian militant (per)versions of Islam.

The 1953 Christian Coronation of the present Queen of Australia

At the coronation of the present **Christian** and **Trinitarian** Queen of **Australia** in 1953, the following historic words were uttered: ñOur gracious Queen, we present you with this Book [the Bible], the most valuable thing that this world affords. Here is wisdom. This is **the Royal Law** [James 2:8-12].... With this sword ï do justice; stop the growth of iniquity; protect the holy Church of God; help and defend widows and orphans; restore the things that are gone to decay; maintain the things that are restored; punish and reform what is amiss....

ñReceive this orb set under the cross, and remember that **the whole World** is **subject** to the power and empire of **Christ our Redeemer**.... The Lord give you: faithful Parliaments and quiet realms; sure defence against all enemies; fruitful lands and a prosperous industry; wise counsellors and upright magistrates; leaders of integrity in learning and labour; a devout, learned, and useful clergy; honest, peaceable, and dutiful citizens....

ñ**Almighty and everliving God**..., grant that all they that do confess Thy holy Name, may agree in the truth of Thy holy Word, and live in unity and godly love! We beseech Thee also to save and **defend all Christian kings**, princes, and governors, and specially Thy servant Elizabeth our queen: that under her, we may be godly and quietly governed [*cf.* First Timothy 2:1-2]; and grant unto her whole council, and to all that are put in authority under her, that they may truly and indifferently minister justice, to the **punishment of wickedness and vice**, and to the **maintenance of Thy true religion and virtue**!ò Romans 13:4 & James 1:27.

What religion is this ñtrue religionò which the Queen of Australia here promised to maintain? The framework of the Coronation Service has hardly changed for over a thousand years. The Service used for the **Anglican** Christian Queen Elizabeth II of Australia in 1953 descends directly ï *via* that used at the Coronation of the **Presbyterian** Christian King William III in 1689 ï from that used at the Coronation of the Non-Anglican **Christian** King Edgar at Bath in 973 A.D.

This Service is therefore not of a denominational but of a Pan-Christian character ï over the last millennium, and right down to our twentieth century. This ñtrue religionò is thus the Christian religion. See too Richard Easonôs *Australia is a Christian Nation*.[133]

Thus the concepts of ñtrue religionò and of basic rights are both indeed to be construed precisely in terms of Christian virtue ï as opposed to unchristian vice. This is not at all foreign to (English and Australian) Common Law. In Britain, this has not changed for at least a thousand years. Indeed, virtue and vice have never changed since before and during the fall of man ï at the beginning of human history.

Sir Owen Dixon K.C., a Rhodes Scholar and Australian Minister to Washington in 1942-44, was Chief Justice of Australia from 1952 till 1964. He received degrees also from Harvard and Oxford, and Yale awarded him the Howland Prize for outstanding achievement in government. Recognized as one of the finest jurists in the English-speaking world,[134] Sir Owen has referred to the Common Law (and its concomitant Rule of Law) as the ñultimate constitutional foundation.ò[135]

In his Inaugural Address as Chief Justice of the High Court of Australia in 1952, Sir Owen insisted that ñclose adherence to legal reasoning was the only way to maintain the confidence of all parties in fundamental conflicts. It may be that the court is thought to be excessively legalistic. I should be sorry to think that it is anything else. There is no other safe guide to judicial decisions in great conflicts, than a strict and complete **legalism**....

ñThe court and the legal profession stand as the necessary foundation of any community. Indeed, it may be said the courts and the system of law are both the foundation and the steel framework; but neither a foundation nor a steel framework is ever able to do more than support a structure with stability and at rest....

ñThe authority of the courts of law administering justice according to law, is a product of the British tradition and it is for us to maintain it. There is I believe a general respect for the queenôs courts of justice which administer justice according to law, and I believe that there is a trust in them. But it is because they administer justice according to **law**.... The respect for the courts must depend upon the wisdom and discretion, the learning and ability, the dignity and the restraint which the judges exhibit.ò

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[133] *Op. cit.* (in McLennanôs *op. cit.* pp. 42f).
[134] Art. *Dixon, Sir Owen* (in *CEANZ* I p. 340). *Cf.* Sir O. Dixon: *Jesting Pilate*, pp. 203f (cited in Lumbôs *op. cit.* pp. 3 & 101 & 108n).
[135] Cited by H.M. Morgan: *Australia and its High Court*, Bond University, Queensland, 27th July 1993, pp. 5f & 8.

Three years later in his Yale address titled *Concerning Judicial Method*, Sir Owen could still add on 19th September **1955**: ñIn our Australian High Court we have had **as yet no deliberate innovators** bent on express change of acknowledged doctrine. It is one thing for a court to seek to extend the application of accepted principles to new cases.... It is an entirely different thing for a judge who is discontented with a result held to flow from a long-accepted legal principle, deliberately to abandon the principle in the name of justice or of social necessity or of social convenience.ò

Lapses from Christian Common Law in Britain & America & Australia since 1964

Sir Owen Dixon ceased to be Chief Justice of Australia in 1964. Thereafter, deterioration has progressively set in. By 1973, Australiaôs Labor Prime Minister Gough Whitlam had attempted (but failed) to alter the *Royal Style and Titles Act* of 1953. The latter had rightly proclaimed Elizabeth to be ñQueen of Australiaò ï but by 1973, Whitlam now sought to remove the immediately-following words ñby the **grac**e of **God**ò from Elizabethôs title.

However, the Queen of Australia would not hear of this removal. She rightly and successfully protested this is exactly what she is[136] ï *viz*. **Queen of Australia**, by the **grace** of **God**!

As Queensland University Law Professor Lumb pointed out[137] in 1983, a continuing change had come about during the last twenty years (and thus from around 1964 onward). This change has accelerated ï especially since 1974.

Even in the United Kingdom, certain eminent legal authorities such as Hailsham and Wade have started questioning whether the traditions of the British system are sufficient to sustain the Parliamentary System; the Common Law; and the Rule of Law.[138] There too, the legal fabric is under pressure.

Also in America, the functioning of its system (especially as regards judicial review) has been questioned. Queries have been raised as to whether the Founding Fathersô intentions have been subverted by the judicial activism of the U.S. Supreme Court and a too liberal interpretation of the *Bill of Rights*. See R. Bergerôs *Government by Judiciary*,[139] and J.H. Elyôs *Democracy and Distrust*.[140]

In Australia, many of these issues emerged especially from 1974 onwards. The ruling Australian Labor Party, following the example of Rooseveltôs earlier New Deal in the U.S.A., appointed Jacobs J. to the High Court of Australia in 1974. It followed this up, by elevating A.L.P. Senator Murphy to the Bench in February 1975.

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[136] Thus *Sir David Smith Speaks: The Necessity of a Constitutional Monarchical System of Government in Australia*. Committee of the Australian Constitutional Educational Campaign Fund, P.O. Box 55, Pittsworth, Q. 4356, 1986, p. 14.
[137] *Op. cit.*, p. viii.
[138] Lord Hailshamôs *The Dilemma of Democracy*, Collins, London, 1978; *cf.* H.W.R. Wadeôs *Constitutional Fundamentals*, Stevens and Sons, London, 1980.
[139] R. Berger: *Government by Judiciary*, Harvard Univ. Press, Cambridge Mass., 1977.
[140] J.H. Ely: *Democracy and Distrust – A Theory of Judicial Review*, Harvard Univ. Press, Cambridge Mass., 1980.

Murphy ï till then the Federal Labor Governmentôs Attorney-General ï had played a major part in formulating *The Death Penalty Abolition Act*, the *Trade Practices Act*, the *Family Law Act*, and the *Racial Discrimination Act*. Because of the conservative character and anti-reformist character of the High Court, Jacobs and Murphy were vital new appointees ï from Laborôs viewpoint.[141]

Interestingly, at the Melbourne Session of the óAustralian Constitution Conventionô (*sic*), the then Prime Minister, Mr. Gough Whitlam, on 25th September 1975 suggested the inclusion[142] in Section 116 of the *Australian Constitution* of a form of words which would have applied it to the States as well as to the Commonwealth. The Hobart session formally recommended this change ï in spite of objections based on the need for prayers in schools. Fortunately, however, political conservatives successfully opposed the recommendation.

Also, in November 1975 a constitutional crisis occurred. The Federal Governor-General Sir John Kerr, as Queen Elizabethôs Representative, made history by dismissing the left-wing Prime Minister Gough Whitlam when the Federal Senate refused to consider the latterôs *Supply Bill*.[143] Though the debate on this explosive matter is now more muted, it constantly continues ï especially as regards the powers of the Federal Senate and of the Federal Governor-General.

For Reformists now wish to move on from our (Con)Federated Australian **Christian** Commonwealth ï especially toward a unitary **secularistic** Republic. *In tandem* with this, is the sustained call for a new *Bill of Rights* ï by the increasingly centralizing Federal Government ï at the expense of the several State Governments.

This is an integral part of the so-called ñdemocraticò social(ist) reconstruction of our *Australian Constitution*. See here Gareth Evansôs *Politics of Justice*,[144] published by the Victorian Fabian Society in 1980.

Yet before the nineteen-eighties, the High Court of Australia still had a rather conservative character. Even McTiernan and Jacobs JJ. were on balance only just to the left of centre, so that the vocal Murphy had been the óGreat Dissenterô[145] ï often irreverent and acrid (thus the sympathetic J. & R. Ely).[146] Although Murphyôs approach made him odd man out in the setting of the Australian High Court, J. & R. Ely aptly add that Murphyôs reputation in some right-wing circles is that of standing somewhat to the left of Lenin.

Australiaôs then-leading Professor of History, the socialistic Dr. Manning Clark, was quoted as saying that it had been one of Murphyôs aims to dismantle the Judeo-Christian ethic of Australian society.[147] Also Murphyôs protegeô Gareth Evans, a former President of the Humanist Society and the architect of the proposed ñ*Bill of Rights*ò ï or, according to others, the ñ*Bill of Wrongs*ò[148] ï was himself once quoted

[141] J. & R. Ely: *op. cit.*, p. 2.
[142] R. Ely: *Unto God and Caesar*, 1976, p. 127.
[143] See art. *Whitlam, Edward Gough* (in *CEANZ* II p. 927).
[144] G. Evans: *Politics of Justice*, Victorian Fabian Society, Pamphlet No. 33, 1980.
[145] *E.g.*: the 1975 *McKinlay's case*; and the 1976 *Grant's case.*
[146] J. & R. Ely: *op. cit.*, pp. 2 & 222.
[147] *Sydney Morning Herald*, 30th October 1986, p. 8.
[148] Eason: *op. cit.* (in McLennanôs *op. cit.* p. 45).

as saying that children want a right to sexual freedom and education and ñprotection from the influence of Christianity.ò[149]

In the 1980 book *Law, Politics and the Labor Movement* ï which Gareth Evans edited ï Judge Murphy had a section on *The Responsibility of Judges*. There, he concluded: ñThe problem (and the answer) is not in how the law is drafted, but how it is interpreted.ò[150]

This answer, of course, removes modern interpretation from the traditional *Sitz in Leben* or life-situation of the law at the time of its enactment within the context of the earlier Common Law. Instead, it places the answer within the subjective bias of the later ñinterpreterò (or rather misinterpreter) ï and within his new milieu.

However, a very much better jurist, Sir Alfred Denning ï later Lord Denning, Master of the Rolls ï has indicated a far more satisfactory perspective. Perhaps the greatest judge of the age, Lord Alfred did not believe with the lesser Murphy that judges may re-interpret the law differently than the way it has been drafted. For also judges are subject to the law, and not above it.

As Lord Alfred Denning declared in the 1977 case of *Gourier* v. *The Union of Postal Workers*: ñBe you ever so high, the law is above you!ò Indeed, he also said in his famous book *The Changing Law*: ñWithout religion, there is no morality; without morality, there is no law!ò[151]

Judge Murphy's revisionistic understanding of Common Law and the rule of law

Mercifully, the Australian High Court continued to retain a basically conservative majority, even since the elevation of Murphy. Occasionally, even the latter has sometimes taken traditional viewpoints. Thus in the 1978 *Breathalyser case*, where a driver was repeatedly requested by police to submit to such a test, Murphy held: ñIn some States of Australia, this fundamental principle of personal freedom has been eroded by statute. To conform with the Common Law tradition, any statutory encroachment should be read with the utmost strictness in favour of the accused person and ought to be applied with the utmost strictness in his favour.ò[152]

Usually, however, Murphy has shocked his colleagues ï and has tried to start commanding the future in an increasingly radical way. Thus, in *Buck* v. *Bavone* (1976), he stated:[153] ñThe doctrine of *stare decisis* should not be applied to continue the effect of reasoning which has made the State and Federal Parliaments almost impotent in fields of social and economic importance.ò

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[149] *Sydney Morning Herald*, 7th May 1976, p. 11.
[150] L. Murphy: *The Responsibility of Judges* (in ed. G. Evans: *Law, Politics and the Labor Movement*, Melbourne, 1980, p. 5).
[151] *Gourier* v. *The Union of Postal Workers*, Q.B. 1997, p. 762. *Cf.* Sir A. Denning: *The Changing Law*, cited in Easonôs *op. cit.* (in McLennanôs *op. cit.* p. 45 col. 2 para. 2).
[152] *Bunning* v. *Cross* (1977-78) 141 C.L.R. 54 at 82.
[153] *Buck* v. *Bavone* (1976) 135 C.L.R. 110 at 132.

More important is the 1979 case of *Dugan* v. *Mirror Newspapers Ltd*.[154] There, a notorious felon had previously been convicted of attempting a capital crime ï which, under the original Common Law of Australia, certainly merited the civil death penalty.

After release, he was further convicted of another felony, but then sought to sue a newspaper for defamation. The newspaper, however, then argued that the felonôs status as an outlaw prevented him from suing. Indeed, at law he had already undergone ócivil deathô as it were ï and hence could not thereafter institute legal proceedings.

For in terms of this doctrine of ócivil deathô ï those convicted of *capital* felonies but who had served out the sentence or been given a full pardon, nevertheless remained ñattaintedò and so could not ñsueò in law.[155] This is English Common Law ï as inherited by Australia at her settlement in 1788.

Explained Murphy:[156] ñThe applicant was convicted in 1950 on a charge of feloniously wounding with intent to murder.... In 1970, while at large on licence, he was charged with and convicted of assault and robbery....

However, Judge Murphy then alleged: ñThe [old-fashioned] ócivil deathô doctrine does not accord with modern standards in Australia. See *Report of the Royal Commission into New South Wales Prisons*.... The Common Law is law made by judges in the area left to them by constitutions and legislation.... None of the cases or old writings purporting to state the Common Law principles bind this court....

ñI would refuse to recognise the doctrine of ócivil deathô... Judges have created the doctrine of ócivil deathô [in the past], and judges can abolish itò ï in the present or the future.

Again, in the 1979 so-called *Sheep case*, two cars collided because one of them swerved after hitting two sheep which had escaped through the damaged fence of an adjoining farm in South Australia. The Court decided the case by following traditional English Common Law (followed in South Australia since its 1836 settlement).[157]

Dissenting, Murphy pontificated:[158] ñThe fiction that óthe Common Law has never changed but is only declared by judgesô (see Blackstone, *Commentaries on the Laws of England*, Vol. 1, 15th ed. 1809, at pp. 68-69)...is a notion which should not be regarded seriously.... Bentham violently crit[ic]ised Blackstoneôs notion. See *Collected Works of Jeremy Bentham*, Univ. of London, 1970.

ñAustin justly characterised it as óthe childish fiction employed by our judges that...Common Law is not made by them but is a miraculous something...existing I suppose from eternity and merely declared from time to time by the judges.ô *Lectures on Jurisprudence*, 4th ed. 1873 at p. 655.... The view that reception of a rule in a colony at its settlement (or at the critical date for reception of English Law) is

[154] *Dugan* v. *Mirror Newspapers Ltd.* (1979), 142 C.L.R. 583.
[155] See J. & R. Ely: *op. cit.*, p. 139.
[156] *Dugan* v. *Mirror Newspapers Ltd.* (1979), 142 C.L.R. at 606.
[157] See J. & R. Ely: *op. cit.*, pp. 157f.
[158] *State Government Insurance Commission* v. *Trigwell & Ors.* (1979) 142 C.L.R. 617 at 642.

conclusive or at least material to the question of whether it is now part of the Common Law is, in my opinion, wrong.ò

In the 1981 *D.O.G.S. case*, the ñCouncil for Defence of Government Schoolsò (D.O.G.S.) challenged the constitutionality of Commonwealth financial aid to church schools ï a time-honoured practice in Australia. The challenge was mounted in terms of a radically-reconstructed view of Section 116 of the *Constitution* (ó The Commonwealth shall not make any law for establishing religionô). It took the plaintiffs twenty-two years to reach the High Court.[159] They were disillusioned with the outcome.[160]

The dissentient Murphy, apparently with some sarcasm, here opined[161] that even the ñ**non-preferential** sponsoring of or aiding religion, is still **establishing** religion. In the nineteenth century, ó**establishment**ô was not restricted to sponsorship of or aid to one church or religion ï although such sponsorship was of course referred to as **establishment**. It was also understood to include sponsorship of all churches, and was referred to as **indiscriminate establishment**.ò

Murphy then cited approvingly the non-judicial and indeed also non-judicious opinion of an apostate left-wing American ó Presbyterianô ï a former Secretary-General of the World(ly) Council of Churches. Muttered Murphy: ñMuch is made of the need for public aid to church schools in light of their pressing fiscal problems. Dr. Eugene C. Blake of the Presbyterian Church, however, wrote [to the contrary] in 1959:

ñó When one remembers that churches pay no inheritance tax,ôò bellowed Blake, ñóit is not unreasonable to prophesy that with reasonably prudent management the churches ought to be able to control the whole economy of the nation within the predictable future.... A government with mounting tax problems cannot be expected to keep its hands off the wealth of a rich church forever. That such a revolution is always accompanied by anticlericalism and atheism, should not be surprising.ôò

Murphy himself then mused: ñThe fact is that under the Commonwealth laws, vast sums of money are being expended for the support of church schools.... A reading of s. 116 that the prohibition against ó any law for establishing any religionô does not prohibit a law which sponsors or supports religions but prohibits only laws for the setting up of a national church or religion or alternatively prohibits only preferential sponsorship or support of one or more religions, makes a mockery of s. 116.... The challenged *Acts* contravene s. 116 of the *Constitution*.ò

Thus the maverick Murphy J. However, he did also add that among the judges then still active in the 1981 High Court of Australia, ñthe majority hold otherwise.ò Yes, thank God!

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[159] J. & R. Ely: *op. cit.*, pp. 106f.

[160] M.J. Ely: *The Erosion of the Judicial Process – An Aspect of Church-State Entanglement in Australia – The Struggle of Citizens to be Heard in the Australian Full High Court on the State Aid Issue*, Melbourne, 1981.

[161] *Attorney-General for Victoria (at the Relation of Black & Ors.) and Black & Ors.* v. *The Commonwealth and the 'National Council of Independent Schools' and Father F. Martin (Sued as Representing Non-Government Schools)* (1981) 146 C.L.R. 559 at 619.

The conservatism of the High Court of Australia till the early 1980s

Sir Garfield Barwick was Chief Justice of Australia from 1964 till 1981. Having been a Liberal Party of Australia Member of the House of Representatives and also the Australian Attorney-General until 1964, he was thereafter President of the Australian Conservation Foundation and of the Australian Institute of International Affairs. He was also Patron of the Australian National Council for the Blind.[162]

In the 1969 *Reader's Digest case*, Sir Garfield rightly insisted that ñfreedom of trade and commerce...involves laws regulating the relationship of free men to each other and to their institutions within society.... It is the concept of freedom in a civilised society, in contrast with unbridled licence in a lawless state which itself involves the necessity for laws of the kind which accommodate one manôs activities to those of another so that each is free to trade within the society organised under and controlled by **law**.ò[163] Emphases mine ï F.N. Lee.

In the (1978*f) Dugan's case*,[164] Barwick stated:[165] ñThe substantive argument for the applicant [a capital felon twice sentenced for two different felonies] has been that the law of England did not become part of the law of the Colony, because it was unsuited to the conditions of the Colony at the time, *i.e.*, either in 1788 or in 1828. [However,] I have no doubt that such a law was suitable to those conditions.... I can see no basis on which it could be said that a law which in its time was fundamental to the relationship to the community of those convicted of capital felony, was not suitable to the community of the Colony both at its inception and in 1828.ò

Back in 1788 to 1828, the percentage of convicts in Australia was greater than it was in England. So Duganôs counsel now argued that the strict English Common Law against convicted capital felons later being allowed to sue, could not be applicable in a Colony like the 1788-1828 New South Wales.

Sir Garfield himself came to the heart of the matter. He observed:[166] ñThe sole question raised on behalf of the applicant is whether the law of England as it stood in 1788 and in 1828 disabled a prisoner serving such a sentence as I have firstly described, suing for a wrong claimed to have been done to him ï and became part of the law of the Colony of New South Wales at those times.

ñIt was faintly suggested at one stage of the argument that, even if that law then became operative in the Colony ï the Court should now decide that such a law is inappropriate to the conditions of today.ò However: ñIf the Court decides that the Common Law of England, properly understood, did deny a prisoner in the situation of the applicant the right to sue during the currency of the sentence and that that law was introduced into and became part of the law of the Colony ï there is no authority in the Court to change that law as inappropriate.ò

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[162] *CEANZ*, I p. 192.
[163] *Reader's Digest case* (1969) ï cited in J. & R. Elyôs *op. cit.* p. 282.
[164] See our text at nn. 154f above.
[165] Cited in J. & R. Elyôs *op. cit.*, pp. 139f.
[166] *Dugan* v. *Mirror Newspapers Ltd.* (1978) 142 C.L.R. 583 at 585f.

Indeed, even as late as 1979, the High Court of Australia was still making sensible decisions on so-called óaboriginalô land claims. See, in that year, *Coe* v. *Commonwealth of Australia*.[167] There, a statutory majority of the Court considered that óAboriginesô in Australia did **not** have inherent sovereignty over the Continent at the time of settlement by Britons in A.D. 1788*f.*

Later, 1993 Australian Prime Minister Keating would be perceived as coming very close to trying to manipulate the 1992 decision in *Mabo's case* ï in essence against the substantive outcome of the 1979 *Coe's case*. For *Mabo's case,* however, see later below.

Tensions and the rise of leftism in the High Court of Australia since 1980

In a 1980 book edited by his protegeô Gareth Evans, Murphy apparently wrings his hands in despair. However, could this perhaps be a manifestation of inverted racism ï triggered off by an imagined ówhite guiltô complex?

At any rate, with vivid imagination, Murphy there paints a fairy-tale picture of Australia before 1788. It is a scene very reminiscent of that depicted in the neo-pagan Jean Jacques Rousseauôs view of óthe noble savageô ï shortly before the French Revolution.

Once upon a time, ñtwo hundred years agoò ï apologizes Murphy[168] ï ñEuropeans came to a country inhabited by peaceful people living in harmony with their environment, with an ancient system of law and a highly-developed system of social justice. They had no need of the goods, the laws or the ideas of the invaders. The British Government took their land, killed most of them, and brutalised and degraded them. We continue to degrade them, to discriminate against them, and to deny them elementary human rights.ò

In 1981, the conservative Sir Garfield Barwick ceased to be Chief Justice in the High Court of Australia. Murphy now flexed his muscles there ï and indeed increasingly so. In the 1981 *D.O.G.S. case*, Murphy had been the only Member of the High Court to find for the plaintiffs. But shortly thereafter in *Onus* v. *Alcoa* (1981), the Full High Court discriminatingly held (Aickin J. dissenting) that the traditional responsibility of an aboriginal community in terms of its customs to protect and preserve ancestral relics in its area, gave it a special interest greater than that of the general public.[169]

Now men of all races are precious. Yet some Blacks and Whites hold that ñAustralian Aboriginesò (so-called) are more precious than black and brown and white and yellow ñNon-Aboriginal Australiansò (so-called). Indeed, ñAustralian Aboriginesò (whether needy or not) are deemed by some to be ***ipso facto*** more worthy

[167] *Coe* v. *Commonwealth of Australia* (1979) 23 A.L.R. 118.
[168] L. Murphy: *The Responsibility of Judges* (in ed. G. Evans: *Law, Politics and the Labor Movement,* Melbourne, 1980, pp. 3-6).
[169] J. & R. Ely: *op. cit.*, pp. 108f.

of receiving assistance from the Federal and the State Governments ï than even needier other Australians who are neither ñAboriginesò nor Whites.

As recently-institutionalized evidence of such recent racial discrimination, we refer to modern Australian or rather Unaustralian programmes such as: ABSTUDY (alias Aboriginal Study Perks); ATSIS (alias Aboriginal and Torres Strait Islander Services); CDEP (alias the Community Development Employment Program); and ITAS (alias the Indigenous Tutorial Assistance Scheme). Needless to say, all such are both racially demeaning, discriminatory and unethical ï and, indeed, a modern Australian or rather Unaustralian version of the racist modern American affirmative action programs advantaging Blacks at the expense of often better-qualified Whites.

There is also what we shall call ACAWOARD (alias Anti-Christian Anti-Western or Anti-Religious Discrimination). As Murphy radically and vigorously argued: ñInterests sufficient to found standing, are not confined to those which arise out of relationships which are fundamentally important in what was described as ówestern European Judeo-Christian culture.ô Australia is a nation composed of people deriving from a variety of cultures, which are not restricted to Western European. Our people also adhere to a variety of religions, many of which are not óJudeo-Christian,ô and many have no religion. ówestern-European Judeo-Christian cultureô ï if there is such a culture ï has no privileged status in our courts.ò[170]

Murphyôs above-mentioned words ñ**if** there **is** such a cultureò as that commonly called the ñ**Judeo-Christian**ò (*sic*!) ï by which he seems to mean **Biblical-Christian** ï are highly significant. Those words are, however, far more a comment on Murphyôs **attitude** toward the Biblical-Christian culture he was discussing then and there ï than they are an accurate assessment of the obvious existence and great worth of that culture ï also according to the people of Australia and her *Constitution*.

Yet by 1982, in *Koowarta* v. *Bjelke-Petersen & Ors*.,[171] Murphy had won a majority of the judges on the bench of the High Court of Australia to his own position of outrightly favouring óAboriginesô above all other Australians. For the High Court then ruled[172] that the óaboriginalô Mr. Koowarta had ñstandingò as an ñaggrieved personò ï and that the Commonwealth of Australiaôs humanistic *Racial Discrimination Act* of 1975 so viewed him.

Indeed, some of the justices ï Stephen,[173] Mason,[174] Murphy[175] and Brennan[176] ï then appeared to support the introduction of a so-called ó*Bills of Rights*ô under the external affairs power. Yet, as Queensland University Law Professor Lumb rightly remarks, it is inappropriate for a ó*Bill of Rights*ô to be introduced by such a ñbackdoorò method. In any case, thus, it would not be a fundamental law binding upon the Commonwealth Parliament.[177]

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[170] *Onus and Frankland* v. *Alcoa of Australia Ltd.*, 140 C.L.R. 27 at 43.
[171] *Koowarta* v. *Bjelke-Petersen & Ors.* (1982), 153 C.L.R. 168 at 236.
[172] J. & R. Ely: *op. cit.*, pp. 115f.
[173] *Koowarta's case* 39 A.L.R. 417 at 454.
[174] *Ib.*, at 463.
[175] *Ib.*, at 472.
[176] *Ib.*, at 488.
[177] *Austral. Constitutionalism*, p. 153 n. 2.

This raises the whole question as to whether Australia really needs such a so-called *Bills of Rights* (in addition to the 1688 one it has maintained here too already since 1788 onward). For, if not specifically Christian in content, such would be ï at least to some extent ï a *Bill of Wrongs*.

In that regard, University of Queensland Law Professor R.D. Lumb correctly observes[178] that it is necessary to proceed cautiously in the matter of adopting a ó*Bill of Rights*ô for Australia. The Common Law with its approach, at once pragmatic yet principled, has on the whole performed its task in a generally-adequate fashion of accommodating the rights of the individual with the changing needs of society. A judicially-enforceable ó*Bill of Rights*ô is not the appropriate method of achieving the goal of protecting the rights of human beings.

The Australian system, certainly at the Federal level, has elaborate methods and structures for protecting procedural due process. Some of these are reflected at State level. Mention may be made of the Ombudsman. Such remedies are all in addition to the traditional parliamentary avenues.

The incorporation of a new ó*Bill of Rights*ô into the Federal *Constitution of the Commonwealth of Australia* in contrast to the State Constitutions, would also have an adverse effect on the federalist part of our system. It would involve a transfer of interpretive function from State to Federal courts in areas which are traditionally part of the Common Law process, such as the area of criminal law and procedure.

Lumb here almost stumbles onto the Ontological Trinity (*cf.* Matthew 28:19) as the root of the prized Australian governmental doctrines of separation or rather delineation of powers ï and their balance between the one Federation and the many States. For Lumb observes[179] that although Locke himself had distinguished between legislative power and executive power, the doctrine received its most detailed assessment in the writings of Montesquieu and Blackstone.

There, it was presented not as a doctrine of complete or absolute separation (which would lead to anarchy) but as a partial separation and partial sharing such that the distinct bodies would exercise their powers compatible with the good of the nation. Indeed, the partial doctrine of separation could be explained as a pure doctrine modified by a system of checks and balances. Compare First Corinthians 12:1-27*f.*

The ongoing pressure upon Australia to adopt a humanistic 'Bill of Rights'

The great Presbyterian Prime Minister, the conservative Sir Robert Menzies, had rightly stated[180] back in 1967: ñI am glad that the draftsmen of the *Australian Constitution* [of 1901], though they gave close and learned study to the *American Constitution* and its amendments, made little or no attempt to define individual liberties.... Except for our inheritance of British institutions and principles of the

[178] *Op. cit.*, pp. 141f.
[179] *Austral. Constitutionalism*, pp. 24-5, 101 & 109n.
[180] Sir R. Menzies: *Central Power in the Australian Commonwealth*, Cassell, Melbourne, 1967, pp. 52-54.

Common Law, we have not felt the need of formality and definition and would say, without hesitation, that the rights of individuals in Australia are as adequately protected as they are in any other country in the world.ò

Yet, in 1973, the Federal Labor Governmentôs Attorney-General ï Senator Lionel Murphy ï introduced the *Human Rights Bill*. In his Second Reading speech, he said: ñThe object of this Bill is to give recognition in legislation of the Australian Parliament to basic human rights and freedoms, and to provide remedies for their enforcement.ò[181]

Murphy himself gave the following motivation for this measure:[182] ñI believe that the Australian people are entitled to a *Bill of Rights* to protect them against infringements of their fundamental rights and freedoms.... [We] believe it is time that the fundamental rights and liberties of the individual, recognised and declared by the community of civilised nations in the [United Nationsô] *Universal Declaration* of 1948 and in many subsequent international treaties, were firmly enshrined in our law.ò

Murphy and his protegeô the later Senator Gareth Evans (who had helped draft the Bill), vigorously promoted it during 1973 and 1974. However, it lapsed when Parliament was prorogued. The strong opposition it encountered was sufficient to ensure that the Whitlam Labor Government did not re-introduce the Bill after the double dissolution of the Commonwealth Parliament in 1974. Indeed, Murphyôs appointment to the High Court removed the Billôs chief champion.

What was the nature of the strong opposition to the Bill? It was criticized by Sir Reginald Sholl, a former Supreme Court Judge. He said the legislation would disrupt the administration of Criminal Law, strengthen organised crime, and make ñpeaceful citizens as insecure as in the United States.ò Such legislation would be ñtragically unwiseò in Australia. ñSocial discipline in Australian society is already breaking down.... A ó*Bill of Rights*ô would completely remove some powers from all organs of government.ò[183]

To this, Sir Robert Menzies added:[184] ñIt is necessary to remember that one of the functions of the **Common Law** devised over the course of centuries in England and adopted by us by [way of] inheritance, has been to protect the individual against infringement of his personal rights.ò

Temporarily, the storm then abated. Menzies had shown that **Common Law**, when enforced, better protects the citizen than does any new so-called ó*Bill of Rights*.ô This is so especially if a ó*Bill of Rights*ô is not itself based upon Common Law (as it is in the U.S.A.) ï but instead rather upon modern humanistic United Nations Conventions (such as Murphy had in mind).

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[181] *Commonwealth Parliamentary Debates*, Sen., 21 Nov. 1973, p. 1971.
[182] L. Murphy.: *Why Australia Needs a Bill of Rights*, AGPS, Canberra, 1974, pp. 109.
[183] E. Sterel: *Human Rights "Will Undermine" Our Laws* (in *The Age*, 24 January 1974, p. 5).
[184] Sir R. Menzies: *Your Rights Are Your Heritage* (in *Melbourne Herald*, 13th March 1974, p. 9).

However, in 1985, Murphyôs proposed ó*Bill of Rights*ô again emerged ï when Minister Bowen had it redrafted. It was then reported[185] that a draft copy of the redraft itself had been circulated in 1983 under strict secrecy by the then Federal Attorney-General Senator Gareth Evans. As a result, the then Premier of Queensland, the conservative and Christian Sir Joh Bjelke-Petersen, said in 1984 that the Bill as it stood would destroy the States, legalise homosexual marriages and abortion on demand, and remove police control over demonstrators in public places.

The resurrected *Rights Bill* was now to form part of a óHuman Rights Packageô which would also significantly amend the 1975 *Racial Discrimination Act* and the 1984 *Sex Discrimination Act*. Bowenôs Bill was vigorously opposed by Sir Joh Bjelke-Petersen, Professor Geoffrey Blainey, the Chief Justice of Australia Sir Harry Gibbs, the Leader and Deputy Leader of the Federal Opposition ï and the Shadow Attorney-General.[186]

The Opposition Leader (Mr. John Howard) and the Leader of the National Party (Mr. Ian Sinclair) called Bowenôs *Bill of Rights* ñan attack on the States; an attack on Parliament; and an attack on the common decency which has guided individual rights in Australia for almost two hundred years.ò They added it should be ñtorn up, thrown out, and left to rot on Canberraôs rubbish tips.ò[187]

Unfortunately, the 1985 óHuman Rights Packageô passed through the Labor-controlled House of Representatives with breakneck rapidity. In the Senate, however, the debate was both prolonged and contentious. The Coalition wanted no Bill at all, while the Democrats (holding the balance of power) wanted a stronger one. Unable to break the deadlock there, the Labor Government withdrew the Bill from the Senate and referred it to a Constitutional Commission.

That Commission recommended a number of amendments to the *Australian Constitution*, in order to implement some of the new órightsô then being proposed. It recommended: the adoption in Australia of the modern humanistic misunderstanding of the 1791 American *Bill of Rights*; the extension of Section 116 even to the States, in order to promote the modern Federal Governmentôs misunderstanding thereof; and the entrenchment of a óone vote one valueô system among the electorates of all States as well as of the Commonwealth.

Once again, opposition was vigorous. Disconcerted, the Labor Federal Government pre-empted ongoing discussion by bringing forward the scheduled date for the National Referendum on it ï believing that this strategy would best ensure its passage.

However, the Government failed miserably. All four of its proposals were decisively rejected, by at least 66% of the voters. The public had drawn the right conclusion: the Australian ó*Bill of Rights*ô really aimed to promote óradical reformsô if not outright deformations. Those changes would benefit chiefly the Labor Party. They would not at all be for the benefit of Australians as a whole.

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[185] See newpaper art. *Rights Bill a licence for social misfits, barrister tells MPs*, 23rd July 1985.
[186] See Electoral and Administrative Review Commission [EARC]: *Review of the Preservation and Enhancement of Individuals' Rights and Freedoms*, P.O. Box 349, North Quay, Q. 4002, p. 70.
[187] See *Australian Financial Review*, 27 February 1986, p. 1.

The Human Rights and the Human Rights and Equal Opportunity Commissions

However, there was also the 1981-86 Human Rights Commission ï and its successor the Human Rights and Equal Opportunity Commission. The former was under the chairpersonship of Dame Roma Mitchell, who then constantly traversed Australia in an attempt to orchestrate public support for it.

A midwife for social change, the Human Rights Commission promoted ideological interference. This reached absurd levels even as early as 1984, when girls taking exams in one part of Australia were given an extra ten percent ï in order to boost their prospects above those candidates who were boys.[188]

University of Queensland Law Professor R.D. Lumb was not impressed. In a letter to the editor of a newspaper dated 5th June 1985, he remonstrated: ñDame Roma Mitchell and her Human Rights Commission have become increasingly tiresome in their criticisms of Queensland legislative and administrative action, which they allege to be in breach of the International Covenant on Civil and Political Rights.

ñThey would be aware that several articles of the Covenant [on Civil and Political Rights] state that the rights specified therein are subject to restrictions ówhich are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.ô

ñSome of the major contemporary problems are: the violence in our society, the exploitation of the young, the assault on the unborn child, the curtailment of essential services by strike action, and the holding of demonstrations which interfere with other persons in exercising their legitimate rights. Surely the Commission would be better employed in finding solutions to these problems, and in upholding community rights ï rather than in attempting, by a selective application of the Covenant, to weaken the constitutional responsibilities of the State Government in dealing with these matters.ò

The draft of the ó*Bill of Rights*ô then being proposed, would have fined private persons $1000 (or three months in jail) and Corporations $5000 for breaching its provisions. Stated the draft: ñTo assist it in its efforts to effect a settlement of a complaint, the Commission will have the power to call and conduct a compulsory conference. Such conferences will be held in private, and persons and corporations will not ï except with the consent of the person presiding at the conference ï be represented by lawyers or other advisers.

ñIndividuals may not refuse, without lawful excuse, a requirement of the Commission to attend, provide information, or produce a document. It is no excuse that this would contravene an Act [or] lead to self-incrimination or the disclosure of legal advice.ò

The Opposition spokesman on legal matters, Mr. Brown, said a Coalition Government would scrap the ó*Bill of Rights*.ôThe Opposition particularly opposed the

[188] Tess Livingstone: *Adding up the value of our human rights*, newspaper art. July 10 1985.

power the Bill would entrust to the Commission, and the proposed penalties were among its most objectionable features.[189]

The Opposite Justice spokesman Mr. Brown also said on July 3rd 1985 that the proposed ó*Bill of Rights*ô would be the ñdeath knell of Australian federalismò; and that the Federal Labor Government intended thereby to destroy the independence of the States. ñQueensland will be the main target of the new Bill,ò he said. ñThe [Federal Labor] Governmentôs use of the Human Rights Commission to give a critical report on the Queensland anti-strike legislation, was a prime example of its willingness to clobber Queensland.ò

The Bill declared some rights, but excluded others. It stated people had the right to join and form a trade union, but did not say they had the right not to.[190]

Moreover, Melbourne Barrister James Bowen told[191] a Federal Senate Committee on 22nd July 1985 that an Australian ó*Bill of Rights*ô would be a licence for societyôs misfits. It would threaten family life, and encourage homosexual marriages.

Bowen, a former Commonwealth Principal Legal Officer, said it would give Federal judges the power to nullify State laws where they were seen to limit constitutional rights. ñThe Bill will be promoted most aggressively by the alienated and disgruntled members of our society and those who would be classified as sexual deviates under existing laws.... It would virtually become a licence for the misfits in our society to emerge and claim a legal right to engage in behaviour that is unacceptable to most Australians.ò

Growing grass-roots disillusionment with trends away from the Common Law

Though still miniscule, there was at that time ï and is now more than ever before ï a very interesting and fast-growing grass-roots movement in Australia vehemently demanding the re-assertion of traditional values. Such demands included and include: clamour to keep the national flag; propaganda to preserve the Queen of Australiaôs Christian Commonwealth here in Australasia; emphasis on the strengthening of the family; and strategies to promote public decency; *etc*.

These concerns were and are expressed in an uncoordinated way by many different organizations. Examples of such are the Festival of Light, Call to Australia, Women that Want to be Women, the Confederate Action Party; and the Presbyterian Church of Australia (especially in Queensland).

Fortunately, their combined efforts prevented the enactment of the Federal ó*Bill of Rights*ô during the mid-eighties. Indeed, their efforts have continued to do so ï even till 1993 [when this dissertation was finalized].

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[189] Tess Livingstone: *Jail, $1000 fine for reluctant witness: Bill of Rights plan*, newspaper art. July 10 1985.
[190] Newpaper art. *Queensland 'target' of Rights Bill*, 4th July 1985.
[191] Newspaper art. *Rights Bill a licence for social misfits, barrister tells MPs*, 23rd July 1985.

Of all those conservative organizations, by way of illustration we give particulars of but two ï a brand-new one and a re-new-ed one. The brand-new one is the Confederate Action Party of Australia. The older one is the Presbyterian Church, established B.C. 4004 ï and re-new-ed, in Australia, on 23rd June 1977.

The Confederate Action Party was formed only in 1990. Under the slogan ñone flag one nationò ï it contested many seats in the March 1993 Federal General Election with *inter alia* the following ñPromise to the People of Australia.ò[192] It would, when elected (in the following order):

ñ* Federalize the first-degree crimes of murder, rape, arson and terrorism and re-introduce the death penalty.

ñ* Enact laws to guarantee the right of individuals to protect their families, their property and themselves; the right of the citizens to own firearms ï subject to the exclusion of people with criminal records; deranged people; and within certain safety requirements....

ñ* Alter the bias of law to favour the victim, not the criminal. Crack down on crime, with emphasis on illegal drugs and corruption. When possible, deport foreign criminals.

ñ* Simplify and adjust the legal system so as to be both available and affordable to average people, with restrictions to curtail lengthy litigation.

ñ* Cancel the refugee programme, and in future draw immigrants from traditional and Christian countries, overall immigration to be reduced at present and to be in accord with national sensitivities and requirements.

ñ* Parent input to be included in a revitalising of education ï including a return to the 3Rôs [reading and óriting and órithmetic], with emphasis on languages and science, aided by a national syllabus and examinations.

ñ* Remove social engineering and political ideologies from government education. Make mandatory the study of the *Australian Constitution* and **Common Law** in High Schools. Rebuild pride in our nation and respect for the Flag....

ñ* Return to the parents and teaching staff accountability for the children whilst in their care.

ñ* Ensure young Australians gain priority at all times in tertiary education. While there is one deserving young Australian unplaced, no foreign student will gain placement....

ñ* Create a strong and effective military defence with priority on self-sufficiency. End compulsory voting. Guarantee the right of freedom of expression and the right of personal choice, within the laws of decency....

[192] See advertisement in *Northside Chronicle*, Brisbane, Wed. March 3rd 1993, p. 21.

ñ* Abolish the [so-called!] *Family Law Act* and return the country to true family standards with strong support for the legal family unit....

ñ* Abolish the Aboriginal Affairs Department. We are one Australia ï one nation....

ñ* Remove government interference and over-regulation of commerce and industry, whilst working towards a flat tax situation....

ñ* Enact óright to workô and óright to associateô legislation, and end óclosed shopô situations; introduce the ósecret ballotô under government scrutiny....

ñ* De-regulate the docks and airlines, and retain Australia Post and Telecom as a non-profitable service to the public....

ñ* Abolish Capital Gains Tax, Fringe Benefits Tax, and Company Takeover Tax deductions.... Cancel foreign aid until our national debt is eliminated....

ñ* Re-align Australia with other producing Southern Nations, to forge military and economic alliances to procure fair pricing for our exports and to resist outside exploitation and manipulation.

ñ* Rescind any legislation which removes total Australian Sovereignty over the nationôs land and resources ï including World Heritage areas.

ñ* Review, towards rescission, all foreign-originated Conventions whose adoption overrules the *Australian Constitution*. Support the Constitution by denying interpretation of External Affairs clauses so as to usurp State Rights....

ñ* Hold a Referendum to introduce a Citizen-Initiated Referendum and Recall into the *Australian Constitution*, so that the people can say óNoô to laws that the majority do not want.ò

The heroic and trinitarian stand of the Presbyterian Church of Australia

In 1975, after the fall of Gough Whitlamôs Australian Labor Party from power, the Commonwealth Government was taken over by Malcolm Fraserôs trendy liberals. Predictably, by 1983, they too had fallen from power in Canberra.

Since then, there have been ten continuous years of Federal Government under the Australian Labor Party. Fresh appointments to the High Court during that time have now tilted it to a much less conservative cast than that for which it was formerly world-renowned (and very rightly so).

During ten years of Labor Government in Canberra (1983-93), it has progressively endeavoured to get Australia to ignore the clear reference to ñAlmighty Godò in the Preamble to the *Australian Constitution*. It has endeavoured to introduce chaplains into the Defence Force from other than the Old and New Testament traditions.

It has endeavoured to surrender some of Australiaôs sovereignty to the humanistic United Nations Organization. It has striven to move towards the latterôs ñ*Bill of Rights*ò and away from the much better freedoms of our own Common Law.

Indeed, it has also sought to transubstantiate Australia from being a Christian Commonwealth of States under their Queen by the grace of God ï into a ógod-lessô and óState-lessô Democratic Socialist Republic centralized not even in Canberra but within the rising New Age Order of International Humanism.

To that end, in 1992, the Federal Governmentôs Labor Prime Minister Paul Keating especially while overseas in Indonesia publically disparaged the Australian flag ï the flag exhibiting the Christian symbols of St. Andrewôs cross, St. Georgeôs cross, St. Patrickôs cross, and the Southern Cross. Then, in 1993, when overseas in New Zealand ï he mooted the prospects of broadening so-called Aboriginal Land Rights Legislation, of more Mabo-type litigation in the Australian Courts, and/or the construction of Treaties between so-called Aborigines and all other Australians.

Yet the battle continues ï also on that most vital of all fronts: the ecclesiastical. God used especially the Presbyterians (like Rev. Dr. John Dunmore Lang) to lift Australia both ecclesiastically and politically from her humble beginnings during her early years. The later decline of the Presbyterian Church into modernism since the First World War until 1977, presaged the decline of Australia since 1977 onward. So now, the resurrection of the Presbyterian Church since 1977 back into orthodoxy ï needs to help lead Australia forward into the twenty-first century toward both national and international recognition of Christôs rule here on Earth.

By the grace of God, in 1977*f*, most of the theological radicals left the Presbyterian Church of Australia. The latter then broke with the so-called óWorld[ly] Council of Churchesô and started re-asserting the Holy Bible and the *Westminster Confession of Faith*.

In 1980, the Presbyterian Church of Queensland affirmed the ñright to lifeò of ñthe unborn child...from conception.ò[193] Indeed, in 1983, the Presbyterian Church of Queensland further overwhelmingly received a paper declaring that ñany unlawful human attempt to abort, is murder in the sight of Godò and that ñeverything medically possibleò is to ñbe done to try to ensure the continuation of the lives of all that are thus being threatened.ò[194]

In 1986, legislation cited as the *Australia Act* was enacted by the Commonwealth and Imperial Parliaments to sever many of the remaining constitutional links with the United Kingdom ï such as appeals from Australia to the Privy Council in Britain. At that very time, the Presbyterian Church of Queensland was entertaining an appeal to that body ï against the Uniting Church in Australia regarding the then-direction of Emmanuel College in Queensland.[195]

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[193] See *Blue Book of the Presbyterian Church of Queensland*, Church Offices, Amelia St., Brisbane, 1980, min. 116.8.
[194] *Ib.*, 1983, min.123.20-21.
[195] The appeal would have been against the verdict in *Bailey* v. *The Uniting Church in Australia Property Trust (Qld.)* (1984) 1 Qd. R. 42. In spite of vigorous protests from the present writer at the

In 1988, the Presbyterian Church of Australia broke with the theologically radical so-called ôWorld Presbyterian Allianceôï and in 1991 terminated further ordination of women to the Ministry of the Word and Sacraments on theological grounds. When litigation ensued ï *Bartholomew* & *Hobbs* & *Somerville* v. *Harman* & *Lee* & *Mill* ï later changed by order of the New South Wales Supreme Court to *Bartholomew & Ors.* v. *Ramage & Ors.* ï the plaintiffs lost their case. (Allan McDonald Harman and Francis Nigel Lee were then Professors of Theology within the Presbyterian Church of Australia, and Murray Ramage was its 1991*f* Moderator-General.)

In 1991, the Presbyterian Church of Queensland condemned gambling, sabbath desecration, prostitution, and homosexuality. It also then requested that the death penalty for murder be re-introduced as the law of the land.[196]

Yet it was not just the conservatives who were now improving their organizations. Sadly, also from 1985 onward ï as a result of massive leftist propaganda ï an increased number of Australian judges (even in the High Court) finally seemed to have started gravitating toward the views of Murphy.[197]

This was patently obvious also in the Electoral and Administrative Review Commission. We refer to its 1992 Paper titled: *Review of the Preservation and Enhancement of Individuals' Rights and Freedoms*.

That 1992 *Review* alleged[198] that although ñ**Australian society inherited a largely <u>Christian</u> religious foundation**, the predominance of Christianity as a religion is gradually decreasing as Australia becomes a more diverse multi-cultural nation with other religions and cultures becoming significant.... A recent [1992] article in *The Bulletin* stated: ôNon-Christian faiths are an increasingly important part of the fabric of Australian society. Just how long Australia can be called a Christian country remains to be seen; the next 10 years will be crucial.ôò

Thus: a humanistic Democratic Peoplesô Republic of Australia by A.D. 2000 ï or bust! Well then, bust it must be ï for the Humanists! For A.D. 2000 is still 2000 **<u>A.D.</u>** ï in the year of our Lord and Saviour Jesus Christ. And a Presbyterian Church loyal to Godôs Holy Word and Law, cannot but so insist.

The 1992 EARC *Review of the...Enhancement of...Rights and Freedoms*

In June 1992, the State of Queenslandôs Electoral and Administrative Review Commission released its massive Study Paper titled *Review of the Preservation and Enhancement of Individuals' Rights and Freedoms*. It declared[199] that ñon the basis of a recent statement made by the Commonwealth [Federal Governmentôs] Minister for Justice, it appears that if Australia were to have some form of ó*Bill of Rights*ô it would have to be at the State level.

Queensland State Assembly, the Presbyterian Church in Queensland decided finally not to proceed with the appeal.

[196] See *Blue Book of the Presbyterian Church of Queensland*, 1991, min. 203.

[197] EARCôs 1992 *Review*, p. 86.

[198] EARCôs 1992 *Review*, p. 19.

[199] *Op. cit.*, p. 10.

ñFirst, world-wide interest in human rights has brought with it a call by the international community for investigations to be initiated at the domestic level into the possibility of giving legislative recognition to human rights not only at the national, but also at the State level.... Australia has already been asked by members of the appropriate Human Rights Committee of the United Nations whether any State governments in Australia have investigated the enactment of a ó*Bill of Rights*ô...

ñThe Commonwealth [or Australian Federal Governmentôs] Minister for Justice, Senator Tate, recently announced that óno fresh attempt to introduce a [Commonwealth] Bill of Rights into Australia was likely in the next few yearsô ï claiming that óthe Federal Government has exhausted its capacity to pursue the issue at this stageô (*The Age*, 25 May 1992). It is therefore unlikely that the Commonwealth Government will take any initiative in the near future.ò

The EARC Paper quickly notes[200] that the then Chief Justice of Australia, Sir Anthony Mason, had observed in 1988: ñHuman rights are now a potent rallying cry across the world, not least on the international stage.... Now, Australia and New Zealand are virtually alone in standing outside the mainstream legal development.ò[201]

The EARC Paper goes on[202] to remind its readers that Australia was an original member of the United Nations, and that this body has approved an *International Bill of Rights*. That latter consists of three documents.

The first document is the 1948 *Universal Declaration of Human Rights* (or *UDHR*). It advocates among other things the ñright to social securityò (at the expense of other taxpayers); the ñright to work and to equal pay for equal workò (against Matthew 20:1-15); and the ñright to form and join trade unionsò (but not the right to work without needing to join such a union).

The second document is the 1976 *International Covenant on Civil and Political Rights* (or *ICCPR*). It advocates among other things ñfreedom of thought, conscience and religionò (but not freedom to spread oneôs religion); ñownership of propertyò (but not private ownership of property); and ñuniversal and equal suffrageò (but not the right to protect oneôs own cultural group within a ómulticulturalô society, nor the right to advocate qualified mature male franchise as in Switzerland). Ominously, the Paper then notes: ñThere are three avenues for possible enforcement of the rights recognised in the *ICCPR*.ò[203]

The third document is the *International Covenant on Economic, Social and Cultural Rights* (or *ICESCR*) ï with similar aims. In addition, there are also other instruments, such as the International Labor Organisation and the very important Council of Europe (with its 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms*).

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[200] *Ib.*, p. 27.
[201] Sir A. Mason: *A Bill of Rights for Australia*. Paper presented to the Australian Bar Association Bicentennial Conference, Townsville, 11th July 1988, unpub., pp. 2-3.
[202] *Op. cit.*, pp. 29f.
[203] *Ib.*, p. 33.

Regarding the latter, the Paper comments:[204] ñThe intention of the Council of Europe in adopting the Convention at that time, was to provide for the enforcement of the rights previously spelt out in the *UDHR* by the General Assembly of the United Nations.... The European Court has the power to declare that a law of a State party contravenes the European Convention on Human Rights.... There is an obligation on the part of the relevant government to rectify the situation and to bring its laws into line with the Convention.... The Council of Ministers, which oversees the implementation of the Court decisions, can ultimately suspend a country from the Council, which adds political pressure.ò

The EARC Paper then claims that the then Chief Justice of Australia, Sir Anthony Mason, stated in an interview: ñThe majority of countries in the western world do subscribe to a ó*Bill of Rights*ô... If we donôt adopt a ó*Bill of Rights*ôï I am inclined to think that we will stand outside the mainstream of legal development in the western world. These are factors that tend to make me favour a ó*Bill of Rights*.ôò

To this, a former High Court Judge and subsequent Governor-General Sir Ninian Stephen is said to have added in 1992: ñAustralia seems to be becoming increasingly isolated from the rest of the world in failing to have any broad-ranging constitutional guarantee of rights.... There appears to be growing support for such a Bill of Rights in Australia, even amongst those once inclined to defend the adequacy of the Common Law.ò[205]

Indeed, continues the EARC Paper,[206] in a judgment delivered on 3 June 1992 in the *Mabo Case*, High Court of Australia Justice Sir G. Brennan said: ñThe opening up of international remedies to individuals pursuant to Australiaôs accession to the *Optional Protocol to the International Covenant on Civil and Political Rights* brings to bear on the Common Law the powerful influence of the óCovenantô and the international standards it imports. The International Law is a legitimate and important influence on the development of the Common Law, especially when International Law declares the existence of universal human rights. A Common Law doctrine founded on unjust discrimination in the enjoyment of civil and political rights demands reconsideration.ò[207]

The apparent intention of the EARC Paper clearly seems to be to soften voters up, so as to support further United Nationsô ñHuman Rightsò programmes. The Paper claims:[208] ñThe Commission appreciates receiving any thoughtful comment from a reader of this Paper.... The Electoral and Administrative Review Commission seeks written public submissions on its *Review of the Preservation and Enhancement of Individual Rights and Freedoms*.... All initial submissions...should be lodged with EARC by 14 August 1992... The final stage of the review will be the presentation of a report to the Speaker of the Legislative Assembly, the Chairman of the Parliamentary Committee for Electoral and Administrative Review and to the Premier. The Commission expects to conclude this review within the first half of 1993.ò

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[204] *Ib.*, pp. 37f.
[205] *Ib.*, p. 39.
[206] *Ib.*, p. 41.
[207] Sir G. Brennan: óTranscript,ô 3rd June 1992, *Mabo's case*, High Court of Australia, unreported, p. 30.
[208] *Op. cit.*, pp. i-ii & 11.

The 1992-93 Queensland Presbyterian Response to the 1992 EARC Paper on Rights

The Convener of the Public Questions Committee of the Presbyterian Church of Queensland was so concerned about the above Paper, that this present writer (Rev. Professor Dr. Adv. F.N. Lee) ï himself a Supreme Court Barrister ï was approached to write a critique. This was done, and resulted in the *Lee Report to the Public Questions Committee of the Presbyterian Church of Queensland anent the Electoral and Administrative Review Commission's Issues Paper (No. 20)*. This *Lee Report* states,[209] *inter alia*, the following:

ñThe view of the *Issues Paper* (p. 12) that óthe change from the mediaeval world to the modern, saw natural law theory defeat the idea of a ñhigherò divine lawô ï is surprising. Indeed, from p. 17, the discussion of Christianity is heavily slanted toward **Thomas Aquinas and Romanism**.

ñThe Paper quite wrongly claims (p. 18) that the socialistic and **Anabaptistic** Levellers were óa group of Puritan Reformers following **Luther**.ô It also errs (p. 18) in claiming that anti-trinitarian ó**Islam** [with its doctrines of forcible religious subjugation and polygamy *etc.*]...expounds ideals about humanity that correspond with tenets of Christian belief.ô For the latter is trinitarian; non-violently persuasive; and monogamous.

ñOn p. 85, one reads: ó'The narrow application of those rights which are contained in the *[Australian] Constitution* has generally been attributed to the strict legalistic and literal approach to judicial interpretation adopted by the High Court.ô

ñHowever, it is offensive to brand our High Courtôs adherence to the classic rules of statutory interpretation [*cf.* Matthew 5:18 & Galatians 3:16] as ólegalismôò *A fortiori*, the implied alternative ï that of sociological if not socialistic misinterpretation of written words ï only relegates legal precision to a stormy sea of subjectivism.

ñOn p. 110, it is stated that recently óthe European Court held that óthe part of the English Common Law on contempt was in breach of Article 10 of the European Convention on Human Rights and Fundamental Freedomsôò *etc.* Now, one can certainly agree with the statement on p. 116 that the *U.S. Bill of Rights* [compare its Art. VII] rests on óthe English Common Law.ô Yet precisely for that reason it is ludicrous to argue that the European Convention of Human Rights, allegedly derived from the American, should over-ride the Common Law itself. For, in *Williams* v. *The Queen*, (1986) 161 C.L.R. 278 at 299, our own High Court rightly upheld óthe jealous protection of personal liberty accorded by the Common Law of Australia.ôò

ñThe *Issues Paper* is quite right (p. 201) in claiming: ó'The right to trial by a jury of oneôs peers for criminal offences has been protected in English Law ï [at least] since the *Magna Carta*. This right is not recognised in the *International Bill of Rights* or the *European Charter* ï as most of the countries which are signatories to those instruments have legal systems based upon Roman Law, rather than the Common Law

[209] Printed in the May 1993 *White Book*, Presbyterian Church of Queensland, Church Offices, Amelia St., Brisbane, 1993, pp. 132-34.

system with its Anglo-Saxon roots.ô Indeed, those Anglo-Saxon roots ï themselves more endowed with common grace than those of Imperial Rome ï were transplanted into Celto-British and Proto-Protestant *substrata* which themselves rest, yet earlier, in the Old and New Testaments themselves.

ñThe roots of Roman Law, on the other hand ï in spite of a later Christian veneer during the Middle Ages ï are essentially pagan. For Roman Law does not recognise, *inter alia*, óthat the jury is a bulwark of liberty, a protection against tyranny and arbitrary oppression, and an important means of securing a fair and impartial trial.ô Gibbs C.J. in *Brown* v. *The Queen*, (1986) 160 C.L.R. 171 at 201. *Cf.* too: Genesis 37:9-21; Numbers 1:4-18; Deuteronomy 17:5*f*; 19:12*f*; Luke 22:14-23; John 7:51.

ñEspecially on pp. 145*f*, one gains the impression that the *Issues Paper* ï in its discussions of óthe death penaltyô and ótermination of pregnancyô ï favours the órightô to life of guilty adult murderers more than that of innocent prenatal human babies. For there, in respect of the *International Covenant on Civil and Political Rights,* it is stated that óthe *Second Optional Protocol*...obliges[!] State parties on accession to abolish the death penalty.... The European Community adopted the *Sixth Protocol to the European Convention on Human Rights* in 1985. This Protocol...requires the abolition of the death penalty by States which ratify the Protocol....

ñóThe death penalty was abolished in Queensland in 1922 [under the then Labor Premier Theodoreôs State Government].... Inclusion of a right to life provision in a Queensland ñ*Bill of Rights*ò would thus not affect...the death penalty itself...although it may inhibit any attempt to reintroduce it.... The arguments about capital punishment range from theological to jurisprudential and political.... The case law on the European Convention is...unclear as to whether protection of the right to life extends to a *foetus*ôï meaning a juridically-innocent and non-criminal tiny human being.

ñHere we need to be reminded about the position of The Presbyterian Church of Queensland ï which is essentially the same as that of the historic Common Law of Australia, as reflected in Blackstoneôs *Commentaries*. For our General Assembly órequests the re-introduction of the death penalty when guilt of the offender has been proved beyond reasonable doubt in the case of murder (Genesis 9:5-6).ô 1991 *Blue Book* min. 203.24.

ñIndeed, our Queensland State Assembly has also affirmed óthe Right to Lifeô of óthe unborn child...from conception.ô 1980 *Blue Book* min. 116.8. It has affirmed óthat abortion is always unacceptable ï except where at least two competent medical authorities...deem the abortion essential to protect the life of a mother or of her prenatal childô and to preserve the lives of both if at all possible. 1983 *Blue Book* min. 123.20 *cf.* 1991 *Blue Book* min. 203.13. It has also declared óthat personhood is to be considered to occur from the commencement of conception, which is from the penetration of the wall of the *ovum* by a sperm.ô 1922 *Blue Book* min. 166.6(b).

ñIn EARCôs *Issues Paper*, the óBibliographyô (pp. 221*f*) is heavily tilted against Australian Common Law, and extremely selective. Therefrom, one might conclude that the great Blackstoneôs *Commentaries on the Common Law* ï or even the contemporary Continental Professor Dooyeweerdôs many works on Law ï apparently never even existed.

ñYet Blackstone has clearly shown the superiority of Common Law over Roman Law. Indeed, his views are those of Classic Australian Law. As the University of Queenslandôs Law Professor R.D. Lumb has stated, Blackstoneôs *Commentaries* were published a few years before Captain Cook proclaimed His Majestyôs sovereignty over the eastern coast of New Holland [alias Australia]. His general outline of the constitution and laws of England was to influence profoundly the understanding of these laws in the Australian Colonies. *Australian Constitutionalism*, Butterworth, Brisbane, 1983, p. 25.

ñIt is our considered opinion ï being somewhat familiar with both systems ï that the inferior Roman Law of Europe (and European understandings of human rights) should be evaluated in the light of the superior freedoms of Anglo-American-Australian Common Law. Not *vice-versa*. For Queen Elizabeth rules expressly and solely óby the grace of Godô (*Coronation Oath*). óAll men are endowed by their Creatorô [and not by any ó*Bill of Rights*ô] with the óunalienable rightsô of the óCommon Lawô (*Declaration of Independence* and *Constitution of the U.S.A.*). Likewise, our *Australian Constitution* affirms órelying on the blessing of Almighty Godôï and an Oath to the monarch, óso help me God.ôò

Thus far Dr. Leeôs critique. That critique was then approved[210] by the Commission of Assembly of the Queensland Presbyterian Church ï and submitted in its name to the Governmentôs Electoral and Administrative Review Commission. It was again mentioned by Dr. Lee in his 27th May 1993 speech to the General Assembly of the Presbyterian Church of Queensland.

The latter then and there unanimously resolved to advise the Prime Minister and other leading politicians that it ñis concerned that the addition of international instruments to the *Human Rights and Equal Opportunity Commission Act* [1986] have the capacity to overarch both the *Constitution of Australia* and Common Lawò; that it ñis concerned that the values stated in...the óDeclaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religious Beliefô are the values of the religion of Humanism.ò

It then further unanimously resolved to circularize all the leading politicians ï and ñcalls on the Prime Minister to move to rescind the legislation establishing the óInternational Instrumentô the óDeclaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religious Belief.ôò

A closer consideration of the 1992 *Mabo case* in the light of the Common Law

Earlier above,[211] we referred to part of the judgment of Brennan J. in the June 1992 *Mabo's case*. Especially since May 1993, the media has suddenly accelerated its own misrepresentations of that decision.

This is not the place to discuss the full judgement in detail (for which see our later Addendum 52 below). Let it here simply be said, however, that this 3rd June 1992

[210] See *ib.* pp. 16(.38), 18(.51), 126(d), & 132-34.
[211] See our text at n. 206f above.

decision of the full bench of the High Court of Australia is not nearly as favourable to the cause of so-called ñAboriginal Land Rightsò and compensation therefor ï as assorted Anabaptists (with their devotion to ócommunal propertyô and their antagonism to private property) would have one believe.[212]

The case concerns five representatives of those styled the ñtraditional ownersò of the Murray Islands. The latter constitute a volcanic group to the northeast of Queenslandôs Cape York Peninsula. Geographically, they are so insignificant that many maps of Australia do not even show them.

One of the five representatives, Eddie Mabo, was a prominent spokesman for those ñtraditional ownersò ï so that the short name of the above case is derived from his own surname. He and his associates claimed that the Murray Islanders had continued to live on and to retain exclusive possession of that territory, through their own social and political organization. They claimed their rights had not been taken away by the Queensland Government, through annexation in 1879, and that their rights should continue to be recognised.

The *Mabo case* did not (and could not) overturn the Blackstonian Common Law ódoctrine of settlement.ô[213] Nor could it overturn the Blackstonian Common Law ódoctrine of conquered or ceded countriesô[214] which ï were it to be applicable in Australia (which it is not) ï might indeed perhaps favour the Murray Islanders. Yet it did reject a selfish and sinful misinterpretation of the Roman Law legal doctrine of *terra nullius*.

Now even Anabaptists[215] have admitted that the High Court did not make a ruling on sovereignty, but rather about who actually owned the land in question. It recognized the continuing existence there of pre-1788*f* native title, arising from ancient traditions and customs and not deriving from the 1788 introduction into Australia of the Common Law. The court ruled that the Murray Island community (rather than Murray Island individuals) holds the native title ï in much the same way that families may hold private property, in community of property, within many Western societies.

Toohey J. ruled that actual occupation of the land by the indigenous people at the time the colonising power claimed sovereignty, would be yet another basis to establish title even under the Common Law ï possession being nine-tenths of the law. Indeed, the Murray Islanders were still living on that land ï and still being sustained by its resources held and enjoyed by their ancestors, ever since even before 1788. Yet native title cannot continue under, nor against, subsequent freehold title. Neither can it continue even under subsequent leasehold title, unless the earlier people still continue

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[212] See the arts. *The Mabo Case* and *Kimberley Land Case*, in *Dayspring*, February 1993, pp. 3-6. *Dayspring* is printed by the ñHouse of Freedom Christian Communityò (a member of ANOCC alias the so-called ñAustralian Network of Christian Communitiesò). The latterôs members comprise the ñAbbotsford Baptist Communityò; the ñCelebration Communityò; the ñDallas Life Centreò; the ñHouse of Freedomò; the ñHouse of the Gentle Bunyipò; the ñPhillip Bay Communityò; the ñSt. Josephôs House of Prayerò; and the ñWestgate Baptist Communityò ï and its Associate Members consist of ñLôArche Genesaretò and the ñSydney Mennonite Fellowshipò (p. 2).

[213] See our text at its nn. 40 & 50 above.

[214] See the second paragraph of our next section here below.

[215] *Dayspring*, pp. 3f.

to exercise their actual enjoyment of that land. Indeed, even the *Aboriginal Land Act* of 1991 does not refer to native title.

So in *Mabo's case*, the High Court acknowledged native title precisely in terms of the **Common Law**. For there, the group proved its own continuing occupation of certain land ï under native law attested by tribal elders. The decision applies only to unoccupied Crown Land, and does not override any existing freehold title under Australian Common Law. Native title could not be granted in any non-aboriginal towns, station leaseholds or tourist developments already holding existing valid titles.

Inter alia, even Brennan J. held that the Crownôs sovereignty over the several parts of Australia cannot be challenged in an Australian municipal court. On the acquisition of sovereignty over a particular part of Australia, the Crown acquired a radical title to the land in that part. Although the rights and privileges under native title were unaffected by the Crownôs acquisition of sovereignty, the latter exposes the former to possible extinguishment in the event of no continuing enjoyment of the land under ongoing native title.

His Honour added that where the Crown has validly alienated land by granting interests inconsistent with native title, the latter is extinguished to the extent of the inconsistency. Thus native title has been extinguished by grants of estates of freehold or of leases. It is extinguished also in other cases, unless the general connection between the indigenous people and the land remains. Native title to an area which an indigenous clan is entitled to enjoy, is extinguished if the clan ceases to acknowledge that native title ï by losing its connection with the land, or on the death of the last of the members of the clan.

So even after *Mabo* – back to Blackstone and the Common Law!

Strictly speaking, *terra nullius* ï alias ñno manôs landò ï is a doctrine of (Pagan) Roman Civil Law[216] and not of (Biblical) British Common Law. To Blackstone, on the other hand, the Common Law doctrine is clearly erected upon the historical development of the possession and use and ownership of things both movable and immovable ï as set out in the book of Genesis.

At this point, fresh study of our own first two chapters in this present dissertation here above ï will be more than profitable. Especially relevant here is what we there said about primordial private property ï and about the Common Law before the Babelic dispersion described in Genesis eleven (and thus before the preservation thereof specifically in the later Celto-British and Anglo-Saxon Common Law).

In the *Introduction* to his *Commentaries on the Laws of England*, the renowned Common Law jurist Blackstone wrote[217] in 1765 ï just over two decades before the British Settlement of Australia ï that ñour more distant plantations in America and elsewhere are also in some respects subject to the English laws. Plantations or colonies in distant countries are either such where the lands are claimed by right of occupancy only, by finding them desart [alias deserted] and uncultivated, and

[216] See R.W. Lee: *op. cit.*, pp. 129-35f ï and the Roman authorities therein cited.
[217] Just before Blackstoneôs *op. cit* I:1:1.

peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations.

ñBut there is a difference between these two species of colonies, with respect to the laws by which they are bound. For it is held that if an uninhabited country be discovered and planted by English subjects, all the English laws are immediately there in force. For as the law is the birthright of every subject ï so, wherever they go, they carry their laws with them. But in conquered or ceded countries that have already laws of their own, the King [of England] may indeed alter and change those laws; but till he does actually change them, the antient laws of the countries remain ï unless such as are against the Law of God, as in the case of an infidel country. *[Robert] Calvin's case*.ò

Blackstone further wrote, in the main body of his great work:[218] ñIn the beginning of the World, we are informed by Holy Writ, the all-bountiful Creator gave to man ódominion over all the Earth; and over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the Earthô [Genesis 1:28]. This is the only true and solid foundation of manôs dominion over external things.... The Earth therefore, and all things therein, are the general property of all mankind...from the immediate gift of the Creator....

ñThese general notions of property were then sufficient to answer all the purposes of human life; and might perhaps still have answered them, had it been possible for mankind to have remained in a state of primaeval simplicity.... Not that this communion of goods seems ever to have been applicable, even in the earliest ages, to ought but the substance of the thing.... For, by the law of nature and reason, he who first began to use it, acquired therein a kind of transient property **that lasted so long as he was using it – and no longer**....

ñWhoever was in the occupation...acquired for the time a sort of ownership from which it would have been unjust and contrary to the law of nature to have driven him by force. But the instant that he quitted the use or occupation of it, another might seise [or appropriate] it without injustice.... Upon the same principle was founded the right of migration, or sending colonies to find out new habitations when the mother-country was overcharged with inhabitants. This was practised as well by the Phaenicians and Greeks ï and the Germans, Scythians and other northern people.

ñThe only question remaining is, how this property became actually vested; or what it is that gave a man an exclusive right to retain in a permanent manner that specific land which before belonged generally to everybody but particularly to nobody.... The very act of occupancy alone, being a degree of bodily labour ï is from a principle of natural justice, without any consent or compact, sufficient of itself to gain a title....

ñIf a disseisor turns me out of possession of my lands, he thereby gains a mere naked possession, and I still retain the right of possession and right of property. If the disseisor dies and the lands descend to his son, the son gains an apparent right of possession; but I still retain the actual right both of possession and property. If I

[218] *Comm.* II:1:1f & II:13:3.

acquiesce for thirty years without bringing any action to recover possession of the lands, the son gains the actual right of possession ï and I retain nothing but the mere right of property. And even this right of property will fail, or at least it will be without a remedy ï unless I pursue it within the space of sixty years.ò All emphases above are mine ï F.N. Lee.

So, in *Mabo's case*, the High Court of Australia did not at all order all White Tasmanians (nor their Government) to compensate the Black descendants of those Mimi negrito peoples moved from Tasmania in the nineteenth century. Still less did the case decree that Ayerôs Rock and Australiaôs Great Red Heart ñbelongò to whatever Australians of (partial) ñaboriginalò descent might allege that some of their ancestors once upon a time walked about those landmarks. Indeed, yet less did it decide that the non-negrito Mainland ñAboriginesò should restore the Australian Mainland to the negrito descendants of the Black or Mimi Tasmanians whom the formerôs ancestors drove from it into Tasmania before the 1788*f* arrival on the Continent of the first White Colonists.

It only decided, **as per Common Law itself**, that continuing occupation and/or use of land from ancient times may well constitute Native Title even in terms of the Common Law itself ï if not also as regards the Australian Mainland, then at least in the Murray Islands. Indeed, the High Court as such not even decided that the Crown would be obligated to compensate ï in the event of certain unjust expropriations which may or may not have been made. So the Common Law still prevails.

Keating's April 1993 *Evatt Lecture*: toward a Mabo-type Republic?

On 28th April 1993, surprisingly victorious after the Australian federal election in March, the Labor Party Prime Minister Paul Keating announced the appointment of a ó Republic Advisory Committeeô in his *H.V. Evatt Lecture*. The following extracts therefrom[219] describe his visions for a Republican Australia ï and an accommodation with its allegedly-ó(ab)originalô inhabitants.

Stated Keating [emphases ours]: ñI believe the 1900s will be a great watershed in our history.... **I believe we will emerge a robust social democracy**...prosperous in our faith: **our faith in ourselves** and the life we have created here.... Being at peace with ourselves I think depends on **making stronger than ever the principles of egalitarianism**....

ñA primary goal of the Government in the 1990s will be to remove the stain of dispossession and social injustice which attaches to the relationship between indigenous and non-indigenous Australians.... The legacy of injustice towards the indigenous people of Australia shames us in the eyes of the World.... Our self-esteem depends on our finding answers to the prejudice...which Aboriginal Australians continue to face.

ñNow, with the Mabo decision, there is a unique opportunity.... Because land goes to the core of the dispossession, Mabo may have the potential to work the miracle.

[219] Art. *The Prime Minister's H V Evatt Lecture,* in *Constitutional Centenary,* Constitutional Centenary Foundation, Carlton Vic., May 1993, pp. 1-2,7,11-13.

The High Court has declared that a native title exists in Common Law ï a declaration which has profound consequences not just for land management, but for contemporary issues of social justice....

ñIt is also why the time has come to start the process of creating an Australian Republic.... We should not underestimate the importance this also has for Australiaôs engagement with the Asia-Pacific region.... There is increasing interest in, and support for, a proposal to amend the current constitutional arrangements so that our affairs are no longer presided over by the King or Queen of the United Kingdom....

ñI would like to see the Australian people demonstrate our social and political maturity by voting at a referendum, for the establishment of a republic.... The government does not seek to include any other constitutional changes with the republican proposal.ò

Here we ourselves make only the following observations. Firstly, the last statement above (that republicanism is to be the sole change involved) is irreconcilable with the first paragraph of this section. We mean the statement that the Evatt Lecture describes Keatingôs visions for a Republican Australia and an accommodation with its allegedly original inhabitants.

Secondly, Keatingôs language is deeply religious (*sic*). Here, he says he believes Australia will emerge a robust social democracy (alias a strong citadel of the nonm-christian of not anti-christian religion of democratic socialism). He affirms not trust in God, but ñfaith in ourselvesò and ñthe principles of egalitarianism.ò He even states that ñMabo may have the potential to work the miracleò (*sic*). But none of this evidences any commitment whatsoever to the unique religion of Christianity.

Thirdly, Keating **racially discriminates** between those whom he calls ñindigenousò and those whom he labels ñnon-indigenousò Australians. He apparently also assumes that the so-called ñAboriginal Australiansò are indeed indigenous. But even Pre-Norman Anglo-Saxons were not indigenous in England. In fact, all such views anent any assumed ñindigenousnessò anywhere on Earth are diametrically opposed to the clear teachings of Genesis 1:26-28 & 2:7-8 and Acts 17:24-27.

Fourthly, Keating is confused about the Mabo decision. It is not unique ï but standardly in line with the settled Common Law. It has no potential to work a miracle. Nor, as he falsely alleges, has the High Court declared that a native title exists in Common Law ï but only prior to, and possibly alongside of, the Common Law.

Fifthly, Keating is quite right that we should not underestimate the impact which becoming a republic could have in regard to ñAustraliaôs engagement with the Asia-Pacific region.ò However, he seems to have forgotten that Australiaôs two greatest trading partners in the region ï the Empire of Japan and the Kingdom of New Zealand ï have non-republican dispositions. Nor has he here recognized that many of Australiaôs nearest neighbours are themselves Kingdoms ï such as Brunei, Malaysia, Papua New Guinea, the Solomon Islands, Thailand, Tonga, Tuvalu and Western Samoa.

Sixthly, it is not true ï as Keating implies ï that Australiaôs affairs are ñpresided over by the King or Queen of the United Kingdom.ò For Australiaôs affairs are

presided over by the Queen of Australia ï and indeed precisely through her resident Australian agent, the Governor-General. So too Queenslandôs affairs are presided over neither by a resident Cardinal in Canberra (representing the Pope in the Vatican) nor a Queen of England nor a Queen of Australia nor an out-of-State Australian Prime Minister residing in alien Canberra ï but by the Queen of Queensland, through her resident Queensland Governor.

Seventhly, it is doubtful that a referendum would succeed in establishing a republic. But even if it did, strictly speaking it could not be legal. Such an act would then be in violation of the Preamble to the *Australian Constitution* which monarchically established an ñindissoluable Federal Commonwealth under the Crown.ò For, being pre-ambulatory, it is not amendable.

Historic Australian Common Law *vs.* the various *UN Declarations*

When the Federal Government was constituted in 1901, the several States invested it with certain of their own powers. Particularly section 51 of the *Constitution* writtenly sets out those powers.

As the eye- and ear-witnesses Quick and Garran then pointed out[220] in their *Annotated Constitution*: ñThe Federal Parliament is a legislative body capable only of exercising enumerated powers. Its powers are determined and limited by actual grants to be found within the Constitution. Anything not granted to it, is denied to it.ò

Consequently, all attempts by the Federal Parliament to legislate any United Nationsô *Declaration* into Australian Law ï especially by mere proclamation ï should be regarded as efforts to legislate without jurisdictional competence according to the *Australian Constitution*. This applies also to the United Nationsô *Declaration on the Elimination of all Forms of Discrimination and Intolerance Based on Religion or Belief* ï published in the *Commonwealth of Australia Gazette* on February 24th 1993, purporting to bring it into Australian Law under Section 47 of the *Human Rights and Equal Opportunity Commission Act* of 1986.

Of that UN *Declaration*, Article 5 paragraphs 3 and 5 provide *inter alia*: ñThe child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood.... Practices of a religion or beliefs in which a child is brought up, must not be injurious to his physical or mental health....ò

The above is clearly irreconcilable with the manifestly discriminatory thrust of Bible passages such as Exodus 11:7, First Corinthians 7:14 and Galatians 6:10 *etc.* Fortunately, the United Nations has not branded such Bible passages as being injurious to a childôs mental health ï at least, not **yet**.

It is sometimes objected that appeals by Australians to agencies of the United Nations is no more foreign than was their appealing to the Privy Council in Britain. However, it must be remembered that even before appeals from Australia to the Privy Council were terminated in 1986, the Privy Council sat as an Australian Court in such

[220] Quick & Garran: *op. cit.*, p. 252.

cases ï then applying, and indeed still applying, not UN Declarations but Biblical and Christian Common Law.

Australia did not, like France, ever adopt a new principle of government by its *Constitution* ï so that pre-constitutional Biblical and Christian Common Law still obtains. All attempts by the Federal Government to incorporate humanistic legal notions from the United Nations into Australian Christian Common Law, are unconstitutional. For, as Latham C.J. once stated, the famous *Engineers' case*[221] has tied Australian courts to the rules of English statutory interpretation ï in a literalistic way.[222]

According to Professor Mark Cooray of Australiaôs Macquarie University:[223]: ñThe founding fathers wrote the *Constitution* as though Australia was to be six [big] States with one little Commonwealth government tacked on to look after customs and defence. State rights and powers were to dominate.... Australia has as good a *Constitution* as could be drafted by imperfect human beings.ò

Very frankly, Australia does not need any UN *Declaration* formulated by the humanistic United Nations ï consisting as it does of much more imperfect human beings than in fact wrote the *Australian Constitution*. For, as the Supreme Court of Victoria recognized in the very recent (**1992**) case of *Noontil* v. *Auty*[224] ï Australia is ña predominantly **Christian** country.ò

Summary: The Common Law in Australia from 1788 to 1993

Summarizing, we started off by mentioning what little is known about the early history of Australia, and then traced its visitations by Britons ï before the establishment of their first Antipodean Colony, in New South Wales, during 1788. Though it was at the beginning to be a penal settlement, soldiers and even Ministers accompanied the convicts.

Whatever the character of that latter category of colonists ï ranging from religious and political prisoners through petty pickpockets to ferocious felons ï they and their overseers all brought their Christian Common Law with them to Australia. Significantly, in public life Governor Phillip strove to uphold the Ten Commandments ï and Australiaôs first Ministers of Religion were all Evangelicals.

From the beginning, Australia not only had dayschools. She had dayschools that were solely Christian. These schools quickly built character into the second generation, even those of convict parentage. Many free settlers too now started pouring into the land. Very quickly, the quality of Australian primary education overtook and qualitatively exceeded that of Britain herself.

The new Presbyterian Governor Lauchlin Macquarie of New South Wales was a godly man who successfully did all he could to promote Christian education and

[221] *The Amalgamated Society of Engineers* v. *The Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129.
[222] L.J.M. Cooray: *Interpreting the Constitution – The Role of the Judge* (in I. Hodge: *Is This the End of Religious Liberty?*, Anzea, Homebush West NSW, 1993, p. 38).
[223] *Ib.*, p. 41.
[224] *Noontil* v. *Auty* (1992) 1 V.R. 365.

prosperity there. His successor, the Scot Sir Thomas Brisbane, was also a godly Christian. Indeed, also the first colonization of Tasmania began not with revelry but with worship. Though it was first populated chiefly by convicts, its Governor George Arthur was a fiery evangelical ï having been converted while formerly in Honduras.

In 1823, a Legislative Council was established in Australia. Ancient British Common Law remained the law of the land in Australia (so far as there applicable), even after the cut-off dates for the reception of fresh British Statutes (1828-36).

The renowned Presbyterian Rev. Dr. Lang had great influence both in New South Wales and in Queensland (both ecclesiastically and politically). Many godly colonists settled in South Australia since 1836. Indeed, also since 1860, Christianity continued to influence Australian legal life.

Especially the Presbyterian Church played a considerable role, both directly and indirectly, in promoting confederation within Australia. In that connection, there were also particularly massive British and U.S. influences working toward the 1901 *Australian Constitution*. Then, after fifty years of movement in the direction of political federation, the *Constitution of the Commonwealth of Australia* was established in 1901.

That 1901 *Constitution* can certainly be described as Christian both in environment and in content (notably in its Preamble and in its Oath). This is also the proper interpretation of Australiaôs so-called ñ1st Amendmentò ï in Section 116 of the *Constitution*. Indeed, its background and early history shows its Christian character ï the modern Judge Murphy notwithstanding.

The four Christian Crosses on the national flag adopted in 1903 underline this. So too does a careful reading of the 1943 *Jehovah's Witnesses case* ï and the 1953 Christian coronation of the present Queen of Australia (and all her predecessors).

We then noted the drift away from Christian Law in Britain, in America, and even in Australia (since 1963) ï and Judge Murphyôs revisionistic understanding of Common Law and the Rule of Law. We were pleasantly impressed by the conservatism of the High Court of Australia till the early 1980s, but then sadly noted tensions and the rise of leftism even there since that time.

For there has been ongoing pressure upon Australia to adopt a humanistic ó*Bill of Rights*ô almost ever since the end of the Second World War. That pressure was intensified after 1985, also through the Human Rights Commission ï and further through the Human Rights and Equal Opportunity Commission.

The surprising Labour Party victory in the 1993 Australian Federal Election, was not encouraging. Nor was Prime Minister Keatingôs announcement on 28th April 1993 that he had set up a (social democratic) Republic Advisory Committee. Nor was the misinterpretation of the verdict in the *Mabo case* and its misuse since May 1993 by the ruling Labor Party as a tool to promote its own socialist agenda. Nor is the one humanistic UN *Declaration* after the other ï purportedly being incorporated into, and mistakenly assumed to be paramount above, Biblical and Christian Australian Common Law.

Nevertheless, there has recently also been growing grass-roots disillusionment with these trends away from the Common Law. Apart from a proliferation of other conservative organizations, we noted the heroic and trinitarian stand of the Presbyterian Church of Australia since 1977. Thus, when even the cosmopolitanizing 1992 EARC *Review* anent proposed ó**E**nhancement of Rights and Freedomsô (*sic*!) appeared ï it was especially the Queensland Presbyterian Church which gave it a prompt response and rebuttal.

For our Australian legal system is still exactly as stated by Law Writers Derham and Maher and Waller ï in their 1983 book *An Introduction to Law*. There, they rightly remind us[225] that the sources of rules of law are to be found in Anglo-Saxon custom. When the Norman conquerors came to England, they found a rich store of Anglo-Saxon laws and customs. By the end of the thirteenth century, there existed a set of rules common to Englishmen everywhere ï the ó**Common Law**ô ï because only these would be enforced by the royal courts.

Judges then were not only experienced but also learned lawyers. Many were ecclesiastics with knowledge of the Canon Law. All were acquainted with Hebrew Law, as written in the Older Testament. Even in the seventeenth century, Cokeôs judgments copiously quote from the Scriptures. It is to such men that we owe the basis of our rules of Equity; the Criminal Law; many Constitutional Rules safeguarding individual rights; our Law of Torts, of Contracts, and of Family Law; and our rules affecting Property.

Many of the classifications lawyers use today, were in existence when the first modern Encyclopaedia of Law was published by Sir William Blackstone in 1765 ï entitled *Commentaries on the Laws of England*. The *Commentaries* were divided into four books ï the first called ó**T**he Rights of Personsô; the second ó**T**he Rights of Thingsô; the third ó**P**rivate Wrongsô; and the final book ó**P**ublic Wrongs.ô

In some ways Blackstoneôs major divisions are reminiscent of the great collection of Hebrew Law in the *Talmud* ï on Agriculture, Festivals, Marriage, Damages, Things, and Uncleanness. Significantly, it is Blackstoneôs famous book which most characteristically and influentially summarizes the Common Law brought to Australia at her Settlement in 1788.

No wonder then, that the substance of the oath taken by a Justice of the Supreme Court of Victoria *etc*. still runs: ñI _____ , swear by Almighty God that I will at all times and in all things do equal justice to the poor and to the rich and discharge the duties of my office according to law and to the best of my knowledge and ability ï without fear, favour or affection.ò Thus Derham and Maher and Waller.

Graeme Loss put it all in just one sentence. Writing in the 1991 *Sydney Law Review*, Loss declared: ñ**God** is a **righteous judge**, strong and patient.ò[226]

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[225] D.P. Derham & F.K.H. Maher & P.L. Waller: *An Introduction to Law*, 4th ed., The Law Book Company Limited, Sydney, 1983, pp. 22,32f,51 & v. Prof. Derham was formerly Vice-Chancellor of the University of Melbourne; Prof. Maher was formerly Reader in Law at the University of Melbourne; and Prof. Waller is the Sir Leo Cussen Professor of Law at Monash University. Thus *op. cit.*, p. iii.

[226] G. Loss: ó**A** Brief History of the Doctrine of Provocation in England.ô (1991) 13 *Sydney Law Review* 570.

Conclusions about the Common Law and its future in Australia

We concluded this dissertation ï rather appropriately, on Australiaôs Federal Election Day, Saturday 13th March 1993. These words below were being written just after the Federal Labor Prime Minister has claimed victory (in a very hard-fought election) ï and just after the Federal Leader of the Opposition has conceded it is possible he himself would no longer win.

The Opposition would probably have won very convincingly ï but for announcing some time just before the election that it would (if elected) reduce Income Tax by introducing Australiaôs first Goods and Services Tax to help break the severe recession. This became almost the sole issue, and turned what should have been a multi-issue General Election into a one-issue *de facto* referendum for or against the Goods and Services Tax (G.S.T.).

In a conservative country which hates referendums and revolutionary changes, the result thus became almost a foregone conclusion ï especially as the conservative Canadian Prime Minister had just fallen from power on the very same G.S.T. issue only a couple of weeks before the Australian General Election. Many Australian supporters of the Opposition voted against its G.S.T., thus ensuring the triumph of the Labor Party.

Australia will now face more unemployment; more socialism; and more economic stagnation. She will also face more propaganda to jettison her flag and her Christian monarchy and to become a Non-Christian ódemocratic Republicô (as an integral part of Southeast Asia).

As Christians, however, we will now battle on. We are strengthened by the knowledge that in His own good time, God Himself will confirm His Kingdom both in Australia and throughout our Earth ï and demolish the strongholds of humanism.

Today, even humanistic man increasingly realizes that the so-called ówelfare Stateô ï especially during a time of high unemployment and poor economic growth ï really cannot save him. The ówelfare Stateô itself, like the Marxism which produced it, contains the seeds of its own destruction. Being quite out of step with fallen human nature, its ultimate abandonment and demise is certain.

The ówelfare Stateô is not faring well. Its days and years are numbered. In Godôs good time, He Himself will terminate it. One way among others in which He should be expected to do so, is through the prolonged and persistent testimony of Spirit-filled Christians both in Church and in State.

Their actions should never be by way of revolution or violence, but only through reformation in a constitutional manner. Yet also **by means of their <u>own</u> testimony and activity** ï they should humbly and prayerfully expect God Himself to hasten the downfall of the socialistic and idolatrous Welfare State. Second Corinthians 10:4*f*; Second Timothy 1:6; Second Peter 3:12-18.

Modern man must therefore seek to re-establish <u>good government</u> ï **under <u>God</u>** and His <u>Ten Commandments</u>. Socialistic óburo-cracyô ï that unconstitutional and unelected ófourth branchô of government ï needs to be eradicated. And the originally

triune executive-legislative-judicial branches of government ï like three horses bridled together to pull the nation forward ï must be re-asserted in all their power and purity.

1992 saw debates in the Australian Federal Parliament especially about the national flag. The Labor Prime Minister disparaged the blue banner of Australia. In Parliament, the Members of the Opposition responded heftily.

Each then also brought his or her own desk-top national flag into the House. In telecasts, scores of Southern Crosses together with thrice that number of the Christian Crosses of S.t Andrew and St. George and St. Patrick were then all seen displayed on coast-to-coast television to viewers throughout Australia ï who thus beheld them fluttering inside the highest legislative body in the land.

That flag flutters yet, also after 13th March 1993. Long may it wave, as a symbol of Australiaôs decalogical roots in Godôs Common Law ï and of peace through the blood of the cross of Christ! Colossians 1:20.

The Presbyterian Rev. Dr. E.N. Merrington was the first Chairman of the Council of the University of Queenslandôs Emmanuel College (containing within it the much older Queensland Presbyterian Theological Hall). Australiaôs most beloved hymn reminds her of her British roots and her own future fruits. To the tune of *Russia*, its author Merrington sang:[227]

God of eternity, Lord of the ages,
Father and Spirit and Saviour of men!
Thine is the glory of timeôs numbered pages;
Thine is the power to revive us again.

Thankful, we come to Thee, Lord of the nations,
Praising Thy faithfulness, mercy and grace,
Shown to our fathers in past generations,
Pledge of Thy love to our people and race.

Far from our ancient home, sundered by oceans,
Zion is builded, and God is adored:
Lift we our hearts in united devotions ï
Ends of the Earth, join in praise to the Lord!

Beauteous this land of ours, Bountiful Giver,
Brightly the Heavens Thy glory declare.
Streameth the sunlight on hill, plain, and river,
Shineth Thy Cross over fields rich and fair.

Pardon our sinfulness, God of all pity,
Call to remembrance Thy mercies of old!

[227] Hymn 642 Russia (11,10,11,9). Ernest Northcroft Merrington, 1876-1953. In *The Church Hymnary – Revised Edition. Authorized for Use in Public Worship by the Church of Scotland, the Presbyterian Church in Ireland, the Presbyterian Church of England, the Presbyterian Church of Wales, the Presbyterian Church of Australia, the Presbyterian Church of New Zealand, the Presbyterian Church of Southern Africa*, University Press, Oxford, 1927, p. 785.

Strengthen Thy Church to abide as a city
Set on a hill for a light to Thy fold!

Head of the Church on Earth, risen, ascended!
Thine is the honour that dwells in this place:
As Thou hast blessed us through years that have ended,
Still lift upon us the light of Thy face!

At the end of Election Day, 13th March 1993, the Labor Prime Minister claimed victory. He repeatedly urged the Australian people to have faith, during these tough economic times. He seemed to be suggesting they should have faith in Australia; in him and his government; and in themselves. He did not at all say they should have faith also in ï and still less only in ï the Triune God and His Son Jesus Christ.

However: during the rest of 1993 and the years beyond, under the Southern Cross of Christ and His Common Law ï Australia shall yet be led to a more consistent trinitarian-triune faith as regards all matters of conduct. Even in political government, may her faith yet be that professed long ago by Isaiah (33:22) ï ñThe Lord is our [judicial] Judge; the Lord is our [legislative] Lawgiver; the Lord is our [executive] King. He will save us!ò

[This dissertation was completed in 1993. Since then, mercifully and thankfully, the Labor Party has been voted out of power at the federal level of Australian Government ï and been replaced by a Centrel-Right Coalition. Indeed, even the Labor Party itself ï as also in Britain ï has subsequently moved toward the right. Yet. With the advent of the third millennium and the Bush years ï let us here simply insert the recent observation that the humanist onslaught against Christianity is still very much with us here in Australia (as it is too also in the U.S.A.)!

The issues raised also in Australia by ongoing abortions, global warming, stem cell research, terrorism, and óforgivingô third world debts (*etc.*), are all **moral issues** which still need to be addressed **as such**. Too, the reversal of recent gun control laws and the reintroduction of capital punishment for kidnapping and murder and rape ï are urgently needed.

Nevertheless, Australians have recently ï even by way of a popular National Referendum ï decisively rejected an attempt to foist a dechristianizing secular republic on the country. They have also rolled back attempts to inflict euthanasia and gay marriages on the land and the people. And they have also, in the present new millennium, rightly responded to address internationally the issue of **Anti-Christian terrorism** by militant (per)versions of Islam in Afghanistan, Iraq, and also in Indonesiaôs Bali.

Significantly ï in addition to the present conservative centre-right Federal Government ï there are now also two outspokenly Pro-Christian political parties represented even in the Federal Parliament. And more and more politicians are now unabashedly supporting Christianity in public.

Certainly Australia has moved to the right, politically and religious, during the last two decades. May that momentum continue ever increasingly during this Third Millennium *anno Domini,* ***regente Jesu***!]

CH. 42: CONCLUSIONS ABOUT THE ROOTS AND FRUITS OF OUR COMMON LAW

We have written this dissertation in Ten Parts. They are: I, Prolegomena to the Common Law; II, The Biblical Background of the Common Law; III, The Development of Common Law in Pre-Christian Britain; IV, Christianized British Law before the Anglo-Saxon Invasion; V, The British Celts Christianize Anglo-Saxon Common Law; VI, British Common Law from King Alfred to the Reformation; VII, English Law from the Reformation to the Puritan Parliaments; VIII, The Impact on the Common Law of Westminster Puritanism; IX, The Post-Westminster Common Law in England; and X, The Development of Common Law in America and Australia. Here, we re-state the findings of each Part, and then draw our conclusions about the roots and fruits of our Common Law.

PART I – PROLEGOMENA TO THE COMMON LAW

We commenced this dissertation, in Part I, with a Prolegomena to the Common Law. Here we gave statements on the B.C. roots and A.D. fruits of British Common Law, and on Apostolic Age British Christianity. We also provided a Preface; a Table of Contents; and a Foreword.

Then, in our Introduction, we saw that authorities are all agreed that British Common Law arose in very ancient times ï quite independently of pagan Roman Law. There is further agreement that, over the years, British Common Law absorbed many Biblical principles into its own genius.

We noted, however, the disagreements as to exactly when the Common Law of England first arose; from what roots it grew; and what external influences it was exposed to, especially during its early days. We further looked at the root cause of the American *Declaration of Independence*; at the precise meaning of the *U.S. Constitution* in general and the American *Bill of Rights* in particular; at the real causes of the War between the American States in the middle of the nineteenth century; and at the history of Common Law in Australia from 1788 till 1993.

We then stated **the problem**: what is the relevance to society today of British Common Law from its earliest origins to the zenith of its development? To answer this question, we first raised seven queries ï the responses to which would help answer the main question above. Here are the seven queries:

1) Does our Common Law indeed root in the Eternal *Elohim* Himself ï or is it merely a relativistic social convention subject to never-ending radical evolution? 2) Does Holy Scripture present us with normative principles of Law and Government ï or is the Bible just a record of the social conventions of a primitive tribe of Ancient Hebrews irrelevant to modern needs? 3) Did the Government and the Common Law of the Pre-Christian British Isles at least to some extent derive from Divine Revelation ï or did that Law simply consist of savage customs, best totally abhorred by todayôs ñenlightenedò society?

There were also two further queries. 4) Did Britain indeed start to be enlightened by the Gospel within just five years after Calvary ï or did that land remain plunged in dismal darkness until after the rise of the Papacy around 600 A.D.? 5) Did British Common Law become christianized before the conquest of England by the Angles and the Saxons; were the latterôs legal systems themselves christianized by the time of Charlemagne; or was the early mediaeval legal system in Britain still largely pagan and grossly inferior to christianized Roman Law?

There were yet a further two queries. 6) Did the Pre-Reformation, the Protestant Reformers and especially the Early Calvinists have their greatest impact particularly on the Common Law of England ï or was English Law unenlightened when compared to contemporaneous developments on the European Continent? 7) Were and are the British and American and the Australian Legal Systems indeed the Quintessence of Christian Jurisprudential Law thus far developed ï or is British Common Law an outdated system doomed to be replaced by the principles of the French Revolution *via* the various United Nationsô Conventions?

We then supplied a chronological table of the Common Law. Finally, we provided maps of major places mentioned in the dissertation.

PART II – THE BIBLICAL AND HISTORICAL BACKGROUND OF THE COMMON LAW

In Part II, we looked at the Biblical background of the Common Law. There we studied: the roots of law and of legal rights; the Biblical data concerning the Common Law; Christocracy before Constantine (when Christôs Law was withstood); and Christocracy after Constantine (when Christôs Law was acknowledged).

1. The Roots of Law and of Legal Rights

In chapter 1, we looked at the roots of law and legal rights. Because human legislation is inevitable and unavoidable, all societies are best understood by studying their *laws*.

God Himself is the Source of all legal rights, and it is He Who appointed laws for His human creatures. Thus even the semi-utilitarian Jurist, Professor John Austin. For even the Law of Nations is derived, ultimately, from the Law of Nature ï yet both have been written in the hearts of men by God Himself. Thus both the Romanist Suarez and the Protestant Selden.

The Mosaic Law is the Worldôs oldest continuing **written** legislation. Thus the great jurist Sir Frederick Pollock.

Yet the Pre-Mosaic and unwritten Law of Nature has operated from the very beginning of the human race. Thus Law Professor Palmer D. Edmunds.

This can be seen from the institution of marriage ï in mankindôs ónaturalô reprehension of bestiality and homosexuality and incest. It can be seen also from humanityôs awareness of the Moral Law, and of the differences between men and

women. Thus Calvin and the *Westminster Confession of Faith*. Genesis 1:27*f*; 18:20*f*; Exodus 20:1*f*; Leviticus 18:6 to 20:21; Numbers 27:1*f* & 36:1*f*; Romans 1:18-27 & 2:14*f*; and First Corinthians 11:14..

Looking at the relationship between law and civilization, regard was paid to the crucial role played not only by Judaism (thus Israeli Law Professor Gabriel Sivan) but especially by Christianity (thus Hebrew-Christian Law Professor Harold J. Berman). Notice was taken also of Paganism ï even in Ancient Greek and Roman Law. For the latter is rooted in tribal provincialism ï and was later influenced by an impersonal and merciless Stoicism. Thus Sir Henry Maine.

On the other hand, Celto-English Common Law was seen to be of ñimmemorialò antiquity. Thus Sir William Blackstone. He traced it all the way back ñto the customs of the Britons and Germans as recorded by Caesar and Tacitus [B.C. 58 to A.D. 98]...and more especially to those of our own Saxon princes [A.D. 449*f*].ò Indeed, he grounded both British Common Law and the Law of Nations in the revealed Moral Law alias the Law of Nature ï and in Natureôs God, Who gave it to regulate manôs place in the universe which God Himself created and sustains.

Regard was next paid to the origin, character, and preservation of the Common Law. It derives, in the remotest antiquity, from the Law of Nature *via* the Law of Nations. It is qualitatively superior to the later Roman-Romish Canon Law (thus Dr. Dodd).

For geographical and historical reasons, the Common Law developed and flourished especially in the British Isles ï where both the Old and the New Testaments had major impacts upon it. Indeed, also Primordial Law has come down through the Celtic Common Law of the Ancient Britons and the Germanic Common Law of the Ancient Anglo-Saxons ï especially to the Early English. Thus Lord Chief Justice Sir Edward Coke.

This is seen also from the A.D. 1771 first edition of the *Encyclopaedia Britannica*. Indeed, Christianity and Common Law undergird not only the constitutional monarchy of Great Britain and the Commonwealth of Australia ï but even the 1688*f* *British Bill of Rights*, the 1776*f* *Declaration of Independence*, and the 1787*f* *Constitution* and *Bill of Rights* of the United States of America. This must continue to remain the case ï especially *vis-a-vis* the ungodly French Revolution of 1789 and its awful aftermath even today.

For, unlike pagan systems such as socialism, Common Law with its emphasis on private property builds upon the Ten Commandments. Thus Professor S. Milsom.

That Decalogue roots precisely in the Older Testament of the Hebrews. Indeed, even among Ancient Egyptian, Mesopotamian, Indian, Chinese and Hebrew Law ï the latter alone is historically reliable to as far back as at least B.C. 1400. Thus Dr. Francis Nigel Lee.

However, the Older Testament of the Hebrews and its Ten Commandments themselves root in the eternal private properties of the various Persons within the Triune God Himself. Genesis 1:1-5; Matthew 28:19; John 17:1-5*f*. This is what makes private property both unavoidable and enduring. Like an anvil, it wears out the

hammerings of all Communalists ï whether so delivered by the pagan Stoics of Ancient Greece, the mediaevalist Thomas Aquinas, the Anabaptist Thomas Muenzer, the doctrinaire socialist Karl Marx, the American Communist Party Leader Gus Hall, or the U.S. redistributionist Ronald Sider.

Yet not only have the Father and the Son and the Spirit maintained the private property of Each *vis-a-vis* One Another within the Trinity ï from all eternity. But even after creation, the Triune God has maintained His own private property *vis-a-vis* all of His creatures ï and all human beings.

Indeed, also all of His pre-human creatures have maintained their God-given properties ï over against all other creatures. Thus, the unfallen Adam maintained his private property *vis-a-vis* that of all other creatures (and therefore also *vis-a-vis* Eve) ï even before the fall.

For the everlasting Moral Law ï as expressed also by the prohibitions óyou must not steal!ô and óyou must not covet!ôï was given even to our first parents in their state of integrity. Indeed, those prohibitions always presuppose the continuing existence of óstealableô and/or ócovetableô property belonging to another. Consequently, any theory advocating a so-called óBiblical communism of propertyô ï whether before Adamôs fall, or right after the restorative birth of the Spirit-filled Christian Church on Pentecost Sunday ï is a dangerous myth.

The mediaeval communalist Thomas Aquinas is therefore quite wrong in his view that Adam and Eve held all things in common before their fall. For even then ï each already had his or her own name, body, sexuality and possessions. So too, God the Father and Son and Spirit ï Whose image Adam and Eve (and their offspring) were ï Each had His Own personal properties or attributes, distinct from those of the Other two Persons from all eternity past.

Within that eternal confederated Trinity ï as within the later confederated human race ï all properties of the individual constituents were and are preserved. Such would have continued, even without sin. Such still continue, even after sin. Such shall always continue ï even beyond sin, in glory. Genesis 1:1-5; 1:6-25; 1:26-28; 4:1-4; Matthew 28:19; Revelation 22:1-17*f.*

Also after the fall, private property continued ï and even intensified. For Abel brought **his** offering to the Lord, from the firstlings of **his** flock. Abraham bought a cave, which thereby became his own. Even against his own father-in-law, Jacob maintained his own cattle. Indeed, private property rights were also ineradicably enshrined in the later Mosaic Law. Genesis 23:4*f* & 30:28*f*; Exodus 20:15*f* & 22:1*f.*

Coming to the New Testament, especially Christôs parables (of the talents and the labourers and the lost coin *etc*.) all fully defend private property rights ï which the welfare work of the Apostolic Church also underlined. For even among the distressed Jerusalem Christians, household dwellings remained the private property of each owner. It was, of course, futile to hoard redundant property in the doomed Jerusalem. Yet the New Testament Church sustained private property rights not just there too, but also everywhere in the World. Acts 2:44*f*; 4:32*f*; 6:1*f*; 12:12; First Corinthians 7:2*f*; 11:22; First Thessalonians 4:4*f.*

Christ indeed warned against the misuse and idolization of private property. Yet He Himself also clearly stated: ôIs it not lawful for Me to do what I want ï with My Own?ô

Consequently, the Neo-Anabaptistic attack against Christian private property rights by the modern bandit state ï is immoral. For also in the far future, each own-er will yet sit under his own fig tree. Indeed, even in glory ï each will receive a white stone with a new name on it, which no one will know except he himself. Matthew 19:29*f*; 20:1*f*; 21:28*f*; Micah 4:4; Revelation 2:17 & 3:12.

The whole Bible, then, both in the Old and in the New Testament, teaches and promotes legal rights to private property. Indeed, it does so ï under the óprivate eyeô of Each of the Persons within the Triune God Himself. For He alone is the original Root of law and of all legal rights.

2. The Biblical Data concerning the Common Law

In chapter 2, we looked at the Biblical Data concerning the Common Law. We saw the Bible testifies that the Triune God alone was and always shall be righteous ï from all eternity past, and unto all eternity future.

This righteousness of God ï this ñstrict adherence to the Lawò (Louis Berkhof) ï is to be reflected throughout the Universe. But especially in man, as Godôs unique image. God **is** righteous ï according to both the Old and the New Testaments. So too was His image man ï before he fell into sin.

This Triune God has always governed Himself in a free confederacy, from all eternity past. And there always has been a perfect government among the three eternal and divine Persons within the Triune God Himself. Genesis 1:1-5.

God towers above His various created laws, which all reflect something of His Own Essence. Genesis 1:6-25 and Psalms 119:89-91 & 148:4-6. All His creatures should obey those various laws. He rules over all; rewarding the obedient and punishing transgressors; and finally giving every rational creature exactly what he or she deserves. Genesis 1:26*f* & 2:16*f*.

The Triune God Himself is the Root of the Decalogue for all mankind. Thus Genesis 1:26-28 and Hosea 6:7-10. Man should obey Godôs special norms (including those governing juridical behaviour). Genesis 2:16*f* & 3:11*f*. As Godôs images, and according to the Law of Nature given by God, men obeyed sinlessly before the fall ï individually; socially; and totally ï in the confederate structure of their sinless relationship to the Creator Who endowed them. Ecclesiastes 7:29.

Unfallen man and woman kept the Ten Commandments. These were all reflected in the dominion charter, the sabbath, the forbidden fruit, the tree of life, and marriage. Genesis 2:1*f*; Romans 1:20*f* & 2:14*f*; Ephesians 4:24-28.

God at manôs creation perpetually bound the entire human race to a covenant of works ï and merely **re-iterated** this in the Ten Commandments on Mount Sinai. Genesis 2:17; James 1:27 & 2:8-12; Exodus 34:1; *Westminster Confession* 19:1-7, *cf.*

Hosea 6:7-10 and Romans 1:18 to 2:16. Salvation was never by manôs own works of keeping the Decalogue. Yet he was to obey, out of gratitude for Godôs gift of life.

We then dealt with the impact of manôs fall upon his obedience to the God-given Law ï and traced the Ten Commandments from the fall to the flood. Genesis 6:1-13. When Adam broke Godôs Law, he fell from his pristine human rectitude. Thus he came under Godôs just condemnation ï individually; socially; and totally. Indeed, all successive events (both human and divine) ï also in law courts and in history ï announce the inexorable approach of the final Great Assize on Godôs Last Day. Genesis 9:5*f* & Revelation 20:10*f*.

In His mercy, however, God promised fallen men a Saviour ï to bear their punishment for them, as their Substitute. Genesis 3:15*f*. This no way provides a *juridical* pardon for guilty criminals in this life. It far rather requires their juridical punishment before tribunals ï even if penitent; and indeed even if converted to Christ. Luke 23:40*f*; Acts 23:29; 25:11,25; 26:31*f*. This is seen in the judgment of the Great Flood ï and, initiated immediately thereafter, also in the embryonic institution of human law courts with their judicial penalties.

So, even after the fall and under the Noachic covenant ï human government was entrenched by a system of courts and prescribed punishments. Though flouted by the cosmopolitan dictator Nimrod, God re-asserted and developed these institutions among the various nations ï after His destruction of the humanistic World Empire at the tower of Babel. Genesis 10:8*f* & 11:1*f*.

Noah had been a righteous man, and a type of Jesus Christ the óSecond Adam.ô The destruction of the Tower of Babel marks the origin of the *Law of Nations*. Thereafter, the primordial laws of the Japheth-ites living in the ñtents of Shemò long remained pure ï and there are many traces of the Ten Commandments among the postdiluvian patriarchs. Genesis 9:27*f* & 10:1-5.

Regarding the laws of the Shem-ites, the Ebla Tablets have now helped date Abraham earlier than had been thought ï previously. The degenerated *Codex Hammurabi* of Babylonian Mesopotamia apparently only came later, and Hebrew Law is clearly superior to that *Codex*. For, unlike Hammurabi, Abraham and his immediate descendants strove to keep Godôs Laws and Commandments. Genesis 15:6; 18:18*f*; 26:5*f*.

Even in Abrahamic times, godly government was by the Presbyterate ï alias the Ruling Eldership. This will continue right down into glory itself. Hebrews 11:2*f*; Genesis 24:2; Revelation 4:10-11 & 19:4*f* & 21:12-14.

Thus Abraham observed and taught Godôs laws and statutes to his large household (through his Ruling Elders *etc*.). Also his godly descendants subsequently did exactly the same. Exodus 18:12*f* & Deuteronomy 1:13*f*. In spite of post-dispersional degeneration, traces of this primordial presbyterial government-by-elders ï even in pagan political structures ï could still be observed.

Early Hebraic government was thus administered through confederated Elders. Especially the Book of Exodus outlines their qualifications. This Office had not only

ecclesiastical but also political implications ï as too did the Mosaic Decalogue. Exodus 18:12*f*; 19:7*f*; 20:1*f*. Thus Owen, Zahn, Bergema, and Van Ruler.

Especially the God-given Mosaic Laws are important. For God still requires Gentile Christians to observe their ógeneral equity.ô Exodus 21:1-36 & 22:1-29, compare *Westminster Confession* 19:4*g*.

These Mosaic Laws provide many details for effective human government. Deuteronomy 17:14*f*. The Early Prophet Samuel warned Israel to heed these Laws, and to spurn the royal whims of the surrounding pagans. First Samuel 8:1*f*. And the Later Prophets (such as David and Solomon and Isaiah *etc.*) record and predict punishments for transgressions of those laws. Psalm 1:1*f* & 72:1*f* and Isaiah 1:1*f*.

The Mosaic *lex talionis* was always focussed on compensation, rather than on vindication. Exodus 22:1*f*. Too, before the monarchy ï the tribes were confederated into a Mosaic Commonwealth. Numbers 10:1-4.

The franchise was always qualified, and never mob-ocratic. Deuteronomy 1:13-17. Yet, after the days of Moses, Old Testament Hebrew Government deteriorated. There was, however, an even greater degeneration of law among the Pre-Christian Gentiles.

We then looked at the Person and teachings of Jesus regarding the Ten Commandments ï and also at Christôs teaching on political government. Jesus insisted He had not come to destroy either the Law or the Prophets, but to bring them both to completion. Matthew 5:17*f*. Far from annul the Law as such, He often rather corrected the Pharisaical perversion of those laws (*cf*. Matthew 15:1-9).

After Christôs substitutionary atonement in the place of His elect, He keeps on convicting the World about sin and righteousness and judgment to come. John 16:8*f*. Penitent Christians become law-abiding citizens of Godôs Kingdom, right here and now. Romans 8:4*f*. For Christians will always be required to keep the Ten Commandments ï and the latter are still Godôs unaltered standards for all mankind. James 2:8-12*f*.

The teaching of the New Testament Church has implications also for political government, especially through the hands of competent officers. Romans 13:1*f*. The Law is of great importance in the teaching of the Apostles, and the Decalogue remains a chief instrument in promoting the advance of Christianity. First Timothy 2:2*f*; Titus 3:1*f*; First Peter 2:13*f*.

For Christôs Own Apostles ï according to the órule of lawô and in connection with the ólaw of libertyô ï re-inforced their Masterôs legal teaching. They did so, and their true ministerial successors still do this ï in relation to the eternal and everlasting principle of Triune Confederacy.

Also the whole of Early Church History from Clement of Rome (*circa* 100 A.D.) till Gregory of Rome (*circa* 600 A.D.), constantly testifies of the need ï on Christianityôs way toward ultimate victory ï to subjugate even politics and law to the Lordship of Jesus Christ. Revelation 2:2*f*; 12:17; 14:12*f*; 15:4; 21:8*f*; 22:14*f*.

Not unitarian Union but triune Confederation remains the desirable pattern for Christian action ï whether in family, the workplace, or in politics. The Law energized the Early Christian Community, which believed in the promised advance of Christianity throughout the World.

Indeed, both Apostolic and Patristic Christianity were committed to a Christocratic eschatology. Such will ultimately destroy the Antichrist, and christianize even every State throughout the World. Daniel 7:7*f* & 12:7-12*f* & Second Thessalonians 2:3-8*f*.

Early Christians further knew **how** they would gain the victory over the World ï through their obedience to the Law of God. Also the *Westminster Standards* reflect on Christianityôs promised advance in this way. Indeed, in the Bible itself there are discoverable and formulatable principles ï with which one should build a Christian legal and political order.

For God shakes up our World in judgment after judgment, right down throughout history. All things, however, ultimately work together to *expand* His Kingdom.

Indeed, all human actions ultimately predict, and indeed require, also a Final Judgment ï and the subsequent emergence of a New Earth, on which righteousness shall dwell forever. For even in glory, the godly will still always keep the Ten Commandments. Revelation 12:17; 14:12; 14:3*f*; 21:7*f*; 22:11-15.

3. Christocracy before Constantine: Christ's Law Withstood!

In chapter 3, we saw that Godôs Law ï given to man since the beginning of history ï continued to operate also after Calvary. Christians strove to obey it, despite all pressures ï even right throughout the óGreat Tribulationô of A.D. 63 to 70, and also beyond it. Christocracy was thus still advocated in the Apostlesô *Didache*; and Godôs Law was upheld in both the *Epistle of Barnabas* and in the writings of Clement of Rome.

Christocracy is the politico-legal system championed by the Shepherd of Hermas ï and the Law of the Lord was upheld also by Ignatius of Antioch. Christôs Church survived all early post-apostolic persecutions, and the Martyr Polycarp observed the Law of God. So too did the Apologist Justin Martyr in his *Dialogue with Trypho*, his *First Apology*, and his *Second Apology* ï even while Christianity was apparently gaining strength especially in Britain.

Christians still kept Godôs Law, also when persecuted under Caesar Marcus Aurelius. This is seen in the decalogical dedication of Theophilus of Antioch, and in the Christonomy of Athenagoras of Athens too. Also Irenaeus condemned the heresy of antinomianism ï and advocated an eschatological optimism.

Clement of Alexandria maintained a strongly theocratic Christonomy. The optimistic eschatology of Clement and Caius, is clear. The theocratic trinitarian Tertullian was outspokenly anti-antinomian and Christonomic. As a Christocratic postmillennialist, he further predicted Christianityôs overthrowal of the Roman Antichrist.

Origen of Caesarea upheld an anti-antinomian Christocracy and an optimistic eschatology, and pursued a political postmillennialism against Celsus. Hippolytus predicted the triumph of Christianity and the downfall of the Roman Antichrist. Cyprian maintained a victorious Christocratic eschatology. Indeed, Christianity overcame all the persecutions of Caesar Decius in the middle of the third century.

The Christian Church grew greatly between the Decian and Diocletian persecutions. This is reflected in the victorious views of Victorinus on the Apocalypse ï and, shortly thereafter, also in the christocratic triumph of the British Emperor Constantine. Truly, as Jesus Himself had accurately predicted in Matthew 16:18, because it is He Who keeps on constructing His Church ï the very gates of hell could not prevail to withstand its expansive edification.

4. Christocracy after Constantine: Christ's Law Recognized!

In chapter 4, we saw that Lactantius (the mentor of Constantine and of the latterôs son) describes the predestinated doom of pagan Rome. It was also noted that Constantine himself actually established a Christian Commonwealth. Eusebius explains the great historical importance of his contemporary, Constantine ï and praises him greatly in his own *Oration*. There, Eusebius shows how God was advancing Christôs Kingdom through Constantine ï especially in that Emperorôs erection of a Christian Law Order throughout the Roman Empire.

Next, we noted Post-Constantinian advances of Christianity ï also through Athanasius of Alexandria and Cyril of Jerusalem. A Christonomic eschatology was seen to be upheld ï also in the *Apostolic Constitutions* and the *Apostolic Canons*. Then, while looking at Post-Nicene Church Fathers from Ephraim to Ambrose ï it became obvious they indeed trusted that all nations would yet call Christ blessed.

John Chrysostom of Constantinople insists Christôs Church would triumph over the Roman Antichrist. Jerome of Bethlehem describes the collapse of the Roman Empire and of its subsequent Antichrist ï and also the triumph over the latter by the Christian Church. Indeed, particularly Augustine of Hippo-Regius ï who lived during the collapse of Babylonish Rome ï is emphatic about the Churchôs triumph also over the Antichrist which would then soon appear.

It was precisely the collapse of Rome which paved the way for the advent of the Romish Papacy. Gregory the Great of Rome resisted being called the first Universal Pope; but his successors had no such objection. Nevertheless, the Papacy was denounced as Antichrist by: Gregory the Great, Arnulf, the Waldensians, Eberhard of Salzburg, the Pseudo-Joachim Commentaries, Pierre Jean dôOlivi, Ubertino of Casale, Dante Alighieri, Michael of Cesena, John of Rupescissa, Francisco Petrarch, John Milicx, John Wycliffe, Matthias of Janow, Richard Wimbledon, John Purvey, Walter Brute, John Huss, Martin Luther ï and every single Protestant Reformer without exception. Second Thessalonians 2:3*f* and Revelation 13:11 & 17:3*f*.

Indeed, the Papal Antichrist is especially denounced by John Calvin ï and by the British Calvin-istsô *Westminster Confession*. Yet their *Westminster Larger Catechism* also sets out not only the predicted triumph of Christianity after the destruction of the Papacy. In addition, it further describes a chief **tool** both to destroy the Papacy and to

reconstruct a deformed Christianity ï namely the tool of a Spirit-induced consistent obedience to the Ten Commandments as the Law of God, in every sphere of human endeavour.

We then looked at the Biblical and pre-papal roots of Ancient British Common Law. It was seen that Ancient British Common Law derives from Noah, *via* Japheth and Gomer. Gildas and Blackstone were seen to have described Japhethôs Scythians and their Ancient Iro-Scotic Law. Indeed, we then noted the role of the Ancient British druids as Common Law judges (according to Julius Caesar, Strabo and Pliny).

Christian influences in Pre-Saxon Celto-British Common Law were next examined. The role of custom, the clan and the family were all seen to be much appreciated among the Ancient Celto-Britons.

We also traced the influence of Christian Celto-British Common Law on that of the Anglo-Saxons ï and indeed of the increasing christianization process even within Anglo-Saxon Common Law itself. The Celto-Britonsô frankpledge and their *leet*-courts were seen to have been absorbed by the Anglo-Saxons ï and the subsequent synthesis of the Celto-British and Anglo-Saxon Law Systems into Anglo-British Christian Common Law was then traced.

Thus we noted the Anglo-British Codes of Asser and Alfred the Great, and also of Anglo-Danes such as Canute. We then followed the development of Anglo-British Codes ï from King Athelstan and Hywel Dda to Edward the Confessor.

We next took a look at William the Conqueror and the development of Anglo-Norman Law by the Normans. In spite of some suppression, British Common Law soon re-asserted itself ï especially at *Magna Carta*, that bulwark of British Common Law liberties.

Subsequent developments portrayed King Edward the First as ñEnglandôs Justinianò (*sic*). Indeed, some of the predictions of Daniel 12:7-12*f* were seen to have been fulfilled in the period between John Wycliffe and the Westminster Assembly.

The latter, however, then evoked a strong antithesis ï culminating in the French Revolution of 1789. Indeed, the latterôs awful aftermath includes not only the Russian Revolution of 1917 ï but also Worldwide Social(istic) Democracy, and Modern Humanism as its concomitant.

Nevertheless, we now work for and await ï in Godôs good time ï the sudden death of democratic Humanism and the resurrection of Christocratic Christianity. For the latterôs Biblical Common Law has great strengths, and is in fact irreplaceable. Indeed, in its ongoing development, it constitutes one of the chief tools and weapons of the only religion which will ultimately triumph in years ahead ï Consistent Christianity.

PART III – THE DEVELOPMENT OF COMMON LAW IN PRE-CHRISTIAN BRITAIN

In Part III, we looked at the development of Common Law in Pre-Christian Britain. Here we studied the Common Law among Ancient Migrants to the British Isles ï

among the Ancient Irish after B.C. 2600, and in Ancient Britain from B.C. 1800 onward. Indeed, we also studied Law in Eurasia & Europe and Britain from 1000 to 100 B.C., and especially British Common Law in the First Century B.C.

5. Common Law among the very Ancient Migrants to the British Isles

In chapter 5, we saw that the Japhethites best preserved the Ancient Common Law after the Babelic dispersion. This continued also with the Dardanian migration to the British Isles after the Trojan War. There was thus a sustained development of law and government in Britain, also during the second millennium B.C. For both before and after their arrival in the British Isles, the Japhethitic Celts long preserved Godôs original revelation.

We then looked at the migrations of the Japhethites in general and of the Japhethitic Celts in particular. We also examined the identity of Gomer and Magog in the various parts of Holy Scripture, and saw their connection with the Western Celts.

Next we considered various evidences that the Gomer-ites became the British *Cymr-i*. Helpful in that regard were the scholarly views of Japanese-American Professor Yamauchi on the Gomerites (and on the Scythians). The B.C. 450 Herodotus indicated the Cimmer-ians had already by then moved from the Ukraine into Europeôs Far West. Also the B.C. 60 Diodorus Siculus and the Post-Reformational Dr. John Selden and Dr. Edward Lluyd all identify the Gomerites with the British *Cymri*.

There is some evidence that also Magog-ites or Scyt-hians moved westward, and settled as the Scot-s in Ancient Ireland. Thus the Iro-Celtic *Leabhar Gabhala*, Strabo, Porphyry, Gildas, Nenni(us), King Alfred, Dr. Geoffrey Keating, Dr. James Parsons, Doyle, MacGoeghan & Mitchel, Dr. Nora Chadwick, the Hastingsô *Encyclopaedia of Religion and Ethics*, and Gladys Taylor.

In reviewing the earliest history of the Cymr-ic Proto-Welsh, we next had occasion further to trace their origin from the Japhethitic Gomer-ites. Here it was seen that this link is, in general, perceived also by many leading theologians. In that regard, citations to illustrate this were given from Delitzsch, Keil, Kurtz, Kuyper, Noordtzij, Pink, Leupold, Atkinson, J.J. Davis, Calvin, Greijdanus and Lightfoot.

Finally, we considered the Ancient Celtic movement toward Britain and Ireland ï whether of Brythons, Iro-Scots or Picts. The migrating Celts preserved much of Godôs original revelation. For the primordial picture of Celtic life is adequately preserved, especially in Ancient Irish records.

There were also ongoing Phoenician and Semitic influences on the Ancient Celts ï by way of international maritime trade. In all this, there is thus adequate evidence of abiding links between the Near East ï and the Ancient British Isles. See too: Genesis 49:13; Deuteronomy 33:18*f*; Judges 5:17; Second Chronicles 2:3-16; 8:18; 9:20*f*; Jonah 1:3; Ezekiel 27:6-9,12-19,25-29; and Avienusôs *Fragmenta Ora Maritima*.

6. Common Law among the Ancient Irish after B.C. 2600

In chapter 6, we first examined the penetration of Godôs post-fall and post-flood revelation and laws ï into Ancient Ireland. Noahôs son Japheth dwelt in the blessed tents of Shem (Genesis 9:27), the ancestor of Eber or Heber (the father of the Heber-ews). Then, in the days of Heberôs son the Heber-ew Peleg, mankind was dispersed (Genesis 10:21-25).

In this way Godôs post-fall and post-flood revelation penetrated especially into the Ancient British Isles. For, when the Ancient Japhethitic Celts (destined to ódwell in the tents of Shemô the covenant-keeper) migrated westbound into Europe ï some of them developed a civilization in the British Isles, well insulated from many adverse foreign influences. Especially was this the case on the extreme western fringe of Europe ï in Ancient Ireland.

One should never discount the ongoing contact with the British Isles of Pre-Christian Ancient Heber-ew travellers. See: Genesis 10:1-5,21-25; Judges 5:17; Jonah 1:3 and Ezekiel 27:6-9,12-19,25-29. But even quite apart from that, the Ancient British Islanders long preserved the early óShem-iticô religion of the Japhethitic Gomer-ites or Welsh-Cymric Cimmer-ians and also of the Japhethitic Magog-ians or Iro-Scotic Scyth-ians. Genesis 9:27 & 10:1-5.

Japhethôs son Magog and his descendants (who were probably under Heber-ew influence), trekked first into Europe and later into the Ancient British Isles. Genesis 10:1-5 & 11:8-9. This occurred in successive waves, and perhaps from B.C. 2600 or at least from 2000 onward. Thus, some of the Japhethitic Magog-ians apparently established themselves as the Celtic óGaelsô first in Britain and then in Ireland.

It was only after the times of Magog and Heber, that God repeated His Holy Laws to Abraham. Genesis 10:1-25 *cf.* 11:16-31*f* & 18:18-19. This was preserved ï infallibly in the book of Genesis, and in somewhat perverted form in the *Codex Hammurabi*.

Yet later, it was impeccably codified by Moses (in Exodus chapter 18 to Deuteronomy chapter 28*f*). Later still, it also influenced other nations during the B.C. 721*f* Assyrian captivity of the Israelites, and during the B.C. 598*f* Babylonian captivity of the Judeans ï possibly affecting the fallible and perverted codes of Zoroaster and even of Buddha *etc*.

However, it was especially the Japhethites ï and particularly the Magogian Scythians or Gaels (and the Gomerian Cymri or Brythons) ï who dwelt in the tents of Shem. Genesis 9:27 to 10:5. In this chapter, we then looked especially at the Gaels ï and more particularly since they took up their residence in Ancient Ireland.

We noted traditions teaching that Ireland was inhabited probably before the destruction of the tower of Babel and possibly even before Noahôs flood. Certainly after the deluge, some of the Magogian Scyths seem soon to have colonized Ancient Ireland. Indeed, even according to secular hypotheses, there were Early-Celtic migrations there.

Both the *Book of Invasions* and the Ancient Irish *Annals* (of the Four Masters) note the migrations to Ireland of the Partholians, the Nemedians, the Tuatha de Danaan, the Fir Bolg, and the Milesians. From the records, it is clear that Cai soon imported the Mosaic Law into Ireland ï and that Ollamh Fodhla was the B.C. 1383 father of her laws.

In his book on Ancient Irish Law, Middle Temple Barrister Ginnell regarded it as the most ancient legal system in Western Europe. Respecting óCai-in Lawô or Parliamentary Legislation, some of the commentaries attribute its origin to the influence of Cai. That person, explained Ginnell, is stated to have been a contemporary of Moses who learned the Mosaic Law **before** coming from the Near East to Ancient Ireland.

The B.C. 1383*f* Irish King Ollamh Fodhla gave a Parliament to the Iro-Scots. The early druidic judges (who upheld the pristine concepts of the Trinity and immortality and legality), here played a prominent role. Triennial meetings took place at Tara ï where sub-kings and delegates from all over Ireland enacted laws.

The Scots in Ireland had a constitution ï over the *Ard-Ri* or High-King and the sub-kings alias Provincial Governors. This was not a unitary government ï but one still reflecting the primordial revelation of the con-federate Tri-une God Himself.

This constituted the first bicameral Parliament in Europe. The elected and deposable High-King was never a law unto himself, but **always subject to the rule of law**. There was a óseparation of powersô in which the High-King was concerned primarily with the tribeôs military business and intertribal diplomacy.

From the tribal groupings, a division into districts emerged. Each of the provinces ï Ulster, Leinster, Munster and Connacht ï had its own harbours. All met in the newly-created province of Meath. There the King held Parliament, as Chief-Lord in the one Confederation of the many States.

Ancient Ireland maintained her *Constitution* as the law of the people. They never lost their trust in it, nor exalted a central authority. The administration was divided into the widest possible range of self-governing communities, which were bound into a voluntary [Con]federation.

Prof. R.A.S. Macalister of Dublin University explained that the Ancient-Irish *Ard-Ri* presided over the Constitutional Assembly and performed the functions of King, Judge and General. Besides the Representative Assembly of Freemen (or *Oinach*), there was also a regional Senate (or *Aireacht*) ï resembling Numbers 10:1-4, and anticipating the later House of Commons and the House of Lords. Each *Tuath* or óStateô was self-governing, where freemen were citizens in their own areas (*cf.* Exodus 18:12-22*f*).

There is much evidence of early literacy in the British Isles, especially as regards the Pre-Christian Irish Ogham. Certainly the vast wealth in gold of Ancient Ireland presupposes a sophisticated trading and legal system, and the Historian A.S. Green has demonstrated the marvellous political and social structures of the Emerald Isle. Such structures include: the institution of tanaistry; the electability and replaceability of the óHigh Kingô or *Ard-ri*; and the sophisticated system of education by fosterage.

We then surveyed Post-Abrahamic social developments in Ancient Ireland down till Early-Christian times. During that period, there was a Pan-Celtic culture in the Ancient British Isles ï and many sociological similarities between the Ancient Irish and the Ancient Britons. Also the Near East had a continuing influence on Ancient Ireland. Indeed, many antiquarian perspectives ï such as those of S.F. Skene ï clearly demonstrate the antiquity of Ancient Irish culture.

From the Greek Diodorus and the Roman Tacitus, it is clear that the Ancient Irish were kinfolk to the Ancient Britons. Indeed, the Gaelic *C*-Celts actually preceded the *P*-Celts into Britain ï and the B.C. 450 Herodotus himself carefully stressed the Iberian connection of the Ancient Celts as *Celtiberi* if not as Celto-Heber-ews.

Especially the great English Jurist Sir Henry Maine has investigated the Laws of Ancient Ireland ï particularly as regards the Law of Nature, private property rights, social mobility, succession, contractual guilds, and distress. All of the above establishes, as pointed out by Chadwick and Neill, that Pre-Christian Ireland possessed one of the most ancient and highly-developed legal systems in the whole World.

7. Common Law in Britain from B.C. 1800 till B.C. 1000

In chapter 7, we first examined the penetration of Godôs post-flood revelation from Ararat into Britain. Noahôs son Japheth would dwell in the blessed tents of Shem (Genesis 9:27), the ancestor of Eber or Heber (who was the father of the Heber-ews).

In the days of Heberôs son the Heber-ew Peleg, mankind was dispersed. Genesis 10:21-25. Japhethôs son Gomer and his descendants the Gomer-ians or Cimmer-ians (and who were probably under Heber-ew influence), trekked first into Europe and later into Ancient Britain. Genesis 10:1-5 & 11:8-9.

The Ancient Britonsô traditions anent these matters were preserved from the deluge onward, and also after their arrival in Britain. Indeed, there are adequate evidences of literacy among the Ancient Britons.

The Gomeric migrations from the Near East to Britain occurred in successive waves, and perhaps from B.C. 2000 onward. There, they developed a civilization in the British Isles ï attaining a considerable level of culture, and preserving many features of true revelation and true religion. Thus, some of the Cimmer-ians established themselves as the Celtic óCymriô in Cambr-ia alias Wales ï and as the óCumriô in Cumbria on the Scottish border.

Hu Gadarn was the pre-eminent hero in and pioneer of Ancient Britain. In immediately Pre-Abrahamic times, around B.C. 1900-1800, he led the Cymri into that land.

It was only after the times of Gomer and Heber (and Hu Gadarn) that God repeated His Holy Laws to Abraham. Genesis 18:18-19. They were preserved ï infallibly in the book of Genesis, and in somewhat perverted form in the *Codex Hammurabi* and elsewhere.

Yet later, they were impeccably codified by Moses. Exodus chapter 18 to Deuteronomy chapter 28. Yet it is apparent that the substance of the Decalogue was revealed priorly to Noah ï and then taken by Hu Gadarn into Britain long before Mosaic times.

The British records describe the first phases of Britainôs being colonized. Samothes was reputedly Ancient Britainôs first king, and gave rise to the Ancient British *samothei*, *magi*, *sarronides* and druids.

That was Ancient Britainôs golden and heroic age. Ancient British Law then developed (thus Barrister Flintoff), and early links between the Britons and the Mediterranean led to the arrival of various other ethnic groups in Ancient Britain.

The first wave of Cimmer-ian Celts arrived in Britain and erected ñBritainôs Pyramidsò in Ancient Wiltshire even before Abrahamic times. Genesis 10:3-5. That first civilization of the Celtic Ancient Britons (probably under Heber-ew influence) constructed Stonehenge ï and received Phoenician merchant mariners (with some Hebrew crews?) probably around B.C. 1800.

Those Ancient Britons were very literate. Too, they early mined and marketed precious metals ï such as tin and bronze ï especially in Cornwall.

We noted the political importance of the *Ancient British Triads*, and also of the *Barddas*, anent Ancient British Common Law. Druidism was the religion of Ancient Britain, and druids attended the Ancient British Parliamentary Assemblies or *Gorseddau* in various parts of the land.

In comparing British Druidism with the Old Testament, it was seen that Ancient Druidism upheld: Trinitarianism; the doctrine of creation; capital punishment; and the immortality of the human soul. It seems to have been the religion also of many of the Pre-Abrahamic Patriarchs, and was apparently similar to the religion of Abraham.

Northwest-European Druidism was headquartered in Ancient Britain, while maintaining contact also with the Mediterranean. We noted its philosophical achievements ï and explained the role of druidic oaks, mistletoe, sacrifices and capital punishment.

Druidism interacted with all of human life, and seems to have been related to Early Britainôs impressive stone monuments. British Druidism seems to have been, at least in part, a preparation for the Gospel. This was reinforced from B.C. 1500 onward by Post-Abrahamic Palestinian contact with Britain; by the intermittent incursions of (Iro-)Scots into Britain; and by Trojan contact with Ancient Britain starting around B.C. 1200.

Indeed, also the Gomer-ian Stonehenge suggests some influence upon those Japhethites from the Pre-Abrahamic Heber-ews. Visiting Pre-Christian Near Eastern mariners called Ancient Ireland ñthe sacred isleò ï and commended Stonehenge in Britain for its religion and sacred harps.

Such religion had arrived in Ancient Britain from the Pre-Abrahamic Japhethites dwelling ón the tents of Shem.ô It was augmented also by: various Heber-ews (*circa*

B.C. 1900*f*); the Abrahamic Darda (1730 B.C.); the Mosaic Law (1440 B.C.); the Phoenicians and the Danites (1400 B.C.); and Brut with his Trojans (1185 B.C.).

In spite of later degeneration, Pre-Christian British Druidism originally and for a very long time continued to uphold the triunity of God, human immortality, the weekly sabbath, substitutionary blood sacrifices of animals (pointing to Christ?), and basic decalogical morality. Triadic religion was strong throughout the centuries, even right down till the beginning of the Christian era.

Consequently, British Druidism then easily yielded to Christianity (thus Leatham). Indeed, Britain then soon became the Worldôs first Christian country. *Cf.* Genesis 9:27; 10:2-5; Isaiah 49:1-12; 66:19.

So Godôs post-fall and post-flood revelation penetrated from the Near East into Ancient Armenia, whence the Japhethitic Gomer-ian Celts migrated into Europe. Some of those Celts developed a civilization in the British Isles, attaining a considerable level of culture especially during the second millennium ï and preserving many features of true revelation and true religion.

Hebrew Law too seems to have influenced the British Isles and especially Ancient Britain. That seems to have reached Britain in part also *via* Ancient Phoenician seafarers by way of the *Celtiberi* in Spain *etc*., and even before the B.C. 1200*f* Brut.

We then looked at some of the details of the free government of the British Isles from the beginning of the second millennium B.C. onward. In that regard, it was noted that Ancient British Common Law was ultimately ï going back *via* Brut, the Phoenicians, Gomer and his Cymri to Japheth ï derived from Japhethôs father Noah and his ancestor Seth the son of Adam the son of God Himself. Luke 3:38.

In Early P-Celtic Wales, after the (*circa* 1800 B.C.) arrival there of Hu Gadarn, judicial and kinship bonds were strong (*cf.* Exodus 20:5*f*) ï especially as regards the punishment of murder and manslaughter (*cf.* Numbers 35:12-27*f*). Ancient Celtic Law in general required the death penalty for capital crimes ï and indeed for ósacrificialô religious reasons (Genesis 9:5-6 *cf.* Exodus 21:23*f*). There was a druidic appeal court system. Crime was rare, and the administration of punishment was swift.

As early as B.C. 1500, Britain probably received also Dan-ite trading ships. *Cf.*: Judges 5:17; Second Chronicles 2:14; Ezekiel 27:19-26. The Britons mined and exported tin and bronze, and were colonized further from the Darda-nelles (*cf.* Genesis 38:30 & First Chronicles 2:6) around 1150 B.C. by the Trojan Brut or Brit. Hence the name óBrut-ainô (or óBrit-ainô).

Even by then, the B.C. 1440 Mosaic Laws may already well have reached Britain ï *via* the Danite seafarers *etc*. Moreover, they were later re-inforced around B.C. 1150 by (Israelitic?) colonists from the Dardanelles (*cf.* Genesis 38:30 & First Chronicles 2:6) ï under the Trojan Brut (hence the new place-name óBrit-ainô or óPrytheinô).

Within Southern Britain, in what later became known as Cornwall and England, especially from the time of the B.C. 1185 Brut onward the Moral Law of God was enshrined as Ancient British Common Law. Early Welsh sources confirm this.

So too do British and English mediaeval historians; Lord Chief Justice Sir John Fortescue; the celebrated Elizabethan Chronicler Raphael Holinshed; Lord Chief Justice Sir Edward Coke; and the famous Puritan lawyers Selden and Sadler ï as well as many modern writers. Indeed, also from B.C. 1200 onward there was further contact between Palestine and Britain ï even before the building of Solomonôs temple.

8. Common Law in Britain and Eurasia from 1000 to 100 B.C.

In chapter 8, we saw that Godôs Holy Law ï infallibly codified under Moses around B.C. 1440*f* ï was possibly conveyed to the Ancient British Isles shortly thereafter. At any rate, metals seem to have been imported from Britain for the building of the temple in Jerusalem ï during the tenth century B.C.

Later, further influences would reach those Isles from other Eurasian and Mediterranean sources. Notable here were the Danaan Greeks (B.C. 850). There may well have been also other influences on those Isles. Thus: possibly from the Israelites in Assyria (B.C. 721*f*); conceivably from the Judean Jeremiah (B.C. 598*f*); and certainly from the Phoenician Himilco of Carthage (B.C. 530).

Ancient Britain attained a considerable level of culture especially during the first millennium (B.C.) ï preserving many features of original and ongoing general and special revelation, and of true religion. In part, this seems to have been achieved *via* constant Ancient Phoenician voyages (also with Danite Hebrew crew-members?) by way of Cadiz in Spain *en route* to the British Isles.

A fresh wave of Cimmerian Celts was pushed into Britain around B.C. 600 by the Scythians (*cf.* Colossians 3:11). See: Herodotus (B.C. 450); Diodorus Siculus (B.C. 60), and Tacitus (A.D. 98). Only a millennium later, also a third wave of related Sacae or Saxons would settle there ï particularly from A.D. 449 onward. Yet all of these Cimmerians and Scythians and Saxons were descendants of Japhethites ï like the Gomer mentioned in Genesis 9:27 to 10:5.

Hebrew Law had some influence also on Ancient Greece ï and apparently even on Ancient Rome. However, it is especially in Ancient Britain that we see such influences. Especially after the B.C. 510*f* reigns of King Moelmud and King Belin, Ancient British Common Law persisted even till A.D. 1066 and beyond ï right down till today. In Pre-Christian Wales, the law was codified in triads, and collected. Much later, it was ï and finally codified from such immemorial customs ï by the A.D. 870*f* Asser and the A.D. 900*f* Hywel Dda.

Among the Pre-Christian Iro-Scots (later migrating from Northern Ireland to Southern Scotland), the legal system ï especially as regards crimes and punishments ï was apparently similar to that in Ireland (as discussed in a previous chapter). Yet among the later Picts in Ancient Northern Scotland, the position is obscure.

In both Ireland and Wales, there was a prescribed tariff for the restitution of various kinds of wounds inflicted (*cf.* Exodus 21:21-30). Theft was severely and precisely punished (*cf.* Exodus 22:1-4). Slander, and damage also to property, was

checked. Indeed, such crimes were to be rectified by the application of restitutional laws.

During the first millennium B.C., the social institutions of Ancient Britain were strengthened. It is possible that some of the ten tribes of Israel after the B.C. 721*f* Assyrian captivity (and/or some of the Jeremian Judeans at the onset of the B.C. 598*f* Babylonian captivity) might have found their way to the British Isles (as Anglo-Israelism believes). And it is certainly probable that there were indeed even earlier Heber-ew influences upon the Gomer-ians. Indeed, those influences do seem to have continued ï also after the eighth through the sixth centuries B.C. onward.

Significantly, visiting B.C. 530 Pre-Christian Phoenician mariners labelled Ireland ñThe Sacred Isleò ï and stated that also the Ancient Britons were ñskilful in art and constantly busy with the cares of tradeò (thus Dionysius). Indeed, the B.C. 495 Greek traveller Hecataeus extolled a productive and religious island in the Ocean ï for its (Stonehenge?) city and temple, and its sacred harps and ñpraise to Godò (Diodorus).

Professor Nora Chadwick, in her definitive book *The Celts*, clearly identifies the Cymric Ancient Britons with the Ancient Cimmer-ians alias the Gomer-ians. Dr. J.X.W.P. Corcoran, in his important work *The Origin of the Celts*, does exactly the same. Those Ancient British Celts attained a very high standard of culture ï especially in connection with the production of pottery, tin-mining, bronze-smelting, weaponsô manufacture, intensive agriculture, selective breeding as regards animal husbandry, art, and wheelmaking.

Ancient Britain from B.C. 1000 to 100 was not an isolated culture. It was influenced also by the Danaan Greeks (B.C. 850); and possibly also by the Israelites in Assyria and the Jeremian Judeans (B.C. 721 & 598). It was certainly visited by Himilco of Carthage (B.C. 530), and by Hecataeus and other Greek travellers (B.C. 495). Indeed, it was referred to by Aristotle (B.C. 340); traversed by Pytheas (B.C 340*f*); and chronicled by Dionysius Perieegeetees (B.C. 300).

Coming next to the Japhethitic Ancient Greeks alias Javan (Genesis 10:4), we saw that the Heber-ews apparently influenced them ï and, through those Greeks, also the Ancient Britons. A group of the Israelitic Danites may well be represented by the Greek Danaans who, from about B.C. 850 onward as the Tuatha de Danaan, reached even Ireland ï and settled there. Thus Petavius, W.E. Gladstone and L.G.A. Roberts *etc*. Indeed, Solonôs Greek Reforms of B.C. 594 seem to suggest some legal influence also from the Hebrews.

Other Danites, *via* the Trojans, seem to have influenced the Ancient Romans. In the days of the Roman Republic, which borrowed some of Solonôs Athenian Constitutional Laws, the famous *Laws of the Twelve Tables* were enacted ï in B.C. 451. Indeed, during the second century B.C., the Jewish writing Second Maccabees (chapter 8) speaks highly of the Constitution of the Roman Republic.

However, the latter crashed in B.C. 70*f*. It succumbed to the tyranny of the dictator Julius Caesar (who unsuccessfully attacked Britain in B.C. 55*f*). Then Rome became transformed into the tyrannical Roman Empire ï under Augustus, Tiberius, Caligula and Claudius. *Cf*.: Daniel 7:7*f*; 11:30*f*; Luke 2:1*f*; 3:1*f*; Second Thessalonians 2:3-8; and Revelation chapters 12 to 17*f*.

In South Britainôs Cornwall (within what later became known as England), from the time of the B.C. 1185 Brut onward, the Moral Law of God was enshrined ï as Ancient British Common Law. This seems to have been simplified and re-codified triadically, by his descendant the B.C. 510 Ancient British King Moelmud alias Mulmutius. Indeed, there is evidence even of Hebrew influences on the *Mulmutine Laws*.

King Moelmud stressed equality of rights and of taxation; freedom of movement; the right to bear arms; the right to vote; and the rights to life, liberty, and the pursuit of happiness. He required the worship of God, military service, and compulsory jury duty. His son Belin the road-builder re-emphasized and augmented all of this. Indeed, Belin even added that ñthere are three things free to a country and its borders: the rivers; the roads; and the places of worship. They are under the protection of God and His peace.ò

During the sixth century B.C., Moelmud and his son Belin built roads or highways across Britain. Such played a big role in spreading the Common Law throughout the land ï and in later spreading Christianity, when it arrived some 500 years later. Moelmudôs sons Belin and Brenn also acquired international influence among the Celts in Europe. Indeed, they held even Rome in check.

The Mulmutine and Belinian Laws, *via* Asser, were later incorporated into King Alfredôs Saxon-British Christian Laws. With yet later input from the A.D. 900 Celto-Brythonic Laws of Hywel Dda, they still further kept on influencing Brythonic and English Law ï even after their temporary óNorman-izationô under William the Conqueror. Thus *Magna Carta*, Fortescue, Selden, Spenser, Shakespeare, Lord Chief Justice Coke, the British *Petition of Right*, Blackstone, Tomlinson and the U.S. *Bill of Rights*.

We then observed that the Celtic Picts and yet more Scots from Ireland arrived in Scotland around B.C. 334*f.* And at that time, the importance of all the Ancient British Isles was recorded ï by the B.C. fourth centuryôs Aristotle, Dionysius, and Pytheas.

The British Queen Martia and her Martian Laws were noted next, and also the gold and silver coinage in Britain (centuries before the arrival of the Romans). Finally, we listed: further evidence of cultural sophistication in Britain; developments in Ancient Scotland; and the general level of Celtic civilization ï during the last three centuries B.C.

9. British Common Law during the First Century B.C.

In chapter 9, we saw that the Ancient Britons long preserved the óShem-iticô religion of the Japhethitic Gomer-ites or Cymric Cimmer-ians. Also during the first century B.C., they continued to improve their technology. This became apparent: in their weapons; in their mining; in their marketing of precious metals; in the development of their coinage; in their ship-buiding; and in their international trade.

This cultural progress can be seen also in their famous settlements in and around Ynys Witrin (alias Glastonbury) in the West Country, and in and around London in Eastern Britain. It can be seen also in the Ancient Britonsô military prowess against

Rome, starting with that of the Cimbri around B.C. 111. The prowess is evidenced even by the subsequent developments in the north of North Britain and in the south of Scotland ï also in aiding the South Britons against Julius Caesar.

Posidonius the Greek visited Britain around B.C. 100, and chronicled some of her achievements. Around B.C. 72*f*, King Lludd renamed Troynovant alias New Troy (the City of Brut) ólondonô ï and rebuilt its walls.

After Lluddôs death in B.C. 61, Caswallon was appointed regent (for Lluddôs two minor sons). Caswallon proved to be a capable administrator, and also a military genius (thus Sir Winston Churchill).

In B.C. 60, the great World Historian Diodorus of Sicily gave a useful description of life in Ancient Britain. Such covers cameos of British life at least from B.C. 500 onward.

Then, in mid-first-century B.C. Rome, her Republic collapsed and Julius Caesarôs tyranny arose. At the time of his attacks on Britain, he himself gave an insightful picture of that land and of its druids (with their great legal learning) ï and well as cameos of the Celts in general as well as of their kindred the Germans.

The Britons, observes Caesar ï lived in strongly fortified towns; maintained representative government; had the toughest soldiers; were magnificent charioteers; and put convicted capital criminals to death. The Germans ï as the ancestors of Britainôs later Anglo-Saxons ï had their own private homes; repudiated all sexual immorality; loved liberty; and popularly elected representatives over their several ócantonsô or groups containing approximately one hundred families. *Cf.* Exodus 18:12-28 & Deuteronomy 1:13-18.

In Romeôs B.C. 56 sea-battle against the Celtic Veneti and the Britons, the British warships terrified the Romans. Ancient-British sources, describing Julius Caesarôs B.C. 55 attack on Britain, note its failure. Even Caesarôs own account admits its lack of success. So too do the later accounts of Orosius, King Alfred, Trevelyan and Churchill.

Both the Ancient-British and Julius Caesarôs own account of his subsequent second attack on Britain in B.C. 54, chronicle his repeated failure. So too do subsequent writers, who confirm his defeat at the hands of the Britons.

Caesar noted the military camouflage used by the Ancient Britons against the Romans. And the *British Chronicles* describe the Britonsô victory celebrations.

Thereafter, Britain had peace. Such continued ï even while the Roman Dictatorship was being strengthened from B.C. 53 till B.C. 12*f*.

Thus Free Britain burgeoned, even after Rome had become a Dictatorship. From perhaps B.C. 45 onward, even alien Roman tradesmen had come to prosperous Free Britain (with its precious metals and pearls *etc.*). They peacefully augmented the already-existing British communication systems.

Indeed, there is even some evidence of Pre-Christian Jewish settlements in Britain ï with all that this implies regarding Hebrew religious influence on the Ancient

Britons (and even on their Pre-Christian druids). Such too would prepare the way for the advent of Christianity in the British Isles.

The B.C. 20 testimony of the Greek Strabo about Ancient Britain, is most revealing. Her clothes and coinage during the first century B.C., he explains, were elaborate.

The Pre-Roman Britons excelled in commerce and literacy, and some were even multilingual. The fact is, there were considerable cosmopolitan cultural influences afoot in Pre-Roman Britain at that time.

As stated, the influence of Pre-Christian Hebrew and even Jewish colonies in Europe had apparently reached even Ancient Britain. Such impacted on Druidism, and later on Christianity. For one should never discount the ongoing influence also on Britain of Pre-Christian Ancient Heber-ew colonies ï in many areas of Europe, and perhaps even in the British Isles themselves. Genesis 9:27 to 10:1-5 & 10:21-25.

Compare: the Phoenicians and the Danites (both before and after the time of King David); the B.C. 20*f* Strabo; Acts 15:21(?); and the 70 A.D. Josephusôs *Wars* VI:6:2. Note too the A.D. 395 Sonnini document (= Acts ñ29ò) ï and the learned Dr. Moses Margoliouthôs book *The Jews in Great Britain*.

One should expecially heed the testimony of that greatest of all hellenized Judaists ï Philo Judaeus ï just before the time of Christôs incarnation. That was also around the time of the last Free British kings before Christ, such as Tenwan and Cunbelin.

Writes Philo: ñOne country cannot contain all the Jews.... They are spread over most parts of Asia [Minor, including Gaul-asia alias Galatia] and Europe, both on the mainland **and on the islands**.... The various countries in which their fathers, grandfathers and ancestors have dwelt, they regard as their fatherlands. For in them they were born and bred.ò

It would thus be a very easy thing for Hebrew Christians to bring the Gospel straight from Palestine to Britain. Indeed, this would be even easier to do before Rome invaded the southeast of the British Isles in A.D. 43 ï than thereafter.

PART IV – CHRISTIAN BRITISH LAW BEFORE THE ANGLO-SAXON INVASION

In Part IV, we looked at christianized British Law before the Anglo-Saxons invaded Britain. There we saw: how Britain was evangelized by Judean Christians from 35 A.D. onward; how the Britons, christianizing, resisted the Pagan Romans from 43*f* A.D. onward; how British Christianity grew from A.D. 43 till 100; how Britain as a whole became a Christian country in the second century A.D.; how Christian Britain from 200-320 A.D. overthrew Pagan Rome; and how British Common Law developed, from the Briton Constantine the Great to the Briton Saint Patrick.

10. Britain Evangelized by Judean Christians from 35*f* A.D.

In chapter 10, we saw that Christôs advent (when it occurred) might possibly have been announced also in Britain ï by learned druids or ówise men.ô The wealthy Cymbeline ruled over Britain at the time of Christôs incarnation. Most of the early records are no longer extant, but it is very probable that there were strong Hebrew influences in Pre-Christian Ancient Britain.

Indeed, the Churchôs earliest Missionaries in Britain were not from the hated Pagan Rome. Instead, they were Hebrew Christians ï directly from Galilee and Judah.

Britainôs locality was most favourable for her early evangelization. Whether by Galatian Christians (thus Lightfoot, Neander and McNeill); or whether directly from Palestine (thus Ussher, Roberts and Goard).

Dr. Deansly explains the likelihood of Britainôs first church being established at Glastonbury. This thesis has some degree of historical feasibility ï especially in the light of the antiquity of Glastonburyôs first ñwattle churchò and the countless late-patristic stories thereanent.

Possibly Jesus Himself, and certainly Joseph of Arimathea (alleged to be His uncle) could well have taken the Gospel to Britain before or by A.D. 35. Acts 8:1-4 and 11:19*f* and 21:8 are thus all seen to be of some supportive significance as regards the early evangelization of Britain.

The writings of Britainôs oldest extant Historian, Gildas (A.D. 516*f*), place the arrival of the Gospel in Britain at before A.D. 37. Indeed, the Reform Councils of Pisa, Constance, Siena and Basle all corroborate that the British Church was the oldest in antiquity. So too even the Romanists Polydore Vergil, Cardinal Pole, Genebrard and Baronius ï and the great Irish Puritan divine, Dr. James Ussher.

To a considerable extent, Ancient Druidism was a preparation for the Gospel in Early Britain. Certainly, there are many Biblical predictions which seem to have been fulfilled in Britainôs early evangelization ï such as Isaiah 24:14-15*f* & 42:1-12 & 49:1-22.

There is also some evidence that Joseph of Arimathea brought the Gospel to Britain. See in Eusebius, Maelgwyn, Gildas, Isidore, Freculph, Nenni, Baronius, Cressy, Hearne, Ussher, Professor Dr. Hugh Williams & Rev. R.W. Morgan.

Joseph of Arimathea would seem to have been helped at Glastonbury by Josephes, Lazarus, Mary and Martha. Other Evangelists not of Josephôs party in Britain before the Pagan Roman invasion of A.D. 43, would seem to have included the Apostles James and Peter and Simon the Zealot (thus Dorotheus and Eusebius) ï and also the Christians Clement, Cyndaf and Ilid. All would have gone those Western Isles, straight from Palestine.

Such Christians were either Hebrews ï and/or Britons and/or Irishmen lodging or residing in (and long acquainted with) the Near East, and now returning home. *Cf.* Acts 1:8; 2:5*f* & 11:19*f*. In Britain, they were thus regarded as ñStrangersò or óCuldeesôï thus First Peter 1:1 and the *Ancient British Triads*.

For the epoch-making events set in motion on Pentecost Sunday, had vast missionary significance. Acts 1:8; 2:1-8*f*; 4:36*f*; 8:1*f*,40; 11:19*f*. So too did the great famine of Acts 11:28, and also the Claudian Edict of Acts 18:2.

Indeed, the latter both seem to have expelled not only Judaistic Hebrews but also Hebrew Christians and their companions ï as well as British Christians and British Druidists then resident overseas. All such persons then seem to have been at least temporarily expelled from the Roman Empire ï and into especially Free Britain and therebeyond.

The story of an Irish soldier named Altus being at Calvary, is set out by the Irish Protestant Church History Professor Stokes and by the Canadian Calvinist Dr. McNeill. Also the Irish Historian Haverty refers to two early Irish Christian Missionaries, Mansuet and Sedul. Mansuet was baptized, allegedly in Britain, during A.D. 40.

Indeed, the Apostle James himself is reputed to have preached in Ireland by A.D. 41 ï thus Maximus, Richard of Cirencester, Holinshed, Ussher, MacGoeghegan and Rev. R. Paton. Directly thereafter, in that same year, James is said to have visited and evangelized also in Britain ï thus Ussher, Flavius Dexter, Cressy and Paton.

Converts to Christianity in Britain before the A.D. 43 Pagan Roman invasion may well have included: King Llyr; Prince Bran; King Gwydyr; King Arvirag; and Prince Caradoc. Thus the *Triads*, Archdeacon Williams, and Lewinôs *St. Paul*. Indeed, the American Scholar Rev. Professor Dr. A. Cleveland Coxe in the *Ante-Nicene Fathers* states ñof Caradocò that there is ñvery strong reason to believe he was a Christian.ò

In the best traditions of covenant theology, these first British Christians seem to have been closely related to one another by blood. Acts 2:5*f*,38*f*; 16:31*f*; First Corinthians 1:16*f*; 7:14; 16:15*f*. Thus: Llyr, Bran, Gwydyr, Arvirag and Caradoc.

Sadly, there is a paucity (but not a total absence) of extant historiographical material contemporaneous with the above persons. Nevertheless, certainly the members of Prince Caradocôs immediate family are stated to have been Christians. Such would include: his daughters Eurgen and Gladys (or Claudia); his sons Llyn, Cyllin and Cynon; and his sister Princess Gladys alias Pomponia Graecina. See Tacitus, Dion Cassius, Bettenson, McNeill and F.F. Bruce. So too, apparently, were many of the British and Irish nobility ï such as Mansuet and Beatt (the Foreign Missionaries).

The first British converts seem to have included very prominent members also of the Royal Family. Such apparently embraced: Prince Caradoc and his father King Bran; Caradocôs sister Gladys Pomponia; Caradocôs sons Cyllin, Cynon and Llyn (or Linus); and Caradocôs daughters Eurgen and Gladys Claudia. *Cf.* Acts 9:15; 13:7*f*; 25:22*f*; 26:1*f*; Philippians 1:13 & 4:22; and Second Timothy 4:21. **Inevitably, this would massively impact on the political life of Britain – and on the British legal system**.

These first British and/or Irish converts seem to have been reached for Christ from Palestine ï before the Pagan Roman armies invaded Britain in A.D. 43. They would have been reached by Hebrew Christians who had known Jesus personally ï and/or by

Hebrew Christians and their companions who had heard and seen and been instructed by the Apostles ï or by both. *Cf.* Acts 1:8; 8:1*f*; 11:19*f*; 15:21; Romans 1:5-8; 16:25*f*; Galatians 1:2; 4:26; 6:16; Colossians 1:6; 3:11.

Indeed, it would seem that even by A.D. 43 ï Britain had already been influenced by the Gospel of the Lord Jesus Christ more than any other nation than the Holy Land itself. And the vast bulk of witnessing Christians in the Holy Land, had fled it as refugees therefrom ï by A.D. 67 at the latest.

11. Britons, Christianizing, resist the Pagan Romans (A.D. 43-87*f*)

In chapter 11, we sketched the increasing resistance by the Britons, from A.D. 43 till 87*f*, to the crass Paganism of the Romans who forcibly invaded and tenuously occupied a large part of Ancient Britain. We first showed the decline and fall of the Roman Republic itself until around B.C. 71*f*. Next we referred to the accounts of the A.D. 100*f* Pagan Roman Historian Suetonius on the rise of Romeôs Caesars. Then we cited Chicago Law Professor Edmunds ï on the legal lapse and moral collapse of Rome, from Republic to Empire.

We next outlined the road to war between Britain and Rome, from A.D. 10 onward. The amoral Pagan Roman imperialistic hatred of ethical and national British Druidism was noted. So too was the political situation in Britain just before the A.D. 43 Roman invasion. We then looked at the Roman records of Claudiusôs A.D. 43 attack on Britain; at the British accounts thereof; and at other comments thereon.

We next noted Vespasianôs first attack against the Britons at Exeter; the Roman use of war-elephants to disrupt the Britonsô war-horses; and the *Romano-British Treaty* of A.D. 45 (during which time the christianizing Roman General Plautius married the British Christian Princess Gladys). After recapitulating, we then described the further resumption of the Romano-British War.

It now moved toward the Western Uplands. Here the Britons more than held their own against overwhelming odds ï until the Romans tilted the military balance in their own favour through the brave fighting of German Mercenaries in the Latin Armies.

We then presented: the A.D. 98*f* Pagan-Roman Historian Tacitusôs account of the great British General Caradoc; other accounts; and the record of the capture of Caradoc by the Romans. We next related his sojourn in Rome from A.D. 52 till 59 ï and referred to implicit suggestions in the Pagan-Roman Historians Tacitus and in Suetonius on possible connections between Caradoc and Christianity.

We then cited Pagan-Roman Historians themselves on the moral superiority of the British General Caradoc to his contemporary the Roman Caesar Claudius. That moral superiority would again be seen from the war-speech of the British Queen Boadicea in A.D. 61*f*, and also from that of the Caledonian Commander Gwallog in A.D. 84*f*.

We next saw that, even after the capture of Caradoc, the British óHigh Kingô Prince Arvirag continued the fight against the Romans ï from A.D. 52 onward. New Roman Generals now arrived to fight in Britain, but without much success.

Indeed, the Romans even lost much ground there during the massive Anti-Roman uprising in Southeast Britain around A.D. 60*f*. This was inflamed even more ï by the Roman incineration of Druidismôs headquarters and leaders on the Island of Anglesey.

We then examined the Roman outrages against Boadicea and her daughters. This triggered off a widescale revolt in Eastern Britain around A.D. 61*f*, as seen in Boadiceaôs famous oration against the Romans.

Though the Britons were defeated, at the decisive Battle between Boadicea and Paulinus, at Ambresbury ï British resistance against the Romans still continued thereafter. Later, for some years, Venut fought successful battles against the Romans on the borders of Cumbria. This in turn was followed by many further skirmishes between the Britons and their Pagan Roman oppressors.

It was seen that the Roman persecution of both Druidism and Christianity, in Britain and elsewhere, had unintended side-effects. One such, was the promoting of co-operation between those two religions with one another ï and against the Pagan Romans as their common enemy.

Remarkably, from A.D. 75 to 87*f*, King Arviragôs son Prince Meric ruled over Britons from Westmorland. Yet the Roman juggernaut rolled ever northward ï as seen from Tacitusôs account of Agricolaôs campaigns against the Britons from A.D. 78 to A.D. 85.

At that latter time, the Romans finally got the upper hand over the Britons. Again only with the help of their German Mercenaries, the Latin invaders decisively defeated the British General Gwallog alias Kellogg [or Galga(cus)] at Scotlandôs Grampians.

Yet, even after the Romans inflicted their new ó*Peace Treaty*ô in A.D. 86, Gwallog still continued his resistance against the Romans till A.D. 87*f*. Indeed, even thereafter, some parts of Britain were never occupied by the Romans.

Significantly, also the Roman Historian Tacitus in A.D. 98 assessed that Britons even in those parts of their islands subjugated by the Romans ï were not deprived of their culture. Consequently, even the Roman-occupied areas of Britain were never really romanized. Thus, **also the Roman-occupied areas of Britain retained their own Brythonic laws and way of life** ï even under Roman rule.

12. The growth of British Christianity from A.D. 43 till 100

In chapter 12, even after the A.D. 43*f* Pagan Roman invasion of Britain, we noted the likelihood of the ongoing missionary work in Britain of the Arimathean Joseph till A.D. 76 ï and (for just a couple of years) also of Simon the Zealot and Simon Peter. After A.D. 43*f* and until their A.D. 46*f* removal to Pagan Rome, this was augmented by that of Aulus Plautius and his British Christian wife Gladys Graecina Pomponia ï and also by that of Rufus Prudentius and his British Christian wife Gladys Claudia.

The Christian British Royal Family, itself exiled to Rome from A.D. 52 onward, continued to witness there too. Thus Claudia, Llyr Llediaith, and Caradoc.

The latter sent his Christian son Cyllin back to Britain as his regent in A.D. 53. His other son, Llyn or Linus, in due course became Bishop over the Christians in Pagan Rome. His daughter Gladys Claudia raised at least four godly covenant children in dissolute Rome ï all of whom later greatly promoted Christianity both there and elsewhere. *Cf.* Second Timothy 4:21.

We next raised the question as to whether the Apostles Peter and Paul were ever in Britain ï after the A.D. 43 Roman invasion of that land, and before their own deaths. From A.D. 58 onward, certainly Paul seems to have sojourned among the British exiles in Rome. To Britain he seems to have sent the (apparently hellenized) Hebrew Christian Aristobulus. *Cf.* Romans 16:10.

This Aristobulus, whom the Britons called Arwystli, seems to have been accompanied on that journey by his son Manaw; by Cyndaw; and by Caradocôs daughter Eurgain. Aristobulus, perhaps himself married to a Greek-speaking Briton, would have worked in Wales and in Dorchester. An inscription at Glastonbury commemorates him and his children Rufinus and Marina and Avaea.

Also Caradocôs daughter Eurgain promoted Christianity in Britain. She endowed the mission in Llan-Ilid; launched the *Cor Eurgain* Missionary Training Centre; composed music; and organized Christian choirs and/or colleges.

Possible trips of the Apostle Barnabas to Britain were considered, in the light of the report that he baptized Beatt at Avalon and expanded the Church in Wales. Meantime, with his father Bran the Blessed replacing him at Rome as a hostage in his place, Caradoc in A.D. 59 returned to Britain ï and from A.D. 61*f* apparently conducted missionary work both there and in Ireland.

Paul the Apostle is alleged to have visited Britain after A.D. 58*f* ï thus possibly Clement; and definitely Jerome, Theodoret and Fortunatus. *Cf.* Acts 1:8 & 13:47.

This is taught also by Oxfordôs *Merton Manuscript* and by the *Sonnini Manuscript*, and implied by the All-British *Triads of Paul the Apostle*. Indeed, it is asserted also by: Venantius, Camden, Baronius, Ussher, Stillingfleet, Parker, Cave, Burgess, Alford and many others,

In Britain, there seems to have been an early christianization of the Anti-Roman British druids and their adherents. An approximately A.D. 58 visit to Britain by the Apostle Peter is asserted by Eusebius Pamphilius and Symeon Metaphrastes, and suggested by inscriptions on the edifice in London of the church building at St. Peterôs Cornhill.

The Apostle Simon the Zealot seems to have made a second visit to Britain around A.D. 60, and to have been crucified there by the Pagan Romans. Indeed, according to Dr. George Smith (LL.D. & F.R.G.S.), also the Evangelist Luke visited Britain.

Prince Bran returned from Rome to Britain in A.D. 68. He there and then introduced the use of *vellum* ï subsequently used to preserve the Holy Scriptures, and also to record British laws.

The Hebrew Christian Ilid worked in Britain from A.D. 68 onward, especially at the spot now called Llantwit (alias Llan-Ilid). Indeed, there is even some evidence that Scotland was visited by the Apostle Andrew around A.D. 69 ï and later, by some of the disciples of the Apostle John.

The A.D. 61-to-69*f* Pagan Roman attacks against both Britain and Palestine did not curb the expansion of Christianity even there. Clement maintained long-lasting contacts with Britain from A.D. 36 onward, and possibly right until he became a Bishop at Rome in A.D. 91.

Aggressive British Christian missionary work ï both local and foreign ï continued even under Roman rule. Thus: Mansuet went to France, Rome and Illyria; Beatt to elsewhere in Europe.

So there indeed seems to have been an óApostolic Ageô evangelization of Britain. Early Ante-Nicene testimony includes the statement by Clement that Paul evangelized ñto the extremity of the West.ò There is also the testimony of Tacitus (on the religious Briton Gladys Pomponia) ï as well as allusions by both Irenaeus and Tertullian to Christianity in Britain.

Tertullianôs contemporary, the Early Church Father Hippolytus, states that the Apostles Simon Zelotes and James as well as the Evangelist Luke all visited Britain. Indeed, Dorotheus declares that the ñAristobulus [of Romans 16:10]...was made a Bishop in Britainò ï and that the Apostle ñSimon Zelotes [was] crucified at *Britannica*.ò And Post-Nicene testimony anent an Apostolic British Church, includes that of Eusebius and Theodoret.

As to the **extent** of Britainôs evangelization during the Apostolic Age ï especially because of the christianization of the Royal Family and many of the nobles, there was a considerable influence of Early Christianity even on Ancient British Common Law. Thus: Moncaeus Atrebas, the Council of Constance, Ussher, Spelman, Alford, Dr. G. Smith, and Rev. Dr. Charles L. Warr. This is conceded even by critics such as Mosheim and McBirnie.

Rev. R.W. Morganôs thesis is that Britain was evangelized during the Apostolic Age. This had been prepared for, by centuries of Druidism (with its doctrines of initial trinitarianism, vicarious atonement, capital punishment, and human immortality).

The conversion of Prince Bran and the British Royal Family gave great impetus to the Christian Faith in Britain. It was spread there by Simon Peter, Simon Zelotes, Aristobulus, Caradoc and his family, and Paul himself.

In one word ï the British Church was always amenable to British Laws (and *vice-versa*). This implies that British Christianity today should not follow Roman nor Romish nor Roman-French Law ï but firmly uphold British Common Law.

For Britain was the very first nation to become Christian. This is reflected and entrenched in her Common Law, which ï however much she may now be pressured by the United Nations and the European Community ï is simply not negotiable.

13. Britain becomes Christian in the Second Century A.D.

In chapter 13, we saw that the christianizing culture of Early Britain as such was never romanized ï not even after A.D. 100. For Britainôs local self-government then continued ï even in the Roman Province of *Britannia*.

Her Apostolic Christianity was preserved by the British Culdees. They apparently first used the Old Celtic Version of the Bible, and not the later Old Latin translations.

Moreover, the Roman *Peace Treaties* of A.D. 86 and A.D. 120 unintentionally helped the British Church. For they provided political stability within Roman-occupied *Britannia* (alias South Britain) ï whereby Christianity could, in general, constantly expand.

In the remote areas of the Roman Province of *Britannia*, and also outside of but adjacent to it, life in the A.D. 100*f* territories of Free Britain was even more favourable for the growth of Christianity. On its border with Roman *Britannia*, Prince Meric of Westmorlandôs son the Christian King Coill ruled in Greater Cumbria from A.D. 125 onward ï even under the very shadow of the Pagan Roman Emperor Hadrianôs Wall, constructed from A.D. 122 to 130.

Anti-Roman ferment flared up again in North Britain, even after Hadrianôs Wall had been completed. Simultaneously, Christianity continued to expand there. For it seems to have been upheld by Britainôs Royal Family without interruption at least from the time of Caradoc and Arvirag ï throughout the Cumbrian days in Westmorland of Arviragôs son Meric, grandson Coill, and great-grandson Llew.

Coillôs covenant son was Llew the Lion ï alias King Lucius. Before A.D. 137, he embraced the Gospel through the preachings of Elfan and Medwy. The ongoing christianization of the nation continued.

In A.D. 156, the Celtic King Llew proclaimed Christianity to be the national religion of Britain ï thus even the later Anti-Celtic Anglo-Saxon Historians like the Venerable Bede and William of Malmesbury. Modern efforts of rationalistic historians like Harnack and Mosheim to offer alternative explanations of this evidence, are futile. Indeed, Llew sent Christian Missionaries even into ôDarkest Italyô as the very stronghold of Paganism.

Around A.D. 183, Llew requested the Bishop of Rome to send back some of those British missionaries ï so that Britainôs king himself could redeploy them in his own kingdom. The Roman Bishop Eleutherius gladly responded, and reminded Llew that the latter himself was the ôDefender of the Faithô ï Christôs vicarious royal representative to promote His Divine Law in Llewôs kingdom of Britain.

Llewôs missionaries then returned to Britain. There, Medwy taught theology ï while Elfan, Dyfan and Ffagan were appointed bishops.

King Llew himself endowed cathedrals at Winchester, Llandaff, Cardiff and Gloucester. He also endowed the churches later known as St Martinôs in Canterbury and St Peterôs Cornhill in London (where that Apostle himself is believed to have preached at an earlier stage).

Many were the political and other fruits of Llewôs regional efforts to elevate Christianity nationally. Revenues and lands were raised for churches; liberties and privileges were secured; and tranquillity was maintained throughout the land. Thus the *Welsh Triads*, the *Mabinogion*, the *Achau Saint Prydain*, the *Book of Llandaff*, Bede, Nenni, Geoffrey of Monmouth, Cressy, William of Malmesbury, Baronius, Polydore Vergil, Ussher, and Alford.

After Llewôs death in A.D. 201, the Caledonians and the Picts invaded York ï and an uprising broke out in South Britain against the unwise rule of the Pagan Roman Governor Trebellius. Yet Llew had exercised a lasting influence for good upon King Donald of Free Britain to the North of Hadrianôs Wall.

Such as were disobedient against the laws and wholesome ordinances of the realm, Donald caused to be punished. Indeed, he studied chiefly how to preserve his people in good peace and perfect tranquillity. For in A.D. 203, he was converted to the Christian Faith ï together with a great number of his nobles.

We then looked at the testimony of modern church historians like Professor Hugh Williams ï anent Christian Britainôs King Llew and Scotlandôs Christian King Donald. Woodward indicates that Llew alias Lucius is linked to British Christianity by the *Brut y Breninoedd*, Ethelwerd, Bede, Nenni, Geoffrey Arthur, Henry Huntington, and even the *Anglo-Saxon Chronicle*. Accordingly, Dillon and Chadwick insist that Christian culture then took root especially in Ancient Cumbria ï from the Solway to Morecambe Bay.

Canon Browne lists sixteen Archbishops of London from A.D. 180 till 586. Also Drs. Williams, Foster and Leatham expatiate on second-century British Christianity. They do so especially in the light of Tertullianôs similar claims made *circa* A.D. 195*f* that by then also ñthe haunts of the Britons inaccessible to the Romansò had already been ñsubjugated to Christ.ò See Tertullianôs *Answer to the Jews*, ch. 7. So too McNeill, Gwatkin, Mosheim ï and even Gibbon.

Accordingly, the political situation of those days was well summed up by the A.D. 200 Pagan Greek Historian Dio Cassius. Held Dion: ñThere are two very extensive tribes in Britain, the [Greater Cumbrian] Caledonians and the Maeataeò [or Picts of Northern Scotland] ï who ñmostly have a democratic government.ò The Pagan Roman Empire, on the other hand, was still totalitarian to the core.

14. Christian Britain, 200-320 A.D., overthrows Rome's Paganism

In chapter 14, we saw that during A.D. 202*f* the Pagan Roman Emperor Severus decreed against Christianity ï but was himself then killed while fighting the Britons in their own land. The Greek Historian Dio Cassius then chronicled the representative nature of government in North Britain beyond Roman *Britannia*. Indeed, there was

considerable foreign testimony ï thus Hippolytus, Sabellius and Origen ï about Christianity in Britain from A.D. 200 to 250.

We then looked at the progress of Christianity in Ancient-Brythonic Caledonia, noting that the illustrious successors of her Christian King Donald and others in what is now Scotland were favourably influenced by South British Christian refugees fleeing periodic persecution at the hands of the Pagan Roman occupants of their land. We also noted: the covenantal or family-based non-celibate Early-Celtic monasticism in the Ancient British Isles; Biblical influences in Ireland before A.D. 260; and the replacement especially in Ireland (though there only later), of druids by presbyters.

Further evidence of Christianity in South Britain is seen in the Christian inscriptions within the Lullingstone villa ï and in the accounts of martyrs such as Aaron, Julius and Alban during the antichristian persecutions by Decius and Valerian and Diocletian. It was seen that King Coel of Colchester together with his family resisted Roman Paganism, and that the Britons King Carawn and King Asclepiodot agitated for freedom from Pagan Rome.

We then examined the thesis that Helen was the daughter of King Coel, and that she bore Cystennin alias Constantine to her husband Constantius Chlorus in *Britannia*. According to some of Constantineôs then-contemporary panegyrists ï as well as Baronius, Ussher, Richardson and Schaff ï that first Christian Emperor of Rome was born and educated in Britain, where his father was Governor and his mother a British Christian Princess. Moreover, Constantineôs later laws evidence his own youthful profession of Christianity ï as too does his apparently being influenced by St. George and his cross, around A.D. 300*f*.

In due course, after the death in Britain of the Governor Constantius, in York his son the Briton Constantine was proclaimed the first Christian Emperor of Rome. The great church historian Eusebius eulogized Constantine after his triumph in A.D. 312, and his many ecclesiastical actions between A.D. 310 and 320 were recounted. Indeed, we then discussed the great political importance of Constantine and the fall of Pagan Rome. *Cf.* Revelation 6:9*f* & 12:10*f*.

We then noted Eusebiusôs account of the life of Constantine; of his imperial edicts; and of his concern for the publicôs welfare. As Emperor, Constantine legislated against: idolatry and pagan sacrifices; concubinage for the married; rape, abortion, infanticide and homicide; gladiatorial carnage; mistreatment of slaves; public works and court sessions on Sundays; imprisonment without trial; the scourging of debtors; inhuman imprisonment without air and light or with chains and shackles; and other cruel but thitherto not unusual punishments. He also legislated in favour of: the building of churches; the promotion of Lordôs Day observance; and the death penalty for practising sexual perverts.

We then noted the eye-witness testimony of Eusebius regarding the Briton Constantineôs public discourses ï and also that great Church Historianôs *Oration on the 30th Anniversary of Constantine's Reign*. Therein, Eusebius recounted Christôs recent achievements through Constantine. Subsequent evaluations of Helen and her son Constantine included those of Theodotus, Henry of Huntingdon and Dr. Hugh Williams.

Last, we considered the ongoing Celto-Brythonic legacy of Constantineôs Britain. Because of his imperial rule as the Roman Empireôs first Christian Emperor, the Briton Constantine greatly boosted especially his own countryôs political importance. Also Britainôs economic standards then surged into pre-eminence, even as her Celto-Brythonic culture continued. Most of all, however, she now became the great missionary arm of the Church, and a big bastion of Christian civilization.

15. British Common Law from Constantine to Saint Patrick

In chapter 15, we saw that the culture of Ancient Britain had much earlier and then very quickly embraced Christianity. Also for that very reason, christianized British culture had never willingly submitted to romanization at the hands of the Pagan-Italian Government-of-occupation. Nor did Britain do so even when Rome herself, under her British Christian Emperor Constantine, became at least nominally a Christian State in A.D. 313-321.

Indeed, within just a few more years, the Roman Armies ï themselves now finally christianized ï would withdraw from Britain forever. They would leave behind them a still-Celtic Britain ï a country and a culture which had begun to receive the Gospel even before the A.D. 43 to 397 Roman occupation (which had itself been pagan till A.D. 313).

The superficial Pagan-Roman occupation of Southern Britain (from 43 till 313 A.D.) ï before the Christian Briton Constantine himself undertook the christianization of Pagan Rome from A.D. 314 onward ï did not and could not arrest the previously-established process of christianization already underway specifically in the British Isles. To the contrary, it was precisely christianized British culture ï under influential leaders like the British Christian King Llew and the British Christian Emperor Constantine ï which now yet further christianized the Roman Province of *Britannia*. To a lesser extent, it beneficially influenced certain areas even of the Roman Empire on the Continent itself.

During the A.D. 43-314 Pagan Roman occupation, the broad masses of the Southern Britons ï and even more so specifically the Cornishmen, the Welsh, the Cumbrians, the Caledonians and the Picts ï were never either romanized or de-celticized. Rather was the ongoing Celtic culture smoothly christianized and enhanced ï by the continuing influence of the first Hebrew-Christian Missionaries straight from Palestine ï without ever losing its Britishness.

Least of all did any significant romanization of Occupied Britain occur ï especially after the A.D. 314*f* nominal christianization of the Continental Roman Empire by the Briton Constantine the Great. Too, his eldest son Constantine II was Ruler over *Britannia*. Yet, in addition to the Picts, also the Brythonic Caledonians were never even exposed to latinization ï nor brought into significant contact even with the Gaelic culture, until the arrival in meaningful quantities of more Iro-Scots from Ireland around A.D. 340*f*.

The Roman province of Christian *Britannia* was then attacked ï by Scots and Picts respectively from Ireland and the later Scotland, and by Anglo-Saxons from Denmark and Germany ï even from A.D. 343 onward. In this and other ways, Roman political

power in *Britannia* was constantly weakened. Yet Christianity became even stronger there. Thus, around A.D. 350, the orthodox Athanasius of Alexandria said that the British Bishops had given him valuable support against Arianism.

South-British Christians maintained their faith against pressures from the west, the north, and the east. Artifacts attest to a strong British Church. There was also even then a Celtic revival in *Britannia* ï which continued to hurl forth even more Christian Missionaries such as Ninian, Comgall, Patrick and (later) Kentigern from Cumbria. This was augmented by the work of Hebrew Christians like Solomon of Cornwall and his son Kelvius.

Also, the reality of the international outreach of fourth-century ecclesiastical leaders from Britain like Ninian and Patrick should be obvious even to the casual investigator. For British Christians influenced events: at the A.D. 314 International Church Council of Arles; at the A.D. 347 Council of Sardica in Illyria; and even during the A.D. 359*f* Council of Ariminum in Italy (where the British delegates (rather uniquely) maintained their own economic independence throughout the meeting of that Council. Hilary of Potiers himself declared that Britain was ñfree from all contagionò of Arianism. Indeed, Jerome of Bethlehem declared: ñBritain resounds with the death and resurrection of Christ!ò

There were even Christian pilgrimages from Britain to Palestine. The British navy exported corn to Europe. The bones of the Apostle Andrew were brought from Scythia into ónew Scythiaô alias Scotland (where it is alleged he previously preached). Indeed, Cornish Christians went to Brittany ï some of whom later returned to strengthen British Christians against the then-invading Anglo-Saxons.

There were Celto-British Culdee churches in Kent ï centuries before the A.D. 597*f* arrival there from Rome of the papal emissary Austin. Indeed, the very resistance to novel Anglo-Romanism offered by Celto-British Christians from then onward ï proves that Celto-British Christianity had long pre-existed both the gradual papalization of Rome and also the sudden vaticanization of many Anglo-Saxons in England from the time of Austin onward.

The so-called óRomano-Britonsô in the Roman Province of *Britannia* ï as distinct from the other Britons in the Non-Roman areas of Britain ï were in fact not at all Latins, but Celts. They were neither ethnically nor culturally Romans, but were freeborn British Christians. Accordingly, after the A.D. 397 Roman withdrawal from Britain ï the Celto-Britons mobilized their own defence forces.

It was to ward off attacks on Rome by barbarians from the East which necessitated the withdrawal of the Romans from Britain and helped *Britannia*ôs Britons to recover their political independence. This was followed by Christian-political growth in Post-Roman Britain ï on the basis of the constitutional confederation of the Celts in South Britain.

Also in Ireland, Christianity had made early progress. Indeed, throughout those Western Isles of Britain and Ireland ï a learned ómarried monasticismô had then replaced the similar customary lifestyle of the ancient druids.

Britainôs famous theologian Morgan at first rightly refuted Romanism, and wrote many valuable works until ï as óPelagiusô ï he sadly fell into error while residing in Rome. He was thereupon, for that latter reason, opposed also by the British Church. True Culdee Christianity, however, held its own in Britain ï as attested by many monuments especially in fourth-century and fifth-century Cornwall.

The evangelization of Scottish Strathclyde was undertaken by Ninian ï the infantly-baptized son of a Cumbrian Prince. Evidence of his activities can be seen from the remnants of his famous church building at Whithorn in Galloway. It is seen also from other signs of his influence throughout the length of what is now Scotland (from the Cumbrian border in the south to the Shetlands in the north). This influence of Ninian commenced before, and continuing after, the Roman withdrawal from Britain at the time of Romeôs collapse.

Constitutional government in *Britannia* was now strongly re-asserted. Indeed, also in the Deep South, there was an ongoing survival of Celtic culture both during and after the Roman occupation.

Again, British Missionaries increasingly inundated Europe ï especially after the Roman withdrawal. The Celtic Missionary Garmon taught Patrick, and combatted Pelagianism. Pallad the Pre-Patrician British Missionary preached to the Irish. Yet it was particularly the Brython Patrick himself who won Ireland as a whole for Christianity.

Clearly evidencing the practice of clerical non-celibacy among the Culdee Christians, the Briton Patrick himself had clergymen among his ancestors. They too seem to have been from Brythonic Strathclyde alias Greater Cumbria, which then included Cumberland and Westmorland as its very heartland. Indeed, not Scotland but Cumbria seems to have been Patrickôs birthplace ï even as it had been Ninianôs. For that Padraig, his name latinized to Patricius alias Patrick, wrote not in Erse nor in Gaelic but in Latin (the official language of Roman *Britannia*).

Yet Patrick also had a thorough grasp of his own Brythonic mother-tongue in which ï and the Ancient British Bible with which ï he had been raised. Thus, he was from birth a Proto-Protestant ï and indeed emphatically a thoroughgoing Trinitarian.

When but sixteen, Patrick was captured and enslaved in a raid by pirates from Ireland. Comparing Britainôs Christians with the Ancient Israelites, he deplored a degree of apostasy especially among the Picts in Scotland. Exhibiting great missionary zeal when in Ireland both as a slave and thereafter again as a freeman, he there eminently extended and edified the Irish Culdee Church.

In addition, securing the conversion of most of the kings and chieftains there ï he also caused Irish Common Law to be streamlined and inscripturated as the long-lasting *Senchus Mor*. As a consequence, especially Armagh and Bangor become strongholds of Christianity in Ulster ï even down to this very day.

So, then ï at that time, there was no vaticanization anywhere at all in the Ancient British Isles. The Roman Armies withdrew from Britain in A.D. 397, in order to defend the Imperial City before it fell to the Goths in 410 A.D. This gave a general peace to the many Christians then in Britain (and to a much lesser extent even in

Europe) ï and complete freedom from Rome in the Western Isles for the next couple of centuries.

During those many years, especially British Christians ï such as óGreater Cumbriansô like Ninian, Patrick, Gildas and Mungo alias Kentigern ï would evangelize the rest of the British Isles. As a result, the Isles would soon yet further unfold ï in peace ï their own developing Non-Roman Christian British Common Law.

PART V – THE BRITISH CELTS CHRISTIANIZE ANGLO-SAXON COMMON LAW

In Part V, we looked at the christianization of Anglo-Saxon Common Law in Britain. That was done largely through the ongoing and faithful influence of the Proto-Protestant British and especially Irish Celts.

There, we saw how Rome withdrew from Britain just before the bulk of the Anglo-Saxons arrived ï and also how Christian Britain survived the attacks of those fierce Anglo-Saxons. We also noted how sixth-century Christian Britain developed between the times of the Brython Arthur and the Italian Austin. We saw how the Jutes in Kent and the Saxons in Essex & Sussex in Southeast England and how the Northern Saxons in Northumbria & Mercia were christianized. Indeed, we further observed how Wessex became the embryo of Christian Englandôs United Kingdom.

16. Rome Withdraws from and the Early Anglo-Saxons Arrive in Britain

In chapter 16, we saw that immediately after the Roman withdrawal from Culdee Christian *Britannia* in A.D. 397, there were only a few Anglo-Saxons then in that land ï and indeed only from about 350-390 onward. While it is certainly true that the Anglo-Saxons both in Germany and in England were still Non-Christians, the Pro-Roman amateur historian Edward Gibbon was quite wrong to view them ï and, to a lesser extent, even more wrong to view also the Christian Celto-Britons ï as barbarians.

From that time onward, however,many Anglo-Saxons moved westward ï from Europe, and toward Britain. Many arrived around A.D. 420*f*, and yet more around 449 and thereafter. Yet even then, although ultimately becoming culturally dominant, they never constituted nor became a numerical majority of the inhabitants in Christian Britain.

Even the romanophilic Gibbon rightly admits some of the shortcomings of Imperial Roman Law, which degenerated especially in Post-Theodosian and Post-Justinianic times. Pre-papally, there was quite a degree of christianization in Continental Common Law systems. However, they then became progressively hybridized ï until the Late-Mediaeval óReceptionô of Semi-Christianized Roman Law into those countries of the European Continent whose Common Law they then absorbed (or rather replaced).

Mercifully, this never happened in England ï nor in the countries later colonized therefrom. There, christianized Common Law (without either romanization or semi-romanization) still obtains ï even to this very day.

There was thus indeed a papal deformation of semi-christianized Common Law systems on the European Continent ï even before the ôReceptionô of Roman Law there. Yet christianized Celto-Brythonic Common Law was never papalized. In that system, the ongoing influence of the Bible ï even from Old Testament times onward ï continued to obtain. To some extent, it still does.

Even among the Pre-Christian Anglo-Saxons, their Common Law was of a very high standard ï through an unusually large measure and operation of Godôs common revelation and His common grace. Even Ancient Pagan Rome testifies as to the excellence of Pre-Christian Germanic Law. This is seen especially in Tacitus. Also Ernest Young demonstrates the moral excellence of Anglo-Saxon Family Law when compared to Roman Law ï and the Roman Tacitus himself admits the moral superiority of the Germans to the Romans.

Already the B.C. 58*f* Julius Caesar shed some light on similarities between the Ancient Germans and the Ancient Britons, and the A.D. 98 Tacitus regarded those Germans as kinfolk of the Celto-Britons. Indeed, even after the migration of many Non-Christian Anglo-Saxons to Britain especially during the fifth century (A.D.) ï their Co-Japhethitic Christian British cousins greatly influenced them there.

History Professor J.R. Green and Law Professor P.D. Edmunds have written incisively on the Early Anglo-Saxons in Britain. Briefly overviewing the progressive conquest of England by the Anglo-Saxons, it was noted that they in turn were conquered by the Christian Gospel there ï largely through the work of Celtic Culdee Missionaries ï even before A.D. 700. Other Christian influences on English Anglo-Saxons, however, reached them from the Teutonic Franks before A.D. 600 ï and even from French and Italian Romanists thereafter.

Wright and Trevelyan have usefully described the christianization of the English Anglo-Saxons. It is not true, however, to allege that the Celto-Britons never tried to win them for Christ.

Those Brythons were indeed hostile to the Non-Christianity of the invaders from Germany, who soon oppressed them. The Brythons also opposed the papalization of the Anglo-Saxons by Missionaries from Rome.

But the Christian Brythons were never averse to the christianization of the Anglo-Saxons. Even while not infrequently lacking enthusiasm themselves to work toward the conversion of their conquerors, at least some such efforts were indeed made (also by the Brythonic King Arthur). And especially by the Proto-Protestant Christian Irish.

17. Christian Britain survives A.D. 429-500
Non-Christian Saxon Attacks

In chapter 17, we saw that Pre-Saxon Christianity in Brythonic Britain was very strong ï especially in Cumbria, Cambria and Cornwall. Its impact upon the Ancient

Laws of Wales can be seen clearly ï in institutions like the *trev*, the *cenedl*, the *cwmmyd* and the *cantrev*. Compare Exodus 18:12-21 and Acts 15:1 to 16:5.

Indeed, even Saxon institutions like the manor and the jury clearly derive from their Christian Celto-Brythonic counterparts. Or, alternatively, from a common ancestor ï such as in the case of *gavelkind*, the *mercheta*, and *borough-english*. Thus Coke, Blackstone and Maine.

After the collapse of Roman rule in Pre-Saxon *Britannia*, the Brythonic Cystennin Fendigaid came over to rule in Britain ï from Brittany. His descendants in Britain included Cestynn, Embres Erryll, Uthyr Pendragon and King Arthur. Other Brythonic leaders who blocked fresh invasions of Britain from Germanic tribes in Europe ï include Cunnedd, Coell Hen, and Owain ap Maxim. Indeed, the political revival of the Brythons was accompanied by that of their orthodox Christianity too ï despite Pelagian pressures.

The Celtic Garmonôs great triumphs in Culdee Christian Britain ï both theological and military ï were then considered. The Celtic view of the Britonsô triumph at the ñHallelujah Victoryò in A.D. 429 was presented. So too were the views of the later Anglo-Saxon Englishmen Bede and Huntingdon.

The initial consequences of this, included bountiful harvests and great blessings. However, subsequent ingratitude triggered off famine ï and also fresh attacks by the Pagan Picts and their allies. Deuteronomy chapters 27 to 29!

The British King Vortigern then concluded a very shortsighted Anglo-Brythonic alliance against the Picts. However, when the Anglo-Saxons suddenly switched sides and indeed allied themselves with the Picts and against the Britons ï many of the latter then fled to Brittany in the last part of the fifth century.

Yet Brythonic and Pictish Scotland to the North was even then not only receiving a large and partly-christianized Scotic population from Gaelic Ireland. In Scotland, both those Scots and the Picts themselves gradually became christianized.

The Brythonic Christian King Embres Erryll then helped the Britons recover from the errors of Vortigern, winning many battles against the Saxons. However, few British writings were preserved ï for first the Saxons and later the Vikings ravished many of their records and destroyed most of their churches.

Nevertheless, the Brythonic account of the first Saxon/Brython clashes is indeed preserved in the writings of Geoffrey Arthur in Monmouth (which he is turn derived from Brittany). And the Anglo-Saxon or English account is preserved in the writings penned by Bede of Yarrow and by Henry of Huntingdon.

According to David Hume, even after a 150-year struggle against the Saxons ï the Brythons were by no means exterminated. Gladys Taylor has demonstrated the continuation of Christian Britain even under the Saxons (with whom they were slowly amalgamating). Indeed: Rev. L.G.A. Roberts, Isabel Elder, Barrister Owen Flintoff and Barrister Hubert Lewis have all shown the Brythonic influence upon the Saxons even in respect of legal institutions like the tithe.

The fact is, the Celto-Brythonic Church stubbornly endured ï despite the opposition of the Saxons. Thus Maelgwyn, Bede and Chadwick. Indeed, Isabel Elder has noted the Celto-Brythonic Churchôs resistance even to the later Anglo-Roman Church ï as too have William of Malmesbury, Archbishop James Ussher and Professor Hugh Williams.

Overseasô testimony about Brythonic Christianity even under the rule of the Saxons, includes that of Arnobius and Theodoret. Flourishing Early-Welsh Christianity from about A.D. 450 onward is shown in the life and work of Illtyd, Dyfrig, Riocat, Dewi, Teilo and Cadoc. It is seen also in their overseas missionary work in Ireland and in Brittany (thus Williams, McNeill and Hanna).

There was thus an ongoing Brythonic military resistance to the Saxon conquest, accompanied by the consolidation of Christianity in Southwestern Britain and her colonies. Christianity was further strengthened also in Cumbria and in Scotland. The British King Embres Erryll could not be dislodged from the Cotswolds ï and he strengthened Christianity in Amesbury. Indeed, his brother and successor Uthyr Pendragon defeated two Saxon chiefs ï and also raised Celtic Britainôs greatest leader (King Arthur of the Round Table).

18. Sixth-century Christian Britain from King Arthur to Rome's Austin

In chapter 18, we first presented early evidence for the historicity of the Celto-Brythonic Arthur, óHigh Kingô of Britain. Baptized in infancy as the son of King Uthyr Pendragon, and himself called to the kingship while still a youth, Arthur ranged the West Country ï from Cornwall and Cambria in the South, to Cumbria and Caledonia in the North. Indeed, most of the place-names of his battles ï such as that of Chester (on the western border of Greater Cumbria) and that of Cat Coit Celidon (north of Carlisle) ï would locate him more in the Northwest than in the Southwest of Brythonia.

Sir Winston Churchill later stressed the importance of King Arthur ï to Christianity; to freedom; and to law and order. For Arthur fought against the Non-Christian Angles in Northumbria ï and marched into battle with a Christian cross painted on his shield.

Arthur was even of international importance. For he established his presence in Ireland, Iceland, Dalriada, Pictavia, Norway and perhaps even elsewhere in Northern Europe. He also took a strong position against Rome, and refused all payment of tribute to that Imperial(istic) City.

Arthur defeated the Saxons in twelve major battles ï culminating in his own great heroism at Mount Badon in A.D. 516. From time to time, he presented the defeated Saxons with an ultimatum. That ultimatum was this ï submit to Christian baptism, or return to Germany!

Various ôWest Countryô traditions in the Southwest of Britain connect Arthur also with Gelliwig in Cornwall. They connect him also with Britainôs first church in Somersetôs Glastonbury ï where he is said to have been buried around A.D. 542.

With the death of King Arthur, one approaches the demise of the old Celto-Brythonic kingdom in Western Britain. That then stretched from Strathclyde in the north (from what is now West-Central Scotland) to Cornwall in the south (of what is now Southwestern England).

His successor King Maelgwyn of Wales died of the plague in 547. Then, around 560, the eye-witness Gildas records that ñthe impious Easternersò from Germany ignited Britain ñfrom sea to seaò ï in an ñassault comparable with that of the Assyrians of old on Judaea.... All the major towns were laid low by the repeated battering of enemy rams ï laid low too all the inhabitants, church leaders, presbyters and people alike ï as the swords glinted all around, and the flames crackled.ò

Also Geoffrey Arthur of Monmouth declared that the Saxons had ñdesolated the fields; set fire to all the neighbouring cities; burnt up well-nigh the whole face of the country from sea to seaò ï and ñlaid waste well-nigh the whole island.ò This continued until ñthe remnant of the Britons therefore withdrew themselves into the western part of the kingdom, to wit Cornwall and Walesò ï and Cumbria. Yet even from those remote areas, ñthey ceased not to harry their enemiesò ï *cf.* the Men of Harlech!

Indeed, especially Celtic Culdee Christian Missions continued from Britain spiritually to ñharry their enemiesò into becoming Christians ï despite all resistance thereto by the Saxons. Bridget and others took the Gospel to Western Scotland; Brendan to Iceland, if not also to North America; the Cumbrian Kentigern to Pictavia; Columba, from Iona, throughout Scotland; and Columbanus to Burgundy, Switzerland and Lombardy in Northern Italy. All of this was the work of Culdee Christianity ï alias Proto-Protestantism. For Romanism in Britain was still quite unknown.

One of the greatest of those Culdees, was Rev. Gildas the Wise ï whose writings are the oldest extant of any Brythonic Church Historian. Like so many of his illustrious predecessors, Gildas too was born in Greater Cumbria. A married man with two sons, he was utterly devoted to Holy Scripture ï almost the whole of which he committed to memory. Living in the period of Christian Brythoniaôs greatest achievements, Gildas outlined the Britonsô illustrious church history from A.D. 35*f* to 560 ï while strongly condemning the antinomianism which had then begun to corrupt even the British Church.

Nevertheless, with the exception of the Anglo-Saxon invaders in Eastern England ï by A.D. 560 the various regions of the British Isles as such had all been christianized. Among the Celtic Gaels, Christianity had now triumphed in Ireland and on the Isle of Man. Among the Celtic Brythons in Britain, it had even earlier triumphed in: Anglesey; Wales; Cernau (or Cornwall); Dyvnaint (or Devon); Sumorset (or Somerset); Hwiccas; Loidis; Elmet; Lindesey; Deira; Cumbria; Reged; and Strathclyde. Even then, the vehement and ongoing mission of the Proto-Presbyterian and strictly sabbatarian Columban Culdee Church ï from Ireland and Iona ï was consolidating Culdee Christianity among both the Picts and the Scots.

Partly through the instrumentality of Columba himself, Scotic Scotland finally became independent of the Ulster Iro-Scots in A.D. 572. Thereafter, Culdee views were impressed upon the new Scottish nation.

Those views included the study of the Holy Scriptures in non-celibate monasteries ï and indifference (thus Columba) if not antagonism (thus Columbanus) toward the Bishop of Rome. Then and subsequently, the Picts and the Scots would influence one another. Both would finally be amalgamated into a Gaelic/Pictish óGreater Scotlandô around A.D. 850 ï with also Brythonic Strathclyde subsequently to follow suit.

Meantime, from Strathclyde in the North to Somerset in the South, the Brythonic Laws remained ï in spite of decisive Saxon advances (thus Chadwick and Williams). Also, despite the military disasters suffered by the Brythons in England from A.D. 550 to 600, they resisted even Romanism too throughout the sixth century. The A.D. 520-589 Dewi Sant, the Patron Saint of Wales who consolidated Culdee Christianity there, is typical of the Brythonic Church at that time.

Indeed, not only had the Bible-believing Culdees impacted upon Celtic Law. According to Barristers Flintoff and Lewis, Early Celto-Brythonic Common Law even began to impact on Early Anglo-Saxon Common Law. This is seen *inter alia* in the origin and development of the legal institutions of compurgation, the hundreds, the tithings, the village green, the manor, the jury, the House of Commons, the House of Lords, and Parliament itself. Genesis 14:20; 28:22; 37:9*f*; Numbers 1:2*f*; 10:2*f*; 19:2*f*; Matthew 19:28.

The fact is, even the victorious Saxons progressively absorbed Christian-British values from A.D. 550 onward. Culdee-Christian Celtic influence upon Anglo-Saxon Northumbria is detectable both in the Anglian Berniciaôs proximity to Celtic Culdee Christian Cumbria ï as well as in Northumbriaôs absorption of the adjacent Celtic Christian Deira. Culdee-Christian Celts also influenced the óAng-lishô in Kent and Wessex. Moreover, the A.D. 615*f* demography of Angle-land alias England shows that Brythonic influences were still continuing even there ï as they still are even today.

Indeed, even before the Britonsô A.D. 591 last victory against the Saxons in Wodnesburie ï an Anglo-British culture through increasing intermarriage between Brython and Saxon was already emerging. This was occurring, all the way to the East of a diagonal line from Northumbria in the Northeast to Wessex in the Southwest of England. During the century which followed, that cultural integration would become complete.

19. The Christianization of Southeast England from Kent to Wight

In chapter 19, it was seen that there were many Christian Brythons in Kent, both before and after the A.D. 449 arrival there of the Jutes. This had some bearing upon Kent becoming the first region of Anglo-Saxons or Anglo-Jutes in England to submit to baptism.

Unfortunately, however, this was done through the agency of the Romish Missionary ï Austin of Italy (around 597 A.D.). The Bishopric of Rome was then

degenerating into the papacy ï and gravely weakening Christianity throughout Continental Europe. Daniel 7:7-25; 12:7*f*; Second Thessalonians 2:3*f*; Revelation 12:13*f*; 13:11*f*; 17:4*f*.

Also from that time onward, Mohammad and his armies swiftly accomplished the Islamic destruction of corrupt churches from Persia to Morocco. The same later followed even throughout Asia Minor ï and also in various parts of Southern Europe. Revelation 9:1-21 & 16:13*f cf*. 19:20.

Even before his conversion to Romanism around 597*f* A.D., the Anglo-Jutish King Aethelberht of Kent was favourably enough disposed toward Christianity to marry a Teutonic-Catholic but Non-Vaticanistic baptized Frankish Princess ï and to allow her to set up a Catholic chapel in Canterbury. Indeed, he also allowed Austin of Rome to bring a party of monks to Kent ï with the express intention of making the Anglo-Jutes Romanists.

There was, however, strong Proto-Protestant Brythonic resistance to the Italian Romanist Austin ï and also to his Anglo-Jutish converts. He himself acknowledged the pre-existence of Non-Romish Christianity in Britain, and its continuing existence to the West of Kent. However, his attitude toward the then-contemporary Celtic Culdee Christians was arrogant and offensive. Consequently, all his attempts to romanize the Celto-Brythonic clergy ï were altogether fruitless.

After Austinôs A.D. 603 meeting with the Brythonic Church, there followed seven gruelling years of confrontation between British Culdees and Romanists. There was in A.D. 610*f* consequently a strong Romish and Anglo-Jutish backlash against the Culdee Britons ï and *vice-versa*.

Chief doctrinal differences between the Apostolic British Church and the then-recent Romanists among the Anglo-Saxons in the eastern parts of South Britain, were precursors of what would become even more stressed at the later time of the Protestant Reformation. Such A.D. 600*f* differences centred round the Romanistsô cavalier attitude toward Apostolic Scripture ï and consequently also their own misconception of baptism; their innovation of purgatory; their episcopalianistic confirmation; their clerical celibacy; their metropolitan hierarchy; and their commitment to the primacy of the Bishop of Rome.

This led to further tensions also of a legal nature ï between Brythonic and Roman Law, and even between Brythonic and Anglo-Jutish Law. Brythonic Law was far more in harmony with Holy Scripture than was Roman Law. Anglo-Jutish Law was only now about to be exposed to the Bible ï yet, thank God, not also to Roman Law.

There was and is a vast gulf between Roman Law on the one hand and the first Anglo-Jutish or English Code in Kent on the other. The ótariff lawsô of the Anglo-Jutish Code or *Dooms of Aethelbehrt* were of a compensatory nature. *Cf*. Exodus 22:1*f*. That Code majored not at all on imperial statutes ï but rather on common offences regarding private property, sexual behaviour, homicide, violence, morality, marriage and servants. Unlike historic Roman Law, one may certainly claim for the A.D. 617 *Dooms of Aethelbehrt* at least a óSemi-Christianô character.

Law Research Professor Warren W. Lehman of the University of Wisconsinôs Law School has well emphasized the importance of the *Dooms of Aethelberht* ï and outlined their essential character. That legislation represents Englandôs oldest law code. It is totally devoid of any influence from Roman Law. Yet it may well have received some input from the Brythonic Common Law previously paramount in Canterbury ï as seen, for example, in the abiding Celtic institutions of *borough-english* and *gavelkind* especially in Kent.

Surveying developments in the World from A.D. 620 to 666, it was seen that Islam arose as a judgment against Romanism. For Rome had departed from especially the vernacular use of Scripture. She had pursued a cultural imperialism against local customs. Indeed, she had declined into the idolatrous use of images. Against all of these things, Islam rightly reacted.

Yet Proto-Protestant Celtic Culdee Christianity was dominant even in England ï until the A.D. 664 Synod of Whitby. Only from about A.D. 666 onward did Romanism appreciably leaven the English Church ï though never as much as it did the European Continent. Revelation 12:13*f* & 13:18. The Non-English Celtic Church in Britain, however ï in Cornwall, Wales, Anglesey, Man, Cumbria, and Scotland ï would still long remain Proto-Protestant. And the Irish Church, yet longer.

We next looked at the Kentish laws of Eadbald, Earconberht, Hlothhere and Eodric. There, we noted that the two trends of both preserving Germanic Common Law and avoiding Roman Law ï were then still continuing. The further christianization of Anglo-Jutish or Kentish Law is apparent in the A.D. 695 *Code of Wihtred*. Indeed, also the *Encyclopaedia Britannica* has recognized the influence of Christianity on Early Anglo-Saxon Law ï especially as regards ownership, donations, wills, and the rights of women.

Finally, we very briefly noted the Germanic Common Law systems of the early East-Anglians, the East-Saxons, the South-Saxons and the Wight-ians. None then produced an important extant law code. However, it is clear that the Brythons indeed influenced the chronological order of christianization of the various Anglo-Saxon areas of Southern England.

In Godôs good time, as we shall show in subsequent chapters, this would have a profound effect also and especially in Northumbria and Mercia and Wessex. Indeed, these were the three great nuclei of the new Anglo-British nation then coming into being.

20. The Northern Anglo-Saxons christianized in Northumbria and Mercia

In chapter 20, we first noted Northumbriaôs Pre-Anglian Proto-Protestant Brythonic kingdoms of Berneich alias Bernicia and Deifyr alias Deira. Such Celtic Christian kingdoms obviously helped prepare the groundwork for what later became Early-Anglian Northumbria, and thereafter Anglo-British Northumbria.

The A.D. 805*f* Brythonic Historian Nenni has referred to Early Northumbria, and also Sir David Hume has written on Pre-Northumbrian Bernicia and Deira. All in all, it is clear that there was indeed an influence of Early-Celtic Common Law on that of Northumbria.

Important was the Anglian Aethelfrith of Northumbriaôs decisive victory over the Brythons near Chester ï at the beginning of the seventh century. That was then soon followed by the initial christianization of Northumbriaôs North-Anglians.

First, their King Edwin took over and expanded that Anglian kingdom. Second, he married the Romanist Aethelberga of Kent ï and himself received baptism. Third, he established Christianity as the religion of Northumbria ï enacting many good laws. Fourth, he engineered a great political expansion of his domains. Fifth, he christianized (but did not romanize) Anglian Common Law.

After noting a coalition between the Christian Brython Cadwallon and the Mercian Saxon Penda against Northumbria, we took a look at the life and times of the latterôs King Oswald. Raised in exile among the Culdees to the north of that Kingdom, after securing his throne he strongly promoted the mission in Northumbria of the Culdee Aidan of Iona. This triggered off a great intertribal and international outreach of the Culdees from Lindisfarne ï tragically followed by the sudden death of Oswald.

He was succeeded by his rather less able brother Oswy. After the latterôs historic victory over the Non-Christian King Penda of neighbouring Mid-Anglian Mercia, the stage was set for the christianization also of that latter kingdom. This was then followed by the consolidation of Christianity among almost all the Anglo-Saxons, from A.D. 630 to 660.

However, that was in turn succeeded by the beginning of the (re)romanization of the Anglo-Saxons ï from A.D. 660 to 666. We discussed the immediate background of the A.D. 664 Synod of Whitby, and identified conspicuous issues there addressed. Revelation 12:13*f* & 13:18. Whether consulting the account of the A.D. 731 Bede or the more recent accounts of Williams, Roberts, Taylor or Warr ï it is clear that the basic issue there was the Culdee Christian commitment to the Apostolic Holy Scriptures ï *versus* the novel Roman Catholic doctrine of a prescriptive papacy.

However, even after the Romanistsô triumph at Whitby, there was still a considerable influence of Culdeeism even in romanizing England itself. This has been well documented by Rev. Professor J.T. McNeill and Rev. Dr. J.A. Duke. Meantime, the overwhelming Culdee influence in the Non-English areas of the British Isles, continued unabatedly. Indeed, Rev. Professor Dr. G.T. Stokes and A.S. Green have shown that the Culdee influence was dominant throughout Ireland for many years even after the eleventh century.

That greatly assisted the consolidation of Christianity even in England itself, from A.D. 675 onward. This was coupled with the ongoing impact of Iro-Scotic theology and law there too, even after Whitby. This is seen in the work within England of Cuthbert, Aidan, Adamnan, Edbert and Aldfrith. Indeed, one notes Culdee influences even upon and through the Romanist Bede of Northumbria ï and the continuing influence of the Celts within Northumbria and upon England even after Bede.

There was, then ï even after Bede ï an ongoing persistence of Culdee Christianity in the British Isles. With the gradual decline of Northumbria, there followed the rise of an emergent England. It was accompanied by ongoing Celtic influence beyond Northumbria and within the rising Mid-Anglian Mercia.

After the reign of the kings of Christian Mercia ï *viz*. Peada, Wulfhere, Conroed and Ethelbald ï there followed the great Anglo-Saxon Christian King Offa of Mercia. He was indeed a monarch of international importance ï almost comparable even with Charlemagne.

Through all of this, there was now a development of **Celto-Anglic Common Law** in the Anglo-Saxon States. Flintoff has demonstrated the influence of Pre-Saxon Celto-Brythonic Common Law on Anglo-Saxon Common Law especially in Northumbria and Mercia. This is seen in the Celto-Anglic institutions of frankpledge, tithings, shires, townships, courts ï and even Parliament. Genesis 14:20; 28:22; 37:9*f*; Exodus 18:12*f*; Numbers 1:2*f*; 10:2*f*; 19:2*f*; Matthew 19:28. Indeed, Anglo-British Common Law is seen to emerge especially in the institutions of Parliament, the magistracy, the crown, fines, debt-bondage, feudal customs, land inheritance, trial by ordeal, the county court, and the jury.

Such then was the nature of the amalgamation of Celto-British Law and Anglo-Saxon Law into Anglo-British Common Law ï in Northumbria and in Mercia. The stage was now set for the expansion of the Anglo-British Kingdom of Wessex in Southwest Britain ï and its ultimate absorption of both Mercia and Northumbria into the developing United Kingdom of Christian England.

21. Wessex the Embryo of Christian England's United Kingdom

In chapter 21, we noted History Professor Brewerôs observations that the early Anglo-Saxon communities developed from a true republic ï alias a non-hereditary aristocracy. Some of their institutions included: *folc-land* alias national territory; *boc-land* alias individual estates; the *tre-ding* alias the riding; the *scir-gemot* alias the shire court; the *scir-gerefe* alias the shire-reeve (or the she-riff); the *tun-scipe* alias the township; the *burh* alias the borough; the *teothing* alias the tithing; the *ealdorman* or elder-man alias the alderman; and *wergild*, alias the prescribed tort tariff anent human injuries. Genesis 14:20; Exodus 18:12*f*; Deuteronomy 16:18*f*; 17:6-9*f*; 19:3-21.

Looking at the rise in the power of Wessex in the South of Britain, we noted that the West-Saxons were christianized from A.D. 635 onward. The Christian Caedwalla alias Cadwallader was the last Brythonic king in ówessexô ï although he does seem to have been an Anglo-Briton rather than an Anglo-Saxon or a Celto-Briton. The Romanist Anglo-Saxon and Anti-Celtic Bede, however, misrepresented the truly Celto-Anglic character of ówessexô ï even ignoring the very existence of the Brythonic St. Patrick. Indeed, Bede also minimized the influence of the Celto-Culdee Missionaries on the Anglo-Saxons.

Turning to the life and times of (Anglo-British) Wessexôs King Ine or Ina, it was noted he may well have been the same person the Welsh call Ivor and claim to be one of their own. King Ine richly endowed the Ancient Brythonic Church at Glastonbury. He was a truly great monarch, incorporating many of the surrounding territories into

Wessex. He legislated together with his representative parliamentary councillors and trusty church leaders (*cf.* the House of Commons and the House of Lords). Finally, he abdicated ï in order to devote himself to ecclesiastical pursuits.

Biblical elements in the Anglo-British *Law Code of Ine*, include: the double fine; ejudicated retribution; criminal atonement; the family home (*frumstol*); the inviolability of fenced land; the killing off of offending animals; and the severe punishment of thieves caught red-handed. *Cf.* Exodus 21:34 to 22:7. Also the ôWelshmanô (alias the ôStrangerô) enjoyed significant protection under *Ine's Code*. Exodus 23:9.

The high educational standards in Early-Christian England were noted, especially as to Aldfrith and Aldhelm. From a thorough study of Holy Scripture (Isaiah 11:1*f* & Revelation 4:5*f*), there flowed forth the pantechnical *trivium* and *quadrivium* of Mediaeval England ï even while Darkest Europe was being evangelized by Christian-English Missionaries such as Willibrord and Wynfryth.

Mediaeval Anglo-British culture had a massive influence also on the Common Law ï as seen in *laens* or loans, *wites* or fines, and *bot* or compensation. This is also seen at the ñgrass rootsò level ï as in *folc-riht* alias popular custom, the sheriff, the jury, the preservation of peace, and the various *gemote* or representative assemblies.

King Beorhtric was elected monarch in 786, chosen by the thanes of Wessex. In his days began the long-lasting attacks of the Pagan Vikings (from Denmark, Norway and Frisia) ï against Ireland, Man, Cumbria, the Shetlands and the Orkneys, Scotland, Northumbria and East-Anglia.

However, King Egbert of Wessex ruled from 802. He established the nucleus of ôEnglandô from Cornwall to Northumbria ï and drove back the Vikings.

Nenni(us), the A.D. 805*f* famous Brythonic Historian of Ancient Britain, drew from many sources ï such as Holy Scripture, the annals of the Romans, the chronicles of the Holy Fathers, the writings of the Irish and the English, and the traditions of the elders of Wales. Stating the Britons to be the descendants of ñthe first man who came to Europe of the race of Japhethò ï he placed the later arrival in Britain of Brut from Troy ñat the time when Eli judged Israelò in the eleventh century B.C. Thenceforth he traced Britainôs history down to King Llew, who proclaimed the Worldôs first Christian State (in the second century A.D.) ï and thereafter down to the end of Celtic rule in ôEnglandô around A.D. 687.

After King Egbert, we traced the history of Wessex from King Aethelwulf to King Aelfred. Aethelwulf traced his descent all the way back to Adam, and got both Church and State to recognize the tithe as a national institution. His first son Aethelbald showed charity to the poor and preserved law and order. Two other sons of Aethelwulf ï Aethelberht and Aethelred ï next ruled in Wessex. Then, yet another son ï Aelfred (alias Alfred the Great) ï came to the throne and defended England against the Vikings.

Wales still remained totally Celtic. However, in the rest of Pre-Alfredian Britain and even in England itself ï although the English language was slowly becoming dominant, the inhabitants were still overwhelmingly if not even fundamentally Celtic.

This was the case especially in Caledonian Scotland, Cumbrian Westmorland, and Cornwall. Thus Anglo-British Law ï Anglo-Saxon Law as superimposed upon and amalgamated with Celto-Culdee Law ï is clearly the root of English and American Common Law. Indeed, the tenacity of the Proto-Protestant Culdees can be seen in Scotland even after the union of the Picts and the Scots in 842 right down to the eleventh century ï later to be revived in the Scottish Reformation of 1560.

PART VI – BRITISH COMMON LAW: FROM ALFRED TO THE REFORMATION

In Part VI, we looked at British Common Law from King Alfred to the Reformation. There, we looked at: Englandôs ñGood King Alfredò and his Biblical Laws; the Common Law from Edward the Elder to Edward the Confessor; Anglo-Norman Law from the Domesday Book to *Magna Carta*; and English Law from King John to the Protestant Reformation.

22. England's "Good King Alfred" and his Biblical Laws

In chapter 22, we first looked at the early life and times of the famous English King ï Alfred the Great (A.D. 849-901). We noted he was a child of the covenant; was spiritually motivated from a very early age; and became under-king even while a teenager.

We further noted his military and political achievements. It was seen that he fought many battles against the Danes during a time of great national peril. Yet he also managed to achieve very much also in the cultural development of his own people in Wessex.

Among the extant writings of King Alfred the Great, we noted his own *Preface* to the translation of the *Dialogues of Gregory* and his very accurate translation into Anglo-Saxon of Gregoryôs *Pastoral Care*. Then there is Alfredôs own *Introduction* to the latter, in which the king expresses his desire that every freeborn English youth might learn to read English.

Next, there is Alfredôs translation of Augustine of Hippoôs *Soliloquies*. There is also his free translation and massive expansion of Orosiusôs *Universal History*. Indeed, there is further his close translation of the A.D. 731 Bedeôs *Ecclesiastical History of England*.

Alfred also certainly started, and promoted the writing of, the *Saxon Chronicle*. In addition, he wrote the *Saxon Martyrology* ï and an Anglo-Saxon prose version of the first fifty *Psalms*.

Then there is also Alfredôs translation of Boethiusôs *Consolation of Philosophy*. Above all, of course, there is Alfredôs own *Dome-Book* ï containing his inscripturation of the Common Law of England.

Finally, there is Alfredôs own *Blostman* (or óBloomsô). The latter concludes: ñHe seems to me a very foolish man and very wretched ï who will not increase his understanding while he is in the World and ever wish and long to reach that endless life, where all shall be made clear.ò

Reflecting on the history of Britain before the arrival of the Anglo-Saxons, Alfred traced his own ancestry back to Noah and the latterôs Japhethitic descendants the Scythian Picts and the Scots ï some of whom, he said, colonized Ireland and Scotland. He noted how Christ gained the Brythons, and how King Llew proclaimed Christianity as the ónationalô religion of Britain ï in 156 A.D. Finally, the Lord ordained the arrival of the Anglo-Saxons. They judged the backslidden Celto-Britons ï and then, observed Alfred, themselves received Christianity with great enthusiasm.

We then noted that even the great Sceptic Sir David Hume insisted on the importance of Alfred ï and also that the famous History Professor Richard Henry Green expatiated on that kingôs famous laws and many other accomplishments. The views about Alfred of George Jowett and William of Malmesbury were then considered ï as too were those of various other Historians such as Huntingdon, Gibbon, Trevelyan, Berman, Rosebery and Pauli.

In our introductory remarks on King Alfredôs *Law Code*, we noted that it incorporates: many of the judicial laws of Israel; the ógolden ruleô of Christ; and the apostolic decisions. Exodus 20:1 to 23:9; Matthew 7:12; Acts 15:1*f*.

It also incorporates (*via* his Welsh biographer Asser) some of the Ancient Common Law of the Celto-Britons and the Anglo-Saxons, and applies the ógeneral equityô of the judicial laws in the contemporary context of ninth-century England. Indeed, it does so in historical continuity with the earlier *Codes* of Aethelbehrt, Ine and Offa (in Kent, Wessex and Mercia).

We then presented various legal opinions anent the worth of *Alfred's Code*. Those included accolades from Research Law Professor Lehman, the *Encyclopaedia Britannica*, Barrister Flintoff, Anglo-Saxon Land Law Expert Henry Cabot Lodge, and Anglo-Saxon Family Law Expert Ernest Young. These all agreed that *Alfred's Code* constitutes a massive synthesis of Biblical Law, Celto-Brythonic Law and Anglo-Saxon Law ï into English or rather Anglo-British Common Law.

Some of the other massive achievements of King Alfred the Great, include: his military victories over and his Christian treaties with the Danes; his promotion of jurisprudence; his construction of a national education system; and his reorganization of both Church and State in continuity with the past. Thus Peter Blair, Simon Keynes, A.J. Frantzen, Sir Henry Maine, Raphael Holinshed, R. OôSullivan, and the *Historians' History*.

The influence of Ancient Celto-Brythonic Common Law on *Alfred's Code* was noted by Pascoe Goard, Isabel Elder, Geoffrey Arthur of Monmouth, and even by Alfred himself. The strong Mosaic component thereof was documented by Alfred, Goard, Elder, Taylor, Sir William Blackstone and Rev. Dr. E.C. Wines.

Discussing King Alfredôs international Christian *Peace Treaty* with the Anglo-Dane Guthrum, it was noted that it bound their now-baptized nations into covenant

with one another ï under the God of their baptism ï against sanctions or threats in the event of disobedience. It declares: ñIf a man become slain, we value all equally dear ï English and Danes.ò It provided for trial by jury. Indeed, it further portrayed Alfred not only as the spiritual father of his erstwhile enemy and new friend Guthrum, but also as indeed being worthy of ñdeathless gloryò (thus Sir Winston Churchill).

We ended with an ample statement by the great Elizabethan Holinshed as to the huge importance of ñGood King Alfredò in English Common Law. We also appended a similar statement by the famous Historian G.M. Trevelyan ï on the integration also of Danelaw into the English system.

Thus Alfred laid the firm foundation of the Common Law of England. After him would further follow: the joint laws of Guthrum and of Alfredôs son Edward the Elder; the laws of Edward the Elder himself; and those of his son Athelstan.

They in turn would then be augmented by the further integration into Anglo-British English Common Law of Ancient Brythonic Law (as documented by the Welshman Hywel Dda). Next would follow the emergence of Anglo-Danish Law (through the great Christian King Canute). All this would then culminate in the Common Law legislation of the last great Anglo-Saxon King, Edward the Confessor.

23. English Common Law from Edward the Elder to Edward the Confessor

In chapter 23, we first gave an overview of English Common Law from the A.D. 880 time of King Alfred onward. We traced its development through King Edward the Elder; King Athelstan; King Edgar; King Canute; King Edward the Confessor; King William the Conqueror; Glanvill; the *Magna Carta*; Bracton; Fleta; Britton; Littleton; Fitzherbert; Coke; and Hale ï to Sir William Blackstone (who died in 1780).

We next outlined the blessed reign of Alfredôs son King Edward the Elder ï examining the laws of the Anglo-British King Edward for Non-Danish England. We next noted that England was consolidated under King Athelstan. We gave an overview of his legal significance ï setting out his *Law Code* in considerable detail. *Cf.* Genesis 28:22; Exodus 22:29; 23:12*f*; Matthew 27:15*f*; First Peter 2:17.

We then looked at Hywel Ddaôs A.D. 940*f* Welsh codification of Moelmudôs B.C. 510*f* Common Law, and noted the further merging of Anglo-Saxon Law and Celto-Brythonic Law into Anglo-British Law ï especially under King Edmund of England and his very wise laws. Passing on next to the short yet important reign of King Eadred, it was noted: that he was a truly national leader; that he was an elected ruler; and that the Celto-Britons, Anglo-Saxons and Anglo-Danes all participated in his election.

We then looked at the truly excellent English Lawmaker King Edgar the Pacific. He ruled in the Name of the blessed Trinity; re-endowed Glastonbury; and concluded in his Charter that Glastonbury was ñthe first Church in the kingdom built by the disciples of Christ.ò Especially Barrister Flintoff and the famous History Professor Chadwick stressed the useful nature of his reign.

King Ethelred (often misnamed the óUnreadyô) and his godly laws were next examined. Ethelred converted the Viking Olaf Trygvasson to Christianity. He also stated: ñThe Christian king must severely punish wicked men.... Be it jealously guarded against, that those souls not perish whom Christ bought with His Own life.... Let Godôs Law henceforth zealously be loved by word and deed! Then God will soon be merciful to this nation.ò

The hegemony of the Anglo-Danish kings over the whole of England was next explored. This led to a consideration of the life and times of the great Anglo-Danish Christian King Canute, and his many wise laws. However, after the short reigns of his sons Harold Harefoot and Hardecanute ï the reign commenced of the last great Anglo-Saxon, King Edward the Confessor.

Edward standardized English Common Law from the time of Alfred onward. He did so from three main sources. First, from the Anglo-British *Mercen-Lage* of the Midlands region. Second, from the Anglo-Saxon *West-Saxon-Lage* of the great Southwest. Third, from the Anglo-Danish *Dane-Lage* of Eastern England.

This led us to note the óProperty Franchiseô of Anglo-Saxon Christian culture. We also saw that the English political organization into óhundredsô is rooted in the Holy Bible ï as too is the age of legal accountability (thirteen) in Anglo-Saxon Law. Genesis 17:25 and Exodus 12:4,26*f* 37 & 18:21*f* and Proverbs 22:6 and Luke 2:40-42. It was also seen that the Anglo-Saxon Christian Common Law was very sophisticated as regards betrothal, marriage, marital status, property and divorce. Likewise its laws of succession and of procedure.

Finally, it was seen that Pre-Norman Anglo-Saxon literature in general had an overwhelmingly Christian nature ï from its A.D. 600 inception onward. Legally this can be seen also in Barrister Flintoffôs statement of Late-Saxon Christian Common Law ï namely as regards: its Parliaments; its popular election of magistrates; its descent of the royal line; its ó*wer-gild*ô fines; its free customs; its equal succession of lands to all males; its trials by ordeal; its county courts, with sessions thrice annually (*cf.* Exodus 23:17); and its trials by jury.

24. Anglo-Norman Common Law from the *Domesday Book* to *Magna Carta*

In chapter 24, we first of all saw that the Normans did not destroy but ultimately enriched Anglo-British Common Law (though often unintentionally). For the latter still continued, even in Norman England from A.D. 1066 onward.

William the Conqueror preserved Anglo-British freedoms, and promoted Britainôs apostolic church at Glastonbury. Indeed, William even resisted the Romish papacy ï precisely at a time when European Common Law on the Continent was being papalized more and more.

Under his son the Norman King William II alias Rufus, however, England deteriorated. Curfews were introduced, and trial by battle tended to overshadow trial by due process of law.

After the death of Rufus, his younger brother Henry I restored the Anglo-Saxon *Laws of Edward the Confessor*. Yet with the rise of Neo-Roman Civil Law and Romish Canon Law throughout Europe, England fell into anarchy under the 1135-53 Romanizer King Stephen. However, under his successor King Henry II, the power of the papacy in England was considerably diminished.

This can be seen in the showdown between King Henry II and Romeôs Thomas a Becket ï and especially in the A.D. 1164*f Constitutions of Clarendon*. The total impact of King Henry IIôs legal reforms was very considerable. For under him, English Common Law was standardized.

The reign of ñthe Lionheartedò ï Good King Richard the First ï marked the enactment of the first English statutes and the beginning of the end of Norman England. Prince Madoc the Celto-Briton and his followers migrated from Wales to North America. Scotland somewhat resisted the papal claims. Late-Norman legal treatises on Anglo-British Common Law included those of Glanvil (who limited the scope of Romish Canon Law). Indeed, Common Law juries became very strong in mediaeval England.

Meantime, the rift between the Church of Rome and the kings of England constantly deepened. It is true that Pope Innocent III did manage to subjugate King John ï and to elevate transubstantiation to official Romish doctrine at the 1215 Fourth Lateran Council. It is also true that King John surrendered to the papal legate Pandulph, and capitulated in his 1214 *Ecclesiastical Charter*. But precisely this antagonized the barons, and set England on the road to *Magna Carta*.

We then gave Barrister Flintoffôs legal analysis of *Magna Carta*, and the *Historians' History*ôs assessment of the historical significance of the document. Then we gave important excerpts from the text of the charter itself, and discussed especially its thirty-ninth article as an expression of the spirit of the whole.

The Pope of Rome, however, was perturbed. For he denounced Englandôs *Magna Carta*, and attempted to excommunicate her barons. The charterôs great legal and historical significance has been assessed by Blackstone, Hume and Green. Its political importance has been evaluated by Jeremy Lee, Butler, Bailey, Hogue and Churchill. Briefly, we summed up those assessments.

Magna Carta simply summarizes and restates the rights of Englishmen under their Common Law ï as formulated earlier, from Alfred the Great to Edward the Confessor. Theologically, it is grounded in the Law of God. As Sir Winston Churchill firmly put it, the charter represents ña Law which is above the king and which even he must not break.ò In subsequent centuries, it is precisely to the charter that ñappeal has again and again been made ï and never, as yet, without success.ò

25. English Law from King John's death to the Protestant Reformation

In chapter 25, we saw that from about A.D. 35 onward Britain had received the Gospel not from Rome but directly from Palestine (and probably before Rome herself

did). Also patristic testimony supports Britainôs apostolic-age reception of Christianity, and even suggests she was probably the first nation to become Christian ï more than 150 years before Paganism collapsed in Rome around A.D. 313*f*.

Christianity spread massively in Britain during pre-papal days (before 600 A.D.). Thus: Clement, Tertullian, Sabellius, Origen, Dorotheus, Eusebius, Jerome, Arnobius, Chrysostom, Augustine, Theodoret, Gildas, Bede, and many others. Indeed, even after the arrival in Britain of the Angles and Saxons ï the latterôs nominal christianization too was already completed before 700 A.D. Thus Sir Winston Churchill.

Even in Europe (though less so than in Britain), the various Common Law systems were considerably christianized before the sixth-century rise of the papacy (which soon degenerated them). Yet it was especially in ónon-papalô mediaeval Britain that Christian Law developed ï particularly under the A.D. 880 King Alfred. This development continued, even down to the end of the twelfth century. There the line runs: Athelstan, Edgar, Canute, Edward the Confessor, William the Conqueror, and Glanvill.

The 1215 *Magna Carta* was a landmark in British Christian Common Law ï against the stateôs alleged sovereignty, and also against the meddling papacy. Indeed, under the *Statute of Provisors* and the *Statute of Praemunire* ï and also under the great jurisprudential works of Bracton, Fleta, Britton, Fortescue and Littleton ï this healthy development was sustained right down to the 1518*f* Protestant Reformation.

In particular, we saw that even after bad King John, also his son the 1216-72 Henry III was obligated to reconfirm *Magna Carta* several times. This greatly strengthened the growth and progress of Parliament, especially in 1253 and 1258. Indeed, after the appearance of the Jurist Bractonôs *Laws and Customs of England* (which insisted that ñthe king himself ought...to be...**subject** to God and the lawò), we find Baron Simon de Montfortôs movement toward more representative government greatly enhanced in 1259.

Further major advances occurred under the ñEnglish Justinianò King Edward the First (1272-1307). He was a major historical and legal figure, and under him there was an extremely significant growth of the Law and of Parliament. Indeed, this was then the case also in Scotland ï especially under Robert the Bruce and James the First. Even the Pre-Renaissance in Europe helped those processes along. So too, of course, did the Pre-Reformation in Britain.

Coming next to the beginning of the godly reign of the English King Edward the Third (1327-77), we saw that he: strengthened Parliament; punished criminals; and checked the pope. Edward moved against Rome and Romanism ï especially through his *Statute of Provisors* and *Statute of Praemunire*.

However, the terrible scourge of the international óBlack Deathô ï apparently Godôs reply to unrepented sin ï finally reached even into England. This marked the end of the 1290 day-years of Daniel 12:11, and the emergence of Wycliffe ï in A.D. 1360. See too Revelation 14:6-12.

Wycliffe rediscovered the sole authority of the Word of God. Flowing from that, he stressed God and His Law as the sources of all government for men. Wycliffeôs

support for patriotism and antipathy against priestcraft, predictably brought him into collision against the mediaeval heresy of transubstantiation. Indeed, he ended up: denouncing the Pope of Rome as Antichrist; getting himself excommunicated by the Vatican; and foreshadowing the Protestant Reformation.

Though falsely blamed for the Tylerite Rebellion of 1381, Wycliffe continued to exert an ongoing influence even after his death in 1384. That influence was seen especially upon Huss and others in Bohemia ï and, through Huss, later upon Luther in Germany.

Even in England and Scotland, Wycliffeôs followers became so influential ï at one stage almost filling half the island ï that they were very harshly persecuted. Never wiped out even in Britain ï *nec tamen consumebatur*(!) ï Wycliffeôs Lollards were still active there too, even at the time of the later outbreak of the Reformation itself.

We then noted the influence of the 1470 English Lord Chief Justice, Sir John Fortescue ï on the study of Ancient British Common Law. The Anti-Roman Fortescue traced British Law back through the B.C. 1190 Trojan Brut to the 1440*f* Moses himself ï and concluded that ñthe customs of the English are not only good, but the best.ò Similarly, though still writing in the Norman-French language ï Sir Thomas de Littleton upheld neither the Roman nor the Roman-French but precisely and only the Anglo-British Law ï of Property, Procedure, and Persons.

Finally, we looked at Henry VII as the first Welsh Tudor King of England (1485-1509) ï and at James IV (1488-1513) as the last Pre-Reformational King of Scotland. Both kings were famous for their Christian characters.

Henry righteously punished criminals; ruled with justice over the Irish; and united Wales with England ï as well as the Houses of Lancaster and York. In Scotland, James stood up against the Archbishop of Glasgow ï and insisted on a fair hearing for accused Scottish Lollards.

Truly, premonitions of the Protestant Reformation of 1517*f* could now be felt beginning to stir up the very air of the British Isles. It awaited only the movement of the Wind of God ï alias the Holy Spirit.

PART VII – ENGLISH LAW: REFORMATION TO PURITAN PARLIAMENTS

In Part VII, we looked at English Common Law from the Reformation to the Puritan Parliaments. There, we took note of the Decalogical Anti-Romish Reformers Luther, Zwingli & Calvin; the use of the Mosaic Laws by Calvin, Bullinger, Beza & De Bres; the Protestantization of Tudor England from 1531 till 1603; James the First and Christian Englandôs Puritanization from 1603 till 1625; and Puritanism in the Early Reign of Charles the First from 1625 till 1642.

26. The Decalogical Anti-Romish Reformers: Luther, Zwingli and Calvin

In chapter 26, we saw that the great Reformer Rev. Dr. Martin Luther taught that the Bible predicts the destruction of Romanism. Daniel 7:25*f*; 8:11*f*; 9:26*f*; 12:1-11; Revelation 12:6-17; 13:1-18. Luther became increasingly aware that God was using him to demolish the papacy, as he himself attempted to ground even secular law upon the Holy Scriptures. Second Thessalonians 2:8*f* & Revelation 16:10*f*. Indeed, the Lutheran Reformation stressed the importance of the Moral Law for the whole of human life.

Also Ulrich Zwingli developed a doctrine of civil government from the Bible ï in Switzerland, and around 1531 A.D. Indeed, by 1536, his colleague Bullinger and others had set out a Biblical view of civil government in the 1536 *First Swiss Confession*.

John Calvin, the lawyer and theologian, was quite the greatest of all Protestant Reformers. He saw Natural Law as being rooted in God Himself. All men recognize righteousness, precisely because they were all created as the image of God. Indeed, there is an awareness also of Natural Law by man ï even after his fall.

It is true that at Adamôs fall and thereafter, man knowingly and deliberately declined from initial righteousness and justice. Yet the Law of Nature and Equity nevertheless operated ï and still operates ï even among the Pagans. However, even since manôs total depravity ï produced by the fall ï there is an obvious need that the Law be inscripturated.

Calvin describes the institution of human governments after Noahôs flood, and further discusses the delegation of political functions even before Sinai ï Exodus 18:12-25 *cf.* Deuteronomy 1:13-17. He takes a strong view on the *lex talionis* and also on theocracy ï and discusses both Godôs ancient provision of, as well as His restrictions upon, theocratic kings.

Having dealt with the predictions of Isaiah regarding Christôs Messianic Kingdom, Calvin goes on to discuss the predictions to Nebuchadnezzar anent the ascensional rule of Christ. That would commence during the days of the pagan Roman Empire ï the government and laws of which Calvin then discusses. At least until Rome got christianized, however, there would be a special need for the arbitration procedure laid down in First Corinthians 6:1-8.

Yet, according to Calvin, Daniel himself taught the christianizability of the pagan Roman Empire. For Christ would achieve the conquest of the World ï through and after and as a result of His post-ascensional rule from Heaven (as outlined in Daniel 7:13-14).

That heavenly Kingdom of Christ here on Earth would then demolish the Roman Empire ï even though its pagan Roman Law would thereafter get replaced by papal Romish Law. That latter implies subsequent centuries of predicted papal oppression ï until the Reformation would begin to destroy both Romish Law and the papal Antichrist. Second Thessalonians 2:8 to 3:1f and Revelation 14:6-9*f* & 16:10-12.

However, until the above events occurred, the Jewish and Roman law courts described in the Acts of the Apostles remained useful ï as seen in the courtroom trials of the Apostle Paul. Thus Calvin deals: with Paulôs parenetic instruction regarding the Roman Law; with Paulôs legal advice to Titus and the Cretians; and with Paulôs advice to Timothy and the Ephesians anent the Law of God.

To Calvin, the advance of Christôs Law right here on Earth is a way to success. Indeed, the nations are to be subjugated to the Law of God ï precisely through the comprehensive execution of the Great Commission. Isaiah 2:3*f cf.* Matthew 28:19.

We next discussed Calvinôs views of justification and the practice of righteousness ï especially as regards the Law of God in the teaching of the book of James. Thereafter we presented his views of: the First Table in the Law of God: the First Commandment (on serving only the Triune God); the Second Commandment (on the prescribed way of worshipping Him); the Third Commandment (on reverencing Godôs Name and works); and the Fourth Commandment (on sanctifying Godôs Sabbath Day). Exodus 20:2-11.

Finally, we presented Calvinôs views: of the Fifth Commandment (on human authority); the Sixth Commandment (on life, abortion and miscarriage); the Seventh Commandment (on sexual purity); the Eighth Commandment (on private property); the Ninth Commandment (on true reporting); and the Tenth Commandment (on uncovetous contentment). We then discussed his summary of the Second Table of the Law of God. Exodus 20:12-17.

27. The use of the Mosaic Laws by Calvin, Bullinger, Beza & De Bres

In chapter 27, we saw there was relative purity in the pre-papal Christian Common Law systems ï especially in Britain. The papacy deformed Christian Common Law particularly in Western Europe, reaching its zenith about 1300 A.D. The deformation of British Law even then, however, was only very slight.

The Late Middle Ages led directly to the Protestant Reformation. Luther was strongly anti-papal, and grounded secular law firmly in Scripture. Zwingli too did much the same. And so too did the *First Swiss Confession* of 1536.

That greatest of all Protestant Reformers, John Calvin, stressed the relationship of Natural Law ï to the Revealed Law, the Moral Law, and the Judicial Law. He had a high regard for public office, and taught Christians to resist tyranny in a constitutional way. His students Knox and Beza championed political freedom. So too did the *French Confession*, the *Belgic Confession*, and the *Second Swiss Confession*. Also ï as would be seen in a subsequent chapter ï did the 1560 *Scots Confession*.

While agreeing that there was indeed an important sense in which especially the ceremonial and also the juridical aspect of the Mosaic Law has been fulfilled in Christ, Calvin also clearly held to the triple use of the Law of God in the life of believers. Godôs Law is perfect; so man needs to obey it. It is comprehensive and spiritual, so even magistrates need to enforce it. It also embraces a principle of general equity. This should be seen in cases of money-lending, conscription, retribution and

incest (as well as in usury and in civil punishments *etc*.) ï in spite of differences from one land to another.

On punishments ï both with Moses, and with us ï Calvin discussed also the capital crimes of murder, abortion, adultery and rape. He stressed the importance of not being cruel even to animals. He also suggested the enacting of Godôs Law nationally ï by citizensô compacts ï to be administered by public officers (who need to be godly). Calvin also implacably opposed the Antinomians and the Anabaptists, and showed them to be both fanatical as well as at variance with Holy Scripture.

We next looked at Calvinôs admonitions to his own King Francis of France ï and also noted his many letters to other countriesô monarchs in Europe (such as the kings of Navarre, Sweden, Denmark, and Poland). Of particular importance were his letters to Englandôs Regent Somerset; to King Edward VI; and to Queen Elizabeth the First (alias ñGood Queen Bessò).

Discussing the best system of civil government, Calvin reflected: on the duties of public office; on violent punishments administered by magistrates; and on the right and duty to resist tyranny. For Calvin lived by the Lordôs prayer: ñThy Kingdom come ï here and now on Earth, as in Heaven!ò

Finally, we noted the ongoing influence of Calvinism on civil government: in the later Bullinger and his disciples; in Calvinôs successor Bezaôs *Concerning the Rights of Rulers Over Their Subjects* and his other work *The Christian Faith*; in the Calvin-istic *Belgic Confession*; and in other early Calvin-istic documents and thinkers. Through the Calvinist Althusius and his doctrine of confederating covenantism, this anti-totalitarian view of triune political sphere-sovereignty and sphere-universality later filtered down into the creation of the United Kingdom of Great(er) Britain and Ireland; into the constitutions of the United States and the Confederate States of America; and also into that of the Commonwealth of Australia.

It also filtered down into the thought of Kuyper and Dooyeweerd. No wonder, then, that the great Calvinist and Dutch Prime Minister Rev. Professor Dr. Abraham Kuyper (1837-1920) could sincerely title one his monographs: *Calvinism the Origin and Guarantee of Our Constitutional Freedoms*.

28. The Protestantization of Tudor England (1531 to 1603)

In chapter 28, we saw that there was a revival of Wycliffite Lollardry in Henry VIIIôs England. In 1531, Henry broke with Rome. Later, his son Edward VI ï and his daughter Elizabeth the First ï both consolidated this.

Initially, Henry opposed Luther and supported Rome. Gratefully, Rome assisted Henry to annul his consummated and eighteen-years-old marriage to Katherine of Aragon ï and long dithered as to whether or not to permit him to marry Anne Boleyn.

In both of these matters, however, Rome was thoroughly pragmatic. This can be seen from her own analogous annulment precedents and procedures immediately prior thereto, in respect of other royal persons.

The gathering storm between Henry VIII and the Pope of Rome is clearly seen in the unprincipled diplomacy of the papal agent Cardinal Wolsey. To protect the sovereignty of his kingdom, Henry invoked *praemunire* ï which (as too in previous centuries) now once again yet further weakened the power of the papacy in England. Indeed, Parliament in 1533 restrained appeals to Rome ï and by the 1534 *Dispensations Act*, prevented the ongoing enrichment of Rome at Englandôs expense.

In 1535, the pope reacted by excommunicated Henry. The latter responded by confiscating all of Romeôs wealth in England ï and then, through Parliament, firmed up the Protestant Reformation in South Britain (where he unified England and Wales in 1536). According to the historians Keightley, Hume and Froude ï all of whom disapproved of Henryôs marital misbehaviours ï his reign must nevertheless be assessed as having produced many other fruits. Most of those fruits, by the grace of God, were of a blessed nature.

We next looked at the regency of the Calvinist Somerset, during the reign of Edward VI (1547-1553). Both Somerset and Edward were Calvinists, and Calvin corresponded with each of them.

The wonderful political and legal implications of the Edwardine *Catechism* and *Articles*, are obvious enough. Consequently, in Edwardôs England: Anabaptism and Romanism were restrained; the Reformation was powerfully advanced; and education flourished. Sadly, the promising Edward died when but sixteen. Sadder still, his nominated successor, the godly young Calvinist Queen Jane, was then ï after ruling for but nine days ï murdered by the usurper óBloody Mary.ô

Mary Tudor now instituted a ruthless reign of terror, from 1553 till her death in 1558. She persecuted Protestants, and even imprisoned her own half-sister Princess Elizabeth Tudor.

However, the latter survived; became óGood Queen Bessô; and inaugurated the blessed Elizabethan Era. Her accession in England even precipitated Knoxôs return to Scotland. There, following the regency over Scotland of the French Romanist Dowager Queen Mary of Guise, her daughter the French-raised Mary Queen of Scots returned ï in order to reign.

Knox the Calvinist then clashed with the Romanist Mary Queen of Scots. He continued to get the upper hand until it was, once more, a case of ñWycliffe rides againò ï but this time, in the now-presbyterianized Church of Scotland.

In 1560, that denomination adopted its blessed *First Book of Discipline* ï and also its sternly antipapal *First Scots Confession of Faith*. A decade later, Knoxôs followers triumphed over Romanism gloriously ï in the ñSecond Scottish Reformation.ò

The English Elizabethan Age in general (1558-1603) represented a vast expansion of Britainôs commerce, education and international power. Early Elizabethan laws promoted Protestantism and restrained Romanism. The Protestant Queen Elizabeth of England survived many plots against her, especially those launched by that adulterous and murderous Romanist Mary Queen of Scots. However, God spared Elizabeth ï and England consolidated itself as a Protestant country.

English Puritanism was on the rise. At first, it was interchangeable with Presbyterianism. The English Puritans became powerful, especially in Queen Elizabethôs Parliaments. Terrified, foreign papists constructed the Spanish Armada ï and hurled it against England. However, after it was destroyed by the stormy Wind and outbreathed Spirit of the Living God ï England was unquestionably the greatest Protestant power on Earth.

The Puritans dominated the English House of Commons ï and also the national understanding of British Common Law. Cartwright, Stubbs, Perkins and Ames all stressed the importance of the judicial laws of Moses. Puritanism ï whether of the Anglican, the Presbyterian, or the Independent variety ï more and more flourished in Elizabethan England. It represented the greatest advance of both Bible-believing Christianity and British Common Law so far witnessed. Indeed, it anticipated the further triumph of Puritanism ï at the Westminster Assembly in the middle of the following century.

29. King James I and Christian Britain's Puritanization, 1603-25

In chapter 29, we saw that in his early years, the young lad King James VI of Scotland ï though born of Romish parents ï was raised as an orphan, and also as a Presbyterian. When fourteen, he signed the 1580 *National Covenant*, condemning the Romish Papal Antichrist. When seventeen, he concluded a *League in Religion* with Protestant England. Then he himself became something of a theologian ï as long as his Danish Lutheran wife had a good influence on him.

A turning point came in 1603, with James of Scotlandôs accession to the throne of England. He clashed with the English Puritans and their 1603 *Millenary Petition*. They resisted his doctrine of the so-called ñdivine right of kings.ò Now anglicanized, James failed to browbeat even his first English Parliament ï and also to depresbyterianize Scotland. Both countries were by then largely Puritan, especially regarding their Houses of Commons.

In 1607, James attempted to unify England and Scotland (in *Robert Calvin's case*). Yet there was much friction between the new Commons and the óOlder Lordsô of Jamesôs Parliament. Trying to placate the Anglicans by authorizing their Bible of 1611, King James remained so deadlocked with the óAddled Parliamentô ï that for many years he strove to rule without it.

We then looked at the rise and life of the great Puritan Jurist, Lord Chief Justice Sir Edward Coke. He clashed with King James in the Star Chamber and elsewhere, firmly upholding the Common Law as rooted in God.

To Coke, the Common Law had proceeded from Almighty God Himself. It had done so *via* Godôs Law of Nature; *via* the Decalogue; *via* the Mosaic Laws; *via* the Laws of the Britons Brut and Moelmud; and also *via* other ancient Greco-Celtic, Celtiberian and Celto-Brythonic roots.

There are many Biblical references in some of Cokeôs more famous cases. It is significant that Sir William Blackstone, the *Encyclopaedia Britannica*, and C.J. Best ï

all regard Cokeôs views as very important in the development of the Common Law. Indeed, the contribution also of the English Parliamentarian and Puritan John Pym should be regarded similarly.

We then examined the life and times of that great expert in Common Law, the Westminster Assembly Theologian John Selden. His antiquarian and legal works were phenomenal. Indeed, he demonstrated an ancient historical connection between the Hebrew priests and the British druids. He also discussed the antiquity and functions of the latter, in depth.

To Selden, there were many remnants of true religion among the Ancient Britons. He stressed the soteriological symbolism of druidic oak-trees. He also made many other statements of relevant archaeological importance ï especially as regards the Japhethites, Brut of Troy, and British Druidism. Not surprisingly, the great Common Law Jurist Sir William Blackstone later spoke very highly of the legal views of this Puritan John Selden.

From 1616 onward, the arminianizing King James distanced himself from Puritanism. Yet the Puritans dominated James at his 1621 Third Parliament.

His reign ended under a cloud, at his death through sickness, in 1625. Yet God had used him to help confederate North Britain and South Britain; to give to the World the King James Bible; and unintentionally to consolidate Puritanism in its run-up toward the 1645 Westminster Assembly.

30. Puritanism during the Early Reign of King Charles I, 1625-1642

In chapter 30, we saw that England-Wales and Scotland became both politically and religiously destabilized especially during the 1625-1642 reign of King Charles the First. The aftermath of his unsuccessful attack on Spain, was dissatisfaction about the monetary levies which that entailed. There were also attacks against the kingôs favourite Buckingham, on account of the international military ineptitude which he had displayed.

Sir Edward Cokeôs 1628 parliamentary *Petition of Right* accordingly came down ï in the name of *Magna Carta* ï against forced loans, arbitrary imprisonments, the billeting of soldiers, and the overriding of Common Law by martial law. Increasingly, Charlesôs Antinomian and Arminian Anglicans clashed more and more with Cokeôs Christonomic Calvinists in England. Indeed, also Scotland became disenchanted with Charles ï when he attempted to erastianize and ritualize even the Scottish Church.

There was increasing persecution of Puritans in England ï especially by that Antinomian and Arminian Anglican, Archbishop Laud. This was accompanied by dour Scottish resistance to Episcopalianism, and especially to Erastianism. English Puritans, and even Members of Parliament, were harshly dealt with especially in the Star Chamber. However, it was Scottish events which now precipitated a showdown against King Charles.

Determined to preserve their Calvinism against the inroads of Charles and his Anglicans, the Scots repudiated both raw Romanism as well as re-romanizing

Episcopalianism ï in their *National Covenant* of 1638. Solidly committed to upholding the Law of God and the law of the land themselves ï the Scots required also Royalty to do the same.

The epoch-making consequence of the Scottish *National Covenant* was its effect upon the later production of the international *Solemn League and Covenant*. That was an international compact between the several lands of the Western Isles ï *viz*. England-Wales, Ireland, and Scotland ï in order confederately to promote a common religion there.

The furious Charles then reacted, by conducting a futile war against the Scots ï after they had subscribed to their 1638 *National Covenant*. They themselves then responded in 1640, by successfully invading Royalist England ï much to the delight of the Puritan English Parliament. This produced a further weakening of the king in Britain, especially when the English Parliament moved against the kingôs supporters in 1641.

The Erastian-Puritan English Parliament introduced a bill to wipe out episcopal preferences ï root and branch. Meantime, dangerous Anti-Protestant rebellions by Celto-Irish and Anglo-Irish Romanists in Ireland further unsettled also England.

The English Parliament then drew up a *Grand Remonstrance* on the condition of the nation. Seeking to save the situation, it resolved to convene the Westminster Assembly ï in order to secure international religious harmony throughout the Western Isles (and to export the same to America and France).

The royal impeachments of parliamentarians, however, foreshadowed the approach even of a military clash. Charles raised his Royal Army at Nottingham, and the Puritan-controlled House of Commons and the House of Lords likewise prepared their Parliamentary Army. Only the speedy convening of meetings such as that of the Westminster Assembly could save the situation.

So Parliament passed a bill in April 1642, ordering the Westminster Assembly to convene. But the king refused to sign the bill, and instead started marching from Nottingham against the South, and toward Parliament in London ï during August 1642.

If only the king had signed the bill in April 1642, and also signed the *Solemn League and Covenant* as did the Westminster Assembly and the English Parliament ï civil war may well have been avoided! Sadly, however, that was not to be. For Charles then did too little ï and too late.

PART VIII – COMMON LAW'S IMPACT ON WESTMINSTER PURITANISM

In Part VIII, we looked at the impact on the Common Law of Westminster Puritanism. There we studied: the commissioning and convening of the Westminster Assembly; the *Westminster Shorter Catechism* and the *Larger Catechism* on government; the governmental implications of the *Westminster Confession*; and the

political impact of the other and lesser documents drawn up at the Westminster Assembly.

31. The Commissioning and Convening of the Westminster Assembly

In chapter 31, we first noted the historical background and importance of the 1615 *Irish Articles* ï composed by Irelandôs great Puritan Archbishop, the later Westminster Assembly Commissioner Dr. James Ussher. In a scholarly way, he set out to prove the apostolic antiquity of British Christianity. He saw Protestantism as but the revival of Proto-Protestant Culdee Christianity ï which had held sway in Ireland, and indeed also in many other parts of the Western Isles, right down till the eleventh century.

Usshersô 1615 *Irish Articles* were of great legal and political content and consequence ï and were the central component of the later *Westminster Confession*. In Holland and beyond, also the 1618-19 Synod of Dordt was of considerable legal and political importance and international significance. It impacted also upon Britain, where it too ï but especially the *Irish Articles* ï had a great influence upon the Westminster Assembly.

The immediate background of Britainôs Westminster Assembly was then stated. There was a parliamentary resolution to convene it ï especially to seek a common liturgy and religion for the various countries of the Western Isles and their colonies. As a result of Englandôs grave national crises during the year A.D. 1642, the convening was delayed. However, by the middle of 1643 ï both the English and the Scots brought their agendas to the Assembly.

The several aims of the Westminster Assembly were carefully prescribed by the English Parliament, so that the former originally had a political purpose. There was a basic doctrinal unity among the Westminster Assemblyôs Commissioners. They were all Calvinistic Puritans. Yet there were also various theological parties within the Assembly (such as Episcopalians, Erastians, Presbyterians and Congregationalists). Indeed, there were also both personal and national idiosyncrasies among the several Commissioners. Though most of them were English, some were Scots. A few were Irish, Welsh, or even French.

We then noted the dominant viewpoint of the Commissioners anent the calling of the magistrate. We found christonomous similarities in the extant works of Commissioners Burgess, Calamy, Coleman, Gillespie, Henderson, Herle, Lightfoot and Marshall. Especially is this the case in the works of the great Samuel Rutherford: and particularly in his masterpiece, *Lex Rex*.

A similar emphasis was also noted in the writings of Commissioners Seaman, Spurstowe, Temple, Thorowgood, Vines, Wilkinson, Wilson, Woodcock ï and, of course, especially Irelandôs grand architect of the Assembly (Dr. James Ussher himself). Very frankly, the Law of God is in the centre of the writings of many of the Commissioners of the Westminster Assembly. This is seen also in the Westminster Standards themselves ï of which they were the authors.

32. The *Westminster Shorter* and *Larger Catechisms* on Government

In chapter 32, we saw that the seventeenth-century Puritan Rev. Dr. Thomas Manton wrote an important *Epistle to the Reader* of the Westminster Standards. There, he indicated that the purpose of the Westminster Assembly was to set up ña common *Confession of Faith* for the three Kingdomsò of Britain, Ireland and Scotland ï and, by implication, also for their various colonies across the seas. (By ñBritainò is meant the United Kingdom of England and Wales.)

We then turned to the *Westminster Shorter Catechism* ï ña Directory for catechising such as are of weaker capacity.ò In our own short legal abridgment thereof, we saw a strong emphasis there both on the exegetical explication as well as on the comprehensive application of the Decalogue.

In the *Westminster Larger Catechism* ï ña Directory for catechising such as have made some proficiency in the knowledge of the grounds of religionò ï we find a much stronger emphasis, especially regarding the Light of Nature and the Moral Law. That *Catechism* shows that the Moral Law is summarily comprehended in the Decalogue (Exodus 20:2-17). The latter, in turn, is shown to be concerned also with governmental authority ï and the protection of human life, morality, property, veracity and contentment.

The *Larger Catechism* gives eight rules for understanding and observing the Ten Commandments. Respectively, these eight rules draw attention to the Decalogueôs principles of: perfection; spirituality; interlockingness; contrariety; timeliness; synecdoche; enforcibility; and assistance.

The *Catechism* itself links many Non-Mosaic texts in the Bible to the Mosaic Decalogue. It also gives many Mosaic illustrations of both the First and the Second Table thereof. Indeed, it grounds Christôs Great Commandment of Love precisely upon the Mosaic Leviticus 19:18 and Deuteronomy 6:5.

Many Mosaic case laws are copiously cited not only in Westminsterôs *Larger Catechism*, but also in her *Confession*. In her *Form of Government*, the Westminster Assembly uses the judicial laws also for Christian Church Polity. The *Catechism* uses them in its treatment of the Mosaic Law itself, and also in the rest of the Old Testament. Indeed, while clearly stressing the heinousness of transgressing them ï it uses even ôNew Testament judicialsô to explain both the First and the Second Table of the Decalogue.

The *Larger Catechism* greatly emphasizes the post-resurrectional rule of King Jesus here and now. He has ascended into Heaven, and is enthroned at the right hand of the Father. Through the power of His outpoured Spirit ï also here on our own great planet Earth, Christ is right now the Victor for His people to ñconquer all their enemies.ò

This gives also <u>legal</u> relevance to the *Lord's Prayer* ï which Jesus commanded His disciples to keep on praying **daily**. For according to the *Larger Catechism*: ôThy Kingdom come!ô is a prayer that the Gospel be propagated throughout the World; that the fullness of the Gentiles be brought into submission to God as their King; that the

Church be purged; and that it be maintained by the civil magistrate. Matthew 6:10a; Second Thessalonians 3:1; Romans 10:1f [& 11:12-15,35-32]; First Timothy 2:1-2.

Similarly, óThy will be done on Earth!ô ï explains the *Catechism* ï is a prayer to God, for men to ñsubmit to His will in all thingsò (and for Christôs sake). Again, óGive us this day our daily bread!ô ï means that men are to keep on waiting upon Godôs providence from day to day, ñin the use of lawful means.ò Finally, óDeliver us from evil!ô ï is a confident plea by Christ-ians, that ñSatan be trodden under our feet.ò Matthew 6:10b; Psalm 119:1f; Matthew 6:13; Romans 16:20.

33. The Governmental Implications of the *Westminster Confession*

In chapter 33, we saw that the *Westminster Confession of Faith* (1:1) starts off by claiming that also nature itself shows the Law of God has been written on the hearts even of the heathen. This is because Godôs righteousness keeps on being revealed against the unrighteous ï ever since manôs fall shortly after his creation. Indeed, day after day the Law is thundered forth by God even through and throughout nature ï so that sinful men are inexcusable, especially when they commit capital crimes. Romans 1:19-32 & 2:1-16 and Psalm 19:1*f*.

The ñlight of natureò is further mentioned in the *Confession* at 1:6. There, it is said to order government in ways common to human actions and societies. Also at 4:2, the implication is that God wrote His Law on the hearts of our first parents ï and therefore continues to do so in respect of all their descendants, in spite of the fall. Genesis 1:1-31; Romans 2:14*f*; Ecclesiastes 7:29. This is because God at manôs creation perpetually bound the entire human race to a covenant of works ï and merely **re-iterated** this in the Ten Commandments on Mount Sinai. Genesis 2:17; Ecclesiastes 7:29; James 1:27 & 2:8-12; Exodus 34:1; *W.C.F.* 19:1-2, *cf*. Hosea 6:7-10 and Romans 1:18 to 2:16.

This is mentioned in the *Confession* also at 20:4 and at 21:1-7. It is stated that those who practise or proclaim what is contrary to the ñlight of natureò may lawfully be called to account ï each in its own way ï by the Church respecting her members, and by the State regarding its subjects. Romans 1:32; First Corinthians 5:1-13; Deuteronomy 13:6-12; Romans 13:3*f*. This applies even to public sabbath disturbances. For even ñthe light of natureò and the ñlaw of natureò show Godôs lordship. Romans 1:20; Exodus 20:8-11.

At 8:8, the *Confession* indicates that Christ rules especially over Christians ï governing their hearts and overcoming all their enemies, as the great Prophet and Priest and King of His people. Psalm 110:1; First Corinthians 15:25*f*; Malachi 4:2*f*; Colossians 2:15. Then, at 19:1-7, the *Confession* discusses the perpetuity of Godôs Moral Law ï in contrast to the temporariness of His now-abolished ceremonial laws.

This brought us to a detailed discussion of the ñsundry judicial lawsò of Israel, mentioned by the *Confession* at its 19:4. There, the word ñsundryò was seen to mean not ñmostò but ñsomeò ï so that only ñsomeò judicial laws as such, ñexpiredò in A.D. 70. Even as regards those ñsundryò laws ï *viz*. such as applied specifically to Ancient Israel ï God would still ñrequireò the keeping of the ñgeneral equity thereofò also today. However, other judicial laws ï the ónon-sundryô ones which were not

specifically for Ancient Israel but rather more general in their applicability ï are to be kept today in their entirety, and not just as to their ñgeneral equity.ò

Still on the *Confession* at 19:4, we explained this ñgeneral equityò: in Exodus 21:1 to 22:29; in Genesis 49:10; in First Peter 2:13-14; in Matthew 5:17-39; and in First Corinthians 9:8-10 ï as well as in 9:7-15 as regards the *Westminster Larger Catechism*. We saw that through the Great Commission of Matthew 28:19, there has in fact been no abolition of either the O.T. judicials or the N.T. judicials. Rather has there been a fulfilment in Christ thereof. Indeed, through the ongoing work of His Spirit through His earthly people today, there continues to be a further development and indeed an internationalization of their general equity.

We mentioned Professor Klineôs rejection of the christonomous teaching of the *Westminster Confession* at its 19:4 ï as regards the ongoing validity of the general equity of Ancient Israelôs judicial laws. We noted Professor Morseôs able refutation of Klineôs decline. Then, at 20:4, we went on to discuss the explicit ñlaw of natureò and the implicit and ongoing ñgeneral equityò of the judicials ï in respect of punishable crimes.

Next, we looked at the explicit ñlight of natureò and the implicit general equity ï as regards sabbath legislation in the *Confession* at 21:1-7. We then did the same as regards public *Lawful Oaths and Vows*, at 22:1-7. Exodus 20:7.

Regarding the rights and duties of the magistrate in 23:3, we saw: that he is not to administer the Word or the Sacraments or the Keys; that the Stateôs power anent the Church is never *supra sacra* nor even *in sacris* but only *circum sacra*. Thus Rev. Professor Dr. Shaw and Rev. Dr. John Richard de Witt. Indeed, this is just one more reason why the *Confession* (23:4) requires people to pray for magistrates. Isaiah 49:23; First Timothy 2:1*f*.

Next, (judicial) laws of marriage and divorce were discussed ï in the *Confession* at 24:1-6. ñThe communion of the saintsò and the rejection of communal property were addressed, at 26:1-3. Second Thessalonians 2:3*f* & Revelation 13:6,15*f*. Anti-Romish passages were noted at 22:7, 23:4, 24:3, 25:6 and 29:6. Church censures were seen to be quite distinct from those of the State, at 30:1-4. See too Isaiah 9:6*f* & Hebrews 13:7*f*. Yet at 31:1-5, the *Confession* very appropriately discusses the desirable harmony between Church and State. Second Chronicles 29:1 to 30:27.

The final judgment was seen to be the eschatological goal of the *Confession*, at 32:1 to 33:3. Ecclesiastes 12:14; Acts 17:31; Romans 2:16. Clearly, all forensic courts here and now on Earth remind people of the Last Great Assize. Indeed, the death penalty to be administered for capital crimes here on Earth negatively reminds the wicked of everlasting death of hell. Then too, positively ï it also reminds everyone of everlasting life, as graciously provided by Christ for all truly repentant sinners.

34. The Political Impact of Other Westminster Standards

In chapter 34 we concluded investigating the politico-legal teaching of the Westminster Standards. Its ógovernmentalô teaching did not surprise us. Not only does the Bible itself clearly teach that ethics are for our earthly life here and now, in this

present world. In addition, the English Parliament itself had appointed the Westminster Assembly.

Indeed, the latter consisted of not only 121 down-to-earth Puritan Theologians. It consisted also of a further twenty Puritan Members of the House of Commons ï and moreover of ten Puritan Peers of the House of Lords.

Accordingly, the Westminster documents ï and especially the *Larger Catechism* ï are full of ógovernmentalô applications of Holy Scripture. Indeed, also the *Confession* speaks not only of the Moral Law in the Decalogue. It also speaks of various ñmoral dutiesò even in the ceremonial laws ï and further of the ñgeneral equityò of ósundry judicial laws.ô

This means that the ñlight of natureò; alias the ólaws of natureô; alias the moral Decalogue ï clearly detectable at the root of **all** of the Old Testament legislation ï still applies in the New Testament economy, even today. Indeed, this Moral Law applies not just in Church but also in State ï and, indeed, throughout society as a whole. Thus the *Westminster Confession*.

Precisely the Ten Commandments ñrequireò men to do their comprehensive ñmoral dutiesò previously expressed in the ñgeneral equityò of the judicial laws, and even where expressed in the now-abrogated ceremonial laws. The ancient Israelitic forms of these ñsundry judicial lawsò no more obtain ï after the termination of the ancient Israelitic State in A.D. 70. However, as the great Rev. John Macpherson points out in his famous book *The Westminster Confession of Faith*, although the ñformalò in the sundry judicial laws ñperishes ï the substance endures.ò

Accordingly, we need to remember the correct interpretation of Matthew 5:17*f* espoused precisely by the *Westminster Confession* 19:5*k*. The ñmoral dutiesò and the ñgeneral equityò ï enshrined in all those ceremonial laws and ósundry judicial lawsô ï will last to the very end of the World. *Confession* 19:3*e*-7*x*. They will endure just like the **non**-sundry judicial laws ï and even as the very Decalogue itself. *Larger Catechism* 89-153. Compare *Confession* 4:2; 7:2*f*; 8:8; 11:5; 14:2; 15:1-2; 16:1-2; 18:3*f*; 19:1-7; 20:1-4; 21:1-8; 22:1-7; 23:1-4; 24:1-6; 26:1-3; 30:1-4 & 31:1-5. So too, copiously, the *Westminster Sum of Saving Knowledge* (especially at its *Evidences* I:1-9).

So those ñmoral dutiesò and this ñgeneral equityò should be recognized by all men everywhere. They should be upheld today too, and throughout all ages-to-come, especially by Christians (as Godôs true chosen people).

Thus declare the Calvin-istic *Westminster Standards*. For, as was correctly observed (in his comment on Leviticus 25:42) by John Calvin himself: ñAlthough the political laws of Moses are not now in operation, still the analogy is to be preserved ï lest the condition of those who have been redeemed by Christôs blood should be worse amongst us than that of His ancient people of old!ò

PART IX – THE POST-WESTMINSTER COMMON LAW IN ENGLAND

In Part IX, we looked at the Post-Westminster Common Law in England. There we studied: the 1642-49 British Wars between Romanizers and Protesters; Oliver Cromwellôs 1649-59 Christian Commonwealth; and the history of British Common Law from the 1660*f* Restoration and the 1688*f* ñGlorious Revolutionò till 1993.

35. Romanizers vs. Protesters: 1642-49 Religious Wars in Britain

In chapter 35, we saw that the English Civil War broke out in 1642. Its religious and historical roots had preceded it, for it was a clash between reactionary Anglo-Romanism and progressive Puritan Protestantism.

Dr. B.B. Warfield identifies the parties as those following the Cavaliers of King Charles the First, and those following the Parliament and its óKing Pym.ô Yet initially, the issue was not at all the monarchy *versus* the Parliament but rather the tyranny of Charles the First *versus* the English Constitution.

There were early successes for Charlesôs Anglo-Catholic Army ï against the Parliamentary Puritan Army. This spurred on the English Parliament to convene the Westminster Assembly and to ally England and Ireland and Scotland internationally ï in a Pan-Protestant religious *Solemn League and Covenant*.

History Professors Green and Brewer have expostulated on the peripheral political aspects of that *Solemn League*. It is doubtful if the English and the Scots understand the *Covenant* identically. Scotlandôs Covenanters from 1557 till 1649 had regarded it primarily as a religious rather than as a military matter. Almost a century later, the English Parliament now embraced the *Covenant* for the very first time. But after Pymôs death, the Independents ï who were rather indifferent to the presbyterianizing obligations of the *Covenant* ï began to strain the Puritan Alliance.

Fraught with internal tensions, the military advances of the parliamentary party in England were followed by that partyôs fragmentation. Power in Cromwellôs Army gradually moved away from the Presbyterians to the Congregationalists. Indeed, the Armyôs ñRadical Independentsò now increasingly promoted Anti-Royalism ï and sometimes even óMob-ocracyô as such. In fact, the radical ñDiggersò and ñLevellersò renounced Presbyterianism ï and embraced even Anarchy. Sadder still, there was also some friction even between the Erastian English Parliament and its own Westminster Assembly.

Military power, however, shifted permanently away from the kingôs men ï at the decisive Battle of Naseby. Its aftermath was important. The king surrendered; was imprisoned; escaped; and again planned for yet another civil war. Indeed, the *Historians' History*ôs account of events from November 1646 onward, makes fascinating reading.

Cromwell himself now moved ever-increasingly away from Presbyterianism. The Anglo-Catholic Charles tried to play his various Protestant enemies off against each other, and he and his Scottish allies now triggered off the Second English Civil War

(1648-49). Some of the Scots ï the so-called ñEngagersò ï did this through their malignant ñEngagementò to Charles, in their own act of treason against the *Solemn League and Covenant*. The English Parliament tried to reposition itself *vis-a-vis* developments in Scotland. Yet it was especially Englandôs Puritan Army which acted belligerently ï and now decisively defeated the invading Scots.

The Scots came to their senses in 1648, and performed a *Solemn Acknowledgment of Public Sins and Breaches of the Covenant*. There, they bewailed the malignantsô treason against God and their English allies; sought forgiveness; and recommitted themself to the ideal of a Calvinistic British Isles by way of international treaty.

The radicalized English Army, however, had now had enough of the Presbyterians and even of their Parliaments ï whether English, Scottish, or Welsh. So the English Army truncated the English Parliament; promoted a trial for óCharles Stuartô; got him found guilty of treason; saw to it that he was beheaded; and thus terminated the monarchy in England.

Yet, as Dr. James Gairdner (LL.D.) has written in the *Historians' History* with reference to the English Civil War: ñIn the very midst of this [1642-49] struggle, the celebrated [1643-47] Assembly of Divines sat at Westminster and framed a constitution for a Presbyterian Churchò throughout the whole of the Westernh Isles and their colonies. That ecclesiastical constitution would also make full allowance for the relation between Church and State. See the *Westminster Confession* 19:4; 20:4; 22:2f; 23:1-4; 30:1 & 31:5.

Long after the cessation of the British Civil Wars, Cromwellôs Commonwealth, and the Stuart Restoration ï the influence of the Westminster Assembly would continue. Indeed, it was precisely **that** which ï through all this time of turmoil ï helped preserve the roots of the Common Law, and bequeath it to the World when things later settled down again.

36. Oliver Cromwell's Christian Commonwealth, 1649-59

In chapter 36, we saw that Cromwell was no radical revolutionary. Just like the Americans until 1776 ï he made many efforts to preserve the monarchy (if at all possible). Nevertheless, after the execution of King Charles the First for breach of the covenant and high treason (at the instigation of Colonel Pride), Cromwellôs Commonwealth had to be established.

International reaction to the termination of the monarchy in England, was generally unfavourable. Yet the 1649 *Agreement of the People of England* to uphold Christianity, and the appointment of godly new chief officers in the Commonwealth of England ï led to a quick improvement of Britainôs international image. This was so in spite of Cromwellôs emergency actions in Ireland to suppress insurrection among the Romish Celts and the Roman-Catholic or Anglo-Catholic Anglo-Irish.

In Scotland, a new regime of Anti-Engagers was installed from 1648 onward. Nevertheless, there were renewed hostilities between the English and the Scots in 1651. For, after the Scottish ñResolutionersò had struggled against their adversaries the ñProtestersò regarding whether to re-admit repentant covenant-breakers to office ï

Prince Charles signed the *Expiatory Declaration*. Very foolishly, the Scots then proceeded to crown that deceitful person as the new King of Scotland.

The English now attacked and severely defeated the Scots for breaking the *Solemn League and Covenant*. Cromwell captured Edinburgh, and gave God all the glory. He whipped the armies of Scotlandôs King Charles II at the Battle of Worcester, and then drove him into exile in Europe.

Cromwellôs international prestige now soared. He triumphed throughout all the British domains. This was so even though not his Roundheads but the Royalists had initially retained control over all the North American colonies except those in New England.

In Britain, Cromwell consolidated his Commonwealth Government. Major developments there during 1653 rotated around his promotion of the Common Law, grounded on the Old and New Testaments. Capital criminals were severely punished ï but only after due process of law before impartial judges.

Nevertheless, there was now a decline of constitutional rule specifically through the agency of Parliament. Cromwellôs Army now replaced it ï with a Protectorate. Especially in his new *Instrument of Government*, Cromwellôs own powers and duties were defined. That *Instrument* stated that ñthe Christian religion...contained in the Scripturesò was to be ñthe public profession of these nationsò of the British Isles and their colonies.

Cromwell himself there opted for a Christian government ñsomewhat like a *Magna Chartaò* ï upholding ñliberty of conscienceò and separation of powers. The Christonomous Theologians in Cromwellôs Commonwealth agreed. Gillespie, Gilbert and Owen all held to the ongoing bindingness of the general equity within the judicial laws of Moses.

The great Puritan Sir Matthew Hale not only drew up a *Code of Common Law* (sanctioning also the conviction of witches). He also declared that ñChristianity is parcel of the laws of Englandò ï so that ñto reproach the Christian religion is to speak in subversion of the lawò of England. Significantly, he was appointed a Judge of the Common Bench by Cromwell ï and later, after the Restoration, made Lord Chief Justice even under Charles II.

We then looked at the English Parliament of 1654. There was now a broad property-qualification franchise, such as had never before been seen. For the first time, Britain and Scotland and Ireland were integrated into one Parliament: foreshadowing the later United Kingdom. Eleven military districts in Cromwellôs Commonwealth safeguarded against over-centralization.

The Puritan Cromwell strongly opposed the power of Romish Spain. Yet he also just as strongly declined the offer that he himself be appointed king over the Western Isles. Significantly, the 1657 Parliamentôs *Humble Petition and Advice* to Protector Cromwell gratefully acknowledged the freedom to practise various brands of the Christian religion. Yet it also urged that public opposition to Christianity ñbe punished according to law.ò

The great Church Historian Merle dôAubigneô wrote that Cromwell ñthought that a Christian...ought to seek his rules of conduct in the Hebrew theocracy.ò John Milton commended Cromwell, his contemporary, for threatening war against the Romish Duke of Savoy for murdering Waldensians. Indeed, Milton himself immortalized Cromwellôs seeking to avenge Godôs ñslaughtered saints whose bones lie scattered on the Alpine mountains cold.ò Never before or since had Rome so quavered before the might of British Protestantism.

In his dying prayer, Cromwell acknowledged that though wretched, he was nevertheless in covenant with God. He urged God to bring it to pass that ñthose who look too much upon Thy instrumentsò (such as Cromwell) ï should rather ñdepend more upon Thyself.ò He asked God to pardon those who had desired ñto trample upon the dust of a poor wormò (Oliver himself). For even ñthey are Thy people too.ò

Cromwell was favourably assessed by great Historians such as the Romanist Lingard, the Royalist Clarendon, and the German Ranke. S.R. Gardiner calls Cromwell ñthe greatest because the most typical Englishman of all time.ò Francois Guizot compares him to William III and George Washington.

Macauley remarked that under Cromwell ñthe principles of the Common Law had never been disturbedò and ñits formsò were throughout ñheld sacred.ò Carlyle called Cromwell ña deep-hearted Calvinist.ò Dr. Gairdner said Cromwell ñsaved his countryò; ñgave her a foremost position among all the powers of Europeò; and ñlaid the foundations of a great Empireò for Britain.

After the death of Oliver Cromwell in 1658, the Rump Parliament returned. However, because it was ineffective, the ñRestorationò of Royalty ï though now as a ñlimited monarchyò ï was secured.

Beyond the shadow of a doubt, Cromwell had prepared the way not only for the advance of Puritan political government in Britain at the end of the seventeenth century. He also foreshadowed the very creation of the United States itself at the end of the eighteenth century ï and also of the Commonwealth of Australia at the beginning of the twentieth century.

37. Britain from the Restoration and the "Glorious Revolution" till 1993

In chapter 37, we saw, on the basis of the ancient Common Law liberties re-asserted by the Puritan Westminster Assembly and the Commonwealth of England, that there was a ñRestoration of Limited Monarchyò ï under Charles II. Sadly, however, Charles almost immediately thereafter then broke his word and began to oppress the Puritans in his realm.

Still, the Puritan Sir Matthew Hale was elevated to Lord Chief Justice of England. Too, the resistance to the tyranny of Charles constantly increased.

After the romanizing reign of his successor the Romanist King James II, followed the arrival and entrenchment in Britain of the Presbyterians King William and Queen Mary. The famous Historian Lord Macaulay rightly assessed the British *Declaration*

of Right at that time, as being of major importance to constitutional freedom. This can be seen also from the *Oath of Allegiance* to William, the *Toleration Act*, and his *Coronation Vows*. Indeed, the 1689 British *Bill of Rights* or *Act for Declaring Rights and Liberties* ï evidenced the triumph of Puritanism at the ñGlorious Revolutionò in the British Isles.

After the *Act of Settlement* of 1701 and the death of William in the next year, followed the 1702-14 reign of the Protestant Queen Anne. Britain (alias England & Wales) entered into Union with Scotland as Great Britain in 1707.

The land prospered. After Anneôs death, a German Prince devoid of English was imported to occupy the childless throne of Britain. This led to a great strengthening of her Parliament *vis-a-vis* both monarchy and people.

The long and epoch-making reign of George III commenced in 1760. During that time, Sir William Blackstone wrote his immortal *Commentaries* on the Common Law of England (in 1765). There, he traced the history of the Common Law after the creation of the World ï from Britainôs first settlement to its being threatened by Romanism in the Middle Ages.

He then described the fightback by the Common Law, from the Norman Conquest onward till the Protestant Reformation ï and also its increasing restoration thereafter. Contrasting British Common Law with Ancient-Roman Law, óRomanesqueô Civil Law and Romish Canon Law ï Blackstone extolled the excellence of British Common Law above all forms of Roman Law. In this way, he strengthened the Common Law both in Britain and in her colonies overseas.

Even in the British Parliament, William Pitt the Earl of Chatham championed the Americansô right to be independent. Also the conservative Irishman Edmund Burke was somewhat sympathetic there. After the tragic war between America and Britain, the international *Paris Peace Treaty* of 1783 was signed between Great Britain and the United States ñin the Name of the most holy and undivided Trinity.ò Yet Burke soon rightly excoriated an entirely different development ï the ungodly French Revolution of 1789.

Union between Britain and Ireland in 1801 constantly stimulated the further extension of the franchise. Sadly, it also presaged the gradual deprotestantization of the British Isles.

As the eminent social scientist Walter Bagehot has shown, the rise of British Socialism occasioned many attacks against British Common Law. We ourselves would say ï also because strengthened by the revolutionary residency of Marx and Engels in Britain for many decades, and their influence also on Fabian Socialism.

Also the tragedy of the First and Second World Wars produced a terrible lawlessness as their awful aftermath. Yet the future of the Common Law and of the Protestant Reformed Religion throughout the British Commonwealth was upheld in Queen Elizabeth IIôs 1953 *Coronation Oath*.

This is why Britainôs Prime Minister Thatcher could suitably remind the Church of Scotland in 1988 that ñwe are a nation whose ideals are founded on the Bible.ò So,

especially after the recent collapse of Communism, and in spite of the onslaught of ñNew Ageò thinking ï the Common Law still stands ready to bear yet more fruits. Indeed, under the blessings of the Triune God, it will continue to do so ï into the twenty-first century, and beyond.

PART X – THE DEVELOPMENT OF COMMON LAW IN AMERICA AND AUSTRALIA

In Part X, we looked at Common Law in America and Australia. There, we studied: American Common Law ere the 1776 *Declaration of Independence*; the Common Law in Independent America till A.D. 1800; U.S. Common Law during the 19th and 20th Centuries; and the Common Law in Australia.

38. American Common Law ere the 1776 *Declaration of Independence*

In chapter 38, we saw the westward expansion of Christianity ever since Christôs incarnation. Proto-Protestant Celto-British Christians reached the New World by A.D. 560*f*. They had established colonies in North America by 830. Celto-Icelandic Christians were doing so by 985*f*. Indeed, a colony of some three hundred Culdee Christian Celto-Brythonic Welshmen under Prince Madoc, was started in America around 1170.

Later, after the Reformation, Protestant Calvinists moved westward ï through Europe and Britain, and toward the great New World. The Welsh writer and geographer Sir Richard Hakluyt eloquently discussed this in his various writings. Thus, British Calvinists began planning their colonization of North America even around 1583*f*.

From 1607 onward, there was a refugee exodus of British Pilgrims ï *via* Holland ï to the huge Western Continent of North America. John Robinson gave Christian encouragement to these Pilgrims. The *Mayflower Compact* reflects their Christian faith. So too does their final rejection of socialism and communism ï in the óBrave New Worldô of 1620*f*. For into New England ï they had brought along with them also the English Common Law.

This was very soon followed by an ongoing colonization of North America on the part of 17th-century Puritans, as can already be seen in the 1629 *Charter of Massachusetts*. The early Puritan influx into New England zenithed: in John Cottonôs 1633 theocracy; in the 1639*f* North American municipal confederations of local government; in the 1643*f* ñNew England Confederationò between Connecticut and Massachusetts; in the ñecclesiastically *con-foeder-at*ò 1648 *Cambridge Platform* óCon-soci-ationô (which adopted the 1643-47 *Westminster Standards*); and in the various 1648-55 New England law codes.

The modern Israeli Scholar Dr. Gabriel Sivan has rightly reflected upon the massive Mosaic influences in Colonial America. Exodus 20 to 22 and Deuteronomy 5 to 27. This ongoing theocratic vision continued in America ï even after the 1660*f*

Restoration in England. It was assisted by the creation of the first American Presbytery of the Presbyterian Church in 1706 ï and also by the bright eschatological predictions of Cotton Mather in 1709, and especially of Jonathan Edwards in 1739.

Eighteenth-century New England was by-and-large spared the humanistic European Enlightenment. Accordingly, Dr. R.J. Rushdoony has rightly noted the abiding trinitarian nature of Early American political government. In 1765, the great Sir William Blackstone prepared the way for the modern America. Indeed, nowhere else is that English Common Law Jurist more highly esteemed.

Grounded in English Common Law, the American colonial legislatures ï all themselves, at earlier dates, created by British Royal Charters ï perceived that the 1765 *Stamp Act* of the English Parliament was illegal. That perception was the match which ignited the New World. Presbyterians led in that ignition.

It was the Calvinistic triune doctrines of sphere-sovereignty and sphere-universality which impelled the Americans ever onward ï toward their 1776 *Declaration of Independence*. Indeed, it was the political spin-off of these doctrines which produced the 1775 orations of Joseph Warren of Massachusetts and Patrick Henry of Virginia. Even in Old England, Deism had already peaked, and had by then started to die. In New England, not Deism but Calvinism was alive and well.

Nearly all the Framers of the American Republic were Calvinists. It was the Calvinists who authored the epoch-making 1775 *Mecklenburg Declaration* of North Carolina ï the immediate ancestor of the 1776 *Virginia Bill of Rights* and the *Declaration of Independence of the U.S.A*. Every one of the various State constitutions just before 1776 had a Christian, and nearly all a Calvinistic, background and foundation.

We then looked at the God-ordained course of the 1776-81 War for American Independence, and especially at the nature of the 1776 *Declaration of Independence* of the United States of America. The latter was juridically legal, and breathes a strongly Protestant and Presbyterian character.

Even since 1776, that Christian character was preserved in the various constitutions of the American States. For the Common Law was preserved both in the U.S.A. as well as in her several constituting States ï also since 1776.

The purpose of the War for Independence was to conserve, and not to revolt against, Bible-believing Christianity and its Common Law. Thus the American Revolution completed the 1642*f* English Civil War ï and also Englandôs own ôGlorious Revolutionô of 1688*f*. Later, even a prominent American Romanist ï the Minnesotan Archbishop John Ireland of St. Paul ï admitted the rightness of Americaôs *Declaration of Independence*. Indeed, the first prayer ever uttered in the American Congress, petitioned God for victory ï **in the Name of Christ**.

For it was British Common Law and the Calvinistic doctrine of ôsphere-sovereigntyô which had led to the 1776 American *Declaration of Independence* and to the 1787 *U.S. Constitution*. It was the same Common Law which was enshrined in the 1791 *U.S. Bill of Rights* ï and which promoted Americaôs subsequent prosperity.

After the Continental Congress in May 1776, Rhode Island and Connecticut each still chose to operate for a time under its old (and indeed Christian) *Colonial Charter*. Yet every single one of the rest of the thirteen States which ócreatedô the United States in July 1776*f*, itself freshly enacted their own 1776-84*f* Christian constitutions ï immediately prior to the formulation and adoption of the *U.S. Constitution* in 1787.

Montesquieu had said in his 1748 *Spirit of the Laws* that there should be triadic (or tri-une) legislative-executive-judicial powers within a nation. Blackstone wrote in 1765 that those powers should never be amalgamated (unitarianistically), but need to be kept discrete. So the 1787 *Constitution of the United States of America* did just that.

39. The Common Law in Independent America till A.D. 1800

In chapter 39, we first looked at the 1776-77 preparation of the 1781 American *Plan of Confederation* ï to protect State rights to the hilt. We then noted the *Thanksgiving Proclamation* of the godly 1782-83 Continental Congress Presbyterian, U.S. President Elias Boudinot. Indeed, we also observed that he ï in fact the first President of the United States of America ï later became the first President also of the American Bible Society.

After the 1783 trinitarian *Paris Peace Treaty* between Britain and America, there was post-war prosperity in the independent U.S.A. It should not be assumed the heterodox Jefferson and Franklin unduly influenced the U.S. For the conservative Federalists saw to it that the óadversary conceptô was thoroughly incorporated into the setting up of the original Federal Government. Indeed, John Adamsôs godly 1788 *Defense of the Constitutions of Government of the United States of America* recoils with horror ï in anticipating the ungodly rumblings of the 1789 French Revolution.

The legislative passage of the *Northwest Ordinance*, two months before the enactment of the 1787 *Constitution of the U.S.*, made provision for the unorganized territories in North America not yet admitted as States. Significantly, it stressed the necessity of religion also in those regions.

The chief reason for the drawing up of the *Constitution of the U.S.A.* is found in its Article I ï *viz.* to ñform a more perfect unionò than had till then existed. Articles II through VII next put into place the essential checks and balances between the triune legislative, executive and judicial departments of the Federal Government.

The *U.S. Constitution* has a thoroughly Christian background. It even expresses concepts from the Bible. It exhibits a trinitarian structure, and professes itself to be republican. The 1788 *Federalist Papers* clarify that it is indeed a conservative document. Significantly, this is conceded even by the twentieth-century secularist J. Mark Jacobson.

At the time of the finalization of the *U.S. Constitution*, the Presbyterian Church in America now became the Presbyterian Church in the United States of America. Always conservative before 1787, that American Presbyterian denomination now sought to harmonize itself with the new regime ï by itself amending its *Westminster Confession* at the latterôs chapters 20 & 23 & 31.

The later American Presbyterian Rev. Professor Dr. Charles Hodge showed this did not óde-christ-ocrat-izeô the civil government. Indeed, even later American amendments to chapters 24 & 25 did and do not affect the religious duties of the civil magistracy in the area of politics.

We then dealt with the 1791 *Bill of Rights* ï alias the first Ten Amendments to the *U.S. Constitution* (as an integral proviso for its adoption). It was seen that these Ten Amendments were all derived from the Common Law ï which is twice mentioned, by name, in the Seventh Amendment. Indeed, Christianity is implicit also in the much misrepresented First Amendment (thus Professor Van Til). For the facts show that the 1776 *Declaration*, the 1787 *Constitution* and the 1791 *Bill of Rights* ï all manifest a Biblical character.

This is further evidenced by the always significant (and in some cases overwhelmingly-Christian) religious commitment of the first U.S. Presidents ï Washington, Adams, Jefferson and Madison. Even the influence of Franklin and Jefferson, though not orthodox, was not deistic (as frequently misalleged).

The constitutional government in the U.S. Christian Republic, though rightly non-denominational, was also trinitarian in nature. Indeed, the First Amendment of 1791 ï while rightly prohibiting the federal establishment of religion ï clearly presupposes Trinitarian Christianity, and promotes its free exercise also in public life.

In summary, then. All of the above is clearly to be seen from the Christian derivation of the *U.S. Bill of Rights*. It is further to be seen from the overwhelming commitment to Christianity of the first U.S. Presidents. It is also seen from the 1788 Synod of the Presbyterian Church in America ï which indeed Anti-Erastianly yet also very Christocratically upheld the concept of a Christian State also for the new Federal Government of the U.S.A.

This could still be seen almost a century thereafter, in the 1860*f* Southern Presbyterians. For men like Dabney together with the Bible upheld capital punishments for capital crimes, and men like Thornwell pressed even for the explicit acknowledgment of the Lord Jesus Christ as the Supreme Head of the American Confederacy.

So too did *post-bellum* Northern Presbyterian Constitutionalists like Professor A.A. Hodge. But most relevantly of all, it can be seen quite centrally ï as we would show in our next chapter ï also in hosts of legal opinions throughout the history of the United States.

40. U.S. Common Law during the 19th and 20th Centuries

In chapter 40, we saw that judgments in early court cases often stressed the Christian Common Law character of the U.S.A. This was endorsed by the 1804*f* Chief Justice James Kent, and especially by the 1811*f* U.S. Supreme Court Justice Joseph Story.

It is true that even from 1837 onward, North-South tensions began warping Christianity and U.S. Common Law. Yet law was still king ï *lex rex*. Hence the

constitutional right of the States to secede from the U.S was then **stressed especially by Northerners**. That legal right was never challenged even from 1837 onward ï until 1861.

Causes of the 1861-65 War of Northern Aggression against the Southern States, were related to the preservation of the Union rather than to slavery. Thus, slavery-opposing General Robert E. Lee rightly assessed Lincolnôs unconstitutional and unethical actions ï and refused to accept the Presidentôs offer that Lee lead the Union Armies against the States of the South.

Professor Thornwell did his best to get Christ acknowledged in the 1861 *Constitution of the Confederate States of America*. Significantly, also Professor Dabney upheld capital punishments for capital crimes ï and regarded the War of Northern Aggression against the *U.S. Constitution* as having been engineered by Christ-hating Socialists.

Following the rape of the South by Northern Radicals, the latter rapidly and progressively prostituted the *U.S. Constitution* itself ï by enacting more and more purported and actual Amendments. These constantly steered the U.S.A. toward yet more socialism.

Yet Christian statesmanship was exercised excellently by great Northern Calvinists like Professors A.A. Hodge & R.S. Storrs ï to heal the war-torn nation. Consequently, U.S. Common Law was still very much alive ï though indeed somewhat indisposed and not totally well ï at the end of the 19th and even at the beginning of the 20th centuries.

There has been further apostasy from the Common Law, even in the U.S. Supreme Court, since the mid-1950ôs. Yet Law Professor Berman & President Ronald Reagan subsequently re-emphasized Americaôs Biblical heritage. Still, in the bicentennial year 1987, one ominously saw the signs of the times in the magazine *Time* ï in the few years then left ñB.C.ò (ñBefore Clintonò).

Summarizing, we saw that the U.S. system of government originally embraced the following Biblical ideas. First, it had a trinitarian structure (separation of the triune governmental powers) ï and a Christian background (Puritan-Presbyterian political theory). Second, it made full allowance for the doctrine of total depravity (by its limited government, its bicameral legislature, its Statesô rights reserved by the Tenth Amendment, and its built-in checks and balances).

Third, the *Constitution* ï derived from Hamiltonôs Presbyterian *Book of Church Order* ï required the Union to have a representative and therefore non-democratic and non-autocratic alias a truly republican form of government, which it also guaranteed to each of the several constituting States. This provided for a óPresbyterian aristocracyô ï and safeguarded against ópopularistic mob ruleô as well as ópapal tyranny.ô

Finally, the original *U.S. Constitution* was and is a good model for export (subject to all necessary adaptations). This can be seen in the Seventh Article of the *Bill of Rights* in the *Constitution of the U.S.A.* ï which upholds the Common Law in all the courts of the land. Its international usefulness can be seen also from its strong

influence on the establishment of the Australian colonial governments from 1788 onward and particularly on their later Statesô governments ï especially at and since the establishment of the Australian Federal Government in 1901.

As the modern Chicago Law Professor Palmer Edmunds has written, the Common Law plunges its millenary roots into the era of feudal agriculturalism ï yet it flourishes in the shadow of skyscrapers, and is fertilized by the black soot of steel mills. Changing and yet unchanged for a thousand years, hoary with age yet contemporaneous in effectiveness, it seems to defy the rhythm of growth and decay. It has produced no finer fruit than the constitutional system of the United States, embodying in clear-cut terms a full quota of individual spiritual rights, and buttressing them and other basic Common Law and statutory rights with procedures insuring as adequate protection and vindication as appears humanly possible.

After recently running for the U.S. Congress, Rev. Dr. Joseph C. Morecraft III wrote an illuminating article on *The Church and Violence*. There, he rightly claimed that a free society is based on the **rule of law** and the **Common Law**. An unfree society, however, is based on the rule of men, and discretionary lawlessness.

So then: ñTo the Law and the testimony! If they do not speak according to this word ï it is because there is no light in them.ò Isaiah 8:20.

41. The Common Law in Australia from A.D. 1788 to 1993

In chapter 41, we said something about the early history of Australia. We then traced its visitations by Britons before the establishment of their first Australian Colony, in New South Wales, during 1788.

Though New South Wales was initially to be a penal settlement, soldiers and even Ministers accompanied the first convicts to their new land. Whatever the character of that latter category of colonists ï ranging from religious and political prisoners through petty pickpockets and ferocious felons ï they and their overseers all brought their Christian Common Law with them to Australia. Significantly, in public life New South Walesôs first governor Arthur Phillip strove to uphold the Ten Commandments (Exodus 20:2-17) ï and Australiaôs first Ministers were all evangelicals (Mark 16:15*f*).

From the beginning, Australia had not only dayschools. She had dayschools that were solely Christian. These schools speedily built character into the second generation, in spite of their convict parentage. Many free settlers now started pouring into the land. Quickly, the quality of Australian primary education overtook and exceeded that of Britain herself.

After New South Walesôs second governor, (the good Presbyterian) John Hunter, also the new governor Lauchlin Macquarie of New South Wales was a godly Presbyterian who successfully did all he could to promote Christian education and prosperity there. Also his successor, Sir Thomas Brisbane, was a godly Scottish Christian.

Also the first colonization of Tasmania began not with revelry but with worship. Though it was first populated chiefly by convicts, its Governor George Arthur was an evangelical Christian (formerly converted in Honduras).

In 1823, a Legislative Council was established in Australia. Ancient British Common Law remained the law of the land in Australia, even after the cut-off dates for the reception of fresh British statutes (1828-36).

The renowned Scottish Presbyterian Rev. Dr. John Dunmore Lang had great influence both in New South Wales and in Queensland (both ecclesiastically and politically). Many godly colonists settled especially in South Australia since 1836. Indeed, also since 1860, Christianity continued to influence Australian legal life.

Particularly the Presbyterian Church played a considerable role, both directly and indirectly, in promoting (con)federation within Australia. In that connection, there were also especially massive British and U.S. influences working toward the production of the 1901 *Australian Constitution*. Then, after fifty years of movement in the direction of political federation, the *Constitution of the Commonwealth of Australia* was established in 1901.

The 1901 *Constitution* can be described as Christian in its environment and in its content (as regards its Preamble and its Oath). This is also the proper interpretation of Australiaôs ñ1st Amendmentò in its Section 116.

Both its background and its early history show its Christian character ï the modern Judge Murphy notwithstanding. The four Christian crosses on the national flag adopted in 1903 also underline this ï as too does a careful reading of the 1943 *Jehovah's Witnesses case*, and the 1953 *Christian Coronation Oath* of the Queen of Australia (and all her predecessors).

We then noted the drift away from Christian Common Law in Britain, America and Australia since 1963 ï and Judge Murphyôs revisionistic understanding of Common Law and the rule of law. We were pleasantly impressed by the conservatism of the High Court of Australia till the early 1980s ï but then sadly noted tensions and the rise of leftism, even there, since that time.

For there has been ongoing pressure upon Australia to adopt a humanistic ôBill of Rightsô almost ever since the end of the Second World War. That pressure was intensified after 1985, also through the Human Rights Commission ï and through the Human Rights and Equal Opportunity Commission.

Nevertheless, there has since then also been growing grass-roots disillusionment with these trends away from the Common Law. Apart from a proliferation of other conservative organizations, we noted the heroic and trinitarian stand of the Presbyterian Church of Australia since 1977. Thus, when even the 1992 EARC *Review* anent the alleged ôEnhancement of Rights and Freedomsô appeared ï it was especially the Queensland Presbyterian Church which gave it a prompt response and rebuttal.

42. Conclusions about the Roots and Fruits of Our Common Law

Immediately following this chapter, we shall furnish an Epilogue. That will show where history has been coming from, and where it is headed. Then, in fifty *Addenda* (following that Epilogue), we shall provide valuable documentation for further research.

There, we shall discuss: Blackstone on Common Law *vs*. Roman Law; the Cimmerians, Scythians and Sacae; the Ancient-British Islanders; Lluyd on the Ancient Irish and the subsequent Britons; Parsons on the remains of Japheth; Maine on the Antiquity of Celtic Law; Stonehenge and the Ancient-British druids; Piggott on the druids; the ôBritish-Israelô theory; Ancient Britons, Celts and Germans in Diodorus and Caesar; Strabo, Pliny and Josephus on the Britons, Germans, Jews and Romans; Suetonius on the 1st-Century A.D. Pagan Roman Empire; and Tacitus on Britain & Eurasia in the 1st Century A.D.

We shall also provide material in our Addenda, from: Dio Chrysostom and Dio Cassius on the Ancient Britons; Gibbon on Romeôs decline and Britainôs ascent; Glastonbury and Early-British Christianity; Gildas as the first extant Celtic British Historian; Trevelyan on Wales; Nenni on the history of the Britons; Geoffrey Arthur of Monmouth on Ancient Britain; William of Malmesbury on Early British history; Henry Huntingdon on the history of Britain; Flintoff on the rise of the laws of England & Wales; Chadwickôs Studies in Early British History; Coke on British Common Law; Selden on the Early Laws of the Ancient Britons; and Hume on the history of Britain till 880 A.D.

Then we also give Addenda regarding: Bede on Britainôs Early Church History; Mitchell on the Celtic Church and the Culdees; McNeill on the Early-Celtic Church; Blair on Roman Britain and Early England; Mackenzie on the Early-Scottish Church; Stokes on Ancient Ireland; Latimer on the Early-Irish Church; Duke on the Church of Columba; Eliot on Anglo-Saxon Law; Attenborough on the Laws of the Earliest Kings of England; and J.R. Green on the Christianization of the Anglo-Saxons.

Finally, we shall also give Addenda on: the colonization and christianization of Iceland; the Christian discovery and settlement of Greenland; the pre-colonial Biblical influences on early America; the secession of the U.S. from Britain and of the CSA from the USA; Alexander H. Stephens on the Christian C.S.A. Confederacy; Dabney on Slavery, Secession, and the New South; Symington on the present reign of King Jesus; the Calvinist Althusius and legal sphere-sovereignty; the historical importance of Ancient Brythonic Cumbria; the Cumbrian Christian Patrick and his evangelizing of Ireland; from the Ancient Britannic Isles to the *Westminster Confession*; the profoundly-Biblical roots of the *Australian Constitution*; and Australian Common Law and Tribal Title (in *Mabo*).

All of those Addenda will clinch the conclusions already reached from the material previously examined. In this present chapter, however ï in the light of the above-mentioned findings ï we can now solve the problem previously stated at the beginning of this chapter and indeed also at the commencement of the whole dissertation. In the face of the ever-increasing modern onslaught of World Humanism and International Socialism and Revolutionary Ideology against (British) Common

Law ï whether in its English, American or Australian form ï we now answer the previously-listed seven queries as follows:

1) Our Common Law indeed roots in the eternal unchanging *Elohim* alias the con-feder-ate covenantal Triune God Himself ï and not in a relativistic social convention subject to never-ending radical evolution.

2) Holy Scripture certainly presents us with normative principles of law and government, relevant to modern needs.

3) The Common Law of the Western Isles (Britain and Man and Ireland) prior to the incarnation of Christ, to a large extent derives from divine revelation.

4) Britain indeed soon started to be enlightened by the Gospel, and probably within just five years after Calvary.

5) British Common Law became christianized over the ensuing decades by Proto-Protestant Culdees, and certainly long before the conquest of Britain by the Anglo-Saxons (and their subsequent semi-romanization).

6) The Pre-Reformation, the Protestant Reformers and the Early Calvinists indeed had their greatest impact particularly on the Common Law of England.

7) The British and American and Australian legal systems indeed represent the Quintessence of Christian jurisprudential law thus far developed.

ñBehold, My Servant! ... I have put My Spirit upon Him. He shall bring forth judgment unto the Gentiles.... He shall not fail.... He shall set judgment in the Earth: and the Isles shall wait for His Law.ò Isaiah 42:1-4.

EPILOGUE

God the Creator, His creation, His image, and His law

The right-eous Father is the very first Person of the Triune God. John 17:24-25. For ever, His Word ï the second Person of the Trinity ï has been settled in Heaven. Psalm 119:89. Both of Them have from all eternity past been accompanied by the third Person of the Triune God *Elohim* ï the Holy Spirit Who at and ever since the creation of our Earth, has been moving upon the face of its waters. Genesis 1:1-3 *cf.* John 17:5 & Hebrews 9:14.

By the Word of the Lord were the Heavens made; He gathers the waters of the sea together; He spoke and it was done. Psalm 33:6-9. Even as regards those earthly waters, the Triune God has set a boundary which they may not pass over. Psalm 104:9. Indeed, He rules all things according to His ordinances. Psalm 119:91. For, in both Heaven and Earth, He has made a decree which shall not pass. Psalm 148:1-6.

By His Spirit, he has garnished the heavens. Job 26:13. By His Spirit, God then proceeded to create man as His very Own image, and hence up-right. Job 27:3 & 33:4 and Ecclesiastes 7:29. He wrote His Moral Law on the heart of all mankind. Romans 2:14f. Later, around 1440 B.C., He wrote it for Moses and His own covenant people also on tablets of stone ï as the Ten Commandments. Exodus 20:1-17.

Yet even before Moses, some nations ï such as the Gomeric Cymri in Ancient Britain ï were particularly blessed with their God-given Common Law. In large measure, this was learned by their ancestor Japheth from Noah himself. Genesis 9:1-19. Indeed, even after Noah, Japhethitic Gomer alias the Brythonic Celts ï and Japhethitic Javan alias the Greeks and the Trojans ï would dwell in the tents of Shem (alias the ancestor of Godôs covenant people). Genesis 9:27 to 10:5.

Coke on Common Law, the Law of Nature, Brut, Mulmutius, & the Druids

Britainôs A.D. 1613 Lord Chief Justice Sir Edward Coke was a singular exponent of British Common Law. As he has shown ï originally, all human law was **Common Law**. Genesis 1:26-28; 2:15-24; 9:1-19. For, explained Coke:[1] ñUnity and consent in such diversity of things, proceeds only from God the Fountain and Founder of all good laws and constitutions.ò Psalm 36:9.

The above-mentioned ñdiversity of thingsò ï observable when comparing one system of law with another ï has a number of causes. Firstly, it is the product of a multiform Maker, the Triune God. Secondly, it is the result of the multiformity within that Triune Godôs universe. Thirdly, it is to some extent attributable to the fall of mankind. Fourthly, it is also a consequence of mankindôs subsequent dispersion into all the world. Genesis 1:7-26f & 3:1-19f & 11:1-9f.

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[1] In his *Preface to the Reader* of the Third Part of his *Reports*, Butterworth, London, 1826, II, pp. iv & xiv-xix.

Some legal systems (such as British Common Law), however, are by Godôs common and special grace much closer to mankindôs original Common Law than are other systems. Genesis 9:25-27 & 10:1-5 *cf.* Deuteronomy 32:8f. For this reason, the legal systems of the British Isles should be paid particular attention. *Cf.* Isaiah 42:4,12 & 49:1,12a & 60:9.

As regards Ancient British Common Law, Coke correctly stated in his *Institutes of the Laws of England*:[2] ñThe law itself is a light. Proverbs 6:23.ò Therefore ñthe ólight of natureô..Solomon calleth óthe candleô of Almighty God. Proverbs 20:27.ò

However, as regards certain other systems of law ï citing Second Corinthians 6:15 Coke commented:[3] ñIf a Christian king should conquer a kingdom of an infidel..., *ipso facto* the laws of the infidel are abrogated. For they be not only against Christianity; but [also] against the Law of God and of Nature contained in the Decalogue.ò

In a *Preface* to his *Reports*, Coke appealed[4] to what he rightly called ñthe antiquity and honour of the Common Lawò of Britain. He wrote that ñBrut(us), the first king of this land ï as soon as he had settled himself in his kingdom ï for the safe and peaceable government of his people, wrote a book in the Greek tongue, calling it the *Law of the Britons*.... He collected the same out of the laws of the Trojansò alias the Darda-nians at the Darda-nelles. *cf.* Genesis 38:29f & First Kings 4:31 & First Chronicles 2:6.

ñThis King [Brut]...died after the creation of the world 2860 years, and before the incarnation of Christ 1103 years ï Samuel then being Judge of Israel.... That the laws of the Ancient Britons, their contracts and other instruments, and the records and proceedings of their judges, were written and ósentencedô in the Greek tongue ï it is plain and evident....

ñOur chronologers...say that 441 years before the incarnation of Christ, Mulumucius ï by some called Dunwallo Mulumucius, by some Dovenant [Moelmud or Molmutius] ï did write two books of the laws of the Britons..., the Statute Law and the Common Law.... 356 years before the birth of Christ, Martia Prova ï queen and wife of King Gwintelin ï wrote a book of the laws of England in the British language.ò

Coke lamented the later loss of the written records anent those laws of Ancient Britain. He expressed[5] his own deep regret that ñthe books and treatises of the Common Law in...other kingsô times ï and specially in the time of the Ancient Britons (an inestimable loss) ï are not to be found.ò

No doubt, this was largely as a result of the deliberate destruction of those precious manuscripts by Anti-British invaders. This would have been done from A.D. 43f

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[2] *Proeme* to 3rd Part, p. ii: ñ*Deo*ò & ñ*Patriae*.ò

[3] See *Robert Calvin's case*, in Sir Edward Cokeôs *English Reports*, 77 Kingôs Bench VI, Green, Edinburgh, pp. 397f.

[4] E. Coke: *Preface* to Vol. II & Vol. III ï as cited in the book *The Law of the Lord or the Common Law* by Rev. W.P. Goard, Covenant, London, 1943, pp. 113-16.

[5] E. Coke: *Institutes of the Laws of England*, Brooke, London, 1797 ed., Part II:1, *Proeme*, pp. ix *seqq*.

onward, by the conquering Heathen Romans (who had long tried to óoutlawô the druids and no doubt their writings too). Compare Julius Caesar with Suetonius.[6]

Later, this destruction would again have been undertaken by the then-still-pagan invading Anglo-Saxons ï especially from A.D. 449 onwards. Indeed, this very thing is chronicled by the earliest extant Celto-Brythonic Christian Historian (Gildas of Greater Cumbria). He refers to it in his A.D. 560 book *On the Destruction of Britain*.[7] For his land had been ruined, formerly, by the earlier occupants from Caesarôs Rome.

Indeed, right then in Gildasôs own lifetime, it was again being ruined especially by the more recent invaders from Anglo-Saxon Germany. And soon after them, would come the destructive Danes and the vicious Vikings.

Caesar, Diodorus, Strabo, Pliny & Juvenal on Ancient British Druids

Nevertheless, in spite of the destruction of early copies of the written British Common Law ï we still know much about it. This is because the druids were the great Ancient-British Judges. They were, according to Julius Caesar,[8] very learned ï even in the studying and writing of Greek (the great international Mediterranean trading language before the time of Christ). Through the accurate oral tradition of British Common Law, for which the druids of Ancient Britain were internationally famous from at least B.C. 55 onward, the ongoing British Common Law itself was remarkably preserved.

This can be seen from the writings of Diodorus Siculus,[9] the famous B.C. 60 Greek chronicler of the history of the world. Coke demonstrated it can be seen also from the preserved writings *inter alia* of Roman or Greek authorities ï such as Julius Caesar, Strabo, Pliny and Juvenal.

Thus, Coke in his *Origin of the Common Law of England*[10] referred to the B.C. 55f testimony of Julius Caesar[11] anent the judicial acumen of the druids of Britain. Coke further added: ñThe very same, witnesseth Pliny[12] also....

ñThe daily commerce and traffic betwixt those Britons and French [or Gaulic Celts ï is] bespoken by Caesar, Strabo and Pliny.... The Massilienses [alias the inhabitants of Ancient Marseilles], a Greek colony ï and, as the histories report, the chiefest merchants then in the world next [to] the **Phoenicians** ï spread abroad the desire of learning their [Greek] language.

ñThat there passed constant traffic likewise betwixt these very Massilienses and the Britons, Strabo...directly affirmeth[13] [around B.C. 20f].... Juvenal who wrote about

[6] *Cf.* J. Caesarôs *Gallic Wars* 5:14-16 & 6:13-19 with Suetoniusôs *Twelve Caesars* 5:10,17,21,25.
[7] *Ruin*, Cymmorodorion, London, 1899 ed., chs. 3:1-4; 4:1-4; 5:1-2; Gildas Ms., Julius, D.xi; 9:1 to 10:1; 11:1-2; 14:1; 15:3; 20:1-2; 21:1-2; 22:1-3; 23:1-3; 24:1 to 25:1.
[8] J. Caesar: *Gallic Wars* 6:13f.
[9] Diod. Sic.: *Hist. Lib.*, 2:21f & 3:5:21f *cf.* 3:5:32,38.
[10] In his *Preface* to the third volume of his *Pleadings*, Butterworth, London, 1826 ed., II, pp. iv & xiv-xix.
[11] J. Caesar: *Gallic Wars*, 6:13f.
[12] *Nat. Hist.*, 13:1.
[13] *Geog*., lib. 4.

1500 years past...saith:[14] *Gallia caussidicos docuit facunda Britannos* ï óGaul was said to teach eloquence **to the <u>Law Professors</u> of Englandô**ò alias Ancient Britain. Emphases mine ï F.N. Lee.

From all of the above, the A.D. 1613f Lord Chief Justice Coke then drew his conclusion. He stated: ñI think this sufficiently proves that the laws of England are of much greater antiquity than they are reported to be ï and [of much greater antiquity] than among the constitutions or imperial laws of Roman Emperors.ò

Coke further went on:[15] ñIt is verily thought that ï with [William] the Conquerorò ï even the A.D. 1066f Normans, ñfinding the excellency and equity of the laws of England, did transport some of them.ò Indeed, they then ñtaught the former laws ï written, as they say, in Greek, Latin, British and Saxon tongues.ò

To Coke, there is also a basic Pan-Japhethitic root of ï and kinship between ï the basic Common Law of England on the one hand, and that of Scotland on the other. For English Common Law is derived from both the Ancient Celto-Brythons in Britain and from the Ancient Anglo-Saxons in Germany (many of whom later migrated to Britain). Ancient-Scottish Common Law was derived from Ancient Celto-Gaelic Ireland ï which was, in many ways, cognate to the Ancient-Brythonic Common Law later reflected in the laws of mediaeval Wales.

The great Sir William Blackstone stated[16] in 1765 that ñSir Edward Coke observes how marvellous a conformity there was not only in the religion and language of the two nations [England and Scotland], but also in their antient laws.... He supposes the Common Law of each to have been originally the same.ò

Blackstone on God's creation, on Tacitus, on Alfred, and on Selden

However, British Common Law ï like the temple of Solomon with its ñJachinò and its ñBoazò ï had not just one great pillar, but two. *Cf.* First Kings 7:21. Indeed, alongside the pillar-like Sir Edward Cokeôs *Institutes of Common Law* ï we must also place the ñsecond pillarò (namely the *Commentaries on the Laws of England* by the above-mentioned Sir William Blackstone).

Oxfordôs former Vinerian Law Professor Sir William Blackstone, who declined the offered post of Englandôs Solicitor-General, explained[17] in his 1765 *Commentaries* that ñGod, when He treated matter and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion. So, when He created man and endued him with free-will to conduct himself in all parts of life, He laid down certain immutable laws of human nature whereby that free-will is in some degree regulated and restrained ï and gave him also the faculty of reason to discover the purport of those laws.ò

[14] In his fifteenth *Satire*.
[15] E. Coke: *op. cit.*, III, *Preface*, p. xl.
[16] Sir William Blackstone: *Commentaries on the Laws of England*, Univ. Press, Chicago, rep. 1979, I p. 95.
[17] *Ib.*, I pp. 39f.

Professor Blackstone also insisted:[18] ñAn academic expounder of the laws...should be engaged...in tracing out the originals and as it were the elements of the law.... These originals should be traced to their fountains..., to the customs of the Britons and Germans as recorded by Caesar [B.C. 58f] and Tacitus [A.D. 98f]; to the *Codes* of the northern nations on the Continent, and more especially to those of our own Saxon Princes [449f A.D.]...; but above all to that inexhaustible reservoir of legal antiquities...entitled...the Law of Nations...weighed and compared with the precepts of the Law of Nature.ò

Judge Blackstone further explained[19] that ñthe British as well as the Gallic druids committed all their laws, as well as learning, to memory; and it is [also] said of the Primitive Saxons here, as well as their brethren on the Continent.... Our antient lawyers and particularly Fortescue[20] insist with abundance of warmth that these customs are as old as the Primitive Britons, and continued down through the several mutations of government and inhabitants to the present time unchanged and unadulterated....

ñOur antiquarians and first historians do all positively assure us that...in the time of Alfred [A.D. 887f]...he found it expedient to compile his *Dome-Book*...for the general use of the whole kingdom.... It contained...the principal maxims of the Common Law [*Folcruhte* alias ófolk-ruleô]..... The first ground and chief cornerstone of the laws of England...is general immemorial custom or Common Law.ò

Sir William Blackstone also stated:[21] ñThe antient collection of unwritten maxims and customs which is called the Common Law...had subsisted immemorially in this kingdom.... It was then taught, says Mr. Selden,[22] in the monasteries....

ñThe clergy in particular...then engrossed almost every other branch of learning. So (like their predecessors the British druids) they were peculiarly remarkable for their proficiency in the study of the law. *Nullus clericus nisi causidicus* [óNo cleric unless a lawyerô] is the character given of them soon after the [Norman] Conquest, by William of Malmesbury.[23] The Judges therefore were usually created out of the sacred order.ò

Coke & Blackstone: *Magna Carta* as affirmative not constitutive

Now both Lord Chief Justice Sir Edward Coke and Common Law Professor Sir William Blackstone emphasize that the A.D. 1215ôs *Magna Carta* did not create new law in Britain ï but rather revived the rights of Englishmen long recognized under Ancient Common Law. For even the Anglo-Norman barons then and there demanded the revitalization of the laws of the last Pre-Norman Anglo-Saxon King of England, Edward the Confessor. This, in turn, had in large measure derived ï *via* early-mediaeval **Anglo-British Law** ï from **Pre-Roman Ancient Celto-Brythonic Common Law**.

[18] *Ib.*, I pp. 35f.
[19] *Ib.*, I pp. 63f & 73.
[20] W. Fortescue: *Praise of the Laws of England, c.* 17.
[21] *Op. cit.*, I p. 17.
[22] J. Selden: *In Fletam*, 7:7.
[23] Will. Malm.: *Laws of the Kings*, l. 4.

Indeed, in his *Institutes*, Coke declared[24] that ñthere be four ends of this great charter [*Magna Carta*] ï mentioned in the preface. *Viz.*: 1, the honour of Almighty God; 2, the safety of the kingôs soul; 3, the advancement of the holy Church; and 4, the amendment of the realm.ò

Blackstoneôs *Commentaries* say[25] the A.D. 1215 ñGreat Charter of liberties...obtained sword in hand from King John..., contained very few new grants; but, as Sir Edward Coke observes, was for the most part declaratory of the principal grounds of the fundamental laws of England.... The Great Charter is directed to be allowed as the Common Law.

ñAll judgments contrary to it, are declared void. Copies are to be sent to all Cathedral Churches, and read twice a year to the people.ò

He explained[26] ñ*Magna Carta*...confirmed many liberties...and redressed many grievances incident[al] to feodal tenures of no small moment.... Care was also taken therein to protect the subject against other oppressions then frequently arising from unreasonable amercements, from illegal distresses or other process for debts...and from the tyrannical abuse of the prerogative of purveyance and pre-emption.... It established the testamentary power of the subject over his personal estate.... It laid down the law of dower.... It injoined an uniformity of weights and measures....

ñIt fixed the Courts of Common Pleas at Westminster, [so] that the suitors might no longer be harassed with following the kingôs person.... At the same time, [it] brought the trial of issues home to the very doors of the freeholders by directing assizes to be taken in the proper counties.... It confirmed and established the liberties of the city of London and all other cities...of the kingdom.ò Indeed, ñit protected every individual of the nation in the free enjoyment of his life, his liberty, and his property ï unless declared to be forfeited by the judgment of his peers or the law of the land.ò

Prime Minister Margaret Thatcher on Christianity and the laws of Britain

In 1988, the British Prime Minister addressed the General Assembly of the Church of Scotland. There, Great Britainôs ñIron Ladyò Margaret Thatcher identified herself as a Christian ï believing in the substitutionary atonement of the Lord Jesus Christ. Like a modern Deborah, she then endeavoured to turn her nation back to the Lord God Who had made Britain óGreat.ô

Mrs. Thatcher declared:[27] ñFrom the beginning, man has been endowed by God with the fundamental right to choose between good and evil.... We were made in Godôs Own image ï and therefore we are expected to use all our own power of thought and judgment, in exercising that choice.

[24] W. Clarke, London, ed. 1817, II, *Proeme.*
[25] *Op. cit.*, I pp. 123f.
[26] *Op. cit.*, IV pp. 416f.
[27] See M. Thatcher: *Christianity and Wealth* (in *Biblical Economics Today*, Institute for Christian Economics, Tyler TX, Aug.-Sept. 1988).

ñIf you try to take the fruits of Christianity without its roots, the fruits will wither. And they will not come [back] again, unless you nurture the roots.... We must not profess the Christian Faith and go to church simply because we want social reforms and benefits, or a better standard of behaviour ï but because we accept...the supreme sacrifice of Christ.

ñMay I also say a few words about my personal belief in the relevance of Christianity to public policy ï to the things that are Caesarôs? The Old Testament lays down: in Exodus the Ten Commandments as given to Moses; the injunction in Leviticus to love our neighbour as ourselves; and generally, the importance of observing a strict code of law.ò See too Numbers and Deuteronomy.

ñThe New Testament is a record of: the incarnation; the teachings of Christ; and the establishment of the Kingdom of God.... I believe that by taking together these key elements from the Old and New Testaments, we gain: a view of the Universe; a proper attitude to work; and principles to shape economic and social life.

ñWe are told we must work and use our talents to create wealth. ôIf a man will not work, he shall not eatô ï wrote St. Paul to the Christian in Thessalonica [Second Thessalonians 3:10].... You recall that Timothy was warned by St. Paul that anyone who neglects to provide for his own house[hold]...has disowned the faith and is ôworse than an infidelô [First Timothy 5:8].... Intervention by the State must never become so great that it effectively removes personal responsibility. The same applies to taxation.

ñPoliticians must see that religious education has a proper place in the school curriculum. The Christian religion ï which, of course, embodies many of the great spiritual and moral truths of Judaism ï is a fundamental part of our national heritage. For centuries, it has been our very lifeblood.

ñIndeed, we are a nation whose ideals are founded on the Bible. Also, it is quite impossible to understand our history or literature without grasping this fact. That is the strong practical case for ensuring that children at school are given adequate instruction in the part which the Judaic-Christian tradition has played in moulding our laws, manners and institutions.

ñNowhere in the Bible, is the word ôdemocracyô mentioned. Ideally, when Christians meet as Christians, to take counsel together, their purpose is not (or should not be) to ascertain what is the mind of the majority ï but what is the mind of the Holy Spirit: something which may be quite different [Exodus 23:2].... No majority can take away God-given human rights.ò

Blackstone on Britain's Colonies like America (and Australia)

Accordingly, the Common Law obtains thus in Great Britain even today. Yet not in Britain alone. For it obtains also, even today, in many of those other lands which she has colonized. Such lands include the U.S.A. and Australia.

Blackstone therefore faithfully discussed not only British Common Law at the time he published his *Commentaries* (in 1765 A.D.). He also reflected on the kindred

American Common Law at that time ï and thereafter. Indeed, he further anticipated that the same Common Law would then soon be brought to new British Colonies ï such as Australia.

This was done by Captain Cook, less than two decades later, in 1788. That would enable also Australia to resist the damnable changes instituted in Europe in the very next year by the ungodly French Revolution of 1789 ï thereafter destined to spread worldwide through her three terrible triplets: Socialism, Communism and Humanism.

Stated the 1765 Blackstone:[28] ñOur more distant plantations in America...are also in some respects subject to English laws.... If an uninhabited country be discovered and planted by English subjects, all the English laws are immediately then in force. For as the [Common] Law is the birthright of every subject ï so, wherever they go, they carry their laws with them....

ñOur [thirteen] American Plantations are principally of this latter sort..., they being no part of the Mother Country but distinct...Dominions.... The form of government in most of them is borrowed from that of England. They have Governors.... They have courts of justice of their own.... Their General Assemblies...are their Houses of Commons. Together with their Councils of State being their Upper Houses, [and] with the concurrence of...the Governors ï [they] make laws suited to their own emergencies.ò

Furthermore, Blackstone added:[29] ñAll foreign Protestants and Jews, upon their residing seven years in any of the American colonies without being absent above two months at a time ï are, **upon taking the <u>oaths</u>**, naturalized to all intents and purposes as if they had been born in this kingdomò of Great Britain. They too ñtherefore are admissible to all such privileges and no other as Protestants or Jews born in this kingdom are entitled to.ò[30] Emphases mine (F.N. Lee). On Roman Catholics *etc*., see later at our note 49 below.

Anticipating additional British Colonies such as those soon to be launched in Australia from 1788 onward, the 1765 Blackstone stated[31] there is a Common Law ñright of migration or sending colonies, to find out new habitations when the Mother Country was [and is] overcharged with inhabitants. This was practised as well by the Phaenicians and Greeks as the Germans, Scythians and other northern people. And, so long as it was confined to the stocking and cultivation of desart[ed] uninhabited countries, it kept strictly within the limits of the **Law of Nature**.ò

American Judges on Christianity as the Root of the Common Law

Regarding North America, the *Encyclopaedia Britannica* rightly remarked[32] that the Pilgrim Fathers took the Common Law with them in 1620 ï even as they took the English speech. Consequently, the Common Law undergirds the foundation also of

[28] *Ib.*, I pp. 104f.
[29] *Ib.*, I p. 363.
[30] Stat.: 2 Geo. III c. 25 [1728]; 13 Geo. c. 7 [1740]; 20 Geo. II c. 24 [1747].
[31] *Op. cit.*, II p. 7.
[32] Art. *Common Law*, in *Enc. Brit.*, 14th ed., 1929, III:687.

the United States. Nowhere has the Common Law been more admirably studied, than precisely in America.

The *Encyclopedia Americana* adds[33] that the English colonists carried the Common Law with them to America as a cherished heritage. For at the beginning of the seventeenth century they brought with them to the New World both their Geneva Bible and their Common Law. Their Geneva Bible emphasized the Law of God, and had been edited by the exiled British Calvinists in Switzerland. Their British Common Law emphasized also the Law of Nature, and was right then being very ably expounded by the great Puritan Jurist Lord Chief Justice Sir Edward Coke.

Thus, almost two centuries after the Pilgrim Fathers and the Puritans first settled in New England, the 1791 Seventh and Eighth Amendments to the 1787 *U.S. Constitution* clearly upheld Anglo-American Biblical ñsuits at Common Law.ò They also preserved ñtrial by jury...according to rules of the Common Lawò ï and further prohibit ñexcessive bailò as well as ñcruel and unusual punishments.ò *Cf.* Exodus chapters 20f to Deuteronomy chapters 25f.

In 1811, Justice Allen of the Supreme Court of New York handed down the unchallenged decision[34] that ñChristianity is part of the Common Law of this State.... It is entitled to respect and protection, as the acknowledged religion of the people.ò Similarly, it was held in *Updegraph* v. *The Commonwealth* (1822) that ñChristianity ï general Christianity ï is and **always** has been a part of the **Common Law** of Pennsylvania.ò[35]

In 1840, the internationally-renowned U.S. Supreme Court Justice Joseph Story wrote: ñWhat nobler triumph has England achieved...than the proud fact that her Common Law exerts a universal sway over this country..., [so] that every lawyer feels that Westminster Hall is in some sort his own?ò Indeed, in the 1844 case of *Vidal* v. *Girard's Executors* he added[36] ï in a unanimous decision ï that ñthe Christian religion is part of the Common Law of Pennsylvania.ò

U.S. Chief Justice Story also put it even more plainly, in his *Institutes of International Law*. There, he declared:[37] ñOne of the beautiful traits of our municipal jurisprudence, is that **Christianity is part of the Common Law** ï from which it sees the sanction of its rights, and by which it endeavors to regulate its doctrine.ò

Roger Brooke Taney was the fifth Chief Justice of the United States. In 1837, he rightly insisted that ñwe adopt and adhere to the rules of construction known to the English Common Law...without exception.ò[38]

In 1855 the Pennsylvania case of *Moyney* v. *Cook* declared:[39] ñThe declaration that Christianity is part of the law of the land is a summary description of an existing and

[33] Art. *Common Law*, in *Enc. Amer.*, 1951, 7:413f.
[34] Cited in A.A. Hodgeôs *Christian Foundation of American Politics* (rep. in *Journal of Christian Reconstruction*, Vallecito Ca., V:1, Summer 1978, p. 45).
[35] 11 Serg. & Rawl. 393, 394, 399 (Pa. 1822).
[36] (1844) 2 Howard (U.S.) 127 & 198, 11 L ed. 205 & 234.
[37] Cited in A.A. Hodgeôs *Chr. Found. Amer. Pol.*, p. 45.
[38] Cited in *The Plain Truth*, Wilke, Melbourne, Sept. 1987, pp. 5f.
[39] (1855) 26 Pa. St. 342 & 67 A.D. 419.

very obvious condition of our institutions. We are a Christian people.... Even those among us who reject Christianity, cannot possible get clear of its influence, customs and principles which it has spread among the people ï so that like the air we breathe, they have become the common stock of the whole country and essential elements of its life.ò

In 1890, the Wisconsin case of *State* v. *District School Board of Edgerton* held:[40] ñThe Christian religion is part of the Common Law of England.... It was brought to this country [the U.S.A.] by the colonists.ò

In 1892, the U.S. Supreme Court determined[41] in *Church of the Holy Trinity* v. *United States* that America was a Christian nation from its earliest days. The court opinion delivered by Justice Josiah Brewer was an exhaustive study of the historical and legal evidence for Americaôs Christian heritage.

It came to the following conclusion: ñOur laws and our institutions must necessarily be based upon and embody the teachings of the Redeemer of mankind. It is impossible that it should be otherwise.... Our civilization and our institutions are emphatically Christian.... This is a religious people.... From the discovery of this Continent to the present hour..., this is a Christian nation.ò

Indeed, on October 4th 1982 the Federal Congress of the U.S.A. rightly passed a Joint Resolution. This authorized and requested the U.S. President to proclaim 1983 as the *Year of the Bible*. This was done, and *inter alia* the following approved reasons then accompanied the Proclamation.

Firstly, because ñthe Word of God has made a unique contribution in shaping the United States as a distinctive and blessed nation and people.ò Secondly, because ñBiblical teachings inspired concepts of civil government that are contained in our *Declaration of Independence* and the *Constitution of the United States*.ò[42]

Fortunately, the U.S. President then was not Bill Clinton of Arkansas ï but the Californian Presbyterian, Ronald Reagan. Most enthusiastically, President Reagan then issued that *Proclamation* ï as requested by the U.S. Congress.

Australian Law Professor Lumb on *Magna Carta*, Blackstone and Australia

Queensland University Law Professor R.D. Lumb has rightly pointed out[43] in his important book *Australian Constitutionalism* that the liberties of Englishmen were considered to flow from the Common Law, as confirmed by *Magna Carta*. Indeed,

[40] 76 Wisc. 117, 20 ASR 41 & 46.
[41] See in R. Smith: *God's Law in America* (in *The Counsel of Chalcedon*, Marietta Ga., January 1988, pp. 9f).
[42] Full text in V. Hall & R.J. Slater: *The Bible and the Constitution of the United States of America*, Foundation for America Christian Education, San Francisco, 1983, pp. xxi-xxii.
[43] Butterworths, Brisbane, 1983, pp. 24f & 68.

according to Blackstone[44] the Common Law reflected in broad outline the Natural Law which gave protection to these rights.

Thus the rights of *Magna Carta* were the rights and liberties of eighteenth-century Englishmen ï including those who from then on would settle in Australia. For Blackstoneôs *Commentaries* were published in 1765, a few years before Captain Cook proclaimed His Majestyôs sovereignty over the eastern coast of New Holland [Australia] ï and a little over twenty years before English colonists set foot on Australian soil.

In a very real sense, Blackstone may therefore be regarded as the immediate father of Australian Common Law. Professor Lumb explains[45] that Blackstoneôs general outline of the constitution and laws of England was to influence profoundly the understanding of these laws in the Australian colonies. For they were to adopt the principles embodied therein ï the principles of the Common Law from time immemorial, funneled down to Blackstone through Jurists like Bracton and Coke.

But the fundamental law to which Bracton and Coke appealed, explains Professor Lumb, was first to transform the legal system of the American colonies. There, it was first to create a new federalist structure, to produce a *Bill of Rights*, and to lay the foundations for a doctrine of judicial review. Some of that tradition of constitutionalism was to enter Australia at a later stage. The Australian system thus incorporates features of both the American and English systems.

Now Blackstone died in 1780. This was just four years after the U.S. *Declaration of Independence*; three years after Captain Cook had visited Tasmania; one year before Britainôs surrender to the United States of America ï and eight years before the later establishment of the first British Common Law Colony in Australia.

Yet already in 1765, Sir William Blackstone had pointed out[46] that British settlers in a previously-unsettled territory bring with them as much of the English Common Law as is applicable to the condition of the new colony. In 1788, New South Wales was simply annexed by the British settlers ï who therefore brought their own system of Common Law with them for that region.

From New South Wales, her Common Law was taken yet further ï when the additional colonies of Tasmania, Victoria and Queensland later separated from her and then themselves expanded. In 1829, the Common Law was established also in Western Australia, at the time of the colonial settlement there.

Then, in 1836, precisely the same occurred at the colonial settlement of South Australia. See the 1978 High Court of Australiaôs *Trigwell's case*.[47] Thus, from 1836 onward, the entire Australian Continent was subject to the Common Law ï and still is.

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[44] *Comm.*, Bk I, Ch 1, pp. 121 *et seq.*
[45] *Op. cit.*, pp. 25 & 68.
[46] *Comm.*, I p. 107.
[47] 142 C.L.R. 617 & 623-25.

Australian Judges on Christianity as part of our Common Law

However, it is not merely indisputable that the Law of Australia is rooted in Britainôs Common Law ï and later enriched by the kindred Anglo-American Common Law. Australian courts themselves have given further judicial recognition to the proposition that specifically **Christianity is indeed part of the law of the land**. See the 1866 case of *Regina* v. *Murphy*.[48]

Also in the 1874 case of *ex parte Thackeray*,[49] it was stated that **the Law of God is part of the law of the colony of New South Wales**. There, the Supreme Court Judge Mr. Justice Hargrave made a very important statement about the character of the law established in Australia during 1788.

His Honour stated: ñWe, the colonists of New South Wales, óbring out with usô (to adopt the words of **Blackstone**) this first great Common Law maxim distinctly handed down by **Coke** and **Blackstone** and every other English Judge long before any of our colonies were in legal existence or even thought of, that ó**Christianity is part and parcel of our general lawsô**; and that **all the revealed or divine law, so far as enacted by the Holy Scriptures to be of universal obligation, is part of our colonial law** ï as clearly explained by **Blackstone**, Vol. I, pp. 42-3; and Vol. IV., pp. 43-60.ò Emphases mine ï F.N. Lee. Compare too, incidentally, also the *Westminster Confession of Faith* 19:4.

In those very passages just mentioned by His Honour Hargrave J., Blackstone stated *inter alia*: ñThe doctrines...we call the revealed or Divine Law...in the Holy Scriptures...are found upon comparison to be really a part of the original Law of Nature.... The moral precepts of this Law are indeed of the same original with those of the Law of Nature.... Upon these two foundations, the Law of Nature and the Law of Revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these.... To instance in the case of murder..., if any human law should allow or injoin us to commit it ï we are bound to transgress that human law....

ñThe belief of a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the Supreme Being, and a firm persuasion that He superintends and will finally compensate every action in human life ï all of which are clearly revealed in the doctrines and forcibly inculcated by the precepts of our Saviour Christ ï these are the grand foundations of all judicial oaths....

ñ[It is] proper for the civil magistrate...to interpose with regard to one species of heresy very prevalent in modern times.... If any person educated in the Christian religion or professing the same shall by writing, printing, teaching or advised speaking deny any one of the Persons in the Holy Trinity to be God, or maintain that there are more Gods than one ï he shall undergo the same penalties and incapacities which were just now mentioned....

ñAs to **Papists**..., if once they could be brought to renounce the supremacy of the pope ï they might quietly enjoy their seven sacraments, their purgatory, and auricular confession; their worship of reliques and images; nay even their transubstantiation.

[48] Wilke Aust. Mag. 757 (cited in *R.* v. *Darling* NSWLR 884 5 at 407-10).
[49] 13 S.C.R. (N.S.W.) 1 & 61.

But while they acknowledge a foreign power superior to the sovereignty of the kingdom ï they cannot complain if the laws of that kingdom will not treat them upon the footing of good subjects.

ñ**Blasphemy** against the Almighty by denying His being or providence; or by contumelious reproaches of our Saviour Christ...[and] all profane scoffing at the Holy Scripture or exposing it to contempt and ridicule...are offences punishable at Common Law by fine and imprisonment or other infamous corporal punishment. For **Christianity is part of the laws** of England.... If in any stage play, interlude or show, the Name of the Holy Trinity or any of the Persons therein be jestingly or profanely used ï the offender shall forfeitò *etc*. Thus the passages in Blackstone approvingly referred to by New South Wales Supreme Court Judge Hargrave.

In the 1884 N.S.W. case of *Regina* v. *Darling & Others*,[50] it was deemed ñan **offence at Common Law**, punishable by fine or imprisonment or both, wilfully to disturb a congregation assembled for the purpose of religious worship. On appeal, Chief Justice Sir J. Martin stated: ñ**An opinion has been expressed that the Christian religion in any of its forms is not recognised by the law of this country. No greater mistake can be made**.

ñIt has been...correctly stated both in England and here that **Christianity is part of the Common Law**, that our laws are based upon its principles, and that our Common Law can be traced back to those principles which run through the whole course of our Statute Law.... **Christianity is part of the Common Law of England, and part of the law of this Colony**.ò

Australia's Constitution, the *Coronation Oath*, and Christianity

We now come to the famous *Commonwealth of Australia Constitution Act*.[51] As stated right at the outset in its Preamble, this was: ñAn Act to constitute the Commonwealth of Australiaò *etc*. Immediately after those opening words, the reason for that enactment was then supplied forthwith. ñWhereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania ï **humbly relying on the blessing of Almighty God** ï have agreed to unite in one indissoluble Federal Commonwealth under the Crownò *etc*.

Australiaôs *Constitution* is therefore certainly grounded in Christianity. According to its very Preamble, it was brought into being on ñ9th July, 1900ò ï ***Anno Domino***, or in the year of our Lord (Jesus Christ). Indeed, even the closing Schedule of that original *Australian Constitution* contains an Oath ï swearing to be faithful ñaccording to law. **So help me God!**ò

Dr. John Quick was one of the Founding Fathers of the *Constitution of the Commonwealth of Australia*. In the 1901 work *Annotated Constitution of the Australian Commonwealth* by J. Quick & R.R. Garran, we are given the background of the reference to ñAlmighty Godò in the Preamble.

[50] NSWLR 884 5 at 405 & 411.
[51] 63 & 64 Victoria, chapter 12.

Quick gave the following definitive statement. He explained:[52] ñThis appeal to the Deity was inserted in the *Constitution* at the suggestion of most[!] of the Colonial Legislative Chambers, and in response to numerous and largely signed petitions received from the people of every Colony represented in the Federal Conventionò ï which framed the text submitted to the Imperial Parliament for enactment.

All federal politicians were then (and still are) required under section 42 of the *Australian Constitution* to swear an oath or make a solemn affirmation of allegiance to the Protestant Christian Monarch ï and to ñher heirs and successors **according to law**.ò That oath is to conclude with the words: ñ**So help me God**!ò

Furthermore, section 61 of the *Australian Constitution* clearly declares: ñThe executive power of the Commonwealth is vested in the Queenò of Australia ï and not in the Protestant Queenôs Prime Minister nor in her Cabinet in Canberra. Moreover, the Australian *Coronation Oath* itself declares that the Queenôs Government is in turn subject to the Empire of **Christ**.[53]

For that Christian Monarch personally declared at her coronation that ñthe whole world is subject to the power and empire of Christ our Redeemer.ò All of her successors are required to do the same. For, as seen from its Preamble, the *Australian Constitution* was signed into law by Queen Victoria on ñ9th July 1900ò **in the year of our Lord** Jesus Christ.

Even the late and left-leaning High Court of Australia Judge Lionel Murphy correctly confirmed[54] in *Bistricic's case* (1976) that ñEnglish colonists brought to New South Wales English Law (both Statute and Common or Decisional) that was suitable to the conditions of the Colony. See Blackstone, *Commentaries* Vol. 1.ò

Once more the same Murphy J., but this time in *McKinlay's case*: ñThe framers of the Australian Constitution [Section 24], in adopting the precise words of the United States Constitution, were certainly aware of United States history. The struggles for independence, the *Declaration of Independence*, the revolutionary war, the framing of the *United States Constitution*, as well as the contributions to the liberty of man by the great figures of the United States are part of the history of the English-speaking peoples. This history is part of our cultural heritage.ò[55]

It was shown in the 1979 South Australian *Sheep case* that cars had collided because one swerved after hitting sheep which had escaped through the damaged fence of an adjoining farm. There, the High Court of Australia reached its decision by following traditional English Common Law. For, as the High Court of Australia itself then declared, that Common Law had been followed also in South Australia ever since its colonial settlement.[56]

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[52] J. Quick & R.R. Garran: *The Annotated Constitution of the Australian Commonwealth*, 1976 rep., p. 287.
[53] R. Eason: *Australia is a Christian Nation* (art. in ed. G. McLennanôs *Understanding our Christian Heritage*, Christian History Research Institute, Orange NSW, n.d., p. 44).
[54] 135 C.L.R. 552 at 56.
[55] 135 C.L.R. 1 at 63.
[56] See J. & R. Ely: *Lionel Murphy – the Rule of Law*, Akron, Sydney, 1986, pp. 157f. See too n. 47 above.

***Eddie Mabo's case*, Blackstone, and Australia's Common Law**

Even in the recent and famous ónative titleô case of *Eddie Mabo & Ors.* v. *The State of Queensland*,[57] there is overall approval of Sir William Blackstone ï and a complete endorsement of his (progressive) Common Law. Thus, just like the A.D. 1765 Sir William Blackstone,[58] also Maboôs High Court of Australia Judge Brennan declared[59] in 1992 ï that there is indeed a Common Law ñright of migration, or sending colonies to find out new habitations when the Mother Country was overcharged with inhabitants.... And, so long as it was confined to the stocking and cultivation of desart[ed] uninhabited countries, it kept strictly within the limits of the **Law of Nature**.ò

Judge Brennan also quoted[60] another passage from Blackstone[61] to the effect that ñin conquered or ceded countries that already have laws of their own, the king may indeed alter and change those laws.ò That Blackstonian passage continues with a reference to one of the cases[62] of that greatest of all Common Law authorities ï Lord Chief Justice Sir Edward Coke himself. There, Coke rightly insisted that the customs ñof an infidel countryò conquered by or ceded to a Christian nation cannot be allowed to remain ï whenever those customs ñare against the Law of God.ò

It is true that Maboôs High Court Judge Brennan later claimed[63] that ñthe *Optional Protocol to the International Covenant on Civil and Political Rights*, brings to bear on the Common Law the powerful influence of...the international standards it importsò into the area ñof universal human rights.ò Very significantly, however, His Honour also declared:[64]

ñIn distinguishing its duty to declare the Common Law of Australia, this court is not free to adopt rules that accord with contemporary notions of justice and human rights, if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency. Australian Law is not only the historical successor of, but is an organic development from, the Law of England.... The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed.ò

Very frankly, Australia does not need any UN *Declaration* ï nor any *Optional Protocol to the International Covenant on Civil and Political Rights* formulated by any of the agencies of the humanistic United Nations Organization. For, as the Supreme Court of Victoria recognized in the very recent (1992) case of *Noontil* v. *Auty*[65] ï Australia is still ña predominantly Christian country.ò

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[57] *Transcript*, 3rd June 1992, unreported, High Court of Australia.
[58] *Op. cit.*, II p. 7.
[59] 1992 *C.L.R.*, p. 20.
[60] *Ib.*, pp. 21f.
[61] *Op. cit.* I ch. 4 pp. 106-8 (thus Brennan); pp. 104f (thus the 1979 Chicago rep. ed.).
[62] 7 Rep. 17b (*Robert Calvin's case,* Show. Parl. C. 31).
[63] *Transcript* of *Mabo's case,* p. 30.
[64] *Ib.*, p. 16.
[65] *Noontil* v. *Auty* (1992) 1 V.R. 365.

Certainly the worldwide religion of Humanism, through the United Nations Organization and its agencies, is indeed bent on trying to emasculate the Common Law by promoting an international secularistic New Age. Such, it is intended, would be subject not to the Law of God (as acknowledged in our Common Law) ï but instead to the laws of fallen man. Yet such Humanism will not succeed.

With its lax views about parental authority and abortion and euthanasia and marriage and private property *etc.*, the religion of Humanism is clearly out of step with reality ï and indeed contains the seeds of its own destruction. For it is out of step with the God of reality Who has declared: ñhonour your father and your motherò; ñyou shall not murderò; ñyou shall not commit adulteryò; and ñyou shall not steal!ò

This is why there must necessarily be some honour, even among thieves. For if thieves steal from one another, they cannot co-operate with one another to steal from others. Indeed, whenever thieves at least do so honour one anotherôs possessions ï they thereby unconsciously advance the Law of God Who declares: ñyou shall not steal!ò

Triumphant future of the Common Law here on our own great planet Earth

Though ruined by the fall, ôby natureô even those nations which do not have the Law ï sometimes do the things contained in the Law. This shows that the work of the Law is written in their hearts, their conscience also bearing witness and their thoughts meanwhile accusing or else excusing one another. Romans 2:14-15. Thus, they too are without excuse. For the invisible things of God are clearly seen from the creation of the world, being understood through the things which have been made. Romans 1:20.

In Christ, however, elect mankind is right now being re-created in right-eousness. Ephesians 4:24. This does not voiden but rather establishes the Law. Romans 3:31. For the Law is holy, and the Commandment is holy and just and good. Romans 7:12. Indeed, the saved sinner delights in the Law of God ï after the inward man. Romans 7:22.

There is going to be a triumphant future of the Common Law, here on our own great planet Earth. For the Law of God must and shall go forth out of Zion alias the Christian Church ï so that all nations will yet flow into her. Isaiah 2:2f & Romans 11:26f. Because Christ judges with righteousness, the Earth shall yet become full of the knowledge of the Lord as the waters cover the sea. Isaiah 11:1-9 *cf.* Habakkuk 2:14-20. For the sake of the Christian Church as the bride and true Zion of God, He will not rest ï until her righteousness goes forth brightly, and the Gentiles see that righteousness. Isaiah 62:1f *cf.* Revelation 15:4.

Meantime, also the antichristian dragon goes forth ï to make war against those who keep the Commandments of God and who have the testimony of Jesus Christ. Revelation 12:17. Yet these are they who keep the Commandments of God and the faith of Jesus. Revelation 14:12. Ungodly kings indeed make war against the Lamb. But the Lamb shall overcome them. For he is Lord of lords and King of kings ï and they who are with Him are called and chosen and faithful. Revelation 17:14.

Blessed then are they who do His Commandments, so that they may have right to the tree of life and may enter in through the gates into the City of God. For **outside** are

dogs and sorcerers and whoremongers and murderers and idolaters ï and whosoever loves and makes a lie. Revelation 22:14. Here, ñdogsò probably means: homosexuals. *Cf.* the Septuagint at Deuteronomy 23:17f, where *kunos* means: sodomite.

Inevitably, a day of final judgment is coming. Wise King Solomon thus gives us the conclusion of the whole matter: ñFear God and keep His Commandments! For this is the whole duty of man. For God shall bring every work into judgment, with every secret thing, whether it be good or whether it be evil.ò Ecclesiastes 12:13f.

Even the Pagans will then be shown to be without excuse. As the great lawyer Paul of Tarsus has assured us:

ñWhenever the Pagans who do not have the Law, **by nature** do the things contained in the Law, these...show **the works of the Law written in their hearts**, their conscience also bearing witness and their thoughts meanwhile accusing or else excusing one another ï in the day when God shall judge the secrets of men by Jesus Christ.ò Romans 2:14-16.

This was affirmed also by Lord Chief Justice Sir Edward Coke. For, in respect thereof, he declared:[66] ñIt may be verified by these laws that *lex est lux*. Proverbs 6:23 ï ó[For the Commandment is a lamp, and] the law itself is a light.ô See Romans 2:14.ò See too Proverbs 20:27 ï óThe spirit of man is the candle of the Lord, searching all the inward parts of the belly.ô

There will, then, be a final judgment of every human being who has ever lived. That judgment will be based on the Ten Commandments, engraved by the Creator into every human heart ï Godôs Moral Law, inherent in the Common Law. Proverbs 6:23 & 20:27 *cf.* Romans 2:12-16 ï thus Lord Chief Justice Sir Edward Coke.[67]

Worthy of condemnation on Judgment Day, as also now, are all such practices as are ñnot only against Christianity but against the Law of God and of Nature contained in the Decalogue.ò Thus, in *Robert Calvin's case*. Again, Sir Edward Coke.[68]

Christ Himself demonstratively declared these truths to His Apostle, John. The latter then faithfully recorded: ñI saw a great white throne and Him Who sat on it, from Whose face the Earth and the Heaven fled away.... I saw the dead, small and great, stand before God. And the books were opened.

ñBut another book was opened, which is the book of life. And the dead were judged out of those things which were written in the books, according to their works.... They were judged, every man according to their works.... And whosoever was not found written in the book of life ï was cast into the lake of fire.ò Revelation 1:1-4 & 20:11-15.

Jesus Christ testifies these things in the churches, saying: ñI am the Root...; let him who is thirsty come and...take the water of life, freely!ò Revelation 22:16f. For in the initial and in the final instance, it is Christ and He alone Who is the Alpha and the Omega, the First and the Last ï the Root and the Fruit of the Common Law.

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[66] *Proeme* to 3rd Part, p. ii: ñ*Deo*ò & ñ*Patriae*.ò
[67] See nn. 2 & 66 above.
[68] See nn. 3 & 62 above.