

The New Testament Church
BIBLICAL WORLDVIEW TEACHINGS

10 – A Biblical View of the Common Law

Paul Jehle – May 29, 2024

I The Origins of the Common Law

- A. God is the Creator of all law – Genesis 1:1-3; 2:7
 - 1. God creates physical motion in creation – Genesis 1:2; Romans 1:20 (see Morris **quote**)
 - 2. God’s law in the conscience – Ge. 2:7; Ro. 2:15 (see Westminster, Blackstone **quotes**)
 - 3. God’s unwritten law, common to all – Genesis 4:10 – the “ground” cried out for justice!
 - a. Numbers 35:33 – *So you shall not pollute the land where you are; for blood defiles the land, and no atonement can be made for the land, for the blood that is shed on it, except by the blood of him who shed it.* – the “law of the land” is the common law
 - b. Romans 5:13 – *For until the law sin was in the world, but sin is not imputed where there is no law.* – due to common grace, not every sin is necessarily illegal
 - c. **Common law pre-dates all legislatures, executives and judges** (see Rushdoony **quote**)
 - 4. Civil Government punishes actions, only God judges the heart – Genesis 9:6
 - a. Consider that Cain was not punished with banishment due to anger, but murder.
 - b. Common Law was distinctly **jurisdictional** – *Criminal intent, unaccompanied by a criminal act (actus reus), is not punishable.* (Titus, p. 71 – quoting Clark and Marshall, *A Treatise on the Law of Crimes*, 1958, p. 176)
- B. Biblical foundations of the Common Law – see Winters, pages 693-698
 - 1. Individuals receive direct authority from God to govern themselves (Genesis 1-2).
 - 2. Law has always been in the mind of the Creator – God is law as well as love (Ge. 2).
 - 3. Common law places government officers under the same law as the people (Ge. 9)
 - 4. Ultimate accountability of all civil magistrates to God and the people (Ro. 13:1-7).
 - 5. Common law demands independent, appellate jurisdiction of justice (Ex. 18).
 - 6. Common law requires public officials to be subject to removal (see 2nd Samuel 23:2-3).
 - 7. Every person is entitled to due process of law under *jurisdiction*, separating legislative, executive and judicial, (Deut. 17:7; 19:21; Ex. 21:24-25).
 - 8. The trial by jury is the “foremost defining quality of the common law.” (Deut. 17:6-7)
 - 9. Scriptures undergird and preserve the practice of common law (Ge. 1-4; 1st Tim. 3:15)
 - 10. The common law’s precepts and habits of mind are revealed in its practice (Ex. 21...)
- C. The Practice of the Common Law (see Titus **quote** on the Biblical origins of common law)
 - 1. Romans 13:1-4 – Civil magistrates are *ministers* (deacons)
 - 2. Justice administered based on God’s Law; civil liberty goal of constitution (Lev. 19:15)
 - 3. God alone is Lord of *conscience* (heart - Ro. 13:5; Acts 24:16)
 - 4. Ro. 13:3; Acts 5:29 positive commands contrary to God’s Word is to be resisted
- D. When Israel chose a King, she moved slowly to *civil law* from *common law*. (see PP chart)

II The Common Law Jury (see summary of Common Law Jury, by Jehle of Titus article, 1996)

- A. Scriptural origins of the Jury
 - 1. The nature and structure of the Law of God – Exodus 20-21
 - a. The Ten Commandments – fundamental LAW
 - b. Statute Laws (precedent) arising from issues between people – EQUITY

2. Deuteronomy 17:6-7 – two or three eye witnesses to put someone to death - individual
3. Matthew 18:15-17 – Jesus affirms the pattern of settling disputes among people
4. 1st Corinthians 6:1-8 – “*pertaining to this life... those least esteemed to judge*”
- B. The nature of Christianity (begins with the individual) is lawful interposition (see **Titus Q**)
 1. John 16:7-10 – unique nature of Christ’s Kingdom – rule from within the believer
 2. Common law is the *essence* of interposition (see Winters **quote**)
 3. The *Writ of Habeas Corpus* (have the body) - a critical step of interposition – Dt. 17:6-7
 4. The *Oath* to God and not general ones (idolatry) is also critical – Mt. 5:33-34; Dt. 19:15
 5. Its essence is *enumerated powers*, delegated from God by consent – Romans 13:1-7
 6. Jury trial *models* interposition – the Biblical lawful defense of liberty (**law and fact PP**)
 - a. Individual - Romans 13 – the State should protect the conscience of the individual
 - b. Horizontal – King & Priest - 1st Sam. 13:8-12 (Saul) and 2nd Chr. 26:16-23 (Uzziah)
 - c. Bottom-up Queen Athalia - 2nd Chronicles 23:14... - civil interposition against tyranny
 7. Steps of interposition - Matthew 18:7; 15-20 (see **Whom we Shall Obey** – Jehle)
 - a. Embrace personal insults and injury, responding in love - Matthew 5:38-41
 - b. Personal appeal (with witnesses) for a redress of grievances - Matthew 18:15
 - c. Boycott - “shake the dust from your feet” at the gate - Matthew 10:14
 - d. Civil interposition - lawful resistance through already established channels - Acts 25:11
 - e. Flee or submissive disobedience when commanded to disobey God - Acts 5:29
 - f. Resistance by force (using the sword) - Luke 22:36

II Highlights of Common Law practice in the British Isles and America

- A. Biblical Law in Britain – see **quote** by Winters
 1. St. Patrick and the *Liber ex Lege Moisi* (450) - see **quote** by Leslie Hardinge
 2. King Alfred – his “dom-bok” (893) – ten commandments, beatitudes – the common law –
 3. Norman the Conqueror (1066) – affirmed the common law, but also “*four civil-law tribunals... ecclesiastic, chancery, admiralty, and chivalry. Later, for a time, the Crown used two additional civil-law prerogative tribunals: the Star Chamber and the High Commission.*” – Winters, p. 310. (see further quote from Winters about this time period)
 4. Magna Charta (1215) – (see Sam Adams **quote** on the Magna Charta)
 - a. Stephen Langton sought to restore the “ancient liberties of England” by common law
 - b. America’s founders sought to clarify the source of those liberties (common law)
 5. John Wycliffe (1383) – ...*Wyclif, grasping this principle, determined to translate the Bible into English as the remedy against the civil-law Code.*” – (Winters, p. 434n)
- B. Biblical common law in America
 1. Colonial Charters assert the Magna Charta and common law as their source
 2. State Constitutions and the Declaration of Independence – foundation of law of nature
 3. U.S. Constitution - see Art. III; S. 2, Cl 1 – “*law and equity*” (**quote** by Jefferson – 1800)
 - a. Why didn’t the U.S. Constitution mandate common law? (who was sovereign?)
 - b. A delegated, enumerated document, a dual covenant (not consolidated or confederated)
 - c. The unwritten, common law was at the local level, and up *through* the States!
 - d. The “way in” to a covenant is the “way out” of a covenant (see Madison quote)
 4. The dilemmas of 1811 and 1860 – source of the law of nature – God in the heart of people
 5. The demise from 1880 onward... - positive law, incorporation of U.S., “civil” rights and “civil law” with no reference to the higher power of God or the Common Law.