

Key Quotes for the Session on the Common Law

Henry Morris comments on Genesis 1:2 – *This activity of the Holy Spirit is called that of ‘moving’ in the presence of the waters. The word ‘moved’ (Hebrew rachaph) occurs only three times in the Old Testament, the other two being translated ‘shake’ (Jeremiah 23:9) and ‘fluttereth’ (Deuteronomy 32:11), respectively.... The idea seems to be mainly that of a rapid back and forth motion. In modern scientific terminology, the best translation would probably be ‘vibrated.’ ...It is significant that the transmission of energy in the operations of the cosmos is in the form of waves – light waves, heat waves, sound waves, and so forth. (The Genesis Record, Baker Book House, 1991, page 52.)*

Westminster Confession of Faith, chp. 20, 1643, *God alone is Lord of the conscience, and has left it free from the doctrines and commandments of men, which are, in any thing, contrary to His Word.*

William Blackstone (1755) – *This will of his Maker is called the law of nature. For as God, when He created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion... 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. (Commentaries on the Laws of England, 1765, as quoted in The Christian History of the Constitution of the United States: Christian Self-Government, FACE, 1966, pgs, 141, 143.)*

R.J. Rushdoony has written, *Law is in every culture religious in origin. Because law governs man and society, because it establishes and declares the meaning of justice and righteousness, law is inescapably religious, in that it establishes in practical fashion the ultimate concerns of a culture. Accordingly, a fundamental and necessary premise in any and every study of law must be, first, a recognition of this religious nature of law. Second, it must be recognized that in any culture the source of law is the god of that society. If law has its source in man's reason, then reason is the god of that society. If the source is an oligarchy, or in a court, senate, or ruler, then that source is the god of that system. (Institutes of Biblical Law, The Craig Press, 1973, p. 4)*

Herb Titus writes; *‘While the Roman Law was a deathbed convert to Christianity, the common law was a cradle Christian.’ So wrote John C. H. Wu in his 1955 encomium to the Anglo-American legal system known as the common law. Wu, a convert to Christianity in the 1930's and a noted international statesman, jurist, and law professor, documented this claim by tracing the history of the English common law from Bracton through Coke to Blackstone.*

Bracton, named by Wu as the ‘Father of the Common Law’, wrote: The king himself... ought not to be under man but under God, and under the law, because the law makes the king... he (the king) ought to be under the law is clearly shown by the example of Jesus Christ... for although there lay open to God, for the salvation of the human race, many ways and means... He used, not the force of his power, but the counsel of His justice. Thus He was willing to be under the Law, ‘that he might redeem those who were under the Law.’ For He was unwilling to use power, but judgment.

Coke, whom Wu praised as ‘the incarnate common law’ or the savior of the common law, showed incomparable courage when he cited Bracton in his momentous encounter with King James I, who claimed that he personified the law as king... Coke, like Bracton, understood that God, not man, was the ultimate source of law, even... the civil realm....

Coke wrote: The law of nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction; ... this is lex aeterna, the moral law, called also the law of nature. And by this law written, with the finger of God in the heart of man, were the people of God a long time governed, before the law was written by Moses, who was the first reporter or writer of law in the world.’ (Titus, Herbert W., The Christian and American Law, H. Wayne House, Editor, pages 13-14.)

Winters - *The Jury's simple and unexplained veto of the law and its judge-instructed application, case by case, is the steady and sure-footed defense against the tyranny of over-zealous prosecutors, the domination of dictators, the malignancy of political correctness, the mania of majorities, and the arrogation, ignorance, and misapplied knowledge of priests, scholars, legislators, and judges.* (Winters, Brent, Excellence of the Common Law, Armstrong and Winters Foundation, 2008, page 480)

Leslie Hardinge writes; *Wherever Patrick established a church he was believed to have left a copy of "the books of the Law an the Books of the Gospel."* *The Liber ex Lege Moisi is the only work surviving from Celtic sources which answers to the description, "books of the law."* (The Celtic Church in Britain, London, 1972, pages 49-50)

Winters of King Alfred... *The judgments (doms, later spelt dooms) of the ancient Anglo-Saxon folk assembly called the moot were never imperial decrees, as from a great to a lesser, but were findings, as that of the Jury of one's neighbors... divine affirmations of an ancient custom discerned afresh and applied anew; an expression of law's application that had existed from eternity past.* (435-436)

Winters writes; *God's Word never threatened the Anglo-Saxons' folk-law tradition because political unity was not the direct message of the gospel, but its indirect outcome. God's Word aims foremost at direct and individual overthrow of false personal desires, not direct and collective overthrow of false social and political institutions. Then as now, the Christian message stressed personal humility and obedience to the Scriptures, not open threats to Anglo-Saxon political structures. Unity then resulted as individuals devoted themselves to the same written Word of Christ.* (Winters, page 439)

Winters writes about the Common Law under William I; *The ecclesiastic courts, being civil-law tribunals, arrogated the source of power and the concentration of power's exercise to the legislator (the pope) before whom the ecclesiastic judges fawned. Common law and government, on the other hand, recognized an allocation of authority and power among an independent judiciary of independent jurors and judges, an independent executive, and an independent legislature. Because the expression of common law and government arises foremost from its courts, the rival civil law used Rome's ecclesiastic courts to usurp jurisdiction from the common-law courts, hoping to subject all judicial decisions to civil law's ecclesiastic code, the canon law.* (Excellence, Winters, p. 311)

James Madison, January 9, 1769 – *Our writer... tells us that formerly the right of taxation was in the King only. I should have been glad if he had pointed us to that time. We know that kings... have lost their crowns and their heads for assuming such a right ...as long as the people understand the great charter of nature upon which Magna Charta itself is founded... this is the law of nature; and a violation of it is the same thing, whether it be done by one man... a king, or by five hundred...*

Jefferson; *if the principle were to prevail, of a common law being in force in the U.S., (which principle possesses the general government at once of all the powers of the state governments and reduces us to a single and consolidated government,) it would become the most corrupt government on the earth.* (Letter of Thomas Jefferson to Gideon Granger, August 13, 1800, as quoted in McDowell, Gary L., Equity and the Constitution, University of Chicago Press, 1982, page 59.)

James Madison, August 28, 1830, in a letter to Edward Everett, *...the error... must be avoided, of viewing it (Constitution) through the medium, either of a consolidated Government, or a confederated Government, whilst it is neither the one or the other, but a mixture of both...in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses rendering passive obedience and non-resistance a greater evil, than resistance and revolution, there can remain but one resort, the last of all, an appeal from the canceled obligations of the constitutional compact, to original rights and the law of self-preservation (emphasis mine)...*