

GENESIS!: SCRIPTURAL CITATION AND THE *LAWYER'S BIBLE PROJECT*

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In the beginning was the Word, and the Word was with God,
and the Word was God.¹

I. INTRODUCTION

Christian lawyers across the United States have deplored the increasing secularization of our society, and particularly of the law. The days of the great international legal publicists (such as Hugo Grotius,² John Selden,³ and William Welwod⁴) much less the church

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1. *John* 1:1 (King James).
2. Professor Mark W. Janis of University of Connecticut School of Law, Hartford, CT, notes that

[t]hroughout *De Jure Belli Ac Pacis*, Grotius relied heavily on proofs and evidences from the Bible to demonstrate the truth of his propositions. Only citations from classical Greek and Roman authors had greater play in the book. Religious sources were very much more important to Grotius than any of the evidences of treaties, diplomatic history, state practice, or judicial decisions which predominate in the ordinary literature of international law today.

MARK W. JANIS, *Religion and the Literature of International Law: Some Standard Texts, in THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW* 63 (Mark W. Janis ed., 1991). See also *id.*, 63-64 (showing Grotius' use of Scriptural citations from both Old and New Testaments, and the presence of a section in his work specifically entitled: "That treaties with those who are strangers to the true religion are not, generally speaking, prohibited by the Hebraic law"). Janis concludes that

famed as a theologian as well as a jurist, Grotius unashamedly brought the Bible to the law of nations. It is important to note that Grotius brought religion to the discipline not to *exclude* other religious groups (be they Calvinists, Catholics, Jews or Moslems), but to show that his religion, a liberal and universal faith, proved that the law of nations was meant to *include* all peoples.

Id. at 65-66. See also JOHN EIDSMOE, *CHRISTIANITY AND THE CONSTITUTION: THE FAITH OF OUR FOUNDING FATHERS* 64 (1987), which notes that Grotius "believed rulers have a duty to settle disputes without war, if possible, using 'Holy Writ' as a basis" and that he

saw his ideal as the 'Christian prince' who would apply the will of God as found both in nature and the Old and New Testaments. He went beyond Luther, who would have magistrates apply God's law but not God's gospel in their civic duties, and moved in the direction of Calvin.

Id.

3. John Selden's *Mare Clausum seu, De Dominio Maris* was translated into English by Marchamont Nedham and published as *Of the Dominion, Or, Ownership of the Sea*, in 1652. It is divided into two books, the first dealing with *legal*, and the second with *factual*, matters. Selden's Biblical references, of which there are several, appear exclusively in the *first* book. By far the greatest concentration occur in Chapter VI, entitled: "That the *Law of God*, or the *Divine Oracles* of holy Scripture, do allow a Private Dominion of the Sea. And that the wide Ocean also, which washeth the Western Coast of the holy Land, or at least a considerable part of it, was, according to the Opinion of such as were learned in the Jewish Law, annexed to the Land of Israë'l, by the Assignment or appointment of God himself." JOHN SELDEN, *OF THE DOMINION, OR, OWNERSHIP OF THE SEA* . . . 15, 18, 19, 25, 26, 27-41, 50 (1972) [1652] [Marchamont Nedham trans.] [Arno Press reprint ed.]. Interestingly, *all* Selden's references are to the Old Testament. Irwin Linton characterizes Selden as

a Christian equally famous as a lawyer, and a scholar so profound that it is said the learned men who gathered together under the auspices of King James to produce . . . the "King James Version" of the Scriptures, were wont to refer to John Selden for solution many problems of translation confronting them as their work progressed.

IRWIN H. LINTON, *A LAWYER EXAMINES THE BIBLE: AN INTRODUCTION TO CHRISTIAN EVIDENCES* 18 (1943).

4. WILLIAM WELWOD, *AN ABRIDGEMENT OF ALL SEA-LAWES* . . . (1972) [1613] [The English Experience no. 565], in dealing with the "Communitie and Proprietie of the

fathers (including St. Augustine and Thomas Aquinas),⁵ who debated

Seas” attempts to refute the arguments of Hugo Grotius’ *Mare liberum*, “fortified by the opinions and sayings of some olde Poets, Orators, Philosophers, and (wrested) Iurisconsults, that Land and Sea, by the first condition of nature, hath beene and should bee common to all, and proper to none” by

a simple and orderly reciting of the wordes of the holy Spirit, concerning that first condition naturall of Land and Sea from the very beginning; at which time, GOD hauing made and so carefully toward man disposed the foure elements, two to swimme about his head, and two to lie vnder his feete: that is to say, the Earth and Water, both wonderfully for that effect ordered to the vpmaking of one and a perfitte Globe, for their more mutuall seruice to mans vse: according to this, immediately after the creation, God saith to man, *Subdue the earth, and rule ouer the fish* [*Gen.* 1.28]: which could not be, but by a subduing of the waters also.

And again, after the Flood, God saith, *Replenish the earth* [*Gen.* 9.1]: and for the better performance heereof, God in his iustice against the building of Babylon, scattered man-kind ouer all the face of the earth [*Gen.* 11.8]; therefore is it that *Moses* saith, *These are the Iles of the Nations diuided in their lands* [*Gen.* 10.5]. So that heereby is euident, that things here done, are not so naturally too cōmon; sith God the author of nature, is also as well author of the division, as of the composition; and yet how-so-euer, in his iustice as is said, yet in his mercy also and indulgent care, for the welfare and peace of mankind.

Id. at 62-63.

5. See generally ARTHUR NUSSBAUM, A CONCISE HISTORY OF THE LAW OF NATIONS 40-41, 42-43 (1947); 1 THOMAS ALFRED WALKER, A HISTORY OF THE LAW OF NATIONS 204-05, 211-12 (1899). The first part of the second part of Aquinas’ *Summa Theologica* (questions 90-108) is particularly noteworthy for its integration of Scriptural texts in legal discussion, as exemplified by that cleric’s consideration of the question whether human law binds an individual’s conscience.

Objection 1. It would seem that human law does not bind a man in conscience. For an inferior power has no jurisdiction in a court of higher power. But the power of man, which frames human law, is beneath the Divine power. Therefore human law cannot impose its precept in a Divine court, such as is the court of conscience.

Objection 2. Further, the judgment of conscience depends chiefly on the commandments of God. But sometimes God’s commandments are made void by human laws, according to Matt. xv. 6: *You have made void the commandment of God for your tradition.* Therefore human law does not bind a man in conscience.

Objection 3. Further, human laws often bring loss of character and injury on man, according to Isa. x. 1 *et seq.*: *Woe to them that make wicked laws, and when they write, write injustice; to oppress the poor in judgment, and do violence to the cause of the humble of My people.* But it is lawful for anyone to avoid oppression and violence. Therefore human laws do not bind man in conscience.

legal issues in a religious context,⁶ are long gone.⁷ In domestic courts, references to the Christian principles held by the founding fathers⁸

On the contrary, It is written (1 Pet. ii.19): *This is thankworthy, if for conscience . . . a man endure sorrows, suffering wrongfully.*

I answer that, Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, according to Prov. viii. 15: *By Me kings reign, and lawgivers decree just things.*

ST. THOMAS AQUINAS, ON LAW AND JUSTICE: EXCERPTS FROM *SUMMA THEOLOGICA* 1019 (1988) (q. 96 Art. 4).

6. Reference should also be made to the work of Gratian on canon law, who emphasized the importance of divine law, "the will of God reflected in revelation, especially the revelation of Holy Scripture." HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 145 (1983). *See also id.* at 148, 149.

7. A recent noteworthy attempt to remedy this defect is Prof. Mark Janis' compilation on the subject. Janis argues that

[t]he connection between religion and international law is close but nowadays surprisingly little studied or analyzed. This lack of attention has, I think, two causes. First is the effort made in the 19th and 20th centuries to turn international law into a "science." Those who do this often feel that doing law "scientifically" means keeping religion entirely out of the discipline. Second is the addition in recent decades of more than a hundred new mostly non-Western states to the international political community. Conscious that Western values are not necessarily shared with other cultures, many international lawyers are unwilling to discuss religion, ethics and morals for fear of excluding those whose beliefs may be very different from their own.

Id. at ix (criticizing the former, but expressing sympathy with the latter cause). While this is a useful start on an explanation, one might also note that many of these "non-Western" states have Christian majorities or pluralities, while others have been significantly influenced historically by Christian theology. Even those nations not falling into one of these categories generally possess *some* religious background. While some publicists have indeed tried to treat law as a "science," it is also necessary to consider the impact of *anti-religious* (as opposed to *irreligious*) intellectualism in ignoring the historical connection between the Christian religion and international law. Two essays included in the collection which are of particular importance for the field are Janis's "Religion and the Literature of International Law: Some Standard Texts," and John E. Noyes' "Christianity and Late Nineteenth-Century British Theories of International Law," *id.* at 61-84, 85-106. *See also* BERMAN, *supra* note 6; HAROLD J. BERMAN, *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION* (1993).

8. *See* EIDSMOE, *supra* note 2, which reviews major influences on the founding fathers and then continues to specifically consider the impact of Christianity on John Witherspoon, James Madison, George Washington, Alexander Hamilton, John Jay, Gouverneur Morris, Benjamin Franklin, Thomas Jefferson, Samuel Adams, John Adams,

have been watered-down to an ill-nourishing gruel, and almost entirely ignored.⁹ An overbroad interpretation of the Establishment Clause has banned Bible reading and prayer from schools;¹⁰ nativity displays have been hustled out of our public parks and municipal buildings;¹¹ House and Senate religious observances¹² and the motto

Patrick Henry, Roger Sherman, and Charles Cotesworth Pinckney. *Id.*

9. See H.B. CLARK, *BIBLICAL LAW: BEING A TEXT OF THE STATUTES, ORDINANCES, AND JUDGMENTS ESTABLISHED IN THE HOLY BIBLE—WITH MANY ALLUSIONS TO SECULAR LAWS: ANCIENT, MEDIEVAL AND MODERN—DOCUMENTED TO THE SCRIPTURES, JUDICIAL DECISIONS AND LEGAL LITERATURE* 44 (2d ed. 1944), quoting 7 *VIRGINIA LAW REGISTER* 777 (New Series 1922) to the effect that “[a]t one time . . . no book was oftener quoted in argument before a jury, but ‘it is seldom referred to now.’”

10. See, e.g., Johanna Josie Raimond, *The Constitutionality of Student-Led Prayer at Public School Graduation Ceremonies*, 48 *VAND. L. REV.* 257 (1995); Gilbert A. Holmes, *Student Religious Expression in School: Is It Religion or Speech and Does It Matter*, 49 *U. MIAMI L. REV.* 377 (1995); Eric Fleetham, *Lee v. Weisman: Psychological Coercion Offends the Traditional Notion of Coercion Under the Establishment Clause*, 24 *U. TOL. L. REV.* 725 (1993).

11. See, e.g., *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963) (compulsory Bible reading in public schools prohibited); Daniel Parish, *Private Religious Displays in Public Fora*, 61 *U. CHI. L. REV.* 253 (1994); Steven Goodman, *Constitutional Law—Public Display of Religious Symbols and the Establishment Clause—Doe v. Small*, 934 F.2d 743 (7th Cir. 1991), 65 *TEMP. L. REV.* 259; Steven A. Seidman, *County of Allegheny v. American Civil Liberties Union: Embracing the Endorsement Test*, 9 *J.L. & RELIGION* 211 (1991).

12. See *Kurtz v. Baker*, 829 F.2d 1133 (D.C. Cir. 1987) (challenge to refusal of House and Senate chaplains to invite nontheists to deliver secular remarks during morning prayers lacked Article III standing). See also *Marsh v. Chambers*, 463 U.S. 783 (1983) (Nebraska legislature chaplaincy practice not in violation of Establishment Clause). Ironically, a cognate issue gained the support of Benjamin Franklin, hardly known as a militant Christian, during the Constitutional Convention of 1787. In this meeting, Franklin queried how it had happened

that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings[?] In the beginning of the contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the divine protection. Our prayers, Sir, were heard and they were graciously answered. . . . I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth, that *God governs in the affairs of men*. And if a sparrow cannot fall to the ground without His notice, is it probable that an Empire can rise without His aid? We have been assured, Sir, in the sacred writings that “except the Lord build the house, they labor in vain that build it.” I firmly believe this, and I also believe that without His concurring aid we shall succeed in this political building no better than the builders of Babel

on our coinage, "In God We Trust,"¹³ have been challenged; and even long-standing clauses in State Constitutions requiring that public officers believe in a Supreme Being are now under attack.¹⁴ It is profoundly ironic that, today, the Bible's major role in court, indeed its only role in most cases, is its use in the swearing-in of witnesses.¹⁵

This state of affairs must not continue. But in restoring rules, and principles and morality to law, a rallying-standard is necessary. The soldiers in the field, the Christian men and women in law's trenches, must have a focus for their struggle. The standard selected must be a symbol, but more than a symbol. Ideally, it should provide knowledge, give guidance, and encourage the faith of the committed, serving as a beacon, a weapon, a refuge . . . not only for those now fighting in its ranks, but also for all those susceptible to its merits. The *Bible* is the obvious answer, but it should be a special edition, one created for use and ready reference by judges and lawyers.

This article will establish the case for a *Lawyer's Bible*, an edition of Scripture with annotations to relevant case law, by reviewing the legal importance of biblical citation and usage in Anglo-American law. Such citation will be traced from Anglo-Saxon and medieval origins through early colonial practice. Their employment by many of the founding fathers and by 19th and 20th

I therefore beg leave to move that hereafter prayers, imploring the assistance of Heaven and its blessings on our deliberations, be held in this assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service.

ISAAC A. CORNELISON, *THE RELATION OF RELIGION TO CIVIL GOVERNMENT IN THE UNITED STATES OF AMERICA: A STATE WITHOUT A CHURCH, BUT NOT WITHOUT A RELIGION* 209-10 (reprint of 1895 ed. 1970) (quoting James Madison, *Journal of the Federal Convention* 259-61 (E.H. Scott ed. 1993)). See also EIDSMOE, *supra* note 2, at 208 (quoting Andrew M. Allison, W. Cleon Skousen, and M. Richard Maxfield, *The Real Benjamin Franklin* 258-59 (1982)), 12-13.

13. See *O'Hair v. Blumenthal*, 462 F.Supp. 19 (W.D. Tex. 1978), *aff'd sub nom O'Hair v. Murray*, 588 F.2d 1144 (5th Cir.), *cert. Denied*, 442 U.S. 930 (1979). See also *Aronow v. U.S.*, 432 F.2d 242 (9th Cir. 1970).

14. See anon. *In (blank) we trust*, 341 THE ECONOMIST, no. 7987, Oct. 12, 1996, at 32.

15. See generally 58 AM. JUR. 2D 1043-61 *Oath and Affirmation*, esp. § 23 *Touching or Kissing Bible* (1964).

century thinkers and jurists, both here and in the United Kingdom will be demonstrated, suggesting the artificiality of the recent dichotomy between law and Scripture, as well as the Bible's continuing importance as persuasive authority in the courts. Finally, consideration will be given to the need for and uses of a *Lawyer's Bible*.

II. "IN THE BEGINNING WAS THE WORD": THE LEGAL IMPORTANCE OF SCRIPTURAL CITATION

Historically, the Bible has held a persuasive role in Anglo-American law.¹⁶ While it has been cited in numerous cases, this usage

16. See D. SEABORNE DAVIES, *THE BIBLE IN ENGLISH LAW* 5 (1954):

Did the Bible ever in fact have . . . "controlling say" in English law? If its authority was only persuasive, to what degree was it so? The answer to the former question appears to me to be pretty clearly, No. The answer to the second must be more diffuse--that the persuasiveness of the authority of scriptural injunctions varied considerably from time to time.

Id. Others have gone further, claiming that Christianity is part of the common law. See *State v. District School Board of Edgerton*, 44 N.W. 967, 973, (1890) ("Counsel for the school board maintain . . . that the Christian religion is part of the common law of England; that the same was brought to this country by the colonists, and by virtue of the various colonial charters was embodied in the fundamental laws of the colonies"); *Vidal v. Girard's Executors*, 11 L. Ed. 205, 234 (1844) ("It is also said, and truly, that the Christian religion is part of the common law of Pennsylvania. But this proposition is to be received with its appropriate qualifications. . . ."); *Updelegraph v. Pennsylvania*, 11 Serg. & Rawle. 394, 400 ("Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania . . ."). See also *Holy Trinity Church v. United States* 143 U.S. 457, 470 (1892). *Mohney v. Cook*, 26 Pa. 342, 347 (1855) notes:

The 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, in so far as we have entered into the spirit of Christian institutions, and become imbued with the sentiments and principles of Christianity; and we cannot be imbued with them, and yet prevent them from entering into and influencing, more or less, all our social institutions, customs, and relations, as well as all our individual modes of thinking and acting. It is involved in our social nature, that 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, so that, like the air we breathe, they have become the common

represents only the tip of an iceberg which includes Biblical allusions in court decisions, the modeling of statutes (often explicitly) on Scriptural originals, and the use of verse or references in the moral debate surrounding legal issues. The following examples will give some idea of the wealth and complexity of this topic.

stock of the whole country, and essential elements of its life.

Id. But see Bloom v. Richards, 2 Ohio St. 387, 390 (1853) (Christianity *not* part of common law of Ohio); Reports of General Court of Virginia, 1730-1740, 1768-1822 (1829) (challenge by Thomas Jefferson to this belief in his essay *Whether Christianity is a part of the Common Law?*); CLARK, *supra* note 9, at 47; A.G. ROEBER, FAITHFUL MAGISTRATES AND REPUBLICAN LAWYERS: CREATORS OF VIRGINIA LEGAL CULTURE, 1680-1810, 164-66 (1981) (discussion of Jefferson thesis); EDWARD DUMBAULD, THOMAS JEFFERSON AND THE LAW 76-80 (1978) (discussion of Jefferson argument). *See also infra* text at nn.17, 24-26 and references cited. Thomas M. Cooley, Michigan Supreme Court Justice and University of Michigan Professor of Law, has noted:

It is frequently said that Christianity is a part of the law of the land. In a certain sense and for certain purposes this is true. The best features of the common law, and especially those which regard the family and social relations; which compel the parent to support the child, the husband to support the wife; which makes the marriage-tie permanent and forbids polygamy; if not derived from, have at least been improved and strengthened by the prevailing religion and the teachings of its sacred book. But the law does not attempt to enforce the precepts of Christianity on the ground of their sacred character or divine origin. Some of these precepts, though we may admit their continual and universal obligation, we must nevertheless recognize as being incapable of enforcement by human laws. That standard of morality which requires one to love his neighbor as himself we must admit is too elevated to be accepted by human tribunals as the proper test by which to judge the conduct of the citizen; and one could hardly be held responsible to the criminal laws if in goodness of heart and spontaneous charity he fell something short of the Good Samaritan. The precepts of Christianity, moreover, affect the heart, and address themselves to the conscience: while the laws of the State can regard the outward conduct only; and for these several reasons Christianity is not a part of the law of the land in any sense which entitles the courts to take notice of and base their judgments upon it, except so far as they can find that its precepts and principles have been incorporated in and made a component part of the positive law of the State.

THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 670 (7th ed., 1903). *See also* CORNELISON, *supra* note 12, at 296.

A. Scriptural Citation and Usage in Early English Law

The association of English law with Scripture reaches far back into the past. Harold B. Clark, editor of *Biblical Law*, claims that

much of the common law of England was founded upon Mosaic law. The primitive Saxon Codes re-enacted certain precepts taken from the Holy Scriptures, and King Alfred in his Doom Book adopted the Ten Commandments and other selections from the Pentateuch, together with the Golden Rule in the negative form, as the foundation of the early laws of England.¹⁷

17. See also CLARK, *supra* note 9, at 43. Moore v. Strickling, 33 S.E. 274, at 277, (1899); DAVID M. WALKER, THE OXFORD COMPANION TO LAW 180 (1980) ("In England down to the Norman Conquest there were decisions of Anglo-Saxon Councils and penitentials, based largely on local custom but also containing biblical texts . . ."). See also DAVIES, *supra* note 16, at 5-6, who notes possible academic *misinterpretation* of this influence: "one scholar omitted the Biblical preface from the text of Alfred's code because it had 'no bearing on Anglo-Saxon law'" (*referring to* THE LAWS OF THE EARLIEST ENGLISH KINGS 35 (F. L. Attenborough ed., 1963)) while "another commentator adds the illuminating footnote, 'See Grimm's Teutonic Mythology,' to the reference in Canute's code to the Devil as a ravening wolf (an obvious quotation . . . in a code which also refers to the Lord's Prayer and stresses the duty to ponder on the precepts and law of God)." [Possibly a reference to *Matthew 7:15*, describing *false prophets* as "ravening wolves." The reference appears in I Canute cap. 2683. See THE LAWS OF THE KINGS OF ENGLAND FROM EDMUND TO HENRY I 175 (A.J. Robertson ed., 1974), where the reference is to the A.S. "werewolf." The textual note, at *id.*, 351, refers to JACOB GRIMM, 3 TEUTONIC MYTHOLOGY 1093-97, which deals with werewolves. But see 1 TEUTONIC MYTHOLOGY 148 (James Steven Stallybrass trans., 1966); 3 TEUTONIC MYTHOLOGY 996 (1966), both of which mention *Christian* connections of the wolf with the Devil, with the latter *specifically* referring to Canute's code. The introduction to Alfred's code "(cap. 1-48) . . . contains translations of the Ten Commandments, and many other passages from the book of Exodus (cap. 20-23), followed by a brief account of Apostolic history (with quotations from the Acts of the Apostles, cap. 15) . . ." ATTENBOROUGH, *supra*, 34. See also BERMAN, *supra* note 6, at 65. But see CORNELISON, *supra* note 12 at 151, quoting Jefferson's essay, which notes:

[W]e know that the common law is that system of law which was introduced by the Saxons on their settlement in England, and altered from time to time by proper legislative authority from that to the date of the *Magna Charta* . . . This settlement took place about the middle of the fifth century, the conversion of the first Christian king . . . having taken place about the year 598, and that of the last about 686. Here then was a space of two hundred years during which the common law was in

existence and Christianity no part of it . . . [No subsequent law adopts] Christianity as a part of the common law. If therefore from the settlement of the Saxons to the introduction of Christianity among them that system of religion could not be a part of the common law, because they were not yet Christians; and if having their laws from that period to the close of the common law we are able to find among them no such act of adoption, we may safely affirm (though contradicted by all the judges and writers on earth) that Christianity neither is nor ever was a part of the common law.

Jefferson further relies on "the silence of certain writers on the common law," *id.* at 151-52, and then directs his efforts to discrediting the laws of King Alfred (which would otherwise tell against his argument).

Houard in his *Contumes Anglo-Normandes* I.87. notices the falsification of the laws of Alfred, by prefixing to them four chapters of the Jewish law, to wit, the 20th, 21st, 22nd, and 23rd chapters of Exodus; to which he might have added the 15th of the Acts of the Apostles, verses 23 to 29, and precepts from other parts of the scripture. These he calls *Hors d'oeuvre* of some pious copyist. This awkward monkish fabrication makes the preface to Alfred's genuine laws stand in the body of the work. And the very words of Alfred himself prove the fraud, for he declares in that preface that he has collected these laws from the laws of Ina, of Offa, Aethelbert and his ancestors, saying nothing of any of them being taken from the scripture. It is still more proved by the inconsistencies it occasions. For example, the Jewish legislator, Exodus xxi, 12, 13, 14 (copied by the pseudo Alfred 13) makes murder death. But Alfred himself Ll. xxvi, punishes it with a fine only, called a weregild, proportioned to the condition of the person killed . . . Now all men of reading know that these pretended laws of homicide, concubinage, theft, retaliation, compulsory marriage, usury, bailment, and others which might have been cited from this pseudograph were never the laws of England, not even in Alfred's time; and of course that it is a forgery. Yet, palpable as it must be to a lawyer, our judges have piously avoided lifting the veil under which it was shrouded. In truth, the alliance between Church and State in England has ever made their judges accomplices in the frauds of the clergy, and even bolder than they are, for instead of being content with the surreptitious introduction of these four chapters of Exodus, they have taken the whole leap, and declared at once that the whole Bible and Testament in a lump make part of the common law of the land . . .

Id. at 152-55. See also ROEBER, *supra* note 16, at 165-66 (quoting Jefferson's essay in part). This view appears to be incorrect. Prof. Alfred P. Smyth, a noted Alfredian scholar, states that

in the introduction to his *Laws*, Alfred first anchored his own Code into quotations from Mosaic law and later reflected by way of the Acts of the Apostles on how Judaic law was modified by Christian practice. He developed the notion of this historical progression yet further by viewing English laws of his own time as the product of tribal customary law modified by the cumulative weight of Judaic-Christian practice as interpreted by successive synods of the English church.

This admixture of custom and Biblical text not only reflects the realities of Church-State relations at the time, but indicates a desire that the law embody Christian morality. To at least some degree, Biblical teachings and precepts were elevated to the status of "law of the land."

The use of Scriptural argument was also recognized in later intellectual discourse. John of Salisbury's *Policraticus*, written in 1159 and described by the religious scholar Harold Berman as "[t]he first Western treatise on government that went beyond Stoic and patristic models," was beholden to both the Old and New Testament, drawing "cases" from Scripture to illustrate contemporary (twelfth century) problems.¹⁸ Henry de Bracton, a mid-thirteenth century judge of the King's Bench, and author of the first systematic statement of English law, made use of the Scriptures, "citing the New Testament from memory, and . . . frequently quot[ing] from the Old. 'All the terrors of Biblical rhetoric' which he expended in denouncing the unjust judge consist of a string of texts from divers parts of it."¹⁹

The end of the thirteenth century saw *The Mirror of Justice*, attributed to Andrew Horn (later Chamberlain of the City of London), which held that "law is nothing else than the rules laid down by our holy predecessors in Holy Writ for the salvation of souls from everlasting damnation." This work has been characterized by D. Seaborne Davies, Professor of the Common Law of England at the University of Liverpool, as "[t]he extreme example of religiosity and bibliolatry in legal literature."²⁰

ALFRED P. SMYTH, KING ALFRED THE GREAT 525 (1995) (note omitted). See also *id.* at 238. As Smyth argues that Asser's *Life of Alfred* was a medieval forgery, he is hardly likely to have been uncritical in his examination of the King's law code.

18. See BERMAN, *supra* note 6, at 276, 279, 283, 284-85.

19. DAVIES, *supra* note 16, at 8.

20. *Id.* at 8. But see *id.* at 9, quoting Maitland to the effect that

"This obtrusive religiosity is not a common-place of medieval law. No doubt in sound and practical treatises we may find religious reflections, references to Holy Writ, and now and again some fragment of dogmatic theology. But it was no more the fashion in the Middle Ages than it is today for a lawyer to speak habitually as if

While the Year Books, medieval case notes collected by regnal year, are generally devoid of scriptural passages, Justice Inge quotes from *Psalms* in 1315, and later in the century, Justice Stonore is on record as having “‘wished well to consider’ a situation in which he saw a conflict between ‘good conscience and the law of God’ and ‘the law of the land.’”²¹ Another exception to religious references is *Humphrey Bohun v. John Broughton, Bishop of Lincoln*, a decision by Chief Justice Prisot in a Yearbook of 1458,²² which states “‘It is proper for us to give credence to such laws as they of holy church have in ancient writing; for it is common law on which all kinds of laws are founded.’”²³ Sir John Fortescue, a former chief justice of the

law and her courts and parliaments existed for the purpose of saving the souls of sinners.” In fact, the medieval church itself, says Maitland, repressed the tendency to collect precedents out of the Old Testament, because it led to a justification of . . . judicial combat . . . and an acceptance of the strictest interpretation of the *lex talionis*.

Id.

21. *Id.* at 8, which gives plausible reasons for this general dearth of Biblical allusions.

22. See *Humphrey Bohun v. John Broughton, Bishop of Lincoln*, Y.B. 34 Hen. VI Pasch. (1458); LES REPORTS DES CASES 38-41 (1679); DUMBAULD, *supra* note 16, at 77, 211 n.32.

23. DUMBAULD, *supra* note 16, at 211, n.41. (quoting Translation from Thomas Jefferson’s Legal Compliance Book, #873). Thomas Jefferson later attacked Sir Henry Finch’s 1693 “misinterpretation” of this language, when he rendered “*en auncient scriptur*” (“ancient writings”) as “holy scripture.” See *id.* at 79. See also Courtney Kenny, *The Evolution of the Law of Blasphemy*, in 1 CAMB. L. J. 127, 130-31 (1922). Others, such as Justice Story and John Quincy Adams, disagreed. Adams stated that

My own opinion has been . . . that it was Mr. Jefferson himself, and not the succession of English lawyers for three hundred years, who had mistaken the meaning of this dictum of Prisot.

Judge Story said that he had looked into the case in the year-book, and found the exposition of it by Mr. Jefferson so manifestly erroneous that he cannot even consider it an involuntary mistake.

See DUMBAULD, *supra*, at 79 (quoting 8 MEMOIRS OF JOHN QUINCY ADAMS 291 (Charles Francis Adams ed., 1876)). Jefferson ignored the entire history of the citation of Scriptural authority to take the position that Holy Scripture could *not* be “ancient writing”—indeed the logical interpretation would be that Biblical authority would be a *subset* of the grouping of ancient writings rather than a *separate class*. Other later writers have followed a similar myopic course. Kenny, for example, notes that Prisot “would not have spoken of the sacred

King's Bench, based the jurisprudence and political thought in his *De Laudibus Legum Angliae* (1468) "on the Law of God and the Law of Nature."²⁴ *De Laudibus* was written for Edward, Prince of Wales, in the form of a dialogue between that Royal and a Lord Chancellor (probably Fortescue). In it, Fortescue,

quotes from seventeen books, but the Bible comes easily first with fifty-two quotations from sixteen books of it. Apart from . . . [his work's] reliance on scriptural references in matters of general principle, such as the office and theory of Kingship, it is particularly interesting to observe its reliance on scriptures in support of concrete parts of English Law differing from the Civil Law, such as trial by jury of twelve, legitimation by the subsequent marriage of parents, and the determination of the condition of a child by that of its father rather than that of its mother. Particularly significant, perhaps, is the retort of the Chancellor to the young Prince when the latter argues that the jury of twelve is contrary to the divine law of scriptures which approved of the sufficiency of two suitable witnesses:²⁵ that it is the *principle*

volume by so mean a title as 'ancient scripture.' Nor would he have thought it possible to find in the Bible rules concerning benefices and advowsons." Kenny, *supra*, at 131.

24. DAVIES, *supra* note 16, at 9.

25. See WILLIAM HOLDSWORTH, 9 A HISTORY OF ENGLISH LAW 203-04 (1966):

The rule that at least two witnesses were needed for proof is found in the classical Roman law; but it gained its great authority in mediaeval Europe from the fact that it became a rule of the canon law, justified, not only by the civil law, but by the authority of the Old (*Deut.* 17:6, 19:12) and New (*Mat.* 18:16; *John* 8:17) Testaments. It is not surprising that, under these circumstances, the maxim *testis unus testis nullus* should be regarded almost as a provision of the Divine law. Its position is well illustrated by the objection to the system of trial by jury, which Fortescue in his *De Laudibus* puts into the mouth of the Prince. "Though" says the Prince, "we be greatly delighted in the form which the laws of England use in sifting out the truth in matters of contention, yet whether the same law be contrary to Holy Scripture or not, that to us is somewhat doubtful. For our Lord saith to the Pharisees in the eighth chapter of Saint John's Gospel, 'In your law it is written that the testimony of two men is true;' and the Lord, confirming the same, saith, 'I am one that bear witness of myself, and the Father that sent me beareth witness of me.' Now

of the divine law, and not its *strict letter*, which must be sought, and that the principle here was that the truth of the issue must be determined by *not less than two*! If the witness of two is in accord with the divine law, *a fortiori* the witness of twelve is so! That marks one of the lines of escape from the dominance of the *ipsissima verba* of the Bible.²⁶

These examples offer evidence for the continued importance of Biblical references in the development of the medieval period of law. Fortescue's mention of Scriptural principles is particularly interesting as an early instance of deviation from a strict interpretation of Biblical authority. Not only does such a philosophical clash indicate the vitality of the tradition, but it foreshadows subsequent developments in the utilization of Biblical examples in Anglo-American law.

Moving on to Tudor times, citation and usage continued to play important roles in the political and legal controversies of the day. The debate on Henry VIII's annulment of his marriage to Catherine of Aragon, for example, was couched in terms of scriptural texts such as Leviticus 20:21²⁷ (used to explain Henry's lack of a male heir) and Deuteronomy 25:5²⁸ (calling for a man to take care of the sister-in-law

Sir, the Pharisees were Jews, so that it was all one to say: It is written in your law, and it written in Moses law, which God gave to the children of Israel by Moses. Wherefore to gainsay this law is to deny God's law: whereby it followeth, that if the law of England swerve from this law, it swerveth also from God's law, which in no wise may be contradicted. It is written also in the eighteenth chapter of Saint Matthew's Gospel . . . 'But if thy brother hear thee not, then take yet with thee one or two, that, in the mouth of two or three witnesses, every matter may be established.' If the Lord have appointed every matter to be established in the mouth of two or three witnesses, then it is in vain for to seek for the verdict of many men in matters of doubt. For no man is able to lay any other or better foundation than the Lord hath laid."

Id. (notes omitted).

26. DAVIES, *supra* note 16, at 9-10.

27. "And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness; they shall be childless" (King James).

28. "If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger: her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her" (King

of a deceased brother).²⁹ Interestingly, Biblical annotation was used in at least one instance to produce what could be viewed as a political antecedent to the *Lawyer's Bible*. Calvinist limits on the duty owed a civil magistrate were expressed in several

marginal notes in the Geneva (or Breeches) Bible (1560), the most important contribution of Genevan exiles to succeeding generations of Puritans. The marginalia on the New Testament, revised from the Great Bible by Whittingham in 1557, provided the abstract principles. For example, to the passage from Luke 20:25 about giving unto Caesar the things which are Caesar's and unto God the things which are God's, the note adds; "The duty which we owe to Princes letteth nothing which is due unto God." Or again, where Acts 5:20 reads, "Then Peter and the Apostles answered and said, "We ought to obey God than men," the note adds, "When they command, or forbid anything contrary to the Word of God."³⁰

As the above quote indicates, citation to the *Bible* could also be used to justify civil disobedience—or treason. "Some of the Marian exiles extended the theme of obedience to the civil magistrate, except when contrary to the will of God, into a theory of rebellion against the sovereign."³¹ Thus what others might term illegality was justified by recourse to a Scriptural source of the law. Not surprisingly, Elizabethan anti-treason legislation was also supported by parallel religious authority. Dean Leo F. Solt of Indiana University explains that

[t]he Canterbury Convocation provided . . . theological

James).

29. LEO F. SOLT, CHURCH AND STATE IN EARLY MODERN ENGLAND, 1509-1640, at 13 (1990).

30. *Id.* at 64-65.

31. *Id.* at 65.

justification for this new legislation when it added a homily “Against Disobedience and Willful Rebellion” to the Second *Book of Homilies* (1563). The new homily . . . drew upon the biblical chapters of Romans 13 and 1 Peter 2, [and] stated that “Kings, Queens, and other Princes . . . are ordained of GOD, are to be obeyed and honored of their subjects: that such subjects, as are disobedient or rebellious against Princes, disobey GOD, and procure their own damnation.”³²

Sir Edward Coke, Chief Justice of the Common Pleas and King’s Bench, an influential Parliamentarian, and author of the seminal *Institutes and Reports* in the seventeenth century, is on record as saying that “the common law was grounded on the law of God.”³³ Professor Davies states that “[i]n Coke’s Reports I found biblical reference in seventeen cases”³⁴ and notes similar allusions in the *Institutes*. According to Davies, Coke’s

knowledge of the Bible is obviously profound. In the very preface it is in the words of the Apocrypha that he acknowledges his want of wisdom and prays for it. *Coke on Littleton*, the Second and the Fourth *Institutes* relate to subjects which, one would imagine, would not readily attract scriptural references and injunctions; but they all contain them, and the Third *Institute*, dealing with criminal offenses, is particularly replete with them.³⁵

32. *Id.* at 101-02.

33. DUMBAULD, *supra* note 16, at 77, 211 n. 33, (quoting *Radcliff’s Case*, 3 Rep. 37a, 40c (1592)). CORNELISON, *supra* note 12, at 161 (cites 3 Coke Rep. 40b, noting “the court cited the 27th chapter of Numbers to show that their judgment on a common law principle in regard to the law of inheritance was founded on God’s revelation of that law to Moses”).

34. DAVIES, *supra* note 16, at 10. These include *Calvin’s Case* (“The Case of the *Post Nati*”), *Ratcliff’s Case*, *Coulter’s Case*, the case of *De Libellis Famosis*, *Case of Barretery*, *Downton’s Case*, the *Sutton Hospital Case*, the *Case of Monopolies*, and the *Case of Tithes*. See *id.* at 10-12.

35. *Id.* at 12. See also *id.* at 12-14. Davies concludes that

Coke merits this somewhat lengthy attention because of his commanding middle

After the English Civil War and the victory of the Parliamentarians,

[f]requent attempts were made to introduce the Mosaic Code as the fundamental law of the land. Some of Cromwell's officers suggested to him that he appoint seventy members of his Privy Council in accordance with the number of the ancient Jew's Sanhedrin In 1653, Major Thomas Harrison, the Anabaptist, publicly advocated in Parliament the adoption of Mosaic legislation. The Levellers, a sect led by Everard, an old soldier and pseudo-prophet . . . demanded the introduction of the *Torah* as the norm of English laws.³⁶

While these proposals may represent extremes, they reflect the

position in English legal history. His considerable quotation of the scriptures probably reflects a professional habit in his time, and probably earlier, at least after the translation and wider propagation of the Bible. It is also natural to assume that his pattern would be followed in after-times. What authority did the scripturally revealed divine law command in this period? It clearly conveyed some measure of persuasive authority: the references to particular rules of English law being "founded" or "grounded" upon it strongly suggests it: the many illustrations and analogies drawn from the Bible are rather more than mere historical embellishments. There is a stronger note of reverence for authority in the habit than that. On the other hand, it is improbable that Coke and his contemporaries felt any great difficulty in "distinguishing" the precedent when they so desired." Three methods of doing so have . . . been suggested. There is the . . . method of going for the "principle" rather than the "letter" of the scriptural injunction; there is the distinction between the law directly instituted by God himself and that promulgated by the Hebrew judges; and there is the distinction between the divine law meant for all mankind and that meant solely for the Jewish people.

Id. at 14.

36. LOUIS ISRAEL NEWMAN, 23 JEWISH INFLUENCE AND CHRISTIAN REFORM MOVEMENTS 632-33 (Columbia University Oriental Studies 1966). *See also id.* at 639 ("several English 'Judaizing' parties, among them the Levellers, Fifth Monarchy Men and Brownists . . . affirmed: 'The Judicial Law of Moses binds at this day all the nations of the world, as well as it ever did the Jews.'"). *But see* CHRISTOPHER HILL, THE WORLD TURNED UPSIDE DOWN: RADICAL IDEAS DURING THE ENGLISH REVOLUTION 262 (1975), noting that Winstanley "would not make the Bible his main source for a code of conduct 'The Scriptures were not appointed for a rule to the world to walk by without the spirit . . . For this is to walk by the eyes of other men.'"

importance of Scripture in politics and law. Modern historian Christopher Hill claims that during this period “[t]he Bible was the accepted source of all true knowledge. Everybody cited its texts to prove an argument, including men like Hobbes and Winstanley, who illustrated from the Bible conclusions at which they had arrived by rational means.”³⁷ Indeed all parties in the trial of John Lilburne, a Leveller accused of treason, were able to agree that “the law of God is the law of England” suggesting the degree to which Scripture was applied in the law.³⁸

That this association between the *Bible* and the law survived the Restoration is suggested by Chief Justice Sir Matthew Hale’s

37. HILL, *supra* note 36, at 75. For use of scripture by the radical digger and pamphleteer Gerrard Winstanley, *see id.* at 261-68. Hill notes that

[t]he Bible spoke direct, outside history, to men who believed passionately that the day of the Lord was imminent: only they understood what the Lord meant. The appeal to the past, to documents (whether the Bible or Magna Carta), becomes a criticism of existing institutions, of certain types of rule. If they do not conform to the sacred text, they are to be rejected.

Id. at 95.

38. The Trial of Lieutenant-Colonel John Lilburne for High Treason, 4 State Trials 1269, 1307 (1809) [1649]. Part of the trial record states:

Lilburne: . . . [I]f by the law of England I cannot have counsel, then upon your own grant, which is, That the laws of God are the laws of England, I desire to have the privilege of the law of God, which you yourself said is the law of England; and I am sure the law of God is, That you should “do as you would be done to.” Now it cannot be according to the law of God, for my adversaries to have the helps of all manner of counsels, by shanes, trials, and provocations, to take away my life, and for me to be denied the benefit to consult with any to preserve my innocent life against potent malice.

Lord *Keble*: You say well: the law of God is the law of England, and you have heard no law also but what is consonant to the law of reason, which is the best law of God; and there is none else urged against you.

Another Judge: The laws of God, the laws of reason, and the laws of the land, are all joined in the laws that you shall be tried by.

Justice *Jermin*: The question is but this, Whether the law of God, and the law of reason, and the laws of men, may be consonant to each other? And whether the court or John Lilburne shall be judges thereof? That is the question.

Id. See also DUMBAULD, *supra* note 16, at 210 n.30.

statement that “Christianity is parcel of the laws of England,”³⁹ and by works such as Richard Chamberlain’s *Complete Justice* (1681), a widely used hornbook for justices of the peace, which noted the usefulness of religious education of the young for preventative justice; “by instruction in the knowledge of Religion, and by learning some Trade in their tender years, so as there should not be an idel [sic] person, or a Beggar, according to the Scripture, Deut. 15. 4”⁴⁰ Professor A.G. Roeber has noted, “most Englishmen . . . had a sense that laws of whatever sort, though made by men, ought to reflect in some measure the laws of God. Nothing would be more erroneous than to suggest that the law . . . during the late seventeenth century, had already been disconnected from this notion”⁴¹

Evidence has thus been adduced of a close and continuing tie between Scripture and English law dating from the time of King Alfred and continuing through the late seventeenth century. While this practice was British in origin, it strongly influenced the American colonists and the foundations of our own legal system.

39. Taylor’s Case, 621 86 E.R. 189 (1675/76). See also Kenny, *supra* note 23, at 129-30; WILLIAM HOLDSWORTH, 8 A HISTORY OF ENGLISH LAW 408 (1973). That position was taken even further in *East India Co. v. Sandys*, 10 STATE TRIALS 371, at 374-75, (1811) [1683/85] where Holt (later Chief Justice) argued “[t]he profession and preservation of Christianity is of so high a nature that of itself it supersedes all law: if any law be made against any point of the Christian religion, that law is *ipso facto* void” (going on to note that “we read how the children of Israel were perverted from the true religion, by converse with the nations round about them, in the Book of Judges”). See also HOLDSWORTH, *supra*, at 408-09 n.12. But see *id.* at 410, where Holdsworth notes:

I think that [Judge] Stephen is quite right in asserting that, in this period, the judges, when they held that Christianity was part of the law, meant to hold that it was “a crime either to deny the truth of the fundamental doctrines of the Christian religion, or to hold them up to ridicule or contempt.”

40. ROEBER, *supra* note 16, at 7 (quoting RICHARD CHAMBERLAIN, THE COMPLETE JUSTICE, BEING A COMPENDIOUS AND EXACT COLLECTION OUT OF ALL SUCH STATUTES AND AUTHORS AS MAY ANY WAYS CONCERN THE OFFICE OF A JUSTICE OF THE PEACE . . . 485 (1681)).

41. ROEBER, *supra* note 16, at 5-6.

B. The Origins of American Scriptural Usage and Citation

The linkage of law and Scripture is not particular to early English law. In the area which was to become the United States, Queen Elizabeth's 1584 colonial grant to Sir Walter Raleigh included authority to enact statutes for the colony as long as these "be not against the true Christian faith nowe [sic] professed in the Church of England."⁴² The major association between the Bible and the law in colonial times, however, occurred in the New England region. Professor Newman claims that "it was the unique contribution of Puritanism not only to maintain the supremacy of the 'Law of Nature,' which it identified with the 'Law of God,' but to link up the 'Law of God' with the Scriptural Word" adding that, "[t]o the Puritan, the Decalogue was the divine confirmation and interpretation of natural law. In each of the Puritan colonies, the Mosaic Law was adapted to meet the requirements of a union between the 'Law of God' and the 'Law of Nature.'"⁴³

The preface to Plymouth's laws notes that

[it] was the great privilege of Israell of old and soe was acknowledged by them, Nehemiah the 9th and 10th that God gave them right judgments and true Lawes. They are for the mayne so exemplary, being grounded on principles of moral equitie as that all Christians especially ought alwaies to have an eye thereunto in the framing of their politique constitution. We can safely say both for ourselves and for them that we have had an eye principally unto the aforesaid platforme in the framing of this small body of Lawes.⁴⁴

42. *Holy Trinity Church v. United States*, 143 U.S. at 466. See also CLARK, *supra* note 9, at 33; CORNELISON, *supra* note 12, at 4.

43. NEWMAN, *supra* note 36, at 637, citing Richard B. Morris, "Puritan Legal Philosophy in its Application to Early American Colonial Law" [ms.].

44. NEWMAN, *supra* note 36, at 638 (noting that "[n]umerous instances can be cited which show the impact of Mosaic legalism on Plymouth codes," and referring to "the revised Law of Inheritance of 1685, based on the Old Testament law of primogeniture, and . . . the eight capital offences, all of which are declared punishable by death in accordance with Jewish practice.").

In 1636, “the General Court of Massachusetts requested the divine John Cotton and others “to make a draught of lawes agreeable to the word of God, which may be the Fundamentals of this commonwealth.”⁴⁵ As the son of an attorney, Cotton “had some understanding of the law but was known more for his biblical scholarship and his expositions of Puritan orthodoxy”; that his work owed much to the Old Testament, is suggested by Gov. John Winthrop’s characterization of the draft as ““A Model of Moses His Judicials.””⁴⁶ While these were not adopted, the work of another minister, the Rev. Nathaniel Ward, produced a “Body of Liberties” in 1641 which had greater influence on Massachusetts’ colonial laws. This corpus included “contributions from the Mosaic code in the drafting of the laws punishable by death.”⁴⁷ These were taken

directly from the books of Exodus, Leviticus, Numbers, and Deuteronomy. [Ward] . . . placed after each law (except the twelfth) a biblical annotation showing its specific derivation from “the word of God.” In some he made slight changes for

45. EDWIN POWERS, *CRIME AND PUNISHMENT IN EARLY MASSACHUSETTS: 1620-1692: A DOCUMENTARY HISTORY* 78-90 (1966) (quoting *1 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND* 174 (Dr. Nathaniel B. Shurtleff ed., 1853).

46. POWERS, *supra* note 45, at 80-81. *See also* EIDSMOE, *supra* note 2, at 32, (noting that this “made reference to ‘the Law of Nature, delivered by God,’ and . . . closed with a reference to Isaiah 33:22 . . .”); NEWMAN, *supra* note 36 at 638-39.

It is a rearrangement and almost complete copy of Pentateuchal enactments; laws concerning magistrates, burgesses and free inhabitants, the protection and provision of the country, the right of inheritance, commerce, trespasses, capital crimes, lesser crimes, the trial of cases and international issues, are drawn up in exact conformance with Old Testament precedents and models; to each law, the Biblical citation is appended; those to which Scriptural passages are not attached as the source of authority, are, in the words of William Aspinwall, editor of the 1655 edition, “not properly law, but prudential rules.”

Id. at 639.

47. POWERS, *supra* note 45, at 82. According to Newman, this “exhibits many important parallels to *Moses, His Judicials.*” NEWMAN, *supra* note 36, at 639. *See also id.* at 639-40 n.18.

better adaptation to the new government or to allow for certain common-law principles, but throughout he retained the basic thought of the Hebrews. The result of the acceptance of this code by the Colony in 1641 was that a citizen of Boston was, at least in theory and in respect to these twelve laws, under the same peril of death at the hands of the government as a citizen of Israel had been some thirty-two centuries earlier in a land some five thousand miles away.⁴⁸

Increase Nowell, who had a lengthy association with the colony's General Court, spoke in 1648 of the advantage

not only to gather our Churches, and set up the Ordinances of Christ Jesus in them . . . ; but also withall to frame our civil Politie and lawes according to the rules of his most holy word whereby each do help and strengthen [the] other (the Churches the civil Authoritie, and the civil Authoritie the Churches) and so both prosper the better⁴⁹

While scriptural allusion and citation was, of course, prevalent during this period, Massachusetts was in fact specifically putting into

48. POWERS, *supra* note 45, at 254. These occurred in § 94 CAPITAL LAWS. *See id.* at 544-46. The twelve crimes and their citations were as follows: (1) idolatry: *Deut.* 13: 6, 10; 17: 2, 6; *Ex.* 22: 20; (2) witchcraft: *Ex.* 22: 18; *Lev.* 20: 27; *Deut.* 18: 10, 11; (3) blasphemy: *Lev.* 24: 15, 16; (4) murder: *Ex.* 21: 12, 13; *Numb.* 35: 31; (5) manslaughter: *Numb.* 35: 20, 21; *Lev.* 24: 17; (6) poisoning: *Ex.* 21: 14; (7) bestiality: *Lev.* 20: 15, 16; (8) sodomy: *Lev.* 20: 13; (9) adultery: *Lev.* 20: 19; 18: 20; *Deut.* 22: 23, 27; (10) man-stealing: *Ex.* 21: 16; (11) false witness in capital cases: *Deut.* 19: 16; 18: 16; (12) conspiracy and rebellion: [later cite] *Numb.* 16: 2; 2 *Sam.* 3; 18; 20. *See id.* at 545-46 (giving some alternate citations), 255-64 (citations used). While rape was omitted from this listing, "presumably because there was no warrant for it in Scripture," some colonists later argued that it qualified as a "presumptuous sin" (*Deut.* 17: 22) worthy of death. *See id.* at 264, 265.

49. POWERS, *supra* note 45, at 101-02 (quoting THE BOOK OF THE GENERAL LAWS AND LIBERTYES CONCERNING THE INHABITANTS OF THE MASSACHUSETTS (1648)). *See also Powers*, at 102 (quoting *Shurtleff*, *supra* note 45, at 177) ("the word [of God] is of generall & common behoofe to all sorts of people, as being the ordinary meanes to subdue the harts of hearers not onely to the faith, & obedience to the Lord Jesus, but also to *civill obedience*, & allegiance unto magistracy . . .").

practice what had only been proposed in England, and by doing so was hearkening back to a tradition dating to Alfredian times.

This scriptural basis for law, despite external doubts,⁵⁰ was not rigid in nature. Like Sir John Fortescue, Chief Justice Coke, and others,⁵¹ the Bay colonists wished to apply biblical law in a flexible manner. Governor John Winthrop noted:

“The fundamentalls which God gave to the Commonwealth of Israell, were a sufficient Rule to them, to guide all their Affaires: we having the same, with all the Additions, explanations & deductions, which have followed: it is not possible, we should want a Rule in any case: if God give wisdome to descerne it.”⁵²

In vindicating the Massachusetts colony from the charge of arbitrary government, Governor Winthrop argued that a law cannot be just without a just punishment, which itself must be determined by biblical law. In the absence of a specified scriptural penalty, judges and officers are to judge justly, i.e., according to the nature and degree of the offense. Winthrop made a cogent case for the use of admonition and mercy, and also considered factors such as a person's position, repentance, and the general good. He suggested the superiority of equity over a prescribed sentence, and buttressed all of his points, appropriately, with scriptural citations.⁵³ In keeping with this biblical

50. See POWERS, *supra* note 45, at 304 (dissatisfaction of English monarchs with Massachusetts for taking its capital laws from the Old Testament instead of the common law or the statutes of England).

51. See *supra* note 35. See DAVIES, *supra* note 16, at 12.

52. John Winthrop, “Arbitrary Government. Described: & the Government. of the Massachusetts Vindicated From That Aspersion,” in ROBERT C. WINTHROP, 2 LIFE AND LETTERS OF JOHN WINTHROP 440, 445 (1971) [reprint of 1867 ed.]. See also John Winthrop, Discourse on Arbitrary Government in 4 WINTHROP PAPERS 468 at 473 (1944) [1638-44; Massachusetts Historical Society]; POWERS, *supra* note 45, at 253 (italics omitted).

53. In one of his writings, Winthrop asserted

Everye Lawe must be Iust in everye pte of it, but if the penaltye anexed be uniuert, how can it be held forthe as a Iust Lawe? To prescribe a penaltye, must be by some Rule, other wise it is an vsurpation of Gods perogative: but where the Lawe makers,

or Declarers caot finde a Rule for prescribing a penaltye, if it come before the Iudges *pro re nata*, there it is determinable by a certaine Rule, viz.: by an ordinance sett up of God for theate purpose w^{ch} hathe a sure promise of Divine assistance, Exo.: 21: 22: Deut. 16: 18: Iudges & Officers shalt thou make &c, & they shall Iudge the people wth Iust Iudgm&. Deut. 25: 1: 2: & 17: 9: 10: 11. If a Lawe were made that if any man were founde drunken he should be punished by the Iudges according to the meritt of his offence: this is a Just Lawe, because it is warranted by a Rule: but if a certaine penaltye were prescribed, this would not be iust, because it wants a Rule, but when suche a case is brought before the Iudges, & the qualitye of the pson & other circumstances considered, they shall finde a Rule to Iudge by; as if Naball, & Uriah, & one of the stronge drunkards of Ephraim, were all 3: together accused before the Iudges for drunkennesse, they could so proportion their severall sentences, accordinge to the severall natures & degrees of their offences, as a Iust & Divine sentence might appear in them all: for a divine sentence as in the lippes of the Kinge, his mouth transgresseth not in Iudgmen^t. Pro: 16: but no suche promise was ever made to a paper Sentence of humane Aut^{ye} or Invention. . . . In the Sentence w^{ch}. Solomon gave betweene the 2: Harlots: 1: Kings: 3: 28: It is sayd All Israell heard of the Iudgm^t. w^{ch} the Kinge had Judged: & they feared the Kinge, for they sawe that the wisdom of God was in him to doe Iudgm^t. See heer, how the wisdom of God was glorified, & the Aut^{ye} of the Iudge strengthened, by this sentence: whereas in mens prescript sentences, neither of these can be attained, but if the sentence hitt right, all is ascribed to the wisdom of o^r. ancestors, if otherwise, it is endured as a necessary evill, since it may not be altered.

Prescript penaltyes take away the use of Admonition, w^{ch} is allso a Divine Sentence & an Ordinance of God, warranted by Scripture, as appears in Solomons Admonition to Adonijah & Nehemiahs to those that brake the Sabbaoth: Eccl: 12: 11: 12: the words of the wise are as goads, & as nayles fastened by the masters of Assemblys--by these (my sonne) be admonished, Pro: 29: 1: Isay 11: 4: Prov. 17: 10: A reprove entereth more into a wise man, than 100 stripes into a foole.

Iudges are Gods upon earth: therefore, in their Administrations, they are to holde forthe the wisdom & mercye of God, (w^{ch}. are his Attributes) as well as his Iustice: as occasi_ shall require either in respecte of the qualitye of the person, or for a mor gen^l good, or euident repentance, in some cases of less public consequence, or avoydinge imminent danger to the State, & suche like prevalent Considerations, Exo: 22: 8: 9: for theft & suche like Trespasses, double restitution was appointed by the Lawe: but Lev: 6: 2: 5: in such cases, if the ptye Confessed his sinne & brought his offeringe, he should onely restore the principall, & adde a fift^e pte thereto. Adultery & incest deserved deathe, by the Lawe, in Iacobs tyme (as appears by Iuda his sentence, in the case of Thamer): yet Ruben was punished only wth losse of his Birthright, because he was a Patriark. David his life was not taken away for his Adulterye & murder, (but he was otherwise punished) in respect of publ^c interest & advantage, he was valued at 10000: cōmon men. Bathsheba was not putt to deathe for her Adulterye, because the Kings desire had wth her the force of a Lawe But if Iudges be tyed to a prescript punishment, & no lib^{the} lefte for dispensation or mitigation in any case, heer is no place lefte for wisdom or mercye: whereas Solⁿ saythe Prov: 20: 28: mercy & truth preserve the Kinge; & his throne is vpholden by

influence, Massachusetts colonial justice often sought insight directly from men of the cloth.

Questions of legal interpretation were frequently propounded not to a body of law-trained men . . . but to the revered elders who, particularly in the earlier years, occupied a respected niche in the halls of government and whose long ‘opinions’ cited ‘leading cases’ from Scripture rather than from the Common Law. Such advisory opinions, although not binding on the General Court, carried great weight . . .⁵⁴

Massachusetts was not the only New England colony to cite Scriptural authority in its legal code. In 1639 New Haven Colony “voted that ‘the word of God shall be the only rule to be attended to in

mercy.

John Winthrop, *Arbitrary Government*. Described, in WINTHROP, *supra* note 52, at 447-49. See also POWERS, *supra* note 45, at 273-74 (giving further Biblical examples), quoting 4 WINTHROP PAPERS *supra* note 52, at 476. Similarly, in 1641, several Massachusetts magistrates argued that “‘all punishments, *except* such as are made certain in the law of God [presumably such as those made punishable by death in the Mosaic code], or are not subject to variation by merit of circumstances, ought to be left arbitrary to the wisdom of the judges.’”

God hath left a pattern hereof in his word, where so few penalties are prescribed [as fixed penalties], and so many referred to the judges [as discretionary]; and God himself [meaning the lawmakers of Israel . . .] varieth the punishments of the same offences, as the offences vary in their circumstances; as in manslaughter, in the case of a riotous son proving incorrigible, in the same sin aggravated by presumption, theft, etc., which are not only rules in these particular cases, but to guide the judges by proportion in all other cases: as upon the law of adultery [a capital offense], it may be a question whether Bathsheba ought to die by that law, in regard to the great temptation, and the command and power of the kings of Israel. So that which was capital in the men of Jabesh Gilead, Judges (xxi: 10) in not coming up to the princes upon proclamation, was but confiscation of goods, etc., in Ezra 10: 8. [See 2 Sam. 14: 6, 11].

POWERS, *supra* note 45, at 447-48 (quoting 2 THE HISTORY OF NEW ENGLAND FROM 1630 TO 1649 BY JOHN WINTHROP, ESQ., THE FIRST GOVERNOR OF THE COLONY OF MASSACHUSETTS BAY 67-68 (James Savage ed., 1853)).

54. POWERS, *supra* note 45, at 512.

ordering the affairs of government in this plantation,” and in 1655 adopted a code in which 47 out of 79 topical statutes were based on the Bible.⁵⁵ In colonial Connecticut, “the Bible was, ‘in the [case of the] defect of a law in any particular case,’ a rule of political government.”⁵⁶ The colony’s “Code of 1650 adopted a Mosaic model

55. NEWMAN, *supra* note 36, at 642. See also CLARK, *supra* note 9, at 44; ROLLIN G. OSTERWEIS, *THREE CENTURIES OF NEW HAVEN, 1638-1938*, at 43 (1953), (noting that “[m]any of the provisions [of the Eaton Code of 1656, prepared by the governor the previous year] received support from marginal references to scriptural authority; even the standard measurements for beer casks enjoyed endorsement from Deuteronomy.”). Newman notes that

thirty-eight laws are exclusively Old Testament enactments; and only seven quote explicitly [sic; explicitly] from both Dispensations. In short, fifty per cent of the Code contains references solely from the Old Testament, nine per cent from Old and New Testaments combined, and only three per cent from the Gospels alone. This obvious preference for Old as against New Testament authority is explicable only when we realize that the Puritans regarded the Gospels as the guide of individual life; the Jewish Bible, on the other hand, was the book of instructions for the social and communal order. Hence, in forming social and governmental laws, Puritan New England turned to the Hebrew Scriptures.

NEWMAN, *supra*, at 642. See also CORNELISON, *supra* note 12, at 54-55 (quoting RECORDS OF THE COLONY AND PLANTATION OF NEW HAVEN, 1638-1649, at 20, 21 (Charles J. Hoadly, ed., 1857), noting the 1639 agreement by vote that “the Scriptures do hold forth a perfect rule for the direction and government of all men in all duties which they are to perform to God and men, as well in the government of families and commonwealths, as in matters of the church” and reporting the Scriptural texts preached on at several meetings. According to an April 3, 1644 enactment:

In the beginning of the first foundation of this plantation and jurisdiction, upon a full debate with due and serious consideration, it was agreed, concluded, and settled, as a fundamental law, not to be disputed or questioned hereafter, that the judicial laws of God, as they were delivered by Moses and expounded in other parts of the Scripture, so far as they are a fence to the moral law, being neither typical nor ceremonial, nor having a reference to Canaan, shall be accepted as of moral equity, and as God shall help, shall be a constant direction for all proceedings here and a general rule in all courts of this jurisdiction, how to judge between party and party, and how to punish offenders till the same be branched out into particulars hereafter.

CORNELISON, *supra*, at 55-56 (quoting REVISION OF FEB. 24, 1644-45, at 191 (1857)). Some statutes from the 1635-55 time period give *specific* Biblical references. See CORNELISON, *supra* at 56-57.

56. Appeal of Allyn, 23 L.R.A.(N.S.) 630, 631 (1909). (quoting 1 THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT 509 (J. Hammond Trumbull pub., 1850)).

of government, and copied its laws in large part from those of Massachusetts," having "fifteen Capital Laws with the same Pentateuchal references and the same phraseology."⁵⁷

The 1643 confederation which produced The United Colonies of New England gave even more importance to Scripture. The Confederation's General Court acknowledged

that the supreme power of making laws and of repealing belongs to God only, and that by Him this power is given to Jesus Christ as Mediator, Matt. xxviii., 19; John v., 22; and that the laws for holiness and righteousness are already made and given us in the Scriptures, which, in matters moral or of moral equity, may not be altered by any human power or authority Yet civil rulers and courts, and this General Court in particular, . . . are the ministers of God for the good of the people, and have power to declare, publish, and establish, for the Plantations within their jurisdiction, the laws He hath made; and to make and repeal orders for smaller matters, not particularly determined in Scriptures, according to the more general rules of righteousness⁵⁸

Other northeastern colonies show similar influences. In a 1680 New Hampshire law, the sentence of death for blasphemy was specifically based on Leviticus 24: 15-16,⁵⁹ while Professor L. I. Newman states that the early legislation of East Jersey was "based largely on Scriptural authority. Thus the law of trespasses and injuries by cattle, of injury by fire, of negligence, and the criminal law are in agreement with the provisions of Exodus."⁶⁰ In all of these cases,

According to Art. I of THE FUNDAMENTAL ORDERS OF CONNECTICUT, magistrates were to "have power to administer justice according to the laws here established; and for want thereof, according to the rule of the Word of God." CORNELISON, *supra* note 12, at 45 (quoting Art. I of THE FUNDAMENTAL ORDERS OF CONNECTICUT (1639)).

57. NEWMAN, *supra* note 36, at 640.

58. CORNELISON, *supra* note 12, at 59 (quoting CODE OF NEW HAVEN, at 569 (1656)).

59. *Id.* at 42 (quoting PROVINCIAL PAPERS 363).

60. NEWMAN, *supra* note 36, at 643 (note omitted).

reference to the Bible and its precepts was an explicit or implicit part of the law-making process, and indicating the close connection between Scripture and the law.

The *Bible* not only influenced the law, but was quoted and cited with approval in the courts. In 1711, Nicholas Trot, Judge of the Court of Vice Admiralty and Chief Justice of the Province of South Carolina, harangued the pirate Stede Bonnet at his sentencing in the following manner:

You being a gentleman that have had the advantage of a liberal education, and being generally esteemed a man of letters, I believe it will be needless for me to explain to you the nature of repentance and faith in Christ, they being so fully and often mentioned in the Scriptures that you cannot but know them. And therefore, perhaps, for that reason it might be thought by some improper for me to have said so much to you, as I have already upon this occasion. Neither should I have done it, but that considering the course of your life and actions, I have just reason to fear that the principles of religion that had been instilled into you by your education have been at least corrupted, if not entirely defaced, by the Scepticism and Infidelity of this wicked age; and that what time you allowed for study was rather applied to the Polite Literature and the vain Philosophy of the times, than a serious search after the Law and Will of God, as revealed unto us in the Holy Scriptures. For *had your delight been in the Law of the Lord and that you had meditated therein day and night* (Psalm 1.2) you would then have found that God's *Word was a lamp unto your feet, and a light to your path* (Psalm 119.105) and that you would account all other knowledge but loss in comparison of the *excellency of the knowledge of Christ Jesus* (Phil. 3.8) *who to them that are called is the power of God and the wisdom of God* (I Cor. 1.24) *even the hidden wisdom which God ordained before the world* (Chap. 2, 7).

You would then have esteemed the Scriptures as the Great Charter of Heaven, and which delivered to us not only the most perfect laws and rules of life, but also discovered to us the Acts of Pardon from God, wherein they have offended those righteous laws. For in them only is to be found the great mystery of fallen man's *Redemption which the Angels desire to look into* (I Pet. 1.12).

And they would have taught you that Sin is the debasing of human nature as being a derivative [deviation] from that Purity, Rectitude and Holiness in which God created us, and that Virtue and Religion and walking by the Laws of God were altogether preferable to the ways of Sin and Satan, for that the ways of Virtue are *ways of pleasantness, and all their paths are peace* (Prov. 3.17).

But what you could not learn from God's Word, by reason of your carelessly or but superficially considering the same, I hope the course of His Providence and the present afflictions that He hath laid upon you, hath now convinced you of the same, For however in your seeming prosperity you might make a *mock at your sins* (Prov. 3.17) [Prov. 14.9] yet now . . . you see God's hand hath reached you, and brought you to public justice. . . .⁶¹

In this excerpt Trot quotes, fairly correctly, no less than eight verses of Scripture from five books of the *Bible* (he uses a further ten books and quotes fourteen other verses, citing sixteen Biblical references in all, in the remainder of his address).⁶² While this may be unusual in its length and scope, it certainly illustrates the central role that Scripture could play in early cases.

Many influential philosophers and publicists of the period also

61. CHARLES JOHNSON, A GENERAL HISTORY OF THE ROBBERIES AND MURDERS OF THE MOST NOTORIOUS PIRATES 79-80 (Arthur L. Hayward ed., 1955) (*italics original; first bracket original; second bracket added*).

62. *Id.* at 78-81. That this was not a departure from standard practice is suggested by the Court's use of Scriptural references in the prior sentencing of Bonnet's compatriots. See *id.* at 77.

used religious quotations to make their points. The political philosopher John Locke “frequently cited the Bible in his . . . writings.”⁶³ Daniel Dulany, author of “The Right of the Inhabitants of Maryland to the Benefit of English Laws” in 1728, opined “[t]hat the Common Law, takes in the Law of Nature, the Law of Reason, and the revealed Law of God; which are equally binding, at All Times, in All Places, and to All Persons . . .”⁶⁴ Blackstone, whose *Commentaries* have significantly influenced law in the United States, viewed the “Law of Nature” as being divinely-inspired, arguing that God “laid down certain immutable laws of human nature, whereby . . . freewill is in some degree regulated and restrained, and gave . . . [man] the faculty of reason to discover the purport of those laws.”⁶⁵ Dovetailing with this was Blackstone’s concept of “Revealed Law” (or “Divine Law”) whose doctrines

are to be found only in the holy scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man’s felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in its present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of

63. EIDSMOE, *supra* note 2, at 61, also noting that

In his first treatise on government he [Locke] cited the Bible eighty times. Forty-two of these citations are from Genesis, mostly chapters 1 and 3. Twenty-two biblical citations appear in his second treatise in which he argued that parents have authority over their children based upon the creation of Adam and Eve and their offspring. He also argued that man has the right to possess property since God gave the earth to Adam and later to Noah. He based the social compact which government is established upon “that Paction which God made with Noah after the Deluge.”

Id. (note omitted).

64. ST. GEORGE LEAKIN SIOUSSAT, *THE ENGLISH STATUTES IN MARYLAND* 82 (Nov.-Dec. 1903) [21 John Hopkins University Studies in Historical and Political Science, xi-xii]. See also MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860*, at 7 (1977).

65. 1 SIR WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND: IN FOUR BOOKS; WITH AN ANALYSIS OF THE WORK* 26 (Chitty ed., 1910).

ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is of infinitely more authenticity than the moral system which is framed by ethical writers, and denominated the natural law. Because one is the law of nature, expressly declared so to by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but, till then, they can never be put in any competition together.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human law should be suffered to contradict these.⁶⁶

The recognition of a legal-scriptural link by Blackstone is extremely important. His support for this connection means that it was acknowledged by all three of the major theoreticians of English law:

66. *Id.* at 28 [Introduction §2]. *But see* DAVIES, *supra* note 16, at 16, who notes that “although the Bible continues to be much cited, it is pretty clear that the whole temper and purpose of the citations have changed. Whatever lip-service is paid to the authority of the revealed law, the emphasis has in fact changed largely to an interest in comparative studies.” *See also id.* at 17-22. In describing “the general tenor of Blackstone’s attitude to scriptural injunctions,” *Id.* at 20, Davies notes:

Broadly, he adopts the same attitude as Hooker. The latter’s unchangeable “moral law” is here; but it is restricted to some few fundamental rights and to the *mala in se*, a category which Blackstone appears to limit strictly. Now and again there is a slight note of uneasiness when some strict penal provision of English law scratches the exterior of his conscience but generally his attitude is that these matters are for the prudence of the local legislature--on much the same lines as Hooker’s distinctions. Contemporary reason is to dictate what is locally and now best for human happiness. As with Hooker, so with Blackstone, the municipal laws of one society . . . “has [sic] no connection with, or influence upon, the fundamental polity of the other.” (As Junius put it in 1771, “Sir, the Bible is the code of our religious faith, not of our municipal jurisprudence.”)

Id. at 20.

Bracton, Coke and Blackstone. From an American standpoint, Blackstone's late eighteenth century views on the subject point the way to the continuation of this relationship in our own legal system. Indeed, in such an environment, when no less a judicial personage than Lord Mansfield could declare that "the law of God is the law of England,"⁶⁷ citations to or quotations from Scripture in legal and political arguments are hardly surprising. Professor L.I. Newman notes that although the system of Old Testament legislation

lost sway, the word of Scripture continued to nourish and sustain much of the thought of the colonies. In the growth of republican principles during the eighteenth century, it played a dominant role; prior to and during the Revolution it gained a new ascendancy and became a powerful ally to the embattled colonists⁶⁸

Surveying political literature from the period 1760-1805, Donald S. Lutz and Charles S. Hyneman have determined that biblical sources constituted 34 percent of all citations, ranging from a low of 24 percent in the 1760s to a 44 percent high in the following decade. They explain

most of these citations come from sermons reprinted as pamphlets . . . amounting to at least 10 percent of all pamphlets published. These reported sermons accounted for almost three-fourths of the biblical citations making this . . . source . . . roughly as important as the Classical or Common Law categories. . . . It is relevant . . . to note the prominence of biblical sources for American political thought, since it was highly influential in our political tradition, and is not always given the attention it deserves.⁶⁹

67. DUMBAULD, *supra* note 16, at 210 n.30. (quoting *Evans v. Chamberlain of London*, 2 BURNS ECCL. LAW 218; 16 PARL. HIST. 315 (1767)).

68. NEWMAN, *supra* note 36, at 645.

69. Donald S. Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," 78 AM. POL. SCI. REV. 189, at 192 (1984)

Christian scholar John Eidsmoe has concluded that “[t]he founding fathers . . . quoted . . . [the Bible] authoritatively and made frequent allusions to Scripture in their writings and speeches.”⁷⁰

The connection between Scripture and law, legislation, and public policy found in early English law can thus be seen to have taken root in America as well as continuing in Britain. The evidence presented suggests broad continuity in this association and indicates that major legal and governmental figures of many periods recognized and supported the connection, which persisted into the following centuries.

(note omitted). Interestingly, Deuteronomy was the “book most frequently cited by Americans during this founding era,” *id.*, while in the 1780’s 9% of the anti-Federalist citations, but *none* of the Federalist citations, were Scripture, *id.* at 194 [Table 4]. *See also* EIDSMOE, *supra* note 2, at 51-52; D.S. Lutz, “From covenant to constitution in American political thought,” 10 PUBLIUS 101-33 (1980). Eidsmoe gives specific examples tending to support this conclusion. Thus John Jay’s speech “at the New York Convention, which called for the support of the Declaration of Independence, was filled with references to biblical figures such as Nebuchadnezzar, Jacob, and Esau. He compared America to Israel . . .” EIDSMOE, *supra* note 2, at 166. *See also id.* at 174-75. The writings of Gouverneur Morris “frequently contain biblical allusions which indicate a familiarity with the Bible.” *Id.* at 184. Samuel Adams was not above using “a Scripture phrase” if the occasion were apt, as did Roger Sherman. *See id.* at 256, 323-24. Indeed, the latter suggested a revision to the Law of Connecticut

holding that life, property, wife, or children could not be taken away except under the laws of the state or “by some clear plain rule warranted by the word of God”; however, the lower house of the legislature, perhaps recognizing difficulties in referring to the Bible generally without enacting specific provisions of it into law, substituted “unless clearly warranted by the Laws of this State.”

Id. at 324, citing CHRISTOPHER COLLIER, ROGER SHERMAN’S CONNECTICUT 196 (1971).

70. EIDSMOE, *supra* note 2, at 341. *See also supra* note 60. *But see* DAVIES, *supra* note 16, at 22, *citing* B. P. Wright to the effect “that whereas the first generation in America relied on the Bible and religious writings, the eighteenth century drew on Aristotle, Plato, Cicero and other ancient authorities, and on Locke, Puffendorf, Milton, Herrington, Montesquieu, Blackstone, and Burlamqui.”

C. Anglo-American Scriptural Citation and Usage in the Eighteenth and Nineteenth Centuries

Attention to the Scriptures persisted in eighteenth and nineteenth century Anglo-American legal argument. For example, in an 1802 charge to the Grand Jury at the Court of General Sessions of the Peace at Barnstable, Massachusetts, Judge Nathaniel Freeman noted that biblical laws ““must be respected as of high authority in all our courts. And it cannot be thought improper for the officers of such (our) government to acknowledge their obligation to be governed by its rules.””⁷¹ An 1864 New York case, involving the unlicensed sale of liquors, notes “the plea as ancient as the world, and first interposed in Paradise: ‘The serpent beguiled me and I did eat. ‘That defense was overruled by the great Lawgiver’”⁷² while an 1870 Maine case quotes a “proverb of Solomon: ‘He that is surety for a stranger shall smart for it, and he that hateth suretyship is sure.’”⁷³ Similarly, citation to Scriptures continued to drive arguments on public policy. Davies suggests that, particularly during the nineteenth century, whenever

some particularly fierce dispute arose, as in the case of women’s rights, slavery and capital punishment, . . . the disputants were very apt to fall back on the revealed Law of God and the Law of Nature. The subject of the use of the Bible by both sides in the slavery controversy would fill many lectures. Likewise, the influence of the Bible on the development of the Criminal Law, and particularly in the period of its worst severity in England and on the Continent, would make a long, and in parts a very sad and sombre story on its own.⁷⁴

71. Quoted in CLARK, *supra* note 9, at 44 n. 26.

72. Board of Commissioners of Excise of Onandaga County v. Backus, 29 How. Pr. 33, 42 (Dist.Ct. 1864).

73. Mayo v. Hutchinson, 57 Me. 546, at 547 (E.D. 1870) (Appleton, C.J.).

74. See DAVIES, *supra* note 16, at 22-23.

One pertinent example is a letter from the pen of the abolitionist (and ex-slave) Gustavus Vassa. Writing to *The Public Advertiser* in 1788, he utilizes Biblical verses in his attack on the author of a pro-slavery tract entitled *Cursory Remarks & Rejoinders*. Starting with a Scriptural cite, Vassa notes “[t]hat to love mercy and judge rightly of things is an honour to man, . . . but ‘if he understandeth not, nor sheweth compassion to the sufferings of his fellow-creatures, he is like the beasts that perish.’ Psalm LIX verse 20.”⁷⁵ Vassa argued that

75. FOLARIN SHYLLON, *BLACK PEOPLE IN BRITAIN 1555-1833*, at 249 (1977) (quoting Gustavus Vassa, letter to *The Public Advertiser* (28 Jan. 1788)). There is no verse 20 to Psalm 59; presumably what Vassa had in mind was Psalms 49:12: “Nevertheless man *being* in honour abideth not: he is like the beasts *that* perish” (King James). Vassa elaborates on this theme as well as adding further biblical authority:

Excuse me, Sir, if I think you in no better predicament than that exhibited in the latter part of the above clause; for can any man less ferocious than a tiger or a wolf attempt to justify the cruelties inflicted on the [blacks] in the West Indies? . . . I confess my check changes colour with resentment against your unrelenting barbarity, and wish you from my soul to run the gauntlet of Lex Talionis at this time; for as you are so fond of flogging others, it is no bad proof of your deserving a flagellation yourself. Is it not written in the 15th chapter of Numbers, the 15th and 16th verses, that there is the same law for the stranger as for you?

Then, Sir, why do you rob him of the common privilege given to all by the Universal and Almighty Legislator? Why exclude him from the enjoyment of benefits which he has an equal right to with yourself? Does civilization warrant these incursions upon natural justice? No.—Does religion? No.—Benevolence to all is its essence, and do unto others as we would others do unto us, its grand precept—to Blacks as well as Whites, all being children of the same parent. Those, therefore, who transgress those sacred obligations, and here, Mr. Remarker, I think you are caught, are not superior to brutes which understandeth not, nor to beasts which perish.

SHYLLON, *supra*, at 249 (quoting Vassa). The relevant quotation from *Numbers* 15:15-16 reads:

One ordinance shall be both for you of the congregation, and also for the stranger that sojourneth with you, an ordinance for ever in your generations: as ye are, so shall the stranger be before the LORD. One law and one manner shall be for you, and for the stranger that sojourneth with you.

(King James).

[f]rom having been in the West Indies, you must know that the facts stated by the Rev. Mr. Ramsey are true; and yet regardless of the truth, you controvert them. . . . Recollect, Sir, that you are told in the 17th verse of the 19th chapter of Leviticus, “You shall not suffer sin upon your neighbours,”⁷⁶ and you will not I am sure, escape the upbraidings of your conscience, unless you are fortunate enough to have none; and remember also, that the oppressor and oppressed are in the hands of the just and awful God, who says, Vengeance is mine and I will repay—repay the oppressor and the justifier of the oppression. How dreadful then will your fate be?⁷⁷

While ostensibly addressing his opponent (whose mind was presumably already closed on the subject), Vassa was in fact crafting an argument based on shared Christian precepts, which was aimed for the larger public. As Professor Davies implies, both sides in the debate attempted to have others view the issue through their own customized Scriptural spectacles, just as policy advocates today attempt to express their views in terms of Constitutionality or fairness. The reason for this struggle for “biblical high ground” is aptly demonstrated by the decision of Justice Best in the 1824 British slavery case of *Cochrane v. Forbes*, where successful characterization of a law as anti-Christian led to a refusal to enforce a right based on it.

76. “Thou shalt not hate thy brother in thine heart: thou shalt in any wise rebuke thy neighbour, and not suffer sin upon him.” *Lev. 19:17* (King James).

77. SCHYLLON, *supra* note 75, at 249 (quoting VASSA). That this missive was not unique is shown by other letters of this black abolitionist. *Id.* at 251, Gustavus Vassa, letter to *The Public Advertiser* (5 Feb. 1788) (“I am sorry to find in your Apology for oppression [“Apology for NEGRO SLAVERY”], you deviate far from the Christian precepts, which enjoin us to do unto others as we would others should do unto us,” also quoting *Acts 17:26*); letter to *The Public Advertiser* (13 Feb. 1788), *Id.* at 253 (“they can say with the pious Job, ‘Did I not weep for him that was in trouble? Was not my soul grieved for the Poor?’”, also quoting *Prov. 14:34*, and other scriptural cites); letter to *The Public Advertiser* (19 June 1788), *Id.*, *supra*, at 256 (“The wise man saith, *Prov. xiv. 34*, ‘Righteousness exalteth a nation, but sin is a reproach to my people.’”); letter to *The Morning Chronicle and London Advertiser* (27 June 1788), *quoted in id.* at 258 (“‘Those that honour their Maker have mercy on the poor,’” also quoting from *Job*); letter to *The Public Advertiser* (14 Feb. 1789), *Id.* at 260 (quoting *Prov. 14:34*).

In *Cochrane*, Justice Best noted:

“The proceedings in our Courts are founded upon the law of Nature and the revealed law of God. If the right sought to be enforced is inconsistent with either of these, the English municipal Courts cannot recognize it.” He quoted Blackstone’s famous dictum that no human law should be suffered to contradict the law of nature and the law of revelation, and concluded that the law of East Florida, on which the plaintiff relied, was “an anti-Christian law and one which violates the right of Nature and therefore ought not to be recognized here.”⁷⁸

As late as 1866, Spencer Horatio Walpole, the British Home Secretary “was solemnly discussing the problems of infanticide on the basis of distinctions drawn in the Bible and by the Church Fathers”⁷⁹

Again, quotation, citation, and allusion to the Scriptures can be perceived as an important and continuing tradition in Anglo-American jurisprudence and policy, in a largely unbroken trend down to the twentieth century.

D. Scripture and the Law in the United States and United Kingdom in the Twentieth Century

The connection between the *Bible* and law in the present century must now be considered. In 1914, it was reported that “lawyers and judges frequently refer to and quote from the Bible in the trial of cases,”⁸⁰ while as late as the early 1920s, it was noted that “allusions to the Bible are perhaps more frequent than to any book other than professional law treatises and previous decisions.”⁸¹ Many judges

78. DAVIES, *supra* note 16, at 4.

79. *Id.* at 5.

80. CLARK, *supra* note 9, at 44 (quoting 42 WASH. L. REV. 771 (1914)).

81. James Brown, The Bench and the Bible, CASE AND COMMENT, Jan.-Feb.

were willing to cite biblical authority when applicable to the cases under consideration.

One such judge was Henry M. Furman of Oklahoma, who referred to Scripture in a number of his decisions. *Ex parte Jefferies*, for example, deals with the probative value of circumstantial evidence. In upholding its superiority to some direct eyewitness testimony, Furman notes that “[t]he Saviour of mankind was crucified upon direct and false testimony”⁸² and that “Stephen, the first martyr on behalf of Christianity after the crucifixion of Christ, was convicted and executed in direct and perjured testimony. In the sixth chapter of Acts, tenth, eleventh, twelfth, and thirteenth verses, we have a statement of the testimony upon which he was condemned.”⁸³ In *Tucker v. State*, a Prohibition case in which the accused claimed that his wife had been the one to “convert his home into a bootlegging joint,”⁸⁴ Furman succinctly disposed of the argument. “Like Adam, of old, his only defense was that the woman did it. This plea did not save Adam, and it should not be permitted to save appellant.”⁸⁵ In another controversy dealing with a conspiracy in restraint of trade, the judge noted, “We are repeatedly told in the Bible that ‘a gift doth blind the eyes of the wise and pervert the words of the righteous.’”⁸⁶ Judge Furman, in slapping down the attempts of a sheriff and jailer to require an accused to meet with counsel in their presence and hearing, stated that this constitutionally provided protection “would, in the language of St. Paul, I Cor. 13, 1, ‘become as sounding brass, or a tinkling cymbal,’ if it did not include the right to a full and confidential consultation with such counsel, with no other persons present to hear what was said.”⁸⁷ *Ex parte Harkins*,⁸⁸ again authored

1923, at 3. This article has proved particularly useful as a source for early twentieth century allusions to Scripture. See also CLARK, *supra* note 9, at 44 n.27.

82. *Ex parte Jefferies*, 41 L.R.A.(N.S.) 749, 761 (1912) (Henry M. Furman, P.J.) (quoting *Luke* 23: 1-2).

83. *Id.*

84. *Tucker v. State*, 125 P. 1089, 1093 (1912) (Henry M. Furman, P.J.).

85. *Id.* Compare this to the similar excuse given in *Backus*, *supra* note 72.

86. *State v. Coyle*, 130 P. 316, 317 (1913) (Henry M. Furman, P.J.) (citing *Deut.* 16: 19; *Ex.* 23: 8).

87. *State ex rel. Tucker v. Davis*, 44 L.R.A.(N.S.) 1083, 1087 (1913) (Henry M.

by Furman, concerns a petition for *habeas corpus* in a capital murder case. In addition to other references, it contains a direct citation to *II Samuel*: 11: 2-24:

[C]rime is always unreasonable. What could be more unreasonable, and therefore more criminal, than the seduction of a 16-year-old girl, in the sacred name of love, by a mature man of the world? . . . Is there any crime which such a man would hesitate to commit, if it suited his purposes? No man can tell what a man will do who has been entertaining illicit relations with a girl. Such conduct could not even be understood by King Solomon, although he was the wisest man who ever lived; for in the eighteenth and nineteenth verses of the thirtieth chapter of Proverbs he says:

“18. There be three things which are too wonderful for me, yea, four, which I know not:

19. The way of an eagle in the air; the way of a serpent upon a rock; the way of a ship in the midst of the sea; and the way of a man with a maid.”

If Solomon with all of his wisdom and long and varied experience could not understand these things, how can they appear reasonable to ordinary mortals? We only know from experience that illicit love has been the most prolific source of murder from the most ancient days to the present time. Take the case of King David. In the eleventh chapter of *II Samuel*, beginning with the second verse, we find the following . . .⁸⁹

Furman, P.J.).

88. 124 P. 931 (1912) (Henry M. Furman, P.J.).

89. Furman continues:

2. And it came to pass in an eventide, that David arose from off his bed, and walked upon the roof of the king's house; and from the roof he saw a woman washing herself; and the woman was very beautiful to look upon.

3. And David sent and inquired after the woman. And one said, Is not this Bathsheba, the daughter of Eliam, the wife of Uriah the Hittite?

4. And David sent messengers, and took her; and she came in unto him, and he lay

with her; for she was purified from her uncleanness; and she returned unto her house.

5. And the woman conceived, and sent and told David, and said, I am with child.

6. And David sent to Joab, saying, Send me Uriah the Hittite. And Joab sent Uriah to David.

7. And when Uriah was come unto him, David demanded of him how Joab did, and how the people did, and how the war prospered.

8. David said to Uriah, Go down to thy house, and wash thy feet. And Uriah departed out of the king's house, and there followed him a mess of meat from the king.

9. But Uriah slept at the door of the king's house with all the servants of his lord, and went not down to his house.

10. And when they had told David, saying, Uriah went not down unto his house, David said unto Uriah, Camest thou not from thy journey? Why then didst thou not go down unto thine house?

11. And Uriah said unto David, The ark, and Israel, and Judah, abide in tents; and my lord Joab, and the servants of my lord, are encamped in the open fields; shall I then go into mine house, to eat and to drink, and to lie with my wife? As thou livest, and as thy soul liveth, I will not do this thing.

12. And David said to Uriah, Tarry here to-day also, and to-morrow I will let thee depart. So Uriah abode in Jerusalem that day, and the morrow.

13. And when David had called him, he did eat and drink before him; and he made him drunk; and at even he went out to lie on his bed with the servants of his lord, but went not down to his house.

14. And it came to pass in the morning, that David wrote a letter to Joab, and sent it by the hand of Uriah.

15. And he wrote in the letter, saying, Set ye Uriah in the forefront of the hottest battle, and retire ye from him, that he may be smitten, and die.

16. And it came to pass, when Joab observed the city, that he assigned Uriah unto a place where he knew that valiant men were.

17. And the men of the city went out, and fought with Joab; and there fell some of the people of the servants of David; and Uriah the Hittite died also.

18. Then Joab sent and told David all the things concerning the war;

19. And charged the messenger, saying, When thou hast made an end of telling the matters of the war unto the king,

20. And if so be that the king's wrath arise, and he say unto thee, Wherefore approached ye so nigh unto the city when ye did fight? knew ye not that they would shoot from the wall?

21. Who smote Abimelech, the son of Jerubbesheth? Did not a woman cast a piece of a millstone upon him from the wall, that he died in Thebez? Why went ye nigh the wall? Then say thou, Thy servant Uriah the Hittite is dead also.

22. So the messenger went, and came and shewed David all that Joab had sent him for.

23. And the messenger said unto David, Surely the men prevailed against us, and came out unto us into the field, and we were upon them even unto the entering of the gate.

24. And the shooters shot from off the wall upon thy servants; and some of the

What could have been more unreasonable than the conduct of King David? . . . [T]he courts are constantly filled with murder cases which grow out of such relations.⁹⁰

Furman's Scriptural allusions demonstrate the use *one* judge made of the *Bible* in his decisions. They were not, unique,⁹¹ as other Oklahoma jurists also referred to Holy Writ.⁹² Furthermore, the practice was not confined to Oklahoma.

In the Missouri case of *Harris v. Security Life Ins. Co. of America*, the appellants attempted to question the doctrine that an incontestable life insurance policy cannot be challenged on any ground not excepted. Judge Henry W. Bond of the Missouri Supreme Court firmly put them in their place in an opinion containing several

king's servants be dead, and thy servant Uriah the Hittite is dead also.

Id. at 940.

90. *Id.* at 940-41. That such a mass incorporation of scripture, while unusual, was paralleled elsewhere is shown by the quotation of the story of the leper Gehazi, from II Kings 5:20-27, in *State v. Buswell*, 58 N.W. 728, 732.

91. Nor was Furman's use of Holy Writ *uncritical*. In *Updike v. State*, 130 P. 1107, 1111 (Okla. 1913) he argues against counsels' isolated reliance on one trial instruction as follows:

In assuming this position, counsel for appellant have not considered this instruction in connection with the other instructions given. The absurd consequences which would result from this line of reasoning can be well illustrated by quoting three passages of Scripture without reference to the connection in which they are used. In one place the Bible says: "Judas Iscariot went out and hanged himself." In another place the Bible says: "Go thou and do likewise." In another place the Bible says: "And all the people said Amen." By selecting isolated passages without reference to the context and subject-matter, counsel could easily dispose of the entire instructions given by the court.

See also *Matthew* 27:5 ("And he [Judas] cast down the pieces of silver in the temple, and departed, and went and hanged himself"); *Luke* 10:37 ("Go and do thou likewise"); *Deut.* 27:16-26 ("And all the people shall say, Amen") (King James).

92. See *Harvey v. Territory*, 65 P. 837, 840-41 (Okla. 1901) (Burford, C.J.) (quoting *Job* 15:6, 9: 20 and *Proverbs* 18:7, 11: 9); *McGannon v. State*, 124 P. 1063, 1067, (Okla. 1912) (Turner, C.J.) (quoting *Proverbs* 26:3).

Biblical allusions:

[W]e gather from their brief that they are content to assail the proposition by characterizing the reasoning of the courts as being “more specious than sound,” . . . and inconsistent with the “Decalogue.” This method of assailing the logic of the decisions of the courts, if it be lacking in demonstrative force or constructive reasoning, may have the merit, at least, of reflecting the temper and taste of the writers. Possibly the great judgments of the great judges cited above will not be wholly dissolved by an interruption so slight and so entirely free from every element of dialectical reasoning or any form of logical disproof. We are inclined to indulge this hope when we bear in mind that the demolition of this great consensus of judicial conclusion is attempted only by the use of the particular aërial force which is said to have overthrown the walls of Jericho.⁹³

Chief Justice Henry Lam of the same court, used direct biblical citation of *Deuteronomy 22:8* to support the proposition that the presence of a guardrail for a sidewalk was necessary in certain cases.⁹⁴

In an Iowa Supreme Court case considering the privileged nature of a communication to church elders, Judge Evans noted, “[w]e are told of one in an olden time who ‘found no place of repentance, though he sought it carefully with tears,’”⁹⁵ while Justice Robinson of

93. *Harris v. Security Life Ins. Co. of America*, 154 S.W. 68, 70 (Mo. 1913). See also *Jos. 6:20*.

94. *Benton v. City of St. Louis*, 154 S.W. 473, 476 (Mo. 1913):

[T]hat the absence of a guard or rail is reprehensible, in certain contingencies, was a fixed idea in very ancient times in the east where people in the cool of the night habitually slept on their house tops. “When thou buildest a new house, then thou shalt make a battlement for thy roof, that thou bring not blood upon thy house, if any man fall from thence.” *Deut. 20, 8* [sic; *Deut. 22: 8*] The modern idea of the necessity of guard rails on sidewalks along deep excavations may take root in that venerable law of Moses, for all I know.

95. *Reutkemeier v. Nolte*, 161 N.W. 290, 293 (1917). See also *Hebrews 12:16* (King James).

the North Dakota Supreme Court characterizes the inheritance tax as “a thief and a robber” in two dissents.⁹⁶

Nor was such usage confined to the midwest. Thomas A. McBride, Chief Justice of the Oregon Supreme Court, cloaked his admonishment of a lower court judge in semi-scriptural allusion:

It was error for the court to express its opinion of the evidence in the presence of the jury. . . . The writer knows from experience on the circuit bench that it is sometimes very difficult for a judge to refrain from making comments on a case during the progress of the trial, and especially where an apparent injustice seems to have been perpetrated; but after a reversal or two, occasioned by this practice, he concluded to go, not to the ant, but to the meek and lowly oyster, to “consider its ways and be wise,” and to keep the judicial mouth shut. He commends the example of the silent oyster to all trial judges.”⁹⁷

This is not to say that every court was swayed by Biblical argument. *State v. Allen*, is an Idaho Supreme Court case involving the appeal of a murder conviction, is one such example. Chief Justice James F. Ailshie mentioned that

[c]ounsel cite the case of Jacob v. Esau, 25 Gen. 29, as showing what hunger will drive men to do. This is persuasive, and there is an element of merit in the contention, but it would be a very dangerous rule to adopt and an erroneous conclusion to reach to suppose those who are hungry or “broke” are the only ones who commit crime—even

96. *Moody v. Hagan*, 162 N.W. 704, 710 (1917) (Robinson, J., dissenting); *Strauss v. State*, 162 N.W. 908, 912 (1917) (Robinson, J., dissenting). In the latter case, Chief Justice Bruce asks “Has not the lord of the vineyard the right to do with his own as he pleases, and even to give to one at the eleventh hour his full penny while denying it, or merely giving a similar amount, to one who has borne the burden and heat of the day?” *Id.* at 909.

97. *Edwards v. Mt. Hood Constr. Co.*, 130 P. 49, 51 (Or. 1913). *See also Proverbs* 6:6 (“Go to the ant, thou sluggard; consider her ways, and be wise.”) (King James).

the crime of robbery.”⁹⁸

While other cases involve religious elements, it is often clear that the bench has gone beyond descriptive necessity in its use of Scriptural citations. Thus in *Ruse v. Williams*, an Arizona case involving attempted recovery of property given to a communal religious organization, Arizona Supreme Court Chief Justice Alford Franklin cites to and quotes from *Acts*,⁹⁹ refers to the fate of Ananias and Saphira,¹⁰⁰ and mentions St. Paul,¹⁰¹ Job,¹⁰² and the second epistle

98. *State v. Allen*, 131 P. 1112, 1115 (Idaho 1913). *See also Genesis 25:29* (“And Jacob sod pottage: and Esau came from the field, and he was faint.”) (King James). Verses 30-34, while directly relevant to the point, were presumably omitted to make this allusion more similar to a case citation.

99. *See Ruse v. Williams*, 130 P. 887, 888 (Ariz. 1913):

The object of the Spiritual Class was to aid in effectuating certain ideals in religious life, especially those relating to the communistic ownership of property. Their aim was to live such a life as Christ lived, and the mode of life described in the Acts of the Apostles was the foundation stone upon which was to be erected the arch of a high ideal in religious belief. . . . It may be stated in the words of a witness: “We were asked if we were willing to give up all for the Lord, and were referred to the fourth and fifth chapters of Acts to read; and, of course, we said we were willing to give up all and spend our time for the benefit of saving souls and for the benefit of the Lord.”

See also id. at 888-89 (citing *Acts 2:44-45* and quoting *Acts 4: 32, 34-35*).

100. *Ruse*, 130 P. at 889; *see Acts 5: 1-10* (King James).

101. *Ruse*, 130 P. at 891:

In parting, the appellee may be admonished that vanities and many vexations attend this business of life. He may apply to himself a great part of St. Paul’s catalogue of sufferings: “In journeyings often, in perils of waters, in perils of robbers, * * * in perils among false brethren; in weariness and painfulness, in watchings often, in hunger and in thirst, in fastings often.”

See also 2 Corinthians 11:26-27 (King James).

102. *See Ruse*, 130 P. at 891:

Solaced with the thought that thereby he lay up to himself treasures in heaven . . . the law of man cannot aid him. “O, that I knew where I might find him!” says Job. “Behold I go forward, but he is not there; and backward, but I cannot perceive him: On the left hand where he does his work, but I cannot behold him; he hideth himself on the right hand that I cannot see him.”

of John.¹⁰³ It is clear that judges during this period were not adverse to using scripture in their judicial opinions.

The 1920s, however, saw a counter-trend, feeding claims that use of Scriptural authority was on the wane. “At one time . . . no book was oftener quoted in argument before a jury,” claimed the author of a piece in the *Virginia Law Register*, but ‘it is seldom referred to now.’”¹⁰⁴ To a degree this prophecy has been self-fulfilling as some judges and attorneys have refrained from wielding this potent moral weapon, while the press has tended to ignore occasions on which the Bible has been cited in court. How many recall that Johnny Cochran cited Scripture in his closing arguments to the jury in the O.J. Simpson case?¹⁰⁵ Similarly, as recently as September 12th of this year,

Id. See also *Job* 23:3, 8-9 (King James).

103. See Ruse 130 P. at 891 (quoting 2 *John* 9: “Whosoever revolteth and continued not in the doctrine of Christ hath not God, but he that continueth in the doctrine hath both the Father and the Son.”). The case concluded with a final citation to Scripture concerning a charge the court declined to consider:

The testimony shows that this Spiritual Class desired revelations, and believed such would be brought by the ghosts of dead men speaking through a tin horn or trumpet. The spirit at times spoke to the class through the trumpet, and this circumstance lately caused appellee to feel that, perhaps, it was of the devil, and some fraud may have been practiced. Such a matter may not be determined by this court. That a revelation may come through a trumpet hath also some countenance in the Holy Writings; for St. John, the Apostle, says: “In the days of the seventh angel, when he shall begin to sound the trumpet, the mystery of God shall be finished, as he hath declared by his servants the prophets.” Many, perhaps, will conceive the impossibility of a revelation being so afforded; but such statement must be interpreted by the reader according to his own judgment, and then he must determine for himself whether that be one of the parts inspired by God, or merely emanating from the unaided reason of the writer. We cannot pretend to determine it.

Id. See also *Revelation* 11:15 (King James).

104. CLARK, *supra* note 9, at 44.

105. See *California v. Simpson*, No. BA 097211, 1995 WL 697930, at *1 (Cal. Super. Trans.) (closing arguments, Sept. 28, 1995):

[T]here was Mark Fuhrman, acting like a choirboy, making you believe he was the best witness that walked in here, generally applauded for his wonderful performance.

It turns out he was the biggest liar in this courtroom during the process, for the Bible had already told us the answer, that a false witness shall not be unpunished and

a born-again Christian (and former murderer)

stood before an Old Bailey judge . . . , confessed to murder and told him the Bible demanded he be put to death. Bearded Andrew Aiken, 32, said he recognised the judge was unable to carry out his request but he insisted: "In my opinion none of the mitigation presented in this case serves in any way to lessen the reprehensible evil of my action and the requirement of retribution.

In stating my belief that I am deserving of capital punishment, I am not possessed by any unnatural desire for death, or to obtain publicity or pity. It is to obtain a clear conscience.

Anybody who premeditates murder forfeits their own right to life and the passages in the Bible on which this belief is based are Genesis 9:6 and St. Matthew 5:21."¹⁰⁶

Several English newspapers reported the case, but failed to mention the defendant's scriptural arguments.¹⁰⁷ Occasionally, the

he that speaketh lies shall not escape.

In that same book it tells us that a faithful witness will not lie but a false witness will utter lies.

Finally in Proverbs it says that he that speaketh the truth showeth the forthrightfulness [sic] but a false witness shows deceit.

Id. see also id., 1995 WL 704342, at *22 (Cal. Super Trans.) (rebuttal argument, Sept. 29, 1995): "We heard so much about the Scriptures, I'm not even going to read it. Just read Proverbs 6 one day when this is all over." Other allusions appear in the trial transcript. *See, e.g., California v. Simpson*, 1995 WL 141620, *8 (Cal. Super. Trans.) (Motion in Limine re: Dr. Golden, Examination of Dennis Arthur Fung, Apr. 3, 1995) ("I do not hold myself as an expert on the Bible, but I believe there is a phrase that something to the effect 'Let he who has not sinned cast the first stone.'").

106. Paul Cheston. *I Killed, Now Kill Me Christian Tells Judge*, EVENING STANDARD 19 (Sept. 12, 1997). *See also Gen. 9:6* ("Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man"); *Matt. 5:21* ("Ye have heard that it was said by them of old time, Thou shalt not kill; and whosoever shall kill shall be in danger of the judgment") (King James).

107. *See, e.g., Adam Fresco, Years of Guilt Led Murderer to Confess*, TIMES (London) Sept. 9, 1997, at 3.

“removal” of Biblical citation from the law has produced confusion among lawyers. A letter to *The Florida Bar Journal*, for example, notes that the author of an article, “*Proverbially Speaking*”: *Rotten Apples, Philadelphia Lawyers and Red Cows*,¹⁰⁸ “seems puzzled” “concerning the origin of the term ‘red cow’ as it applies to the usage ‘red cow case’”¹⁰⁹ The letter’s author explained the Biblical origin of the phrase; “[t]he courts began using it as an application of an example meaning ‘perfect example’ derived from the origin of the term in the Old Testament, Numbers 19: 2: ‘Instruct the Israelite people to bring you a red cow without blemish in which there is no defect. . . .’”¹¹⁰

At the same time, citations to Scripture can still be found by those who seek. In a 1995 U.S. Supreme Court case, Justice Scalia joined in Justice Thomas’ opinion quoting Genesis 1:9-10.¹¹¹ *Grubert* is one of several recent Supreme Court opinions to mention that Biblical book.¹¹² Indeed, an on-line survey of cases citing or alluding to the first chapter of Genesis yields some thirty-five twentieth century examples, dating from 1905 to 1995, hardly suggestive of a moribund tradition.¹¹³

This brief review of Scriptural citation and usage may evoke yearning for earlier, more devout eras. Yet this is not a new sentiment. South Carolina’s Chief Justice Trot referred to “the Scepticism and Infidelity of this wicked age,”¹¹⁴ in 1711, while Blackstone spoke of

108. See Scott D. Maker, “*Proverbially Speaking*”: *Rotten Apples, Philadelphia Lawyers and Red Cows*, FLA. B. J., Jan. 1996, at 48, 49-50.

109. Paul Luskin, letter, in FLA. B. J., Mar. 1996, at 4.

110. *Id.*

111. *Jerome B. Grubert, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 549-50 (1995) (Thomas & Scalia, JJ., concurring).

112. See e.g., *Edwards v. Aguillard*, 482 U.S. 578, 625, (1987) (Scalia, J. & Rhenquist, C.J., dissenting); *Epperson v. Arkansas*, 393 U.S. 97, 114, (Black, J., concurring).

113. See Appendix 1 and references therein. Of this number, surprisingly, only eight (less than 25 percent) antedate World War II. While it could be argued that this chapter and book would probably supply more allusions than, say *Numbers*, one could equally argue that the quantity of legal cites would probably be less than in, say, one of the four Gospels or *Proverbs*.

114. JOHNSON, *supra* note 61, at 79.

the “present corrupted state” of reason¹¹⁵ during his lifetime, indicating that they faced problems similar to, if perhaps not quite as extreme as, those confronting lawyers and judges today. Perhaps much of the perceived alienation between Christianity and the law is just that—perception. There must be thousands of lawyers, and hundreds of sitting judges who would not be adverse to using Scriptural arguments in their briefs and decisions *if they were convinced that this has traditionally been acceptable legal practice. . . .*

III. CREATING A *LAWYER'S BIBLE*

Having established a basis for the use of Scripture in legal argument, by citation and allusion, the creation of a *Lawyer's Bible* remains to be addressed. This unique concept,¹¹⁶ as has been noted, would involve the reprinting of a complete Biblical text, with annotations for each appropriate verse, giving case numbers, citations, and information on how each has been cited in judicial decisions. The Appendix to this piece is a treatment of the first chapter of Genesis, suggesting how such a treatment might look.

A question which has not hitherto been raised, is: “Whether the citation or mention of Biblical parallels in legal argument a good thing?” For most Christian jurists the answer will be an obvious yes, as an argument based on fundamental principles is always to be

115. BLACKSTONE, *supra* note 65, at 28.

116. An online search of OCLC has revealed no book with the title *Lawyer's Bible* (or *Attorney's Bible*). Thematically, the closest work to this project appears to have been “*Clark's Biblical Law*,” or more properly, *Biblical Law: Being a Test of the Statutes, Ordinances, and Judgments Established in the Holy Bible—With Many Allusions to Secular Laws: Ancient, Medieval and Modern—Documented to the Scriptures, Judicial Decisions and Legal Literature*, published in two editions in 1943 and 1944. See CLARK, *supra* note 9. In CLARK, however, “the author—in order that Biblical Law may be easy of access—has extracted the many commandments, precedents and customs which are to be found throughout the Sacred Writings and has sought to present them logically and systematically, in the style of a modern law book.” *Id.* at vi, while the footnotes contain *both* scriptural references and references to legal literature, the latter “with a view to exemplifying, explaining, illustrating, qualifying or giving additional support to text statements.” *Id.* at [v].

preferred over a pragmatic or relativistic approach. Other valid questions remain. Would Biblical citation in an opinion result in an impermissible establishment of religion under the First Amendment? Would Scriptural allusion in a manifestly unjust judgment damn by association? Might it cause others to cite the *Koran* or the *Tripitakra*? All these are valid queries. One could imagine a judge phrasing each decision which he or she made in terms of a particular religious worldview a Biblical quotation (rather than patriotism) *could* be the last refuge of the legal scoundrel, while a stray jurist *could* cite Lodowick Muggleton's *The Divine Looking Glass*, Madame Blavatsky's *The Secret Doctrine*, or Newbrough's *Oahspe* in a decision. At the same time, the fact that an idea may occasionally be abused, or taken to an extreme, does not detract from its worth.

Regarding the Constitutional issue, it should be remembered that the *Bible* has generally been viewed as persuasive authority when it has been cited, and has usually occurred as dictum rather than in holdings. While a ruling in Scriptural verse might be considered an excessive entanglement (or equally be viewed as a valid exercise of free speech), any holding would acquire its legal authority from the operation of the law rather than from its Biblical source. Nor would the dangers of a "judicial theocracy" mindlessly stretching the law on some Procrustean Biblical bed be as great as many secularists might fear; the history of Scriptural citation offers numerous examples of the applicability of Biblical verses to varying human situations. Just as the Bible bereft of Spirit would be a dusty tome, so the law stripped of the moral authority of Scripture loses much of its positive social value. Nor need Christians fear that the Book would suffer from unjust decisions; indeed one might argue that inappropriate textual allusions or citations would draw bad judgments into sharper focus.

Finally, the possibility that other religions might have their holy books quoted should be of small concern. To the degree that this strengthens the moral behavior of their adherents, and offers principled arguments, it would serve a positive secular purpose, while on a religious plane, Christians should welcome any comparison of doctrines. If Scripture serves a fundamental purpose in our lives, dare

we banish it from our courts?

Assuming, *arguendo*, that Biblical quotation and allusion in the law is a positive thing, is a *Lawyer's Bible* the appropriate way to proceed? An alternative might be a hornbook (organized by topic & specific subheadings). To this several answers may be made. A work so-organized, Clark's *Biblical Law*, already exists, though it is currently out of print.¹¹⁷ The organization, as well as the classification of cases in a hornbook would depend upon editorial whim, whereas, the *Lawyer's Bible* would provide a solid structure which would be recognized by all Christians. Similarly, a *Lawyer's Bible* offers what a "Biblical hornbook" cannot, those valid and apposite Scriptural texts which have not to date appeared in legal decisions. Does the fact that the two verses

3. And God said, Let there be light; and there was light.

4. And God saw the light, that it *was* good: and God divided the light from the darkness¹¹⁸

do not appear to be cited in any legal opinion detract from their political usefulness in, say, an electrification case? Finally, the use of an annotated *Bible* rather than a hornbook, subordinates case law to the Holy Word, rather than the reverse, and allows the reader to view legal citations in their scriptural context.

With a *Lawyer's Bible*, the reader could refer to legal annotations of a particular passage to see how Scriptural authority had been understood (or misunderstood) in the law. Citation to a text could thus be made through persuasive legal authority, while possible misinterpretations of a passage could be spotted in advance and avoided. Reference to a topical index could provide a quick study of apposite quotes, while use of a personal name index might suggest the relative receptiveness of a judge to such arguments, or provide useful secular "authority" for a scriptural allusion. As a reference tool, the

117. See CLARK, *supra* note 9. The fact that this volume was apparently not resumed after 1944 *might* suggest problems in this organizational style.

118. *Genesis* 1:3-4 (King James).

usefulness of a *Lawyer's Bible* would be limited only by the ingenuity of the reader, and its restrained informational approach would appeal to believer and agnostic alike.

IV. CONCLUSION

The citation of Scripture by judges, attorneys, and legal authorities has a long and distinguished history in Anglo-American jurisprudence; only in recent years have the law and the Bible been artificially separated. The proposed project to produce a *Lawyer's Bible* is a complex, but feasible, attempt to reunite Scripture and the law. Over half a century ago, during World War II, H.B. Clark noted that

[t]he Bible has risen to new heights of popularity in these distressing times; and many thoughtful persons are discovering for themselves, anew, the truth known to our fathers: That the Bible is, not only the source of spiritual guidance, but also the most authoritative code for determining questions as to temporal conduct, whether in respect of personal, national or world affairs.¹¹⁹

Similarly, the evangelist Charles G. Finney noted, in a slightly different context, that he had been struck with “the manner in which a clear presentation of the Law and the Gospel of God will carry the intelligence of judges, men who are in the habit of sitting and having testimony and weighing argument on both sides.”¹²⁰

Today, given the necessary leadership and resources, it should be possible to produce a legally-annotated copy of the *Bible* which could repose in every judge's chambers, be found in every law school or firm library, and be the valued possession of every lawyer. Taking any Scriptural passage, it would be clear at a glance what use the courts have made of it in the past, providing both an educational tool and a

119. CLARK, *supra* note 9, at [v].

120. Quoted in LINTON, *supra* note 3, at 14.

practical resource. Serving as a sort of “Christian-Legal Dictionary,” the *Lawyer’s Bible* would offer a means for believers to argue and solve their legal disputes, for Christian attorneys to “appeal to Caesar,” and even for agnostics to set their cases in a scriptural context.¹²¹ It would permit the Bible to be viewed in terms of the law as well as allowing the justice system to be judged by the The Book, and would hopefully restore a sense of cohesiveness between religion and jurisprudence which has been lost. The 19th century circuit rider’s pocket Blackstone and the 20th century policeman’s printed Miranda warnings may thus be superseded by a 21st century phenomenon: an annotated *Bible* equipping judges and attorneys to support their legal reasoning with *moral* force and allowing Scripture to return to our courts. Perhaps the first president or Supreme Court justice of the new millenium will take his oath on a *Lawyer’s Bible*, again reuniting the *Bible* and the law.

121. Interestingly, Linton argues “that legal training coupled with an investigation of the Bible’s proofs practically always results in Christian conviction.” *Id.* at 17.

APPENDIX

GENESIS: CHAPTER 1¹

1. [Gen. 1 general]: See *Edwards v. Aguillard*, 482 U.S. 578, 625, 107 S.Ct. 2573, 2600, 96 L.Ed. 2d 510, 546, 55 USLW 4860,____, 39 Ed. Law Rep. 958, 984 (1987) (Antonin Scalia, J. and William H. Rehnquist, C.J., dissenting) [quoting Louisiana state senator Keith: "Senator Keith repeatedly and vehemently denied that his purpose was to advance a particular religious doctrine. At the outset of the first hearing on the legislation, he testified: '... I am not proposing that we take the Bible in each science class and read the first chapter of Genesis' 1 *id.* at E-35."] (constitutional/Louisiana act forbidding teaching of theory of evolution in elementary and secondary schools unless accompanied by instruction in theory of "creation science" articulated a secular purpose and did not advance a particular religious doctrine) [case has other non-specific, but relevant allusions to chapter 1].

See *Davenport v. Davenport Found.*, 215 P.2d 467, 470 n.1 (Cal. 1950) (Marshall F. McComb, A.J.) [quoting from a declaration of trust: "All teaching shall be in harmony with the philosophy of creation, according to the account in the Book of Genesis, Chapters 1 and 2."] (trust/trust with religious purpose held valid).

See *People v. Cooke*, 131 Cal. App. 3d 73, 81, 182 Cal. Rptr. 217, 222 n.3 (Cal. Ct. App., 1st Dist., Div. 1, May 17, 1982) (___ Goff, Assoc. J.; concurring in part and dissenting in part) [citing "Genesis, which describes God creating the universe out of chaos by words"]

(criminal/incarceration of juvenile offender for rehabilitation does not differ from incarceration for punishment).

See *Johnson v. Charles City Community Sch. Bd. of Educ.*, 368 N.W.2d 74, 77, 25 Ed. Law Rep. 524, 527 (Iowa 1985) (David Harris, J.) [quoting opinion of trial court: "Another apparent 'last straw' has been the teaching of Darwin's theory of evolution as modified from time to time, but not the 'fundamentalist's' [sic] version of creation as contained in Genesis."] (education/parents of children attending fundamentalist church school violated Iowa compulsory attendance law).

See *In re: Minneapolis Community Dev. Agency*, 439 N.W.2d 708, 712 n.4. (Minn. 1989) (John E. Simonett, J.: *en banc* decision) ["The YMCA has available for use by local groups a series of twenty 15-20 minute, 16 mm. color films which depict scenes from the Bible. The series, entitled 'The New Media Bible,' has 18 films on Genesis (Chapters 1-50) and 15 from Luke's gospel (Chapters 1-24)."] (constitutional/ condemnation of property).

See *Waites v. Waites*, 567 S.W.2d 326, 335 (Mo. 1978) (John E. Bardgett, J., concurring; *en banc* decision) ["What if a parent—maybe both parents—believe the World was created as set forth in Genesis and that belief is a tenant of the faith they espouse?"] (domestic relations/custody in a divorce cannot depend on approval or disapproval of religious beliefs).

See *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 207 Neb. 802, 805, 301 N.W.2d 571, 574 (Neb. 1981) (William C. Hastings, A.J.) ["The instruction is Bible-oriented. For example, PACE [Packet of Accelerated Christian

1. In the beginning² God created the heaven and the earth.

2. And the earth was without

Education] 25 in social studies is devoted to the first chapter of *Genesis*, and its outline topics include The Creation of the Heavens and the Earth, The Seven Days of Creation, and the Garden of Eden.”] (education/parents not entitled to be completely unfettered by reasonable government regulations as to quality of education furnished their children in a non-public institution).

See *Steele v. Waters*, 527 S.W.2d 72, 73 (Tenn. 1975) (*per curiam*) [Quoting statutes requiring that “Any [biology] textbook . . . used in the public education system which expresses an opinion or relates to a theory or theories [of evolution] shall give in the same textbook and under the same subject commensurate attention to, and an equal amount of emphasis on, the origins and creation of man and his world as the same is recorded in other theories, including, but not limited to, the Genesis account in the Bible.”] (constitutional/statutes requiring that evolution be presented as theory rather than scientific fact and requiring equal emphasis on creationist theories held unconstitutional).

2. See *State v. Akers*, 119 N.H. 161, 163, 400 A.2d 38, 40 N.H. (1979) (William A. Grimes, J.) [“[Parenthood] was firmly entrenched in the Judaeo-Christian ethic when ‘in the beginning’ man was commanded to ‘be fruitful and multiply.’ GENESIS I.”] (constitutional/criminal conviction based on vicarious liability involving status as parents which does not involve a voluntary act or omission is against statute, and state constitution’s due process clause).

form, and void;³ and darkness was upon the face of the deep.

3. See *People v. Jondreau*, 384 Mich. 539, 555, 185 N.W.2d 375, 383 (Mich. 1971) (Eugene F. Black, J., concurring) [“*People v. Chosa* was, when handed down December 2, 1930, like the earth before it was made, ‘without form, and void.’ (Genesis ch. 1:2).] (Indian/state law or regulation conflicting with Indian treaty, and legal decision based thereon, is invalid).

See *Darrow v. Briggs*, 261 Mo. 244, ___, 169 S.W. 118, 125 (1914) (Chas. B. Faris, J.) [“[W]e are convinced that the petition is bad on demurrer, that it is incoherent and presents no tangible or understandable issues; that it is ‘without form and void’ (Genesis 1:2), and violates almost every known rule of good pleading”] (tort/pleading in case alleging civil liability for conspiracy in discharge of college professor).

See *State ex rel. Campbell Iron Co. v. Pub. Serv. Comm’n of Missouri* 317 Mo. 724, 732, 296 S.W. 998, 1001 (1927) (Ernest S. Gantt, J.) [“All that part of said order attempting an arbitrary termination of the existence of said rules is null and void. Therefore the so-called extension orders (to quote the language of Faris, J., in *Darrow v. Briggs*, 261 Mo. 244, 169 S.W. 125) are ‘without form and void’ (Genesis: 1:2).”] (communication/order of Public Service Commission which limited existence of telephone rates held void).

See *Macku v. Drackett Prod. Co.*, 216 Neb. 176, 181, 343 N.W.2d 58, 61 (Neb. 1984) (Thomas M. Shanahan, J.) [“To fashion an abolitionary intent from the verbal void of §25-224(4) would be truly creative. However, creation is a subject for *Genesis* and not for the Nebraska Reports.”] (product liability/statute of limitations tolled by infancy of minor child).

And the Spirit of God moved upon the face of the waters.

3. And God said, Let there be light: and there was light.

4. And God saw the light, that *it was good*: and God divided the light from the darkness.

5. And God called the light Day, and the darkness he called Night.⁴ And the evening and the morning were the first day.⁵

4. See *United States v. Liebrich*, 55 F.2d 341, 342 (MD Pa. 1932) (Albert L. Watson, J.) ["In the Bible, Genesis, 1:5, we find 'And God called the light day and the darkness he called night.'" (criminal/light does not cease with the setting of the sun, thus search slightly after sunset when warrant called for "daytime" was legal).

See *Funches v. State*, 299 So.2d 771, 776, 53 Ala. App. 330, 336 (1974) (John C. Tyson III, A.J.) [quoting *United States v. Liebrach*: "In the Bible, Genesis, 1:5 we find 'And God called the light day and the darkness he called night.'" (criminal/lawful execution of search warrant).

5. [Gen. 1:4, 8, 13, 19, 23, 31]: See *Scopes v. State*, 289 S.W. 363, 369 (Tenn. 1927) (Grafton Green, C.J.) ["One is not prohibited by this act from teaching, either that 'days,' as used in the book of Genesis, means days of 24 hours, the literalist view, or days of 'a thousand years' or more, as held by liberalists, so long as the teaching does not exclude God as the author of human life."] (constitutional/law forbidding teaching of evolution in public schools does not violate the 14th amendment to the U.S. Constitution or article 1 of the Tennessee constitution).

6. And God said, Let there be a firmament in the midst of the waters, and let it divide the waters from the waters.⁶

7. And God made the firmament and divided the waters which *were* under the firmament from the waters which *were* above the firmament: and it was so.⁷

8. And God called the firmament Heaven. And the evening and the morning were the second day.⁸

9. And God said, Let the waters under the heaven be gathered together⁹ into one place, and let

6. [Gen. 1: 7-8]: See *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 195, 139 Cal. Rptr. 396, 403, 7 Envtl. L. Rep. 20, 583, ___ (1977) (Leonard M. Friedman, acting P.J.) ["The Genesis account of creation draws a figurative line between the water above the firmament and that below. The authors of the Final EIR [Environmental Impact Report] have essayed a similarly figurative line, dividing subsurface waters according to their destination."] (environmental/formalities of EIR met in manner required by law).

7. See *supra* note 6.

8. See *supra* note 5.

9. See *Sexton v. Bates*, 17 N.J.Super. 246, 251-52, 85 A.2d 833, 835 (1951) (Howard Ewart, J.S.C.) [quoting from a booklet on Jewish family life: "What is a Mikvah?"/"Literally, the word means "gathering"; specifically, the "gathering of waters," as in the account of

the dry *land* appear: and it was so.¹⁰

10. And God called the dry *land* earth; and the gathering together of the waters called he Seas: and God saw that *it was* good.¹¹

11. And God said, Let the earth bring forth grass, the herb yielding seed, *and* the fruit tree yielding fruit after his kind, whose seed is in itself, upon the earth: and it was so.

12. And the earth brought forth grass, *and* herb yielding seed

after his kind, and the tree yielding fruit, whose seed *was* in itself, after his kind: and God saw that *it was* good.

13. And the evening and the morning were the third day.¹²

14. And God said, Let there be lights in the firmament of the heaven to divide the day from the night; and let them be for signs, and for seasons, and for days, and years:

15. And let them be for lights in the firmament of the heaven to give light upon the earth: and it was so.

16. And God made two great lights; the greater light to rule the day, and the lesser light to rule the night; *he made* the stars also.

17. And God set them in the firmament of the heaven to give light upon the earth,

18. And to rule over the day and over the night, and to divide the light from the darkness: and God saw that *it was* good.

19. And the evening and the morning were the fourth day.¹³

20. And God said, Let the waters bring forth abundantly the moving creature that hath

the Creation in Genesis 1:10 and in Lev. . . .”] (municipal/legality of government approval and issuance of a permit allowing construction of a mikvah).

10. [Gen. 1: 9-10]: see Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 549-50, 115 S.Ct. 1043, 1056, 130 L.Ed.2d 1024, 1045, 63 USLW 4154, ___, 1995 A.M.C.913, 930 (1995) (Clarence Thomas, & Antonin Scalia, JJ., *concurring*) [“It is especially unfortunate that this has occurred in admiralty, an area that once provided a jurisdictional rule almost as clear as the 9th and 10th verses of Genesis: “And God said, Let the waters under the heaven be gathered together unto one place, and let the dry land appear: and it was so. And God called the dry land Earth; and the gathering together of the waters called he Seas: and God saw that it was good.” The Holy Bible, Genesis 1:9, 10 (King James).] (admiralty / federal admiralty jurisdiction in the case should be based on whether the tort occurred on a vessel on navigable waters).

11. See *supra* note 10.

12. See *supra* note 5.

13. See *supra* note 5.

life, and fowl *that* may fly above the earth in the open firmament of heaven.

21. And God created great whales, and every living creature that moveth, which the waters brought forth abundantly, after their kind, and every winged fowl after his kind: and God saw that *it was* good.

22. And God blessed them, saying, Be fruitful, and multiply, and fill the waters in the seas, and let fowl multiply in the earth.

23. And the evening and the morning were the fifth day.¹⁴

24. And God said, Let the earth bring forth the living creature after his kind, cattle, and creeping thing, and beast of the earth after his kind: and it was so.

25. And God made the beast of the earth after his kind, and cattle after their kind, and everything that creepeth upon the earth after his kind: and God saw that *it was* good.

26. And God said, Let us make man in our image, after our likeness: and let them have

dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.¹⁵

15. See *State v. Davis*, 72 N.J.L. 345, 348, 61 A. 2, 3 (1905) ["All the lexicographers now give the primary definition of 'fowl' as 'any bird.' They have very ancient use of the word to justify the definition. In *Genesis*, i, 26, we find 'Let them have dominion over * * * the fowls [sic] of the air.'" (criminal/unconstitutionality of statute prohibiting killing of certain birds offered as defense in prosecution for violation of the statute but court held statute constitutional).

See *New Jersey SPCA v. Bd. of Educ.*, 91 N.J.Super. 81, 90, at n. 3, 219 A.2d 200, 206 at n.3 (1966) (Charles S. Barrett, Jr., J.) [noting, in reference to the "Legislator's awareness of the commonly accepted view that animals may properly be used by man" (*Id.* at 205): "This accepted principle of mankind has been expressed in the Bible, Book of Genesis, chapter 1, verse 26 (Authorized King James version):

'And God said, "Let us make men in our own image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.'" (criminal/statute allowing government to authorize scientific experiments on animals does not deny it the right to allow high school student experiments).

See *A.E. Nettleton Co. v. Diamond*, 27 N.Y.2d 182, 186-87, 264 N.E.2d 118, 119, 315 N.Y.S. 2d 625, 627 (1970) (John F. Scileppi, J.) ["While it is not our function here to engage in any form of biblical

14. See *supra* note 5.

exegesis, it is obvious that man has only too readily acceded to the blessing enunciated in Genesis encouraging him to "be masters of the fish of the seas, the birds of heaven, the cattle, all the wild beasts and all the reptiles that crawl upon the earth" (Genesis, ch. 1, verse 26, Jerusalem Bible, p. 16.)"] (*criminal/New York statute prohibiting sale of hides of protected species valid*).

See *Lock v. Falkenstine*, 380 P.2d 278, 280-81 (Okla. 1963) (Kirksey Nix, J.) ["Before the science of Biology was in existence, a distinction was made between living creatures in the Holy Scriptures, and often referred to as 'beasts of the fields, fish of the sea, and fowls of the air.' In the beginning, it was said in Genesis 1.26:

'And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.'" (*criminal/cockfighting not covered by statute prohibiting instigation of fights between animals*).

[*Gen. 1:26, 28-30*]: See *Rock Creek Ditch & Flume Co. v. Miller*, 93 Mont. 248, ___ 17 P2d 1074, 1076, 80 ALR 200, 203 (1933) (Lew L. Callaway, C.J.) [quoting Pothier: "The first of mankind had in common all those things which God had given to the human race. This community was ... 'called a negative community, which resulted from the fact that those things which were common to all belonged no more to one than to the others'" (*water rights/water after coming into a natural stream became subject to appropriation*).

[*Gen. 1:26-28*]: See *Epperson v. Arkansas*, 393 U.S. 97, 114, 89 S.Ct. 266, 275, 21 L. Ed. 228, 240 (1968) (Hugo L. Black, J., concurring) ["Certainly the Darwinian theory, precisely like the Genesis story of the creation of man, is not

27. So God created man in his own image, in the image of God created he him, male and female created he them.¹⁶

above challenge." (*constitutional/antievolution statutes*).

See *Randolph v. Randolph*, 146 Fla. 491, 494, 1 So. 2d 480, 481 (Fla. 1941) (Glenn Terrell, J.) ["The law of the State, Section 5884, Compiled General Laws of 1927, makes the father and mother joint guardians of the minor children. This is in harmony with the story of creation in the first chapter of Genesis where we are told that male and female were created equal and commanded to inhabit and subdue the earth."] (*domestic relations/affirmation of divorce decision granting divided custody of minor children*).

See *State v. Sheets*, 564 S.W.2d 623, 626 (Mo. 1978) (Donald L. Mason, Spec. J.) (quoting from trial transcript: "It goes back to how they were created. I believe you will find in Genesis, if I could make myself clear // Q You don't believe God created man in his own image? // A I believe there were two creations of man and that is my religious belief.") (*criminal/cross examination of defense witness as to religious beliefs of defendant's church was prejudicial and mandated new trial*).

See *North Carolina v. Craig*, 308 N.C. 446, 468, 302 S.E.2d 740, 753 (1983) (James G. Exum, Jr., J., dissenting in part) ["Defendant after all is a human being created like the jurors themselves by God in His own image and given dominion over all other creatures. Genesis 1:26-28, 2:4-23. In making its life or death decision, the jury's focus on defendant's humanity should not be blurred."] (*criminal/decision tainted by use of animal metaphor in capital case*).

16. See *City of Cincinnati v.*

28. And God blessed them, and God said unto them, Be fruitful and multiply,¹⁷ and replenish

King, 152 N.E.2d 23, 27, 79 Ohio Law Abs. 426, __, 6 O.2d 313, __ (1958) (___ Leis, J.) ["God has created man in His own image; thus there is a sanctity about the human body that was never intended by man's Creator to be the subject of defilement, abuse or mockery. The book of Genesis, Chapter 1, Verse 27."] (*criminal/sale of obscene publications or pictures*).

See also *supra* note 15.

17. See *Sherlock v. Stillwater Clinic*, 260 N.W.2d 169, 175 (Minn. 1977) (Walter F. Rogosheske, J.) ["today it must be acknowledged that the time-honored command to 'be fruitful and multiply' has not only lost contemporary significance to a growing number of potential parents but is contrary to public policies embodied in the statutes encouraging family planning." (footnotes omitted (one of which cites Genesis 1:28).] (*tort/damages for birth of child caused by negligently performed sterilization operation*).

See also *supra* note 2.

See *American Book Co. v. Yeshiva Univ. Dev. Found., Inc.*, 59 Misc. 2d 31, 36, 297 N.Y.S.2d 156, 162 (1969) (Edward J. Greenfield, J.) ["Indeed the argument that there is a fundamental conflict in the outlook of these two groups with respect to the need and practice of birth control is a matter of theological disputation in which courts should not be immensed. 'Be fruitful and multiply' commands the Bible (Genesis, I, 28.) But the Talmud recognizes the propriety of birth control by females to preserve life and health." (landlord and tenant/*subleasing of property*).

See *Gowin v. Gowin*, 292 S.W. 211,

the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.¹⁸

29. And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in the which is the fruit of a tree yielding seed; to you it shall be for meat.¹⁹

214 (Tex. 1927) (Luther Nickels, J.) ["[T]he first cause and reason of matrimony ought to be the design of having offspring. . . . The so-called 'first cause' is the plain direction given to the first man and the first woman, as a pair, and repeated to Noah and offspring in the re-beginning. Genesis i, 28; ix, 1." (domestic relations/*cause of action or damages for breach of marriage contract in absence of divorce*).

18. [Gen. 1:28-30]: See *In re Hughes*, 259 N.J. Super. 193, 197, 611 A.2d 1148, 1150 (1992) (Phillip A. Gruccio, J.A.D.) ["Yet, despite a long history of blood use for these purposes, the witnesses point to a time when people obeyed God's law on blood. When God created Adam and Eve, He gave them all vegetation as food, but warned that animal flesh (and therefore blood) was not intended as food. Genesis 1:28-30." (medical/*court did not err in appointing a hospital administrator as guardian of a surgical patient to consent to blood transfusions even though patient gave written instructions she was not to receive blood*).

See also *supra* note 15.

19. See *United States v. Sams*,

30. And to every beast of the earth, and to every fowl of the air, and to every thing that creepeth upon the earth, wherein *there is* life, *I have given* every green herb for meat: and it was so.²⁰

31. And God saw everything that he had made, and, behold, *it was* very good. And the evening and the morning were the sixth day.²¹

980 F.2d 740, 1992 WL 336979 at *1 (9th Cir. 1992) (unpublished opinion) ["Sams contends that a 'cornerstone tenet of his religion is that God has not just condoned but has encouraged Man to grow and use marijuana, or "herb" as it is referred to in the Bible; citing Genesis 1:29 and I Corinthians 10:1" (constitutional/criminal).

See *Hatch v. McCaughtry*, 185 Wisc.2d 711, 520 N.W.2d 111, 1994 WL 174876 at *1 (Wis. App. May 10, 1994) (per curiam) [*unpublished* Rule 809.23 (3) decision] ["In his trial affidavit, Hatch described himself as a Christian and based his religious claims primarily on Genesis 1:29: 'And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in which is the fruit of a tree yielding seed; to you it shall be for meat.'"] (constitutional/inmate claimed failure of prison officials to provide him a meat-free diet was a violation of his First Amendment rights).

See also *supra* notes 15, 18.

20. See *supra* notes 15, 18.

21. See *supra* note 5.