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Law and Religion in the Protestant Tradition

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This chapter analyzes the distinct legal contributions of the Lutheran, Anabaptist, Anglican, and Calvinist traditions from the sixteenth century to the twentieth. This northern European reform movement, and its gradual expansion overseas, broke the international rule of the medieval Catholic Church and its canon law, permanently splintering Western Christendom into competing nations and regions. The Protestant Reformation also triggered a massive shift of power, property, and prerogative from the Catholic church to the Protestant state. Protestant rulers now assumed jurisdiction over numerous subjects and persons previously governed by the medieval church, and introduced enduring reforms of church-state relations, constitutional law, criminal law and procedure, religious freedom, family law, education law, and social welfare that reflected this new Protestant theology. This chapter makes clear, however, that in formulating their new state laws, Protestant authorities also drew heavily on biblical law, Roman law, medieval civil law and canon law, as well humanist and republican legal and political thought. It also makes clear that a number of these original Protestant legal teachings have had a lasting impact on the Western legal tradition, both in combination and in competition with modern liberal teachings born of the Enlightenment and Evangelical teachings born of the Great Awakenings.

Keywords: Protestantism; Lutheranism; Calvinism; Anglicanism; Western law; Legal Theory; Legislative Power; Judicial Power; Religious Freedom; Separation of Church and State; Criminal Law; Education; Social Welfare; Slavery and Abolition; Enlightenment Liberalism; Evangelicals; Civil Rights Movement

Introduction

The Protestant Reformation erupted in 1517 with Martin Luther's posting of the 95 Theses on the church door in Wittenberg and his burning of the medieval canon law books at the city gates three years later. The Reformation soon split into four main branches – Lutheranism, Anabaptism, Anglicanism, and Calvinism – with ample regional and denominational variation within each branch. Lutheranism spread throughout the northern Holy Roman Empire, Prussia, and Scandinavia and their later colonies, consolidated by Luther's catechisms and the Augsburg Confession (1530). Anabaptists fanned out in small communities throughout Western and Eastern Europe, Russia, and eventually North America, most of them devoted to the founding religious principles of the Schleitheim Confession (1527). Anglicanism was established in England by King Henry VIII and Parliament in the 1530s and, once consolidated by the Great Bible (1539) and the Book of Common Prayer (1559), spread throughout the vast British Empire in North America, Africa, the Middle East, and the Indian subcontinent. Calvinist or Reformed communities, modeled on John Calvin's Geneva and anchored by the Geneva Academy, spread into portions of the Swiss Confederation, France, the Palatinate, the Lowlands, Scotland, England, and North America. This checkerboard of Protestant communities, living tenuously alongside each other and their Catholic neighbors, was protected for a time by the Peace of Augsburg (1555), the Union of Utrecht (1579), the Edict of Nantes (1598), the Peace of Westphalia (1648), and other peace treaties, although religious persecution and religious warfare were tragically regular events in early modern Europe.

While new confessions, creeds, and catechisms helped to inspire and integrate these Protestant movements, it was new law that usually set them in motion and consolidated them. Hundreds of local "church ordinances" (*Kirchenordnungen*), or "legal reformations" (*Rechtsreformationen*) were issued by Lutheran German cities, duchies, and principalities after 1520; these were echoed in national church ordinances in Sweden, Denmark, Norway, Finland, and Iceland over the next two centuries. Local Anabaptist elders issued short "church orders" to govern their small, self-sufficient Anabaptist communities, many of their rules drawn directly from biblical and early apostolic teachings. Parliament's Supremacy Act (1534) and a torrent of legislation thereafter declared the English monarch to be "supreme head" and "defender of faith" in the now freestanding Church of England. Geneva's Reformation Edict (1536) was echoed in scores of European towns and provinces and later North American colonies that accepted Calvinist or Reformed Protestantism.

All these early Protestant legal declarations were, in part, firm rejections of the law and theology of Roman Catholicism. The Catholic Church had been the universal legal authority of the West since the twelfth century. Medieval church authorities claimed exclusive jurisdiction over doctrine, liturgy, clergy, polity, marriage, family, inheritance, trusts, education, charity, contracts, moral crimes, and more. They also claimed concurrent jurisdiction over many other legal subjects, sometimes filling gaps in local

civil rules and procedures, but often rivalling local civil authorities in governing the local population. And the church had huge property holdings – more than a quarter of the land in some regions of Europe – all of which remained under exclusive church control and free from secular taxes and regulation. To exercise this power, the medieval church developed an intricate system of canon laws promulgated by the pope, bishops, and church councils, and enforced by a hierarchy of church courts and clerical officials under the final papal authority of Rome. A vast network of church officials, immune from secular legal control, presided over the medieval church's executive and administrative functions. The church registered its citizens through baptism. It taxed them through tithes. It conscripted them through crusades. It educated them in church schools. It nurtured them in cloisters, monasteries, chantries, hospitals, and guilds. It cared for them and their families even after death through perpetual obits, indulgences, and foundations. The medieval church was, in F.W. Maitland's famous phrase, "the first true state in the West." Its canon law was the first international law in place since the fall of Rome and its Roman law in the fifth century.

Already in the fourteenth and fifteenth centuries, strong secular rulers started to rebel against the power, prerogatives, and privileges of the medieval church and put in place a number of legal reforms that were critical prototypes for the Protestant Reformation. In fourteenth-century England, several statutes of "provisors" and "praemunire" limited papal control over local clerical appointments, church taxes, and local property disputes. Beginning in 1414, the Holy Roman Emperors called a series of great church councils that put limits on the operation of canon law and church courts in the Empire and aimed to regularize papal succession and the appointments of bishops, abbots, and abbesses. In the Pragmatic Sanction of Bourges (1438) and again in the Concordat of Bologna (1516), French kings banned various papal taxes, limited appeals to Rome, required election of French bishops by local church councils called by the king, and subjected French clergy and church property to royal controls. Fifteenth-century Spanish monarchs subordinated church courts to civil courts on many legal subjects and assumed political and legal control over the inquisition. Fifteenth-century German and Scandinavian princes and city councils passed numerous "legal reformations" that placed limits on church property and religious taxation, disciplined wayward clergy and monastics, and curtailed the jurisdiction of church courts over crime, family, inheritance, and contracts. Medieval reformers like Marsilius of Padua (c. 1280 - c. 1343), John Wycliffe (c. 1330-1384), John Hus (c. 1370-1415), and several others pressed for attendant theological reforms, often at the cost of their lives.

The sixteenth-century Protestant Reformers – Martin Luther (1483-1546), John Calvin (1509-1564), Thomas Cranmer (1489-1556), Menno Simons (1496-1561), and others – built on these late medieval reforms but went beyond them. The Reformers now called for full freedom from the medieval church's legal regime – freedom of the individual conscience from intrusive canon laws, freedom of political officials from clerical power and privilege, freedom of local clergy from centralized papal and conciliar rule. "Freedom of the Christian" was the rallying cry of the early Protestant Reformation. It led the Reformers to denounce canon law and clerical authority altogether and to urge radical legal and political reforms on the strength of the new Protestant theology. The

Catholic canon law books were burned. Church courts and episcopal offices were forcibly closed. Clerical privileges and immunities were stripped. Mendicant begging was banned. Mandatory celibacy was suspended. Indulgence trafficking was condemned. Annates and tithe payments to Rome or to distant bishops were outlawed. Diplomatic and appellate ties to the pope and his curia were severed. Catholic bishops, priests, and monastics were banished from their parsonages, monasteries, and guilds. The church's vast properties were seized, often with violence and bloodshed. Priceless church art, literature, statuary, and icons were looted, sometimes destroyed. And many church sanctuaries, seminaries, hospitals, charities, and more were confiscated and converted to Protestant control.

The Reformers defended this revolutionary purging of the church as a theological necessity. All the early Protestant leaders taught that salvation comes through faith in the Gospel, not by works of the Law. Each individual stands directly before God, to seek God's gracious forgiveness of sin and to conduct life in accordance with the Bible and Christian conscience. To the Reformers, the Catholic canon law administered by the clergy obstructed the individual's direct relationship with God and obscured simple biblical norms for right living. All the early Protestant Reformers further taught that the church was at heart a community of saints, not a corporation of law. Its cardinal signs and callings were to preach the Word, to administer the sacraments, to catechize the young, and to care for the needy. The Catholic clergy's legal rule in Christendom obstructed the church's divine mission and usurped the state's role as God's vice-regent called to appropriate and apply divine and natural law in the earthly kingdom. Protestants did recognize that the church needed internal rules of order to govern its own polity, teaching, and discipline. Church officials and councils needed to oppose legal injustice and combat political tyranny. But, for most early Protestants, law was primarily the province of the state not of the church, of the magistrate not of the minister.

These Protestant teachings helped to transform Western law in the sixteenth to eighteenth centuries. The Protestant Reformation broke the international rule of the medieval Catholic Church and canon law, permanently splintering Western Christendom into competing nations and regions, each with its own religious and political rulers. The Reformation also triggered a massive shift of power and property from the church to the state. Protestant state rulers now assumed jurisdiction over numerous subjects and persons previously governed by the church and its canon law – including marriage and family law, poor relief, education, inheritance, oath-swearing, and many forms of criminal law and of public and private morality. In some Protestant lands, the state also assumed new jurisdiction over church property, clergy, polity, and religious life, and established Lutheranism, Anglicanism, or Calvinism at state law.

These massive shifts in legal power and property from church to state did not signal the secularization of law in Protestant lands, or the cessation of traditional Christian influences on the law. For all of their early violent attacks on the medieval canon laws and church courts, Protestant leaders eventually transplanted many Catholic canon law rules and procedures directly into the new Protestant state laws -- some trimmed of theologically offensive provisions, others reformed in light of new teachings, but many

retained largely in their medieval forms, but now administered by the state instead of the church. Moreover, in creating other new state laws, Protestant authorities drew anew on Christianized Roman law and medieval civilian jurisprudence, Christian republican and Renaissance humanist legal and political thought, and biblical law and Talmudic jurisprudence, all of which were staples in the new Protestant law faculties. And Protestant leaders worked hard to convert some of their own distinct new theological teachings, especially concerning freedom, family, charity, education, and crime, into new legal forms.

What emerged from the Protestant Reformation movements were impressive new legal syntheses that skillfully blended classical and biblical, Catholic and Protestant, civilian and canonical teachings. What also emerged was a wide variety of legal and political arrangements in Protestant lands reflecting the wide variety of early modern Protestant confessions. Strong monarchists in Denmark, England, and Prussia were as fervently Protestant as democratic revolutionaries in Scotland, the Netherlands, England, and America. Strict Anglican or Lutheran religious establishments were as deeply rooted in Reformation teachings as novel Anabaptist or Calvinist theories of religious freedom. Some early modern Protestant groups were intense religious pietists and political quietists, while others worked relentlessly to develop written constitutions, enumerated bills of rights, clear separation of powers, and federalist structures of government. Some Protestants turned cheeks in expression of Christian love and martyrdom; others swung swords in pursuit of just wars and democratic revolutions.

This chapter samples the reformation of law in early modern Protestant lands in Europe and Great Britain, and then the expansion and ongoing reformation of these legal teachings during and after the modern Enlightenment.

The Lutheran Reformation of Law

The Lutheran Reformation of Germany and Scandinavia territorialized the Christian faith and gave ample new political power to territorial princes and lower Christian magistrates. Martin Luther (1483-1546) replaced the medieval “two swords” teachings with a new “two kingdoms” theory. The “invisible” church of the heavenly kingdom, he argued, was a perfect community of saints, where all stood equal in dignity before God, all enjoyed perfect Christian liberty, and all governed their affairs in accordance with the Gospel. The “visible” church of this earthly kingdom, however, embraced saints and sinners alike. Its members still stood directly before God and still enjoyed liberty of conscience, including the liberty to leave the visible church itself. But, unlike the invisible church, the visible church needed both the Gospel and human law to govern its members' relationships with God and with fellow believers. The church held the authority of the word and the Gospel; the state held the authority of the sword and the law.

Luther regarded the political magistrate as God's vice-regent in the earthly kingdom, called to elaborate and enforce God's law, and to reflect and project God's justice and majesty for earthly citizens. “Law and earthly government are a great gift of God to

mankind,” he wrote. “Earthly authority is an image, shadow, and figure of the dominion of Christ.” The Christian magistrate is also “a voice of the Ten Commandments,” called to teach and to enforce the spiritual and civil duties set forth in that sublime statement of divine and natural law – using force when needed. “Princes and magistrates are the bows and arrows of God,” Luther wrote, equipped to hunt down God’s enemies near and far, using military power and criminal punishment when “just wars” and “righteous judgments” are called for. When used for a just cause, the hand of the Christian magistrate, judge, or soldier “that wields the sword and slays is not man’s hand, but God’s” (quoted by Witte 2002, 87-117).

Luther also regarded the political magistrate as the “father of the community.” The magistrate was called to care for his political subjects as if they were his children, and his political subjects were to “honor” and “obey” him as if he were their parent. Like a loving father, the magistrate was to keep the peace and to protect his subjects from threats or violations to their persons, properties, and reputations. He was to deter his subjects from abusing themselves through drunkenness, wastrel living, prostitution, gambling, and other vices. He was to nurture and sustain his subjects through the community chest, the public almshouse, and the state-run hospital. He was to educate them through the public school, library, and lectern. He was to see to their spiritual needs by supporting the ministry of the locally established church and by encouraging their attendance and participation through the laws of Sabbath observance, tithing, and holy days. He was to see to their material needs by reforming inheritance and property laws to ensure more even distribution of the parents’ property among all children. He was to set a moral example of virtue, piety, love, and charity in his own home and private life for his faithful subjects to emulate and to respect.

These new theological teachings helped to trigger a massive shift in power and property from the church to the state, and to create enduring new systems of state-established churches, schools, and social welfare institutions as well as comprehensive new state laws to govern public, private, and penal matters. For example, the Lutheran reformers replaced the traditional Catholic idea of marriage as a sacrament under church authority with a new idea of the marital household as a social estate to which all persons are called--clerical and lay alike. On that basis, the reformers developed a new civil law of marriage under state jurisdiction. They insisted on the universal right to marriage for all fit adults, featuring requirements of parental consent, state registration, church consecration, and peer presence for valid marital formation as well as the right to absolute divorce on grounds of adultery, desertion, and other faults, with subsequent rights to remarriage.

The Lutheran reformers replaced the traditional understanding of education as a teaching office of the church with a new understanding of the public school as a “civic seminary” for all persons to prepare for their distinctive vocations. On that basis, magistrates replaced clerics as the chief rulers of education, and civil law replaced canon law as the principal law of education, and the general vocational training of all Christians replaced the special calling of the clergy as the principal goal of education. Local magistrates now chartered state-run public schools for the religious, civic, and

literary training of young boys and girls alike, with advanced students selected for professional training in state-chartered universities.

The Lutheran reformers replaced the traditional view of charity and poor relief as an office of the church funded by the salvific alms of the faithful with a new understanding of the state as the father of the community called to care for the “poor, widows, orphans,” and other *personae miserabiles* in the community. On that basis, magistrates replaced the clergy as the principal administrators of charity and poor relief, maintaining local community chests for distribution to the “deserving poor.” While local Lutheran churches continued to give diaconal care to their members, eventually more substantial state-run social welfare institutions supported by taxes came to replace the many monasteries, religious guilds, and religious foundations of the medieval Catholic church. These new state laws on social welfare as well as the new laws governed family life and education became quite common in Protestant lands on both sides of the Atlantic.

The shift of power from the church to the state also led to a dramatic expansion of state criminal law in Lutheran and other Protestant lands. Protestant magistrates continued to prohibit major crimes like treason, murder, theft, perjury, rape, abduction, and adultery as their medieval forebearers had always. But the state now had to prohibit many other major and minor offenses that had traditionally been governed the medieval canon law of crimes and sacramental rules of penance. These included religious and ideological offenses – heresy, sorcery, witchcraft, alchemy, blasphemy, sacrilege, Sabbath-breaking, tithe-breaking, false oaths, perjury, contempt, slander, defamation, and more. They included various family and sexual offenses – wife and child neglect and abuse, malicious desertion, seduction and fornication, prostitution, pornography, voyeurism, exhibitionism, and more. And these criminal laws included a growing number of offenses against “public morality and policy” (*Polizei*) – drunkenness and debauchery, sumptuousness and waste, trade, labor, and economic crimes, proper conduct in taverns, shops, and lodgings, embezzlement, usury, and banking irregularities, false weights and measures, passport and travel violations, and much more. In Lutheran and other Protestant polities, the rolls and roles of state criminal laws were greatly expanded, even if consistories and church courts still sometimes had a firm hand in enforcing these laws.

Protestant reformers further called on magistrates to balance firmness and equity, severity and temperance in the administration of this expanded criminal law. In particular, they urged magistrates to stop using torture to extract confessions from the defendant as had been conventional in medieval procedural law. Not only were these coerced confessions often unreliable as evidence in criminal cases. But such confessions did the defendant’s soul no good, Protestants argued. Medieval Catholic authorities regarded confession as an essential first step in receiving the sacrament of penance, without which the sinner faced eternal punishment in hell. A one-time act of bodily torture was thought to be a small price to pay for the eternal life of the soul. Protestants rejected the sacrament of penance and thus rejected the underlying rationale for torture. Every sinner had to confess directly to God, without the mediation,

let alone coercion, of church or state authorities. Here was one source, alongside others, for the gradual abolition of torture in early modern criminal law.

Protestants also called on magistrates to draw more refined distinctions between degrees of criminality and to prescribe a broader range of punishments short of execution for a capital crime. The refined differentiation of mortal and venial sins and their punishment that historically attached to the church's sacrament of penance, were now to be attached to the state's criminal laws and punishments, leading to hierarchy of lesser criminal offenses, and a range of sentences based on both the degree of crime and the conditions under which the defendant committed it. The reformers emphasized the importance of rehabilitating convicted defendants, consigning them to public work programs, workhouses, and penitentiaries (*Zuchthausen*) and furnishing them with chaplains, pastors, and teachers to bring them back to a level of sociability and morality, if not piety and spiritual integrity. These criminal justice reforms, too, were only partly achieved in early modern Protestant lands, and they had other sources of inspiration besides Protestant theology – not least legal humanism and new Catholic criminal jurisprudence emerging from Salamanca school in Spain. But the Reformation was an important source and catalyst for these criminal law reforms, which would persist in Protestant lands until transformed by the new nineteenth-century codes of criminal law and procedure.

The Anabaptist Reformation of Law

Early Anabaptist reformers advocated the separation of church and state. Emerging as a new form of Protestantism in the early 1520s, Anabaptists were scattered into various groups of Amish, Brethren, Hutterites, Mennonites, and later Baptists and others. In their definitive Schleitheim Confession (1527), the early Anabaptists called for a return to the communitarian ideals of the New Testament and the ascetic principles of the apostolic church. Anabaptist communities ascetically withdrew from civic life into small, self-sufficient, intensely democratic communities. These communities were governed internally by biblical principles of discipleship, simplicity, charity, and non-resistance. They set their own internal standards of worship, liturgy, diet, discipline, dress, and education. They handled their own internal affairs of property, contracts, commerce, marriage, and inheritance – so far as possible by appeal to biblical laws and practices, not those of the state. And they enforced these internal religious laws not by coercion, but by persuasion, and not for the sake of retribution, but for the redemption of the sinner and restoration of that person to community. Recalcitrant sinners and community members who grew violent, destructive, or persistently betrayed the community's ideals were shunned and, if necessary, banned from the community. When such communities grew too large or too divided, they deliberately colonized themselves, eventually spreading Anabaptists from Russia to Ireland to the furthest frontiers of North America. These communities were governed by biblical principles of fellowship, discipleship, simplicity, charity, hospitality, and non-resistance. They set their own standards of worship, liturgy, diet, discipline, dress, and education. They handled their own internal affairs of property, contracts, commerce, marriage, and inheritance – so far as possible by appeal to biblical laws and practices, not those of the state.

The state and its law, most Anabaptists believed, was part of the fallen world, which was to be avoided in accordance with biblical injunctions that Christians should “be in the world, but not of the world” or “conformed” to it (John 15:18-19, 17:14-16; Rom. 12:2; 1 John 2:15-17). Christians should obey the laws of political authorities, so far as Scripture enjoined, such as in paying their taxes or registering their properties. But Christians should avoid active participation in and unnecessary interaction with the world and the state. Most early modern Anabaptists were pacifists, preferring derision, exile, or martyrdom to active participation in war. Most Anabaptists also refused to swear oaths, or to participate in political elections, civil litigation, or civic feasts and functions. This aversion to political and civic activities often earned Anabaptists severe scorn, reprisal, and repression from Catholics and other Protestants alike – violent martyrdom in many instances.

While unpopular in its genesis, Anabaptist theological separatism was a vital source of later Western constitutional arguments for the separation of church and state and for the protection of the civil and religious liberties of minorities. Equally important for later legal reforms was the new Anabaptist doctrine of adult baptism. This doctrine gave new emphasis to religious voluntarism as opposed to traditional theories of birthright or predestined faith. In Anabaptist theology, each adult was called to make a conscious and conscientious choice to accept the faith -- metaphorically, to scale the wall of separation between the fallen world and the realm of religion to come within the perfection of Christ. Various derivative Free Church followers, both in Europe and North America, converted this cardinal image into a powerful platform of liberty of conscience and free exercise of religion not only for Christians but eventually for all peaceable believers. Particularly in America, diverse leaders like Roger Williams (ca. 1604-1684), William Penn (1644-1718), Isaac Backus (1724-1806), and John Leland (1754-1841) grounded their religious freedom advocacy in these earlier Anabaptist arguments, and their views helped to shape new American constitutional laws that protected religious freedom for all peaceable faiths and allowed for no religious establishments.

“The notion of an [established] Christian commonwealth should be exploded forever,” wrote John Leland, the fiery American Baptist preacher in summary of nearly three centuries of Anabaptist teachings. All religious establishments are “evil,” because when “uninspired, fallible men make their own opinions tests of orthodoxy,” then religion is stunted and stilted, “ignorance and superstition prevail, or persecution rages.” Establishments inspire hypocrisy because people embrace the religion favored and pampered by law. “Establishments not only wean and alienate the affections of one from another,” but they drive nonconformists away from the state, taking their loyalty, work, and taxes with them and leaving dull, anemic religions to propagate themselves or convert others by coercion or bribery. Establishments reduce religion and church into an agent and “trick of the state.” And establishments merely cover for the insecurity and doubt of both church leaders who lack faith in the cogency of their views, and political rulers, who “often fear that if they leave every man to think, speak, and worship as he pleases, that the whole cause [of statecraft] will be wrecked in diversity” (Leland 1969, 118, 179-92).

In place of state establishments of religion and state patronage of religion, Anabaptists demanded autonomy of church governance. Every religious body, they argued, should be free from state control of its assembly and worship, from state regulations of its property and polity, from state incorporation of its society and clergy, from state interference in its discipline and government, and from state collection of religious tithes and taxes. Some advocates went further to oppose such traditional state supports of religion as tax exemptions, civil immunities, and property donations. They feared that religious bodies receiving any state benefits would invariably become beholden to the state, dependent on its largess, and distracted from their divine mandates.

The Anglican Reformation of Law

Whereas Anabaptism communalized the Protestant faith, and Lutheranism territorialized it, Anglicanism nationalized the faith under the final spiritual and political rule of the Christian monarch. King Henry VIII resolved his bitter dispute with the papacy from 1527 to 1533 over dissolution of his marriage with Catherine of Aragon by cutting all legal and political ties with Rome and declaring the Catholic Church in England to be the separate Church of England or Anglican Church. Henry and early Anglican Reformers like Thomas Cranmer and Thomas Cromwell (1485-1540) pushed through Parliament a series of sweeping new laws that rapidly established the new Anglican order in top-down fashion, and with brutal executions of scores of dissenters and exile for thousands of others. The Supremacy Act (1534) declared the monarch to be the "Supreme Head" of the Church and Commonwealth of England. The Act for the Submission of Clergy and Restraint of Appeals (1534) gave the monarch final authority to appoint, discipline, and dismiss all clergy, to call church councils, to reform the church's doctrine, liturgy, and canon law, and to register church properties and personnel. The Act for First Fruits and Tenths (1534) required church tithes and taxes to be paid to the Crown. The Act Dissolving the Greater Monasteries (1539) and later acts led to the massive seizure and dissolution of monasteries, cloisters, chapels, chantries, guilds, schools, colleges, hospitals, fraternities, almshouses and other properties held by the church, cutting to the heart of the pre-Reformation church-based systems of welfare and education. Within a decade and a half of the break with Rome, the King and his retinue had replaced the Pope and his curia as supreme ruler of the Church of England and its growing colonial empire.

Having seized the church's institutions and properties, the Anglican Reformers also moved rapidly to establish by law the new Anglican faith and worship, but this proved more difficult. Thomas Cranmer did issue, with royal approval, The Great Bible in 1539, an English translation based on the earlier masterwork of William Tyndale (1494-1536) and Miles Coverdale (1488-1569). This text was now to be used for Anglican worship and devotional life. Other Bible translations were censored and would remain so until the King James Version (1611) became the authorized English Bible for the established church. Parliamentary Acts of Uniformity in 1549 and 1552 further mandated the use of Cranmer's Book of Common Prayer in Anglican worship, with escalating penalties for clergy and laity who deviated from its prayers, liturgy, and sacramental rites. The king also approved the Forty-Two Articles of the Faith, a new creed that, while consonant

with medieval Catholic tradition on many matters, included a number of familiar Lutheran and Calvinist teachings about God, sin, salvation, and the sacraments and rejected Anabaptist teachings about adult baptism, biblical asceticism, and separation of church and state.

A more sweeping Reformation of Ecclesiastical Law, however, akin to the many reforms of public, private, penal, and procedural law passed by Lutheran and Calvinist Protestants, failed despite repeated efforts to enact it in 1552, 1559, and 1571. This proposed Reformation aimed to retain church courts in England and to maintain their traditional jurisdiction over marriage, tithes, inheritance, defamation, and benefices. But the document also envisioned major new Parliamentary reforms of each of these laws and stronger review of church courts by royal courts. It also proposed sweeping reforms of clerical and lay marriage, rights to fault-based divorce and remarriage, and annual conferences and regular democratic meetings among bishops, priests, and laity. None of these changes came to pass in the Reformation era in England. The structure of the church courts, and of the clerical hierarchy altogether, remained largely unchanged, though appeals from church court judgments now went not to the curia in Rome but to a new Court of Delegates in England, staffed by civilians and canonists. The law administered by these Anglican church courts remained largely the canon law of the medieval Catholic church, with only minor changes gradually introduced by Parliament and Convocation over the next three centuries.

This Anglican adherence to legal and religious tradition reflected not only inertia, but also ample resistance of the English clergy and laity to the Crown's heavy-handed top-down reformation of church and state, theology and law. Moreover, Queen Mary (r. 1553-1558) sought to return England forcibly to full recommunication with Rome. In twin acts of 1553 and 1555, Mary aimed to repeal the Reformation laws and practices of her father Henry VIII and half-brother Edward VI, to repair England's relations with the papacy, and to restore to the Catholic Church and clergy their traditional power, property, and prerogatives. When church and state officials resisted these changes, too, more than 250 Protestant heretics were executed, and thousands more, called the Marian Exiles, fled to the Continent, leaving the English church, state, and society in turmoil.

During Queen Elizabeth's long reign from 1558 to 1603, England gradually settled on a via media between Roman Catholicism and Continental Protestantism, and this settlement, too, was legally prescribed and judicially enforced. Parliament issued an Act of Uniformity (1559) that reestablished clearly the Anglican doctrine, liturgy, and creed of the church and commonwealth. Communicant status in the Anglican Church was now made a condition for citizenship status in the English Commonwealth, for holding high political and religious office, acquiring professional licenses and charters, and for exercising many other basic rights. Parliamentary acts prohibited papal bulls and "traitorous" worship, publications, or teaching by Catholics and Protestant "sectaries," and these laws were enforced firmly in Star Chamber, High Commission, and other royal courts in Elizabeth's reign and even more firmly by her Stuart successors, Kings James I and Charles I. Elizabeth's Parliament further renewed the Act of Supremacy

(1559), restoring to the Crown final authority over the Anglican Church's clergy, polity, and property. The English church courts retained their jurisdiction, though new canons introduced piecemeal legal changes in 1571, 1575, 1585, 1597, and 1604. Parliament passed the Poor Relief Act (1598) and Charitable Uses Act (1601) that sought to restore some of the robust pre-Reformation welfare and educational system of England, now largely through Anglican parishes and Crown-chartered private enterprises.

This Elizabethan settlement of church and state, and of law and religion attracted new political and legal theories from such Anglican divines as John Jewel (1522-1571), Edmund Grindal (1519-1583), and Richard Bancroft (1544-1610). The most important defense came in the massive *Laws of Ecclesiastical Polity* by Richard Hooker (1553-1600), who defended the Anglican establishment against more radical Calvinist views of congregational and presbyterian forms of democratic church government. "The powers that be are ordained by God," Hooker quoted from Scripture, and reflect God's authority as supreme monarch over the entire universe, which he rules by his eternal law. The Christian monarch on earth embodies God's monarchical government in heaven; indeed the monarch is a "god on earth" as Psalm 82:6 put it. And the monarch embraces God's law for all of religious and civil life. As God's vice-regent, the monarch is called to promulgate positive laws to instruct humans on how to live together and to live well in Christian communion. While every individual has the rational capacity to ascertain the natural law for their private lives, Hooker wrote drawing on Thomas Aquinas (1225-1274), the monarch's positive laws of church and state must guide and govern their communal spiritual and temporal lives in accordance with the eternal laws of Christ. While different nations have formed their own voluntary compacts with God and their political rulers, England and its great common law tradition had formed a unique "covenant," with God's blessing, whereby the people had consented to this Christian monarchical reign of church, state, and society. Hooker's defense of Christian monarchy in a unitary church and commonwealth became more expansive in the theories of "the divine right of kings" and absolute monarchy offered by King James I, Sir Robert Filmer (1588-1653), and others in the seventeenth century – theories which John Locke (1632-1704) would later counter directly with his proto-democratic arguments in his *Two Treatises on Government* (1689).

The established Church and Commonwealth of England, while gradually liberalized from the eighteenth century onward, proved to be a remarkably effective global legal force. English explorers, merchants, colonists, and missionaries gradually established English religious and political rule throughout North America and much of the Caribbean as well as many parts of Anglophone Africa, the Middle East, the Indian subcontinent, Australia, and New Zealand. While American revolutionaries in the eighteenth century, and African, Middle Eastern and Indian liberation and decolonization movements in the later nineteenth and twentieth centuries, broke the formal English rule, these former English colonies continued to draw heavily on English common law and the Parliamentary system, the King James Bible and the Book of Common Prayer, and English language and literature – all of them shaped by the Anglican Reformation. Fifty-seven of these former English colonies, home to 2.7 billion people, are still part of the British Commonwealth today.

The Calvinist Reformation of Law

The Calvinist or Reformed tradition charted a course between Lutherans and Anglicans who subordinated the church to the state, and early Anabaptists who withdrew the church from the state and society. Like Lutherans, Calvinists insisted that each local polity be an overtly Christian commonwealth that adhered to the general principles of natural law and translated them into detailed new positive laws of religious worship, Sabbath observance, public morality, marriage and family, crime and tort, contract and business, charity and education. Like Anabaptists, Calvinists insisted on the basic separation of the offices and operations of church and state, leaving the church to govern its own doctrine and liturgy, polity and property, without interference from the state. But, unlike these other Protestants, Calvinists stressed that both church officials were to join the state in playing complementary roles in the creation of the local Christian commonwealth and in the cultivation of the Christian citizen.

Calvinists emphasized more fully than other Protestants the educational use of both the natural law of God and the positive law of earthly authorities. Lutherans stressed the “civil” and “theological” uses of the law: the need for law to deter sinners from their sinful excesses and to drive them to repentance. Calvinists emphasized the educational use of the law as well: the need to teach persons both the letter and the spirit of the law, both the civic morality common to all persons and the spiritual morality that becomes the Christian life. It was the church's responsibility to teach aspirational spiritual norms, Calvinists argued. It was the state's responsibility to enforce mandatory civil norms. This division of responsibility was reflected in Geneva in the procedural divisions between the church consistory and the city council. For many non-violent legal issues, the consistory was the court of first instance; it would call parties to their higher spiritual duties, backing their recommendations with (threats of) spiritual discipline. If such spiritual counsel failed, the parties were referred to the city council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties.

In Calvin's Geneva, this political responsibility of the church fell largely to the consistory, an elected body of civil and religious officials, with original jurisdiction over cases of marriage and family life, charity and social welfare, worship and public morality. Among most later Calvinists, the Genevan-style consistory was transformed into the body of pastors, elders, deacons, and teachers that governed each local church congregation, and played a less structured political and legal role in the broader Christian commonwealth. But local clergy still had a strong role in advising magistrates on the positive law of the local community. Local churches and their consistories also generally enjoyed autonomy in administering their own doctrine, liturgy, charity, polity, and property and in administering ecclesiastical discipline over their members.

Like Lutheran communities, Calvinist communities in Europe and North America introduced sweeping new reforms to many topics of private, public, penal, and procedural law traditionally governed by the medieval Catholic church and its canon law. Particularly striking and enduring were Calvinist reforms of family law that made marital formation and dissolution, children's nurture and welfare, family cohesion and

support, and sexual sin and crime essential concerns for both church and state. In Geneva and other early modern Calvinist communities, the consistory and the council worked together to outlaw monasticism and mandatory clerical celibacy and to encourage marriage for all fit adults whatever their vocation. They set clear guidelines for courtship and engagement. They mandated parental consent, peer witness, church consecration, and state registration for valid marriage. They radically reconfigured weddings and wedding feasts. They reformed marital property and inheritance, marital consent and impediments. They created new rights and duties for wives within the bedroom and for children within the household. They streamlined the grounds and procedures for annulment. They introduced fault-based divorce for both husbands and wives on grounds of adultery and desertion. They encouraged the remarriage of the divorced and widowed. They punished rape, fornication, prostitution, sodomy, and other sexual felonies with startling new severity. They put firm new restrictions on dancing, sumptuousness, ribaldry, and obscenity. They put ample new stock in catechesis and education, and created new schools, curricula, and teaching aids. They provided new sanctuary to illegitimate, abandoned, and abused children. They created new protections for abused wives and impoverished widows. All these reforms were set out in legal detail in John Calvin's Geneva, and these laws were echoed and elaborated over the next three centuries in many Calvinist polities on both sides of the Atlantic.

Later Calvinists also laid some of the foundations for Western constitutional theories of democracy, human rights, and rule of law. One technique, developed by Calvinist writers like Christopher Goodman (ca. 1530-1603), Theodore Beza (1519-1605), and Johannes Althusius (1557-1638), was to ground rights in the duties of the Decalogue and other biblical moral teachings. The First Table of the Decalogue prescribes duties of love that each person owes to God -- to honor God and God's name, to observe the Sabbath day and to worship, to avoid false gods and false swearing. The Second Table prescribes duties of love that each person owes to neighbors -- to honor one's parents and other authorities, not to kill, not to commit adultery, not to steal, not to bear false witness, not to covet. These reformers cast the person's duties toward God as a set of rights that others could not obstruct -- the right to religious exercise: the right to honor God and God's name, the right to rest and worship on one's Sabbath, the right to be free from false gods and false oaths. They cast a person's duties towards a neighbor, in turn, as the neighbor's right to have that duty discharged. One person's duties not to kill, to commit adultery, to steal, or to bear false witness thus gives rise to another person's rights to life, property, fidelity, and reputation. Goodman called all these "unalienable rights" rooted in the natural law of God, and later Calvinists argued further that the persistent and pervasive breach of these "unalienable rights" by a tyrant triggered a further "fundamental right" to resistance, rebellion, revolution, even regicide (quoted by Witte 2007, 117-22, 137-38).

Another technique, developed especially by Dutch, English and New England Calvinists, was to draw out the legal and political implications of the signature Reformation teaching, coined by Luther, that a person is at once sinner and saint (*simul justus et peccator*). On the one hand, they argued, every person is created in the image of God and justified by faith in God. Every person is called to a distinct vocation, which

stands equal in dignity and sanctity to all others. Every person is a prophet, priest and king, and responsible to exhort, to minister, and to rule in the community. Every person thus stands equal before God and before his or her neighbor. Every person is vested with a natural liberty to live, to believe, to love and serve God and neighbor. Every person is entitled to the vernacular Scripture, to education, to work in a vocation. On the other hand, Protestants argued, every person is sinful and prone to evil and egoism. Every person needs the restraint of the law to deter him from evil, and to drive him to repentance. Every person needs the association of others to exhort, minister, and rule her with law and with love. Every person, therefore, is inherently a communal creature. Every person belongs to a family, a church, a political community.

In the seventeenth and eighteenth centuries, Calvinists recast these theological doctrines into democratic norms and forms. Protestant doctrines of the person and society were cast into democratic social forms. Since all persons stand equal before God, they must stand equal before God's political agents in the state, they argued. Since God has vested all persons with natural liberties of life and belief, the state must ensure them of similar civil liberties. Since God has called all persons to be prophets, priests, and kings, the state must protect their constitutional freedoms to speak, to preach, and to rule in the community. Since God has created persons as social creatures, the state must promote and protect a plurality of social institutions, particularly the church and the family.

Protestant doctrines of sin, in turn, were cast into democratic political forms. The political office must be protected against the sinfulness of the political official. Political power, like ecclesiastical power, must be distributed among self-checking executive, legislative, and judicial branches. Officials must be elected to limited terms of office. Constitutions must be written, with powers and rights both enumerated. Laws must be clearly codified, and discretion closely guarded. If officials abuse their office, they must be disobeyed. If they persist in their abuse, they must be removed, even if by revolutionary force and regicide. These Protestant teachings were among the driving ideological forces behind the revolts of the French Huguenots, Dutch Pietists, and Scottish Presbyterians against their monarchical oppressors in the later sixteenth and seventeenth centuries. They were critical weapons in the arsenal of the revolutionaries in England and America, and important sources of inspiration and instruction during the great age of democratic construction in later eighteenth- and nineteenth-century North America and Western Europe.

New Enlightenment and Evangelical Challenges

In the modern era, these Lutheran, Anabaptist, Anglican, and Calvinist traditions have continued to influence Western laws, albeit with growing denominational differentiation, division, and variations among Protestants, and with declining cultural and political force in Europe and North America today. Over the past century, however, these Protestant teachings have had a growing influence in Latin America, Anglophone Africa, and in various lands in the North and South Pacific. In these regions Protestant populations have grown exponentially, and local leaders have embraced both traditional Protestant

legal teachings as well as new Pentecostal, Holiness, and other charismatic movements and various syncretic forms that combine Protestant and Indigenous teachings and practices.

Two main movements – Enlightenment liberalism and Evangelical awakenings – have challenged and changed modern Protestantism and its legal influence. Particularly challenging was the rise of the European and American Enlightenments, and the outbreak of the French Revolution of 1789 and the Napoleonic legal reforms that followed. Initially, European Protestants hoped that France would follow American and early democratic revolutionary patterns and establish a strong new constitutional regime of rights to counter many decades of monarchical and aristocratic abuse. But, like others, these Protestants were soon dismayed by the French revolutionaries' violent attack on French Catholic churches and monasteries, art and literature, schools and charities, canon law and church courts that killed untold tens of thousands of clergy and laity. This was a grim reminder of the massive destruction of French Calvinist (Huguenot) churches and communities a century before with the 1685 Revocation of the Edict of Nantes at Fontainebleau. Protestants were even more dismayed that the later French revolutionaries and Napoleonic reformers who took deliberate aim at the Christian foundations of Western law, liberty, and learning in favor of secular Enlightenment teachings of rationalism, empiricism, positivism, utilitarianism, and contractarianism. Particularly the French revolutionary legal declarations and Enlightenment-inspired legal codes, these Protestant critics believed, sought to create a system of law and liberty that no longer depended on foundational Christian postulates or essential legal roles for the church and clergy in the governance of public and private life.

Various Protestant “antirevolutionary” movements broke out among European Protestants. In the Netherlands, it was Abraham Kuyper (1837-1920) and other leaders of the Dutch Anti-Revolutionary Party who inveighed against the liberal reforms and called for a revival and reform of Calvinist legal and political teachings. In Scotland, it was Robert Haldane (1764-1842), James Haldane (1768-1851), and Thomas Chalmers (1780-1847), who led the Scottish resistance to Jacobin radicalism and the return to the orthodoxy of the Westminster Confession and to freedom of the church from political patronage. In the German Länder, it was Christian Karl Josias von Bunsen (1791-1860) and others who signaled the dangers of secularism for Christian churches and helped to unify the Lutheran and Calvinist churches of Germany in concerted response. In England, it was the Anglican sage Edmund Burke (1729-1797) who warned of the corrosive impact of the French revolutionaries and Napoleonic codifiers on the settled traditions of the Anglican church and state.

While many Protestants initially rejected the violence and secularization efforts of the French revolutionaries, they ultimately did not reject Enlightenment teachings altogether. After all, many of the leading Enlightenment philosophers were themselves Protestants -- Scottish Presbyterians from Frances Hutcheson (1694-1747) to Adam Smith (1723-1790), German and Nordic Lutherans from Gottfried Leibniz (1646-1716) to Immanuel Kant (1724-1804), English and American Anglicans from John Locke (1632-

1704) to William Paley (1743-1805). And even in France, Jean Jacques Rousseau (1712-1778) was raised in a Calvinist home and Baron Montesquieu (1689-1755) converted from Catholicism to Protestantism.

Because of the Protestant pedigree of their leaders, many Enlightenment-based legal reforms were often generalized versions of longstanding Protestant and more broadly Christian teachings and practices. Thus, covenants were translated into contracts, sins into crimes, righteousness into justice, sacraments into civic rituals, creation narratives into mythical states of nature. And longstanding Christian legal ideas and institutions of rights and liberties, sovereignty and authority, marriage and family, charity and education and more were now recast with new rational, natural, and utilitarian logics in lieu of the old biblical, theological, and dogmatic arguments that had sustained them for many centuries before.

These overlapping Christian and Enlightenment logics on the fundamentals of law, politics, and society led to permanent tensions among modern Protestants between conservative and liberal, theological and philosophical, private and public expressions of the faith. But it also led some modern Protestants to make common cause with Enlightenment liberals in creating new written constitutions, bills of rights, and democratic polities; pressing for the abolition of slavery and the international slave trade; advocating for the rights of women, children, the poor and needy; reforming family, education, and social welfare laws as well as criminal laws, due process, and equal protection guarantees for all.

Not only Enlightenment liberalism, but also various Evangelical and revivalist movements divided modern Protestantism and its legal and political influence. The First Great Awakening (ca. 1720-80) featured the rise of Baptist and Methodist churches, under the leadership of John Wesley (1703-1791), Charles Wesley (1707-1788), George Whitfield (1714-1770), and others. It also catalyzed revival movements within various traditional Calvinist and Anglican communities under the leadership of theologians like Jonathan Edwards (1703-1758) and William Wilberforce (1759-1833) and their many students. Later evangelical awakenings in the nineteenth century, led to the explosive growth of Baptists and Methodists in North America and Great Britain and on the mission field in the Global South. These movements also produced new Protestant denominations like Pentecostals, Adventists, Jehovah's Witnesses, and Holiness Churches.

While these nineteenth-century Evangelical groups did not work out a detailed new political theology or theological jurisprudence, they added accents to the Protestant inheritance that helped shape law and politics until well into the twentieth century. For example, Evangelicals emphasized Christian conversion, the necessary spiritual rebirth of each sinful individual. On that basis, they strongly advocated the liberty of conscience of each individual and the free speech and press rights and duties of the missionary to proselytize. Evangelicals had a high view of the Christian Bible as the infallible textbook for human living. On that basis, they celebrated the use of the Bible in public school classrooms, military, prisons and elsewhere while they castigated Jews, Catholics,

Mormons and others for their use of partial, apocryphal, or surrogate Scriptures. Evangelicals emphasized sanctification, the process of each individual becoming holier before God, neighbor and self. On that basis, they underscored a robust ethic of spiritual and moral progress, education, and improvement of all.

Many Evangelicals coupled this emphasis on personal conversion and sanctification with a concern for social reform and moral improvement of the community. Great numbers of Evangelicals on both sides of the Atlantic eventually joined the international campaign to end slavery – though this issue permanently divided Methodists and Baptists, as well as Presbyterians and Lutherans. Nineteenth-century Evangelicals were more united in their support for successive, and sometimes successful, campaigns for new laws against dueling, freemasonry, reserving Indians, lotteries, drunkenness, Sunday mails, Sabbath-breaking, and more. In the later nineteenth century, many Evangelical leaders also joined the struggle for the rights and plights of emancipated blacks, poor workers, women suffragists, and labor union organizers – none more forcefully and successfully than Calvinist Baptist Charles Spurgeon (1834-1892), Baptist theologian Walter Rauschenbusch (1861-1918), and Presbyterian minister Francis Grimké (1850-1937). But on these issues, too, Evangelical camps were often bitterly divided.

On occasion, nineteenth-century Evangelicals became actively involved in national party politics, such as in the three unsuccessful American presidential campaigns of Protestant titan William Jennings Bryant at the turn of the twentieth century. Most American Evangelical groups, however, were suspicious of the national government and were staunch believers in the virtues of federalism and the prerogatives of state and local government. Many Evangelicals, together with Calvinists, further believed that the individual congregation and the voluntary association were the most essential sources of governance and improvement. They regarded churches, schools, clubs, charities, businesses, unions, corporations, learned societies, and other voluntary associations as essential buffers between the individual and state and essential bulwarks against state power and essential instruments of law and authority in their own right.

Law and Protestantism in the Past Century

During the First and Second World Wars, Protestant theologians were critical prophetic voices in denouncing the scourge of totalitarianism, fascism, anti-Semitism, and xenophobia that had broken over the world. Swiss Calvinist Karl Barth (1886-1968) led the coalition of theologians that issued the Barmen Declaration (1934) condemning the rise of Nazism. German Lutheran Dietrich Bonhoeffer (1906-1945) actively resisted Nazism and was executed for plotting Hitler's assassination. Reformed thinkers like Emil Brunner (1889-1966) and Herman Dooyeweerd (1894-1977) developed elaborate Christian theories of law, politics, and society. American Protestant Reinhold Niebuhr (1892-1971) offered trenchant political commentary on domestic and international themes. Episcopal First Lady Eleanor Roosevelt (1884-1962) chaired the international

and interreligious committee that drafted the Universal Declaration of Human Rights (1948).

Protestant legal and political influence waned after the 1950s, however. Various Protestant jurists and theologians did continue to develop important new themes, particularly relating to religious freedom, church-state relations, just war theory, the environment, and emerging biotechnology. But modern American Protestantism did not develop an authentic political model or program of legal reform on the order of Roman Catholicism after the Second Vatican Council. Some Protestants repeated old legal and political formulas, often nostalgically (and selectively) recounting Protestant progress and prowess in Western history. Other Protestants focused their attention on single political issues – the restoration of prayer in public schools, the eradication of abortion, the protection of the traditional family, the disestablishment of religion – often mobilizing ample political support and securing occasional legal victories for these causes. Still others, particularly in the World and National Council of Churches, threw their support behind ecumenical and inter-religious programs. But a comprehensive Protestant political and legal platform, faithful to the cardinal convictions of historical Protestantism and responsive to the needs of an intensely pluralistic modern polity, did not emerge in the twentieth century.

Protestants did make some notable legal and political advances in recent times. One was the American civil rights movement of the 1950s and 1960s, led by the Baptist preacher Martin Luther King, Jr (1929–1968) and others, that helped to bring greater political and civil equality and rights to African Americans through a series of landmark statutes and cases. Another was the rise of the Christian right in America in the 1970s to 1990 – a broad conservative political and cultural campaign designed to revitalize public religion, restore families, reform schools, reclaim unsafe neighborhoods, and support faith-based charities through new statutes and lawsuits. Another has been the recent energetic involvement of Protestant and other Christian intellectuals in campaigns of family law reform, human rights protection, environmental care, social welfare reform, and greater protections for women, children, and racial minorities throughout the world. Contrasting movements of neo-Anabaptism, Christian socialism, chiliasm, and Radical Orthodoxy among various recent Protestant groups have pressed for more authentic, and often independent, forms of Christian legal and political living. Whether these recent movements are signposts for the development of a comprehensive new Protestant jurisprudence and political theology remains to be seen.

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