

MONDAY, 3RD OF MAY, 2021

Study Group: Common Law

In depth study of Brent Allan Winters' *Excellence of the Common Law* book and Study Guide. Companion to the Wednesday Calls:
[Evidence of the Common Law](#)

Preface

Principles of law and government

MINISTERIAL

"...; every magistrate and officer holds his office, authority, and power at the pleasure of God to whom he is responsible and to whom he will answer for the doing of his office."

GOD ALONE IS LORD OF THE INDIVIDUAL CONSCIENCE

"...: each individual, from the private person serving as juror to the public magistrate and officer, is responsible before God to inform his conscience aright and to exercise independent judgment in determining his convictions and acting upon them; his duty of independent discernment is non-delegable.

OBEDIENCE TO ANY COMMAND CONTRARY TO GOD'S DESIRE IS ALWAYS WRONG.

"Moreover, when the individual answers to God for the doing of his office, God will never allow him to take refuge in his frank obedience to, or tacit conformity with, the judgment of any other mortal or combination thereof, regardless of threats, demonstrations of power, claims to authority, or assertions of infallibility.

Differences

CIVIL LAW

- Utopian in outlook
- Wishbone
- Unlimited government of men for a government limited by law

BY ITS NATURE

- Legislation denies the minority opinion on any given matter
- Commands the majority will
- The tone is broad and commanding
- Legislation decrees

COMMON-LAW DUE PROCESS

- Real only in practice
- Backbone of the Constitution
- Breaths life into its members
- Courts of record make findings and render opinions

BACKBONE

- Backbone of the Constitution to stand upright
- The animating principle that enables it to walk
- Life force of constitutional law
- enlivens its principles to safeguard our rights of liberty,
- Without which the Constitution is an empty, delated form.

"...in the common-law tradition, the legislator uses popular politics to check executive power; the courts (litigants, jurors, and judges) champion the quest for true law as a check on executive power and legislative majorities."

Focus is on Due Process NOT the Desired Result.

- "The one having outfitted his conscience with the principles of Scripture, and having informed his understanding with the common law's applications of those principles, will occupy and hold the ground allotted him against evil."
- "Justice supplies the minimum requirements of duty concerning one's relationships with others and is best-learned and known through experience."
- "Experiencing the saving grace of God brings the understanding and appreciation necessary to motivate one to ever-wiser obedience—i.e., refined by ever-keener discernment—desired by God. The obedience of faith is the fruit of understanding God's acceptance (grace) made possible by the satisfaction of divine justice in the sacrifice of Christ. Moreover, lack of appreciation of God's graciousness results in lawlessness."
- "Consonant with Scripture, the common-law tradition insists upon a limited executive, legislature, and judiciary, each with defined power meant to curb the other two."
- "The legislator's culture—as the executive's—is one of politics, i.e., based on the majority principle."
- "...: legislators are crowd pleasers."
- "History shows that while dictators and tyrants seek to dominate and enslave others to themselves in the present, legislators unchecked, in their willingness to satisfy in the present, will enslave their constituents for the future."
- "The people clothe their legislators with authority to bind the people in perpetual debt to moneylenders."
- "Thus, the dignity and duty of the courts demands that the Jury and judge work in an atmosphere of right and law, never majority and might."

"Through divine providence, common-law courts look for the entry of truth by many avenues and especially through the juror, drawn at random from all conditions and walks-of-life. From the human perspective, therefore, the common-law tradition is not foremost a moral order of imperial legalism, but is a tradition of process out of which Providence shows us the fitting application of moral principles."

In Sum

— CIVIL LAW

- Seeks conformity to the will of the state as expressed in its legislation
- The Goal is universal compliance with the will of the state
- Begins its analysis of legal issues by affirming legislation to be the true and one-size-fits-all **universal application** of justice to any particular legal dispute
- Legislators are blown about by political winds

— COMMON LAW

- Adheres to right process, focusing its attention on insuring the process due each party before the court
- Relies on observance of due process to render up a right and fitting outcome
- The Aim is to observe due process with a view toward individual justice
- Begins by affirming that following due process provides the best opportunity for emergence of the **fitting application** of the principle
- Courts are steady subjects of fixed principles of law

Scriptures:

- Preface
 - Luke 10:25–37
- Chapter 1:
 - 1.1
 - Matthew 7:15–23
 - James 1:25
 - Tradition–Positive:
 - II Thessalonians 2:15, 3:6
 - Tradition–Negative:
 - Matthew 15:2, 3, 6
 - John 17:17
 - I John 5:2
 - II John 6
 - Ephesians 2:8–10
 - Joshua 24:15
 - Proverbs 14:12, 16:25
 - Romans 5:12
 - II Timothy 2:15
 - Matthew 23–25–26