Chapter 1 : "Un-Making Law: The Classical Revival in the Common Law" by Jay Feinman

The Resurrection of Classical Liberalism. Peter A. Taylor June 13, If you're trying to save the old libertarian America, you've arrived on the scene a little late.

If a man were now to deny that there is salt on the table, you could not reduce him to an absurdity. Come, let us try this a little further. I deny that Canada is taken, and I can support my denial by pretty good arguments. The French are a much more numerous people than we; and it is not likely that they would allow us to take it. Now suppose you should go over and find that it really is taken, that would only satisfy yourself; for when you come home we will not believe you. We will say, you have been bribed. Such is the weight of common testimony. How much stronger are the evidences of the Christian religion? Van Leeuwen for a discussion from an epistemological point of view. Given the theological background to the development of our modern law of evidence, it is natural to infer that the evidential credibility of the Christian is very much tied to such legal standards of evidence. There are two other epistemological concepts which arose out of this dispute worth mentioning. While the orthodox Protestants initially responded by arguing that we cannot be infallibly certain of our reading of church documents either, the later Protestants, especially the English thinkers, argued that we need only moral certainty, and not infallible certainty, to establish theological facts. It is clear that in these cases the legal analogies loom large in trying to determine theological facts. While the initial disputes were concerned with deciding the rule of faith between Protestantism and Roman Catholicism that is, between Bible or ecclesiastical documents , eventually the epistemic standards, and legal analogies, used for deciding this controversy were used as a more general base to answer atheists and skeptics against the Christian religion Grounding Christianity on Evidence R. Burns in his work The Great Debate on Miracles argues that the deistic controversy may have its origins as a reaction by the deists against the Christians. It was the Christians who first attempted to buttress Christian claims with the new philosophies of the English Enlightenment, and the new standards of evidence, which provoked a response from the deists who tried to point out the flaws in their case. The dispute is a very long and complex one which we need not get into. However we can note that the legal background to evaluating the evidence of the Christian faith remains to this very day in Anglophone Christian apologetics. I would like to draw two other related features of the common law system in relation to how Christian truth is established. I will finally end with some philosophical comments on the sort of audiences presupposed by Christian, or Protestant, apologetics. The Jury System The jury system is by no means universal. However what is interesting is that historically English law held that juries determined facts while judges determined law. The idea is that juries who were familiar with the persons involved can give testimony concerning their characters, among other things, while the judges who were experts of the law can determine the legality of the suit after the facts were established. Of course while in actual cases juries had to both determine facts and law, the basic idea remains that juries are primarily supposed to adjudicate facts according to the law as articulated and explained by the judge. If the average, not expert, reasonable man can weight the credibility of testimonies and other evidences to determine whether or not the accused stabbed another person, he can jolly well use his same reason to weigh the testimony of the Gospel accounts concerning the resurrection. If the average man can use his reason to deprive another man of his freedom for life, can not the average man use his reason to also give up his freedom to the will of God revealed in Jesus Christ? Erastianism Erastianism refers to the idea of state control of religion. As much as it might horrify us today, it was not an unusual thing in the past. The unbaptised Constantine had a free hand in directing the affairs of the Church, Zoroastrian rulers, and later Islamic Caliphs, had a hand in the selection of the Patriarch of the Assyrian Church of the East. Christian kings before the Investiture Controversy and after the Reformation appointed the bishops of the church. Even today in Singapore the President of Singapore appoints the judge of the Syriah courts, established by the civil laws of Singapore under the Administration of Muslim Laws Act. Why is Erastianism important here? If indeed the truth of Christianity can be established by legal standards of evidence, then it follows irresistibly that Christian facts can be recognised as legal facts, with legal effects and consequences. After all the Anglican Church remains the legally established Church of

England, and there are no persecutions of non Christians for heresy. What it does mean however is that we should not be a priori opposed to state or legal authorities citing or using Christian facts as a basis for actions or judgements. It is interesting to note that even today English law does recognise Hindu deities as possessing legal personality. In a case an English judge argued that: Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir, It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established. However the a priori rejection of all religious facts in the use of legal or political reasoning does damage the idea that Christian facts can so be credibly established by the legal standards of evidence. It would lead to other deeply problematic implications for theology as well. Banishing God from the Public What are we to conclude from this brief survey of the common law system and the law of evidence in relation to the establishment of the Christian truth? I believe that at the heart of the issue lies the question as to whether or not the Christian facts exists in the objective realm or empirical plane, an object of public discernment, scrutiny and judgement, as embodied in the Anglosphere legal system, or is it an esoteric gnostic truth, accessible only by Kierkegaardian leaps of faith or tribalistic subscription, but otherwise opaque to the rest of the world? To affirm and assent as much is not to be blind to the preconditions of our position. Notwithstanding these considerations however, and the need for Christian grace to sustain our reason, we cannot, at the expense of adopting a secularist position, banish all Christian facts from the scrutiny of reason. That would be simply conceding that the divine is inherently inaccessible to man qua man in their nature, eviscerate all natural theology, and utterly deny that we already live and have our being in God. It would relegate the divine to rare moments of esoteric grasping instead of something intrinsically part of us as humans qua humans. In short, the recovery of the Christian position in the legal and public realm is tied ultimately to whether we believe that the resurrection is a mere myth or fable we tell ourselves, or is it an objective empirical event, of which the apostles are eyewitnesses, willing to testify in a court of law.

Chapter 2 : Roman law - Wikipedia

Includes bibliographical references (pages) and index The resurrection of classical common law -- Injuries, victims, and the attack on tort law -- A realistic view of tort law -- Consumers, workers, and the tyranny of freedom of contract -- Freedom of contract and fair contract -- Property rights and the right's property -- Takings and.

Summary[edit] Greenleaf begins his book by arguing for the need to suspend prejudices and to be open to conviction, "to follow the truth wherever it may lead us" p. He limits the scope of his book to an inquiry "to the testimony of the Four Evangelists , bringing their narratives to the tests to which other evidence is subjected in human tribunals" p. His specific inquiry is concerned with testing "the veracity of these witnesses by the same rules and means" employed in human tribunals p. Greenleaf argues the case by first inquiring as to the genuineness of the four gospels as ancient writings. Here he applies what is known in law as the ancient documents rule, stating that "Every document, apparently ancient, coming from the proper repository or custody, and bearing on its face no evident marks of forgery , the law presumes to be genuine, and devolves on the opposing party the burden of proving it to be otherwise" p. Greenleaf maintains that the Four Gospels do not bear any marks of being forgeries and the oldest extant copies may be received into court as genuine documents. Greenleaf proceeds to argue that "In matters of public and general interest, all persons must be presumed to be conversant, on the principle that individuals are presumed to be conversant with their own affairs" p. Greenleaf then builds a cumulative case by claiming to cross-examine the oral testimony of the evangelists in their accounts of the death and resurrection of Jesus. Greenleaf develops his case on the basis of the following tests: Greenleaf then argues that the gospel writers can be shown to be honest in their character and do not show any motives to falsify their testimony pp. He claims that keen observations and meticulous details are related by Matthew and Luke, and he concludes this demonstrates their ability pp. He maintains that discrepancies in their accounts are evidence that the writers are not guilty of collusion, and that the discrepancies in their respective accounts can be resolved or harmonized upon careful cross-examination and comparison of the details pp 32â€” Greenleaf argues against the scepticism of the Scottish empirical philosopher David Hume concerning reports of miracles. Greenleaf takes as his own assumption that as God exists then such a being is capable of performing miracles. Lastly, Greenleaf examines the problem of uniform testimony among false and genuine witnesses, and finds there is sufficient circumstantial evidence to support the accounts of the Four Evangelists. Greenleaf sums up his argument with the following plea: Let the witnesses be compared with themselves, with each other, and with the surrounding facts and circumstances; and let their testimony be sifted, as if it were given in a court of justice, on the side of the adverse party, the witnesses being subjected to a rigorous cross-examination. The result, it is confidently believed, will be an undoubting conviction of their integrity, ability and truth Either the men of Galilee were men of superlative wisdom, and extensive knowledge and experience, and of deeper skill in the arts of deception, than any and all others, before or after them, or they have truly stated the astonishing things which they saw and heard" pp. Literary importance in Christian apologetics[edit] In the history of Christian apologetics there have been many lawyers who have written texts commending and defending their faith. In recent years writers such as John Warwick Montgomery , Ross Clifford and Philip Johnson have described the contributions made by lawyers as a distinct school of thought and use the terms "juridical apologetics", "jural apologetics" and "legal apologetics". These writers point to the Seventeenth century Dutch legal scholar Hugo Grotius as one of the first juridical apologists. Montgomery, Clifford and Johnson argue that Greenleaf may be ranked as one of the most important representative figures of this particular school of apologetic thought. Johnson states that Greenleaf, "must be regarded as the pivotal figure in juridical apologetics. Here he followed the basic appeals to logic, reason, and historical evidences on behalf of the Bible generally, and in defence of the possibility of miracles occurring. However, what distinguished Greenleaf from previous apologists is that he is the first American apologist to develop an argument favoring the reliability of the gospels and specifically on the evidences for the resurrection of Jesus Christ using technical legal criteria. His technical arguments concerning the evidentiary weight of the eyewitness passages found in the gospel narratives, the criteria for

cross-examining that eyewitness testimony, and the claimed status of the gospels as competent evidence, have been relied on and restated by several American Christian apologists of the nineteenth and twentieth centuries, such as Clarence Bartlett As A Lawyer Sees Jesus , Walter M. Lamb Miracle and Science , Irwin H. Howard Richard Packham is a retired foreign language instructor and former part-time estate planning attorney who holds to an atheist worldview. He has written an internet article criticising the technical arguments set forth by Greenleaf and others. Packham argues that the ancient documents rule technically only applies to a limited genre of legal documents, such as wills and contracts and other specific legal instruments, to which the gospels do not belong. The Ancient Documents Rule is not limited to express legal instruments, but covers any type of documents. The criteria for the Ancient Documents Rule is simple and straightforward. According to legal authorities, documents of any type must meet three criteria in order to qualify for the Ancient Documents Rule: Greenleaf, as a writer of highest legal authority, concluded that the Gospels should be received under the ancient documents rule. Packham maintains that in a court procedure it is up to a judge to decide if a document may be admitted. However, the issue of allowing any evidence is whether the evidence has enough value for the trier of fact to reach a conclusion, whether for or against FRE b notes. However, that means the written document is allowed into evidence in the case and that evidence of its contents have to be further weighed by the trier of fact. The interesting dilemma is that both advocates and opponents must cite the Gospels in order to admit or omit their contents. Thus the probative value, and the logical and conditional relevancy of the Gospel materials is exhibited. Packham liberally cites the Gospel material and biblical higher critics in order to make his points. Ross Clifford, who is a former Australian barrister and a theologian, has often written about the subject of legal apologists. Clifford affirms the case for the resurrection of Jesus. He states that it may appear to opponents that legal apologists like Greenleaf have at different points overstated their case. In that text he raised a technical question about the ancient documents rule and suggested that hypothetically a court could admit the gospels as ancient documents, but that does not mean that their specific contents are automatically acknowledged as facts p. However, the trier of fact is allowed to weigh the evidence of the contents of the writings. Clifford says that apologists may appear to their opponents to have overstated their conclusions based on the ancient documents rule. It does not automatically lead to admission of the substance of the document irrespective of its credibility. It can be argued this is even true today for the United States, even though the Federal Rule of Evidence [16] states statements in Ancient Documents are admissible as exemptions to hearsay. Greenleaf takes no cognisance of this position and asserts that when an instrument is admitted under the said rule the court is bound to receive into evidence its substance as well unless the opposing party is able to impeach it It could be strongly pleaded there is justification for doing so. Baker, , pp.

Chapter 3 : Philosophy of the Common Law - Oxford Handbooks

The concept of order maintained by the law of cause and effect is a scientific principle with a history traceable through Hebrew, Babylonian, Greek, and modern civilizations.

Consideration Consideration Consideration is a central concept in the common law of contracts. Under classical contract theory, consideration is required for a contract to be enforceable. Modern contract theory has also permitted remedies on alternate theories such as promissory estoppel. There are two common theories for consideration. The main purpose of the shift from benefit-detriment to bargain theory is to reconcile consideration theory with other aspects of contract theory. For instance, courts will not inquire as to the adequacy of consideration. If someone honestly dislikes their car and wants to sell it for fifty dollars, the law will not consider this an invalid deal. Another term for this sort of non-bargained-for payment is nominal consideration. For example, in Fischer v. There are three main purposes cited for the consideration requirement. The first is the cautionary requirement â€" parties are more likely to look before they leap when making a bargain than when making an off-the-cuff promise of a gift. The second is the evidentiary requirement â€" parties are more likely to commemorate, or at least remember, a promise made due to a bargaining process. The third is the channeling requirement â€" parties are more likely to coherently stipulate their specific desires when they are forced to bargain for them. Each of these rationales ensure that contracts are made by serious parties and are not made in error. Certain other stipulations regarding consideration include the following: Something that is already done is done, and it does not change the legal position of the promisor. Any goods or services to be exchanged must be exchanged at or after the time of contract formation. However, a promise to pay a pre-existing debt or obligation IS enforceable. The promise must be real and unconditional. This doctrine rarely invalidates contracts; it is a fundamental doctrine in contract law that courts should try to enforce contracts whenever possible. Accordingly, courts will often read implied-in-fact or implied-in-law terms into the contract, placing duties on the promisor. For instance, if a promisor promises to give away a third of his earnings for the year, he has no actual obligation to do anything; if he earns nothing, a third of zero is zero. However, courts will generally read in an implied term that he will use reasonable efforts to try to gain income. Even though the promisor has no actual duties, the promisee may still benefit by the possibility that the contract may lead to the promisor fulfilling certain duties, and that possibility itself is beneficial. Unliquidated debt, or a payment which is disputed, can be used for consideration. While the concept of consideration is not generally accepted in civil law systems, some recognize the similarity between consideration and cause, as some civil codes recognize that all contracts must have a cause, though this is not generally accepted. Privacy Policy HotChalk Partner.

Chapter 4 : Common Law and the Law of Reason | Natural Law, Natural Rights, and American Constitution

The Death of Contract is a masterful commentary on the common law, especially the law of promissory obligation known as contracts. In this slim and lively book, the late Yale law professor Grant Gilmore examines the birth, development, death, and even the resurrection of a body of American law.

Bible in English culture, The A unifying factor The Bible has been a significant component of English life for many centuries, particularly since the publication of the Authorised Version of the Bible in , with which every citizen was expected to be familiar. Just as most people know television catch phrases today, so references to the Bible would be instantly recognised by almost everyone. It has contributed to developments in civil life, the arts and science. Influence on the law The Bible features heavily in the architecture and decoration of the Houses of Parliament, paying silent tribute to its significance in English jurisprudence. Many old parish church es still have copies of the Ten Commandments on the walls, underlining the importance of the Bible for providing the moral cohesion of society. Most British law is ultimately derived from the codes of law within the Bible, of which the Ten Commandments is pre-eminent. The equality of all people before the law is another of its legacies. Cultural influence Visual Arts The Bible has for centuries fired and filled the imaginations of artists of all genres. The great masters â€" the painters of the European Renaissance and those who followed them- frequently re-presented the great stories of the Bible, including the annunciation , birth, baptism and temptation s of Jesus at the beginning of his ministry , the Last Supper and the crucifixion , followed by scenes of his resurrection. The foundations of English theatre were laid by medieval plays based on biblical events. More fundamentally, there is a strong case for claiming that it is the consistency and coherence of the biblical understanding of God, and the reliability of the universe which follows from this, which provided a substantial contribution to the development of the Enlightenment and the sciences which have flowed from it. From a philosophical standpoint these fundamental assumptions are a necessary foundation for science. Wider social impact The Bible has also contributed to the wider cultural and social context in the United Kingdom: The debates about the propriety and nature of the monarchy have often been focussed on biblical texts. The great social reforms of the eighteenth and nineteenth centuries were profoundly influenced by the biblical contribution to issues such as liberty, equality and fraternity, as the recent commemoration of The Abolition of the Transatlantic Slave Trade Act has reminded us. The debates concerning the limits of authority whether of the monarchy or parliament over individual conscience, were shaped by people like Milton and Thomas Helwys in the seventeenth century, who depended heavily on their biblical knowledge as a source of profound truth. Many of those involved in the Trades Union movement were also driven by the vision for fairness which they saw in the Bible. The Bible provided a common framework for social debate among the educated and from the eighteenth century onwards it was the Bible which lay at the heart of the developing populist education movements. In short the social institutions and safeguards, as well as many of the benefits people take for granted, were supported by the understanding of human life which was found within the Bible. The Christian Bible consists of the Old Testament scriptures inherited from Judaism, together with the New Testament, drawn from writings produced from c. The translation of the Bible in English which was produced in by a group of scholars appointed by King James I. It is the origin of many common phrases and sayings in the English language. Main church within a parish. Instructions said to have been given to Moses by God on Mount Sinai, which have not only shaped Jewish and Christian belief and practice but also strongly influenced the legal systems of many countries. The term describes the movement, especially in the 15th and 16th centuries originating from Italy, where new areas of art, poetry, scholarship and architecture emerged. The immersion in or pouring over of water, in the name of God the Father, Son and Holy Spirit, to signify the washing away of away of sin. Baptism in Christian churches marks the acceptance of the baptised child or adult into the church. The act of tempting or something that entices an individual to do wrong. The name given to the man believed by Christians to be the Son of God. His life is recorded most fully in the Four Gospels. Work or acts of service performed for God and other people. The Passover meal which Jesus ate with his disciples before his betrayal and arrest, at which he instituted the eucharist or holy

communion or mass. Execution by nailing or binding a person to a cross. Literally, rising to life again. Important Old Testament prophet who was active in the northern kingdom of Israel 9th C. Came from Tishbe of Gilead. A European intellectual movement of the seventeenth and eighteenth centuries, also known as the Age of Reason. It sought to promote knowledge and reform society by focussing on what could be understood through reason and logic. The celebration of the Resurrection of Christ and the oldest and greatest festival of the Christian Church. Seventh Sunday 50th day after Easter. The Jewish feast of Weeks harvest. In the New Testament the term is used of all Christians but gradually came to describe an especially holy person.

Chapter 5 : The Resurrection of Classical Liberalism

The resurrection of classical common law --Injuries, victims, and the attack on tort law --A realistic view of tort law --Consumers, workers, and the tyranny of freedom of contract --Freedom of contract and fair contract --Property rights and the right's property --Takings and transcendental nonsense --The movement to un-make the law.

Post-classical law[edit] By the middle of the 3rd century, the conditions for the flourishing of a refined legal culture had become less favourable. The general political and economic situation deteriorated as the emperors assumed more direct control of all aspects of political life. The political system of the principate , which had retained some features of the republican constitution, began to transform itself into the absolute monarchy of the dominate. The existence of a legal science and of jurists who regarded law as a science, not as an instrument to achieve the political goals set by the absolute monarch, did not fit well into the new order of things. The literary production all but ended. Few jurists after the mid-3rd century are known by name. While legal science and legal education persisted to some extent in the eastern part of the Empire, most of the subtleties of classical law came to be disregarded and finally forgotten in the west. Classical law was replaced by so-called vulgar law. Substance[edit] Concept of laws[edit] ius civile , ius gentium , and ius naturale â€" the ius civile "citizen law", originally ius civile Quiritium was the body of common laws that applied to Roman citizens and the Praetores Urbani , the individuals who had jurisdiction over cases involving citizens. The ius gentium "law of peoples" was the body of common laws that applied to foreigners, and their dealings with Roman citizens. The Praetores Peregrini were the individuals who had jurisdiction over cases involving citizens and foreigners. Jus naturale was a concept the jurists developed to explain why all people seemed to obey some laws. Their answer was that a " natural law " instilled in all beings a common sense. In practice, the two differed by the means of their creation and not necessarily whether or not they were written down. The ius scriptum was the body of statute laws made by the legislature. The laws were known as leges lit. Roman lawyers would also include in the ius scriptum the edicts of magistrates magistratuum edicta , the advice of the Senate Senatus consulta , the responses and thoughts of jurists responsa prudentium , and the proclamations and beliefs of the emperor principum placita. Ius non scriptum was the body of common laws that arose from customary practice and had become binding over time. An example of this is the law about wills written by people in the military during a campaign, which are exempt of the solemnities generally required for citizens when writing wills in normal circumstances. In the Roman law ius privatum included personal, property, civil and criminal law; judicial proceeding was private process iudicium privatum ; and crimes were private except the most severe ones that were prosecuted by the state. Public law will only include some areas of private law close to the end of the Roman state. Ius publicum was also used to describe obligatory legal regulations today called ius cogensâ€"this term is applied in modern international law to indicate peremptory norms that cannot be derogated from. These are regulations that cannot be changed or excluded by party agreement. Those regulations that can be changed are called today ius dispositivum, and they are not used when party shares something and are in contrary. Concepts that originated in the Roman constitution live on in constitutions to this day. Examples include checks and balances , the separation of powers , vetoes , filibusters , quorum requirements, term limits , impeachments , the powers of the purse , and regularly scheduled elections. Even some lesser used modern constitutional concepts, such as the block voting found in the electoral college of the United States , originate from ideas found in the Roman constitution. The constitution of the Roman Republic was not formal or even official. Its constitution was largely unwritten, and was constantly evolving throughout the life of the Republic. Throughout the 1st century BC, the power and legitimacy of the Roman constitution was progressively eroding. Even Roman constitutionalists, such as the senator Cicero , lost a willingness to remain faithful to it towards the end of the republic. The belief in a surviving constitution lasted well into the life of the Roman Empire. Ius privatum , Stipulatio , and Rei vindicatio Stipulatio was the basic form of contract in Roman law. It was made in the format of question and answer. The precise nature of the contract was disputed, as can be seen below. Rei vindicatio is a legal action by which the plaintiff demands that the defendant return a thing that belongs to the plaintiff. The plaintiff could also institute an actio furti a personal

action to punish the defendant. If the thing could not be recovered, the plaintiff could claim damages from the defendant with the aid of the condictio furtiva a personal action. With the aid of the actio legis Aquiliae a personal action , the plaintiff could claim damages from the defendant. Rei vindicatio was derived from the ius civile , therefore was only available to Roman citizens. The individual could have been a Roman citizen status civitatis unlike foreigners, or he could have been free status libertatis unlike slaves, or he could have had a certain position in a Roman family status familiae either as the head of the family pater familias , or some lower member. Two status types were senator and emperor. Roman litigation The history of Roman Law can be divided into three systems of procedure: The periods in which these systems were in use overlapped one another and did not have definitive breaks, but it can be stated that the legis actio system prevailed from the time of the XII Tables c. AD , and that of cognitio extra ordinem was in use in post-classical times. Again, these dates are meant as a tool to help understand the types of procedure in use, not as a rigid boundary where one system stopped and another began. He had to be a Roman male citizen. The parties could agree on a judge, or they could appoint one from a list, called album iudicum. They went down the list until they found a judge agreeable to both parties, or if none could be found they had to take the last one on the list. No one had a legal obligation to judge a case. The judge had great latitude in the way he conducted the litigation. He considered all the evidence and ruled in the way that seemed just. Also, there was a maximum time to issue a judgment, which depended on some technical issues type of action, etc. Later on, with the bureaucratization, this procedure disappeared, and was substituted by the so-called "extra ordinem" procedure, also known as cognitory. The whole case was reviewed before a magistrate, in a single phase. The magistrate had obligation to judge and to issue a decision, and the decision could be appealed to a higher magistrate.

Chapter 6 : On Common Law and the Establishment of Christian Facts | Deus Ex Machina

Common law and its widely shared conceptualizations are considerably very complex. It discusses the concept of artificial reason in common law that differs in two respects from natural law. The aim of this artificial reason is as a convergence of judgment on common solutions, thereby securing effective practical guidance.

Electing Ron Paul is like showing up at an autopsy with a live human liver. But that was a week ago. Some of it is valid, but applies only to radicals like Murray Rothbard e. Some of it is technically incompetent e. Most of it, frankly, is just straw men and character assassination. The arguments of social conservatives who base their criticism of libertarianism on religion are almost never cogent for me. These arguments also bore me. However, my exposure to the secular far-right is a recent phenomenon. I find their criticisms much more interesting. I am indebted to several of these "reactionaries", such as Steve Sailer, John Derbyshire, and Carter Van Carter, for many of the ideas in my critique of libertarian immigration policy which you arguably should read first. I also have some discussion of the differences between libertarians and neoreactionaries here. I also find their psychological observations on the libertarian movement interesting. Foremost among these is John Derbyshire: Modern libertarianism there is a bit more to say about the older kind is in fact a geek fad, a head game for high-IQ bourgeois types. The US began as an expression of classical liberalism. What actually made it into the American political canon was a mixture of beliefs about natural rights and democracy. For example, the Declaration of Independence talks of unalienable rights and states " That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed First, the clause about securing rights sounds good to libertarians and Objectivists, but what does "consent" mean? Do "just powers" stem from the necessity to secure rights or from consent? Bernard Crick In Defence of Politics wrote that this "consent" consists of majorities choosing between alternatives presented to them by elites. Gordon Tullock and James M. But as Crick p. If I am part of an unpopular minority, how much good does "representation" do me? It is only likely to be marginally useful at best. Tyranny of the majority is still tyranny. As James Bovard put it, "Democracy must be something more than two wolves and a sheep voting on what to have for dinner. I discussed some of these issues in my critique of libertarian immigration policy. The distinction between a republic and a democracy sounds promising, but this distinction is only meaningful so long as the voters choose to honor it. Scratch the surface of a republic, and underneath you find a democracy. As Robert Jenkinson 2nd Earl of Liverpool, Prime Minister put it, I consider the right of election as a public trust, granted not for the benefit of the individual, but for the public good. In fact, the Constitution is explicitly agnostic on the subject, not just in the 1st Amendment disestablishment clause, but also in Article VI "no religious test shall ever be required as a qualification to any office or public trust under the United States". Consequently, neither of these sources of classical liberal moral authority have stood up well under scrutiny. The classical liberal moral consensus broke down at the end of the 19th century. Property rights were protected in the US by tradition and institutional hysteresis, and to some extent by common sense, but moral arguments in defense of property were decidedly out of fashion amongst intellectuals. By the midth century, classical liberalism was essentially a corpse, and those intellectuals who still more-or-less adhered to it for practical reasons were looking for a way to reanimate it as a moral force. Modern libertarianism thus came into the world, as a sort of intellectual zombie. The classical liberal tradition died, and young Frederick is trying to resurrect it. But it still looks pretty uncomfortable in a tuxedo. Note that this is not the standard libertarian explanation for the growth of the US government. But which comes first, policy or voter psychology? Andrew Breitbart said, "Politics is downstream of culture. I see some truth in all of these claims. Culture is hard to separate from religion. People do have powerful urges to compete for social status, which manifests itself as a craving for a sense of moral superiority. The things people do or say in order to compete are affected by innate cognitive biases, formal teachings, and most especially by culture i. Religion promotes some moral doctrines over others partly through formal teachings, but mainly by promoting culture i. In my view, governments grew because they were allowed to by the increasing moral rootlessness of the voters. Socialism moved in to fill an existing religious vacuum. The problem is fundamentally quasi-religious. We

need to understand what went wrong with liberalism the first time. I see a number of flaws in it: The moral arguments were too closely tied to religion. In the US, the Declaration of Independence grounds human rights in a Creator regarding whom the Constitution is agnostic. In another sense, classical liberal moral arguments were too loosely tied to religion. Classical liberalism also lost its hold on the churches. The relation between personal freedom and political schism ethnic independence movements was unclear. The relation between personal freedom and legal protection of property was unclear. The relation between private property and sovereignty was unclear. The relationship between moral and practical arguments was never clear. The critical point here is that classical liberal morality was too dependent on religion. Liberal moral ideas were a platform built on supernatural piers, which were eaten away by enlightenment termites. Most people still have ideas about the supernatural, but the "wisdom tradition" that supported classical liberalism is a vague memory. And on a deeper level, this weakness was more or less inevitable. The problem is that moral theories are never completely grounded in observable fact. Moral theories fall into various categories such as "sympathetic", "deontological", and "consequentialist". The moral theories that are not consequentialist are poorly grounded in observable fact by definition. Bruce Ramsey , discussing Jeffrey Friedman, thinks this is unfair. The consequentialist ones, such as utilitarianism, try to be grounded in observable fact, but human nature, culture, and the rest of reality is so complicated, so subject to delayed consequences and muddled causes, that in practice, they suffer from huge uncertainties, and moral analysis is far too subject to "motivated reasoning". In practice, morality is a credence good , "A type of good with qualities that cannot be observed by the consumer after purchase, making it difficult to assess its utility. Thus I find myself accusing libertarian scholars like David Friedman of having blown the autopsy on classical liberalism. Consequently, radical libertarians have also prescribed the wrong approach to restoring the creature to health. They find themselves, in T. There exists in every human breast an inevitable state of tension between the aggressive and acquisitive instincts and the instincts of benevolence and self-sacrifice. It is for the preacher, lay or clerical, to inculcate the ultimate duty of subordinating the former to the latter. It is his function to emit a warning bark if he sees courses of action being advocated or pursued which will increase unnecessarily the inevitable tension between self-interest and public duty; and to wag his tail in approval of courses of action which will tend to keep the tension low and tolerable. It is the preacher, not the economist, who most strongly influences how people vote again, see Caplan. The problem is not that the "preacher" failed to preach benevolence, or what Buddhists call "right relationship" with other people, but that he offers incompetent and perverse advice on how to act in order to achieve this. The preacher and the economist are supposed to be working together. Instead, if we go back to the Young Frankenstein analogy, the Progressive preachers released a bunch of antibodies that attack the economic and moral reasoning on which free societies depend. Essentially, what classical liberalism died of is an auto-immune disorder. The quest for moral clarity Again, I find that the reactionaries understand this better than the libertarians. As " asdf " put it, The problem is that various forces push most bureaucrats to believe certain things and act certain ways. I believe this largely happens to them before they are adults via education, media, and other pressures. Get rid of one batch and the next will be the same. Rather than viewing DC as a dark heart in a pure nation, I see it as the dark heart at the center of an already rotting nation. It becomes a feedback loop between the two. Even if you get a good emperor he can only clean things up for awhile. I say we need "preachers", and that political movements are inherently quasi-religious. What is the relationship between these two claims? Libertarianism, like Progressivism, is quasi-religious in the sense of trying to promote moral rules and having to wrestle with the difficulty of demonstrating their correctness. It is also quasi-religious in the sense that part of the reward for participation is a sense of moral superiority. The "potato sack race" has teachers and coaches, many of whom are professionals competing for wealth and power at the highest levels. There are powerful emotional rewards for being on a team, and especially for being on a winning team. You can also be ostracized for going off-script; for taking your leg too far out of the sack, or not keeping up when the sack moves. The people involved in this "potato sack race" include "teachers" professionals and "children" amateurs. But the social status points are awarded by other people, and to a considerable degree by professionals who have elections that they need to help win. You score points by saying things that might influence the outcome of an election. But the other children will also reject you if you

spoil their fun.

Chapter 7 : Testimony of the Evangelists - Wikipedia

CLASSICAL THEORY OF LAW legal orders can develop independently of will, design, and inten-tion. Of course, the common law is the paradigm case of this phe-.

Both are unwritten law; both claim to be anchored in reason and to discern principles of right and wrong; both have been invoked by judges to confine if not simply void acts of positive legislation, and derided by others who oppose such action. There is in fact a deep affinity between common law and natural law, but it is better at the outset to describe their differences, and best to do this historically. Indeed, starting from the past rather than from nature is already a characteristic means of distinguishing common law from natural law. Common law is first and foremost the customary law of England, as applied in the courts of law. As written records came to be made of the decisions of the royal courts, judicial precedents, seen as the most authoritative evidence of a custom, were held to have the force of law: Common law judges decide cases on the basis of the specific facts in light of all applicable law. Before a trial, the accused is ordinarily entitled to be released on bail and in general to have the privilege of the writ of habeas corpus, guaranteeing that there be no imprisonment without a trial. After a trial, he cannot be tried again for the same offense nor punished in any way except as specified by law, and he has, besides, a right to appeal his verdict. In civil trials at common law, many of these rules are altered, because both parties are equal before the law and either might have initiated proceedings in a dispute. The standard of judgment in civil trials is preponderance of the evidence, and the judgment typically awards monetary damages. Juries were traditionally involved in civil cases as well as criminal ones, though they are increasingly less common in the former. Still, the right to appeal remains intact, and even more than in criminal cases, where crimes are now defined by code rather than by precedent, similar civil cases typically establish the parameters for decision in subsequent cases, unless there is in the circumstances something genuinely new. There is much about common-law due process that is not strictly speaking a requirement of natural law: Nevertheless, in at least three ways natural law seems particularly evident in common-law thinking. Moreover, the centrality of the jury at common law suggests deference to common sense at the center of the system and thus constitutes a restraint on elite theorizing and on partisan will. A second natural-law moment in common law appears in the process of reasoning by appellate courts. In most legal disputes that are appealed, both sides can argue precedents in their favor; the issue is which set of precedents forms the better analogy to the pattern of facts in the case at hand. For example, is an exchange of instant messages more like a phone conversation, which sometimes cannot alter a written contract, or is it like an exchange of written documents, which can? Is a motor home more like a house, and thus entitled to constitutional protection from warrantless searches, or more like a motor vehicle, searchable upon reasonable suspicion? It is no accident that these examples involve technological change, for that seems to be a common source of genuinely new cases. Where, by contrast, the issue suggests a reinterpretation of established precedent, the common law presumes in favor of the tried and true over innovation. Natural law, though in principle anchored in immutable human nature, does not forbid all change in positive law and may even command it: The basic idea is that the law will brook no contradiction within itself, not that judges need be set up as philosopher-kings to ensure the rule of abstract reason; common law judges try first to reconcile apparent contradictions and accommodate all the various sources of law that apply to a particular case. Part of the reasonableness of common law is that its judges traditionally did not see their jurisdiction as unlimited; on the contrary, judges can rule only in cases properly presented before them, and the remedies they can impose for the injustices they find are likewise defined and limited by law. In England and in some of the states, separate courts of equity were established for special circumstances where the operation of strict law was thought to work an injustice; in federal law, the same judges were made responsible for law and equity, but until the s the process for filing a case at law and that for moving a bill of equity were entirely distinct. Moreover, although common law courts are courts of general jurisdiction, they have usually co-existed with other specialty courts responsible for distinct areas of law such as admiralty or martial law. In England, where there is an established church, ecclesiastical courts were likewise separate, while the American tradition of

religious liberty allows ecclesiastical law to operate within denominations without state interference, provided civil law itself is not breached. Constitutional law was always more closely entangled with common law. But the Americans also inherited from the British the tradition of declaring constitutional principles in writingâ€”a tradition that extended back at least to Magna Carta and forward to the English Bill of Rights â€”and not a few provisions of the latter appear in almost unaltered form in the early American constitutions and in the Bill of Rights that figures so prominently in American constitutional law today. In discussing common law in relation to natural law, more has been said about common-law process than about substantive rules of law, many of whichâ€”for example, the law of coverture in marriage, or various tenures for the holding of real propertyâ€”have been radically changed, often by legislation. American judges never held the common law to have been imported intact, but rather only insofar as applicable to American circumstances and as unaltered by local legislation. The English themselves, as long ago as the 17th century, used the analogy of the Argoâ€”the ship of the ancient hero Jason whose planks were replaced one by one while at seaâ€”to explain how the common law can remain constant even as its particular rules are altered to adapt to changing circumstances. In seeking to discover law in the context of settling rights in particular cases, looking to established rules and precedents while keeping in mind the basic maxims of justice, common law judges did not make natural law their only point of reference, but they also did not treat it as something they were free to ignore. This is not the only way a legal order can respect natural law, but it is a legitimate way, and one that has contributed to keeping natural law a living force in the English and American constitutional traditions. Clarendon Press, , vol. Wesleyan University Press, ; orig. Hart, The Concept of Law Oxford: Oxford University Press, , ch. The traditional citation of the famous passage is 8 Co. University of Chicago Press, ; orig.

Chapter 8 : Common Law Marriage Fact Sheet â€” Unmarried Equality

The essay maintains that, despite its many variations, the constant theme in classical common law jurisprudence is the idea of law rooted in a disciplined practice of public practical reasoning, maintaining a substantial congruence (but not identity) with the thick texture of the ordinary life and affairs of people in the political community.

Chapter 9 : American Christian Leadership â€“ Liberty Is The Law

The classical conception of law, articulated by seventeenth century common law jurists like Sir Edward Coke and Sir Matthew Hale, drew inspiration from earlier natural law sources, but also.