



# Historical and Theological Foundations of Law

*John Eidsmoe M.Div.*

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## **What is the Law? Where does it get its authority?**

With unparalleled scope and minute detail, *Historical & Theological Foundations of Law* studies the earliest origins of Law in the legal systems of ancient societies all across the earth, explores their common threads and differences, and traces their development through history, and notes common trends that should cause hope or alarm today!

**Volume I: Ancient Wisdom.** In Book I, *The Foundation*, we begin by exploring the laws of ancient civilizations: Egyptian stability, Babylonian precision, Persian enlightenment, Indian philosophy, Chinese Taoism/Buddhism/Confucianism, Polynesian kapu, Incan absolutism and efficiency, Mayan oligarchy, Aztec judicial independence, Cheyenne volunteerism, and the Iroquois Confederacy's sage balancing of power. How did these systems arise? What trends do we see? Polytheism to monotheism, or monotheism to polytheism? Decentralization, or centralization of power? Fewer laws, or more laws? Gentleness, or brutality?

In Book II, *The Cornerstone*, we focus upon a unique people who many believe have influenced the world more than any other. In a canon of thirty-nine books, the Hebrews have given us the Tanakh (Old Testament). How did the Hebrew constitution function, and upon what precepts was it based? Are the Ten Commandments truly the foundation of Western Law? Why is their influence so often overlooked today?

**Volume II: Classical and Medieval.** In Book III, *The Structure*, we turn to Greece and Rome. Hailed as the birthplace of democracy, the Athenian system was unstable, inefficient, and short-lived. Nevertheless, Plato laid a philosophical basis for natural law, and Aristotle provided a foundation for justice.

Rome had a genius for law and organization, but the constitutional constraints of the Republic gradually gave way to the Empire. However, the followers of Christ, once a persecuted minority, came to rule the Empire and put a Christian stamp on Roman law.

Out of Roman law we see the rise of the Canon law of the Church, and we also survey the Sharia law of Islam.

Book IV, *The Centerpiece*, begins with the Dark Ages—the darkness of the womb, out of which was born the Common Law. From the Celtic mists, with the Druids and their Brehon lawyers, St. Patrick and the Senchus Mor, the Anglo-Saxons in the forests of Germany with their witanes and juries which they brought to Britain, Alfred the Great who began his Book of Dooms with the Ten Commandments, to the Norman Conquest and the warfare between the centralizing Norman kings and their opponents, the precepts and institutions of the Common Law took form.

What is the Common Law? If it is so common, why is it so seldom defined? How does it relate to Canon law or civil law? And is it Christian, or Roman, or a fusion of both?

**Volume III: Reformation and Colonial.** Book V, *The Pinnacle*, examines the Lutheran and Calvinist Reformations, whereby the doctrines of justification by grace through faith and the priesthood of all believers led to republican concepts of government by consent of the governed, social contract, God-given

rights, and justified resistance against tyranny. Constitutional jurists such as Selden, Milton, Coke, Althusius, Grotius, Locke, Montesquieu, and Blackstone fused Biblical theology with the Common Law.

Book VI, *The Beacon*. *To take root and grow, the Common Law needed fresh soil. In Book VI, we see that Anglicans established the Common Law in Jamestown and the Southern Colonies, Puritans in the New England Colonies, Presbyterians, Quakers, Catholics, and others in the Middle Colonies. In 1776 they took the ultimate republican step of declaring independence. When, in 1787, fifty-five delegates gathered in Independence Hall to draft a Constitution, they did not write on a blank slate. Rather, they were prepared with thousands of years of "echoes of Eden," Holy Writ, and the Common Law. The event, Washington said, was "in the hands of God."*

This book provides information and answers, but just as important are the questions it raises about the nature, purpose, and source of law. Jurists have articulated it, philosophers have theorized about it, theologians have explored the moral principles that underlie it. Statesmen have enacted it, judges have interpreted it, sheriffs have enforced it, soldiers have defended it, kings have implemented it. And then, after the fact, people have written about it, to try to explain what it is, and what it should be.

This is a journey worth taking, for its insight into our legal heritage. We hope that the truths contained in these volumes will reverberate to future generations who may well need reminding, even as we need reminding today, of the foundations as well as the Founder of our unique American system of Law.

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