

The Breakfast Club

Constitutional Minute for 3 January 2023

When is the Law, not Law?

In “Novanglus No. 7,” written in 1775, John Adams states: *“They define a republic to be a government of laws, and not of men.”* Indeed, one of the great strengths of the American republic, universally acclaimed, has been our adherence to the rule of law. The rule of law brings order, predictability and safety to our world. I can feel reasonably secure driving on our highways knowing that other drivers, by and large, can be depended upon to drive on the correct side of the road and observe the other “rules of the road.” Americans are generally law-abiding folk and those who choose not to be are vigorously sought, usually apprehended and (generally) brought to justice.

Although legislators today at local, state and national levels create civil law, law itself is not a human invention, it goes way, way back. The Bible shows us that the concept of law was created (along with everything else) by God -- the first “law” taking the form of a commandment to Adam to watch what he ate (although it wasn’t exactly dietary advice). In the space of a few sentences in the Bible we encounter instances of our first law and our first law-breaker (and our first blame-shifter). Later on, the Ten Commandments would form what became known as God’s Revealed Law. Even later, theologians and philosophers would discover the presence of yet another system of law in the world; they called it Natural Law (law to be discovered by reason and experience).

What is the relationship between man-made (civil) law and God’s law? The famous British lawyer, Sir William Blackstone, who’s Commentaries on the Laws of England was read by every lawyer in colonial America, put it this way: *“This law of nature, being [of equal age] with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, ... from this original.”* (emphasis added)

To Blackstone this “law of nature” was as permanent (and binding) in the world as the law of gravity. Blackstone also shows us that laws can lose (or fail to establish) their validity by being in contravention of God’s laws, becoming, for want of a better word: “non-law.”

Article VI, Clause 2 of the United States Constitution, known as the Supremacy Clause, states: “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” When we read this carefully, we note that only laws made “in pursuance thereof”, i.e. in accordance with, the Constitution shall be considered the supreme law of the land.

So, can there be laws, passed by the Congress, signed by the President, even affirmed by the Supreme Court which are invalid because they contravene God’s law or lack supremacy

because they are not in accordance with the Constitution? Of course; there have been such laws in the past (the 1850 Fugitive Slave Law comes to mind), and many, I contend, continue to sit in the United States Code today.

Do we as citizens have a responsibility to obey all laws? In Romans 13:1-5, Christians are clearly admonished to *"be subject to the governing authorities."* But I'd prefer to let Thomas Jefferson give us a fuller answer: In a September 20, 1810, letter to John Colvin, he wrote: *"A strict observance of written laws is doubtless one of the highest duties of a good citizen, but it is not the highest. The law of necessity, of self preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means."*

In 1798, Thomas Jefferson and James Madison were each commissioned to write a response to the Alien and Sedition Laws, which, among other things, made it a crime to criticize the U.S. Government and its officials. Several journalists and even a sitting Congressman were charged and convicted under this "law." Jefferson (writing for the Kentucky legislature) and Madison (writing for the Virginia Assembly) took slightly different tacks in their critique of these dutifully passed and signed (by President Adams) "laws," but both stated vehemently that citizens and intermediate governments (like states) had a moral obligation to oppose and nullify badly crafted laws. Heck, our Declaration of Independence is based on the premise that bad laws are to be opposed, even at risk of "our Lives, our Fortunes and our sacred Honor."

As we enter a new year, how about we make a New Year's Resolution to be more vigilant and examine more closely the "laws" our legislatures pass, and speak up when they contradict natural law or God's moral law (the laws of Nature and Nature's God).

Pastors have an elevated responsibility to do so. God has placed them into leadership positions in their communities for a reason. As the great evangelist Charles Finney observed: *"The Church must take right ground in regard to politics... Politics are a part of a religion in such a country as this, and Christians must do their duty to the country as part of their duty to God... God will bless or curse this nation, according to the course Christians take in politics."* Christians must hear this message from the pulpits of America. Yet many pastors are reluctant to preach on some of the moral issues of the day due to the politics attached to these issues, fearing (without just cause) that their church's non-profit status will be jeopardized by doing so. A correct understanding of "The Johnson Amendment" will free pastors of this inhibition. On Monday, January 9th, at 7pm pastor David Whitney of Pasadena, Maryland, will discuss the Johnson Amendment's history and application as part of the Foundation for American Christian Education's Lessons in Liberty series. All pastors (and other Christians) are encouraged to attend.

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