

**CREATION JURISPRUDENCE AS A MEANS TO DISCOVER
THE DIVINELY CREATED NATURAL OR HIGHER LAW
THAT SERVES AS THE FOUNDATION OF THE CONSTITUTION
OF THE UNITED STATES OF AMERICA**

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ABSTRACT

Most modern jurists, legal scholars and legislators refuse to recognize the existence of a divinely created natural or higher law, fearing that such recognition gives individual judges the opportunity to impose their personal and private notions of justice in the name of natural law. Such a fear, however, is misplaced because subjective standards of human discretion must control juridical decision making unless a divinely established, objective fixed standard exists. That the framers of the Constitution of the United States of America established the American government upon a foundation of this divinely created natural or higher law is demonstrated by a study of the Declaration of Independence, and English common law from which American law sprang. This divine creation foundation has been largely abandoned today in favor of a jurisprudence based on evolution. Creation jurisprudence provides a model that enables mankind to discover and know the substance of the divinely created natural or higher law.

INTRODUCTION

In *Calder v. Bull*, one of the United States Supreme Court's earliest decisions concerning constitutional limitations on governmental power, the issue of a natural or higher law surfaced. The justices authored *seriatim* opinions in which Justice Samuel Chase [6, p. 387-389] explored a natural or higher law basis in the "first principles of the social compact" for circumscribing the acts of a legislature, with or without any explicit limitations in the Constitution, while Justice James Iredell [6, p. 398-399] expressed a concern that reliance upon a higher law would lead to arbitrary imposition of individual opinions of jurists in the name of natural law.

In 1965, the Supreme Court of the United States again split over the same issue. [16] In carving out a modern right of privacy in *Griswold v. Connecticut*, the Court divided along the lines of the Chase/Iredell division of *Calder v. Bull*. In *Griswold*, a majority of the Court concluded that Connecticut's statute regulating contraceptive devices concerned the intimate marriage relationship, "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees," and held the statute to be unconstitutional. [16, p. 485] Although a majority of the Court in *Griswold* recognized the existence of "fundamental rights," it did not specifically find those rights in any divinely created higher law—but rather, found them as emanating from several constitutional provisions. Virtually all modern court cases serve as examples of an American jurisprudence which has abandoned any reliance upon a fixed higher law standard such that

. . .the words of the Amendment [i.e., Constitution] are not precise, and. . .their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. [29]

But, have 'evolving standards' always been the basis for American jurisprudence? Did the founders intend for American law to rest upon 'evolving standards of decency,' or did they look to a divinely ordained fixed standard of natural or higher law? The answers to these questions can only be found in the historical record of America's establishment as an independent nation.

THE 1787 CONSTITUTION

The study of the present government of the United States of America must begin with the present Constitution of the United States adopted September 17, 1787. [30] Article VII of that 1787 Constitution recognizes the Declaration of Independence as the founding document of the new nation in the following language:

DONE in Convention. . .the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. [31]

If September of 1787 was within the twelfth year of America's independence as a nation, the Declaration of Independence, adopted by the Congress in July of 1776, must have been considered by the framers of the Constitution as the foundational document of the United States of America. Thus the 1787 Constitution operates not as a document establishing a new nation, but as a document to put into practice the principles espoused in the Declaration of Independence that did establish a new nation, much as by-laws govern the operations of an organization so as to conform to the principles established in the articles of incorporation that established the organization's legal existence.

John Quincy Adams, sixth President of the United States under the 1787 Constitution and son of John Adams, second President of the United States under that same constitution, reminded his countrymen of this relationship in a famous oration delivered on the occasion of the Constitution's fiftieth anniversary:

. . .the virtue which had been infused into the Constitution of the United States. . .was no other than the concreteness of those abstract principles which had been first proclaimed in the Declaration of Independence. . .This was the platform upon which the Constitution of the United States had been erected. Its virtues, its republican character, consisted in its conformity to the principles proclaimed in the Declaration of Independence and its administration. . .was to depend upon. . .those principles proclaimed in the Declaration of Independence and embodied in the Constitution of the United States. [1]

Nearly twenty years later one of America's most famous presidents, before he became president, reportedly voiced concern that Americans were abandoning the great truths of the Declaration of Independence:

Now my countrymen, if you have been taught doctrines conflicting with the great landmarks of the Declaration of Independence; if you have listened to suggestions which would take away from its grandeur. . .if you have been inclined to believe that all men are *not* created equal in those inalienable rights enumerated by our chart of liberty, let me entreat you to come back. . .come back to the truths that are in the Declaration of Independence. [21]

The Supreme Court of the United States recognized the interdependent relationship between the Constitution and the Declaration of Independence in 1898 when it wrote:

'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as

to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. [17]

THE 1776 DECLARATION OF INDEPENDENCE

Thomas Jefferson, in writing the Declaration of Independence, eloquently stated the fundamental principles justifying the dissolution of America's political connection with Great Britain and the establishment of a new government:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, . . . [14]

Jefferson never doubted the theistic cosmology of a god that created the world and all its inhabitants, and that such a god controlled or planned the history of his creation. Regarding Jefferson's belief in a Creator, Professor Paul K. Conkin writes:

This cosmology remained the foundation of his private religious beliefs and a support both for objective knowledge and moral confidence. He was so certain of his beliefs in such a creative god, in a planned and ordered universe, and in a divinely implanted moral sense in each person, that he assumed. . . that such beliefs were universal. . . When anyone challenged such beliefs, he easily and routinely referred to the evidences of design in nature and in the human mind. Such evidence made belief in a creative and purposeful god unchallengeable, self-evident. [13, p. 20]

One thing Jefferson "could never doubt—the existence of a god, for it was upon this foundation that he reared all his hopes for an ordered, disciplined, and virtuous society." [13, p. 46] The American government caused the following words by Jefferson to be engraved into the marble of the Jefferson Memorial in Washington, DC:

God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the Gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever . . . [19, 20]

The Supreme Court of the United States noted in 1892 that, "the Declaration of Independence recognizes the presence of the Divine in human affairs." [9, p. 458] One might ask from where this recognition of the presence of the divine in human affairs and of the foundation of the United States of America upon divine transcendent principles stems? America's English common law heritage holds the key.

ENGLISH COMMON LAW

The common law of England is universally recognized as being of great influence on American jurisprudence at the time the English North American colonies went their own way apart from Great Britain. The Continental Congress unanimously resolved in its Declaration of Rights of October 14, 1774, that "the respective Colonies are entitled to the common law of England. . ." [15]

The Supreme Court of the United States has noted on more than one occasion the relationship of American law to English common law.

Our ancestors brought with them its [i.e., English common law] general principles, and claimed it as their birthright. . . [32]

[The common law] is the system from which our judicial ideas and legal definitions are derived. The language of the Constitution and of many acts of Congress could not be understood without reference to the common law. [26]

The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history. [28]

Given this English common law heritage one must ask if English common law recognized the presence of the divine in human affairs or recognized divine transcendent principles as the foundation of law?

Sir Edward Coke (1552-1634) and Sir William Blackstone (1723-1780) were perhaps the two most prominent expositors of English common law throughout history to date. Coke played a central role in English law for more than a generation, serving as Attorney General (1594-1606), Chief Justice of Common Pleas (1606-1613), and then as Chief Justice of the King's Bench (1613-1616), after which he returned to Parliament during the early Stuart attempts to impose absolute monarchy in the 1620s. His eleven volumes of *Reports* (1600-1615) and a four part *Institutes of the common law* (1628-1644) champion the supremacy of the common law. Blackstone served in Parliament (1761-1770), became solicitor general to the queen (1763), and served as judge on the Court of Common Pleas (1770-1780). Publication of Blackstone's *Commentaries on the Laws of England* "in some ways is the most notable event in the history of the Law," [24] and his *Commentaries* "became the most influential exposition of English law in point of style and accuracy, setting out the structure of English law and explaining its major principles." [7]

Sir Edward Coke

Although detailed studies of Coke's legal thought are scanty, a few passages from Coke's works are quite revealing of his jurisprudence:

And it appears in our books, that in many cases, the common law will controul Acts of Parliament, and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it and adjudge such Act as to be void. [11]

How did Coke view this common law that trumped legislation? What characteristic of the common law gave it the power and authority to void a parliamentary act? The following quote suggests that Coke relied upon that natural law created by our Creator God:

Now followeth the Second Part, *De Legibus*, wherein these parts were considered: first that ligeance or faith of the subject is due unto the King by the law of nature: secondly, that the law of nature is part of the law of England: thirdly, that the law of nature was before any judicial or municipal law: fourthly, that the law of nature is immutable. The law of nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction; and this is *lex æterna*, the moral law, called also the law of nature. And by this law, written with the finger of God in the heart of man, were the people of God a long time governed, before the law was written by Moses, who was the first reporter or writer of law in the world. . . This law of nature, which indeed is the eternal law of the Creator, infused into the heart of the creature at the time of his creation, was two thousand years before any laws written, and before any judicial or municipal laws. [10]

In a much earlier case Coke even relied upon the Books of Moses found in the Torah and the Old Testament as precedent for the common law:

. . . in this point, as almost in all others, the common law was grounded on the law of God, which was said, was *causa causarum*, as appears in the 27th chap. of Numbers, where the case which was in judgment before Moses. . . seemed of great difficulty to Moses, and therefore, for the deciding of that question, Moses consulted with God. . . By which general law (which extends not only to said particular case, but to all other [like cases], to all persons, and at all times). . . [12]

Further evidence of Coke's use of creation jurisprudence is provided by his personal library. Coke personally possessed nearly 300 works of divinity, and the section of his library catalogue that begins the listing of his works on the Laws of England, immediately following the Divinity section, contains the notation, "SECONDLY OF THE BOOKS of the laws of England (because they are derived from the lawe of god) . . ." [18] Thus, the conclusion that Coke viewed English common law as having its origin in the natural or higher law of a Creator appears to be accurate. Many 18th century spokesmen for the rights of British North Americans received their legal training at the Inns of Court--the great law schools of England--where they studied Sir Edward Coke and the common law.

Sir William Blackstone

Sir William Blackstone's *Commentaries on the Laws of England* "not only provided a definitive summary of the common law but was also a primary legal authority for 18th and 19th century American lawyers." [33] "Blackstone's *Commentaries* are accepted as the most satisfactory exposition of the common law of England. At the time of the adoption of the Federal Constitution it had been published about twenty years, and it has been said that more copies of the work had been sold in this country [i.e., the U.S.A.] than in England, so that undoubtedly the framers of the Constitution were familiar with it." [27]

The following extensive quotes from his *Commentaries* confirm that Blackstone, much like Coke, regarded English common law to be permanently valid because it was ultimately grounded in the law of God.

Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. . . as man depends absolutely upon his maker for every thing, it is necessary that he should in all points conform to his maker's will.

This will of his maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

Considering the creator only as a being of infinite *power*, he was able unquestionably to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But, as he is also a being of infinite *wisdom*, he has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions.

This law of nature, being co-eval 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, mediately or immediately, from this original. [5]

The two greatest expositors of English common law leave little doubt that English common law not only recognized, but rested upon, the Creator's natural law.

SOURCES OTHER THAN ENGLISH COMMON LAW

Although America's founders relied primarily upon English common law, they also consulted sources outside of English common law, and writers other than Coke and Blackstone. The Holy Bible was the book most frequently cited in the public **political** literature from 1760 to 1805, and approximately 80% of the published **political** pamphlets during the 1770s were reprinted sermons. [23, pp. 140-142] One can reliably presume, until evidence proving otherwise is presented, that this late 18th and early 19th century reliance upon the Holy Bible was due to a firm belief in the omnipotent Creator God of Genesis. As demonstrated above by Coke's reliance upon Moses, the Holy Bible can even be considered as being relied upon as part of the English common law.

Charles Louis de Secondat, Baron de La Brède et de Montesquieu (1689-1755) was the most frequently cited secular author during the founding period (1760-1805), Blackstone being a close second, and John Locke (1632-1704) exceeded Montesquieu in citations during the 1760s and 1770s. [23, pp. 140-143]

While the Holy Bible obviously approaches law from a creation viewpoint, what about the approaches of Montesquieu and Locke?

Baron de Montesquieu

Although Montesquieu's most famous work, *L'Esprit des lois*, received much criticism from diverse groups and arguably failed in its attempt to integrate physical and social sciences, one cannot deny that Montesquieu recognized a Creator as determining laws, for he wrote:

Thus the creation, which seems an arbitrary act, supposes laws as invariable as those of the fatality of the Atheists. It would be absurd to say that the Creator might govern the world without those rules, since without them it could not subsist. . . Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal. We must therefore acknowledge relations of justice antecedent to the positive law by which they are established. . . Man, as a physical being, is like other bodies governed by invariable laws: As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. . . Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. [25]

John Locke

In his *Two Treatises of Government*, Locke attempted to justify the Glorious Revolution of 1688-1689 that brought William and Mary to the throne of England. The first treatise refutes the idea of the divine right of kings as espoused by Sir Robert Filmer in *Patriarcha*, and consists of a detailed study of the scriptural account of Adam's creation. In Locke's words:

I shall shew. 1. That by this Grant, I *Gen.* 28. God gave no immediate Power to *Adam* over Men, over his Children, over those of his own Species, and so he was not made Ruler, or *Monarch* by this Charter. 2. That by this Grant God gave him not *Private Dominion* over the Inferior Creatures, but right in common with all Mankind; so neither was he *Monarch*, upon the account of the Property here given him. [22, p. 23]

Having rejected the divine right of kings in the first treatise, Locke provides a justifiable basis for legitimate government in his second treatise:

Thus the Law of Nature stands as an Eternal Rule to all Men, Legislators as well as others. The Rules that they make for other Mens Actions, must. . . be conformable to the Law of Nature, *i.e.* to the Will of God, of which that is a Declaration, and the fundamental Law of Nature being the preservation of Mankind, no Humane Sanction can be good, or valid against it. [22, p. 270]

NECESSITY OF A DIVINELY CREATED HIGHER LAW

Today, most jurists, legal scholars and legislators refuse to recognize that a divinely created natural or higher law exists, much less to make any attempt to discover and conform to it. They fear that such a recognition and attempt opens the door for individual judges to impose their personal and private notions of justice. Logically, however, such a fear is not well founded, because absent a divinely established, objective fixed standard, a human discretionary standard must control. The only question, in the absence of a divinely created standard, is who gets to impose their notion of law and justice.

Justice Black, in his *Griswold* dissent, expressed the same concern that Justice Iredell expressed more than 1½ centuries earlier—that the Court's vesting itself with power to invalidate statutory laws based on "natural justice". . . would require judges to determine what is or is not constitutional on the basis of their own appraisal of what laws are unwise or unnecessary." [16, pp. 511-512] Black plainly asserted, "I cannot rely on. . . any mysterious and uncertain natural law concept as a reason for striking down [a law]." [16, p. 522] He asked "how they [i.e., judges] can avoid considering them [i.e., their personal and private notions]." [16, p. 519]

The answer to Justice Black's query of *how* judges can avoid considering their personal and private notions is the creation model provided by creation jurisprudence. Creation jurisprudence recognizes that our Creator established laws for governing human relationships, i.e., social laws, just as he established the physical laws governing matter. Creation jurisprudence attempts to conform the administration of human laws to the Creator's law in order to establish true justice. Creation jurisprudence not only provides the means by which judges can avoid considering personal and private notions in decision-making, but is absolutely necessary to prevent such use of personal and private notions.

Three of the *Griswold* majority justices, in a separate concurring opinion, addressed the concern that judges will use natural law as a means of justifying their own discretionary decision-making:

In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the 'traditions and collective conscience of our people' to determine whether a principle is 'so rooted there as to be ranked as fundamental.' The inquiry is whether a right involved 'is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.' [16, p. 493, internal citations omitted]

While the justices recognized the existence of fundamental rights not specifically mentioned in the Constitution, they failed to rely on the divinely created natural or higher law of creation jurisprudence as a means to determine those fundamental rights. Instead, they looked to "the traditions and collective conscience of our people," to discover indirectly the fundamental rights found in higher law. But this reliance upon human agency is not satisfactory in answering the concerns of Justices Black, Iredell and others.

While the 'traditions and collective conscience' of a people may, at times, conform to natural or higher law, without creation jurisprudence all law will necessarily be determined by the personal and private notions of some number of human beings, whether they be legislators, jurists, executives, administrators, tyrants, etc. No fixed standard can possibly exist unless a transcendent power or authority establishes it, and, absent any such transcendentally established fixed standard, all juridical decisions necessarily rely upon human agency. Absent a divinely established fixed standard, a changing evolutionary based standard determined by human discretion must control. If human discretion and arbitrariness are to be eliminated in the administration of justice, a veritable higher law established by a Creator is absolutely necessary. Therefore, rather than rejecting a divinely created natural or higher law for lack of any fixed standard to prevent the imposition of arbitrary human opinions as if they were law, we must acknowledge that the Creator's law is the only possible source of any fixed standard, and diligently attempt to discover the substance of that objective law of our Creator. Once we accept the logical necessity of a transcendent higher source to establish just, non-arbitrary law, we can then address the concerns expressed by Justices Iredell, Black and others. Once we realize that a transcendent higher natural law must exist, we can proceed to formulate a means of discovering such law. Creation jurisprudence provides that means of discovery.

Study. . .the machinery of society, as it came from the hands of the Great Artificer, and you will be convinced that He evidences a concern for all men that goes beyond your dreams and fantasies. Then, perhaps, instead of proposing to redo the divine handiwork, you will be content to pay it homage. [2, p. 202]

CREATION JURISPRUDENCE AS THE MEANS FOR DISCOVERY OF NATURAL LAW

Once we accept that the Creator's divinely created law is the source of human rights and is the law governing human relationships, we can then direct our efforts at discovering the substance of that divinely created law so as to conform our man-made laws to it. Once the Creator's natural or higher law, a source external to humanity itself, is accepted as the origin of human rights, we can then establish some principles to be used to discover that natural or higher law. Several characteristics must be considered. Our Creator's natural or higher law is:

- a) Eternal and Unchanging (fixed)

Thus the Law of Nature stands as an Eternal Rule to all Men, Legislators as well as others. [22, p. 270]

This law of nature. . . is the eternal law of the Creator. [10]
. . . the law of nature is immutable. [10]

For as God. . . when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature. [5, pp. 39-40]

Considering the creator [as]. . . a being of infinite *wisdom*, he has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil. . . [5, p. 40]

Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place. [4, p. 6]

Thus the creation, which seems an arbitrary act, supposes laws as invariable as those of the fatality of the Atheists. It would be absurd to say that the Creator might govern the world without those rules, since without them it could not subsist. These rules are a fixed and invariable relation. . . [25]

b) Spatially and Temporally Universal

[The Creator's law] extends. . . to all persons, and at all times. . . [12]

This law of nature, being co-eval with mankind and dictated by God himself. . . is binding over all the globe, in all countries, and at all times. . . [5, p. 41]

c) Absolute and Fundamental

. . . as man depends absolutely upon his maker for every thing, it is necessary that he should in all points conform to his maker's will. This will of his maker is called the law of nature [5, p. 39]

. . . when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it and adjudge such Act as to be void. [11]

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. . . 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, mediately or immediately, from this original. [5, p. 41]

Life, faculties, production--in other words, individuality, liberty, property--this is man. And in spite of the cunning of artful political leaders, these three gifts from God precede all human legislation, and are superior to it. [4, p. 6]

d) The Source of Rights Possessed Equally by all Human Beings

. . . we must consider what State all Men are naturally in, and that is, a State of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.

A State also of Equality, wherein all the Power and Jurisdiction is reciprocal, no one having more than another, there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection, unless the Lord and Master of them all, should by any manifest Declaration of his Will set one above another, and confer on him by an evident and clear appointment an undoubted Right to Dominion and Sovereignty. [22, p. 167]

Each of us has a natural right—from God—to defend his person, his liberty, and his property. These are the three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of the other two. For what are our faculties but the extension of our individuality? And what is property but an extension of our faculties? [4, p. 6]

e) Knowable from Revelation

This has given manifold occasion for the benign interposition of divine providence; which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in divers manners, to discover and enforce it's laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in it's present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is (humanly speaking) of infinitely more authority than what we generally call the natural law. Because one is the law of nature, expressly declared so to be by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority: but, till then, they can never be put in any competition together. Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these. [5, pp.41-42]

...the law of God, which was said, was *causa causarum*, as appears in the 27th chap. of Numbers, where the case which was in judgment before Moses. . . seemed of great difficulty to Moses, and therefore, for the deciding of that question, Moses consulted with God. . . By which general law (which extends not only to said particular case, but to all other [like cases], to all persons, and at all times). . . [12]

The laws of England like those of other Christian nations, consist partly. . . of the revealed law of God. [8, p. 84]

f) Recognizable by its Utility to the Creature

...the foundation of natural law. . . may be considered as the will of the Creator, manifested . . . by its utility to his creatures. [8, p. 85]

When we admire the providential laws that govern men's transactions. . . According as these laws are conformed to or violated, good or evil is produced. In other words, men's interests are harmonious, provided every man remains within his rights, provided services are exchanged freely, voluntarily, for services. [2, p. 203]

And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and Preservation of all Mankind . . . [22, p. 169]

... that freedom and the general welfare are perfectly compatible with justice and peace, and that all these great principles run parallel to one another and will do so through all eternity without ever coming into conflict. . . stems from all that we know of the goodness and wisdom of God, as manifested in the sublime harmony of the physical universe? . . . am I . . . to believe that this same God saw fit to introduce antagonism and discord into the laws of the moral universe? No. . . ' [3]

True human rights arising out of a natural or higher law must be fundamental, absolute, immutable and universal. All human beings must possess equal human rights, for if they do not a fixed standard for any system of jurisprudence is not possible. If all human beings have equal rights, it seems probable that the

Creator endows each individual with the maximum complement of rights as a human being at the time of her or his creation. This full complement of human rights must be the same for all individuals and cannot change, over time, absent some action by the individual to forfeit any rights, i.e., the violation of some other individual's right. Thus, human rights cannot be legitimately expanded or contracted by mankind or any human institution.

Furthermore, since every person has the same human rights one person's right cannot conflict with or disparage another person's right. Thus, in those situations where a tribunal faces the quandary of balancing one person's 'right' to behave in a certain way or receive a certain benefit against another person's 'right' to behave a different way or receive a different benefit, we may reasonably conclude the problem is not a true conflict of rights, but a conflict of privileges, or perhaps a conflict of a right with a privilege where the privilege is mistakenly viewed as a right.

THE DIVINELY CREATED HIGHER LAW & LEGITIMATE GOVERNMENT

Considering all these principles and characteristics, what might this eternal, immutable, universal absolute law of our Creator be? I suggest the following:

NO HUMAN BEING MAY DEPRIVE ANY OTHER COMPETENT HUMAN BEING OF HER/HIS RIGHT TO CHOICE PURSUANT TO EACH INDIVIDUAL'S FREE WILL GIVEN FROM THE CREATOR. THIS NECESSARILY MEANS THAT NO HUMAN BEING SHALL THREATEN TO USE OR INITIATE THE USE OF FORCE OR FRAUD OF ANY TYPE UPON ANY OTHER HUMAN BEING. FURTHERMORE, WHAT ANY SINGLE HUMAN BEING MAY NOT LEGITIMATELY DO INDIVIDUALLY, ANY NUMBER OF HUMAN BEINGS MAY NOT LEGITIMATELY DO COLLECTIVELY, WHETHER THEY BE STYLED A GOVERNMENT, LEGISLATURE, COURT, AGENCY, BOARD, COMMITTEE, COMMISSION, GANG, MOB, ETC.

This enumeration follows from the principles written by many in the past, for example,

Though the Legislative, . . . tho' it be the Supream Power in every Common-wealth; yet, *First*, It is not, nor can possibly be absolutely Arbitrary over the Lives and Fortunes of the People. For it being but the joynt power of every Member of the Society given up to that Person, or Assembly, which is Legislator, it can be no more than those persons had in a State of Nature before they enter'd into Society, and gave it up to the Community. For no Body can transfer to another more power than he has in himself; and no Body has an absolute Arbitrary Power over himself, or over any other, to destroy his own Life, or take away the Life or Property of another. A Man . . . cannot subject himself to the Arbitrary Power of another; and having in the State of Nature no Arbitrary Power over the Life, Liberty, or Possession of another, but only so much as the Law of Nature gave him for the preservation of himself, and the rest of Mankind; this is all he doth, or can give up to the Common-wealth, and by it to the Legislative Power, so that the Legislative can have no more than this. . . It is a Power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the Subjects." [22, pp. 268-269]

The State of Nature, has a Law of Nature to govern it which obliges every one. . . That being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions; for Men being all the Workmanship of one Omnipotent, and infinitely wise Maker. . . And being furnished with like Faculties, sharing all in one community of Nature, there cannot be supposed any such Subordination among us, that may Authorize us to destroy one another, as if we were made for one anothers uses. . . And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and Preservation of all Mankind, the Execution of the Law of Nature is in that State, put into every Mans hands, whereby every one has a right to punish the transgressors of that Law to such a Degree, as may hinder its Violation." [22, pp. 168-170]

. . . men's interests are harmonious, provided every man remains within his rights, provided services are exchanged freely, voluntarily, for services. But does this mean that we are unaware of the perpetual struggle between the wrong and the right? Does this mean that we do not see, or that we approve, the efforts made in all past ages, and still made today, to

upset, by force or by fraud, the natural equivalence of services? These are the very things that we reject as breaches of the social laws of Providence, as attacks against the principle of property; for. . . free exchange of services, justice, property, liberty, security, are all merely different aspects of the same basic concept. It is not the principle of property that must be attacked, but, on the contrary, the principle hostile to it, the principle of spoliation and plunder." [2, p. 203]

What, then, is law? It is the collective organization of the individual right to lawful defense. If every person has the right to defend—even by force—his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right—its reason for existing, its lawfulness—is based on individual right. And the common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force—for the same reason—cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.

The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause *justice* to reign over us all.

If a nation were founded on this basis, it seems to me that order would prevail among the people, in thought as well as in deed. It seems to me that such a nation would have the most simple, easy to accept, economical, limited, non-oppressive, just, and enduring government imaginable—whatever its political form might be. [4, p. 7]

CONCLUSION

The recognition of a Creator God as the source of law provides the basis for liberty. America's founders established the Constitution of the United States upon the principles espoused in the Declaration of Independence which clearly and unambiguously asserted the existence of a Creator whose higher law served as the cornerstone of liberty. This declaration of a higher law foundation was the expression of the recognition of such a source for law by the common law of England that is part of America's jurisprudential heritage. While human agency has undeniably missed the mark in perfectly conforming to the divine law of the Creator, both in England before and America after the American Revolution, nevertheless, the recognition of the existence of this divinely created law of God provides the standard by which judges and lawmakers can and should establish and administer justice and law.

The Declaration of Independence proclaimed principles—transcendent self-evident truths—that serve as the bedrock foundation upon which the United States of America is founded. These transcendent truths are the fundamental axioms recognized by creation jurisprudence—creation jurisprudence being that system or body of law wherein human rights are recognized as originating from the Creator of mankind, and that human law must conform to the Creator's divine natural or higher law. The Creation model enables mankind to discover human rights, rather than propound or legislate them. The human task is to establish government institutions to preserve these divinely created human rights for everyone. Any action by one or more human beings, whether organized as a government or not, that infringes a God-given right of another person is illegitimate and contrary to our Creator's natural law.

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