

The Place for Truth in Government

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INTRODUCTION

During his 40-year tenure as president of Harvard (from 1869 to 1909), Charles William Eliot tirelessly promoted a new religious ideal for education in America. Beginning with Harvard, and then spreading his message to universities, colleges and secondary schools all over the country, Eliot largely succeeded in his effort to free American education from its original foundation, the Holy Bible. In its place, Eliot urged educators everywhere to substitute the new science, inspired by Charles Darwin's 1859 book entitled, On The Origin Of Species.

Eliot's address on the occasion of the inauguration of the first president of Johns Hopkins University in Baltimore typified Eliot's campaign to transform American education by liberating teachers, scholars and students from the narrow confines of historic Christianity. Praising Johns Hopkins as a pioneer of America's new faith, Eliot hailed the new evolutionary science as the key to truth:

Physics, he claimed, offered the "law of conservation of energy."

Chemistry, he claimed, offered the "doctrine of indestructibility and eternal flux of atoms."

Biology, he claimed, offered the "principle of evolution through natural selection."

Science, he said, dispensed with the need that men had previously had for God, because science had proved that the physical world was self-contained and self-sufficient, needing no divine help from the outside to maintain or explain the physical world – the world of science.

Eliot's faith in the scientific method, with Darwinian evolution as the guiding principle of that method, acted as the keys to truth leading him outside the physical sciences into history, philosophy, theology, government and law.

EVOLUTION REVOLUTION IN LAW

Eliot moved first in the area of law, selecting Christopher Columbus Langdell as dean of the Harvard law school. Langdell, in his 25-year tenure at Harvard, led an evolution revolution in American law, moving its common law system from its Christian foundation to an evolutionary scientific one – where it remains firmly entrenched until this day.

A. American Law's Christian Beginning

To understand the significance of this transformation, consider the fact that Joseph Story – when he was inaugurated as the first Dane Professor of Law at Harvard – was in the vanguard of the movement at that time to save the common law of America from the populist revolution headed by Andrew Jackson and backed by Thomas Jefferson. Jackson and Jefferson maintained that the common law was the people's law and that its rules were subject to change by the majority vote of popularly elected legislative assemblies. Story and his allies insisted to the contrary – that the common law was unchanging, having been inscribed by God in the heart of every human being and into the created order.

Thus, in 1829 in his inaugural lecture as Dane Professor of Law, Story proclaimed: “. . . notwithstanding the specious claim of one of our distinguished statesmen . . . there has never been a period in which the common law did not recognise Christianity as lying at its foundations.” The statesman to which Story referred in this address was none other than Thomas Jefferson, whose essay denying the Christian foundation of the common law had appeared earlier that year.

Story’s view – that the laws of America were rooted in Christianity – had been the prevailing view in America since the 1606 founding of the Jamestown colony in Virginia. What Story meant by this was not that the American people had chosen to be ruled by law founded upon Christianity; rather that the American people had recognized that they had no choice – God ruled them by his law whether they wanted to be so ruled or not.

Thus, in an essay entitled “Natural Law,” Story wrote:

God has fashioned man according to his own good pleasure, and has fixed the laws of his being . . . the whole duty of man therefore consists in two things; first, in making constant efforts to ascertain what is the will of God; and secondly, in obedience to that will when ascertained As he is our lawgiver and judge, we owe an unreserved obedience to his commands

According to Story, when the American people had made God’s law the law of the land, it was by the fact that God was the Creator that his law ruled the affairs of men. All that the American people had done was to make a deliberate and conscious effort to submit and to conform to that law.

Story’s view of American law was also the prevailing view of English law, and it had been so since the 13th century when Bracton wrote these words in his seminal treatise on the common law:

The king . . . ought not be under man but under God, and under the law, because the law makes the king.

Ironically, these words of Bracton appear engraved (in Latin) at the top of the front wall of Langdell Hall – a building named for a man who did more than any one else at Harvard to get them erased in the classrooms inside.

What Bracton wrote in the 13th century would prove to be the foundation of the American revolution – a revolution designed to restore the rule of law that had been disregarded by a tyrannical king and parliament.

B. The Laws of Nature and of Nature’s God

In its opening paragraph, the Declaration of Independence explicitly states that America’s founders based their case for independence upon the laws of nature and of nature’s God. With this phrase the nation’s founders unmistakably embraced a Christian philosophy of law.

The phrase was not new – it had been well understood for centuries as a short-hand way of

acknowledging that God's will as revealed in nature and in the holy scriptures was the common law of all nations. The phrase was well known and well accepted in America, having been mediated through sir William Blackstone in his *Commentaries on the Laws of England*.

Blackstone's *Commentaries*, written between 1765 and 1769, were widely read and approved in America both before and after the American revolution. In chapter 2 of Blackstone's first volume, he wrote that the common law was based upon the Genesis account of creation in the Holy Bible. That law was the rule of God – the Creator – not just in the physical realm, but in every area of life, including human society.

This law of God was knowable, Blackstone claimed, because God had revealed it both in nature and in the holy scriptures. As for God's revelation in nature, he said, this was the law of nature – fixed as to time, uniform as to person and situation and universal as to place. All human law was derived either immediately or mediately from this revelation and any human law contrary to the law of nature was void, *i.e.*, not law at all.

As for the holy scriptures, Blackstone maintained that God had given the law of nature in writing because, after the fall of man in the Garden of Eden, his reason became tainted – no longer able to discover God's rules of law in the natural world. But God in his mercy wrote those laws of nature up in a book. Thus, the Ten Commandments and other rules were written so that man could better understand God's revelation.

Upon these, the laws of nature and of nature's God, all law governing civil societies depends. America's founders took this Blackstonian view of law and enshrined it in the first paragraph of the Declaration of Independence, and thereby chartered America as an independent nation upon God's revelation.

Not only that but America's founders committed America henceforth to be governed by God's revealed law – again the words are explicit – “*all men are created equal and endowed by their Creator with certain unalienable rights, among which are life, liberty and the pursuit of happiness – that to secure these rights governments are instituted among men.*”

Notice here that governments do not define rights nor do they invent the rules by which those rights are to be governed. Rather, civil governments are designed only to secure the rights that God has granted to all mankind equally.

C. A Christian Philosophy of Truth

Upon what foundation did America's founders base this philosophy of law and government? Again, the Declaration is explicit – *upon self-evident truths*. “We hold these truths to be self-evident.”

What makes a truth self-evident? By definition, not science – if a proposition requires reasoned proof based upon empirical observation, then by definition that proposition is not a self-evident truth. What, then, is a self-evident truth?

First, it must be established independent of man's mind, and in the case of the Declaration of Independence that independent source is God, the uncreated Creator. Indeed, to the 18th century mind, there was a distinct difference between "truth" and "opinion." *Truths* were only those ideas that actually and exactly conformed to God's reality; whereas *opinions* were those ideas that probably or possibly conformed to that reality.

America's founders did not rely upon their opinions to call the nation to fight a war for independence, nor could they have rallied the people to such a cause if it was based merely on opinions. No one is stirred to risk their lives, their fortunes and their honor by a statement that "we hold these opinions to be self-evident."

But they can be stirred by the clarion call, "*we hold these truths to be self-evident.*" For truths are absolutes, opinions are but relative. And there can be only one source of an absolute, and that is God, who is not bound by time or space. So the first point about truth is that a truth to be true must be created by God (who alone is infinite), not invented by finite mankind.

That brings me to my second point: a self-evident truth cannot be based upon man's reason, it can only be based upon God's revelation. If a claim of truth is founded in reason, then that claim is subject to doubts because of differences of culture, religion, language, and a host of other human factors. To overcome these doubts, there is only one source that can possibly transcend human cultural differences – again that source is God – who alone transcends all things.

The Holy Bible attests that God has revealed to all mankind in a universally understood language, *i.e.*, truths that all can know and understand. That is the testimony of Psalm 15 and of Romans 1:20.

Believing this to be true, America's founders – in defending their decision to fight against the mother country for their independence – relied on the universal truths revealed by God to all mankind, *that all are created equally in God's image, that God the creator has given all the rights to life, liberty and the pursuit of happiness.*

Only by making this universal appeal based upon the revelation of God, the creator of all, could the subscribers to the Declaration of Independence possibly have believed that the message contained in that great document showed "a decent respect for the opinions of mankind."

Finally, the third ingredient of self-evident truths is that they are God-imposed, not man adopted. Noah Webster in his great 1828 Dictionary of the American Language defined *self-evident* as follows:

Evident without proof of reasoning; that produces certainty or clear conviction upon a bare presentation to the mind.

A self-evident truth, then, is one that is not true because it satisfies the mind of man. Rather, it is true because it has been impressed upon man's mind. This point is clearly made by the apostle Paul in Romans chapters 1 and 2 where Paul writes that *the invisible things of God are known by man because God has imposed them upon each individual and in the created order.* Such truths are

rejected – not because they are unknown, Paul continues – but because they are not wanted. It is a problem of the will, not of the mind.

To summarize, then, America as a nation is founded on God’s truth, not upon man’s reason. Hence, the epistemology of the Declaration of Independence, and also the official epistemology of law and government in America, cannot be the empirical methodology of evolutionary science. Rather, it can only be the revelational word of God.

D. Self-evident Truths and Public Policy

America’s early statesmen from George Washington to Thomas Jefferson put these self-evident truths into practice, utilizing them as the foundation for the nation’s public policy. To illustrate this point, take Jefferson’s Statute of Religious Liberty enacted into law on January 16, 1786 in the Commonwealth of Virginia. The preamble of the statute sets forth the foundational principle upon which the American policy of disestablishment of religion originally rested:

Well aware that almighty God hath created the mind free, and manifested by his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion – who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his almighty power to do, but to extend it by its influence on reason alone. . . .

James Madison wrote in defense of Jefferson’s bill- citing as its foundation article I, section 16 of the 1776 Virginia Constitution which reads:

Religion, or the duty that we owe our creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.

Later, when Abraham Lincoln debated Stephen Douglas over slavery, Lincoln rested his case against slavery on the self-evident proposition that all men are created equal, relying upon the creation account in the book of Genesis proving that all human beings are one race, *i.e.*, all descendants of Adam and Eve and of Noah. Thus, the truth of legal equality could not be changed by men’s opinions.

This truth was also understood by America’s early lawyers, legislators, and judges from St. George Tucker to John Marshall to Joseph Story, and was applied in all areas of public policy – from property ownership, to contract making, to domestic relations. Jesse Root, the first compiler of case reports in the state of Connecticut, led the way when he wrote that the common law of America, by which all public policy must be measured, found its purist expression in the holy scriptures – which he called the Magna Charta of the United States of America.

E. The Evolution Revolution

Now let me take you back to where I began, when Charles William Eliot chose Christopher Columbus Langdell to be the Harvard law school dean in 1870. He did so with a purpose of accomplishing an evolution revolution in law – to replace the law’s godly foundation for an evolutionary scientific one. And succeed he did. Within 11 years Oliver Wendell Holmes, Jr. published his treatise on the common law, and with one short paragraph Holmes overruled 500 years of history. That paragraph is Holmes’s now famous statement:

The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy . . . even the prejudices which judges share with their fellow-men . . . primarily determined the rules by which men should be governed. The law embodies the story of a nation’s development through many centuries. . . . In order to know what it is, we must know what it has been, and what it tends to become.

Having divorced law from its divine foundation, Holmes cast about for a substitute authority, and not surprisingly he found it in judges. “What constitutes the law? . . . The prophecies of what courts will do in fact, and nothing more pretentious are what I mean by law. . . .” Holmes’ colleague John Chipman Gray picked this up and ran with it in his book, The Nature and Sources of Law, where he concluded that the law is nothing more and nothing less than the opinions of judges.

Why the shift from God to judges, from the divine to the human? It was because Holmes and Gray, like Langdell and Eliot, had shoved God and the book of Genesis aside on the assumption that Darwin had proved scientifically that all life had evolved over time by a process called *natural selection*.

They did not pause to ask if the new science were true – or even if the new science proved that there was no God. No, as the apostle Paul warned in the book of Romans, it was an act of will, not an exercise of the mind – what Holmes and Gray did in the late nineteenth century was to lead a judicial *coup d’etat* that continues to this day. This judicial usurpation of power began slowly enough, but by the mid-twentieth century it came into view for all to see.

In the case of *Cooper v. Aaron*, the United States Supreme Court had ruled that racial segregation in the nation’s public schools violated the equal protection clause of the fourteenth amendment. In *Cooper*, Arkansas Governor Orval Faubus resisted implementation of the court’s new ruling. Instead of ruling that Faubus’s actions violated the constitution as the supreme law of the land, the court ruled that Faubus violated the court’s ruling, which was the supreme law of the land.

And so it has been ever since. From pornography to religion, from abortion to sex discrimination, the high court has elevated itself above the rest of us, playing God as the final arbiter of truth in the government of American society. And its standard of truth has not been anchored to the self-evident truths set forth in the nation’s charter. Rather, its standard has been that of evolutionary science and existential philosophy.

This can best be illustrated with the high court's two leading abortion cases: *Roe v. Wade* and *Planned Parenthood v. Casey*.

In *Roe*, Justice Harry Blackmun did not seek a definition of life in accordance with the self-evident truth that God created life and endowed each creature with life as an unalienable right. Rather, he relied upon the latest embryological data which he claimed indicated that life was merely a natural process, not an event. And thus he invented the term "potential life" and applied it to a living human being so long as that being remained in the womb of the mother.

Likewise, he assumed that the process of conception was merely a matter of time and chance, independent of the will of any being. Thus, he asserted that a child, unwanted by its mother, was in fact an unwanted child. Not once did Justice Blackmun pause to ask the question whether God, as the author of life, had ordained each conception according to his plan and purpose.

Blackmun's evolutionary views simply did not permit him to consult any sources other than science. For as professor Phillip Johnson of the Law School at the University of California at Berkeley has pointed out, Blackmun had adopted the philosophy of naturalism as the beginning point of departure of his opinion, thereby reducing the nature of human life wholly to a physical phenomenon.

Having dehumanized pre-born children in order to deny them their right to life, the court then had to find a way to humanize women in order to grant to them the liberty to terminate their pregnancy. In *Roe*, women were portrayed as victims – victims of an unwanted pregnancy which imposed upon them psychological and economic hardships which they had not chosen. To free them from these adverse circumstances that were not of their choosing, the court granted to them the right to get out from underneath the burden of bearing and rearing a child that they did not want.

This rather negative justification – a kind of survival of the fittest – soon wore thin, so that the next time around the court put a more positive spin to the woman's right to choose. This time Justice Sandra Day O'Connor tried her hand at finding a justification for the woman's right to choose. She found that right not in evolutionary science, but in existential philosophy, *i.e.*, the right of the woman to authenticate herself, defining *liberty* as "the right to define one's own existence, of meaning, of the universe and the mystery of human life."

From evolutionary determinism to existential autonomy- the court has from the beginning rested its abortion decisions on the opinions of men, not the revealed truths of God.

As a consequence we are no longer *a government of laws, not of men*, as Chief Justice John Marshall promised us in *Marbury v. Madison*. And the reason for this is that judges, legislators, and executive officers no longer believe that they are controlled by any truth – only by their opinions, or the opinions of others, whether they be the opinions of experts or the opinions of the people expressed in the latest opinion poll or the most recent flurry of calls and faxes to their offices.

CONCLUSION

There is no place for truth in law and government today because there is no place for God. When Charles William Eliot began his campaign to transfer American education's allegiance from the Bible to science, he used a slogan from the Bible as the theme of his campaign. Quoting from John 8:32 – *and you shall know the truth and the truth shall set you free* – Eliot promised that the new science, not the old religion, was the key to truth.

What Eliot did, however, was to quote the Bible out of context, for verse 31 of John chapter 8 says: “if you abide in me, then you are my disciples and you shall know the truth and the truth shall set you free.” What did Jesus mean, *if you abide in me*? Was he calling for some kind of existential subjective identity movement? Not at all. In John 1:1 we learn that *in the beginning was the Word, and the Word was with God and the Word was God*. What Jesus was teaching was that the key to truth was the revealed word of God.

By this Jesus did not mean that we were to ignore the world around us. To the contrary, he taught his disciples to pay attention to what they see, hear, touch, and smell. To pay attention to the physical world, but not to confine themselves to that world, lest (as he put it in Matthew 16) *they would miss the sign of the times*.

And what was the sign that Jesus gave his disciples? Again in Matthew 16, he said, “No sign shall be given to you except the sign of Jonah.” The sign of Jonah – how unscientific could you get? Here was a man running away from God on a ship in a storm-tossed sea and he tells the mariners of the ship, “Throw me overboard and the storm will be over. And they threw him overboard,” and sure enough, the storm quieted down. You see, those mariners had missed the truth of whether or not to take Jonah as a passenger on their ship and to set sail, because they paid attention only to the empirical data available to them.

What was true then is true now – and whether it concerns a ship at sea as in Jonah's case – or the ship of state – God still rules and reigns. And as a ship that is built contrary to God's physical laws governing ships at sea will sink – so a ship of state built contrary to God's moral laws governing civil societies will sink.

Is there a place for truth in government? There is not only a place for truth, for without truth, based on the revelation of God, there can be no law and government – only tyranny.

Other writings by Herbert W. Titus:

America's Heritage: Constitutional Liberty

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Christian Roots in American Constitutional Law

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