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## The Bible and American Law

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# LECTURE

## THE BIBLE AND AMERICAN LAW

*Herbert W. Titus*<sup>†</sup>

### I. LECTURE

It is a joy for me to be here in Lynchburg, Virginia, and to visit with three of my former Regent University Law School colleagues—Roger Bern, Jeff Tuomala, and Barbara Baxter—now members of the law faculty at Liberty University School of Law. It is also a special joy for me to see the law school here. I remember talking to Pierre Guillermand, Liberty's then President, and Dr. Falwell, the Chancellor, back in the early 1980s about the possibility of starting a law school here. It is wonderful to see that God has brought to pass what was on the Chancellor's and the President's heart at this great university.

#### *A. God, Man, and Law*

The conventional wisdom today is that the Bible is irrelevant to the study and practice of law in America because law does not come by God's revelation, but only from man's reason. However, Sir William Blackstone, in his *Commentaries on the Laws of England*, begins his exposition of the English common law with the creation account in the biblical book of *Genesis*. Blackstone writes that God—man's Creator—imposes the rules that govern man—the created—and those rules govern all of God's creatures whether they believe in God or not.<sup>1</sup>

Now Blackstone speaks to this issue, but he does not speak fully to it. It is therefore important for those of us who believe in God to have our understanding illuminated so that we can defend the position that I believe that we must defend. We must be able to show clearly that God, as the creator of every nation,<sup>2</sup> has set down the rules that govern the civil society of every nation.<sup>3</sup> This is such an important position to defend since if God is not the

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1. See WILLIAM BLACKSTONE, 1 COMMENTARIES \*33-62.

2. "From one man [God] made every nation of men, that they should inhabit the whole earth; and he determined the times set for them and the exact places they should live. God did this so that men would seek him . . ." *Acts* 17:26-27 (NIV). See also *Psalms* 2.

3. See *Genesis* 9-11. In these chapters, "God, through the families of Noah, created all nations and established by His covenant with Noah as the father of nations the sanctioning

source of law—if every person is just trying to figure it out for himself—then we Christians do not have much more to offer than a different perspective. As a matter of fact, the danger in today's America is that this law school, its faculty, its students, and its graduates will be relativized because people will just dismiss the view that law is rooted in God and the Bible as just another opinion, not worthy of any truth claim.

If you look to Blackstone, however, he wrote that *every* human being is a creature of God, and as a creature of God *every* human being is ruled by God; and the rules that God lays down *every* human being is bound to obey.<sup>4</sup> Now, it is important to emphasize this point because our everyday vocabulary betrays that fundamental truth. For example, how many times have we heard it said that the Supreme Court of the United States has legalized abortion?<sup>5</sup> The answer is, "No they have not." Why? Because a majority of justices—indeed, even a unanimous court—cannot make straight what God has made crooked.<sup>6</sup> We must understand that the United States Supreme Court is not the source of law. The ruling in *Roe v. Wade* that a woman has a constitutional right to terminate a pregnancy,<sup>7</sup> may be the Court's opinion, but if we are going to determine whether the opinion of judges is law, must we not have a standard by which to measure it other than the court's own opinion? I like the way Blackstone put it: he said when a judge makes a mistaken opinion about law and then it is changed, it was not changed because it was "bad law," but because it was not law at all.<sup>8</sup> Blackstone could never have arrived at that position, if he had not relied upon the revelation of God as the standard outside of man used to measure whether a certain opinion is law.<sup>9</sup>

When the apostle Paul went into the city of Athens, as reported in the seventeenth chapter of *Acts*, picture Paul going into Boston or Cambridge, Massachusetts, because he was walking into the intellectual capital of the Roman Empire. In Athens, Paul discovered an altar to an unknown god, and he opened his message with the description of that god—God the Creator—by

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authority of civil government, as exemplified by Genesis 9:6." Herbert W. Titus, *The Bible: Law Book for the Nations*, in *FIRST STEPS TO STATESMANSHIP* 50-53 (D. Eby ed. 2001).

4. See WILLIAM BLACKSTONE, 1 COMMENTARIES \*33-62.

5. *Roe v. Wade*, 410 U.S. 113 (1973). See, e.g., C. Landwehr, *Roe v. Wade: An Elitist Decision*, in *TO RESCUE THE FUTURE* 19 (D. Andrusko ed. 1983).

6. See *Ecclesiastes* 1:15, 7:13, 11:5 and *Psalms* 139:13-17. Because God is the Creator of every human being, there is no such being as an "unwanted child."

7. *Roe v. Wade*, 410 U.S. at 164-65.

8. See WILLIAM BLACKSTONE, 1 COMMENTARIES \*70-71.

9. See *id.* at \*41-42. Blackstone's standard was twofold: the law of nature and the law of the Holy Scriptures, each of which contained God's revealed law, the latter being the most reliable.

proclaiming that every individual human being is a creature of God.<sup>10</sup> Paul proclaimed that from “one blood” God created “all nations,” setting their “boundaries” and their “times,” “that they should seek the Lord.”<sup>11</sup> Notice how significant this is. God is not only the creator of each human being individually, but God is the creator of the nations—*all* of the nations of the world, including the United States of America. As creator of each individual, does He not lay down the rules for every man, woman and child? And does it not follow that the Creator of every nation lays down the rules for *all* nations? Indeed, *Psalms* two is a testament of God’s rule over *all* nations.<sup>12</sup>

Recall with me *Acts* chapters four and five. These chapters picture a little “rag-tag” church preaching the gospel of Jesus Christ arrested by the religion department of the Roman Empire, charged with teaching in the name of Jesus. At that time, nothing could be done in the Roman Empire except in the name of Caesar. So, Peter and John were arrested and charged with teaching in the name of Jesus.<sup>13</sup> These two were unlearned men—they had not gone to law school—but they knew the law. As they stood before the Jewish rulers, who had been empowered by Caesar, they pled their case: if you be the judge, then judge first if you have jurisdiction over this matter, and make the decision whether you can tell us not teach in the name of Jesus.<sup>14</sup> In response, the Jewish rulers let Peter and John go, with instructions to cease teaching in Jesus’ name.<sup>15</sup>

In reply, the church held a prayer meeting, during which time in “one accord” they spoke from *Psalms* two: “Why did the heathen rage, and the people imagine vain things? The kings of the earth stood up, and the rulers were gathered against the Lord and against his Christ.”<sup>16</sup> Emboldened by the Holy

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10. *Acts* 17:22-34.

11. “[God] hath made of one blood all nations of men for to dwell on all the face of the earth, and hath determined the times before appointed, and the bounds of their habitation; That they should seek the Lord . . .” *Acts* 17:26-27 (KJV).

12. In *Psalms* 2 the psalmist asks:

Why do the nations conspire and the peoples plot in vain? The kings of the earth take their stand and the rulers gather together against the Lord and against his Anointed One. “Let us break their chains,” they say, “and throw off their fetters.” The One enthroned in heaven laughs; the Lord scoffs at them. Then he rebukes them in his anger and terrifies them in his wrath, saying, “I have installed my King on Zion, my holy hill.”

*Psalms* 2:1-6 (NIV).

13. *Acts* 4:7.

14. “But Peter and John replied, ‘Judge for yourselves whether it is right in God’s sight to obey you rather than God.’” *Acts* 4:19 (NIV).

15. *Acts* 4:16-17.

16. *Acts* 4:25-26 (NIV).

Spirit, the church received God's answer: the rulers could not require the church to teach in the name of Caesar.<sup>17</sup> Thus, Peter and John did not have to get a license from the civil government to preach the gospel. Peter and John went on teaching, only to be arrested again, and brought before the same Jewish rulers. The rulers questioned why they had not followed the rulers' earlier instructions. Peter and John replied: "We must obey God rather than men!"<sup>18</sup>

In today's world, most would construe this answer as an act of civil disobedience, contrary to law. While it was an act of civil disobedience, it was not contrary to law. Rather, it was Peter and John who were obeying the law, and the Jewish rulers who were in disobedience of God's law that prohibited any civil ruler from taking action against teaching in the name of Jesus.<sup>19</sup> Because God is the Creator of every nation, it is God's law that governs the authority and power of every civil ruler, not just with respect to the teaching of the gospel, but with respect to all matters.<sup>20</sup> God's word, therefore, should

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17. "But Peter and John replied, 'Judge for yourselves whether it is right in God's sight to obey you rather than God. For we cannot help speaking about what we have seen and heard.'" *Acts* 4:19-20 (NIV).

18. *Acts* 5:28-29.

Having brought the apostles, they made them appear before the Sanhedrin to be questioned by the high priest. "We gave you strict orders not to teach in this name," he said. "Yet you have filled Jerusalem with your teaching and are determined to make us guilty of this man's blood." Peter and the other apostles replied: "We must obey God rather than men! The God of our fathers raised Jesus from the dead—whom you had killed by hanging him on a tree. God exalted him to his own right hand as Prince and Savior that he might give repentance and forgiveness of sins to Israel. We are witnesses of these things, and so is the Holy Spirit, whom God has given to those who obey him."

*Acts* 5:28-32 (NIV).

19. Peter and John were simply obeying Jesus' Great Commission:

Then Jesus came to them and said, "All authority in heaven and on earth has been given to me. Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age."

*Matthew* 28:18-20 (NIV).

20. Paul describes God's ordination of civil authority in *Romans* 13:

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for

reveal to us the law that governs every civil society. Summing up, as we look to the Bible to see what the rules are for our individual lives, we should study the Bible to discover what the Scriptures say about civil society. How, then, shall we go about this task?

### *B. The Lawful Use of Law*

Let us return to Paul's sermon in Athens. Paul, who had been educated as a lawyer, knew what he was talking about when he spoke that from one blood God created all nations. He knew this because he had read Genesis chapters nine through eleven, which provides an account of the beginning of nations. You are familiar with the story, the story of Babel—how all the people had come together and begun to build a tower into the sky. Seeing this, God came down, scattered the people, divided them up by languages, and, as the Scripture teaches, out of the family of Noah, and the generations following, came all nations.<sup>21</sup> So nations were birthed at the time of the tower of Babel. This is very significant and I am going to get to the significance of that a little bit later.

What I want to do now is to return to Paul for a moment. I want to emphasize that Paul understood that the task of a Christian in reading the Bible as it relates to the nations—not as it relates to him as an individual believer—but to nations composed of believers and unbelievers is to understand how the law applies to the civil society. I find no better guidepost than the section in the book of *First Timothy*, where Paul says that we know that the law is good if it used lawfully.<sup>22</sup> Paul goes on to say, and this is what is so remarkable in twenty-first century America—that the law is not for believers, it is for unbelievers. It is not for people that behave themselves; it is for people that do not behave themselves. Is it not interesting that when you talk to an unbeliever today, the response is just the opposite? They say, "God's law may apply to you because you believe it, but don't you impose your beliefs on me!" Well, I

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nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer.

*Romans 13:1-4 (NIV).*

21. *Genesis 11.*

22. Paul says of law:

But we know that the law is good, if a man use it lawfully; Knowing this, that the law is not made for a righteous man, but for the lawless and disobedient, for the ungodly and for sinners, for unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for whoremongers, for them that defile themselves with mankind, for menstealers, for liars, for perjured persons, and if there be any other thing that is contrary to sound doctrine . . . .

1 *Timothy 1: 8-10 (KJV).*

discovered the opposite when I became a Christian. God's law governed me whether I believed in Him or not, and God's reality was there whether I believed it or not.

Now what is Paul saying? He says "the lawful use of law."<sup>23</sup> At first glance, that sounds like a lawyer trying to get a guilty client off. A closer examination reveals much more. This is a reminder of the dialogue between Jesus and the lawyer about loving his neighbor as himself, as recorded in chapter ten of the *Gospel of Luke*. In response to Jesus' admonition to obey the commandment, the lawyers asked, "who is my neighbor?" Immediately, Jesus discerned that the lawyer asked the question, not to know the lawful application of the law, but to "justify himself," dividing the world into neighbors and non-neighbors so that he could know whom he was not required to love.<sup>24</sup> Jesus did not answer that question, however, because it was based upon a wrong understanding of the law of love. Rather, Jesus illustrated the lawful use of the law of love with the story of the Good Samaritan.<sup>25</sup> This confirms Paul's point—that in order to act lawfully, we must know the lawful use of law.

Go back to the fourth and fifth chapter of *Acts*. What was that event about? It was about the lawful use of law. The Jewish rulers attempted to use the force of Caesar to stop Peter and John from teaching under the authority of someone other than Caesar. What is important here is to see is that was a battle over the lawful use of law. By stating that they would obey God, not man, Peter and John claimed that the Jewish rulers were guilty of an unlawful use of law. Jesus summarized that point when he was asked about paying taxes to Caesar: "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's."<sup>26</sup> That is a statement of jurisdiction—a statement of lawful use of law. Caesar claimed that everything belonged to him, to the State. Actually, that claim was what finally persuaded Pilate to "deliver Jesus over to be crucified": "We have no king but Caesar."<sup>27</sup>

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23. *Id.*

24. On one occasion an expert in the law stood up to test Jesus:

"Teacher," he asked, "what must I do to inherit eternal life?" "What is written in the Law?" he replied. "How do you read it?" He answered: "'Love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind'; and, 'Love your neighbor as yourself.'" "You have answered correctly," Jesus replied. "Do this and you will live." But he wanted to justify himself, so he asked Jesus, "And who is my neighbor?"

*Luke* 10:25-29 (NIV). After saying this, Jesus replied with the well-known story of the Good Samaritan, in *Luke* 10:25-37.

25. *Luke* 10:25-37.

26. See *Luke* 20:22-25 (KJV).

27. *John* 19:15-16 (NIV).

Who decides what belongs to Caesar? Well, Caesar would like to decide that, would he not? We see that even today, do we not? People who get into civil government, people who are legislators, people who are in executive office, even judges—they want to decide for themselves what lawfully belongs to them. The Bible, however, points us to a higher authority—to the Creator, someone other than a human being.

One of my classmates at the Harvard Law School was Richard Posner. Let me tell you, he was a class ahead of everybody else and we knew it. He was one of these people who could read something and he would know exactly what was on the page and would never forget it. When you are in competition with somebody like that, you really have to pray for God's grace. But if you will read Judge Posner carefully, you will see that he sets his own standard. He is very bright, very intelligent, and often times very, very persuasive. Nevertheless, he is his own standard.

The point is that we cannot measure the lawful use of law except by someone other than a human being—God himself and His revealed word. That is what Paul is talking about when he invokes the term, “the lawful use of law.”

### C. *The Law of Limited Civil Authority*

Let us now look at the thirteenth chapter of the *Epistle to the Romans*. We can all certainly agree that verse four addresses the role of the civil ruler as a minister of God.<sup>28</sup> In the Greek, he is a deacon of God, he is a servant of God.<sup>29</sup> Notice carefully that verse four authorizes the civil ruler to wield the sword against *wrong doing*.<sup>30</sup> Now, that is a very important first principle: The civil ruler has authority over *conduct*. Blackstone reflects this view in his definition of “municipal law,” *i.e.*, the law of civil society, describing it as “a rule of *civil conduct*.”<sup>31</sup> In criminal law, students learn that the two elements of any crime are the *actus reus*, and the *mens rea*. If there is no proof of an act (or

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28. Paul describes God's ordination of civil ministers in *Romans* 13:

For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer.”

*Romans* 13:3-4 (NIV).

29. JOSEPH H. THAYER, *THAYER'S GREEK ENGLISH LEXICON OF THE NEW TESTAMENT* 138 (4th ed. 2005). The word rendered “servant” in the NIV is *διακονος*, or deacon.

30. “He is God's servant, an agent of wrath to bring punishment on the *wrongdoer*.” *Romans* 13:4 (NIV) (emphasis added).

31. WILLIAM BLACKSTONE, *1 COMMENTARIES* \*44.



an omission of an act where there is a legal duty to act), there can be no crime. As Professors Wayne R. LaFave and Austin W. Scott, Jr. put it in their treatise on the criminal law, “[b]ad thoughts alone cannot constitute a crime.”<sup>32</sup> Notice the jurisdictional significance of this foundational premise: a person may be a murderer, but a civil government only has authority over an *act* of murder. A person cannot be charged with being a murderer because being a murderer is not conduct. The civil government does not have any authority over who you are, but only over what you do. Now, that is a very important distinction: the one between being and doing. Philosophers have struggled with that particular question for years, but many people understand that the bedrock of civil liberty is that civil government cannot take jurisdiction over who you are.

There are many people in civil society who say we cannot afford to wait before a murderer commits murder. Would it not be better to round up all the murderers before they ever commit murder? Would this not make society a lot safer? Yes, it might be a lot safer, but it would not be very free. It is important to understand that the first limitation on civil jurisdiction is God’s claim that He has exclusive jurisdiction over who you are. Think about it for a minute. David committed murder and adultery, but he was not a murderer or an adulterer, for the Bible teaches that David was a man after God’s own heart.<sup>33</sup> God claims exclusive jurisdiction over the heart of every human being. That is why *Proverbs* chapter twenty-one states that God moves the hearts of kings.<sup>34</sup> He moved the heart of Nebuchadnezzar,<sup>35</sup> he moved the heart of Pharaoh,<sup>36</sup> he moves the heart of George W. Bush, and he moves the heart of the leaders of all countries.

In short, God is the king of hearts. If it were otherwise, if civil rulers had authority over the people’s thoughts and feelings—over who they are—then the rulers could “round” the people up like cattle to “prevent” criminal conduct. The operative rule of that kind of civil society would be: “When in doubt, don’t let them out.” The Christian legal message to any civil society, however, is just the opposite. It is a message, first of all, of liberty—the message of freedom. It is a law of liberty to be able to claim that a ruler cannot put a person in jail because the ruler has good reason to believe that the person is a thief or a liar. No, the “lawful use of law” principle requires the civil ruler to refrain from

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32. W. LAFAVE & A. SCOTT, JR., *CRIMINAL LAW* 177 (1972).

33. *C.f.* 2 *Samuel* 11 and 12 with *Psalms* 51 and *Acts* 13:22.

34. “The king’s heart is in the hand of the Lord; He directs it like a watercourse wherever he pleases.” *Proverbs* 21:1 (NIV).

35. *See Daniel* 4.

36. *See, e.g., Exodus* 10:1.

putting a person in jail unless that person commits an act of wrongful “civil” conduct.

This brings us to a second point—not all conduct is “civil conduct.” For example, telling a lie is conduct, but it is not, standing alone, “civil conduct” enforceable by civil authorities. Thus, the Bible teaches that the jurisdiction of civil rules is limited to only “civil conduct,” not conduct in general. As Blackstone put it, municipal law concerns rules of *civil*, not *moral* or *faith* conduct.<sup>37</sup> While Blackstone states this as a matter of principle, he offers little guidance in the application of the difference between “civil” and “moral” or “faith” conduct.

Those students studying contract law know that there are promises that are enforceable in a court of law and promises that are not. In fact, the common law of contracts made a clear demarcation between promises made in pursuance of a commercial transaction and promises that concern “social” matters. In today’s litigious world, that line is not so clear. I remember reading not too long ago about a young lady who filed suit against a young fellow for breaking a date to the prom, claiming a breach of promise that cost her money spent on a dress, shoes, hairdo, and so forth. What happened to that case? Or what should have happened to that case? It should have been dismissed for lack of civil jurisdiction. Why? Because prom-going is not civil conduct. It is social conduct. Well, what is the difference? How can we tell the difference between what is civil and what is civilly enforceable and what is morally enforceable? May I suggest to you that the Bible gives us the answer? There are certain relationships that God has created between one human being and another human being that are governed not by force. Not by the civil ruler who wields the sword, but instead governed by—can I say it?—Love.

Let us go back and look at Jesus’ Good Samaritan story.<sup>38</sup> Remember Jesus is telling this story to illustrate the nature of the command: “Love your neighbor as yourself.”<sup>39</sup> This story is designed for the purpose of showing you what love is. In the story we hear of a Samaritan man walking down the street and seeing this person—a stranger—lying in the gutter. The Samaritan looks at the man in the ditch and the first thing he does is to ask whether the stranger has a job or makes any income, so that the Samaritan can ascertain if he really has a need of his help. Or, if the stranger were a woman, whether she had a husband or other man who might take care of her to see if she were eligible for help.

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37. See WILLIAM BLACKSTONE, 1 COMMENTARIES \*45.

38. Luke 10:30-37.

39. Luke 10:27 (NIV).

No, the Samaritan did not ask any questions concerning eligibility. You see, the Good Samaritan was not a social worker working for the State government to help those that the government had defined by law as eligible for help. Instead, the Good Samaritan just reached down, picked the stranger up, not knowing whether the guy deserved to be there or not.<sup>40</sup> For all the Samaritan knew, the guy had been in a fight, provoked by him, and had gotten the worst of it. But he did not ask any questions, did he? He did not ask questions, because the nature of love is that one acts to help another, wholly voluntarily and unconditionally.

Now go back to the dating situation. Is that not the kind transaction where one person calls another to ask them, "Would you like to go to the prom with me?" How would it be if the one on the other side of the line said: "Yes . . . , and I know you are going to have to take me because if you do not I can sue you." Or, what about the husband who is commanded to "love your wife as Christ loves the Church."<sup>41</sup> That command was one of the hardest things for me after becoming a Christian. I remember thinking, "Boy, I do not want to do that." I mean that might take some sacrifice. Of course, there are a lot of men like me.

So, let us suppose the legislature of the Commonwealth of Virginia decides it ought to pass a law that requires husbands to love their wives, and just to make it equal—the Commonwealth includes in that same law a provision requiring wives to submit to their husbands.<sup>42</sup> So, the law is passed and, the next thing my wife knows, I am out cleaning the garage. She knows I do not like to clean the garage. The only time I ever clean it is when I am really loving her, but now she knows that I am out cleaning the garage because I do not want to go to jail. It is the law! You see, the very nature of civil power undermines the law of love. It undermines it. It destroys it. It means that no longer is it governed by love, it is governed by fear of what the civil ruler might do if caught.

It is the same thing as  $2 + 2 = 4$ . Suppose a legislature enacted a law proclaiming that everyone must believe  $2 + 2 = 4$  and refrain from teaching others to the contrary. Thomas Jefferson addressed that question in his Bill for Establishing Religious Freedom, drafted in 1779.<sup>43</sup> First, he began with the

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40. "But a certain Samaritan, as he journeyed, came where he was: and when he saw him, he had compassion on him, And went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him." *Luke* 10:33-34 (NIV).

41. See *Ephesians* 5:25.

42. See *Ephesians* 5:22.

43. Thomas Jefferson, *A Bill for Establishing Religious Freedom*, in THE FOUNDERS'

self-evident truth “that Almighty God hath created the mind free, and manifested his Supreme will that free it shall remain.”<sup>44</sup> Thus, he concluded that “to suffer the civil Magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on the supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty.”<sup>45</sup>

Truth propositions, professions, and propagations are not the business of civil government. Such matters are to be governed not by the sword of Caesar, but by the Spirit of God; not by the fear of men, but by the fear of God. This foundational principle undergirds the very nature of civil liberty. This cannot be a workable principle for one who does not believe that God is God. If God is removed from the legal equation, what will take His place?

The great temptation in America today is to look to the State to deal with wrong opinions through laws prohibiting such matters as “hate crimes” or “offensive” speech. If a legal system posits that there is no God, or if God exists, He only created the world, winding it up like a clock to run by itself, then the great temptation is to look to the State to fill in for God. That is what we see today. Most Americans think that it is the State’s job to take care of the poor, to take care of our fathers and mothers in their older age—taxing the people and, thereby, undermining the law of love. In doing so, the government is destroying the liberty endowed by God. The very liberty that is supposed to be secured—not usurped—by the civil authorities.<sup>46</sup>

#### *D. The Law Granting Civil Authority*

Now that we have examined the Bible to determine the law that tells us what a civil government cannot do, let us see what the Bible says that civil government can do. Take the death penalty, for example. It is rather controversial—one of many legal and political battlegrounds in America today. Going back to *Genesis* chapters nine, ten, and eleven, God authorized—indeed commanded—Noah, as the father of nations, to take the life of anyone who took the life of another.<sup>47</sup> Today, many in America and around the world, react to this commandment in horror, exclaiming that the death penalty is unfit for a civilized nation.<sup>48</sup>

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CONSTITUTION 77 (P. Kurland & R. Lerner, eds, 1987).

44. *Id.*

45. *Id.*

46. See THE DECLARATION OF INDEPENDENCE (U.S. 1776).

47. *Genesis* 9:6.

48. See, e.g., Hugo Adam Bedau, *The Case Against the Death Penalty* (2002), <http://users.rcn.com/mwood/deathpen.html> (last visited Sept. 6, 2008).

Let us examine capital punishment from a Biblical perspective. First, we learn that prior to the covenant with Noah, no human institution was authorized to enforce the law of murder. It was not that the law against murder did not exist, for we know that when Cain killed his brother Abel, there is no question that he violated the law.<sup>49</sup> While a penalty was imposed upon Cain for the murder of his brother, it was not by the hand of man, but by the hand of God.<sup>50</sup> Indeed, God warned Cain's fellow men not to impose any sanction on Cain for Abel's murder, lest they bring upon themselves an even greater punishment.<sup>51</sup> After the flood, however, God cut a new covenant with Noah, authorizing the creation of civil government and commanding the civil rulers to protect innocent human life by implementing the death penalty for murder.<sup>52</sup> This covenant had a twofold purpose: (1) To stop the unauthorized imposition of the death penalty by vigilantes like Lamech, who used the law as a tool of personal vengeance,<sup>53</sup> contrary to God's law prohibiting such individual action;<sup>54</sup> and (2) To protect those who did "good," those who were obeying the commandments of God, as Paul attests in his epistle to the *Romans*.<sup>55</sup>

Now what "good" is Paul talking about here? Again, we must return to *Genesis*, this time to *Genesis* chapter one, where God said to Adam and Eve, "be fruitful, multiply, and exercise dominion over the fish of the sea, the fowl of the air and the creeping things and all of the earth"—the dominion mandate.<sup>56</sup> Well, what happened to Abel's dominion mandate after Cain killed him? Abel was no longer able to fulfill that command. He was deprived of the ability to carry out God's first great commission—to "be fruitful, and multiply, and replenish the earth, and subdue it; and have dominion."<sup>57</sup> The foremost purpose of the mandate in *Genesis* chapter nine, then, was to authorize the civil government to protect human life, so that individual human beings would not be deprived of their duty and authority to exercise dominion. Indeed, what happened during the period from Cain's murder of Abel to the flood was the complete deterioration of law and order in human society<sup>58</sup>—dominated

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49. Indeed, the very land cried out as a witness that Cain's killing of Abel was contrary to the "law of the land." See *Genesis* 4:10.

50. *Genesis* 4:11-13.

51. *Genesis* 4:14-15.

52. "Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man." *Genesis* 9:6 (NIV).

53. *Genesis* 4:23-24.

54. See *Romans* 12:19.

55. *Romans* 13:3. See also *Romans* 4.

56. *Genesis* 1:26-28 (NIV).

57. See *Genesis* 1:28 (NIV).

58. See *Genesis* 6:5.

presumably by thousands of “Lamechs”—so that no one was safe from someone who would kill him without cause.<sup>59</sup> After the flood, God promised Noah that He would never destroy the earth and its inhabitants again, renewing His dominion covenant by commanding Noah to “be fruitful and multiply upon the earth.”<sup>60</sup>

How, after the flood, could a law-abiding person exercise dominion without additional protection? What kind of a God would He be if, after commanding Noah to multiply, replenish, and have dominion, God did not put in place means whereby law-abiding persons could secure, at least their lives, from a recurrence of the same evil that had occurred before the flood? By cutting a new covenant with Noah as the father of nations, God created civil government with authority to protect innocent human life by the death penalty so that the same destructive spiral would not occur again. Thus, the first duty of civil government is to protect the unalienable right to life, as the Declaration of Independence, the charter of our Nation, attests: “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, among which are life, liberty and the pursuit of happiness; that to secure these rights governments are instituted among men . . . .”<sup>61</sup>

What is there that is self-evident, if God does not exist? Why would human life deserve special protection if God had not created human life distinct from all other life—equally in His image?<sup>62</sup> Indeed, it is because man is created in God’s image that God authorized the death penalty for murder,<sup>63</sup> thereby affirming the uniqueness of the human life of both the victim and the perpetrator. And why would not God reveal to Noah that the most important authority that He is granting to the new civil institution is to protect life? Because if the right to life is not secured, then a person is completely deprived of the dominion authority that God has commanded him to exercise.

Notice that *Genesis* chapter nine does not extend the same protection to the life of the fish of the sea, the fowl of the air, and the creeping things and cattle on the earth. To the contrary, God repeals the original dominion authority that limited man to a vegetarian diet, authorizing man to eat meat, although not the

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59. Lamech was the second murderer mentioned in the Bible. “And Lamech said unto his wives, Adah and Zillah, Hear my voice; ye wives of Lamech, hearken unto my speech: for I have slain a man to my wounding, and a young man to my hurt. If Cain shall be avenged sevenfold, truly Lamech seventy and sevenfold.” *Genesis* 4:23-24 (NIV).

60. See *Genesis* 6:17.

61. See DECLARATION OF INDEPENDENCE (U.S. 1776).

62. Cf. *Genesis* 1:26-27 with *Genesis* 1:21, 24.

63. See *Genesis* 9:6.

blood, of animals.<sup>64</sup> Today, we live amongst people who have bought into Darwin's theory of evolution, claiming that man is just another animal. Thus, they have rejected the self-evident proposition that all men are created equal, endorsing the theory that all animals are created equal. Now these people do not behave that way—I have yet to see PETA defend mosquitoes, but that may come. Others reject the proposition that all men are created equal by substituting a “quality” of life theory for the absolute sanctity of life that follows from each human being having been created in the image of God, all endowed with the responsibility of being fruitful, multiplying, and exercising dominion.

The first order of business of any civilized society therefore, is to protect human life. This is why abortion is such an important issue. Christians are often accused in America today as being overly concerned about that “one issue.” Well, I cannot think of any better issue to be concerned about than the protection of innocent human life in the womb of the mother. Indeed one could say God was a one-issue God because He did not address any other issue in the Noahic covenant other than life. Reflecting on that for just a moment, however, if a civil government has the authority to impose the death penalty to protect life, then would it not be that the greater authority subsumes all other authority as it applies to the dominion mandate?

Let us go back and look at that great commission. Notice that it is two-pronged. The first prong is often overlooked: “Be fruitful and multiply.”<sup>65</sup> Recent demographic studies affirm a remarkable truth: that to stay even, a nation's populace must multiply.<sup>66</sup> If nations do not multiply, they lose ground. They shrink. Now, think about that for a minute. This great dominion

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64. God's command in *Genesis* 9 was to:

Be fruitful and increase in number and fill the earth. The fear and dread of you will fall upon all the beasts of the earth and all the birds of the air, upon every creature that moves along the ground, and upon all the fish of the sea; they are given into your hands. Everything that lives and moves will be food for you. Just as I gave you the green plants, I now give you everything.

*Genesis* 9:1-3 (NIV). The original dominion mandate limited Adam and Eve to eating “seed bearing plants.”

Then God said, “I give you every seed-bearing plant on the face of the whole earth and every tree that has fruit with seed in it. They will be yours for food. And to all the beasts of the earth and all the birds of the air and all the creatures that move on the ground—everything that has the breath of life in it—I give every green plant for food.” And it was so.

*Genesis* 1:29-30 (NIV).

65. *Genesis* 9:1 (KJV).

66. See generally, MARK STEYN, *AMERICA ALONE: THE END OF THE WORLD AS WE KNOW IT* (2006).

commission necessarily accompanies, or has to be accompanied, by being fruitful and multiplying.

Put yourself in Adam and Eve's place: God, you have got to be kidding! This whole vast earth! We have to exercise dominion over all these fish and all these fowl! You have to be kidding! Ah, but, God would respond; "That's why I created you Adam and Eve; that's why I created you man, and woman. In order to carry out the dominion mandate I have created you to be husband and a wife and have children." Thus, this passage in *Genesis* does *not* state that a man shall leave his mother and father and cleave to Steve—Adam and another man cannot produce children. Adam and Eve are created so that, as husband and wife, they can reproduce children, who in turn can reproduce and so on through generation after generation. The dominion mandate is both present and future. In order to carry out the dominion mandate, mankind must multiply because it would otherwise be impossible to exercise the dominion duty and authority set forth in *Genesis*.

What was mankind's response to this command after the flood? They built the Tower of Babel, refusing to exercise dominion, taking a short cut to heaven.<sup>67</sup> Why? Because in the exercise of dominion after the sin of Adam and Eve in the garden, and after the flood, women continued to experience the curse on Eve and men, the curse on Adam. In their labors, women experienced overwhelming "sorrow"; men, "thorns and thistles."<sup>68</sup> Not surprisingly, just a few generations after Noah, man rebelled once again, not wanting any of this dominion stuff.

By scattering the people into nations, God exercised His sovereign authority, confusing languages and imposing such conditions on all humankind so that the

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67. *Genesis* describes the Tower of Babel as follows:

Now the whole world had one language and a common speech. As men moved eastward, they found a plain in Shinar and settled there. They said to each other, "Come, let's make bricks and bake them thoroughly." They used brick instead of stone, and tar for mortar. Then they said, "Come, let us build ourselves a city, with a tower that reaches to the heavens, so that we may make a name for ourselves and not be scattered over the face of the whole earth." But the Lord came down to see the city and the tower that the men were building. The Lord said, "If as one people speaking the same language they have begun to do this, then nothing they plan to do will be impossible for them. Come, let us go down and confuse their language so they will not understand each other." So the Lord scattered them from there over all the earth, and they stopped building the city. That is why it was called Babel—because there the Lord confused the language of the whole world. From there the Lord scattered them over the face of the whole earth.

*Genesis* 11:1-9 (NIV).

68. See *Genesis* 3:16, 18 (NIV).



dominion authority would be exercised under the protective power of civil government. Now how can the civil authorities foster and protect the exercise of dominion authority if the laws of a civil society do not prohibit rape, adultery, fornication, sodomy, bestiality, and other sexual conduct outside the marriage covenant? In light of the dominion mandate, issues of sexual behavior are not “moral” issues outside the jurisdiction of civil government. Rather, they are matters of “civil conduct” because to permit them without civil sanction is to permit conduct that threatens the very heart of the dominion mandate—the godly family of one man/one woman committed for a lifetime. Humans cannot fulfill the great commission outside the family relationship. Hence, the issues of sexual behavior are not just matters of Christian morality, but concern the economic survival of any nation.

Do we realize what is happening to the western world that used to be called Christendom? What is happening in Europe? The nations of Europe are on a suicide march. The Dutch, the English, the Germans, the Italians, the Russians. Why? Because they are refusing to multiply; and by refusing to multiply, they are disobeying the dominion mandate.<sup>69</sup> Civil governments are failing to carry out their divine mandate, to protect and foster the family in order for the dominion mandate to be carried out. Instead, repealing laws prohibiting sexual behavior outside of the godly marriage, those governments are contributing to the ultimate destruction of their economies.

Today, many in America and abroad argue for “sexual freedom,” that sex is a matter of individual choice and that the *Declaration of Independence* protects “liberty.” But what is liberty? Just because a person is able to do something does not mean that he is “free” to do it. Our founders understood that pornography, for example, was not freedom of speech.<sup>70</sup> However, today’s United States Supreme Court does not know the difference.<sup>71</sup> Consider the Court’s definition of pornography—what appeals to the prurient interest of the average person.<sup>72</sup> Well, the grossest pictures of human sexual perversion do not appeal to the prurient interest of the average person; rather, they are revolting. So the worse the pornographic picture, the less pornographic and the more free, because of its lack of appeal to the prurient interest of the average person!

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69. See Mark Steyn, *It's the Demography, Stupid*, WALL ST. J., Jan 4, 2006.

70. See *Chaplinsky v. New Hampshire*, 315 U.S. 568 571-72 (1942).

71. See, *Miller v. California*, 413 U.S. 15 (1973); *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564 (2002); *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997).

72. *Miller v. California*, 413 U.S. 15, 24 (1973).

The Bible teaches, however, that liberty is a matter of law,<sup>73</sup> not measured by the average person, or by any other human standard. What does the Bible teach about this “law of liberty?” Too often, Christians point to Adam and Eve as examples of man’s liberty, evidencing the existence of “free will” in their disobedience of God in the garden. The perfect example of free will and of the law of liberty is not fallen man, but the perfect man, the Lord Jesus Christ. The place to look for evidence of the law of liberty is not in the garden of Eden, but in the wilderness encounter between Jesus and Satan.<sup>74</sup>

In the wilderness, Jesus expressed perfect freedom by choosing to obey the Father, choosing to be and to do as God had created Him to be and to do.<sup>75</sup> Thus, Jesus was the perfectly free man.<sup>76</sup> Adam and Eve are not examples of freedom. They are examples of license. Just because a person is able to have sex with another person of the same sex does not mean that a person is “free” to do it. There is a difference between freedom and ability. It is important for us to see that the laws prohibiting sexual relationships outside of marriage are laws that protect liberty and prohibit license.

Having examined the first prong of the dominion mandate, let us examine the second one—the exercise of dominion over the fish of the sea, the fowl of the air, the cattle and creeping things on the earth, and the earth itself. As the civil government has authority to secure human life and liberty, it has authority to secure private property. Look at the section in *Genesis* chapter two where God reveals that He put human beings on the earth to “dress and keep the Garden of Eden.”<sup>77</sup> What? Not to keep the wilderness, but the garden. To till it. Today, many think of the Garden of Eden as a kind of paradise where no one had to work. It was already beautified and you did not have to do anything. *Genesis* reveals otherwise. It says that God put Adam in the garden to work. Now what happens if you are working and working and along comes some scumbag and steals the produce that you worked so hard to grow and

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73. See *James* 1:25.

74. See *Matthew* 4:1-11.

75. Matthew reports the Temptation in the Wilderness as follows:

Then was Jesus led up of the Spirit into the wilderness to be tempted of the devil. And when he had fasted forty days and forty nights, he was afterward an hungred. And when the tempter came to him, he said, If thou be the Son of God, command that these stones be made bread. But he answered and said, It is written, Man shall not live by bread alone, but by every word that proceedeth out of the mouth of God.

*Matthew* 4:1-4 (NIV).

76. See *Philippians* 2:5-11.

77. “And the Lord God took the man, and put him into the garden of Eden to dress it and to keep it.” *Genesis* 2:15 (KJV).

harvest. That is theft, and God has raised up the civil government to secure one's rightful ownership of property.

In his *Commentaries on the Laws of England*, Blackstone traces the law of private property back to the book of *Genesis*.<sup>78</sup> According to James Kent, the "American Blackstone," the idea of private property is inescapable, having been written in the very heart of every man.<sup>79</sup> It is just the way mankind was created. That is what dominion is all about, including man's relationship with the animals. Because animals are created after their kind—not as man, created in God's image—animal's have no rights independent of man's claim on them and God's revelation of the limits upon man's authority in his use of them.<sup>80</sup> Today, the animal rights movement would have us believe otherwise, asserting that animals deserve the same treatment as human beings. Ironically, it is not the apes asking more rights for the apes, it is human beings leading the "animal rights" movement. The dominion mandate is truly inescapable.

In sum, the Bible teaches the principles underlying property ownership, use and enjoyment, and those principles lay at the foundation of property, contract, and tort law. Indeed, all the subjects that are studied in the first year of law school relate directly or indirectly to the dominion authority that God has granted to mankind and the role of civil government to foster and secure that authority. In order for the civil government to stay within its God-ordained jurisdictional boundaries, however, it must first secure to the people those duties that rightfully belong to God exclusively. As James Madison put it in his great Remonstrance:

Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe; and if a member of Civil Society, who enters into any subordinate Association, must do it with reservation of his duty to the General Authority; much more must every man who becomes a member of a particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign.<sup>81</sup>

After securing such rights, then one must determine what the civil government may lawfully do and what the civil government cannot do, as revealed by Scripture to protect human life, to secure the human family order, and to protect private property.

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78. WILLIAM BLACKSTONE, 2 COMMENTARIES \*1-37.

79. JAMES KENT, 2 COMMENTARIES ON AMERICAN LAW 255-57 (1827).

80. See, e.g., *Genesis* 9:4; *Exodus* 20:10.

81. James Madison, *Memorial and Remonstrance Against Religious Assessments*, in THE FOUNDERS' CONSTITUTION, *supra* note 43, at 82.

*E. God's Call on the Christian Lawyer*

There are many issues to resolve, some of which the Bible speaks to and some of which the Bible does not. For example, the Bible gives a very specific definition of murder and the Bible addresses very specifically the death penalty with regard to murder,<sup>82</sup> but there are many tough questions, the answers to which are not self-evident.

I will never forget an encounter I had with one of my former undergraduate philosophy professors who had learned of my conversion. About two months after I was saved, he asked me whether the verse in the eighteenth chapter of *Leviticus* that prohibits sexual intercourse with a woman during her menstrual cycle commands civil government to make such an action a crime.<sup>83</sup> At the time, I did not even know the verse existed, much less did I have any idea of the answer to his question. Of course, his immediate assumption was that since the Bible prohibits sexual intercourse during the menstrual cycle of a woman, then that must be a crime. I was really troubled that I had no idea how to answer that question, even though I taught criminal law in the law school.

After that encounter, I was determined to study the Bible and with God's help to know how to answer the tough questions. I began to search the Scriptures, asking God to show me how to understand His word so that not only could I teach my students, but I could be a witness as a lawyer for Him. God was so faithful, revealing to me that *Mark* chapter seven, verses seventeen through twenty-three was the key to the Darwinian puzzle that had haunted me as an ardent believer in evolution.<sup>84</sup> Before I met Christ, I wondered how a person could be held responsible for a criminal act, if we as human beings are only products of our genes and environment. Jesus answered that question when He explained that it is not what comes from outside the man that defiles the man—not his genes or his environment—but what comes from within—his

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82. See, e.g., *Numbers* 35.

83. "Do not approach a woman to have sexual relations during the uncleanness of her monthly period." *Leviticus* 18:19 (NIV).

84. The verse in *Mark* reads as follows

After he had left the crowd and entered the house, his disciples asked him about this parable. "Are you so dull?" he asked. "Don't you see that nothing that enters a man from the outside can make him 'unclean'? For it doesn't go into his heart but into his stomach, and then out of his body." (In saying this, Jesus declared all foods "clean.") He went on: "What comes out of a man is what makes him 'unclean.' For from within, out of men's hearts, come evil thoughts, sexual immorality, theft, murder, adultery, greed, malice, deceit, lewdness, envy, slander, arrogance and folly. All these evils come from inside and make a man 'unclean.'"

*Mark* 7:17-23 (NIV).

heart. Armed with that new revelation of individual responsibility and accountability, I quoted from *Mark* chapter seven in my first criminal law class after my conversion, as an “historical” introduction to the study of law—that if the students wished to understand the criminal law, they must understand that the basic principles of the law are based upon Jesus’ understanding of who man is as revealed in *Mark* chapter seven.

I will never forget the response. Instead of a discussion, my Biblical reference provoked a protest against bringing the Bible into a law school classroom at a state university, in violation of the separation of church and state. Little did I know at the time that God was preparing me for the battles to come at both Oral Roberts University School of Law and Regent University School of Law to obtain American Bar Association approval for a law school dedicated to the educational mission of bringing the Bible to bear on American law at the close of the twentieth century.

This battle is not just one affecting accreditation of law schools. Rather, it is a battle for the legitimacy of a Bible-based legal education and practice. Thus, it is our duty as Christians to know what we believe and why we believe the Bible as lawyers. If we do not understand the Bible as it applies to civil rule and to the ministry that God is calling us as lawyers in civil society, then we will not be able to defend our viewpoints. Oh, we may be able to defend our client in certain circumstances, but should we always be playing by their rules? No. I believe that God is calling Christian men and women today to be ministers of truth in law in the courtrooms and in the law offices across America and that each of us has a duty to understand how the Bible relates to what we do—whether one is a prosecutor, or a defense attorney, or a personal injury lawyer, or an estate planning lawyer, or an elder lawyer, or whatever it is that God may call you to do. It is important for you to have an understanding, a Biblical understanding of the substantive law, as well as a commitment to the ethical principles that should guide your life in the practice of law.

## II. QUESTION AND ANSWER SESSION

Q. Could you explain your understanding of the relationship between natural law and the Bible, natural law as historically understood by our founding fathers, and the role that it plays in the twenty-first century?

A. Well, I think Blackstone puts it best where he distinguishes between the “law of nature” and “natural law.” This is a very important distinction that our founders understood quite well, because if you look at the Declaration of

Independence, it says “the laws of nature and of nature’s God.”<sup>85</sup> It does not say “natural law.” So, this nation was deliberately founded on the laws of nature and the nature’s God. Now, the way that Blackstone puts it and he says the law of nature is God’s will revealed in nature, in the natural world. *Psalms* nineteen, for example is a scriptural affirmation that the law of God can be seen in the natural world. That is the world that God created. *Romans* chapter two, likewise, is a testament that the law is written on the heart of every human being. That would be an example of the law of nature as God’s law revealed not only in nature but also in the Holy Scripture. Now, what Blackstone then said was that natural law is man’s best understanding of God’s revelation. Now, let me try to illustrate that. Today’s lecture is a natural law lecture. Why? Because I am trying to give you my best understanding of what I think the word of God reveals. What is your task? Your task is to go to the Scripture and find out under the tutelage of the Holy Spirit, is he right about that or is he wrong about that. That is our duty is it not? There is another natural law tradition which is completely divorced from God’s revelation—A natural law tradition that is based upon, you know, looking to human beings without acknowledging that there is a Creator. There is then a severance between natural law and the law of nature. In many ways, the enlightenment did that. The enlightenment came along and tried to cut off the law of nature from God’s revelation, but that certainly is not the heritage of this country.

Q. Sir, you stated a few minutes ago that the civil law undermines the law of love. If that is the case, it seems to me that the civil law can be used to create an environment where the law of love can grow—not be undermined by it. What do you think about that?

A. Yes, I believe that and the best way for civil government to foster the love of law is to stay out of the business of love. It is interesting to me that there is a whole school of Christian thought that basically says “that it is the duty of Christians to reach out to the poor, and then they say it is the duty of the government to reach out to the poor.” Now to me, that is interfering with the law of love because it undermines the law of love whenever the state comes into the equation. Look at Article One of Section Sixteen of the 1776 Virginia Constitution.<sup>86</sup> This section defines freedom of religion by saying that religion,

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85. See THE DECLARATION OF INDEPENDENCE (U.S. 1776).

86. The Constitution of 1776 reads:

That religion, or the duty which we owe to 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,

or the duty we owe to our creator, is enforceable only by reason and conviction, not by force or violence.<sup>87</sup> That is what free exercise of religion is, those duties that by nature can only be enforced by the Holy Spirit. Now, what is interesting is that at the end of Article One, Section Sixteen says this: "it is the mutual duty of all to practice Christian forbearance, love and charity towards each other."<sup>88</sup> Now, that is interesting. It is the mutual duty, not civil duty, but mutual duty. What is a mutual duty? That is one that is voluntarily assumed, right? And, it says the mutual duty of whom? Of all, not just believers, not just Christians, but everybody, to practice Christian forbearance, charity and love. So, you can see there is a specific application of "free exercise of religion" that means that if the civil government is going to foster the law of love, the first order of business is to stay out of it, leave us alone, let God deal with us.

Q. Dean Titus, you touched on the topic of jurisdiction and the states and the federal government of the United States. In the *Terry Schiavo* case,<sup>89</sup> it would appear that there was a chance for Governor Bush to interpose himself between the ruling of the Supreme Court and the treatment of Terry Schiavo. Doing so would have put him into opposition with his brother who would have been the Chief Executive of the government of the United States, if he tried to enforce the Court's order. Would you like to comment on that?

A. Well, two comments. One is that I talked with the Governor's Counsel, not in this round, but an earlier round. We were encouraging Governor Bush to interpose on the grounds that he was the Chief Executive officer under the State Constitution. Interestingly, under the Florida State Constitution as Chief Executive officer he has a much broader powers than other governors in other states under their constitutions. I talked to the lawyer to persuade her to persuade him to interpose and actually wrote a memorandum that I sent to her and it ended up on internet, you can probably find it out there somewhere. The Governor did not do it. Now, in my view that was the Governor's

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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.

VA. CONST., art. I, § 6 (1776).

87. *Id.*

88. *Id.*

89. The cases collectively referred to as the "*Terry Schiavo* case" include: *In re The Guardianship Of Theresa Marie Schiavo, Incapacitated*, 2000 WL 34546715 (Fla. Cir. Ct. 2000); *In re Guardianship of Schiavo*, 780 So.2d 176 (Fla. Dist Ct. App. 2001); *Schiavo ex rel. Schindler v. Schiavo*, 357 F.Supp.2d 1378 (M.D. Fla. 2005); *Schiavo ex rel. Schindler v. Schiavo*, 358 F.Supp.2d 1161 (M.D. Fla. 2005); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223 (11th Cir. 2005); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289 (11th Cir. 2005).

responsibility because he is the executive officer. What is the duty of the executive officer of the Florida state government? It is to defend, preserve, and protect the constitution of Florida. It is the same thing with the President of the United States, to defend, preserve and protect the Constitution of the United States. Just because a court has made an order does not mean that the Governor should allow it to be carried out. Judges do not carry out their own orders. They have no executive power. It is like when Alexander Hamilton said in the Federalist papers. Hamilton recognized that all a court has is judgment.<sup>90</sup> In that particular case, therefore, I believe had Jeb Bush intervened at the earlier stage, before it became this incredible political football, he had the opportunity to interpose and prevented all of that from happening. I do not believe that the Congress had the authority to interpose nor do I believe the President had the duty to interpose. That is the problem in America today is that we often times think we have got to go to Washington D.C. for every problem and we forget that we are a federal union. We ought to be the first ones to see that because this federal system is patterned after the nation of Israel in the scriptures. Israel had the twelve tribes and the central government.<sup>91</sup> The big things they took to Moses, and the small things they took to the leaders of thousands, hundreds, and tens.<sup>92</sup> It is the federal system and structure.

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90. Hamilton wrote in FEDERALIST no. 78:

The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

FEDERALIST no. 78 (Hamilton).

91. The biblical figure of Jacob, who God renamed Israel, had twelve sons. See *Genesis* 35:23-26. These sons were the patriarchs and namesakes of the Twelve Tribes of Israel.

92. The text refers to a section in the book of Exodus where Moses established a governmental structure for the Israelites. Initially, Moses was hearing and deciding all governmental matters by himself. Moses' father-in-law Jethro sought counsel with Moses to suggest a superior governmental structure.

Listen now to me and I will give you some advice, and may God be with you. You must be the people's representative before God and bring their disputes to him. Teach them the decrees and laws, and show them the way to live and the duties they are to perform. But select capable men from all the people—men who fear God, trustworthy men who hate dishonest gain—and appoint them as officials over thousands, hundreds, fifties and tens. Have them serve as judges for the people at all times, but have them bring every difficult case to you; the simple cases they can decide themselves. That will make your load lighter, because they will share it with you. If you do this and God so commands, you will be able to stand the strain, and all these people will go home satisfied."



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Moses listened to his father-in-law and did everything he said. He chose capable men from all Israel and made them leaders of the people, officials over thousands, hundreds, fifties and tens. They served as judges for the people at all times. The difficult cases they brought to Moses, but the simple ones they decided themselves.

Exodus 18:19-26 (NIV).