

## Random Thoughts — Society, Law and Truth

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“Post hoc, ergo propter hoc<sup>1</sup>.”

The nation, it is said mostly (I think) by those who are not particularly well versed in history or jurisprudence, is one of law. The context is generally that of “The law applies to everyone.” Also implicit in this context is that there are no exceptions. This approach is somewhat akin to the popular and misguided principal of “zero tolerance” for a proscribed action, activity or infraction. It is a pernicious treatment applied to a situation that typically would merit a well-reasoned approach, tempered by the circumstances and events leading up the situation. Since it is a mindless solution to either a real or imagined problem, there often ensues an unfortunate consequence to one or more individuals. This is hardly a proper approach by a well-reasoned society. It is also the backdrop for this discourse.

It is also necessary, from a historical perspective, to acknowledge the influence of religion on the formulation of our rules governing civilized behavior. While the Judeo-Christian Bible is used as a reference for the discussion, one could just as easily use the Qu’ran or Principles of Buddhism, or any other well defined religion. The Bible being at least well-known, if not well read, it will serve as the referent authority. In this regard, the intent is not to recognize any particular religion; rather, the intent is to recognize that the Bible was, first and foremost, an account of man’s struggle to survive in a harsh world. It is also a codification governing human behavior, a guide for resolving disputes, and a historical background that serves to explain the underlying principles that evolved to guide human behavior in day to day life. Furthermore, it provides cautionary and allegorical tales and parables to illustrate the consequences of humankind’s actions. It is hardly surprising that it served as a standard for principles governing human behavior, as well as a guide for resolving disputes.

(Some would say that some laws are intended to be advisory. That is neither sensible nor true. It is not sensible, for laws either must apply or they do not. They cannot apply sometimes and then at other times not apply, at the discretion of the court. That is not so say that there is no place for judicial discretion – there is, although obtaining jurists with the wit and wisdom to exercise discretion is a capricious matter. Legislative bodies nonetheless issue advisory acts – they are designated “resolutions” but really have no significance insofar as being enforceable.)

It is unfortunate that most people fail to make a distinction between faith and religion. The framers of the Constitution rightly intended to prohibit the establishment of a national religion<sup>2</sup>, and it did not intend to limit the practice of religion (including the making of public statements of faith either by individuals or the government itself<sup>3</sup>.) In its zeal to protect the public from the evils of a forced religion, the Federal Courts have acted, however well-intentioned, in such a manner as to dismiss all the historical benefits of a solid religious regimen in the daily lives of ordinary citizens. Religion is how one practices one’s faith. The perils of a national religion are amply described in the history of western civilization, notably as evidenced in the Roman Empire and English history. So the framers of our Constitution wisely decided it is best for each of us to exercise our individual faiths as we see fit. It does not appear that there was any intention that the minority of those with no faith (agnostics and/or atheists) should dictate that those of faith should be prohibited from expressing their faith in daily life. Yet, sadly, that is now the case. So the country deliberately has chosen to ignore history (not for the first time.) It is important to understand that there is legal (or at least historical) precedent for prescribing the place and manner of demonstrating one’s faith, whether in private or in the public arena, and that led to the establishment of the United States. As far as proscribing the place and manner of demonstrating one’s faith, only Muslim countries and the United States do so, likely to the peril of all.

The fact remains and is undeniable that society progresses from family to tribe to territory to nation, as *homo sapiens* flourishes, explores and conquers. Generally, it becomes obvious that brute force exercised by the meanest, baddest guy in the area is not the most appropriate means for governing the affairs of an increasingly complex society. Hence, tribal elders eventually established rules of conduct. These rules, then as now, were of two kinds — proscriptive and prescriptive. That is, there were actions known to be bad for the tribe, so the rules banned certain behaviors and actions; e.g., taboos on marrying very close relatives and avoiding the eating of pork (both of which were known to have bad effects upon the tribe). Other actions were deemed desirable or beneficial, so they were mandated by the rules; e.g., everyone was expected to tithe ten per cent, so as to take care of the sick and indigent. There was a further discriminator applied to the rules: some were more important than others, so the consequences reflected the importance of the rule; e.g., murder generally rated a death sentence for the killer, whereas adultery

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<sup>1</sup>Literally, “After this, therefore because of this.”

<sup>2</sup> Article I, United States Constitution.

<sup>3</sup> This is the author’s understanding, based upon the wording of the aforementioned Article I.

rated a mere stoning of the offender. This model for societal laws was so well thought out that it has stood the test of time and is still used today in modern society.

Eastern philosophy contributed the notion of balance — *yin* and *yang*. In western culture, the balance has been between good and evil, or right and wrong, depending on whether one is speaking canonically or legally. Either way, the basic notion recognizes that there must be a state of equilibrium under which society can function. This state of equilibrium is provided under the umbrella of modern society's legal system of laws with a system of checks and balances. Thus, laws came into being to promote the good of the society. That being the case, a key test for a law is whether it is good for society as a whole. It goes without saying that if this is the case, the majority of the society will accept and abide by the law, thus providing the ultimate ratification of the law. If, however, the law applies narrowly to the benefit of a minority of the society, it will no doubt be well liked by that segment of society and generally despised and evaded by the larger society. It was the latter, for example, that brought pressure upon American society to dispense with the "Jim Crow" laws of the American southern states. The same fate occurred with both the adoption and the revocation of the Alcoholic Prohibition amendment.

This is as it should be. Laws follow society, which in turn regulate behavior in the society to society's benefit. When circumstances, such as technological change, determine that the law(s) no longer benefit society, it is proper to remove the law. Unfortunately, governments are lax about removal of outmoded laws and do so reluctantly. Usually, members of society simply ignore the law, which in turn generates contempt for law in general.

Our system of government was set up so as to allow ample time to review, consider and debate passage of our laws. While both proponents and opponents of a proposed legislation may be quite passionate about their respective views, the intent is for a reasoned consideration before enactment of a law. This results from the realization that hasty legislation is often poorly considered, inadequate and/or mis-applied, and with pernicious unintended consequences. Again, the Patriot Act and the Affordable Care Act both come to mind as examples of sub-standard legislation enacted during periods of intense emotional duress (one quite real, and the other generated by its proponents). The former simply was not well thought through in the haste of its passage. The latter, having no clear majority in its favor, was enacted following the use of questionable legislative and political tactics. The mere fact that few, if any, understood what the legislation contained should have been ample warning that much more consideration and debate was warranted before any action whatsoever was taken.

A frequent and pernicious practice is that of allowing the law to reach beyond its original scope. That is, there is always the possibility that those in power politically may attempt to extend their power. Two examples immediately come to mind. The first is "diversity", so beloved of extant educators, academicians and politicians. As nearly as can be determined, this arose from the equal opportunity and affirmative action legislation passed in order to further desegregation, in and of itself a good thing. The mantra is that more diversity is better. This flies in the face of facts, reason and common sense. Sociologically, the evidence seems to be building that diversity promotes the very ills it is supposed to overcome<sup>4</sup>. It is also contrary to human behavior, as nearly every human society, however tightly or loosely organized, exerts pressure upon its members to conform. Of course, it makes sense that those whose behavior is noticeably off-normal create all sorts of problems, both public and private. As far as is known, all societies exert pressure upon its members to conform to the group norm<sup>5</sup>, and rightly so.

The other example is, again, that of the current Affordable Care Act, whose purpose seems to be at odds with its aims and objectives. The majority of citizens ostensibly were not the target of the act — only those who could not afford health care were the stated beneficiaries. Turns out that they are, but in the process, the health care of the larger majority were irrevocably damaged "for the benefit of all." This takes the discussion to the last item — the "truth."

We humans seem to have a very weak relationship with the truth. To begin with, few in extant society are critical thinkers. Thus, most think truth is what is so, is real, and can be proven. Truth may be so in fact; typically, it is what is agreed upon. This is best illustrated by an observation made by a fictional attorney who observed, "Truth is not what happens in court; truth is what comes out of the court." That is, we agree upon what the truth is; we do not have to agree upon reality (and we all know of individuals who appear to operate inside an entirely different reality). The best way to illustrate the importance of truth, as well as noting that it is a defined topic and not something that is absolute, is to cite the Biblical Ten Commandments. These rules of behavior were defined; while there undoubtedly was historical basis underlying the necessity for them (the entire stories of Moses and Joseph provide the basis in detail), nothing pointed to them as occurring in the natural world of the time. The fact that it was necessary to invoke a powerful deity as the ultimate authority is further evidence that there was no evidence they would have been articulated except under exceptional circumstances. Further, as is the case with many laws

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<sup>4</sup> "The Downside of Diversity", Michael Jones, The New York Times, August 5, 2007.

<sup>5</sup> The current fad of "political correctness" is a prime example of group pressure to conform.

governing the behavior of humankind, they are not absolute. To be sure, traditional language (that is, the King James version of the Bible) couches the commandments as “musts”, but any consequences for disobedience has to be levied by society itself. Nor is obedience a matter of “zero” tolerance. One must not kill — except in defending oneself, it is allowed, for example. Nor should one bear false witness (lie, in other words); everyone does, but only the most pernicious, harmful lies merit punishment. As my mother once told me, “Truth will set you free, but it will not keep you out of trouble.”

The point is not to belabor the inviolable nature of the commandments; the point is that they were determined (eventually) by the target society to be good; that is, true. Truth is an agreed upon matter, not a natural phenomenon. Certain forms of behavior, types of activity, and other human endeavors have an impact upon society. Some are good; others not so good or even evil, and some are inconsequential. Good endeavors become apparent over time; so do bad ones. A business observer back in the 60’s once observed, “If what you are doing is wrong, you will fail<sup>6</sup>.” There is a companion adage, “If what you are doing is wrong, you will do it badly.” Slavery failed; prohibition failed; zero tolerance is failing; the adoration of diversity is a mantra which flies against reason. Our politicians persist in claiming that they have the best interests of the people at heart; when in fact they merely have their own interests at heart. To demonstrate this assertion, it is sufficient to note that those members of congress who arrive with mediocre financial portfolios emerge a few years later as millionaires. Q. E. D.<sup>7</sup> This in itself is more than ample justification for term limits.

Another observation: the Affordable Care Act’s stated purpose was to provide health coverage for an estimated sixteen million who had no medical insurance. The remainder of the population had coverage; some with and/or by their employers, others procured their own coverage; others were self-insured; and a few didn’t want coverage for whatever reason. Rather than address the plight of those who needed medical coverage and couldn’t get it, the approach was to completely alter the fabric of the country, thereby assuring that no one would be unaffected. Never mind that it was pure socialism, which had already failed in Europe.<sup>8,9</sup> There is little reason or historical basis to believe that this endeavor will succeed.

A final observation about the nature of truth: it is not necessary that it meet a test for correctness. It requires agreement, in order to be accepted. It is what is agreed upon, for whatever reason (or none at all, for that matter). To some extent, it impinges upon faith, which is another matter entirely. Both “truth” and “reality” beg philosophical and practical questions, some of which are answerable, some of which are arguable, and some of which are of little practical use.

In summation, laws follow the dictates of society, not the converse. Facts are reality; truth is an agreed upon “what is so”, and there is nothing that indicates that truth has to meet a test for correctness. Finally, anything that flies against man’s best interests and/or the laws of nature inevitably fails.

“We have met the enemy, and he is us.” – General Jubilation T. Cornpone<sup>10</sup>, mythical Confederate Army Commander after his first, last and only disastrous campaign.

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<sup>6</sup>*The Ten Commandments of Business*, Robert Heller

<sup>7</sup>“Quod erat demonstrandum”; i.e., “That which is demonstrated.”

<sup>8</sup>*Why Socialism Failed (Collectivism is Based on Faulty Principles)*, Mark Perry, June 1, 1995, *The Freeman*

<sup>9</sup>*Socialism’s Downfall*, Steve McCann, *The American Thinker*, January 13, 2013.

<sup>10</sup> Created by Cartoonist Walt Kelly in the comic strip *Pogo*.