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The Rule of Law Fallacy

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Throughout history, the governing authority systems that have existed in every part of the world have been almost exclusively built around some person – a king or queen, an emperor, a dictator, or the like. Of course, the people who have led these governments achieved their power in many different ways. Various ones rose to power through wars, hereditary succession, palace intrigue, force of personality, and so on. Regardless of the method, though, the leader's rule was maintained based on the his or her ability to wield power over the society.

America, however, was built on a different foundation. While George Washington was offered the opportunity to become a king, he turned it down in favor of an entirely different approach. As a result, America was formed as a land where the law, rather than a human leader, is the governing authority. There are, of course, political leaders who are tasked with the job of managing the governmental system (executive officials, legislators, judges, and bureaucrats). However, they don't lead based of their own authority, but on the authority of the law. In fact, even the political leaders themselves are subject to the law.

What is the Issue?

There will be some governing authority for every society. No society can function without order, and the most fundamental job of a governing authority is to maintain that order. The way it is maintained is based on the type of governmental system that exists. Kings and dictators maintain order by the power of their own authority. In America, the law is the bottom line authority, and all

government officials are charged with making sure it is enforced.

We live, though, in a time when the rule of law is being broken down. There is a faction within the country that doesn't like the fact that their own political ambition is hindered by the existence of the rule of law, and they seek ways to circumvent it in order to enhance their own power. But to do that, they must also break down the underlying beliefs that have established the law as the ultimate authority source in the first place.

As it turns out, the primacy of the rule of law is based upon a philosophical foundation that emerges out of Christian Theism. By the same token, the point of view that would like to circumvent the rule of law paradigm is also based on a particular philosophical foundation – that of Naturalism.

The Presuppositions of Conflicting Notions about "The Rule of Law"

Biblical Theism

The origin of the whole idea of law came from God himself as he revealed to mankind his will and his ways. Man then took that concept and used it to create rules to help order the various societies as they formed in the world.

When a society is small, there is not so much need for a big set of laws, as most matters can be handled on a more personal level. But as societies grow larger, it is impossible for the various leaders to have the kind of personal interaction with the citizens that is necessary for a personal touch. At that point, formalized societal rules are established to make it possible for the society to operate in an orderly fashion.

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God did this for the nation of Israel when it grew large enough to need laws to maintain societal order. He revealed the 10 Commandments and other laws to Moses as a means of providing the nation with guidelines for living as a nation. It was up to people, then, to obey the law in order to obey God. The law had a higher standing than any human ruler because it represented God's authority in the world.

America's founders imitated that model by creating a constitution that is the supreme law of the land. Every human authority and every other law is subject to it. The principle underlying this approach is found throughout the pages of the Bible. The following verses demonstrating this are all taken from the ESV.

Genesis 9:6

Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image.

Exodus 12:49

There shall be one law for the native and for the stranger who sojourns among you.

Exodus 22:1-31

1 If a man steals an ox or a sheep, and kills it or sells it, he shall repay five oxen for an ox, and four sheep for a sheep. 2 If a thief is found breaking in and is struck so that he dies, there shall be no bloodguilt for him, 3 but if the sun has risen on him, there shall be bloodguilt for him. He shall surely pay. If he has nothing, then he shall be sold for his theft. 4 If the stolen beast is found alive in his possession, whether it is an ox or a donkey or a sheep, he shall pay double. 5 If a man causes a field or vineyard to be grazed over, or lets his beast loose and it feeds in another man's field, he shall make restitution from the best in his own field and in his own vineyard. 6 If fire breaks out and catches in thorns so that the

stacked grain or the standing grain or the field is consumed, he who started the fire shall make full restitution. 7 If a man gives to his neighbor money or goods to keep safe, and it is stolen from the man's house, then, if the thief is found, he shall pay double. 8 If the thief is not found, the owner of the house shall come near to God to show whether or not he has put his hand to his neighbor's property. 9 For every breach of trust, whether it is for an ox, for a donkey, for a sheep, for a cloak, or for any kind of lost thing, of which one says, "This is it," the case of both parties shall come before God. The one whom God condemns shall pay double to his neighbor. 10 If a man gives to his neighbor a donkey or an ox or a sheep or any beast to keep safe, and it dies or is injured or is driven away, without anyone seeing it, 11 an oath by the Lord shall be between them both to see whether or not he has put his hand to his neighbor's property. The owner shall accept the oath, and he shall not make restitution. 12 But if it is stolen from him, he shall make restitution to its owner. 13 If it is torn by beasts, let him bring it as evidence. He shall not make restitution for what has been torn. 14 If a man borrows anything of his neighbor, and it is injured or dies, the owner not being with it, he shall make full restitution. 15 If the owner was with it, he shall not make restitution; if it was hired, it came for its hiring fee. 16 If a man seduces a virgin who is not betrothed and lies with her, he shall give the bride-price for her and make her his wife. 17 If her father utterly refuses to give her to him, he shall pay money equal to the bride-price for virgins. 18 You shall not permit a sorceress to live. 19 Whoever lies with an animal shall be put to death. 20 Whoever sacrifices to any god, other than the Lord alone, shall be devoted to destruction. 21 You shall not wrong a sojourner or oppress him, for you were sojourners in the land of Egypt. 22 You shall not mistreat any widow or fatherless child. 23 If you do mistreat them, and they cry out to me, I will surely hear their cry, 24 and my wrath will burn, and

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I will kill you with the sword, and your wives shall become widows and your children fatherless. 25 If you lend money to any of my people with you who is poor, you shall not be like a moneylender to him, and you shall not exact interest from him. 26 If ever you take your neighbor's cloak in pledge, you shall return it to him before the sun goes down, 27 for that is his only covering, and it is his cloak for his body; in what else shall he sleep? And if he cries to me, I will hear, for I am compassionate. 28 You shall not revile God, nor curse a ruler of your people. 29 You shall not delay to offer from the fullness of your harvest and from the outflow of your presses. The firstborn of your sons you shall give to me. 30 You shall do the same with your oxen and with your sheep: seven days it shall be with its mother; on the eighth day you shall give it to me. 31 You shall be consecrated to me. Therefore you shall not eat any flesh that is torn by beasts in the field; you shall throw it to the dogs.

Matthew 22:17-22

17 Tell us, then, what you think. Is it lawful to pay taxes to Caesar, or not?" 18 But Jesus, aware of their malice, said, "Why put me to the test, you hypocrites? 19 Show me the coin for the tax." And they brought him a denarius. 20 And Jesus said to them, "Whose likeness and inscription is this?" 21 They said, "Caesar's." Then he said to them, "Therefore render to Caesar the things that are Caesar's, and to God the things that are God's." 22 When they heard it, they marveled. And they left him and went away.

Romans 13:1-7

1 Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. 2 Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. 3 For rulers are not a terror to good conduct, but to bad.

Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, 4 for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. 5 Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. 6 For because of this you also pay taxes, for the authorities are ministers of God, attending to this very thing. 7 Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honor to whom honor is owed.

1 Peter 2:13-17

Be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme, or to governors as sent by him to punish those who do evil and to praise those who do good. For this is the will of God, that by doing good you should put to silence the ignorance of foolish people. Live as people who are free, not using your freedom as a cover-up for evil, but living as servants of God. Honor everyone. Love the brotherhood. Fear God. Honor the emperor.

1 Timothy 2:1-2

First of all, then, I urge that supplications, prayers, intercessions, and thanksgivings be made for all people, for kings and all who are in high positions, that we may lead a peaceful and quiet life, godly and dignified in every way.

Titus 3:1

Remind them to be submissive to rulers and authorities, to be obedient, to be ready for every good work,

1 John 3:4

Everyone who makes a practice of sinning also practices lawlessness; sin is lawlessness.

Naturalism

Naturalism has an entirely different foundation. At its most basic, it recognizes no transcendent authority. In an eternal sense, there is no God, so there is no one even able to reveal moral precepts that would form an objective basis for law. This has implications on a temporal level, as well. Even if a nation (or any other group) has a constitution (a document that describes its most basic moral precepts), it is not considered the highest law because it can be overridden by human rulers.

Ultimately, for Naturalists, the highest law is nothing more than the will of the person or group that is capable of enforcing its will on society at large. As no objective moral authority exists, human beings must make it up as they go along – and those who have the power to enforce their will get to determine what laws will be in force. And later, if they change their mind, or if some other power center emerges, what was considered the law can be changed to accommodate the desires of the new ruler.

We actually see this principle playing out when judges in a court case substitute their personal preferences for the duly enacted laws of the land. There is actually a judicial philosophy that is being taught in some law schools based on naturalistic philosophy promoting this approach. It is actually quite a natural expression for those who hold naturalistic beliefs, but is completely alien to a system that is built upon the rule of law.

Is the Secularist view of The Rule of Law True?

To put it bluntly, the naturalistic beliefs about the rule of law are not true. They simply do not correspond with human nature. While most of the world lives in an environment where true justice and fairness are not the order of the day, all people have a deep inner sense that justice and fairness ought to reign, and all have a deep longing for it to be so.

Accomplishing that goal requires that all human beings be subject to the same standard of justice and fairness. This simply does not happen based on naturalistic philosophy. When societal order is based on the changing whims of fallen human leaders, objectively true justice and fairness cannot be maintained. True justice and fairness requires an objective standard that applies to everyone, and is faithfully carried out. All naturalistic philosophy has to offer is the rule of the powerful. It simply does not provide a means for true justice and fairness to exist.

What is the Answer?

The answer to this dilemma is to create a system where there is some objective standard that is not buffeted by the whims and prejudices of fallen humanity. The way to make this happen is to promote the law above all human authorities.

Biblical Christianity is the only belief system that promotes true justice and fairness. It posits a creator God who is the author of righteousness and justice, and who has revealed to human beings what that looks like. Humans must then receive it and create a structure in human society that codifies those precepts into laws that apply to all – regardless of status or circumstance. At that point, justice and fairness have a vehicle by which they can operate in the entirety of society.

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