

The Supreme Court's Atheistic Interpretation of the Constitution and Its Consequence for the Destruction of America

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—Part II—

The Supreme Court's atheistic interpretation of the Constitution has led to the development of a fallacious and deceptive legal scheme that negates moral absolutes. This invalidates the moral foundation of jurisprudence, which, in turn, degrades law from what it must be, to a degenerate, morally compromised law as defined by the State. That is, law "having fallen from a perfect or good state into a less excellent or worse state; having lost something of the good qualities possessed; having declined in natural or moral worth."¹

Looking again to the prime architect of the Constitution of the United States and the Bill of Rights, James Madison set the high standard undergirding "the rule of law." In urging New York to ratify the Constitution, Madison in *The Federalist*, presented the "General view of the powers proposed to be vested in the union." In the third installment of his argument (*The Federalist* No. 43), concerning "miscellaneous powers," he framed his own question: "On what principle the confederation, which stands in the solemn form of a compact among the states, can be superseded without the unanimous consent of the parties to it?" In response, he stated that it "is answered at once by recurring to the absolute necessity of the case; to the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim and to which all such institutions must be sacrificed."² Transcendent equates to "superior or supreme,"³ or "highest in authority."⁴ This is the understanding of what is defined as "Higher Law." In this regard, the "law of nature and of nature's God" is the "Higher Law" that overrules all other laws, to which all other laws must concur and not violate. The fact that Madison, as the chief architect of the Constitution, defended the Constitution by the use of "the transcendent law of nature and of nature's God" conveys the specific legal position to which the Constitution was expected to adhere. If this were not the case, then legal reasoning undergirding Constitutional Jurisprudence would always be inferior, inconsistent, subject to moral compromise, and adverse to liberty. This type of legal reasoning would be fostered by what Alexander Hamilton described—concerning unqualified Supreme Court justices—as "the ordinary depravity of human nature."⁵ (*The Federalist* No. 78)

In the vein of Hamilton, Madison revealed why "transcendent law" is essential: "But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal

controls on government would be necessary.”⁶ (*The Federalist* No. 51) However, “controls on government” are “necessary” because, as he stated, “there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust.”⁷ (*The Federalist* No. 55) “Transcendent law” embodies moral absolutes that expose and challenge corrupt legal reasoning embraced by those who are motivated by “the ordinary depravity of human nature.” For “the safety and happiness of society” to be maintained, “the transcendent law of nature and of nature’s God” must be the legal benchmark for “all political [government] institutions,” including the Supreme Court. Madison, in *The Federalist* No. 43 evoked the Declaration of Independence as he did in *The Federalist* No. 40 where he declared, “the transcendent and precious right of the people to ‘abolish or alter their government as to them shall seem most likely to effect their safety and happiness.’”⁸ “The transcendent and precious right of the people” is predicated on “the transcendent law of nature and of nature’s God.” For the government to invalidate “the transcendent law of nature and of nature’s God.” would also abrogate “the transcendent and precious right of the people.” It would deny that “the Declaration of Independence was the promise; the Constitution was the fulfillment,” which, in fact, would repudiate the Constitution and give way to a tyrannical government. Law would be based on nothing more than the will of the State.

George Mason (who was second only to Madison in importance concerning the Bill of Rights, and who influenced Jefferson in the drafting of the Declaration of Independence) argued the case, *Robin et al. v. Hardaway, et al.*, in Virginia (April, 1772), in which he defended the rights of Indian women who had been sold into slavery. His defense, like Madison in his cause, was based on the fact that “the laws of nature are the laws of God:”

Now all acts of legislature apparently contrary to natural right and justice, are, in our laws, and must be in the nature of things, considered as void. The laws of nature are the laws of God; whose authority can be superseded by no power on earth. A legislature must not obstruct our obedience to Him from whose punishments they cannot protect us. All human constitutions which contradict His laws, we are in conscience bound to disobey. Such have been the adjudications of our courts of justice.⁹

The particularities and nuances of these causes are outside the purview of this article. The important point is this, Madison and Mason exhibited the understanding of “the rule of law” held by the Founders and Framers. One would think that those closest to the formulation of our nation’s government and the intended nature of its underlying legal system would have garnered the most credence and respect. However, the Supreme Court, in various decisions over the years, has rejected the sage reasoning of the great men who bequeathed to us the heritage of liberty. These decisions have put an enormous “fly in the ointment of the apothecary,” which has caused an ever increasing, odious legislative, judicial, and executive stench that fills the land.

At this moment in history, the everyday affairs of American citizens cannot be conducted without the constant reminder of the obvious decline and fall of our culture. The corrupt activities that fill the news reflect the direct influence of a theory of law that is foreign to the wisdom exhibited by the men who founded and framed our Constitutional Republic. In order to better understand the “superior or supreme” foundation of “the rule of law” envisioned by the Founders and Framers,

and in the process expose the contradictory degenerate theory of law that has led to America's cultural collapse, it will be enlightening to look at the teachings of one of the greatest legal minds in American history. This luminary was Joseph Story.

Story (1779-1845) became an Associate Justice of the Supreme Court of the United States, when he was 32 years of age, having been appointed to the Court by President James Madison. It was a position he held for 33 years (1811-1845), until his death. In addition he was selected to be the first Dane Professor of Law in Harvard University; he was inaugurated on August 25, 1829, after sitting on the Supreme Court for 18 years. Again, a position he held until his death. Justice Story also wrote the renowned *Commentaries on the Constitution of the United States* (3 Volumes), which was first published in 1833. To say the least, Story was one of the most brilliant legal scholars to ever grace the Supreme Court, or any law school for that matter. To understand the necessary foundation of law that produces liberty, a few excerpts from Story's writings should more than suffice. We begin with his "Dane Inaugural Address." This discourse was considered to be, "one of his most finished literary productions."¹⁰ The breadth of this address is not my focus, his articulation concerning "the Law of Nature" is. In introducing his lecture series Story declared concerning law: "It searches into and expounds the elements of morals and ethics, and the eternal law of nature, illustrated and supported by the eternal law of revelation."¹¹ The continuity of "the law of nature" and "the law of revelation" set the tone for Story's understanding and application of Natural Law. Later in the introduction he declared:

One of the beautiful boasts of our municipal jurisprudence is, that Christianity is a part of the common law, from which it seeks the sanction of its rights, and by which it endeavors to regulate its doctrines. And, notwithstanding the specious objection of one of our distinguished statesmen [Thomas Jefferson¹²], the boast is as true, as it is beautiful. There never has been a period, in which the common law did not recognize Christianity as lying at its foundations. For many ages it was almost exclusively administered by those, who held its ecclesiastical dignities. It now repudiates every act done in violation of its duties of perfect obligation. It pronounces illegal every contract offensive to its morals.¹³

The importance of Christianity in relation to "common law" being fundamental to "municipal jurisprudence," is an absolute necessity. This necessity in which law "seeks the sanction of its rights, and by which it endeavors to regulate its doctrines," is a startling claim in today's political economy. However, the adverse of Story's insistence is the bulwark of America's cultural decay. Further in the introduction to his speech, Story defined the full scope the Dane lectures were designed to cover:

The duties assigned to the Dane Professorship are, in the first instance, to deliver lectures upon the Law of Nature, the Law of Nations, Maritime and Commercial Law, Equity Law, and, lastly, the Constitutional Law of the United States. No reflecting man can hesitate to admit the importance of these branches of jurisprudence, and their intimate connection with the best interests of civilized society.¹⁴

What's at stake for "the reflecting man," and "the best interests of civilized society"? Story's emphasis was a reverberation of the concern of the Founders and Framers. His assertion that the

study of law “searches into and expounds the elements of morals and ethics, and the eternal law of nature, illustrated and supported by the eternal law of revelation,” resounds throughout the history of “civilized society.” A “civilized society” based on “Christianity” must be emphasized, for the present experience of its antithesis is our concern. To this interest, the intervention of Christianity plays a major role, as Story expounded:

With us, indeed, who form a part of the Christian community of nations, the law of nature has a higher sanction, as it stands supported and illustrated by revelation. Christianity, while with many minds it acquires authority from its coincidences with the law of nature, as deduced from reason, has added strength and dignity to the latter by its positive declarations.¹⁵

Story challenged the idea that “Christianity” and “the law of nature” can be correctly deduced from unaided reason and asserted the opposite, which is extremely important considering the context of his address. Since Christianity is necessary to add “strength and dignity” to the law of nature, then Christianity obviously and necessarily stands above the law of nature, which is indebted to it, even though the law of nature preceded Christianity. Story confirmed this line of thought, revealing the superiority of revelation over unaided reason and the necessity of Christian revelation in comprehending the depth, breadth, and exactness of the law of nature:

It goes farther. It unfolds our duties with far more clearness and perfection than had been known before its promulgation; and has given a commanding force to those of imperfect obligation. It relieves the mind from many harassing doubts and disquietudes; and imparts a blessed influence to the peaceful and benevolent virtues, to mercy, charity, humility, and gratitude. It seems to concentrate all morality in the simple precept of love to God and love to man. It points out the original equality of all mankind in the eyes of the Supreme Being, and brings down the monarch to the level of his subjects. It thus endeavors to check the arrogance of power, and the oppression of prerogative; and becomes the teacher, as well as the advocate, of rational liberty. Above all, by unfolding in a more authoritative manner, the doctrine of the immortality of the soul, it connects all the motives and actions of man in his present state with his future interminable destiny. It thus exhorts him to the practice of virtue, by all, that can awaken hope, or secure happiness. It deters him from crimes, by all, that can operate upon his fears, his sensibility, or his conscience. It teaches him, that the present life is but the dawn of being; and that in the endless progress of things the slightest movement here may communicate an impulse, which may be felt through eternity. Thus, Christianity becomes, not merely an auxiliary, but a guide, to the law of nature; establishing its conclusions, removing its doubts, and elevating its precepts.¹⁶

Story admitted the defect in man’s reasoning concerning “the law of nature.” This is not to suggest in any way that “the law of nature” itself is defective, which would be impossible. Without Christianity being “a guide, to the law of nature; establishing its conclusions, removing its doubts, and elevating its precepts” and relieving “the mind from many harassing doubts and disquietudes” man would be in a constant state of uncertainty regarding legal reasoning. This is obviously seen in the vast history of contradictions found in legal opinions delivered by different justices dealing with the same laws, and especially in the enactment of laws that negate and challenge every

obligation Story defined. At the close of his address Story encouraged the audience concerning future generations who would choose to study law at Harvard:

What consolation could be more affecting to her grateful children, than that in these academical shades there should arise a temple, sacred to the majesty of the law; where our future orators, and jurists, and judges, and statesmen, might mature their genius, and deepen their learning, and purify their ambition; where future generations may approach, and read the wisdom of the law, as it is personified in the glowing sketch of Algernon Sidney: "It is void of desire and fear, lust and anger. It is mens sine affectu [mind without passion], written reason, retaining some measure of the divine perfection. It does not enjoin that, which pleases a weak, frail man; but, without any regard to persons, commands that, which is good, and punishes evil in all, whether rich or poor, high or low. It is deaf, inexorable, inflexible."^{17,18}

Story's quote of Algernon Sidney's statement concerning law in relation to "good" and "evil" deserves deeper consideration. Sidney explained the only ways "good" and "evil" can be accurately understood: "We have but three ways of distinguishing between good and evil. 1. When God by His word reveals it to us. 2. When by His deeds He declares it: because that which He does is good, as that which He says is true. 3. By the light of reason, which is good, in as much as it is from God."¹⁹

The "light of reason" is a magnificent gift of God and when used correctly it is of incontestable benefit. This fact is seen most assuredly when attempting to distinguish between good and evil. Reason when correct never contradicts God's absolute delineation of the two. Any variance from God's distinctions reveals an extreme lack of rational thought and illustrates man's potential for perverse considerations and actions. When this perverseness enters into the realm of law, the light of revealed truth must confront, expose, and correct the gross errors in judgment. Story addressed this issue again in an article published in the *Encyclopedia Americana* (1832). This publication was his most extensive treatise on "Natural Law:"

The obligatory force of the law of nature upon man is derived from its presumed coincidence with the will of his Creator. God has fashioned man according to his own good pleasure, and has fixed the laws of his being, and determined his powers and faculties. He has the supreme right to prescribe the rules, by which man shall regulate his conduct, and the means, by which he shall obtain happiness and avoid misery. He has given man the power of discerning between good and evil, and a liberty of choice in the use of those means, which lead to happiness or misery. The whole duty of man therefore consists in two things: first, in making constant efforts to ascertain what is the will of God; and, secondly, in obedience to that will when ascertained.²⁰

Story did not come to this understanding in a vacuum. In his studies he encountered the teachings on law from a number of excellent sources that preceded him or were his contemporaries. One such notable was the English jurist, William Blackstone. Blackstone revealed in his *Commentaries on the Laws of England* a concurrence with Story's conclusion:

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

This will of his maker is called the law of nature. . .

This law of nature, being coeval with mankind, and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But, in order to apply this to the particular exigencies [circumstances] of each individual, it is still necessary to have recourse to reason . . . And if our reason were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide but this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his understanding full of ignorance and error.

This has given manifold occasion for the benign interposition of divine providence; which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in divers manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the Holy Scriptures. . .

Upon these two foundations, the law of nature and the law of revelation depend all human laws; that is to say, no human laws should be suffered to contradict these. . . . Nay, if any human law should allow or enjoin [command] us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the divine.²¹

The question before the State is, “does God have,” as Story put it, “the supreme right to prescribe the rules, by which man shall regulate his conduct?” Or, as Blackstone said in addressing the same issue, “as man depends absolutely upon his maker for everything,” is it “necessary that he should, in all points conform to his maker's will[?]” Looking at this question from the opposite direction, “does the State have the right to countermand God's absolute prerogative, by creating laws that violate His moral commandments?” These are not questions to trifle with for the future of American liberty hangs in the balance.

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Notes

1. *An American Dictionary of the English Language* (1828), s.v. “degenerate.”
2. *The Federalist*, A New Edition (Washington: Jacob Gideon, Jun., (1818), 277-278.
3. *An American Dictionary*, s.v. “transcendent.”
4. *Ibid*, s.v. “superior.”
5. *The Federalist*, 490.
6. *Ibid*, 325.
7. *Ibid*, 351.
8. *Ibid*, 249.
9. Thomas Jefferson, *Reports of Cases Determined in the General Court of Virginia* (Charlottesville: F. Carr, and Co., 1829), 114.
10. *Life and Letters of Joseph Story*, William W. Story, ed. (Boston: Charles C. Little and James Brown, 1851), 2.7.
11. Joseph Story, *A Discourse Pronounced Upon the Inauguration of the Author as Dane Professor of Law in Harvard University* (Boston: Hilliard, Gray, Little, and Wilkins, 1829), 4.
12. Story exposed Jefferson’s poor scholarship on this subject. See “Christianity a Part of the Common Law,” *The American Jurist and Law Magazine*, Vol. 9, No. 18 (April, 1833): 346-348. Just as important, if not more so, is an article, “Is Christianity a Part of the Common-Law of England?,” published in *The Quarterly Christian Spectator*, Vol. 8 (March, 1836): 13-22. Additionally, an article by the Hon. P. Emory Aldrich summarizes the true position of the connection between Christianity and common law, which would have been an extreme embarrassment to Jefferson, were he alive at its publication. P. Emory Aldrich, “The Christian Religion and the Common Law,” *Proceedings of the American Antiquarian Society*, Vol. 6 (April, 1890): 18-37. And lastly, Thomas Clayton, United States Senator and Chief Justice of the Delaware Superior Court, like Story, exposed Jefferson’s poor scholarship concerning this issue when he rendered the verdict in the case of *The State v. Chandler*, November, 1837.
13. Story, *A Discourse*, 20-21.
14. *Ibid*, 41.
15. *Ibid*, 43.
16. *Ibid*, 43-44
17. *Ibid*, 60.
18. Algernon Sidney, *Discourses on Government* (New York: Richard Lee, 1805), 3.69.
19. *Ibid*, 1.363-364.
20. *Encyclopedia Americana* (Philadelphia: Carey and Lea, 1832), s.v. “Natural Law,” 9.150-151.
21. William Blackstone, *Commentaries on the Laws of England* (New York: Harper & Brothers, 1852), 1.39-41.