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What Washington doesn't know about the U.S. Constitution

In the 10-day "Roman circus" conducted in the U.S. Senate last month concerning the nomination of Clarence Thomas to the U.S. Supreme Court, the crucial issues of natural law and constitutional government were submerged in the diatribes about "sexual harassment." Lyndon LaRouche, in an article published in EIR *on July 17, 1987 and excerpted below, contributed a discussion of natural law which remains very useful in understanding the fundamental issues which should be addressed today. The issues that LaRouche raises here about the Reagan administration are even more acutely true of the Bush administration. Entitled "The Revocation of Executive Orders 12333 and 12334," the article discusses the Executive Orders foolishly signed by President Reagan, which allowed the growth of the enormous covert operations apparatus behind Lt. Col. Oliver North. Mr. LaRouche himself was targeted, prosecuted, and jailed in a political dirty tricks operation conducted under the unconstitutional authority of EO 12333 and 12334.*

The repugnant lawlessness which appears to be characteristic of numerous of the activities conducted under 12333 and 12334, is in no sense accidental. Such lawlessness is intrinsic to the architecture of Executive Order 12333. . . .

The tendency to substitute the principle of apparent expediency, and even capricious whims, for constitutional principles of law, has been a perceptible trend among all three branches of the federal government, especially during the recent 20 years or so.

The tendency, which the Reagan administration's policy of practice shares, has been that those holding political power assume that they have the right to impose their arbitrary will upon our domestic and foreign affairs, merely because they are incumbent authority. This has been the tendency not only in the Executive Branch, but also the policy of practice too often tending to dominate the opinion of majorities within the Legislative Branch.

This same tendency is also evident in a significant number of instances in judicial proceedings.

Our government has been established as a system of constitutional representative government, implicitly subject to the kind of natural law addressed by our Declaration of Independence. The leading explicitly contrary current in law, is that elaborated as the dogma of "historicity" by Berlin's Karl Friedrich Savigny. The tendency to employ Savigny's irrationalist dogma of law, the so-called *Volksgeist*, is evident in "environmentalist" and other patterns of judicial lawmaking during the recent dozen years or more.

When judges rely upon a perception of some selected agency of assumed "public opinion" in interpretation of law and fact, rather than using the rational standards traditional to our law, the result is a trend toward the tyranny of arbitrary irrationalism. The authority of being incumbent authority in the judicial system, is then construed in the form of arbitrary authority; in such instances, law, as understood by the founders of our republic, virtually ceases to exist. . . .

The fact that the principle of law integral to the composition of our Constitution is so little recognized in policies of practice of our government during recent times, obliges us to summarize here exactly that which President Reagan overlooked, both in signing 12333, and in enjoying certain of the illicit fruits of capricious desire obtained by aid of the subterfuges implicit in 12333.

The analogy of Goethe's *Faust* is not to be overlooked. The elected official's particular desires serve as the bait. Mephistopheles offers a subterfuge of expediency as the means for gaining the particular object the official desires. Or, the analogy of the Malaysian monkey-trap might be used. The Mephistopheles who first appeared as merely a useful means, as disguised as a mere servant, employed to secure the administration's particular desires, turns to his master, and says, like Dickens' Uriah Heep, "Now, I own you."

The drafting of our federal Constitution, then shaped by reflection upon constitutional principles since Solon of Athens, produced the briefest and most excellent of all modern constitutions. If a President of the United States, when taking his oath of office, were to understand the beauty and genius of that Constitution, this would have sufficed to prevent him from tolerating a drafted Executive Order such as 12333, and to refuse to tolerate the kinds of obnoxious practices typified by the interaction of 12333 with the Office of Special Investigations. It is our belief that President Reagan, for one, lacks such comprehension of our Constitution.

It is urgent that Executive Orders 12333 and 12334 be revoked. These revoked orders must be superseded by an Executive Order whose design is consistent with the implicit

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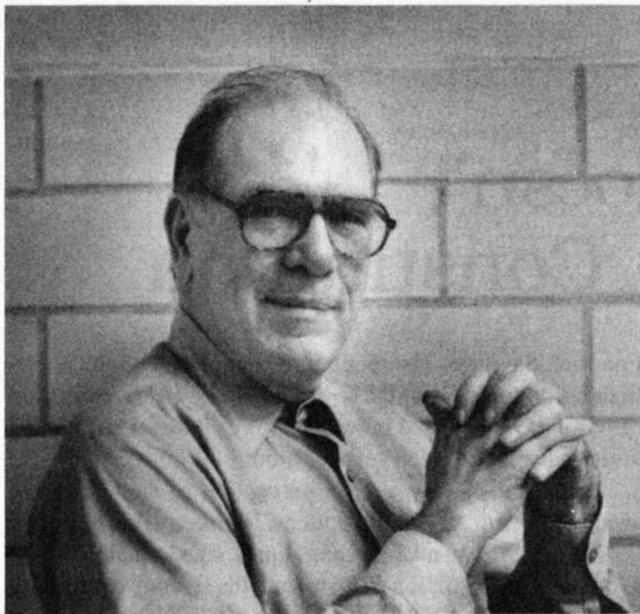

1992 presidential candidate Lyndon LaRouche, a political prisoner of George Bush.

purposes as well as explicit provisions of our federal Constitution.

The Constitution implicitly defines the domestic, foreign, and defense policies in the following terms of reference.

The kernel of the Constitution is composed of three principal parts:

a) The most important portion is the Preamble, specifying the intentions which must govern the Executive, Legislative, and Judicial branches of our federal government in all important matters of shaping and conduct of policy and practice.

b) The second, is the seven Articles of that Constitution, which order the composition of representative forms of self-government.

c) The third, affixed later, is the Bill of Rights, which specifies prohibition of the unlawful practices we had suffered under British rule, and which aided in striking down the tendencies toward tyrannical practices of government under the administration of our second President, John Adams.

There is a fourth aspect. In the body of amendments to that Constitution, there is included the extermination of the institutions associated with chattel slavery, and the later extension of the suffrage. These are in the spirit of the Bill of Rights, and should be understood as integral to the Bill of Rights in character and principle.

Other amendments have more the character of ordinary legislative law enacted as constitutional amendments, than constitutional law as such. Although they have the force of positive law, they have otherwise no immediate bearing upon the essential intent of our Constitution as a whole.

The Constitution as a whole must be read in the light of the 1776 Declaration of Independence. Our republic was established by authority of a body of law higher than that of the law of any nation. The Declaration appeals to the authority of that higher body of law, and avows our nation's rightful independence under the authority of that higher body of law.

Thus, the existence of our nation, the premise upon which the composition and intent of our Constitution also depends, depends upon the authority of the natural law addressed by the Declaration of Independence. In that respect and that degree, the Declaration of Independence is the most fundamental definition of intent of our Constitution and constitutional law as a whole.

That higher body of law is what is broadly known as Christian natural law, as this term applies to the influence of St. Augustine's writings on matters of statecraft, and the reaffirmation of such natural law in proceedings centered upon the 1439 Council of Florence. Christian natural law, as this bears on matters of statecraft, is rightly identified otherwise as western European Judeo-Christian natural law in the spirit of the collaboration between St. Peter and Philo of Alexandria.

Our founders' perception of such Christian natural law, was most strongly and directly influenced by the form which the heritage of Augustinian natural law assumed in England's 17th-century struggles for the cause of civil and religious liberty. This Protestant notion of Christian natural law was also influenced from Germany, by the writings of the famous Puffendorf, and the more rigorous restatement of natural law presented by Leibniz. . . .

This heritage is beautifully, succinctly, and efficiently expressed in the Preamble to our Constitution:

"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the General Welfare, and secure the blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States."

That is the Constitution's essential statement of intent. This declaration of intent expresses and depends upon the commitment to Christian natural law adopted by our Declaration of Independence. In its proper, historical and rational reading, every other feature of our Constitution is subordinated to the fulfillment of this intent by aid of the composition of our institutions of representative forms of self-government.

Any law, any executive order, any policy, or policy of practice, which violates the implications of that intent, is an abomination by government. Such . . . is the abominable character of Executive Orders 12333 and 12334.

The constitution of Solon of Athens

It is useful to look back to the case of that ancient constitution, given to Athens, by the famous Solon.

In a moment of crisis, a crisis so severe that the continued

existence of the city was threatened, the people of Athens arose, behind the leadership of Solon, to effect sweeping repudiation of the practice of usury, and to effect other reforms prefiguring our own founders' notion of principled forms of civil liberty and self-government.

As an afterthought, the great Solon composed a constitution. The argument made, showing the need for such a document, is key to understanding the purpose and authority in law of all kindred constitutions, such as our own, since.

There are rare moments, in the history of a great people, in which the majority of that people is awakened, in the happy words of Shelley, to enjoy a power for imparting and receiving profound and impassioned conceptions respecting man and nature, in far greater degree than under ordinary circumstances. The conjunction of these ennobled moments with the experience of crises which threaten the very existence of the nation, is the rare moment in which that people will compose and adopt a great constitution.

Such were the circumstances in which our Declaration of Independence and Constitution were composed and adopted.

Later, as Solon foresaw, the same great people which had aroused itself to magnificent undertakings, would fall into a lower moral condition of occupation with petty matters of hedonistic selfishness and faction. Under these circumstances, it were likely that popular opinion would be dominated by successive, episodic majorities for this or that view, and this all in a way which eroded those precious reforms which had rescued the nation from peril at the earlier time.

Thus, a wise people, finding itself in the kind of ennobled momentary state associated with great undertakings, will bind itself and its posterity to principles of law and self-government which must thereafter be efficient means to defeat the capricious whims of public opinion. This is the essence of the nature and authority of a good constitution. So says the Preamble of our Constitution, and the Declaration of Independence before it.

The essence of natural law

In the ennobled moment of composition of a great constitution, such as our own, a great people perceives more or less clearly, that the Creator has embedded in the composition of Creation certain principles of physical law, and has endowed mankind with means by which it may act successfully in accord with that physical law, to the effect that the human species is perpetuated, and its political and physical condition of existence improved. If men act in a manner contrary to such law, that law will act to the effect of injuring or even destroying the nation which allows such error. Thus, a good constitution is one which echoes such a perception of natural law.

The guiding notions of natural law which must govern the deliberations of all branches of the federal government, include the following most notably.

It is the essence of natural law, that our Creator holds mankind accountable for the condition of mankind. Such is the duty of each and every person: to develop his or her talent, and to employ that talent in such a way as to contribute to the well-being of mankind within the limits of his or her power to do so. This obligation bears down with extraordinary force on the President, federal legislatures, and federal courts of our republic.

The mortal individual within society lives, at most, a fragile and historically brief existence. It is society upon which that person depends for nurture of his or her talent, and for opportunities to employ that talent for the good. The person lacks the means to ensure that such good as he or she contributes will prosper to the advantage of both present and posterity. The person depends upon a more powerful, less mortal agency for these important things which are beyond the means of the individual. That agency is society.

The best form of organization of society is a constitutional form of perfectly sovereign nation-state republic. It is perfectly sovereign in the specific sense, that no foreign or supranational authority may dictate the laws or the practice of government of that republic. The only higher authority which the republic allows, is the universal authority of the natural law.

This form of republic must be efficiently dedicated to the improvement of the condition of mankind as a whole, to such effect that the individual citizen, by contributing to the progress of the republic, is contributing efficiently to the well-being of mankind as a whole.

The President and the Executive Branch of the United States must embody that view of the individual, the nation, and mankind in their consciences. The Preamble to our Constitution expresses this obligation insofar as the internal affairs of our republic are concerned, and also in respect to the defense of this republic. The application of this same principle to foreign policy is left implicit, rather than stated, but the implication should be sufficiently clear from reading of our national history.

In the papers of Secretary of State John Quincy Adams bearing upon the circumstances and intent of the 1823 Monroe Doctrine, that implicit intent of our Constitution, respecting foreign policy, is made explicit. If those papers are read properly, in the circumstances in which they were written, the proper design of today's foreign policy of the United States is readily derived. That improved view of our proper foreign policy is the proper guide to formulating the functioning of our intelligence community.

That improved view of our foreign policy, illuminates directly the irrationality, and the fostering of lawlessness embedded in the architecture of Executive Orders 12333 and 12334. It should be readily recognized, that irrationality and lawlessness in the direction of our intelligence community's foreign activities must foster a similar irrationality and tendency for lawlessness in the domestic practice of agencies engaged otherwise in foreign intelligence. . . .