

from
Upholding the Law
and Other Observations

by
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Upholding the Law



There's a wonderful old fable called "The Emperor's New Clothes", in which a pair of scoundrels con money from a foolish sovereign by claiming the ability to spin clothes from pure gold. The Emperor, eager to possess what he should have known was impossible, gives the conmen his gold and a room in which to work, but prudently endeavors to supervise them through the eyes of various members of his court, whom he dispatches at intervals to observe and report on the progress of the work. However, the two conmen, though actually engaging in nothing but pantomime, deploy sheer audacity and a subtle exploitation of the human psychology to successfully oblige each such officer to conclude that the imaginary clothes which the pair claim to be sewing are visible to everyone but himself.

The scheme is masterfully cunning. Expansive and eloquent descriptions of the non-existent work are presented to each courtier arriving to conduct an inspection. At the same time, each is informed of an especially marvelous property of the cloth: It is possessed of such subtle perfection that it is invisible to all but the most capable and competent! Thus each inspector is discouraged from believing the evidence of his own

eyes, or at least from voicing any doubts about the conmen's work.

Quite the contrary, in fact. Each victim of the scam is seduced into personal participation in its furtherance-- vociferously parroting the conmen in description and praise of the magnificence of the cloth, and thereby supporting the pressure on his fellows to do the same. The cunning process instantly created a community of interest in the perpetuation-- even the elaboration-- of the illusion.

So, the fantasy is spun and thrives, not only unchallenged but ever-fed, until the Emperor himself, having been told over and over by all of his subordinates what wonderful work the conmen are doing (and, no less than any other, unwilling to raise doubts regarding his own fitness for office), effusively praises the invisible garments with which he is at last fitted. Chilly, but entirely taken in, the naked sovereign marches into the public square to show off his new finery. There, the townspeople, also aware of the "special properties" of the cloth, ooh and ah.

Like the courtiers before them, the commoners carefully suppress themselves, and declaim to each other as to the magnificence of the Emperor's new clothes, until at last a young child, unencumbered by pride, speaks the plain truth revealed to his own eyes and announces that the Emperor has no clothes! The spell is broken, and everyone awakens, but the thieves have snuck away with the gold, which they have, of course, simply been pocketing all the while.

I hope that everyone shares this most educational tale with their children. This fable offer much insight into human behavior in general, and the behavior of placeholders in a hierarchy (as opposed to free-agents in a meritocracy) in particular. More importantly, this clever allegory can help us understand the simple mechanics of one of the key processes by which the rule of law is being corrupted in America today,

and what it is that each of us is called upon to do in order that the law may be restored and upheld.

What Do We Mean By 'Rule Of Law'?

The phrase 'rule of law' is commonly understood to mean that once the law has been written, it is the final word, for practical purposes. No edict issuing forth from any tyrant can override it, nor can any man escape its authority, regardless of position or place. This understanding is sound enough, as far as it goes.

However, a more fundamental aspect of the 'rule of law' concept is that in order for 'the law' to rule, the laws must be made *according to the rules*. That is, they must remain within the limits of the legitimate authority of the lawmaker; they must be made effectively and meaningfully known to those to whom they apply, and they must be clear in their command. Any "law" which fails in any of these respects is, at best, more a burden on the polity than a benefit; at worst, it is a tool of despotism of one variety or another.

For instance, it is obvious that a "law" which is a mere declaration of the tyrant is no true law. Nor is the unrestrained whim of the mob. In the former case, the necessary delegation of authority from the polity is lacking, at the least. In the latter case, typically, authority beyond that which CAN be delegated is exercised.

Regarding sufficiency of notice, the evils and illegitimacy of a "law" which bides in secrecy until deployed against an unwitting target seem almost too obvious to even allude to. However, such "laws" were well-enough known to America's founding fathers that they felt obliged to include a prohibition in the federal Constitution against one version-- "ex-post facto" laws, that is, new "laws" which take cognizance of previously engaged-in behavior. Furthermore, while not quite stepping

across the line into outright disregard of the “no secret law” rule yet, the establishment of secret courts such as the Foreign Intelligence Surveillance Act court, the implementation of unpublished policies such as those regarding the furnishing of identification before flying in a commercial aircraft, and the several “retroactive” tax increases which have occurred in recent years reveal a systemic disdain on the part of the current state toward this simple, common-sense rule.

This disdain is most dangerously expressed in claims of extra-Constitutional executive authority in time of crisis, which is nothing more and nothing less than an effort at justifying the administration of secret law. “Law” which is not deliberated nor published, but merely springs forth from the mind of an executive on the fly couldn’t be more secret (nor less legitimate).

Beyond legitimacy of authority and sufficiency of notice, the chief rule in the ‘rules of law’ is “clarity of command”. It is here that we can be instructed by the wisdom in the fable of the Emperor’s New Clothes.

The law must say what it means, and mean what it says. Without clarity a ‘law’ is nothing more than a weapon in the hands of whoever is allowed to declare its meaning-- an invisible thing, the effects and consequences of which are only revealed to us as we are made the targets of its application. In no way is such a “law” the property or product of the people in whose name it is theoretically administered. The sense of this can be concisely apprehended by considering Josef Stalin’s wise observation that,

“He who votes decides nothing; he who counts the votes decides everything.”

Of precisely the same character is the reality that,

“He who makes the law exercises no power, if he who enforces the law gets to decide what the law means.”

The fortunate reality is that American law IS clear-- it DOES say what it means and it DOES mean what it says. Nonetheless, the American legal system IS used as a weapon (and a gravy-train) by scoundrels who have conned their way into the position of declaring the meaning of the law to the rest of us. These scoundrels have seduced and intimidated the rest of us into entertaining the fantasy that, rather than the plain and sturdy homespun that it really is, our law now has magical properties, too complicated and subtle to be understood by commoners. We have been conned into nodding our heads, and letting ourselves be told all about this amazing law-- how it works, and how it can be exercised-- even when the tale keeps changing in a way that is always to the benefit of the comen, and always to the diminishment of ourselves. But this amazing pretense is just a cheap fraud, capitalizing on our all-too-widespread ignorance of the essential character of true law.

True law, legitimate law, is the law of the people-- it is not the product nor the province of special knowledge, or a privileged class, and it cannot be. It is the essence of true law that it be of the people's making, and for the people's purpose, and that it be accessible by the people and comprehensible to the people-- therefore simple, straightforward, explicit and limited. Axiomatically, a law such that the legal duty which it mandates, and the limits of that legal duty, are not fully clear to the average citizen is illegitimate and void, regardless of the forms or persons by which it may have been crafted or interpreted. As the United States Supreme Court points out in *Connally v. General Const. Co.*, 269 U.S. 385 (1926):

"...a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Upholding the Law

It is self-evident that any law which is not clearly comprehensible to at least a majority of the people is not, in any meaningful way, of the people's making. In fact, such a law *cannot* be of the people's making, for how can it be said that someone has made something that they themselves do not understand?

Nor can such a "law" be legitimately administered for any purpose, for how can anyone be held to account for the violation of an incomprehensible requirement? It is no answer to these simple realities that 'interpreters' of the law are available. To rest there is to accept the establishment of an aristocracy, contrary to natural law as well as to the Constitution. Further, "interpreted law" is inevitably a fluid and amorphous thing. Such "law" changes with each individual scrying. It is ever and always in doubt; and it is inherently unequal in its application-- either for the benefit, or to the dismay, of any given object of its attention. "Interpreted law" is inherently secret law by nature. True law must be visible to the eyes of the people.

True law delivers justice through equality of access, a scrupulous regard for clarity and a scrupulous respect for rights. It embraces only such principles and purposes which can each be upheld without a violation or compromise of any other, and which can be contemplated, without art or artifice, by all to whom it applies. While these characteristics necessarily leave much outside its reach, it is only thus that the law can meet the prime requirement of legitimacy.

Unfortunately, many years ago, America let itself be distracted from the simple principles of true law by a grand fantasy of law that is all things to all people, which regulates and rectifies every imagined imperfection of life, and fulfills every desire. We became dazzled by enticing visions of a

utopian perfection of outcome spun by scoundrels who only asked that the law be put into their hands for spinning.

Like the Emperor in the fable, each American unwisely delegated the responsibility for overseeing their treasure to others. These others, wittingly or unwittingly, merely repeated the lies, finding that to be the safest or easiest course, or knowing no better than anyone else. Thus, we all became victims of the trap. Like the Emperor, we walk through our country naked, cold and insecure, stripped of the benefits of true law, and we do so without protest. As those in the fable were about the Emperor's new clothes, so have we Americans become about our law. Each of us concludes that while he or she perceives the law as incomprehensible, illegitimate, and flawed, everyone else apparently does not. The problem, each of us individually imagine, must be with ourselves.

Individually, we all know that whether a business does or does not meet OSHA standards in its facilities and practices has no affect on "commerce between the several states", as would be alleged in a prosecution for failing to do so. Individually, we all know that dictating the disposition of a wetland area on private property to serve an alleged collective interest in its preservation is a taking of private property for public use. Individually, we all know that a Constitutional amendment was needed to authorize federal prohibition of alcohol and a Constitutional amendment is needed to authorize a legitimate federal prohibition of marijuana. Individually, we all know that a seizure of property without a trial, whether called a "civil forfeiture", or by any other name, is a violation of due process.

Individually, we all know that the United States Constitution is shorter and simpler than the instructions for assembling a bicycle. Individually, we all know that the nine great legal minds sitting on the Supreme Court, and all those lesser lights sitting on all the lesser courts, and the swarms of

government attorneys practicing before them for 10, these past two hundred and fifteen years have not been struggling, in their tortured interpretations-- and subsequent interpretations of previous interpretations-- to figure it out, so as to scrupulously abide by its restrictions. Individually, we all know that instead, these specialists have been struggling to devolve it into a "living law" by virtue of which they are elevated to a legal priesthood.

Individually, we all know that the growth of State power over our lives, which is both a market-broadening interest of its symbiotic beneficiaries, and the inevitable consequence of make-it-up-as-you-go-along jurisprudence, is rapidly erecting the infrastructure of totalitarianism, conditioning an ever-more poorly educated population to the habits of subordination to government, and strengthening the general perception of the law as fundamentally outside the ken of the average citizen in the corrupt cycle that is the essence of the con.

Despite all of us knowing all these truths, every day millions of citizens are constrained in their dignity and liberty by fear of prosecution or suit over their management of their own business affairs, and other private decisions-- or indeed suffer loss in such prosecutions or suits. Every day, thousands of citizens are constrained in their dignity and liberty by fear of prosecution or suit in the disposition of their own land-- or indeed suffer loss in such prosecutions or suits. Every year, thousands of citizens lose, in the aggregate, billions of dollars worth of property to seizures without trial; and every year virtually every adult citizen is bullied and intimidated into declaring themselves lawfully taxable by a code that neither they, their attorney, their CPA or the IRS thugs shaking them down have ever read.

Every day a million offenses of government lawlessness are visited upon us and our neighbors because, like the Emperor's court, we are each persuaded by the conmen to believe-- or behave as though we believe-- an obvious and

corrupt lie. So we meekly do what we're told. We sign where we're told, parrot what we're told, think what we're told, denounce our neighbor when we're told, indict our neighbor when we're told, arrest our neighbor when we're told, convict our neighbor when we're told, and haul away our neighbor's property when we're told. Every day, dazzled by fine words and fanciful images, and cowed into silence by fear of looking foolish, we sacrifice a bit more at the direction of the priesthood of the "living law". Every day, the fabric of our true law becomes more threadbare.

In the fable, the conmen stole the money and left town, content to enrich themselves and move on. In America today, the conmen have moved right in, for they've learned that their little scheme serves the interests of powerful factions, and have become partners in a cozy little relationship. Political demagogues, collectivists, bureaucratic tyrants, and other buyers and sellers of power over individual citizens are steady customers for the legal theocrats, trading protection and feeding-rights for usefully creative deconstructions of the law. It's the oldest game in the book, in fact-- one played by kings and priests since time immemorial.

So, What Do We Do?

First, we open our eyes, and, like the little boy in the Emperor's New Clothes, recognize and admit some disquieting truths. Among them is that restoring the rule of law-- the true law-- is going to be resisted by the entrenched beneficiaries of the prevailing status quo, and is thus going to require dedication and sacrifice. It is not going to be accomplished by a part-time effort.

John Adams, speaking during the time of the American revolution, instructs us thusly:

"I must study politics and war that my sons may have liberty to study mathematics and philosophy. My sons ought to study mathematics and philosophy, geography, natural history, naval architecture, navigation, commerce and agriculture in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain."

Adams' formula worked out, as far as it went. But he stopped short in his prediction-- incapable of imagining, from the perspective of his own immersion in affairs of substance and moment, what would actually come to pass in the fullness of time. Had he looked further, he would have reluctantly continued, *"...so that my more distant descendants have the leisure to study television, and the sports page."*

We cannot afford such distractions. We must turn off the tube and tune in to reality.

We must study politics, and war.

Edmund Burke, a British Member of Parliament and contemporary of Adams, addressed parliament in 1775 regarding the aspirations of the colonists for liberty, observing that,

"In this character of the Americans, a love of freedom is the predominating feature which marks and distinguishes the whole: and as an ardent is always a jealous affection, your colonies become suspicious, restive, and untractable, whenever they see the least attempt to wrest from them by force, or shuffle from them by chicane, what they think the only advantage worth living for."

Burke goes on to further describe aspects of the American character, and the reasons why Britain cannot succeed in maintaining the subjugation of the colonies. His last argument (prior to dryly pointing out that three thousand miles of ocean hinder the British purpose) is this:

“Permit me, Sir, to add another circumstance in our colonies, which contributes no mean part towards the growth and effect of this untractable spirit. I mean their education. In no country perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to the congress were lawyers. But all who read, and most do read, endeavour to obtain some smattering in that science. I have been told by an eminent bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the plantations. The colonists have now fallen into the way of printing them for their own use.”

Burke correctly recognized that it was the American's knowledge of the law that made them a people impossible to hold under illegitimate power. Not because that study reveals a magic spell that makes tyrants and would-be tyrants dry up and blow away, but because a study of the law arms the student with the moral certainty needed to sustain the long-term commitment which the struggle for liberty against the ambitions of despotism always requires.

We must study the law, and arm ourselves with the moral certainty that the defense of liberty requires.

Thomas Jefferson observed that,
"It is the natural course of things that government should gain ground and liberty yield."

In saying this, Jefferson did not mean that the defense of liberty is a fool's game. He meant that like rust-- its counterpart in the physical world-- political corruption never sleeps, but those against whom it contends, do.

Those sons and grandsons of John Adams, who set aside the study of the arts of politics and war, turn their attention instead to other pursuits once the battle for liberty seems well-fought, and won. They install their servants into positions of responsibility and immerse themselves in their families, their businesses, and their pleasures. They lose the habit of jealously guarding their rights.

They become complacent, and distracted, and when the servants offer to take charge of certain of their affairs, those distracted and complacent sons and grandsons are compliant. It is then not long before those distracted and complacent sons and grandsons return home to find that the locks on the house have changed, and the helpful servants hold the keys.

The fact is, the battle for liberty is never over. Power WILL be exercised over everything that it can be in this world. Who exercises it is determined not as a matter of right-- which can be sorted out, and written down, and considered finished. Who exercises power is determined as a matter of will.

Frederick Douglass explained this to us when he thundered,
"Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have the exact measure of the injustice and wrong which will be imposed on them, and these will continue till they have been resisted with either words or blows, or with both. The limits of

tyrants are prescribed by the endurance of those whom they suppress."

Rust never sleeps, and neither can we. We must put aside our distractions; abandon our complacency; and study the law, and the arts of politics and war.

**If You Perceive That Your Government Is Doing Wrong
And You Do Nothing, It May Well Be That Your
Government Is Corrupt, But It Is A Certainty That You
Are**

The mechanism of the con in the Emperor's New Clothes was the substitution of the thief's pretense for the self-evident truth available to the eyes of everyone else involved, by means of simple but effective psychology. The scoundrels used the fear of being out of step with the crowd to intimidate each and every member of that crowd-- all of whom saw exactly the same thing, and harbored exactly the same truth-- into silence. They lured, and seduced, and slyly threatened each of their victims into self-suppression. The scoundrels made monkeys out of everyone else involved-- monkeys who saw no evil, heard no evil, and spoke no evil, long enough for the thieves to creep away with all the monkey's treasure.

Today, here in America, you and I are encouraged to play the part of dumb animals, cowed into the denial of the evidence of our own eyes. We are urged to join in, and be a part of the corruption ourselves, by standing silent as the conmen steal our gold.

Don't do it.

Upholding the Law

Raise Your Voice.

Speak Your Truth.

Never Abandon The Field Of Battle.

Uphold The Law.