Constitution In 10 Lessons

Lesson 8

The Lie of "Separation of Church and State" & the U.S. Supreme Court's Usurpations of Power.

Must Supreme Court Judges Obey the Constitution?

Prepared by: Publius Huldah

How has it happened that our country became a land where…

- Christian (any) children are forbidden to us the word, “God”, in the public schools, or
- they are forbidden to say prayers at a football game, and
- Christian religious speech is banned from the public square?

What does the Constitution say about religion and speech?

- Legislative Branch - Article 1
- Executive Branch - Article 2
- Judicial Branch - Article 3
  - Have only enumerated powers delegated to them in the Constitution.
  - All legislative powers granted in the Constitution are vested in Congress (Article 1, Sec. 1)

What does the Constitution say about religion and speech?

  - This means that no other branch may make law.

- Since the legislative powers of Congress are enumerated, **Congress may make laws *only* on those specific subjects listed in the Constitution** as proper objects of legislation.

What does the Constitution say about religion and speech?

Since "*Religion*" and "*Speech*" are **NOT** among the enumerated powers,

Congress

May NOT Make

Any laws about

***Religion* or *Speech*.**

The First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or prohibiting the free exercise thereof; or abridging the freedom of speech..."

Understanding the Phrase: *Establishment of Religion*.

To find out what "establishment of religion" meant at the time the Constitution was ratified we must consult:

- English History,
- American Colonial History,
- Writing of our Founders.

Establishment of Religion: English History

Until the Protestant Reformation (Martin Luther's 95 Theses - 1517), the Catholic Church was the only religious organization.

"The Reformation was a triumph of literacy and the new printing press. Luther's translation of the Bible into German was a decisive moment in the spread of literacy, and stimulated as well the printing and distribution of religious books and pamphlets. From 1517 onward religious pamphlets flooded Germany and much of Europe."

Wikipedia: Protestant Reformation

Establishment of Religion: English History

In 1529, the English King Henry VIII began to separate the Church of England (Anglican Church) from the Church in Rome (Catholic Church) which began the Protestant Reformation in England.

Henry's personal desire for a divorce fueled separating the Church of England from the authority of the Catholic Church in Rome. In 1534, King Henry was made the Supreme Head of the Church of England and he assumed control of all Catholic Churches and property.

Establishment of Religion: English History

1535 - Henry VIII executed his trusted friend and advisor, Thomas More (the author of Utopia) for opposition to separation from the Catholic Church and for refusing to swear an oath to Henry VIII as Supreme Head of Church of England.

This became a period of great unrest as Catholics and Protestant Reformers both experienced imprisonment and martyrdom for their faith.

In, 1553, Mary Tudor, Henry VIII's eldest daughter becomes Queen of England and re-establishes Rome as the religious authority in England. During her 5 year reign, she was responsible for 280 religious martyrs burned at the stake.

Establishment of Religion: English History

1558 - Elizabeth I becomes Queen of England and re-establishes the Church of England as the national church.)

The Act of Uniformity (1559) imposed fines, forfeitures, and imprisonment on church officials who did not conform to approved doctrine & practice; it imposed fines on all persons who, without sufficient excuse, did not attend services of the Church of England.

What was at stake in regards to the “established church” was the authority to collect or be supported by tithes.

Establishment of Religion: English History

During the reign of Charles II (1661 - 1685), the Puritan John Bunyan, author of *Pilgrim's Progress*, was imprisoned for 11 years because he *refused* to attend services of the established Church of England, and he *refused* to obtain a license to preach as a "nonconformist".

1620 - Pilgrims land to begin colony at Plymouth Rock, Massachusetts

Establishment of Religion: English History

The established religions in England, first Roman Catholic, and then Church of England were supported by "**tithes**" -

> mandatory payments of a percentage of the produce of the land, payable by those living within the parish (regardless of their religious preferences) to the parish church, to support it and its clergy:
>
> The Origins of Tithe, Devon.gov.uk

Establishment of Religion: English History

- The payment of tithes was a cause of endless dispute between the tithe owners and the tithe payers - between clergy and parishioners.
- In addition, Quakers and other non-conformists objected to paying any tithes to support the established church.

Establishment of Religion: English History

- Almost every agricultural process and product attracted controversy over its tithe value. By the 18th Century the complex legislation surrounding the tithe began to have a detrimental effect…
- Tithing was seen as increasingly irrelevant to the needs of the community and the developing agricultural industry.

Establishment of Religion: English History

- The essential characteristic of "*established religion*" in England up to the time of the founding of our country was coercion by the civil government: The people were **forced** to practice the established denomination under pain of death, imprisonment, & fines, and were **forced** to financially support the established church.

The Origins of Tithe, Devon.gov.uk

Establishment of Religion: American Colonial History

English settlers in the colonies promptly established *their* religions.

- **Massachusetts** - They established the Congregational Church, only church members could vote, between 1631-1664; dissenters (Roger Williams, etc.) were banished; and between 1650-1670, Quakers were whipped, imprisoned, banished, and put to death.

Establishment of Religion: American Colonial History

- **Virginia** - They established the church of England, penalties for failure to attend services during the early 1600's included death, prison, and fines. Roman Catholics's between 1704-1775 were forbidden to possess arms, give evidence in court, or hold office unless they took certain oaths.

Establishment of Religion: American Colonial History

- **Maryland** - They established the Church of England, between 1704-1775, Roman Catholic (RC) services could be held only in private homes, RC's could not teach school, inheritance of property by RC's was restricted, and RC's who would not take a certain oath were disfranchised and subject to additional taxes, as well as being forced to contribute to the established church.

Establishment of Religion: American Colonial History

- **New York** and **Massachusetts** made laws which stayed on the books until the Revolution directing all RC's to leave the realm.
- **Rhode Island's** laws between 1719-1783 prohibited RC's from being freeman or office holders. Not until 1783 were RC's given full political rights in Rhode Island.
- In **Virginia**, no marriage was legal unless performed by a minister of the Church of England.

Establishment of Religion: American Colonial History

- Everyone in **Virginia**, **Maryland**, and **North** & **South Carolina** was required to contribute to the support of the established Church of England, to maintain the building, pay the minister's salary, and provide him with a house and plot of land.
- **New York** required each county to hire a "good sufficient" Protestant minister and to levy taxes taxes for his support.
- By 1760, the Congregational Church was still established in **Massachusetts** and **Connecticut**; but Episcopalians, Baptists, and Quakers were now tolerated, and no longer required to support of the Congregational church.

Establishment of Religion: American Colonial History

- Presbyterians of Chester, **New Hampshire**, objected to being taxed to support the Congregational minister, and in 1740 won the right to be taxed only by their own denomination.

- Even so, in 1807, the Presbyterians in Chester, **New Hampshire,** sold a Quaker's cow for non-payment of the Minister's Tax.

Establishment of Religion: Writings of Our Founders

As the Spirit of Toleration grew in England and colonial America criminal penalties for dissenting from the tax-supported established religions were abolished. By 1776, the essential characteristic of “established religions”, as opposed to “tolerated religions”, was that the former were supported by tax money (or tithes assessed & collected by law); whereas the latter were supported by voluntary contributions alone.

Establishment of Religion: Writings of Our Founders

Benjamin Franklin wrote this informative article about colonial America in The London Packet, June 3, 1772.

"They went from England to establish a new country…where they might enjoy the free exercise of religion…they granted the lands out in townships, requiring…**that the freeholders should forever support a gospel minister (meaning probably one of the then governing sects)…Thus, what is commonly called Presbyterianism became the *established religion* of that country.** All went on well in this way while the same religious opinions were general, **the support of minister…being raised by a proportionate tax on the lands. …"**

Cont.

Establishment of Religion: Writings of Our Founders

"But in process of time, some becoming Quakers, some Baptists, and … some returning to the Church of England … objections were made to the payment of a tax appropriated to the support of a church they … had forsaken. The civil magistrates, however, continued for a time to collect and apply the tax according to the original laws which remained in force … a payment which it was thought no honest man ought to avoid under the pretense of his having changed his religious persuasion. … Cont.

Establishment of Religion: Writings of Our Founders

"But the practice being clamoured against by the Episcopalians as persecution, the legislature of the Province of the Massachusetts-Bay, near thirty years since, passed an act for their relief, **requiring indeed the tax to be paid as usual**, but directing that the … **sums levied from members of the Church of England, should be paid over to the Minister of that Church**, with whom such members usually attended divine worship, which Minister had power given him to receive and on occasion *to recover the same by law*."

Establishment of Religion: Writings of Our Founders

Alexander Hamilton wrote in 1775 in his "Remarks on the Quebec Bill" (No. 11).

"**The characteristic difference between a tolerated and established religion, consists in this**: With respect to the support of the former, the law is passive and improvident, leaving it to those who profess it, to make as much, or as little provision as they…judge expedient;…"

Establishment of Religion: Writings of Our Founders

"…and to vary and alter that provision, as their circumstances may require. In this manner, the Presbyterians, and other sects, are tolerated in England. *They are allowed to exercise their religion without molestation and to maintain their clergy as they think proper*. These are wholly dependent upon their congregations, and can exact no more than they stipulate and are satisfied to contribute…."

Establishment of Religion: Writings of Our Founders

"**But with respect to the support of the latter**, the law is active and provident. **Certain precise dues, (tithes & c.) are legally annexed to the clerical office, independent on the liberal contributions of the people**…While tithes were the free…gift of the people…the Roman church was only in a state of toleration; but when the law came to take cognizance of them, and, by determining their permanent existence, destroyed the free agency of the people, it then resumed the nature of an establishment."

[emphasis added]

Establishment of Religion: Writings of Our Founders

James Madison wrote in his letter to Rev. Adams, 1832.

"In the Colonial State of the Country, there were four examples, Rhode Island, New Jersey, Pennsylvania, and Delaware, & the greater part of New York where there were no religious Establishments; the support of Religion being left to the voluntary association & contributions of individuals…"

Establishment of Religion: Writings of Our Founders

The essential characteristic of an "established religion" by 1789 was that an "established" denomination was supported by mandatory taxes or tithes,

- but "tolerated" denominations were supported by voluntary offerings of their adherents.

Establishment of Religion: Writings of Our Founders

Franklin's letter of 1772 shows that the hot topic of the time was the forcing of dissenters to financially support established religion:

- In England, dissenters from the Church of England were forced to pay tithes to the clergy of that Church.
- The English supporters of the Church of England responded that the "dissenters" in America had no room to complain because they compelled American Anglicans to pay taxes to support the Presbyterian worship!

Whose Powers are restricted by the First Amendment?

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech..."

Whose Powers are restricted by the First Amendment?

Only

Congress'

Powers!

The People of the States…

- Are free to establish (or dis-establish) any religion they want -
  - This is one of the powers retained by the States or the People!

Several States did retain their established religions after ratification of the U.S. Constitution in 1789.

- Remember the aforementioned incident in 1807, Presbyterians in Chester, N.H. sold a Quaker's cow for non-payment of the Minister's Tax.
- Not until the Toleration Act of 1819 did the N.H. Legislature make it illegal for towns, as corporate bodies, to raise money for the support of the gospel.
- Connecticut did not dis-establish the Congregational Church until they adopted their Constitution of 1818 (7th Article).
- Massachusetts did not dis-establish the Congregational Church until 1833.

The First Amendment:

- **Prohibits Congress** from establishing a national denominational religion,
- **Prohibits Congress** from interfering in the States' establishments of the religions of their choice, or dis-establishments,
- **Prohibits Congress** from abridging the Peoples' freedom of speech.

At ratification of the Constitution (1789) everyone understood that…

NO ONE

in the federal government

had any authority to cancel, abridge, restrain, or modify rights of any denomination

or the States' essential rights

of liberty of conscience.

Virginia Delegates Ratify Constitution

- We the Delegates of the People of Virginia … having … investigated and discussed the proceedings of the Federal Convention … Do in the name … of the People of Virginia declare and make known that the powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression …

Cont.

Virginia Delegates Ratify Constitution

"and **that every power not granted thereby remains with them and at their will: that *therefore no right of any denomination can be cancelled abridged restrained or modified by the Congress by the Senate or House of Representatives acting in any Capacity by the President or any Department or Officer of the United States* except in those instances in which power is given by the Constitution for those purposes: & that among other essential rights *the liberty of Conscience* and of the Press *cannot be cancelled abridged restrained or modified by* ANY *authority of the United States*…."**

Cont.

Gitlow v. People (New York), (1925).

- The Supreme Court asserted - that the 14th Amendment (which applies to States - "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, not deny to any person within its jurisdiction the equal protection of the laws." -) Incorporates the First Amendment so that the First Amendment now RESTRICTS the powers of the States.

Supreme Court Precedent: Gitlow v. People (New York).

- "…**we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States**. We do not regard the incidental statement in Prudential Ins. Co. v. Cheek 5 ….that the Fourteenth Amendment imposes no restrictions on the States concerning freedom of speech, as determinative of this question.

For More Information

Search the website:

Justia.com - U.S. Supreme Court Center

For: Gitlow v. People (New York) 1925.

Judicial Jujitsu

- Jujitsu is a strategy to use your opponent's strength/weight, against him.
- The Supreme Court Judge's new interpretation of the 14th Amendment became the weapon the Court has used to silence Christians and to seize Power over States & local governments.

Judicial Jujitsu as Precedent

- By claiming that the 14th Amendment allows the Supreme Court to (mis)interpret that the First Amendment restricts the powers of the States & local governments, the Court set itself up as policeman over the States, counties, over cities & towns, and even over football fields & court-house lawns. (!)
- In this way, the Bill of Rights, which was intended to be the States' and the People's protection against usurpations of power by the federal government, *became the weapon the Supreme Court used to usurp power and force their wills on all People in Our Land*.

Judicial Jujitsu: Redefinition of "Establishment of Religion".

Earlier we read the definition of "establishment of religion" as understood by Benjamin Franklin, Alexander Hamilton, and James Madison…

- **The distinguishing characteristic of an "*established religion*" was the the "*established*" denomination was supported by *mandatory* taxes or tithes**, whereas "*tolerated*" denominations were supported by voluntary offerings of their adherents.

Judicial Jujitsu: Redefinition of "Establishment of Religion".

Engel v. Vitale (1962)

6 Judges outlawed non-denomination prayer in the Public Schools.

A New York Public School school board had directed the following prayer to be said at school:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

Any student was free to remain seated or leave the room, with out any comments by the teacher one way or the other.

Judicial Jujitsu: Redefinition of "Establishment of Religion".

Engel v. Vitale (1962)

According to Justices Black, Warren, Clark, Harlan, Brennan, and Douglas this short, non-denominational and voluntary prayer constituted an "establishment of religion" in violation of the First Amendment.

Reality Check - Whose authority is restricted by the First Amendment? The Supreme Court? Congress? The President? Or The People as in the local school board?

Judicial Jujitsu: Redefinition of "Establishment of Religion".

Engel v. Vitale (1962)

According to Justices Black, Warren, Clark, Harlan, Brennan, and Douglas this short, non-denominational and voluntary prayer constituted an "establishment of religion" in violation of the First Amendment.

Even though in the Court opinion, the Justices admitted that the prayer:

- "… does not amount to a total establishment of one particular religious sect to the exclusion of all others - that, indeed the government endorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago."

Judicial Jujitsu: Redefinition of "Establishment of Religion".

Now means,

- a religious activity
- a prayer
- A prayer that someone in government composed
- A school board is now a government?
- Writing or sanctioning official prayers
- A nativity scene
- Wishing someone a Merry Christmas…even at WalMart.

Judicial Jujitsu: Redefinition of "Establishment of Religion".

- The Supreme Court Justices believes the encouragement to offer prayers to the Creator God who endowed us with certain rights and liberties is perceived as being a detriment to civilization.

- This understanding is illogical and antithetical to the fundamental purpose of government which is to punish those that commit evil and lawless deeds as well as to to safe guard the life, liberty and personal property of those that do good.

- Therefore, in following this Progressive trend, the government is actually undermining its own duty to be a responsible and moral framework that allows the perpetuation of the basic Creator Endowed rights that form the foundation of civilization.

Nancy Coppock

Judicial Jujitsu: Redefinition of "Establishment of Religion".

Engel v. Vitale (1962)

According to Justices Black, Warren, Clark, Harlan, Brennan, and Douglas this short, non-denominational and voluntary prayer constituted an "establishment of religion" in violation of the First Amendment.

Reality Check - Whose authority is restricted by the First Amendment? The Supreme Court? Congress? The President? Or The People as in the local school board?

Judicial Jujitsu: Redefinition of "Establishment of Religion".

In his dissenting opinion to *Santa Fe I.S.D. v. Doe,* Justice Rehnquist, joined by Scalia & Thomas, said the majority opinion:

…bristles with hostility to all things religious in public life. Neither the holding nor the tone of the opinion is faithful to the meaning of the Establishment Clause, when it is recalled that **George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God."** [emphasis added]

Judicial Jujitsu: The One-Way Only "Wall of Separation"

We all know that the phrase "wall of separation" between church and state is nowhere in the Constitution, nor is it a constitutional principle.

The First Amendment says…

- Congress may not "legally establish one [religious] creed as official truth and support it with its full financial and coercive powers"; **and it may not prohibit the free exercise of religion or religious speech ANYWHERE.**

Jefferson & the Danbury Baptists

- The Congregational Church was the established church in Connecticut until dis-established by Connecticut's Constitution of 1818.
- Oct. 7, 1801, the Baptists in Danbury, CT wrote a letter to President Jefferson in which they expressed their distress that in Connecticut, ….

Jefferson & the Danbury Baptists

"…where they were a religious minority…religion is considered as the first object of legislation; and therefore what religious privileges we enjoy (as a minor part of the state) we enjoy as favors granted, and not as inalienable rights; and these favors we receive at the expense of such degrading acknowledgements as are inconsistent with the rights of freemen…"

Jefferson & the Danbury Baptists

In his response, Jan. 2, 1802, Jefferson indicated that he hope the People of Connecticut would follow the example of the "whole American people":

"…Believing with you that religion is a matter which lies solely between man & his God; that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinion, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should…

Jefferson & the Danbury Baptists

"…*make no law respecting an establishment of religion, or prohibiting the free exercise thereof*, "thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights…"

Jefferson & the Danbury Baptists

In his letter, Jefferson pointed out that:

- Civil government ought not dictate to People in matters of religious belief,
- The First Amendment prevents Congress from doing this.
- The Federal Government had no authority to dis-establish Connecticut's official Church.
- He recognized that it was only by the President as well as the People acting in accordance with the Creator endowed rights that situations such as this one affecting the Danbury Baptists would cease and there by "the progress of those sentiments which tend to restore to man all his natural rights."

Justice Black & the wall of separation

In *Engel v. Vitale*, Justice Hugo Black [former Klansman] said the reading of the prayer ["*Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country*."] before children in the N.Y. public schools who chose to hear it: "breaches the constitutional wall of separation between Church and State."

Justice Black & the wall of separation

In doing so, Justice Black *misrepresented* the phrase - separation of church and state - as a constitutional principle.

Black also misapplied the metaphor -

- As the N.Y. public school board is not Congress,
- Nor was the State of N. Y. *establishing a religion, nor was it forcing everyone to financially support any religion with taxes and tithes.*

Lawlessness on the Court

- The Supreme Court has reversed the purpose of the First Amendment so that it became the tool the Court uses to silence speech **they** don't like and to suppress the free exercise of a religion they don't like, all throughout the States, counties, towns, villages, all the way down to a football field and county courthouse lawn near you.

Lawlessness on the Court

- Even though the phrase “establishment of religion” has a distinct historical meaning, the Court re-defines the term so as to describe the circumstances surrounding religious speech **they** don’t like so that they can declare it “unconstitutional”.

Lawlessness on the Court

- They outlawed the free exercise of religion; and they outlawed free speech - when the subject is "religious" - because **they** don't like it.
- In doing so, they took away from their Sovereign - their Creators - a right expressly reserved by us in the U.S. Constitution.
- Congress may not stop people from praying anywhere, or posting the Ten Commandments anywhere, or preaching in any public area. **Neither May the Supreme Court**.

Lawlessness on the Court

- In denying our right to worship God as our conscience dictates, the Supreme Court has advanced the agenda of a non-religion - or Humanist/Statism - which is the rule of man, not God. There is no neutral ground.
- By claiming that their opinions have the effect of "law", they made "laws" respecting religion, and "laws" abridging speech **they** don't like, even though the federal government has no authority to act in this area.

Lawlessness on the Court

- The States and political subdivision retained the rights to make whatever laws they please "respecting" religion (subject only to any limitations imposed by their own State Constitutions), **and the U.S. Supreme Court has no constitutional authority whatsoever to interfere**.
- Federal Judges serve during "good behavior" only (Article III, Section 1).
- The constitutional remedy is impeachment, trial, conviction, and removal. Federalist 81- 8th paragraph, Hamilton.

The Constitution: Article VII, clause 2

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of American the Twelfth, In Witness whereof We have hereunto subscribed our Names.

Virginia Delegates Ratify Constitution

With these impressions with a solemn appeal to the Searcher of hearts for the purity of our intentions …We … in the name … of the People of Virginia … ratify the Constitution recommended on the seventeenth day of September one thousand seven hundred and eighty seven by the Federal Convention for the Government of the United States. …"

[emphasis added]

Fallacies of Logic

- Fallacy by definition.
- Fallacy of presupposition.

Must Supreme Court Judges Obey the Constitution?

- In the recent lawsuit involving U.S. v. Arizona it became clear that certain "rules" have become as if "law" in regards to hearing the case in the Supreme Court or in hearing the case in the Federal District Court - Judge Susan Bolton.

Rule of Law or Rule of Men.

- PH cited that the Constitution requires that the federal government's lawsuit against Arizona and Gov. Brewer be tried in the Supreme Court.
- This would be instead of in a Federal Court within the State.

How do rules of men begin?

- In acknowledging the need to follow a just law, we make up rules to help us.
- The problem is that we begin to acknowledge the rule more than the law and the reason for that law.
- The Law is forgotten in a myriad of rules that actually prevent the Law from its duty.

Nancy Coppock

Remember the Sabbath was made for man; not man made for the Sabbath.

Mark 2:27 - Jesus said to them, "The Sabbath was made for man, and not man for the Sabbath.

- The Constitution was made for the People; the extra rules were made by men that:
  - Wanted to keep procedures organized and fair,
  - Wanted to amass political power.

Nancy Coppock

How to tell a rule of man from a law.

- How many times have we been frustrated to learn that some “procedure” or “rule” of Congress is prohibiting the straightforward resolution of a problem?
- Does the rule fit with the context of the greater American Philosophy as stated in the Declaration, Federalist Papers, and Constitution? Or does the Rule supercede the Law?

Nancy Coppock

Definition: Law

- [L. lex; from the root of lay. See lay. A law is that which is laid, set or fixed, like statute, constitution, from L. statuo.]
- A **rule**, particularly an established or permanent rule, prescribed by the supreme power of a state to its subjects, for regulating their actions, particularly their social actions.
- Laws are:
  - imperative or mandatory, commanding what shall be done;
  - prohibitory, restraining from what is to be forborn;
  - or permissive, declaring what may be done without incurring a penalty.
  - The laws which enjoin the duties of piety and morality, are prescribed by God and found in the Scriptures.
- Law is beneficence acting by rule.

Definition: Beneficence

- n. [L.beneficentia, from the participle of benefacio.] The practice of doing good; active goodness, kindness, or charity.
  - Note: beneficence is the actual doing good as measured by result, not intentions.
  - **Beneficence** is often misinterpreted to mean **benevolence** - The disposition to do good; good will; kindness; charitableness; the love,of mankind, accompanied with a desire to promote their happiness.

Beneficent vs. Benevolence

- **Beneficent -** is the actual doing of good work as determined by result.
- **Benevolence -** is the desire to do good, whether actual results measured good or not.
- Not all deeds of *benevolence* end in actual *beneficence* to the individual or community.

Nancy Coppock

Definition: Rule

n. [L. regula, from rego, to govern, that is, to stretch, strain or make straight.]

- Government; sway; empire; control; supreme command or authority.
- That which is established as a principle, standard or directory; that by which any thing is to be adjusted or regulated, or to which it is to be conformed; that which is settled by authority or custom for guidance and direction. …

Definition: Rule

- Thus a statute or law is a rule of civil conduct;
- a canon is a rule of ecclesiastical government;
- the precept or command of a father is a rule of action or obedience to children;
- precedents in law are rules of decision to judges;
- maxims and customs furnish rules for regulating our social opinions and manners.
- The **laws of God** are **rules** for directing us in life, paramount to all others.

The Law & The Constitution

- Serve the people by preserving and protecting our God endowed rights.
  - This is the purpose of government.
- Therefore it is our duty to preserve and honor the Rule of Law & The Constitution.

Nancy Coppock

Where do we look to understand the Constitution?

The Federalist Papers

By what authority?

- The Board of Visitors of the University of Virginia, March 4, 1825.

The Board of Visitors of the University of Virginia resolved:

In the presence of both Thomas Jefferson and James Madison in selected text for the Law school…

"on the distinctive principles of the government of our own state, and that of the U.S. the best guides are to be found in…"

Virginia Law School Resolution - 1825

"1. The Declaration of Independence, as the fundamental act of union of these states.

2. **The book known by the title of 'The Federalist', being an authority to which appeal is havitually made by all, and rarely declined or denied by any as evidence of the general opinion of those who framed, and of those who accepted the Constitution of the US. On questions as to its genuine meaning**…"

In doing so,

- It is clear these men saw The Constitution as having a fixed meaning which one could learn by consulting the Federalist.

Since then,

- In 1907, former Chief Justice Charles Evans Hughes said, "…the Constitution is what the judges say it is…"
- Judges rejected the objective standard provided by The Federalist, and substituted their own subjective interpretations.

Resulting in…

- The Constitution is no longer taught as a set of fixed principles explained by The Federalist
- But instead taught as a stream of Supreme Court opinions…
  - That allows Congress to do whatever it pleases.
  - And gives judges the authority to say what the Constitution “means”.

This is the failure of

- Those in authority to measure the vast divide between the terms:
  - Rule of Law and Rule of Man
  - Benevolence and Beneficence

  - The results are clearly seen in the breakdown of civil society because government is no longer the protector of our Creator endowed rights, but the benevolent source of our rights.

Therefore,

Roger Pilon of the Cato Institute understands the issue correctly when he said:

"Is is unconstitutional for Congress to mandate that individuals buy health insurance of be taxed if they don't? Absolutely if we lived under the Constitution. But we don't. Today we live under something called "constitutional law" - an accumulation of 220 years of Supreme Court opinions - and that "law" reflects the Constitution only occasionally."

The Problem is

That we are obeying the Supreme Court

NOT the Constitution.

Which is an error of allowing

Article III Section 2, clause 1

to trump

Article III Section 2, clause 2

Article III, Section 2, Clause 1

- The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the US, and Treaties made, or which shall be made, under their Authority;
  - to all Cases affecting Ambassadors, other public Ministers and Consuls;
  - to all Cases of admiralty and maritime Jurisdiction;
  - to Controversies to which the US shall be a party;
  - to Controversies between two or more States;

Article III, Section 2, Clause 1

- (Continued)
  - between a State and Citizens of another State;
  - between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]

Article III, Section 2, Clause 2

"In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction."

"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact with such Exemptions, and under such Regulations as the Congress shall make."

Article III, Section 2, clause 2

- Lists two of the previously mentioned in Article III, Section 1 categories:
  - Ambassadors, other public Ministers and Consuls
  - Those in which a State shall be Party

And says that in **ALL** such cases the supreme Court **SHALL** have original [trial] jurisdiction.

Federalist 81 - Hamilton

"We have seen that the original jurisdiction of the Supreme Court would be confined to two classes of causes, and those of a nature rarely to occur. In all other cases of federal cognizance, the original jurisdiction would appertain to the inferior tribunals; and the Supreme Court would have nothing more than an appellate jurisdiction, "with such EXCEPTIONS and under such REGULATIONS as the Congress shall make."

Such was the understanding of Marbury v Madison

"…If Congress remains at liberty to give this court appellate jurisdiction where the Constitution has declared their jurisdiction shall be original, and original jurisdiction where the Constitution has declared it shall be appellate, the distribution of jurisdiction made in the Constitution, is form without substance…"

Marbury v Madison - continued

"…When an instrument organizing fundamentally a judicial system divides it into one Supreme and so many inferior courts as the Legislature may ordain and establish, then enumerates its powers, and **proceeds so far to distribute them as to define the jurisdiction of the Supreme Court by declaring the sases in which it shall take original jurisdiction, and that in others it shall take appellate jurisdiction, the plain import of the words seems to be that some class of cases, its jurisdiction is original, and not appellate; in the other, it is appellate, and not original.**…"

- Today's jurisprudence contradicts the Constitution and The Federalist Papers.

- The Law of Man has confounded the Rule of Law.

The Powers of the federal courts are enumerated

- Federal courts are not supposed to hear any case which does not fall within the categories listed at Article III, Section 2, clause 1.
- The Supreme Court's case load would be greatly reduced by staying within enumerated powers.

Article III, Section 2, Clause 1

- Shows on its face, the judicial Power of the United States extends only to cases of “federal” or “national” cognizance.

Likewise, Congress' powers are enumerated

- International Commerce and War
- Domestically, an authority to establish an uniform commercial system (bankruptcy laws, a monetary system, weights & measures, patents & copyrights, a limited power over interstate commerce, and mail delivery.)

Likewise, Congress' powers are enumerated

- Authority to establish an uniform Rule of Naturalization.
- Then certain Amendments granted Congress powers to protect former slaves, voting rights, and lay income taxes.
- That's about it. They overburden themselves with unconstitutional business.