

FOUNDATIONS OF LAW, LESSON 1: AUTHORITY OF LAW

I. Overview of Law.

- A. What is Law? Black law defines law as:
1. That which is laid down or established. That which is declared.
 2. A system of principles and rules of human conduct.
 3. A rule of civil conduct.
 4. A law is a general rule of human conduct.
 5. A law is a command which obligates a person or persons.
- B. Automatic v. Manual
1. Automatic- Some laws like the physical laws of nature which direct and limit the action of matter and energy are self-executing. These physical laws include laws of thermodynamics, electricity, pressure, light, magnetism, gravity, chemistry, and other physical laws.
 2. Manual-Some laws like those that regulate human conduct need an outside force to ensure that they are executed. Laws must have binding legal force and an appropriate means for their enforcement or execution.
- C. Negative v. Affirmative
1. Negative- Laws can be negative by prohibiting something or declaring an act shall not be done. Most laws are negative.
 2. Affirmative-Laws can be affirmative by commanding or requiring an action to be done.
- D. Written and Unwritten
1. Laws can be written like statutes or Constitutions.
 2. Laws can be unwritten such as common law, natural law, or international law. We are not subject to constitutions and statutes, but a type of unwritten law.
- E. What is Common Law?
1. In the English System- Common law refers to the body of law that is developed through judicial decisions and precedent rather than through legislative statutes or executive regulations.
 2. In the American System- According to American Jurisprudence, which is the Science of law, in our nation, Bills of rights are merely declarative of the common law. In order words the common law refers to rights as the law.
 3. The Problem is that they are trying to convince you that our common law system relies heavily on court precedent. They refer to a concept of “Judge-Made Law” otherwise known as case law.

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F. Law is your rights on the Land (Common Law), Air (Equity), and Water (Admiralty/Maritime).

II. Authority of the Law- Law is a rule that guides, directs, or limits the conduct or action of something or someone, which is declared by some authority. For one to be obliged or required to obey a law, there must be authority for the law to exist. Whether or not we are obligated to obey a law depends on the source of the law and our relationship to that source.

A. The Source of a Law-For something to be regarded as a law, it must come from a source that has authority to enact the law.

1. God as a Source of Law -Under Anglo-Saxon jurisprudence, the law of God has always stood in pre-eminence in relation to human law.

a) *Divine/Natural Law- In science, natural law is the physical laws of nature. In legal philosophy, natural law is a set of universal truths, principles, and rules that properly govern moral human conduct. The idea that certain moral principles are inherent in nature and can be discovered through reason. Natural law is often seen as independent of human-made laws.*

Maxim 74f. *Jus naturale, or natural law, has its foundation in the will of God. 1 Bl. Comm. 39; 1 Kent, Comm. 2, note; Id. 4 note.*

Maxim 74c. *The laws of nature are unchangeable. Cycl. Dict. 566; Branch, Princ.*

b) *Natural Rights- Natural rights are fundamental human rights that are considered inherent, inalienable, and universal. These rights are often seen as preexisting and independent of government or legal recognition. The concept of natural rights has deep historical roots and has been influential in the development of political philosophy and legal theory.*

2. Man as a Source of Law- Man's laws are strengthless before God's laws, consequently, a human law, directly contrary to the law of God, would be an absolute nullity.

a) *Positive law*

Maxim 74j. *Things which are forbidden by the nature of things are confirmed by no law. Branch, Princ. Positive laws are framed after the laws of nature and reason. Finch, Law. 74.*

(1) **Fundamental Law:** Fundamental law, often expressed through legal maxims, comprises fundamental principles or guiding rules that underpin a legal system. These maxims are concise expressions of general legal truths.

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(2) Constitutions: Serves as the primary source of law, establishing the framework for the federal government and delineating its powers.

(3) Statutes and Codes: Statutes and codes are laws created by legislative bodies. They represent written rules and regulations enacted by human authorities. In the hierarchy, they come after common law and are considered man-made laws.

b) *Non-positive law*

(1) Statutes and Codes: Statutes and codes are laws created by legislative bodies. They represent written rules and regulations enacted by human authorities. In the hierarchy, they come after common law and are considered man-made laws.

B. Your Relationship to the Source- The prime example of a law-making authority is God. We readily acknowledge that God can enact laws that we are obligated to follow. But what is His authority to do so? Why are we required to follow the laws of God? Is it because God is all-powerful, or all-knowing, or because He is eternal? No, it is not. God's authority to place law over us lies not in the fact that He is omnipotent or a Supreme Being, but rather in our relationship to God. That relationship lies in the fact that God is our Creator and provider. Relationships are either natural or legal.

1. Natural Relationships

a) *God's Authority Over His Creation- God has the authority to make laws we are subject to because we are His creatures and because of our dependence upon Him for the necessities of life. These things establish a relationship between us and God, making us legally obligated to Him.*

b) *Parent's Authority Over Their Child- A parent is a law-making authority over a child not because the parent is stronger or bigger or even more intelligent than the child, but because of the relationship between parent and child. The child was produced by the parent and is dependent upon the parent, thus when laws come from that source, the child's parent, the child is bound to obey.*

2. Legal Relationships

a) *An Employer's Authority Over Their Employee- An employer and employee have a legal relationship between them that gives the employer the authority to prescribe certain rules of conduct or laws that the employee must follow. The employer has the authority to make such rules not because it has more wealth and assets than the employee, but because the employee has entered into a legal agreement with that employer.*

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b) A Colonel's Authority Over Inferior Officers- A colonel in the military has the authority to make commands or laws that majors, lieutenants, and privates must obey and follow. There is a legal relationship between them since they each have placed themselves under a Military Code and the Articles of War which require them to obey all lawful orders of a superior officer. However, a private in the American army is not required to obey the orders of a colonel from the German army as there is no legal relationship between them. There thus is no authority for a German colonel to give him laws or orders to follow.

c) A King's Authority Over His Subjects- A King has the authority to give laws and commands that his subjects must follow because of their relationship to the king as subjects of his kingdom. The king has control over the land and also provides protection for the people of his kingdom, creating a legal relationship between him and the subject.

