

## FOUNDATIONS OF LAW, LESSON 4: USURPATION OF AUTHORITY

### V. USURPATION OF AUTHORITY

#### A. Declared Acts of Tyranny

1. **Original Grievance:** "He has refused his Assent to Laws, the most wholesome and necessary for the public good."
  - a. **Summary:** The King has rejected laws that are essential for the well-being of the people.
2. **Original Grievance:** "He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them."
  - a. **Summary:** The King prevented colonial governors from passing urgently needed laws and ignored them when they were suspended.
3. **Original Grievance:** "He has refused to pass other Laws for the accommodation of large districts of people unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only."
  - a. **Summary:** The King denied the enactment of laws for the benefit of certain regions unless the people gave up their right to representation.
4. **Original Grievance:** "He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures."
  - a. **Summary:** The King convened legislative assemblies in inconvenient and distant locations to wear them down and force compliance with his wishes.
5. **Original Grievance:** "He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people."
  - a. **Summary:** The King disbanded representative assemblies multiple times for resisting his violations of the people's rights.
6. **Original Grievance:** "He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within."
  - a. **Summary:** The King delayed holding new elections after dissolving legislative bodies, leaving the government paralyzed and vulnerable.
7. **Original Grievance:** "He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of

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Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands."

- a. **Summary:** The King attempted to impede the growth of the colonies by hindering immigration and land allocation.
8. **Original Grievance:** "He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary powers."
  - a. **Summary:** The King hindered the proper functioning of the judicial system by rejecting laws that would establish judicial powers.
9. **Original Grievance:** "He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries."
  - a. **Summary:** The King controlled judges by determining the duration of their offices and the payment of their salaries at his sole discretion.
10. **Original Grievance:** "He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance."
  - a. **Summary:** The King created numerous unnecessary offices and sent many officers to harass the colonists, draining their resources.
11. **Original Grievance:** "He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures."
  - a. **Summary:** The King stationed permanent military forces in the colonies during peacetime without the approval of colonial legislatures.
12. **Original Grievance:** "He has affected to render the Military independent of and superior to the Civil power."
  - a. **Summary:** The King attempted to make the military independent of and more powerful than civilian authorities.
13. **Original Grievance:** "He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws, giving his Assent to their Acts of pretended Legislation."
  - a. **Summary:** The King collaborated with foreign entities to impose a jurisdiction on the colonies that was not recognized by their own constitution and laws.
14. **Original Grievance:** "For Quartering large bodies of armed troops among us."
  - a. **Summary:** The King forced the colonies to house and provide for large groups of armed troops.
15. **Original Grievance:** "For protecting them, by a mock Trial from punishment for any Murders which they should commit on the Inhabitants of these States."
  - a. **Summary:** The King shielded soldiers from real trials, allowing them to escape punishment for committing murders against the colonists.
16. **Original Grievance:** "For cutting off our Trade with all parts of the world."

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- a. **Summary:** The King imposed trade restrictions, preventing the colonies from engaging in commerce with other nations.
17. **Original Grievance:** "For imposing Taxes on us without our Consent."
  - a. **Summary:** The King levied taxes on the colonies without their approval or representation in the decision-making process.
18. **Original Grievance:** "For depriving us in many cases, of the benefits of Trial by Jury."
  - a. **Summary:** The King denied the colonists the right to a trial by jury in numerous situations.
19. **Original Grievance:** "For transporting us beyond Seas to be tried for pretended offences."
  - a. **Summary:** The King sent colonists overseas to be tried for alleged offenses, denying them a fair and local trial.
20. **Original Grievance:** "For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies."
  - a. **Summary:** The King undermined the established English legal system in a neighboring province, replacing it with an arbitrary government and expanding its authority as a model for imposing absolute rule in the colonies.
21. **Original Grievance:** "For taking away our Charters, abolishing our most valuable Laws and altering fundamentally the Forms of our Governments."
  - a. **Summary:** The King revoked colonial charters, abolished important laws, and fundamentally changed the structure of colonial governments.
22. **Original Grievance:** "He has abdicated Government here, by declaring us out of his Protection and waging War against us."
  - a. **Summary:** The King abandoned his governance responsibilities by declaring the colonies outside his protection and initiating war against them.
23. **Original Grievance:** "He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people."
  - a. **Summary:** The King authorized attacks on colonial coasts, towns, and people, resulting in destruction and loss of life.
24. **Original Grievance:** "He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation."
  - a. **Summary:** The King hired foreign mercenaries to continue acts of death, desolation, and tyranny in the colonies, displaying cruelty and dishonesty unbecoming of a civilized leader.

25. **Original Grievance:** "He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands."
  - a. **Summary:** The King forced captured colonial citizens to fight against their own country or face execution by their captors.
26. **Original Grievance:** "He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions."
  - a. **Summary:** The King encouraged rebellions within the colonies and sought to enlist Native American allies whose warfare tactics involved indiscriminate destruction of all demographics.
27. **Original Grievance:** "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people."
  - a. **Summary:** Despite humble petitions for redress, the King responded with continued injuries. The King's actions indicated a tyrannical character, making him unsuitable to govern a free people.

### B. Establishment of a Constitutional Republic, NOT A DEMOCRACY

1. The founders hated Democracies. In the Federalist Papers, written by Madison, Alexander Hamilton, and John Jay, to defend their revolutionary charter called, the Constitution of the United States, Madison wrote in No. 10, *"From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction."*
  - a. Thomas Jefferson lamented that *"a democracy is nothing more than mob rule, where 51 percent of the people may take away the rights of the other 49."*
  - b. John Adams concluded that democracy *"never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide."*
  - c. Benjamin Franklin referred to a democracy as, *"Two wolves and a lamb deciding what to have for dinner."*
  - d. Hamilton wrote, *"It has been observed that a pure democracy if it were practicable would be the most perfect government. Experience has proved that no position is more false than this. The ancient democracies in which the people themselves deliberated never*

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*possessed one good feature of government. Their very character was tyranny; their figure deformity.”*

- e. *Samuel Adams prophetically stated, “If ever a time should come, when vain and aspiring men shall possess the highest seats in Government, our country will stand in need of its experienced patriots to prevent its ruin.”*
2. Aspects of a Constitutional Republic
    - a. **Energy:** A major goal of the proposed constitution was to create a government with sufficient energy to rule effectively. By energy, the authors of the Federalist Papers essentially mean the power to address national problems and perform the proper functions of government.
    - b. **Union:** The creation of the Constitution aimed to establish a more perfect union, a term defined by the Founding Fathers as the cohesive and integrated bond among states under the newly proposed Constitution. They held the belief that the freedom of Americans relied on maintaining national unity. The Founders contended that a well-organized and united union would advance common interests, cater to the general welfare, and ensure the overall strength and security of the nation. This emphasis originated from the conviction that the key to political prosperity hinged on the effectiveness of the union, given that any form of disunion was considered a precursor to foreign interference, the establishment of military forces, and civil conflict.
    - c. **Delegated Authority:** This is one of the central principles of republican government. Delegated authority refers primarily to the people giving the authority to make and implement laws to elected representatives. A constitutional republic employs a system of representative government, where elected officials represent the interests of the people. Citizens typically participate in the political process by voting for representatives who make decisions on their behalf. This ensures that decisions are made by elected individuals rather than through direct participation by the entire population.
    - d. **Separation of Powers:** A major goal of the Constitution's authors was to ensure that no one branch of government had enough power to become tyrannical and violate the rights and liberties of the people. By distributing power among different branches of government, the founders hoped to prevent one branch from dominating all the others.
    - e. **Checks and Balances:** Closely related to the theme of separation of powers, checks, and balances refers to the specific ability of the three branches of government to limit the use of powers by one

another. Each branch is granted specific powers over the other two branches, with no one branch able to usurp power from its fellows.

- f. **Protection of Individual Rights:** One of the fundamental purposes of a constitutional republic is to protect the rights of individuals. The Constitution typically includes a bill of rights or similar provisions that enumerate and protect certain fundamental rights and liberties of citizens. These rights are considered inviolable and are safeguarded against government infringement.
- g. **Constitution as the Supreme Law:** In a constitutional republic, a written constitution serves as the highest law of the land. This constitution outlines the framework of the government, its structure, powers, and the rights of individuals. It typically includes mechanisms for its amendment and provides a foundation for the legal system.

### C. Erosion of Constitutional Principles

1. Many recognize that the legal system today does not follow constitutional law or the common law, as it once did, but is now operating under some other law. While it is generally agreed that we are under a different law and legal system, its exact nature seems to be in dispute. It has been said that we are under admiralty law, equity law and procedure, administrative rules, public policy, emergency measures, bankruptcy law, the war powers, international law, or martial law.

In a sense, all of these concepts are in part correct, since aspects of each of them are being arbitrarily followed. But none of them specifically state or identify the legal problem and situation. While the cause or source of the current corrupt law and legal system is to be found in the spiritual sector, there is a legal explanation for what is transpiring in the government and courts.

- a. **Constitutional Avoidance**-If a statute can be interpreted two ways, one which conflicts with the constitution, and one which does not, the courts will adopt the interpretation that avoids constitutional conflict.
- b. **Non-constitutional Laws**- a law is constitutional if it conforms to the written constitution of the state or nation; it is unconstitutional if it is repugnant to that constitution. This applies if it is passed from a “creation of the constitution” such as a legislature. But when an appointed body of commissioners, committees, or revisors who are not creatures of any constitution, draft the codes and the comprehensive revised statutes in this country. As non-constitutional entities, they try and hide from the constitutional debate.

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- c. Statute to Code- The legislative acts of the United States, enacted by Congress, were initially recorded in a series of volumes called the "United States Statutes at Large." The first Congress under the U.S. Constitution convened in New York City from March 4, 1789, to September 29, 1789, during which 27 separate acts were passed. These acts were documented in the initial volume of the Statutes at Large, an official compilation issued by the Secretary of State and the Government Printing Office. Over time, this collection expanded, incorporating both new laws and the repeal of existing ones, leading to complexities in identifying the applicable laws for specific matters.

As early as 1866, Congress authorized the consolidation of all laws categorized by subject matter. Although the initial edition of the "Revised Statutes" emerged in 1872, it faced disapproval from Congress. Despite a revision in 1875, which contained numerous errors, and another edition in 1878, these works were rarely cited, with courts and lawyers predominantly relying on the Statutes at Large.

In 1924, a bill to revise all existing U.S. laws passed the House but was defeated in the Senate. Subsequently, a committee recommended the establishment of a commission to undertake the revision. This commission, responsible for revising the laws, led to the creation of "The United States Code," officially approved by Congress on June 30, 1926 (44 Stat. Part 1). Organized into 50 titles or subject headings, listing the revised laws, the U.S. Code has been periodically compiled by a standing committee appointed to revise the laws since its inception. The assembly and revision of the Code fall under the supervision of "the Committee on the Judiciary of the House of Representatives," with the primary revision work conducted by a subcommittee or office known as "the Office of the Law Revision Counsel of the House of Representatives," comprising an appointed supervisor, members of Congress, volunteer lawyers, and individuals from West Publishing in St. Paul, Minnesota. Initially overlooked, the U.S. Code faced indifference, as legal professionals were accustomed to using the Statutes at Large. In cases where laws, including those of the "New Deal," were deemed unconstitutional, citations in indictments and court records predominantly referred to the Statutes at Large, with only a limited number of cases incorporating the U.S. Code citation, often in conjunction with the Statutes at Law citation.

d. **Emergency Powers-** Emergency powers in the context of the U.S. government refer to extraordinary authorities and actions that can be invoked during times of crisis or emergencies. While the term "emergency powers" is not explicitly mentioned in the U.S. Constitution, various provisions and legal precedents grant certain authorities to the President and other branches of government in response to urgent situations. Here are some key aspects related to emergency powers in the U.S.

1. **Example: Presidential Powers:** The claim is, that the President can exercise emergency powers based on their constitutional authority as the Commander in Chief and chief executive. This includes the ability to deploy military forces domestically and, in some cases, suspend certain civil liberties.

The National Emergencies Act of 1976 provides a legal framework for the declaration of a national emergency. Once a national emergency is declared, the President can access specific **statutory powers** to address the crisis.

i. Article II, Section 2 - Commander in Chief Clause:

This clause designates the President as the Commander in Chief of the armed forces. While it grants the President the authority to direct the military, the scope of this power and its application during emergencies have been subject to interpretation and debate.

ii. Article I, Section 8 - Necessary and Proper Clause:

Often referred to as the "Elastic Clause," this grants Congress the power to make all laws that are "necessary and proper" for carrying into execution the powers vested by the Constitution. Congress has relied on this clause to delegate certain emergency powers to the President.

iii. Article II, Section 3 - Take Care Clause: This clause imposes a duty on the President to "take care that the laws be faithfully executed." In times of crisis, Presidents have argued that this clause empowers them to take extraordinary actions to address emergencies.

iv. **Emergency Powers through Legislation:** Congress, using its legislative authority under Article I, can pass laws that delegate specific emergency powers to the President. The National Emergencies Act of 1976 is an example of such legislation. It allows the



President to declare a national emergency and access certain statutory powers.

2. *Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398, 425-426 (1934)*. "A declared State of Emergency does not create power nor does it increase granted power or remove or diminish the restrictions imposed upon power granted or reserved."

e. War Powers and Martial Law

1. ***Right to Keep and Bear Arms; Armies; Military Power Subordinate to Civil Authority; How Soldiers Quartered: A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. South Carolina Const. art. 1, § 20.***

## D. Malfeasance, Misfeasance, Non-Feasance, and Maladministration

1. Malfeasance: Malfeasance refers to the intentional commission of an unlawful or wrongful act, especially by a public official or someone in a position of authority. It involves the deliberate violation of the law or the commission of a harmful act.
2. Misfeasance: Misfeasance occurs when an individual performs a legal act but does so improperly or negligently. It involves the improper execution of a lawful duty, resulting in harm or damage. Unlike malfeasance, misfeasance involves a legal act but is characterized by errors or negligence in carrying out that act.
3. Non-Feasance: Non-feasance refers to the failure to perform a required duty or obligation. It involves a person's inaction or omission when there is a legal or ethical duty to act. Non-feasance occurs when someone neglects or fails to fulfill a responsibility, which can lead to negative consequences.
4. Maladministration: Maladministration broadly refers to improper or dishonest conduct in the administration or management of affairs, especially within an organization or government. It can involve incompetence, negligence, or misconduct in the execution of administrative responsibilities. Maladministration may lead to inefficiency, injustice, or harm.
  - a. *That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community;*

*of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration. And that, when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal. **Virginia Declaration of Rights, Section 3***

### E. It's Treason, There's No Other Name

1. Treason Definition: The offense of attempting to overthrow the government of the state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power. Webster.
2. Treason in the United States Constitution
  - a. "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place." **U.S. Constitution, Article 1, Section 6**
  - b. "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." **U.S. Constitution, Article 2, Section 4**
  - c. "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted." **U.S. Constitution, Article 3, Section 3**
  - d. "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." **U.S. Constitution, Article 4, Section 2, Clause 2**
3. Treason in the State Constitutions (Treason appears 102 times among the 50 State Constitutions)

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- a. **Treason; Testimony of 2 Witnesses:** *Treason against this State shall consist only in levying war against it, adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of 2 witnesses to the same overt act, or confession in open court. **Maine Const. art. I, § 12.***
  - b. **Treason and Descent of Estates:** *Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death. **Montana Const. art. 2, § 30.***
4. Treason in Fundamental Law
- a. **Tucker Blackstone Vol. 1 Appendix Note B [Section 3] 1803** “*If in a limited government, the public functionaries exceed the limits which the constitution prescribes to their powers, every act is an act of usurpation in the government, and, as such, treason against the sovereignty of the people.*”
5. Treason in Statutory Law
- a. **Title 18, U.S. Code SECTION 2381:** *Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States. (June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103–322, title XXXIII, § 330016(2)(J), Sept. 13, 1994, 108 Stat. 2148.)*
  - b. **TITLE, 18, U.S. Code SECTION 2382.** *Misprision of treason: Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both. (June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)*