

FOUNDATIONS OF LAW, LESSON 5: INTRODUCTION TO FUNDAMENTAL LAW

VI. INTRODUCTION TO FUNDAMENTAL LAW- The finest minds the world has ever seen were assembled to form the United States, and very few people have ever been able to match their brilliance. Although history prefers to lump these men together into a single, cohesive section of American history, or worse, discard their work altogether, the Founding Fathers were a collection of highly educated, varied minds.

A. The origins of maxims and principles of fundamental law can be traced back to various philosophical, political, and legal traditions that have evolved over centuries. Here are some key origins:

1. Ancient Philosophical Roots:

a. **Greek Philosophy:** Ideas from ancient Greek philosophers like Aristotle and Plato laid the groundwork for concepts such as justice, equality, and the rule of law. These Greek works, among others, provided the founding fathers with insights into political philosophy, ethics, governance, and human nature.

1. Plato's "Republic" and "Laws": Plato's "Republic" explored the nature of justice, the role of the individual in the state, and the structure of an ideal society. His "Laws" discussed the principles of governance, the rule of law, and the importance of civic virtue.

2. Aristotle's "Politics" and "Nicomachean Ethics": Aristotle's "Politics" delved into various forms of government, discussing the merits and shortcomings of each. His "Nicomachean Ethics" explored ethical virtues and the moral character of individuals, influencing the founding fathers' ideas about virtuous citizenship.

3. Thucydides' "History of the Peloponnesian War": Thucydides' historical account provided insights into the causes and consequences of war, power politics, and the dynamics of human behavior in the context of conflict. The founding fathers appreciated its realistic approach to history.

4. Herodotus' "Histories": Often referred to as the "Father of History," Herodotus wrote about the Greco-Persian Wars and explored cultural differences and historical events. His work provided the founders with perspectives on the clash of civilizations.

5. Sophocles' Tragedies: Works such as "Antigone" and "Oedipus Rex" by Sophocles addressed themes of moral responsibility, justice, and the consequences of individual

actions. The founding fathers found these plays relevant to questions of governance and ethics.

6. Euripides' Tragedies: Euripides' plays, like "Medea" and "The Bacchae," explored the complexities of human nature, the consequences of irrational behavior, and the challenges of leadership.
7. Demosthenes' Orations: Demosthenes, an orator and statesman, delivered speeches on political matters and the defense of Athenian democracy. His works were seen as examples of persuasive rhetoric.

b. **Roman Law:** The Roman Republic and later the Roman Empire contributed to legal principles, including the notion of "jus civile" (civil law) and the idea that certain laws are fundamental and should be upheld.

1. "The Histories" by Tacitus: Tacitus was a Roman historian whose works provided insights into the rise and fall of the Roman Empire. His writings on the corrupting influence of power and the importance of civic virtue were particularly influential.
2. "The Annals" by Tacitus: Another work by Tacitus, "The Annals" covered the history of the Roman Empire from the reign of Tiberius to that of Nero. It offered insights into the nature of imperial power, tyranny, and the preservation of liberty.
3. "Meditations" by Marcus Aurelius: Marcus Aurelius, a Roman emperor and philosopher, wrote "Meditations" as a collection of personal reflections on stoic philosophy and the pursuit of wisdom, virtue, and self-improvement. The book emphasized the importance of moral character and self-discipline.
4. "Lives of the Noble Greeks and Romans" by Plutarch: Plutarch's biographical work provided the founding fathers with valuable insights into the lives of famous Greek and Roman figures. It explored their virtues, vices, and the lessons that could be learned from their experiences.
5. "The Republic" by Cicero: Cicero, a Roman statesman and philosopher, wrote extensively on political philosophy. "The Republic" discussed the principles of justice, law, and good governance, which resonated with the founding fathers' ideas about the structure and principles of a republic.

6. "The Aeneid" by Virgil: Although an epic poem rather than a philosophical work, Virgil's "The Aeneid" was highly regarded by the founding fathers. It celebrated the heroism, virtue, and destiny of Rome, serving as a source of inspiration for their aspirations of creating a great and enduring nation.

2. Medieval and Renaissance Influences:

- a. **Scholasticism:** During the Middle Ages, scholastic philosophers like Thomas Aquinas sought to reconcile classical philosophy with Christian theology, influencing ideas about natural law.
- b. **Renaissance Humanism:** Humanist thinkers of the Renaissance focused on individual rights, civic duty, and the importance of human reason in shaping legal and political structures.
- c. **Thomas Hobbes:** Hobbes, in works such as "Leviathan," contributed to political philosophy by proposing the social contract theory and emphasizing the need for a strong central authority to prevent chaos and ensure order.

3. Enlightenment Thinkers:

- a. **John Locke,** an influential English political theorist of the Enlightenment era (1632-1704), significantly impacted the framers of modern constitutions through his writings. Noteworthy among his works are "A Letter Concerning Toleration" (1689), "An Essay Concerning Human Understanding" (1690), and "Two Treatises on Government" (1690). Between 1760 and 1800, Locke's insights on government and religious toleration made him one of the most frequently cited secular authors in America. His "Second Treatise on Government" particularly imparted crucial lessons to the founding generation, emphasizing concepts of the social contract, natural rights, and the right of revolution.
- b. **Montesquieu,** a key figure in the Enlightenment era, played a significant role in shaping the thinking of modern constitution framers. Charles de Secondat, Baron de Montesquieu (1689-1755), was a French political philosopher known for his influential works, including "The Spirit of the Laws" (1748). This profound piece of literature delved into political theory, exploring the separation of powers and its impact on the structure of governance. During the period from 1760 to 1800, Montesquieu's ideas on the separation of powers and the importance of checks and balances gained prominence, making him a widely cited figure in America. His insights into the necessity of distributing political power across

different branches of government provided foundational principles for the framers of modern constitutions. Montesquieu's lasting influence echoes in constitutional frameworks worldwide, emphasizing the vital role of balance and restraint in ensuring a just and effective system of governance.

c. **Jean-Jacques Rousseau**, a prominent figure in Enlightenment philosophy, left an indelible mark on the intellectual landscape that influenced the framers of modern constitutions. Rousseau (1712-1778), a Genevan philosopher, gained recognition for his influential works, including "The Social Contract" (1762) and "Emile, or On Education" (1762). Between 1760 and 1800, Rousseau's ideas on the social contract, popular sovereignty, and the general will resonated strongly in American intellectual circles. His call for direct democracy and the idea that individuals collectively create the government left a lasting imprint on political thought. Rousseau's emphasis on individual freedoms within the context of a communal agreement profoundly impacted discussions on governance. The framers of modern constitutions drew inspiration from Rousseau's concepts, recognizing the importance of ensuring that governmental authority stemmed from the consent of the governed. The enduring legacy of Rousseau lies in his contributions to the theoretical foundations of constitutional democracy and the protection of individual liberties.

d. **Voltaire**, a towering figure of the Enlightenment era, significantly influenced the framers of modern constitutions with his incisive ideas on freedom of thought and expression. François-Marie Arouet, known as Voltaire (1694-1778), was a French philosopher, historian, and writer renowned for his wit and advocacy for civil liberties. Between 1760 and 1800, Voltaire's writings, including works like "Candide" (1759) and his numerous essays on political and social issues, made him a widely cited figure in America. His passionate defense of free speech, religious tolerance, and the separation of church and state left an indelible mark on Enlightenment thought. Voltaire's insistence on the importance of individual freedoms, coupled with his criticism of authoritarianism, resonated with those shaping modern constitutional principles. The framers drew inspiration from Voltaire's commitment to the ideals of reason, tolerance, and the pursuit of a just and equitable society. His enduring legacy lies in his contributions to the defense of fundamental human rights and the establishment of constitutional protections against tyranny.

4. English Legal Tradition:

- a. **Magna Carta:** In 1215 King John of England was forced to sign the Magna Carta by a group of English noblemen who were frustrated with the King's arbitrary and tyrannical actions. They demanded the King give up some of his power and grant certain rights to English citizens. This document became an inspiration to many later constitutions, including the US Constitution, due to its claim that people have certain basic rights that must be respected by their rulers and that government should be limited in its powers. Specific rights were named in the Magna Carta and later included in the US Constitution, mostly in the Bill of Rights, such as the right to trial by jury, the protection of private property, religious freedom, and freedom of speech in the English Parliament. However, the Founding Fathers included in the text of the Constitution more than just certain rights enumerated in the Magna Carta. They also were inspired by the more general ideas of no taxation without representation, due process, and the ability of a people to petition a tyrannical government for their natural rights of "life, liberty, and the pursuit of happiness."
- b. **English Bill of Rights:** After William and Mary became the rulers of England in 1689, Parliament made them sign the English Bill of Rights. This document guaranteed certain basic rights to the English people and Parliament. Some of the rights granted were
 - The king could not interfere with the law
 - Parliament must agree to any taxation proposed by the King
 - individuals may own weapons for self-defense
 - individuals have the right to elect members of Parliament
 - individuals may petition the King
 - Parliament has freedom of speech
 - individuals cannot be fined without trial
 - individuals cannot be sentenced to cruel and unusual punishments.

Many of these rights were included by the Founders in the US Constitution, most notably in the Bill of Rights.

5. Colonial and Revolutionary Experiences:

- a. **Colonial charters:** Colonial charters played a pivotal role in shaping the thinking of the American founders during the creation of the Constitution. These early charters, granted by the British Crown to the American colonies, established the legal framework for governance in the New World. The charters delineated the

powers and responsibilities of colonial governments, providing a blueprint for self-governance. As the founders embarked on crafting a new national constitution, they drew inspiration from these colonial charters, which embodied principles of representative government, individual rights, and the limitation of arbitrary power. The experiences with charters such as the Mayflower Compact, the Virginia Charter of 1606, and others, showcased the colonists' commitment to establishing fair and just systems of governance. The constitutional framers, recognizing the significance of these colonial precedents, incorporated key elements of self-governance, checks and balances, and protections for individual liberties into the fabric of the U.S. Constitution, thereby creating a democratic framework that reflected the lessons learned from the colonial era.

1. **The Mayflower Compact:** When the Pilgrims established the Plymouth Colony in Massachusetts in 1620, they set up the first form of *self-government in the colonies. The Pilgrims agreed while still on their ship, The Mayflower, that everyone would obey the same laws “for the general good of the Colony.” This agreement was a form of social contract, in which men entered into covenants with each other, and would later be furthered by men like Rousseau. The Magna Carta had established the idea of the rule of law according to the King, but the Pilgrims were expressing loyalty to God and to laws they would make themselves, believing that they derived their right of self-government from God. This idea put forward in the Mayflower Compact was the foundation of both the Declaration of Independence and the US Constitution.

b. **Iroquois Confederacy:** The United States Constitution was influenced by the Iroquois Confederacy, a collective of Native American tribes known as the Six Nations. In the pre-Revolution era, this confederacy, acknowledged as one of the oldest democracies globally, consisted of six tribes in upper New York, forming a loosely organized government. Governed by a common council, the Great Council, decisions required unanimous agreement from all tribes. When negotiating with the colonies, the Great Council persuaded colonial leaders to adopt the tribes' negotiation methods. The Iroquois Confederacy played a significant role in shaping early American governance principles, introducing the concept of a confederation and the equitable distribution of power

among distinct entities, thereby influencing subsequent notions of federalism in the United States.

1. Canassatego, a leader of the Six Nations, delivered a speech encouraging the unity of the 13 Colonies, which Benjamin Franklin attended. In this address, Canassatego utilized a metaphor, likening the united colonies to an unbreakable bundle of arrows. This imagery is echoed in the Great Seal of the United States, where an eagle clutches 13 arrows. Captivated by Canassatego's words, Franklin had the speech printed and urged members of the Great Council to address the Continental Congress in 1776. Remarkably, principles from the Iroquois Confederacy's Constitution, recorded on a wampum belt, resonate with the U.S. Constitution. Shared elements include guidelines for removing individuals from government positions and the establishment of two branches for the enactment of laws.

c. **Declaration of Independence (1776):** The Declaration of Independence, a seminal document drafted by Thomas Jefferson and adopted by the Continental Congress on July 4, 1776, exerted profound influence on the framers of the United States Constitution. The principles articulated in the Declaration, particularly the idea that governments derive their legitimacy from the consent of the governed and the assertion of unalienable rights, served as a foundational blueprint for the constitutional framers. The Declaration's emphasis on individual liberty and the right to alter or abolish oppressive government resonated strongly during the Constitutional Convention. The framers drew inspiration from the Declaration's spirit of self-determination, weaving key concepts such as popular sovereignty, separation of powers, and checks and balances into the fabric of the Constitution. Thus, the Declaration of Independence not only declared the colonies' independence but also laid the intellectual groundwork for the creation of a new constitutional framework that would guide the fledgling United States.

d. **Early State Constitutions:** Prior to the drafting of the U.S. Constitution, each of the 13 colonies had established its own constitution, many of which included elements that would later be incorporated by the Founders into the U.S. Constitution. Notably, the Connecticut Fundamental Orders featured a Declaration of

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Rights for individuals, resembling the later U.S. Bill of Rights. The Massachusetts Constitution, recognized as the oldest constitution still in effect globally, marked a significant departure as it was the first constitution crafted not by a legislative body but by a convention. The U.S. Constitution mirrored the structure of the Massachusetts Constitution, encompassing a preamble, a governmental framework, a declaration of rights, and provisions for amendments. Key concepts from colonial constitutions, such as self-government, bicameral legislatures, and an executive as the head of the government, were also recurrent themes that found their way into the U.S. Constitution.

- e. **The Bible:** Possibly the greatest influence on the drafting of our Constitution was Christianity and the Holy Bible. When you read the large volume of letters the Framers wrote during their lives, Biblical principles and scripture are woven all throughout, flowing as naturally from their pens as their own thoughts. However, the Constitution is a document meant for practical governing. So, while you will not find Bible verses sprinkled throughout the Constitution, or direct references to God, as in the Declaration of Independence, the Founding Fathers included principles to preserve the liberty of the people—a concept that came directly from their Christian faith—into the very structure of the government. The whole idea of natural law, in which people have rights that have been given to them by their Creator, and the foundational belief that people are created equal by God, undergirds the entire Constitution. Benjamin Franklin later wrote that the delegates at the Constitutional Convention were “influenced, guided and governed by that omnipotent, omnipresent & beneficent Ruler, in Whom all . . . live & move and have their Being.”

- B. **Returning to the Principles the Founders Used to Found America, Is the Remedy to Restore America.** Thomas Jefferson was so moved by a quote that Montesquieu wrote in *Spirit of the Laws*, VIII, c.12, that he transcribed it into his *Commonplace Book*, which is why it is usually falsely attributed to Jefferson. Montesquieu wrote, “*When once a Republic is corrupted, there is no possibility of remedying any of the growing evils but by removing the corruption and restoring its lost principles; every other correction is either useless or a new evil.*”

Not only do I agree with Montesquieu, that the only way to end corruption is to eradicate it and bring back the core values upon which our founding documents were crafted, but regardless of the state you live in, it is your inherent, unalienable

right to require of your lawmakers an exact adherence to those values which is also the only peaceful way to stop the corruption.

The Massachusetts Constitution, written by John Adams, was the first to be drafted following the signing of the Declaration of Independence and served as the template for the United States Constitution. It states in Part the First, Article XVIII, "*A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.*" What are these principles?

C. The Hierarchy of Authorities:

1. **Natural Law:** JUS NATURALE. The natural law, or law of nature; refers to a set of principles derived from nature and reason, believed to be inherent and universally applicable. It forms the foundation for legal and moral principles. Authority Level: Considered a philosophical basis for legal systems, but its direct application in legal practice can vary.
 - a. The Law of Nature is unchanging.
 - b. All are equal under Almighty God.
 - c. All are equal under the Law.
2. **The Common Law, The Law of God, and the natural Law of the Land are the same.**
 - a. The Common Law [of the Land] is above government.
 - b. Natural Rights are merely declarative of the Common Law.
 - c. Courts, whether of the king, of the People, or parliament, are established not by written law, but by the Common Law.
 - d. Rights come from God; privileges come from man [government].
 - e. Rights come from the eternal Everlasting [Almighty God], privileges come from man [government].
 - f. Nothing is unchangeable but the inherent and unalienable Rights of man.
 - g. Rights cannot be taxed.
 - h. Rights never die.
 - i. He who uses his Rights, harms no one.
 - j. A Right cannot arise from a wrong.
 - k. Rights abused still remain Rights.
 - l. A Right cannot be converted into a crime.
 - m. No man may be charged for exercising a Right.

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- n. No man has a Right to deny or trespass on the equal Rights of another man.
 - o. No man has a Right to permit another man to act outside the Law.
 - p. Might does not make Right.
 - q. Where there is a Right, there is a Remedy.
3. **The Fundamental Law**, organic law or constitution, of a state or nation, written or unwritten; that law or system of laws or principles, expressed as maxims which define and establish the organization of its government. *St. Louis v. Dorr*, 145 Mo. 466, 46 S.W. 976, 42 L.R.A. 686, 68 Am.St.Rep. 575.
- a. **Maxims of Law** are the foundations of Law.
 - b. **Maxims of Law** are based on God's Laws, therefore are fundamental and immutable, remove the foundation, and all falls [Luke 6:48]
4. **Statutes:** Statutes are laws enacted by legislative bodies. They cover a wide range of legal subjects and are a primary source of law. Authority Level: Second in authority to the constitution; must align with constitutional principles.
- a. The Common Law is superior to and overarches statute law, in every case.
 - b. A statute should be harmonious with the Common Law [see: UCC 1-103.6 Anderson Uniform Commercial Code, Third Edition (1981), Lawyers' Cooperative Publishing Company].
 - c. Statutes are not law, and no act creating a statute as law is valid, if it waives a fundamental right in order to comply with the demands of something [a juristic person] called the state [or government].
 - d. The Common Law will not allow a statute to be used as a cloak for fraud.
 - e. A statute is a contractual legal instrument of commerce.
 - f. All statutes must be agreed upon.
 - g. A statute needs consent to have the power of Law.
 - h. A statute contrary to Common Law, is void at inception [ab initio].
 - i. Long use does not make lawful a void statute.
 - j. A statute is private law.
 - k. A government that enacts a statute contrary to the Common Law, is an enemy at war with the People.
 - l. A government that enacts a statute trespassing [traversing] on an unalienable Right of man, is an enemy at war with the People.

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5. **Regulations:** Regulations are rules and directives created by administrative agencies to implement and enforce statutes. They provide detailed guidance on how laws are to be applied.
6. **Codes:** Codes are comprehensive compilations of laws organized by subject matter. They can include statutes, regulations, and other legal provisions related to a specific area of law.

The Constitution



Branch of Govt.	Judicial	Legislative	Executive
	↓	↓	↓
	↓	↓	↓
Type of Law Produced	Case Law	Statutes	Regulations
	↓	↓	↓
	↓	↓	↓
Chronological Publication of Law	Case Law Reporters	Session Laws (Stat. at Large)	The Federal Register
	↓	↓	↓
	↓	↓	↓
Publication of Law By Subject	None	United States Code (USC)	Code of Federal Regulations (CFR)