



Thomas: ‘Legislating morality’ is the basis of true law

Trevor Thomas March 15, 2013

Being a lifelong fan of football, I have never had a problem with NFL instant replay. I’m in my early 40s, so I can remember well the days before instant replay. Whatever the shortcomings of instant replay, to me, the benefit of the official getting the call right has always trumped any inconvenience that might result from a video review of a play.

Of course, “getting it right” means that there is a standard — like the rules of the NFL — to which teams are held. Despite notions to the contrary, as we argue and debate the issues of our day, ultimately each of us relies on such a standard, or some notion of right and wrong, or fair play, rules or morality, whatever you want to call it.

What’s more, the very foundation of our government depends upon such a notion. In fact, the foundation of any good government, culture, society, or virtually any situation where human beings interact with one another rests upon what used to be called natural law.

Our Founding Fathers understood this well. However, the idea that liberty, good government, and just laws have their roots in natural law, or “the laws of nature and nature’s God,” did not begin with the founding of America. For millennia many philosophers, politicians, priests, and lay people alike knew the role that natural law should play in the “governments (that) are instituted among men.”

Jim Powell, senior fellow at the Cato Institute and an expert in the history of liberty, credits the Roman philosopher and statesman Marcus Tullius Cicero (106 B.C. to 43 B.C.) with expressing the “principles that became the bedrock of liberty in the modern world.”

“True law,” as Cicero called it, is the “one eternal and unchangeable law (that) will be valid for all nations and all times, and there will be one master and ruler, that is God, over us all, for he is the author of this law ...”

Sir William Blackstone, a renowned and favorite English jurist of our Founders, declared in his presuppositional basis for law that, “These laws laid down by God are the eternal immutable laws of good and evil. ... This law of nature dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity if contrary to this ...”

References to, not vague religious babble, but specific biblical texts, such as the Ten Commandments, can be found in the civil law of every original U.S. colony. It is a fact of history that throughout our pre-Colonial, Colonial, Revolutionary period and beyond, America’s lawmakers and laws were steeped in natural law.

Thus we can conclude that from the beginning our government has been “legislating morality.” All law is rooted in morality.

“Laws without morals are in vain,” said Ben Franklin. Not only that, but as I implied above, every debate we have is rooted in morality.

It is absurd and ignorant to lament conservative Christian efforts when it comes to abortion, marriage and so on as some attempt to “legislate morality.” The other side is attempting the very same thing! In fact, the lamenter has also taken a moral stand.

In addition, those who attack natural law (because an attack on a position that stems from natural law is an attack on natural law) do so with arguments that are derived from natural law. It is a self-defeating effort. They are attempting to saw off the limb upon which they are sitting.

Sadly, recent examples of attacks on natural law come from self-described “Orthodox Christians” within the GOP. Michigan GOP Rep. Justin Amash recently complained that “We can’t legislate morality and force everyone to agree with us.”

Libertarian John Stossel likes the fact that “Amash focuses on government spending.” In addition, conservative author Arthur Brooks implores Republicans to focus on “improving the lives of vulnerable people” through the appropriate conservative policies instead of “imposing an alien ‘bourgeois’ morality on others.”

Libertarians and their like-minded friends want to focus on government spending or conservative fiscal policies, but they often fail to realize that one does not leave morality at the door when entering the realm of economics.

If you want to make the moral arguments in favor of proper economic policy (which, of course, are ultimately based in natural law), then you must accept the other moral conclusions — killing a child in the womb is wrong; marriage is only between a man and a woman — that go along with them.

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