

## Abortion Worldwide Report: Part I

### The Nature of Law and Its Purpose in Protecting Life

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What is law? What is the purpose of law? Should law protect human life? Ask lawyers, judges, officials, diplomats, or law students these questions and you may receive a different answer from each one, and from most no discernment of the Divine origin or purpose of law. This brief is built upon the prior four briefs, and lays the foundation for just law, which is the means by which civil governments establish the rule of law and fulfill their God-given function. I offer my observations and answers to these questions.

**Aquinas and Blackstone on the Origin and Purpose of Law.** Thomas Aquinas (1225-1274 A.D.) studied the origin and nature of law, and profoundly impacted the history of law and nations through his Treatise on Law. He believed that, “God, by His wisdom, is the Creator of all things,” that “the universe is governed by [His] Divine Reason,” and “the very Idea of the government of things in God ... has the nature of a law.” Those laws are dictated by “the Ruler of the universe,” by His “Divine Wisdom,” and are called “eternal law” or “Divine law.” When humans use their God-given ability to reason in order to create laws consistent with the eternal law, they reflect “the Eternal Reason” of God, and “this participation of the eternal law in the rational creature is called the natural law.” As to the human necessity of law, Aquinas said that the devil inclines us to do evil, but God moves us to do good, instructing “us by means of His Law, and assists us by His grace.”<sup>1</sup>

Sir William Blackstone (1723-1780 A.D.), in his Commentaries on the Laws of England (1765-1769), like Aquinas, affirmed that the Creator Himself is the Source and Sustainer of the fixed Laws that govern nature, mankind, and the universe.

“(W)hen the Supreme Being formed the universe, and created matter out of nothing, He impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be.”

These principles are the physical and moral laws governing every creature and created thing without exception, such as the law of gravity. Of law generally, Blackstone wrote,

“Law ... signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.”

And as applied specifically to man,

“Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. ... And consequently ... it is necessary that he should in all points conform to his Maker’s will.”

The “Maker’s will” is manifested in the “the law of nature.”

“This will of the Maker is called the law of nature. For ... when He created man, and endued him with freewill to conduct himself in all parts of life, He laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.”

Further, God always conforms Himself to His own Law, and through it, He has given us the capacity to discern good from evil and establish justice.

“Considering the Creator ... laid down only such laws as were founded in those relations of justice ... These are the eternal, immutable laws of good and evil, to which the Creator Himself in all His dispensations conforms; and which He has enabled human reason to discover ....”

These Laws of God are superior to all human laws; any contrary “laws” are unlawful.

“This law of nature, being coeval [same age] with mankind and 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: and such as are valid derive all their force, and all their authority, mediately or immediately, from this original.”

Blackstone also recognized the fallen nature of man, affecting our ability to reason rightly, and thus our need to have the Law of God in written form.

“But ... it is still necessary to have recourse to reason ... But every man now finds ... that his reason is corrupt, and his understanding full of ignorance and error. ... This has given manifold occasion for the benign interposition of Divine Providence ... [by giving the Bible] ... The doctrines thus delivered we call the Revealed or Divine Law, and they are to be found only in the Holy Scriptures.”<sup>2</sup>

Blackstone’s understanding of law represented the most highly developed view of law among the nations that is consistent with the Law of God. How did this English jurist come to this understanding?

**The written Law of God as foundation of law.** The LORD God gave His Law to Moses between 1450 and 1410 B.C.,<sup>3</sup> which he recorded in the first five books of the Bible (the Torah or Pentateuch). God gave His Law directly to reveal His will for people to be able to live in right relationship to Him and to other people, and to provide a just system of government and law for the nation of Israel. (Some of the provisions were applicable only to ancient Israel, such as animal sacrifices, annual feasts, and certain dietary prohibitions, but many provisions can be implemented in any nation.) Evidence of principles of the same Law are found in every code of

laws – including the Code of Hammurabi<sup>4</sup> and the Justinian Code<sup>5</sup> – because they reflect, though imperfectly, the Law of God written on every human heart (Romans 1:19; 2:15). Every person knows it is wrong to lie, steal, murder, rape or commit adultery. Even a thief knows, for if you steal from him, he will become angry, demand his property, and may take vengeance.

How did a deeper understanding of the applicability of the Law of God develop among nations outside of Israel? A series of events occurred between A.D. 1215 and the early 1800s that opened up a new understanding of authority, law, human rights and responsibilities. As mentioned above, Thomas Aquinas wrote extensively about theology and law, and shaped the understanding of clergy and rulers during the mid-1200s. Johannes Gutenberg invented the printing press and printed the first complete Latin Bible in 1455, resulting in the Bible being available to the public. John Wycliffe (1320-84), William Tyndale (1494-1536), Martin Luther (1483-1546) and others created translations in English, German, and other common languages, which were subsequently mass printed. Knowledge of the Bible led to awareness of theological errors and abuses of church authorities, which resulted in the reformation of the church. Less known was the transformational understanding of the principles, purposes and limitations of law and civil government discovered in the Bible. Blackstone's views reflect those discoveries.

**Just law complies with the Law of God and is fixed, uniform, and universal.** The Law of God is distinct from human laws. In the Bible, there are several words used for laws, commands, and statutes; but in both the Old and New Testaments, there is one predominant word for “law”, and that word means exclusively the Law of God, including the Ten Commandments and Law of Moses. The Hebrew word is *tôwrâh*, and the Greek word is *νόμος*. Different words for “law” are used when referring to human laws of nations. For example, during the decades of Babylonian captivity when the books of Daniel and Nehemiah were written, the Hebrew authors use *tôwrâh* when referring to the Law of God, but used a Chaldean word, *dâth*, when referring to “the law of the Medes and Persians” (Daniel 6:8, 12, 15).<sup>6</sup>

King David declared: “The Law of the LORD is perfect, restoring the soul” (Psalm 19:7). How could he, a flawed man, make this assertion? Human laws are imperfect, sometimes contradictory, and sometimes authorize evil, such as abortion. Perhaps David came to the same realization as I in studying and comparing the Law of God to human laws. The Law of God is absolutely righteous, just, and good; there is not a single unrighteous, unjust, imperfect or evil provision.

Dr. Herbert W. Titus, former Dean of the School of Law at Regent University, studied the history of law, including Biblical Law, and concluded: “Law, to be called Law must be unchanging, that is, fixed, uniform, and universal, not relative to time, person or situation, or place.”<sup>7</sup> And Dr. Michael V. Hernandez, current dean of the Regent School of Law said, “Human laws must reflect these characteristics of God’s law in order to be valid.”<sup>8</sup>

Thus the goal of those entrusted with civil government authority should be to create and enforce just laws and policies that are consistent with the Law of God, and are fixed, uniform, and universal within their jurisdiction. While this should be the goal, Dr. Hernandez astutely

observed that, “given our fallen nature, we will never perfectly encapsulate justice through human law.” That is also precisely why it is important to be able to change human laws and correct errors, hopefully bringing the law into better conformity with the Law of God. As Dean Hernandez said, this process can be safeguarded by ensuring “the consent of the governed, the separation of powers, *stare decisis*, and the protection of natural rights (such as life).” By contrast, “laws” based on evolutionary or humanistic views have no fixed standard; they are always changing according to the arbitrary will of legislatures, courts, government leaders, and decision makers.

**Just law establishes fixed standards of right and wrong.** The Law of God is His standard of righteousness and justice, defining with absolute authority what is good or evil, right or wrong, true or false, just or unjust. Thus, every provision of law is a moral judgment. Further, every provision of law is discriminatory based on principle, not on persons; that is, what the law prohibits and punishes as wrong is wrong for every person, without distinction. Just laws apply equally to citizens and rulers, to poor and wealthy.

As stated above, the original word for “law” in Hebrew is “*towrah*” (or Torah), which means “law” or “instruction,” and comes from another word that means, “to lay foundations” or “teach.”<sup>9</sup> Jesus summarized the Law of God and the entire Bible this way:

“‘You shall love the LORD your God with all your heart, and with all your soul, and with all your mind.’ This is the great and foremost commandment. The second is like it, ‘You shall love your neighbor as yourself.’ On these two commandments depend the whole Law and the Prophets” (Matthew 22:36-40).

Therefore, God’s intent in every provision of His Law is to teach us how to live in right relationship with Him and with people, and provide a fixed standard of law upon which human authorities can make right judgments when one person harms another person.

Some provisions of the Law of God pertain only to our relationship with God, and are entirely outside the jurisdiction of civil government, such as rights of conscience, thought, belief, freedom of religion, freedom of speech, liberty, loving God, and loving people. Civil government is to protect these God-given rights from being violated, but not to control, punish, or prohibit them.

Other provisions are clearly the responsibility of civil government, especially protecting human life. As discussed in the prior Civil Government brief, from the beginning, the legitimacy of civil government was inseparable from its duty to protect innocent human life and establish lawful justice (Genesis 9:5-6; Exodus 20:13; 23:7; Leviticus 24:17; Psalm 72:14; 94:20-21).

**Human laws must be consistent with conscience to ensure respect.** When human laws are consistent with the Law of God, they are consistent with a rightly informed conscience, thus giving citizens the opportunity to live freely with a clean conscience before God and in obedience to civil laws. When the civil “laws” contradict the Law of God, this creates internal

conflict, requiring each person to choose between obeying God or human rulers. If they choose to obey God, they will in some form resist the unlawful “law,” and have difficulty respecting their government. If they obey the unlawful “law,” they will violate their conscience, dulling their sensitivity to right and wrong, and will gradually lose respect for themselves, and their government and their “laws.” Then it will become more difficult to maintain the rule of law.

Pope John XXIII said, “Separated from God a man is but a monster, in himself and toward others; for the right ordering of human society presupposes the right ordering of man’s conscience with God, who is Himself the source of all justice, truth and love” (par. 215).<sup>10</sup>

**A foremost purpose of the law is to protect human life.** Through the Bible and creation, God has revealed Himself as the Creator of mankind and of every baby in his mother’s womb (see Sanctity of Life brief). Consequently, the right to life is the first and foremost unalienable human right (see Human Rights brief). When God authorized civil government, He specifically did so to protect innocent human life and establish justice (see Government brief). These purposes are accomplished through making, complying with, and enforcing just laws, such as, “You shall not murder” (Exodus 20:13). Therefore, God commands every human government to make and enforce laws prohibiting murder of any human being within their jurisdiction, preborn and born. Preborn children must be protected from the moment of conception or fertilization, without discrimination based on viability, gender, ethnicity, or disability. *A foremost purpose of law is to protect human life!*<sup>11</sup>

### **Law corrupted by evolutionary theories, humanism, and the case method.**

Beginning in the 1870s A.D., Professor Christopher C. Langdell, Dean of Harvard Law School, invented “the case method,” which changed the understanding of “law.”<sup>12</sup> He deliberately sought to remove law from a fixed foundation, changing its concept to something that emerges from the rulings of judges and decision-makers. Decisions in court cases became the primary focus for shaping what “law” ought to be, as a continuous, endless process. Thus, the predominant view of “law” currently held in most nations is that it is always changing and emerging, reflecting the will of those currently in governing power, and it can be ignored, altered or voided by new decisions. To my knowledge, nearly every law school in the United States teaches “law” from this perspective, and from observing government officials, congressional debates, judicial decisions, and international policy discussions for over 30 years has persuaded me that the vast majority of those serving in government think the same way.

This scheme was based on both evolutionary theory and humanism, developed by Langdell and others not long after Charles Darwin published his evolutionary theory. It presupposes that there is no God; and there is no premise, principle, or rule of “law” that is fixed. It further presupposes that “law” originates in man, emerging and changing through man “as a result of a continuous process.”<sup>13</sup> The only constant is change. Under this view of law, there is no fixed and unchanging basis to protect vulnerable, defenseless, human life, especially preborn babies.

**Closing note on terminology in this Report.** We have chosen to use the word “authorize” rather than “legalize” when referring to governments enacting policies permitting or mandating abortion of innocent preborn children. The word “authorize” means: “To give authority, warrant or legal power to; to give a right to act”; and is traced back to the “author,” that is, the “one who produces, creates, or brings into being.” The word “legal” means: “According to law; in conformity with law; permitted by law” (Webster’s, 1828).<sup>14</sup> To authorize may include “to make legal,” but it should be obvious to all that some laws and policies enacted by human governments are not right or just. There is only one standard of Law that is perfect, namely, the Law of God, which reflects His perfect, faithful, consistent, loving nature (Psalm 19:7). Human laws that conform to the divine Law are just laws. But human laws and court decisions enacted 136 governments authorizing the destruction of preborn children, usually with impunity, are unjust. Thus we use the word “authorize” to point back to the originators that made or enforced policies permitting or mandating abortion.

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## Endnotes

<sup>1</sup> Aquinas, Thomas, “Treatise on Law,” *The Summa Theologica*, Questions 90, 91, 93.

<https://www.ccel.org/a/aquinas/summa/FS/FS090.html#FSQ90OUTP1>

<sup>2</sup> Blackstone, Sir William, Introduction, Section 2, “Of the Nature of Laws in General,” *Commentaries on the Laws of England* (1765-1769).

<sup>3</sup> There is a 200-300 year discrepancy among sources on the timing of the Exodus and giving of the Law.

<sup>4</sup> *The Code of Hammurabi*, Code of Laws (1780 B.C.), translated by L. W. King. The Avalon Project, Yale Law School (Lillian Goldman Law Library, 2008). <http://avalon.law.yale.edu/ancient/hamframe.asp>

<sup>5</sup> The *Code of Justinian* was developed under the rule of Emperor Justinian I, between 527 and 565 A.D., to create a uniform legal code for the Byzantine Empire.

<https://www.law.berkeley.edu/library/robbins/RomanLegalTradition.html>

<sup>6</sup> Hebrew 8451, 1881, 1882, and Greek 3551, in Strong’s Exhaustive Concordance of the Bible, by James Strong (Nashville, TN, USA: Crusade Bible Publishers, Inc.); and at [www.BlueLetterBible.org](http://www.BlueLetterBible.org).

<sup>7</sup> Titus, Herbert W., J.D., author, *God, Man, and Law: The Biblical Principles* (1984).

<sup>8</sup> Email from Michael V. Hernandez, J.D., Dean and Professor, School of Law, Regent University.

<sup>9</sup> Hebrew 8451, 3384, *Gesenius’ Hebrew-Chaldee Lexicon*, as published online at:

<http://www.BlueLetterBible.org>

<sup>10</sup> “*Mater Et Magistra*: Encyclical of Pope John XXIII on Christianity and Social Progress,” 15 May 1961.

<sup>11</sup> Good laws protecting human life have saved the lives of countless babies. One example is Rebecca Kiessling, who is the mother of 6 children (3 adopted), and a strong advocate for laws prohibiting abortion including in cases of rape – the 1 percent exception that is often used to justify authorizing abortion. Her mother was raped and twice attempted to abort her; when she went to the hospital, they helped her, but refused to abort Rebecca because the law at that time prohibited abortion. And abortion-survivor attorney Rebecca lives. See her ministry and website: <http://www.savethe1.com>

<sup>12</sup> <http://harvardmagazine.com/2003/09/making-the-case-html>

<sup>13</sup> Kurtz, Paul, editor, *Humanist Manifesto I & II* (Buffalo, NY: Prometheus Books, 1982).

<sup>14</sup> *Noah Webster’s First Edition of an American Dictionary of the English Language*, 1828 A.D., republished in facsimile edition (San Francisco, CA: Foundation for American Christian Education, 1967).