

The Colonists' Rationale for Independence: Basso: Commentary on Plea Bargaining; Not "Revolutionary War" but "War for Independence"; Difference between "Government" & "State" in the Declaration; George III's Violation of the Natural Law Provides Rationale for Separation; Paine's "Common Sense"; Jefferson & Henry on Abolishing the "Form" of Government

NOTE: This principle "no respecter of persons" has been systematically distorted within our nation's jurisprudence. Details on this historical trend are provided by Louis J. Basso:

Plea bargaining did not come into wide use until AFTER liberalism had already taken root and began to flourish in America. The Supreme Court of the U.S. did not even address it until 1968 (see below). It is intimately related to the following categorical forces:

- 1) increase in the level of disrespect for ALL authority and governing bodies of establishment; with resulting licentiousness,
- 2) exponential explosion in bureaucracy and the promulgation of regulations (22,000 pages in 1950 to over 78,000 pages today),
- 3) the ability of (through technological advance) government and its willingness to invade the privacy of its citizens;
- 4) the belief that there are NO absolutes.

It would be very interesting to do additional research on the above, but then it would only further substantiate what we already know.

Below you will find some information from the *Encyclopedia of Everyday Law* as well as some statistical data from the Federal Bureau of Justice. It gives a history and "rationale" for plea bargaining. As you said tonight [see 09-12-02.TG09-05], if you commit a crime there should be a punishment stated. The jury should be left to determine guilt. Remember, however that philosophically the lesser crime in a particular category is assumed into the greater crime. The distinction being more one of *mens rea*¹ than the act itself.

For example all categories of "murder" (1st degree, 2nd degree and voluntary manslaughter etc.) all require a perpetrator, a victim, and a causal relationship between an act of the perpetrator and the death. What distinguishes one degree from the other is the definition of "intent"; in other words getting into the mind of the perpetrator.

As we as a society lost our moral courage and clarity of thought, we aggressively sought meaningless intellectual distinctions in order to excuse and rationalize our cowardice and unwillingness to hold others accountable.

¹ "MENS REA (*mens rā-a*) Lat.: A guilty state of mind. The mental state accompanying a forbidden act. Criminal offenses are usually defined with reference to one of four recognized criminal states of mind: (1) **intent**; (2) **knowledge**; (3) **recklessness**; (4) gross (criminal) **negligence**" (Steven H. Gifis, *Dictionary of Legal Terms: A Simplified Guide to the Language of Law*, 3d ed. [Hauppauge, NY: Barron's Educational Series, 1983], 296).

The combination of a growing guilt complex, lack of doctrine, moral degeneracy, and growing liberalism etc., we LOST this battle against criminality as is evident by the fact we have a prison population in the millions which cost us billions each year, and over 20% of the population in America today has been or is now part of the penal system at one point of their lives.

Some interesting statistics from the U.S. Bureau of Justice for the years 1974-2001:

Lifetime likelihood of going to State or Federal prison

- If recent incarceration rates remain unchanged, an estimated 1 of every 15 persons (6.6%) will serve time in a prison during their lifetime. [This was based on the aforementioned years. Actual statistics and percentages today are closer to 22%.]
- Lifetime chances of a person going to prison are higher for men (11.3%) than for women (1.8%); for blacks (18.6%) and Hispanics (10%) than for whites (3.4%).
- Based on current rates of first incarceration, an estimated 32% of black males will enter State or Federal prison during their lifetime, compared to 17% of Hispanic males and 5.9% of white males.

Recidivism

- Of the 272,111 persons released from prisons in 15 States in 1994, an estimated 67.5% were rearrested for a felony or serious misdemeanor within 3 years, 46.9% were reconvicted, and 25.4% resentenced to prison for a new crime.
- The 272,111 offenders discharged in 1994 accounted for nearly 4,877,000 arrest charges over their recorded careers.
- Within 3 years of release, 2.5% of released rapists were rearrested for another rape, and 1.2% of those who had served time for homicide were arrested for a new homicide.
- Sex offenders were less likely than non-sex offenders to be rearrested for any offense — 43 percent of sex offenders versus 68 percent of non-sex offenders.
- Sex offenders were about four times more likely than non-sex offenders to be arrested for another sex crime after their discharge from prison — 5.3 percent of sex offenders versus 1.3 percent of non-sex offenders.

U. S. Supreme Court Cases



Article III, Section 2[3] of the U. S. Constitution provides that "The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury." However, it has never been judicially determined that engaging in a plea bargaining process to avoid trial subverts the Constitution. To the contrary, there have been numerous court decisions, at the highest levels, that discuss and rule on plea bargains. The U. S. Supreme Court did not address the constitutionality of plea bargaining until well after it had become an integral part of the criminal justice system.

In *United States v. Jackson*, 390 U.S. 570 (1968), the Court questioned the validity of the plea bargaining process if it burdened a defendant's right to a jury trial. At issue in that case was a STATUTE that imposed the death penalty only after a jury trial. Accordingly, to avoid the death penalty, defendants were waiving trials and eagerly pleading guilty to lesser charges. Justice Potter Stewart, writing for the majority, noted that the problem with the statute was not that it coerced guilty pleas but that it needlessly encouraged them.

Two years later, the Court actually defended plea bargaining in *Brady v. United States*, 397 U.S. 742 (1970), pointing out that the process actually benefited both sides of the adversary system. The Court noted that its earlier opinion in *Jackson* merely required that guilty pleas be intelligent and voluntary. The following year, in *Santobello v. New York*, 404 U.S. 260 (1971), the Court further justified the constitutionality of plea bargaining, referring to it as "an essential component of the administration of justice." The Court added that "[as long as it is] properly administered, [plea bargaining] is to be encouraged."²

It can be seen on proper evaluation, that the Declaration did not proclaim a right to revolution. The colonists never challenged George III's right to rule as king of England. The question posed was whether King George had the right to rule *them*. The colonial charters were issued primarily to private entrepreneurs and the Crown's sovereignty over those colonies was considered to be quite limited.

The colonials were of the opinion that if they were not represented in Parliament, then they were not under the sovereignty of Parliament's king, neither having the just consent of the governed.

Note in the above excerpt from the Declaration Jefferson's choice of words: he chooses "government" rather than "state." English law made a clear and distinct differentiation between the two words. *Government* implied the temporary possessors of power and their current political policies. For example, whenever the king dismissed his ministers and chose new ones it was said that a new *government* was formed.

State meant what today we would call the nation. This was the established civil social order of things including constitutional contracts, civil laws, culture, and customs.

To speak of altering or abolishing the government was simply stating a principle from the laws of nature. To speak of altering or abolishing the state would have been a recommendation for outright revolution. Such was never a part of the colonial consciousness. In fact, even during the War for Independence, colonial soldiers, under George Washington's direction, would toast their allegiance to King George.

² Louis J. Basso, P.C., e-mail message to author, December 2, 2009.

So, the Declaration spoke of instituting “new government,” not overthrowing the state itself and establishing a new social order.³ They desired to expand and enhance what England already possessed in the way of fundamental institutions.

To suggest a change of *government* was not hard to justify. Henry Bracton, who was considered the father of English common law in the thirteenth century, said:

Let the king render back to the law what the law gives to him, namely, dominion and power; for there is no king where will and not law wields dominion.

Or they could have quoted Richard Hooker, a sixteenth-century theologian who brilliantly discerned the difference between governments formed under the laws of divine establishment and those formed under the mystery doctrines of the church. In his analysis, the eight-volume treatise entitled *Of the Laws of Ecclesiastical Polity*, Hooker discusses how an unjust king should be restricted. In 1688 a precedent was set when James II was dethroned in order to preserve the Church of England.

Thus, the overthrowing of a *form* of government destructive to the ends of granting power to the governed was a rational appeal to the laws of nature.

They were quick to point out that evils must become insufferable before men should consider abolishing government. In fact, the government must have presented itself unredeemable over a considerable expanse of time.

Self-governing from the very beginning, the colonists were asking only that they be allowed to continue to possess the rights of Englishmen. To be taxed only with the consent of their representatives in Parliament was the key to such rights.

From the beginning the colonials had been separate from England. Their link to Britain was a voluntary one in which they maintained a loyal allegiance to the king. There were the natural ties of culture, customs, bloodlines, and law. George III had expediently sought to use the colonists to pay for his mercantile wars. In so doing, he violated the very basis of a just government—he circumvented the laws of nature and of nature’s God.

It was a bold and dangerous move, but the colonists decided to challenge the king on the premise that the laws of God for man were unalienable rights which no earthly king had the power to resend. As Patrick Henry said one year earlier in Richmond, “An appeal to arms and to the God of Hosts is all that is left us!”

The appeal to arms was not very widespread even a year after the Battle of Lexington and Concord.⁴ However, America opinion was almost instantly galvanized with the publication of Thomas Paine’s *Common Sense* in January of 1776. George Washington said that it worked a powerful change in the minds of many men.

³ This is why describing the war with England as the Revolutionary War is inaccurate. There was never the desire or intent to dethrone King George or to conquer England. The conflict is better described as the War for Independence from the “government” of England.

⁴ (April 19, 1775) Initial skirmishes between British regulars and American provincials, marking the beginning of the U.S. War for Independence.

Government by kings was first introduced into the world by the Heathens, from whom the children of Israel copied the custom. It was the most prosperous invention the Devil ever set on foot for the promotion of idolatry. The Heathens paid divine honors to their deceased kings, and the Christian world hath improved on the plan, by doing the same to their living ones.⁵

O ye that love mankind! Ye that dare oppose, not only the tyranny, but the tyrant, stand forth! Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia, and Africa, have long expelled her—Europe regards her like a stranger, and England hath given her warning to depart. O! receive the fugitive, and prepare in time an asylum for mankind.⁶

In addition to these dogmatic gems, the Continental Congress learned in March of 1776 that King George had hired German mercenaries to send against the colonies. On June 7, 1776, Richard Henry Lee introduced a resolution to Congress which would seek independence from Britain. On June 11, a committee was appointed to draw up the document.

The committee was composed of Benjamin Franklin of Pennsylvania, John Adams of Massachusetts, Robert Livingston of New York, Thomas Jefferson of Virginia, and Roger Sherman of Connecticut. They were given until July 1 to submit a document for consideration by the Congress.

On July 1, the Congress reconvened and Lee put forth his resolution again. During the time between June 11 and July 1, all colonial legislatures had been informed of the resolution and all but New York had given approval to their delegates to vote for independence.

The Declaration was passed by Congress on July 2 and published as the Declaration of Independence on July 4, 1776. It was signed by 56 delegates representing all thirteen colonies. The die was cast!

This past July 4 we celebrated the 233rd birthday of this document. It is being abused by those who seek to misuse freedom for their own selfish ends.

Only in freedom does a person enjoy the privilege of voicing ideas which if followed would destroy that freedom. Historical trends seem to be exposing a growing number among us who would on the one hand read into the foundational documents what best suits their current cause or ignore them altogether.

National figures are jeered and mocked when they express support for the original intent of the Constitution. Supreme Court justices publically criticize the Constitution while other voices suggest it has outlived its usefulness. Some have even suggested that we have a Constitutional Convention in order to modernize the document within the framework of modern American thought.

⁵ Thomas Paine, *Common Sense and the Crisis* (Garden City, NY: Anchor Books, 1972), 19.

⁶ *Ibid.*, 42.

Progressive ideology and a supportive elite political class are undermining the fabric of our society. I have often wondered why societies allow themselves to fall under totalitarian regimes without a fight. The answer is a loss of thought. Reduced through orchestrated ignorance by a government controlled educational system, propagandized into supporting the cosmic panaceas of socialism, and deluded into following the mantras of a Luciferian “angel of light,” the clanking chains of tyranny soon have the preprogrammed benighted so deluded that even should they desire to free themselves they are incapable of executing an escape.

Several recent events, and others planned for the future, indicate efforts are afoot to suppress political speech. Remember the Founders’ differentiation between “government” and “state.” The state referred to the nation whereas the government referred to its various forms—concepts enucleated in the Declaration. The colonists’ desire was to change the *form* of government that restricted their freedoms:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.—

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—

That whenever any Form of Government becomes destructive to these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.⁷

Our next two chances “to alter or abolish” our present “Form of Government” and “to institute new Government” are scheduled for November 2, 2010, and November 6, 2012, respectively.

If tyranny prevails then we may witness the fulfillment of Thomas Jefferson’s comment in his letter to W. S. Smith:

The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.”⁸

Our mandate as Christians is to submit to governmental authorities unless the violation of inflexible principles of divine revelation is imposed upon us by government. Through nonviolent civil disobedience we are to stand fast with truth while being submissive to whatever penalty clause the state desires to impose upon us.

Presently, far too many have eyes to see but do not see the signs of impending danger to our liberty nor do they have ears to perceive the deceitful lies contained in every public profession announced by our political class. Fair warning is contained in Patrick Henry’s famous address before the Virginia House of Burgesses in 1775:

⁷ The Declaration, para. 2.

⁸ Thomas Jefferson to W. S. Smith, 13 November 1787. Monticello: Liberty: Jefferson Quotations (B.12.356). <http://www.monticello.org/reports/quotes/liberty.html>

It is natural for man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth—and listen to the song of the siren till she transforms us into beasts. Is this the part of wise men engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and, having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it might cost, I am willing to know the whole truth; to know the worst and provide for it.⁹

Henry, discerning the harbingers of impending war, concluded his famous Liberty or Death speech at the Convention with these prophetic words:

Our chains are forged, their clanking may be heard on the plains of Boston.¹⁰

Thanks to the grace of God, the United States has remained a cool and pleasant oasis between Eden and the Millennium where the waters of freedom have flowed unrestrained for over two centuries. Yet, the One who made it so is vilified, scoffed, and censored as a relic of some heathen pantheon. No righteous God will disregard such impertinence forever. We have every right to ask, “How long, O God, will You have mercy on those who blaspheme Your name?”

We have the confidence of knowing that as long as we serve Him, our Lord will preserve us in the midst of a crooked and perverse nation in which we are obligated to serve as lights to the world.

Our national anthem contains recognition of divine blessings upon our client nation:

**Blest with vict’ry and peace, may the Heav’n rescued land
Praise the Pow’r that hath made and preserved us a nation!
Then conquer we must when our cause it is just;
And this be our motto: “In God is our trust!”¹¹**

⁹ Lacky, *The Proceedings of the Virginia Convention*, 11.

¹⁰ *Ibid.*, 13.

¹¹ Francis Scott Key, “The Star-Spangled Banner,” v. 4, lines 3–6.