

**Politics and the Bible**

Lesson Three

The Courts and the Question of Ultimate Power in a Nation<sup>1</sup>

- I. Do You Care About The Courts?
  - A. The most basic issue regarding any system of government is, “Who will have the ultimate power to control the nation and how will such persons be selected?”
  - B. Throughout human history different countries have had different answers to that question
    1. Monarchy
    2. Dictators
    3. Prime minister (or president)
  - C. When the United States was founded, it answered that question with a different kind of solution
    1. The highest authority in the nation would not be any human person
    2. Rather, it would be a document – the Constitution
      - a. The Constitution would be the highest authority
      - b. This Constitution could only be changed with great difficulty
    3. All government officials and all laws were to be subject to the Constitution
  - D. To guard against the tyranny of one human ruler with too much power (whether one ruler or a small group), the system of government designed by the United States Founding Fathers prohibited any one person or group of persons from gaining ultimate power and made everyone subject to the Constitution
    1. In this way the nation was founded on a “rule of law”
    2. As opposed to a “rule of men”
  - E. This system of government bears significant similarities to the system of government in ancient Israel
    1. All the governing officials (king, priests, judges) in Israel were subject to an external wall – the law of God
    2. It was God’s law that ultimately ruled over the nation, not the king (Deut 17:18-19)

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<sup>1</sup>These principles come from chapter five “The Courts and the Question of Ultimate Power in a Nation” in Wayne Grudem’s *Politics According to the Bible*, pages 124-154

- F. In establishing a rule of law system of government in the United States, another problem faced the Founding Fathers was how to guarantee that some powerful group would not take over the government, violates the Constitution at will, and refused to be subject to its requirements
- G. Their solution was a “separation of powers”
1. In the United States, the power of the national government is divided among three branches:
    - a. The legislative (Congress)
    - b. The executive (the President and everyone under his authority)
    - c. The judicial (the courts)
  2. The legislative power is divided between...
    - a. A House of Representatives (with members elected every two years)
    - b. A Senate (with members of elected every six years [a third up for re-election every two years])
  3. New legislation must be passed by both houses and signed by the President
  4. In addition, power is divided in the United States, in that it is allocated in portions to the national government, to the fifty state governments, and to county and local city governments, with each level retaining authority over some areas
- H. This system of “checks and balances” was designed to protect the nation from any person or group that might arise and abuse their power
- I. With respect to the separation of powers between the legislatures and the courts, the United States was set up to have a system by which...
1. One group would make the laws (the national Congress, and the state and local legislatures and boards)
  2. And another group would interpret and apply the laws (the courts) and would also decide if the laws were consistent with the national or State Constitution
- J. The benefits of this plan:
1. The separation of powers – the principle that those to judge the laws should not be those who also make the laws
  2. Accountability for those who make the laws
    - a. Those who make the laws are the most accountable people
      - (1) They are the officials who are directly elected by the people
      - (2) They are the officials who are closest to the people at every level of government
    - b. The people have ultimate authority in the nation (for they elect government officials), but they exercise that authority

through their elected representatives and under the Constitution

3. The rule of law
  - a. There is a higher law above the lawmakers; therefore, even the lawmakers are to be subject to the rule of law
  - b. Amending the Constitution is possible, but it is very difficult
    - (1) It has been rarely done
    - (2) It requires a 2/3 vote in both houses of Congress and then ratification by the legislatures of 3/4 of the states
    - (3) An alternative method is a constitutional convention
      - (a) Requested by the legislature of 2/3 of the states
      - (b) With changes then ratified by the legislators of 3/4 of the states
4. Protection from fundamental change
  - a. This system protects the nation from becoming *fundamentally* different than what it started out to be
  - b. Both...
    - (1) By ensuring that the Constitution will be enforced
    - (2) And by making it extremely difficult to change the Constitution
5. Protection from a hasty majority
  - a. This system protects the nation from a tyranny of a majority of the people
  - b. Responding to perceived "urgent" needs in a "crisis" that would erode or destroy the pillars upon which the nation was founded

## II. According to the Bible what should judges do?

- A. The essential role of judges is to judge according to a law external to themselves
  1. In Israel's case, God had given the standard by which judges were to decide a dispute
  2. It was necessary for the judges to know the laws of God in order to judge the people rightly
- B. Judges are not to show partiality or take bribes, for this would be using some other basis for judgment than the established law
- C. The role of judges in the Bible is clear
  1. They were to evaluate and judge each case fairly according to the established standard of law external to themselves
  2. They were not to change the law nor were they to use any other basis for judgment than the law that was clearly established – a law that was external to themselves

- III. What Has Happened in the United States?
- A. For most of the history of United States, the system established by the Constitution worked quite well – the courts would decide cases according to the laws that had been passed and according to the Constitution
1. There were not only federal courts dealing with cases of law for the whole United States
  2. There were also state and local courts dealing with their own laws
- B. The courts also evaluated laws that were passed, to see whether they conformed to the Constitution
1. If someone thought a new law was unconstitutional, he could file a suit in a US District Court, asking the court to overturn the new law
  2. The losing party could appeal to a higher court, one of twelve US Courts of Appeals
  3. Above the 12 US Courts of Appeal is the Supreme Court
- C. **The gradual discovery: the Supreme Court could have unlimited power**
1. There was a weakness in the system that the justices on the Supreme Court discovered over time
  2. If a case came to the Supreme Court and *the Constitution did not say something that the Supreme Court justices wanted it to say, or thought it should say*, they would claim to “discover” new principles in the Constitution.. and no one would have the power to override them
  3. Whenever they thought it was important, the justices on the Supreme Court could simply create a new law and call it an “interpretation” of some part of the Constitution and it would become the highest law in the land
    - a. **Roe v. Wade** (January 22, 1973)
      - (1) By a 7-2 majority, the Supreme Court found that the right to an abortion was contained in the 14th amendment
      - (2) Justice Byron White wrote in dissent, *“I find nothing in the language or history of the Constitution to support the court’s judgment...[this is] an exercise of raw judicial power”*
    - b. More and more decisions of this nature were made
- D. **The Supreme Court thus became the most powerful group in the nation**
1. The Supreme Court made decisions not grounded in any law that had been passed by any Congress or any state legislature and that were not part of what the Constitution originally meant
  2. This has happened so often in the last several decades that many people in United States *simply assume* this is what should happen, that this is the kind of government we are supposed to have as a nation

3. No person or group or government agency has any authority over the Supreme Court
  4. The Supreme Court can simply invent new provisions that it claims are now part of the Constitution
  5. Now the most important laws in this land are not made by officials who are the closest to the people and accountable to the people (the Congress and state and local governments), but are made by a group of justices...
    - a. Who have never been elected by the people
    - b. And have no accountability whatsoever to the people of the nation
- E. Judicial Activism
1. As the Constitution was written, judges were to have absolutely no role in the process of making laws or in the process of amending the Constitution
  2. This “new power” of the Supreme Court has affected hundreds of other issues
    - a. The Supreme Court has reinterpreted the First Amendment (*Lemon v. Kurtzman* [1971]) to remove the people’s right to religious speech or writing in public places, at government functions, or even on government buildings
      - (1) Rather than prohibiting the favoring of one *particular religion* the Supreme Court decided that government could no longer *favor religion at all*
      - (2) These restrictions placed on religious freedom and speech have not been passed by state or local representatives who are accountable to the people they serve, but decreed by a court
      - (3) Because of this Supreme Court decision, public schools are now prohibited from teaching the most fundamental fact in the universe – that God created it
    - b. In *Kelo v. City of New London* (2005)
      - (1) The Supreme Court approved, in a 5-4 decision, the taking of private property for private development
      - (2) The reinterpretation of the Public Use Clause (Fifth Amendment) removes any “meaningful limit on the governments eminent domain power”<sup>2</sup>
    - c. In the year 2000, the decision *Boy Scouts of America et al. v. Dale*, the Supreme Court came within one vote of finding the constitutional right to engage in homosexual conduct

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<sup>2</sup> Associate Justice Clarence Thomas, in a separate dissent

- (1) A five-member majority of the US Supreme Court overturned the New Jersey Supreme Court decision, holding that the Boy Scouts, as a private organization, were allowed to exclude a person from membership on the basis of the constitutional right of freedom of association
  - (2) This right implies the freedom *not* to associate with certain people
  - (3) This right *not to associate* is especially strong when an association would hinder the organization's ability to communicate a message representing certain values
  - (4) Four members of the Supreme Court found in the Constitution a right to engage in homosexual conduct and **thought they had the right** to impose such a requirement on the entire United States
3. *Did the founders of the United States and the original authors and signers of the Constitution ever intend that the Supreme Court would have the right to decide for the entire nation what is appropriate and protected sexual conduct and what is not?*
  4. **The very fact** that people in United States simply assumed that the Supreme Court can decide such things means...
    - a. We have "long since" abandoned the essence of the nation as it was founded
    - b. That is, **the right of the people** *as a whole through democratic processes in their elected representatives to decide the most important issues facing the nation*
- F. Following the pattern of the United States Supreme Court, many State Supreme Courts have invented other "constitutional rights"
1. State laws regarding same-sex marriage
  2. Laws giving special legal rights to homosexuals
- G. Judicial overreach
1. On May 20, 1996, in a 6-3 majority, the Supreme Court overturned an amendment to the Colorado Constitution in *Romer v. Evans*
    - a. Amendment Two prohibited state and local governments in Colorado from passing laws that gave special rights to homosexuals or to claim minority status
    - b. The US Supreme Court decreed that the citizens of Colorado did not have the right to make that decision
  2. From 1972 to 1976, the United States Supreme Court outlawed all capital punishment in the United States (*Furman v. Georgia*)
  3. The issue of capital punishment should be decided by the citizens of United States through their elected representatives

- H. The broad powers of the court
  - 1. All the important legal issues of our time are now being decided by small group of nine judges
    - a. None of whom has ever been elected by any group of voters in the United States
    - b. And none of them is accountable to any group of voters in the entire United States
  - 2. If citizens want to change these decisions the factors they have absolutely no power to overcome these rulings
  - 3. The people of this nation are no longer allowed to make decisions for themselves
    - a. The Supreme Court makes decisions for the people
    - b. And all the people are able to do is submit to those decisions
- IV. Why Didn't the System of Checks and Balances Work to Correct This Mistake?
  - A. *Why didn't the President and Congress stepped in and appoint new justices when the others died or retired, so as to replace "activist" judges who were taking so much power to themselves? Why didn't the executive branch and legislative branch defend themselves against the judicial branch's's distortion of the original system?*
  - B. **The answer:** Many liberal politicians in the other two branches began to realize that the goals they had for remaking America could be quickly accomplished simply through the rulings of the courts, rather than taking the hard path of getting the people and their representatives to approve the changes
    - 1. Therefore, rather than acting as a balance against the Supreme Court many in Congress decided they would support the courts usurping of power and would support judges (at the federal district level and at the appeal court level) who also hold and seek to promote judicial activism
    - 2. Rather than each of the three branches of government working to protect its own rights, influential members of the legislative and executive branches joined with and supported the Supreme Court in its wrongful usurping of power
    - 3. This process came into clear focus in President Ronald Reagan's nomination of Robert Bork in 1987
      - a. Bork was a highly respected judge and had an impressive resume
      - b. At the time of this nomination, he had been called the most able constitutional scholar in the United States
      - c. But Robert Bork was an "originalist"
        - (1) He held to the idea that the original public meaning of the Constitution should be the guiding principle in



government as the best safeguard against the abuse of power is divided power

1. King, priest, judge and (prophet) in the Old Testament
  2. Plurality of apostles and plurality of elders in the New Testament
- C. The principle that people should be accountable for their actions
1. It is wrong for those who judge the law to be the exact same people who actually make the laws
  2. It is wrong for the court to invent new laws when what they decide is not legitimately based on any statute or any provision in the Constitution
  3. Nor should the people who make the most important laws be unelected and unaccountable to the people
- VI. Individual Votes for Democrats and Republicans Will Decide the Future of the Nation on This Issue
- A. There is not even the faintest hint in the Constitution that the judiciary shares any of the legislative or executive powers
- B. It is of great significance to note that every departure from the original understanding of the Constitution has resulted in the judicial enactment, or attempted enactment, of an item on the modern liberal agenda
1. Reverse discrimination on the basis of sex and race
  2. The right to an abortion
  3. Coming within one vote of finding the constitutional right to engage in homosexual conduct
  4. For a few years, the court even abolish the death penalty
- C. Under the Constitution, these are questions left for the people and their elected representatives to decide, not the courts
- D. Intellectual elites hold values which are far more egalitarian and socially permissive (that is, liberal and leftist-leaning) than those of the nation at large
1. As a result, the elites cannot carry elections
  2. They continue to push their agenda through judicial activism (including laws enacted by the Supreme Court)
- E. The two political parties in the United States have adopted completely opposite approaches to this issue
1. With Democrats supporting liberal activist judges, who will use the courts to advance a liberal agenda
  2. And most (but not all) Republicans supporting originalist judges and justices who will rule according to the original meaning of the Constitution
- F. Therefore, every vote for every candidate at the state and national level will tend to strengthen one party or the other and will tend to perpetuate either a liberal, activist system of judges or a conservative, originalist

system of judges

1. If Democrats are elected, they will tend to perpetuate the system activist judges
  2. If Republicans are elected, they (not entirely, but for the most part) will support judges at the state and national levels who hold to the original intent of the Constitution and the laws that have been passed
- G. This is one of the most important issues facing the nation
1. This will decide who will rule the nation
  2. It will decide whether we will once again become a nation with a government “of the people, by the people, and for the people”
  3. Or whether we will forever be ruled by nine unelected, lifetime justices on the Supreme Court
- H. So...*Do You Care About The Courts?*