

GOOD GOVERNANCE
AND THE RULE OF LAW
Worldviews Collide



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"In the beginning God...." Gen 1:1

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A person's worldview, or *Weltanschauung*, 'is a way of viewing or interpreting all of reality'.¹ Geisler and Watkins call it 'an interpretative framework through which or by which one makes sense of the data of life and the world'.² Noebel compares it to 'a pair of glasses through which you view everything.' The lens through which one views the world can include any 'set of ideas, beliefs, or values that provide a framework'³ or perspective on how one understands something in the universe.⁴ Thus, the legal-philosophical worldview lens through which one views the world determines how one perceives life, liberty, law and constitutional governance. All individuals, including legislators, judges, and other government authorities, make decisions informed by some worldview.

Basically, two competing legal-philosophical views of the world exist in the United States.⁵ An objectivist *Unalienable Judeo-Christian Worldview* sees God as the source of law and rights—where ageless moral absolutes or objective reference points provide an

inviolable fixed measure. Conversely, a subjectivist *Alienable Humanistic Worldview* sees man as the morally-relative evolving measure—and measurer—of all things.⁶ Thus, Americans generally either embrace that law and liberty are moral absolutes God reveals for us to discover—or that it is something humans deem into existence and evolve solely by our own reasoning apart from any divine revelation.⁷

If the source of the law and liberty is God, the underlying presumptions are very different than if the source is man alone. If the source is God, the presumption is that His assertions of truth exist, effectively providing objective moral reference points for law and governance. This includes the principle that God created human life in his image. Because God did so, human dignity is inviolable and all government actions must acknowledge and respect it.⁸ Liberty, therefore, is seen as an unalienable and unchanging objective inviolable limit on government action.

Conversely, government authorities viewing the world through a subjectivist *Alienable Humanistic Worldview* adopt some form of legal positivism. Viewing the legal-philosophical world through this lens enables authorities, on either the political left or the right, to see rights as subjective human creations unconnected to any moral or ethical underpinnings. As such they, as

humans, are free to re-define, transfer, take away, or evolve rights without regard to any moral considerations. Here, liberty can be seen as the alienable, morally relative, subjective, evolving preferences of those holding power.⁹

The Unalienable Judeo-Christian Worldview: An Inviolable Objective Standard

The Framers saw human laws as reflections of divine or natural law.¹⁰ Such laws may be just or unjust, depending on the clarity with which they reflect those objective standards. Again, my purpose here is not to enter, in any substantial way, the analytical battles involving the many facets, divine or otherwise, of natural law. To be sure though, when natural-law theory dominated Western legal philosophy, American judges, lawyers, and scholars recognised God's existence, and referred to His natural law as a source of our law and rights.¹¹ The United States Supreme Court often cited the writings of three of the greatest natural-law scholars (Grotius, Puffendorf, and Vattel).¹² Likewise, to the Framers, God's truth was self-evident,

and He endowed all human beings with unalienable rights.¹³ These Framers, for the most part very religious men, therefore read and were informed not only by the Holy Scriptures, but also the writings of classic natural law thinkers and jurists.¹⁴ Sir Edward Coke, cited by the Framers, expressed the scriptural principle that God writes His law on our heart:

God at the time of creation of the nature of man infused into his heart for his preservation and direction; and this is the eternal law, the moral law... And by this law, written with the finger of God in the heart of man ... before any laws written and before any judicial or municipal laws.¹⁵

Sir. William Blackstone, whose *Commentaries on the Law* were considered the leading legal authority at the time, similarly wrote: 'God, when he created man ... laid down certain immutable laws of human nature ... and gave him also the faculty of reason to discover the purport of those laws'.¹⁶

In this objectivist *Unalienable Judeo-Christian Worldview*, the Creator makes truth and other moral absolutes evident to us; we do not create them. Moreover, the Creator makes us creatures; we are not

the Creator, and, as such, we are subordinate to, though certainly a part of, that realm of absolutes. A lawful, moral order is, in some sense, inherent in human nature and is therefore accessible to us. This is why our traditional, natural-law view 'asserts a person's fundamental *obligation* (according to one's ability) to recognise reality as it actually exists on its own terms—and to recognise and respect the God-given (and, hence, inviolable) dignity of every human being'.¹⁷

For most Americans, the traditional wisdom of our forebears is generally reliable, which is why it has endured. If they correctly perceived and expressed the truth of an issue, we will only be able to agree with their conclusions; any changes we make to their findings would not be progress, but a perversion of the truth.¹⁸ Clarifications, refinements to fit new developments, and other marginal improvements are frequently possible; however, by its very nature, the truth of first principles endures—it does not evolve into 'new truths'.¹⁹ The laws of moral governments, operating under the Rule of Law, reflect this principle. Good government is not immoral or amoral. Good government is moral.

Under the *Unalienable Judeo-Christian Worldview*, the good that government is designed to do is premised on absolute and objective truths, not subjective and

relative feelings. That is ultimately what we must mean when we affirm that we are a government of laws, not of men.²⁰ For example, if one desires to know whether a law or judicial opinion is genuine law we must have some standard against which to measure the law or opinion, other than the law or opinion itself.²¹ Blackstone observed that when judges erroneously opine about law and thereafter correct the error, the erroneous original opinion was never law in the first place.²² Herb Titus astutely points out that 'Blackstone could never have arrived at that position, if he had not relied upon the revelation of God as the standard outside of man used to measure whether a certain opinion is law'.²³ This objective truth, as viewed through the *Unalienable Judeo-Christian Worldview* lens, is seen worthy of serving as a standard because it corresponds to reality and conforms to fundamental laws of logic.²⁴

The idea of an objective higher law predominated throughout Western legal history, until the dawn of Darwinian evolution jurisprudentially nudged God to the side in favour of a subjectivist, humanity-based legal philosophy.²⁵

*The Alienable Humanistic Worldview: Substituting Evolving Subjective Moral Relativism for the Inviolable Objective Standard*²⁶

Contrasting the worldview lens through which lawmakers perceive a sacred objective standard for life and liberty is an *Alienable Humanistic Worldview* lens through which contemporary secular ‘progressives’ deem into existence evolving laws and fundamental liberties. Rejecting the moral absolute of objective inviolable standards, secular progressives favour this subjectivist, human-centred worldview. Viewed through the subjective lens of moral relativism, individuals determine whether liberty exists based on circumstance and personal convenience or autonomy, and—without looking to any objective standard of right or wrong—create law accordingly. Law, as viewed through this subjectivist lens, holds no moral absolute value as an objective standard; instead it is seen as a ‘temporally and spatially conditioned phenomenon’ that is ‘subject to historical change’ as desired.²⁷

Contrary to the foundational *Unalienable Judeo-Christian Worldview* of the Constitution’s Framers, the subjective *Alienable Humanistic Worldview* cuts us off from the realm of objective reality.²⁸ It has no place for God—or, rather, it puts man in God’s place.²⁹ There is no objective truth or good; the human subject is the

source of all rights and laws, all concepts of truth, good, and justice.³⁰ The subjectivist *Alienable Humanistic Worldview* obviously cannot compare human laws to objective standards of truth, good, or justice. The reason it cannot is because each individual defines truth, good, and justice based on their own power of reason (apart from any objective moral reference point).

The *Alienable Humanistic Worldview* avoids recognizing the real existence of actual good; to imply it exists suggests a moral absolute that might impede political progress.

Over 100 years ago, G.K Chesterton prophetically recognized that

Every one of the popular modern phrases and ideals is a dodge in order to shirk the problem of what is good. We are fond of talking about 'liberty' that, as we talk of it, is a dodge to avoid discussing what is good. We are fond of talking about 'progress'; that is a dodge to avoid discussing what is good.... The modern man says, 'Let us leave all these arbitrary standards and embrace liberty'. This is, logically rendered, 'Let us not decide

what is good, but let it be considered good not to decide it'. He says, 'Away with your old moral formulae; I am for progress'. This, logically stated, means, 'Let us not settle what is good; but let us settle whether we are getting more of it'. He says, 'Neither in religion nor morality, my friend, lie the hopes of the race, but in education'. This, clearly expressed, means, 'We cannot decide what is good, but let us give it to our children'.³¹

Thus, Ezekiel Emanuel, one of President Obama's senior advisors, writes:

[I]nvoing a conception of the good ... is not possible within the framework of a liberal political philosophy. [L]aws and policies cannot be justified by appeals to the good. To justify laws by appealing to the good would violate the principle of neutrality and be coercive, imposing one conception of the good on citizens who do not necessarily affirm that conception of the good.³²

And so today when some talk about *neutrality*, others see it as a modern day dodge to avoid having to deal

with the existence of good as an actual existing moral absolute. Making laws and liberty interests adhere to a subjective notion of 'neutrality', while dismissing the possibility of an objective moral standard of 'good', enables those in power to define law and liberty according to their own morally relative evolving views of 'neutrality'.

Thus, under the *Alienable Humanistic Worldview*, terms such as 'truth', 'good' or 'justice' are treated as subjective, relativistic viewpoints and not absolute standards. We cannot 'know' truth or good, so we must make it up as we go. The problematic result of this approach, of course, is that one who holds it (even if characterised in terms of 'neutrality') cannot actually claim it is true or good—or for that matter, neutral.³³ It may be 'true' or 'good', or even neutral in the relativist sense, for the speaker, but need not be for the listener, which is no meaningful truth at all. For those using the morally relative *Alienable Humanistic Worldview*, real truth that actually corresponds to reality or conforms to fundamental laws of logic, is, therefore, not necessary. As Keyes notes:

[T]he cutting edge of relativism's critique is to say that all ultimate religious and philosophical beliefs are properly understood not as possible sources of

true knowledge about God or ultimate truth, but as only products of their culture's groping to name the unnameable. But at the same time relativism claims for itself immunity from the force of its own critique. We are meant to believe that it alone is not just a product of the relativizing factors in its own (modern, Western, academic, tenure-seeking) culture, but that it is in some mysterious sense, objectively, timelessly true. It comes to us through an epistemological immaculate perception, whereby it miraculously escapes the acid bath of relativizing analysis....³⁴

Moreland and Craig describe the ironic nature of the relativist position:

[R]elativism itself is either true or false in the absolutist sense. If the former, relativism is self-refuting, since it amounts to the objective truth that there

are no objective truths. If the latter, it amounts to a mere expression of preference or custom by a group or individual without objective, universal validity. Thus it cannot be recommended to others as something they should believe because it is the objective truth of the matter...³⁵

Thus, for those viewing the world through a morally-relative *Alienable Humanistic Worldview* lens, interpretation of the constitution becomes an agenda-driven instrument of government power to achieve some preferred end—irrespective of whether that end comports with the will of the citizenry. In this jurisprudential revolt against objectivist principles, those with government power create new rights and often make irrelevant, in a constitutional sense, inviolable unalienable rights.³⁶

¹ D Noebel, *Understanding The Times*, Harvest House Publishers, Eugene, OR, 1991.

² D Noebel, note 1 above, quoting N L Geisler and W D Watkin.

³ D Noebel, 'What is a Worldview?', *Worldview Times* (Online), 26 August 2009 <http://www.worldviewweekend.com/worldview-times/article.php?articleid=5324>.

⁴ For an exhaustive scholarly review and analysis of competing worldviews see F Schaeffer, *The Complete Works of Francis A Schaeffer: A Christian Worldview*, Volume Five, Crossway Books, Wheaton, IL, 1982; N Pearcey, *Total Truth: Liberating Christianity from Its Cultural Captivity*, Crossway Books, Wheaton, IL, 2004; D Noebel, note 1 above; Moreland and Craig, *Philosophical Foundation for a Christian Worldview*, Intervarsity Press, Downers Grove, IL, 2003.

⁵ A plethora of variations on this primal dichotomy of worldviews exists, and there are many modern and post-modern and post-post-modern attempts to 'bury' the natural law view. But reports of this tradition's demise are greatly exaggerated. Stout defenses have been raised by numerous legal-philosophical and philosophical experts. See, e.g., D Beyveld and R Brownsward, *Law as Moral Obligation*, Sheffield Academic Press, London, 2005; J Finnis, *Natural Law and Natural Rights*, Oxford University Press, Oxford, 2005; R George, *Natural Law Theory*, Oxford University Press, Oxford, 1994.

⁶ See generally, A Zimmermann, 'Evolutionary Legal Theories—the Impact of Darwinism on Western Conception of Law' (2010) 24(2) *Journal of Creation* 103; See D M Crone, 'Assisted Suicide... A Philosophical Examination' (1997) 31 *USF Law Review* 399, p 422; see also M W McConnell, 'The Right to Die and the Jurisprudence of Tradition' (1997) *Utah Law Review* 665, pp 667–669.

⁷ See, C E Rice, Rights and the Need for Objective Moral Limits 3 *Ave Maria Law Review* 259 (2005).

⁸ See eg, Madison's Remonstrance 1785; D M Crone, Assisted Suicide... A Philosophical Examination 31 *USF Law Review*, p 422. (1997)

⁹ Keyes correctly observes that 'relativism works at two levels.... On the one level, it is a philosophical doctrine, one among other

contenders. But on the other level, it is a meta-philosophy, telling us how to understand all doctrines from all sources.... It is one view, but demands to be the paradigm through which all views are known'. D Keyes, 'Pluralism, Relativism, and Tolerance', *A Series of L'Abri Lectures, No.2*, L'Abri Fellowship, Southborough.

¹⁰ Such laws may be just or unjust, depending on the clarity with which they reflect those objective standards. See generally C E Rice, note 7 above, p 264-265; See also D M Crone, 1997, note 8 above, p 423

¹¹ R H Helmholz, 'The Law of Nature and the Early History of Unenumerated Rights' (2007) 9 *University of Pennsylvania Journal of Constitutional Law* 401; D W Kmiec, 'Natural Law Originalism for the Twenty-First Century--A principle of Judicial Restraint, Not Invention' (2007) 40 *Suffolk University Law Review* 383, pp 385, 391; N Miller, 'The Nobility of the Lawyer: The Ennobling History, Philosophy, and Morality of a Maligned Profession' (2005) 22 *Thomas M Cooley Law Review* 209, p 217; See eg, Romans 1:19-29; Rom 2:14-15. For a lucid discussion of divine law as natural law see D VanDrunen, *A Biblical Case for Natural Law*, Action Institute, Grand Rapids, 2008, citing Thomas Aquinas, *Summa Theologiae*; John Calvin, *Commentaries on the Epistle of Paul the Apostle to the Romans*; D J Moo, *The Epistle to the Romans*, Eerdmans, Grand Rapids, 1996, pp 148-151; AA Das, *Paul, the Law, and the Covenant*, Hendrickson, Peabody, 2001, pp 180-182; J T Molot, 'The Rise and Fall of Textualism' (2006) 106 *Columbia Law Review* 1; M L Jones, 'Fundamental Dimensions of Law and Legal Education: An Historical Framework--A history of U.S. Legal Education Phase I: From the Founding of the Republic until the 1860s' (2006) 39 *John Marshall Law Review* 1041, pp 1106-1108; R Kirk, 'Natural Law and the Constitution of the United States' (1994) 69 *Notre Dame Law Review* 1035, p 1038-40; See also D Barton, *Original Intent*, 3rd ed, WallBuilder Press, Aledo, TX, 2002; J A Brauch, *A Higher Law*, William S. Hein, Buffalo, NY, 2008.

¹² R H Helmholz, note 11 above, p 407. Cf. David Hume prominently opposed the notion that suicide, for example, should be prohibited as a violation of natural law, arguing that we regularly 'violate' natural law and that is not necessarily negative. See T J Marzen et al, 'Suicide: A Constitutional Right?' (1985) 24 *Duquesne Law Review* 1, pp 35-36. Marzen's argument was cast, however, largely in terms of the physical laws of nature, and was based on his assertion that human life had no special sanctity or importance. ('The life of a man is of no greater importance than that of an oyster'.) He cannot, therefore, be said to represent the views of the majority of Western people or legal history,

although more than a few prominent legal scholars have also fallen into that black hole and called it light. See, eg, D M Crone, 1997, note 8 above, pp 412–415.

¹³ See D M Crone, 1997, note 8 above, p 422, quoting *THE DECLARATION OF INDEPENDENCE* (1776) Paragraph 2

¹⁴ See, e.g., D Barton, note 11 above; J A Brauch, note 11 above.

¹⁵ *Calvin's Case* (1608) 7 Coke Rep 12 (a), 77 Eng. Rep. 392.

¹⁶ Blackstone, 'Of the Nature of Laws in General', in *Commentaries on the Laws of England*, Vol I, Macmillian, London, 1979, pp 29–30; Zimmerman accurately observes that 'Blackstone believed that authentic liberty is defined and regulated by eternal or natural laws, which everyone is able to discover by "right reason"' A Zimmermann, note 6 above.

¹⁷ See eg, Madison's Remonstrance 1785; D M Crone, 1997, note 8 above, p 422.

¹⁸ D M Crone, 1997, note 8 above, p 428–429

¹⁹ *Id.*

²⁰ See *Marbury v Madison*, (1803) 5 US 137; John Adams embedded this principle in the Massachusetts Constitution in the context of establishing a separation of governmental powers. *Massachusetts Constitution*, part I, article XXX.

²¹ H Titus, 'The Bible and American Law' (2008) 2 *Liberty Law Review* 305, p 306

²² *Id.* citing William Blackstone, 1 *Commentaries* * 70–71

²³ *Id.*

²⁴ For example, the law of non-contradiction states that something 'cannot be both true and false in the same sense at the same time'. Moreland and Craig, note 4 above. For a lucid analysis of the philosophical foundations of objective truth see Chapter 6 of this treatise.

²⁵ For an enlightening historical account of the secularization of the study of law see, H Titus, *God, Man, and Law: The Biblical Principles*, 3rd ed, Institute in Basic Life Principles, Oak Brook, IL, 1999, pp 1–7 (discussing, inter alia, the influence of Darwin's *Origin of the Species* on jurisprudence and the legal academy—and noting how 'the older idea that law is ultimately dependant on Divine Providence, that it has a religious dimension, gradually receded, and... has ultimately almost vanished'. quoting H Berman, 'The Secularization of American Legal Education in the 19th and 20th Centuries', (1975) 27 J. Leg. Educ. 382, p 384); A Zimmermann, note 6 above; H Berman, 'Religious freedom and the Challenge of the Modern State', in *Articles of Faith, Articles of*

Peace, The Brookings Institution, Washington DC, 1990

²⁶ For an outstanding historical review of social evolutionists and their impact on the law see: A Zimmermann, note 6 above.

²⁷ A Zimmermann, note 6 above, p 106, citing and quoting H Kelsen, 'The Pure Theory of Law—Part 1' (1934) *Law Quarterly Review* 517 (II: 50).

²⁸ The holders of this view may object to a discussion of God in the affairs of government or law because such discussion supposedly reflects a prejudicial ideology. In other words, they believe the existence of God is irrelevant to good government (and good jurisprudence). They cannot seriously deny, however, that to say God is irrelevant is to express *that* prejudicial ideology. See, eg, D M Crone, 1997, note 6 above, p 399, 408–410 quoting S Jaki, 'Evicting the Creator' (1990) *THE ONLY CHAOS AND OTHER ESSAYS* 152, p 158, ('Ideologies . . . are avoidable only if one says nothing'). Saying God is irrelevant is hardly 'neutral'. It is merely another subjective view that, under the subjectivist's own rules, we are free to ignore as 'untrue for us,' because there is no objective truth.

²⁹ See generally, A Zimmermann, note 6 above; D M Crone, 1997, note 6 above, p 408-10

³⁰ D M Crone, 1997, note 6 above, p 408-10

³¹ G.K Chesterton, *Heretics*, Dover Publications, Mineola, NY, 1905, p 13.

³² Hastings Center Report, Nov-Dec, 1996, p 3.

³³ See, e.g., C E Rice, note 7 above, p 267-268

³⁴ D Keyes, note 9 above; See also. C E Rice, note 7 above, p 267–268.

³⁵ Moreland and Craig, note 4 above.

³⁶ For an excellent analysis of some similar phenomena in the international context, see J Cornides, *Natural and Un-Natural Law*, International Law Group, Organizations Legal Studies Series, 2009, p 2.