

LAW AND ANTILAW

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CATEGORY: LAW AND LEGAL – CONSTITUTIONAL LAW

## **Law and Antilaw**

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### **From Constitution to Emergency Rule**

The establishment of the U.S. Constitution in 1789 and its Bill of Rights in 1791 was a fundamental innovation in jurisprudence. It introduced the first constitutional republic, with a written constitution that superseded the Common Law that preceded it, while incorporating that part of the Common Law not in conflict with it, and provided that all subsequent statutory law and official acts must be based on its provisions and not in conflict with it. Any statute or official act not so based, or in such conflict with it, was to be considered unconstitutional, and null and void from inception.

Unfortunately, despite the nominal commitment to compliance with the Constitution, legislators and officials have failed to comply with it in many instances. Most of these instances were justified as necessary to deal with perceived crises, especially war and depression. Some of these instances include the Dick Act of 1903 and the Federal Reserve Act of 1913. But perhaps the most important was the Emergency Banking Act of March 9, 1933, and particularly its amendment to the Trading with the Enemy Act of October 6, 1917, and its ratification of such executive orders as the Proclamation 2040 by President Roosevelt issued on March 6, 1933, sometimes called the Emergency and War Powers order. This act, codified as 12 USC 95(b), effectively declared the Constitution suspended and conferred dictatorial powers on the President, a situation which continues to this day.

Following this there was a long train of unconstitutional legislation and executive orders, made possible by intimidation of the federal courts. Although some reference to provisions of the Constitution was made to justify them, especially an expanded interpretation of "interstate commerce", it is argued that what was really done was suspension of the Constitution as the "Supreme Law of the Land" and the extension of the "Law of the Sea" over the land, making all federal courts admiralty courts, under the executive authority of the President. The "Law of the Sea" is a branch of Common Law

under which the President and admiralty courts exercise essentially dictatorial powers, akin to martial law.

Under this assumed authority, the U.S. Congress, the President, and the federal courts have extended their powers and jurisdiction far beyond the limits imposed on them under the Constitution, in violation of the 10th Amendment.

Senate Report 93-549, written in 1973, said "Since March 9, 1933, the United States has been in a state of declared national emergency." It goes on to say:

"A majority of the people of the United States have lived all their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the constitution have, in varying degrees, been abridged by laws brought into force by states of National emergency. In the United States, actions taken by government in times of great crisis have ... in important ways shaped the present phenomenon of a permanent state of National emergency."...

"These proclamations give force to 470 provisions of federal law. These hundreds of statutes delegate to the President extraordinary powers, ordinarily exercised by Congress, which affect the lives of American citizens in a host of all-encompassing manners. This vast range of powers, taken together, confer enough authority to rule this country without reference to normal constitutional process.

"Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens."

The problem, of course, is that the Constitution does not provide for its own suspension, under some Rule of Necessity, only for temporary suspension of the right of *habeas corpus*, nor does Congress have such emergency and war powers or the power to delegate them to the President. Such a doctrine of "emergency rule" is a legalistic façade, perhaps providing a defense against summary judgement by a lawful court, but not providing true legal authority. The Constitution is not just the Supreme Law of the Land, but of all operations of the institutions it establishes, as agents of the People, including those at sea and those involving the laws of nations, forbidding them to exercise any powers not specifically delegated to them, in any field of action.

A difficulty for this regime is that the vast majority of people in and out of government are unaware of such emergency rule. As far as they are concerned, the Constitution is still in full force and effect. Many of them continue to take an oath to "preserve, protect, and defend the Constitution against all enemies, foreign and domestic." Some of them are aware of their role as militiamen, as defenders of the State and its Constitution, with a duty to not only obey the Constitution and constitutional laws, but to do what they can to enforce them as well, singly or in concert with one another.

## Two Bodies of Jurisprudence

What we have, then, is two bodies of jurisprudence: one based on the Constitution, the other not based on it, and, indeed, in fundamental conflict with it. Unfortunately, the full force of *de facto* government acts to enforce this second body of jurisprudence, and this puts it in fundamental conflict with the Militia and its duty to defend the Constitution and enforce it and its laws.

Since the statutes and official acts not based on the Constitution are null and void from inception, and in conflict with the real law, which is based on the Constitution, we may call this body of jurisprudence *antilaw*. It is sometimes referred to by the euphemism "public policy".

Almost any effort to enforce such antilaw infringes on the civil rights of persons, and is therefore itself a crime, specifically, violation of 18 USC 241, Conspiracy Against Rights, or 242, Deprivation of Rights Under Color of Law. These statutes are arguably constitutional, under the authority of the 14th amendment, therefore citizens have the duty, as militiamen, to enforce it against officials who attempt to enforce antilaw, to arrest them and bring them before a grand jury.

What we have, therefore, is the potential for conflict between two groups of Americans, each enforcing what they consider to be the law against the other, each trying to arrest the other, with armed force if necessary. The forces of *de facto* government may, for the most part, believe they are in the right. Most of them are just doing their jobs, following the orders of the people who pay their salaries, and many people, not knowing any better, think they are indeed the lawful government. They are better organized, funded, and equipped. On the other side are a growing number of citizens who are becoming aware of the situation and their duties as militiamen, and while they are not yet as well organized, they are becoming more numerous and better organized, and they are even gaining support from within this *de facto* government.

## Corruption and the Crisis of Legitimacy

This dysfunctional situation is exacerbated by pervasive corruption that infects almost every level and agency of government and institution of society. This has brought compromise of the integrity of those institutions, and the loss of their ability to meet the needs of the people. Computerized elections are often rigged. Many judges are compromised or intimidated. It is not uncommon for people to take a case before a federal judge, asking him to enforce the Constitution, and have him refuse to rule, saying "If I ruled on this, I would be dead before morning." Take a case of high-level official misconduct to law enforcement authorities and they refuse to consider it. Investigating and exposing such corruption and the abuses it brings all too often results in the harassment, persecution, or even the death of the investigator and his witnesses, and the confiscation or destruction of their evidence.

This crisis of legitimacy and corruption is causing severe conflicts within government as well, between factions that extend across institutions and align themselves with citizen activists. This conflict has become a kind of low-level civil war, in which there is real violence and the loss of lives.

## **Antilaw as Dyslaw**

Antilaw might prevail if it met the needs of the people, eventually acquiring a kind of legitimacy, but it does not. It is fundamentally dysfunctional, as well as illegitimate, and therefore *dyslaw*. As such, it is doomed, and must eventually give way to a return to the Rule of Law under the Constitution. This will be a difficult transition to manage gracefully. Once the dominoes start falling, it may be difficult to avoid a sudden collapse that will bring chaos and economic upheaval.

The first shot across the bow of antilaw from the Supreme Court may have just been fired, in the case of *U.S. v. Lopez*, which, for the first time since 1936, struck down a federal criminal statute based on the interstate commerce clause.

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