

# **Legal Equality: No Respector of Persons**

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## INTRODUCTION

In the United States today, we affirm equality with our words, but deny it with our actions. Few people openly advocate inequality in the administration of the law for fear that they will be quickly and thoroughly denounced. Yet, many of our state and federal laws not only result in inequality, but are justified solely on the basis that certain inequalities are *necessary*. So-called "affirmative action" laws are a prime example. They define and recognize "minorities," such as "Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts."<sup>1</sup> Affirmative action laws not only treat people unequally, but they are justified on the theory that it is right to do so.

Such laws could have been enacted only by men who have rejected the faith of our Founding Fathers who believed that equality is a question of law. Most current legislators have accepted a new faith which views equality as a question of fact. In other words, most Americans and their governments no longer believe it is enough for the law to ensure that everyone has the same opportunity to pursue their own happiness. Instead, they want the law to empower the civil government to guarantee that everyone receive the same size slice of the pie of life. The necessary means of reaching this goal is to make equality scientifically quantifiable, that is, a matter for factual analysis. According to this perspective, law is merely the means to the end of enforcing a desired factual result.

However, true equality is a matter of legal opportunity. More specifically, legal equality presupposes that civil government may not be a respecter of persons. By way of contrast, the modern notion of equality is based on factual similarity. It presupposes that civil authority may sometimes infringe upon individual liberties because all rights are subject to "balancing," depending on the circumstances. In other words, the modern concept of equality rejects the idea of an unalienable right to equal opportunity and substitutes it with a civil right of equal position.

This false perspective of equality is evident in the way people understand such basic statements as the phrase "all men are created equal" from the Declaration of Independence. Some legal and political commentators suggest that true equality is a laudable goal, but is impossible in reality. They conclude that since people are obviously mentally and physically different, with some even being retarded or handicapped, men are not really created equal. Therefore, equality cannot be an unalienable right. But, this presupposes that factual equality or equal position is the meaning of "equal" in the Declaration. This, however, is not true.

I propose to reexamine the basis of equality in America today and rediscover its true root. I will demonstrate how the United States Constitution embodies the concept of equality in its legal, not factual, understanding, in relation to the taxing power. Next, I will examine the clauses of the Constitution dealing with titles of nobility in the light of equality principles. I will then apply these principles to two major departures from the unalienable right of equality as they relate to religion and occupations. The cornerstone for my analysis is the idea that "equality before the law" means

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1. *E.g.*, 42 U.S.C. §6705(f)(2) (1982).

that the law can be no respecter of persons.

## **THE ROOT OF EQUALITY**

To even speak of the law of equality, or the "equal protection of the laws," one must recognize that the central issue of equality is a legal one, not a factual one. The legal context for the Constitution, and thus the nation, was established by our charter document, the Declaration of Independence. In its opening paragraph, the Declaration specified that independence from Great Britain was legally justified by the "Laws of Nature and of Nature's God." This we understand to be a short-hand phrase for what Blackstone called the will of God revealed in the observable creation (or the law of nature), and the law of God revealed in the Bible (or the divine law).

The Bible indicates that equality is a question of legal opportunity, not factual similarity. Deuteronomy 1:17 says, "Do not show partiality in judging; hear both small and great alike." Leviticus 19:15 says, "Do not pervert justice; do not show partiality to the poor or favoritism to the great, but judge your neighbor fairly." In each case, the command is to judge according to what a person does, not who they are. Each person has the equal opportunity to prove his innocence, and the equal opportunity to pay the penalty for his misdeeds.

The Bible also indicates that factual similarity is not the proper test for equality. In the second chapter of James, the church is told not to show favoritism to the rich, but no condemnation of riches is made. Jesus told His disciples in Matthew 6:24: "You cannot serve both God and Money." He did not say, "You cannot serve God and have money." Similarly, 1 Timothy 6:10 states that "the love of money is a root of all kinds of evil." It does not say "having money is evil." Thus, the Bible neither commands, nor implies, that all people ought to have an equal social, political, or economic status.

The Declaration of Independence is consistent with the principles of equality set out in the Bible. It declares only that the pursuit of happiness is an unalienable right, not the achievement of happiness. Thus, the perspective of the Founders was one disposed towards equal legal opportunity for happiness, not its equal factual attainment. This must be the understanding attached to the phrase, "all men are created equal." All men are different in their minds and bodies, but all are born separated from God by sin. Thus, they have the same opportunity for a true relationship with the Creator through Jesus Christ, and the same opportunity to suffer away from His presence for eternity.

Similarly, all persons born in the United States are equally citizens of this nation. Their circumstances may vary, but each person is entitled to the same rights and duties, privileges and immunities enjoyed by all other citizens. This is the promise of the Declaration as secured by the Constitution in article IV, section 2 and the fourteenth amendment. The promise of the fourteenth amendment that each state shall not deny its citizens the equal protection of the laws is best understood, not as instituting a new rule of equality for the nation, but as merely recognizing the true intent of the Declaration which had been ignored.

## EQUALITY IN TAXATION

Now let us press on and discover how these principles may be applied to some problems of today. Consider the federal taxing power.

All federal taxation consists of either direct taxes or indirect taxes. Direct taxation refers to the taxation of persons (a capitation tax) or property tax. Article I, section 9, clause 4 specifies that direct taxes must be levied in proportion to the population, as determined by the most recent census. Thus, each state's share of a direct tax is equal to its proportionate share of the nation's population. Although states may vary in the way each raises its share of a direct tax, the legal burden of each state is equal to its opportunity, that is, the taxpayer base.

Indirect taxes make up all remaining federal taxes. Article I, section 8, clause 1 specifies that these taxes must be uniform throughout the United States. The Supreme Court has interpreted this to mean that indirect taxes must be only equal geographically, not intrinsically equal with respect to each individual person.<sup>2</sup> In other words, the rate structure of any indirect tax can apply to different people in different ways, so long as the people in every state are treated the same.

Despite the Supreme Court's interpretation, a correct view of equality requires the conclusion that progressive tax rate structures violate the law of equality. Although it is true that no clause of the Constitution expressly requires all taxes to be a flat amount or a flat rate, both a progressive rate structure and a regressive rate structure are unconstitutional because they violate the law of equality as expressed in the Declaration.

This conclusion rests upon the fact that the Constitution did not create the legal context of the nation. Our Constitution presupposes the legal context of "the Laws of Nature and of Nature's God" set forth in the Declaration. To maintain that an unequal exercise of the taxing power is constitutional is to hold that the Constitution may contradict the Declaration. Such a position denies that the Declaration is legally relevant, and it also denies the Declaration's understanding of equality. In short, a progressive tax rate system rejects the proposition that the right of equality is an unalienable right.

The law of equality, according to the laws of nature's God, is a standard of legal opportunity. The criterion for determining whether equal opportunity exists is whether the law is a "respector of persons." This means that whenever a statute distinguishes between people not on the basis of what they do, but who they are, it is a respector of persons and violates the law of equality. This can occur in many forms, some of which are subtle.

Consider the sanction portion of a hypothetical federal criminal statute, as follows:

All persons convicted of this crime shall be guilty of a felony and be sentenced to two years

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2. *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, 24 (1915).

imprisonment in a penitentiary, subject to the following:

- A) Heads of households shall be guilty of a misdemeanor and fined \$500;
- B) Unmarried women without children shall be sentenced to five years hard labor;
- C) Foreigners shall be deported to their country of origin;
- D) Christians shall work in a community service program sponsored by Planned Parenthood for six months;
- E) Persons who earned \$50,000 or more in the last calendar year may pay a fine of \$10,000 in lieu of any imprisonment;
- F) Individuals over age 65 shall be imprisoned for a term equal to their life expectancy less two years (but not less than zero);
- G) Licensed nurses are presumed innocent at all times; and
- H) All other persons shall be treated equally, without regard to sex, race, religion, marital status or handicap.

Now, the question is whether this statute violates the law of equality, and to what extent. Clearly, the statute violates the law of equality throughout, not just in its obvious discriminations on the basis of sex, race and religion, but also in its discriminations on the basis of income, age and occupation. At the root of the statute is blatant inequality. Each provision, A through G, treats people differently, not on the basis of what they did (all were found guilty of committing the same act), but on the basis of who they are. Thus, such a statute is a respecter of persons and violates the law of nature and the law of the nation.

A progressive tax rate system makes similar distinctions. Part of the problem in seeing this clearly results from regarding the income tax, for example, as a tax on income, which it is not. The income tax is a tax on people, measured by their income. When two people both earn \$200 on the last day of the tax year, but are taxed at different rates on that \$200, the tax system is distinguishing between taxpayers not on the basis of what they earned, but who they are. In essence, the tax laws treat the rich differently from the poor. And, according to the laws of nature's God, any law that favors either the rich or the poor is equally unlawful.

Furthermore, federal income tax rates also discriminate between individuals on the basis of marital status, whether a return is filed jointly or separately, and whether or not a person is a "head of household." Exemptions even vary depending on an individual's age (over 65) and handicap (blindness). Plus, other legal entities, such as corporations, and trusts, estates and other fiduciaries, all pay income taxes according to still other tax rate schedules. In every case, the tax treatment of income is not so much a function of the amount of income, as it is a function of the identity of the

taxpayer.

Do not be deceived by the subtlety of these discriminations. If it is unlawful for the federal government to discriminate between the rich and the poor for criminal purposes, as in the previous example, then legal equality also prohibits discrimination in the exercise of the taxing power. If it is unlawful for the federal government to discriminate between single and married people, or young and elderly people, for criminal purposes, it must also be unlawful to make those distinctions for taxing purposes. Taxation and criminal enforcement are equally peculiar to the civil sphere of authority, and inequality in either area is equally onerous, and equally wrong.

If the principle of legal equality of opportunity is applied to tax rate structures properly, it mandates a flat tax rate. A flat rate of tax embodies legal equality because it permits each taxpayer the opportunity to retain the same proportion of his income as all other taxpayers. For example, a 15% flat tax ensures that all taxpayers can keep 85% of their income, and that the amount of tax is affected solely by what they do, not by who they are. The Creator intended for civil governments to be supported through taxation, but it grieves the heart to see how far our nation has departed from the law of equality in the area of taxation.

## **RELIGIOUS EXEMPTIONS**

Inequality also permeates the tax code in the form of special exemptions from taxation given to the members of certain privileged classes. In fact, the members of one such class enjoy exemptions from a host of federal and state laws, including such matters as property taxes, sales taxes, military service, state licensing requirements, and even gambling statutes, among others. In a sense, this class has achieved the status of nobility in America. I am referring to religious organizations, including churches.

To be sure, religious organizations do not comprise the only class of nobility on America. However, there are several good reasons for examining the exemptions granted to churches in the context of equality principles. First, church exemptions are familiar to most people. Second, churches are the groups of people which most openly profess to follow the law of God, including the law of equality. Third, religious exemptions pervade every area of civil regulation. Fourth, churches have been historically vocal in protecting their exemptions from civil laws. Fifth, churches make the hardest case. In other words, if it can be argued persuasively that church exemptions violate the law of equality, it will be relatively easy to show that any other type of exemption or privilege is also unlawful.

I wish to examine the nobility status of churches in the context of tax exemption. But before I do, three important considerations must be discussed briefly. First, there has been a long history of church exemptions in English common law, and we must realize that the provisions of the Constitution were designed to prevent a recurrence in the United States of the institutionalized church in England.

Second, the nature of taxation (according to biblical principles) is such that religious exemptions

from taxation are legally unnecessary. Consider the income tax exemption, for example. A fundamental law of taxation, both biblically and in American legal history, is that gifts are not considered income. Even today, Congress does not tax gift receipts, whether to an individual or organization, tax-exempt or not. Thus, churches would not be required to pay income taxes on their contribution receipts, even if they were not tax exempt. In other words, tax exemption is not a prerequisite for a ministry to avoid payment of income taxes on its gift receipts.

Third, this analysis is not intended to be, nor even appear to be, an attack upon religion, churches, Christianity, or any religious organization. I support churches and other religious ministries financially, participate in religious ministry actively, and cherish religious liberty openly. However, this analysis does intend to show that one cannot protect religion by violating equality. To do so makes God's law appear to contradict itself, but the Bible tells us that God does not lie nor is He the author of confusion. Accordingly, I am attempting to chart a path whereby religion and equality are both preserved, maximizing liberty for all. Religion and equality were never intended by God to conflict with each other.

Briefly, my case may be summarized by five propositions. First, the granting of religious exemptions from taxation constitute a title of nobility prohibited by the express language of the Constitution. Second, religious exemptions violate the law of equality dictated by the voice of nature. Third, religious exemptions are not justified by any other rule of law consistent with the laws of nature's God, that is, the Bible. Fourth, religious exemptions invariably result in the establishment of religion by civil authorities. Fifth, religious exemptions, in addition to being unlawful, are completely unnecessary.

The specific clauses of the Constitution to be examined are article I, section 9, clause 8 and article I, section 10, clause 1, which respectively prohibit the granting of any title of nobility by the United States or by a state. Isaac Backus, a Baptist minister who served as a delegate to the Massachusetts ratifying convention, noted: "Another great advantage, sir, in the Constitution before us, is, its excluding all titles of nobility, or hereditary succession of power, which hath been a main engine of tyranny in foreign countries."<sup>3</sup> Backus was right, of course, but we must not assume from his statement that all titles of nobility are by definition acquired by hereditary succession.

Blackstone, commenting on the laws of England, noted that the ranks of nobility in England were those of a duke, marquis, earl, viscount and baron. He also noted that although some of the nobility in the House of Lords inherited their title by descent, other members of the nobility obtained their titles by special grant from the king, and some were even elected to the noble office.<sup>4</sup> It is important to recognize that any class of people that has the attributes of nobility, has the legal equivalent of a title of nobility. This is true regardless of how the class is created, how it is defined, or what it is labeled, if it is recognized by the civil government as a specially privileged group.

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3. 2 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 150 (J. Elliot 2d ed. 1891).

4. 1 W. Blackstone, Commentaries \*384-94.

Blackstone also wrote that the English Parliament consisted of four parts: the king, lords spiritual, lords temporal, and the House of Commons. The titles of nobility mentioned earlier are all "temporal lords." The lords spiritual were all members of the clergy of the Church of England. I suggest that, under the English common law, the lords spiritual were members of the English nobility. This is evident not only from the fact that the clergy sat on the noble side of Parliament, that is, the House of Lords, but also from the many special legal privileges enjoyed by the clergy under English law.

Of these special privileges, two are worthy of mention. The first is that the Church of England was the established religion of the realm. Consequently, the people were compelled by the King to pay taxes to support the clergy rather than tithes voluntarily. This compulsory support was the exclusive privilege of the established clergy. Second, the clergy enjoyed what was known in common speech as "the benefit of clergy." This entitled the clergy to two principal exemptions. First, places consecrated to religious duties were exempted from all criminal arrests. This is the foundation of the concept of sanctuaries. Second, the persons of clergymen were exempt from criminal process before secular courts. (Remember, the canon courts, or religious courts, were separate from the civil courts.)

Hence, the clergy of the Church of England were unquestionably a privileged class. Unfortunately, many of these privileges have been carried over into modern federal and state tax policy. For example, churches enjoy exemption from state property and sales taxes in most state jurisdictions. Under section 501 of the Internal Revenue Code, churches enjoy exemption from income taxes.<sup>5</sup> Section 170 grants to individuals a deduction from income for contributions made to churches.<sup>6</sup> Other sections grant, or have granted until recently, special income and housing allowances for ordained clergymen.<sup>7</sup> Special exceptions are made for self-employment taxes on income earned by members of religious orders and other persons belonging to certain religious faiths.

Section 1402 of the Internal Revenue Code is a good example. Subsection (e) exempts from self-employment tax any ordained minister, member of a religious order, or Christian Science practitioner, who states that he is conscientiously opposed, or on religious grounds refuses, to accept federal public insurance payments, that is, Social Security. Subsection (g) similarly exempts any individual who is a member of a "recognized sect or division thereof and is an adherent of established tenets or teachings of such sect" which oppose the acceptance of Social Security payments. But this does not apply to those individuals adhering to the major religions of the nation, which do not decry Social Security as a matter of church doctrine.

This is a blatant example of a statute which is a respecter of persons. Not only are clergymen

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5. 26 U.S.C. §501(c)(3).

6. 26 U.S.C. §170(a)(1).

7. *See, e.g.*, 26 U.S.C. §§107, 1402(a)(8).



treated differently from all other self-employed persons, but some religious sects are treated differently than others. In a nation where the first amendment prohibits Congress from making any law respecting an establishment of religion, this is a gross and flagrant rejection of the faith of our Founding Fathers regarding the law of nature, the unalienable right of equality, religious liberty and justice.

In each case, exemptions are not a function of the existence or non-existence of a taxable transaction, for the statutory language assumes a normally taxable transaction has occurred. Rather, the exemption is conditioned solely on the identity of the taxpayer, not his actions. In other words, each of these tax-exemption statutes is unquestionably a respecter of persons. Accordingly, these statutory exemptions create a class of persons legally equivalent to a nobility, which violates the prohibitions against granting any title of nobility in the Constitution.

This is the nature of all religious exemptions from taxation. The conferral of tax exempt status itself makes a distinction between exempt organizations and all other non-exempt organizations. Among exempt organizations, religious organizations are treated differently than labor unions and other non-religious organizations. Among religious organizations, churches and religious orders are treated differently than other religious ministries under many other sections of the Code. Furthermore, tax-exempt status only applies to organizations, not to individuals. Each of these provisions rejects the legal framework of the nation regarding the law of nature, the unalienable right of equality, religious liberty and justice.

Given that religious organizations should not need tax-exempt status to avoid paying income taxes on their contribution receipts, one may ask why tax-exempt status is sought. There are two reasons. The first is that it allows these organizations to hold sales, sponsor bingo parties, and in short, to go into business, yet still avoid paying income taxes. This is known as "related business income." In essence, tax exemption allows ministries to compete with families in taking dominion over the earth, and to do it more cheaply. If churches simply fulfilled the Great Commission of making disciples of all nations, they would not need to go into business, and therefore, they would not need tax-exempt status.

The second reason ministries seek tax exemption is to give their contributors an income tax deduction. This, of course, requires that the church be "qualified," or "approved." It effectively makes the ministry a part of an established national religion. A donor deduction also helps to negate the gift aspect of contributions, because contributors receive a benefit in return for their donation. And, tax exemption diverts funds from needy individuals, who cannot be tax-exempt, to organizations, who then control what needs are funded by their contributors. Consequently, tax-exemption serves the interests of organized religion, but not necessarily the interests of the gospel.

I realize that the church has historically justified its special exemption from civil laws as a necessary consequence of the separation of church and state, and of the church's allegiance to God alone. But, these are specious arguments for several reasons.

First, religious exemptions, rather than keeping civil authorities out of the religious sphere, only serve to increase civil intrusion into religion. Legal authority is a function of the right of definition. Whoever has the right to define something, has the right to control it. If Congress can exempt churches from its laws, it has the power to define what constitutes a church. Conversely, if the people have the exclusive right to define what constitutes a church, then no legislature can control the church. Today, the power to define the church has been asserted by civil bodies. They define who is exempt, on what conditions, to what extent, and for what purpose.

It should be no surprise then, that the power to define is increasingly being used to restrict the activities of the church, and to narrow the scope of its legitimate activities. Exemptions are no longer viewed as a matter of right by civil bodies, but a matter of concession to political pressure. When it becomes politically expedient, the exemptions will be denied. But, in fact, the exemptions should never have been granted in the first place.

It was no accident that the Church of England was both treated as a privileged class and recognized as the established church of the nation. The granting of the special privilege of tax exemption to churches in the United States today legally and practically recognizes qualifying organizations as the established religion of the nation. After all, what are all those laws about, except that a church cannot be tax-exempt unless it is organized a certain way, disposes of its assets a certain way, engages only in certain activities, and conforms to certain notions of public policy? That is not religious liberty, but religious establishment. That is not equality, but privilege. Therefore, contrary to conventional wisdom, one cannot preserve religious liberty by violating the law of equality. Either religion and equality will both be affirmed, or both will be denied.

Second, we should not forget that the church is not the only non-civil government ruled directly by God. The family is as directly accountable to God as the church. The family is a separate authority from the state just as is the church. Like the church, the family is instituted by God. And, every church is composed of members of families, but the reverse is not true. In fact, the family existed long before the church and any civil government. The family is rooted in the creation of mankind itself. So why is no one arguing for the exemption of the family from civil laws? What makes the church so special that it can bend the law in the direction of its own benefit, to the exclusion of all others? The family deserves tax exemption just as much as the church.

This, of course, would produce an absurd result if implemented. If all families were exempt, no one could be taxed. The point is not to argue for family tax exemption. Rather, it is to demonstrate that if family tax exemption is ridiculous, then church tax exemption is also ridiculous. There is no legal basis, under the "Laws of Nature and of Nature's God," for treating the church and the family unequally for purposes of income taxation or any other civil law. To affirm that religious exemptions are lawful is to deny that the right of equality is unalienable.

## **OCCUPATIONAL LICENSING**

The same kind of analysis can be made in the "secular" sphere. One of the truly "sacred cows" of our society and a matter of great importance to all of us is occupational licensing. You may not

have previously thought about this issue in terms of the law of equality, but an equality analysis is extremely relevant, even though a liberty of contract analysis would lead to the same conclusions. In short, occupational licensing violates the unalienable right of equality.

The principles and concepts which are examined here apply to every kind of occupational licensing. In our nation today, occupational licensing takes many forms, and is called by many names, such as certification, qualification, approval and registration. Many kinds of professions, trades and occupations are licensed or regulated, including lawyers, physicians, truck drivers, contractors and teachers.

Occupations are regulated or licensed at both the state and federal level. However, it does not really matter which level applies for our purposes. The reason for that is two-fold. First, the law of the nature of equality applies to both state and federal law. The Declaration of Independence establishes the legal context both for the nation and for every state. Both as a matter of law, and as a matter of historical record, every state in the Union has bound itself to the legal framework established by the Declaration. Second, the United States Constitution contains express language prohibiting both the federal government and the states from granting any title of nobility.

Let us examine whether occupational licensing is a violation of the law of equality and is a form of title of nobility. Consider the occupation most familiar to many of us, the legal profession. I submit that the present system of law school accreditation and compulsory bar memberships, as well as the licensing of attorneys in general, is contrary to the law of nature and is also unconstitutional.

This subject requires that we review the history of monopolies under the English common law. We generally have a wrong view of monopolies today, which is evident by the way Congress has defined the law of antitrust. For example, the Sherman Anti-Trust Act states: "Every contract, combination . . . or conspiracy, in restraint of trade or commerce . . . is declared to be illegal."<sup>8</sup> Similarly, the Clayton Anti-Trust Act makes it illegal for businesses to charge different customers different prices for the same goods or services, or to acquire another business whenever the effect is to lessen competition or to create a monopoly.<sup>9</sup> Essentially, these laws prohibit certain business contracts entered into by private parties.

But, in Blackstone's day, and in the world view of our American forefathers, a monopoly meant only one thing: an exclusive privilege to engage in business which was granted by the king. In other words, every monopoly was created by the civil ruler. A monopoly was not a private contract, or even a contractual issue, but a civil privilege, and therefore, an equality issue. Thus, private parties could "corner the market," but they could never create a monopoly.

The distinction between law and fact is also relevant here. Modern scholars define a monopoly based upon economic facts, that is, the perceivable practice of market participants. However, our

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8. 15 U.S.C. §1 (1982).

9. 15 U.S.C. §§12-14 (1982).

forefathers understood a monopoly as a question of law, that is, whether a person was legally entitled to enter the marketplace. If, in fact, only one seller brought his wares to the market, that was acceptable, so long as other sellers were able to act similarly, but simply chose not to do so. If, however, only one seller had the exclusive right to sell his wares at the market, even if no one else wanted to sell their wares in the same market at the same time, a monopoly existed, and was unlawful. Thus, the definition of a monopoly was legally based, not factually based.

Pursuant to this historical definition, the licensing of attorneys creates a monopoly and violates the law of equality. After all, a lawyer's license is nothing other than a privilege to render legal services, a privilege which is granted by the state. And, the privilege is made exclusive by the enactment of statutes outlawing the unauthorized practice of law which restricting the right of other persons to render legal services. In this way, the licensing of attorneys creates a monopoly contrary to the law of equality.

Attorney licensing is completely predicated on a presumed state's right to be a respecter of persons. The function of a statute prohibiting the unauthorized practice of law is not to distinguish between people on the basis of what they do, but who they are. By definition, a person engaged in the unauthorized practice of law is engaging in the same activity as a licensed lawyer. The only distinguishing characteristic is that he is not licensed. Licensing statutes similarly distinguish between people on the basis of where they attended school, by whom it was accredited, and in what states they previously practiced law. In short, whether you become licensed depends on your identity, not your competency.

Attorney licensing is also legally equivalent to a title of nobility. Licensing, like some of the English titles of nobility, is obtained by special grant from the state. And, licensing confers special privileges peculiar to the profession. Only licensed attorneys can appear before a judge on behalf of another person and are regarded as "officers of the court." Only licensed attorneys have the benefit of an attorney-client privilege, and the name says it all. It is not called the "attorney-client right," because it is not a right. Legally-enforced confidentiality is a privilege usually denied even to other licensed professionals. In essence, licensed attorneys are state established, just as a state religion could be established.

W. Clark Durant, chairman of the Legal Services Corporation's board of governors, stated at the mid-winter meeting of the American Bar Association (A.B.A.) in February 1987:

The greatest barrier to widely dispersed low-cost dispute resolution services for the poor, and for all people, could very well be the laws protecting our profession. They make it a cartel. Like any such laws, they limit or distort supply; they increase prices; and they create dislocations in the marketplace.

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The legal monopoly rests on two major pillars. The first are laws that set aside specific work exclusively for lawyers. Anyone else who performs "lawyer's work" may be prosecuted for

the unauthorized practice of law [UPL statutes]. The second is a series of restrictions on how one may become a lawyer. These restrictions are really barriers to competition, not guardians of competence.<sup>10</sup>

Speaking of the A.B.A. accreditation of law schools, Durant said: "This is not a quality control issue. It is an issue of control under the pretext of quality." And finally, he concluded: "State bars should be voluntary . . . . State unauthorized practice of law statutes simply should be repealed."<sup>11</sup>

These conclusions are also supported by an examination of the same issues in the light of the law of contract liberty and the Constitution's Obligation of Contracts clause.<sup>12</sup> In a contracts context, occupational licensing is nothing other than a restriction on the kinds of contracts people would otherwise be at liberty to make. It says that certain people can enter into contracts to furnish legal services, but all other persons cannot. In essence, it declares all contracts for the furnishing of legal services to be illegal, unless one of the parties has special permission from the state. Consequently, licensing violates the unalienable right of contract within our right of liberty as much as it violates the unalienable right of equality.

The foregoing general analysis of attorney licensing also applies to the American Bar Association in particular. The A.B.A. is a group of self-appointed guardians of the purity of legal doctrine, who have obtained a grant of monopoly from most of the states, to determine how all lawyers must think, and what the law ought to be. The A.B.A. is not created or governed by any civil government, yet it wields legislative, executive and judicial power. It is not accountable to the people, yet it rules over them as a lord and benefactor, supposedly acting in the public interest.

If ever there was a privileged nobility in America, the A.B.A. is one. It has been given the exclusive right by most states to engage in the business of accrediting law schools as it sees fit. We should not wonder why it resists the accreditation of any law school which teaches God-given rights. By definition, the A.B.A. has arrogated unto itself a monopoly in violation of the law of the nature of equality and the constitutional prohibitions against titles of nobility. By the very nature of its activities, the A.B.A. denies that equality is an unalienable, or God-given right.

## CONCLUSION

In summary, progressive tax rate structures, religious exemptions and occupational licensing must all be recognized for what they are: the actions of a government ruled by special interests, not by law. The existence of these perversions of law demonstrate that our civil governments, state and federal, have rejected law in favor of what they perceive to be the facts. They have rejected self-government in favor of totalitarian government. They have rejected equality as being an

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10. Address by Clark Durant entitled *Maximizing Access to Justice: A Challenge to the Legal Profession*, American Bar Association Mid-Winter Meeting (Feb. 12, 1987), New Orleans.

11. *Id.*

12. U.S. Const. art. I, §10, cl. 1.

unalienable right in favor of the right to respect persons. They have rejected liberty in favor of tyranny. They have rejected a government of laws, in favor of a government of men. And ultimately, they have rejected the Creator, in favor of the creature.

Perhaps it is time for the church to work toward restoring our nation's lost legacy of the unalienable right of equality. An acknowledgement that God's law of individual equality does not conflict with His law of church authority, or His law of civil authority, is long overdue. The right of equality is truly God-given and unalienable, and therefore may not be legitimately withdrawn or restricted by the civil government. It is time to recognize that special privileges or exemptions established by law are justified only by self-interest. To paraphrase the Bible, you cannot serve two masters. Either you will hate one and love the other, or you will be devoted to the one and despise the other. Choose this day whom you will serve: equality or privilege. You cannot serve both.

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