Random Thoughts

Our nation, it is said mostly (I think) by those who are not particularly well versed in history or jurisprudence, is one of law. The context is generally that of “The law applies to everyone.” Implicit in this context is that there are no exceptions. This approach is somewhat akin to the popular and misguided principal of “zero tolerance” for a proscribed action, activity or infraction. It is a pernicious treatment applied to a situation that typically would merit a well-reasoned approach, tempered by the circumstances and events leading up the situation. Since it is a mindless solution, there are often unfortunate consequences. This is not proper conduct in a well-reasoned society.

As a society, we do not acknowledge the influence of religion for governing civilized behavior. While the Judeo-Christian Bible is used as a reference for the discussion, one could just as easily use the Qu’ran or Principles of Buddhism, or any other well defined religion. The Bible being at least well-known, if not well read, it will serve as the referent authority. It was, first and foremost, an account of man’s struggle to survive in a harsh world. It is also a codification governing human behavior, a guide for resolving disputes, and a historical background that serves to explain the underlying principles that evolved to guide human behavior in day to day life. Furthermore, it provides cautionary and allegorical tales and parables to illustrate the consequences of humankind’s actions. resolving disputes.

We all too often fail to distinguish between faith and religion. The framers of the Constitution rightly intended to prohibit the establishment of a national religion. The practice of religion, including the making of public statements of faith either by individuals or the government itself, was never in question. In its zeal to protect the public from the evils of a forced religion, our Courts have acted, however well-intentioned, in such a manner as to dismiss all the historical benefits of a solid religious regimen in the daily lives of ordinary citizens. Religion is how one practices one’s faith. The perils of a national religion are amply described in the history of western civilization, notably as evidenced in the Roman and British Empires and in several of the extant Middle Eastern states.

The framers of our Constitution wisely decided it is best for each of us to exercise our individual faiths as we see fit. It does not appear that there was any intention that the minority of those with no faith (agnostics and/or atheists) should dictate that those of faith should be prohibited from expressing their faith in daily life. Yet, sadly, that is now the case. So the country deliberately has chosen to ignore history (not for the first time.) It is important to understand that there is legal (or at least historical) precedent for prescribing the place and manner of demonstrating one’s faith, whether in private or in the public arena, and that led to the establishment of the United States. As far as proscribing the place and manner of demonstrating one’s faith, only Muslim countries and the United States do so, likely to the peril of all.

The fact remains and is undeniable that society progresses from family to tribe to territory to nation, as *homo sapiens* flourishes, explores and conquers. Generally, it becomes obvious that brute force exercised by the meanest, baddest guy in the area is not the most appropriate means for governing the affairs of an increasingly complex society. Hence, tribal elders eventually established rules of conduct. These rules, then as now, were of two kinds — proscriptive and prescriptive. That is, there were actions known to be bad for the tribe, so the rules banned certain behaviors and actions; e.g., taboos on marrying very close relatives and avoiding the eating of pork (both of which were known to have bad effects upon the tribe). Other actions were deemed desirable or beneficial, so they were mandated by the rules; e.g., everyone was expected to tithe ten per cent, so as to take care of the sick and indigent. There was a further discriminator applied to the rules: some were more important that others, so the consequences reflected the importance of the rule; e.g., murder generally rated a death sentence for the killer, whereas adultery rated a mere stoning of the offender. This model for societal laws was so well thought out that it has stood the test of time and is still used today in modern society.

Eastern philosophy contributed the notion of balance — *yin* and *yang*. In western culture, the balance has been between good and evil, or right and wrong, depending on whether one is speaking canonically or legally. Either way, the basic notion recognizes that there must be a state of equilibrium under which society can function. This state of equilibrium is provided under the umbrella of modern society’s legal system of laws with a system of checks and balances. Thus, laws came into being to promote the good of the society. That being the case, a key test for a law is whether it is good for society as a whole. It goes without saying that if this is the case, the majority of the society will accept and abide by the law, thus providing the ultimate ratification of the law. If, however, the law applies narrowly to the benefit of a minority of the society, it will no doubt be well liked by that segment of society and generally despised and evaded by the larger society. It was the latter, for example, that brought pressure upon American society to dispense with the “Jim Crow” laws of the American southern states. The same fate occurred with both the adoption and the revocation of the Alcoholic Prohibition amendment.

This is as it should be. Laws follow society, which in turn regulate behavior in the society to society’s benefit. When circumstances, such as technological change, determine that the law(s) no longer benefit society, it is proper to remove the law. Unfortunately, governments are lax about removal of outmoded laws and do so reluctantly. Usually, members of society simply ignore the law, which in turn generates contempt for law in general.

Our system of government was set up so as to allow ample time to review, consider and debate passage of our laws. While both proponents and opponents of a proposed legislation may be quite passionate about their respective views, the intent is for a reasoned consideration before enactment of a law. This results from the realization that hasty legislation is often poorly considered, inadequate and/or misapplied, and with pernicious unintended consequences

A frequent and pernicious practice is that of allowing the law to reach beyond its original scope. That is, there is always the possibility that those in power politically may attempt to extend their power. Two examples immediately come to mind. The first is “diversity,” so beloved of educators, academicians and politicians. This arose from the equal opportunity and affirmative action legislation passed in order to further desegregation, in and of itself a good thing. The mantra is that more diversity is better. This flies in the face of facts, reason and common sense. Sociologically, the evidence seems to be building that diversity promotes the very ills it is supposed to overcome. It is also contrary to human behavior, as nearly every human society, however tightly or loosely organized, exerts pressure upon its members to conform. All societies exert pressure upon its members to conform to the group norm, and rightly so.

Most of us have a very weak relationship with the truth. To begin with, few in extant society are critical thinkers. Thus, most think truth is what is so, is real, and can be proven. Truth may be so in fact; typically, it is what is decided. This is best illustrated by an observation made by a fictional attorney who observed, “Truth is not what happens in court; truth is what comes out of the court.” That is, we agree upon what the truth is; we do not have to agree upon reality (and we all know of individuals who appear to operate inside an entirely different reality). The best way to illustrate the importance of truth, as well as noting that it is a defined topic and not something that is absolute, is to cite the Biblical Ten Commandments. These rules of behavior were defined; while there undoubtedly was historical basis underlying the necessity for them (the entire stories of Moses and Joseph provide the basis in detail), nothing pointed to them as occurring in the natural world of the time. The fact that it was necessary to invoke a powerful deity as the ultimate authority is further evidence that there was no evidence they would have been articulated except under exceptional circumstances.

Further, as is the case with many laws governing the behavior of humankind, they are not absolute. To be sure, traditional language (that is, the King James version of the Bible) couches the commandments as “musts”, but any consequences for disobedience has to be levied by society itself. Nor is obedience a matter of “zero” tolerance. One must not kill — except in defending oneself, it is allowed, for example. Nor should one bear false witness (lie, in other words); everyone does, but only the most pernicious, harmful lies merit punishment. As my mother once told me, “Truth will set you free, but it will not keep you out of trouble.” Lies may delay, if not avoid, retribution for one’s acts.

In summation, laws follow the dictates of society, not the converse. Facts are reality; truth is an agreed upon “what is so”, and there is nothing that indicates that truth has to meet a test for correctness. Finally, anything that flies against man’s best interests and/or the laws of nature inevitably fails.

“We have met the enemy, and he is us.” – General Jubilation T. Cornpone, mythical Confederate Army Commander after his first, last and only disastrous campaign.