

LAWFULNESS OF WAR AND DEFENSIVE ACTION

Perspectives On The Declaration of Independence

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"Nay if it were not lawful for people to defend their religion, lives, and liberties against the unjust encroachment of a tyrannical king, then I say the people would be in a worse situation with a king than without him, for they have done it before they had them, and so had better be without them still."
Captain Stephen Case, Ulster County Militia, NY 1783

In 1789 Captain Stephen Case of the Ulster County Militia wrote a manuscript dedicated to George Washington, Commanding General of the revolutionary army. It was published in 1783 under the title "Defensive Arms Vindicated And The Lawfulness of the American War Made Manifest". Although somewhat unpolished and circuitous it captures that part of the revolutionary spirit which provided the moral and legal basis for resistance to tyranny.

Case outlines the justification for self defense as vindication for those taking up arms against a government who would "deprive a people of their liberty and property." His paper was intended to demonstrate that resistance against the abuse of authority is justified by moral, legal, and scriptural precedent and that citizens have a duty and obligation to resist the exercise of unlawful authority.

For those with an interest in history and historical precedent Case's paper provides insight regarding the success of the revolution. Case helps us understand what motivated and inspired the colonists to take on and prevail over a militarily superior empire. In essence, he outlined the legal and moral foundations essential for effective civil disobedience and "defensive war".

Case affirms that self-preservation and defense is both right and lawful. He suggests that a debate on the issue is almost superfluous and explains that the nature of the world and mankind is such that there will always be those who would totally subvert others to their own power and will and who otherwise cannot be deterred without force of arms.

While some might contend the opposite, Case explains that the colonists did not rush into war, but did petition, remonstrate, and otherwise take every reasonable action to prevent its occurrence. However, defensive action was necessary to thwart the aims of a king intent on total surrender of all rights and liberties and unconditional submission by those under his authority.

Case cites numerous examples from natural, civil or national law, historical and scriptural precedent which form a persuasive, if not compelling justification for the revolution against Great Britain. He presumes an understanding of the governmental excesses which prompted response on the part of the colonists and expounds in detail on the justification for common defense for liberty and independence so eloquently stated in our Declaration of Independence.

His arguments may be summarized as follows:

Natural Law

Case maintains that man's individual right to preservation of self and property is a natural right and self-evident truth. While excluding "private revenge and retaliation" for small injustices, he explains men have a natural, or God-given right, as do all living things with the means and ability, to protect and preserve that life.

"From the law of nature I may argue. First. If God the fountain of all power, and the author of all

right, hath given unto man both the power, and the right of, and reason to manage self-defense, and hath no ways interdicted it in his word, to be put forth against tyrants, then it is a duty to use it against him upon occasion;"

"Defence is no act of jurisdiction, but a privilege of nature. Hence arises these common sayings, all laws permit force to be repelled by force; and the great and first law of nature allows self-defense. I say, that the defense of life is necessary, and flows from the laws of nature."

Scriptural/Biblical Law

Case cites an overwhelming number of scriptural examples where the lawful use of arms is justified in defensive wars by the tribes and nation of Israel.

"We have in scripture many promises of the Lord's approving and countenancing the duty of defensive arms, even against their oppressing rulers."

Scripture, he maintains, holds a promise of performance, of divine approval and assistance, that "a people shall be strong to do exploits in resisting the arms of their rulers opposing their religion and liberties". As part of Gods law and judgement he maintains that those with moral precedent will always eventually prevail over their oppressors.

He also explains the biblical precedent to resist kings who defy "lawful commands of lawful things". Those who "govern contrary to the laws of the land" are not legitimate rulers, and as such go beyond their bounds and their legitimacy is not ordained by God.

Resistance, he maintains, is not justified in revenge for minor private or even perceived injuries. He cites scripture which compels us as individuals to "turn the other cheek" to those who would do us harm and which condemns tyrants and evil men who would "live by the sword". Yet, while subject to "higher powers" in all things lawful, citizens, he maintains are not bound to obedience when rulers act "without order of law" but at such times are compelled to resist. Case explains that Jesus himself provided the means and justification for his disciples to defend themselves in Luke 22:36 where the privilege of defense in a wicked world is mandated in addition to spiritual protection:

"Now he that hath a purse, let him take it, and likewise his scrip; and he that hath no sword, let him sell his garment and buy one."

Further, spiritual justification is offered in the explanation that Christianity allows a man to be a soldier. It allows him to fight for the maintenance of order and in lawful cause. And, if it is lawful for this purpose it must be lawful for men, individually and collectively to exercise arms in lawful defense.

Case reasons that a ruler's authority does not extend to breaking charters, overturning laws, and oppressing subjects. Further an unfettered king or government, acting outside biblical and civil law, becomes a curse not a blessing, and must be resisted.

"From the institution of government, I may argue thus, that power and government, which is not of God, may be resisted. The tyrant's power and government in breaking charters, overturning laws, subverting religion, oppressing subjects, is not of God, therefore it may be resisted."

Historical Precedent

Case cites numerous examples from history affirming a peoples right to resist an abusive tyrant and his "servants" as proofs of historical vindication and precedent. In particular, he emphasizes events in which Christian leaders and communities from 315 AD through 1655 AD used military force in defense of community and nation, and more importantly found strength and moral justification from religious and

historical tenets which were instrumental in allowing them to prevail over their oppressors.

Case also finds ample support for historical precedent from writers who documented fundamental legal tenets which predate the revolution and which illustrate an awareness of the limits to sovereign power:

From Bodin de Republic: " 'If a king turn tyrant, he may lawfully, at his subjects request, be invaded, resisted, condemned, or slain by a foreign prince' - hence, if a foreign prince may lawfully help a people, oppressed by their own sovereign, then people may resist themselves, if they be able;"

From Arnisaeus de author Prici: " 'That if the king proceed extrajudicially, without order of law, by violence, every private man hath power to resist.'"

Case agrees with historical legal tenets and adds:

"..if a king or his messenger coming to use unjust violence, against an innocent subject, be no more regarded than a murderers's emissary, but may be resisted by that innocent subject, then must a community of such innocent subjects defend themselves against a tyrant, or his bloody emissaries, coming against them on such a wicked errand."

In summarizing his historical basis for resistance to tyranny, Case recognizes that reasonable limits to government are essential if the rule of law is to prevail over the natural desire for power and control over others. He notes that if resistance to tyrants were not justifiable:

"this would tend irremediably to overthrow all politics, and open a gap to all disorder. Injustice and cruelty would give as great encouragement to tyrants to do what they list, as thieves would be encouraged, if they knew that nobody would resist them, or bring them to punishment."

National/Civil Law

Case rightly maintains that rebellion against lawful government is an anathema to God. But, he is adamant that God does not ordain or authorize unlawful government, which abuses biblical or civil law. Therefore, when government becomes oppressive, resistance to tyranny becomes "obedience to God" and is therefore required.

"Then whenever a tyrant doth break all these conditions [fundamental laws of the government], which he once accepted, and so become, in strict law, not king and the people be, in strict law, liberated from subjection to him, they may and must defend themselves, and their fundamental rights and privileges, religion and laws, and resist the tyranny overturning them."

Government, he maintains, has an obligation and duty to support the laws and liberties of those ruled. While obedience to lawful rulers is required, Case states that God does not endorse passive obedience, but demands that those who grant power to a king or government, retain and exercise the authority to demand compliance within the scope of their delegated authority.

"If the estates of a kingdom give the power to a king, it is their own power in the fountain; and if they give it for their own good, they have power to judge when it is used against themselves and for their evil; and so power to limit and to resist the power that they gave."

Finally, Case holds that in granting power and authority to a government or ruler, those granting such authority retain a fundamental right to the fair and equitable administration of the law and incur a "land right" which ensures in perpetuity the application of those laws and guarantees to those who retain property rights under that jurisdiction.

"But I am convinced that it is a privilege that Christ hath allowed to mankind, to defend and preserve

their religion and liberties by arms, especially when they have been established by solemn charters, and the laws and constitution of the land, and thereby become a land right, and the dearest and most precious of all rights and interest we have to contend for."

Summary

The profound dedication to spiritual and moral values reflected in Cases' writings is indicative of the philosophical orientation of American patriots of the period. These values formed the basis for the strength of character, commitment, and dedication of those who stood for liberty in 1776. These were the values shared by the patriots of the time and reflected in our Constitution and Declaration of Independence.

On this July 4th, as we contemplate the similarities between 1777 and 1997, we reflect on Case's prophetic words:

"If it be duty to defend our religion, lives and liberties, against an invading army of cut throats, Turks, Tartars, etc., without or against the king's warrant, then of course, it is and must be duty to defend the same against home bred tyrants,..."

Case knew it, so did Hamilton, Madison, Franklin, Jefferson and all the other founders who were wise in the ways of human nature. They knew that those who would defend the foundation of our country and preserve our form of government must continually contend with those bent on its destruction. They knew those with the means and will to defend our government would be threatened, harassed and put to the test by those intent on its perversion.

Captain Stephen Case of the Ulster County militia left us a legacy, an encouragement, a call to duty, and a plea to maintain our resolve to resist those who would betray our freedom and liberty under pretense of law and authority.

"... if neither challenges of rebellion, nor practices of enemies, who pretend authority, nor any discouragements whatsoever, should deter people from a duty which they have a call and capacity from God to prosecute, and if they may remove it against all opposition, by defensive arms, then when a people are oppressed and treated as rebels for a necessary duty, they can and must defend themselves and maintain their duty, notwithstanding of all pretensions of authority against them."

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