There is no such thing as "Case Law"

By William Taylor Reil

The Founding Fathers who wrote the founding documents of both the States and the United States of America knew nothing of "case law". They were well-educated men and were learned in the law. Almost all were also devout Christians. Until after the War Between the States and the unconstitutional so-called 14th Amendment, State Supreme Courts provided the final decisions and opinions in most cases. The courts clearly understood the difference between the State and the federal governments before 1868. That is not to say that corruption did not exist in government, including the courts, before that time. In fact, history confirms that the original method of appointing judges to the Courts in Pennsylvania was changed by a Constitutional Amendment in 1850 to that of electing them because the Courts were so corrupt at that time.

The case method, which ultimately became so called "case law" was created by a law student at Harvard named Christopher Columbus Langdell. Langdell had first gone to Harvard College as a sophomore in 1848 at age 22, an age at which most students had already graduated. He stayed at the Harvard College for only a year and did not graduate. After reading law for a year and a half at a law office, Langdell entered the Harvard Law School in November of 1851 where he studied for three years. During this time he repeatedly expounded to others about his "case method". Among those that listened to Langdell with great admiration was a young chemistry student named Charles William Eliot. Charles Eliot became the President of Harvard in 1869. For sixteen years after leaving Harvard, Langdell practice law in New York City where he, Langdell, become known as the "lawyer's lawyer".

In 1870 President Eliot sought out Langdell and made him Dane Professor of the Harvard Law School. Professor Langdell immediately introduced his "case method" at Harvard. Shortly thereafter all of the other Law Professors then at Harvard left because they disagreed with the validity of the "case method" as a way of teaching law. The "case method" was soon introduced at the other "ivy league" Law Schools and by the early 20th century it was used in all of America's Law Schools. C.C. Langdell and James Barr Ames, an Assistant Professor under Langdell and Langdell's successor as Dean Professor of the Harvard Law School in 1895, changed the way law was taught in America. More importantly they were very influential in eliminating the use of the Bible, history, Blackstone's Commentaries, the Constitutions and references to prior case opinion as the basis of authorities for court decisions; to primarily, if not exclusively, the use of case opinion references.

Ultimately, the repeated use of the term "case law" by attorneys and judges, who had been taught by the "case method", lead to the general acceptance of the term ("case law") in the twentieth century. However, in 1842 Justice Story stated, speaking for the unanimous Supreme Court of the United States in Swift v. Tyson [16 Peter 1, 18 (1842)], the following concerning case opinions:

"In the ordinary use of language it will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are; and not of themselves laws."

This was repeated in Erie Railroad Company v. Tompkins, 304 U.S. 64, 83 (1937)

Only God, the People and their Legislators can make law.

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