

Constitutional Chaos: What Happens When the Government Breaks its Own Laws. By Andrew P. Napolitano. Nashville, Tenn.: Nelson Current, 2006.

A COUPLE OF MONTHS ago, I received a package in my office mailbox. When I opened it, I found the new book *Constitutional Chaos*, by Judge Andrew Napolitano, who is the chief legal analyst for Fox News. Having been familiar with Napolitano's views on the law—and finding them compatible with mine—I was quite happy to receive it.

Of course, since I had not ordered the book, I was wondering who would have sent it. Opening the book, I soon found out: the book was a gift from the author himself. At that moment, I realized that some of the things I have written about law—along with my writing partner Candice E. Jackson—have been able to make it outside the usual circle of libertarians with whom I regularly communicate.

That mystery being solved, I quickly took to reading it, and found that Napolitano does not disappoint. Here is a man who has worked as a judge who insists that rule of law matters, and it matters greatly.

After reading *Constitutional Chaos*, I would recommend that people also read *The Tyranny of Good Intentions* by Paul Craig Roberts and Lawrence M. Stratton. My reasoning is that while Napolitano writes from a foundation of natural law—which reflects the Roman Catholic tradition of which the author is a part—Roberts and Stratton emphasize the influence of William Blackstone and the “Rights of Englishmen.” Both streams of thought are wonderfully compatible, and they created the backbone of a legal system that once was the envy of the world. Unfortunately, as Napolitano all-too-aptly demonstrates, the rule of law has evaporated into the rule by the law-breaking political classes.

Napolitano's style is somewhat folksy but incisive. Take his opening statements, for example:

It should be against the law to break the law. Unfortunately it is not.

In early twenty-first century America, a long-standing dirty little secret still exists among public officials, politicians, judges, prosecutors, and police. The government—federal, state, and local—is not bound to obey its own laws. (p. ix)

In this simple and straightforward manner, he then proceeds to demonstrate how government officials at all levels routinely violate the law, commit felonies, lie, use torture and other illegal methods to extract confessions from innocent people and generally act in a manner so cynical as to destroy the confidence that any of us could have in the law. Furthermore, he is not afraid to name names. Janet Reno, he says, “should have been indicted for nearly ninety counts of murder” (p. 108). U.S. Department of Justice prosecutors who forced guilty pleas from the so-called Lackawanna Six should have been indicted (p. 149). Instead, as he sadly points out, they were given honors and awards from their employer.

A few more zingers should convince the reader that Napolitano means business:

- Attorney General John Ashcroft doesn’t seem to have much use for the First Amendment. (p. 92)
- As the state attorney for Dade County, Florida, Janet Reno made a name for herself by prosecuting innocent people so that they could rot in prison for crimes they did not commit. (p. 27)
- Rather than condemning the illegal actions of his corrupt attorney general, Bill Clinton praised Janet Reno. (p. 116)
- As a result of pressure from President Bill Clinton and FBI Director Louis Freeh, FBI sniper Lon Horiuchi got away with murder. Horiuchi, who illegally shot Weaver and then proceeded to murder Weaver’s wife, never even had to stand trial. (p. 120)

This comes from a man who entered a state judgeship in New Jersey as a self-described “law-and-order Republican” and emerged as a man who understood that government was assaulting liberty at every turn. A present-day supporter of the ethos of the Republican Party could not have written the following words:

Many of my fellow conservatives have welcomed reposing this kind and amount of power into President Bush’s hands. He is a good man, they tell me, big-hearted, clear-headed, modest, honest, and trustworthy. I, too, believe he is. But we are a nation of laws, not men, and no president is president forever. Would my friends agree to have given these king-like powers to President Bush’s predecessor, or to one of his successors, especially if she has the same last name as the predecessor? (p. 164)

Napolitano's first chapter is entitled "Breaking the Law to Enforce It," and he starts out swinging:

Amazingly, infuriatingly, incredibly, the government will lie, cheat, and steal in order to enforce its own laws. And the courts continually give law enforcement a free pass to engage in these practices. (p. 1)

He begins with the case of *Frisbie v. Collins* in 1952, in which police in Chicago, at the request of police from Flint, Michigan, kidnapped and beat Shirley Collins into unconsciousness, then transported him across state lines to Flint. No Michigan authorities had made an extradition request, but the U.S. Supreme Court ruled that no one violated Collins's right to due process.

Yes, Collins was accused of committing murder, but even murderers are due protection under the U.S. Constitution. In fact, Napolitano goes on to deal with accused drug dealers, alleged members of the Mafia, and even terrorism suspects to point out that when the government fails to follow its own laws giving the accused due process respecting their rights, none of us is safe. In case after case, he points out how government agents repeatedly broke the law, yet the courts did nothing and in many cases sanctioned the lawbreaking.

During his own term as a state judge, Napolitano was on the lying end of police testimony. In one particularly egregious case, he recounts how two state police officers trying to pass themselves off as Mafiosi continually demanded "protection" money from a Sicilian immigrant who owned a small restaurant. After he continually rebuffed their advances, they threatened him with murder and told him that the next time they came to the restaurant, he had better have a gun for protection.

Soon afterwards, they showed up and demanded to see a gun. He pulled out a borrowed handgun, and was then arrested for illegally possessing the weapon. When the man appeared in court, Napolitano asked the officers if they had concocted the scheme on their own, or were they ordered to do so from supervisors. After the police refused to answer, he dropped the charges against the restaurant owner.

Indeed, Napolitano has almost no use for police entrapment schemes. He recalls walking through Washington Square in New York City following a Sunday mass and being accosted by undercover police officers wanting to sell him marijuana. After he refused, one of the officers flipped up his NYPD badge and said, "Have a good day, your honor."

Calling the practice of entrapment a "perversion of the policing function," Napolitano gives case after case in which innocent people

are caught up in police stings and other attempts by the government to create crime where none was being committed in order to give the impression that police are protecting people. From bogus drug schemes to using cameras to photograph cars that run through red lights (after authorities have tinkered with the mechanism to give a short yellow light), governments are victimizing innocent people in order to fill up prisons and government coffers with fines.

He also takes aim at the government for its attempts at gun control. He writes convincingly:

The right to possess arms is a fundamental human right. This right is *guaranteed* in the Second Amendment. . . .

Contrary to popular political beliefs, the right to possess a firearm has little to do with hunting or any other recreational activity. The basic right to possess a gun serves a much more important function in our society: self-defense. The right has two purposes: It allows individuals to protect themselves from criminals when the government is *unable to protect them*. Even more importantly, the right exists so that individuals can protect themselves *from the government* when it unjustly attacks them. (Emphasis in original, p. 50)

Napolitano recognizes that the right to own firearms is an *individual*, not a bogus *collective* right, as has been interpreted by the U.S. Supreme Court since its infamous *Miller* decision in 1939. Not only is the government satisfied with criminalizing the mere ownership of guns, but it also actively prosecutes individuals who legitimately defend themselves and their property from criminal attacks. He ends his chapter on gun control with this chilling statement:

Constitutional chaos and loss of innocent life: That's what happens when the government violates the Constitution. Just think what might have been avoided if law-abiding Americans had been armed on those ill-fated planes on September 11th 2001. (p. 64)

There is more, much more in this wonderful book. Napolitano goes after governments that use eminent domain to confiscate private property on the cheap and then sell to private firms, all in the name of increasing tax revenues. After giving numerous examples of how governments abuse individuals through eminent domain procedures, he writes, "On a daily basis, the government can be found plotting to violate the Constitution in order to take away your land" (p. 75).

As he continues to build his case against the modern criminal state, he takes on the Ruby Ridge and Waco attacks, and he writes clearly and forcefully:

She ordered her agents to inject poisonous gas into a building, after using armored tanks to raid and destroy the building. When the building caught on fire, her agents shot and killed people who tried to save their own lives by fleeing the flames. She refused to allow the fire department to rescue those trapped inside. In the end, eighty-six innocent men, women, children, and babies died from the cyanide poisoning, the bullets, and the tanks. Most were reduced to ash. (p. 108)

The Waco/Ruby Ridge chapter outlines the many crimes of Janet Reno, who was feted as a hero after the deadly attack on the Branch Davidian site. He also deals with the crimes committed by the FBI and the ATF at Ruby Ridge, saying that “being a federal official means you have a license to kill—or at least immunity from a prosecution for murder” (p. 122).

His last section deals with the government’s so-called war on terror, and again he takes the side of liberty. Napolitano is willing once again to take the side of people who presently are unpopular in our society or who are willing to stand up for people who are seen as “enemies of the people.” Thus, he stands up for Lynne Stewart, the lawyer for Sheikh Omar Abdel Rahman, who was one of the conspirators behind the 1993 World Trade Tower attacks.

Whatever one might think of Rahman, he is due a defense and a vigorous one at that, but by convicting Stewart of specious charges, the government demonstrated that its continuing war against defense lawyers is nothing less than an all-out assault on the few constitutional liberties that remain. From the bogus charges against Brandon Mayfield, who was falsely accused of aiding the Madrid train bombers of March 11, 2004, to the government’s attempts to impose a regime of secret trials of those accused of being involved in “terrorism,” Napolitano makes it clear that the government’s actions—taken ostensibly to “protect” the rest of us from being victims of terrorism—are a form of totalitarian terror themselves.

His last chapter, “What Can We Do?” outlines some strategies including “sue the bastards,” and for the rest of us to defend the Constitution, since those who pledge under oath to “protect and defend the Constitution of the United States of America” are the people who are most likely to rip the document to shreds. As Thomas Jefferson once put it, the moment the government becomes the final arbiter of constitutional rights, the Constitution is not worth the paper on which it is written.

Unfortunately, while Napolitano’s words cut to the heart of the matter, the prospects for a return to the rule of law are bleak. Yet,

even if that is the case, it is heartening to know that people like Napolitano are out there, and that they speak with authority and purpose. And there is nothing wrong with raising a little bit of hell in the process.

William L. Anderson
Frostburg, Maryland