

That there is a "higher law," in the sense of a law superior to all human-made law, means that the most any human lawmaker can do is not to "make" law, but only to "declare" and "apply" it, i.e., the higher law. Granted, then, that there is such a "higher law," who upon earth has the right to declare and apply it (cf. Beer, 1993: 345, 366)?

Since, by the logic of the case, the disjunction between "none," "some," and "all" is exhaustive, there are three, and only three, possible answers to this question: (1) *no* one has this right; (2) *some* one has the right; or (3) *every* one has it.

The first answer is the one that seems to have been given by the councilors to Governor Hutchison of Massachusetts in 1769 when they advised, "Supreme or unlimited authority can with fitness belong only to the sovereign of the universe" (336; cf. also the resolution of the citizens of Malden, Massachusetts on May 27, 1776, in which they confessed, "we can never be willingly subject to any other King than he who, being possessed of infinite wisdom, goodness, and rectitude, is alone fit to possess unlimited power." It seems clear from its immediate context, however, that this confession really precludes only monarchy and in no way rules out establishing "an American republic" [Jaffa, 2000: 122]).

But allowing that anarchy is, in all events, to be avoided, one is left with holding *either* that someone—one or few—has the right to declare and apply the higher law; *or* that everyone has the right to do this. And this, simply put, is the issue between the various forms—monarchical or aristocratic—of the premodern hierarchic tradition, on the one hand, and all the variants of the modern democratic or republican tradition, on the other. Whereas for the first tradition, legitimate sovereignty is elitist, being vested in one or few, who alone have the right to declare and apply the higher law, for the second, legitimate sovereignty is popular in that it belongs to the people, all of whom have an equal right to rule.