

Rule of Law Being Moral Good in Christian Terms

Heleba S*

Department of Law, University of Johannesburg, Johannesburg, South Africa

Abstract

Lawlessness is not merely the lot of rich celebrities. Drug crimes in poor city neighbourhoods regularly lead to long prison terms. Upper-class drug crime is treated more generously. Often it is simply ignored since ferreting it out costs more than police have to spend. In short, the rule of law is honoured in theory but widely ignored in practice.

Keywords: Commercial dishonesty; Rule of law; Christian theology; Legal system; Rule-of-law principles; Modest agenda

Introduction

Discretion mostly rules in America's justice system, especially its criminal justice system-the place where legality is supposed to be most sacred. Why? We believe the answer comes in two steps. Step one has to do with laws ambition. Judging from appellate opinions and law reviews, American law is supposed to do a great deal more than define conduct rules and determine litigation outcomes. It is supposed to inspire, to express our deepest values, to shape our identity. Above all, it is supposed to teach [1]. The various bodies of law that regulate commercial dishonesty seem designed to define a moral code for business and finance. Criminal codes likewise look like moral codes, and, like moral codes, they are comprehensive: no petty wrong, no act of selfishness is too trivial to escape their notice. But misbehaviour, selfishness, and dishonest business practices are too common; the legal system cannot deal with them all [2]. So, law enforcers must be selective, and their selections end up defining the real line between punished and permitted behaviour. The rule of law becomes a veneer that hides the rule of discretion. Notice the relationship, the more law seeks to do, the farther it strays from the modest goal of resolving litigation outcomes, the bigger the role discretion plays in the actual operation of the legal system. The rule of law works only if law does not seek to rule too much. The second step has to do with an unlikely subject: Christian theology. Christianity too sees law as a beautiful thing that delights the soul and serves as a source of inspiration and wise teaching on how to live well. But the law that does all these good things is not meant for code books and courtrooms; it exists to govern the hearts of the men and women God made in His image [3].

Methodology

Jesus discussion of adultery and murder in the Sermon on the Mount proves the point, as He defines them, the prohibitions against these acts are ones that no legal system, ancient or modern, could possibly enforce [4]. Christianity also contains the seeds of the rule of law, the ideas that all men and women have dignity in God's eyes, and that all need governing because all are prone to sin. Yet, different rules exist for Martha Stewart than for the rest of us; different rules exist for the teenage boys who deal crack in city neighbourhoods than for their counterparts who sell cocaine powder in the suburbs; different rules exist for cases that land on different prosecutors' desks [5]. These things are not consistent with the Christian conception of who we are, men and women made in the Father's image, all of whom have strayed from His ways like lost sheep. Christianity seems to require the rule of law, yet its vision of law is one that cannot function without massive, un-law-like discretion-discretion that violates all five of the traditional rule-of-law principles [6]. The solution to this seeming inconsistency is the rule of two kinds of law: one for hearts and minds, and the other

for code books and courtrooms as shown in (Figure 1). Only God's law is fit for the former purpose. Law that operates in the latter territories must have more humble ambitions [7].

Discussion

To put the point more simply, the bodies of law that govern twenty-first-century America generally draw lines between good and bad, proper and improper behaviour. Such laws cannot possibly govern, there is simply too much bad conduct. Good moral codes make for bad legal codes. Laws that aspire to teach citizens how to live and at the same time seek to govern the imposition of tangible legal penalties are likely only to teach lessons in arbitrary government and the rule of discretion as shown in (Figure 2). Perhaps God intended that His law should be the exclusive source of such moral teaching. If laws that govern men's and women's affairs are to function as law, and not as a cover for official discretion, they need to pursue a more modest agenda [8]. Part I of this essay briefly explores the Christian conception of law. The various restrictions that travel under the label of legality follow naturally from Christian premises. But God's law violates all those restrictions. And God's law is likewise seen in Christian scripture as a source of inspiration, joy, and wisdom. It could not provide those benefits if it remained within rule-of-law boundaries [9]. Law can teach us how to



Figure 1: Solution to seeming inconsistency.

*Corresponding author: Heleba S, Department of Law, University of Johannesburg, Johannesburg, South Africa, Tel: +27011559475, Email: heleba@uj.ac.za

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Figure 2: Teaching lessons to citizens in arbitrary government and the rule of discretion.

live or it can send us to prison when we live especially badly. It cannot do both. All of us are sinners-is that we need to be governed, restrained from acting on our worst impulses. If we were simply left to our own devices, our sin would produce chaos. It is important to underscore, moreover, that since all of us sin, the need for government is universal; no one is exempt from this need for oversight. Those who govern-the lawmakers who make the laws and the police, prosecutors, regulators, and judges who enforce them-do not stand outside and apart from sin; they too are in its grasp [10]. It follows that the governors need to be governed, just like the rest of us. But that government should treat even those it punishes with the dignity and respect due to creatures made in God's image [11]. If anything, that requirement is heightened when the government's wrath is visited on the poor, who are usually the recipients of criminal punishment. And, since sin is universal and since those who govern must themselves be governed, law must do the restraining. Rulers must submit to the same rules they apply to others [12]. There is one more reason why law rather than discretion must be the driving force behind official punishment. If discretion governs, those who punish must have clean hands; they must stand in a superior moral position relative to those they condemn. But the Bible teaches that no one has clean hands; none of us can fairly claim moral superiority. So no one can pass judgment [13]. Only the law itself can do so. These Biblical principles lead, in other words, to the same rule-of-law principles that our legal system purports to honour. Clearly articulated rules, not jurors' or judges' whims, should be the basis for decisions that impose criminal or civil liability on the state's citizens [14]. This principle follows from the proposition that those whims are in part the product of sin, discretionary power means the power to oppress, something all power-holders are tempted to do. So, too, the rules must have a reasonable measure of specificity [15]. Otherwise, we are right back in the world of unbounded discretion, with prosecutors and regulators holding all the cards.

For the same reason, the rules should be specified in advance; if not, officials will be tempted to apply different and harsher rules to those they target than to the rest of the population. Likewise, the same rules must apply to rich and poor alike, if.

Conclusion

All are to be treated with the dignity and respect that is due to creatures made in God's image. And since that image does not vary with skin colour or neighbourhood, the same rules should apply to all races, ethnicities, and social classes.

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Conflict of Interest

None

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