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Rights, Wrongs, and the Law

One of the oddest, most harmful political beliefs to emerge in the past 50 years is the notion that one cannot legislate morality. What utter nonsense. Man has always legislated morality.



Sir William Blackstone, the central legal mind the post-1787 U.S. courts looked to for guidance, wrote, "The primary and principle objects of the law are RIGHTS and WRONGS.

"That's clear enough. And while rights and wrongs are the primary objects of study in the law - the very definition of civil law, according to Blackstone, "[is] a rule of conduct prescribed by the Supreme power in a state, commanding what is right, and forbidding what is wrong.

"How could it be otherwise? We make laws because we believe that some things are right and other things are wrong, that wrongs left unchecked hurt individuals, families, neighbors, communities, nations - or the environment, the economy, a particular industry, and so on.

Isn't this true? J.J. Burlingame, another favorite study of the founding generation, thought so, and that is why he defined morality as follows:

LAW being the rule of human actions, in a comparative view we observe that [human actions] are either conformable or opposite to the [law]; and this sort of qualification is called morality.

Webster's 1828 Dictionary said of morality, "We often apply the word to actions which accord with justice and human laws ...

"Simply: Morality and the law, in the American Founding Era, were well understood as solidly linked.

Three-quarters of a century later, President Theodore Roosevelt so perfectly understood the fixed nature of this link that he reminded judges that they have a duty to "unhesitatingly disregard even the wishes of the people if they conflict with the eternal principles of right as against wrong. [A judge] must serve the people; but he must serve his own conscience first. All honor to such a judge."

Of course, favoring right over wrong even when right is unpopular is the stuff of our Founders' republic—a republic that sided with fixed laws, a written constitution, inalienable rights, and divisions of powers as checks upon the passions of pure democracy. A moral people could choose no less.

A half-century later, in 1951, President Harry Truman reminded us about the source of freedom itself. He said:

We talk a lot these days about freedom — freedom for the individual and freedom among nations. Freedom for the human soul is, indeed, the most important principle of our civilization. We must always remember, however, that the freedom we are talking about is freedom based upon moral principles.

He then referred to "The Divine Law," "The Golden Rule," and the "evils" that occur when we ignore them, none of them pretty, nor insignificant. Fast-forward three decades, and President Ronald Reagan, of like mind, bluntly affirms:



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Right and wrong matters. ... We must understand that basic moral principles lie at the heart of our criminal justice system, that our system of law acts as the collective moral voice of society. There's nothing wrong with these values, nor should we be hesitant or feel guilty about [punishing] those who violate the elementary rules of civilized existence. Theft is not a form of political or cultural expression; it is theft, and it is wrong. Murder is not forbidden as a matter of subjective opinion; it is objectively evil, and we must prohibit it.

President Reagan continues,

But it has occurred to me that the root causes of our other major domestic problem, the growth of government and the decay of the economy, can be traced to many of the same sources of the crime problem, [that is,] "a tendency to downplay ... permanent moral values."

I'm sure you get it. The study of the law is about rights and wrongs. Civil law commands what is right and forbids what is wrong. Nearly every other law, including the principles of freedom itself, is morality based. Obedience or disobedience to these laws reflects individual and collective morality. Individual and collective rejection of moral values does harm to individuals, the economy, and the state. Thus, legislating morality is what we do, what we have done, what we will yet do in America - and that's okay.

Former Utah Supreme Court Chief Justice, and prominent religious leader, Dallin H. Oaks, wrote:

I suppose persons who mouth the slogan ['Don't legislate morality'] think they are saying something profound. In fact, if that is an argument at all, it is so superficial that an educated person should be ashamed to use it. As should be evident to every thinking person, a high proportion of all legislation has a moral base. That is true of all the criminal law, most of the laws regulating family relations, businesses, and commercial transactions, many of the laws governing property, and a host of others.

He was right, of course. The idea of not legislating morality is superficial nonsense. Which moral values to legislate and how to legislate them in a manner that reveres inalienable rights and exercises reasonable checks on centralized power is the only legitimate and sensible discussion on the matter.

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