



Written by [Selwyn Duke](#) on May 30, 2016

Why Morality Is the Only Thing We Should Legislate

“You can’t legislate morality!” is a common battle cry today. It’s thought to be a quintessentially American idea, even though the Founding Fathers never expressed such a sentiment. Nor did the early Americans who would unabashedly enforce a biblically based code of morality in their localities, both via social pressure and governmental laws, with transgressors sometimes spending time in stocks — or worse. No, our common battle cry is a modern idea, and one of modernism. It also betrays a fundamental, and dangerous, misunderstanding of law’s nature.



In reality, the *only thing we should legislate is morality*. The only other option is legislating whims or immorality.

One problem with addressing this issue, which I have done several times, is that many readers have a reason-clouding emotional reaction induced by the assumption that I’m advocating big government. So I’ll preface what follows by saying that even if we enact just one law — let’s say, prohibiting murder — we have legislated morality. The only people who could credibly say they wouldn’t legislate morality are those who wouldn’t legislate at all: anarchists.

I’ll start by putting this simply. Could you imagine a legislator saying, “This law doesn’t prevent something that’s *wrong*, but I’m going to impose it on you anyway”? What if he said, “This other law doesn’t mandate anything that is a *good*, but I’ll compel you to adhere to it simply because I feel like it”? Would you suppose his legislation had a sound basis? Or would you think that, unlike a prohibition against murder or theft, the imposition of something lacking a moral foundation (“rightness” or “wrongness”) was the very definition of tyranny?

Generally speaking, a law is by definition the imposition of a value (which can be positive, negative or neutral), and a just law is the imposition of a moral principle (good by definition). This is because a law — with the exception of laws for naming post offices and such (which don’t constrain us and which won’t be included henceforth when I speak of “laws”) — states that there is something you must or must not do, ostensibly because the action is a moral imperative, is morally wrong, or is a corollary thereof. If this is not the case, again, with what credibility do you legislate in the given area? There is no point imposing something that doesn’t prevent a wrong or mandate some good. This is why there will never be a powerful movement lobbying to criminalize strawberry ice cream or kumquats.

As an example, what is the possible justification for speed laws? Well, there is the idea that it’s wrong to endanger others or yourself, and, in the latter case, it could be based on the idea that it’s wrong to engage in reckless actions that could cause you to become a burden on society. Of course, some or all of these arguments may be valid or not, but the point is this: if a law is not underpinned by a valid moral principle, it is *not a just law*. Without morality, laws can be based on nothing but air.



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One cause of the strong negative reaction (generally among libertarian-leaning) to the above is the word “morality” itself; as with “capitalism” in liberal circles, the term has taken on a negative connotation. Yet this is partially due to a narrow and incorrect view of what morality is. Use the word, and many imagine the Church Lady or a preacher breathing fire and brimstone; moreover, reflecting our libertine age’s spirit, people’s minds often automatically go to sex. “Stay out of the bedroom!” we hear, even though the only side legislating bedroom-related matters today is the Left (e.g., contraception mandate, forcing businesses to cater faux weddings). It’s almost as if, dare I say, some people are worried that others may ruin their fun.

Morality encompasses far more than sexual matters, however. Yet it is narrow in one way: it includes only *correct* principles of rightness. And, again, when these are not the stuff of laws, elements of wrongness will be.

Speaking of which, everyone advocating legislation seeks to impose a *conception* of morality or, as modernists are wont to put it, a “values” set. For example, the only justification for forcing bakers to service faux weddings is the (incorrect) notion that it’s “wrong” to deny such service. ObamaCare could only be justified based on the idea that providing medical care for those who can’t afford it is a *moral imperative*. And “transgender” bathroom laws would have to be based on the fancy that it’s *wrong* to disallow someone from using facilities associated with his “gender identity.”

A common argument I’ve heard in response to the above is “No, I *don’t* legislate morality; something should only be illegal if it harms another.” Other arguments are that we should merely prohibit “force” or protect “property rights.” Leaving alone the deep matter of what constitutes “harm,” these assertions are, with all due respect, dodges. Is it “wrong” to harm another, use unjust force against him or violate property rights? If not, why trouble over it?

People making the harm, force or property-rights argument are almost universally sincere, except with themselves, as it’s self-deception. It’s a way of preserving a mistaken ideological principle (“Don’t legislate morality”) by obscuring what it is you’re actually doing when making law. It’s also dangerous because it keeps things on a more superficial level. It’s a way relativistic moderns can avoid dealing with something they consider inconvenient, messy and divisive: determining “What is good?” But when you don’t work hard to settle what is good, you end up with what is bad.

Another reason many people are oblivious to the values/morality underpinning their conception of law is that many moral principles are now woven so seamlessly into our civilization’s fabric that we don’t recognize them as “morality.” Yet a moral does not cease to be a moral because it becomes a meme. Consider that while we take for granted that theft, murder and slavery should be governmentally prohibited, most pre-Christian pagans would have found such an idea foreign. Pillaging for a living, Viking-style, was common and accepted; might made right. And while you might not murder or enslave your fellow group members (one problem Athenians had with Spartans was that the latter enslaved *other Greeks*: the Helots), outsiders were fair game. In fact, if there had been such a thing as a libertarian Roman, he just might have said to Christians endeavoring to outlaw the brutality of the arena, “You can’t legislate morality!”

There can be no such thing as a separation of morality and state. That is, unless we want to regress to man’s default, the immoral state.

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