

WHY CAN IMMORALITY BE LEGISLATED MORE EASILY THAN MORALITY IN AMERICA?

I. INTRODUCTION

Law is inherently moral.¹ Despite the common claim that “You cannot legislate morality,” the truth is in fact the opposite; morality is all that can be legislated. Creating laws involves drawing lines, declaring that this act is allowed while that one is forbidden. Whenever legislators vote on a bill, they engage in a moral endeavor; they are telling the public that certain behavior will not be tolerated. If you refuse to abide by the new law, you can expect the police to pay you a visit and you will face the consequences for your decision. All legislators decide how to vote based on their view of the bill’s rightness or wrongness, and each one’s morality influences his choice. Members of the public will also view the law as moral or immoral based on their moral presuppositions.

Many today deny that morality is absolute, and instead claim that each person can decide what is moral. This view is clearly seen in the United States Supreme Court’s opinion in *Planned Parenthood v. Casey*:² “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”³ Even though the Court recently reaffirmed its commitment to this relativistic creed,⁴ it cannot consistently apply it, for the result would be anarchy. If everyone were allowed to implement this credo fully, law would be impossible; any attempt to draw a line would invariably infringe upon someone’s “concept of existence.” As one Christian thinker has said, “Taken at its face . . . such language can justify doing anything you please.”⁵ The Court has not yet applied this credo beyond the issues of abortion and consensual sodomy, but that is little comfort: “If the Supreme Court has not yet drawn these conclusions [applications of its credo to murder, rape, and terrorism], it hardly matters. The conclusions follow from the Court’s premises.”⁶ The sheer relativism espoused by the Court is spreading through American culture like cancer, and has our institutions if higher learning in a stranglehold.⁷ On these premises, legislation cannot be moral or immoral in any real sense, for each person’s opinion is just as valid as next one.

The titled question thus presupposes an absolute morality by which legislation can be definitively declared moral or immoral. The Christian tradition has always recognized absolute standards of right and wrong, rooted in the character of God.

II. THE NATURAL LAW

“It is a fact that the law of God which we call the moral law is nothing else than a testimony of natural law and of that conscience which God has engraved upon the minds of

¹ See Robert George, , 15 REGENT U. L. REV. (2003).

² 505 U.S. 833 (1992).

³ *Id.* at 851.

⁴ See *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁵ J. BUDZISZEWSKI, WHAT WE CAN’T NOT KNOW 168 (2003).

⁶ *Id.*

⁷ “But if the modern university is not theoretically Sophist, it is operationally Sophist, and the extremists hold the high ground.” *Id.* at 169. By the term “Sophist,” Budziszewski means the philosophy that denies the existence of unchanging truth.

men.”⁸ With these words, John Calvin identified the morality that is common to all men: the natural law of God. All men know this law, for, as Calvin says, its work has been written on man’s heart, so that he is without excuse.⁹ This natural law reflects the character of God, and is the standard for human morality.

Christians have used different terminology to explain the workings of natural law. Saint Thomas Aquinas viewed natural law as a reflection of God’s eternal law, discerned by right reason.¹⁰ Sir William Blackstone described the law of nature as the will of the Creator, which is known to man by reason (natural law) and by direct revelation (Scripture).¹¹ Professor J. Budziszewski has described natural law as being “built into the design of human nature and woven into the fabric of the normal human mind.”¹² The natural law is the revelation of God in nature, as expressed in the Psalms: “The heavens are telling of the glory of God; and their expanse is declaring the work of his hands. Day to day pours forth speech, and night to night reveals knowledge.”¹³ God has created the world in such a way that man cannot help but know that there is a God and that He has set forth rules for human conduct. God’s creation includes man, who, as Budziszewski notes, has moral categories written into his thinking. While a newborn may not know that it is wrong to kill his next door neighbor without cause, as soon as the child understands the meaning of the terms “kill,” “neighbor,” “cause,” and so forth, he understands that killing innocent human life is wrong, and this understanding has moral force. In the same way, when a man stands on the brink of a precipice, his mind tells him that if he takes one more step, he will fall farther than he has ever fallen; he will fall far enough to die. At the same time, his heart tells him that it is wrong to kill himself, and the conscience puts together the impulses of the heart and the thoughts of the mind. The man concludes that it is wrong for him to take another step.¹⁴ This is moral reasoning; humans cannot reason in any other way. This is the natural law.

The natural law is the foundation for human law: “Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law.”¹⁵ Aquinas argued that human law is law only to the extent that it reflects the natural law. Calvin also taught that equity (essentially a natural law concept) ought to be the pattern for human law: “[T]his equity alone must be the goal and rule and limit of all laws.”¹⁶ The natural law is absolute and unchanging; it is the same for all men at all times. It defines what is moral and immoral. If human law is consistent with the natural law, it is moral; if it is inconsistent with the natural law,

⁸ 2 JOHN CALVIN, *INSTITUTES OF THE CHRISTIAN RELIGION* 1504 (Ford Lewis Battles trans., John T. McNeill ed., 1960).

⁹ *See Romans* 1:20-21, 2:15.

¹⁰ ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* I-II, Q. 93, art. 3 (Fathers of the English Dominican Province trans., Christian Classics ed. 1981) (1273); *see also id.*, Q. 94, art. 2 (“Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law.”).

¹¹ 1 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* *39.

¹² BUDZISZEWSKI, *supra* note 5, at 14.

¹³ *Psalms* 19:1-2.

¹⁴ I am indebted to Dr. Joseph N. Kickasola of Regent University for this example.

¹⁵ AQUINAS, *supra* note 10, Q. 95, art. 2; *see also* BLACKSTONE, *supra* note 11, at *42 (“Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these.”).

¹⁶ CALVIN, *supra* note 8; *cf.* THE WESTMINSTER CONFSSION OF FAITH, chapter XIX (1646) (judicial law of the Old Testament not binding except to the extent of general equity).

it is immoral. Armed with this absolute standard, it is now possible to explain why American legislation gravitates to immorality.

III. A CULTURE IN DENIAL

While all men know the natural law, not all men love the natural law. Man is fallen, and therefore he hates the things of God, including His law.¹⁷ Even so, man cannot escape the natural law and its commands any more than he can cease to be human. His conscience punishes him for rejecting the law he knows; he feels guilty and attempts to rationalize or expiate his deeds in some way, but finds no relief.¹⁸ Man's conscience grows harder and harder to the work of the law written on his heart. Fallen man thus pursues immorality more and more, as G.K. Chesterton once remarked: "Men may keep a sort of level of good, but no man has ever been able to keep on one level of evil. That road goes down and down."¹⁹ Denial of the natural law is one reason why men reject its use in making laws for the good of all.

Professor Budziszewski points to other reasons why natural law is spurned. First, we live in an era where tradition is despised; if it is not new, it cannot be good. Forsaken are the old paths, the wisdom of generations past; instead, the culture listens to the latest pop icon. Second, the common man can no longer contribute anything meaningful to society. No one can speak with authority unless he is an "expert" in that field; knowledge is the business of a few, limited to those who can rise through an academia controlled by the relativistic elite. Third, as mentioned above, relativism has a death grip on culture at large and universities in particular. Fourth, public reflection on issues of importance is nonexistent. People's attention span has been conditioned by the length of television commercials, as has the depth of their thinking. People no longer read the great books of the Western tradition, nor do they care. Fifth, no one is shocked by immorality anymore. People have grown so accustomed to seeing horrific spectacles, called entertainment, that nothing can awaken their shame. Sixth, immaturity is encouraged as adolescence is prolonged. Parents think it is normal for children to become rebellious in their teens, and no one is encouraged to shoulder real responsibility until sometime after college. Lastly, feelings are exalted as the final authority; conforming your conduct to an objective standard is bondage, so you must reject external standards and do what feels right.²⁰

Natural law is constant; it never changes. In the past great men understood and applied it to the civil government and to civil law. Now, the indicia of moral breakdown identified by Budziszewski are clearly seen in America. History is rewritten to reflect modern virtues, particularly cultural relativism. Columbus is no longer viewed as a great man motivated to advance the Christian faith, but is now a racist bigot who oppressed the natives by trying to evangelize them. Students in modern universities are uncomfortable even questioning the morality of the heinous events of September 11, 2001. The commercials surrounding the Super Bowl are filled with crass, libidinous material, as if the advertisers are competing with each other to create the raunchiest ad—and the public loves it.²¹

¹⁷ See *Romans* 3:10-18.

¹⁸ For an excellent discussion of natural law and the conscience, see BUDZISZEWSKI, *supra* note 5, at 139-60.

¹⁹ *Id.* at 159 (quoting G.K. CHESTERTON, *THE PENGUIN COMPLETE FATHER BROWN* 63 (Penguin Books 1981)).

²⁰ See *id.* at 162-81.

²¹ See PETER JONES, *CAPTURING THE PAGAN MIND* 40-52 (2003). Dr. Jones gives many examples of the immorality that is rampant in our culture.

The words of the poet are easily adapted: “Milton! Thou shouldst be living at this hour: America hath need of thee: she is a fen of stagnant waters”²² Americans no longer have a moral consensus, and the culture today provides ready relief for those haunted by a guilty conscience. Psychologists explain away the guilty feelings, abundant entertainment provides a ready diversion, the scandalous lifestyles of celebrities confirm familial breakdown for the masses, and many rationalize horrific practices on the grounds that they are legal. If this picture describes America, it becomes clear why immorality is so easy to legislate in America today.

IV. LEGISLATION IN AMERICA

America is a constitutional republic. The people elect officials to represent them, and these officials create the law. It is a simple step to say that America’s laws reflect America’s people. If America’s laws are immoral it is because America’s people are immoral. The people cannot blame their representatives in Congress or in state legislatures, for they chose these men and women to represent them. A majority of votes sends a candidate to the legislature; there, a majority of votes sends a bill to the executive. The majority thus controls the legislative process in America, but it would be naïve to deny that intense battles are fought in which the lawmakers on both sides of the issue try to persuade their uncommitted colleagues to join them. This phenomenon further exacerbates the problem since the middle ground is often occupied by people who do not have a firm moral stance, but are persuaded by whims of public opinion.

Here, then, is the answer to our question: it is easier to legislate immorality than morality in America because that is what America wants. The laws reflect the people, a majority of whom, as this essay has argued, love darkness rather than light. These people know the natural law, but deny it and relegate it to the trash heap of historical irrelevance. What they do is immoral, for the natural law is still true even if it is rejected. The created order can be suppressed for only so long before it springs back with a vengeance. Those who break God’s law will face the consequences. This is equally true of cultures as it is of individuals.

While America has fallen from the morality that once upheld it, we still have hope that the course may be changed by the grace of God. The current conflict between good and evil in this country is nothing but the latest battle in a great war that is almost as old as mankind. The seed of the serpent is at war with the seed of the woman,²³ and this fight will continue until the Lord returns. Saint Augustine described this struggle well: “[T]wo cities have been formed by two loves: the earthly by the love of self, even to the contempt of God; the heavenly by the love of God, even to the contempt of self. The former, in a word, glories in itself, the latter in the Lord.”²⁴ We can have confidence that the heavenly city will ultimately triumph through the foolishness of the cross, as Augustine expressed: “But in the other city there is no human wisdom, but only godliness, which offers due worship to the true God, and looks for its reward in the society of the saints, of holy angels as well as holy men, ‘that God may be all in all.’”²⁵ Amen.

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²² William Wordsworth, *London, 1802*, available at <http://www.bartleby.com/145/ww219.html> (last visited Apr. 22, 2004).

²³ See *Genesis* 3:15.

²⁴ ST. AUGUSTINE, *THE CITY OF GOD* 477 (Marcus Dods trans., The Modern Library Classics ed. 2000) (426).

²⁵ *Id.*