

The Purpose of the Law

(A brief exchange of opinions in the MGT yahoogroups,
by Nonoy Oplas, MB, and Joseph de Guzman, June 25, 2010)

In one of my discussion yahoogroups, there was a discussion about "midnight appointment" by the outgoing President of the Philippines whose term will end this coming June 30, 2010. I did not join their debate on "midnight appointment" as I feel it is a debate of who should fill up vacancies in certain bureaucracies of the BIG government, the outgoing or the incoming administration. Being a non-believer of big and bloated government, I think that about half of the current bureaucracy are abolishable and we ordinary taxpayers, especially those in the private sector, will be better off with less taxes and fees to pay, with less signatures and permits required by bureaucrats before we want to start a business, for instance.

There was one idea thrown in during the discussion. That "the law exists to arbitrate where different positions cannot be reconciled per se. Where the law is silent, neither position can claim to be self-evidently superior..."

I am not too keen to accept this definition, that the purpose of the law is to arbitrate. From what I observe and read, the purpose of the law is to prohibit, to make restrictions.

When we say there is a law on something, that means -- explicitly or implicitly -- there is prohibition on something. When there is no law on something, that means there is no prohibition on something.

Take breathing. Is there a law on breathing? Any regulation, republic act, decree, executive order, administrative order, local government order, on breathing? No. No law on breathing means no restrictions, no prohibitions, on breathing.

Take pollution. Is there a law on pollution (air, land, water)? Yes, hundreds of them, from local government to administrative orders to laws and decrees

enacted by congress/parliament or the President. This means there are prohibitions and restrictions on pollution.

That is why the "rule of law" simply means the "rule of prohibitions". Laws against killing, against stealing, against kidnapping, against rape, against extortion, against stabbing and whacking people's head, against pollution, against smuggling, etc.

And the rule of law means rule of law, not rule of men. No one is exempted from the law, and no one can grant exemption from the law. The law applies equally to unequal people. Whether the theft is the President or the poorest man in this country, both should be penalized for stealing. Whether the murderer is the chief of police or the most hardened criminal or the most holy religious leader of the planet, the law against murder rules. It applies equally to unequal people.

And this makes ALL leaders of the country, past and present, hypocrites about the rule of law. Just observe ordinary traffic laws. The most notorious, the most arrogant violators of traffic laws are government people -- drivers of police cars, other red plate cars, and the king of them all, the Presidential Security Group (PSG).

Laws against stealing and plunder. Laws against illegal gambling and prohibited drugs. The fact that there are such laws and prohibitions and those things and activities continue up to this day, just shows how hypocritical the leaders of the country are in disrespecting and not promulgating the "rule of law."

-- Nonoy Oplas

Some say the law should also be used to provide more for those with less in life (Ramon Magsaysay Sr.).

I think, at the end of the day, laws are unavoidably made to control human behavior at varying degrees.

The question is: to what end do we craft our laws? Some like Ramon Magsaysay want to use the law to impose obligations on one group to another (more on this later). As a libertarian I believe we should maximize individual freedoms.

Whenever I say this I'm sometimes accused of being an anarchist; encouraging chaos and lawlessness. But this is untrue. I too believe in law and that the restrictions of law can and does in fact increase individual freedoms.

As you said Nonoy, there are laws against killing and stealing. And I support these laws because they support my values of maximizing individual freedoms. We are all made freer if we all give up the freedom/right to wantonly kill and steal from each other. It allows to plan our future with less uncertainty which leads to increases in productivity and higher standards of living. This allows us to afford greater material security and freedom from hunger, deprivation, poverty, etc.

Going back to Ramon Magsaysay's penchant for using law to increase positive freedoms, notice I emphasized all in my previous paragraph. This is another value I have: law ought to be blind and non-discriminatory applying to all. Like Hayek, I believe when you craft laws to "help" a "disadvantaged" group, you cannot help but be discriminatory. You cannot help but provide exclusive/unique rights to one group not given to other groups.

Thus in this case, the purpose of law is no longer to benefit the whole of society but to lobby as many privileges as one possibly can for one's group and to hell with other groups. I don't think I have to elaborate on the negative effects this has on the incentives for productive work other than: "why work if you can get paid by political fiat?"

However genuinely disadvantaged one group is, it is generally a bad idea to use the law to help them. Why? Because you create perverse incentives that attract the greedy and selfish to tilt the system in their favor (e.g. professional squatters, US farm subsidies meant to help ordinary farmers now benefit huge corporations). Eventually the process legislation becomes a sickening exercise of grabbing as many entitlements possible.

So to repeat, what sort of values do we have as a society you think we should have? One of individual freedom and equality or whatever the heck we have right now?

-- MB

There must be a distinction between law as a human interpretation of how we interact with one another and Law as a force that defines interactions in nature, including human affairs.

Therefore the creation of the former is our attempt in understanding the latter, in the same way we try to interpret the natural rhythms of weather and other cosmic events. As our reasoning evolved, everything became anthropomorphized, thus resulting in the creation of religion.

The growth and development of human society is our natural reaction to our physical environment, and our success so far has been as a result of our respecting the limitations of our conventions, and then allowing these conventions to help with the transition of how our growing mastery over our physical environment affects how we govern our human affairs.

We can argue ad infinitum ad nauseam that the lack of any governing laws have allowed less technologically advanced societies to function well without major distortions, and it would be tempting to simplify human society and go "back to the basics." But those same societies lack the capability to adapt to the changes of our current civilization and may be, if push came to shove, be easily eliminated and finally assimilated.

The Tofflers have postulated the growth of a "mosaic democracy" where anyone can become a special interest-group. I was noting this the other day when I reflected on the progress of social networking media. When I was with a B2B internet company some 10 years ago the approach was to create individualized industry verticals that deliver specific content to an individual user. In the intervening time since then content-customized portals have been made available (Yahoo, for example), and technology has taken it up another notch - allowing a producer to customize content for delivery to individuals, groups, or even the whole of cyberspace en masse.

The need for individual understanding of Law and its inherent value has now outstripped the ability of major institutions, or even the nuclear family unit (particularly with diaspora) to influence and mold value systems.

The "rule of law" therefore is not a construct for limitation, but a guide on how society lives and provides for everyone. Of course, if we were to return to the original position in nature our institutions would not present a hindrance in how law is administered. I for one believe that people would always expect maximum utility of their rights and privileges instead of advocating the difference principle (inequality is tolerated insofar as it benefits the least advantaged).

The promulgation of law, I admit, has become too unwieldy precisely because entitlement rules the day in our present society, and even in the width and breadth of minimal government there is just too much "I". If we are to

strengthen the value of institutions and the role of government we should argue on the goals and vision, not how. Any government, even a minimalist one, that is devoid of "soul" (in the absence of a more scientific term), would be subject to failure.

Therefore, I refuse to believe that the simple value of the social contract is less powerful than the efforts of certain parties to obfuscate the truth by virtue of legalese. This is where the confusion emanates that laws exist to prohibit or make restrictions. There is a higher Law that we still submit to in the absence of human definitions. And these are the principles that make our society possible.

On another note, there is one imbalance which we ought to be more conscious of - the imbalance of understanding. If there is hope for transformative politics, it should be demonstrated by raising the consciousness of people in recognizing the needs of their society, or of increasing the value of kinship/relationship beyond that of the individual, family, or basic kinship group. As long as this gap exists, the business of government becomes esoteric and therefore the vision of the common people becomes short-sighted.

Unfortunately, because of this understanding gap, the strength of any potential argument fails when the intended receiver lacks the capability to understand, or worse, has closed off channels to receive new information. Thus, the tendency of any central authority to restrict instead of to educate. Think of these in a normal family environment - authority figures direct, coerce, or use the prospect of physical harm when understanding is less. When a person becomes more mature, authority figures engage in a more intellectual manner, and approach on a peer level.

Coercive laws exist because political maturity is weak. And the tendency of anyone who lacks the ability or the inclination to widen understanding (or worse, to keep understanding on the lowest level) is to up the ante on force. My hope for this new administration is that it aspires not to make new human interpretations of laws, but to make the value of the Law (caps mine) as the backbone of our society more accessible. To demonstrate it, it should be resolute not in the creation of new "limitations", but to build understanding of the law's value. This part of the MG credo I totally buy - a strong government is one that demonstrates its ability to execute what it legislates.

-- Joseph Angelo de Guzman

Laws are enacted by the legislators of any country in order to restrain what they consider as bad and anti-social behavior. Laws by nature are prohibitions and restrictions.

Such prohibitions are either direct (do not do this) or indirect, aka mandatory (do that, or the State will penalize you if you don't do that). There are some laws that look "innocent", like mandatory 20% discount to senior citizens and persons with disabilities (PWDs). It looks very welfarist, and all drugstores, all restaurants, all moviehouses, all public transpo (plane, ship, bus, jeepney, etc.) are mini-criminals if they will not give the mandatory discount. Then the State can run after them.

Since all laws are prohibitions, then more laws = more prohibitions. It should be a formula to restrict individual freedom. I will be more than happy if everyone, no exception, will follow the prohibition against killing, against stealing, kidnapping, etc. But if new laws will tell us, "You cannot improve or expand your own house or your own office unless you get a 'Permit to Renovate' from the city hall", then another law that says, "You cannot re-occupy your own renovated house or office unless you get a 'Permit to Re-occupy' from the city hall", man that's something really restrictive.

I know a friend here in Metro Manila whose office has no electricity for at least one month because their "permit to renovate" was not yet signed by the city hall. I advised her, "It only means one thing: those city hall building permit division bureaucrats want a bribe."

And we go to a discussion of a free and unfree society. In a free society, the dominant rule is: "Everything is allowed unless explicitly prohibited." And those expressly prohibited are just few, like no killing, no stealing, no kidnapping, no raping, etc. Everything else is allowed, like putting up your own vulcanizing shop with zero or just two signatures needed, from the city hall and from the national government, say the BIR.

In an unfree society though, the rule is a complete reversal : "Everything is prohibited unless explicitly allowed." So, putting up a business and creating job for the jobless is not allowed, unless one goes through a maze of bureaucracies. Putting up your own house, or renovating an old one, is not allowed, unless one gets certain permits from the local and/or national government agency.

The "rule of law" therefore, means the rule of prohibitions. Rule of law means no exception, no one is exempted from the law, and no one can grant exemption from the law. The law applies equally to unequal people.

Where there is full promulgation of the rule of law, the natural size of government will be small. Why? Because all laws and prohibitions that apply to ordinary people will also apply to all government officials, from the

President or Prime Minister, to the lowest-ranking bureaucrat. This means that even the President and his/her military and police security aides should stop on red lights, should not counter-flow one-way streets, should not park on “No Parking” areas.

Since most politicians and bureaucrats do not like too many restrictions themselves, then they are obliged not to create new restrictions that will equally apply to them, to their friends and family. And they will be obliged to reverse or abrogate previous unnecessary restrictions. When there are few restrictions in society, then there will be few agencies and bureaucrats who will monitor and implement those restrictions and prohibitions. Overall result: small government.

Governments become big and expansive only because politicians and bureaucrats know that certain rules apply only to ordinary mortals but not to them, they know that they are exempted from such restrictions as they themselves granted the exceptions. This is wrong.

-- Nonoy Oplas

(This is also Nonoy’s article for “People’s Brigada News”

<http://peoplesbrigadanews.com/wpress/index.php>, June 25, 2010)