

## **You Can't Legislate Morality?**

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(K: I told you I would, here it is). I hear it all the time from my most liberal friends: “You can’t Legislate Morality.” They tell me that people have to make up their own minds about things and that there is no one morality that we can all agree on. What’s interesting about this argument is that so many people accept it and yet it is so obviously false. Don’t get me wrong, I actually tend to agree with the statements my friends make next which usually have to do with something like Sodomy laws, but nevertheless we can, do and will continue to legislate morality. All laws are simply codified morality. Indeed, even some of the most fundamental ideals of our country (life, liberty, the pursuit of happiness, equality) are themselves a morality.

Rousseau (and later Hobbes and Locke) put forth the idea of “Man in a State of Nature.” The basic idea is that the only thing guaranteed to you is freedom of action in the pursuit of happiness. You can do anything you want in order to make yourself happy. The problem with the state of nature, of course, is that everyone else can do anything they want in pursuit of their own happiness. So, they can steal from you if that makes them happy. People naturally found this life rather grim. So, they entered into societies. Rousseau (and others) discussed “social contracts” which are essentially the laws, customs and morals we agree upon in order to have societies. We agree not to steal or kill each other. While this limits my freedom in some ways, the gain is that I am safer. Generally what we see is that humans that agree on a society are generally and individually better off than those in the state of nature (yeah, that’s economics guys!).

The real question is what restrictions on individual behavior are necessary for a society to function and flourish, and what restrictions are not. This is a difficult question, since different people have different definitions of “function and flourish” than others (yeah, that’s utility theory). The Religious Right in our country would argue that society is not flourishing if it is not following the teachings of Christ and God (as interpreted by them). The Liberal Left in our country would argue that society is not flourishing if individuals are repressed (where repression is defined by them as well). This is, of course, the tension in any society we form. In order to form a society we must give up some individual freedom and comply with the norms (morals, laws etc) of the social contract. On the other hand if the social contract is too restrictive, it’s not better than the state of nature (or perhaps more importantly better than alternative social contracts individuals can join).

To argue that you can’t legislate morality is silly. All laws are codified morality. It begs off the important questions: what do we want our society to look like? Under what conditions will it flourish? What rules do we need to protect each other? What freedoms do we need to allow the pursuit of happiness? Some parts of the answer are obvious: nearly all societies have laws against theft, murder and rape. Other parts are more difficult: what do we do about pornography or prostitution? By yelling “you can’t legislate morality!” you fail to confront the real issue which is a difficult one: what individual freedoms do we restrict in order to protect the largest elements of our society. It’s a tough question, but it’s worth confronting regularly and it’s worth it not to reduce the question to simplistic answers and trite phrases. (Both the left and the right need to hear this – both are frequently guilty).