



There Ought to Be a Law

The temptations of American legalism

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DISCUSSION QUESTIONS

1. What's the point of law? Boudway suggests laws should primarily concern themselves with maintaining "temporal tranquility"—and be less concerned with "private" vices that do little to disrupt public order. But he also admits that "the law is a teacher" (though not the only one). Can you think of instances where law should intervene against vicious behaviors that don't necessarily disrupt temporal tranquility?

2. Boudway points to several possible explanations for America's temptation toward legalism: its pluralism, its Puritanism, its impatience with arguments based on "tragic necessity." Which of these explanations do you find most plausible? Are there others you would include?

3. Can you think of a behavior that you find deeply reprehensible but still believe should be entirely outside the purview of the legal system? Can you think of a behavior you consider neutral, or even benign, but which you think should carry a legal sanction?

4. American social movements have often engaged in civil disobedience to protest laws they view as being morally unjust. Martin Luther King Jr. writes, "A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law." If we follow Boudway's suggestions, would it be harder to make the same argument that King does?

5. Boudway discusses the abortion debate extensively in this piece. Should the pro-life movement pivot away from its single-minded focus on abortion bans, and if so, how? Is Bill Clinton's "safe, legal, and rare" formulation the best approach to abortion legislation? What other options might there be?

6. Boudway suggests that the law and commerce are the only two things all Americans share. Given that, should we worry about the kind of moral-but-not-legal movements that Boudway writes about defaulting to mere consumer movements? For example, a vegetarian movement to prohibit beef might become nothing more than a consumer boycott of beef.

SUGGESTIONS FOR FURTHER READING:

Matthew Sitman, "Preeminent?," November 2019: <https://www.commonwealmagazine.org/preeminent>

Ernst-Wolfgang Böckenförde, "A Christian in the Office of Constitutional Judge," December 2020: <https://www.commonwealmagazine.org/christian-office-constitutional-judge>

Jacques Maritain, "The Natural Law," May 1943: <https://www.commonwealmagazine.org/natural-law-0>

J. Eliot Ross, "The Evolution of a Moderate Drinker," November 1929: <https://www.commonwealmagazine.org/evolution-moderate-drinker>

Michael J. Hollerich, "The Böckenförde Paradox," November 2017: <https://www.commonwealmagazine.org/böckenförde-paradox>

Charles Camosy, "A Failed Strategy," July 2020: <https://www.commonwealmagazine.org/failed-strategy>