

The Power and the Limitations of Law in the Pursuit of Liberty and Prosperity

Mud was a movie that was showing on television a few days before my first official day in law school. The movie really didn't have anything to do with law, except that in one scene the young protagonist is sitting by the river, watching agents from the river development authority demolish the house that he and his family had been living in along the riverbanks. His best friend passes by and asks him why they're demolishing his house.

The boy answers plainly: "that's the law."

The best friend replies: "that's bullshit."

I don't know, but this exchange of words between the two boys, and the helplessness with which they watched the demolition continue, has always stayed with me a little. Not that I think that the law is bullshit, only that I understand how it can feel absurd. It's a bunch of words on paper, written by strangers far away, and yet it's powerful enough to take people's homes away from them. It's so powerful that it can affect whether we have a place to go home to everyday, whether we get to eat or go to school, and ultimately whether we feel safe and included in society.

Indeed, the scene above, I think, perfectly illustrates how law can affect both liberty and prosperity – liberty, in the way it can affect our sense of helplessness and impotence, our lack of freedom in directing our own lives; prosperity, in the way it can make real decisions about our basic means of living. Use law in the right way, and it can mean that people are well-fed, have a home, are educated, and feel secure in their civil liberties. Used in the wrong way, and it can make people hungry, vulnerable, impotent, and helpless. In fact, law, in the way it interplays with both liberty and prosperity, can alter drastically the way we feel about our own humanity and dignity.

It's difficult for me to grasp if I really think about it. It's difficult to fully comprehend how something can be so powerful, and how such a powerful tool can be so easily used for both positive and destructive ends.

At the same time, as powerful as the law is, I have also come to realize that it can mean nothing if it doesn't adjust itself to and address the actual realities that people live in. Well-worded laws on civil liberties mean nothing if they exist in a society where people are abused economically, where people don't have a voice in society because they're too hungry to speak. Further, the best laws on access to basic services, jobs, and protection of trade and business would be in vain if they also didn't come with real improvements in the civil and political freedoms of the most marginalized members of society. If the law is to mean anything, it has to be sensitive to the actual realities of the people, and to adjust to what we really need. Only then can law be said to be perpetuating a society that is truly just, where both liberty and prosperity are upheld.

One of the lessons from our first year Philosophy of Law class that I've really drilled into my long-term memory is the idea that the law is not always the same as justice. Robert Kidder's writings on Critical Legal Theory, for instance, expound on the way law can be a device of domination, utilized by the ruling class to establish and maintain their dominance over others.¹ Sen evoked the concept of *nyaya*, a Sanskrit word for justice, which asserts that justice goes beyond the law, and that it manifests itself not only in the law, but more importantly in "the world that actually emerges."² In fact a law, no matter how well written, would still constitute injustice if it indeed caused injustice in the real world.³

Following Kidder, if the law is not the same as justice, then it is our job to challenge the assumptions behind the law and reveal the conflicts behind it.⁴ We must work, not simply to live by and uphold the law, but to see to its improvement – if needed, "to further just arrangements not yet established."⁵ Our duty is not to the law, but to justice – including the pursuit of both true liberty and prosperity.

To my mind and little as I know of the actual experience of the legal profession, men and women of the law can play a role in the pursuit of justice, liberty, and prosperity especially in three aspects. The first is in the upholding of the importance of dialogue and deliberation. The second is in our capacity to

¹ Robert L. Kidder, *The Origins of Law: Conflict, The Critical Perspective*, in *CONNECTING LAW AND SOCIETY* 83, 89 (1983).

² AMARTYA SEN, *THE IDEA OF JUSTICE* 20 (2009).

³ *Id.* at 20-21.

⁴ Kidder, *supra* note 1, at 87.

⁵ JOHN RAWLS, *A THEORY OF JUSTICE* 99 (2nd ed. 1990).

represent other people's points of view. The third is in our role of support in the everyday lives of people.

As to the first: we've all heard the stories about how lawyers are scumbags of the earth. Sometimes, these stories involve a lawyer representing a guilty/criminal/evil person. But my law school education so far has really driven home to me the idea that even well-meaning people can get a justice verdict wrong, because nobody has a monopoly on the truth. The idea of which person is innocent or guilty or which verdict is just, further, is too important a matter to leave to just one person, or to a group of people who have not thought it out, to decide. Thus we have the justice system, which involves the threshing out of both sides of an issue – even of the side which most people believe to be wrong. It involves dialogue, debate, and careful deliberation. It involves second-guessing our own long-standing opinions. Hopefully, in law school, we are trained well enough in the art of deliberation so as to be able to use it even outside the courts.

In the *Apology*, Socrates asserts that the wisest person is the one who knows that his wisdom is “worth nothing,” and then he spends the rest of his life trying to talk to people in order to get them to see the limitations of their own perspectives.⁶ In the same vein, Sen talks about the need for reasoning in order for us to check if our actions, although not intended to be injurious, have that effect.⁷ He says that to prevent catastrophes and injustices, “we need critical scrutiny, not just goodwill towards others.”⁸ He further says that any theory of justice “depend[s] on contributions from discussion and discourse.”⁹

The importance placed on the role of discussion and discourse in the pursuit of justice has got me to thinking that justice isn't so much found in the result or decision of an issue, as in the process itself. That is, justice is not just giving someone what is his due, but more than that – allowing him the chance to be a part of the process. I believe this is embodied in Socrates' dying wish at the end of the *Apology*. He implores his audience, when his sons have grown up, “to trouble [my sons] as I have troubled you... And if you do this, I and my sons will have received justice at your hands.”¹⁰ Socrates saw justice in the act of troubling itself.

⁶ Plato, *Apology*, available at <http://classics.mit.edu/Plato/apology.html> (last accessed Oct. 9, 2014).

⁷ SEN, *supra* note 2, at 46-47.

⁸ *Id.* at 48.

⁹ *Id.* at 88-89.

¹⁰ Plato, *supra* note 8.

As to the second: it is notable that lawyers, quite apart from taking part in deliberations on justice themselves, also have the job of representing others in the process. I believe this to be the end of justice.

I recall recently reading Hannah Arendt's account of the plight of the millions of stateless people in Europe after the end of the first World War, who were deprived of their citizenship and thus had to live outside the jurisdiction and without the protection of the law.¹¹ These people, being outside the pale of the law, roaming from the borders of one country to another or living in interment camps, could be argued to have more freedom of movement and speech than their contemporaries who lived in totalitarian countries.¹² And yet, their so-called freedoms mattered little in their attainment of justice.

“[T]heir freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow...The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.../the loss, in other words, of some of the most essential characteristics of human life.”¹³

Further, I recall an incident I experienced while working for an organization which handled the matter of a conflict between a planned government project and an indigenous cultural community. It was this one day I was with the members of the community, and we were all so absorbed in discussing the issue that night fully set in before we looked up from our talk and the heads of the families remembered that none of them had started to prepare dinner yet. The members of the community were trying to explain to me that they didn't want the government project because it clashed with their own vision of how their land should develop. I remember all the stars were out over the forest, and there were fireflies hovering over the trees that surrounded us. I think it was that night that it really struck me how the heart of the conflict was a difference in point of view, and that the people who lived there very badly wanted their point of view to be recognized.

Indeed, the chance to direct our own lives, to have lives that matter, to have opinions and points of view that are recognized as legitimate by others – in short,

¹¹ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 286 (1973).

¹² *Id.* at 296.

¹³ *Id.* at 296-297.

the chance for our humanity to be recognized – these are what constitute the fabric of justice.

Further, if freedom and the ability to be human are what constitute justice, then poverty or injustice is, for Sen, the deprivation of capability.¹⁴ In the pursuit of justice, more attention has to be given to those who experience the short end of the inequality of capabilities, those who make up the marginalized of society.¹⁵ Rawls, too, writes that society must favor those who are in the less favorable social positions.¹⁶ It is to these people, above all, that we must answer to in whatever work we end up pursuing as men and women of the law. By helping to include them in the process towards justice, we are in the position to help the most marginalized assert their humanity.

As to the third: one useful thing about the legal profession is that it is involved in every aspect of life, and it has an impact in every aspect of life. Lawyers are not just there for when we want to get out of jail, but in fact they can be intimately involved in the everyday matters of life. Thus, we men and women of the law have a duty to use our everyday positions in society to pursue justice. This is true not only for those involved in government work or in litigation where the civil rights of clients are at issue, but also for those who involve themselves in corporate work and business. Wherever we are, whatever we choose to involve ourselves in, we have a duty to work towards liberty and prosperity.

My vision is of a society where people feel truly human, and where people can pursue their humanity to its fullest potential. This means a world where even the most marginalized members of society can believe that they can control their own destiny, that they can pursue their higher dreams of life, whatever those may be. It also means, necessarily, a world where people are free from poverty, hunger, and the denial of their basic rights. This society can only be achieved where the law is reflective of and responsive to the actual situations of the people, and addresses the pursuit of both liberty and prosperity, and where men and women of the law must be conscious of their role in upholding the law, liberty, and prosperity.

¹⁴SEN, *supra* note 2, at 256.

¹⁵*Id.* at 232.

¹⁶RAWLS, *supra* note 7, at 86.