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Law and Human Nature

Abstract

"While the law may assume rationality, it's a fair question whether people are really all that rational."

Posting about the way that human nature is viewed by the law from *In All Things* - an online hub committed to the claim that the life, death, and resurrection of Jesus Christ has implications for the entire world.

<http://inallthings.org/the-law-and-human-nature/>

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The Law and Human Nature

 inallthings.org/the-law-and-human-nature/

Donald Roth

The law is somewhat unique in that the core of the discipline — the formation, administration, and enforcement of the rules of society — involves not just the study of human nature, but the coercive management of it. In the end, the law compels action, and, regardless of motivation or worldview, action implies anthropology; that is, when we do things, our expectation that those actions will have an effect reflects certain assumptions about how the world works, and this understanding involves some philosophy of human nature. While the understandings and philosophies vary, my goal in this piece is to highlight a few of the common assumptions that characterize the way that human nature is envisioned by the law; specifically, I argue that the law sees humans as rational agents who have inherent worth and an obligation, although not always an ability, to behave reasonably.

People are Rational

When I say that people are rational, what I mean is not that people are logical, but that people respond in a predictable way to incentives. That is, the law assumes that people have some awareness of their options and that they will intentionally choose the option which they believe best.¹ We know this is an assumption made by the law through both the incentives it provides and the liability it imposes. Among the carrots and sticks used to incentivize certain decisions: gifts to charity are promoted by a related tax deduction², attending college is promoted for low-income students via special grants³, and unsafe driving is deterred through fines and other penalties.⁴ At the same time, the law presumes awareness of these rules in the way it imposes liability, both by refusing to impose criminal sanctions where the exact criminal activity is not clearly spelled out⁵ and by refusing to recognize ignorance of a legal standard as a defense to its enforcement.⁶ Taken as a whole, the law assumes people are rational as a necessary precondition to the law's attempt to control or influence people's actions.

People have inherent Dignity

The law also assumes some sort of inherent dignity or value in humanity. To be clear, not all legal traditions assign *equal* value to human beings, and even in countries that do, there are often a variety of exceptions to that equality; however, my point is much more fundamental: there is no legal system which has failed to assign some value to humanity, even if this right is only fully expressed for a favored group. This can be seen in broad statements like the UN's [Universal Declaration of Human Rights](#) or the [Declaration of Independence](#), but it is even enshrined (if not always respected) in the Constitution of tyrannical states like the [Soviet Union](#). If people were worthless, it wouldn't be worth the trouble of working so hard to rule over them, and so the law views human nature as something with an inherent dignity.⁷

People should be Reasonable

The last assumption that I want to highlight has to do with the standard that the law seeks to impose on us, something which speaks to how the law believes that we should behave. The law often asserts this requirement explicitly: tort law⁸ has long required people to act with due regard and care for how their actions could affect others⁹; contract law often judges issues of formation and interpretation based on what the parties could have [reasonably expected](#), and it inserts reasonableness as a gap filler when certain

contract terms, like timing, are absent¹⁰; even criminal law, though it goes on to spell out what it means in more detail, often frames liability in terms of reasonable action¹¹, and it judges things like self-defense and the acceptability of police action by a standard of reasonableness. This legal standard therefore assumes two things: first, that it's possible to judge what is reasonable, and, second, that we don't always live up to that standard.¹²

What this Means

So, other than keeping with the theme of the week, why bother with this analysis? When the theories undergirding these assumptions are so wildly diverse, why mention them at all? My reasons are twofold: first, it allows for critical analysis, and second, it can provide Christian comfort.

If the law assumes that people are rational, have inherent dignity, and should be reasonable, we can test those assumptions and press for further answers. While the law may assume rationality, it's a fair question whether people are really all that rational. At the same time, if we so often behave irrationally, how is it that we are competent to judge something like reasonableness? If we have inherent value and (in the Western tradition) rights, how do we measure that value, and on what do we base this claim of rights?

These lines of inquiry lead to what I read as a source of affirmation and comfort as a Christian working in this discipline: Biblical principles such as man's sinfulness, our worth as image-bearers, and even our implied awareness of what is right (and therefore guilt for sin), fit well with the assumptions about human nature that I've described here. If, as [Romans 13](#) says, there is "no authority except from God, and those that exist have been instituted by God," we can see the compatibility of these assumptions with divine revelation as evidence of the Maker's hand operating behind the scenes. Of course, legal theorists have given many other explanations, and human laws are, at best, a weak reflection of divine will. But, for Christians who, like the believers in Nero's Rome, must struggle with the Bible's call to submit ourselves to the governing authorities, seeing God at work in the very fabric of that authority can be a source of great comfort.

Footnotes

1. For the philosophers following along at home, this is similar to rational action theory, although I don't want to be so specific as to imply that individuals are actually reasonable. For some theorists, they are, others would argue that they only follow a certain personal logic. At the same time, there is a ranging dispute over whether the best option will be a hedonistic calculus, a moral judgement, or some mix therein, not to mention overlays of pragmatism or utilitarian philosophy. ←
2. [IRC § 170](#). ←
3. See, e.g. [20 U.S.C. § 1070a](#). ←
4. See, e.g. [IOWA CODE § 321](#). ←
5. This is also known in statutory interpretation as the [Rule of Lenity](#), and, in more extreme cases, can find a law unconstitutional via the [Vagueness Doctrine](#). ←
6. If you want to impress friends at parties, this is also known by the Latin phrase "[ignorantia juris non excusat](#)." ←

7. Put differently, I have power over the millions of protozoa floating in my water bottle, but I neither regularly think about them nor put a whole lot of thought or effort into how I exert my control over them. I certainly haven't written up a Constitution regarding their rights. Therefore, the decision to expend so much effort to rule people must mean that they're worth the effort, which means they have worth. ↩
8. It's a little overbroad, but think personal injury suits and most other civil claims that involve some sort of physical injury which are not based on a contractual relationship. For a more formal definition, see the [Wex Legal Dictionary definition](#). ↩
9. This is called the [reasonable person standard](#). ↩
10. See, e.g. [U.C.C. § 2-309](#). ↩
11. For instance, [IOWA CODE § 321](#), mentioned above, says "Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper..." ↩
12. If we didn't fail to live up to it, there would be no need to state a standard. ↩