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Thinking Like a Lawyer

Jeffrey C. Tuomala
Liberty University, jtuomala@liberty.edu

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By Jeffrey Tuomala

A few classes into the first semester of law school, students realize that legal education is much more than an advanced game of Monopoly in which they, the players, acquire a basic knowledge and comprehension of rules that can be readily applied to given fact situations.

Ask any law professor, "What is the *raison d'être* of a legal education?," and most likely he will respond that it is to "teach students to think like lawyers." Thinking like a lawyer involves going beyond the simple accumulation of knowledge and comprehension of rules.

Legal Components

Students expect to operate on the three lowest rungs of Bloom's taxonomy of educational objectives: knowledge, comprehension, and application. Their professors demand that they function effectively on the three highest rungs of the taxonomy: analysis, synthesis, and evaluation.

Although law students remain very adept at analysis, they have increasing difficulty engaging in synthesis and are virtually unable to engage in evaluation. They are able to break things into components (analysis), but find it difficult to relate the parts to one another in a coherent and comprehensive whole (synthesis). And they have no fixed and objective standards by which they can evaluate rightness and truth. They are faced with the prospect of either redefining what it means to think like a lawyer or embracing the Christian worldview that enables them to think like lawyers.

Primarily, lawyers analyze cases and rules. They typically break cases into parts, which they label as facts, issues, application, and holdings. They break rules into parts, often called elements, and elements into sub-elements. Once they have engaged in breaking cases and rules into components, they must compare them to other cases and rules and bring them together as a whole. This is the process of synthesis. Particular rules must be compared with other rules and cases for consistency, and they must be organized under more general rules or principles that subsume the particulars.

At the highest level of Bloom's taxonomy is "evaluation." In law, the rules must be evaluated for rightness and wrong. It is obvious that evaluation is futile if there is no standard by which to evaluate. The futility of the non-Christian's attempt to engage in evaluation is apparent in one definition of evaluation: "Judging the value of material based on personal values/ opinions, resulting in an end product, with a given purpose, without real right or wrong answers."

In this world of relativism, that the inability of a non-Christian to engage in synthesis is not apparent. Synthesis operates on the assumption that the parts are related to one another and to the whole. There will be a consistency between the parts, the whole will comprehend the parts, and the mental construct will correspond with the world.

We do not engage in analysis, synthesis, and evaluation as three distinct and separate processes. Particulars never exist except in relation to each other and the whole. And particulars must be evaluated for rightness before we can hope to have a synthesis.

Biblical Law

At the heart of legal reasoning is relating rules, which are general in nature, to fact situations, which are specific in nature. It involves the relationship of universals to particulars, or of the one to the many. R. J. Rushdoony powerfully noted that this basic metaphysical problem is resolved in the Trinity, in which neither the One nor the Many is ultimate, and that each of the persons of the Godhead dwell in perfect harmony with the others.

The view that law is a *corpus juris*, a body of law, is based in Christian theology as it reflects the truths revealed in Scripture. Harold Berman sums this up nicely in his description of the concept of *corpus juris*: "the validity of an enacted law depended on its conformity to the body of human law as a whole, which in turn was to conform to both natural law and divine law" (*Law and Revolution*, p. 146). Most basic law libraries contain a multi-volume legal encyclopedia, titled *Corpus Juris Secundum*. It is an attempt to systematically set forth as a comprehensive whole the law of the United States. It pays tribute to a thousand year old Western legal tradition that law is a comprehensive, consistent body of laws based on truth that corresponds with reality. It reflects how deeply embedded is the Christian notion of a *corpus juris* in law, even today.

Chief Justice Roy S. Moore of the Alabama Supreme Court has championed the restoration of the moral foundation of law. It is easy to see how the Ten Commandments provide a standard by

which to evaluate human laws. They provide a fixed and universal standard of right and wrong. But the law of God also provides the moral standard by which lawyers can engage in the processes of synthesis and analysis. It provides our assurance that the parts will fit together as part of a whole.

The greatest commandment, and the most general statement or principle of God's law, is "love the Lord your God." The second greatest commandment is like it, "love your neighbor as yourself." "On these two commandments hang all the law and the prophets." These two general principles summarize all the particular laws of Scripture. There is no conflict between any of the commands in Scripture. As Paul writes in the book of Galatians, there is no law in Scripture contrary to love. All of the particular commands are subsumed in the law of love and every particular command embodies the law of love. There can be no conflict between the parts or between the particulars and the general. There is in fact a body of law.

The Two Greatest Commandments, then, are a summary of the Ten Commandments and the Ten embody, and give more particular application of, the Two. But Paul tells us that the Ten Commandments are also something in the nature of a summary or statements of general principles of law. All of God's law may be summarized in the Ten Commandments. It is this reality that makes analysis and synthesis possible.

Calvin's commentaries on the Pentateuch arrange and address the entire first five books of the Bible under the headings of the Ten Commandments. This view of law is taught in the Westminster Catechism in question-answer format.

Q. 40. What did God at first reveal to man for the rule of his obedience?

A. The rule which God at first revealed to man for his obedience, was the moral law.

Q. 41. Where is the moral law summarily comprehended?

A. The moral law is summarily comprehended in the ten commandments.

Q. 42. What is the sum of the ten commandments?

A. The sum of the ten commandments is, To love the Lord your God with all our heart, with all our soul, with all our strength, and with all our mind; and our neighbor as ourselves.

Legal Contradictions

Legal positivism became the prevailing legal philosophy of the nineteenth century and in essence prevails today. It did not claim that law was completely divorced from morals. It simply claimed that law did not depend on the adoption of any particular moral values. Legal positivists removed the possibility of evaluation from legal reasoning. At the same time, they retained a belief in the possibility of analysis and synthesis.

Legal positivism was accompanied by the movement to codify the law. Legislators were to base statutes on any values to which they chose to give the force of law. From these general principles were to be deduced more particular laws to be applied ultimately to individual cases. They assumed that law could be given any moral content desired without destroying the ability to relate the parts to one another in a consistent, coherent body of law. Correspondence to the real world was irrelevant because the purpose of law was to create a social order, not to reflect eternal verities.

In the legal academy, the fate of rule of law has become linked to legal positivism, which is often referred to as formalism. Radicals of the far left who believe that the rule of law is a myth believe that they can prove their point by discrediting legal positivism or its two mainstream twentieth-century offspring — sociological jurisprudence and legal realism. While the analytical positivists believe that lawmakers can enact a comprehensive and logically coherent body of law, the sociological positivists focus on the lawmaker's duty to maximize society's wants. The basis for enacting laws has become the satisfaction of competing desires of diverse interest groups.

Modern man's view of law since Pound is based on interest-group politics and competing interests. As a result there really are no rights, and Constitutional adjudication becomes little more than balancing competing interests and favoring one over another. Because laws are enacted and cases are decided in such a way as to satisfy the desires of competing groups, as opposed to any rational basis, case decisions and statutes become increasingly contradictory. There is no longer a body of law. There are only groupings of laws, many of which are inconsistent. Because there are no absolutes there is no possibility of restoring the *corpus juris* by weeding out that which is not law. At the same time the courts claim that we are a people governed by law not men.

Radical law professors who believe that there is no possibility of law focus on the many inconsistencies in the law as proof that there is no such thing as law. Of course, in order to criticize a lack of logical consistency it seems they must assume the truth of the very thing which they deny — that there is such a thing as logical consistency by which they can judge things inconsistent.

Christian legal education is the only antidote to the fatal conditions of cyni-

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tians of today, they thought they would succeed! It was an optimistic, though badly warped, eschatology that motivated many of their social endeavors. Their postmillennialism was humanistic, not theocentric — it depended on man to usher in the kingdom by alleviating the physical suffering of other men. The spiritual content of their work consisted mainly in comforting and cheering the objects of their charity — but since sin was being de-emphasized, urging repentance and faith in Christ was logically incompatible with the mission.

This is clear from the statements of some of the early liberal social workers. In 1920, Owen Lovejoy, president of the National Conference of Social Work, described social workers and their associates as "social engineers" who were able to produce "a divine order on earth as it is in heaven."[11] Calling the atoning sacrifice of Jesus Christ "spiritual cannibalism," he rejected the "belief in the sacrifice of another in order that the wrath of God may be cooled, and he may find it possible, without violating eternal justice, to forgive those who have broken his law." Lovejoy preferred the idea that there is "divinity in every man" and emphasized "human improvableness."[12]

For Lovejoy and other social workers, socialism was obviously the best way to achieve paradise on earth. Propaganda reports coming in from the Soviet Union (reports which continued even to the mid-1930s with Beatrice and Sidney Webb's fawning *Soviet Communism*) reinforced the optimism in state planning and control. This was to prove an embarrassment for liberal churches when the Soviet regime and its client states collapsed about 1990. Yet it was not embarrassing enough. With amazing tenacity, liberal churches have clung to socialist ideas, and even expanded them into new areas — environmental protection being a favorite. The basic idea of state planning is held to be intact; it was the execution of the idea under the Soviets (or Chinese, or Cambodians, or...) that was at fault. Too much power was taken from *the people*, who, being basically good, would of course not vote themselves into tyranny. Perhaps democratic nations, then, could grant power to the civil government without the unfortunate consequences observed under communism. Hope springs eternal.

Yet slavery can originate in democracy just as easily as it can issue from an oligarchy or a dictatorship. In a sense, humanitarian liberalism is a kind of slavery — the unceasing labor to establish one's righteousness by works instead of trusting in the righteousness of Christ. As the great J. Gresham Machen wrote:

> The grace of God is rejected by modern liberalism. And the result is slavery — the slavery of the law, the wretched bondage by which man undertakes the impossible task of establishing his own righteousness as a ground of acceptance with God. It may seem strange at first sight that "liberalism," of which the very name means freedom, should in reality be wretched slavery. But the phenomenon is not really so strange. Emancipation from the blessed will of God always involves bondage to some worse taskmaster.[13]

Thus theologically liberal churches remain statist in their social statements. The battle against statism is theological at its core. It will not be won until the larger contest for Biblical orthodoxy is decided.

Timothy Terrell teaches economics at a small college in South Carolina, and is director of the Center for Biblical Law and Economics, at http://www.christ-college.edu/html/cble/.

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[1] Rousas J. Rushdoony, *Politics of Guilt and Pity* (Vallecito, CA: Ross House Books, [1970] 1995), 316.
[2] *ibid.*, 320.
[3] Regrettably, the prevailing eschatology of the Christian Right movement also produced some undesirable characteristics, such as a vehement Zionism.
[4] Ludwig von Mises, *The Anti-Capitalistic Mentality* (Princeton: Van Nostrand, 1956), 45.
[5] Cited in David W. Hall, *Savior or Servant? Putting Government in Its Place* (Oak Ridge: Covenant Foundation, 1996) 317.
[6] Rousas J. Rushdoony, *Christianity and the State* (Vallecito, CA: Ross House Books, 1986), 93.
[7] Reinhold Niebuhr, "Moral Man and Immoral Society" (New York: Scribner's, 1960), in David W. Hall, *Savior or Servant? Putting Government in Its Place* (Oak Ridge: Covenant Foundation, 1996), 327.
[8] Marvin N. Olasky, *The Tragedy of American Compassion* (Washington: Regnery, 1992), 137.
[9] *ibid.*, 138.
[10] Rousas J. Rushdoony, *Roots of Reconstruction* (Vallecito, CA: Ross House Books, 1991), 1033.
[11] Marvin N. Olasky, *The Tragedy of American Compassion* (Washington: Regnery, 1992), 144.
[12] *ibid.*, 145.
[13] J. Gresham Machen, *Christianity and Liberalism* (New York: McMillan, 1923), 144.

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cism and legal relativism. Mainstream lawyers whose belief in the rule of law is waning are left with two choices – embrace the Christian faith, which provides the basis for the rule of law, or quit playing law and acknowledge that there is no law, there is only politics.

Professor Jeff Tuomala teaches at Thomas Goode Jones School of Law in Montgomery, Alabama, is a consultant to Alabama Chief Justice Roy S. Moore, and is a Colonel in the U.S. Marine Corps Reserve.