

THE (IM)PROPER ROLE OF GOVERNMENT IN DEFINING OUR CULTURE

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What is the role of government in defining the culture? In principle, none; in practice, disastrous. The culture is the constitutional system that was set up. That was the culture, which, in his first inaugural address, Jefferson defined as protecting people from injuring each other but otherwise leaving them alone.¹ And it is that kind of framework of liberty that creates our culture, in this country in particular.

I want to make two points about how, in practice, we have gotten it wrong. The first has to do with the attempts to prohibit or control individual behavior, whether you are talking about drinking, as in the case of Prohibition, or whether it is drug use, or censorship of the kind that Walter Dellinger discussed.² In all of this, I think there are a couple of problems that are not paid enough attention. It was called by an e-mail correspondent of mine “law inflation,” which, in effect, has the same effect on law and our attitude toward the law that inflation has on money.

The point is this: that if you have a few simple laws against things that people all agree are bad—rape, robbery, murder, fraud, things like that—you have no problem. You can establish cultural capital, which says you shall obey the law because the rule of law is so important that you will not try to judge each law de novo. When the government gets involved in cultural issues in which large numbers of people in the population do not think they are doing anything wrong, (a) you label them criminals, and (b) they say to themselves, “I am doing this thing which the government says is illegal; I am not doing anything wrong.” And people start to pick and choose which laws they are going to obey.

* Charles Murray is affiliated with the American Enterprise Institute. Dr. Murray originally delivered these remarks during Showcase Panel IV, entitled *The Role of Government in Defining Our Culture*, at the Federalist Society’s 2006 National Lawyers Convention, on Saturday, November 18, 2006, in Washington, D.C.

¹ Thomas Jefferson, First Inaugural Address (Mar. 4, 1801), in 8 THE WRITINGS OF THOMAS JEFFERSON 4 (Paul Leicester Ford ed., 1897) (“Still one thing more, fellow citizens a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.”).

² See Walter E. Dellinger III, *Cultural Values and Government*, 102 NW. U. L. REV. 479, 479–80 (2008).

Tonight I am going to go home, and first, I will probably pour myself a large martini, which is legal. But if I were to light a joint, I could be put in jail for a long period of time. We have hundreds of thousands of people in jail right now for doing things like that, not because they have hit somebody while they were smoking dope, not because they abused their children, not because they robbed anybody, but because they engaged in that act—which, as far as I am concerned, is basically like drinking a martini. I would log on to FullTiltPoker.com and play poker, but the government has said I cannot do that either. Well, you have millions of people who disagree. Every time that happens, that you have new government attempts to push and poke the personal behaviors that define our culture, you have a lot of people who say, “This is nonsense,” and go ahead and break the law. And, thus, you weaken the cultural capital, which is the most precious legacy we have: respect for the rule of law.

The second point has to do with attempts to positively affect the culture, to encourage stable families, religion, and the rest of it. I think it is fair to say that almost everything I have written over the last twenty years has started from the premise of the importance of the married two-parent family as the generator of a civil society. I am very, very one-sided in my view of the importance of the family. But I would also suggest to you that government no more knows how to encourage certain values regarding the family or religion or other institutions that I hold dear than the left had when it was trying to socially engineer its values in the 1960s. So, any time you have an administration, whether it is conservative or liberal, that says, “We will use the instruments of government to push and pull and tweak,” they get it wrong.

They get it wrong for a couple of reasons. Those of you who are familiar with public choice theory know that however good the idea is originally, by the time it is crafted into legislation, public choice dynamics have contaminated it beyond recognition. You also know all the political problems that go along with it. I would add that there is an incompetence inherent in this kind of effort. The smartest social scientists in the world cannot tell you what is going to happen if, for example, you have a major new tax deduction for children, just to pick one that is kind of a conservative attempt to affect the culture. We do not know how that is going to play out, but I will tell you this: that if you go to countries which, say, have tried to encourage the family by having very generous child allowances, generous maternity leave, and day care centers, you are going to find plunging fertility rates, plunging marital rates, and soaring illegitimacy ratios. That is the way it has worked out in these countries which openly label their policies “child-centered.” Similarly, if you go to rural Sweden as I did a few years ago, and drive through the country, you will see in town after town absolutely beautiful churches, freshly painted, meticulously maintained grounds, subsidized by the government. And they are empty—empty on Sundays, as well as every other time. When government gets involved in the crucial in-

stitutions that define the culture in which we live—family and community and religion—it inherently, ineluctably, and inevitably enfeebles it.

