

Editorial: The rule of law and the rule of morality

June 20, 2018

The rule of law and the rule of morality are not synonymous in human systems.

The divide between law and morality has been on public display particularly during the last few weeks as growing numbers pressured Congress and the Trump administration to end the policy of separating children from their parents who are detained after entering the United States.

Thankfully, President Trump signed an [executive order](#) Wednesday afternoon, June 20, to cease the separation of parents and children at the U.S. border with Mexico when adults are detained for entering the country illegally.

Despite this positive step, the events of the last few weeks give us reason to consider the relationship between our law and our morals in order to prevent future injustice and to respond to injustices in more effective ways.

A case study in comparing legality and morality

It may be legal in the United States to separate children from their parents, but it may not be moral. The legality of separating children from parents depends on the situation, a statement akin to a famous Baptist's parsing of 'is.'

Are we talking about a situation of parents abusing or neglecting their

children? If this is the case, there is wide agreement children can and should be placed in a safer environment. In other words, most agree with the creation of a system that separates children from their parents for the purpose of placing those children in safe places such as foster care. In this case, law and morality seem to align.

Are we talking about a situation of parents raising, disciplining and teaching their children in accordance with certain religious convictions such as those purported to be held by [Jehovah's Witnesses](#)? If this is the case, we are very reluctant to separate children from their parents, even if we are in strong disagreement with their religious convictions. In this case, law and morality quibble.

Of course, these two examples refer to families who are citizens of the United States.

Is what's good for Americans good for others?

What if we are talking about a situation of parents fleeing violence to protect their children? What if we are talking about a situation of parents trying to provide a more stable future for their children?

Of course, these two examples refer to families who are not citizens of the United States.

The question is whether or not the relationship between law and morality changes or should change from one situation to another. Does what we consider immoral when applied to our own citizens become moral when applied to non-citizens?

According to Attorney General Jeff Sessions, the law is clear.

If a person enters the United States by any means outside the approved channels, that person has violated U.S. law and is a criminal.

Fair enough. How then should such criminals be treated?

There's the rub. How exactly should a clear law, if it is indeed clear, be enforced? That—a policy for enforcement—seems to be anything but clear.

Much has already been said about the morality of separating children from their parents at the U.S./Mexico border (I wonder if the same is happening at the U.S./Canada border.). I won't repeat all of the good reporting and editorial opinion already published.

I will call us to examine the rule of morality and to determine if the rule of law on this one issue meets the moral requirement. And yes, all laws must meet a moral requirement, regardless whether or not we can “legislate morality.”

Mandatory reporting is an example of a moral law.

[Section 261.101](#) of the Texas Family Code reads:

PERSONS REQUIRED TO REPORT... A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

261.101 is commonly referred to as the mandatory reporting requirement.

“A person” means *any* person. Clearly, this legal requirement is morally right. Every child should be protected from abuse and neglect and should be provided the means for recovery from the same.

An important provision of the mandatory reporting requirement is Section 261.106, which provides immunity for the reporter “if the person [reporting] was acting in good faith and in the scope of the person’s responsibilities.”

Again, most agree this law is good as it applies to citizens of the United States residing in the State of Texas. Does the same law apply to children and their parents who are not citizens of the United States but who have entered Texas? If the law applies equally in the latter situation, how should that law be enforced in that situation?

Does the zero-tolerance policy constitute “abuse or neglect by any person?”

My guess is Attorney General Sessions and others would argue a government does not meet the definition of ‘person.’ Interestingly, a similar discussion has taken place concerning [corporations](#).

Supposing their argument is cogent that a government is not a person, might the individual enforcers of the zero-tolerance policy meet the definition of ‘person?’ Might each person on Texas soil involved in separating a child from his or her parents in compliance with the zero-tolerance policy be considered to give “cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person?” The [American Academy of Pediatrics](#) thinks so.

Man's law and God's law

Sessions, given his reading of Romans 13, would have us accept the zero-tolerance policy without question. However, given the entire context of [Romans 13](#) and Paul's assertion that God's love fulfills the law, perhaps law-abiding citizens of the United States can comply with another law, which isn't policy but is an actual legal requirement.

Perhaps we can become mandatory observers along the border and in the places where children are being held, so we might then become mandatory reporters coming to the aid of children in need, mindful that not all who are enforcing the policy agree with or are happy with it and like us long for a more just solution.

Eric Black is the executive director, publisher and editor of the Baptist Standard. He can be reached at eric.black@baptiststandard.com or on Twitter at [@EricBlackBSP](https://twitter.com/EricBlackBSP).