

Legal Vices and Civic Virtue: Vice Crimes, Republicanism and the Corruption of Lawfulness

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Abstract Vice crimes, crimes prohibited in part because they are viewed as morally corrupting, engage legal theorists because they reveal importantly contrasting views between liberals and virtue-centered theorists on the very limits of legitimate state action. Yet advocates and opponents alike focus on the role law can play in suppressing personal vice; the role of law is seen as suppressing licentiousness, sloth, greed etc. The most powerful advocates of the position that the law must nurture good character often draw on Aristotelian theories of virtue to ground the connection between law and virtue. While Aristotle believed that law and character were linked, it is ironic to note that he did not argue for the position evidenced in our vice laws that law was likely to succeed in instilling virtue. Indeed, Aristotle thought the project of using law to instill private virtue was nearly certain to fail. Aristotle’s deep concern was not for the way law protected private virtue within each person but the way law had to protect civic virtue between citizens. This article argues that even from its foundations, the project of vice crimes as moral instruction is misconceived. The use of law for overly instrumental or narrow reasons opens law and legal institutions to abuse and factionalism. Lawyers, judges and others specially connected to law must first and foremost aim at addressing “legal vices,” vices internal to the institutions of law. Particularly, increasing factionalism and instrumentalism which disconnects law from the pursuit of the common good threatens our civic bonds. Most importantly, where civic bonds are disrupted, citizens have no reason to remain law abiding. The striking lesson, captured both in ancient philosophy and modern history, is that when legal vices grow unchecked and factions use the law to pursue narrow interests, ultimately law abidingness is corrupted and interest groups harm themselves as much as others.

Keywords Civic virtue · Republicanism · Obligation to obey the law · Aristotle

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