

The Problem of the Grudge Informer

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As the newly elected Minister of Justice, I have decided to adopt the recommendation of the third deputy. As a natural law theorist, I believe that law is a rule and measure to abide by, set for the common good and end, made by lawmakers or he who has care of the community, that is promulgated to the members of the state (Aquinas 2005). Using Aquinas's interpretation of law, I will explain the different recommendations set forth by all of the deputies. I will briefly summarize their theoretical standpoint and explicitly state the defects in their recommendations.

According to the first deputy, we can not do anything about the so-called grudge informers. This is because the acts reported by these individuals were unlawful according to the government in control of the nation. Thereby, these individuals were engaging in their civic duty of legal and moral obligation. This is similar to the theory of law as coercive orders, which states that where there is a law there is human conduct which is obligatory (Hart 1961, p. 37). Therefore, the citizens had a legal obligation to denounce these acts which were forbidden by the government. This is the main emphasis of the first deputy's recommendation. The fact that the government was unlawful is disregarded and analyzed from a merely positivist law perspective. Positive law theory is the belief that laws are established by political superiors to political inferiors. The political superiors (in this case the Purple Shirt Regime) are those who have the might and power of affecting others with evil or pain and forcing through fear of that evil to fashion their conduct to one's wishes or commands (Austin 2005). These commands or laws become the course of conduct for political inferiors and function in correlation with duty and sanctions (Austin 2005). The political inferiors, or the citizens under the Purple Shirt Regime, had the duty to obey such laws otherwise they were liable to any sanctions imposed by

the political inferior/sovereign. From this positivist perspective, the grudge informers were abiding by the governance of their political system.

Although the first deputy, affirms his abhorrence to the Purple Shirtism, he emphasizes the difference in ideology rather than to try to discredit them for their unlawful government. Following the positivistic theory approach, he affirms the legality of the government and distinguishes among the different ideology of the Purple Shirts Regime. He states that this regime “attempted to impose their monolithic code on everyone” through fear, force and power (2005, p. 161). On the contrary, we as a just society tolerate difference in beliefs and opinions without condemning dissent. Our system of government allows laws which may not be approved by all but in the end earn legal recognition on their own. To the contrary, the Purple Shirt Regime disregarded any laws that incorporated objectives which they did not approve of. Their ideology was different than ours by not using the judicial process in a democratic way. With this comparison of ideology, the third deputy states that if we cannot simply nullify all of the laws and acts made by the Purple Shirt Regime simply because they are not approved in our ideology. If we were to do this we would mirror the Purple Shirt Regime. In conclusion, as a positivist legal philosopher, the third deputy recommends we can not do anything about the grudge informers. However I believe differently from the first deputy.

Although the first deputy states valid points regarding the political system during the Purple Shirt Regime, I denounce this recommendation because it fails to addresses some concerns of the legal validity of the political system. In addition it does not satisfy the basic requirements of law which, as a natural law theorist, is different than that of a positive law theorist. One differing aspect is that positive law places no importance on the morality component of law by operating on the slogan “law is law” (Hart 2005). However as a natural law theorist I believe that law must meet several requirements to be a law. Law should not be based on coercive power, but on the belief that as a society there needs to be protection for the maintainance of social life (Hart 1961, p.40). As stated by Aquinas, “Law is nothing else than an ordinance of reason for the common good,

promulgated by him who has the care of the community" (Aquinas 2005, p. 14). This concept of law has four components. The first is that laws are ordinances of reason that are meant to be rules and measures to abide by. Laws derived from reason are meant to guide human conduct, not from impulsive behavior as a way to control citizens like in the Purple Shirt Regime. The second component is that in order for something to be a law it must be for the common good (Aquinas 2005, p. 14). Therefore, the laws set forth by the Purple Shirt Regime would fail this component because their only purpose was to benefit members of the party. The third component of the law is that it has to be made by lawmakers or he who cares of the community. Finally, the last component is the requirement of promulgation of laws to the members of the state. The members of the Purple Shirt Regime failed to fulfill this component since some of the law were kept secret and were only known by the party's members. Because the laws passed by this Regime fail to fulfill the components of a law, I refuse to accept that the validity of these laws. Thereby, I do not agree with the first deputy.

The Second Deputy is recommending that we don't do anything about the grudge informer because what they did was neither lawful nor unlawful. According to the deputy, all of the citizens under the Purple Shirt Regime were living under anarchy and terror. He describes the situation as a "War of all against all" where the grudge informers were only participating in this phase of the war (2005, p. 161). The Purple Shirt Regime were not a lawful system because they lacked legal validity. This system operated through coercive command without fulfilling any elements of law, such as promulgation of the law and the rule of recognition. Under the Purple Shirt Regime laws were never put in writing, thereby provided no acknowledgement of the rules. In addition they failed to promulgate the law to the subjects who were supposed to abide by them. As a result they failed to achieve legal validity. According to the second deputy, "law ceased to exist when Purple Shirt Regime came to power." Although the Second Deputy addresses some problems with the legal validity of the Purple Shirt Regime and is more sympathetic to the grudge informers, I refuse his recommendations. The following are my reasons.

As noted by many natural law philosophers "An unjust law is no law at all" (King 2005, p. 80). This means that any law or act that is inconsistent with natural law and eternal law, the law of God, these do not generate a duty to obey (King 2005, p. 80). As stated by Aquinas, law acquires its binding force only when it is for the common good. When laws are contrary to the common good, they lose their legitimacy. Therefore, the laws passed by the Purple Shirt Regime were unjust and morally wrong. As such, these should not have been followed by the citizens. Those citizens who chose to follow the laws had malicious intent and used the unjust laws only for their benefit. This is not the purpose of law and this is why these grudge informers must be liable for their actions.

One of the recommendations that I studied was the fourth deputy's recommendation. This deputy recommended the establishment of an *ex post facto* law which would be a special statute directed to the grudge informers. This retroactive law would make it unlawful to have acted as a grudge informer and would provide appropriate penalties for the guilty. I have decided against this recommendation because of my firm belief in the legal maxim *nulla crimen, nulla poena sine lege praevia*. This means that there is no crime, no punishment without a previous law. It would be unjust to hold someone responsible for doing something that was not against the law when he did the action. On the contrary some of those accused were following the law at the time of their action. To take this action would contradict the previous law and fail to satisfy the internal morality of law (Fuller 1964). A law cannot have inconsistencies, for it must be stable and constant. To contradict a previous law is to undermine the integrity of the previous law, thus jeopardizing the stability and integrity of future laws. In addition, since this law would be retrospective, this law would violate one of the elements of law which is promulgation. Promulgation is the communication of newly enacted laws to those who are supposed to obey law and will suffer repercussions if they disobey the law (Aquinas 2005). It would be impossible to satisfy the promulgation element in law with an *ex post facto* law (Fuller 1964). Only by fulfilling the promulgation requirement does law establish legitimacy and acquire force

(Aquinas 2005). In conclusion, an *ex post facto* law as recommended by the fourth deputy would fail to satisfy the internal morality of law and would violate many of the elements of law.

The last recommendation that I denied was the fifth deputy's recommendation. According to the fifth deputy there should be no *ex post facto* law because it would be difficult to draft such a statute. This statute would only make us more like the Purple Shirt Regime. His suggestion is that we allow the human instinct for revenge to express and solve the problem without any form of legal intervention. Our governing system would allow citizens to deal with the grudge informers by whatever means necessary. However, I am much appalled by this last suggestion. As a governing body we are here to uphold the values of law which are to serve the public benefit, provide legal certainty and justice (Radbruch). By following the fifth deputy we are following none of the values of law. If we decide human instinct for revenge is the best solution we are allowing for this to become a legitimate type of behavior acceptable in society. On the contrary this would be an illegitimate form of behavior and would not serve as a rule of measure for conduct. If this were the case we would fail to provide order of law thus failing to provide our duty as care takers of the community. As a result I have denied the third deputy's suggestion and have opted for the third deputy.

I have reviewed all of the proposals and have concluded that the best way to solve this political crisis is by using the third deputy. I do not fully agree with his recommendation however I do believe that the grudge informers should be liable for the acts of malice they committed. As explained by the third deputy, not all was unlawful under Purple Shirt Regime. It was not "a war of all against all" setting since normal life went unaffected by the Purple Shirt Regime. Therefore, we should only intervene in those situations where the Purple Shirt Philosophy intruded and perverted the administration of justice. We shall act on the cases that are clear cut regarding the malicious intent of the grudge informers. The reason why I believe this is the best course of action is because it is our job to restore justice in the administration of law. These grudge informers used the legal system not to the benefit of the whole community but

to their selfish advantage. The legal government at the time lacked both external and internal morality of law. The Purple Shirt Regime lacked external law, “the authority to make law must be supported by moral attitudes that accord to it the competency it claims” (Fuller, 1964, p. 71). The Purple Shirt Regime laws were not supported by moral attitudes, they were enacted for self interest purposes. Similarly, the grudge informers disguised their self interest through what they claim “fidelity of law”. In addition to the lack of external morality, the Purple Regime also lacked the internal morality of law. Since they failed to treat legal cases with consistency they failed to act with justice in the administration of the law (Fuller 1964, p. 71). With all of these unlawful aspects of the Purple Shirt Regime the grudge informers had a moral duty to recognize the difference between “fidelity of law” and the reason to know what is right and decent. If we were to leave these citizens as innocent we would implicitly reinforce the thought that disregard for justice is allowed.

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