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Why has the Rule of Law become so Fragile?

By: Tabish Khair

‘There is law that applies to certain criminal activities, which are usually connected to older, corporal forms of power and profit, but there is a clear lack of law, or its applicability, to newer and currently dominant forms of ‘incorporal’ power and profit.’

Though the Little Prince revealed a lot about the asteroids, especially 325, 326, 327, 328, 329, and 330, and planets that he visited, he never said a word about the galaxy he knew as L.A.W. Looking back, this is surprising, because he spent much more time in that galaxy. After leaving our earth – and you have probably read [a famous though idiosyncratic account of his stay here](#) – the Little Prince did on occasions mention his visit to galaxy L.A.W., but it was always in abrupt snippets, suggesting bewilderment.

One day, for instance, he said, ‘The first two planets of that galaxy could not have been more different. One had laws for almost everything: what to wear, what to eat, how to sit. The other planet had fewer than five laws. But do you know what was strange about both the planets? Both contained populations almost equally divided between those who believed that their planet had too many laws and those who believed that it had too few, and those who thought that the laws were working perfectly and those who were convinced that everything was falling apart.’

One another occasion, he told a courtier, ‘What saddened me most of all in galaxy L.A.W. was planet 6. When I reached it in my rocket, I thought it was the best planet in the galaxy. It had a standard for framing laws, which reminded me of what people used to call Ockham’s Razor on Earth, though here, given the tenor of the galaxy, it was about laws. This planet believed that laws should not be framed unless necessary. What an excellent principle, I exclaimed. But it took me only a few days to discover that it did not work, for its denizens had different concepts of necessity, and the attempt to define it from above or outside led to not just a proliferation of laws but also different kinds of tyrannies.’

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Finally, when he was King, and married, he told his Queen, who was also a man, ‘I felt I vaguely understood what was wrong with galaxy L.A.W., when I visited planet 111, which is at the far end of the galaxy, and supposed to be oldest. The inhabitants of that planet call it the ‘sphere of eternal laws.’ For them, laws could not be discarded, or even re-defined or replaced. They had to be preserved verbatim. So all their laws, going back millennia, still applied. However, as the planet and its people had changed, which is a condition of life in the universe, they had to frame new laws too, some of which contradicted older ones. These new laws also applied verbatim. So that everyone was always committing a crime in the process of applying a law, and vice versa. You can imagine how fast I got out of that place, my dear!’

I wish the Little Prince had provided more information about his travels in galaxy L.A.W., or at least left us the location of the galaxy, so that we could have visited it to learn for ourselves. Lacking both these options, it is difficult to answer the question, ‘Why has the Rule of Law become so Fragile?’, posed by the redoubtable Nine Dots Essay competition, the richest essay prize in the world of English writing. Actually, before I even attempt to do so, with the help of bits and fragments gleaned from the memoirs of the Little Prince, I have to ask *if the rule of law has actually become more fragile than it was?*

One important contemporary thinker, who actually lives on planet Earth (much of the time, I am told), implicitly argues against it. His name is Steven Pinker, and he recently wrote a book, *The Better Angels of Our Nature: Why Violence Has Declined*, in which he argued that we actually live in an age with far less violence than in the past. As violence is mostly related to a breakdown of the law, whether defined in tribal, religious or secular-political terms, this argument carries the implication that the rule of law is less fragile today than it was in the past.

Despite the fact that Pinker mostly lives on planet Earth, or so I am told, it appears that his erudite argument was not fully valid. There were various flaws in it, and other critics, mostly from planet Earth, but some also from neighbouring galaxies, have already listed them. I will mention only one flaw, because it has a bearing on our enquiry.

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Pinker’s definition of violence was largely, even at times entirely, corporal: it was all about chopped heads, broken bones, incarcerated bodies. But what he had mostly overlooked was the changing nature of power – and hence, violence. A slave, in the phase when power and profit were still significantly corporal, had to be captured, confined, whipped. Today, a worker can be simply fired, or large numbers of potential workers not given a chance to gain full, proper or any employment, because profit can be made without harnessing their corporal labour. In the past, a king could invade and ravage another realm. Today, we have things like hedge funds, usually located elsewhere.

This partial blindness in Pinker’s book enables us to move towards answering our question: we live in a world where the rule of law impacts differently on different people. Just as Pinker often fails to see the ‘incorporal’ violence prevalent in the world, we fail to see how some laws are framed to be broken by a few privileged people, or not framed at all. These are usually ‘economic’ or ‘financial’ laws – shall we say, ‘incorporal’ laws, laws relating to abstract capital, which now mostly exists as numbers, not even as coins or paper money. On the other hand, corporal laws – usually based on regulating older forms of power and profit – are applied, discussed, debated. When we talk about the ‘rising crime rate’ in London or New York, we discuss muggings and shootings, not economic crime – which radiates, with the support of banking institutions in such metropolises, to offshore sanctuaries and shell companies.

There is little attempt to legislate against such incorporal crimes, which, however, in the form of collapsing infrastructure, lay-offs, closures, worsening working conditions, etc., do have a corporal effect: ranging from obesity and malnutrition among the poor to environmental devastation and wars. Interestingly, the very person who might have been fired because of the incorporal violence that Pinker does not see, might be thrown into prison for punching his boss, or some unfortunate scapegoat later in the pub.

Does this mean the law is deficient? Does it mean there is no law? The inhabitants of the first two planets visited by the Little Prince might have had something to say about this. But I am reminded right now of something else that the Little Prince narrated, this time to his two children. I must confess that this anecdote might be deficient, for the version that reached us was through the children, who were just five and six years old when it happened. The two children of the Little Prince, who was now a Big King, had been bickering, when the Little Prince separated them and asked them the reason for their tiff. Both laid claim to the same toy, and both had convincing reasons – children always have convincing reasons – for their claims.

That is when their father, the Little Prince, told them about a planet in galaxy L.A.W. that was divided exactly into two equal halves, with people in both the halves waging relentless war on each other. No one could resolve their conflicts; though, in other ways, both the halves of this torn planet contained very agreeable people, and regimes with just laws. Do you know the reason for this, the Little Prince asked his children. The girl and the boy shook their heads. The reason, said the Little Prince, balancing each child on a knee, was this: Each half had framed laws in total disregard of the other half and this meant that they were condemned to eternal violence.

But, the girl asked her father, because she was the more inquisitive of his two children, but, papa, why did it mean that they were condemned to eternal violence? That, answered their father, is in the nature of violence. There was a philosopher I met on planet Earth, I think his name was Emmanuel Levinas, who told me that violence is any action in which we behave as if we are alone to act.

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As Judith Butler puts it in *Prekarious Life*, ‘[t]o the extent that we commit violence, we are acting on another, putting the other at risk, causing the other damage, threatening to expunge the other.’ Hence, committing violence is essentially breaking the law, as it is understood by a human being, intellectually or viscerally. But what happens in a world where some are allowed to commit such violence? What if this does not just happen at individual levels but at national and even regional levels? And what happens in the minds of the people who are impacted by such violence – in the form of obesity or malnutrition, structural adjustment lay-offs, corporate cannibalism that leads to industry shut-downs, deteriorating civic infrastructures as taxes are not paid and governments strive to keep the super-rich happy with tax cuts and bailouts, and, finally, civil war or outright war?

What happens when these people, these real or potential victims of the failure of law, are also the people on whom another set of laws is sought to be rigorously applied?

Even as capital rampages in and out of her country at the click of a keyboard, and the super-rich avoid taxes in various ‘legal’ havens, the worker cannot cross her national border to a better job, or even just to a job, without breaking laws, or seeking the help of traffickers. Even as the bosses give themselves bonuses and lay-off a dozen workers as structural adjustment, the workers cannot do anything in response – and what they can do, like throwing a brick through the window of their boss’s Mercedes Benz, is a clear act of lawlessness.

Returning to our question then, one can argue that the fragility of the rule of law today – whether real, which may be debated, or perceived, which is indubitably a fact – is a direct consequence of this. First, there is no real rule of law for one special bit of the planet: Let’s call it the global North. Second, there is law that applies more to the rest of the planet: Let’s call it the global South. Or, you can put it differently: there is law that applies to certain criminal activities, which are usually connected to older, corporal forms of power and profit, but there is a clear lack of law, or its applicability, to newer and currently dominant forms of ‘incorporal’ power and profit.

How is it possible to believe in the rule of law on a planet where the good life of a few seems to depend on denying the good life to most others?

This sad equation is complicated by other factors. For instance, the difference in understandings of the rule of law is connected to differences in life-styles, or, rather, differences in expectations of the good life, which of course is what any just law is there to enable and sustain. It is not that the idea of the good life differs to some extent from culture to culture. That would be possible to bridge. But bridges cannot be built over these bridgeable differences in a world where the good life for the global North is opposed, by definition, because of factors outlined above, to the good life for the global South.

Laws cannot be imposed from above, as discovered by the inhabitants of the planet with the sensible rule that only necessary laws should be framed. Just the problem of defining ‘necessity’, on a vast planet of many differences, made that rule a source of Hobbesian conflict or Leviathan dictatorship. Laws can also not just be allowed to remain pickled in time, despite the changes that living inevitably brings about. Laws have to be freely accepted, before they are fully obeyed. In any other condition, the rule of law will be fragile. But how is it possible to fully accept laws, even if they are just, if you can sense the lack of necessary laws, or their application, in the case of others? How is it possible to believe in the rule of law on a planet where the good life of a few seems to depend on denying the good life to most others?

Many current ways of thinking are partly a result of this evaded problem. It also includes intellectual positions that are not wrong in themselves – such as the subject’s right to decide for herself. Yes, the subject needs the right to decide for herself: it is essential to her subject-hood and agency. But there is a potential chasm between that necessary position and the common pop-post-modernist exclamation of ‘you cannot judge me’ or ‘we should not judge others.’ This exclamation is partly the result of living on a planet where some are not judged, where the law fails to apply or even does not exist for a very few. As against these privileged nabobs of the global North, we have the masses in the global South, and the chant given to them is ‘you cannot judge me.’ This works as a religion, in the sense in which Karl Marx claimed that religion was an opium of the people, because, by opium, as his essay clarifies, he did not mean a hallucinatory drug, as we understand it now; he meant a pain-killer, which is what opium was in the 19th century. He added that religion only enables people to forget their genuine pain; it does not cure the disease, the source of the pain.

Judgement is inevitable in law. Condemnation or execution need not be, but judgement is required. Judgement is required in life. One of the pleasures of great literature is not that it can be read without judging, as some erroneously suppose. Instead, great literature is consistently involving the reader in the act of judging, returning to the judgement and judging again, and, finally, of judging without condemning, judging with understanding. It is this process that might have contributed to the historical correspondence between the rise of the novel and the rise of modern notions of human rights.

If there is perhaps an excess of laws on the one side, the side of the corporal in the global South, there are essentially no effective laws on the side of incorporal capital in the global North. This realisation makes both the global South and the global North feel that the rule of law is fragile.

But the exclamation that we should not judge is like Marx’s religion-opium. It enables the global South to share in an enabling condition of the good life of the nabobs of the global North: their impunity from the law. They are not judged. But, simultaneously, the masses know that they themselves will be judged. They know the rule of law would apply more to them than to the nabobs. They know that they will need to break the law to achieve some of their desires, and they will be punished if they get caught, while the nabobs... oh well. So the masses, like Marx’s proletariat, smoke their opium, and sing in their pop songs: ‘Don’t judge me!’ It helps them forget the pain.

I grew up in a small town of India, with its convoluted lanes and its traffic chaos, and when I left India for the first time, about twenty years ago, by some ironic twist of fate, I ended up in Denmark, a small country with uncongested lanes and strict abidance to traffic rules. I watched with something like shock as drivers waited for the light to turn green, even as there was no other vehicle in sight. Over my years in Denmark, I realised that this abidance to traffic rules is not genetically ingrained in Danes. And, actually, it is not even the result of trust in the system, though trust does play a part in the larger picture. It is the direct result of the conviction that others will also follow the rule. You can call it trust in one’s fellow citizens.

But the point in this context is not the trust. The point is the fact that all drivers in Denmark are on a flat plane with transparent and equally applicable rules. It is this, along with trust, that enables them to accept and obey the rules, even when there is no external constraint. That flat plane is actually very different from the planet they share with others.

The question – Why has the Rule of Law become so Fragile? – implies that law exists, as it should, both in terms of the legislative and the executive. The facts of this planet are different. If there is perhaps an excess of laws on the one side, the side of the corporal in the global South, there are essentially no effective laws on the side of incorporal capital in the global North. This realisation makes both the global South and the global North feel that the rule of law is fragile. And it is: for the nabobs because there are too many horrific muggings in the global South; for the global South because their lives are made increasingly precarious by the impunity afforded to the global North.

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If there are pickled ‘corporal’ laws left over from the past – what to wear and what to eat – there are also new laws that promise a good life in the absence of the old laws. Sometimes, these new laws are used to criminalise the old laws, which bite back with increasing viciousness, for over this ceaseless conflict there hovers the shadow of laws that have not been made and that have not been implemented, laws that enable the nabobs to reign in the palaces of power and profit in the global North.

The rule of law does not need more or less laws. It does not need old laws or new laws. It needs laws that enable an equivalent access to the good life for all. We do not live on a planet where this is even remotely possible at the moment, and its possibility, as various indexes show, has deteriorated in recent decades. That might be the reason why the Little Prince never mentioned his visit to galaxy L.A.W when he visited us.

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