Jurisprudence and the Problem of Church Doctrine

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Mormons frequently refer to "Church Doctrine" in their theological discussions. For example, Sister Smith might express her belief that the earth is no more than five or six thousand years old and that the theory of evolution is a Satanically inspired plot. Brother Young responds by noting, "Those are just your opinions. That is not Church Doctrine." Whatever else the term Church Doctrine might mean in this exchange, it is clearly functioning as a theological authority, delineating those beliefs that have a claim on Brother Young from those that do not. Like most Mormons, Brother Young seems to be conceptualizing Church Doctrine as some set of authoritative teachings promulgated by the Church,[1] and Brother Young thinks that it is possible to identify them. Yet how we differentiate between Church Doctrine and mere opinion is unclear.   I argue that we can analogize the problem of "What is Church Doctrine?" to the jurisprudential problem of "What is the law?" The answers offered by the philosophy of law to the second of these questions illuminates the sorts of answers that we can give to the first. Ultimately, I conclude that we discover Church Doctrine not by application of any hard and fast rule that allows us to identify it but rather through a process of interpretation.

Jurisprudential Solutions to the Problem of Church Doctrine

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[1] Unless otherwise noted, all references to "the Church" are to The Church of Jesus Christ of Latter-day Saints.

Jurists and political philosophers tend to ask different questions about the law. Political philosophers are largely concerned with justification. They tend to assume that the question of what the law is is relatively simple, and they want to spend their time thinking about what sorts of laws are justified. Jurists, in contrast, know from experience that the contours of the law are frequently unclear, and determining what the law is can be as difficult as determining whether it is justified. Ultimately, the jurists' questions are of more use for thinking about how we discover Church Doctrine than the political philosophers' questions. This is because rather than seeking to determine the extent to which the law's authority is justified, the jurists seek to determine how far the law's claim of authority extends. It is this focus on form over substance that makes the juristic arguments useful for thinking about Church Doctrine. This is because the question of how we identify Church Doctrine is a formal question rather than a substantive question. We are not interested in what Church Doctrine ought to be but rather in what it actually is. Consider analogies to two jurisprudential theories: legal positivism and law as integrity.

According to H.L.A. Hart, an influential legal positivist, law is a system of rules. Some rules govern human behavior, for example the rule that murder is prohibited. Some rules govern the promulgation and validity of other rules. On this view, law is ultimately defined by what Hart called a "rule of recognition."[2] This is a rule that allows us to differentiate those rules that are law from other rules, such as rules of manners or the rules of golf, which are not law. For example, in the United Kingdom a statute passed by the House of Commons is law. This is a rule of recognition.

Positivism provides a seemingly elegant solution to the problem of what is Church Doctrine. All that is necessary is to identify a rule of recognition for Church Doctrine. The problem is that as a matter of social understanding it does not appear that any such rule of

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[2] *See* HART supra note **Error! Bookmark not defined.** at 100-110.

recognition exists. It is tempting to look to the scriptures and the idea of canonization as a rule

of recognition. On this view, Church Doctrine would consist of whatever the scriptures say.

There are at least two problems with this approach. First, it is over- and under-inclusive. There

are certain things that are very clearly Church Doctrine that cannot really be found in the

scriptures. For example, our current understanding of the Word of Wisdom exceeds the text of

the Doctrine & Covenants. The very fact that the Word of Wisdom is regarded today as a

commandment is at odds with the text itself, which clearly states that it is not given by way of

commandment. (See D&C 89:2) The scriptures are also contain many teachings that are not

Church Doctrine. For example, certain aspects of the text of the Word of Wisdom – such as the

prohibition on meat except in winter or time of famine – are not regarded as normative. (See

D&C 89:12-13) Likewise, Christ's prohibition on divorce in the Gospel of Mark does not seem

to be Church Doctrine, (see Mark 10:6-9) to say nothing of the intricate rules found in the

Pentateuch.

The second problem with looking only to the scriptures for Church Doctrine is the

problem of interpretation. Mormonism begins with a rejection of the sufficiency of scriptural

interpretation standing alone. After finding himself caught up in a war of words between the

rival evangelists in Palmyra, Joseph Smith noted that "the teachers of religion of the different

sects understood the same passages of scripture so differently as to *destroy all confidence in

settling the question by an appeal to the Bible.*" (JS-H 1:11-12; emphasis added) The new

revelation of the Restoration came only after the sufficiency of scripture had been rejected. As it

now stands, Mormons regularly invoke the concept of Church Doctrine as an aid to the

interpretation of scripture. For example, should someone teach that the text of D&C 89 requires

that Mormons become vegetarians; the standard response would be "That is just your

interpretation; it is not Church Doctrine." This points, however, to an important function of Church Doctrine. It is something that we frequently use to identify which interpretations of scripture are authoritative and which are not. This means, however, that Church Doctrine necessarily exceeds the Standard Works standing alone.

Finally, one might look to the statements of General Authorities as providing a clear rule of recognition for Church Doctrine. Joseph Smith, however, taught that a prophet is only a prophet when speaking as a prophet.[3] What we lack, however, is a clear criterion for identifying when a prophet is speaking as a prophet. For example, should we assume that everything uttered in general conference is Church Doctrine? If so, is it because the speakers in general conference are careful to make sure that they don't say anything that contradicts Church Doctrine, or because Church Doctrine simply is what is said in general conference? Furthermore, is Church Doctrine confined to some set of public statements by high Church leaders? For example, if the General Handbook of Instructions were modified so that abstinence from coffee was no longer necessary to qualify as worthy for a temple recommend, would such a change constitute a shift in Church Doctrine, even if it was not announced from the pulpit in general conference? The fact that we do not have clear answers to these questions suggests to me that we lack a clear rule of recognition for what constitutes Church Doctrine. This does not mean, of course, that the words of scripture and modern prophets are without authority. It simply means that a statement does not become Church Doctrine by virtue of being uttered by any particular Church leaders or even by virtue of being printed in the Standard Works. Nor does it mean that the various potential rules of recognition that we might propose are wrong per se. All of these rules can help to orient us toward Church Doctrine. However, they cannot provide a fool-proof way of identifying Church Doctrine in every case.

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[3] *See* SMITH *supra* note **Error! Bookmark not defined.** at ????.

Law as Integrity and Church Doctrine

"Law as integrity" provides an attractive alternative to the analogy of legal positivism. This approach begins with so-called "easy cases," situations where what the law consists of and what it demands is more or less clear and obvious. For example, we know that the U.S. Constitution's requirement that the President be at least 35 years of age can be identified as the law without recourse to any elaborate theory of what law is. Such obviously true legal propositions abound: Lower courts are bound to apply the holdings of higher courts. The 1964 Civil Rights Act clearly forbids a Hilton from refusing to serve a patron because he or she is Black. After centuries of accumulated precedent many common-law rules, like the requirement that a will have two witnesses, are beyond serious question. The vast majority of legal disputes involve such "easy cases." We only require a theory of "what is the law?" when we are faced with what Ronald Dworkin has called "hard cases."[4] In these situations the scope of the law is unclear and we are hard pressed to identify its demands. Dworkin imagines how a perfect judge, who he names Hercules, would decide such a case.[5] According to Dworkin, Hercules would survey the vast mass of clear and easy law relating to the issue. He would then construct an account that makes sense of all of this material. Any theory of law must do this because the clear and easy law is binding, hence his interpretation must fit and justify it.

Dworkin gives the example of the English case of *McLaughlin v. O'Brian*.[6] The case involved a woman who sued a negligent driver for damages for emotional distress. The woman was not in the car accident and had not been physically injured in any way. Rather, she was called to the hospital where she learned that her husband and daughter had been killed. Previous English cases had awarded damages for emotional distress but only in cases where the plaintiff

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[4] *See* Ronald Dworkin, *Hard Cases* in RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1978).
[5] *See* RONALD DWORKIN, LAW'S EMPIRE (1986).
[6] [1983]1 A.C. 410, reversing [1981] Q.B. 599.

had actually witnessed the injury or had come upon a loved one's corpse at the scene of the accident.[7] The question presented by *McLaughlin* was whether or not these cases authorized damages in a situation whether emotional distress was removed from the scene of the accident to the more antiseptic setting of the hospital.

In deciding a case like *McLaughlin*, Hercules does not simply decide whether he believes, all things considered, that recovery for emotional distress in this situation is a good idea. Rather he begins with the earlier cases. Suppose, for example, that Hercules believes that any recovery for emotional distress would be misguided. He thinks that it is a bad policy and that the moral arguments in favor of compensating emotional distress are weak. He cannot, however, simply apply this judgment to McLaughlin's case, because the previous decisions by which he is bound clearly reject his position by awarding damages. Nor may he simply hold that the previous decisions were mistaken and that from now on no damages for emotional distress will be awarded.[8] Rather, Hercules must look at the previously decided cases and construct the best possible argument that he can to justify them. In justifying them, he looks not only at the outcomes in the cases, but also to the reasons offered by the previous judges. He must also account for these reasons, although in constructing the best possible justification for the previous cases he will necessarily recharacterize the reasoning of previous judges. Thus the arguments in support of the holdings evolve over time. In *McLaughlin*, Hercules would draw on the best possible understanding that he has of policy and political morality to justify the conclusion that those who witness the death of a loved one should be compensated, and then he would then

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[7] *See Marshall v. Kionel Enterprises Inc.*, [1971] O.R. 177, *Chadwick v. British Transport*, [1967] 1 W.L.R. 912.
[8] This is true even though common-law courts can overrule previous decisions. The issue of overruling precedent is a complicated question beyond the scope of this article. Suffice it to say that courts do not simply reject precedent when they disagree with it, but rather they overrule a previous case only when subsequent decisions decided under it severely undermine its holding and rationale. For example, in *Brown v. Board of Education*, which struck down racial segregation in primary-level public schools, the Supreme Court reversed its previous decision in *Plessy v. Ferguson*, which announced the principle of "separate but equal." However, prior to *Brown* the Court had decided a series of cases – mainly striking down segregation in higher public education – that undermined *Plessy*'s holding.

decide if those arguments justify giving the wife and mother of accident victims compensation when she learns of the deaths in a hospital. Hercules' interpretation involves normative judgments, but it is not simply a matter of *his* normative judgments. Rather, discovering what the law requires in a particular case is a matter of giving force to the latent normative judgments of previous, controlling precedents. Put another way, to discover the law in a "hard case" a judge creates a story that makes sense of the clearly established cases and then fits the new case into that story in a way that places the whole in the best possible light.

In my view, thinking of Church Doctrine as a kind of Dworkinian interpretation provides the best account of how we discover it. The advantage of Dworkin's view is that it does not require that we have any clear idea about the rule of recognition. It simply requires that we have some easily identifiable core cases of Church Doctrine from which we can reason. This is precisely the situation in which we find ourselves. We can easily imagine that Brother Young and Sister Smith have very different opinions about the rule of recognition for Church Doctrine. For example, Brother Young might believe that Church Doctrine consists only of texts formally canonized by a vote in general conference, while Sister Smith might regard any public sermon by a member of the Quorum of the Twelve as Church Doctrine. Both of them agree, however, that it is Church Doctrine that Jesus Christ is the savior of mankind and that Latter-day Saints should not drink coffee. When faced with a new question about Church Doctrine, rather than trying to determine which of them has the correct rule of recognition they can simply reason on the basis of clear cases, fitting the new question into a story that will place things in their best possible light. More importantly, I think that this is how most Mormons actually use the concept of Church Doctrine. To be sure, Latter-day Saints point to authoritative statements in support of their claim that this or that proposition or rule of conduct is Church Doctrine. However, all of

these claims are made against a background of teachings, experiences, and texts that they seek to accommodate and charitably characterize. It is their interpretation of the totality that produces their conclusions about what is or is not Church Doctrine.

The question of whether or not Diet Coke is prohibited by the Word of Wisdom provides an example of how we discover Church Doctrine. We start with the brute fact that we all agree that the Word of Wisdom is Church Doctrine and that it forbids drinking coffee, tea, and alcohol. What would be the best story that one could tell about this? One story would be to say that it is a health code designed to prohibit the ingestion of bad substances.[9] Thus we look at alcohol and caffeine and use them as touchstones for Word of Wisdom compliance. On this view, chocolate and Diet Coke, both of which contain caffeine, are out. There are a number of problems with this interpretation. For example, the schedule of prohibited substances is strangely random from a purely health-oriented point of view. Why condemn excessive meat consumption but not excessive sugar consumption? Why explicitly include relatively harmless substances like tea or coffee but not narcotics? One might offer the argument that in the nineteenth century when Section 89 was given they didn't have such drugs. This, however, is historically inaccurate. The nineteenth century was well acquainted with narcotics like opium. Furthermore, the current interpretation of "hot drinks" as meaning tea and coffee (but not herb tea) didn't gel until the twentieth century, so it is not clear why nineteenth-century practice should control. Given these difficulties, one could conclude that the bad-substances interpretation doesn't provide the best account of the rules. A better account is that the prohibition is meant as a reminder or symbol of the covenant that I make with God and an open-ended admonition to be healthy. This explains the seemingly arbitrary schedule of prohibited substances. As symbols they are arbitrary in the

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[9] For an extremely influential version of this interpretation see JOHN A. WIDTSOE & LEAH D. WIDTSOE, THE WORD OF WISDOM: A MODERN INTERPRETATION (1937).

same way that using the shape "A" to designate the sound "ahhh" is arbitrary. It also explains

the rise of the Word of Wisdom as a central part of Mormon identity in the 1930s. As outward

reminders of Mormons' status as a "peculiar people" in the form of things like polygamy or the

United Order retreated in the face of intense outside pressure, the Word of Wisdom provided a

workable mark of the covenant. On this reading, however, the prohibition on hot drinks cannot

be reduced to a prohibition on caffeine that then extends to Diet Coke. It does suggest, however,

that one should avoid consumption – including the consumption of Diet Coke – that is bad for

one's health.

Some Implications of Church Doctrine as Integrity: Obedience and Personal Judgment

This approach also provides a more nuanced understanding of the relationship between

individual judgment and following Church Doctrine. To see how, we must understand that on

this view Church Doctrine is inherently contestable. This doesn't mean that doctrinal questions

are without correct answers.[10] Indeed the interpretive approach necessarily assumes that many

aspects of Church Doctrine are clear. Rather it means that we always can have disagreements

about certain aspects of what Church Doctrine requires and that the only way of doctrinally

settling these disagreements will be by resort to complex arguments about the best possible story

to be told. It is important to understand that when I say that certain aspects of Church Doctrine

are inherently contestable, I am not talking about disagreements over whether Church Doctrine is

true or whether it should be followed. Rather I am talking about disagreements over the *content*

of Church Doctrine itself. This inherent contestability is illustrated by the fact that the Church's

solution to the practical problems created by doctrinal disputes is not a clear and mechanical rule

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[10] *Cf.* Ronald Dworkin, *Is There Really No Right Answer in Hard Cases*, in RONALD DWORKIN, A MATTER OF PRINCIPLE 119 (1985) (arguing that there are right answers to inherently contestable legal questions).

for discovering what is Church Doctrine. We lack an intellectual formula for escaping the demands of interpretation. Rather the coping mechanisms are essentially moral and institutional.

Morally, we are to discuss Church Doctrine with charity and unity, avoiding "contention." In the Book of Mormon, the risen Christ teaches, "For verily, verily I say unto you, he that hath the spirit of contention is not of me, but is of the devil, who is the father of contention, and he stirreth up the hearts of men to content with anger, one with another." (3 Ne. 11:28-29) This is not a philosophical Rosetta stone that allows us transparently to identify authoritative Church Doctrine. This suggests that the primary danger of the contestability of Church Doctrine is not epistemic. It is not that we will be mistaken. Rather, it is moral and social. It is the danger of rancor, discord, and a loss of unity. Accordingly, we have a solution in the form of a moral injunction about social interactions – in this case doctrinal discussions – rather than an intellectual method for resolving doctrinal disputes.

In addition to a morality of doctrinal discussion, we have institutional solutions to the practical difficulties of doctrinal disagreements. Return once again to the initial disagreement between Sister Smith and Brother Young. Imagine that Sister Smith is called as a gospel doctrine teacher and begins vociferously teaching her anti-evolution views during class. Brother Young suggests to her that she should stop teaching her opinions as Church Doctrine. Sister Smith indignantly replies that her views on the age of the *are* Church Doctrine, insisting that she holds them precisely for this reason. Both parties take the dispute to their bishop. He asks that Sister Smith confine her lesson more closely to the text of the assigned scriptures. Such a solution to Sister Smith's and Brother Young's doctrinal disagreement is entirely institutional. Indeed, it needn't take a doctrinal position at all on the resolution of the dispute. The bishop's decision controls in this situation not because he has privileged access to Church Doctrine per se

but simply because he is the bishop. In this sense, the hierarchy of the Church, with its accompanying notions of stewardship and jurisdiction, renders a theory that incontestably identifies Church Doctrine unnecessary. [11] The success of the ethical and institution methods of coping with doctrinal disagreement underscores the inherent contestability of Church Doctrine. Given the proper attitude and institutional structure, the contestability seems to be something that we can live with quite nicely. Nevertheless, the contestability remains.

The source of this inherent contestability lies in the identification of Church Doctrine through finding the best possible story that can be told about the texts, practices, and history of Mormonism. Not only is this process of interpretation complicated, but the principle of charity means that it necessarily involves normative judgments that are inherently contestable. This does not mean, however, that discovering Church Doctrine is a free-wheeling exercise in normative reasoning. Such a view fails to appreciate the difference between judging what would make the best story about a particular set of phenomena and simply judging what would be best. Discovering Church Doctrine requires that we make sense of clear instances of Church Doctrine and their context (contemporary and historical). This interpretive requirement forecloses certain possibilities. For example, suppose that I come to believe – after careful consideration – that the best way of memorializing gospel covenants in our lives would be to eat only white food, since whiteness denotes purity and ingestion is a powerful way of symbolizing how we take the gospel into our very being. (Something like this view was common among early Christians.) Whatever the merits of this practice, it is not Church Doctrine. It does not purport to offer an interpretation

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[11] Robert Cover made an analogous legal point about the interaction of institutions and interpretation, arguing for what he called a jurispathetic theory of law. On Cover's theory, citizens produce a vast welter of interpretations about what their laws require. The role of the courts is to kill off some of these interpretations in order to resolve concrete disputes. Ironically, Cover used – inter alia – the example of Mormon interpretations of the constitution. *See* Robert Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 51 (1983) ("The long process leading up to Utah's statehood was, from the Mormon perspective, an exploration of the degree of resistance required by religious obligation and the realities of power.").

of the teachings and practices of the Church. In contrast, the interpretation of the Word of Wisdom that I offered above assumes that the Word of Wisdom is an authority that forecloses, for example, the modest and healthy consumption of wine.

The precise nature of the link between the authority of Church Doctrine and the need to tell the best possible story about it is complicated. The search for the best possible story is not offered as an account of the authority of Church Doctrine. It does not justify it. Such a justification must come from elsewhere, and its nature is beyond the scope of this essay. Suffice it to say that the source of the authority of Church Doctrine likely lies in covenants, priesthood power, the privileged access of prophets to the divine, and the needs of the saints as a community. These are all normative grounds separate from the particular stories that we tell about particular doctrines. (Although to be sure, the grounds of Church Doctrine's authority no doubt have their role to play in understanding this or that question about its contours.) However, the authority of Church Doctrine does require that we look at it in the best possible light. Such an approach acknowledges that Church Doctrine is something with a claim upon us, something normative.

Hence, following Church Doctrine does not constitute an abdication of independent moral judgment, as has been so often suggested. Following Church Doctrine does mean subordinating one's independent substantive judgments on an issue to which Church Doctrine speaks. Yet understanding what Church Doctrine requires is not a mechanical process. Acknowledging the authority of Church Doctrine means committing oneself to discovering its demands. Yet this process of discovery will necessarily involve making independent judgments about what provides the best possible story to be told about the totality of known doctrines. Put another way, independent of its legitimacy or justification, *discovering* the bounds of authority is

at least in part a normative inquiry that requires our independent judgment. Even in obedience we "must be as gods, knowing good and evil" (Moses 4:11).[12]

Conclusion

My goal today has not been to reform or critique the way that Mormons use the concept of Church Doctrine. Rather, I have tried to elucidate what I take to be the underlying logic of their practice. Hence, the interpretive approach that I draw by analogy from the philosophy of law is not offered as something new. Rather, I think that on this point Mormons are rather like the man who discovers that he has been speaking prose all his life. Analogizing the question of how we know if something is Church Doctrine to the question of how we know if something is law, however, does allow us bring certain issues into sharper focus. First, it allows us to recognize that we lack a rule of recognition for what is Church Doctrine. Second, it provides us with a way of understanding why this is not a serious theoretical objection to our current practice. Finally, by revealing the inherently interpretive nature of discovering Church Doctrine, it hopefully sheds light on some of our institutional and theoretical practices.

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[12] To be clear, I do not claim that the discussion offered above exhausts the issues presented by the interaction of personal judgment and authority, or even that it answers all of the most pressing questions raised by it. Rather, my claim is that it puts to rest the notion that following Church Doctrine is intellectual or morally lazy, involving an abdication of personal judgment. Such judgment is always necessary.