第十二届『华政杯』全国法律翻译大赛

初赛试题

注意事项：(1) 参赛译文须独立完成，抄袭他人译文、提交机器翻译译文或有其他舞弊行为的，一经核实，取消参赛资格。

(2) 参赛译文版面需清洁美观，依序另页提交（标示题号，仅需提供汉语译稿;英文使用 Times New Roman 字体,中文使用宋体，小四号字，1.25 倍行距；现有格式，无需变动）。

『华政杯』全国法律翻译大赛组委会

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Part I

Throughout the COVID-19 pandemic, Americans have heard the President issue federal stay-at-home guidelines, including a nationwide lockdown until April 30th. Americans have also heard the President discuss potentially lessening those restrictions and reopening businesses after this date; however, it is not his call to make. Although it may appear from the COVID-19 Task Force press conferences that the President ordered the current lockdowns, it is the state governments who possess the authority to impose these types of restrictions, although they often take their cues from the federal government. States have the police power to regulate almost everything in its state, including the ability to issue statewide lockdowns, force closures of institutions and businesses, limit public gatherings and prevent travel. Protecting public health and safety is one of the states' most compelling use of state power. Under the Constitution, the federal government has a limited set of enumerated powers, leaving the state government with the primary authority to fight the pandemic. States have many key advantages over the federal government in enacting these types of restrictions during an emergency, including more knowledge on its own resources and hazards, ability to shape policies on local issues and more flexibility to alter their emergency response plans. That's not to say the federal government does not possess any power during this crisis. The federal government has the power to provide medical supplies, transfer money to state governments, bar individuals with COVID-19 from entering the United States, and fund research for a vaccine. It cannot, however, impose statewide quarantines.

While some experts suggest a national lockdown would dramatically help slow the spread of the COVID-19, the United States federalism system likely prevents the federal government from officially enacting one and, instead, leaves that power in the hands of the individual states. Although national emergencies, especially wartime, usually give rise to broader presidential power, a national shelter-in-place order is unprecedented and could likely be challenged in court. While the President's constitutional authority during emergency crises is not entirely defined, without an executive order to the contrary, the states have the lockdown power in their hands. A successful nationwide lockdown would require joint cooperation from all states, but states have each enacted varying levels of restrictive measures. Thirteen states, including New York and California, enacted the most restrictive measures in closing all nonessential businesses and prohibiting all gatherings. Meanwhile, twelve states have yet to issue official statewide stay-at-home orders, including Alabama, Arkansas, Iowa, Missouri and North Dakota. All states have issued some form of restriction, but their degree of prohibitions and exemptions vary. Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases and a key leader in the administration's COVID-19 response, does not believe a nationwide shutdown is

necessary because of the variation in infection rates across the states. Nonetheless, responsibility for making decisions about the pandemic rests with the states, not the federal government.

(482 words)

Part II

If there is a single over-arching theme from the progression of legal education from Blackstone till now in the US, it is that at least since the last half of the twentieth century and into the twenty-first, there is a profound dominance of a legal philosophy that repudiated earlier notions. At first there was "legal sociology" and "legal realism", and, then, later, the related developments of "critical legal studies", "feminism", and "critical race theory". This dominance of these schools of legal thought led to a legal pedagogy in the great American law schools which abandoned the Blackstonian notion that the law could be a clear, certain, and binding constraint on judges, and a rejection of the Blackstonian view that the law contained universal principles, principles of morality which were dictated by the Deity. Instead, a majority of the American legal academy all but concluded that law was little different from politics. For most American Law Professors, inspired perhaps by the Warren Court, realizing the discretion that the American common law system and its analogues in Constitutional Law actually gave to judges, and idolizing as they did the creative jurist, the job of American law as administered in the courts was seen to be the redistribution of American wealth and power in order to reverse decades of discrimination against minorities and women, gays and other formerly disadvantaged groups. This is not to say that this movement did not result in the redress of some longstanding grievances, or that it did not, in some way promote some ideals of justice.

However, it is not the original Blackstonian legal philosophy. The absolute Blackstonian version of the rule of law and, indeed of a government of laws not of men, it must be recognized, may be unattainable ideals in the real world. But if the law is about nothing but implementing political preferences, about redistributing resources to currently favored groups, it will have ceased to be a noble profession preserving order, stability, deference, certainty and predictability, and it will become, as Thrasymachus cynically believed, only the tool of those in power.

Many of law professors have understood, articulated, and imagined an American law that is now a danger to the legal and Constitutional foundations. The elegant and elaborate theories of these contemporary American law professors that justify departures from prior precedents or implement new versions of rule of law, are similarly splendid, but similarly dishonest.

(402 words)