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Making Men Moral, Civil Liberties and Public Morality (book review)

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MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY. By Robert P. George. New York: Oxford University Press 1995. Pp. xvi, 229. Paper. \$24.95. ISBN: 0-198-26024-5.

In this provocative book, Robert P. George defends morals laws (laws that prescribe moral virtues and punish those who commit moral offenses), which are seen by most contemporary liberal theorists as violative of the rights of persons with unpopular morals. George defends these laws from the perspectives of Aristotelian and Thomistic political theories, insofar as these theories view law and politics as rightly concerned with the perfection of the virtue of political communities. He explores the relationship between these political theories and jurisprudence in an early chapter on the debate between the philosopher H.L.A. Hart and the jurist Patrick Devlin. Devlin would accept some morals laws in order to promote political stability, but he does not believe that a jurist ought to consider the validity of the moral claims that the laws seek to enforce. This chapter shows that for a moral realist like George, the immorality of the proscribed act is a necessary, but not sufficient, requirement for the validity of such laws.

In the central chapters of the book, George develops his argument for morals laws by engaging the prominent liberal theorists who are critical of them. In Chapter 3, he argues that Ronald Dworkin fails to derive a right to moral independence from a principle of equal concern and respect. For Dworkin, a right to moral independence proscribes laws that would interfere with an individual's ability to determine morality for him or herself. But, George shows that Dworkin conceives of the common good as collective utilitarian interests, and he argues that this way of viewing the common good is utterly hopeless.

Chapter 4 considers Jerry Waldron's argument that sometimes people have a moral right to do what is morally wrong. George concedes that some immorality inheres in all societies, but this concession limits the scope of morals laws. It does not mean that the law must be entirely separated from prescribing morals and punishing moral wrongdoing. And, in Chapter 5, which takes up the thought of John Rawls through the writing of David A.J. Richard, a prominent Rawlsian, George criticizes the subjectivity of morality in Richard and Rawls's work.

These forms of contemporary liberal theory fail for George in part because they reject the belief that progress toward a morally perfect society can be judged by objective criteria. The perfectionist alternative that George develops allows a space for a government to use coercive force to promote moral progress measured against an abstract foundational moral principle that has its origins in the work of Germain Grisez and John Finnis. (16) Their new natural law theory claims to be a comprehensive *resourcement* of Aquinas's theory and to escape the objections that have undermined Thomism at least since the Enlightenment. While George views perfectionist moral theory to be suitable for a pluralistic society, it is here that criticism can be made. George's account of perfectionist pluralism seems to depend on the strict avoidance of metaphysical conceptions of human nature. But, without metaphysics, the new natural law seems to be merely another restatement of the Kantian categorical imperative. This view of the Grisez-Finnis project was advanced by Russell Hittinger.¹ Still, George's thought-provoking insights are refreshing and welcome in a field dominated by moral skepticism.

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1. *A Critique of the New Natural Law Theory* (U. of Notre Dame Press 1987).

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