

Dealing with Sensitive Issues in Morality and Law

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Dealing with Sensitive Issues in Morality and Law

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**Robert P. GEORGE, *In Defense of Natural Law*
New York: Oxford University Press, 1999, 340 pages,
ISBN 0-19-826771-1**

Robert P. George teaches in the Politics Department, at Princeton University, and is a former Judicial Fellow at the US Supreme Court. Currently a presidential appointee to the US Commission on Civil Rights, he has sometimes been described as one of America's "leading legal and political theorists".

People who read *In Defense of Natural Law* may not agree with all of George's basic ideas but may well find it difficult to question his reputation as one of the most brilliant exponents of natural law philosophy and of its public policy implications.

In *Making Men Moral*, published in 1993, George called into question some basic assumptions of liberal jurisprudence and political theory. In his most recent book, he goes one step further and attempts to demonstrate how natural law theory allows for an adequate treatment of basic issues of justice and political morality. More importantly, George provides a well-reasoned argument in support of the notion that one need not adopt the contemporary liberal creed, according to which personal preferences or opinions are the ultimate foundation of what is right and wrong, to establish one's credentials as a true democrat.

The book is divided into three parts, each consisting of six chapters, all of them having appeared as articles and review essays in journals of law, politics and philosophy, or as

contributions to edited volumes. The three parts deal successively with theoretical issues, moral and political questions, and “dialectical engagement”.

As might be expected, several of the chapters devoted to theoretical issues will appeal mainly to readers with an interest in matters philosophical. However, Chapter Five, entitled “Natural Law and Positive Law”, should appeal to anyone concerned about the scope and limits of judicial authority. George demonstrates that, while it is often believed that the notion of an objective moral law entails that judges should be able to nullify any positive law they deem inconsistent with natural law (since an ‘unjust law is not a law’), natural law principles “neither require nor forbid schemes of allocating authority under which judges enjoy a broad power of judicial review and, thus, play a significant legislative role”. Indeed, George points out, “the usurpation of political authority, particularly by judges, violates the moral-political ideal of the rule of law — an ideal central to natural law thinking regarding political morality”.

The final chapter of Part One, entitled “Free Choice, Practical Reason and Fitness for the Rule of Law”, explains why the rule of law occupies such a prominent place in a natural law approach. The argument essentially boils down to the fact that there are not only procedural but also *moral* reasons for rulers to respect its requirements.

The six chapters in Part Two address a range of morally-charged political issues, including those over abortion, pornography, religious freedom, homosexuality, marriage and the international order. George’s objective, here, is nothing less than to show that natural law theory offers a credible alternative to the liberalism that currently prevails in Western academic and political circles. These chapters are undoubtedly the most interesting to be found in the book. They are meant to present an approach to legal and public policy issues that incorporates “key insights and achievements of the liberal tradition, including, notably, its concern to protect the basic rights and liberties of individuals”.

In Chapter Seven, entitled “Religious Liberty and Political Morality”, George proposes to reflect on the basis for religious liberty, which stands as the first great achievement of the

liberal tradition. The question he addresses is whether freedom of religion calls for religious indifferentism on the part of government. More specifically, he attempts to answer the question as to whether public officials should ignore the religious traditions to which they adhere in making judicial decisions and developing legislation. (The question appears all the more relevant in light of a comment made by Canada's Supreme Court Chief Justice, shortly after her appointment in January 2000, to the effect that her religious upbringing had played a significant role in her life, both private and *professional*).

George argues that one cannot seriously expect religiously informed moral judgment to be excluded from public life. He goes on to offer a natural law theory of religious freedom that, although different from the contemporary liberal conception, could hardly be described as any less genuine in its respect of moral conscience. George readily acknowledges that religious faith, by its very nature, cannot be coerced ("The price of attempted coercion is religious inauthenticity"). One, however, cannot conclude from this fact that political authority must profess agnosticism or that religious motivations should be ignored in the drafting of legislation on matters of justice and human rights. This view is predicated on the notion that "the good of religion is a reason for political action and an aspect of the common good of civil society". In developing this argument, George draws on *Dignitatis Humanæ*, Vatican II's *Declaration on Religious Liberty*.

The essential point, here, is that religion, while a deeply private matter, is not a "purely private matter". Man, being a social being, cannot help giving external expression to his internal acts of religion. It is therefore fitting that, in the words of *Dignitatis Humanæ*, "he should profess his religion in the community". On this basis, George argues that the common good requires not only that governments respect and protect religious liberty but that they "encourage religious reflection, faith and practice". This can be done by, for example, "cooperating with parents and religious leaders to provide opportunities for children to practice their religions and receive religious instruction as parts of the regular school week". (Note that the plural in "religions" is not a typo.)

Governments should also support religious broadcasting, especially that which fosters inter-faith understanding.

George also argues that government support for religion could act as a countervailing pressure against “powerful secularizing forces that would employ the principal institutions of cultural transmission to spread a pseudo-gospel of materialism and self-indulgence”. Interestingly enough, this is the kind of argument that was used by liberal economists in the 1960s as a rationale for countering the economic power of big corporations whose dominant positions tended — so the argument went — to impede the functioning of free markets.

In Chapter 11, entitled “Public Reason and Political Conflict: Abortion and Homosexuality”, George provides a good summary of the debate on the philosophical underpinnings of the pro-choice position. What comes out of his review is that the argument according to which the life of a human being begins at conception has never been rebutted. More importantly, the case for a so-called right to abortion — even to a “duly qualified” right to abortion in the third trimester — has never been established without engaging the moral and metaphysical questions on the basis of which people divide over the issue. In short, there is no sound political or philosophical rationale that would require pro-life groups to cease demanding legal protection for the life of the unborn. More to the point, the pro-life position is entirely consistent with the findings of modern science. George quotes authoritative scientists who have unabashedly stated that there can be no doubt about certain “biological facts [...] a human zygote is not a possible human being; nor is he or she potentially a human being; he or she is a human being”.

In Defense of Natural Law is not an easy read. But it is written with a great sense of intellectual rigour and will give the attentive reader a clear perception of the basic issues that lie ahead for those who want to promote an ideal of justice based on something more solid than “personal preferences”.

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