

**FREEING ME TO BE MORAL:  
A NATURAL LAW REJOINDER TO THE HART-DEVLIN DEBATE  
ON CIVIL LIBERTIES AND MORAL LEGALISM<sup>1</sup>**

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**I. Introduction**

This paper is about enforcing morals laws. It is however not about its morality. It is about its consequences. But I am not a consequentialist; precisely so this study of consequences leaves out the issue of whether it is morally permissible to coerce through morals laws.<sup>2</sup> I am a natural law theorist. A natural law theorist does not only pronounce normative judgments, derived from his attentiveness to practical *reasons*; he can also use the data which he has gathered in that kind of first person reflection, called the internal point of view, and see how it informs theoretical, descriptive truths. So an internal examination of the data of practical reasons gives rise to an account of human nature<sup>3</sup>, and also an account

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<sup>1</sup> This paper grew out of a seminar by C L Ten on Millian liberalism. Ten first pointed out and loaned me George's book. I was helped in the development of some of my views of political liberalism through discussions with him. I was also helped by comments by several anonymous reviewers. John Finnis' seminar on his *Aquinas: Moral, Political and Legal Theory* helped clarify aspects of my understanding of natural law theory. Finnis also helpfully discussed with me his ideas in his *Natural Law and Natural Rights*. Note however, that nowhere do I presume to explain Finnis, and where errors exist, they are mine. My natural law theory, though strongly influenced by Finnis, may go beyond what Finnis says, and at times deviate from him in directions which seem to me more reasonable.

<sup>2</sup> I do this elsewhere in a separate paper arguing how various coercions are normatively unacceptable.

<sup>3</sup> See John Finnis, *Aquinas: Moral, Political and Legal Theory* (NY: OUP, 1998). 90-94.

of metaphysical reality.<sup>4</sup> My task here is to take that information to explain why moral legalism is counter-productive.

## II. The Hart-Devlin Debate

In a recent very good work, the natural law theorist Robert P George rejoins the Hart-Devlin debate. In that debate, Devlin had argued that not enforcing shared morality leads to the disintegration of society, whereas Hart had replied that this would not occur. In his *Making Men Moral*, George asks whether morals laws should be legally enforced, and surveying the arguments in the debate between Devlin and Hart, he gives an affirmative answer. However, he does so only by refining Devlin's argument.

For the purposes of argument, let us grant George against Hart that Devlin means by 'society' not merely the physical peaceful co-existence of persons within a geographical limit, but includes some form of social and interpersonal integration and co-ordination, all of which implies a structure built on a belief consensus.<sup>5</sup> Thus, if this social co-ordination and integration is disintegrated, the mere peaceful co-existence that subsists would not constitute the subsistence of a 'society', but something less than a society. Hence society would indeed be destroyed. Nonetheless Devlin's case cannot stand as it is. The criticism George has for Devlin is that Devlin errs in insisting that shared morality *simpliciter* should be enforced and at the same time rejects the additional premise that *such a shared morality must be sound*. So George writes:

even in circumstances in which social cohesion is imperiled, as Devlin correctly supposed it could be, by the erosion of a hitherto dominant morality, a concern for social cohesion *per se* is not a sufficient ground for enforcing moral obligations.<sup>6</sup>

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<sup>4</sup> see *ibid.*, 294-298. Also John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 371-410. Also see my "The Reason of God: Natural Law and Its Anti-Naturalist Implications" (unpublished)

<sup>5</sup> Robert P George, *Making Men Moral: Civil Liberties and Public Morality*, (Oxford: Clarendon Press, 1993), 67-70

<sup>6</sup> *ibid.*, 71

George thinks the reason for Devlin's refusal to admit the legal credentials of a sound morality as opposed to merely a shared morality is that Devlin is a moral non-cognitivist. In insisting against Devlin that moral knowledge is possible, George represents correctly the realist tradition he calls the Central Tradition (i.e., the Aristotelian-Thomistic tradition). In the name of that tradition, George then argues that one should endorse the moral enforcement of *sound moral norms*:

The justification of morals laws cannot prescind, as Devlin supposed it could, from the question of the moral truth of the obligations they enforce. A concern for social cohesion around a shared morality can justify some instances of the enforcement of morals, *but only if that morality is true.*<sup>7</sup>

I do not think so, and it is this last which I wish to contest. While I am a great admirer of George's work on natural law, I think here is something that needs to be debated. And I too hail to come from the Central Tradition, so-called. Indeed as a thomist very sympathetic to the natural law theory developed by John Finnis (and Germain Grisez) which George builds on, my procedure is not in fact to simply split ways with George, or for that matter with Finnis, but really to point out that their very own remarks actually do not cohere with George's own conclusion on this matter.<sup>8</sup> In fact I will try to sieve out what I think are the many brilliant insights in George's own work here in question which sanction a stronger separation between private morality and its legal enforcement.

### **III. Religious Beginnings**

George starts with the question of religious freedom because of its intuitive connection with any theory of 'moral liberty', a term that must be understood *very* precisely. He writes:

I maintain that the right to religious freedom is grounded precisely in the value of religion, considered as an ultimate intelligible reason for action, as

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<sup>7</sup> *ibid.* 71

<sup>8</sup> Finnis is in fact less enthusiastic when it comes to endorsing paternalism. See his *Aquinas*, *op. cit.*, 222-228. He reads Aquinas as understanding the role of the state to be limited only to external acts related to peace and justice, not internal dispositions.

basic good. Like other intrinsic values, religion can constitute a reason for political action; government need not, and should not, be indifferent to the value of religion. The nature of that value is such, however, that it simply cannot be realized or well served by coercive imposition. Any attempt by government to coerce religious faith and practice, even *true* religious faith and practice, will be futile, at best, *and likely to impair people's participation in the good of religion*. While religious liberty...is not absolute, government has compelling reasons to respect and protect religious freedom.<sup>9</sup>

The important point George is making here is that even though religion is a good, it is a good that can be participated by the subject *only if he is to participate it in a certain manner, namely, sans coercion*. This derives from the nature of religion as a reflexive good, i.e., “objects of choice whose value depends on their being freely chosen.”<sup>10</sup> So, “as interior acts, religious acts cannot be compelled. If they are not freely done, they are simply not done at all.”<sup>11</sup>

There is ample evidence how coercive enforcement of religion in effect short-circuits one's ability to experience the good of it. Enforcement entices the coerced with the objective of escaping from pain, so that it is not religion as such that is aimed at, but mere external compliance for the sake of other physical and hedonistic goods. George writes, for example,

Communion with God, if God exists, is like communion with other persons in its *reflexivity*; it is not communion unless it represents a free self-giving, unless it is the fruit of a *choice* to enter into a relationship of friendship, mutuality or reciprocity. Such a relationship simply cannot, in the nature of the thing, be established by coercion. Coercion can only damage the possibility of an authentic religious faith, a true realization of the human good of religion. Coercion deflects people from really choosing that human

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<sup>9</sup> Robert P George, op. cit., 220 *Italics* mine.

<sup>10</sup> see *ibid.*, 221, note 15

<sup>11</sup> *ibid.*, 221

good, for it seeks to dominate their deliberations with the prospect of a quite different good—of freedom from imminent pain, loss, or other harms, or of some other non-religious advantage.<sup>12</sup>

Here surely George is on the mark. Coercion is simply counter productive; in order to encourage anyone's participation of the good of religion, there must be a sphere of freedom. The person who has religion imposed on him through threat and complies tends to have his practical syllogism reduced to a quest ultimately of the good of freedom from pain, rather than the substantive truths of religion as such. When he considers why he should obey or give (superficial) assent to them, he is motivated, under threat, by the quest for hedonistic goods.

It is of course possible that a person under threat might still *truly* seek religion. Yet if that were so, it is not achieved by the threat at all; such a person seeks religion not *because of the threats*, but *despite the threats*. He or she must already see it as a worthy point of interest. Hence the threat is at least superfluous. But it is not just harmlessly superfluous. It becomes a hindrance to the true participation of the good of religion, because it tends practical deliberation towards intentions directed at pleasure (or freedom from pain) rather than the good of faith. And this is true not merely for threats, but for promises of pleasures as well. This is because the increase of pleasure is also the removal of pains. So just as equally, influencing a person with promises of honors or recognition for seeking a religion tends to displace any authentic religious motives and distract his practical deliberation with temptations of such non-religious, hedonistic motives.

Of course, if the threat is not too violent (say, people who do not seek the good of religion are not entitled to tax refunds on the donations they give to charities), or if the pleasure is not too intense (say, people with religion are invited to a government funded dinner function to honor them just once a year), then the distraction is diminished. And the avoidance of pain is less likely to be the *only* reason for compliance. In any case, such things can be artfully done: the law can have very light penalties for non-religiosity. Some very sensitive persons will be deflected, others will not be. These other persons, then, will see the good of religion, and comply with the law without the mere desire to avoid the

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<sup>12</sup> *ibid.* 222

penalties. So, if the good of religion cannot *always* be coerced successfully, there still are chances of success. Perhaps over a long period of time, after repeated “soft” coercion, some will come around to see the point of religion as something worth seeking. Underlying these kinds of reasoning is the assumption that somehow, it is possible to impress the good of religion in another.

But this will not work either. This has to do with the fact that what is normative *for me* is not necessarily normative for another. Now this has to be taken very carefully. I am not saying that the precepts of the natural law are not normatively *true* for all persons. They are, and in this sense they are normative for me and for you. But in another sense, the normativity of the natural law is *not transferable*: all one can do is to *agree with* what someone else finds normative. Take a precept of the natural law, like, “one should not kill the innocent (or what is the same: one should promote the good of life)”. This precept is normative for all persons, because all persons, to the extent that they have the natural law, will be bound by it. They will agree with its normative obligatoriness. But they do not agree with the precept in the sense of passively receiving this precept; rather, they find that their own practical thinking *coheres* with this precept. And since it is the natural law which obliges one to seek the good of religion, so also the obligation to seek the good of religion cannot be transferred or grafted into another. The following will try to demonstrate this.

#### **IV. Do You See What I See?**

John Courtney Murray SJ once wrote:

Man’s native condition as a moral subject, who confronts demands of a transcendent order of truth and goodness, requires that he be surrounded by a zone or sphere of freedom *within which he may take upon himself the ineluctable burden—that of responsibility for his own existence*. This requirement for an environment of freedom is more stringent in what concerns man’s relation with God. This relation is personal in that it is immediate, a relation of person to person. Therefore it is to freely entered, in response to the divine initiative. And in further consequence, the

responsibility for the nature of the response, whether acceptance or rejection, in *inexorably a personal responsibility, not to be shared with others or assumed by others, much less shifted onto others*. On all these counts it clearly appears that coercion brought to bear upon the human subject, especially in what concerns his relation with God, is not only a useless irrelevance but *also a damaging intrusion. It does injury to man's personal autonomy. It stupidly seeks to replace what is irreplaceable. It does violence to the very texture of the human condition, which is a condition of personal responsibility.*<sup>13</sup>

There is a point to Courtney Murray's remark that religious choice is a personal responsibility that is not transferable, and I wish to recast in greater detail the point in the context of the (neo-thomistic) natural law theory much developed by John Finnis (and Germain Grisez and Joseph Boyle), and brought forward by George himself—who in writing that “no one can search for religious truth, hold religious beliefs, or act on them authentically, for someone else”<sup>14</sup> makes the same point—although on particular conclusions further down regarding moral legalism George and I will be diametrically opposed. Still I hope this be not so much interpreted as an opposition to their theory, but an effort to collaborate in its development. But returning to the issue at hand, here we delve more deeply into the nature of practical reasoning and the structure of its first principles—i.e., natural law, or what John Finnis calls the “non-transparency of ethics”. To begin, in *Natural Law and Natural Rights*, John Finnis maintains that there are many underived first principles of natural law:

...Aquinas asserts as plainly as possible that the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason (and not just by metaphysicians), are *per se nota*, (self evident and indemonstrable). They

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<sup>13</sup> John Courtney Murray, “The Declaration of Religious Freedom: A Moment in Its Legislative History”, in *Religious Liberty: An End and A Beginning*, John Courtney Murray SJ (ed), (NY: Macmillan, 1966), 39-40, italics mine.

<sup>14</sup> Robert P George, *op. cit.*, 220

are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical presuppositions about human nature, or about the nature of good and evil, or about the ‘function of a human being’, nor are they inferred from a teleological conception of nature or any conception of nature. They are not inferred or derived from anything. They are underived (though not innate). Principles of right and wrong, too, are derived from these first, pre-moral principles of practical reasonableness.<sup>15</sup>

Concurrent to this understanding of natural law is a hermeneutic that Aristotle and Aquinas’ speculative conclusions about human nature and the metaphysics of reality are buttresses of a purely non-theoretical but practical moral theory. To point out that it according to Finnis, Aristotle and Aquinas’ moral theories are non-theoretical but *practical* is not to make a trivial point. Although the mind is not two but one, nevertheless practical reasoning excludes merely thinking about what to do *simply in order to know what to do*. Theoretical thinking, which is thinking primarily in order to *know*, is distinguished from *practical* thinking. In fact, practical thinking is thinking *in order to act*. Practical thinking, is *really a kind of thinking which works on a different kind of logic*.

When discerning what is good, to be pursued (*prosequendum*), intelligence is operating in a different way, yielding a different logic, from when it is discerning what is the case (historically, scientifically, or metaphysically); but there is no good reason for asserting that the latter operations of intelligence are more rational than the former.<sup>16</sup>

This notion of practical thinking governs his interpretation of Aristotle and Aquinas. In *Fundamentals of Ethics*, when explicating Aristotle’s idea of ethics as a practical enterprise, he writes:

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<sup>15</sup> John Finnis, *Natural Law and Natural Rights*, op. cit., 33-34

<sup>16</sup> *ibid.*, 34

The philosopher [Aristotle] who may be said to have initiated, and named, the academic pursuit called *ethics* also called that pursuit ‘practical’. The knowledge that one may gain by that pursuit is, he said, ‘practical knowledge’. People usually water down these claims of Aristotle’s...The misunderstanding goes like this: Aristotle just meant that the subject matter in ethics is human action (*praxis*), or opinions about human action, or opinions about right human action, or right opinions about human action, or all of these topics.

...Of course, each of those topics is an aspect, more or less central, of the subject-matter of ethics. But in calling ethics practical, Aristotle had much more in mind. He meant that one does ethics properly, adequately, reasonably, if and only if one is questioning and reflecting *in order to be able to act*—i.e., in order to conduct one’s life rightly, reasonably, in the fullest sense ‘well’. And doubtless he had in mind that the questioning and reflecting which constitute the academic pursuit itself are themselves *actions*, the actions or conduct of you or me or Aristotle or those of his students who took his course seriously.<sup>17</sup>

But Finnis then goes one step further: not only is practical thinking about *what is to be done*, but also what *I* think is to be done. This phenomenological difference in practical thinking and theoretical thinking is analyzed as a difference in the object of one’s intentionality. When I am thinking theoretically about *p*, my intention falls precisely on *p* as the object. Theoretical thinking about *p* obeys what Finnis calls ‘transparency’, and what I gather by transparency is that the person making that statement in theoretical thinking is transparent. He is not included in the propositional string which expresses *p*. He is unseen, invisible. He is not included as the object of his intentionality in any manner.

The theorist can say to himself (1) ‘I ought to think that ‘p’ (since the evidence favors the conclusion)’. Or he can say (2) ‘I think that *p* (since the

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<sup>17</sup> John Finnis, *Fundamentals of Ethics* (Washington: Georgetown University Press, 1983), 1

evidence...’). But both (1) and (2) are *transparent for* assertions that omit the first-person pronoun and verb. That is, the meaning of (1) and of (2) can be found in assertions of the form (3), ‘it is the case that [or: it’s true that] *p*, (since...),’ or most simply, the affirmation of (3’) ‘*p*’. In formulations in form (3) the theorist—oneself as a human being with one’s objective(s), one’s responsibility and one’s attainment—disappears from view.<sup>18</sup>

On the other hand, when I am thinking practically about *p*, my intention falls precisely on *my act of thinking about p*.<sup>19</sup> For Finnis, practical thinking is also a self-reflexive exercise. The object of one’s intention when thinking practically *includes the person who is thinking*. The focus of my attention when thinking practically is on *me* deciding what to do, and not merely about *what to do*. The consideration of actions in practical thinking can never abstract the “me” from *me-thinking-about-what-to-do*. Only thinking like this “kicks in”, as it were, the practical logic. The following is most explicit:

...ethics is also precisely and primarily (‘formally’) practical because the object one has in mind in doing ethics is precisely my realizing in my actions the *real* and *true* goods attainable by a human being and thus *my participating in* those goods. Notice: ethics is not practical merely by having as its subject-matter human actions (*praxis*). Large parts of history and of psychology and of anthropology have human *praxis* as their subject matter; but these pursuits are not practical. No: ethics is practical because my choosing and acting and living in a certain sort of way (and thus my becoming a certain sort of person) is not a secondary (albeit inseparable and welcome) objective and side-effect of success in the intellectual exercise; rather it is *the very objective primarily envisaged* as well as the subject-matter about which I hope to be able to affirm true propositions.<sup>20</sup>

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<sup>18</sup> *ibid.*, 3

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.* (Italics original)

Practical thinking as practical therefore has a very strict phenomenological *differentia*: it is (*my thinking*) about what I must do, not merely about things to be done. The self-reflexive “I” always features directly in the object of one’s consciousness in practical thinking. One might say that practical reasoning is not transferable; I cannot think practically what *you* should do. I can only think practically for myself. To think practically that “I should do this” is not to say that “I should do this no matter who thinks about it”, but “I should do this when I think about it.” The “I” is essential in any practical pronouncement of “I should...”: I and only I can think what should be done for me when thinking practically. This is not true of theoretical thinking: the “I” can be abstracted and the thinking remains theoretical. Thinking about a piece of fact as truth or falsehood is not about its truth or falsehood for *me*. Although we say “I think it is true”, the subject “I” is irrelevant: we mean to say, “it is true”: it is true or false independently of me thinking it.

>From this something rather significant follows. Since thinking about human actions in a subjectively disinterested<sup>21</sup> fashion does not include the “I” in its intentionality, it cannot be practical thinking. Clearly then, results of physical (understood as the philosophy of nature) or metaphysical speculations about human nature, or about ends for human beings, or about goods for nature cannot be called practical, since they are subjectively disinterested conclusions about it being true that “human nature is such and such, ends are such and such and goods are such and such”, independently of any thinker. They abstract from the “I” who thinks, in the manner we explicated above, and fail to surface the practical logic with its epistemic deliverances. Given that natural law are first principles of *practical* reasoning, it follows then that metaphysics or any philosophy of nature cannot constitute any of these principles. Nor can conclusions derived from theoretical science (physical or metaphysical) be *practical*, and so cannot be (first) principles of *practical* reason, precisely because they are not the propositions of practical but theoretical thinking. The peculiar content of practical reason, with its peculiar logic and epistemic deliverances will all have been absent from these (theoretical) truths. It follows then that if the first principles of *practical* reasoning are to be truly *practical*, they cannot be the inferred from

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<sup>21</sup> by subjectively disinterested I do not merely mean unemotionally, but also that when I think about something, I think about with without a reference to *myself*. The self, the subject, “me”, is transparent, invisible.

conclusions of physical or metaphysical speculation. If physics and metaphysics exhaust all possible candidates for deriving practical principles, then the first principles of natural law are more merely not inferred from these, but are further simply not-inferred, self-evident.<sup>22</sup>

But I wish to draw out *another* insight. Insofar as ethics is *practical*, as defined above, and natural law consists of the first principles of *practical* reasoning, then *personal* responsibility and the *non-transferability of ethical deliberation* obtain. In fact we had already pointed this out in passing. Insofar as ethical principles properly speaking are *practical*, then ethics cannot be done in proxy, by another person for someone else. The logic of practical thinking operates only when I think thus: “*I*-ought to do, seek, or work for this and that”. The inclusion of the “*I*”, as we have pointed out, governs the practicality of the discourse and thought. “*I*” can only think what is good for *me* to seek. Now of course I can think what is good *for you*, just as I can also say, “it is good for you to...etc”, but here it is theoretical, because the statement is transparent—“it is good...”—and the *practical* logic, with its intuitively given premises, do not operate. The first principles of practical reasoning do not come to bear in this mental exercise when one ceases to think *for oneself*, *i.e.*, *practically*. This should not be confused with thinking egoistically. One can think practically what it is good to do to benefit another: “*I*-ought to help him or her...”. The presence of the “*I*” in the intentional structure is what marks the distinction, not the thought of benefiting the “*I*”. Again, *in order for the practical principles to bear on my mental deliberation, only I can bring that about*. No one, not you nor anyone else, can do that for

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<sup>22</sup> Finnis et al defend the non-inference of practical reasons because the practical proposition contain the normative “ought”, which cannot be logically derived from the descriptive “is”. That is simply true and I too affirm that. But what I have done here is to develop an alternative approach (building on Finnis’ own analysis in his *Fundamentals of Ethics*) to show why practical reasons are not derived from physics or metaphysics: because different ways of thinking will yield different kinds of operational logics, and reveal different (though not contradictory) kinds of objects of thought. Theoretical thinking, being subjectively indifferent (and thinks about “what is the case, does not matter for who”), yield facts. Practical thinking, which is subjectively specific (and thinks about “what *I* ought to do”), yield meaningful points worth seeking for. Hence for those who deny the “is-ought” gap (much as it is true), it does not follow quite yet that if the gap is fused one can now derive practical principles from theoretical reasons. Even if one can derive an “ought” from an “is”, *practical* reasons, with its peculiar practical logic and epistemic deliverances, are not derived from these theoretical premises, the latter wherein the practical logical and its epistemic deliverances of *practical data* will be completely absent. These kinds of practical data which are absent from theoretical thinking include not merely the “ought”, but also the various irreducibly basic, meaningful ends worth

me. To tell me that you think it is good for me to seek or do such and such is to give me theory, and it is not *yet* for me to be doing ethics, or practical thinking. It is not *yet for me to experience the guiding force of the natural law*, i.e., the first principles of *practical* reasoning. And since the participation of the basic good (of religion or morality) for each person presupposes his or her thinking and seeking that good in the manner which is expressed by a non-transparent intentional string, one in which the subjective “I” is included, then it would seem that the judgment that religion (or morality) is good is a non-transferable one, meaning that: no one could possibly help me intend the *goodness and worth seeking-ness* of religion in this way—or rather, at all—except myself. Unless I am motivated by the *practical* acknowledgment of religion as a good and worth seeking, i.e., “I-ought to seek the good of religion”, there would be no other practical motivation to seek it. If that is so, then it would be either futile or unreasonable or arbitrary for me to seek religion, when religion is not *to me* a good; whereas if it were *to me* a good, then insofar as the first principle of practical reasoning “Good ought to be sought and done” directs me, it would be reasonable for me to seek religion.<sup>23</sup>

On other words, ethics or *practical* thinking—whether intending a good or resisting an evil—involves a kind of thinking which at once engages and surfaces the subjective self, the “I”. This is the peculiar structure of natural law in us, the law by through which we experience ourselves as rational creatures sharing in the providential intelligence of the eternal law, and therefore with a capacity for self-governance. The experience of this intentional structure is peculiar to the human person *qua* rational being, participant of the eternal law. Now, could anyone possibly make me or help me in any manner see that “I ought to seek the good of religion?” No: because the only way religion can be a good is *for me to see it as good, and worth seeking*, moved and directed *by the self-evident natural law* [i.e., *practical* first principle] in me, and moved in such a way that it is true *for ME thinking*

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seeking. Even if one could get the “ought” from the “is”, he would still have no access to the various meaningful points or ends which *practical* reason counsels as worth seeking.

<sup>23</sup> While only “I” can know for myself that such and such a good is to be sought, this is not to be confused with saying that only *my personal instantiation* of such a good is worth seeking. Rather, only when thinking of such a *universal-good* (*qua* a good that is good for myself and anyone else like me), only I can know for myself such a value to be worth seeking. The exclusivity is in the knowing, not in the known good. The good known is a universal good, but only I can know *by myself and form myself* that such a good is to be

*about what to do, to seek, to work for, etc.* The natural law that motivates me to see and seek the good of religion is *surfaced and operational only when I think about what “I; me” ought to do* here and now or engaged with possibilities. If I were to say “*one* ought to do this or that”, this would not be a reporting of a natural law’s motivation, unless it is clear that “one” refers exclusively to me—this particular subject—when I am saying it, and not an abstract, common and variable subject. The first principles of practical reasoning which provide reasons for action, i.e., the natural law, are not only self-evident, they are *operationally subject-specific*. While it is true that all of us, more or less share the same content in natural law, yet it is also true that each set of natural law in each rational subject is peculiarly each person’s own and normative for him or her only, in the sense that he or she can only be moved by *those natural laws which he or she experiences in himself or herself through practical thinking*, and not another persons’. If some being did not have his or her own store of natural law, it is not for us to try to impress it upon it, but to relegate it to the genus of brutes. It is in this sense that each rational person is a center of self-governance, and hence a subject of *personal* responsibility—nobody can do *for you*, or move (reasonably) *for you*, or indeed *understand, appreciate, see for you the good of religion*.

From these I conclude that any coercion directed at a person who does not himself see the basic good (of religion or other basic goods) to want to seek it, with the intention of *making* him see the point of the good of religion and to seek it, is always and everywhere a waste of time and effort. Such attempts fail to attend to the anthropological fact that anyone’s experience of normativity is always because of *operationally subject-specific natural laws*. Coercion seen in this light shows why it is a counter-productive activity. It is a failure to take into account a *human person* as a *self-moving, and self-responsible being*. It is to try to do for him what only he can do for himself, i.e., experience the normativity of and so be moved reasonably by the—indeed, *his*—natural law.

## V. Let It Be

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sought and to be thus reasonably motivated to seek it. I.e., I can know only *by myself* that such a *good-for-everyone* is something worth seeking.

Now, just as religion is a basic good, so practical reasonableness (or morality: being clearheaded, and following through with first principles of practical reasons *qua* the natural law without being deviated by feelings) is a basic good: it is an irreducible motive for activity, and as such “one ought to be practically reasonable” is a natural law precept, a first principle of practical reasoning.

Yet persons can fail to be fully reasonable in two ways: firstly because he or she does not see the point of being practically reasonable, and so is not motivated by this very practical reason or norm: “one ought to be practically reasonable, and thus one ought to seek to be coherent and never violate reasons, and one ought not let non-reasonable deviations like feelings and emotions get in the way of reasons...”. Not being motivated by this normative precept, this person will not be concerned with acting *reasonably*, but will be willing to be moved (by feelings) against reasons. Secondly, a person may see the point of being practically reasonable, and thus seek to be attentive to reasons. But in so doing he or she may not be entirely successful. In both defects, coercion will not help.

Consider the first case, which is the case of the person who does not seek to be fully reasonable. Again, as all basic goods, i.e., as ultimate intelligible points of activity, the recognition of the good of practical reasonableness (or morality) is subject specific, and not transparent. Meaning to say, these first principles which constitute intelligible motives for activity—if at all—are peculiar to the particular subject. I.e., these first principles, what we call *natural law*, are natural laws which are *operationally subject-specific*, and hence cannot be used to move any other person except that in which these laws inhere, since the nature of human practical motivation is that he experiences the operation of intelligent motivation thanks only to his own store of the natural law, and not another’s. All these we have explained at length above. So if someone does not see the intelligible value of morality, which may be an ultimate source of motivation for activity, then one cannot impress it upon the person.<sup>24</sup> All such similar and equally applicable arguments we have expressed at length above in our discussion of the good of religion.

Now consider the second case. Suppose one does see the good in being practically reasonable or moral, of being clear headed, of living in accordance with *reasons* rather than

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<sup>24</sup> Aquinas and Aristotle point out that age is a necessary but not sufficient condition for wisdom. Persons who never develop beyond obeying (infantile) feelings and see no point in being reasonable, would be such persons who fail to recognize the good and to-be-pursued of morality or of being (practically) reasonable.

feelings. But he or she is mistaken about what being practically reasonable means, i.e., what these reasons fully entail, say, with respect sexual conduct. And assuming we have gotten it rightly sorted out. Do we force it on him or her, or require through law that he or she obey it? If we did, it would not help the person be more perfectly moral, i.e., be fully practically reasonable. To see this we have to consider two possible scenarios, two kinds of compliant persons: the emotionally less sensitive person, and the emotionally sensitive person.<sup>25</sup>

First there is the emotionally less sensitive person, who is not swayed by the fear of punishment or of promises of rewards. Instead, he obeys out of sheer will. Here coercion does not help him become practically reasonable. The reason is this: as we have seen, the only source of practical normativity is to be found in the operationally subject specific natural law or practical reasons. Only the natural law *in that person* moves him or her. I.e., if he or she must experience moral obligatoriness in its central sense, then he or she must experience being moved *by these reasons in him or her*. An internal point of view of what it is to be fully reasonable is: to fully follow through with one's own<sup>26</sup> first principles of practical reasons, and to be moved *by that normativity that is in those first principles*. To be fully practically reasonable is not just imitating another's moral script (say a point of sexual conduct made a law), disassociated with my own grasp of normative principles. If I merely imitated or were forced to act out, literally, that script, I am not experiencing practical reasonableness. So I am not being moral in its focal sense. For me to be practically reasonable, there must be *continuity* between that script proposed to me and what is the only thing that is for me practically normative, viz. *my first principles of practical reason*. So that moral script must be for me a natural extension of those first principles of practical reason, such that their normativity (being the only source of practical normativity for me) transits into that moral script, and hence that moral script too becomes normative. Anyone who has truly experienced being *persuaded* by another person of a reasonable course of action which he or she previously was not convinced of will see clearly this transition of normativity. That kind of normativity which does indeed binds

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<sup>25</sup> We leave out discussion of the non-compliant, since it so obviously does them no good when they resist with vehemence what is forced on them.

<sup>26</sup> The natural law are one's own not in the sense of one's own invention, but as being in me and so operationally normative *for me, and for me alone, and not for you or anyone else*.

one, which we call *reasonableness*, is qualitatively, and so essentially distinct from other kinds of motivation found in *willful* acts. It phenomenologically differs from other kinds of motivations which are best described as acting or just mimicry. In these latter kinds of motivations, one does not experience practical *reasonableness*. One experiences the *lack of reasonableness*. The long and short of it is this: there is only one way for anyone to fully experience practical reasonableness in its fullness—to see for oneself what truly follows from his or her own only source of practical normativity viz. the natural law.

Thus, one may counsel, debate, discuss or even criticize severely a person who is immoral, but never coerce through punishments or pains.<sup>27</sup> Discussion and debates are efforts to demonstrate how certain conclusions follow from one's own store of natural law. Its effect is to help another see the logical continuity between the first principles and these proposed detailed courses of action, and how the normativity of the first principles in him transits also into these detailed courses of action. This will indeed preserve his or her practical reasonableness, since we have seen above that so long as the continuity between these detailed precepts and the first principles is logically maintained, then the normativity of reasons motivates his or her action, and so falls within the focal meaning of what we mean by a reasonable act—i.e., any act fully supported by the normativity of the first principles. Coercion on the other hand is inattentive to the continuity, and hopes to force the person to *will* the desired acts. But precisely in doing this the person does not become practically reasonable, because his complying acts are not motivated by the normativity of (his) practical reasons. And any act which is not so motivated falls outside the focal meaning of a practically reasonable act. It is rather a willed act: literally, an act or show. So we are confident that moral legalism is, as a paternalistic public policy, is never productive. It simply does not make others practically reasonable.

What about the person who is easily swayed emotionally? Well, under coercion *an emotionally sensitive person* may be strongly inclined<sup>28</sup> to be moved or influenced by other un-reasonable motives (of fear, or of pleasure) in order to (pretend to) act morally. If he gives in to their influences, he is in fact *not* being practically reasonable. Instead, *his practical deliberation is swayed from being motivated by the good of morality towards*

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<sup>27</sup> Except of course, as an act of self-defense or punishment with regards his other-regarding acts.

<sup>28</sup> Or tempted

*being motivated by emotions*, and the irony is hence that he is *hindered even from being motivated from the concern to be moral, practically reasonable*. So not only is the good of being practically reasonable not participated, one is constantly being deflected away from it towards other sources of motivation. To assure external acts which are in conformity with morality through coercion may indeed prevent immoral acts, but at the same time destroys *authentically moral, practically reasonable* acts. This is because such reasonable acts require an environment of freedom from strong emotional influences. Here we concur with George:

Moral goods are, like the good of religion, reflexive. They can be realized only in and by freely chosen acts (or omissions). They cannot be realized by people acting solely out of fear or punishment, the hope of getting praise, or some other non-moral motive.<sup>29</sup>

Let us take stock, and sum up our findings this far. Whether the person is emotionally sensitive or not, legal coercion cannot help him become fully practically reasonable—and this is true even if he or she does see the good of being practically reasonable, and admits it is good to be practically reasonable. Again, if he or she cannot even admit that it is reasonably and normatively binding that one ought to be reasonable, then of course, no enforcement would make him or her practically reasonable either, since this norm is just not transferable. Therefore, I think it is safe to say that there are no moral benefits to be gotten through moral legalism. However, just near the end of his book George adds:

The reflexivity of moral goods does not entail, however, that no benefit is realized or harm prevented when laws deter people from immoral acts. Obviously great good is accomplished when the victims of crime and other wrongs are spared the effects of actions which their victimizers would otherwise have committed. Moreover, the *immoral actors themselves are benefited*, whether the acts from which they were deterred would have harmed others or only themselves. For, by deterring such acts, *the law may*

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<sup>29</sup> Robert P George, op. cit., 226

*prevent people from habituating themselves to corrupting vices which will more or less gradually erode their character and will to resist.* Even people who might, in the absence of law, wish to perform the immoral act may benefit from the law by being gradually habituated to resist, freely and willingly, the very vice which they would not have attempted to resist prior to that habituation.<sup>30</sup>

I submit, apart from the prevention of harms to *other people*, the reasons justifying paternalistic coercion are not convincing. George's inferences about consequential benefits may not be quite as he might imagine. To be fair to George, he recognizes that those who feel morally obliged to follow through with the proscribed low conduct will in fact suffer a deflection from the moral good, insofar as he complies with the law out of fear of punishment, and here we are on the same page.<sup>31</sup> However, for those who do not believe that to follow through with the proscribed low conduct is a duty, he writes,

sound morals laws [do not] deflect people from realizing moral goods. A sound morals law provides a person whose reason and will may be overwhelmed by powerful temptations...with a countervailing motive not to succumb to the tempting vice.<sup>32</sup>

But this last is at least curious: if someone should be motivated by fear of punishment, which is simply a non-moral motive, how then can one still maintain that the good of morality is not deflected? Obviously, the motivation is steered towards non-moral goals. Therefore I deny George his conclusion. Perhaps George meant that in any case, such a person did not act *with the intention of fulfilling morality (i.e., being practically reasonable) anyway*, and hence the law does not deflect the choice *from* that moral good, which was never intended. And his remark that such a person would consider himself having a moral right rather than a moral duty seems to favor such a reading.<sup>33</sup> Still in this

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<sup>30</sup> Robert P George, op. cit., 226-227

<sup>31</sup> see *ibid.*, 227

<sup>32</sup> *ibid.* 227

<sup>33</sup> *ibid.*, 228

case, the subject still ends up with non-moral motivations. Sure, he is technically not “deflected”, insofar as “deflection” implies being shifted *from* an original course to a different one, and here he had no original moral course so to be “deflected” from. Still, could this just be a play of words? We might say that he was not “deflected” strictly speaking, but it is equally true he is not at all encouraged to seek the good of morality. In fact, just in bending to the impulse of fear, the participation of moral good suffers hindrance. We saw this clearly with the case of the emotionally sensitive person.<sup>34</sup> Hence I would rather conclude that in both instances, whether one feels morally obliged to carry out the proscribed low conduct, or merely tempted to do so, compliance with the law proscribing such conduct for fear of punishment in fact prevents—whether by ‘deflection’ technically speaking, or not—realization of the moral good.

Finally we must say a word or two about social cohesion. Remember that George thinks some sound morals laws can be justified because of their supposed effects on social cohesion. In the light of my analysis, we can see that morals laws do not make men practically reasonable. Hence morals laws in fact do not improve the practical reasonableness of the people who are meant to be socially cohesive. Indeed, we saw that for some persons, such as the emotionally sensitive, it was damaging to their being practically reasonable. If that is the case, it is hard to imagine how social cohesion can be strengthened. Society will perhaps be better orchestrated, more in unison, marching in sync along for various motives, moral and non-moral, like a military brass band. But such cohesion will be superficial at best: their deeds will be conformed but their minds will be in conflict. While there will be truly some who obey the law from practical reasonableness because they agree with the law, others will obey out of sheer will, and still others out of motives of pains or pleasures. Can this be a picture of social cohesion? Contrast this with persons persuaded of each other through freedom of discussion, who find in their minds the normativity peculiar to themselves (i.e., the natural law and what follows from it) at once truly obligatory for them and at the same time imaged in others with whom they agree on the truth of the norms. Here we find not merely the unity of acts, but the unity of motives—specifically, the motive of practicable reasonableness.

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<sup>34</sup> The emotionally insensitive person, of course, would not benefit, since he is not afraid of punishments and will go about his own business. In any case, George is arguing how those who do indeed comply through fear will benefit.

## VI. Conclusion

In this paper I have argued that, if we attend to the structure of practical reason's *modus operandi*, we see that its normativity is not transferable. In natural law jargon, I expressed this by saying that natural law is operationally subject-specific. From this I concluded that any kind of paternalistic coercion in an effort to make men religious or moral is inevitably futile, because either it hopes to transfer the practical norm that one should seek the good of religion or morality into the person coerced, and this cannot be done, or, because enforcing such acts damage the continuity of the prescribed behavior with one's only source of normativity viz. the operationally subject specific natural law. This continuity is essential to one's being fully practically reasonable, and hence moral. Finally I arbitrate on moral legalism's implications for effecting social cohesion, and conclude that it does not do well for society's unity.

THE END

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