

NEW BUT NOT IMPROVED

In Defense of Natural Law

ROBERT P. GEORGE
CLARENDON PRESS, OXFORD, 1999,
343 PGS.

I approached this book with considerable sympathy. Murray Rothbard rested much of his *Ethics of Liberty* on the foundation of Thomist natural law. Would it not be excellent to have a sophisticated defense of this moral theory? Further, the author, a professor of politics at Princeton, combines two qualities rarely yoked together. He has an extensive and sophisticated grasp of the literature of analytic moral philosophy. Nevertheless, he rejects contemporary liberalism's usual defenses. Who could ask for more?

Unfortunately, Dr. George is not the philosopher for whom we have all sought anxiously. His political philosophy is resolutely statist, and his version of natural law is not the genuine article. Rather, it is a bizarre concoction brewed by Germain Grisez, John Finnis, and their many collaborators. In fairness to them, they think their position faithfully expounds and develops Aquinas. I hope their historical contention fails, as it would be a shame to think a great philosopher capable of such nonsense.

Most of the book's chapters address issues outside the scope of political

philosophy, but our author tips his hand in Chapter 12, "Natural Law and International Order." Here we learn that a world government is the order of the day. "Does this mean that natural law theory, as applied to the problems of today, envisages the institution of a world government? The answer is, I think, 'yes'; however, it is subject to certain clarifications and, perhaps, qualifications" (p. 236).

This is not a good start; and, when one sees what the world government is supposed to do, our misgivings increase. International action is needed "to promote the economic development of poor nations"; further, "global environmental problems such as ozone depletion, oceanic pollution and mass deforestation, simply do not admit of effective solutions without substantial international cooperation" (p. 236). In sum, the usual agenda of leftist internationalism.

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In our author's opinion, world government is far more than an ideal: it is a demand of reason. The argument Dr. George advances to show this strikes me as singularly unimpressive. Natural law, when applied to politics, we learn,

seeks the common good. To find it, we must discover the “complete” or self-sufficient community. The nation-state no longer suffices.

“In other words,” Dr. George writes, “the national state can no longer (if it ever could) secure the conditions of its citizens’ overall well-being...without the active assistance of supranational institutions, at least some of which must possess powers to enforce multilateral agreements and international law” (p. 235).

If a nation chooses not to cooperate with the world government, such insolence cannot be tolerated. “[S]ubmission to the jurisdiction of a just world government is not morally optional”; resistance to its dictates is “the sort of practical unreasonableness in political affairs that the natural law tradition treats as a paradigmatic case of injustice” (p. 241).

Dr. George’s reasoning is specious. He argues that because certain problems extend beyond the scope of single nations, a world authority is mandated. He fails utterly to show, however, that governmental action of any kind is necessary. Granted, the government of a single nation cannot control what happens outside its jurisdiction; but it begs the question to assume that there must be some jurisdiction that controls all relevant factors. As Murray Rothbard long ago pointed out in criticizing Yves Simon, many natural law theorists confuse the state with society. Dr. George is, in his own words, a “paradigmatic case” of such confusion.

Perhaps I have so far been unfair to Dr. George. From a classical-liberal

perspective, he is, to say the least, not altogether sound on international affairs. But why judge him solely on this front? Does he do better on domestic issues?

Alas, here too he manifests a naive confidence in the state’s good offices. Because pornography depraves and

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corrupts, the state must act to suppress it. Since “vulnerability to the risk of anarchic sexuality is by no means confined to the young” (p. 190), censorship should not be restricted to material available to juveniles. The state must police the moral environment for adults as well.

One wonders how far Dr. George is prepared to go in this connection. Since “racism,” a term he does not define, is in his view a manifest evil, may the state suppress “politically incorrect” opinions? He writes, “there is no reason to give a respectful hearing to those who would revive those [racial] prejudices or stir up the residue of racial prejudice that, alas, remains” (p. 323).

Dr. George deserves praise for his defense of a high standard of sexual morality; but from a classical-liberal perspective, he errs in not developing a theory of individual rights. On what basis may the state coerce people for their own good? Dr. George has no answer: to reiterate that it is for their own good, that pornography really is bad, ignores the question. Why is it a sufficient criterion for state intervention that it aims to counter immorality?

Dr. George would no doubt reply that it is I who here beg the question against him. He rejects the classical-liberal position; why then do I take for granted its truth in criticizing him?

Very well then. Suppose one rejects totally any Lockean notion of individual rights. Away with self-ownership! Let us hear no more of rights, but only of the common good. Even on this basis, does Dr. George really want to give the state a large role in promoting morality? Since when has the state been a reliable source for good in the world? Surely to look at the state is to ignore all historical experience, let alone original sin.

If our author is no great shakes as a political theorist, it does not follow that his book is useless. Most of the volume, after all, concerns itself not with a political program, but with the defense of a theory of natural law. Is this not an indispensable task? Why not, if possible, use Dr. George's work on natural law to construct a politics more to our liking?

I fear that the project suggested is futile. Dr. George's natural law is no better than his politics. When most

people speak of natural law, what they have in mind is the contention that morality can be derived from human nature. If human beings are rational animals of such-and-such a sort, then the moral virtues are...(filling in the blanks is the difficult part).

Dr. George rejects this sort of natural law altogether. According to Germain Grisez and John Finnis, whom

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our author closely follows, neo-scholastic natural law theorists commit the naturalistic fallacy. Moral requirements do not follow from facts about human nature. The standard approach to natural law "involves the naturalistic fallacy of purporting to infer moral norms from facts about human nature. Logically, a valid conclusion cannot introduce something that is not in the premises" (p. 84). Natural law not based on human nature: that is indeed *Hamlet* without the Danish prince.

Before we consider the "new and improved" natural law, let us examine the argument Dr. George has just presented. Defenders of the older view

maintain that moral laws follow from facts about human nature. Just what they contend, obviously, is that their chosen premises entail their conclusions. In other words, in their view, the conclusions they derive are “in” their chosen premises.

To say that something is “in” or “contained in” a set of premises is to use a metaphor: what is meant is that the “something” in question logically follows from the set. Dr. George’s claim that natural law theory commits the naturalistic fallacy, then, begs the question. All he is saying is that their conclusions do not follow from their premises. But he has not shown this: in appealing to the naturalistic fallacy, he merely repeats his assertion of error.

What then do Grisez, Finnis, and George put in place of the standard view? In the new doctrine, one begins with a list of basic goods. These include life, health, marriage, religion, and play. These goods serve as rational grounds for action. If you act for some ultimate end that is not on Dr. George’s “A” list, then you are irrational. If, say, you do something just because it gives you pleasure, you have no ground in reason for your act.

All this strikes me as arbitrary. The basic goods do indeed provide plausible grounds for action, but why only these? Why, in particular, isn’t it a good reason to do something that gives you pleasure? For that matter, why isn’t “just because I want to” a sufficient reason for action? Of course, what gives you pleasure may be morally wrong or otherwise subject to challenge. But at this point Dr. George has

not yet introduced morality. All he claims to do is to offer a list of grounds for action, and his list appears arbitrary.

The rest of the “new natural law” lands us in total confusion. The basic goods, he contends, are incommensurable. How then are you to decide what to do? The answer lies in the fundamental principle of morality, which is never

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to act directly against a basic good. Thus, you may not bomb innocent civilians in order to restore Albanians to their homes in Kosovo.

So far, so good. But the basic principle also seems to imply that you should not use your favorite sand wedge in order to pry loose a pit bull biting a baby, if doing so will destroy the wedge. To do so is to act against the basic good of play. Dr. George knows of counterexamples of this sort; but his attempt to cope with them is lame. But my opinion is not an argument, and readers should assess his discussion for themselves. (He deals with the criticism in Chapter 4, “Does the Incommensurability Thesis Imperil Common

Sense Moral Judgments?" My golf example attempts to sharpen the example that Dr. George discusses on page 94ff.)

Dr. George's theory also includes other remarkable claims. It appears to be a consequence of his view of what makes non-marital sex immoral that ascetic practices are also immoral. You must not, our author thinks, use your body as an instrument to achieve certain mental sensations; but do not mystics who mortify themselves in order to attain spiritual ecstasy do just that? Dr. George's wish to defend high moral standards, I repeat, is admirable; but his reasons in support of these standards baffle me. I wish, in Byron's phrase, that he would "explain his explanations." ♦

THE SOCIAL CHAOS COURTS CAUSE

*The End of Democracy II:
A Crisis of Legitimacy*

EDITED BY MITCHELL S. MUNCY
SPENCE PUBLISHING COMPANY, 1999,
XLVIII + 287 PGS.

There is nothing like a good target to get a writer going, and the contributors to this excellent symposium have found a very worthy

target indeed. The Supreme Court has, since the New Deal, engaged in acts of gross usurpation of power. What principally concerns these authors, however, is more specific.

The decision of the Court in *Roe v. Wade* (1973), striking down state laws against abortion, and subsequent cases reaffirming that ruling, outrages them. They regard abortion as murder; and the fact that the government permits

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this practice raises doubts in the minds of some of them as to whether they can continue to recognize the American government as legitimate.

Abortion is a subject guaranteed to induce passionate argument; and since I always avoid controversy, I shall say no more about it. At any rate, abortion is more the releasing cause of their book than its principal theme. Their anger with the Court has led them to produce some of the most original and valuable criticisms of the Court's jurisprudence that I have seen.

First, though, an objection must be dealt with. The contributors condemn abortion, and practices such as