become far *less* strict than it had been when the religious entered. In both cases their new situation was definitely not what the religious had signed on for and, for the most part, the ecclesiastical authorities, then and now, have tended to turn a deaf ear to such complaints.

The oft-quoted opening line of Hartley's 1953 novel *The Go-Between*, 'The past is a foreign country; they do things differently there', definitely comes to mind. The assumption behind the mediaeval law, as well as the procedures for its enforcement, such as the English writ *de apostata capiendo*, was that religious profession was a free gift of oneself, and that once given it was not to be taken back. The vocabulary used had, and has, the sense of permanence: 'renunciation', 'donation', 'sacrifice', 'holocaust', 'consecration', 'oblation', in addition to an explicit indication that a religious is such for the whole of their life. It is not surprising, therefore, that there was no 'exit strategy' for religious life in the Middle Ages, and the various procedures which have grown up in the past two centuries for departures from religious life can only be seen as ways of ducking the issue. But the same can be seen in discussions of the indissolubility of marriage: previous generations took the permanence for granted. To what extent can anyone, in marriage or in consecrated life, say 'until death'?

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The Right to Do Wrong: Morality and The Limits of Law

Mark Osiel
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Any legal or political observer today knows that the law cannot undertake everything necessary to moral ordering in modern society and that it requires informal supplement at many points by concepts as diverse and socially complex as dishonour, shame, disrepute, reproach, disgrace, opprobrium, humiliation and stigma – to name but a few. These non-legal sanctions can, for good or ill, assume a life of their own. Often they have constituted a society's first line of defence against ethical transgression. As the author of this volume puts it:

> Shared understandings of right and wrong inevitably fail to find their way fully into law, but nonetheless assert themselves – at observable points, in recognisable ways – when we seek to put our entitlements to use and encounter others who believe we act improperly. Ethical considerations

> barred from entering law's front door thus frequently sneak in through the back, influencing our conduct no less for the seeming circuity … Legal rights to do serious wrong, and the routine resistance against their abusive exercise, occupy the decisive points where these forces meet, contend and are compelled to mutually accommodate. (p 321)

The author sounds a wise and timely note of caution to those 'keen to enlist the law against perceived defects in common morality wherever we discern them' (p 319).

Professor Mark Osiel of the University of Iowa's College of Law has produced a wide-ranging, thought-provoking, interdisciplinary appraisal of this curious interplay between apparently lenient law and restrictive morality. 'This book revives a certain dormant understanding of sociology, in the tradition of Montesquieu, to right this imbalance and the resulting distortion to our understanding of how law and morality interact' (p 319). In support of his arguments he weaves an impressively detailed, copiously catalogued and carefully argued evaluation of ways in which factors like stigma and shame can, in some cases, be more effective than law in deterring action that humanity deems immoral. He draws on insights from philosophy, economics, the sociology of law and moral anthropology.

Although Osiel modestly (and humorously) characterises his work as 'little more than sniffing about and sussing out the alternative scenarios' (p 329) and assures his readers that his aim has not been to produce a 'rousing jeremiad or soaring prophecy' (p 329), there can be no doubting the seriousness of his purpose or the depth of his scholarship. That has, perhaps, come at the cost of an occasionally unwelcome wordiness (the notes and references alone run to 156 pages). The range of his analysis is, however, impressive, thoughtful, empirical and refreshing.

Much of what we could do, we shouldn't – and we don't. We could declare ourselves bankrupt to avoid debts, but not without stigma. We have a free-speech right to be offensive but may face outrage or even civil disturbance in response. We may decline medical attention and yet owe moral obligations to dependants or ourselves. Museums may retain masterworks looted from elsewhere decades before, but have at times to face opprobrium. The military has a right in international law to kill civilians during armed conflict if deaths are 'incidental' to the military purpose and not 'clearly excessive'. But few Western powers openly embrace this right, voluntarily adopting more stringent rules of engagement. In each of these (and a host of other) situations, 'the law permits what ordinary morality – widely shared notions of right and wrong – reproaches, sometimes severely' (p 14).

Osiel's thesis in this significant and original book on the theory and practice of rights is that it is perhaps better to rely on these non-legal enforcement mechanisms than on the legal system itself. Too much law can lead to

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tyranny. There is paradox here. Law often grants people rights – in the hope that they will be exercised sparingly. Osiel calls these 'rights to do wrong'.

Taking no assumptions for granted, the book is Osiel's attempt to

> tame the extravagant claims of both those who ingenuously see the law as naturally, straightforwardly 'reflecting' or 'mirroring' common morality and those who cynically view these twin normative orders as traveling in altogether different orbits, as if lawmakers could afford to remain wholly unconcerned with what elicits keen indignation among ordinary people. (p 329)

He describes this complex study as 'an elementary introduction from an advanced standpoint – or perhaps better, an advanced introduction to some elemental questions' (p 12). His purpose: 'to crisply formulate the concept of a right to do wrong, identify some of its sources and empirical expressions (with no pretence to exhaustiveness), suggest its significance within our legal order, and prompt its further study' (p 12).

The author is very much alive to the 'long term repercussions of living under conditions of acute moral plurality' (p 42). He readily concedes that 'common morality is an elusive notion, both conceptually and empirically' (p 24), and he recognises that a 'thick' concept like 'wrong' has been substantially displaced by the thinner 'inappropriate'. 'Community standards' seem ever harder to discern.

That this book 'ventures no further reflection on these momentous matters' (p 43) felt perhaps its greatest frustration. Osiel is too sophisticated a commentator to fail to recognise that 'as a society fractures along any number of possible lines, common morality becomes at once more important for securing public order (in defensible form) and much more difficult to attain' (p 43). He gently mocks the 'weepy lamentations, periodically proclaimed from across the ideological spectrum, that we have lost a language of sharp moral appraisal' (p 330).

It was not altogether easy to share the optimism of Osiel's concluding 'good news':

> that modern liberal society discloses – here and there, in places both frequent and decisive – a demonstrable capacity for moral regeneration that remains little noticed. We do not depend entirely on the law and on an ever-dissolving inheritance of pre-liberal mores – the perennial fear of conservative culture critics. (pp 329–30)

One can only hope he is right.

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