

Should Law Improve Morality?

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Abstract Lawyers and philosophers have long debated whether law should enforce social morality. This paper explores whether law should improve social morality. It explains how this might be possible, and what sort of obstacles, factual and moral, there are to doing so. It concludes with an example: our law should attempt to improve our social morality of sexual conduct.

Keywords Social morality · Consent · Rape · HLA Hart · Patrick Devlin · Paul Robinson

A New Question

Lawyers and philosophers have long debated whether law should *enforce* social morality. No, says J. S. Mill, unless doing so prevents harm to others. Yes, says James Fitzjames Stephen, so that intentionally inflicted suffering can affirm and validate the community's moral judgments. H. L. A. Hart replies: never, unless doing so attains some good that outweighs the loss of liberty and happiness that come with enforcement. Patrick Devlin rejoins: on the contrary, provided what is at issue is a moral standard whose breach an average person would regard with intolerance, indignation, and disgust, we should enforce it. Ronald Dworkin dissents: but that would be to give force to mere hostilities and prejudices, and those do not even count as moral views. Joseph Raz mediates: it is

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