

Enforcing Morality

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Abstract In debating Patrick Devlin, H. L. A. Hart claimed that the “modern form” of the debate over the legal enforcement of morals centered on the “significance to be attached to the historical fact that certain conduct, no matter what, is prohibited by a positive morality.” This form of the debate was politically important in 1963 in Britain and America, and it remains politically important in these countries today and elsewhere; but it is not the philosophically most interesting form the debate can take. An older form of the debate appealed to natural law or critical morality. It centered on the question of whether political authorities could properly use the criminal law to enforce critical morality, including prohibitions on conduct that was not harmful or disrespectful to others. This paper engages with this older form of the debate. It offers some reasons for thinking that there is a presumption in favor of the view that it is a proper function of the criminal law to enforce critical morality, including that part of critical morality that is not directly concerned with preventing harm or disrespect to others. It then defends this presumption against some arguments recently pressed by Ronald Dworkin.

Keywords Hart · Devlin · Morality · Law · Self-respect · Authenticity

Fifty years ago H.L.A. Hart initiated the “Hart/Devlin debate” with the publication of *Law, Liberty and Morality*.¹ And he won that debate. Hart established that Devlin had failed to

¹ H.L.A. Hart, *Law, Liberty and Morality* (Stanford University Press, 1963). Devlin’s contributions to the debate are collected in his *The Enforcement of Morals* (Oxford University Press, 1965). In large measure,

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