

Criminalizing Sex: A Unified Liberal Theory, Stuart P. Green [Oxford University Press, 2020, 382pp, £22.99 (hardback)]

The latter-part of the twentieth century saw a divergence – so Green posits in this book – that saw sexual offences divide between the nonconsensual offences which saw a punitive approach, and the consensual offences which saw a markedly more permissive approach from the law. On the one hand offences relating to rape and sexual assault have been expanded and new offences such as sex trafficking introduced. In contrast, we've seen the legalisation or decriminalisation of sodomy, adultery, and adult pornography, Green argues.

It's the inclusion of this final subject – pornography – that leaves me unconvinced given a range of new offences that the UK Government has introduced in recent years (for example 'revenge pornography' under the Criminal Justice and Courts Act 2015, and the ongoing 'online harms' focus of Government policy). Otherwise Green's observation of a divergence seems a sound one, and he doesn't substantively address the subject of pornography beyond this initial framing of his analysis (and some brief mentions in passing later in the text).

Green's analysis seeks through this book to explore the conceptual and normative implications of this divergence. His book is rooted in a framework of the liberal state providing an engaging and coherent prism of analysis, but one that lacks the radicalism that one might see from feminist or queer interventions. This is a book that does frame doctrinal issues in an engaging way but in some ways adopts a conventional but comprehensive consideration of the themes and offences associated with sexual offences. Green's ideas are rooted in liberal ideas inspired by John Stuart Mill, H.L.A Hart and particularly those of Joel Feinberg. Green is careful to root his analysis in these ideas and this approach. He makes clear at the outset that this is not an analysis focused on 'rough justice' or issues relating to race or sexual orientation.

The book is divided into four parts. The first provides a 'conceptual toolbox' for the reader, exploring sexual offence and sexual conduct, the key themes of autonomy and consent, and criminalisation and liberalism. The second part considers nonconsensual and unwanted sex and has four sub-themes, looking first at 'proving nonconsent' and explores rape, whilst the second looks at presuming nonconsent (incapacity, statutory rape, and abuse of position). The third sub-theme addresses 'unwanted sex' and looks at sexual harassment, and the fourth explores the assumption of risk through voyeurism and indecent exposure offences.

The third part of the book considers putatively consensual sex and explores incest, sadomasochistic assault, and prostitution. The use of 'prostitution' as a chapter heading is arguably consistent with the approach of doctrinal law but it also highlights the limitation of the liberal theoretical approach that Green adopts. A more critical or feminist perspective would find the term problematic and would at the very least include sex work within the title. Others might criticise the chapter for not addressing sex trafficking or forced prostitution, but Green does pre-empt this line of criticism in noting that those areas are beyond his focus in this part of the book which is limited to putatively consensual sex. The otherwise confident tone of the book feels more hesitant in this chapter and one gets the sense that Green –

understanding the emotive and contested ideas in this area – seeks to pick a careful path through his analysis. The final part of the book turns to a consensual sex and explores bestiality and necrophilia.

The book is not narrowly rooted in one jurisdiction. In this regard that the book sets itself an unenviable task of not merely navigating the web of US sexual offence statutes and case law (the jurisdiction that the author is based in), but also draws on the law of England and Wales and other Western jurisdictions from time to time. That Green does so whilst maintaining an incredibly readable and accessible text is worthy of praise in itself. That he does so whilst – and arguably because of – drawing on theory so as to produce a carefully constructed synthesis of doctrine and theory is all the more praiseworthy.

In doing so, Green has produced a text that not only provides a comprehensive framework for academics and postgraduate students, but it also provides a readable account for well-equipped undergraduates and taught postgraduate students.

Green has a style that sparkles and carries the reader through an area that could be overwhelmingly dense, blending theory and legal doctrine. This approach is central to the book and also underlines the unique perspective that Green is seeking to provide.

Price might not regularly feature in book reviews, but I think it worthy of comment. I had to double check the price for this text I was worried there had been an error. £22.99 is however the correct price for this substantial hardback volume. At a time when book prices seem to find ever more nosebleed inducing heights, a rigorous high quality scholarly volume at this price point is as astounding as it is welcome. The price of this text is therefore below that of many substantive textbooks and yet this is as readable as any textbook, albeit lacking the summary boxes, tables, and graphics of contemporary teaching focused publications.

This impressive text from Stuart P Green has already been described on the blurb as 'magisterial' (Herring), 'a masterpiece' (Dempsey) and 'highly recommended' (Cold). These plaudits – and more - are much deserved for a text that is remarkable for the clarity it brings to the area of sexual offences law.

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