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Review of Christopher F. Mooney, *Public Virtue: Law and the Social Character of Religion* (1986)

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Recommended Citation

Griffin, Leslie C., "Review of Christopher F. Mooney, *Public Virtue: Law and the Social Character of Religion* (1986)" (1990). *Scholarly Works*. 712.

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PUBLIC VIRTUE: LAW AND THE SOCIAL CHARACTER OF RELIGION.
By Christopher F. Mooney. Notre Dame: University of Notre Dame Press, 1986. Pp. xii, 180. \$22.95. ISBN: 0-268-01561-9. Paper. \$13.95. ISBN: 0-268-01583-X.

In *Public Virtue: Law and the Social Character of Religion*, Christopher Mooney advocates a central role for public virtue in American social life. The author first locates public virtue within the history of political thought in the United States, and then illustrates its presence and absence in contemporary society. Mooney's basic argument is that public virtue is necessary to promote the common good, and requires tolerance, dialogue, and acceptance of ambiguity. The book's appeal is broad. Lawyers, politicians and ministers, as well as scholars in law, political theory, religion and ethics, will profit from the author's analysis of public and professional conduct. While the book offers a sustained defense of public virtue, it can also be read as separate essays on Mooney's major themes of law, religion and morality.

Public Virtue opens with an examination of the role of religion on the public sphere. Mooney identifies religion as one of the strong foundations of public virtue; public theology "not only analyzes moral dilemmas, it also helps to alleviate them" (5). He argues that religion's presence is appropriate in American public life, but that citizens must work to make religion present in the public sphere in a way that promotes the common good.

The author argues that this American tradition of public virtue devoted to the common good is necessary given the persistence of another American tradition of virtue, an individualistic, utilitarian strand represented by Benjamin Franklin. This strain sees virtue in self-interest, often conflicts with the public good, and persists to the present: the "great danger in American society today is that policies will be formed from an amalgam of personal preferences and feelings" (19). Public religion can counter the individualism of self-interest by providing a broader context of meaning for human lives.

Chapter two clarifies the relationship of religion and public life by tracing the history of the Establishment and Free Exercise Clauses of the First Amendment. Mooney distills from this history the themes of religious pluralism, religious freedom, and government neutrality. These themes undergird Mooney's argument that churches

must be present in the public sphere, yet not impose their particular religious beliefs on others.

Chapter three explores the differences between public morality and law, as well as their interrelatedness. "We assert that the fundamental moral principle in politics ought to be the observance of our country's legal processes, since legal process ought to coincide with moral conviction" (55). However, while law and ethics are related, law provides only a minimum moral standard. Mooney cites Solzhenitsyn's commentary that "a society with no other scale but the legal one is not quite worthy of men either" (64). In Mooney's opinion the law should reflect communal moral consensus, but such consensus is difficult to achieve. As a source of such agreement, Mooney recommends conflict, argument, compromise and reasoned discussion. Law can provide the framework for such discussion: "Law, in other words, should be used to mediate conflicts in public morality, not wielded like a bludgeon to resolve them before their time" (60).

In both chapters three and four, Mooney examines the legal profession and its influence on society. Professional training often narrows persons' perspectives on life, and creates " 'minds in a groove,' to use Alfred North Whitehead's phrase, grooves which, he adds, result in a 'restraint of serious thought' " (67). Mooney sheds much light of the "groove" of the legal profession in an examination of the litigious nature of society, the positivism of American legal theory, the mode of legal education, and the high cost of legal services. Mooney reminds lawyers that public virtue must be present in their profession, for law is a vocation which calls persons to justice and to love. Mooney opposes the "technical analysis that continually excludes human feeling" (89) and argues that the lawyer needs to be concerned with the well-being of human persons. He identifies a threefold mission of technical competence linked to human concern and social responsibility for the profession. Mooney offers healthy remedies for the ills of contemporary legal education and practice, and should be read seriously by law students and law professors.

In an unusual and understated fifth chapter, Mooney explores the use of public moral anger by President Woodrow Wilson during the Lusitania crisis. In that incident, the shared moral outrage at Germany depended on deceit and on the ignorance of the American public about crucial facts of the case. "The paradox is that this moral consensus was so strong because it was so completely uninformed" (138). Mooney suggests that Wilson also closed his eyes to the facts in his moral stance against Germany. Mooney's conclusions here are

less specific than in other chapters, and the reader is left to mull over the lessons of this section. Yet his detailed study of Wilson's actions well illustrates the concerns about moral consensus, law and political leadership treated earlier in the book. Mooney's analysis of politicians' manipulations of public moral outrage remains helpful for contemporary political theory and ethics.

A final chapter treats Roman Catholic natural law theory as a case study. Its messages echoes the themes of the book of open-mindedness, tolerance and compromise.

The author of *Public Virtue* traverses many subjects, including constitutional law, theology, ethics, to offer a helpful book on public and professional ethics. Many minds will find a chance here to leave their grooves.

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