This book is an evaluation and critique of ‘new natural law,’ a school of thought first advanced by Germain Grisez and ostensibly based on the work of Thomas Aquinas. Members of this school, in particular John Finnis and Robert George, have prominently defended conservative moral views about sexuality (in particular, about lesbian and gay and ‘non-marital’ heterosexual sexual activity) and gender (in particular, about contraception and abortion), and have presented their arguments as being of a secular rather than doctrinal character.

Bamforth and Richards argue that the new natural lawyers’ views – which were advanced before the U.S. Supreme Court in Lawrence v Texas (concerning decriminalization of gay sex) – are neither of a secular character nor properly consistent with the philosophical aims of historical Thomism. Instead, their positions concerning lesbian and gay sexuality, contraception and abortion serve as a defense of the conservative doctrinal stance of the Papacy – a stance now properly rejected by many thoughtful Catholics. The book suggests that the new natural lawyers’ arguments are rooted in an embattled defense of the highly patriarchal structure of Catholic religious authority, and as such are unappealing in a modern constitutional democracy. Alternative interpretations of Christianity, not flawed in the way that new natural law is, are both possible and more constitutionally acceptable.

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PATRIARCHAL RELIGION, SEXUALITY, AND GENDER

A Critique of New Natural Law

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IN MEMORIAM

H. L. A. Hart (DAJR); Joyce M. Bamforth (NCB)
But interference with individual liberty may be thought an evil requiring justification for simpler, utilitarian reasons; for it is itself the infliction of a special form of suffering – often very acute – on those whose desires are frustrated by the fear of punishment. … [T]he suppression of sexual impulses generally is … something which affects the development or balance of the individual’s emotional life, happiness, and personality.

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ACKNOWLEDGMENTS

Some time before we first met – at a conference on the legal recognition of same-sex partnerships, held at the School of Law, King’s College, University of London, in July 1999 – each of us had independently written short critiques of the conservative and, in our view, unpleasantly homophobic arguments concerning same-sex sexual acts and same-sex partnerships advanced by legal philosophers John Finnis and Robert George. It was Nicholas who first suggested to David that it might be possible to produce some fruitful collaborative work (perhaps, an article or two developing our previous critiques?), and took his full-year sabbatical from Oxford in 2003–2004 at New York University School of Law in part to explore this possibility further. It was that year of splendid conversation and growing friendship between us, at weekly working lunches, that led to something neither of us had anticipated: a book-length critique of new natural law, the branch of contemporary Catholic theology developed by Germain Grisez and applied in the legal context by Finnis, George, and others. By the time Nicholas returned to the United Kingdom in August 2004, we had produced the first draft of our critique, something more ambitious than anything either of us might have produced separately. This draft was extensively revised over the following two years and resulted in this book.

We are very grateful to the people who and institutions that made possible Nicholas’s year-long residence in New York, including Professor Joseph Weiler – who sponsored his status during that year as a Hauser Global Fellow – and the Oxford–NYU Fund and the Governing Body of The Queen’s College, Oxford, who between them underwrote most of the associated costs. We are grateful as well to the New York University School of Law Filomen D’Agostino and Max E. Greenberg Faculty Research Fund for research grants to David, and to Dean Richard Revesz and Associate Dean Clayton Gillette, for providing support for the preparation of the index and arranging accommodation for Nicholas in New York when we met in 2005, 2006 and 2007 to take our work further. Thanks are also due to David’s assistant, Lavinia Barbu, for her service above and beyond the call of duty in preparing the bibliography for us, and to David’s previous assistant, Lynn Gilbert, for facilitating our work together in 2003–2004.
We are also very grateful for the many useful comments on drafts of the manuscript that we received at faculty or graduate colloquia at New York University, Oxford University, Washington and Lee University (where we were honored to serve as joint Frances E. Lewis Scholars-in-Residence in early 2004), Cornell University, and Southern Methodist University. We are also extremely grateful for the illuminating conversations either or both of us enjoyed about the subject matter (whether in person or by e-mail) with Nicholas Barber, Samantha Besson, Charles Curran, Samuel Freeman, Carol Gilligan, Brendan Horan, Matthew Kramer, Brian MacDonnell, Blake Morant, Thomas Nagel, Sally Norris, Christopher Rowland, Dan Sarooshi, Peter Southwell, and Robert Summers. Sandeep Sreekumar very graciously allowed us to cite from his doctoral thesis in developing our argument. We must also especially thank Drucilla Cornell, Evan Gerstmann, and Nicola Lacey for their helpful and supportive comments on the manuscript as readers, as well as John Berger, senior editor at Cambridge University Press, for his enthusiastic support for our project, and Maggie Meitzler at Aptara Corporation, who handled copy editing issues with wonderful fortitude. The usual disclaimers apply in all cases. Conversations with David's life partner, Donald Levy, Professor of Philosophy at Brooklyn College, were invaluable in our work. Nicholas would particularly like to thank his father, Colin and sister Katharine (who, as a teacher of religious studies, has the difficult task of making sense on a day-to-day basis of the humanitarian potential but practical intolerance of many organized religions) and to remember his mother, Joyce.

We appreciate that this book may not be welcomed by segments of the legal philosophy community – particularly in the United Kingdom, where John Finnis's interventions in U.S. debates concerning sexuality and gender tend to be ignored in evaluations of his work. We offer no apology for any resulting discomfort: Meaningful evaluation of any theory must encompass an analysis of its practical recommendations. For liberals, this becomes a moral imperative when that theory would justify the use of law in a fashion seriously injurious to the dignity of traditionally disempowered groups – in the case of new natural law, women (heterosexual or lesbian) and gay men.

New York and London
23rd April 2007