

# Book Review: Being Apart from Reasons: The Role of Reasons in Public and Private Moral Decision Making, by Claudio Michelon Jr.

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## Citation Information

Ludwig, Marcos de Campos. "Book Review: Being Apart from Reasons: The Role of Reasons in Public and Private Moral Decision Making, by Claudio Michelon Jr." *Osgoode Hall Law Journal* 45.1 (2007) : 209-214.  
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol45/iss1/11>

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*BEING APART FROM REASONS: THE ROLE OF REASONS IN PUBLIC AND PRIVATE MORAL DECISION MAKING* BY CLÁUDIO MICHELON JR. (DORDRECHT: SPRINGER, 2006) 189 pages.<sup>1</sup>

BY MARCOS DE CAMPOS LUDWIG<sup>2</sup>

Suppose, one fine day, Vincent decides he wants to paint. Suppose he hires an instructor, acquires the necessary materials for learning and performing this art, and, finally, begins to paint. Was this a *moral* decision? More importantly, has *reason* played any part in Vincent's decision-making process? And if so, *should* reason have played any part at all?

Such questions, prosaic as they may seem, inspired Cláudio Michelin Jr.<sup>3</sup> to undertake doctoral research at the University of Edinburgh ten years ago. There, he reflected on the philosophical foundations of moral decision making. These foundations stem from the intimately private, as in Vincent's decision to paint, to the politically relevant, as in a public agent's decision to budget for a new hospital instead of, say, new schools. The result of Michelin's insight into this topic now makes its way into the market as volume 76 of Springer Publishing's prestigious collection, "Law and Philosophy Library."

Michelon's style of writing makes for pleasant reading, even for those who may not be acquainted with moral foundations inquiries. The author has a firm grasp on the subject matter and continuously strives to achieve clarity in his arguments. The result is an elegant, prudently drafted text that allows the author's line of reasoning to flow smoothly and convincingly throughout the entire work. Disagreement with other scholars' opinions, when it occurs, is expressed respectfully and includes a fair consideration of the challenged opinion. This approach helps to

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<sup>1</sup> [*Being Apart from Reasons*].

<sup>2</sup> Bachelor and Master in Laws at the Federal University of Rio Grande do Sul, Porto Alegre, Brazil (2000 and 2002, respectively); LL.M. at the Institute of Comparative Law (ICL), McGill University, Montreal.

<sup>3</sup> Michelin was awarded a Ph.D. by the University of Edinburgh in 2001, where he is now a Lecturer in Law. He is also Reader in Law at the Federal University of Rio Grande do Sul, Porto Alegre, Brazil, on leave of absence.

minimize potential criticisms that the arguments presented are hermetic or ambiguous—a common trap in many philosophical works.

*Being Apart from Reasons* examines the complexity of moral decision making and how the different theoretical attempts to simplify its scope, such as isolating certain kinds of reasons from the moral arena, are destined to fail. The two main theses are clearly introduced and carefully developed in the face of challenging rival opinions that aim precisely at restraining the range of reasons potentially applicable in moral decision making.

The first main thesis states that ratiocination, *i.e.* recourse to reason, is not necessarily the best approach to decision making. The first chapter of the book, “Moral Action, Reason and Inclination,” aims precisely at defining which sorts of reasons could apply to justify (and even oblige) an agent not to use reason in decision making. The author proceeds by differentiating “judgment of character” from “judgment of action”—a step not typically taken by modern philosophers, who are usually attached to a conception of the human being as “an empty vessel essentially composed of capacities to reason and to will.”<sup>4</sup> This, the author argues, is because there are other morally relevant features in human life beyond reasoning. Hence, a given action may be judged morally correct even when it did not result from ratiocination on the part of the agent. In other words, the assessment of the processes of moral judgment is relevant beyond the stricter scope of reasoning because those processes reveal the agent’s character more properly than a more restrained analysis of his or her actions would.

The author describes character as “something about what kind of person the decision-maker is”<sup>5</sup> and prudently suggests that morally good character lies “somewhere in between” the purely rational and the purely irrational.<sup>6</sup> The fundamental point, again, is that “judging characters is one, if not the only, business of morality,”<sup>7</sup> and that the way a given agent uses reasons when making decisions is not the only variable to consider when assessing the morality of his or her actions. Different inclinations, such as justice and mercy, somehow coexist

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<sup>4</sup> *Supra* note 1 at 45.

<sup>5</sup> *Ibid.* at 174.

<sup>6</sup> *Ibid.* at 175.

<sup>7</sup> *Ibid.*

within the human character. Thus, the reduction of the “morally correct” solely to one or the other is ultimately a simplistic account of what it is to be human. Guiding this type of tension between different virtues is precisely the role of another virtue—prudence—that the author suggests should be understood as having some kind of “meta-virtue” status.

The second main thesis offered by Michelin focuses on public decision making. Michelin argues that decision making by public agents must always be the result of comprehensive reasoning, meaning that the decision-maker is supposed to weigh all the applicable reasons to the case to determine the best course of action.

At least three respected lines of argument have been developed which lead to a conclusion contrary to the one reached by Michelin: (1) the liberal argument that public agents should be impartial between rival conceptions of the good and, as a consequence, are not expected to reason comprehensively—in other words, reasons for the “right,” because of its alleged neutrality, should prevail over reasons for the “good”; (2) the Razian argument that the reliance on reasons provided by a legitimate authority brings the agent to the right action independently of the actual result—in other words, “formal” reasons pre-empt “substantive” ones and thus exclude comprehensive reasoning; and, (3) the argument that reasons resulting from democratic procedures are systematically prioritized over other kinds of reasons—in other words, the procedural value of legal reasons leads to the insulation of plain moral reasons.

Michelon ambitiously proceeds by criticizing in detail each of these accounts. To summarize, the neutral liberal argument fails to insulate “the right” from “the good” because, as shown in a sophisticated counter-argument developed by Michelin, the moral agent cannot remain alienated from his or her own decision-making process (chapter three). The Razian argument fails to insulate formal from substantive reasons because formal reasons of moral probability (such as “authoritative directives are probably right”) are sensitive to substantive reasons that contribute to increased moral certainty (such as “I am sure that this particular authoritative directive is wrong”) (chapter four). In contrast, Michelin insightfully argues that formal reasons can be thought of “not so much as excluding comprehensive reasoning, but

as implying it,"<sup>8</sup> thus coexisting in persistent tension with substantive reasons. To use Razian terminology to restate Michelin's conclusion, insulation of reasons "by weight" is possible, but not insulation "by kind." Finally, the procedural argument fails to insulate legal reasons from plain moral reasons based on the alleged rational authority of the parliament. This is because, according to Michelin, the procedural argument does not cope with the complexity of actual practical reasoning (as in Waldron's account) or because it fails to demonstrate empirically that a certain kind of law-making procedure assures proper consideration of all the reasons available in society (as in Habermas' account) (chapter five).

One important step in Michelin's reasoning, especially in his critique of Raz, is the distinction he draws between *reasons for action* and *reasons for deciding*. While the former are understood as "a fact or set of facts whose occurrence in the world makes it correct to perform a given action,"<sup>9</sup> the latter refer to those reasons "one takes, or should take, into account *in a deliberative process*."<sup>10</sup> Although both sorts of reasons are practical, Michelin suggests that political power can create *reasons for action* only, in the sense of stimulating or attempting to avoid certain behaviour, *but not reasons for deciding*. Underlying this argument is a philosophical resistance to interference on the part of the political authority in the subject's autonomy—a sort of intervention that Raz's normal justification thesis not only implies, but actually attempts to justify.

This book provides valuable and provocative insight even for those scholars defending the arguments that Michelin ultimately criticizes. With respect to Michelin's first main thesis on the limited room for reasoning in personal, intimate decision making, it might be argued that the connection between morals and law could have been explored in more detail by the author. From a moral point of view, Vincent's decision to paint may be a relevant subject for an assessment of its morality; however, it is not as clear from Michelin's text if and when this sort of intimate decision is *legally* relevant. In other words, while the connection between morals and law is certainly assumed by

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<sup>8</sup> *Ibid.* at 177.

<sup>9</sup> *Ibid.* at 114.

<sup>10</sup> *Ibid.* at 115.

Michelon, a reader with legal training might be disappointed at the absence of a plain account of what makes law, specifically, a realm somewhat autonomous from morals. But then, even the title of the book indicates that the fundamental concern of the author is not with the legal, but rather with the *moral* aspects of decision making. Plus, both main theses submitted by the author aim primarily to expose the insufficiencies of rival theories, rather than to explain a comprehensive theory of his own.

Even readers who are not persuaded by Michelin's arguments after completing the book may profit from several insights that allow for further theoretical reflection. One might wonder, for instance, how the author's first main thesis, on the role of virtues beyond ratiocination in moral decision making, might contribute to the debate surrounding the character of legal adjudication in comparison to law-making. It has been suggested that justice should be seen as the defining virtue of adjudication, or the *administration* of law.<sup>11</sup> Other virtues, such as charity and temperance, should not be expected from judges or courts, but from *legislators*, which are supposed to produce law that is "*more than just*," in a certain sense.<sup>12</sup>

Another promising line of inquiry is the extent to which Michelin's second main thesis, arguing for comprehensive reasoning in public decision making, may apply to other contexts beyond decision making by public agents. Is it plausible to suggest that comprehensive reasoning will be required whenever the agent is expected to act in the interests of others? For example, what reasoning is required from a director or manager who is expected to decide and act in the best interests of the company? Or, what is the decision-making approach for a franchisor who intends to implement a network-wide policy affecting the situation of the franchisees by exercising discretionary powers that are typically granted in franchise agreements? Should comprehensive reasoning be required from these agents? In essence, what distinguishes public decision making from private or personal decision making, such

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<sup>11</sup> John Gardner, "The Virtue of Justice and the Character of Law" (2000) 53 *Curr. Legal Probs.* 1 at 29.

<sup>12</sup> *Ibid.* See also at 30: "[J]ustice is the first virtue of those institutions—adjudicative institutions—whose job it is to mop up when things have already gone wrong. Not only corrective justice, but justice *tout court*, is a remedial virtue. It is a virtue for dispute-resolvers and dispute-anticipators" [footnote omitted].

that comprehensive reasoning is required in the former but not in the latter context?

In sum, whether the reader agrees or disagrees with the line of reasoning followed by the author, Michelin's voice deserves to be included in any academic debate about the moral foundations of law.