

4-1-2002

Book Review: The Idea Of Human Rights: Four Inquiries

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Recommended Citation

Garcia, J.L.A. (2002) "Book Review: The Idea Of Human Rights: Four Inquiries," *Faith and Philosophy: Journal of the Society of Christian Philosophers*: Vol. 19 : Iss. 2 , Article 7.

Available at: <https://place.asburyseminary.edu/faithandphilosophy/vol19/iss2/7>

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BOOK REVIEWS

The Idea of Human Rights: Four Inquiries, by Michael J. Perry. Oxford University Press, New York, 1998. Pp. 162. \$35.00 (Hardcover), \$14.95 (Paperback).

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This slender volume (about 106 pp. of text) comprises four chapters, each treating succinctly, and sometimes superficially, an important question about the possibility, foundations, or nature of human rights. The author is a noted professor of law and a liberal Catholic thinker who recently has admirably critiqued the 'gag-rule' propounded by neutralist liberals against appeals to religious faith in public political discussion. He has also argued, less admirably, against orthodox Christian morality's condemnation of homosexual acts. This book follows the same pattern, showing Perry generally right-headed and sometimes incisive in his criticism of some contemporary secular theorizing, but revealing him as too willing to trim traditional Christian moral thought to accommodate current trends.

Perry's first question is whether the idea of human rights has an intelligible secular version. He claims the idea of human rights has two "parts," first, that everyone is "sacred, inviolable," possessed of "inherent dignity and worth... an end in himself," and second, that because of this, certain things ought be done for everyone, and others ought not be done to them. Perry effectively shows the emptiness of legal theorist Ronald Dworkin's recent attempt to reinterpret the claim that every human life is sacred while dispensing with God. (And with the claim that people ought not be killed before birth or when they despair late in life). For Dworkin, a human life is sacred because it represents an investment of human and natural creative work, which he finds wondrous. Perry nicely points out that this "life as a masterpiece" – understanding of sacredness does not make its sacredness *inhere* in human life, and seems to make its value dependent on our fleeting, inconsistent, and variable sense of wonder.

Perry may interpret Dworkin uncharitably in seeing him as making the sanctity of human life depend on our feelings. Still, even Dworkin's less subjectivist argument to sanctity from the value of the natural and human "investment" represented in each human life fails. For any butterfly also represents a great natural investment (biological, physico-chemical, climatological, etc.) in its generation and sustenance, yet butterflies lack human (or human-like) rights. Moreover, if what is distinctive about humans is the

self-investment we make in our lives, then circularity threatens. For it is hard to see why human time and effort matter so crucially unless we humans are somehow antecedently special. So, human distinctiveness is a presupposition of that argument, not its conclusion.

Some seek to justify human rights by appealing simply to the definition of 'moral.' Perry is right that this approach raises the question, 'why be moral?' Unfortunately, he regards this question as more serious than it is. After all, an adequate response will point out some way in which being moral is good, but in a way which the questioner may not care about or may care about less than she cares about some competing matter. So, it may fail to motivate the individual. The serious question is whether being moral is justified. But that is already settled by its being good. Someone whose decision against violating other persons is made simply as a means to her own personal interest doesn't genuinely *respect* their rights, and is not acting from the moral virtue of justice. Perry appears to recognize that the kind of non-interference that Hobbesian accounts justify falls short of genuine morality. However, his own preferred "justification" of human rights is also in terms of the agent's "flourishing" and is therein also self-interested, and instrumental, falling short of full justification for the same reason. What is needed here is a dose of Levinas' insight that being moral cannot be merely a means to any nonmoral project. We can ask whether being moral, including being just in respecting others' rights, can ever "pay off" someone. But even if it can, as Jews and Christians believe (and Aristotelians and Stoics did too), we must still recognize that being moral is not something we can do simply as a means to such a pay-off. To be moral, to be virtuous, is centrally to love and cherish persons for their own sakes, not just divine persons but also human, and not only one's own person but also others'. It is not only the religious who can find this the most rewarding life. However, it plainly makes no sense to care for others for their own sakes *simply in order to* reap its rewards—whether they are conceived as Hobbes' desire-satisfaction, Epicurus' pleasure, or the "flourishing" Perry borrows from Aristotle. This is one reason only those who lose their lives—i.e., abandon them in loving service—will regain them (Matthew 16). Perry appears not to appreciate the way in which "Why be moral?" is a valid *theoretical* question, but of no direct practical import. In any case, Perry needs to clarify whether he thinks sacredness is internal to human rights. If so, then the definitional and Hobbesian strategies, pace his claim, are not really defenses of human rights talk at all, since they purposely eschew human-sanctity.

I think sanctity-claims may be part of the best defense of human rights, since otherwise it is difficult to see why disrespecting people, harming them, betraying them, and failing (in one's relationships with) them is so significant morally. I am inclined to think that sanctity-claims are not part of human rights themselves. If that is right, then definitional and self-regarding strategies are genuine *accounts* of human rights, but poor defenses of them.

We should note in passing that the claims that there are some things that we ought to do to people and other things we ought not to do to them, which according to Perry are the second part of the idea of human rights, cannot themselves suffice for rights talk. They do not specify that the violations are morally wrong rather than merely ill-advised, nor that they are acts of

wronging, of victimizing. After all, I ought not to destroy my couch, but doing so need not be morally wrong. It's just stupid, imprudent. I also ought not trash your couch but, again, my trashing it is not a violation of *the couch's* rights. More is needed for human rights than such bare 'ought'-claims as these. Perry may well be right that human rights can be understood in terms of the kind of 'ought'-claims that natural law grounds. Still, he moves too fast in going from these 'ought'-claims to human rights talk.

Perry correctly points out that Rorty's anti-foundationalist position simply abandons the efforts to justify rights talk. Nevertheless, the brief critiques of Dworkin, Rorty, and a few other contemporary thinkers only skim the surface of recent efforts to defend human rights in our age of neo-Kantian moral philosophers. In general, there is just too much here on Nietzsche. A century since of efforts at a gentler, more loving, more respectful post-Christian secular morality gets short shrift.

Perry's second, and shortest, chapter answers the question whether the discourse of international human rights is corrupted in the ways that Mary Ann Glendon argues U.S. rights-discourse have become. Perry quotes from major rights documents to show that they do not subordinate all other concerns to rights-claims, discredit compromise, abort discussion, shortchange such intermediate institutions as family, and so on. Perry largely succeeds in his unambitious goal, but his discussion is interesting mainly for what it omits. Recently some critics, most notably Glendon herself, have charged that international rights discourse is becoming Americanized, especially in the Cairo and Beijing U.N. Conferences, and in some responses to the U.N. Declaration's fiftieth anniversary. (Recently, a population conference in New York insisted on the reproductive "rights" of teenagers.) These critics contend that the Clinton Administration and its West European ideological allies elevated some lifestyle and sexual rights to the level of inviolability and used terminological tricks—especially replacing talk of "family" with coded phrases about diverse forms of "families," for instance—to blunt the effectiveness of appeal to those institutions against demands to license perverse individual "life-style" preferences under the rubric of human rights. Since Perry does nothing to address this important contemporary controversy, his discussion here is largely irrelevant.

The third chapter inquires whether human rights and all other moral norms are so relativized to local cultures that appeal to inherent and universal rights must be wrong-headed. Again, he is on the right side, arguing in the negative. Unfortunately, his argument, while touching some important but familiar points, does little to advance the discussion. Readers interested in responding to relativism are better advised looking to Moody-Adams, Wiredu, Scanlon, et al. than to Perry's brief treatment. Perry's argument is marred by its focus on a straw man, as he expends much of his limited space showing that such acts as torture are bad *for* their victims irrespective of the latter's nationality, religion, etc. Plainly, that is not what the relativist challenge to human rights is about. Rather, the relativist maintains that, while the torture is bad *for* its victim, that does not always suffice to make it a violation of her rights, since she holds that rights are cultural creations and may in some societies be withheld from certain or all classes of people. So, Perry's discussion here is insufficient and misdirect-

ed. He further confuses matters by claiming to endorse a form of “cultural relativism” himself, though he holds only the uncontroversial position that some universal norms will require different conduct in places and cultures differently situated. It is not wildly inaccurate to call this ‘relativism’ but doing so certainly obscures issues it ought to clarify.

Perry abandons the side of good sense altogether in his final chapter. Here he responds negatively to the question whether any human rights are exceptionless norms. His discussion is confused in its basic terms. He notes, for example, that some of the principal documents of human rights include *ceteris paribus* clauses in their affirmation of rights and concludes that the rights are not absolute. However, if your doing something to me always violates my rights except when you do it for some specific reason (whatever that is), then your doing it without that reason is wrong *without* exception. So, Perry is an absolutist too, *malgre lui*.

We get the same conclusion from another angle. He sides with the proportionalist moral theologians who hold that one’s overriding duty is always to promote “the greater good.” This is called anti-absolutist, but it is plain these thinkers count something as wrong in every instance: promoting a lesser good. The point is that we’re all absolutists. The dispute is over just which acts are wrong absolutely. Perry warns darkly that such absolutists as the Oxford legal theorist John Finnis offer no convincing defense against the charge that their position is fanatical. However, one who, like Perry, professes his approval of doing absolutely anything to secure a better result is in no position to call others fanatics. Finnis is Perry’s special target there, but this misdirects the chapter’s discussion. Perry makes a fuss over criticizing the claim of Finnis, Germain Grisez, and others that life and other fundamental forms of human good are “incommensurable” a claim they make to bolster the traditional view that lying, blasphemy, and intentionally killing innocents, for example, are acts never permissible. Yet even if there is, as it seems reasonable to think, some sense in which the result of an act that causes two deaths is worse than that of an act that causes just one, it remains to be shown how one moves from that observation to the contested view that morality permits and even requires killing one person to save two. That is a question not just about the good but about the right and Perry offers no theory to back this conclusion. Instead, he maintains, with some misgivings, that traditional absolutism is counterintuitive. This is interesting mainly for the fact that only a few decades ago even defenders of utilitarianism conceded that it was their *anti*-traditionalism that offended their readers’ moral intuitions. Perry may be right that nowadays his readers’ intuitions are likely to run the other way. I think this shows that the theorist’s appeal to moral intuitions should be done carefully, with intuitions like those Perry (correctly or not) claims duly discounted as rather unreliable turns of thought, untested, of unproven staying power or lasting appeal, temporally and spatially localized accoutrements to those of a certain class and educational background.

What matters here is that Perry’s explicit suggestion that it might involve no immorality, no violation of human rights, to threaten and kill someone’s innocent loved ones to get her to reveal the location of a ter-

rorist bomb (his example) is wildly and plainly inconsistent with his own insistence on the sacredness, sanctity, and inviolability of human beings (he uses the three terms as rough equivalents) that grounds human rights. His (and, for that matter, any) efforts to overcome this incompatibility fail miserably. More important, an inviolability that countenances such blatant violations—egregious instances of what Kant memorably called treating others “merely as means”—cannot ground any human rights that are worth a damn. The reason Perry seems not to see this is that he works with an impoverished understanding of love. Christian love is love of persons as neighbors, not a devotion to promoting any such dubious abstraction as the greater good. To love anyone is to wish her well, and it is not hard to see that intentionally depriving her of so fundamental good as her life, solely for the benefit of others, cannot but be the antithesis of acting lovingly toward her. Of course, we cannot in the real world bring every good thing to every person. But then it is reasonable to think that love serves to limit the extent to which we can licitly set ourselves against any one person’s retaining such fundamental goods as life itself without having done anything to cut herself off from deserving our consideration.

It is Perry’s fondness for the shallow and inept theorizing of proponents of the discredited moral theological school called ‘proportionalism’ that bogs his discussion down throughout this final chapter. (For a critique of this school see the papal encyclical *Veritatis Splendor* or Chris Kaczor’s work.) Some legal theorists do even worse by him, leading Perry to absurd musing about whether killing innocents for others benefit might be unobjectionable if they might be induced to vote for a policy permitting it, or if a majority accepted such an arrangement. None of this makes much sense—surely the decent would look to the morality of killing for guidance on how to vote, not see it as emerging from the toteboard. It reveals the emptiness of much of what passes for moral theory in this Rawlsian time, when people have become used to the idea that moral norms are creatures of hypothetical (and even actual) political agreements. Near his book’s end, Perry charges Finnis with holding that it is better for the whole nation to perish than for one person. Actually, this seems to be a misinterpretation of the latter’s position, for Finnis’ claim that fundamental values are not objectively commensurable entails that no such comparative judgment of superiority, inferiority, or equality can be correct. More important, however, is the fact that Perry would make this complaint. Has he given any thought to the context of the famous claim that it is better that one man die than the nation? What has beclouded our thinking when professed followers of Christ proclaim an ethic indistinguishable from the one Caiphas both practiced and preached? Perry’s morality countenances vicious victimization of some for the sake of others; but such single-minded devotion to the purported greater good is the code of oppressors. What we need is moral thinking that follows not the thinking of the victimizer, but the moral understanding of The Victim.