

Universal Human Rights in Theory and Practice. By **Jack Donnelly.** 2nd edition. Ithaca: Cornell University Press, 2003. 290 pages.

The fact that this book is now in a second edition is evidence that it represents a widely held view of human rights. Since 1989 it has become one of the most widely read books on the subject in the American liberal tradition, and this in itself makes it most valuable. As a reviewer who dissents in some central respects I will, of course, not forgo an opportunity to advertise alternative views, even if I find myself largely in the same tradition.

What is at stake in discussion of the foundations of individual human rights may be the very survival of a tradition now in serious decline. My basic point of divergence with Donnelly concerns these foundations of human rights. He advocates loose foundations: the validity of human rights cannot be derived from any certainly known first principles (18-21). Rather, their validity is grounded in today's near universal *de facto* consensus regarding their indispensability to human dignity. "Human rights ultimately rest on a decision to act as though such 'things' [as individual human rights] existed" (21). This conventional decision is currently embodied in the United Nations Universal Declaration (17).

The main problem here is that if human rights are made to depend on a decision or convention, they are essentially alienable, though Donnelly claims that they are inalienable (10). The truth seems to be that ideal human rights may be inalienable, but actual human rights can be alienated from a human being merely by the refusal of others to recognize their validity. This follows from the most acceptable definition of a "right" as a claim that is recognized within a certain society to be valid or legitimate.

Some writers, such as John Hospers, define a right as a morally justified claim, which would of course imply that slave owners had no rights. But in some minimal sense they clearly did have rights, though their rights were not right. It seems best to define rights sociologically. They are always considered legitimate within a given community, but only moral rights, a subgroup of all rights, will actually be justified.

Throughout history, at least until the modern West, human rights most often have been alienated, even where they ought not to have been alienated. If there is a human right to food, it is still alienated today. It is probably not technically possible for humankind to respect a universal right to food within three months. However, near universal recognition that the claim to food is legitimate seems quite possible within that many months, and this makes it possible to argue that such a right ought not to be alienated from the human person.

What disrupts Donnelly's grounding of rights is a version of what philosophers call the "naturalistic fallacy." The validity of human rights is founded on the fact that they are widely considered to be well-founded, at least today. It is hard to avoid the implication that if they ceased to be widely supported, they would no longer be justified. I fear that universal rights in the liberal tradition are left here on an unduly shaky ground, though Donnelly believes that in practice such rights remain in good shape without any more solid foundation, or even without any foundation. I would suggest that those who are asked to sacrifice as much as their very lives will be less inclined to do so with such a loose foundation. I suspect that Donnelly himself is practicing a kind of sour-grapes philosophy. Because Donnelly does not think he can have a solid foundation, he says that one is not even desirable.

But Donnelly should note that his ideological counterparts on the right do not hesitate to base themselves on patriotic or libertarian truths that are allegedly known to be true without a doubt. In the end, Donnelly represents a liberalism that is ideologically in decline in public discussion because it is epistemologically in decline. Can the problem be remedied?

I do not believe we need revert to direct justification from certainly known first principles to obtain a solid foundation for human rights. What Donnelly fails to consider is the possibility of an indirect justification that is quite superior to—that is, far less dogmatic than—any direct justification proposed by his ideological opponents. By this I mean justification through the contradiction that arises when one tries to justify restrictions on human rights. For it becomes clear that the very nature of the maximum justification of any claim at all requires that it be submitted to a maximally universal audience of potential discussion partners who are protected and empowered by human rights.

In this respect, Jürgen Habermas's concept of procedural rationality seems quite helpful. Donnelly at one point invokes the authority of Habermas in favor of "consensus"-based morality (43), but he does not note that, for Habermas, the relevant consensus must be "rationally motivated," that is, motivated by recognition of the other's capacity to enlighten in a cooperative search for truth.

Donnelly objects to any "philosophical theory" that "masquerades as science" (24). But he should see that acceptance of a Habermasian human rights theory is a theoretical condition of the possibility of science in the open society, before a universal audience of rights-empowered inquirers. Habermas's concept of human rights is a more contemporary version of the concept proposed earlier in the twentieth century by Karl Popper, and in the nineteenth century by the American pragmatist philosopher Charles Saunders Peirce. Popper's theory of the "open society" made little explicit reference to individual human rights, but it clearly implies an effective universal right of reply, which alone makes possible the falsifiability of conjectures. The sick and starving are less likely to furnish any falsifications they may have. Peirce held that the criterion of truth was universal agreement among inquirers. He did not make the reference to a universal right to freedom of thought fully explicit, but

it is clear that his criterion of truth is inapplicable if inquirers lack certain universal rights.

Clearly, maximum justification of violating human rights would require universal respect for the basic right of freedom of thought that is to be violated. Any justification that is less than maximal arbitrarily excludes a possible range of critics.

Donnelly endorses John Rawls's idea of "overlapping consensus" between different communities as the ground of human rights (40). He does not consider the Habermasian/Popperian/Peircean idea of an overarching consensus between all those who seek truth in the public domain, in dialogical partnership with all others. This universal consensus is hospitable to the diversity of communities, which may or may not reinforce it, so long as the stipulations of that consensus are respected.

Donnelly himself makes no claim that the right to individual freedom of thought is basic. Instead, he stresses the vaguer claim to individual dignity (14). But once individual freedom of thought is admitted as basic, human rights can be justified indirectly, dialectically. It will be objected that even this indirect justification is circular, since we must presuppose a rights-empowered audience in order to justify the procedure of justification. The point, however, is that justification by the appeal to self-evidence in the privacy of one's own mind has empirically proven fallible. The history of science and philosophy are strewn with too many refutations of claims to self-evidence and certainty for such claims to carry for us much weight. Justification by convincing an audience of more than one person or even very many persons has proven equally dubious so long as it is a restricted audience that excludes some voices.

The procedure we would use in justifying ourselves by private intuition does not simply refute itself *empirically* by the fact that others manage to refute us. It refutes itself *necessarily* because the condition of the possibility of being refuted empirically by others is that we have already allowed the logical possibility of being refuted by other voices.

All human rights other than freedom of thought seem grounded in the fact that they support that right. Otherwise it appears that they are not grounded at all. One exercises freedom of thought *by* having the right to free elections, by having a right to food, and so forth. The right to food is only

an animal right unless it is a particular mode of the right to freedom of thought.

Donnelly is correct in separating human rights based on some kind of convention from the notion of natural rights. Yet his treatment of human rights might benefit by retrieving one central thought from the natural rights tradition, namely, that reason (the power of inquiry, the ability to correct error) is central to human dignity.

Donnelly's reluctance to make this move may be related to his concern to salvage the respect for the rights of Alzheimer's patients, among many others to whom we grant dignity despite their apparently deficient power of reason. One way to deal with this problem is to say that there is no proof that a silver bullet or a pill will not be found to bring to manifestation the missing rational capacity inherent in human nature. After all, is there proof that no surprising scientific experiment could give rationality to a cat, a worm, or a tree? But in some cases the unlikelihood of such a remedy amounts to the unlikelihood that any such capacity is really present.

A second solution is to interpret a thing's rational capacity as being manifested in all the further things that have developed or evolved from it. Biological evolution apparently has shown that inanimate matter has demonstrated a capacity for reason by evolving intelligent life. This seems to imply that we should respect inanimate life as much as we respect intelligent life, which is difficult to reconcile with what is usually meant by respect for human rights. The dignity of inanimate matter is surely present, but it does not rise to the imperative nature of individual human rights.

A third way to treat the problem is to say that those afflicted with Alzheimer's deserve respect as monuments to their former selves, or even that they deserve respect for what as members of the human species they might have done or might have been able to do. But, again, the dignity that is established here seems to fall short of the rights of a fellow inquirer with a probable capacity for enlightening us.

A fourth approach is to say that Alzheimer's patients after all do have a direct ability to enlighten others about how to cope with problems of illness that others may one day face. They can also enlighten us regarding basic values in human relationships such as trust, security, and affection. In discussing group rights Donnelly discusses women, indigenous

people, and other minorities (chap. 12), but does not address the situation of handicapped persons or (apart from children) others of diminished capacity.

It is perhaps normal that Donnelly, a political scientist, considers human rights chiefly as a political topic (10, 41-42). Yet a strong argument can be made that the subject is more fundamentally moral, that, most fundamentally, human rights ought to be respected in day-to-day relations between people, and that respect for such rights by states is ultimately a function delegated to states by individuals. Human rights ultimately lie in respect for the basic claims of all individuals by all individuals, not by states.

That Donnelly ignores the credentials of Habermasian procedural rationality will not trouble most American readers. Even less troubling will be his neglect of dialectical reason as practiced by G. W. F. Hegel. (Essentially, dialectical reason embraces the truth by repelling it, as universal rights must be embraced to vindicate the denial of them.) More problematic for some American readers will be Donnelly's occasional tendency to buy into the nefarious post-modernist trend (43).

Yet, despite all this, he says many true and insightful things about human rights, and his book remains a treasure trove of much real wisdom on the subject. For example, he seems correct that there is little basis for human rights, as distinct from God-given rights, in Islam (72-76). He is also right, I believe, that rights imply responsibilities, and that ideally if others meet their responsibilities towards us we will not have to invoke our rights (9). (Yet it is not clear how Donnelly can go on to wonder how "the Chinese managed to claim human rights without the language to make such claims" [81]. China may not have had human rights, but the fact they did not complain would not prove it. Perhaps they did not clamor for rights precisely because others, acting out of duty consciousness, actually respected them.) And he is right to deny that group rights can be human rights (204-24).

Publication of this new edition of *Universal Human Rights* has the advantage of not leaving the field entirely to libertarian versions of individual rights theories. Any human rights theory that does not, in the manner of many libertarian theories, leave basic civil rights like freedom of thought in a vacuum unsupported by the social rights that

make this concretely possible must be appreciated. It is refreshing to see Donnelly defend the principle of the much-maligned "welfare state" without embarrassment (2000-3). One can only hope that renewed commitment to his conclusions will stimulate closer attention to, and reevaluation of, his premises.

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