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Justifying Ethics: Human Rights & Human Nature

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Justifying Ethics: Human Rights & Human Nature

REVIEWED BY CELIA R. TAYLOR*

JAN GORECKI, *JUSTIFYING ETHICS: HUMAN RIGHTS & HUMAN NATURE*; Transaction Publishers, New Brunswick, New Jersey (1996); (\$32.00); ISBN 1-56000-236-0, 147 pp. (hardcover)

Justifying Ethics: Human Rights & Human Nature is a thoughtful, well written and ultimately frustrating attempt to rationalize some of the struggles confronting those attempting to incorporate human rights into domestic and international legal structures. In its strongest sections (and there are many of them) Gorecki directly addresses such difficult issues as the search for objective justification of moral utterances. If such justification could be found, incorporation of human rights would be far less problematic than it currently proves to be. Unfortunately for both human rights proponents and readers of this book, the solution is not that simple. Concluding that objective justification is not possible and is indeed an impediment to the struggle for incorporation, Gorecki attempts to rationalize an approach for incorporating some human rights in some situations. His suggested approach begs fundamental questions and is far less successful than his earlier insightful analysis and articulation of how to think about human rights generally.

Any author attempting to address the idea of human rights must define the term. For Gorecki, "human rights" are at heart, moral rights, but only in a limited sense of morality as a system of rights and duties. These moral rights may become legal rights, but only when some positive law implements them.

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As moral rights, human rights are acquired through a process of contagious social learning and are therefore dependant on the society in which they are generated. Every society is a large, ongoing referendum of evaluations of moral rights; any particular rights acceptance depends on a complex set of social and ecological concerns; concerns which will differ both from place to place and from time to time. By adopting this definition of human rights, Gorecki takes the position that all human rights are neither universal nor constant, but are subject to important and "dangerous" historical limitations. In addition, he acknowledges that human rights under this approach are subjective, based on personal pronouncements of right and wrong.

Gorecki is clearly not happy with this result. If any human rights are to gain acceptance as universal, they cannot be perceived as changeable. Instead, some external, objective source of justification is necessary to validate them. Does any source of objective justification of human rights (morality) exist? To test this, Gorecki identifies potential sources of justification, including human nature, divine will, reason and cognitivism. For each of these sources, he considers whether its claim to justify human rights can be rebutted by defect of logic, lack of persuasive force, or evidence that the event claimed to create the norm has not occurred.

It should come as no surprise that Gorecki concludes that none of the suggested sources objectively justify human rights, but his analysis of the issue is the heart of the book and a valuable contribution to the dialogue. For example, in his analysis of human nature as a potential source, Gorecki identifies two possible elements that could provide objective justification. First, there exists an identifiable category of universal human needs and wants, constituted of the biological basics of existence; food, water, air, etc. If the recognition of this category as universal leads to a universal "rule of recognition" i.e., because these needs are universal we should give them to everyone (or at least not deprive anyone of them) the human right to these basics would be objectively justified. However, for Gorecki, such recognition does not occur and the minor premise of everyone having universal biological needs does not carry the persuasive force necessary to become a universal human right. Societies can and do deprive individuals of even these basic needs. Thus, human nature will permit actions even in contradiction to a universal human need and therefore cannot serve as an objective verification of human rights.

In a similar fashion, Gorecki discounts the existence of any universally accepted moral norms which could serve as justification. For example, although most would concur that "no killing" is a widely accepted norm, society sanctions killing in many contexts. Thus, the norm itself cannot be deemed universal and human nature cannot provide a source of universal ethical inclinations.

These examples grossly oversimplify the author's careful consider-

ation of each potential source of objective justification. His analysis is cogent and exhaustive; drawing heavily on philosophy, religion and history, Gorecki presents a convincing argument that objective justification of human rights is not possible.

This poses a serious problem for human rights proponents. Justification aids recognition and implementation of rights. Human rights face particular problems in these areas given that conflicting ethnic, economic and political interests lead to dramatically different articulations of rights, and a general vagueness of sources and weakness in the enforcement of rights prevents even broadly acknowledged rights from having much force. Therefore, the need for justification of rights is great, and yet, we have now been told, impossible. This then is the core of the problem; rights which the author would like to see recognized and implemented cannot be justified and will depend on the level of development in any society. How then can broader recognition of all rights be encouraged? Unfortunately, in his attempt to address this problem, Gorecki's rigorous analysis fails. The remainder of his argument posits facile solutions to intractable problems.

Essentially, Gorecki falls back on the inherent goodness of humans. Humans are polymorphic. Certain individuals who are exceptional will always exist in every society. Quoting Stanislaw Ossowski, Gorecki states that if these individuals push a human rights agenda "we may expect that the attitudes, today somewhat exceptional, could, in different circumstances, spread to a degree determining the new shape of the whole of social life." Humans are capable of holding conflicting views and are capable of changing their positions on ethical issues. This plasticity provides hope. "[O]ne should fight for what ought to be done without speculating" about nature, reason, divine orders, etc.

In the face of a potentially insurmountable obstacle to the implementation of human rights, Gorecki now has a way forward. It is possible to acknowledge the impossibility of locating an objective source of justification of ethics or rights while still arguing that efforts towards recognition and implementation should continue.

The issue then arises of what rights should be fought for? If no rights are objectively justified, how do we select among the many put forward for recognition? Are any more "worthy" than others? What rights should be the focus of a struggle to turn the moral idea of some to the moral idea of many, and thus, eventually (in theory) into the moral idea of the entire species? This struggle must include two components; that of spreading the norm itself through "moral contagion" and fighting for the implementation of the norm by states. Clearly, these efforts will require tremendous energy and dedication from activists and others interested in enhancing human rights protections. If success is to be had for any rights, the field of potentially enforceable rights needs to be narrowed from the entire spectrum currently avail-

able to a more workable field.

In order to restrict the field, Gorecki immediately dismisses third generation rights, which include such things as the right to development. In a somewhat disingenuous argument, he states that while such claims may "constitute a well-founded moral right" they are, as human rights, "such an ambiguous, self-contradictory dangerous and unhelpful novelty, that it would be difficult to opt for their inclusion into the human rights catalog." The problem of course lies in that Gorecki himself has defined human rights as moral rights; once recognizing the inherent morality of third generation rights, they are every bit as eligible for inclusion as any others.

However, limiting human rights to first generation political rights and second generation social and economic rights, Gorecki then attempts to limit the field further. Recognizing that societies prioritize rights differently depending on their level of development, he separates human rights into two categories. The first category includes those rights that are universally feasible for all societies, regardless of their level of development. In this grouping he includes the universal prohibitions on genocide, torture, racial discrimination and slave trade. For Gorecki, these rights, and only these rights, are "actually" universally human.

The second category includes rights that are only potentially universally human. These are rights which depend on the level of development of the implementing society. Included in this category as such rights as the right to democracy, unemployment protections, rest and leisure etc. This admission puts Gorecki clearly back in the camp of those who deny the universality of rights; if a society has the ability to claim that its level of development prohibits it from recognizing those rights which are only potentially universally human, those rights are not universally human . . . yet.

For Gorecki, this is not an untenable position. Potentially universal human rights will become actual universal human rights through the same process of contagion that raises the norm to the realm of a right in the first instance. When enough societies reach a sufficient level of development and enough states incorporate recognition of human rights into their legal regimes, all those rights which are now only potentialities will be realities.

Gorecki's ultimate conclusion then seems to be that rights will be recognized and implemented because it is the right thing to do. We will have to be ever vigilant to ensure that the contagion process produces acceptable results, but the framework for widespread acceptance of human rights exists even if there is no readily identifiable external justification of our ethical positions.

This optimistic view is sure to please many human rights proponents. However, it begs several important questions. By recognizing

that the implementation of rights will depend on the level of development in the society, a system is created which says some humans have right A while others do not. Are those who live in less developed countries thereby less human than others because they are not permitted to assert the same "human" rights? Gorecki recognizes this dilemma, but attempts to resolve it by separating rights into actual and potential rights is not satisfying. Either the right exists or it does not. Perhaps the "actual" human rights defined by Gorecki are more properly understood to be duties of the State. Taking them out of the rights definition clarifies that human rights must exist in all humans no matter their situation on the planet. Perhaps all rights are only potentially realizable. This would not preclude societies from recognizing them but it would eliminate the need to argue that some have rights while others not based on no more cogent distinction than geography.

Another significant problem lies in Gorecki's reliance on contagion. He assumes that as proponents fight for broader acceptance of rights considered potentially human, these ideas will spread worldwide. However, he also acknowledges that many societies do not have the necessary preconditions to incorporate these rights. How then will contagion occur when the society by his argument cannot accept such ideas. Further, his agenda for the implementation of human rights is premised on the belief that "exceptional" individuals will exist in each society, and further, that their views will be toward the advancement of human rights. It is just as easy to conceive of such individuals who would seriously impede the progress of rights. The "plasticity" of humans, the ability to accept and adopt new moral norms, could be turned against a human rights agenda just as it could be put to work in its favor.

Gorecki recognizes his fundamental problem. His conclusion that no objective justification of human rights is possible removes any secure position from which to argue that rights must be recognized and incorporated into the international legal structure. Unwilling to abandon the struggle, he is left to argue that the search for justification is in itself useful. The means justifies the means, as the struggle for widespread recognition of rights will increase contagion of societies with the norms thus enhancing their persuasiveness. The sentiment underlying his argument is understandable. The inherent difficulty of advancing human rights can seem insurmountable. His proposal at least offers hope for those who advocate broader acceptance of human rights, while placating those who argue that rights are situation specific. However, this compromise solution ultimately undermines the work. After setting up the problem clearly and intelligently, the book adds little by way of practical suggestions to overcome it. The book leaves the reader hoping for a sequel to remedy that situation.

