

**UTILITY AND RIGHTS**, edited by F.G. Frey. *Basil Blackwell, Oxford. 1986. pp. ix + 246. £19.50. (Alternate edition: University of Minnesota Press, USA. 1984).*

'Like the arms race, the rhetoric of rights is out of control'. (p. 20) L.W. Sumner begins his essay in this exciting collection with these words, which well sum up many of the themes considered in Frey's anthology. In an attempt to be on the cutting edge of issues central to the matter of rights, Frey has assembled eleven essays articulating problems in this important area of rights theory. At the core is the debate between the utilitarians and the right-based theorists. As H.J. McCloskey remarks, 'Jeremy Bentham saw clearly enough that utilitarians can have no truck with theories of natural human rights'. (p. 121) Nonetheless, contemporary utilitarians have tried to accomplish this in spite of Bentham's rather clear and explicit warning. If, on the other hand, human rights are based on a non-utilitarian method, one must articulate clearly this foundation. Too often this descends to an appeal to intuition. McCloskey suggests, for example, that the plausible approach to the justification of human rights '... is that the basic fundamental moral rights are self-evidently so...' (p. 126) Obviously, this is a form of intuitionism. Readers familiar with rights literature know that both Bentham and Edmund Burke attacked ferociously the theories of absolute human rights. Nonetheless, right-based theories have come to the forefront of philosophical discussion principally as an attack on the theoretical weaknesses inherent in utilitarian justifications. In his *A Theory of Justice*, John Rawls a decade ago noted that 'utilitarianism does not take seriously the distinctions between persons'. John Finnis's recent work, showing the theoretical problems necessarily connected to any form of consequentialism, certainly indicates problems which utilitarians must answer. Finnis has developed his own theory of natural rights in *Natural Law and Natural Rights* (OUP, 1980) and *Fundamentals of Ethics*, (OUP, 1983).

What Frey as editor has attempted to do is assemble a set of essays which indeed advance the argument concerning the issues raised in utilitarianism and right-based theories. This anthology contains work by philosophers well known in these discussions. One of the last essays by John Mackie appears here—a rather thorough analysis of Richard Hare's work—and Hare responds to the points Mackie has raised. Persons familiar with the Oxford discussions on these matters will be pleased to have the Mackie-Hare debate together in print.

In considering contemporary discussions on the nature of rights, in addition to the shadow of Bentham, the writings of Rawls, Dworkin and Nozick are always in the background. Dworkin's *Taking Rights Seriously* has served as an impetus to much recent thinking on rights matters. This set of essays seems to consider as accepted a view of rights theory, one quite prevalent today, which goes something like this. Historically, there have developed two general theories of rights, the first which took place in the 17th Century and culminated in the work of John Locke, and the second, pertaining to our own era, which resulted in the discussions on rights following the Second World War. It seems that this division, generally accepted throughout Frey's anthology, omits stipulatively the recent work of John Finnis and the exciting research undertaken by Henry Veatch. Both of these philosophers are interested in articulating a substantive theory of human rights. Veatch, in particular, is deeply distressed that Locke's theory of rights may not be able to justify ultimately what we mean by a human right. Hence, while this set of essays is interesting and important in many ways, nonetheless it does abide with a certain bias towards right research which I think needs to be addressed. Finnis's work, for instance, receives but a mention in two footnotes, one of which indicates that such natural rights talk is 'too uninformative to be very useful'. (p. 40) Many of us would disagree with this proposition.

In summary fashion, this collection of eleven essays contains eight which are published for the first time and two others which have been radically revised from earlier

versions. An article by Joseph Raz has appeared elsewhere.

In opposition to Dworkin, Mackie and Nozick, L.W. Sumner and Joseph Raz suggest that moralities are not right based. Sumner provides a critique of natural rights using Bentham's arguments. Raz argues that 'right based theories are impoverished'. (p. 44) He is worried that contemporary talk on rights is too individualistic; to the contrary, Raz considers the 'intrinsic value of some collective goods'. (p. 59) In a rather detailed essay, Frey argues that the present enchantment with rights has led to the further disenchantment with act-utilitarianism. In a deft manner, Frey tries to establish that act-utilitarianism can accommodate individual moral rights within its structure. This is, in effect, a critique of Hare's *Moral Thinking*. John Mackie offers a good summary account of the tensions existing between utilitarianism and right-based theories. As Mackie puts it, '...the real dispute, then, concerns the choice between 'utility' and 'rights' as the central concepts in higher level, critical, moral thinking'. (p. 103) Hare responds to Mackie by questioning the legitimacy of the bifurcation between utility and right.

James Griffin provides a fascinating essay, 'Towards a Substantive Theory of Rights', in which 'autonomy' is seen as having a value of its own. McCloskey, and Mackie in an earlier work, appear to say the same thing. Griffin, in a Kantian fashion, suggests that the concept of personhood generates most of the conventional list of civil rights. In a manner akin to Finnis, Griffin considers the concepts of 'human status' and 'human flourishing'. Griffin writes that 'we say that personhood concerns what is needed for human *status*, but it is tempting to be more generous and say that it concerns what is needed for human *flourishing*'. (p. 139) Griffin, moreover, suggests that the values which back rights are autonomy, liberty and equal regard. Whether this formalist account of rights will generate substantive rights in their entirety is a question natural rights philosophers will obviously raise. While Griffin wants his theory of rights articulated at a deeper level than mere utility alone, nonetheless he appeals to utility for second-level decision making involving prudential choices.

Jan Narveson argues that rights are statuses entailing not merely obligations, but enforceable obligations. Narveson further suggests that only a contractarian theory will justify a rights theory. Alan Ryan suggests that utility is the only way to provide an adequate theory of property rights. He notes, probably correctly and in accord with Hart, that any theory of rights ought to have something serious to say about rights of ownership. Interestingly enough, Ryan seems to accept the time worn but somehow never defeated argument that without God, one cannot make sense of natural law. In the last two essays, Rolf Sartorius, in the spirit of Locke, defends the concept of property as related to the concept of person. Charles Fried offers an interesting analysis limiting the role philosophy plays in legal matters—an important topic for philosophers undertaking work in jurisprudence.

This is an important set of essays, one which can be read fruitfully by all those interested in seeing where rights matters are these days. Frey himself has written a particularly informative introduction indicating the tension between utilitarianism and right-based theories. In some ways, the context of this collection is part of an older debate, one rekindled by Rawls's remark noted above. William Frankena two decades ago also articulated his concern that any form of utilitarianism needs a deontological rider in terms of a principle of justice. Certainly Frankena's insight then has contributed to the present debate.

A highly recommended collection.

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