Towards a Theory of Human Rights: Religion, Law, Courts
Michael J Perry
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In Cat’s Cradle, the novelist Kurt Vonnegut, observes:

Tiger got to hunt,
Bird got to fly;
Man got to sit and wonder ‘Why, why, why?’

This undistinguished doggerel serves Vonnegut’s larger purpose, for it points up humankind’s need to invest life with meaning. Dwelling on this need, Vonnegut identifies it as finding expression in bodies of religious faith that he regards as ‘nothing but lies’.1 Vonnegut thus traverses terrain that Michael Perry also moves across in Towards a Theory of Human Rights. Perry identifies the morality of human rights as giving expression to a quest for meaning. Moreover, he sees this quest as being about more than the impulse to wonder ‘Why?’ He argues that we cannot offer an adequate account of the morality of human rights unless we see it as giving expression to large ontological assumptions (which concern the nature of existence) rather than lies.

Perry identifies ‘the morality of human rights’ as ‘the dominant morality of our time’ (p 4). He also describes it as ‘global’ and thus unique in human history. However, this morality is not ‘well understood’. This leads Perry to concur with John Searle, who has argued that we lack ‘a clear theory of human rights’. Perry also agrees with Searle on the point that the work involved in elaborating such a theory is ‘just beginning’.2 Perry is, however, clear on the question as to how the morality of human rights has gained the currency that it now enjoys. Looking back on the ‘moral landscape’ of the twentieth century, Perry finds it to be, in many respects, ‘bleak’ (p 4). The data that he presents certainly support this conclusion: 109 million people died in wars, while many more millions perished as a result of, inter alia, slave labour and genocide. But Perry does not explain the ‘emergence . . .

2 Ibid, p 139.
of the morality of human rights' solely by reference to the carnage that unfolded in the twentieth century. The significance now attached to human rights also reflects what Pope John Paul II (in his encyclical *Fides et Ratio*) described as 'the quest for meaning that has always compelled the human heart'. This quest finds expression in the religious and non-religious grounds for human rights examined by Perry.

Perry notes that both religious and non-religious accounts of the morality of human rights give expression to a ‘twofold claim’ (p 5). These accounts point up the ‘inherent dignity’ of each person; they also identify the inherent dignity of human beings as having ‘normative force for us’. By this he means that ‘[w]e should live our lives in accordance with the fact that every human being has inherent dignity’. Perry explains the religious ground for human rights by reference to Jesus’ counsel to ‘love one another’; he takes this to mean that we should see others as children of God and, therefore, as brothers and sisters.

Perry identifies, inter alios, Ronald Dworkin and Martha Nussbaum as offering non-religious grounds for the morality of human rights. Thus, we find Dworkin appealing to the value that we attach to all human life, while Nussbaum argues that we ‘care for others and feel disturbance when bad things happen to them’.\(^4\) Perry responds to these arguments by saying that their authors appeal to a consensus that, in each case, is a ‘phantom’ (p 23). Moreover, he identifies both Dworkin and Nussbaum as having failed to take seriously Nietzsche’s argument that ‘morality’ cannot survive where ‘the God who sanctions it is missing’. On this point, Perry finds support in Phillipa Foot’s *Natural Goodness*, since she argued that ‘few contemporary moral philosophers . . . have really joined battle with Nietzsche about morality’.\(^5\) Rather, they have ‘gone on taking moral judgements for granted as if nothing had happened’ when Nietzsche declared God to be dead.\(^6\)

Perry does not focus exclusively on the grounds for human rights. He also considers the role that the judiciary should play in protecting human rights and examines three controversies in which the discourse of human rights features prominently. These controversies concern abortion, same-sex unions and capital punishment. In his examination of capital punishment, Perry draws a contrast between the thinking of Pius XII on the one hand and John Paul II on the other. Pius X-II argued that, ‘by his crime’, a dangerous criminal has ‘already disposed himself of his right to


\(^{6}\) Ibid.
live’. By contrast, John Paul II (in his 1995 encyclical, *Evangelium Vitae*) set out what Perry calls an ‘unconditionalist principle’ (pp 41–46). This principle specifies that all humans (including depraved criminals) have inherent dignity. Moreover, it provides (on John Paul’s analysis) a ground on which to conclude that execution is a violation of ‘the inalienable dignity of human life’ (p 41).

While Perry accepts that every human being has inherent dignity, he does not endorse the unconditionalist principle. He entertains the possibility that, in some circumstances, there may be ‘a sufficiently weighty justification’ for imposing the death penalty (p 47, et seq). Having staked out this and a variety of other ‘conspicuously controversial’ conclusions (p 142), Perry draws his exposition to a rather limp close, for he describes himself as doing no more than making a contribution to a ‘conversation’ that is still unfolding. This is consistent with the view that our efforts to theorise human rights are ‘just beginning’. But a ‘conversation’ hardly holds out the prospect of strong protection for fundamental human interests.

Even if we entertain doubts about Perry’s conclusions, he certainly succeeds in alerting us to a variety of grounds (religious and non-religious) for the morality of human rights. We should not suppose, however, that we will be able to rest content with any of these grounds. Kurt Vonnegut provides a basis on which to explain why uncertainties seem likely to gnaw away at us. He tells us that, for humankind, the search for meaning is a ‘heartbreaking necessity’. However, he also identifies humans as afflicted by the impulse to unpick the webs of meaning that invest their lives with significance. This seems to be as true in the sphere of human rights as anywhere else. Perry’s emphasis on conversation (a process that unfolds with no obvious stopping point) lends plausibility to this conclusion.

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7 Perry quotes (p 40) from EC Brugger, *Capital Punishment and Roman Catholic Moral Tradition* (Notre Dame, IN, 2003) p 26, emphasis in original.
8 Vonnegut, *Cat’s Cradle*, p 177.
9 Vonnegut’s assessment of humankind bears similarities to that in a novel that he greatly admired. See F Dostoevsky, *The Brothers Karamazov* (London, 1992), pp 292–294, where the dying Elder Zosima notes that, while people ‘thirst’ for meaning (in the form of ‘the word of God’), they are apt to be ‘scoffers and blasphemers’. See also K Vonnegut, *Slaughterhouse Five or The Children’s Crusade: a duty to dance with death* (London, 1970), p 73, where Eliot Rosewater observes that ‘everything there is to know about life is in The Brothers Karamazov . . . [b]ut that isn’t enough any more’ (emphasis in original).