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## Book Review [The Philosophy of Human Rights]

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## BOOK REVIEW

THE PHILOSOPHY OF HUMAN RIGHTS, By Morton E. Winston. Wadsworth Publishing Co. 1988. Pp. 293  
Softcover. \$22.50.

*Reviewed by Dinah Shelton\**

In the past fifty years, human rights have become a matter of international concern, the subject of regional and global treaties and declarations. Within the United States, the Bill of Rights and State Constitutions have lengthened the list of recognized legal rights to include the right to privacy and, in some cases, the right to education or right to environment. In addition, greater attention is being sought by and afforded disadvantaged groups and individuals. Each week sees debate over new claims for inclusion in the catalogue of human rights: The right to development, the right to a clean and safe environment, the right to tourism, the right to birth, the right to death. At the same time, the very existence of "human" rights is under question from those who would extend fundamental legal protections to animals or all "biotes." In addition, attacks on long-recognized human rights and efforts to secure their enforcement are being initiated at the United Nations in the name of cultural diversity, in regional meetings leading up to a global human rights conference scheduled for June 1993. More than ever, the questions of what, how and why human rights exist need to be posed and carefully considered.

Study of philosophy or jurisprudence is not fashionable in legal education. Yet very practical decisions turn upon the perceived philosophical foundations of human rights, including such basic issues as whether or not economic rights constitute human rights and whether humans have a particularity that results in all and only humans having rights. The meaning afforded the term rights may itself determine the length or the scope of the rights' catalogue. Legislators and

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negotiators struggling to decide whether to adopt a right to environment or whether to permit physician-assisted suicide should give careful consideration to the foundations and theoretical framework on which they base their decisions.

Morton Winston's anthology *The Philosophy of Human Rights* is an outstanding collection of modern writings that provide anyone interested in human rights, civil liberties, or legislation, with the basic materials to formulate, test, and reformulate their views on the nature of rights and the justification for human rights. In four parts, the book addresses the nature of rights, the content of human rights, the justification for rights, and the nature of rights-holders. It also has an appendix containing the Universal Declaration of Human Rights and the two United Nations Human Rights Covenants. The fact that there are two separate Covenants, one on civil and political and the other on economic, social and cultural rights, itself reflects the divergence of views on what constitutes human rights.

Winston's introductory essay sets the various chapters in an historical context and provides an excellent overview of the materials in the book. He poses the questions that each of the authors and all those who work on this subject attempt to answer: What are rights, how do they differ from goals, duties, interests, needs and claims? What are the specific rights mentioned in national and international instruments; do they all have equal stature? Are there correlative duties? Must rights be judicially enforceable to be rights? Are there any absolute rights? Are human rights a projection of western philosophical and political traditions? What is the justification for the existence of human rights?

Winston defines human rights as universal moral rights that belong equally to all human beings by virtue of the fact that they are human beings. Other authors in the first section of the book attempt to frame general definitions of rights. Joseph Raz posits that "X has a right if and only if X can have rights, and other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty." Raz distinguishes between core and derivative rights and finds that X can have rights if X has ultimate or intrinsic, rather than instrumental value. Joel Feinberg argues that "[t]o have a right is to have a claim to something and against someone, the recognition of which is called for by legal rules or, in the case of moral rights, by the principles of an enlightened conscience." In contrast, Rex Martin states that a human right is defective as a right in the absence of appropriate practices of recognition and maintenance. Winston summarizes the

views of the authors of the first section and finds that they suggest a developmental pattern in the evolution of rights: from "manifesto" rights when a need or good is recognized as requiring special social protection and such protection is claimed as a moral entitlement, to wider social recognition and acceptance through political or social movements. Finally, the right in question is formally recognized in civil or international law, with appropriate procedures for the protection and recognition of the right. In Martin's view, only at this last stage can one speak of a human right. Another author, Carl Wellman, analyzes human rights as clusters of ethical advantages, building upon Hohfeld's elements of claim, liberty, power, or immunity. The final selection in the first chapter comes from Ronald Dworkin's book, *Taking Rights Seriously*, and sets forth his well-known analogy of rights as legal trumps in balancing social interests.

Part II, addressing the content of human rights, contains three essays on the universality and customary catalogues of human rights. Winston's introductory essay provides additional background and material for discussion, especially on the question of adding new rights to the existing catalogues.

The third part contains other well-known pieces, including Henry Shue's excellent essay on the foundations of human rights in human needs for security and for subsistence. It also prints Alasdair MacIntyre's skeptical selection which concludes that "there are not human rights, and belief in them is one with belief in witches and unicorns." In his view, human rights are useful for political polemics and protests, as records of considered moral judgments, values and preferences, but they are not demonstrable moral truths. Alan Gewirth provides the counterpoint to MacIntyre's essay. Gewirth believes that a rational justification for the existence of human rights derives from fundamental facts about human agency. The final piece in the section, by David Lyons, attempts to demonstrate that belief in human rights is compatible with utilitarian approaches to the general welfare. Interestingly, Shue, Lyon, and Gewirth all converge in the belief that there are basic human rights, although their approaches differ. MacIntyre dissents.

The final section of the book poses perhaps the most perplexing problem: Why do human beings have human rights? In some respects, the earlier essays also grapple with this question. Gewirth believes that human rights are grounded on the universal capacity for rational, purposeful agency. Claims that other species have similar abilities leads the various authors to take different approaches; for the reader, one of the many provocative discussions that can re-

sult from reading the book involves posing the question what does it mean to be human?

The fact that Winston's small anthology provokes many profound questions is a testament to its value. It is one of the rare academic books that one is tempted to push on everyone and urge them to read in order to have long discussions about its many ideas. Winston has done a great service to human rights and to thinking.