

Edmundson, William A. *An Introduction to Rights*.
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Rights have been and continue to be one of the most studied, discussed, and deployed normative ideals in Western moral, political, legal, and social philosophy. *An Introduction to Rights* lives up to its billing as an “accessible and readable introduction to the history, logic, moral implications, and political tendencies of the idea of rights,” and it will be a valuable undergraduate text in moral, political, legal, or social philosophy courses in which a broad survey of the subject of rights is needed. Apart from its accessibility and readability, the two greatest strengths of this book are (1) that it identifies key historical events and thinkers instrumental in developing the idea of rights and (2) that it canvasses core issues

in the philosophy of rights, issues such as the meaning, nature, value, and source of rights and the relationship between rights and other normative concepts, as well as issues pertaining to who or what can count as a bearer of rights.

A guiding methodological assumption of this book is that it is impossible to advance our understanding of the foregoing conceptual issues without having a sense of the historical evolution of the idea of rights. Accordingly, Edmundson organizes the book chronologically, summarizing historical events such as the American and French Revolutions, the Civil War, and the Second World War and the ideas of key figures, including Grotius, Hobbes, Pufendorf, Locke, Kant, Paley, Burke, Bentham, Austin, and Mill. The broad aim of this historical overview in chapters 1–5 is to illuminate current debates and make predications about the likely direction of future thinking about the subject of rights in global politics and in legal and political philosophy.

Edmundson takes a side in some of these debates. For example, he pays special attention to the long-standing debate over whether rights function to protect choices or interests, more generally. He devotes all of chapter 7, “The Nature of Rights: ‘Choice’ Theory and ‘Interest’ Theory,” to this matter and ultimately embraces the view that moral rights in particular are best understood as protected choices, though I have reservations about this conclusion as well as about whether it follows from his critical discussion. Just as one may conclude that the “contest between a Choice Theory account and an Interest Theory account of legal rights in Anglo-American jurisprudence may be too close to call,” as Edmundson observes (132), one may also conclude that the contest remains too close to call when these models are transposed from the legal domain to the moral. Indeed some rights theorists have plausibly argued that we need not choose between these models at all insofar as rights in general, and moral rights in particular, can be understood to protect both choices and interests. But be that as it may, Edmundson’s main philosophical contribution consists in critically discussing some of the main positions staked out in the literature on this and other core issues in the philosophy of rights. And, for the most part, he does a commendable job of faithfully reporting their respective merits and demerits.

The book is divided into two parts: part 1 is titled “The First Expansionary Era,” and part 2 “The Second Expansionary Era.” Edmundson contends that these eras mark two distinct periods of time during which “rights talk was so prevalent that its very prevalence became a matter of comment and criticism” (12). The first period begins roughly during the late eighteenth century, between the American Declaration of Independence in 1776 and the end of the French Reign of Terror in 1794, when rights rhetoric rose to prominence as a revolutionary discourse for normatively condemning oppressive political authority and justifying the establishment of political authority that would hold individual autonomy and freedom in the highest regard. This period was also fueled by skeptical doubts, practical worries, and philosophical criticism of rights rhetoric culminating with Wesley Newcomb Hohfeld’s conceptual analysis of rights, which aimed to make the idea of rights intellectually respectable by identifying different senses of the term ‘rights’ and defining them in terms of their logical correlatives and opposites.

Part 1 concludes with a chapter-long discussion of Hohfeld’s analysis of

rights and its implications for our general inquiry into the nature of both legal and moral rights. This chapter primarily aims to be expository rather than creative, that is, it does not purport to advance our understanding of Hohfeld's contribution to the theory of rights. Yet there are places in this chapter where Edmundson makes substantive philosophical claims that go beyond mere exposition and therefore require more philosophical articulation and defense.

One such claim pertains to the relevance of recognition in establishing the existence of moral rights. Edmundson contends, "Recognition may be a necessary condition of the existence of a legal right (as legal positivists hold), but it can't be a necessary condition of the existence of a moral right (unless morality itself is, at bottom, conventional)" (100). To be sure, the thesis that recognition is necessary for the existence of a moral right is not widely held among contemporary rights theorists; however, there are a few champions of this view who have shown that it cannot be so easily dismissed as a viable position. Moreover, in addition to having roots in the positivist thought of Bentham—something Edmundson acknowledges, though he spends little time developing Bentham's reasons for believing that all rights must be creatures of positive law—the rights recognition thesis also has roots in the political philosophies of the influential late nineteenth-century British Idealists T. H. Green, Bernard Bosanquet, and David Ritchie. And a historical overview of the subject of rights in Western philosophy that totally ignores Green in particular (as Edmundson's book does)—given Green's influence on late nineteenth- and early twentieth-century thinking about rights and on a significant number of contemporary political philosophers and theorists—will be noticeably incomplete.

Another noteworthy omission in Edmundson's historical overview is that he makes no mention of Frederick Douglass in his extended discussion of the American Constitution, slavery, the U.S. Supreme Court, and the infamous *Dred Scott* decision. As Edmundson observes, William Lloyd Garrison did indeed denounce the Constitution as a proslavery document and expressed doubt about using America's founding ideals to argue the case for black emancipation. Douglass also embraced this view during his early participation in the abolitionist movement before ultimately rejecting it in favor of the view that the Constitution and the Declaration of Independence could be used productively to argue for the abolition of slavery. Moreover, Douglass was arguably the most influential nineteenth-century thinker to develop tensions between chattel slavery and America's founding ideals, and he did more than anyone else to defend the humanity of blacks for the purpose of showing that the idea of 'human rights' applied to them as well. In fairness to Edmundson, one cannot be expected to discuss all of the relevant events and thinkers that had an impact on our understanding of rights. Yet one of the costs associated with this historical way of proceeding is that one can be accused of ignoring historical events or thinkers deemed indispensable for our understanding of the subject of rights. And, in this particular case—when slavery and nineteenth-century abolitionism in America is brought into the discussion of the development of rights—Douglass is clearly an indispensable thinker.

The second expansionary period of rights rhetoric, according to Edmundson, began with the Universal Declaration of Human Rights in 1948, in the aftermath of the Second World War, and continues today. During this period

many proponents have viewed rights as both a philosophically and politically necessary normative alternative to consequentialist moral theories in a global order in which a universal or objective point of view is needed to condemn the immoral conduct of sovereign nations against their citizens and, if need be, to justify both military and nonmilitary actions to curtail such conduct. Edmundson explores the relationship between rights and consequentialism indirectly by way of contractualism in chapter 6, "The Universal Declaration, and a Revolt against Utilitarianism," and more directly in chapter 9, "The Pressure of Consequentialism," by way of exploring the issue of when, if ever, a moral claim-right can be interfered with. These two chapters cover a significant amount of familiar material in a fairly efficient manner.

Edmundson observes that worries about moral skepticism and nihilism loom large in this second expansionary period; however, he contends that it is difficult to conceive how we might live justly apart from an objective moral order or a shared belief in one. If we follow Edmundson in holding that the language of rights is an essential part of an adequate account of justice, then rights must be situated within a larger account of how people fit into the natural order. Edmundson's naturalism clearly has a place in the long history of thinking about rights. A common way in which naturalism manifests itself is in the widely held view that we have certain rights merely in virtue of our nature as human beings and we hold them against others even though these rights might be contrary to all established conventions and even though they might be violated by others.

This naturalist dogma gives rise to another, more serious, worry I have about Edmundson's appropriation of the history of rights discourse. He begins chapter 1, "The Prehistory of Rights," by distinguishing the view that certain fundamental rights are universal by virtue of the fact that everyone possesses them merely by virtue of being human from the view that rights are constructions of modern, bourgeois Western culture to advance its own purposes. He then proposes that one way to reconcile these conflicting opinions is to trace the history of rights discourse. If we find that rights or something equivalent to them are recognized in all human cultures at all times, then they are not simply a modern Western invention. But if we find that they are not universally recognized, then the thesis that they are constructed appears more plausible. Not only is it implausible to believe that merely tracing the history of the idea of rights can reconcile these conflicting opinions, or any other substantive philosophical dispute for that matter, but it is crucial to bear in mind that interpretations of historical events and thinkers can lead us in unexpected directions that may not support our philosophical presuppositions and distinctions.

For instance, one problem with this broad distinction between rights as natural and rights as constructed is that it obscures the possibility that grounding certain rights in our humanity is a way of universalizing them and making them fitting standards of normative criticism of cultures. Here the issue is not clearly about the empirical question of whether all cultures have an idea of rights. For even if a culture does not, if they can be applied universally then they can be used for normative purposes. Tracing the history of the idea of rights could, therefore, reveal that the idea of rights possessed merely by virtue of humanity was invented or constructed for certain normative purposes.

I am sympathetic to Edmundson's methodological assumption that we need

to pay close attention to the historical evolution of the idea of rights to advance our understanding of long-standing issues in the philosophy of rights. Yet we must remain guarded in thinking that attention to evolution of the discourse can offer us all the resources we need to settle once and for all the multitude of conceptual issues raised by the idea of rights. My own view is that attention to history gives us resources for arguing for a particular conception of rights or for making a case for taking a particular stance on an issue. But for those who are less guarded about this way of proceeding, this book is certainly a good model for how to draw productively on the historical evolution of the idea of rights to reveal avenues for tackling the issues to which the idea of rights gives rise.

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