

## **Relativism and Rights A Reply to Harman**

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To refute moral relativism is more than I aspire, either in the paper<sup>1</sup> to which Professor Harman now responds or in this note. Instead, my goal has been the more modest one of defusing the temptation toward relativism, of showing that even so ingenious a proponent as Harman can provide no convincing reason to abandon nonrelativistic ethics.<sup>2</sup> In his latest essay, Harman renews the challenge on two fronts. First, he reasserts his earlier claim that the greater weight of the duty to refrain from harming others than of the duty to render aid is best explained by positing an implicit bargaining process between the rich and the poor. He criticizes my attempt to explain the asymmetry between the two duties through a Lockean theory of natural rights. Second, Harman maintains that only a relativistic analysis can satisfactorily ground a theory of natural rights. I shall respond to each assertion in turn.

### **I**

Harman's sociological explanation of the puzzling harm/aid asymmetry is clear and uncomplicated. One may suspect though that, in this case, simplicity is a flaw and not a virtue. Would the hypothesized bargaining process yield just the outcome that Harman suggests it does? The answer is underdetermined; one needs to know a good deal more about the attitudes of the bargainers to derive any unequivocal result. Are the bargainers motivated only by purely egoistic concerns, or are they possessed of various other-regarding preferences which they also attempt to realize? (An assumption of unmitigated egoism is theoretically tidy, but it jeopardizes the realism of what purports to be a piece of empirically grounded sociology.) Any actual person will bring to the bargaining process antecedently held moral convictions which he will attempt to project into the resulting agreement.<sup>3</sup> Harman's faceless contractors, however, are not presented as valuing anything other than their own physical and economic well-being. Their conception of the good is so straitened that one can hardly recognize them as moral agents at all. Whatever the results of their deliberations, no reason

has been given to show that these results can validly be generalized to any actual society.

Even within the limits Harman imposes, the result is questionable. He defends his equation of the rich and the strong by noting, "The rich can afford armies." Surely Harman is correct to emphasize the connection between wealth and strength. However, at least since Plato and Aristotle, political theorists have also noted that the poor tend to be the most numerous element within any society. In numbers too there is strength. How these two sources of power will play themselves out within any particular political structure is an enormously complex matter. Different regimes exhibit different balances established among social classes. A contractual scenario that insists on identifying strength with wealth can muster little conviction as a generalizable explanation of the source of duties concerning harm and aid.

Harman notes that what counts as (proscribable) "harm" is itself indeterminate. "The duty to avoid harming others is not a duty to refrain from anything that is against another person's interest. If one raises one's prices, that makes things more expensive for others without harming them in the relevant sense. . . . The duty to avoid harming others is a duty to avoid certain specific harms." The point is well taken. Both relativist and nonrelativist can agree that the class of harms recognized by a society as wrongful may depend, to a large extent, on that society's material base as well as other factors.

This observation, though, is accorded little weight in the sociological account Harman provides. It is left unexplained why an arrangement between the rich and poor should result in the kind of construal of harms seen in actual societies. Why, for example, would Harman's contractors classify infanticide as a serious harm? Infants are, after all, in a notoriously poor bargaining position. Or, to cite Harman's own example, why ought it be an impermissible harm to kill one patient to distribute his organs and so save five healthy ones? The rich and poor are roughly equal in susceptibility to degenerative disease; one would expect that they would be more in accord concerning redistribution of bodily parts than redistribution of proceeds from a progressive income tax! The proposed sociological derivation poses at least as many questions as it resolves.

Even if appeal to a conventional undertaking could explain why persons come to hold particular moral beliefs, it would not *justify* them. Indeed, the reverse is more likely to be the case. Suppose that a strong duty not to harm and a weak duty to render aid are the best results that the poor can achieve from a grossly unequal initial bargaining position. One who is apprised of this result will then be inclined to revise his commitment to these duties. He will have discovered that there is nothing in the nature of harming that makes it a more egregious offense than is the failure to aid. It is only that the rich could not be budged into more than a token acknowledgment of a duty

to help the unfortunate. This discovery is apt to undercut the intuition that the duty to avoid harm is of greater urgency. It is odd that, if convention is the foundation of morality, to unearth the relevant convention and exhibit it in all its clarity is more likely to disconfirm than confirm the moral agreement alleged to derive from it.

Harman objects, "But that would be to assume that moral relativism is false." Precisely so. An avowed relativist will not discount a moral belief shown to be a compromise of this sort. However, Harman has been attempting to demonstrate that moral relativism best explains our intuitions concerning harm and aid. It will not do to turn around and say that recalcitrant intuitions should be set aside because they imply the falsehood of moral relativism. The defense is infected by an air of circularity.

Harman could (and, as I read him, does) respond to these criticisms by claiming that my parsing of the harm/aid dichotomy in terms of Lockean natural rights is equally sketchy and rests on unsupported assumptions. The charge is justified. I have neither argued for the truth of a Lockean ethic nor demonstrated that it yields a treatment of harms more or less congruent with ordinary moral beliefs. At most, I have suggested one alternative to moral relativism and set out a prospectus for its extension to the problem with which Harman deals. We both maintain that utilitarianism is ill-equipped to distinguish adequately between harming and the failure to aid; neither of us has constructed a full-blown replacement of utilitarianism.<sup>4</sup>

The admission does not disable the foregoing criticism. Its aim was modest, merely to show that Harman has provided us no convincing reason to adopt a stance of moral relativism. That is because a nonrelativistic Lockean theory of natural rights is at least as likely a contender to ground duties concerning harm and aid as is relativism. Only if the Lockean account can be demonstrated to be defective will relativism emerge as the most plausible explanation. This might appear to be an inconsequential quibble over on whom the onus of proof falls, but that is not its intent. Rather, it rests on a distinction between not having a good reason to accept some proposition *p* and having a good reason to reject *p*. My argument addressed only the former.

## II

In "Moral Relativism as a Foundation for Natural Rights," Harman offers a new brief for moral relativism. "Anyone who believes in natural rights had better be a moral relativist if that belief is to receive an adequate foundation." If he is correct, one might be willing to excuse many other deficiencies in the moral relativist's case. The great scandal of contemporary moral philosophy is its unwillingness or inability to justify appeals to natural rights. No one has succeeded in showing whence they derive, what they include, or how one comes to know their content; indeed, hardly anyone has

even tried. That has not prevented philosophers from invoking a veritable bestiary of such rights. At no time within living memory has the discussion of rights been so animated; at no time have the foundations for such discussion been so slighted.

Can moral relativism provide a cogent grounding for natural rights? It cannot. Indeed, relativism and natural rights are logically incompatible. Harman defines "natural rights" as "rights people have simply in virtue of being people." If moral relativism is true, then there can be no rights in this sense because no moral claims follow from a simple ascription of humanity. Rather, morality results from an implicit bargaining process among individuals. The claims people press are a function of the powers and resources they wield. Whatever moral dicta they arrive at hold good only for those who have implicitly agreed to abide by them. They cannot be generalized to humanity at large, and even if they could, rights would be held by virtue of the agreement, not because simply being human entitled one to certain protections from interference.

This result is not surprising. If relativism is true, then all morality is conventional. Natural rights, by definition, are not conventional. If any exist, then moral relativism is false. The surprise is that Harman could have thought otherwise. What can account for the attempt to solemnize so unlikely a marriage?

One possibility is that Harman does not, in spite of his stated intention, wish to advance a natural rights theory at all. Rather, what genuinely interests him is explaining moral agreement *within a society*. Because some of these agreements concern protections extended equally to all contractors, there exist generally recognized conventional rights. But if this captures Harman's aim, his characterization of natural rights as those held simply in virtue of one's humanity is seriously misleading.

A second possible reconstruction of his argument is to take natural rights as both conventional and universal. This can work only if there are some moral claims which are so appealing that any group of contractors, however situated, will agree amongst themselves to respect those claims. The claims' authority is due to agreements in intentions, but because everyone will have reason to accept them, they function identically to (non-relative) Lockean rights.

Two problems beset this ploy. First, nowhere has Harman given any indication that there are moral claims that all rational beings will acknowledge as binding. Instead, he argues that cannibals, Murder, Incorporated employees and their ilk will fail to be motivated by inner judgments that Lockean hold to be entailed by natural rights.<sup>5</sup> Second, moral bargaining and resultant agreements in intentions play a pivotal role in Harman's relativistic account. Only so, he argues, can the motivational force of moral judgments be understood. But if there exist moral claims to which any rational and well-informed being must accede, the bargaining process is short-

circuited. Agreements will be universal because all participants have reasons in common to accept these claims. It would then be the *reasons themselves* that justify the moral claims; bargaining becomes redundant. In effect, the relativism of Harman's moral relativism disappears.

I conclude by reiterating my previous judgment: there is no persuasive reason to adopt a relativistic account of morality. Moreover, anyone who believes in natural rights had better not be a moral relativist; natural rights and moral relativism do not mix.

### NOTES

1. "Harman's Moral Relativism," *Journal of Libertarian Studies* 3 (1979): 279-91, by the present author.
2. Harman refers to the denial of moral relativism as "moral absolutism." The label is not a fortunate one. It suggests a rigidity that few nonrelativists will care to espouse. A non-relativist may hold all of the following: (i) although any adequate moral theory must acknowledge the significance of such concepts as *liberty*, *harm* and *property*, what counts as liberty, etc. may be a variable function of different social conditions; (ii) fundamental moral principles may yield different moral rules in different societies; (iii) not all beings who fall under the scope of morality do so in the same way—for example, animals, fetuses, children, the severely retarded and yet others may each merit a special moral status.
3. If morality is *entirely* due to a process of bargaining, then one must be able to tell a credible story about how beings with no moral beliefs can come together to deliberate over a mutually agreeable moral code. I have not seen such a story and suspect that it cannot be produced. If this suspicion is correct, then moral relativism is incoherent. I confess that I do not know how to turn my suspicion into a convincing argument.
4. Harman reads my criticism of utilitarianism as primarily a complaint that strong duties to render aid will prove impossibly burdensome to one with his own projects to pursue. I accept that appraisal of utilitarianism but wish to go beyond it by maintaining that the crucial breakdown of utilitarianism concerns its metaphysics; utilitarianism ignores the uniqueness of the connection between an agent and his own ends. (See "Harman's Moral Relativism," p. 289.) A fuller and, I hope, more lucid statement of that argument can be found in my "A Refutation of Utilitarianism," unpublished: distributed as an Institute for Humane Studies Working Paper (Menlo Park, California).
5. Gilbert Harman, "Moral Relativism Defended," *Philosophical Review* 84 (1975): 4-8.