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Problems at the Roots of Law: Essays in Legal and Political Theory by Joel Feinberg (book review)

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however, demand a repudiation of the justificationist's general principles. "He will still hold that a statement about the past can be true only in virtue of an actual or possible direct observation of it. But he will take a more realist attitude to whether such a direct verification was or could have been carried out" (p. 70).

"The Metaphysics of Time" offers a stimulating discussion of the four possible metaphysical positions regarding the present, past, and future: (1) only the present is real; (2) the future is real, but the past is not; (3) the past is part of reality, the future is not; (4) the past and future are both real. Dummett offers trenchant objections to the arguments of the first three positions and then defends the reality of past and future as "regions of reality determined, at any given moment by our temporal perspective, as it is at that moment" (p. 86). While God apprehends things as they really are in themselves, we humans cannot attain a description of reality as wholly independent of our temporal, changing experience. In view of these new reflections, Dummett's brief discussion of the metaphysical implications for theistic belief does not (nor can it in this short essay) engage the issues raised by Dummett's philosophical critics on these theistic questions. And he acknowledges that the theologians may well "spurn" his speculations. This writer believes, rather, that more theologians (and historians) ought to be engaged by Dummett's reflections on the past and future, for he offers much that could stimulate and challenge their thinking.—James C. Livingston, *The College of William and Mary*.

FEINBERG, Joel. *Problems at the Roots of Law: Essays in Legal and Political Theory*. Oxford: Oxford University Press, 2003. vii + 199 pp. Cloth, \$45.00—This is, regrettably, the last book from a prolific writer, published only a few months before his death in March of 2004. Joel Feinberg was a widely respected author and teacher at the University of Arizona where he held the Regents professorship in philosophy. His most influential works include his massive four-volume study of harm and punishment in criminal law, and several collections of his essays, of which the present volume is the fourth. Throughout his writings, Feinberg's work explores the tense relationship between autonomy and paternalism in a liberal state, particularly as relevant to questions of public harm and criminal responsibility.

In this book Feinberg presents seven essays that explore various topics in law, morality, and political theory. The first two essays deal with questions about the relationship between morality and legal theory. The first essay, on natural law jurisprudence, offers a compact introduction to the debate between legal positivists (notably H. L. A. Hart) and natural law thinkers (notably Lon Fuller and Lloyd L. Weinreb). Focusing on the fugitive slave cases during the American Civil War, Feinberg argues

that the unquestionable immorality of slavery suggests the illegitimacy of laws institutionalizing it, and thus at least in extreme cases the legitimacy of a law can turn on the morality of the institutions it serves.

In the second essay Feinberg develops a defense of a role for moral rights in political and legal decision-making. Feinberg argues against the view, espoused by theorists like Raymond Frey, who believe that a claim of moral right is merely a confused claim of legal rights. Feinberg disagrees, arguing that in familiar language it is common to speak of moral rights preceding their legal recognition (for example, women had a moral right to vote before having a legal one), sometimes moral rights conflict with law and legal institutions (for example, the moral right to rebellion), and that many commonplace moral rights are enjoyed without the need for state recognition (for example, being treated with respect). Feinberg further argues that since moral principles derive from reason, they require no institutional base. Unfortunately, however, Feinberg does not provide or even intimate how it is that reason provides justification for moral principles. He realizes the need for some sort of metaethical account, but he asserts that it is beyond the scope of his essay.

The next three essays deal with a number of particular legal issues, criminal entrapment, attempted criminal acts, and the justification of government subsidies for the arts. Criminal entrapment occurs when government agents provide the circumstances for the commission of a crime that might not otherwise have been committed. Feinberg uses his discussion of the criminal law of entrapment to explore whether it is conceptually possible for one person to cause another person to commit a voluntary act. Feinberg argues that if the government is permitted randomly to test the propensities of individuals to commit criminal acts, then the government might pose a greater danger to autonomy than the would-be criminals that it would seek to ferret out. Similarly, in an essay on criminal attempt, Feinberg examines the ancient problem of punishing those who fail in an attempt to commit a crime. Focusing on moral culpability rather than actual harm committed, Feinberg argues for greater proportionality in punishing attempted crimes and successful criminal acts. He suggests that by trying to void moral concepts, recent philosophers have muddled the issue. In the essay on justification of government subsidies for the arts, he argues that any theory of justification for government subsidies rests on a corresponding theory of political liberty.

The final two essays consider perpetrators of cruel and senseless crimes. Feinberg observes that such perpetrators are described as either mentally ill or "sheer evil." Those advocating the medical view of illness tend to find the moral language of evil to be vague, and those advocating evil as the proper descriptor find the medical definition to be obscure. Feinberg surveys a number of approaches to understanding "sheer evil" and mental illness, arguing that the distinctions between normal and evil and healthy and ill are complex and richly textured. In the last essay he briefly explores the intermixing influence that psychology and philosophy have had in working out conceptualizations of aberrant behavior.

At times, these essays could provide more historical context, particularly of the complex understandings of law, freedom, evil, health, and sin as developed by ancient and medieval philosophers and theologians. The essays on the moral and psychological meanings of evil, for example, could benefit in particular from a discussion of Christian thinkers like Augustine, whose conceptualization of evil had influence on a wide range of modern theorists, from Freud to Hannah Arendt. At times, Feinberg seems to grope to rediscover concepts and arguments that have been debated for centuries.—Kevin Lee, *Ave Maria School of Law*.

FEIST, Richard, Editor. *Husserl and the Sciences: Selected Perspectives*. Philosophica, vol. 55. Ottawa: University of Ottawa Press, 2004. x + 230 pp. Cloth, \$35.00—This collection appears to have begun life as a conference volume, which helps explain the geographical spread of the contributors (four are at institutions in Montreal, one in Ottawa, one at the University of Western Ontario, and the remaining four from Europe). The geography is nonetheless suggestive, insofar as Ottawa and Quebec represent an area of overlap between the English-speaking and Continental European philosophical worlds. For many reasons, a consideration of Husserl's views on the sciences falls within a similar area of overlap in intellectual space (although, with one possible exception, all contributions to this volume are sufficiently "analytic" in style to be easily accessible to analytically trained readers).

It should be said that the title is slightly misleading. Most of the chapters in fact focus on either mathematics (which in English, at least, is not usually called a "science"), the mathematical foundations of physics, or epistemological issues about science in general (as opposed to "the sciences" individually). This focus is unsurprising, given Husserl's well-known interest in both mathematics and such general epistemological issues. For the same reason, however, it makes the collection somewhat less exciting than the title might suggest.

Nevertheless, the volume as it is contains some very interesting contributions. I found this especially true of those in part 2 ("Phenomenology, Mathematics, and Physics"). All five discuss the relationship between Husserl's views and those of philosophically minded mathematicians (and mathematical physicists) who influenced or were influenced by his thought. Particularly prominent is Herman Weyl, explicitly in the contributions by Feist ("Husserl and Weyl: Phenomenology, Mathematics, and Physics") and John Bell ("Herman Weyl's Later Philosophical Views: His Divergence from Husserl"), but also in that of Mathieu Marion ("Husserl's Legacy in the Philosophy of Mathematics: From Realism to Predicativism"). Those three chapters have to do mostly with the reception of and reaction to Husserl's work (although Marion is also concerned to adjudicate between Weyl's early predicativist reading of Husserl and Gödel's realist one). The remaining two aim more squarely at understanding Husserl's own thought and placing it