THE MAN WHO MISTOOK HIS LIFE FOR A PLANT

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According to the naturalist conception, moral knowledge is knowledge of how to live so as to flourish, to achieve well-being.¹

Flourish . . . to grow luxuriantly, or thrive in growth, as a plant: The African violet flourished.²

As I assume that other participants to this Symposium have already made clear, Morality, Politics, and Law is a dauntingly ambitious attempt to ground modern constitutional law in a comprehensive political philosophy. Few of us would have the confidence to attempt such a feat, fewer still would have the mastery of contemporary philosophy and jurisprudence needed to make the attempt credible. There is much that I admire in Professor Perry's analysis, particularly his discussions of foundationalism and judicial prudence. The book displays formidable intelligence, vast erudition, and a passionate sense of justice.

In an ordinary book review, I would devote considerable space to describing these strengths of the book. In the context of this Symposium, however, such a description would be superfluous, and a more focused treatment is called for. Consequently, I will limit my comments to a single aspect of the book, Perry's naturalistic moral theory (NMT). Specifically, I will discuss the problematic concept of individual flourishing, which plays a central role in Perry's version of NMT. Before turning to a discussion of NMT, however, I need to explain the title of this Essay, which some readers understandably may find mysterious.

The title of this Essay is drawn from Dr. Oliver Sacks's book, The Man Who Mistook His Wife for a Hat and Other Clinical Tales. In the title essay of the book, Dr. Sacks, a neurologist, describes his meeting with a patient he calls Dr. P., a "musician of distinction, well-known for many years as a singer,

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² THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 546 (1979). This is not listed as the first definition, but it is the one most closely related to the root florere, a Latin verb meaning "to bloom."
and then, at the local School of Music, as a teacher.”3 Dr. P. was “a man of great cultivation and charm who talked well and fluently.”4 He was also, as Dr. Sacks was to learn subsequently, a gifted musician with the “most incisive musical intelligence.”5 And yet something was amiss, something that became suddenly apparent as the interview progressed. After a routine reflex test, Sacks waited for the patient to put his shoe back on. But Dr. P. seemed unable to find it, even though it was right in front of him. After a couple of further tests Dr. Sacks observed:

I must have looked aghast, but he seemed to think he had done rather well. There was a hint of a smile on his face. He also appeared to have decided that the examination was over and started to look round for his hat. He reached out his hand and took hold of his wife’s head, tried to lift it off, to put it on. He had apparently mistaken his wife for a hat!6

His curious visual defect did not reflect any lack of high intelligence or visual acuity in the ordinary sense. Dr. P. could see perfectly well and could describe his surroundings in great detail; he simply couldn’t identify what he saw. For example, when asked to identify a glove, Dr. P. examined it closely and reported that it was “[a] continuous surface . . . infolded on itself. It appears to have . . . five outpouchings, if this is the word.”7 He then surmised that the glove might be a container of some kind, such as a coin-purse for coins of five sizes. No child could have engaged in such a sophisticated analysis, but any child, of course, would have recognized that a glove is a glove. Dr. Sacks was startled by this incongruity between his patient’s peculiar form of blindness and his obvious intelligence.

When reading Perry’s discussion of NMT, I sensed an incongruity similar (though obviously far less extreme) to the one that Dr. Sacks observed. What began in Perry’s book as a formidable intellectual analysis of moral reasoning—the very core of his work—suddenly seemed to go oddly off track, in a direction that seemed quite inconsistent with the general moral seriousness of the book.

The trouble began with the following passage:

4. Id. at 9.
5. Id. at 12.
6. Id. at 11.
7. Id. at 14.
The commitment to flourishing presupposed by naturalist ought-talk and in need of no justification is a person’s commitment to her own flourishing. To say that I am committed to my flourishing, to satisfying my interests, is not to say that I am committed—or that I ought to be committed—to your flourishing, to satisfying your interests.\(^8\)

At this point, I began to wonder whether I had properly understood the concept of moral flourishing in NMT. Was NMT a theory of morality or of self-gratification?

The ensuing discussion of altruism heightened my concern about NMT. Of course, even the most egotistical individual has some reason to regard the interest of others, but Perry seems skeptical that this self-interested motivation goes very far:

One way of looking out for my interests is to inhabit a society in which people help me and, in return, I help them. . . . Does my need for the cooperation (including the noninterference) of some other persons to satisfy some of my interests give me a reason to attend to the interests of other persons? Hardly. At most it gives me a reason to cooperate only with those persons with whom I need to cooperate, and even then only to the extent satisfaction of certain of my interests requires it. Even that claim is problematic, however: Perhaps my need for cooperation gives me a reason to cooperate only when feigning cooperation won’t do the trick. In any event, such limited self-interested cooperation, if altruism at all, is hardly a robust altruism.\(^9\)

“For the naturalist,” as he says, “‘Why be moral?’ means ‘Why try to flourish?’ . . . .”\(^10\) Thus, under NMT, if altruism is to be defended, it must be done by showing that respect or concern for others is a good path to personal flourishing.

In part, it was this backhanded treatment of altruism that suggested the analogy to Dr. Sacks’s patient, Dr. P. Neither situation involved an intrinsically odd action. It is not bizarre for a man to gesture toward his wife’s head, nor is it peculiar that Perry is interested in the concept of flourishing. Rather, in both situations, the oddity resides in the incongruity between the action and its purpose.

The oddity in Dr. P.’s behavior was his belief that he was reaching for a hat. Similarly, it struck me, at least initially, as

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8. M. Perry, supra note 1, at 21.
9. Id. at 22.
10. Id.
being almost as peculiar that Perry was presenting NMT as a moral theory. The principal subject of morals, one would have thought—I had thought, anyway—was how to treat other people, not how to be nice to yourself. And yet, NMT seemingly focuses primarily on the latter question, at least as its analytic starting point. Just as Dr. Sacks’s patient should not have reached to his wife if he wanted his hat, perhaps Perry should not have reached for NMT if he wanted a moral theory.

As I reread the first portion of the book, besides being disturbed by the use of NMT as a moral theory, I became increasingly puzzled by NMT, and in particular by the concept of flourishing. The crux of NMT is that moral knowledge is “knowledge of how to live so as to flourish, to achieve well-being.” But the meaning of flourishing remains elusive. The following is as close as NMT comes to providing a definition of flourishing:

> Of course there is moral knowledge in the sense of at least some rationally acceptable beliefs about how particular human beings ought to live if they are to flourish—believes about what they should do or refrain from doing if they are to live lives as deeply satisfying as any of which they are capable.

Thus, flourishing is defined in terms of its connection with experiencing deep satisfaction.

There are, it seems to me, two ways to understand this definition. First, being deeply satisfied could be seen as a matter of psychological fact, like other emotional states. This reading is suggested by Perry’s aspiration to provide a naturalist theory, by which he means one that treats moral virtue as something akin to physical or mental health. With this reading, the goal of attaining a satisfying life seems appropriate for the patient in psychotherapy, but rather far from being an adequate moral goal. At least, it is not at all clear that maximizing one’s feelings of self-satisfaction is either a necessary or desirable goal in life, or even that self-satisfaction is a desirable state of mind.

The implausibility of viewing satisfaction as the chief moral value is easily seen. Suppose some chemist invented a new

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11. Perry maintains that a moral theory could simply concern self-aggrandizement. See id. at 223 n.56. This is contrary to what I understand to be ordinary usage, but I see no reason to fuss about semantics.
12. Id. at 11.
13. Id. at 12 (emphasis in original).
14. Id. at 215 n.17.
improvement on heroin, so that one dose produced powerful, permanent feelings of smugness and self-satisfaction. Then on this reading of NMT, the highest moral good would consist of use of this new drug, because it would produce the strongest possible feelings of satisfaction. In fact, Perry's discussion of utilitarianism contains a rather similar argument about why satisfying preferences is not necessarily good. Thus, it is plausible to assume that NMT is not based on a view that feelings of satisfaction have inherent moral value.

Other passages suggest the second possible interpretation of NMT. In defending flourishing as the ultimate moral value, Perry asks what can be said to someone who is not committed to flourishing. His reply is that "'[m]oral discourse always presupposes the acceptance of humanity and the striving to be and to become ever more fully human.'" Toward the end of the book, as well, he speaks admiringly of feminist thinkers who have explored the fundamental question of what it means to be authentically human. These passages intimate the possibility that to say someone is deeply satisfied is not simply to say that they are feeling very pleased with themselves. Instead, being deeply satisfied means being satisfied in a more authentically human way.

Unfortunately, Perry does little to elucidate the concept of human authenticity. It is difficult to conceive of how authenticity in Perry's context can be used in a purely descriptive sense, merely to give a factual description of some lives as opposed to others. If an authentic Van Gogh is one painted by Vincent, an authentic human life is presumably one lived by a member of Homo sapiens. Hence, to say that someone is "acting like a real human being" is somewhat peculiar. She is a real human being, so how else can she act? Obviously, we are not making anything like a factual judgment in such statements. Instead, we are dispensing moral compliments.

Perhaps, then, the term "authenticity" is used in NMT to convey a moral judgment of some sort. But to say that humans should seek authentic humanity or the truest possible satisfaction, meaning those terms in some unspecified normative sense, is only to restate a moral question in different terms. Instead of

15. *Id.* at 79-81.
16. *Id.* at 17 (quoting R. Unger, *Knowledge and Politics* 196 (1975)); see also *id.* at 22-23.
17. *Id.* at 183.
seeking the moral course of action, we are asking what course of action would be taken by moral individuals or will lead to justified moral satisfaction afterwards. In other words, if you do the right thing, you will have the moral satisfaction of knowing that you did so. No doubt this is true, but it does not seem to advance the analysis very much. Instead, we apparently have come full circle by defining morality to mean flourishing, flourishing to mean authentic satisfaction, and authenticity to mean moral virtue.

Either reading of NMT—flourishing as psychological satisfaction or flourishing as authenticity—seems to leave in doubt its status as a truly naturalistic moral theory. On the first reading, NMT is naturalistic but rather doubtfully moral because it is devoted only to enlightened self-gratification. On the other reading, NMT is moral but not fundamentally naturalistic because the reference to personal flourishing turns out to be only a proxy for other normative judgments, serving little function in the analysis.

Thus, the concept of flourishing in NMT is quite unclear and seems (at least as developed so far) to be incapable of forming the basis for a naturalist theory of morality. What is clearest about this concept of flourishing, however, is also what is most disturbing: its radically individualist foundation.

Perry attacks liberal philosophers, with some justification, for having an unduly restricted vision of the self, a vision that makes a person's core personal commitments peripheral to her sense of identity. However, the vision of the self in NMT is also troublesome. NMT takes as axiomatic the individual's commitment to her own flourishing. Indeed, as we have seen, it is altruism that is problematic under NMT, not egoism. But if, as Perry acknowledges, human life is inevitably social then flourishing need not be defined as an individual attribute. Perry finds it natural for people to seek individual flourishing, but if humans are inevitably situated in society, perhaps their natural goal instead is toward social flourishing as part of a family, religion, or society. NMT takes individual flourishing as axio-

18. Id. at 59-61, 72-73, 216 n.19.
19. Id. at 18.
20. See id. at 217 n.21.
21. Perry recognizes, of course, that an individual's preferences may involve the welfare of others. But this may be too individualistic a formulation. Many people may define themselves in ways that do not fully distinguish their own interests from those of
matic and then seeks to derive social flourishing as a necessary means. With equal plausibility, however, we could reverse the reasoning by taking collective flourishing as the premise, and then showing how collective flourishing entails personal freedom and the pursuit of individual fulfillment.

NMT’s individualistic vision of the basis of morality seems to leave too little room for any concept of justice, which, after all, involves treating other individuals fairly when their interests or views conflict with one’s own. The liberal philosophical project seeks a fair framework for resolving such disputes without taking sides on the merits of the contesting views. It is not surprising that Perry rejects the liberal project. The basis of that project is that there are limits to how far one can pursue one’s own flourishing at the expense of others. But, as we have seen, NMT begins with the contrary assumption that only the individual’s interests have ultimate ethical weight; the interests of others are to be considered only to the extent that doing so makes us feel better about ourselves.

To be sure, one can make a fetish of giving equal consideration to the views of others, at the expense of treating oneself in some sense as a stranger. Some theories of liberal neutrality seemingly require a form of self-alienation, in which one’s own values are given little more weight than those of the neighborhood ax murderer. But while liberal philosophical theories—like other philosophical theories—are subject to serious criticism, they also (like many other philosophical theories) embody a sound insight: that we are not entitled to flourish regardless of the cost to others.

Given the difficulties raised by NMT, it is fortunate that NMT does not play a major role later in the book. When Perry discusses actual ethical issues, references to personal flourishing are usually absent. For example, in chapter six, he discusses the others. One can imagine individuals who lack these social and emotional bonds, but they might reasonably be considered exceptional cases. At least, it is far from unthinkable that a person would not regard his personal flourishing as a crucial goal. It is also more than a little thinkable that a person might recognize other proper motives for action apart from self-fulfillment: religious people might engage in certain conduct, not because it will lead them to flourish (even in the after-life), but simply because God said to do it.

22. M. Perry, supra note 1, at 68. Perry views this as a nonsensical project because a version of justice is ultimately just another view of the good, an argument that “certain political and legal arrangements are better than others for human beings.” Id. This phrasing itself is quite revealing, for on these terms NMT itself does not even qualify as a theory of the good. After all, it focuses not on what is good for human beings (plural), but only on what is best for oneself.
moral obligations of judges. Why, he asks, should judges seek to ground decisions in the Constitution? The answer: "By oath a judge has sworn to support the Constitution."\(^2\) Thankfully, he does not seem to find it necessary to consider the judge’s feeling of self-gratification as the basis for answering this question. And in his thoughtful discussion of civil disobedience, the key ethical factor does not seem to be (as NMT might have suggested) whether civil disobedience would be a good "growth experience" for the protester.

Similarly, when Perry talks about equal protection, he has no doubt that the interests of everyone must count alike and that the government may not weigh the well-being of one person or group over that of another.\(^2\) This appears logically inconsistent, however, with the premises of NMT, under which a person should ultimately give moral weight only to her own flourishing. If the equal protection clause is morally correct, it would seem that those in power should not pursue their own flourishing at the expense of others.

Yet NMT cannot be neatly severed from the rest of the book. Even in the discussion of constitutional issues, NMT sometimes intrudes. When Perry inquires about the ethical foundations for commitment to our constitutional community, his answer harkens back to NMT:

As members of the constitutional community we participate in a form of life that is both a personal and a collective good (good for “me” and good for “us”)—a form of life that enables us, both individually and collectively, to make progress, however halting, in realizing our true selves and in achieving well-being. Were we deprived of or cut off—alienated—from the constitutional (or an equivalent) community, in the way the victims of authoritarian and totalitarian societies are deprived of such a community, we would, we believe, be seriously diminished.\(^2\)

This passage retreats from the individualistic premise of NMT by introducing the ideal of collective flourishing, but it remains centered on self-benefit. It is our own enlightened self-interest that ultimately underlies our commitment to the Constitution, as opposed to our commitment to justice for others. This is an uninspiring portrait at best. To fight injustice is ennobling.

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23. Id. at 134.
24. Id. at 176.
25. Id. at 158-59.
combat injustice in order to achieve personal (or even collective) nobility, however, is in some sense a bit squalid.

The vision of human life reflected in NMT is on the whole curiously self-absorbed. NMT sometimes appears to envision a person's life almost as if it were a house plant she owned, in constant need of watering, fertilizer, and light. Am I flourishing enough? Or do I need some more light? This anxious self-absorption seems rather in tune with the spirit of the 1980s, but it also excludes much of what is most valuable in human life. Certainly it excludes much of what we commonly consider morality, which is based precisely on determining the demands that others can properly make on us.

Everything about Michael Perry demonstrates that he is not the ethical narcissist portrayed in NMT, and that on the contrary he is deeply committed to social justice. Why, then, does he profess a theory that falls so short of his own moral understanding?

The answer, I believe, is to be found in the broader currents of legal scholarship. Under the mores of contemporary legal scholarship, it is not enough to care for social justice: one must have a philosophical theory of justice. Such theories, unfortunately, often seem to caricature somehow what they seek to define. Despite his own best instincts, Perry appears to have been unable to resist the pressure toward abstraction that led him to NMT. Thus, while the strengths of Perry's book are distinctively his own, the weaknesses are symptoms of a general malaise in legal scholarship—the continuing obsession with abstract theory.

Interestingly enough, Dr. Sacks's case study ends with a similar observation about the value of the particular over the abstract:

Dr. P. had abstract attitude—indeed, nothing else. And it was precisely this, his absurd abstractness of attitude—absurd because unleavened with anything else—which rendered him incapable of perceiving identity, or particulars, rendered him incapable of judgment.

By a sort of comic and awful analogy, our current cogni-

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26. One of my colleagues, who has asked to remain anonymous, suggests that an appropriate "But cf:" citation here would be the now famous remark of Colonel Oliver North's lawyer, "Well, sir, I'm not a potted plant." N.Y. Times, July 10, 1987, at 7, col.1.

27. See id. at 34-35, 282 n.26 (on the virtues of being particular).
tive neurology and psychology resembles nothing so much as poor Dr. P.! We need the concrete and real, as he did; and we fail to see this, as he failed to see it. Our cognitive sciences are themselves suffering from an agnosia essentially similar to Dr. P.'s. Dr. P. may therefore serve as a warning and parable—of what happens to a science which eschews the judgmental, the particular, the personal, and becomes entirely abstract and computational.\(^\text{28}\)

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28. O. SACKS, supra note 3, at 19-20 (emphasis in original). In another relevant passage, Dr. Sacks adds:

Neurology and psychology, curiously, though they talk of everything else, almost never talk of 'judgment'—and yet it is precisely the downfall of judgment (whether in specific realms, as with Dr. P., or more generally, as in patients with Korsakov's or frontal-lobe syndromes . . .) which constitutes the essence of so many neuropsychological disorders. Judgment and identity may be casualties—but neuropsychology never speaks of them.

And yet, whether in a philosophic sense (Kant's sense), or an empirical and evolutionary sense, judgment is the most important faculty we have. An animal, or a man, may get on very well without 'abstract attitude' but will speedily perish if deprived of judgment. Judgment must be the first faculty of higher life or mind—yet it is ignored, or misinterpreted, by classical (computational) neurology.

Id. at 19-20 (emphasis in original).

Dr. Sacks closes with a lament that he was unable to keep in touch with his patient. Id. at 20. We can all be grateful, however, that we can look forward to seeing much more of Professor Perry's challenging work.