

Book Reviews

JOSEPH MARGOLIS. *Negativities: The Limits of Life*. Columbus, OH: Charles E. Merrill, 1975. pp. ix, 166. \$5.95, paperback.

Margolis opens on a confessional note: "I have written these essays out of necessity" (p.v). The Epilogue explains that his negativities are "deprivations or limitations of life or of some condition preeminently valued by human beings" (p. 157). The eleven specimens discussed here are Death, Suicide, Abortion, War, Crime, Punishment, Illness, Insanity, Perversion, Waste, and—incongruously yet fashionably—Inequality.

Excited by his list, readers of *Teaching Philosophy* will now be asking how useful or otherwise this book could be to those who want to show the relevance of our discipline to questions which are important for living. For "given the insistence on 'relevance', it is most instructive to see how very little has actually been done" (p. vi). The answer is that *Negativities* will be much less directly helpful in the classroom than it might have been. However, by indicating some of what are from this point of view defects, I may yet increase its indirect contribution.

After first, as we have seen, witnessing to his personal imperative Convert Margolis continues his testimony: "... my previous work failed to include a sustained effort to show how to analyze the principal categories bearing on conduct in a way that remained informed and professionally vigorous as well as responsive to the need that we all have to take a stand on the deepest problems of life . . . That is all changed now" (p.v). Though relevant to practice such analyses by themselves do not, of course, entail any particular decisions about what ought or ought not to be done. Margolis maintains, without mentioning any names, that many of our contemporaries are so misguided as to suggest that some such entailments do hold: "A good deal of contemporary philosophy focused on questions of public policy invites us to believe that the analy-

sis of fundamental concepts somehow yields instruction about the rights and wrongs of personal conduct."

The truth is different, and on this count Margolis has nothing to repent: "I have never believed it, but instead have believed that philosophy must give way to ideology where commitment is concerned . . . What I have tried to do here is to show both how remarkably systematic are our informal views of an entire array of categories . . . and how philosophical analysis of each decisively bears on whatever doctrinal commitments we may make, without dictating the "correct" commitment" (pp. v-vi).

Let us waive the questions of how much Margolis wants to count as ideological; of whether, in Margolis, ideology is to be construed as always and exclusively normative; and of whether, for Margolis, "our informal views" themselves constitute not merely a systematic but even a correct commitment. We are not, I think, given a satisfactory answer to any of these basic questions; and certainly any course in which ideology is mentioned would need to get everyone much clearer about what ideology is supposed to be. It is also in the present perspective obvious that as teachers of philosophy we must approach all his negativities with an eye to picking out the key concepts, the crucial distinctions, the perennially ignored implications and non-implications of which any philosophically enlightened commitment will have as such to take account. These are the essentials for our syllabi. These are the insights which we have somehow to ensure that our students acquire.

(1) We begin, following Margolis, with "Death": in our end is our beginning. It is, I agree, right to make the central point an insistence that "*no internally coherent policy or commitment whatsoever is rationally precluded by man's understanding that he must die*" (p. 16: italics original). But, if that is indeed the main point to be got across, then we surely need to hear argument: first, to persuade us that the shortness of our lives does not necessarily make anything in those lives either less, or even more, valuable; and, second, to allow for the fact that, if we had

reason to believe in the possibility of a future elsewhere of a kind to be determined by our conduct here, then it would become paradigmatically prudent to make the appropriate adjustments in our current life-styles (if once this idea of a future life had been brought into the reckoning, tempting mention could have been made of the further, human-interest, philosophical question of what evidence—if any—should settle that issue!) Instead of trying to meet these objectives (or mentioning the further exciting question) Margolis rushes on to talk about “the right to life” in the Declaration of Independence (p. 17).

Earlier he made the distinction needed to dispose of the contention that no one can conceive of his own death. But then he says: “To think of one’s death is to think of a world in which, though one obviously still exists, one no longer exists” (p. 12). The unfortunate slovenliness could be put to salutary pedagogic use as an illustration of the importance of attentive word ordering. Let another generation be challenged, and guided, to get it right: “To think of one’s death is to think, though one obviously still exists, of a world in which one no longer exists”.

(2) “Suicide” gets off to a bad start: “As far as linguistic usage goes, there is no clear sense in which characterizing an act as an act of suicide entails its being blameworthy, evil, sinful, or reprehensible” (p. 23). Not only is this false, and obviously false, it is also flatly inconsistent with the main thesis of the chapter. That it is false is obvious from the fact that standard usage required us to speak not of suiciding but of committing suicide. This is why some of those—including the present writer—who repudiate the still established doctrine that to kill yourself is at least defeasibly wrong, make a practice of going against ordinary usage by employing the word “suicide” as a verb.

The main thesis of the chapter is that Durkheim’s value-free definition has to be seen as stipulative rather than descriptive: the word, says Durkheim, “is applied to all cases of death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result”

(quoted, p. 24). On the contrary, Margolis argues, of the cases collected by this Durkheim definition only those are called suicide which are disfavored by the norms to which the speaker attaches himself: “Suicide is an interpretative category imposed on acts characterizable in relatively neutral ways, in accord with a relevant doctrine or ideology” (p. 29).

(3) A main point which Margolis makes in “Abortion” is that, if you claim that the fetus is actually or potentially an innocent human life, and if you also allow abortion when there would be serious danger to the mother in the pregnancy going to term, then you have conceded that you have no absolute and indefeasible objection to the taking of innocent human life.

Margolis opens this argument by claiming “that the principle of innocence is, however useful, entirely vacuous, rather like the presumption of innocence in the law” (p. 40). This is a most unfortunate way of saying, as he is going on to put it later, “that innocence is a *ceteris paribus* consideration” (p. 42). Anyone who had teaching in mind would have seen this as an opportunity not just to allude to, but to explain, the notion of a defeasible presumption. Our philosophical mission to improve the quality of thinking requires us to enrich people’s private stocks of conceptual equipment.

Nor will it do to say that it is entirely vacuous “to claim that a fetus must be killed, if at all, only for some overwhelmingly good moral reason.” There is a world of difference between, on the one hand, that position; and on the other hand, the position of those who hold that a fetus has no rights. There is too another world of difference between those who defend and those who attack the presumption of innocence; and one not to be removed or minimized merely by observing that the methodological presumption of innocence is in no way to be equated with an assumption or a categorial affirmation that the accused is in fact innocent.

(4) The thesis of “War” is “that the very concept of war entails that justification for the wholesale destruction of life and property is *debatable*” (p. 59: italics original). Especially in these relativistic

days the conscientious tutor is in professional honor bound to press a question which may well not occur to any of his students: "Granted that some issue is in fact contested, may we immediately infer that it is also legitimately disputatious?"

(5) Why are there separate chapters first on "Crime" and then on "Punishment"? Margolis himself says: "There could not be a concept of crime if there were not also a concept of punishment" (p. 88).

The first chapter starts from "The embarrassment of penal institutions . . . their general ineffectiveness in reducing recidivism and reforming or rehabilitating criminals . . ." (p. 65). The second begins with the question: "What possible basis could there be for taking another's life *as a form of punishment?* . . . As far as the offender is concerned capital punishment serves no corrective or rehabilitative function or even a deterrent function (in the usual sense)" (pp. 79-80: italics original).

Here the failure of Margolis to ask himself the sort of questions with which I earlier suggested that the teacher ought to begin has set him off on wrong lines in his own meditations. For the very first thing to grasp before embarking on any discussion of possible justifications for punishment is the fundamental difference: between, on the one hand, reasons for having a system under which those who commit offences are punished; and, on the other hand, reasons why a particular person, or class of persons, should be punished, or punished in a particular way.

To questions of the first kind the decisively excellent answer has to be in terms of deterrence. Even the most lamentable of penal systems can scarcely be worse than the Hobbist state of nature. And the penal system as a whole may be having—indeed it always is having—enough deterrent effect to warrant maintaining some penal system as opposed to none: notwithstanding that there are—always—far too many offenders, who were by definition not effectively deterred; and notwithstanding that there will be—always—too many of these offenders who will not by their present punishments be

effectively deterred from committing future offences. To questions of the second kind the first essential answer is, but in a purely formal sense, retributive: the offender is presumptively liable to punishment precisely and only because he has committed an offense. But the universal appropriateness of this formal answer does not foreclose on the possibility of providing acceptable justification for inflicting particular sorts of punishment for particular sorts of offenses or particular sorts of offenders, in either deterrent (for others), or reformative (for them), or even substantially retributive terms.

It is the more important to insist in our teaching on this fundamental distinction because both penal reformers and sociological students of crime tend to attend above all to offenders. Criminologists have the strongest of occupational temptations towards this blinkered concentration. For convicted offenders, and in particular those who are at present confined, are conveniently collected. Yet this methodologically handy class certainly in two respects does not constitute a fair sample of all those whom we ought to consider in making our assessments of penal systems. For it does not include any representatives: either of those who offended but were not caught and convicted; or of those who did not offend at all. It will not do—though it is often done: either to ignore the former, and perhaps conclude that crime never pays, or to ignore the latter, and perhaps conclude that the threat of prison is not a real deterrent. Above all we must never forget that by far the most important, yet least quantifiable, measures of deterrent efficacy are the deeds which would be done if there were no penal system laboring to prevent such deeds; and done by those who are perhaps, as things now are, never even seriously tempted. I think here of Admiral Mahan's words on the fleet which stopped Napoleon's armies: "Those far distant storm-beaten ships, upon which the Grand Army never looked, stood between it and the Dominion of the world".

(6) In "Illness" Margolis argues, in my view rashly, that even physical medicine "is to be understood as a purely instru-

mental discipline subject to all the vagaries of ideological pressure" (p. 105). So, even though it "is a form of prudence concerned with the least changeable . . . stratum of our cultural life, . . . it cannot provide a model for the direction of any other of our cultural concerns" (p. 105). Margolis is, therefore, both here and in the following chapter on "Insanity", properly suspicious of present tendencies grossly to overextend the scope of the notion of mental illness. But, perhaps because he has already written much more fully on these topics elsewhere, in *Psychotherapy and Morality* (Random House, 1966), I doubt whether these two chapters would succeed in getting their message across to the student members of a psychotherapeutically oriented culture.

Here and elsewhere there are for this purpose too few illustrations. It is all very well to say: "In principle, insanity is a disorder of the prudential capacities . . . Therein lies the source of its social ambiguity. For it is entirely possible . . . to repudiate the usual prudential objectives, without in the least being irrational or incapacitated" (p. 116). But without illustrations, which could scarcely have failed to be entertaining and memorable, this statement will not enforce its message. In providing them Margolis would also have had to notice that his "disorder of the prudential capacities" might be: either a matter of a deviant preference structure, perhaps not accompanied by any intellectual incapacities; or a matter of intellectual incapacities, maybe not involving any deviant personal preferences. A disorder which is only a disorder in the first of these two interpretations ought not, surely, either to be rated as a mental disease or allowed to serve as a sufficient excuse in court?

In the first of these two chapters we read: "should the earth's pollution drive all human societies into the depths of the sea, at a level at which sunlight could not penetrate and artificial light would be impractical to sustain . . . there would no longer be a point to insisting that sight was the eye's function" (p. 99). On the contrary: precisely this is what such descendants could truly offer as an explanation of their possession of a no doubt in-

creasingly vestigial organ: the function of the vermiform appendix was, I have often been told, to digest grass.

(7) "Perversion" and "Waste" are both interesting chapters. To those about to present the former topic to a class I offer my favorite legend of the Chinese sage Lao Tsu. When the first bridges were built Lao Tsu condemned them as "unnatural." He scrupulously continued to wade or to swim his water obstacles. The typical contention of "Waste" is that "there is no way of specifying ecological imbalance, pollution, or waste independently of ideologically partisan preferences. Any scheme of human endeavour carried out on the scale that modern states are capable of cannot be viewed by the partisans of other states in terms of wasting or polluting resources" (p. 150; italics original).

The references to modern states, to their vast scale and even to ideological partisanship, are really beside the point. For the basis of the contention seems to be a definition of "waste" as "the depletion or unexploitability of a physical resource . . . viewed in terms of projects that might otherwise have been pursued" (p. 150). So everyone will have to say that all use of resources by anyone else is waste; if, but only if, he denies the fundamental legitimacy of the existence of, and any use of resources by, that other person. That waste in this, or any other sense, is something which cannot be identified without reference to human desires is not a sufficient warrant for suggesting that there cannot be excellent reasons for saying that this is waste and that is not, that all statements about waste are nothing but the expression of "ideologically partisan preferences." The going price of a 1970 Volkswagen Beetle cannot be determined without reference to human desires. Yet the person who informs you of what that going price is, is not necessarily expressing nothing but "ideologically partisan preferences."

In times when most of the young are only too willing to acclaim such relativistic and subjectivistic debunkings it is part of our job to make sure that the most plausible of rival views get a proper hearing. And we most certainly ought not ever

to present universals of the contemporary consensus as if we were boldly advocating some dashing heretical innovation: "It is obvious, for instance, that sex is politicized, even in bedrooms orthodoxly committed to preserving the race with the least amount of satisfaction" (p. 121).

(8) The first sentence of "Inequality" raises the hope that Margolis is going to make much of the fundamental distinction between equality of talents and equality of rights; and to bring out that the equalities of rights proclaimed in the great Declarations do not presuppose any equalities of talents. But this first hint is not taken up. Nor do we hear of that other fundamental antithesis, equality of opportunity as opposed to equality of final condition. That leaves us without the essential framework for understanding a radical and topical difference: between the egalitarianism of 1789—"la carrière ouverte aux talents"; and the egalitarianism of present day socialist ideologues—let no one be better off than anyone else (or at least not much).

Without such basic equipment neither Margolis nor his readers are prepared adequately to cope with the great IQ and Race Debate, to which he does rightly attend (pp. 137-8 and p. 142). With it we first insist that the immoral doctrine of racism maintains that it is permissible or imperative that people should be advantaged or disadvantaged on the grounds that they belong to some particular racial group. Next we appreciate that from no statement about the average abilities or inabilities of any group does anything follow about the abilities or inabilities of any particular member of that group. Furthermore, from no statement about the average talents of a group does anything follow, either about the general rights of that group, or about the particular rights of any individual who happens to be a member of it. So there is no inconsistency whatever in the position of those who, like the much harried and abused Jensen and Herrnstein: both insist that no individual *ought* to be either advantaged or disadvantaged because he happens to belong to this racial group rather than that; while nevertheless daring to suggest that in fact there *are* average differences in IQ

as between one such group and another.

It is an enormous reproach to teachers of philosophy, and a corresponding challenge, that in the early seventies so many of a generation of students went on the rampage against "Jensenism". They had, apparently, never been made to attend to the relevant distinctions; they could not see that the various crucial fallacies are fallacies; and they were themselves, one must presume, held back from racism only by a blind and obscurantist faith that there are not, there cannot, there must not be any average hereditary differences between racial groups. Did these stormtroopers of the New Left think that, if this were really what the facts are, then we ought to treat a black Einstein like a white fool, or any individual person on anything but his own individual merits?

In sum *Negativities* is not, and makes no claim to be, the set book for that swinging new course of "Relevant Philosophy." But it is a book to read and ponder during the preparation for that venture.

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GOLDING, MARTIN P., *Philosophy of Law*. Englewood Cliffs, NJ: Prentice-Hall, 1975. Paperbound. Foundations of Philosophy Series.

Professor Golding has written a concise summary of several standard issues currently taught as philosophy of law in philosophy departments, and in some law school seminars, by philosophers more commonly than by law professors. This brief volume contains discerning references to the literature familiar in those circles and, quite helpfully, reminds philosophers of, or gently suggests a first acquaintance with, other writers as diverse as Bobbio, Packer, and Selznick. Neither a taxonomist nor a chronicler, Golding has also included something of his own work as a philosopher of law. I shall first mention a few of the book's merits and then discuss how best to use it in teaching philosophy students how to philosophize about law.

Whatever one's reservations that "... one of the central problems of legal phi-