Michael J. Perry teaches at Emory University, Faculty of law, where he is the Robert W. Woodruff Professor of Law. Throughout his career as political and constitutional theorist, he has published several books and articles, most of them addressing issues related to human rights and the relation between religion and the law. His new book, The Political Morality of Liberal Democracy, explores those same topics by asking the following question: what should be "the moral convictions and commitments that govern decisions about what laws to enact [and] what policies to pursue"? Broader in scope than Perry first expected it, the book still relies on a question that has been continuously present in Perry's writings: what should be the proper role of religion in policy and law making? He addresses those questions by looking at the grounding, the content, the implications and the judicial enforcement of what he calls the political morality of liberal democracies.

The thesis Perry advances is the following: religion can legitimately be the premise of a public policy only if certain criteria are met, notably that: (1) religion is one of, but not the only possible justification to the public policy; (2) the public policy does not violate each human being's dignity, and; (3) the public policy does not infringe on each human being's inviolability. This thesis is of particular interest when looking at the province of Quebec’s current legal, social and political contexts where reflections on the relation between religion and public policy have mostly focused on individual claims for religious accommodation. Perry's book, because it is rooted in an American context where secularism has not been implemented as deeply as in Quebec, offers a change of paradigm in that it focuses on explicitly religious-based public policies rather than on individual legal claims. In so doing, Perry's work illustrates how important a context-sensitive analysis is when it comes to addressing public policy choices and debates.

In the first part of his book (chapters 1 and 2), Perry defines his understanding of what makes a democracy a liberal one. He argues that to qualify as liberal, a democracy must entail the "morality of human rights", that is the morality, developed in the international law of human rights after World War II, that would be the base of two interconnected claims: (a) that each human being has inherent dignity

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* L.L.M. Candidate, Centre de recherche en droit public, Université de Montréal; Aisenstadt Fellow, Centre for Human Rights and Legal Pluralism, McGill University; Co-Founder of Projet Rafiki.


2 Ibid at 1.

3 One can here think, amongst other debates and reflections held in the province of Quebec, of the Consultation Commission on Accommodation Practices Related to Cultural Differences (often referred to as the Bouchard-Taylor Commission).
and (b) that each human being is inviolable. These two claims lead to an obligation for liberal democracies to recognize certain moral rights as fundamental legal rights. The framework offered by Perry to understand what characteristics make a democracy liberal is well developed and convincing. However, one would have liked Perry to engage in a discussion in which he would have analysed what specific moral rights should be translated into legal rights.

Perry then takes on another question, which arises from addressing the morality of human rights: how can this morality be justified by religious and secular arguments? He argues that not only it is a mistake to conceive religion as irreconcilable with a morality of human rights, but that religion can and often is the very reason why people adhere to the claims that each human has inherent dignity and is inviolable. On the other hand, Perry sees no plausible secular motivation to support those claims, since "there is no way to address fundamental moral questions without also addressing, if only implicitly, religious questions". He also rejects historically based arguments that pretend that the protection of human rights is an efficient way to insure world peace and stability, on the base that these arguments are rhetoric and of little substance. Here, one can question what appears to be a double standard: on the one hand, a religious person can invoke her faith as justifying her adherence to the morality of human rights without seeing such adherence being questioned on its substance and function; the sincere belief in a metaphysical religious authority is, in itself, a valid justification. On the other hand, a secular justification of the morality of human rights couldn't be considered valid, for it is based on arguments that would either always refer to religion or that would be of little substance, which means that a sincere belief is insufficient unless its substance is proven right. Therefore, one can wonder whether the burden Perry imposes on religious people is easier to relieve than the one imposed on atheists.

In the second part of his book (chapters 3, 4, 5 and 6), Perry addresses the rights to moral equality, to religious freedom and to moral freedom before examining what should be the proper role of religion in policy making. The right to moral equality is one's right never to be treated as inferior to another person, which would violate the claims that each individual has inherent dignity and is inviolable. As for the rights to religious and moral freedom, Perry explains that the latter is a logical extension of the former, which most liberal democracies already recognize and enforce. Those two rights entail that one's religious or moral convictions can never be treated as inferior without violating the two claims that form the morality of liberal democracies.

When defending these three rights, Perry argues that a breach to one of them necessarily is a violation of it unless a government can prove that (a) the law that challenges those rights serves a legitimate interest and (b) that the importance of this interest is proportionate to the cost it imposes on individuals. Perry then highlights the fact that both religious and non-religious citizens have the same reasons to embrace the rights to religious and moral freedom, since political majorities should never be

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4 Perry, supra note 1 at 42.
trusted as arbiter of religious or moral truth. Moreover, not only should political
majorities philosophically not be able to decide what is right and wrong for the
citizens of a liberal democracy, but giving them such power of arbiter of truth, Perry
also argues, would corrode societies more than it would unite them.

In the last chapter of Part II, Perry asks if the American nonestablishment
norm — a norm that doesn't allow the State to establish or impose any religion —
forbids religion to be a basis of lawmaking. Perry argues that the meaning of the norm
doesn't prohibit a religious premise to be a basis of lawmaking so far as (a) a secular
premise can also justify a policy and (b) that the religious premise is not a sectarian
one — that would only be shared within one community of faith. However, Perry is of
the opinion that a premise of a law that would either be sectarian — based only on
one religion — or that could find no other justification than a religious one — that is,
no secular justification — is forbidden by the nonestablishment norm. Moreover, in
extending this debate to democracies that don't have a nonestablishment norm, Perry
argues that laws based only on a religious premise could not be acceptable, since they
would violate the right to religious freedom by allowing a political majority to act as
an arbiter of the religious truth. In this second part of his book, Perry develops a very
nuanced and convincing discourse that is both normatively and empirically grounded
on certain fundamental rights, their articulation and their justification. He also offers a
persuasive argument on how to define and articulate the role of religion as a basis of
policymaking that both acknowledges the importance of religion in the process of
lawmaking and its necessary limits in order to respect each citizen's beliefs and rights.

In Part III (chapters 7 and 8), Perry applies his normative framework to two
American political controversies: abortion and same-sex marriages. He starts by
making clear that his purpose is not to adjudicate which policies should be preferred,
but rather if there is one or another tenant for or against these policies that holds a
discourse that violates the morality of human rights. After having reviewed arguments
on both sides of the abortion controversy, Perry concludes that questions about when
a human life starts being unresolved and legitimately debated, both pro-life and pro-
choice hold a discourse that can be justified in regard of the morality of human rights,
that is that can be justified secularly and that doesn't put forward one religion over the
others. However, Perry argues that laws forbidding same-sex partners to engage in a
civil union don't respect the morality of human rights in that they treat as unequal
citizens those of homosexual orientation. He explains that no secular premise can
justify those laws, since empirical data has proven that same-sex marriage can't
rationally prejudice other members of society. Therefore, Perry concludes that the
right to moral equality of same-sex partners is being violated, for government can't
prove that those laws prohibiting same-sex unions serve a legitimate interest and are
secularly justifiable. Again in this third part, Perry develops a very convincing
argument, in both debates, drafting from normative and empirical perspectives,
broadening how one can think, conceive and justify coercive policies.

In the final part of his book, Perry addresses the question of the role courts
should play in enforcing fundamental legal rights. He argues that the power courts
should be granted is a "penultimacy" one, that is "the power to have, not the last word,
but [...] a word that may be overruled by ordinary legislation"\(^5\). However, if courts should be granted with ultimate power of decision, says Perry, then they should exercise it with judicial deference. Drafting from James Bradley Thayer's writings, he argues that judges with ultimate decision-making power should invalidate a norm only if the government's claim that the norm doesn't violate human rights is unreasonable. Otherwise, according to Perry, a judge should not overrule a law when he thinks that this law violates a human right, but that it is reasonable to think that it actually doesn't. Perry justifies this position mainly on a democratic argument that wants citizens and political sovereign power to always be able to have the final say in a public deliberation.

After having made his case for a deferential judicial attitude, Perry argues that there should be two situations where judges make exceptions and rule with no deference towards the legislative power. Those two exceptions are for the laws that concern the right to political freedom and the right to moral equality since, Perry explains, those rights are the ones that respectively make democracies democracies and liberal democracies. Therefore, "[p]rotecting the right to moral equality [and to political freedom] is too important to the maintenance of the basic moral legitimacy of a liberal democracy"\(^6\) for it to be deferentially adjudicated by the judges when claims are made that these rights are being violated.

In conclusion, this new book from Michael J. Perry surely contributes to a rich and essential discussion on the interaction between religion and the law. Drafting from a lot of his previous writings and taking them further, it sometimes feels like the topics Perry wished to cover were so broad and diverse that some would have necessitated more pages and depth. However, this shouldn't stop one from reading Perry, since the normative framework he offers (chapter 1), the articulation of the three human rights he addresses (chapters 3, 4, 5) and the analysis of actual controversies he makes (chapters 7, 8) are all original, enlightening, challenging and persuasive. Finally, Perry shows brilliantly in this book what many authors fail to point out: a very inclusive and hopeful reminder that proves wrong those who forget that (a) religion can be and often is a source of adherence to liberal democracies and (b) that all citizens, regardless of their (non)religious practices and beliefs, share much more in terms of political morality than what sporadically divides them.

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\(^5\) Ibid at 162.

\(^6\) Ibid at 175.