

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

## **HUMAN RIGHTS IN THE CONSTITUTIONAL LAW OF THE UNITED STATES**

In the period since the end of the Second World War, there has emerged what never before existed: a truly global morality. Some of that morality – the morality of human rights – has become entrenched in the constitutional law of the United States. This book explicates the morality of human rights and elaborates three internationally recognized human rights that are embedded in U.S. constitutional law: the right not to be subjected to cruel, inhuman, or degrading punishment; the right to moral equality; and the right to religious and moral freedom. The implications of one or more of these rights for three great constitutional controversies – capital punishment, same-sex marriage, and abortion – are discussed in depth. Along the way, Michael J. Perry addresses the question of the proper role of the Supreme Court of the United States in adjudicating these controversies.

Michael J. Perry holds a Robert W. Woodruff Chair at Emory University, where he teaches in the law school. Previously, Perry held the Howard J. Trienens Chair in Law at Northwestern University, where he taught for fifteen years, and the University Distinguished Chair in Law at Wake Forest University. Perry has written on American constitutional law and theory; law, morality, and religion; and human rights theory in more than seventy-five articles and essays and eleven books, including *The Political Morality of Liberal Democracy*; *The Idea of Human Rights*; *We the People: The Fourteenth Amendment and the Supreme Court*; *Under God? Religious Faith and Liberal Democracy*; *Toward a Theory of Human Rights: Religion, Law, Courts*; and *Constitutional Rights, Moral Controversy, and the Supreme Court*.

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

---

# Human Rights in the Constitutional Law of the United States

**Michael J. Perry**

*Emory University School of Law*



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,  
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107666085](http://www.cambridge.org/9781107666085)

© Michael J. Perry 2013

This publication is in copyright. Subject to statutory exception  
and to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without the written  
permission of Cambridge University Press.

First published 2013

Printed in the United States of America

*A catalog record for this publication is available from the British Library.*

*Library of Congress Cataloging in Publication Data*

Perry, Michael J.

Human rights in the constitutional law of the United States / Michael J. Perry.

pages cm

Includes index.

ISBN 978-1-107-03836-3 (hardback)

1. Civil rights – United States. 2. Constitutional law – United States. 3. Human rights –  
United States. 4. Human rights. I. Title.

KF4749.P47 2013

342.7308'5–dc23 2013007042

ISBN 978-1-107-03836-3 Hardback

ISBN 978-1-107-66608-5 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for  
external or third-party Internet Web sites referred to in this publication and does not guarantee  
that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press  
978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States  
Michael J. Perry  
Frontmatter  
[More information](#)

---

*For Sarah, Daniel, and Gabriel, the loves of my life*

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

---

CONTENTS

About the Author page ix

Introduction: Human Rights in the Constitutional Law of  
the United States. . . . . 1

**PART I. THE MORALITY OF HUMAN RIGHTS**

1. The Internationalization of Human Rights . . . . . 7

2. What Is a “Human Right”? . . . . 19

3. The Normative Ground of Human Rights . . . . . 27

**PART II. THE CONSTITUTIONAL MORALITY OF  
THE UNITED STATES**

4. Capital Punishment . . . . . 59

5. The Question of Judicial Deference . . . . . 92

6. The Right to Moral Equality . . . . . 105

7. The Right to Religious and Moral Freedom . . . . . 112

8. Same-Sex Marriage . . . . . 136

9. Abortion . . . . . 158

Concluding Note . . . . . 179

Index 181

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

## ABOUT THE AUTHOR

**Michael J. Perry** specializes in three areas: Constitutional Law, Human Rights, and Law and Religion. He is the author of twelve books and more than seventy-five articles and essays. The titles of Perry's books reflect his particular interests: *The Constitution, the Courts, and Human Rights* (Yale, 1982); *Morality, Politics, and Law* (Oxford, 1988); *Love and Power: The Role of Religion and Morality in American Politics* (Oxford, 1991); *The Constitution in the Courts: Law or Politics?* (Oxford, 1994); *Religion in Politics: Constitutional and Moral Perspectives* (Oxford, 1997); *The Idea of Human Rights: Four Inquiries* (Oxford, 1998); *We the People: The Fourteenth Amendment and the Supreme Court* (Oxford, 1999); *Under God? Religious Faith and Liberal Democracy* (Cambridge, 2003); *Toward a Theory of Human Rights: Religion, Law, Courts* (Cambridge, 2007); *Constitutional Rights, Moral Controversy, and the Supreme Court* (Cambridge, 2009); *The Political Morality of Liberal Democracy* (Cambridge, 2010); and *Human Rights in the Constitutional Law of the United States* (Cambridge, 2013).

Since 2003, Perry has held a Robert W. Woodruff University Chair at Emory University, where he teaches in the law school. A Woodruff Chair is the highest honor Emory University bestows on a member of its faculty.

Before coming to Emory, Perry was the inaugural occupant of the Howard J. Trienens Chair in Law at Northwestern University (1990–97), where he taught for fifteen years (1982–97). He then held the University Distinguished Chair in Law at Wake Forest University (1997–2003). Perry began his teaching career at the Ohio State University College of Law (1975–82) and has taught as a visiting professor at several law schools: Yale (1978–9), Tulane (spring semester, 1987), New York Law School (spring semester, 1990), the University of Tokyo

Cambridge University Press

978-1-107-03836-3 - Human Rights in the Constitutional Law of the United States

Michael J. Perry

Frontmatter

[More information](#)

(fall semester, 1991), the University of Alabama (fall semester, 2005), the University of Western Ontario in Canada (January term, 2009), and the University of Dayton (intrasession course, March 2011). For three consecutive fall semesters (2009, 2010, 2011), Perry was the University Distinguished Visiting Professor in Law and Peace Studies at the University of San Diego, where he taught an introductory course on international human rights to both law students and graduate students at the Joan B. Kroc School of Peace Studies.

Perry, who was born and raised in Louisville, Kentucky, received his A.B. from Georgetown University (1968) and his J.D. from Columbia University (1973). He served as law clerk to U.S. District Judge Jack B. Weinstein (1973–4) and to U.S. Circuit Judge Shirley M. Hufstedler (1974–5). In 1999, Perry was awarded an LL.D. (honoris causa) by St. John's University, Collegeville, Minnesota.

Perry is married to Sarah Anne O'Leary, a public health specialist with the U.S. Centers for Disease Control in Atlanta. They have two sons: Daniel (b. 1989) and Gabriel (b. 1991).