

Chapter 1

LIBERAL DEMOCRACY AND HUMAN RIGHTS¹

Not every country that advertises (or advertised) itself as a democracy is (was) in fact a democracy. Two examples: The official name of North Korea, translated into English, is the Democratic People's Republic of Korea; the official name of East Germany, translated into English, was the German Democratic Republic.² And not every country that can plausibly advertise itself as a democracy³ is a *liberal* democracy: a democracy committed, first, to the

¹ c 2009, Michael J. Perry.

² See Kenneth Roth, "Despots Masquerading as Democrats," in Human Rights Watch, World Report 1, 7 (2008): "As the Burmese junta rounded up protesting monks and violently suppressed dissent, it spoke of the need for 'disciplined democracy.' China has long promoted 'socialist democracy,' by which it means a top-down centrism that eliminates minority views." See Associated Press, "Report Says Democracies Enable Despots," New York Times, Jan. 31, 2008:

Authoritarian rulers are violating human rights around the world and getting away with it largely because the U.S., European and other established democracies accepts their claims that holding elections makes them democratic, Human Rights Watch said in its annual report [today].

By failing to demand that offenders honor their citizens' civil and political rights and other requirements of true democracy, Western democracies risk undermining human rights everywhere, the international rights watchdog said.

Still, Kenneth Roth, Human Rights Watch's executive director, wrote in a segment of the report called "Despots Masquerading as Democrats": "It is a sign of hope that even dictators have come to believe that the route to legitimacy runs by way of democratic credentials."

³ For a "modest" definition of democracy, see Andrew Koppelman, "Talking to the Boss: On Robert Bennett and the Counter-Majoritarian Difficulty," 95 Northwestern U.L. Rev. 955, 956-57 (2001):

[Joseph] Shumpeter . . . proposes the following, more modest

proposition that each and every human being has inherent dignity and is inviolable and, second, to certain human rights against government--that is, against law-makers and other government officials--such as the right to freedom of religion.⁴ (The union of the two most

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definition of democracy: "the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote." The people influence political decisions by voting in elections and "do not control their political leaders in any way except by refusing to reelect them or the parliamentary majorities that support them." . . .

The politician is vulnerable to losing his office unless he continuously manages to attract votes. This creates an incentive for him to pay attention to what voters want. And this incentive guarantees that, in a democracy, the government will not act in a way that attracts the wrath of an electoral majority--or, if it does, that it won't keep it up for long.

(Quoting Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (3d ed. 1950).) According to Koppelman, "[Joseph] Schumpeter is entirely free of . . . mushy sentimentalism about majoritarianism . . ." *Id.* at 956. See also Richard A. Posner, "Enlightened Despot," *New Republic*, Apr. 23, 2007, at 53, 54: "Political democracy in the modern sense means a system of government in which the key officials stand for election at relatively short intervals and thus are accountable to the citizenry."

⁴ Not that this is the only way to conceive of what makes a democracy a *liberal* democracy: Not everyone who affirms liberal democracy also affirms the idea of "inherent human dignity". Nonetheless, the conception of liberal democracy articulated in the text is not only common; it is, for many, the most morally attractive conception. Philosopher Thomas Nagel has written that "[t]he term 'liberalism' applies to a wide range of political positions But all liberal theories have this in common: they hold that the sovereign power of the state over the individual is bounded by a requirement that individuals remain inviolable in certain respects The state . . . is subject to moral constraints that limit the subordination of the individual to the collective will and the collective interest." Thomas Nagel, "Progressive but Not Liberal," *New York Rev. of Books*, May 25, 2006. Similarly, philosopher Charles Larmore has argued that "our commitment to [liberal] democracy . . . cannot be understood except by appeal to a higher moral authority, which is the obligation to respect one another as persons." Charles Larmore, "The Moral Basis of Political Liberalism," 96 *J. Philosophy* 599, 624-25 (1999). See also Jeffrey Stout, "A House Founded on the Sea: Is Democracy a Dictatorship of Relativism?," 13 *Common Knowledge* 385, 387 (2008): "[D]emocracy, rightly understood, derives its legitimacy in part from 'the affirmation that the human person, unlike animals and things, cannot be subjected to domination by others'" (quoting Pope John Paul II, *The Gospel of Life: Evangelium Vitae* 33 (1995)). Cf. Samuel Brittan, "Making Common Cause: How Liberals Differ, and What They Ought To Agree On," *Times Lit.*

widely affirmed political-moral ideals of our time--democracy and human rights--yields a third political-moral ideal: liberal democracy.) To say that a democracy is committed to the proposition that every human being has inherent dignity and is inviolable is to say that in the political culture of the democracy, the proposition is axiomatic. To say that a democracy is committed to a human right against government is to say that in the legal system of the democracy, the right is recognized and protected as a fundamental legal right. More precisely, a democracy is committed to a human right against government, understood as a *moral* claim of a special sort--a moral claim about what government may not do to human beings, or about what government must do for human beings, given that every human being has inherent dignity and is inviolable--if in the legal system of the democracy the moral claim is recognized and protected as a fundamental *legal* claim.

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Supp., Sept. 20, 1996, at 3, 4:

[P]erhaps the litmus test of whether the reader is in any sense a liberal or not is Gladstone's foreign-policy speeches. In [one such speech,] taken from the late 1870s, around the time of the Midlothian campaign, [Gladstone] reminded his listeners that "the sanctity of life in the hill villages of Afghanistan among the winter snows, is as inviolable in the eye of almighty God as can be your own . . . that the law of mutual love is not limited by the shores of this island, is not limited by the boundaries of Christian civilization; that it passes over the whole surface of the earth, and embraces the meanest along with the greatest in its unmeasured scope." By all means smile at the oratory. But anyone who sneers at the underlying message is not a liberal in any sense of that word worth preserving.

Listen, too, to Herman Melville: "But this august dignity I treat of, is not the dignity of kings and robes, but that abounding dignity that has no robed investiture. Thou shalt see it shining in the arm that wields a pick or drives a spike; that democratic dignity which, on all hands, radiates without end from God Himself! The great God absolute! The centre and circumference of all democracy! His omnipresence, our divine equality!" Herman Melville, *Moby Dick* 126 (Penguin Classics ed. 1992).

Let's begin our inquiry into the political morality of liberal democracy by examining the proposition to which, as I said, liberal democracy is, as such--as *liberal* democracy--committed: Every human being has inherent dignity and is inviolable. I call that proposition, for a reason that will soon be apparent, "the morality of human rights".

I. The Morality of Human Rights

The name of my state of origin--Kentucky--is said by some to derive from a Native American word meaning "a dark and bloody ground". An apt name for our century of origin is a dark and bloody time--indeed, *the* dark and bloody time: The twentieth century "'was the bloodiest in human existence,' . . . not only because of the total number of deaths attributed to wars--109 million--but because of the fraction of the population killed by conflicts, more than 10 times more than during the 16th century."⁵ However, the list of twentieth-century horrors includes much more than wars. As the century began, King Leopold II of Belgium was presiding over a holocaust in the Congo; it is estimated that between 1880 and 1920, because of a system of slave labor, the population of the Congo "dropped by approximately ten million people."⁶ From 1915 to 1923, the Ottoman Turks, who were Muslim, committed genocide

⁵ Kim A. McDonald, "Anthropologists Debate Whether War Is Inevitable among Humans," *Chronicle of Higher Education*, Nov. 22, 1999 (quoting Carol Nordstrom, an anthropologist at the University of Notre Dame).

⁶ Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* 233 (1998). The causes--all of them related to the system of slave labor--were several: murder, starvation, exhaustion, exposure, disease, and a plummeting birth rate. See *id.* at 225-234. As Hochschild observes, this was "a death toll of Holocaust dimensions." *Id.* at 4. The holocaust in the Congo was not an isolated event. See, e.g., Giles Foden, "Rehearsal for Genocide," *New York Times Book Rev.*, Apr. 20, 2003; Ross A. Slotten, "AIDS in Namibia," 41 *Soc. Sci. Med.* 277 (1995):

against the Armenian minority, who were Christian.⁷ Not counting deaths inflicted in battle, Stalin was responsible for the deaths of over forty-two million people (1929-53); Mao, over thirty-seven million (1923-76); Hitler, over twenty million (1933-45), including over ten million Slavs and about five and a half million Jews.⁸ One need only mention these places to recall some more recent atrocities: Cambodia (1975-79), Bosnia (1992-95), Rwanda (1994), and the Darfur region of Sudan (present).⁹ And, sadly, there is so much more.¹⁰ For an

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In 1884, Namibia formally became a German colony and was known as German South West Africa. During the time of annexation, the Herero and Nama peoples were the largest tribes, inhabiting the most desirable land, which the Germans gradually expropriated between 1893 and 1903. This expropriation led to many battles, culminating in the intentional genocide of 60% of the population. To this day, the Hereros and Namas have not recovered their original numerical strength.

⁷ See Israel W. Charney, ed., *I Encyclopedia of Genocide* 61-105 (1999). See also Peter Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (2003).

⁸ See Charney, *I Encyclopedia of Genocide*, n. #, at at 29 (Table 5). "[The Nazi] genocides likely cost the lives of about 16,300,000 people: nearly 5,300,000 Jews, 260,000 Gypsies, 10,500,000 Slavs, and 220,000 homosexuals, as well as another 10,000 handicapped Germans." *Id.* at 439. "The Nazi genocide against the Jews--the Holocaust, as it has generally come to be known as--is estimated to have resulted in the murder of about five and a half million Jews in Nazi-occupied Europe, around half the number targeted in the notorious Wannsee Conference of January 1942." Ian Kershaw, "Afterthought: Some Reflections on Genocide, Religion, and Modernity," in Omer Bartov & Phyllis Mack, eds., *In God's Name: Genocide and Religion in the Twentieth Century* 377 (2001).

⁹ For a narrative of the failures of the United States to respond to recent genocides, see Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (2002).

¹⁰ See, e.g., Mark Danner, *The Massacre at El Mozote: A Parable of the Cold War* (1994); Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (1997); Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America* viii (2002): "Through 1944, when lynchings first began to decline strongly, [the Tuskegee Institute] recorded 3,417 lynchings of blacks . . . Not until 1952 did a year pass without a single recorded lynching." See generally Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (1999).

exhaustive and exhausting account of the grim details, one can consult the two-volume *Encyclopedia of Genocide*, which reports:

In total, during the first eighty-eight years of [the twentieth] century, almost 170 million men, women, and children were shot, beaten, tortured, knifed, burned, starved, frozen, crushed, or worked to death; buried alive, drowned, hanged, bombed, or killed in any other of the myriad other ways governments have inflicted deaths on unarmed, helpless citizens and foreigners. Depending on whether one used high or more conservative estimates, the dead could conceivably be more than 360 million people. It is as though our species has been devastated by a modern Black Plague.¹¹

¹¹ Charney, I *Encyclopedia of Genocide*, n. #, at 28. "[G]enocide--intentional acts to eliminate in whole, or in substantial part, a specific human population--[has] claimed the lives of some 60 million people in the 20th century, 16 million of them since 1945, when the watchword was 'Never again.' Genocide has, in fact, been so frequent, the number of victims so extensive, and serious attempts to prevent it so few, that many scholars have described the 20th century as 'the age of genocide.'" Roger W. Smith, "American Self-Interest and the Response to Genocide," *Chronicle of Higher Education*, July 30, 2004.

It bears emphasis here that "religion has played an important role in several outbreaks of genocide since World War I." Omer Bartov & Phyllis Mack, "Introduction," in Bartov & Mack, n. #, at 1. But the role religion has played is not invariably negative, as Bartov and Mack explain:

Violence and religion have been closely associated in a variety of intricate, often contradictory ways, since the earliest periods of human civilization. Institutionalized religions have practiced violence against both their adherents and their real or imagined opponents. Conversely, religions have also been known to limit social and political violence and to provide spiritual and material comfort to its victims. Religious faith can thus generate contradictory attitudes, either motivating aggression or restraining it. Individual perpetrators and victims of violence can seek in religious institutions and personal faith both a rationale for atrocity, a justification to resist violence, or a means to come to terms with the legacy of destruction by integrating it into a wider historical or theological context.

Id. Cf. Os Guinness, "On Faith," *Wilson Quarterly*, Spring 2005: "It's a simple fact, for example, that, contrary to the current scapegoating of religion, more people were slaughtered during the 20th century under secularist regimes, led by secularist intellectuals, and in the name of secularist ideologies, than in all the religious persecutions in Western history."

In the midst of the countless grotesque inhumanities of the twentieth century, however, there is a heartening story, amply recounted elsewhere:¹² the emergence, after World War II, of the international law of human rights. ("Until World War II, most legal scholars and governments affirmed the general proposition, albeit not in so many words, that international law did not impede the natural right of each equal sovereign to be monstrous to his or her subjects."¹³) Indeed, in the final decade of the twentieth century, the Security Council of the United Nations went so far as to establish two international criminal tribunals, one (in 1993) to deal with atrocities committed in the former Yugoslavia since 1991 and the other (in 1994) to deal with atrocities committed in Rwanda in 1994. (In 2001, pursuant to the Rome Statute of the International Criminal Court (1998), the International Criminal Court was established, with jurisdiction over the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.¹⁴) The twentieth century, therefore, was not only the dark and bloody time; the second half of the twentieth century was also the time in which a growing number of states the world over responded to the savage horrors of the twentieth century by establishing the international law of human rights, thereby rendering the moral landscape of the twentieth century a touch less bleak.¹⁵

¹² See, e.g., Louis B. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States," 32 *American U. L. Rev.* 1 (1982); Robert F. Drinan, *Cry of the Oppressed: The History and Hope of the Human Rights Revolution* (1987).

¹³ Tom J. Farer & Felice Gaer, "The UN and Human Rights: At the End of the Beginning," in Adam Roberts & Benedict Kingsbury, eds., *United Nations, Divided World* 240 (2d ed. 1993).

¹⁴ See Henry J. Steiner, Philip Alston, & Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* 1291-1310 (3d ed. 2008); Benjamin N. Schiff, *Building the International Criminal Court* (2008).

¹⁵ Much of the international law of human rights consists of rules contained in human rights treaties, which are legally binding only on the states that have become parties to the treaties. But some of the international law of human rights consists of rules that are legally

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binding on every state, such as the rules pertaining to the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. On those four categories of crime, see the Rome Statute of the International Criminal Court, Arts. 6-8, which, like every other human rights law or document I refer to in this chapter, is available on the web and, thanks to Google, easily accessible.

Regrettably, the international law of human rights has been much less consequential than many hoped it would be. As I was drafting this essay (May 2008), Amnesty International issued its 2008 Report, the Foreword to which states:

World leaders owe an apology for failing to deliver on the promise of justice and equality in the Universal Declaration of Human Rights, adopted 60 years ago [1948]. In the past six decades, many governments have shown more interest in the abuse of power or in the pursuit of political self-interest, than in respecting the rights of those they lead. This is not to deny that progress has been made . . . But for all the good, the fact remains that injustice, inequality and impunity are still the hallmarks of our world today.

Amnesty International Report 2008, State of the World's Human Rights 3 (2008). Moreover, the Report "assailed the moral leadership of the United States, saying that, as 'the world's most powerful state' it 'sets the standard for government behavior globally.' But, Amnesty International said, the United States had 'distinguished itself in recent years through its defiance of international law.'" Alan Cowell, "Human Rights Report Assails U.S.," New York Times, May 29, 2008. Cf. Samuel Moyn, "On the Genealogy of Morals," The Nation, Apr. 16, 2007, at 25:

Even those who retain an investment in human rights cannot treat them as an unquestionable good, mainly because the America that once seemed to many enthusiasts to be the prospective servant of universality abroad all too quickly became the America pursuing low-minded imperial ambitions in high-minded humanitarian tones. The effect on human rights as a public language and political cause has been staggering, and it is not yet clear whether they can recover.

It bears mention that one can affirm the international law of human rights *in general* without affirming each and every provision one finds in the international law of human rights. Indeed, one can affirm the international law of human rights in general while thinking that some of the provisions one finds there do not belong there. See, e.g., James Griffin, *On Human Rights* 191-211 (2008).

The law of human rights is one thing, the morality of human rights, another. By "the morality of human rights", I mean the morality that, according to the International Bill of Human Rights, is the principal ground of--the principal warrant for--the law of human rights. The morality of human rights is not the only ground of the law of human rights,¹⁶ but it is, according to the International Bill of Human Rights, the principal ground, as I am about to explain.

The International Bill of Human Rights, as it is known,¹⁷ consists of three documents: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.¹⁸ The Universal Declaration refers, in its preamble, to "the inherent dignity . . . of all members of the human family" and states, in Article 1, that "[a]ll members of the human family are born free and equal in dignity and rights . . . and should act towards one another in a spirit of

¹⁶ See Perry, *Toward a Theory of Human Rights*, n. #, at 25-26.

¹⁷ See Office of the High Commissioner for Human Rights, Fact Sheet No. 2 (Rev. 1): The International Bill of Human Rights, <http://www.unhchr.ch/html/menu6/2/fs2.htm>,

¹⁸ The Universal Declaration was adopted and proclaimed by the General Assembly of the United Nations on Dec. 10, 1948. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which are treaties and as such are binding on the several state parties thereto, were meant, in part, to elaborate the various rights specified in the Universal Declaration. The ICCPR and the ICESCR were each adopted and opened for signature, ratification, and accession by the General Assembly of the United Nations on Dec. 16, 1966. The ICESCR entered into force on Jan. 3, 1976, and as of January 2007 had 155 state parties. The ICCPR entered into force on Mar. 23, 1976, and as of January 2007 had 160 state parties. The United States is a party to the ICCPR but not to the ICESCR. In October 1977, President Jimmy Carter signed both the ICCPR and the ICESCR. Although the United States Senate has not ratified the ICESCR, in September 1992, with the support of President George H. W. Bush, the Senate ratified the ICCPR (subject to certain "reservations, understandings and declarations" that are not relevant here; see 138 Cong. Rec. S 4781-84 (daily ed. Apr. 2, 1992)).

brotherhood." The two covenants each refer, in their preambles, to "the inherent dignity . . . of all members of the human family" and to "the inherent dignity of the human person"--from which, the covenants insist, "the equal and inalienable rights of all members of the human family . . . derive."¹⁹

According to the International Bill of Human Rights, then--and also according to the constitutions of many liberal democracies²⁰--the morality of human rights consists of two connected claims, the first of which is this: *Each and every (born) human being has equal inherent dignity.*²¹

¹⁹ The relevant wording of the two preambles is as follows:

The State Parties to the present Covenant,

Considering that . . . recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

Recognizing that these rights derive from the inherent dignity of the human person.

. . .

Agree upon the following articles: . . .

²⁰ See David Kretzmer & Eckart Klein, eds., *The Concept of Human Dignity in Human Rights Discourse* v-vi, 41-42 (2002); Vicki C. Jackson, "Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse," 65 *Montana L. Rev.* 15 (2004); Mirko Bagaric & James Allan, "The Vacuous Concept of Dignity," 5 *J. Human Rights* 257, 261-63 (2006).

²¹ As a descriptive matter, the morality of human rights holds not that every human being has inherent dignity, but only that every *born* human being has inherent dignity. See Perry, *Toward a Theory of Human Rights*, n. #, at 54. Except when discussing abortion, I generally bracket the born/unborn distinction and say simply that according to the morality of human rights, every human being has inherent dignity. I have argued elsewhere that one who affirms that every born human being has inherent dignity has good reason to affirm as well that every unborn human being has inherent dignity. See *id.* at 54-59.

o *The Oxford English Dictionary* gives this as the principal definition of "dignity": "The quality of being worthy or honourable; worthiness, worth, nobleness, excellence."²²

o To say that every human being has "inherent" dignity is to say that the fundamental dignity every human being possesses, she possesses *not* as a member of one or another group (racial, ethnic, national, religious, etc.), *not* as a man or a woman, *not* as someone who has done or achieved something, and so on, *but simply as a human being*.²³

o To say that every human being has "equal" inherent dignity is to say that, like being pregnant, being "inherently dignified" is not a condition that admits of degrees: Just as no pregnant woman can be more--or less--pregnant than another pregnant woman, no human being can have more--or less--inherent dignity than another human being. According to the morality of human rights, "[a]ll members of the human family are born . . . equal in dignity . . ." Hereafter, when I say "inherent dignity", I

²² Oxford English Dictionary (2d ed. 1991).

²³ The International Covenant on Civil and Political Rights, in Article 26, bans "discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See Peter Berger, "On the Obsolescence of the Concept of Honor," in Stanley Hauerwas & Alasdair MacIntyre, eds., *Revisions: Changing Perspectives in Moral Philosophy* 172, 176 (1983): "Dignity . . . always relates to the intrinsic humanity divested of all socially imposed roles or norms. It pertains to the self as such, to the individual regardless of his position in society. This becomes very clear in the classic formulations of human rights, from the Preamble to the Declaration of Independence to the Universal Declaration of Human Rights of the United Nations." Cf. Charles E. Curran, "Catholic Social Teaching: A Historical and Ethical Analysis 1891-Present 132 (2002): "Human dignity comes from God's free gift; it does not depend on human effort, work, or accomplishments. All human beings have a fundamental, equal dignity because all share the generous gift of creation and redemption from God. . . . Consequently, all human beings have the same fundamental dignity, whether they are brown, black, red, or white; rich or poor, young or old; male or female; healthy or sick."

mean "equal inherent dignity".²⁴

This is the second claim: *The inherent dignity of human beings has a normative force for us, in this sense: We should--every one of us--live our lives in accord with the fact that every human being has inherent dignity; we should respect--we have conclusive reason to respect--the inherent dignity of every human being.*

There is another way to state the second claim: *Every human being is "inviolable": not-to-be-violated.*²⁵ According to the morality of human rights, one can violate a human being either explicitly or implicitly. One violates a human being *explicitly* if one explicitly denies that she (or he) has inherent dignity. (The Nazis explicitly denied that the Jews had inherent dignity.²⁶) One violates a human being *implicitly* if one treats her as if she lacks inherent dignity, either by doing to her what one would not do to her, or by refusing to do for her what one would not refuse to do for her, if one genuinely perceived her to have inherent dignity. (Even if the Nazis had not explicitly denied that the Jews had inherent dignity, they would have implicitly denied it: The Nazis did to the Jews what no one would

²⁴ For a discussion of the concept of human dignity, and of the role the concept has played in various contexts (western thought, legal discourse, judicial discourse, and transnational judicial conversations), see Christopher McCrudden, "Human Dignity" (2006), <http://ssrn.com/abstract=899687>. See also Doron Shultziner, "Human Dignity - Functions and Meanings," *Global Jurist Topics* (3003), <http://www.bepress.com/gj/topics/vol3/iss3/art3>. For a skeptical account of talk about human dignity, see Bagaric & Allan, n. #. "Dignity is a vacuous concept." *Id.* at 269.

²⁵ For a general definition of what it means to say that one is "inviolable", see Oxford English Dictionary (2d ed. 1991): "not to be violated; not liable or allowed to suffer violence; to be kept sacredly free from profanation, infraction, or assault."

²⁶ See Michael Burleigh & Wolfgang Wipperman, *The Racial State: Germany, 1933-1945* (1991); Johannes Morsink, "World War Two and the Universal Declaration," 15 *Human Rights Q.* 357, 363 (1993); Claudia Koonz, *The Nazi Conscience* (2003).

have done to them who genuinely perceived the Jews to have inherent dignity.) In the context of the morality of human rights, to say that (1) every human being has inherent dignity and we should live our lives accordingly (namely, in a way that respects that dignity) is to say that (2) every human being has inherent dignity and is inviolable: not-to-be-violated, in the sense of "violate" just indicated. To affirm the morality of human rights is to affirm that every human being has inherent dignity and is inviolable.

II. From Morality to Law

Again, by the morality of human rights I mean the morality that, according to the International Bill of Human Rights, is the principal ground of the law of human rights.²⁷ How, precisely, does the morality of human rights ground the law, including the international law, of human rights?

The morality of human rights holds that every human being has inherent dignity and is "inviolable": not-to-be-violated. So we who affirm the morality of human rights, *because* we affirm it, should do what we can, all things considered--we have conclusive reason to do what we can, all things considered--to prevent human beings, including government officials, from doing things that violate human beings either explicitly or implicitly.²⁸ (The "doing" may be a

²⁷ See Griffin, n. #, at 156, referring to "the ground of human rights that the United Nations has adopted: the dignity of the human person." Actually, the ground of human rights the United Nations has adopted, in the International Bill of Human Rights, is the equal inherent dignity of the (born) human being.

²⁸ The "all things considered" will be, in many contexts, indeterminate. What Amartya Sen, borrowing from Immanuel Kant, calls the distinction between "perfect" and "imperfect" duties is relevant here--though I would mark the distinction with different terms: "determinate" and "indeterminate" duties. As Sen remarks, "[t]he perfectly specified demand not to torture anyone is supplemented by the more general, and less easily specified,

Chapter 2

LIBERAL DEMOCRACY AND RELIGIOUS FAITH¹

[The] affirmation of universal human rights [that characterizes] modern liberal political culture [represents an] authentic development[] of the gospel . . .

--Charles Taylor²

One sometimes encounters the ignorant sentiment that persons of deep religious faith cannot truly embrace liberal democracy.³ Again, my principal focus in this book is the liberal democracy of which I am a citizen: the United States. Most citizens of the United States are religious believers,⁴ and for most of them, their religious faith gives them a powerful reason reason to hold liberal democracy within their embrace:

1. It is a part of the content of the religious faith of most citizens of the United States that every human being has inherent dignity and is inviolable.

¹ c 2009, Michael J. Perry.

² Charles Taylor, *A Catholic Modernity?* 16 (1999). Taylor then hastens to add "that modern culture, in breaking with the structures and beliefs of Christendom, also carried certain facets of Christian life further than they ever were taken or could have been taken within Christendom. In relation to the earlier forms of Christian culture, we have to face the humbling realization that the breakout was a necessary condition of the development." *Id.* For Taylor's development of this point, with particular reference to modern liberal political culture's affirmation of universal human rights, see *id.* at 18-19. Cf. Charles Taylor, "Closed World Structures," in Mark A. Wrathall, ed., *Religion after Metaphysics* 47, 53-54 & 61 (2003).

³ See introduction, n. #.

⁴ See introduction, n. #.

2. A liberal democracy is, as such--as a *liberal* democracy--committed to the proposition that every human being has inherent dignity and is inviolable.

3. So the religious faith of most citizens of the United States gives them a powerful reason to embrace liberal democracy.

Let me elaborate.

The morality of human rights is as close to a global morality as we human beings have ever achieved (or probably will ever achieve); and, relatedly, the language of human rights has become the moral *lingua franca*.⁵ Nonetheless, this fundamental question remains: Is the morality of human rights true?

Recall from the preceding chapter that the morality of human rights consists of two connected claims:

⁵ See Jürgen Habermas, *Religion and Rationality: Essays on Reason, God, and Modernity* 153-54 (Eduardo Mendieta, ed., 2002): "Notwithstanding their European origins, . . . [i]n Asia, Africa, and South America, [human rights now] constitute the only language in which the opponents and victim of murderous regimes and civil wars can raise their voices against violence, repression, and persecution, against injuries to their human dignity."

The morality of human rights is not new; in one or another version, it is a very old morality. See Leszek Kolakowski, *Modernity on Endless Trial* 214 (1990):

It is often stressed that the idea of human rights is of recent origin, and that this is enough to dismiss its claims to timeless validity. In its contemporary form, the doctrine is certainly new, though it is arguable that it is a modern version of the natural law theory, whose origins we can trace back at least to the Stoic philosophers and, of course, to the Judaic and Christian sources of European culture. There is no substantial difference between proclaiming "the right to life" and stating that natural law forbids killing. Much as the concept may have been elaborated in the philosophy of the Enlightenment in its conflict with Christianity, the notion of the immutable rights of individuals goes back to the Christian belief in the autonomous status and irreplaceable value of the human personality.

1. Every human being has (equal) inherent dignity.
2. Every human being is inviolable; that is, the inherent dignity that every human being has, has a normative force for us, in this sense: We should--every one of us--live our lives in accord with the fact that every human being has inherent dignity; we should respect--we have conclusive reason to respect--the inherent dignity of every human being.

If it is true, why is it true--in virtue of what is it true--both that every human being has inherent dignity and that we should live our lives accordingly? That the International Bill of Human Rights is (famously) silent on that question is not surprising, given the plurality of religious and nonreligious views that existed among those who bequeathed us the Universal Declaration and the two covenants.⁶

I am about to articulate a religious response to the question. For purposes of exposition, I attribute the religious response to an imaginary "Sarah", who is a religious believer. No one who is not a religious believer will accept Sarah's response (or any other religious response); indeed, even some who *are* religious believers will not accept it. Nonetheless, Sarah's response is an intelligible, coherent response to the question, a response

⁶ See Jacques Maritain, "Introduction," in UNESCO, *Human Rights: Comments and Interpretation 9-17* (1949). Maritain wrote: "[W]e agree about the rights but on condition that no one asks us why." *Id.* at 9. However, Maritain was wrong: There was agreement not only about "the rights" (actually, about *some* rights) but also about a part of the "why": namely, that every human being has inherent dignity. Again, the Declaration explicitly refers, in its preamble, to "the inherent dignity . . . of all members of the human family" and states, in Article 1, that "[a]ll members of the human family are born free and equal in dignity and rights . . . and should act towards one another in a spirit of brotherhood." So what Maritain should have said was this: "We agree about the rights. We even agree about the inherent dignity--but on condition that no one asks us *why* every human being has inherent dignity."

that for many religious believers is conclusive reason to live the kind of life the morality of human rights claims they (and we) should live.

Although she is a Christian, Sarah is sufficiently familiar with Judaism and Islam to know that her religious response, which she is about to elaborate, is not one that just Christians (not all Christians, but many) affirm; many religious Jews and Muslims affirm it too.⁷ So, notwithstanding her Christian vocabulary and scriptural references, Sarah's religious response is ecumenical as among the three great monotheistic faiths.⁸

Sarah affirms that every human being has inherent dignity and that we should live our lives accordingly. (For a reason that will soon be apparent, Sarah prefers to say that every

⁷ On Islam and the morality of human rights, see Recep Senturk, [complete cite]. See also Khaled Abou El Fadl, "Islam and the Challenge of Democratic Commitment," in Elizabeth M. Bukar & Barbara Barnett, eds., *Does Human Rights Need God?* 58 (2005).

On Judaism and the morality of human rights, see Asher Maoz, "Can Judaism Serve as a Source of Human Rights?," 64 *Heidelberg J. Int' L.* 677 (2004); Michael Lerner, "Jesus the Jew," *Tikkun*, May/June 2004, at 33:

Jesus' message of love is . . . an intrinsic part of Torah Judaism . . . It was the Torah, not Jesus, that first taught "Thou shalt love thy neighbor as thyself" and "Thou shalt love the Lord your God with all your heart, with all your soul, and with all your might." It was this same Judaism that taught a truly revolutionary message: "Thou shalt love the stranger (Hebrew: *ger*, which might also be translated as "The Other" or "the Powerless one," based on the follow-up point made in Torah, "Remember that you were a *Ger* in Egypt" when the Jewish people were enslaved).

See generally Robert Traer, *Faith in Human Rights: Support in Religious Traditions for a Global Struggle* (1991).

⁸ If we listen carefully to what Sarah is about to say--and if we refrain from imputing to Sarah standard Christian positions on theological issues Sarah does not address, such as the divinity of Jesus--we will not assume that Sarah identifies herself as a Christian in the conventional sense (though for all we know she may).

human being "is sacred". Nonetheless, for Sarah, each predicate--"has inherent dignity", "is sacred"--is fully equivalent to the other; Sarah translates each predicate into the other without remainder.) In affirming this, Sarah affirms the morality of human rights. Predictably, Sarah's affirmation provokes this question: "Why--in virtue of what--does every every human being have inherent dignity?" Sarah gives a religious explanation: Speaking the words of *The First Letter of John*, Sarah says that "God is love." ("Whoever fails to love does not know God, because God is love." 1 John 4:8.⁹ "God is love, and whoever remains in love remains in God and God in him." 1 John 4:16.)¹⁰ Moreover, God's act of creating and sustaining the universe is an act of love,¹¹ and we human beings are the beloved children of God and sisters

⁹ The translations of biblical passages here and elsewhere in this book are those of *The New Jerusalem Bible* (1985).

¹⁰ See John D. Caputo, "The Experience of God and the Axiology of the Impossible," in Mark A. Wrathall, ed., *Religion after Metaphysics* 123, 138 (2003):

There is no name more closely associated in the Christian Scriptures with "God" than love. That is what God is, and this comes as close as the New Testament does to a "definition" of God, as opposed to defining God onto-theo-logically in terms of possibility and actuality, essence and existence. Even so, it would be at best a quasi-definition because in saying that God is love one is not de-fining God in the sense of setting forth God's limits and boundaries, but saying that God is unbounded and unlimited and unconditional excess, for love is love only in excess and overflow, not in moderation.

So the experience of God is given in the experience of love. But love is perfect not when love is drawn around a closed circle of friends and intimates, which makes perfect sense and is perfectly possible, but precisely when love is stretched to the breaking point of loving when love is mad and impossible. The God of love and the God of the impossible seem like a nice fit, a kind of pre-fit.

¹¹ Simone Weil wrote: "God created through love and for love. God did not create anything except love itself, and the means to love." Simone Weil, *Waiting for God* 123 (Emma Craufurd, tr., 1951).

Sarah doesn't mean to put much weight on the distinction between (a) God's "creating" and (b) God's "sustaining" the universe. See Brian Davies, "Creationism and All That," *The Tablet* [London], May 11, 2002, at 16:

and brothers to one another.¹² (As Hilary Putnam has noted, the moral image central to what Putnam calls the Jerusalem-based religions "stresse[s] equality and also fraternity, as in the metaphor of the whole human race as One Family, of all women and men as sisters and brothers."¹³) Every human being has inherent dignity, says Sarah, in the sense that every

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In the thirteenth century, St Thomas Aquinas, though himself believing that the world had a beginning, argued that this is seriously irrelevant to the doctrine of creation. He said that to believe that the world is created is chiefly to believe that its being there at all and at any time is God's doing.

And this, too, is what we find biblical authors teaching. . . . In these texts God is intimately involved with the world as its ever-present cause.

. . .

At the end of his *Tractatus Logico-Philosophicus* Ludwig Wittgenstein wrote: "Not *how* the world is, is mystical, but *that* it is." For Wittgenstein, *how the world is* is a scientific matter with scientific answers (even if we do not have all the answers yet). But, he insists, even when the scientific answers are in, we are still left with the *thatness* of the world, the fact *that* it is. And it is with this fact that we surely need to grapple if we are reasonably to arrive at the notion of creation apart from the testimony of scripture.

¹² Cf. Monroe, n. #, at 216.

[I]t is the [altruistic] perspective itself that constitutes the heart of altruism. Without this particular perspective, there are no altruists. . . . [The perspective] consists of a common perception, held by all altruists, that they are strongly linked to others through a shared humanity. This self-perception constitutes such a central core to altruists' identity that it leaves them with no choice in their behavior toward others. They are John Donne's people. All life concerns them. Any death diminishes them. Because they are a part of mankind.

¹³ Hilary Putnam, *The Many Faces of Realism* 60-61 (1987). In an essay on "The Spirituality of The Talmud", Ben Zion Bokser and Baruch M. Bokser state: "From this conception of man's place in the universe comes the sense of the supreme sanctity of all human life. 'He who destroys one person has dealt a blow at the entire universe, and he who sustains or saves one person has sustained the whole world.'" Ben Zion Bokser & Baruch M. Bokser, "Introduction: The Spirituality of the Talmud," in *The Talmud: Selected Writings* 7 (1989).

human being is a beloved child of God and a sister/brother to every other human being.¹⁴

Sarah is fully aware that she is speaking analogically, but that's the best anyone can do, she insists, in speaking about who/what God is¹⁵--as in "Gracious God, gentle in your power and

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They continue:

The sanctity of life is not a function of national origin, religious affiliation, or social status. In the sight of God, the humble citizen is the equal of the person who occupies the highest office. As one talmudist put it: "Heaven and earth I call to witness, whether it be an Israelite or pagan, man or woman, slave or maidservant, according to the work of every human being doth the Holy Spirit rest upon him." . . . As the rabbis put it: "We are obligated to feed non-Jews residing among us even as we feed Jews; we are obligated to visit their sick even as we visit the Jewish sick; we are obligated to attend to the burial of their dead even as we attend to the burial of the Jewish dead."

Id. at 30-31.

¹⁴ Cf. Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* 474 (1995) (quoting Lee Khan Yew, Senior Minister of Singapore, on the outcry over the sentence of flogging given to Michael Fay for vandalism): "To us in Asia, an individual is an ant. To you, he's a child of God. It is an amazing concept."

¹⁵ See Richard P. McBrien, ed., *The HarperCollins Encyclopedia of Catholicism* 43 (1995):

analogy, A comparison in the form of "A is to B as C is to D," e.g., God is to the world as the artist is to her work."

All theological language is analogous since we can compare God only to the created things we know; we cannot speak of God except in human terms. The Fourth Lateran Council (1215) declared that "No similarity can be found so great but that the dissimilarity is even greater" (DS 806). Thus every similarity between God and creatures (God is wise; humans are wise) is understood to include a greater dissimilarity (God's wisdom is unlike human wisdom in that it infinitely surpasses it). Thomas Aquinas (d. 1274) is particularly well known for developing the role of analogy in theological discourse.

(Not *all* theological language is analogical, however; *some* is negative: e.g., God is not finite, God is not comprehensible.) Continuing to speak analogically, Sarah says that every human being is created "in the image of God." See id. at 654:

imago Dei (Lat., "image of God"), theological concept that

strong in your tenderness, you have brought us forth from the womb of your being and breathed into us the breath of life."¹⁶

Sarah's explanation provokes a yet further question, about the ground of the normativity--of the "should"--in the claim that we *should* live our lives in a way that respects the inherent dignity of every human being: "I'll assume, for the sake of our discussion, that every human being has inherent dignity in the sense that every human being is a beloved child of God and a sister/brother to every other human being. So what? Why should it matter to me--to the way I live my life--that every human being has inherent dignity, that every human being is a beloved child of God and a sister/brother to me? Why should I respect--why should

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denotes the likeness of the human creature to God. According to Gen 1:26, humanity was created "in [God's] image, according to [God's] likeness." Found sparsely in the Hebrew Scriptures, the word "image" was often used in Pauline writings in the NT to interpret Christ's work and became central to early Christian reflections on the human condition, the meaning of redemption in Christ, and hope for humankind. . . .

Early theologians did not consistently separate "image" from "likeness" in interpreting human existence, and they saw the image of God variously in God's intellect, the capacity for moral decision, and the ability to rule over creation; but these theologians usually agreed that it implied a kinship between God and humankind and a call for the imitation of God.

For a discussion of different understandings and uses of the "image of God" language, see Roger Ruston, *Human Rights and the Image of God* 269-91 (2004).

¹⁶ United Church of Christ, *Book of Worship* 111 (1983).

I want to be a person who respects--the inherent dignity of every human being?" In responding to this important question about the ground of normativity, Sarah--who "understands the authority of moral claims to be warranted not by divine dictates but by their contribution to human flourishing"¹⁷--states her belief that the God who loves us has created us to love one another.¹⁸ (We are created not only to achieve union, in love, with one another; we are also created, Sarah believes, to achieve union, in love, with God. Sarah understands that state to be "not an ontological unity such that either the lover or the beloved ceases to have his own individual existence[, but rather] a unity at the level of affection or will by which one person *affectively* takes the other to be part of himself and the goods of the other to be his own goods."¹⁹) Given our created nature--given what we have been created *for*--the

¹⁷ See Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* 144-45 (2005):

In the course of reviewing recent work on the biological roots of morality, Stephen Pope contrasts divine command approaches to ethics to the revised natural law theory currently being developed by some contemporary Catholic moral theologians, including himself, observing that this latter approach "understands the authority of moral claims to be warranted not by divine dictates but by their contribution to human flourishing." The Thomistic theory of natural law to be developed here shares in this fundamental approach, insofar as it takes happiness to be the aim of, and correlatively the ultimate criterion for, moral behavior.

(Quoting Stephen Pope, "The Evolutionary Roots of Morality in Theological Perspective," 33 *Zygon* 545, 554 (1998).)

¹⁸ In e-mail discussion (Aug. 28, 2002), Steve Smith has characterized Sarah's views this way: "Human fulfillment generally, and my own fulfillment, will be served by learning to love and respect that which is sacred. Human beings are sacred. Therefore, human fulfillment is served by . . . etc." As Smith observes: "In this presentation, the claims that (a) my fulfillment is served by learning to love Bill, Jane, et al. and (b) Bill, Jane, et al. are sacred are hardly independent claims, or independent reasons to care about others . . . Both the 'fulfillment' and the 'sacredness' parts are necessary to the argument. But at the same time, they are not just different phrasings of the same claim."

¹⁹ David M. Gallagher, "Thomas Aquinas on Self-Love as the Basis for Love of Others," 8 *Acta Philosophica* 23 (1999) (emphasis in original).

most fitting way of life for us human beings, the most deeply satisfying way of life of which we are capable, as children of God and sisters and brothers to one another, is one in which we embrace Jesus' "new" commandment, reported in John 13:34, to "love one another . . . just as I have loved you."²⁰ By becoming persons of a certain sort--persons who discern one another as bearers of inherent dignity and love one another as such--we fulfill our created nature.²¹ "We are well aware that we have passed over from death to life because we love our brothers. Whoever does not love, remains in death." (1 John 3:14.)²² Indeed, Sarah believes that in

²⁰ For Christians, the basic shape of the good life is indicated by the instruction given by Jesus at a Passover seder on the eve of his execution: "I give you a new commandment: love one another; you must love one another just as I have loved you." John 13:34. See also John 15:12, 17.

²¹ In his book *After Theory* (2003), Terry Eagleton writes that "Aristotle thought that there was a particular way of living which allowed us . . . to be at our best for the kind of creatures we are. This was the life conducted according to the virtues. The Judaeo-Christian tradition considers that it is the life of charity or love. What this means . . . is that we become the occasion of each other's self-realization. It is only through being the means of your fulfillment that I can attain my own." Quoted in David Lodge, "Goodbye to All That," *New York Rev.*, May 27, 2004, at 39, 41.

²² In the Gospel, there are two great commandments, not one. See Matthew 22:34-40: "But when the Pharisees heard that he had silenced the Sadducees they got together and, to put him to the test, one of them put a further question, 'Master, which is the greatest commandment of the Law?' Jesus said to him, 'You must love the Lord your God with all your heart, with all your soul, and with all your mind. This is the greatest and the first commandment. The second resembles it: You must love your neighbor as yourself. On these two commandments hang the whole Law, and the Prophets too.'" See also Mark 12:28-34; Luke 10:25-28. Cf. J.L. Mackie, *Ethics: Inventing Right and Wrong* 243 (1977): "D.D. Raphael, in 'The Standard of Morals', in *Proceedings of the Aristotelian Society* 75 (1974-75) follows Edward Ullendorff in pointing out that whereas 'Thou shalt love thy neighbor as thyself' represents the Greek of the Septuagint (Leviticus 19:18) and of the New Testament, the Hebrew from which the former is derived means rather 'You shall treat your neighbor lovingly, for he is like yourself.'"

What is the relation between the two commandments? In the view of great German Catholic theologian Karl Rahner, not only is there no tension between the commandment to love God and the commandment to love one another, there is "a radical identity of the two loves." Karl Rahner, *6 Theological Investigations* 231, 236 (1969). In his "Reflections on the Unity of the Love of Neighbor and the Love of God", Rahner wrote: "It is radically true, i.e. by an ontological and not merely 'moral' or psychological necessity, that whoever does not love the brother whom he sees, also cannot love God whom he does not see, and that one can

some situations, we love most truly and fully--and therefore we live most truly and fully--by

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love God whom one does not see only *by* loving one's visible brother lovingly." Id. at 247. Rahner's reference is to a passage in John's First Letter in which it is written: "Anyone who says 'I love God' and hates his brother, is a liar, since whoever does not love the brother whom he can see cannot love God whom he has not seen." 1 John 4:20. In Rahner's view, it is only by loving one's neighbor that one achieves the ontological/existential state of being/consciousness that constitutes "love of God", even though one may not "believe in God". See Rahner, this n., at 238-39. If Rahner is right, then there is, in the following sense, not two great commandments, but one: Compliance with the first great commandment (to love God) requires compliance with the second (to love one another), and compliance with the second entails compliance with the first. See id. at 232. Consider, in that regard, the Last Judgment passage in Matthew's Gospel:

When the Son of man comes in his glory, escorted by all the angels, then he will take his seat on his throne of glory. All nations will be assembled before him and he will separate people from one another as the shepherd separates sheep from goats. He will place the sheep on his right hand and the goats on his left. Then the King will say to those on his right hand, "Come, you whom my Father has blessed, take as your heritage the kingdom prepared for you since the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you made me welcome, lacking clothes and you clothed me, sick and you visited me, in prison and you came to see me." Then the upright will say to him in reply, "Lord, when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and make you welcome, lacking clothes and clothe you? When did we find you sick or in prison and go to see you?" And the King will answer, "In truth I tell you, in so far as you did this to one of the least of these brothers of mine, you did it to me." Then he will say to those on his left hand, "Go away from me, with your curse upon you, to the eternal fire prepared for the devil and his angels. For I was hungry and you never gave me food, I was thirsty and you never gave me anything to drink, I was a stranger and you never made me welcome, lacking clothes and you never clothed me, sick and in prison and you never visited me." Then it will be their turn to ask, "Lord, when did we see you hungry or thirsty, a stranger or lacking clothes, sick or in prison, and did not come to your help?" Then he will answer, "In truth I tell you, in so far as you neglected to do this to one of the least of these, you neglected to do it to me." And they will go away to eternal punishment, and the upright to eternal life.

Matthew 25:31-46. In Matthew's Gospel, these are Jesus' final words to his disciples before the beginning of the passion narrative. Matthew 26:1-2 states: "Jesus had now finished all he wanted to say, and he told his disciples, 'It will be Passover, as you know, in two days' time, and the Son of Man will be handed over to be crucified.'"

taking the path that will probably or even certainly lead to our dying. "No one can have greater love than to lay down his life for his friends." (John 15:13.)²³

(Sarah also believes that the ultimate fulfillment of our created nature--which, Sarah believes, is mystical union, in love, with God and with one another²⁴--can be neither fully achieved nor even fully understood in our earthly life.²⁵ "Now we see only reflections in a

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It seem to follow, from Rahner's view, that it is a mistake, a confusion, to say that we should love one another *because* we love, or should love, God and God wants us to--or *because* we fear, or should fear, God and God wants us to. We should say, instead, that for us to love one another is also for us to love God--and that we should achieve the ontological/existential state of being/consciousness that constitutes "love of one another" (= "love of God") because that state is the highest human good; to have achieved that radically unalienated condition is to have become *truly, fully* human.

²³ Dietrich Bonhoeffer wrote that "when Christ calls us, his call leads to death." Dietrich Bonhoeffer, *The Cost of Discipleship* 41 (R.H. Fuller, tr., 1995; originally published 1937). Cf. Helmut Gollwitzer et al., *Dying We Live: The Final Messages and Records of the Resistance* (New York: Pantheon Books, Inc. 1956); Terry Eagleton, "Lunging, Flailing, Mispunching", *London Rev. of Books*, Oct. 19, 2006) (reviewing Richard Dawkins, *The God Delusion* (2006)):

The central doctrine of Christianity . . . is, in the words of the late Dominican theologian Herbert McCabe, that if you don't love you're dead, and if you do, they'll kill you. Here, then, is your pie in the sky and opium of the people. It was, of course, Marx who coined that last phrase; but Marx, who in the same passage described religion as the "heart of a heartless world, the soul of soulless conditions", was rather more judicious and dialectical in his judgment on it than the lunging, flailing, mispunching Dawkins.

²⁴ Cf. Charles Taliaferro, "Why We Need Immortality," *6 Modern Theology* 367 (1990).

²⁵ See Byron L. Sherwin, "Jews and the World to Come," *First Things*, June/July 2006, at 13. Cf. Graham Greene, *Monsignor Quixote* 221 (1982): "The Mayor didn't speak again before they reached Orense; an idea quite strange to him had lodged in his brain. Why is it that the hate of a man--even of a man like Franco--dies with his death, and yet love, the love which he had begun to feel for Father Quixote, seemed now to live and grow in spite of the final separation and the final silence--for how long, he wondered with a kind of fear, was it possible for that love of his to continue? And to what end?"

mirror, mere riddles, but then we shall be seeing face to face. Now, I can know only imperfectly; but then I shall know just as fully as I am myself known." (I Corinthians 13:12.) But in our earthly life, Sarah believes, we can make an important beginning.²⁶⁾

The "love" in Jesus' counsel to "love one another" is not *eros* or *philia*, but *agape*.²⁷ To love another in the sense of *agape* is *to see her (or him) in a certain way* (namely, as child

²⁶ Compare, to Sarah's eschatological vision, the view of Jürgen Habermas:

[By confronting] the conscientious question about deliverance for the annihilated victims[,] we become aware of the limits of that transcendence from within which is directed to this world. But this does not enable us to ascertain the *countermovement* of a compensating transcendence from beyond. That the universal covenant of fellowship would be able to be effective retroactively, toward the past, only in the weak medium of our memory, of the remembrance of the living generations, and of the anamnestic witnesses handed down falls short of our moral need. But the painful experience of a deficit is still not a sufficient argument for the assumption of an "absolute freedom which saves in death."

Habermas, *Religion and Rationality*, n. #, at 80.

²⁷ The literature in Christian ethics on *agape* is voluminous. Some recent titles include: Colin Grant, *Altruism and Christian Ethics* (2001); Garth L. Hallett, *Christian Neighbor-Love: An Assessment of Six Rival Versions* (1989); Stephen J. Pope, *The Evolution of Altruism and the Ordering of Love* (1994); Edmund N. Santurri & William Werpehowski, eds., *The Love Commandments: Essays in Christian Ethics and Moral Philosophy* (1992); Edward Collins Vacek, SJ, *Love, Human and Divine: The Heart of Christian Ethics* (1994); Timothy P. Jackson, *Love Disconsolated: Meditations on Christian Charity* (1999); André Comte-Sponville, *A Small Treatise on the Great Virtues* 222-90 (Catherine Temerson, tr., 2001); Timothy P. Jackson, *The Priority of Love: Christian Charity and Social Justice* (2003).

of God and sister/brother to oneself) and, therefore, *to act toward her in a certain way*.²⁸ *Agape* "discloses to us the full humanity of others. To become properly aware of that full humanity is to become incapable of treating it with contempt, cruelty, or indifference. The full awareness of others' humanity that love involves is an essentially motivating perception."²⁹

²⁸ For Sarah, to love another, in the sense of *agape*, is not to *feel* a certain way but to *act* in a certain way. Cf. Jeffrie G. Murphy, "Law Like Love," 55 *Syracuse L. Rev.* 15, 21 (2004):

There are, of course, many fascinating questions that can be asked about the love commandment. Does it command love as an emotion or simply that we act in a certain way? Kant, convinced that we can be morally bound only to that which is in our control, called emotional love pathological love and claimed that it could not be our duty to feel it. What is actually commanded he called practical love-- which is simply acting morally as Kant conceived acting morally.

Murphy explained to me in discussion that by "pathological" (which is the English word commonly used to translate the German word Kant used) Kant did not mean diseased or sick but simply something from our passions with respect to which we are passive and thus not in voluntary control.

²⁹ Timothy Chappell, Book Review, 111 *Mind* 411, 412 (2202) (reviewing Gaita, n. #). Chappell is here describing "Gaita's view" and says that it is "reminiscent of course of Simone Weil and Iris Murdoch." Id. See Gaita, n. #, at xxxiii:

Iris Murdoch said that understanding the reality of another person is a work of love, justice and pity. She meant, I believe, that love, justice and pity are *forms* of understanding rather than merely conditions that facilitate understanding--conditions like a clear head, a good night's sleep, an alcohol-free brain. Real love is hard in the sense of hardheaded and unsentimental. In ridding oneself of sentimentality, pathos and similar afflictions, one is allowing justice, love and pity to do their cognitive work, their work of disclosing reality. It is the same love, [Simone] Weil tells us, that sees what is invisible.

Compare Alain Finkielkraut, *In the Name of Humanity: Reflections on the Twentieth Century* 5-6 (2000) (commenting on Primo Levi's encounter, at Auschwitz, with the German chemist Doktor Engineer Pannwitz): "To Doktor Pannwitz, the prisoner standing there [Levi], before the desk of his examiner, is not a frightened and miserable man. He is not a dangerous or inferior or loathsome man either, condemned to prison, torture, punishment, or death. He is, quite simply, not a man at all."

The "one another" in Jesus' counsel is radically inclusive: "You have heard how it was said, You will love your neighbor and hate your enemy. But I say this to you, love your enemies and pray for those who persecute you; so that you may be children of your Father in heaven, for he causes his sun to rise on the bad as well as the good, and sends down rain to fall on the upright and the wicked alike. . . . You must therefore set no bounds to your love, just as your heavenly Father sets none to his." (Matthew 5:43-48.)³⁰

As it happens, Sarah embodies Jesus' extravagant counsel to "love one another just as I have loved you." She loves all human beings. Sarah loves even "the Other": She loves not

³⁰ See also Luke 6:27-35. Recall here the Parable of the Good Samaritan (Luke 10:29-37):

But the man was anxious to justify himself and said to Jesus, "And who is my neighbour?" In answer Jesus said, "A man was once on his way down from Jerusalem to Jericho and fell into the hands of bandits; they stripped him, beat him and then made off, leaving him half dead. Now a priest happened to be travelling down the same road, but when he saw the man, he passed by on the other side. In the same way a Levite who came to the place saw him, and passed by on the other side. But a Samaritan traveller who came on him was moved with compassion when he saw him. He went up to him and bandaged his wounds, pouring oil and wine on them. He then lifted him onto his own mount and took him to an inn and looked after him. Next day, he took out two denarii and handed them to the innkeeper and said, 'Look after him, and on my way back I will make good any extra expense you have.' Which of these three, do you think, proved himself a neighbour to the man who fell into the bandits' hands?" [The man] replied, "The one who showed pity towards him." Jesus said to him, "Go, and do the same yourself."

In *The New Jerusalem Bible*, a note attached to "Samaritan" explains that "[t]he contrast is between the element in Israel most strictly bound to the law of love, and the heretic and stranger, . . . from whom normally only hate could be expected."

only those for whom she has personal affection, or those with whom she works or has other dealings, or those among whom she lives; she loves even those who are most remote, who are unfamiliar, strange, alien, those who, because they are so distant or weak or both, will never play any concrete role, for good or ill, in Sarah's life.³¹ Sarah loves even those from whom she is most estranged and toward whom she feels most antagonistic: those whose ideologies and projects and acts she judges to be not merely morally objectionable, but morally abominable.³² Sarah loves even her enemies; indeed, Sarah loves even those who have violated her, who have failed to respect her inherent dignity. Sarah is fond of quoting Graham Greene to her incredulous friends: "When you visualized a man or a woman carefully, you could always begin to feel pity. . . . When you saw the corners of the eyes, the shape of the mouth, how the hair grew, it was impossible to hate. Hate was just a failure of imagination."³³

³¹ See Norman Geras, *The Contract of Mutual Indifference: Political Philosophy after the Holocaust* 67 (1998): "The claims of the intimate circle are real and important enough. Yet the movement from intimacy, and to faces we do not know, still carries the ring of a certain local confinement. For there are the people as well whose faces we never encounter, but whom we have ample means of knowing *about*. . . . [T]heir claims too, in trouble, unheeded, are a cause for shame."

³² See Gaita, n. #, at xviii-xix: "[T]he language of love . . . compels us to affirm that even . . . the most radical evil-doers . . . are fully our fellow human beings."

³³ Graham Greene, *The Power and the Glory* 131 (Penguin ed. 1940). See also Denise Levertov, *The Poet in the World --* (1973): "Man's capacity for evil . . . is less a positive capacity . . . than a failure to develop man's most fundamental human function, the imagination, to its fullness, and consequently a failure to develop compassion."

For a dissenting view on hate, see Meir Y. Soloveichik, "The Virtue of Hate," *First Things*, February 2003, at 41. As the *Chronicle of Higher Education* stated, in an e-mail notice on this article dated Feb. 13, 2003: "Rabbi Soloveichik asks: 'Is an utterly evil man . . . deserving of a theist's love?' and, reflecting on his conversations with Christian clergymen, concludes that there is 'no minimizing the difference between Judaism and Christianity on whether hate can be virtuous.' He examines the 'theological underpinnings' for each faith's approach to hate and notes that 'the crucifixion is a story of a loving God seeking humanity's salvation,' but that 'not a single Jewish source asserts that God deeply desires to save all humanity.'" For vigorous criticism, by religious Jews and others, of Soloveichik's essay, and

Such love--such a state of being, such an orientation in the world--is, obviously, an ideal. Moreover, it is, for most human beings, an extremely demanding ideal; for many persons, it is also an implausible ideal.³⁴ Why should anyone embrace the ideal? Why should anyone want to be (or to become) such a person--a person who, like Sarah, loves even the Other? This is, existentially if not intellectually, the fundamental moral question for anyone: Why should I want to be the kind of person who makes the choices, who does the things, I am being told I should make/do. And, in fact, Sarah's interlocutor presses her with this question: "Why should I want to be the kind of person who, like you, loves the Other? What reason do I have to do *that*?" Because that is essentially the question about the ground of the normativity in the claim that we should live our lives in a way that respects the inherent dignity of every human being, Sarah is puzzled; she thought that she had already answered the question. Sarah patiently rehearses her answer, an answer that appeals ultimately to *one's commitment to one's*

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a response by Soloveichik, see "Correspondence: Jews and Christians, Hate and Forgiveness," *First Things*, May 2003, at 2-9.

³⁴ It seems to have been an implausible ideal for Ivan Karamazov:

I have never been able to understand how it was possible to love one's neighbors. And I mean precisely one's neighbors, because I can conceive of the possibility of loving those who are far away. I read somewhere about a saint, John the Merciful, who, when a hungry frozen beggar came to him and asked him to warm him, lay down with him, put his arms around him, and breathed into the man's reeking mouth that was festering with the sores of some horrible disease. I am convinced that he did so in a state of frenzy, that it was a false gesture, that this act of love was dictated by some self-imposed penance. If I must love my fellow man, he had better hide himself, for no sooner do I see his face than there's an end to my love for him.

Fyodor Dostoevsky, *The Brothers Karamazov*, opening of ch. 5, IV (Norton ed. 1976).

own authentic well-being: "The most deeply satisfying way of life of which we are capable is one in which we 'love one another just as I have loved you.' By becoming persons who love one another, we fulfill--we perfect--our created nature and thereby achieve our truest, deepest, most enduring happiness."³⁵ It is now Sarah's turn to ask a question of her interlocutor:

"What further reason could you possibly want for becoming (or remaining) the kind of person who loves the Other?"

When he was deliberating about how to live, St. Augustine asked, "What does anything matter, if it does not have to do with happiness?" His question requires explanation, because he is not advising selfishness nor the reduction of other people to utilities, and even qualification, because other things can have some weight. All the same, the answer he expects is obviously right: only a happy life matters conclusively. If I had a clear view of it, I could have no motive to decline it, I could regret nothing by accepting it, I would have nothing about which to deliberate further.³⁶

³⁵ Thus, Sarah rejects as false Vacek's distinction between "natural-law ethics" and "mutual-love ethics". See Edward Collins Vacek, SJ, "Divine-Command, Natural-Law, and Mutual-Love Ethics," 57 *Theological Studies* 633 (1996): "In natural-law ethics, something is right because it fulfills human nature, and the task is to discover and realize that nature. In mutual-love ethics, something is finally right because it is appropriate to our love relationship with God, and the fundamental moral task is to live in accord with this relationship." For Sarah, what fulfills human nature is to live in a relationship of love with God and with other human beings. Vacek's "mutual-love ethics" seems to me better understood not as an alternative to, but as a version of, "natural-law ethics". For an excellent explication of Aquinas's understanding of the relation between self-love and other-love (and also between self-love and love of God), see Gallagher, n. #; see also Porter, *Nature as Reason*, n. #, at 209-10.

³⁶ Stephen Scott, "Motive and Justification," 85 *J. Philosophy* 479, 499 (1988). On the term "happiness", see Julia Annas, "Virtue and Eudaimonism," 15 *Social Philosophy & Policy* 37, 53 n. 35 (1998): "Despite the differences between *eudaimonia* and happiness which I have explored in this essay, and which are striking to philosophers reflecting on virtue and happiness, 'happiness' is clearly the correct translation for *eudaimonia* in ancient literature of all kinds, and it would be a mistake to conclude that we should translate *eudaimonia* by some other term." Compare Richard Taylor, "Ancient Wisdom and Modern Folly," 13 *Midwest Studies in Philosophy* 54, 57, 58 (1988): "The Greek *eudaimonia* is always translated 'happiness,' which is unfortunate, for the meaning we attach to the word *happiness* is thin indeed compared to what the ancients meant by *eudaimonia*. *Fulfillment* might be a better term, though this, too, fails to capture the richness of the original term. . . . The concept of happiness in modern philosophy, as well as in popular thinking, is superficial indeed in comparison."

A clarification may be helpful here. Does Sarah do what she does for the Other--for example, does she contribute to Bread for the World as a way of feeding the hungry--for a *self-regarding* reason? Does she do so, say, because it makes her happy to do so? No. Although feeding the hungry does make Sarah happy, that isn't why she does it. Given the kind of person she is, the reason--the *other-regarding* reason--Sarah feeds the hungry is this: "The hungry are my sisters and brothers; I love them." Now, a different question: Why is Sarah committed to being the kind of person she is, and why does she believe that everyone should want to be such a person? *Pace* Augustine, Sarah's answer to that question is self-regarding: "As persons who love one another, we fulfill our created nature and thereby achieve our truest, deepest, most enduring happiness."³⁷ According to Sarah, it is not individual acts of love that necessarily make one happy; it is, rather, becoming a person who loves the Other "just as I have loved you." "[S]elf-fulfillment happens when we are engaged from beyond ourselves. Self-fulfillment ultimately depends on self-transcendence. This is essentially the claim that is made by religion, that the meaning of our lives is to be found beyond ourselves."³⁸

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³⁷ Sarah's eudaimonistic, love-animated morality will not sit well with those whose thinking is under the influence of Kant. For an insightful, clarifying discussion of how sharply Kant's understanding of happiness differs from Aristotle's, see James Bernard Murphy, "Practical Reason and Moral Psychology in Aristotle and Kant," 18 *Social Philosophy & Policy* 257, 273-76 (2001).

³⁸ Grant, *Altruism and Christian Ethics*, n. #, at xix. Sarah agrees with Grant. She understands Aquinas to have defended substantially the same position. See note # [Gallagher & Porter]. Cf. David O. Brink, "A Puzzle about the Rational Authority of Morality," 6 *Philosophical Perspectives* 1, 22 (1992): "Unless agent-neutral reasons are necessarily superior reasons, the best solution would be to argue that agent-relative reasons, properly understood, support other-regarding moral requirements as well. So friends of agent-neutrality would do well to cultivate the resources of strategic and metaphysical egoists, even if they

It bears emphasis that Sarah does not believe that she should be the kind of person she is because God has issued a command to her to be that kind of person--a command that, because God is entitled to rule, to legislate, she is obligated to obey. For Sarah, God is not best understood in such terms. A theistic religious vision does not necessarily include, though some conventional theistic religious visions do include, a conception of God as supreme legislator, issuing directives for human conduct.³⁹ For Sarah, for whom God is love, not supreme legislator, some choices are good for us to make (or not to make)--and, therefore, we ought (or ought not) to make them--not because God commands (or forbids) them, but because God is who God is, because the universe--the universe created and sustained by God who is love in an act that is an expression of God/love--is what it is, and, in particular, because we human beings are who we are. For Sarah, "[t]he Law of God is not what God legislates but what God is, just as the Law of Gravity is not what gravity legislates but what gravity is."⁴⁰

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reject the rational egoist assumption that all reasons for action are agent-relative." (For Brink's discussion of "metaphysical egoism", see *id.* at 18-22. See also David O. Brink, "Self-Love and Altruism," 14 *Social Philosophy & Policy* 122 (1997). Augustine, Aquinas, and Sarah are all what Brink calls "metaphysical egoists". So too, apparently, are some "neo-Confucian" thinkers. See Yong Huang, "'Why Be Moral?' The Cheng Brothers' Neo-Confucian Answer," 36 *J. Religious Ethics* 321 (2008).)

³⁹ Indeed, for some religious believers, such a "God" is an idol. Cf. Charles Larmore, "Beyond Religion and Enlightenment," 30 *San Diego L. Rev.* 799, 799-802 (1993).

⁴⁰ Crossan, n. #, at 144. For a version of Divine Command Theory--albeit, an unconventional version--that has a strong affinity with Sarah's moral "theory", see Martin Kavka & Randi Rashkover, "A Jewish Modified Divine Command Theory," 32 *J. Religious Ethics* 387 (2004). In discussion, Recep Senturk said that he doesn't see any conflict between a loving God and a legislating God. The holy scriptures of Judaism, Christianity, and Islam (Senturk said) always portray God as both a loving God and a legislating God. I don't mean to suggest that there is a conflict. For Sarah, nonetheless, "the Law of God is not what God legislates but what God is, just as the Law of Gravity is not what gravity legislates but what gravity is." Cf. *id.* at 411: "[W]e think that there is no philosophical ground for understanding 'obedience to God' in the sense [of] 'obedience to propositional sentences uttered by God.'"

Sarah believes that because God is who God is, because the universe is what it is, and because we are who we are, and not because of anything commanded by God as supreme legislator, the most fitting way of life for us human beings--the most deeply satisfying way of life of which we are capable--is one in which we children of God, we sisters and brothers, "love one another just as I have loved you."

Sarah's religious worldview reminds us that in the real world, if not in every academic moralist's study, fundamental moral questions are intimately related to religious (or metaphysical) questions; there is no way to address fundamental moral questions without also addressing, if only implicitly, religious questions.⁴¹ (That is *not* to say that one must give a religious answer to a religious question, like the question, for example, Does God exist? Obviously many people do not give religious answers to religious questions.⁴²) In the real

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⁴¹ See Peter Geach, *God and the Soul* 127-28 (1969).

⁴² Jürgen Habermas' has acknowledged "that a philosophy that thinks postmetaphysically cannot answer the question that [David] Tracy . . . calls attention to: why be moral at all?" Habermas, *Religion and Rationality*, n. #, at 81. What Habermas then goes on to say is really quite remarkable:

At the same time, however, this philosophy can show why this question does not arise meaningfully for communicatively socialized individuals. We acquire our moral intuitions in our parents' home, not in school. And moral insights tell us that we do not have any good reasons for behaving otherwise: for this, no self-surpassing of morality is necessary. It is true that we often behave otherwise, but we do so with a bad conscience. The first half of the sentence attests to the weakness of the motivational power of good reasons; the second half attests that rational motivation by reasons is more than nothing [*auch nicht nichts ist*]-moral convictions do not allow themselves to be overridden without resistance.

Id. Let's put aside the fact that "we" acquire our moral "intuitions" in many places besides (or in addition to) our parents' home--in the streets, for example. The more important point, for present purposes, is that we don't all acquire the same moral intuitions. Some of us acquire

world, one's response to fundamental moral questions has long been intimately bound up with one's response--one's answers--to certain other fundamental questions: Who are we? Where did we come from; what is our origin, our beginning? Where are we going; what is our destiny, our end?⁴³ What is the meaning of suffering? Of evil? Of death? And there is the cardinal question, the question that comprises many of the others: Is human life ultimately meaningful or, instead, ultimately bereft of meaning, meaning-less, absurd?⁴⁴ If any questions

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moral intuitions that enable us to ignore, and perhaps even to brutalize, the Other without any pangs of "conscience". It is incredible that in the waning days of this unbearably brutal century, Habermas--writing in Germany of all places--could suggest otherwise. We need not even look at the oppressors themselves; we need look only at those whose passivity makes them complicitors. The real world is full of what Primo Levi called "us-ism": "Those on the Rosenstrasse who risked their lives for Jews did not express opposition to anti-semitic policies per se. They displayed primarily what the late Primo Levi, a survivor of Auschwitz, called 'selfishness extended to the person closest to you . . . us-ism.' In most of the stories that I have heard of Aryans who risked their lives for Jews to whom they were married, they withdrew to safety, one by one, the moment their loved ones were released. Their protests bring home to us the iron limits, the tragically narrow borders, of us-ism." Nathan Stoltzfus, "Dissent in Nazi Germany," *Atlantic*, September 1992, at 87, 94.

⁴³ "In an old rabbinic text three other questions are suggested: '*Whence* did you come?' '*Whither* are you going?' '*Before whom* are you destined to give account?'" Abraham J. Heschel, *Who Is Man?* 28 (1965). "All people by nature desire to know the mystery from which they come and to which they go." Denise Lardner Carmody & John Tully Carmody, *Western Ways to the Center: An Introduction to Religions of the West* 198-99 (1983). "The questions Tolstoy asked, and Gauguin in, say, his great Tahiti triptych, completed just before he died ('Where Do We Come From? What Are We? Where Are We Going?'), are the eternal questions children ask more intensely, unremittingly, and subtly than we sometimes imagine." Robert Coles, *The Spiritual Life of Children* 37 (1990).

⁴⁴ Communities, especially historically extended communities--"traditions"--are the principal matrices of religious answers to such questions: "Not the individual man nor a single generation by its own power, can erect the bridge that leads to God. Faith is the achievement of many generations, an effort accumulated over centuries. Many of its ideas are as the light of the star that left its source a long time ago. Many enigmatic songs, unfathomable today, are the resonance of voices of bygone times. There is a collective memory of God in the human spirit, and it is this memory which is the main source of our faith." From Abraham Heschel's two-part essay "Faith", first published in volume 10 of *The Reconstructionist*, Nov. 3 & 17, 1944. For a later statement on faith, incorporating some of the original essay, see Abraham J. Heschel, *Man is Not Alone* 159-76 (1951).

are fundamental, *these* questions--"religious or limit questions"⁴⁵--are fundamental. Such questions--"naive" questions, "questions with no answers", "barriers that cannot be breached"⁴⁶--are "the most serious and difficult . . . that any human being or society must face . . ." ⁴⁷ John Paul II was surely right in his encyclical, *Fides et Ratio*, that such questions "have their common source in the quest for meaning which has always compelled the human heart" and that "the answer given to these questions decides the direction which people seek to give to their lives."⁴⁸

⁴⁵ David Tracy, *Plurality and Ambiguity: Religion, Hermeneutics, Hope* 86 (1987).

⁴⁶ In Milan Kundera's *The Unbearable Lightness of Being* the narrator, referring to "the questions that had been going through Tereza's head since she was a child", says that "the only truly serious questions are ones that even a child can formulate. Only the most naive of questions are truly serious. They are the questions with no answers. A question with no answer is a barrier than cannot be breached. In other words, it is questions with no answers that set the limits of human possibilities, describe the boundaries of human existence." Milan Kundera, *The Unbearable Lightness of Being* 139 (1984).

⁴⁷ David Tracy, *The Analogical Imagination* 4 (1981). Tracy adds: "To formulate such questions honestly and well, to respond to them with passion and rigor, is the work of all theology. . . . Religions ask and respond to such fundamental questions . . . Theologians, by definition, risk an intellectual life on the wager that religious traditions can be studied as authentic responses to just such questions." *Id.*

⁴⁸ John Paul II, *On the Relation Between Faith and Reason: Fides et Ratio*, issued on Sept. 14, 1998. In the introduction to *Fides et Ratio*, John Paul II wrote:

Moreover, a cursory glance at ancient history shows clearly how in different parts of the world, with their different cultures, there arise at the same time the fundamental questions which pervade human life: Who am I? Where have I come from and where am I going? Why is there evil? What is there after this life? These are the questions which we find in the sacred writings of Israel and also in the Veda and the Avesta; we find them in the writings of Confucius and Lao-Tze, and in the preaching of Tirthankara and Buddha; they appear in the poetry of Homer and in the tragedies of Euripides and Sophocles as they do in the philosophical writings of Plato and Aristotle. They are questions which have their common source in the quest for meaning which has always compelled the human heart. In fact, the answer given to these questions decides the direction which people seek to give to their lives.

Id. at Introduction, pt. 1. See also *id.*, chapter 3, pt. 26. (*Fides et Ratio* would more

We can now see why it is that for most citizens of the United States, their religious faith gives them a powerful reason reason to hold liberal democracy within their embrace.

A powerful reason, but not by itself a sufficient one. Even if one affirms that every human being has inherent dignity and is inviolable and therefore has a strong reason to embrace liberal democracy, one may also have another and perhaps stronger reason(s) to reject liberal democracy. Consider, for example, the (imaginary) Elysians, whom I discuss later in this book:⁴⁹ They affirm that every human being has inherent dignity and is inviolable and therefore have a strong reason to embrace liberal democracy. But they also have an even stronger reason (stronger for them) to reject liberal democracy--to reject, that is, the right to

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accurately be named *Fides et Philosophia*.) We find a similar statement in the Second Vatican Council's Declaration on the Relation of the Church to Non-Christian Religions (*Nostra Aetate*, 1):

People look to their different religions for an answer to the unsolved riddles of human existence. The problems that weigh heavily on people's hearts are the same today as in ages past. What is humanity? What is the meaning and purpose of life? Where does suffering originate, and what end does it serve? How can genuine happiness be found? What happens at death? What is judgement? What reward follows death? And finally, what is the ultimate mystery, beyond human explanation, which embraces our entire existence, from which we take our origin and toward which we tend?

⁴⁹ [cite.]

freedom of religious practice, which is one of the human rights to which liberal democracy is, as such, committed. To reject the right to freedom of religious practice--or any of the other human rights to which a liberal democracy is, as such, committed--is to reject liberal democracy.

Unlike the Elysians, however, most citizens of the United States embrace liberal democracy, and their doing so is not only consistent with their religious faith *but strongly supported by it*.

Indeed, we may fairly wonder--as I do in the postscript to this chapter--what reason those who lack religious faith have for embracing liberal democracy's constitutive commitment to the inherent dignity and inviolability of every human being.⁵⁰ Listen, in that regard, to Jürgen Habermas, who is *not* a religious believer:

Christianity has functioned for the normative self-understanding of modernity as more than a mere precursor or a catalyst. Equalitarian universalism, from which sprang the ideas of freedom and social solidarity, of an autonomous conduct of life and emancipation, of the individual morality of conscience, human rights, and democracy. is the direct heir to the Judaic ethic of justice and the Christian ethic of love. This legacy, substantially unchanged, has been the object of continual critical appropriation and reinterpretation. To this day, there is no alternative to it. And in light of the current challenges of the postnational constellation, we continue to draw on the substance of this heritage. Everything else is just idle postmodern talk.⁵¹

⁵⁰ See n. #.

⁵¹ Jürgen Habermas, *Time of Transitions* 150-51 (2006). See also Habermas, *Religion and Rationality*, n. #, at 162: "[T]he basic concepts of philosophical ethics, as they have developed up to this point, also fail to capture all the intuitions that have already found a more nuanced expression in the language of the Bible, and which we have only come to know by means of a halfway religious socialization." Listen, too, to Australian philosopher Raimond Gaita, who, like Habermas, is not a religious believer. See n. # and accompanying text.

Postscript to Chapter 2

The Morality of Human Rights:

Is There a Secular Ground?

And What Difference Does It Make if There's Not?

Few contemporary moral philosophers . . . have really joined battle with Nietzsche about morality. By and large we have just gone on taking moral judgements for granted as if nothing had happened. We, the philosopher watchdogs, have mostly failed to bark . . .

--Philippa Foot⁵²

Again, the morality of human rights consists of two connected claims:

1. The dignity claim: Every human being has inherent dignity.
2. The inviolability claim: Every human being is inviolable; that is, the inherent dignity that every human being has, has a normative force for us, in this sense: We should--every one of us--live our lives in accord with the fact that every human being has inherent dignity; we should respect--we have conclusive reason to respect--the inherent dignity of every human being.

Can any secular worldview warrant--embed--the dignity claim?⁵³ Is there anything one

⁵² Philippa Foot, *Natural Goodness* 103 (2001).

⁵³ Cf. Glenn Tinder, "Can We Be Good without God: The Political Meaning of Christianity," *Atlantic*, December 1989, at 69, 80 (passages rearranged and emphasis added):

who is not a religious believer can say that is functionally equivalent to "the unashamedly anthropomorphic . . . claim that we are sacred because God loves us, his children."⁵⁴

Australian philosopher Raimond Gaita, who is an atheist,⁵⁵ has observed that "[i]f we are not religious, we will often search for one of the inadequate expressions which are available to us to say what we hope will be a secular equivalent of [the religious articulation that all human beings, as beloved children of God, are sacred]." Examples of the hoped-for secular equivalent: "We may say that all human beings are inestimably precious, that they are ends in themselves, that they are owed unconditional respect, that they possess inalienable rights, and,

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Nietzsche's stature is owing to the courage and profundity that enabled him to make all this unmistakably clear. He delineated with overpowering eloquence the consequences of giving up Christianity, *and every like view of the universe and humanity*. His approval of those consequences and his hatred of Christianity give force to his argument. Many would like to think that there are no consequences--that we can continue treasuring the life and welfare, the civil rights and political authority, of every person without believing in a God who renders such attitudes and conduct compelling. Nietzsche shows that we cannot. We cannot give up the Christian God--*and the transcendence given other names in other faiths*--and go on as before. We must give up Christian morality too. If the God-man is nothing more than an illusion, the same thing is true of the idea that every individual possesses incalculable worth. The standard of *agape* collapses. It becomes explicable only on Nietzsche's terms: as a device by which the weak and failing exact from the strong and distinguished a deference they do not deserve. Thus the spiritual center of Western politics fades and vanishes.

For Tinder's book-length treatment of the relevant issues, see Glenn Tinder, *The Political Meaning of Christianity: An Interpretation* (1989).

⁵⁴ Raimond Gaita, *A Common Humanity: Thinking about Love and Truth and Justice* 23-24 (2000).

⁵⁵ See John Haldane, "The Greatest of These Is Love, as an Atheist Reminds Us," *The Tablet* [London], Dec. 9, 2000, at 1678.

of course, that they possess inalienable dignity." In Gaita's reluctant judgment, "these are ways of trying to say what we feel a need to say when we are estranged from the conceptual resources we need to say it."⁵⁶

Imagine a cosmology according to which the universe is, finally and radically, meaningless⁵⁷--or, even if meaningful in some sense, not meaningful in a way hospitable to

⁵⁶ Gaita, n. #, at 23-24. See also Habermas, *Religion and Rationality*, n. #, at 162: "[T]he basic concepts of philosophical ethics, as they have developed up to this point, also fail to capture all the intuitions that have already found a more nuanced expression in the language of the Bible, and which we have only come to know by means of a halfway religious socialization." Cf. Gaita, n. #, at 5: "Religious traditions speak of the sacredness of each human being, but I doubt that sanctity is a concept that has a secure home outside those traditions."

⁵⁷ Bruce Ackerman has announced: "There is no moral meaning hidden in the bowels of the universe." Bruce A. Ackerman, *Social Justice in the Liberal State* 368 (1980). See also Bertrand Russell, *Mysticism and Logic* 47-48 (1917):

That man is the product of causes which had no prevision of the end they were achieving; that his origin, his growth, his hopes and fears, his loves and his beliefs, are but the outcome of accidental collocations of atoms; that no fire, no heroism, no intensity of thought and feeling, can preserve an individual life beyond the grave; that all the labor of the ages, all the devotion, all the inspiration, all the noonday brightness of human genius, are destined to extinction in the vast death of the solar system, and that the whole temple of man's achievement must inevitably be buried beneath the debris of a universe in ruins--all these things, if not quite beyond dispute, are yet so certain that no philosophy which rejects them can hope to stand. Only within the scaffolding of these truths, only on the firm foundation of unyielding despair, can the soul's habitation henceforth be safely built.

Ackerman's declaration, like Russell's before him, brings to mind one of Nietzsche's sayings:

Man a little, eccentric species of animal, which--fortunately--has its day; all on earth a mere moment, an incident, an exception without consequences, something of no importance to the general character of the earth; the earth itself, like every star, a hiatus between two nothingnesses, an event without plan, reason, will, self-consciousness, the worst kind of necessity, *stupid* necessity-- Something in us rebels against this view; the serpent vanity says to us: "all that *must* be false, *for* it arouses indignation-- Could all that not be merely appearance?"

our deepest yearnings for what Abraham Heschel called "ultimate relationship, ultimate belonging".⁵⁸ Consider, for example, Clarence Darrow's bleak vision (as recounted by Paul Edwards):

Darrow, one of the most compassionate men who ever lived, . . . concluded that life was an "awful joke." . . . Darrow offered as one of his reasons the apparent aimlessness of all that happens. "This weary old world goes on, begetting, with birth and with living and with death," he remarked in his moving plea for the boy-murderers Loeb and Leopold, "and all of it is blind from the beginning to the end." Elsewhere he wrote: "Life is like a ship on the sea, tossed by every wave and by every wind; a ship headed for no port and no harbor, with no rudder, no compass, no pilot; simply floating for a time, then lost in the waves." In addition to the aimlessness of life and the universe, there is the fact of death. "I love my friends," wrote Darrow, "but they all must come to a tragic end." Death is more terrible the more one is attached to things in the world. Life, he concludes, is "not worthwhile,"

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And man, in spite of all, as Kant says--"

Friedrich Nietzsche, *The Will to Power* 169 (Walter Kaufmann & R.J. Hollingdale, trs., & Walter Kaufmann, ed., 1967).

⁵⁸ For the person deep in the grip of, the person claimed by, the problem of meaning, "[t]he cry for meaning is a cry for ultimate relationship, for ultimate belonging", wrote Heschel. "It is a cry in which all pretensions are abandoned. Are we alone in the wilderness of time, alone in the dreadfully marvelous universe, of which we are a part and where we feel forever like strangers? Is there a Presence to live by? A Presence worth living for, worth dying for? Is there a way of living in the Presence? Is there a way of living compatible with the Presence?" Heschel, *Who Is Man?*, n. #, at 75. See also Dostoevsky, n. #, at 235: "For the secret of man's being is not only to live but to have something to live for. Without a stable conception of the object of life, man would not consent to go on living, and would rather destroy himself than remain on earth, though he had bread in abundance." (This is one of the Grand Inquisitor's statements in chapter 5 of Book Five.) Cf. W.D. Joske, "Philosophy and the Meaning of Life," in E.D. Klemke, ed., *The Meaning of Life* 248, 250 (1981) ("If, as Kurt Vonnegut speculates in *The Sirens of Titan*, the ultimate end of human activity is the delivery of a small piece of steel to a wrecked space ship wanting to continue a journey of no importance whatsoever, the end would be too trivial to justify the means."); Robert Nozick, *Philosophical Explanations* 586 (1981) ("If the cosmic role of human beings was to provide a negative lesson to some others ('don't act like them') or to provide needed food to passing intergalactic travelers who *were* important, this would not suit our aspirations--not even if afterwards the intergalactic travelers smacked their lips and said that we tasted good.").

and he adds . . . that "it is an unpleasant interruption of nothing, and the best thing you can say of it is that it does not last long."⁵⁹

One prominent contemporary proponent of a Darrowian cosmology, the physicist and Nobel laureate, Steven Weinberg, "finds his own world-view 'chilling and impersonal'. He cannot understand people who treat the absence of God and of God's heaven as unimportant."⁶⁰

Where is there a place in a cosmological view like Darrow's and Weinberg's for the idea that every human being has equal inherent dignity to gain a foothold? ("The masses blink and say: 'We are all equal. - Man is but man, before God - we are all equal.' Before God! But now this God has died."⁶¹) For one who believes that the universe is utterly bereft of transcendent meaning, why--in virtue of what--is it the case that every human being has inherent dignity? Richard Posner asks: "Thomas Nagel is a self-proclaimed atheist, yet he thinks that no one could *really* believe that 'we each have value only to ourselves and to those who care about us.' Well, to whom then? Who confers value on us without caring for us in

⁵⁹ Paul Edwards, "Life, Meaning and Value of," 4 *Encyclopedia of Philosophy* 467, 470 (Paul Edwards, ed., 1967). Whether Clarence Darrow was in fact "one of the most compassionate men who ever lived" is open to question. For a revisionist view of Darrow, see Gary Wills, *Under God: Religion and American Politics*, chs. 8-9 (1990).

⁶⁰ John Leslie, "Is It All Quite Simple? The Physicist's Search for a Theory of Everything," *Times Lit. Supp.*, Jan. 29, 1993, at 3 (reviewing, inter alia, Steven Weinberg, *Dreams of a Final Theory* (1992)). See Steven Weinberg, "Without God," *New York Rev. Books*, Sept. 25, 2008. Cf. Paul Davies, "The Holy Grail of Physics," *New York Times Book Rev.*, Mar. 7, 1993 (reviewing, inter alia, Weinberg's book): "Reductionism [in physics] may be a fruitful research method, but it is a bleak philosophy. . . . If the world is but a collection of inert atoms interacting through blind and purposeless forces, what happens to . . . the meaning of life?"

⁶¹ This passage--quoted in George Parkin Grant, *English Speaking Justice* 77 (1985)--appears in Nietzsche's *Thus Spoke Zarathustra*, Part IV ("On the Higher Man"), near the end of section 1.

the way that we care for friends, family, and sometimes members of larger human communities? Who else but the God in whom Nagel does not believe?"⁶²

I am inclined to concur in R.H. Tawney's view (except that where Tawney says "all" morality, I would say something like "our" morality): "The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God."⁶³ One need not be a religious believer to concur in Tawney's view. Listen again to the atheist Gaita: "The secular philosophical tradition speaks of inalienable rights, inalienable dignity and of persons as ends in themselves. These are, I believe, ways of whistling in the dark, ways of trying to make secure to reason what reason cannot finally underwrite."⁶⁴

⁶² Richard A. Posner, "The Problematics of Moral and Political Theory," 111 *Harvard L. Rev.* 1637, 1687 (1998) (citing Thomas Nagel, *The Last Word* 130 (1997)). Cf. James Boyd White, "Talking about Religion in the Language of Law: Impossible but Necessary," 81 *Marquette L. Rev.* 177, 197-99 (1998) (explaining why he has difficulty understanding what one who is not a religious believer might be saying in affirming the Declaration of Independence's insistence on the "equality" of all human beings).

⁶³ J.M. Winter & D.M. Joslin, eds., *R.H. Tawney's Commonplace Book* 67 (1972). On Aug. 13, 1913, Tawney wrote, in his diary, the passage accompanying this note. Three days earlier, on Aug. 10, he quoted in his diary T.W. Price, Midland secretary of the Workers' Educational Association and lecturer at Birmingham University: "Unless a man believes in spiritual things--in God--altruism is absurd. What is the sense of it? Why shld [sic] a man recognize any obligation to his neighbor, unless he believes that he has been put in the world for a special purpose and has a special work to perform in it? A man's relations to his neighbors become meaningless unless there is some higher power above them both." *Id.* Cf. Dennis Prager, "Can We Be Good Without God?," 9 *Ultimate Issues* 3, 4 (1993): "If there is no God, you and I are purely the culmination of chance, pure random chance. And whether I kick your face in, or support you charitably, the universe is as indifferent to that as whether a star in another galaxy blows up tonight."

⁶⁴ Gaita, n. #, at 5.

Consider now the question about the truth of the inviolability claim: Even assuming that every human being has inherent dignity,⁶⁵ is it in fact the case that we--every one of us--should live our lives in accord with the (assumed) fact that every human being has inherent dignity, that we should respect--that we have conclusive reason to respect--the inherent dignity of every human being? Is there a plausible affirmative secular response to that question? What is the ground of normativity--the ground, that is, of the the "should"--in the claim that we *should* live our lives in accord with the fact that every human being has inherent dignity?⁶⁶

⁶⁵ Cf. Patrick Lee & Robert George, "The Nature and Basis of Human Dignity," 21 *Ratio Juris* 173 (2008).

⁶⁶ I am assuming in this essay that all normative reasons--reasons for action--are agent-relative ("internal") rather than agent-neutral ("external"). See Richard Joyce, *The Myth of Morality* 106-34 (2001). See also Peter Geach, *God and the Soul* xix, 121-22 (1969). Cf. Henry B. Veatch, "Modern Ethics, Teleology, and Love of Self," 75 *Monist* 52, 60 (1992):

[T]he stock answer given to this question ["Why should I be moral?"] has long been one of trying to distinguish between a *reason* and a *motive* for being moral. For surely, it is argued, if I recognize something to be my duty, then surely I have a reason to perform the required action, even though I have no motive for performing it. In fact, even to ask for a motive for doing something, when one already has a reason for doing it, would seem to be at once gratuitous and unnecessary--at least so it is argued. Unhappily, though, the argument has a dubious air about it at best. For does it amount to anything more than trying to prove a point by first attempting to make a distinction, implying that the distinction is no mere distinction, but a distinction with a difference--viz. the distinction between a reason and a motive. But then, having exploited the distinction, and yet at the same time insinuating that one might conceivably have a reason for doing something, but no motive for doing it, the argument draws to its conclusion by surreptitiously taking advantage of the fact that there possibly is no real distinction between a reason and a motive after all, so that if one has a reason for doing a thing, then one has a motive for doing it as well. In other words, it's as if the argument only succeeds by taking back with its left hand what it had originally given with its right.

Because the "should" in that claim means "has (or have) conclusive reason to", we may ask the question this way: What conclusive reason do we have to live our lives in accord with the fact that every human being has inherent dignity? What answer can one give who is in the grip of what Bernard Williams called "Nietzsche's thought": "[T]here is not only no God, but no metaphysical order of any kind . . ." ⁶⁷

The point is not that one cannot live one's life in accord with the fact (if it is a fact) that every human being has inherent dignity unless one believes in God. ⁶⁸ Many who do not believe in God manage to live their lives in truly saintly ways, and many who do believe in God are anything but saintly. ⁶⁹ The point is simply that it is open to serious question whether a secular worldview can bear the weight of the claim that we should--that we have conclusive

⁶⁷ Bernard Williams, "Republican and Galilean," *New York Rev.*, Nov. 8, 1990, at 45, 48 (reviewing Charles Taylor, *Sources of the Self: The Making of Modern Identity* (1989)). Cf. John M. Rist, *Real Ethics: Rethinking the Foundations of Morality 2* (2002): "[Plato] came to believe that if morality, as more than 'enlightened' self-interest, is to be rationally justifiable, it must be established on metaphysical foundations . . ."

⁶⁸ Kristen Renwick Monroe's study of altruists and altruism is relevant here: *The Heart of Altruism: Perceptions of a Common Humanity* 216 (1996).

⁶⁹ See Jim Wurst, "Archbishop Tutu Examines Link Between Religion and Politics," *U.N. Wire*, Mar. 18, 2004 (reporting on and quoting Archbishop Tutu's speech "God's Word and World Politics"):

Religion . . . is neither automatically good or bad, it can be either depending on what it inspires its adherents to do. Religion has the capacity to produce saints, but it also has the capacity to produce rogues. . . . Christians need to be among the most modest because of the many ghastly things that Christians have perpetrated [e.g., slavery, apartheid, Nazi Germany and the Holocaust, fascism in Italy and Spain, the dropping of the atomic bombs on Hiroshima and Nagasaki, the Ku Klux Klan and the Rwanda genocide]. We who are Christians have much that should make us hang our heads in shame.

reason to--live our lives in accord with the fact that every human being has inherent dignity.⁷⁰

It is obscure what ground one who is not a religious believer can give for the claim that every human being has conclusive reason to live her life in a way that respects the inherent dignity of every human being.⁷¹ Listen, in that regard, to Charles Taylor:

The logic of the subtraction story is something like this: Once we slough off our concern with serving God, or attending to any other transcendent reality, what we're left with is human good, and that is what modern societies are concerned with. But this radically under-describes what I'm calling modern humanism. That I am left with only human concerns doesn't tell me to take universal human welfare as my goal; nor does it tell me that freedom is important, or fulfillment, or equality. Just being confined to human goods could just as well find expression in my concerning myself exclusively with my own material welfare, or that of my family or immediate milieu. The, in fact, very exigent demands of universal justice and benevolence which characterize modern humanism can't be explained just by the subtraction of earlier goals and allegiances.⁷²

⁷⁰ See Leszek Kolakowski, *Religion, If There Is No God: On God, the Devil, Sin, and Other Worries of the So-Called Philosophy of Religion* 191 (1982):

When Pierre Bayle argued that morality does not depend on religion, he was speaking mainly of psychological independence; he pointed out that atheists are capable of achieving the highest moral standards . . . and of putting to shame most of the faithful Christians. That is obviously true as far as it goes, but this matter-of-fact argument leaves the question of validity intact; neither does it solve the question of the effective sources of the moral strength and moral convictions of those 'virtuous pagans.'

See also Rist, n. #, at 267: "Although a 'moral saint' may exist without realist (and therefore religious) beliefs, yet his stance as a moral saint cannot be *justified* without recourse to realism."

⁷¹ Patrick Lee and Robert George argue that "all persons possess profound, inherent, and equal dignity," and that "[t]hus, every human being deserves full moral respect." Lee & George, n. #, at 191. However, Lee and George's "thus" is a non sequitur: That A has inherent dignity does not entail that B should--that B has conclusive reason to--live B's life in a way that respects A's dignity. The dignity claim and the inviolability claim are separate claims. The passage by Charles Taylor accompanying the next footnote makes the point.

⁷² Taylor, "Closed World Structures," n. #, at 61.

Let's assume here what many secular enthusiasts of the law of human rights believe: that no religious worldview is plausible. ("[T]here is not only no God, but no metaphysical order of any kind . . ."73) Let's also assume what many religious enthusiasts of the law of human rights believe: that even *if* there is a plausible secular argument for the dignity claim--that is, a plausible secular account of the sense in which, and why, human beings (most of them, anyway74) have a significant moral status, whether it be called "inherent dignity" or something else--nonetheless there is no plausible secular argument for the inviolability claim: No plausible secular argument supports the claim that we should--that we have conclusive reason to--live our lives in accord with the fact that every human being has that status. (I have explained elsewhere why, in my judgment, several efforts to specify a secular ground of normativity are problematic.75) What follows from those two assumptions for one who

73 See n. #.

74 For example, all human beings who are "normative agents". See Griffin, n. #.

The sense of "human dignity" that I am invoking must be specified, because there are several acceptable senses of "dignity" not relevant to human rights: for example, the dignity that quite properly should be accorded to a person deep in dementia or even to a dead person's body. The sense of dignity relevant to human rights, however, is that of a highly prized status: that we are normative agents.

Id. at 151-53. "What human rights guarantee is that one be able to live the life of a normative agent." Id. at 162. "On my account, of course, very young children do not yet have any human rights to be infringed." Id. at 165. "[E]mbryos and fetuses do not have human rights, though there may be moral considerations other than human rights that serve to prohibit abortions." Id. at 220.

75 See Michael J. Perry, "Morality and Normativity," 13 *Legal Theory*, 211, 236-48 (2008); Perry, *Toward a Theory of Human Rights*, n. #, at 18-25. See also Wolterstorff, n. #, at 325-40.

affirms the law of human rights--in particular, for one who affirms the post-World War II internationalization of the law of human rights?⁷⁶

Here are three options. (Are there others?)

First. One can say: "For me, the claim that every human being has inherent dignity and is inviolable is bedrock; 'this is where my spade is turned.'^[77] I have more confidence in that claim than I have in any imaginable argument, religious or secular, for the claim. That

⁷⁶ Cf. Sen, n. #, at 317:

Human rights activists are often quite impatient with such critiques. The invoking of human rights tends to come mostly from those who are concerned with changing the world rather than interpreting it (to use a classic distinction made famous, oddly enough, by that overarching theorist, Karl Marx). It is not hard to understand their unwillingness to spend time trying to provide conceptual justification, given the great urgency to respond to terrible deprivations around the world. This proactive stance has its practical rewards, since it has allowed immediate use of the colossal appeal of the idea of human rights to confront intense oppression or great misery, without having to wait for the theoretical air to clear.

Sen then adds:

However, the conceptual doubts must also be satisfactorily addressed, if the idea of human rights is to command reasoned loyalty and to establish a secure intellectual standing. It is critically important to see the relationship between the force and appeal of human rights, on the one hand, and their reasoned justification and scrutinized use, on the other.

Id.

⁷⁷ "I have reached bedrock and this is where my spade is turned." Ludwig Wittgenstein, *Philosophical Investigations*, sec. 217 (1953), quoted in Hilary Putnam, *The Many Faces of Realism* 85 (1987).

claim is, as it were, my 'religion'." That response will work for some, but others will be engaged--and troubled--by this question: If, as one's bedrock conviction holds, the Other, *even the Other*, truly does have inherent dignity and truly is inviolable, what *else* must be true; *what must be true for it to be true that the Other has inherent dignity and is inviolable?*⁷⁸

Second. One can say: "Let's abandon 'human rights foundationalism';^[79] in particular, let's abandon the effort to ground--to argue for the truth of--the claim that every human being has inherent dignity and is inviolable. I and many others want to live our lives *as if* every human being has inherent dignity and is inviolable. Why? Because we much

⁷⁸ In e-mail discussion (Mar. 18, 2005), Steve Smith has written:

Insofar as humans have the quality of "dignity" or (as I prefer) "sacredness," perceptive sincere persons may well be able to perceive that quality without even knowing or giving much thought to the "ground" of the quality. So they don't need to believe in God in order to accord this respect to human beings. Their understanding would be seriously incomplete, of course, but their moral commitment might still be perfectly sincere.

The problems arise when (a) they try to give a secular account of this quality--because the account will be deficient--and/or (b) they affirmatively embrace a naturalist cosmology of the sort you associate with Darrow and Weinberg, because that cosmology will tend to subvert their initial more innocent perception of the sacredness of life. In other words, "sacredness" won't be intelligible in the naturalist ontological worldview, and so the worldview and the moral commitment will be inconsistent.

But even so, insofar as people are able to maintain inconsistencies (and many of us are prodigiously talented at that), they can hold both to a naturalist worldview and to genuine moral commitments, including commitments to human rights.

⁷⁹ The term "human rights foundationalism" is Richard Rorty's. See Richard Rorty, "Human Rights, Rationality, and Sentimentality," in Stephen Shute & Susan Hurley, eds., *On Human Rights: The Oxford Amnesty Lectures 1993* 111, 116 (1993).

prefer living our lives according to that 'as if' to living them as if only some or even no human beings have inherent dignity and are inviolable; we much prefer living in a world that unfolds according to the former 'as if' rather than according to the latter."⁸⁰ That response will work for some, but others will be troubled:

Outside our philosophical study . . . we don't think we're merely "expressing our acceptance" of norms calling for mutual respect and social justice when we make (sometimes great) personal sacrifices in order to comply with these norms. We act as if we think that the authority of these norms is not "in our heads" or traceable only to social conventions and our (cognitive or affective) reactions to them, but "real".⁸¹

And what would happen--not this year, or next, but eventually--if we who embrace the cause of human rights were to stop believing that the inherent dignity and inviolability of every human being is "real"? Consider what the Polish poet and Nobel Laureate, Czeslaw Milosz, has suggested:

What has been surprising in the post-Cold War period are those beautiful and deeply moving words pronounced with veneration in places like Prague and Warsaw, words which pertain to the old repertory of the rights of man and the dignity of the person.

I wonder at this phenomenon because maybe underneath there is an abyss. After all, those ideas had their foundation in religion, and I am not over-optimistic as to the survival of religion in a scientific-technological civilization. Notions that seemed buried forever have suddenly been resurrected. But how long can they stay afloat if the bottom is taken out?⁸²

⁸⁰ I have criticized a version of the second response--Richard Rorty's version--elsewhere. See Perry, *Toward a Theory of Human Rights*, n. #, at 26-28.

⁸¹ Jean E. Hampton, *The Authority of Reason* 120 (Richard Healey, ed., 1998). Thanks to George Wright for calling this passage to my attention.

⁸² Czeslaw Milosz, "The Religious Imagination at 2000," *New Perspectives Quarterly*, Fall 1997, at 32. See also Gaita, n. #, at xviii-xix:

[T]he language of love . . . compels us to affirm that even those who suffer affliction so severe that they have irrevocably lost everything that gives sense to our lives, and the most radical evil-doers, are fully

Third. One can say: "Let's stop trying to ground--to justify--the international law of human rights on the basis of 'the inherent dignity and inviolability of every human being'. Let's justify it instead on a different basis, namely, on the basis of 'selfish'--that is, self-regarding--reasons: Let's explain why from this point on, we and our families and friends and other loved ones will be much better off, in the long run, living in a world in which every

(con't)

our fellow human beings. On credit, so [to] speak, from this language of love, we have built a more tractable structure of rights and obligations. If the language of love goes dead on us, however, if there are no examples to nourish it, either because they do not exist or because they are no longer visible to us, then talk of inalienable natural rights or of the unconditional respect owed to rational beings will seem lame and improbable to us. Indeed, exactly that is happening.

Cf. Timothy P. Jackson, "The Theory and Practice of Discomfort: Richard Rorty and Pragmatism," 51 *Thomist* 270, 284-85 (1987):

[T]he loss of realism . . . means the loss of any and all realities independent of or transcendent to inquiry. In this respect, God must suffer the same fate as any other transcendent subject or object. Because faith makes sense only when accompanied by the possibility of doubt, Rorty's distancing of scepticism means a concomitant distancing of belief in "things unseen." He, unlike Kant, denies both knowledge and faith; but for what, if anything, is this supposed to make room? Faith may perhaps be given a purely dispositional reading, being seen as a tendency to act in a certain way, but any propositional content will be completely lost. The pull toward religious faith is at best a residue of metaphysical realism and of the craving for metaphysical comfort. The taste for the transcendent usually associated with a religious personality will find little place in a Rortian world. Similarly, hope and love, if thought to have a supernatural object or source, lose their point. The deconstruction of God must leave the pious individual feeling like F. Scott Fitzgerald after his crackup: "a feeling that I was standing at twilight on a deserted range, with an empty rifle in my hand and the targets down." The deconstructed heart is ever restless, yet the theological virtues stand only as perpetual temptations to rest in inauthenticity. We live in a world without inherent *telos*; so there simply is no rest as Christianity has traditionally conceived it.

country both refrains from doing to its citizens (and others) what the international law of human rights tells it not to do to them and does for its citizens what the international law of human rights tells it to do for them."⁸³ That response will work for some, but others will wonder whether it is in fact the case that from this point on we and our loved ones will be much better off, in the long run, inhabiting a world in which every country lives in accord with the international law of human rights.

The reasons the International Bill of Human Rights gives in support of the international law of human rights include not only "the inherent dignity . . . of all members of the human family" but also this historically-based consideration, which, whatever else it is, is profoundly self-regarding: that "disregard and contempt for human rights" undermine "peace in the world" and "friendly relations among nations".⁸⁴ Along those lines, U.S. Secretary of State Warren Christopher, in June 1993, argued before the World Conference on Human Rights that "[a] world of democracies would be a safer world. . . . States that respect human rights and operate on democratic principles tend to be the world's most peaceful and stable. On the other hand, the worst violators of human rights tend to be the world's aggressors and proliferators. These states export threats to global security, whether in the shape of terrorism, massive refugee flows, or environmental pollution. Denying human rights not only lays waste to human lives; it creates instability that travels across borders."⁸⁵ In 2002, William Schulz, at

⁸³ For a fine example of such a response, see Dohrman W. Byers, "The Morality of Human Rights: An Egocentric Foundation" (unpublished ms. 2008).

⁸⁴ See the preambles to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

⁸⁵ Warren Christopher, "Democracy and Human Rights: Where America Stands," 4 U.S. Department of State Dispatch 441, 442 (1993).

the time the Executive Director of Amnesty International USA, argued that "respect for human rights both in the United States and abroad has implications for our welfare far beyond the maintenance of our ethical integrity. Ignoring the fates of human rights victims almost anywhere invariably makes the world--*our* world--a more dangerous place. If we learned nothing else from the horrific events of September 11, perhaps we learned that."⁸⁶

Some will wonder, however, whether such arguments in support of the international law of human rights--and, in particular, in support of an American foreign policy that includes as one of its main goals the protection of human rights⁸⁷--are mainly rhetoric and little substance. As one expert has put the point: "[Self-regarding] arguments are hard to prove and not fully persuasive. Despite considerable effort, it has been difficult to construct a wholly convincing 'selfish' rationale for major U.S. national commitments to promote the human rights of foreigners."⁸⁸

⁸⁶ William F. Schulz, *In Our Own Best Interests: How Defending Human Rights Benefits Us All* xix (2002). See also William W. Burke-White, "Human Rights and National Security: The Strategic Connection," 17 *Harvard Human Rights J.* 249 (2004).

⁸⁷ Cf. William F. Schulz, ed., *The Future of Human Rights: U.S. Policy for a New Era* (2008); Jerome J. Shestack, "An Unsteady Focus: The Vulnerabilities of the Reagan Administration's Human Rights Policy," 2 *Harvard Human Rights Yearbook* 25, 49-50 (1989) (listing several reasons that should "motivate an administration to afford human rights a central role in United States foreign policy as a matter of national interest").

⁸⁸ Richard B. Bilder, "Human Rights and U.S. Foreign Policy: Short-Term Prospects," 14 *Virginia J. International L.* 597, 608 (1974).