

1993

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Recommended Citation

Michael J. Perry, *Is the Idea of Human Rights Ineliminably Religious?*, 27 U. Rich. L. Rev. 1023 (1993).

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IS THE IDEA OF HUMAN RIGHTS INELIMINABLY RELIGIOUS?*

*Michael J. Perry***

The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. *The world found nothing sacred in the abstract nakedness of being human.*¹

We almost all accept . . . that human life in all its forms is *sacred* For some of us, this is a matter of religious faith; for others, of secular but deep philosophical belief.²

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An earlier version of this essay was prepared for a conference on "Paradoxes of Rights," sponsored by the Program in Law, Jurisprudence, and Social Thought of Amherst College (November, 1992). I am grateful to have had the opportunity to discuss a draft of the essay with several groups: faculty and students at the University of Notre Dame (October, 1992); the Fifth Annual Symposium on Law, Religion, and Ethics, sponsored by the Hamline University School of Law (October, 1992); faculty and students at the Southern Methodist University School of Law (March, 1993); and a Symposium on Conflicts of Law and Morality in a Free Society, sponsored by the J. M. Dawson Institute of Church-State Studies, Baylor University (April, 1993). For helpful comments on a draft of the essay, or for helpful discussion, I am grateful to many generous colleagues around the country.

This essay—which, I want to emphasize, is very much an unfinished work—is the first installment in what I anticipate will be a series of connected essays (and, eventually, a book) on "The Idea of Human Rights."

1. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 299 (Harvest ed. 1973) (emphasis added).

2. Ronald Dworkin, "Life is Sacred. That's the Easy Part," *N.Y. TIMES*, May 16, 1993, § 6 (Magazine), at 36.

The name of the state where I was born and raised—Kentucky—derives from a Native American word meaning “the dark and bloody ground.”³ Were there an Indian word for “the dark and bloody time,” it would aptly name this century, a century as unrelentingly dark and bloody as any in human history. In the midst of all the terrible inhumanity of the twentieth century, however, there is a hopeful story: the emergence in international law of the idea of human rights.⁴

The increased and increasing protection of human rights by international law in the period since the end of the Second World War is an important and hopeful story, amply recounted elsewhere.⁵ But it is not a story that should dispel our skepticism about the extent to which many basic human rights, notwithstanding their protection by international law, are really any better off now than they were before 1945. Even as the

3. For an explanation, see DARCY O'BRIEN, *A DARK AND BLOODY GROUND* 1 (1993).

4. The idea of human rights, in one form or another, is very old. 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.

5. See, e.g., ROBERT F. DRINAN, S.T., *CRY OF THE OPPRESSED: THE HISTORY AND HOPE OF THE HUMAN RIGHTS REVOLUTION* (1987); Louis B. Sohn, “*The New International Law: Protection of the Rights of Individuals Rather Than States*,” 32 *AM. U. L. REV.* 1 (1982).

There are many good studies of different aspects of the international law of human rights. See, e.g., PHILLIP ALSTON, *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* (1992); I, II *HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES*, (Theodore Meron ed., 1984). For relatively brief overviews of the international law of human rights, see THOMAS BUERGENTHAL, *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* (1988); SCOTT DAVIDSON, *HUMAN RIGHTS* (1993). Two good periodical sources of articles are the *HARVARD HUMAN RIGHTS YEARBOOK* and the *HUMAN RIGHTS QUARTERLY*.

twentieth century ends, the furious slaughter of innocents continues—most famously, perhaps, in the former Yugoslavia.⁶ Neither that story nor that skepticism is the subject of this essay, however. The internationalization of human rights—and the attendant rhetoric of human rights so pervasive in the world today, especially in the western world, present an important occasion, in my view, for addressing several fundamental questions about the idea of human rights.

The idea of human rights—the idea that has emerged in international law in the period since the Second World War—is complex. In the book of which this essay is a part, I mean to explore all the main constituents of the idea. In this essay, however, I am interested only in one constituent—albeit, a foundational one: the conviction that every human being is sacred. Is that conviction inescapably religious, and the idea of human rights, therefore, ineliminably religious?

I.

“The International Bill of Human Rights,” as it is sometimes called, consists of three documents. The first of these, the Universal Declaration of Human Rights,⁷ speaks, in the Preamble, of “the inherent dignity . . . of all members of the

6. On the day I write these words, June 2, 1993, there is a story in the *New York Times* which vividly describes the bloodshed:

[m]ortar shells exploded today [June 1] amid a neighborhood soccer tournament, killing at least a dozen people and wounding at least 80 in the worst single incident in a year in the bombardment of [Sarajevo] by the Bosnian Serb forces.

Shrapnel-peppered cars, drying pools of blood, a few shreds of blood-soaked clothing and a worn-out soccer ball were all that remained afterward in the parking lot where about 100 players and spectators had gathered for the game.

The attack came on a day of chaotic violence across Bosnia and Herzegovina that was shocking even by local standards and confirmed the fears of many people here that the war in this former Yugoslav republic, which has already claimed tens of thousands of lives, is only getting worse.

Chuck Sudetic, *Mortar Fire Kills 12 at Soccer Game in Bosnian Capital*, N.Y. TIMES, June 2, 1993, at A1.

7. G.A. Res. 217A (III), U.N. GAOR, 3d. Sess., U.N. Doc. A/180 (1948) [hereinafter *Universal Declaration*].

human family” and of “the dignity and worth of the human person.”⁸ In Article 1, the Declaration proclaims: “All human beings . . . should act towards one another in a spirit of brotherhood.”⁹ The second and third documents of the International Bill of Human Rights are the International Covenant on Civil and Political Rights¹⁰ and the International Covenant on Economic, Social, and Cultural Rights.¹¹ The Preamble common to both covenants echoes the Universal Declaration, speaking of “the inherent dignity . . . of all members of the human family.” The Preamble then states: “[T]hese rights derive from the inherent dignity of the human person” A fourth document, the American Declaration of the Rights and Duties of Man¹² begins: “The American peoples have acknowledged the dignity of the individual The American states have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality” The Preamble to the American Declaration proclaims: “All men . . . should conduct themselves as brothers to one another.”¹³ A fifth document, the American Convention on Human Rights,¹⁴ echoes the American Declaration, stating in the Preamble that “the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality”¹⁵ Similarly, the Preamble to the African [Banjul] Charter on Human and Peoples’ Rights¹⁶ (1986) proclaims that “fundamental human rights stem from the attributes of human beings”¹⁷

8. *Id.* at pmbl.

9. *Id.* at art. 1.

10. G.A. Res. 2200 (XXI), 21 U.N. GAOR, 11th Sess., Supp. No. 15, at 49, U.N. Doc. A/6316 (1976).

11. *Id.*

12. O.A.S. Res. XXX, 9th Int’l Conf. of Am. States, Bogata, Supp. No. 43, at 133 (1949).

13. *Id.* at pmbl.

14. O.A.S. T.S. No. 36, at 1, O.A.S. Off. Rec. OEA/Ser L/V/II, 23, Doc. 21 rev. 6 (1979).

15. *Id.* at pmbl.

16. O.A.U. Doc. CAB/Lc6/67/3 Rev. 5 (1981).

17. *Id.* at pmbl.

The idea of human rights that informs these various international human rights documents (and many others) is, in part, the idea that *there is something about each and every human being, simply as a human being, such that certain things ought not to be done to him or her and certain other things ought to be done for him or her.*¹⁸ The “every human being, simply as a human being,” is represented in Article 2 of the Universal Declaration of Human Rights by this language: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁹ The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights each contain identical language.

The question to which this formulation of the idea of human rights gives rise is this: What, precisely, is that “something about each and every human being, simply as a human being”—such that certain things ought not to be done to us and certain other things ought to be done for us? To ask the question in the words of the American Declaration, the American Convention, and the African Charter, what are the relevant “attributes” of each and every human being—the attributes on which “the essential rights of man” are based? The principal such attribute, according to the documents of the International Bill of Human Rights, is “the inherent dignity of all members of the human family,” from which derive human rights.

What are we to make of such talk: talk about “the inherent dignity” of all human beings—about all human beings as members of one “family”—and about the importance, therefore, of all human beings acting towards one another “in a spirit of brotherhood”? It is easy enough to understand such language as *religious* talk.²⁰ But is it possible, finally, to understand such talk

18. For some “certain things,” the “ought” and the “ought not” may be presumptive rather than unconditional or absolute.

19. Article 2 continues: “Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

20. *But cf.* Robert Ombres, OP, *The Ethics of Human Rights*, L. & JUSTICE, No.

in a nonreligious (“secular”) sense? Is there, at least, a nonreligious equivalent for such talk—and, if so, what is it? Or must we conclude that the idea of human rights is indeed ineliminably religious—that a fundamental constituent of the conviction that every human being is sacred (has “inherent dignity,” is “an end in himself,” or the like), is inescapably religious?²¹

114/115, 140 (1992) (stating, “[R]eferences to God, Nature and even Human Nature were deleted from the drafts of the 1948 Universal Declaration of Human Rights shortly before its adoption.”).

21. Nietzsche, was unrelentingly contemptuous of the conviction that every human being is sacred, as he reveals in this bleak and sobering passage from *The Will to Power*:

In moving the doctrine of selflessness and love into the foreground, Christianity was in no way establishing the interests of the species as of higher value than the interests of the individual. Its real *historical* effect, the fateful element in its effect, remains, on the contrary, in precisely the enhancement of egoism, of the egoism of the individual, to an extreme (—to the extreme of individual immortality). Through Christianity, the individual was made so important, so absolute, that he could no longer be sacrificed: but the species endures only through human sacrifice— All “souls” became equal before God: but this is precisely the most dangerous of all possible evaluations! If one regards individuals as equal, one calls the species into question, one encourages a way of life that leads to the ruin of the species: Christianity is the counter principle to the principle of *selection*. If the degenerate and sick (“the Christian”) is to be accorded the same value as the healthy (“the pagan”), or even more value, as in Pascal’s judgment concerning sickness and health, then unnaturalness becomes law—

This universal love of men is in practice the *preference* for the suffering, underprivileged, degenerate: it has in fact lowered and weakened the strength, the responsibility, the lofty duty to sacrifice men. All that remains, according to the Christian scheme of values, is to sacrifice oneself: but this residue of human sacrifice that Christianity concedes and even advises has, from the standpoint of general breeding, no meaning at all. The prosperity of the species is unaffected by the self-sacrifice of this or that individual (—whether it be in the monkish and ascetic manner or, with the aid of crosses, pyres, and scaffolds, as “martyrs” of error). The species requires that the ill-constituted, weak, degenerate, perish: but it was precisely to them that Christianity turned as a conserving force; it further enhanced that instinct in the weak, already so powerful, to take care of and preserve themselves and to sustain one another. What is “virtue” and “charity” in Christianity if not just this mutual preservation, this solidarity of weak, this hampering of selection? What is Christian altruism if not the mass-egoism of the weak, which divines that if all care for one another each individual will be preserved as long as possible?—

II.

What does it mean to say that a conviction, belief, idea, worldview, etc., is or is not "religious"?²²

In *Sources of the Self: The Making of the Modern Identity*, Charles Taylor has observed that "[t]he problem of the meaning of life is . . . on our agenda, however much we may jibe at the phrase."²³ The problem of the meaning of life does not arise for everyone. It is not on everyone's agenda, even if, as Taylor says, it is on the agenda of "our" age. But it does arise for many. The problem can even arise *again* for someone, after it had been resolved, or repressed—someone who had been convinced of the meaningfulness of life, and especially of her own life, but whose conviction has been gradually eroded or perhaps suddenly shattered. A principal occasion of its arising or arising again—at least, of its arising in an existential, as distinct from a merely intellectual, way—is a searing encounter with such common but elemental events as sickness, old age, and death. Another principal occasion is an encounter, whether personal or vicarious, with evil and the terrible, primal suffering evil causes. Such experiences can leave one with a feeling that she is, or might be, a stranger, an alien, an exile, homeless, anxious, vulnerable, threatened, in a world, a universe, that is, finally

If one does not feel such a disposition as an extreme immorality, as a crime against life, one belongs with the company of the sick and possesses its instincts oneself—

Genuine charity demands sacrifice for the good of the species—it is hard, it is full of self-overcoming, because it needs human sacrifice. And this pseudo humaneness called Christianity wants it established that no one should be sacrificed—

FRIEDERICH NIETZSCHE, *THE WILL TO POWER* 141-42 (Walter Kaufman ed., Walter Kaufman & R.J. Hollingdale trans., 1967).

22. My discussion here is adapted from a longer discussion elsewhere. See MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS*, ch. 5 (1991).

23. CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* 18 (1989). Taylor also observes that "those whose spiritual agenda is mainly defined in this way are in a fundamentally different existential predicament from that which dominated most previous cultures and still defines the lives of other people today." *Id.* On the "notorious vagueness" of the question "what is the meaning of life?", see W.D. Joske, *Philosophy and the Meaning of Life*, in *The Meaning of Life* 248, 248 et seq. (E.D. Klemke ed., 1981). See also R. Hepburn, *Questions about the Meaning of Life*, in *id.* at 209.

and radically, unfamiliar, hostile, perhaps even pointless, absurd. Albert Camus wrote:

What, then, is that incalculable feeling that deprives the mind of the sleep necessary to life? A world that can be explained even with bad reasons is a familiar world. But, . . . in a universe suddenly divested of illusions and lights, man feels an alien, a stranger. His exile is without remedy since he is deprived of the memory of a lost home or the hope of a promised land. This divorce between man and his life, the actor and his setting, is properly the feeling of absurdity.²⁴

Because of its radically alienating character, any such experience can be an occasion of existential confrontation with the problem of meaning: *Am I indeed an alien, an exile, homeless, in a world, a universe, that is strange, hostile, pointless, absurd? Or, instead, is the world, finally and radically, familiar, even gracious; does the world have a point, is it a project; is the world, in that sense, meaningful: meaning-full, full of meaning rather than bereft of it (and therefore meaning-less, absurd)? In particular, is the world hospitable to me in my deep yearning to be at home, rooted, connected?*²⁵ 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 Abraham Heschel.²⁶

24. ALBERT CAMUS, *THE MYTH OF SISYPHUS AND OTHER ESSAYS* 5 (1944; Eng. tr. 1955). See LESZEK KOLAKOWSKI, *THE PRESENCE OF MYTH* (1989), especially chapter 8: "The Phenomenon of the World's Indifference." Compare BLAISE PASCAL, *PENSEES* 95 (Penguin Books ed. 1966): "The eternal silence of these infinite spaces fills me with dread."

25. See DAVID TRACY, *PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE* 87 (1987)

Like strictly metaphysical questions, religious questions must be questions on the nature of Ultimate Reality. Unlike metaphysical questions, religious questions deliberately ask the question of the meaning and truth of Ultimate Reality not only as it is in itself *but as it is existentially related to us*. The religious classics are testimonies to the responses of the religions to those questions.

Id. (emphasis added).

26. ABRAHAM HESCHEL, *MAN IS NOT ALONE* (1951).

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?²⁷

One fundamental response to the problem of meaning is "religious": the trust that the world is finally meaningful in a way hospitable to our deepest yearnings. The word "religion" derives from the Latin verb "religare," which means to bind together again that which was once bound, but has since been torn or broken; to heal.²⁸ A "religious" vision, then, etymologically understood, is a vision of final and radical reconciliation, a set of beliefs about how one is or can be bound or connected to the world—to the "other" and to "nature"—and, above all, to ultimate reality in a profoundly intimate way. If an ideology is not grounded or embedded in a vision of the finally or ultimately meaningful—the ultimately reconciling—nature of the world, it is a confusion, on the understanding of religion I'm presenting here, to think of that ideology as "religious;" even if the ideology, like Marxism, is all-encompassing.²⁹

Throughout human history it has been the so-called religious "mystics" who have trusted most deeply, and affirmed most passionately, the ultimate meaningfulness of reality.³⁰ Al-

27. *Id.*; Cf. FYEDER DOSTOEVSKY, *THE BROTHERS KARAMAZOV* 235 (1976). (Ralph E. Matlaw ed. & Constance Ganett trans.).

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.)

28. Cf. the meaning given the word "religion" in OXFORD ENGLISH DICTIONARY 568 (13th ed. 1989).

29. See David Braybrooke, *Ideology*, in 4 ENCYCLOPEDIA OF PHILOSOPHY 124 (P. Edwards ed., 1967).

30. Harvey Egan has written that "there is a sense in which all great religions are mystical at heart and that mysticism is the full-flowering of any religious tradition." HARVEY D. EGAN, *WHAT ARE THEY SAYING ABOUT MYSTICISM?* 17 (1982).

According to Wayne Proudfoot, the very ubiquity of mystical experience among the world religions suggests that mysticism may be regarded as "a *paradigm* of reli-

though her experience that the world is ultimately meaningful is deeply personal, the religious mystic denies that the experience is reducible to an idiosyncratic, perhaps even pathological, psychological state. Notwithstanding its noetic quality, however, and for all its potency, the mystical experience is often, if not invariably, transitory.³¹ Moreover, not everyone is graced by such experience, or graced as often, or to the same degree. In the aftermath of mystical experience, therefore, or in its absence, fundamental questions about the meaningfulness of human existence—questions that so thoroughly pervade, and so relentlessly subvert, our lives—remain in need of answers that are intellectually satisfying and emotionally resonant. In Milan Kundera's *The Unbearable Lightness of Being*, the narrator, speaking of "the questions that had been going through Tereza's head since she was a child,"³² says that:

gious experience." WAYNE PROUDFOOT, *RELIGIOUS EXPERIENCE* xviii (1985). Some commentators distinguish between two fundamental types of mystical experience or of union with God or the Absolute: (1) the experience of union, but not identity with God (as attested to by mystics in theistic traditions such as Christianity, Judaism, and Islam), and (2) the experience of complete absorption into the divine. But compare the following excerpt from Proudfoot:

The terms in which the subject understands what is happening to him are constitutive of the experience; consequently those in different traditions have different experiences. Jewish and Buddhist mystics [for example] bring entirely different doctrinal commitments, expectations, and rules for identifying their mental and bodily states to their experiences, and thus *devekuth* and *nirvana* cannot be the same.

Id. at 121.

31. According to William James, "transience" is a third mark of mystical experience. Commenting on James, Proudfoot writes:

The two secondary marks by which James characterizes the mystical state, transience and passivity, are also related to the noetic quality of the experience. Passivity conveys the sense of being grasped and of being subject to some power beyond oneself. Both passivity and transience reflect the perception that the experience is not under the subject's voluntary control. It cannot be manipulated or guaranteed by the subject's decision or by causes that he might set in motion. He can prepare himself for it, but the experience is finally not subject to his control. The rules for the identification of an experience as mystical include the condition that he judge it to be something other than an artifact of his own thought and actions.

PROUDFOOT, *supra* note 30, at 147-48.

32. MILAN KUNDERA, *THE UNBEARABLE LIGHTNESS OF BEING* 139 (Michael H. Heim trans., Harper Row 1984).

[t]he 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.*³³

Communities, especially historically extended communities—"traditions"—are the principal matrices and repositories of religious answers to such questions.³⁴ Who are we? Where did we come from; what is our origin, our beginning? Where are we going; what is our destiny, our end?³⁵ 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 the world ultimately meaningful or, instead, ultimately bereft of meaning, meaning-less, absurd? If any questions are fundamental, *these* questions—"religious or limit questions"³⁶—are fundamental. Such questions—"naive" questions, "questions with no answers," "barriers that cannot be breached"—are:

33. *Id.* (emphasis added).

34. See Abraham Heschel, *Faith*, in 10 THE RECONSTRUCTIONIST 4, Nov. 3 & 17, 1944.

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.

Id. at 4. For a later statement on faith, incorporating some of the original essay, see ABRAHAM HESCHEL, *MAN IS NOT ALONE* 159-76 (1951). On community/tradition as a principal matrix of moral beliefs, see MICHAEL J. PERRY, *MORALITY, POLITICS, AND LAW* 24-33 (1988).

35. See ROBERT COLES, *THE SPIRITUAL LIFE OF CHILDREN* 37 (1990) ("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.") Cf. HESCHEL, *supra* note 34, at 28 ("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?'" (citations omitted)).

36. TRACY, *supra* note 25, at 86.

[t]he most serious and difficult . . . that any human being or society must face 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.³⁷

To say that a conviction is “religious,” therefore, is to say that the conviction is embedded in—that it is an aspect, a constituent, of—a religious vision or cosmology; a vision according to which the world is ultimately meaningful in a way hospitable to our deepest yearnings. (Of course, not every religious tradition tells the same story about the way in which the world is ultimately meaningful; often the stories are different, even if sometimes the stories are quite similar.) To ask whether the conviction that every human being is sacred—the conviction that every human being has “inherent dignity,” is “an end in himself,” or the like—is inescapably religious is to ask whether the conviction can be embedded in, if it can cohere with, if it can be supported by, either a nonreligious cosmology, (according to which the world is, at the end of the day, not meaningful but meaningless) or a cosmological agnosticism that neither affirms nor denies the ultimate meaningfulness of the world.

Real moralities—the moralities that various human communities have actually lived—have always been cosmologically embedded. In every human community across time and space,

[m]oral norms are closely linked to beliefs about the facts of human life and the world in which human life is set To know what people find good in human action, we must know something about the powers and vulnerabilities they find characteristically human, and about how they explain the constraints that nature, power, finitude, and mortality impose on persons

[W]hen they formulate moral norms and impose them on themselves and others[, persons] are trying to formulate relationships between realities and human purposes that

37. DAVID TRACY, *THE ANALOGICAL IMAGINATION* 4 (1981).

allow them 'to live as [they] would in a world that is the way it is.'³⁸

The conviction that every human being is sacred is cosmologically embedded; it is embedded in a religious cosmology.³⁹ Indeed in one or another version, the conviction is embedded in more than one religious cosmology.⁴⁰ The question before us is whether the conviction can be embedded either in a nonreligious cosmology or in cosmological agnosticism.

III.

As I said, it is easy to understand talk about "the inherent dignity" of all human beings and related talk—for example, about all human beings as members of one "family"—as *religious* talk. But can we understand such talk in a secular sense? I now want to present a religious version of talk about the inherent dignity of all human beings; that is, I want to present a religious version—the Christian version, or at least *a* Christian version—of the conviction that every human being is sacred. We will then be in a better position to discern whether there is, indeed whether there can be, a coherent secular version of the conviction.

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."⁴¹ The "one another" is radically inclusive:

38. Robin Lovin & Frank Reynolds, *Focus Introduction*, 14 *J. RELIGIOUS ETHICS* 48, 56-57 (1986). See *id.*; Robin Lovin & Frank Reynolds, *In the Beginning*, in *COSMOGONY AND ETHICAL ORDER: NEW STUDIES IN COMPARATIVE ETHICS* 1, 1 (Robin Lovin & Frank Reynolds eds., 1985).

39. Cf. NIETZSCHE, *supra* note 21, at 184 ("What is the *counterfeiting* aspect of morality?—It pretends to *know* something, namely what 'good and evil' is. That means wanting to know why mankind is here, its goal, its destiny. That means wanting to know that mankind *has* a goal, a destiny . . ."). What was Nietzsche's teleology? See *id.* at 544-50 (The Eternal Recurrence).

40. See *infra* note 52 and accompanying text.

41. *John* 13:34. See *John* 15:12, 17 (This and the other translations in this essay are those of *The New Jerusalem Bible* (1985)). See also GARTH HALLETT, *CHRISTIAN NEIGHBOR-LOVE: AN ASSESSMENT OF SIX RIVAL VERSIONS* (1989). See generally THE

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. For if you love those who love you, what reward will you get? Do not even the tax collectors do as much? And if you save your greetings for your brothers, are you doing anything exceptional? Do not even the gentiles do as much? You must therefore set no bounds to your love, just as your heavenly Father sets none to his.⁴²

But, *why* should we “love one another . . . as I have loved you”?⁴³ The answer, in the vision of Judaism and Christianity, nourished by what David Tracy has called “the analogical imagination,”⁴⁴ is that the Other, too (the outsider, the stranger, the alien) no less than oneself and the members of one’s family or tribe or nation, is a “child” of God—God the creator and sustainer of the universe, imag(in)ed, analogically, as loving “parent”⁴⁵—and therefore a “sister”/“brother.” As Hilary Putnam has written, the moral image central to what she calls the

LOVE COMMANDMENTS: ESSAYS IN CHRISTIAN ETHICS AND MORAL PHILOSOPHY (E. Santurri & W. Werpehowski, eds., 1992). For a recent collection of secular philosophical essays on altruism, see 10 SOC. PHIL. & POL’Y 1-245 (1993). On the relation between the commandment to “love God” and the commandment to “love one another,” see *infra* note 61. Cf. NIETZSCHE, *supra* note 21, at 183 (“[L]ove: the ideal state of the herd animal that no longer wants to have enemies.”).

42. *Matthew* 5:43-48 (emphasis added). See *Luke* 6:27-35. Such a conception of the good is not confined to semitic spiritualities. For example, Buddhists feel the good life centrally involves compassion (*karuna*) for all sentient creatures and therefore for all human beings. Cf. NIETZSCHE, *supra* note 21, at 120.

One drives nature out of morality when one says “Love your enemies”: for then the natural “Thou shalt love thy neighbor and hate thy enemy” in the law (in instinct) has become meaningless; then this love of one’s neighbor must also find a new basis (as a kind of love of God). Everywhere, God is inserted and utility withdrawn; everywhere the real origin of morality is denied: the veneration of nature, which lies precisely in the recognition of a natural morality, is destroyed at its roots

43. *John* 13:34.

44. TRACY, *supra* note 25.

45. In the Bible, God—Ultimate Reality—is often imaged as “parent,” sometimes as “father,” sometimes as “mother.” Cf. ELIZABETH JOHNSON, *SHE WHO IS: THE MYSTERY OF GOD IN FEMINIST THEOLOGICAL DISCOURSE* (1992).

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."⁴⁶ At the beginning of its 1986 Pastoral Letter, the National Conference of Catholic Bishops wrote:

This letter is a personal invitation to Catholics to use the resources of our faith, the strength of our economy, and the opportunities of our democracy to shape a society that better protects the dignity and basic rights of our *sisters and brothers both in this land and around the world*.⁴⁷

In a recent 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."⁴⁸ 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."⁴⁹

46. HILARY PUTNAM, *THE MANY FACES OF REALISM* 60-61 (1987).

47. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Economic Justice for All*, PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE ECONOMY (1986) (emphasis added).

48. Ben Z. Bokser & Baruch M. Bokser, *Introduction: The Spirituality of the Talmud*, in *THE TALMUD: SELECTED WRITINGS* 7 (Ben Z. Bokser & Baruch M. Bokser eds., 1989).

49. *Id.* at 30-31.

Friedrich Nietzsche was relentlessly critical of what he called "the concept of the 'equal value of men before God.'"⁵⁰ That concept, he wrote,

is extraordinarily harmful; one forbade actions and attitudes that were in themselves among the prerogatives of the strongly constituted—as if they were in themselves unworthy of men. One brought the entire tendency of the strong into disrepute when one erected the protective measures of the weakest (those who were weakest also when confronting themselves) as a form of value.

Confusion went so far that one branded the very virtuosi of life (whose autonomy offered the sharpest antithesis to the vicious and unbridled) with the most opprobrious names. Even now one believes one must disapprove of a Cesare Borgia; that is simply laughable. The church has excommunicated German emperors on account of their vices: as if a monk or priest had any right to join in a discussion about what a Frederick II may demand of himself. A Don Juan is sent to hell: that is very naive. Has it been noticed that in heaven all interesting men are missing?—Just a hint to the girls as to where they can best find their salvation.—If one reflects with some consistency, and moreover with a deepened insight into what a "great man" is, no doubt remains that the church sends all "great men" to hell—it fights *against* all "greatness of man."

. . . .
The degeneration of the rulers and the ruling classes has been the cause of the greatest mischief in history! Without the Roman Caesars and Roman society, the insanity of Christianity would never have come to power.

When lesser men begin to doubt whether higher men exist, then the danger is great! And one ends by discovering that there is *virtue* also among the lowly and subjugated, the poor in spirit, and that *before God* men are equal—which has so far been the *non plus ultra* of nonsense on earth! For ultimately, the higher men measured themselves according to the standard of virtue of slaves—found they were "proud," etc., found all their higher qualities reprehensible.

When Nero and Caracalla sat up there, the paradox arose: "the lowest man is worth more than the man up

50. NIETZSCHE, *supra* note 21, at 466.

there!" And the way was prepared for an image of God that was as remote as possible from the image of the most powerful—the god on the cross!⁵¹

One might respond to the religious vision sketched here, if not like Nietzsche, then this way: "Even if I assume, for the sake of argument, that the Other is a 'child' of God and therefore my 'sister/brother', still, why should I love the Other? In particular, why should I give a damn about the well-being of her or him who is, in some deep sense, my sister or my brother?" For us—or, at least, for most of us—it is a fundamental conviction, born not merely of our own experience, but of the experience of the historically extended communities ("traditions") that for many of us have been formative. It is the tradition that an important constituent of one's own well-being—of one's authentic flourishing as a human being—is concern for the well-being of one's sisters and brothers. We believe, based on that experience, that a life of loving connection to one's sisters and brothers is, to that extent, a flourishing life and that a life of unloving—uncaring—alienation from one's sisters and brothers is, to that extent, a withering life. This fundamental conviction about human good—about what it means to be truly, fully human, about what is of real and ultimate value in life, about what makes a life most deeply meaningful⁵²—is, for us, bedrock; this is where our spade is turned.⁵³ There may be little of resonance for us to say, if indeed there is anything, *to* one who rejects the conviction—which, it bears emphasis, is not necessarily, for a person whose conviction it is, a religious conviction. But there is this to say *about* one who rejects it: He is, by our lights, no less in the grip of a pathology of estrangement than if he were to reject that an important constituent of one's own well-being is concern for the well-being of one's child, or spouse, or parent.⁵⁴ The serious question among us—some of

51. *Id.* at 466-68.

52. See MARTHA C. NUSSBAUM, *ARISTOTLE ON HUMAN NATURE AND THE FOUNDATIONS OF ETHICS* 22 (1990) ("[T]o find out what our nature is seems to be one and the same thing as to find out what we deeply believe to be most important and indispensable [in a human life].").

53. See LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS*, § 217 (1953) ("I have reached bedrock, and my spade is turned." (quoting PUTNAM, *supra* note 46, at 85)).

54. *Cf.* ROBERT NOZICK, *PHILOSOPHICAL EXPLANATIONS* 403 (1981).

whom count ourselves religious, but others of whom do not—is not whether a life of loving connection to our sisters and brothers is a flourishing life, but this: “Who is my sister? Who is my brother?”⁵⁵ Or, in a different but spiritually equivalent termi-

Recall Glaucon’s challenge to Socrates in Plato’s *Republic*: show that being moral is better for the agent, apart from its external consequences. To isolate these consequences, Glaucon imagines a ring that makes someone invisible. With this ring he is able to act immorally with no external penalty: he can rob, murder, and rape without being caught or punished. Is there any reason why he should not do this? Glaucon sharpens the issue by imagining that the immoral man has the reputation of being moral, he is honored and praised as moral, while another man is thought to be immoral and so is condemned and shunned. Glaucon asks Socrates to show, despite this, that the second moral person is better off than the first immoral one, that we would be better off being that second than the first.

Id.

[T]he answer that [Plato] puts into the mouth of Socrates is that the just man is happy because his soul is harmoniously ordered, because, as we would say, he has an integrated personality, whereas the unjust man’s personality is disintegrated, and the man who represents the extreme of injustice is psychotic, his soul is a chaos of internal strife.

JOHN MACKIE, *ETHICS: INVENTING RIGHT AND WRONG* 190-91 (1977). Should we take Socrates’ response seriously? See BERNARD WILLIAMS, *ETHICS AND THE LIMITS OF PHILOSOPHY* 46 (1985).

There is also the figure, rarer perhaps than Callicles supposed, but real, who is horrible enough and not miserable at all but, by any ethical standard of the bright eye and the gleaming coat, dangerously flourishing. For those who want to ground the ethical life in psychological health, it is something of a problem that there can be such people at all. But it is a significant question, how far their existence, indeed the thought of their existence, is a cultural phenomenon. They seem sleeker and finer at a distance. Some Renaissance grandee fills such a role with more style than the tawdry fascist bosses, gangsters, or tycoons who seem, even as objects of fantasy, to be their chief contemporary instances. Perhaps we deceive ourselves about the past.

Id.

55. See James Burtchaell, *The Source of Conscience*, 13 *NOTRE DAME MAG.* 20, 20-21 (Winter 1984-85).

The Catholic tradition embraces a long effort to uncover the truth about human behavior and experience. Our judgments of good and evil focus on whether a certain course of action will make a human being grow and mature and flourish, or whether it will make a person withered, estranged and indifferent. In making our evaluations, we have little to draw on except our own and our forebears’ experience, and whatever wisdom we can wring from our debate with others

What we are trying to unpuzzle are things like childbearing and immigration and economic policy and infant mortality and drug use and family fidelity and so much else about which we must frame moral judg-

nology: "Who is my neighbor?"⁵⁶—which is the very question to which, according to Luke's Gospel, Jesus responded with the Parable of the Good Samaritan.⁵⁷

ments. With our fellow communicants we share commitments and assumptions: that we are happier giving than getting, that there is no greater love than to put down your life for your neighbor, and that your neighbor always turns out to be the most unlikely person.

On our neighbor always turning out to be the most unlikely person, see *infra* note 57 and accompanying text (Parable of the Good Samaritan). For a revised version of Burtchaell's essay, and for several other illuminating essays by Father Burtchaell, see James Burtchaell, *The Giving and Taking of Life* (1989).

56. 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."

Id. See also *Mark* 12:28-34; *Luke* 10:25-28 (On the relation between the two commandments, see *supra* note 41.) Cf. MACKIE, *supra* note 54, at 243

David 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." Thus, Bruce Ackerman need not worry that he is being asked to love the "stranger" as himself. *That*, protests Ackerman, "[o]nly a God could do . . . : there are too many strangers with too many strangenesses." BRUCE ACKERMAN, *THE FUTURE OF LIBERAL REVOLUTION* 21 (1992).

57. See *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."

Id. In the annotation of *The New Jerusalem Bible*, a footnote appended to "Samaritan"

One response to the question, a religious response, is that the Other, too, is, in the deepest possible sense—i.e., as a child of God—your sister/brother. To fail to “see” the Other as sister/brother is, according to this religious response to succumb to a kind of blindness: blindness to the true nature or being both of the Other and of oneself, which nature/being consists partly in a profound kinship between self and Other. And to fail to love the Other as sister/brother—worse, to hate the Other—is to succumb to the pathology of estrangement.⁵⁸ It is, to that extent, to wither as a human being rather than to flourish. That the estrangement is radical—indeed, that it is estrangement even from “the Lord your God”⁵⁹—and involves the most fundamental and enduring failure to achieve human well-being, is emphasized in the searing “Last Judgment” passage of Matthew:

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,

tan” says 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.” *Id.*

58. I may love the Other even if I do not understand that the Other is my sister/brother. And I may understand that the Other is my sister/brother, and yet fail to love the Other.

59. See *supra* note 51-52 and accompanying text.

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.⁶⁰

60. *Matthew* 25:31-46 (In Matthew's Gospel, these are Jesus' final words to his disciples before the beginning of the passion narrative); see also *Matthew* 26:1-2: ("Jesus had now finished all he wanted to say, and he told his disciples, 'It will be Pass-over, as you know, in two days' time, and the Son of Man will be handed over to be crucified.'). See generally 6 KARL RAHNER, *THEOLOGICAL INVESTIGATIONS*, 231, 236-39 (Karl H. Kruger & Boniface Kruger trans., 1969) (concerning Vatican Council II).

In the view of great German Catholic theologian Karl Rahner, a view consistent with the eschatology of the Last Judgment passage, 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." 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 love God whom one does not see only by loving one's visible brother lovingly.

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." I *John* 4:20. See *supra* note 57 and accompanying text (Parable of the Good Samaritan). In Rahner's view, the two great commandments are really one. See *id.* at 232. Rahner argued that, if and to the extent one loves one's neighbor one has achieved the ontological/existential state of being/consciousness that constitutes "love of God" even if one does not "believe in God." *Id.* at 238-39. If Rahner is right, then it is a mistake, a confusion, to say that one should love the Other 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 may say, instead, that to love the Other (who is "sister/brother") just is to love God (who is "parent")—and that we should achieve the ontological/existential state of being/consciousness that constitutes "love of the Other," or "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. "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." I *John* 3:14.

Has Rahner pushed a good idea—that no one can be judged to love God who fails to love his/her neighbor—too far? One can accept that idea while rejecting

The response of the Gospel to "Who is my sister/brother/neighbor?" is religious in the fundamental sense that such a response is embedded in a religious vision of the world and of our place in it. Of course, there are differences among religious visions within the relevant range, sometimes large differences, sometimes small. The analogical imagination does not yield precisely the same vision in every time or in every place. How a person or a community arrives at a religious vision is a difficult question; as is the question how one brings another to such a vision. Moreover, different religious traditions, and even different theologies within the same broad religious tradition, proffer different answers to such questions.

It bears emphasis that a theistic religious vision does not necessarily include a conception of "God" as a kind of divine legislator, issuing directives for human conduct. (Indeed, a religious person may well believe that such a "God"—such an idol—is dead.⁶¹) The imperative to "love one another as I have loved you" can be understood, and should be understood, not as a piece of divine legislation, but as a truly, fully human response to the question of how to live. However, to say that the response is a human one does not entail that it is not also a religious response. What makes the imperative a *religious* human response and not merely a secular one is that the response is the existential yield of a religious conviction about how the

Rahner's identification of love of God with love of neighbor. Tim Jackson has suggested, in response, that "surely there is such a thing as the *direct* love of God, as for instance in the ecstatic prayer of some mystics or in Holy Communion. Human beings are social animals, no doubt, but they are also born for a vertical relation to the Supernatural." Cf. JEAN PORTER, *Salvific Love and Charity: A Comparison of the Thought of Karl Rahner and Thomas Aquinas*, in *THE LOVE COMMANDMENTS: ESSAYS IN CHRISTIAN ETHICS AND MORAL PHILOSOPHY* 240, 240 n.30, (Edmond N. Santurri & William Werpehowski, eds. 1992).

61. See C. Larmore, *Beyond Religion and Enlightenment*, 30 *SAN DIEGO L. REV.* 000, 000-00 (forthcoming 1993) (On the death of such a "God"). Indeed, as my footnote references to Buddhism—whose "theological" discourse is, in the main, non-theistic—suggest, the vision is not necessarily even theistic in any conventional sense. Whether mainline Buddhism is theistic in an unconventional sense is a difficult question. David Tracy, *Kenosis, Sunyata, and Trinity: A Dialogue With Masao Abe*, *THE EMPTYING GOD: A BUDDHIST-JEWISH-CHRISTIAN CONVERSATION* 135 (John B. Cobb, Jr. & Christopher Ives, eds., 1990).

world (including we-in-the-world) hangs together: in particular, the conviction that the Other is, finally, one's own sister/brother—and should receive, therefore, the gift of one's loving concern.⁶²

Indeed, a theistic religious vision is not necessarily attended by confident, much less dogmatic, God-talk.⁶³ If that statement seems strange, consider what one scholar has recently stressed about Thomas Aquinas, perhaps the greatest Christian theologian:

[M]uch of [Aquinas'] doctrine about talking about God is in truth a carefully qualified *via negativa* . . . Aquinas would simply agree with modern antitheists that we cannot say what God is; and that human language is inadequate to the claimed reality of God; and that there is something improper even in saying that God is a being. But not only does Aquinas think that none of these admissions disqualifies him from theism; he actually thinks that the theist should make these admissions.⁶⁴

Of course, and as Aquinas understood, to insist that we cannot say what God is—that we can only follow a *via negativa* and say what God is not—is not to deny that we can try to mediate our experience of Ultimate Reality by analogy. For example, we can speak of God as *like* a loving “parent,” and of the Other as *like* a “sister”/“brother.” In addition to his “carefully qualified *via negativa* . . . Aquinas also has, of course, a *via positiva* about God-talk, namely, the ‘doctrine of analogy.’”⁶⁵ However,

62. In Buddhism, the relevant conviction is that the, appearances (illusions) to the contrary notwithstanding, the other is not really Other at all, or in any deep sense—is an object of infinite compassion. (The Buddhist greeting “Namasté” means, roughly, “I greet the place within you where we are one.”)

63. I have developed the point elsewhere. See PERRY, *supra* note 22, at 72-73. Nor is such a vision necessarily attended by belief in an afterlife. Cf. Timothy R. Jackson, *The Disconsolation of Theology: Irony, Cruelty, and Putting Charity First*, 20 J. RELIGIOUS ETHICS 1, 19 (1992) (arguing that “a future heaven and/or hell ought not to play much of a role in [Christian] ethics, whatever role they may play in cosmology”).

64. T.D.J. Chappell, *Why Read Aquinas?*, TIMES LITERARY SUPP., May 1, 1992, at 25 (reviewing B. DAVIES, *THE THOUGHT OF THOMAS AQUINAS* (1992)).

65. See TRACY, *supra* note 37 at 108-109. David Tracy's comments about the richness, the variety, but, finally, the problematic character—the limits—of all talk about Ultimate Reality, and especially of God-talk (talk about God, “theo-logizing”), are

compelling.

In and through even the best speech for Ultimate Reality, greater obscurity eventually emerges to manifest a religious sense of that Reality as ultimate mystery. Silence may be the most appropriate kind of speech for evoking this necessary sense of the radical mystery—as mystics insist when they say, “Those who know do not speak; those who speak do not know.” The most refined theological discourse of the classic theologians ranges widely but returns at last to a deepened sense of the same ultimate mystery: the amazing freedom with all traditional doctrinal formulations in Meister Eckhart; the confident portrayals of God in Genesis and Exodus become the passionate outbursts of the prophets and the painful reflections of Job, Ecclesiastes, and Lamentations; the disturbing light cast by the biblical metaphors of the “wrath of God” on all temptations to sentimentalize what love means when the believer says, “God is love”; the proclamation of the hidden and revealed God in Luther and Calvin; the *deus otiosus* vision of God in the Gnostic traditions; the repressed discourse of the witches; the startling female imagery for Ultimate Reality in both the great matriarchal traditions and the great Wisdom traditions of both Greeks and Jews; the power of the sacred dialectically divorcing itself from the profane manifested in all religions; the extraordinary subtleties of rabbinic writing on God become the uncanny paradoxes of kabbalistic thought on God’s existence in the very materiality of letters and texts; the subtle debates in Hindu philosophical reflections on monism and polytheism; the many faces of the Divine in the stories of Shiva and Krishna; the puzzling sense that, despite all appearances to the contrary, there is “nothing here that is not Zeus” in Aeschylus and Sophocles; the terror caused by Dionysius in Euripides’ *Bacchae*; the refusal to cling even to concepts of “God” in order to become free to experience Ultimate Reality as Emptiness in much Buddhist thought; the moving declaration of that wondrous clarifier Thomas Aquinas, “All that I have written is straw; I shall write no more”; Karl Rahner’s insistence on the radical incomprehensibility of both God and ourselves understood through and in our most comprehensible philosophical and theological speech; . . . the “God beyond God” language of Paul Tillich and all theologians who acknowledge how deadening traditional God-language can easily become; the refusal to speak God’s name in classical Judaism; the insistence on speaking that name in classical Islam; the hesitant musings on the present-absent God in Buber become the courageous attempts to forge new languages for a new covenant with God in the *post-tremendum* theologies of Cohen, Fackenheim, and Greenberg. There is no classic discourse on Ultimate Reality that can be understood as mastering its own speech. If any human discourse gives true testimony to Ultimate Reality, it must necessarily prove uncontrollable and unmasterable.

Id. Cf. MARTIN BUBER, HANS KÜNG, DOES GOD EXIST? AN ANSWER FOR TODAY 508 (Edward Quinn trans., 1980).

["God"] is the most loaded of all words used by men. None has been so soiled, so mauled. But that is the very reason I cannot give it up. Generations of men have blamed this word for the burdens of their troubled lives and crushed it to the ground; it lies in the dust, bearing all their burdens. Generations of men with their religious divisions have torn the

to insist with Aquinas that in talking about God we must either follow a *via negativa* or speak analogically is *not* to say that God-talk is merely metaphorical or figurative or poetic. Aquinas was, after all, a committed theological realist.⁶⁶

To forestall predictable misunderstanding, let me make two

word apart; they have killed for it and died for it; it bears all their fingerprints and is stained with all their blood. Where would I find a word to equal it, to describe supreme reality? If I were to take the purest, most sparkling term from the innermost treasury of the philosophers, I could capture in it no more than a noncommittal idea, not the presence of what I mean, of what generations of men in the vastness of their living and dying have venerated and degraded . . . We must respect those who taboo it, since they revolt against the wrong and mischief that were so readily claimed to be authorized in the name of God; but we cannot relinquish it. It is easy to understand why there are some who propose a period of silence about the "last things," so that the misused words may be redeemed. But this is not the way to redeem them. We cannot clean up the term "God" and we cannot make it whole; but, stained and mauled as it is, we can raise it from the ground and set it above an hour of great sorrow.

Id. For feminist-theological reflection on God-talk, see generally JOHNSON, *supra* note 45; ROSEMARY R. RUETHER, *SEXISM AND GOD-TALK: TOWARD A FEMINIST THEOLOGY* (1983); *WEAVING THE VISIONS: NEW PATTERNS IN FEMINIST SPIRITUALITY* (J. Plaskow & C. Christ eds., 1989) (of particular importance is part 2, "Naming the Sacred").

66. David Hollenbach, SJ, *Afterword: A Community of Freedom*, in *CATHOLICISM AND LIBERALISM: CONTRIBUTIONS TO AMERICAN PUBLIC PHILOSOPHY* (R. Douglass and David Hollenbach, eds., (forthcoming)).

For Christian believers, it is a challenge to recognize that their faith in God and the way of life it entails is a historical reality—it is rooted in historically particular scriptures and symbols and it is lived and sustained in historically particular communities. This historicity means that the task of interpreting the meaning of their faith will never be done as long as history lasts. The God in whom they place their faith can never be identified with any personal relationship, social arrangement, or cultural achievement. God transcends all of these. Though Christians believe that in Jesus Christ they have been given a definitive revelation of who this God is, they cannot claim to possess or encompass God in any of their theologies or understandings of the ultimate good of human life. Thus, in the words of Avery Dulles, "The Christian is defined as a person on the way to discovery, on the way to a revelation not yet given, or at least not yet given in final form."

Id. (quoting Avery Dulles, *Revelation and Discovery*, in *THEOLOGY AND DISCOVERY: ESSAYS IN HONOR OF KARL RAHNER 27* (Kelly, SJ ed., 1980). Hollenbach adds:

Because the Christian community is always on the way to the fullness of its own deepest faith, hope, and love, it must be continually open to fresh discoveries. Encounter with the other, the different, and the strange must therefore characterize the life of the church. Active participation in a community of freedom is a prerequisite to such discovery. *Id.* at 23.

points. First, in presenting a religious version of the conviction that every human being is sacred, I have relied on the religious materials I know best. In relying primarily on Christian materials, however, I do not mean to suggest that there are not ample materials in other religious traditions out of which one can construct, or reconstruct, a relevantly similar version of the conviction. Of course, just as there are differences among the precise religious visions adhered to by different sects within Christianity, there are differences among the precise visions adhered to by different world religions. Again, the analogical imagination does not yield precisely the same vision in every time or place. But such differences ought not obscure the fact that the experience of all human beings as sacred is widely shared among different sects and religions, albeit expressed or mediated differently in different traditions; and that common, ecumenical ground helps to explain the emergence of the idea of human rights as a point of convergence among peoples from different religious traditions.⁶⁷

Second, in presenting a religious version of the conviction that every human being is sacred, and in relying primarily on Christian materials in doing so, I do not mean to deny that the lived practice, as distinct from the professed ideals of every religious tradition, including Christianity, offers at best equivocal support for what we now call human rights. Indeed, I do not mean to deny even that the professed ideals of religious traditions—at least on some quite plausible construals of those ideals—fail to support, and may even oppose, some of what we now think of as human rights. Christianity is a conspicuous example.⁶⁸ There has been an obvious tendency on the part of

67. See WORLD RELIGIONS AND HUMAN LIBERATION (Dan Cohn-Sherbok ed., 1992); THE ETHICS OF WORLD RELIGIONS AND HUMAN RIGHTS (Hans Küng & Jürgen Moltmann eds., 1990); HUMAN RIGHTS AND THE WORLD'S RELIGIONS (Leroy Rouner ed., 1988); HUMAN RIGHTS IN RELIGIOUS TRADITIONS (Arlene Swidler ed., 1982); ROBERT TRÄER, FAITH IN HUMAN RIGHTS: SUPPORT IN RELIGIOUS TRADITIONS FOR A GLOBAL STRUGGLE (1991).

68. See SANDRA M. SCHNEIDERS, *Does the Bible Have a Postmodern Message?*, in POSTMODERN THEOLOGY: CHRISTIAN FAITH IN A PLURALIST WORLD 56, 64-65 (Frederic B. Barnham ed., 1989).

[There are] two problems: the ideological *use* of Scripture, which is, if you will, an exterior problem; and the ideological *content* of Scripture, which is intrinsic to the text.

even the world's "great" religious traditions toward tribalism, racism, and sexism. No person who takes seriously the resources of one or another religious tradition should deny "the brokenness and ambiguity of every tradition" or repress "one's own inevitably ambivalent relationship to [the tradition]."⁶⁹ A self-critical attitude towards one's own tradition is "the route to liberation from the negative realities of [the] tradition."⁷⁰

For believers to be unable to learn from secular feminists on the patriarchal nature of most religions or to be unwilling to be challenged by Feuerbach, Darwin, Marx, Freud, or Nietzsche is to refuse to take seriously the religion's own suspicions on the existence of those fundamental distortions named sin, ignorance, or illusion. The interpretations of believers will, of course, be grounded in some fundamental trust in, and loyalty to, the Ultimate Reality both disclosed and concealed in one's own religious tradition. But fundamental trust, as any experience of friendship can teach, is not immune to either criticism or suspicion. A religious person will ordinarily fashion some hermeneutics of trust, even one of friendship and love, for the religious classics of her or his tradition. But, as any genuine understanding of

The question of the *use* of Scripture for purposes of oppression is being focused in the third-world struggle of the poor from domination by the rich and for participation in the societies and cultures which have been, for so long, controlled by the economically powerful for their own advantage. The struggle involves wresting the sacred text from those who have used it to legitimate their oppressive regimes and strategies and delivering it into the hands of the oppressed as a resource for liberation The problem of the ideological use of scripture is soluble and is slowly being solved.

The second problem . . . , that of the ideological *content* of Scripture, is much more complicated. It is being focused in the struggle of women for liberation from patriarchal oppression in family, society, and church, and in the struggle of feminists, both men and women, to destroy the patriarchal ideology which grounds not only sexism but racism, classism, clericalism, and all the other forms of dualistic hierarchy in which the powerful dominate the weak in the name of God. Here the problem is not that the Scripture has been *used* to legitimate oppression (although this is a continuing problem) but that the Bible itself is both a product and a producer of oppression, that some of its *content* is oppressive.

Id. Schneiders' elaboration of the problem and her overview of the various responses of women (especially feminist theologians) and others to it are excellent. Schneiders is a feminist Christian theologian.

69. TRACY, *supra* note 25, at 105.

70. *Id.* at 100.

friendship shows, friendship often demands both critique and suspicion. A belief in a pure and innocent love is one of the less happy inventions of the romantics. A friendship that never includes critique and even, when appropriate, suspicion is a friendship barely removed from the polite and wary communication of strangers. As Buber showed, in every I-Thou encounter, however transient, we encounter some new dimension of reality. But if that encounter is to prove more than transitory, the difficult ways of friendship need a trust powerful enough to risk itself in critique and suspicion. To claim that this may be true of all our other loves but not true of our love for, and trust in, our religious tradition makes very little sense either hermeneutically or religiously.⁷¹

IV.

The religious-cosmological context of the conviction that every human is sacred, the context I sketched in the preceding section, is not appealing to everyone. It was very unappealing to Nietzsche. And even for one to whom it is greatly appealing, it may not be credible. It is not credible, for example, to Jürgen Habermas, who has written:

[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 . . . 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."⁷²

71. *Id.* at 84-85, 86, 97-98, 112.

72. JÜRGEN HABERMAS, *Transcendence from Within, Transcendence in this World*, in HABERMAS, MODERNITY, AND PUBLIC THEOLOGY 226, 238 (Don S. Browning & Francis S. Fiorenza eds., 1992).

Even if one finds incredible the religious-cosmological context of the conviction that every human being is sacred, the question persists whether the religious version of the conviction isn't the only coherent version. Can there be a coherent secular version, a version not finally rooted in a religious vision of the world and of our place in it? Can the conviction be embedded either in a nonreligious cosmology or in cosmological agnosticism? Consider Glenn Tinder's statement:

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.⁷³

Is Tinder right? We may agree with Charles Larmore that morality is now widely understood (or, at least, understood by

73. Glenn Tinder, *Can We Be Good without God: The Political Meaning of Christianity*, THE ATLANTIC MONTHLY, Dec. 1989, at 69, 80 (passages rearranged and emphasis added). Tinder's emphasis on the Christian tradition will surely and understandably be, for some non-Christians, a provocative distraction from his fundamental point. Tinder's (and Nietzsche's) point loses nothing, however, if the emphasis is placed not on the Christian tradition but on the Jewish, for example. Recall the comment on the Talmud quoted earlier in this essay. Nor does the point lose anything if the emphasis is put, for example, on the (Mahayana) Buddhist tradition, with its insistence on compassion for all sentient creatures as the fitting response to the true—as distinct from the illusory—nature of the world.

many of us, religious or not, who read essays like this one) to be independent of God conceived of as the supreme moral legislator.⁷⁴ But is it plausible to think that morality can be independent of *any* cosmological convictions—any convictions about how the world (including we-in-the-world) hangs together? After Nietzsche, is it plausible to think that a morality embedded in religious convictions about how the world hangs together can be more or less equivalent to a morality embedded in the conviction that the world is nothing but a great cosmic process utterly bereft of ultimate meaning and therefore, from a human point of view, absurd.⁷⁵ Nietzsche declared: “Naiveté: as if morality could survive when the *God* who sanctions it is missing! The ‘beyond’ absolutely necessary if faith in morality is to be maintained.”⁷⁶ Writing recently of “anthropocentrism, [which] by abolishing all horizons of significance, threatens us with a loss of meaning and hence a trivialization of our predicament,” Charles Taylor has said:

At one moment, we understand our situation as one of high tragedy, alone in a silent universe, without intrinsic meaning, condemned to create value. But at a later moment, the same doctrine, by its own inherent bent, yields a flattened world, in which there aren't very meaningful choices because there aren't any crucial issues.⁷⁷

Consider a cosmology according to which the world is, finally and radically, meaningless—or, even if meaningful in some sense, not meaningful in a way hospitable to our deepest yearn-

74. See Larmore, *supra* note 61.

75. Cf. NIETZSCHE, *supra* note 21, at 169.

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 nothingness, 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? And man, in spite of all, as Kant says—”

Id. See also BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 368 (1980). “There is no . . . meaning . . . in the bowels of the universe.”

76. NIETZSCHE, *supra* note 21, at 147.

77. CHARLES TAYLOR, THE ETHICS OF AUTHENTICITY 68 (1991).

ings for what Heschel called "ultimate relationship, ultimate belonging."⁷⁸ 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," 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."⁷⁹

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."⁸⁰ Where is the place in a cosmologi-

78. See JOSKE, *supra* note 23, at 250 ("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;") see also Nozick, *supra* note 54 at 586.

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.

Id.

79. Paul Edwards, *Life, Meaning and Value of*, in 4 ENCYCLOPEDIA OF PHIL. 467, 470 (Paul Edwards ed., 1967). Whether Clarence Darrow was in fact "one of the most compassionate men who ever lived" is open to serious question. For a revisionist view of Darrow, see GARY WILLS, UNDER GOD: RELIGION AND AMERICAN POLITICS, chs. 8-9 (1990).

80. John Leslie, *Is It All Quite Simple? The Physicist's Search for a Theory of Ev-*

cal view like Weinberg's for the conviction that every human being is sacred (has inherent dignity, is an end in himself, etc.) to gain a foothold? Indeed, embedded in the view that the world is merely a process devoid of ultimate meaning, what would the conviction that every human being is sacred even mean? If the only coherent version of the conviction is religious—if indeed the only *intelligible* version is religious—then cosmological agnosticism, which neither affirms nor denies the ultimate meaningfulness of the world, entails agnosticism about the sacredness *vel non* of human beings.

In writing recently about abortion and euthanasia, Ronald Dworkin has asserted that “[w]e almost all accept, as the inarticulate assumption behind much of our experience and conviction, that human life in all its forms is *sacred*.”⁸¹ Dworkin then observes that “[f]or some of us, [the sacredness of human life] is a matter of religious faith; for others, of secular but deep philosophical belief.”⁸² Now, many folks who believe that every human being is sacred do not count themselves religious; some of them even embrace nonreligious views like Weinberg's. The question nonetheless persists whether there is a coherent secular version of the conviction about the sacredness of every human being. Imagine a nonreligious person saying: “That

erything, *Times Literary Supp.*, Jan. 29, 1993, at 3 (reviewing, inter alia, STEVEN WEINBERG, *DREAMS OF A FINAL THEORY* (1992)); cf. Paul Davies, *The Holy Grail of Physics*, *NEW YORK TIMES BOOK REV.*, Mar. 7, 1993, at 11 (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?).

For a controversial critique of such scientific reductionism, see B. APPLEYARD, *UNDERSTANDING THE PRESENT: SCIENCE AND THE SOUL OF MODERN MAN* (1992). On philosophical inquiry into cosmology, see Derek Parfit, *The Puzzle of Reality*, *TIMES LITERARY SUPP.*, July 3, 1992, at 3.

Several papers in a fierce and ongoing debate about the consistency or inconsistency of claims made in evolutionary biology with Christian claims are relevant here. All the papers are by persons who identify themselves as Christians. In the September 1991 issue of *Christian Scholar's Review*, see Ernan McMullin, *Platinga's Defense of Special Creation*; A. Platinga, *Evolution, Neutrality, and Antecedent Probability: A Reply to McMullin and Van Till*; A. Platinga, *When Faith and Reason Clash: Evolution and the Bible*; Howard J. Van Till, *When Faith and Reason Cooperate*. In the June/July 1993 issue of *First Things*, see Howard J. Van Till & P. Johnson, *God and Evolution: An Exchange*.

81. Dworkin, *supra* note 2, at 36.

82. *Id.* at 36.

every human being is sacred is not, for me, a religious tenet; it is a secular but deep philosophical belief." We may ask: "Please tell us something about the constellation of views—views about how the world, including we-in-the-world, hangs together—in which, for you, that philosophical belief is embedded." Imagine this answer: "For me the conviction that every human being is sacred is not only axiomatic; it is unconnected to any of my views about how the world hangs together." Perhaps the answer includes this statement: "I have no confident views about how the world hangs together. I'm agnostic about all such 'religious' or 'cosmological' matters." It seems, then, that the premise that every human being is sacred is, for our nonreligious interlocutor, less a conviction about a part of the world than a kind of free-floating aesthetic preference. In Dworkin's view, however, the premise is, even for most nonreligious persons who hold it, much more than an aesthetic preference.

In his book on abortion and euthanasia, Dworkin writes that "one of [his] main claims [is] that there is a secular as well as a religious interpretation of the idea that human life is sacred."⁸³ Dworkin purports to explain, in his book, how the conviction that every human being or "life," is sacred "may be, and commonly is, interpreted in a secular as well as in a conventionally religious way."⁸⁴ To say that a human life is

83. RONALD DWORKIN, *LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* 195 (1993).

84. *Id.* at 25. Curiously, elsewhere in his book Dworkin writes that he "can think of no plausible account of the content that a belief must have in order to be deemed religious that would rule out convictions about why and how human life [is sacred], except the abandoned notion that religious belief must presuppose a god." *Id.* at 163. He also says that "why and how human life is sacred" is an "essentially religious position." *Id.* at 165. It is not obvious why, if there is a secular interpretation or version of the idea that human life is sacred, the issue of why and how human life is sacred is *essentially* religious. If the idea that human life is sacred is *not* essentially religious, why is the issue of why and how human life is sacred essentially religious? Dworkin's principal incentive to claim that the idea that human life is sacred can be interpreted in a secular as well as in a religious way is that, for purposes of his characterization of the abortion controversy, he wants to be able to attribute the idea, in its secular version, to secular folks, as well as, in its religious version, to religious ones. His principal incentive to claim that the issue of why and how human life is sacred is essentially religious is that, for purposes of his argument about the (un)constitutionality of restrictive abortion legislation, Dworkin wants to be able to rely on the constitutional premise according to which government may not take coercive action predicated on nothing more than a contested position on an essentially religious

sacred is partly to say, according to Dworkin, "that it has *intrinsic* and *objective* value quite apart from any value it might have to the person whose life it is."⁸⁵ Emphasizing in particular the notion of "intrinsic" value, Dworkin writes:

[M]uch of our life is based on the idea that objects or events can be valuable in themselves [T]he idea that some events or objects are valuable in and of themselves . . . is . . . a familiar part of our experience The idea of intrinsic value is commonplace, and it has a central place in our shared scheme of values and opinions Something is intrinsically valuable . . . if its value is *independent* of what people happen to enjoy or want or need or what is good for them.⁸⁶

Dworkin's comments about "intrinsic" value obscure rather than clarify that value is always and everywhere value *for* someone or something. The notion of something being valuable independently of a beneficial relation to anyone or anything—whether a human being, a nonhuman but living entity, or God—is perfectly opaque. Putting aside things that are of value either for nonhuman entities or for God, we may say that

the category of values is anthropocentric, in that it corresponds to interests which can only take root in creatures with something approaching our own affective make-up [V]alues are only ascribable from points of view constituted by human patterns of affective response. A wholly dispassionate eye would be as blind to them as a black-and-white camera to chromatic colors.⁸⁷

issue. *See id.* at 160-68 (suggesting that whether there is such a constitutional premise is open to question). *Cf.* Michael Perry, *Religious Morality and Political Choice: Further Thoughts—and Second Thoughts—on Love and Power*, 30 SAN DIEGO L. REV. 000 (forthcoming 1993).

85. DWORKIN *supra* note 83, at 36 (emphasis added).

86. *Id.* at 69-71.

87. A. Price, "Varieties of Objectivity and Values," *Proceedings of the Aristotelian Society* 103, 106 (1983). *See* DAVID HUME, *A TREATISE OF HUMAN NATURE* 469 (L. Selby-Bigge ed., 1973):

Vice and virtue, therefore, may be compar'd to sounds, colours, heat and cold, which, according to modern philosophy, are not qualities in objects, but perceptions in the mind: And this discovery in morals, like that other

The relevant distinction here is between "intrinsic" value and "instrumental" value. To say that something has intrinsic value is to say, not that something has value even if it has no value for anyone (not even God) or anything—but that something has value for someone (or something) *not merely as a means to an end but as an end in itself*. And to say that something has "objective" value and not (or not merely) "subjective" value is to

in physics, is to be regarded as a considerable advancement of the speculative sciences; tho', like that, too, it has little or no influence on practice.

See also Anthony T. Kronman, *A Comment on Dean Clark*, 89 COLUM. L. REV. 1748, 1755 (1989):

[The view] that there are goods which are not the goods of any human beings at all, is likely to appear . . . wholly unintelligible, for it conflicts with what is perhaps the deepest and most widely shared orthodoxy of modern moral thought—the assumption that only the goods of human beings (or perhaps sentient beings) count in assessing different practices and institutions.

Cf. Robin W. Lovin, *Empiricism and Christian Social Thought*, ANNUAL OF SOCIETY OF CHRISTIAN ETHICS 25, 41 (1982): "Ethics will never be like physics, chemistry, or certain types of sociology, because it understands the moral reality to be about an interaction between persons and the world which can only be known from the reports of those who experience that interaction."

Does Dworkin disagree? It's difficult to tell. Cf. Dworkin, *supra* note 83, at 248 n.1.

I do not mean to take any position on a further, very abstract philosophical issue not pertinent to this discussion: whether great paintings would still be valuable if intelligent life were altogether destroyed forever so that no one could ever have the experience of regarding paintings again. There is no inconsistency in denying that they would have value then, because the value of a painting lies in the kind of experience it makes available, while still insisting that this value is intrinsic because it does not depend on any creatures' actually wanting that kind of experience.

Id. At one point in his discussion of "intrinsic" value, Dworkin writes: "David Hume and many other philosophers insisted that objects or events can be valuable only when and because they serve someone's or something's interests. On this view, nothing is valuable unless someone wants it or unless it helps someone get what he does want." *Id.* at 69. The second sentence here is a glaring non sequitur. It does not follow, from the Humean view, that nothing is valuable unless someone wants it or unless it helps someone get what he does want. It follows only that nothing is valuable unless it serves someone's or something's interests. That something serves my interests does not entail that I want it, or that it helps me get what I do want. After all, I may not know that something serves my interests, or I may not know what my real interests are. Indeed, that I want something, or that it helps me get what I do want, does not entail that it serves my interests; I may want things that are not good for me—indeed, that are bad for me.

say that something has value for someone (for example, that it is good for her, that it is conducive to or perhaps even constitutive of her flourishing) *even if she is unaware that it has value for her—indeed, even if she believes that it has disvalue for her.*⁸⁸

That something has both objective and intrinsic value for someone does not mean that it is sacred. An end to my itch has both objective and intrinsic value for me but it is not thereby sacred. For some persons who count themselves religious, to say that every human being is sacred is to say, speaking analogically, that every human being is the beloved child of God (God who is love). For persons who do not count themselves religious, what does it mean to say that every human being is sacred?

According to Dworkin, “[t]he nerve of the sacred lies in the value we attach to a process or enterprise or project rather than to its results considered independently from how they were produced.”⁸⁹ Dworkin argues, the sacredness of human beings is rooted, for nonreligious persons, in two basic facts about human beings. First, every human being is “the highest product of natural creation [T]he idea that human beings are special among natural creations is offered to explain why it is horrible that even a single human individual life should be extinguished.”⁹⁰ Second, “each developed human being is the product not just of natural creation, but also of the kind of deliberative human creative force that we honor in honoring art.”⁹¹ “The idea that each individual human life is inviolable is therefore rooted . . . in two combined and intersecting bases of the sacred: natural *and* human creation.”⁹²

88. To say that something has *merely* subjective value for someone, is to say that she believes it to have value for her even though it does not. Considered in isolation, something may have objective and/or subjective value for someone even if considered in context it does not. One thing that has value for someone may crowd out or preclude another thing that has even greater value for her.

89. DWORKIN, *supra* note 83, at 78.

90. *Id.* at 82. *See also id.* at 81-84.

91. *Id.* at 82.

92. *Id.* at 83.

The life of a single human organism commands respect and protection, then, no matter in what form or shape, because of the complex creative investment it represents and because of our wonder at the . . . processes that produce new lives from old ones, at the processes of nation and community and language through which a human being will come to absorb and continue hundreds of generations of cultures and forms of life and value, and, finally, when mental life has begun and flourishes, at the process of internal personal creation and judgment by which a person will make and remake himself, a mysterious, inescapable process in which we each participate, and which is therefore the most powerful and inevitable source of empathy and communion we have with every other creature who faces the same frightening challenge. The horror we feel in the willful destruction of a human life reflects our shared inarticulate sense of the intrinsic importance of each of these dimensions of investment.⁹³

This, then, is Dworkin's rendering of a secular version of the conviction that every human being is sacred. Even if in truth the world is nothing but a process bereft of ultimate meaning, every human being is nonetheless sacred, according to Dworkin, because "each human being . . . is a creative masterpiece"⁹⁴—a masterpiece of "natural *and* human creation."⁹⁵

Does Dworkin succeed in portraying a coherent secular version of the conviction that every human being is sacred? Important questions need to be answered—or so it seems to me. How does the fact that something is a masterpiece of natural and human creation make that something not merely a creative masterpiece, but sacred? What is the precise sense of "sacred" at play in Dworkin's portrayal? Let us agree that every human being is a creative masterpiece and, as such, inspires awe in us. That something justifiably inspires awe in us, however—James Joyce's *Ulysses*, for example—entails neither that we believe it to be sacred, nor that it is sacred.

93. *Id.* at 84.

94. *Id.* at 82.

95. *Id.* at 83.

To say that every human being is sacred, and therefore inviolable, is ordinarily to say something about (what is believed to be) the true nature of every human being. Of course, something may inspire awe in us, and we may therefore value it—it may have both objective and intrinsic value for us—because it is sacred (or, at least, because we believe it to be sacred). But to suggest, as Dworkin does in his book that something is sacred *because* it inspires awe in us, because we value it, is to reverse the ordinary order of things.⁹⁶ Dworkin seems to be using “sacred” in what we may call a weak, or “subjective,” sense—something (e.g. a human life) is sacred *because*, or *in the sense that*, it inspires awe in us and we attach great value to it—rather than in the strong, or “objective,” sense—something is sacred and *therefore* it inspires awe in us and we attach great value to it. Moreover, in using “sacred” in the weak or subjective sense, Dworkin is trading on the greater strength of the objective sense in which the word is ordinarily used.

That rhetorical strategy, however, is problematic. The premise that every human being is sacred-in-the-subjective-sense cannot begin to bear the weight of the premise that every human being is sacred-in-the-objective-sense. Imagine someone saying to a Bosnian Serb: “The Bosnian Muslim, too, no less than you, is sacred. It is wrong for you to rape her.” If “sacred” is meant in the subjective sense, the Bosnian Serb may reply: “Sacred to you and yours, perhaps, but not to me and mine. In the scheme of things, we happen not to attach much value to her life.” By contrast, “sacred” in the objective sense is not fundamentally a matter of “sacred to you” or “sacred to me.” It is, rather, a matter of how things really are. (Of course, one may disbelieve the ontology, but that’s a different problem.) If every human being is sacred in the objective sense, then, in violating the Bosnian Muslim, the Bosnian Serb does not mere-

96. *Id.* at 78. Recall, for example, Dworkin’s statement that “the nerve of the sacred lies in the value we attach to a process or enterprise or project rather than to its results considered independently from how they were produced.” *Id.* Or his statement that “[t]he life of a single human organism commands respect and protection . . . because of our wonder at the . . . processes that produce new lives from old ones . . .” *Id.* at 71.

ly violate what some of us attach great value to; he violates the very order of creation.

Dworkin may insist that he's been misunderstood. He may insist that he means "sacred" in the objective sense, and that on his account of "sacred," the Bosnian Serb is indeed violating the very order of creation. He may say that the Bosnian Muslim has intrinsic value even for the Bosnian Serb—and objective value too; that the welfare of the Bosnian Muslim is an intrinsic good for the Bosnian Serb, even if the Bosnian Serb will remain forever unaware of that fact. But if Dworkin wants to respond in such a way, then he must forswear any explanation of the sacredness of someone or something in terms of, or by reference to, "the value we attach to" that someone or something. He must explain it solely in other terms. It is not clear, however, what those other terms might be. In particular, it is not obvious that either a secular cosmology or cosmological agnosticism can yield the requisite conviction about how things really are. How do we get from "the universe is, or might be, nothing but a cosmic process bereft of ultimate meaning" to "every human being is nonetheless sacred in the strong or objective sense"? Of course, even in an absurd universe, a universe bereft of transcendent meaning, there can be creative masterpieces. But again, that something is a creative masterpiece and understandably inspires awe in us entails neither that it is sacred nor even that we believe it to be sacred in the strong sense.

Has Dworkin identified a coherent secular version of the conviction that every human being is sacred? It seems not, if "sacred" is meant in the objective sense; however, if "sacred" is meant in the subjective sense, perhaps Dworkin has. But if he has, Dworkin's secularized claim that every human being is sacred is a substantially weaker claim than the paradigmatic claim about the sacredness of all human beings. In any event, Dworkin has said nothing to diminish suspicion that the conviction that every human being is sacred—*sacred in the strong/objective sense, sacred because of how the world really is, and not because of what we attach value to in the world*—is inescapably religious. The challenge is to identify a coherent secular version of *that* conviction. In his review of Dworkin's

book for the *Times Literary Supplement*, Robert Grant concluded that “[i]n *Life’s Dominion*, Professor Dworkin makes considerable play with, indeed frankly exploits, the idea of the sacred, but shows no understanding of it.”⁹⁷

V.

If—if—the conviction that every human being is sacred is inescapably religious, it follows that the idea of human rights is ineliminably religious, because the conviction is an essential, even foundational, constituent of the idea. The possibility that the idea of human rights is ineliminably religious poses a problem for the secular or agnostic enthusiast of human rights. One response to the problem is to try to defend the establishment in international law of the particular human rights, or of some of them, that have in fact been established in international law during the last fifty years, not by relying on the conviction that every human being is sacred. Rather, human rights can be defended by means of a justificatory strategy that avoids reliance on that conviction—a strategy that avoids reliance, therefore, on “the idea of human rights.” I now want to identify and comment briefly on two such strategies.⁹⁸

97. Robert Grant, *Abortion and the Idea of the Sacred*, *TIMES LITERARY SUPP.*, June 18, 1993, at 11.

98. There are, of course, others. A prominent secular argument for human rights—that is, a prominent argument that does not rely on the possibly ineliminably religious idea of human rights—is Alan Gewirth’s. See ALAN GEWIRTH, *HUMAN RIGHTS* 41-78 (1982); ALAN GEWIRTH, *REASON AND MORALITY*, chs. 1-2 (1978); Alan Gewirth, *Human Dignity as the Basis of Rights*, in *THE CONSTITUTION OF RIGHTS: HUMAN DIGNITY AND AMERICAN VALUES* 10 (Michael J. Meyer & William A. Parent eds., 1992). Alan Gewirth, *The Epistemology of Human Rights*, *SOCIAL PHILOSOPHY & POLICY*, Spring 1984, at 1. Gewirth’s argument has been extremely controversial, to say the least. Indeed, I am tempted to say that there is as close to a consensus as one gets in moral philosophy that Gewirth’s argument simply doesn’t work. See, e.g., BRIAN M. BARRY, *THEORIES OF JUSTICE* 285-88 (1989). GEWIRTH’S ETHICAL RATIONALISM (Edward Regis, Jr., ed., 1984); For a careful restatement and defense of Gewirth’s argument, see DERYCK BEYLEVELD, *THE DIALECTICAL NECESSITY OF MORALITY: AN ANALYSIS AND DEFENSE OF ALAN GEWIRTH’S ARGUMENT FOR THE PRINCIPLE OF GENERIC CONSISTENCY* (1991). For a skeptical review of Beyleveld’s book, see Nick Fotion, 103 *Ethics* 579 (1993) (book review).

A. *The Definitional Strategy*

[T]here is today no way of proving that napalming babies is bad except by asserting it (in a louder and louder voice), or by defining it as so, early in one's game, and then later slipping it through, in a whisper, as a conclusion.⁹⁹

The idea of human rights, again, is that because each and every human being is, simply as a human being, sacred, certain things ought not to be done to any human being and certain other things ought to be done for every human being. The definitional strategy is a different way of trying to ground this proposition so as not to rely on the premise that human beings are sacred. According to the definitional strategy, certain things ought not to be done and certain other things ought to be done simply because "the moral point of view"—understood as the "impartial" or "universal" point of view—requires it. In commenting on "that sort of impartiality that constitutes the moral point of view," James Griffin has written that

[w]e all agree that to look at things morally is to look at them, in some sense or other, impartially, granting every person some sort of equal status. Of course, we should have to make this notion of equal status more determinate—say through one interpretation or other of the Ideal Observer or Ideal Contractor. In any case, principles of equality can be principles of impartiality in this sense: they can express the spirit with which one will, if one is moral, consider the facts of the matter.¹⁰⁰

The definitional strategy is deeply problematic, because it fails even to address what David Tracy has called the "limit-question" of morality: "Why be moral at all?"¹⁰¹ The

99. Arthur Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 454 (1974) (emphasis added).

100. JAMES GRIFFIN, *WELL-BEING* 239 (1986).

101. David Tracy, *Theology, Critical Social Theory, and the Public Realm*, in HABERMAS, *MODERNITY, AND PUBLIC THEOLOGY*, 19, 37 (Don S. Browning & Francis S. Fiorenza eds., 1992).

definitional strategy fails to respond to this fundamental challenge:

You claim that we ought not to do certain things to any human being, and that we ought to do certain other things for every human being. We ask why. You say that the moral (impartial, universal) point of view requires it. For the sake of argument we will stipulate to your definition of "moral." Our challenge remains, but now we'll express it this way: Why ought we to adopt "the moral point of view"; why ought we to be "moral" in the stipulated sense? Why ought we to give a damn about being "moral" or doing the "moral" thing? We are right back where we started: What reasons—what real-world, flesh-and-blood reasons—are there for doing for every human being those certain things that the moral point of view requires be done for every human being and for not doing to any human being those certain other things that the moral point of view forbids be done to any human being?

The fundamental challenge to each and every human rights claim, about what ought not to be done to any human being or what ought to be done for every human being, is a demand for reasons. James Nickel has distinguished between two different interpretations of the demand: one according to which it is "a demand for prudential reasons," and another according to which it is "a request for moral reasons."¹⁰² The second interpreta-

102. JAMES NICKEL, MAKING SENSE OF HUMAN RIGHTS: PHILOSOPHICAL REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 91 (1987). (The distinction between "prudential" and "moral" is deeply problematic, at least for anyone with an Aristotelian understanding of morality). See Stephen Scott, *Motive and Justification*, 85 J. PHIL. 479, 499 (1988).

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.

Cf. Richard Taylor, *Ancient Wisdom and Modern Folly*, 13 MIDWEST STUD. PHIL. 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

tion, Nickel suggests, "assumes that one's audience has transcended egoism and is prepared to accept arguments that appeal directly to what is reasonable from the moral point of view, whether or not it can be shown that adopting this perspective is likely to promote the long-term interests of the individual."¹⁰³ But the problem is larger, much larger, than "egoism." One may favor, not oneself, or even one's family, but one's tribe, or nation, or race, or religion. The assumption that those to whom human rights claims are addressed have "transcended" such favoritism is wildly implausible. The fundamental challenge to human rights claims is a real-world challenge. Many to whom such claims are addressed have conspicuously not adopted anything like "the moral (impartial, universal) point of view." The moral point of view is not a justificatory basis for human rights claims—at least, not a fundamental basis. The moral point of view is itself in dire need of justification, especially in a world—*our* world, the *real* world—that is often fiercely partial/local rather than impartial/universal. 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.¹⁰⁴

compared to what the ancients meant by *eudaimonia*. *Fulfillment* might be a better translation, 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.

Id.

For an extended discussion of the "Why be moral?" problem from a neo-Aristotelian perspective, see RÜDIGER BITTNER, *WHAT REASON DEMANDS* (Theodore Talbot trans. Cambridge Univ. Press 1989).

103. Nickel, *supra* note 102 at 91.

104. Nathan Stoltzfus, *Dissent in Nazi Germany*, ATLANTIC MONTHLY, Sept. 1992, at 87, 94.

The question remains: what reasons are there for adopting “the moral point of view”? Charles Taylor, commenting critically on moral theories that are variations on the definitional strategy—in particular, theories that exclude discourse about human well-being—has put the point this way:

[Such theories] leave us with nothing to say to someone who asks why he should be moral But this could be misleading, if we seemed to be asking how we could convince someone who saw none of the point of our moral beliefs. There is nothing we can do to “prove” we are right to such a person. But imagine him to be asking another question: he could be asking us to make plain the point of our moral code, in articulating what’s uniquely valuable in cleaving to these injunctions [e.g., act “impartially”]. Then the implication of these theories is that we have nothing to say which can impart insight. We can wax rhetorical and propagandize, but we can’t say what’s good or valuable about [the injunctions], or why they command assent.¹⁰⁵

105. Taylor, *supra* note 23, at 87. Compare the following excerpt:

Much contemporary moral philosophy, particularly but not only in the English-speaking world, has given such a narrow focus to morality This moral philosophy has tended to focus on what it is right to do rather than on what it is good to be, on defining the content of obligation rather than the nature of the good life, This philosophy has accredited a cramped and truncated view of morality in a narrow sense, as well as of the whole range of issues involved in the attempt to live the best possible life, and this not only among professional philosophers, but with a wider public.

Id. at 3, Taylor’s book is, among other things, a powerful argument for a different, larger understanding of “moral;” an Aristotelian rather than a Kantian understanding. *See id.* at 4, 14-15, 63-64, 79, 87.

The effort to evade the why-be-moral question by distinguishing between “reasons” and “motives” is unavailing as, indeed, is implicit in Taylor’s comments. *See* Henry B. Veatch, *Modern Ethics, Theology, and Love of Self*, 75 *THE MONIST* 52, 60 (1992).

[T]he stock answer given to this question 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

The definitional strategy is unavailing. Of course, a strategy is not definitional if it explains "the moral point of view" on the basis of a cosmological vision that yields something like the premise that every human being is sacred. But then we are back to the question of whether such a premise isn't inescapably religious.¹⁰⁶

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.

Id.

106. John Finnis' argument in defense of a requirement "of fundamental impartiality among the human subjects who are or may be partakers of [basic human goods]" is simply unavailing. For the argument, see JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 106-09 (1980).

[John] Finnis has tried to do in two pages what . . . others have devoted entire books to: the attempt to show that egoism is inherently self-contradictory or irrational. All of these attempts have failed. It is surprising that Finnis deals with such a problematic and contentious issue in such a brief and casual fashion.

J.D. Goldsworthy, *God or Mackie: The Dilemma of Secular Moral Philosophy*, 30 *AM. J. JURIS.* 43, 75 (1985).

One of Finnis' most recent writings fares no better. See John Finnis, *Natural Law and Legal Reasoning*, in Robert P. George ed., *NATURAL LAW THEORY* 134 (1992).

Given the current prominence in some circles of Habermasian "discourse ethics," this recent statement by Jürgen Habermas is worth reporting—a statement that should be very sobering for anyone who thinks that discourse ethics is an effective secular argument for human rights. He states: "It is true that a philosophy that thinks postmetaphysically cannot answer the question that [David] Tracy . . . calls attention to: why be moral at all?" HABERMAS, *supra* note 72, at 239.

What Habermas then goes on to say is really quite remarkable, if not incredible.

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.

B. *The Self-Regarding Strategy*

The self-regarding strategy is yet another way, one that does not rely on anything like the premise that human beings are sacred, of trying to justify the proposition that certain things ought not to be done to any human being, and certain other things ought to be done for every human being. According to the self-regarding strategy, it is good for oneself or for one's family, tribe, nation, race, religion, etc., that certain things not be done to any human being, and certain other things be done for every human being. This strategy needs to be distinguished from (lest it collapse into) the different (and ineliminably religious?) strategy according to which every human being is sacred, and it is good for everyone to recognize that fact and act accordingly. According to the self-regarding strategy, it is good for oneself or for one's nation/etc. that certain things not be done and certain other things be done, even if it is not the case that every human being is sacred.

The fundamental problem with the self-regarding strategy is twofold. First, it is not clear how much more than "a mere nonaggression treaty"¹⁰⁷—a treaty among persons who have reason to fear one another—the self-regarding strategy can support. A recent, prominent self-regarding strategy is David Gauthier's contractarian argument. Let's put aside the question whether the argument works and look simply at the aim of the argument, which, according to Gauthier, is to show "that rational persons will recognize a role for constraints, both unilateral and mutual, in their choices and decisions, that rational persons would agree ex ante on certain mutual constraints were

Id.

Let's put aside the fact that "we" acquire our moral "intuitions" in many places besides our parents' home. The more important point, for present purposes, is that we do not all acquire the same moral intuitions. Some of us acquire 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—as the quote in the text accompanying the preceding note confirms.

107. See WILLIAMS, *supra* note 54, at 103-04.

they able to do so, and that rational persons will frequently comply with those mutual constraints in their interactions."¹⁰⁸ In particular, Gauthier's self-regarding argument does not aim to justify anything close to the range of rights established in international law—for example, in the International Bill of Human Rights. As one commentator has observed, "[Gauthier's] main interest is to give an account of rational and impartial constraints on conduct. If this does not capture the traditional conception of morality, so much the worse for the traditional conception. Rationality—not morality—is the important notion for him."¹⁰⁹

Second, whatever rights beyond "a mere nonaggression treaty" the self-regarding strategy can support, it is not clear that the strategy can support them as *human* rights—as rights each and every human being should enjoy. It may be able to support them only as rights among persons who have reason to fear one another's aggression or to need one another's cooperation. Nietzsche wrote:

Justice (fairness) originates among those who are approximately *equally powerful*, as Thucydides . . . comprehended correctly. . . . [J]ustice is repayment and exchange on the assumption of an approximately equal power position Justice naturally derives from prudent concern with self-preservation; that means, from the egoism of the consideration: "Why should I harm myself uselessly and perhaps not attain my goal anyway?"¹¹⁰

Even if you are not within the circle of those I happen to respect and for whom I happen to have concern, if you are my neighbor, I may have reason to fear your aggression or to need your cooperation. But if you are a Somalian, or a Bosnian Mus-

108. David Gauthier, *Rational Constraint: Some Last Words*, in CONTRACTARIANISM AND RATIONAL CHOICE: ESSAYS ON DAVID GAUTHIER'S *Morals by Agreement* 323, 330 (Peter Vallentyne ed., 1991).

109. Peter Vallentyne, *Gauthier's Three Projects*, in CONTRACTARIANISM AND RATIONAL CHOICE: ESSAYS ON DAVID GAUTHIER'S *Morals by Agreement* (Peter Vallentyne ed., 1991).

110. Friedrich Nietzsche, *All Too Human*, in BASIC WRITINGS OF NIETZSCHE 148 (W. Kaufmann trans., 1973).

lim, we (as North Americans) may not have any realistic reason to fear *your* aggression or to need *your* cooperation.

On the other hand, even if you are only a lowly inhabitant of an alien, distant, and weak community, we or some of those within the circle of our respect and concern may eventually suffer in ways not always easy to predict or even foresee if we fail to act toward you as if you were within the circle of our respect and concern. Although, again, their principal justificatory reliance is on the idea of human rights—their principal argument is other-regarding. Even the Universal Declaration of Human Rights¹¹¹ and the other documents of the International Bill of Human Rights¹¹² contain at least a hint of a self-regarding argument, namely: if you want to enjoy the fruits of peace in the world, you must extend your respect and concern to all human beings. Each of the three documents of the International Bill of Rights states in its preamble that “recognition . . . of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice *and* peace in the world.”¹¹³ Similarly, the European Convention for the Protection of Human Rights and Fundamental Freedoms¹¹⁴ states that the “Fundamental Freedoms”¹¹⁵ it affirms “are the foundation of justice *and* peace in the world.”¹¹⁶

As a matter of domestic political debate—as a matter of domestic *realpolitik*—plausible self-regarding (“pragmatic”) reasons for our nation taking even the lowliest of the low into the circle of those it happens to respect and for whom it happens to have concern are undoubtedly an important complement to the other-regarding argument (i.e., the idea of human rights) for our nation doing so.¹¹⁷ (I quote Jerome Shestack’s useful catalogue

111. See *supra* note 7.

112. See *supra* notes 7, 10 & 11.

113. See *supra* notes 7, 10 & 11 at pmb. (emphasis added).

114. European Convention for the Protection of Human Rights and Fundamental Freedoms (*opened for signature* Nov. 4, 1950) 213 U.N.T.S. 221 (entered into force Sept. 3, 1953).

115. *Id.* at pmb.

116. *Id.* (emphasis added).

117. Cf. Henry Kissinger, *Continuity and Change in American Foreign Policy*, SOCIETY Nov./Dec. 1977 at 97, 99.

of such reasons below.)¹¹⁸ It seems quite doubtful, however,

[O]ne of the basic challenges of foreign policy [is] the perennial tension between morality and pragmatism. Whenever it has been forced to wield its great power, the United States has also been driven to search its conscience. How does our foreign policy serve moral ends? How can the United States carry out its role as human example and champion of justice in a world in which power is still often the final arbiter? How do we reconcile ends and means, principle and survival? How do we keep secure both our existence *and* our values? These have been the moral and intellectual dilemmas of the United States for two hundred years.

Id.

118. See Jerome Shestack, *An Unsteady Focus: The Vulnerabilities of the Reagan Administration's Human Rights Policy*, 2 HARV. HUM. RTS. Y.R. 25, 49-50 (1989) (footnotes omitted).

What reasons should motivate an administration to afford human rights a central role in United States foreign policy as a matter of national interest? I believe that there are at least the following compelling motivations:

1. Human rights values advance national security. Nations that accept human rights are likely to be more stable and make better allies. Repression of human rights invites interventions and endangers stability. Conversely, human rights include responsiveness to the will of the people and restraints on aggressive action.

2. Human rights and world peace are interrelated. Peace and stability cannot be maintained in a world in which people are repressed and impelled to rise up against their oppressors. Afghanistan, Armenia, Burundi, Bangladesh, Haiti, the Philippines and many other places are stark examples.

3. Human rights are premised on the observance of rules of international law. Acceptance of the rule of law is a condition for a system of world order which, in turn, promotes world peace.

4. Human rights have become a central item on the global agenda, appealing to the expectations of people on every continent. The United States is perceived as having an immense potential to further human dignity and freedom. Championing human rights affords the United States the opportunity to be relevant to that agenda and responsive to the aspirations of people around the world.

5. Advancing economic and social human rights removes causes of tension and instability among less developed nations and promotes an equitable world order.

6. Human rights endeavors offer the United States the opportunity to act in concert with other nations to generate "coalitions of shared purposes."

7. Human rights address one of the world's most pressing problems: the enormous increase of refugees. The plight of refugees contributes to international tensions, and refugees impose huge burdens on nations to which they flee. Enforcing human rights will alleviate the suffering and number of refugees.

8. Including human rights in foreign policy formulation is favored by Congress. Without accommodation to this concern, the executive branch

that self-regarding reasons can by themselves bear all the weight. Put another way, it seems doubtful that any domestic political argument that is not at least partly other-regarding—that does not appeal at least in part to the conviction that every human being is sacred—can do the required work.¹¹⁹ The self-regarding reasons are highly speculative.¹²⁰ How confident are we that we Americans will eventually suffer if we fail to take the Bosnian Muslims, for example, or the Tibetan Buddhists, into the circle of our respect and concern? Confident enough to incur the costs of taking them in? In any event, the conviction that every human being is sacred is partly constitutive of the American identity.¹²¹ (The Declaration of Independence famously proclaims: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among

faces a polarized foreign policy marked by continuing disputes with Congress. A consensus with Congress on human rights issues advances the effectiveness and reliability of United States foreign policy initiatives.

9. Human rights policies command respect and support from this nation's citizenry. Conversely, foreign policies which ignore human rights are likely to be self-defeating by failing to sustain popular support.

10. Finally, advancing human rights reinforces this nation's own cohesion, its moral purpose and its appreciation of its own domestic liberties. Human rights have long been a focus for shared purpose in this nation's tradition, and a sense of shared purpose among its people is in the national interest.

Id.

119. See Richard B. Bilder, *Rethinking International Human Rights: Some Basic Questions*, 1969 WIS. L. REV. 171, 187-91 (commenting on “[t]he difficulties in constructing a wholly selfish rationale for major national commitments to promote the human rights of foreigners . . .”).

120. See *id.* at 191.

121. Cf. Richard B. Bilder, *Human Rights and U.S. Foreign Policy: Short-Term Prospects*, 14 VA. J. INT'L L. 597, 608-09 (1974).

Moral compromises . . . may have real costs in terms of the way Americans view their own country and its role in the world. We are coming to see that national pride, self-respect, cohesion, and purpose are meaningful elements of both national power and domestic tranquility. It is true that there are practical limits to what the United States can reasonably attempt to accomplish in promoting the human rights of other peoples. But, in a period following Vietnam and Watergate, it may be worth some foreign policy risks to reassert historic American commitments to human worth and dignity.

Id.

these are Life, Liberty and the pursuit of Happiness.”¹²² No political argument for our nation taking the human rights of distant peoples seriously will begin to have the power of an argument that appeals at least in part to the conviction that all human beings are sacred and “created equal and endowed by their Creator with certain inalienable Rights”¹²³ The power of that conviction for most Americans derives in part from the fact that in the United States, which remains a pervasively religious society, the conviction that human beings are sacred is for most persons a religious conviction, even if for some persons the conviction is not religious—indeed, even if the conviction is not inescapably religious.

Unlike the definitional strategy, then, the self-regarding strategy for insisting that certain things not be done to any human being and that certain other things be done for every human being should not be dismissed. But the self-regarding strategy is probably availing only or mainly as a buttress, a complement, to the strategy that relies on the idea of human rights and on the conviction that every human being, even the lowliest inhabitant of the most alien, distant, and weak community, is sacred. Significantly, neither individually nor even cumulatively can self-regarding reasons by themselves begin to account for the passionate other-regarding character of most discourse in support of human rights.

VI.

To suggest that the idea of human rights is ineliminably religious—that there is, finally, no coherent secular version of the idea of human rights, that the conviction that human beings are sacred is inescapably religious—is *not* to deny that one can take human rights very seriously indeed without being religious. Agnostics, too, even atheists, can take human rights seriously, and they, too, can love the Other.¹²⁴ *Of course*

122. THE DECLARATION OF INDEPENDENCE (U.S. 1776).

123. *Id.*

124. In his review of *Love and Power*, *supra* note 22, Ned Foley thought that I was denying that one can be moral without being religious. See Edward P. Foley, *Tillich and Camus, Talking Politics*, 92 COLUM. L. REV. 954, 964-77 (1992).

atheists—like Albert Camus¹²⁵—can take human rights seriously. *Of course* they and other nonreligious persons can love the Other. (Indeed, if the Other really is, in some deep sense, one's sister/brother, then it would be surprising if every nonreligious person were existentially disconnected from that truth.¹²⁶ But, of course, as the example of Camus attests, to be connected to that truth existentially is not necessarily to affirm it philosophically.) However, as the Polish philosopher Leszek Kolakowski has written:

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."*¹²⁷

That Camus achieved the highest moral standards, that he loved the Other, even that, in doing so, he understood himself to be engaged in a profound act of resistance and rebellion—resisting and rebelling against what he believed to be the ultimate absurdity, or meaninglessness, of the universe¹²⁸—“leaves the question of validity intact.”¹²⁹ In par-

125. *See id.* at 965.

126. *Cf.* Neera Kapur Badhwar, *Altruism v. Self-Interest: Sometimes a False Dichotomy*, 10 SOC. PHIL. & POL'Y 90 (1993); Karl Monroe, et al., *Altruism and the Theory of Rational Action: Rescuers of Jews in Nazi Europe*, 101 ETHICS 103 (1990).

127. LESZEK KOLAKOWSKI, RELIGION 191-92 (1982) (emphasis added).

128. *But cf.* Jackson, *supra* note 63, at 9 (“Promethean self-creation and utterly gratuitous care for others risks collapsing into its (putative) opposite, a self-destructive and domineering hubris.”); Fred R. Dallmayr, *Critical Theory and Reconciliation*, in MODERNITY AND PUBLIC THEOLOGY *supra* note 72, at 119, 139.

If the world is totally corrupt and perverse, then this world must be destroyed and replaced by a completely new one through some kind of *creatio ex nihilo*; moreover, given the removal of absolutes, such creation can only be the work of human agents or producers. In this manner, reconciliation and redemption become the targets of goal-directed activity, that is, or purposive fabrication At the same time, being themselves part of the corrupt world, human agents can only perpetuate or re-create the state of corruption; thus, instrumentalism becomes inescapable and self-destructive.

ticular, and as Nietzsche saw clearly, it leaves intact the question: Why should we give a damn about the well-being of all human beings, including the weak and the powerless—those whom the Gospel calls “the least of these brothers of mine”?¹³⁰

Now, “the question of validity,” as Kolakowski calls it, is not always at issue and is not always on the table. As I said, one can, like Camus, love the Other without being religious.¹³¹ If two citizens, one of them religious, the other not, happen to agree that the well-being of the Other is of fundamental importance, the question of validity does not arise *as between them*.¹³² But that the question does not arise as between them does not mean that it does not arise as between or among others. After all, not everyone in the United States does, like Camus, love the Other; not everyone does agree that the well-being of all human beings—including the weak and the powerless—is of fundamental importance; not everyone agrees that he or she owes every human being respect or concern. The question of validity is often on the table—though often not explicitly—in the public square, as, for example, when redistributive issues are being debated.¹³³ “Why should *we* be taxed to support *them*? Frankly, I don’t give a damn about them. And even if I did, I’ve worked hard for my money and it’s all I can do to take care of my own.” The mere fact that one can love the Other without being religious does not begin to respond to the question of validity when the question does arise, when it is at issue.¹³⁴

Id.

129. KOLAKOWSKI, *supra* note 127, at 191-92.

130. *Matthew* 25:40.

131. For a series of meditations on Camus’s work by one of the most important Christian (Catholic) writers of the late 20th century—a writer who did not pretend that Camus was in any way an “anonymous” Christian—see Thomas Merton, *Seven Essays on Albert Camus (1966-68)*, in *THE LITERARY ESSAYS OF THOMAS MERTON* 179-301 (Patrick Hart ed., 1981).

132. Foley suggests that it would not have arisen as between Paul Tillich and Albert Camus. He also explains that it need not arise as between someone who is “pro-choice” on the issue of abortion and someone who is “pro-life.” See Foley, *supra* note 124, at 973-75.

133. Cf. Waldron, *infra* note 139.

134. Foley thinks that Camus’ nonreligious response to the question of validity, no less than a religious response, works. See Foley, *supra* note 126, 965-66. I am

There is not only the question of validity. There is also, as Kolakowski has said, "the question of the effective sources of the moral strength and moral convictions of those 'virtuous pagans.'"¹³⁵ Habermas is frank in acknowledging the problem—and bleak in what he has to say about it:

Who or what gives us the courage for such a total engagement that in situations of degradation and deprivation is already being expressed when the destitute and deprived summon the energy each morning to carry on anew? The question about the meaning of life is not meaningless. Nevertheless, the circumstance that penultimate arguments inspire no great confidence is not enough for the grounding of a hope that can be kept alive only in a religious language. The thoughts and expectations directed toward the common good have, after metaphysics has collapsed, only an unstable status.¹³⁶

inclined to say of any nonreligious response much the same thing Tim Jackson has said of anti-realism:

[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.

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

135. KOLAKOWSKI, *supra* note 127 at 192.

136. HABERMAS, *supra* note 72, at 239.

Consider, with respect to the problem of the adequacy of any nonreligious response to that question, the relevance of what Jackson has said about anti-realism:

[L]etting go of realism will in all probability leave a society without the wherewithal to found or sustain a commitment to liberty, equality, or fraternity—much less sorority. Such a society may live for a time on past cultural capital embodied in liberal institutions and traditions, but a purely conventional virtue will not last long. The issue is one of motivation and consistency.¹³⁷

The bleakness of Habermas' statement—about the “unstable status” that “thoughts and expectations directed toward the common good have after metaphysics has collapsed”¹³⁸—lends weight to Jackson's.

Many persons will have an understandable incentive to reject the possibility that the idea of human rights is ineliminably religious: persons who do not count themselves religious, including some who count themselves anti-religious, but who embrace the idea of human rights—who embrace, in particular, the conviction that every human being is sacred (has inherent dignity, is an end in himself, etc.). “The conviction that every human being is sacred cannot be inescapably religious, for if it were, how could *we*—we who are not religious, and who may even look at religion as always and everywhere little more than a childish superstition—defend the idea of human rights?” How indeed?

For many religious persons and even for some nonreligious persons, the idea of human rights simply does not make sense, it does not exert a claim, apart from, cut off from, the Gospel vision of the world and of our place in it—or from some equivalent religious vision.¹³⁹ Simone Weil wrote: “The Gospel

137. Jackson, *supra* note 134 at 289.

138. HABERMAS, *supra* note 72 at 239.

139. See Jeremy Waldron, *Religious Contributions in Public Deliberation*, 30 SAN DIEGO L. REV. 000, 000-00 (forthcoming 1992).

Consider, for example, the issue of whether property owners are obliged by natural law to share their wealth with the poor. Locke's position on this is well known:

makes no distinction between the love of our neighbor and justice The supernatural virtue of justice consists behaving exactly as though there were equality when one is stronger in an unequal relationship."¹⁴⁰ Some even fear that the only conception of justice likely to flourish apart from the Gospel, or some equivalent vision, once we have exhausted our "past cultural capital,"¹⁴¹ is the dispiriting conception implicit in Nietzsche's genealogy of justice:

My dear Sir Long-Ears-and-Virtuous, we have no desire whatever to be better, we are very contented with ourselves, all we desire is not to harm one another—and therefore we forbid certain actions when they are directed in a certain way, namely against us, while we cannot sufficiently honor these same actions provided they are directed against enemies of the community—against you, for instance. We edu-

[W]e know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his Children such a Property, in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denied him, when his pressings Wants call for it.

We could presumably rephrase this as follows: "A needy person has a right to the surplus goods of a rich person if they are necessary to keep him from perishing." But if we do, someone is likely to ask us for an *argument* to support this controversial proposition. In Locke, the argument is based on the seminal fact of God's creating the world for the sustenance of all men:

God made Man, and planted in him, as in all other Animals, a strong desire of Self-preservation, and furnished the World with things fit for Food and Rayment and other Necessaries of Life, Subservient to his design, that Man should live and abide for some time upon the Face of the Earth, and not that so curious and wonderful a piece of Workmanship by its own Negligence, or want of Necessaries, should perish again presently after a few moments continuance

Once again, we could at a pinch translate *that* into secular language: "It is common sense that people have a right to make use of the goods that may help them to survive." But it loses a little in the translation. It is hard to keep hold of the idea that we were *meant* to survive, and that there is something offensive to *the fact of our existence* in our being denied access to the naturally available resources that we need.

Id. See also Rachel Mariner, *Burdens Hard to Bear: A Theology of Civil Rights*, 27 HARV. C. R.-C. L. L. REV. 657 (1992).

140. SIMONE WEIL, *WAITING FOR GOD* 139, 143 (Emma Craufurd trans., 1973) (quoted at the beginning of Jackson, *supra* note 63).

141. See *supra* note 137 and accompanying text.

cate our children in them; we cultivate them—If we shared that “God-pleasing” radicalism that your holy madness recommends, if we were fools enough to condemn together with those actions the source of them, the “heart,” the “disposition,” that would mean condemning our own existence and with it its supreme prerequisite—a disposition, a heart, a passion we honor with the highest honors. By our decrees, we prevent this disposition from breaking out and expressing itself in an inexpedient way—we are prudent when we make such law for ourselves, we are also moral—Have you no suspicion, however faint, what sacrifice it is costing us, how much taming, self-overcoming, severity toward ourselves it requires? We are vehement in our desires, there are times when we would like to devour each other—But the “sense of community” masters us: please note that this is almost a definition of morality.¹⁴²

Clearly it is not enough to retreat (*pace* Richard Rorty?¹⁴³) into a kind of ethnocentrism, proclaiming proudly and loudly that, although among us late-twentieth-century North Americans and Western Europeans (and perhaps a few others), a great fondness for human rights—or for “the moral point of view”—is nothing more than an acquired taste; it is *our* acquired taste and that, if necessary, we are willing to fight and even die for it). First, not even among all of us late-twentieth-century North Americans, etc., has the taste—the aesthetic preference—for human rights been acquired. Second, if the fondness for human rights that some of us have is, at bottom, nothing more than an acquired taste, there is little of consequence to say to those who have not acquired the taste—and who may even have acquired a taste for violating (what we call)

142. NIETZSCHE, *supra* note 21 at 159-60. See Gauthier, *supra* note 108 and accompanying text. David Gauthier's “morality” seems quite Nietzschean.

143. See Bernard A. Williams, *Auto-da-Fé*, N.Y. REV., Apr. 28, 1983, at 33.

Rorty is so insistent that we cannot, in philosophy, simply be talking about human beings, as opposed to human beings at a given time

Rorty . . . contrasts the approach of taking some philosophical problem and asking . . . [“w]hat does it show us about *being human?*” and asking, on the other hand, [“w]hat does the persistence of such problems show us about *being twentieth-century Europeans?*”

Id. (emphasis in original.) I recall Alasdair MacIntyre saying to Rorty, at a meeting years ago (circa 1984), that all Rorty could say to Soviet Communists is: “You’re un-American.”

human rights—other than, perhaps, “Try it, you’ll like it (maybe).” Third, why shouldn’t we try to disabuse ourselves of our fondness for human rights, if it is only an acquired taste, once it becomes clear that indulging that fondness can be, politically, economically, and militarily a rather costly proposition? (I commented earlier on the limitations of a self-regarding strategy for supporting human-rights-claims.)

Let me emphasize that nothing in this essay—nothing at all—is meant to defend, as credible or even as appealing, any religious-cosmological beliefs or any religious-moral beliefs, much less to commend any such beliefs to anyone.¹⁴⁴ One certainly need not count oneself a religious person in order to wonder—indeed, one can be one of those “good many professors and other intellectuals [who] display a hostility or skeptical indifference to religion that amounts to a thinly disguised contempt for belief in any reality beyond that discoverable by scientific inquiry and ordinary human experience”¹⁴⁵ and *nonetheless* wonder—whether the idea of human rights isn’t ineliminably religious. One need not count oneself religious in order to wonder whether much secular moral-philosophizing hasn’t been, for a very long time now, a kind of whistling in the dark.¹⁴⁶

144. Cf. Thomas Nagel, *A Faith of the Enlightenment*, *TIMES LITERARY SUPP.*, Dec. 14, 1990, at 1341 (“a religious answer stands as much in need of defence and explanation as does a secular one.”).

145. KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* 6 (1988). See PERRY, *supra* note 22, at 67 & 173 n.1. Cf. RICHARD NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* 86 (1984).

In the minds of some secularists the naked public square [i.e., neutral/impartial political discourse] is a desirable goal. They subscribe to the dogma of the secular Enlightenment that, as people become more enlightened (educated), religion will wither away; or, if it does not wither away, it can be safely sealed off from public consideration, reduced to a private eccentricity.

Id.

146. See Goldsworthy, *supra* note 106. Arthur A. Leff, *Unspeakable Ethics, Unnatural Law*, 1979 *DUKE L.J.* 1229; see also P. Johnson, *Nihilism and the End of Law*, *FIRST THINGS*, Mar. 1993, at 19.

Nietzsche asked: "Now suppose that belief in God has vanished: the question presents itself anew: 'who speaks?'"¹⁴⁷ Echoing Nietzsche's question a brutal century later, Art Leff wrote:

Napalming babies is bad.
Starving the poor is wicked.
Buying and selling each other is depraved.
Those who stood up to and died resisting Hitler,
Stalin, Amin, and Pol Pot—and General Custer too—
have earned salvation.
Those who acquiesced deserve to be damned.
There is in the world such a thing as evil.
[All together now:] Sez who?
God help us.¹⁴⁸

147. NIETZSCHE, *supra* note 21, at 157.

148. Leff, *supra* note 146, at 1249.

