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GOD'S IMAGE AND EGALITARIAN POLITICS

By George P. Fletcher

I. Introduction

These days, American politicians are loath to cite biblical passages for fear of being charged with breaching the wall between church and state. There was a time when a presidential candidate could claim that a certain monetary policy would "crucify us on a cross of gold."[1] This kind of rhetoric is now taboo. America's national leaders even avoid quoting the religious phrases from the Declaration of Independence, particularly its references to the "Creator" or "Nature's God." Although in the past some of the greatest American political oratory—Abraham Lincoln at Gettysburg (1863) or Martin Luther King, Jr., at the Lincoln Memorial (1963)—relied unashamedly on biblical sources and imagery, it is no longer considered acceptable to argue publicly in the language of either the Hebrew or Christian Bibles. However religious American society might still be today, political rhetoric is noticeably nonreligious.

This is a peculiar situation, and it is hard to avoid smiling about some of the latent contradictions. Politicians are supposed to go to church or (of late) to synagogue, but they are not allowed to discuss the ideas that are elaborated inside the sanctuary. Their preferred use of these sites is to be photographed coming and going. Politicians are supposed to lead sexually moral lives, but they are not to engage in reflection or discussion about what constitutes the moral life in the Judeo-Christian tradition. Children still pledge allegiance to "one Nation under God, indivisible, with liberty and justice for all" (notwithstanding a bizarre decision by the U.S. Court of Appeals for the Ninth Circuit in the summer of 2002),[2] and yet the New York Board of Regents recently edited a book by Elie Wiesel to eliminate all references to being born in the image of God.[3]

Americans maintain this aversion to public discussion of biblical sources even though it seems apparent that the political energies of the twentieth

[1] William Jennings Bryan, "Speech Delivered at the 1896 Democratic National Convention," in *Three Centuries of American Rhetorical Discourse: An Anthology and a Review*, ed. Ronald F. Reid (Prospect Heights, IL: Waveland Press, 1988), 601–6.

[2] *Newdow v. United States Cong.*, 292 F.3d 597 (2002) (holding that the recitation of the Pledge of Allegiance in public schools is an endorsement by the state of religion, and hence unconstitutional).

[3] N. R. Kleinfeld, "The Elderly Man and the Sea? Test Sanitizes Literary Texts," *New York Times*, June 2, 2002, late edition–final, sec. 1, p. 1, col. 1; Evelyn Nieves, "Judges Ban Pledge of Allegiance from Schools, Citing 'Under God'," *New York Times*, June 27, 2002, late edition–final, sec. A, p. 1, col. 1.

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century drew heavily on the influence of biblical principles. The fight against "godless Communism" was cast in obvious religious terms. But the better, more persistent case is America's ongoing commitment to egalitarian politics, the constant pressure to include new groups within the inner circle of those regarded as morally equal and entitled to equal benefits under the law, a cause that has only been magnified at the dawn of the twenty-first century. One group after another has asserted its fundamental equality with the group of white American males who were privileged by the original U.S. Constitution to vote and hold office, to own slaves, and to hold sway in patriarchal domestic life. Since the late eighteenth century, and particularly since the Civil War, with a great acceleration in the 1970s, other groups have asserted themselves as being equal in rights to America's founding elite. These newly assertive groups include not only former slaves and women, but also children born out of wedlock, homosexuals, senior citizens, Americans with disabilities, and noncitizens. Other groups have been slow in organizing themselves and generally seem intimidated by the opprobrium they suffer in American society: these include the obese, smokers, prison inmates, and ex-felons.[4] Other groups, such as public school pupils in inner cities, are barely acknowledged as victims of discrimination. However the claims of these various groups are negotiated in the future, there is little doubt that egalitarian politics will dominate the American agenda for a long time to come.

The assumption guiding this political movement is not simply that equal treatment is useful or efficient or that its benefits outweigh its costs. The movement draws on a strong belief that treating people equally is the right thing to do—regardless of the cost. But from where does the moral energy come to assert the equality of groups once considered of lesser status in American society? It is not enough to claim that children born out of wedlock are equal to all other children. One needs a reason. The problem is finding a moral or other nonlegal reason for thinking that human beings are of equal worth and, therefore, should be treated as equal.

What could the reason be? Secular philosophies are hard pressed to provide a reason for their zealous defense of equality. So far as I can tell, Ronald Dworkin has no ideological or moral foundation for the view that the state must treat each person with "equal concern and respect."[5] This is simply a postulate of American academic liberalism. By like token, John Rawls has no case for assuming that in "the original position" all human beings are of equal worth. He just assumes this to be true as a premise of his system of "justice as fairness."[6]

[4] On the shocking policy of disenfranchising inmates and felons, see George P. Fletcher, "Disenfranchisement as Punishment: Reflections on the Racial Uses of Infamia," 46 *UCLA L. Rev*. 1895 (1999), and *Richardson v. Ramirez*, 418 U.S. 24 (1974).

[5] Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), 275.

[6] Rawls concedes that human equality is simply a postulate of his system. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 504.

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II. Dignity and Equality

There seem to be two approaches to the problem of grounding the duty to treat all people as equal. One is to assume that some single feature of our existence—say our capacity to reflect on our existence or to search for the good—makes us human.[7] But, of course, even if a single standard for humanity could explain why humans are different from animals or machines, it would not follow that all humans are equal. It could be the case that all humans can think and experience conscious self-reflection but, nonetheless, display different degrees of intelligence. If the quality *A* is what makes us human, then—to paraphrase George Orwell's *Animal Farm*—having more of *A* should make one more human, thereby putting one on a higher scale of value.

Single-feature tests of humanity are bound to fail for other reasons as well. Even if some single feature makes us unique, we would still need an account of why this feature has moral worth. Suppose the distinguishing feature of human beings were that we have five toes. So what? It would be hard to generate a moral argument about intrinsic worth from the number of our toes.

The second approach is to proceed by conceding the variance among human beings but to assert that humans share the capacity to recognize and appreciate the humanity that lies beneath our individuality and differences. My favorite literary example is Shylock's speech to the Venetians about why they should recognize him and other Jews as human and equal in moral stature to themselves:

> I am a Jew. Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions?——fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die? And if you wrong us, shall we not revenge?[8]

Here there is no single feature that distinguishes Shylock as human. He has the physical constitution of other humans, the same needs, the same vulnerabilities, and the same capacities for joy. Note that there is nothing in this speech about our supposedly higher capacities of thought and self-reflection. The appeal is primarily visual. Shylock's opponents should look at him and see a reflection of themselves.

[7] See John E. Coons and Patrick M. Brennan, *By Nature Equal: The Anatomy of a Western Insight* (Princeton, NJ: Princeton University Press, 1999); and Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Knopf, 1993).

[8] Shakespeare, *Merchant of Venice*, Signet Classic edition, ed. Kenneth Myrick (London: Penguin, 1965), 3.1.55–63.

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Recall the famous teaching that the book of Matthew attributes to Jesus but that is found originally in the Hebrew Bible: "Love thy neighbor as thyself."[9] The Hebrew text *V-avhta et reacha c-mohah* is, in fact, better translated as "Love thy neighbor, for thy neighbor is like you." This is essentially Shylock's appeal: Love (or at least respect) me because I am like thee. The basis of the likeness is purposely kept vague. Resemblance turns on a generalized image of what it means to be human.

Appealing to a generalized image of humanity offers an alternative to the search for a single factor that makes us different from and morally superior to, say, animals and machines. But this appeal suffers from the same flaw as the quest for a single distinguishing feature. So what if we human beings *are* made in the image of each other? Why does that mean that we are all of ultimate or even high moral worth?

In this context we can understand the unusual strength of the argument that we are made in the image of God (Gen. 1:27). The appeal to an image—as in Shylock's arguments—avoids singling out a factor that might be too thin a reed to bear the moral weight of the argument, and bearing some resemblance to the Divine solves the problem of why the resemblance confers dignity. Partaking of the divine image (*imago Dei*) renders human beings of value, arguably of ultimate value. As Immanuel Kant expressed his doctrine of intrinsic human dignity, each human being possesses a dignity that is beyond price, that cannot be traded off against competing values. The arguments in Genesis and in Kant follow if we assume that (1) being in the image of something entails partaking of its value, and (2) God or humanity is of ultimate value.[10] Whether you are a believer or not, these premises lead to the conclusion that humans beings are of overriding value. The troublesome question is, how do we get from the idea of being made in the image of God to Thomas Jefferson's famous proposition in the Declaration of Independence that "all men are created equal"? And if this derivation is problematic, how can we be sure that the principle of human equality derives from the *imago Dei* of Genesis?

The principle that all human beings are of equal dignity is accepted today without serious discussion. No single phrase has moved American politics more than Jefferson's "all men are created equal." After four score and seven years of quiescence, the phrase re-emerged in Lincoln's Gettysburg Address: "[O]ur fathers brought forth on this continent a new nation conceived in liberty and dedicated to the proposition that all men are created equal." One hundred years later, Martin Luther King, Jr., reminded another generation of Americans: "I still have a dream . . . that one day this nation will rise up and live out the true meaning of its

[9] Lev. 19:18 (translation by the author).

[10] Kant's argument is not that we are made in the image of humanity but that each person incorporates humanity in himself. See Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785), trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1998), 37–39.

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creed—we hold these truths to be self-evident, that all men are created equal."[11]

In Supreme Court opinions, this revered creed of the United States has finally begun to make a lasting impact. Its leading champion is Justice John Paul Stevens, who first invoked the maxim in a biting dissent to a decision that denied equal benefits under the law to children born out of wedlock:

> The reason why the United States Government should not add to the burdens that illegitimate children inevitably acquire at birth is radiantly clear: We are committed to the proposition that all persons are created equal.[12]

There seems to be little doubt today about the premise that we are all morally equal and that this radical equality should have some bearing on our rights under law.[13] But there is less agreement on the historical provenance of this argument and certainly some skepticism about whether its roots lie in the book of Genesis. I need, therefore, to address this issue.

III. The Relevance of Genesis

There seems to be a widespread view in American academic circles that because the United States was founded by Christians, the fundamental values of our legal culture must be Christian in their origin. Thus, the principle of human equality is attributed to Christian thinking. For example, George Fredrickson comments in his recent book on the history of racism:

> First came the doctrine that the Crucifixion offered grace to all willing to receive it and made all Christian believers equal before God. Later came the more revolutionary concept that all "men" are created equal and entitled to equal rights in society and government.[14]

Paul comes as close as any Christian thinker to articulating a doctrine of equality within the community of believers: "There is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ

[11] See Martin Luther King, "I Have a Dream," speech delivered at the Lincoln Memorial (Aug. 28, 1963), reprinted in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James M. Washington (San Francisco, CA: Harper, 1986), 219.

[12] *Mathews v. Lucas*, 427 U.S. 495, 516 (1976) (Stevens, J., dissenting).

[13] Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002).

[14] George M. Fredrickson, *Racism: A Short History* (Princeton, NJ: Princeton University Press, 2002), 11.

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Jesus."[15] Yet this Christian teaching is a far cry from the Kantian doctrine of intrinsic human dignity, a characteristic of all human beings regardless of their religious commitments. On the contrary, the requirement of faith in Jesus establishes a rather clear barrier to the universal view that all human beings are created equal. Moreover, the tragic history of anti-Semitism in the Catholic Church testifies to the capacity of Paul's teachings to intensify the feeling that some humans, to borrow Orwell's classic phrase, are "more equal" than others.[16]

There is no doubt that Christianity sought to overcome the tribal exclusivity of the Jews as the "chosen people." Indeed, the rhetorical point of Paul's claim of equality "in Christ" is to argue that all Christians are heirs to God's covenant with Abraham.[17] But it is a mistake to confuse a broadening of the criteria of inclusion with a principle of human equality.

Alternatively, some people claim that the principle of equality is rooted in Roman law or in the philosophy of the Stoics. It is true that, though Roman law tolerated slavery, some scholars at the time subscribed to a doctrine of equality as a matter of natural law,[18] but there is no basis for tracing a line of influence from these obscure Roman sources to Jefferson's conceptualization that all men are created equal. The argument that the Stoics originated the normative doctrine of equality also falters for lack of a theory of historical continuity. Also, the Stoic claim seems to have been limited to an argument about the equal rationality of all human beings, a feature that may or may not issue in a normative theory of equality.[19]

The belief that equality derives from Christian thinking is so deeply entrenched that many advance the claim in an obviously self-contradictory manner. Thus, Nicholas Capaldi writes: "Christianity is the origin of the modern conception of equality," but then notes a few sentences later that "Christians drew . . . on the Stoic doctrine" and the Hebrew notion from Genesis that all humans beings, "male" and "female," were made in the image of God.[20] This sounds to me like a recognition that the doctrine is of Jewish origin. Also, there is literally nothing in the Christian Bible that would support a thesis of universal equality. Strikingly, the New Testament fails even to reiterate the basic claim of Genesis that Adam is created in the image of God.

[15] Gal. 3:28 (New International Version).

[16] See James Carroll, *Constantine's Sword: The Church and the Jews: A History* (Boston, MA: Houghton Mifflin, 2001); and Elaine Pagels, *The Origin of Satan* (New York: Random House, 1995).

[17] Gal. 3:29 NIV: "If you belong to Christ, then you are Abraham's seed and heirs according to the promise."

[18] See Ernst Levy, "Natural Law in Roman Thought," 15 *Studia et Documenta Historica et Iuris* 1, 12 (1949) (quoting Ulpian).

[19] Nicholas Capaldi, "The Meaning of Equality," in *Liberty and Equality*, ed. Tibor R. Machan (Stanford, CA: Hoover Institution Press, 2002), 3; available on-line at http://www-hoover.stanford.edu/publications/books/fulltext/equality/1.pdf [accessed May 20, 2003].

[20] Ibid. The Stoic doctrine is, apparently, that "all men posse[ss] the rational capacity to grasp the universal order."

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The argument that the idea of equality originates in the book of Genesis, that it represents a Jewish vision of humanity, seems to me well grounded both in the text and in projected channels of historical influence. It is to be assumed, for example, that influential eighteenth-century thinkers such as Jefferson and Kant were familiar with the book of Genesis; the biblical story of creation in the image of God was a given in an eighteenth-century education.

Later debates leading up to the Civil War reveal how crucial the biblical passages were, in fact. When Lincoln said in his Second Inaugural Address that "both sides read the same Bible and pray to the same God," he was right on point. Abolitionists and advocates of slavery read the same passages in Genesis and debated whether all human beings descended from Adam or not. If they believed in 'monogenesis' (i.e., that all humans descend from Adam), then they were likely to be abolitionists. But if they discerned some basis for thinking that there were multiple sources of humanity,[21] then they readily held the view that some human beings belong to a privileged caste while others were properly relegated to a life of serving their superiors.[22]

IV. Interpreting a Contradictory Text

Even for those who accept the idea of monogenesis, there is a problem in formulating a principle of human equality. A serious philosophical problem lurks in the transition from "being made in the image of God" to the proposition that "all men are created equal." The Bible itself makes no explicit mention of human equality and, further, the book of Genesis is replete with stories that testify to inequality rather than equality. The most famous of these, of course, is the treatment of Eve and Adam, based on the apparent mistranslation of the Hebrew text that describes Eve as being made from the "rib" of Adam.[23]

[21] The thesis of 'polygenesis' (i.e., that God created other human beings besides Adam and Eve) gets some support from anomalies in the story of Cain, one of the sons of Adam and Eve. There is a puzzle about where Cain's wife comes from (Gen. 4:17) and who it is Cain might fear as he sets forth as a wanderer (Gen. 4:14).

[22] See Fredrickson, *Racism: A Short History*, 52 (discussing the origins of the concept of polygenesis in the writings of Giordano Bruno and Christopher Marlowe, where it was suggested that Adam might be the ancestor of the Jews alone), and ibid., 67–69 (discussing Henri de Saint-Simon, Jean-Joseph Virey, and other early nineteenth-century advocates of polygenesis, whose work influenced American pro-slavery writers).

[23] Gen. 2:21–22 AV: "And the Lord God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh thereof; /And the rib, which the Lord God had taken from man, made he a woman, and brought her unto the man." There is some dispute about whether the word *tsela* should be translated as 'rib'or 'side'. The reading in favor of male supremacy obviously prefers the former and this translation has entered into the conventional understanding of the text. My view is that 'side' is a more accurate translation.

The Christian reading of the text has furthered the subordination of women. These lines from Corinthians 11:7–9 carry an undying sting:

> A man ought not to cover his head, since he is the image and glory of God; but the woman is the glory of man. For man did not come from woman, but woman from man; neither was man created for woman, but woman for man.

In *Paradise Lost*, John Milton (1608–74) converted this bias against women into beautiful poetry:

> For contemplation he and valour formed, For softness she and sweet attractive Grace, He for God only, she for God in him.[24]

Not only women suffer in the interpretation of Genesis. The narratives of Genesis are replete with implied hierarchies of caste and status. God favors Abel's craft of husbanding animals over Cain's work in the fields. German theologian Claus Westermann reads the resulting conflict as the beginning of class struggle.[25] The tower of Babel leads to the breakdown of the single language that united humanity. With the resulting diversification of languages we encounter the beginning of national differences and the inevitable practice of treating one's own nationals as privileged relative to those of other tribes and nations.

The expulsion of Ishmael from the House of Abraham is possible only because it is implicitly assumed that a hierarchical relationship applies to the wives and concubines of Abraham: Sarah is superior to Hagar and, therefore, can order her expulsion as well as that of her son. Discrimination against homosexuals has its origin in the story of Sodom and Gomorrah: God destroys the cities in "fire and brimstone" because some of the residents clamor to sodomize the visitors whom Lot has brought under his roof. Genesis seems, in fact, to be preoccupied with these distinctions that place some people above others—older children above younger, or women with children above barren women. Indeed, the entire purpose of the book is to describe the emergence of the Hebrews, later called the Jews, as the people chosen by God for a special mission in history.

The only obvious source of discrimination not mentioned in Genesis is race. The idea that people with darker skin are inferior seems to be foreign to the biblical conception of humanity's origins. "I am black, but comely, O daughters of Jerusalem," sings the heroine of the Song of Songs (1:5). Perhaps this line betrays an apologetic tone, but even if skin color

[24] John Milton, *Paradise Lost* (1667), bk. 4, lns. 296–98, in John Milton, *Paradise Lost and Other Poems*, ed. Edward LeComte (Dublin: Mentor Books, 1961).

[25] Claus Westermann, *Genesis 1–11: A Continental Commentary*, trans. John J. Scullion (Minneapolis, MN: Fortress Press, 1994).

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matters in the culture of the Bible, I do not believe that race does. There may be a sense that some nations are cursed because of their sins or the sins of their ancestors (e.g., the Amalekites for treachery in warfare, or the Ammonites and Moabites for the acts of incest between Lot and his daughters that resulted in their conception), but the modern biological notion of racial inferiority had to await the development of modern science and its false theories of racial evolution.[26]

Even if we leave aside the tales of inequality in Genesis, we have some trouble understanding why the abolitionist movement put so much faith in the principle that all human beings are made in the image of God. How does one derive a principle of equality from creation in God's image?

So far as I can tell, there are two ways of making the argument. One relies on the prohibition of homicide in Genesis (9:6): "Whoever sheds man's blood, by man shall his blood be shed, for in the image of God [*imago Dei*], God made man." It is worth thinking about the logic of this proposition. Why does *imago Dei* entail a rule against killing? After all, the potential murderer is also made in the image of God. There is a clue, I believe, in a famous discussion in the Talmud about whether it is permissible for *A* to kill *B* if *C* has threatened *A* with death if he does not kill *B*.[27] The answer is no. Even though *A*'s motive may be to save life, namely, his own, choosing between *B*'s life and his own is impermissible. As the rabbinic sages put it: "Why is your blood redder than his?"

The second way of making the argument is to recognize that the claim of dignity implicit in *imago Dei* is, by its nature, ultimate. To partake of God's existence by being made in the image of God is, as Kant expressed the concept of dignity, to be beyond quantifiable value.[28] There is no trade possible against the dignity of a human life, no price that can be put on the existence of a single human being. If human beings are of ultimate value, then it follows that they are of equal value. Were they of finite value, then it would be impossible to avoid a hierarchy based on relative dignity, with some people viewed as having more than others.

The challenge in reading Genesis is to fathom how the same Bible could appeal to both abolitionists and slaveholders, to feminist egalitarians and

[26] Admittedly, in the postbiblical period, some commentators argued that Noah's curse of Ham's son Canaan (Gen 9:23–25) expressed the subordination of all Africans who were thought to be descended from Cush, another son of Ham. See Fredrickson, *Racism: A Short History*, at 43–45, 80. For a discussion of the eighteenth- and nineteenth-century "scientific" theories of racial inequality that offered secular support to pro-slavery advocates, see Fredrickson, *Racism: A Short History*, at 56–58, 66–68, and 79–81.

[27] Babylonian Talmud, Sanhedrin 72:1.

[28] Immanuel Kant, *The Metaphysics of Morals* (1797), trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), 230:

> But man regarded as a *person*, that is, as the subject of a morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he exacts respect for himself from all other rational beings in the world.

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to male chauvinists. The beginning of a solution lies in understanding the two stories of creation and the different functions they fulfill in the biblical presentation of the world. Any serious reader of the text will notice striking differences between the two accounts of creation, the first detailed in Genesis 1 and the second beginning in Genesis 2:4. I shall refer to the stories as 'One' and 'Two' as I list the differences:

1. In One, creation lasts seven days; in Two, it takes only one day and there is no mention of a Sabbath on which God rested.
2. In One, the name of God is "Elohim," typically translated as God; in Two, it is "JHVH Elohim," translated as "Lord God."[29]
3. In One, human beings are created in God's image; in Two, human beings are made from the earth.
4. In One, human beings have no purpose other than to celebrate their existence. In Two, human beings have a necessary function in the scheme of creation: nothing could grow because "there was no Adam to till the ground."
5. In One, the origin of humanity lies in a single being called "Adam"; in Two, Adam is bifurcated into male and female beings.

Historically, the difference between these two texts is that the first story, with its emphasis on creation in the image of God, has been a powerful stimulus to an egalitarian political thrust, at least since the late eighteenth century. The second story and other texts have fostered consciousness of the inequalities that we still find all around us. Obviously, the first story resonates more with modern egalitarian sensibilities than does the second. Shall we say that Genesis 1, with its emphasis on creation in the image of God, is right and Genesis 2, with its subordination of women, is wrong?[30] Well, we could do that, but then we would call into doubt the relevance of the biblical text as supporting authority. It is difficult both to

[29] The Hebrew here rendered as JHVH is the Tetragrammaton *Yud-Heh-Vav-Heh*. (Orthodox Jews do not pronounce this name aloud, and therefore use a euphemism that means "Lord." Thus the translation in English text of this name is typically "Lord God.") The familiar "Jehovah" represents an attempt to render the Tetragrammaton JHVH in English.

[30] The two creation narratives may be compared by juxtaposing the following excerpts. From the first, or Priestly, version:

> So God created man in his own image, in the image of God created he him; male and female created he them. (Gen 1:27 AV)

From the second, or Jehovist, version:

> And the Lord God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh thereof; / And the rib, which the Lord God had taken from man, made he a woman, and brought her unto the man. (Gen 2:21–22 AV)

and

> Unto the woman [God] said, "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and *he shall rule over thee*. (Gen. 3:16 AV) (emphasis added)

take the text seriously and to make sure the text supports our preferred positions on human dignity and equality.

I have no easy solution to this problem of exegesis, but there is clearly a difference between confronting a contradiction in the biblical text and flatly rejecting a passage simply because it seems "wrong." It is very tempting to argue that it was wrong for God to command Abraham to sacrifice his son Isaac and that Abraham should have resisted and argued with God.[31] But this wholesale rejection of the text implies the superiority of one's own moral judgment. This is much different from wrestling with a contradiction in the text by bringing to bear moral sensibilities.

I also find some solace in the multiple functions of the biblical text. The words of Genesis both teach us normative standards and document our wayward impulse to deviate from these standards. Genesis 1 teaches us a principle of equality that flies in the face of the inequality seemingly endorsed in other chapters of Genesis and in the interpretive tradition that reads into the text words like "rib" and assumes that Eve was created from Adam. A similar bias has entered the reading of the story of Sodom and Gomorrah, which simply takes it for granted that the sin of the local residents was their desire to engage in homosexual *sodomy*. Even our language incorporates the assumption. In fact, the text never overtly refers to anal or same-sex intercourse, and there are other readings that are more faithful to the details of the story, for example, the view that the locals' sin was attempting sex with angels or infringing upon the hospitality that Lot had extended to the visitors.

The problem of interpreting biblical narratives is, of course, one that lawyers and judges encounter all the time in confronting any historic legal text that lends itself to conflicting understandings. In legal cultures there is a point to retaining and, indeed, cultivating contradiction among legal sources. Shall we read the Eighth Amendment to endorse capital punishment simply because it addresses the problem of granting bail in capital cases? Shall we say, as the Supreme Court unfortunately held, that the second section of the Fourteenth Amendment endorses the constitutionality of disenfranchising felons because it creates an exemption for states that disqualify voters "for participation in rebellion, or other crime"?[32]

In my view, the American constitutional culture embodies ongoing contradictions, for example, between the freedoms enshrined in the Bill of Rights and the commitment to equality expressed in the post–Civil War Fourteenth Amendment.[33] The advantage of tensions of this sort is that the legal culture retains its flexibility and adaptability.

[31] See Alan M. Dershowitz, *The Genesis of Justice: Ten Stories of Biblical Injustice that Led to the Ten Commandments and Modern Morality and Law* (New York: Warner Books, 2000), 103.

[32] *Richardson v. Ramirez*.

[33] For a book-length argument of this position, see George P. Fletcher, *Our Secret Constitution: How Lincoln Redefined American Democracy* (Oxford: Oxford University Press, 2001).

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It is not clear that this is the value to be drawn from the contradictions between the first and second stories of creation; they may simply reflect conflicts between a normative and an anthropological approach to equality. While equality remains the ideal, the entire world continues to witness widespread social discrimination. The biblical text reminds us simultaneously of our ideals and our weaknesses. If we resolve the contradictions in favor of egalitarian principles, if we follow the Declaration of Independence and the Gettysburg Address, we can do so in the conviction that we are still honoring the biblical text as we seek to bring our tradition into harmony with our contemporary values.

V. Conclusion

The constitutional separation of church and state has led Americans to disengage from the sensibility that generates our deepest normative commitments. We take for granted equality among human beings, but, in fact, it is not to be so easily assumed. Today there are new voices that raise doubts about whether the least competent or the least moral of human beings should have the same claim to life and human rights as all others.[34] When the equality of human beings is challenged, as it will be from time to time, we must return to the historical origins of our commitments. Even a totally secular society, even one disengaged from biblical study, has much to learn by taking seriously the biblical message and honoring its influence in American culture.

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[34] See, for example, Peter Singer, *Animal Liberation*, 2d ed. (New York: Random House, 1990).

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