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MORALITY AND NORMATIVITY*

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In this essay I elaborate a particular, and particularly important, morality: the morality of human rights. Next, I ask the ground-of-normativity question (as I call it) about the morality of human rights and go on to elaborate a religious response. Then, after explaining why one might be skeptical that there is a plausible secular response to the ground-of-normativity question (i.e., to the question asked about the morality of human rights), I comment critically on John Finnis's secular response. Finally, I consider what difference it makes if there is no plausible secular response to the ground-of-normativity question.

> The masses blink and say: "We are all equal.—Man is but man, before God—we are all equal." Before God! But now this God has died.
>
> —Friedrich Nietzsche[1]

> Few contemporary moral philosophers . . . have really joined battle with Nietzsche about morality. By and large we have just gone on taking moral judgements for granted as if nothing had happened. We, the philosopher watchdogs, have mostly failed to bark.
>
> —Philippa Foot[2]

I. PRELIMINARIES

As we all know, there is not just one morality in the world; there are many.[3] By a "morality," I mean a claim or set of claims to the effect that human

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1. This passage—*quoted in* GEORGE PARKIN GRANT, ENGLISH SPEAKING JUSTICE 77 (1985)—appears in FRIEDRICH NIETZSCHE, IV THUS SPOKE ZARATHUSTRA ("On the Higher Man"), near the end of sec. 1.

2. PHILIPPA FOOT, NATURAL GOODNESS 103 (2001).

3. Many moral philosophers write as if there were just one morality—or at least, just one correct understanding of the term "morality." (They do this, no doubt, because many moral philosophers share an understanding of the term. *See* Jean Porter, *Christian Ethics and the Concept of Morality: An Historical Inquiry*, 26 J. SOC'Y CHRISTIAN ETHICS 3, 4 (2006). Three examples:

First: Some write about "the moral point of view" as if there were just one moral point of view. For example, in commenting on "that sort of impartiality that constitutes the moral point of view," James Griffin writes that:

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beings, either some or all, should live a certain sort of life—"should" in the sense of "have conclusive reason to."[4]

The morality Adolph Hitler espoused is radically different from the morality Mother Theresa espoused; nonetheless, each is a morality.[5] "Hitler's 'morality' is not a morality," you reply, "because it is, to put it mildly, false. There is only one true morality, and Hitler's—least of all Hitler's—is not it!" To say that there are many moralities, however, is to say nothing about whether a particular morality—or indeed any morality—is true. (Moral skepticism, properly understood, is the position not that morality is false—again, there is not just one morality—but that every morality is false, that every claim or set of claims to the effect that human beings, some or all, have conclusive reason to live a certain sort of life is false.) There are many moralities—and the morality Hitler espoused is one of them.

> We 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.

JAMES GRIFFIN, WELL-BEING 239 (1987), at 239. As Bernard Williams observes:

> It is often thought that no concern is truly moral unless it is marked by this universality. For morality, the ethical constituency is always the same: the universal constituency. An allegiance to a smaller group, the loyalties to family or country, would have to be justified from the outside inward, by an argument that explained how it was a good thing that people should have allegiances that were less than universal.

BERNARD WILLIAMS, ETHICS AND THE LIMITS OF PHILOSOPHY (1985), at 14.

Second: Some address the question "Why be moral?" as if there were just one thing it means to be moral. *See, e.g.*, PETER SINGER, PRACTICAL ETHICS 314–335 (2d ed. 1993). Singer writes that the "why be moral" question

> is a question about the ethical point of view, asked from a position outside it. But what is "the ethical point of view"? I have suggested that a distinguishing feature of ethics is that ethical judgments are universalisable. Ethics requires us to go beyond our own personal point of view to a standpoint like that of the impartial spectator who takes a universal point of view.

Id. at 317.

Third: Some argue that morality is a "myth" (or worse) as if there were just one morality. *See, e.g.*, RICHARD JOYCE, THE MYTH OF MORALITY (2001). *Cf.* Brian Leiter, *Morality Critics, in* THE OXFORD HANDBOOK OF CONTINENTAL PHILOSOPHY (Brian Leiter & M. Rosen eds., 2007). Relatedly, some opine about the biological and/or social determinants of morality as if there were just one morality. *See, e.g.*, RICHARD JOYCE, THE EVOLUTION OF MORALITY (2006).

4. In MICHAEL J. PERRY, MORALITY, POLITICS, AND LAW (1988), I collect several texts in support of this way of understanding the fundamental subject matter of moralities; *see* id. at 11–12 and 212–217. *Cf.* STEPHEN DARWALL, THE SECOND-PERSON STANDPOINT: MORALITY, RESPECT, AND ACCOUNTABILITY (2006), at 26: "[M]oral obligations always give agents conclusive reasons for acting that outweigh or take priority over any potentially competing considerations; or, at least, that always purport to do so."

5. *See* CLAUDIA KOONZ, THE NAZI CONSCIENCE (2003).

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> Asking oneself "Should I care about others?" is not a question prior to moral thought nor a question about morality, but is rather a question *within* morality. Hate and envy are as much "moral" emotions as love and sympathy. Another way to see this is to note that we should consider immoral judgments as a subset of moral judgments; bad moral values as a subset of moral value; false moral theories . . . are still moral theories about how to live.[6]

Of course, just as one can acknowledge that there are many moralities and reject every one of them as false, one can acknowledge that there are many moralities and affirm a particular morality as true—affirm as true, that is, the claim that one should live, that one has conclusive reason to live, the sort of life the morality claims one should live.

A morality may purport to be true for all human beings by claiming that all human beings have conclusive reason to live the sort of life it claims all human beings should live. Or a morality may purport to be true only for some human beings. Either way, a morality may be false in one sense but partly true in another: some, but only some, of the human beings for whom the morality purports to be true may have conclusive reason to live the sort of life the morality claims they should live. Conceivably, two (or more) moralities may both be true or both be partly true in this sense: one morality may be true for those or for some of those for whom it purports to be true, and another morality may be true for those or for some of those for whom it purports to be true.

Notice that it would beg the question to say to someone that the conclusive reason she has for living the sort of life a morality claims she should live is just that that sort of life is (for her) moral. The question is precisely whether the sort of life the morality claims she should live is (for her) truly moral; she wants to know whether in fact she has conclusive reason to live the sort of life the morality claims she should live.

The "ground of normativity" question—as I call it—can be asked about any morality; to ask it about a particular morality is simply to ask whether (and for whom) the morality is true and, if so, why—in virtue of what—it is true. Again, to say that a particular morality is true (for one) is to say that one should live—that one has conclusive reason to live—the sort of life the morality claims one should live; put another way, it is to say that one has conclusive reason to be(come) the sort of person who lives the sort of life the morality claims one should live. So to ask whether a particular morality is true is to ask what conclusive reason one has, if any, to live the sort of life the morality in question claims one should live. To ask the ground-of-normativity question about a particular morality is to ask what grounds the "should" in the morality's claim that one should live a certain sort of life; it is to ask why—in virtue of what—one should live that sort of life.

6. Paul Bloomfield, Book Review, 116 MIND 176, 178 (2007) (reviewing JOYCE, *supra* note 3).

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In the next section of this essay, I elaborate a particular—and particularly important—morality that I call the morality of human rights[7] (because, as explain, it is the principal articulated morality that underlies the law of human rights).[8] In section III, I ask the ground-of-normativity question about the morality of human rights and then elaborate a religious response. After explaining in section IV why one might be skeptical that there is a plausible secular response to the question (i.e., to the question asked about the morality of human rights), I consider some secular responses in sections V and VI. Finally, in section VII I ask what difference it makes if there is no plausible secular response to the ground-of-normativity question.

II. THE MORALITY OF HUMAN RIGHTS

Although it is only one morality among many, the morality of human rights has become the dominant morality of our time; indeed, unlike any morality before it, the morality of human rights has become a truly global morality.[9] (Relatedly, the language of human rights has become the moral *lingua franca*.)[10] Nonetheless, the morality of human rights is not well understood.

What does the morality of human rights hold? The International Bill of Rights, as it is informally known, consists of three documents: the Universal Declaration of Human Rights, the International Covenant on Civil

7. *See* MICHAEL J. PERRY, TOWARD A THEORY OF HUMAN RIGHTS: RELIGION, LAW, COURTS (2007), at 3–6.

8. On the precise relationship between the morality of human rights and the law of human rights, *see* id. at 33–36.

9. This is not to say that the morality of human rights is new; in one or another version, it is a very old morality. *See* LESZEK KOLAKOWSKI, MODERNITY ON ENDLESS TRIAL (1990), at 214:

> 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.

Nonetheless, the emergence of the morality of human rights in international law in the period since the end of World War II is a profoundly important development: "Until World War II, most legal scholars and governments affirmed the general proposition, albeit not in so many words, that international law did not impede the natural right of each equal sovereign to be monstrous to his or her subjects." Tom J. Farer & Felice Gaer, *The UN and Human Rights: At the End of the Beginning*, *in* UNITED NATIONS, DIVIDED WORLD (Adam Roberts & Benedict Kingsbury eds., 2d ed. 1993), at 240.

10. *See* JÜRGEN HABERMAS, RELIGION AND RATIONALITY: ESSAYS ON REASON, GOD, AND MODERNITY (Eduardo Mendieta ed., 2002), at 153–154: "Notwithstanding their European origins, . . . [i]n Asia, Africa, and South America, [human rights now] constitute the only language in which the opponents and victim of murderous regimes and civil wars can raise their voices against violence, repression, and persecution, against injuries to their human dignity."

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and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.[11] The Universal Declaration refers in its preamble to "the inherent dignity . . . of all members of the human family" and states in Article 1 that "[a]ll members of the human family are born free and equal in dignity and rights . . . and should act towards one another in a spirit of brotherhood." The two covenants each refer in their preambles to "the inherent dignity . . . of all members of the human family" and to "the inherent dignity of the human person"—from which, the covenants insist, "the equal and inalienable rights of all members of the human family . . . derive."[12]

According to the International Bill of Rights, then, and also according to the constitutions of many liberal democracies,[13] the morality of human rights consists of a twofold claim. The first part of the claim is that *each and every (born) human being has equal inherent dignity.*[14]

- *The Oxford English Dictionary* gives this as the principal definition of "dignity": "The quality of being worthy or honourable; worthiness, worth, nobleness, excellence."[15]

11. The Universal Declaration was adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which are treaties and as such are binding on the several state parties thereto, were meant in part to elaborate the various rights specified in the Universal Declaration. The ICCPR and the ICESCR were each adopted and opened for signature, ratification, and accession by the General Assembly of the United Nations on December 16, 1966. The ICESCR entered into force on January 3, 1976, and as of June 2004 had 149 state parties. The ICCPR entered into force on March 23, 1976, and as of June 2004 had 152 state parties. The United States is a party to the ICCPR but not to the ICESCR. In October 1977, President Jimmy Carter signed both the ICCPR and the ICESCR. Although the United States Senate has not ratified the ICESCR, in September 1992, with the support of President George H. W. Bush, the Senate ratified the ICCPR (subject to certain "reservations, understandings and declarations" that are not relevant here; *see* 138 CONG. REC. S 4781–84 (daily ed. Apr. 2, 1992)).

12. The relevant wording of the two preambles is as follows:

> *The State Parties to the present Covenant,*
>
> *Considering* that . . . recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.
>
> *Recognizing* that these rights derive from the inherent dignity of the human person.
>
> *Agree* upon the following articles:

13. *See* THE CONCEPT OF HUMAN DIGNITY IN HUMAN RIGHTS DISCOURSE v–vi, 41–42 (David Kretzmer & Eckart Klein eds., 2002); Mirko Bagaric & James Allan, *The Vacuous Concept of Dignity*, 5 J. HUM. RTS. 257, 261–263 (2006). *See also* Vicki C. Jackson, *Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse*, 65 MONT. L. REV. 15 (2004).

14. As a descriptive matter, the morality of human rights holds not that every human being has inherent dignity but only that every *born* human being has inherent dignity. *See* PERRY, *supra* note 7, at 54. Except when discussing abortion, I generally bracket the born/unborn distinction and say simply that according to the morality of human rights, every human being has inherent dignity. I argue elsewhere that we who affirm that every born human being has inherent dignity have good reason to affirm as well that every unborn human being has inherent dignity. *See* id., ch. 4.

15. OXFORD ENGLISH DICTIONARY (2d ed. 1991).

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- To say that every human being has "inherent" dignity is to say that the fundamental dignity every human being possesses, she possesses *not* as a member of one or another group (racial, ethnic, national, religious, etc.), *not* as a man or a woman, *not* as someone who has done or achieved something, and so on, *but simply as a human being*.[16]
- To say that every human being has "equal" inherent dignity is to say that like being pregnant, being "inherently dignified" is not a condition that admits of degrees: just as no pregnant woman can be more—or less—pregnant than another pregnant woman, no human being can have more—or less—inherent dignity than another human being. According to the morality of human rights, "[a]ll members of the human family are born . . . equal in dignity." Hereafter, when I say "inherent dignity," I mean "equal inherent dignity."

The second part of the claim is that *the inherent dignity of human beings has a normative force for us, in this sense: we should—every one of us—live our lives in accord with the fact that every human being has inherent dignity; that is, we should respect—we have conclusive reason to respect—the inherent dignity of every human being*.[17]

There is another way to state the twofold claim that is the morality of human rights: Every human being has inherent dignity *and* is "*inviolable*": not-to-be-violated.[18] According to the morality of human rights, one can violate a human being either explicitly or implicitly. One violates a human being *explicitly* if one explicitly denies that she (or he) has inherent dignity.

16. The ICCPR, in Article 26, bans "discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." *See* Peter Berger, *On the Obsolescence of the Concept of Honor, in* REVISIONS: CHANGING PERSPECTIVES IN MORAL PHILOSOPHY 172, 176 (Stanley Hauerwas & Alasdair MacIntyre eds., 1983):

> Dignity . . . always relates to the intrinsic humanity divested of all socially imposed roles or norms. It pertains to the self as such, to the individual regardless of his position in society. This becomes very clear in the classic formulations of human rights, from the Preamble to the Declaration of Independence to the Universal Declaration of Human Rights of the United Nations.

Cf. CHARLES E. CURRAN, CATHOLIC SOCIAL TEACHING: A HISTORICAL AND ETHICAL ANALYSIS 1891–PRESENT (2002), at 132:

> Human dignity comes from God's free gift; it does not depend on human effort, work, or accomplishments. All human beings have a fundamental, equal dignity because all share the generous gift of creation and redemption from God. . . . Consequently, all human beings have the same fundamental dignity, whether they are brown, black, red, or white; rich or poor, young or old; male or female; healthy or sick.

17. I say that the morality of human rights consists of a twofold claim, rather than that it consists of two claims, as a way of emphasizing that according to the morality of human rights, the claim that every human being has inherent dignity is not an independent claim but is inextricably connected to the further claim that we should live our lives in a way that respects the inherent dignity of every human being. *See* n. 37 [Smith e-mail].

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

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(The Nazis explicitly denied that the Jews had inherent dignity.)[19] One violates a human being *implicitly* if one treats her as if she lacks inherent dignity, either by doing to her what one would not do to her or refusing to do for her what one would not refuse to do for her if one genuinely perceived her to have inherent dignity. (Even if the Nazis had not explicitly denied that the Jews had inherent dignity, they would have implicitly denied it: the Nazis did to the Jews what no one would have done to them who genuinely perceived the Jews to have inherent dignity.) In the context of the morality of human rights, to say that (1) every human being has inherent dignity and we should live our lives accordingly (namely, in a way that respects that dignity) is to say that (2) every human being has inherent dignity and is inviolable: not-to-be-violated in the sense of "violate" just indicated. To affirm the morality of human rights is to affirm the twofold claim that every human being has inherent dignity and is inviolable.

If it is true, why is it true—in *virtue of what is* it true—that every human being has inherent dignity and is inviolable?[20] That the International Bill of Rights is (famously) silent on that question is not surprising, given the plurality of religious and nonreligious views that existed among those who bequeathed us the Universal Declaration and the two covenants.[21] Indeed, the claim that every human being has inherent dignity and is inviolable is deeply problematic for many secular thinkers, because the claim is difficult—perhaps to the point of impossible—to align with one of their fundamental convictions, what Bernard Williams called "Nietzsche's thought": "[T]here is not only no God, but no metaphysical order of any kind."[22]

19. *See* MICHAEL BURLEIGH & WOLFGANG WIPPERMAN, THE RACIAL STATE: GERMANY, 1933–1945 (1991); Johannes Morsink, *World War Two and the Universal Declaration*, 15 HUM. RTS. Q. 357, 363 (1993); KOONZ, *supra* note 5.

20. *Cf.* Jeff McMahan, *When Not to Kill or Be Killed*, TIMES LITERARY SUPP., Aug. 7, 1998, at 31 (reviewing FRANCES MYRNA KAMM, MORALITY, MORTALITY (VOL. II): RIGHTS, DUTIES, AND STATUS (1997)): "Understanding the basis of our alleged inviolability is crucial both for determining whether it is plausible to regard ourselves as inviolable, and for fixing the boundaries of the class of inviolable beings."

21. *See* Jacques Maritain, *Introduction*, *in* UNESCO, HUMAN RIGHTS: COMMENTS AND INTERPRETATION 9–17 (1949). Maritain writes: "We agree about the rights but on condition that no one asks us why." Id. at 9. *See also* Youngjae Lee, *International Consensus as Persuasive Authority in the Eighth Amendment*, 156 U. PA. L. REV. (2007): "International human rights treaties are . . . willfully silent about the reasons behind the norms that they adopt." However, Maritain is wrong: There was agreement *both* about "the rights" (actually, about some rights) and about a part of the "why": namely, that every human being has inherent dignity. Again, the Declaration explicitly refers in its preamble to "the inherent dignity . . . of all members of the human family" and states in Article 1 that "[a]ll members of the human family are born free and equal in dignity and rights . . . and should act towards one another in a spirit of brotherhood." So what Maritain should say is this: "We agree about the rights. We even agree about the inherent dignity—but on condition that no one asks us why every human being has inherent dignity."

22. Bernard Williams, *Republican and Galilean*, N.Y. REV., Nov. 8, 1990, at 45, 48 (reviewing CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF MODERN IDENTITY (1989)). *Cf.* JOHN M. RIST, REAL ETHICS: RETHINKING THE FOUNDATIONS OF MORALITY (2002), at 2: "[Plato] came to believe that if morality, as more than 'enlightened' self-interest, is to be rationally justifiable, it must be established on metaphysical foundations."

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III. THE GROUND-OF-NORMATIVITY QUESTION: A RELIGIOUS RESPONSE

> Only someone who is religious can speak seriously of the sacred, but such talk informs the thoughts of most of us whether or not we are religious, for it shapes our thoughts about the way in which human beings limit our will as does nothing else in nature. If we are not religious, we will often search for one of the inadequate expressions which are available to us to say what we hope will be a secular equivalent of it. We may say that all human beings are inestimably precious, that they are ends in themselves, that they are owed unconditional respect, that they possess inalienable rights, and, of course, that they possess inalienable dignity. In my judgment these are ways of trying to say what we feel a need to say when we are estranged from the conceptual resources we need to say it. Be that as it may: each of them is problematic and contentious. Not one of them has the simple power of the religious ways of speaking.
>
> Where does that power come from. Not, I am quite sure, from esoteric theological or philosophical elaborations of what it means for something to be sacred. It derives from the unashamedly anthropomorphic character of the claim that we are sacred because God loves us, his children.
>
> —Raimond Gaita[23]

I said that the ground-of-normativity question can be asked about any morality. Let us ask it about the morality of human rights: Is the morality of human rights true (or at least partly true)? Do we (or at least some of us) have conclusive reason to live the sort of life the morality of human rights claims that we—every one of us—should live: *a life in which we strive never to violate any human being, never to treat any human being as if she lacks inherent dignity; a* life *in which we strive always to respect the inherent dignity of every human being*?[24]

In this section, I elaborate an affirmative religious response—in particular, a Christian response—to the question. Of course, no one who is not a religious believer will find the response plausible; indeed, even many who are religious believers will not find the response plausible. Nonetheless, the religious (Christian) response I am about to elaborate is a intelligible, coherent response to the ground-of-normativity question, a response that for many religious believers is conclusive reason to live the sort of life the morality of human rights claims they (and we) should live.

Imagine a religious believer named Sarah. Although she is a Christian, Sarah is sufficiently familiar with Judaism and Islam to know that her

23. RAIMOND GAITA, A COMMON HUMANITY: THINKING ABOUT LOVE AND TRUTH AND JUSTICE 23–24 (2000). *Cf.* HABERMAS, *supra* note 10, at 162: "[T]he basic concepts of philosophical ethics, as they have developed up to this point, also fail to capture all the intuitions that have already found a more nuanced expression in the language of the Bible, and which we have only come to know by means of a halfway religious socialization."

24. I have argued elsewhere that we violate a human being even if all we do is decline to do what we can, all things considered, to prevent another human being from violating her or from otherwise causing her unwarranted suffering. *See* PERRY, *supra* note 7, at 33–36.

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religious response to the ground-of-normativity question, which she is about to elaborate, is not one that just Christians (not all Christians, but many) affirm;[25] many religious Jews and Muslims affirm it too.[26] So, notwithstanding her Christian vocabulary and scriptural references, Sarah's religious response is ecumenical as among the three great monotheistic faiths.[27]

Sarah affirms that every human being has inherent dignity and that we should live our lives accordingly. (For a reason that will soon be apparent, Sarah prefers to say that every human being "is sacred." Nonetheless, for Sarah, each predicate—"has inherent dignity," "is sacred"—is fully equivalent to the other; Sarah translates each predicate into the other without remainder.) In affirming this, Sarah affirms the morality of human rights.

Predictably, Sarah's affirmation provokes this question: Why—in virtue of what—does every human being have inherent dignity? Sarah gives a religious explanation. Speaking the words of the First Letter of John, Sarah

25. Charles Taylor writes that the "affirmation of universal human rights" that characterizes "modern liberal political culture" represents an "authentic development[] of the gospel." CHARLES TAYLOR, A CATHOLIC MODERNITY? (1999), at 16. Taylor writes:

> that modern culture, in breaking with the structures and beliefs of Christendom, also carried certain facets of Christian life further than they ever were taken or could have been taken within Christendom. In relation to the earlier forms of Christian culture, we have to face the humbling realization that the breakout was a necessary condition of the development.

Id. For Taylor's development of this point, with particular reference to modern liberal political culture's affirmation of universal human rights, *see* id. at 18–19. *Cf.* Charles Taylor, *Closed World Structures, in* RELIGION AFTER METAPHYSICS 47, 53–54, and 61 (Mark A. Wrathall ed., 2003).

John Allen, the Vatican correspondent for the NATIONAL CATHOLIC REPORTER, has reported that Catholic priest and theologian Martin Rhonheimer, "widely recognized as a provocative and unpredictable thinker," suggested that "once the secular world accepts the universality of human dignity and the bundle of absolute rights it implies, it will sooner or later discover that the Christian gospel provides the strongest cognitive basis for explaining and defending those rights." John L. Allen, Jr., *The Word from Rome*, NCRonline.org, May 5, 2006.

26. On Islam and the morality of human rights, *see* Khaled Abou El Fadl, *Islam and the Challenge of Democratic Commitment, in* DOES HUMAN RIGHTS NEED GOD? 58 (Elizabeth M. Bukar & Barbara Barnett eds., 2005).

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

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

See, generally, ROBERT TRAER, FAITH IN HUMAN RIGHTS: SUPPORT IN RELIGIOUS TRADITIONS FOR A GLOBAL STRUGGLE (1991).

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

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says that "God is love." ("Whoever fails to love does not know God, because God is love." 1 John 4:8.[28] "God is love, and whoever remains in love remains in God and God in him." 1 John 4:16.)[29] Moreover, God's act of creating and sustaining the universe is an act of love,[30] and we human beings are the beloved children of God and sisters and brothers to one another.[31] (As Hilary Putnam has noted, the moral image central to what Putnam calls the Jerusalem-based religions "stresse[s] equality and also fraternity, as in the metaphor of the whole human race as One Family, of all women and

28. The translations of biblical passages here and elsewhere in this book are those of THE NEW JERUSALEM BIBLE (1985).

29. *See* John D. Caputo, *The Experience of God and the Axiology of the Impossible, in* RELIGION AFTER METAPHYSICS 123, 138 (Mark A. Wrathall ed., 2003):

> There is no name more closely associated in the Christian Scriptures with "God" than love. That is what God is, and this comes as close as the New Testament does to a "definition" of God, as opposed to defining God onto-theo-logically in terms of possibility and actuality, essence and existence. Even so, it would be at best a quasi-definition because in saying that God is love one is not de-fining God in the sense of setting forth God's limits and boundaries, but saying that God is unbounded and unlimited and unconditional excess, for love is love only in excess and overflow, not in moderation.
>
> So the experience of God is given in the experience of love. But love is perfect not when love is drawn around a closed circle of friends and intimates, which makes perfect sense and is perfectly possible, but precisely when love is stretched to the breaking point of loving when love is mad and impossible. The God of love and the God of the impossible seem like a nice fit, a kind of pre-fit.

30. Simone Weil writes: "God created through love and for love. God did not create anything except love itself, and the means to love." SIMONE WEIL, WAITING FOR GOD 123 (Emma Craufurd trans., 1951).

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

> In the thirteenth century, St Thomas Aquinas, though himself believing that the world had a beginning, argued that this is seriously irrelevant to the doctrine of creation. He said that to believe that the world is created is chiefly to believe that its being there at all and at any time is God's doing.
>
> And this, too, is what we find biblical authors teaching. . . . In these texts God is intimately involved with the world as its ever-present cause.
>
> At the end of his *Tractatus Logico-Philosophicus* Ludwig Wittgenstein wrote: "Not *how* the world is, is mystical, but *that* it is." For Wittgenstein, *how the world is* is a scientific matter with scientific answers (even if we do not have all the answers yet). But, he insists, even when the scientific answers are in, we are still left with the *thatness* of the world, the fact *that* it is. And it is with this fact that we surely need to grapple if we are reasonably to arrive at the notion of creation apart from the testimony of scripture.

31. *Cf.* KRISTEN RENWICK MONROE, THE HEART OF ALTRUISM: PERCEPTIONS OF A COMMON HUMANITY (1996), at 216.

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

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men as sisters and brothers.")[32] Every human being has inherent dignity, says Sarah, in the sense that every human being is a beloved child of God and a sister/brother to every other human being.[33]

Sarah is fully aware that she is speaking analogically, but that is the best anyone can do, she insists, in speaking about who/what God is[34]—as in "Gracious God, gentle in your power and strong in your tenderness, you

32. HILARY PUTNAM, THE MANY FACES OF REALISM (1987), at 60–61. Ben Zion Bokser & Baruch M. Bokser, *Introduction: The Spirituality of the Talmud, in* THE TALMUD: SELECTED WRITINGS 7 (1989), 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."' They continue:

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

Id. at 30–31.

33. *Cf.* DANIEL C. DENNETT, DARWIN'S DANGEROUS IDEA: EVOLUTION AND THE MEANINGS OF LIFE (1995), at 474 (*quoting* Lee Khan Yew, Senior Minister of Singapore, on the outcry over the sentence of flogging given to Michael Fay for vandalism): "To us in Asia, an individual is an ant. To you, he's a child of God. It is an amazing concept."

34. *See* THE HARPERCOLLINS ENCYCLOPEDIA OF CATHOLICISM (Richard P. McBrien ed., 1995), at 43:

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

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

> **imago Dei** (Lat., "image of God"), theological concept that denotes the likeness of the human creature to God. According to Gen 1:26, humanity was created "in [God's] image, according to [God's] likeness." Found sparsely in the Hebrew Scriptures, the word "image" was often used in Pauline writings in the NT to interpret Christ's work and became central to early Christian reflections on the human condition, the meaning of redemption in Christ, and hope for humankind. . . .
>
> Early theologians did not consistently separate "image" from "likeness" in interpreting human existence, and they saw the image of God variously in God's intellect, the capacity for moral decision, and the ability to rule over creation; but these theologians usually agreed that it implied a kinship between God and humankind and a call for the imitation of God.

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have brought us forth from the womb of your being and breathed into us the breath of life."[35]

Sarah's explanation provokes a yet further question, about the ground of the normativity—of the "should"—in the claim that we should live our lives in a way that respects the inherent dignity of every human being:

> I'll assume, for the sake of our discussion, that every human being has inherent dignity in the sense that every human being is a beloved child of God and a sister/brother to every other human being. So what? Why should it matter to me—to the way I live my life—that every human being has inherent dignity, that every human being is a beloved child of God and a sister/brother to me? Why should I respect—why should I want to be a person who respects—the inherent dignity of every human being?

In responding to this important question about the ground of normativity, Sarah—who "understands the authority of moral claims to be warranted not by divine dictates but by their contribution to human flourishing"[36]—states her belief that the God who loves us has created us to love one another.[37] (We are created not only to achieve union in love with one another; we are also created, Sarah believes, to achieve union in love with God. Sarah understands that state to be "not an ontological unity such that either the lover or the beloved ceases to have his own individual existence [but rather] a unity at the level of affection or will by which one person affectively takes

For a discussion of different understandings and uses of the "image of God" language, *see* ROGER RUSTON, HUMAN RIGHTS AND THE IMAGE OF GOD 269–291 (2004).

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

36. *See* JEAN PORTER, NATURE AS REASON: A THOMISTIC THEORY OF THE NATURAL LAW (2005), at 144–145:

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

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

37. In e-mail discussion, Steve Smith has characterized Sarah's views this way: "Human fulfillment generally, and my own fulfillment, will be served by learning to love and respect that which is sacred. Human beings are sacred. Therefore, human fulfillment is served by . . . etc." As Smith observes:

> In this presentation, the claims that (a) my fulfillment is served by learning to love Bill, Jane, et al. and (b) Bill, Jane, et al. are sacred are hardly independent claims, or independent reasons to care about others. . . . Both the "fulfillment" and the "sacredness" parts are necessary to the argument. But at the same time, they are not just different phrasings of the same claim.

E-mail from Steven Smith to Michael Perry, Aug. 28, 2002.

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the other to be part of himself and the goods of the other to be his own goods.")[38] Given our created nature—given what we have been created for—the most fitting way of life for us human beings, the most deeply satisfying way of life of which we are capable, as children of God and sisters and brothers to one another, is one in which we embrace Jesus' "new" commandment, reported in John 13:34, to "love one another . . . just as I have loved you."[39]

By becoming persons of a certain sort—persons who discern one another as bearers of inherent dignity and love one another as such—we fulfill our created nature.[40] "We are well aware that we have passed over from death to life because we love our brothers. Whoever does not love, remains in death" (1 John 3:14).[41] Indeed, Sarah believes that in some situations, we love most truly and fully—and therefore we live most truly and fully—by

38. David M. Gallagher, *Thomas Aquinas on Self-Love as the Basis for Love of Others*, 8 ACTA PHILOSOPHICA 23 (1999) (emphasis in original).

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

40. TERRY EAGLETON, AFTER THEORY (2003) writes:

> Aristotle thought that there was a particular way of living which allowed us . . . to be at our best for the kind of creatures we are. This was the life conducted according to the virtues. The Judaeo-Christian tradition considers that it is the life of charity or love. What this means . . . is that we become the occasion of each other's self-realization. It is only through being the means of your fulfillment that I can attain my own.

Quoted in David Lodge, *Goodbye to All That*, N.Y. REV., May 27, 2004, at 39, 41.

41. In the Gospel there are two great commandments, not one. *See* Matthew 22:34–40:

> But when the Pharisees heard that he had silenced the Sadducees they got together and, to put him to the test, one of them put a further question, "Master, which is the greatest commandment of the Law?" Jesus said to him, "You must love the Lord your God with all your heart, with all your soul, and with all your mind. This is the greatest and the first commandment. The second resembles it: You must love your neighbor as yourself. On these two commandments hang the whole Law, and the Prophets too."

See also Mark 12:28–34; Luke 10:25–28. *Cf.* J.L. MACKIE, ETHICS: INVENTING RIGHT AND WRONG (1977), at 243:

> D.D. Raphael, in "The Standard of Morals," in *Proceedings of the Aristotelian Society* 75 (1974–75) follows Edward Ullendorff in pointing out that whereas "Thou shalt love thy neighbor as thyself" represents the Greek of the Septuagint (Leviticus 19:18) and of the New Testament, the Hebrew from which the former is derived means rather "You shall treat your neighbor lovingly, for he is like yourself."

What is the relation between the two commandments? In the view of great German Catholic theologian Karl Rahner, not only is there no tension between the commandment to love God and the commandment to love one another, there is "a radical identity of the two loves." KARL RAHNER, 6 THEOLOGICAL INVESTIGATIONS 231, 236 (1969). Rahner, *Reflections on the Unity of the Love of Neighbor and the Love of God, in* 6 THEOLOGICAL INVESTIGATIONS (1969) writes: "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." Id. at 247. Rahner's reference is to a passage in John's First Letter, in which it is

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taking the path that will probably or even certainly lead to our dying. "No one can have greater love than to lay down his life for his friends" (John 15:13).[42]

written: "Anyone who says 'I love God' and hates his brother, is a liar, since whoever does not love the brother whom he can see cannot love God whom he has not seen." 1 John 4:20. In Rahner's view, it is only by loving one's neighbor that one achieves the ontological/existential state of being/consciousness that constitutes "love of God," even though one may not "believe in God." *See* RAHNER, 6 THEOLOGICAL INVESTIGATIONS, at 238–239. If Rahner is right, then there is in the following sense not two great commandments, but one: compliance with the first great commandment (to love God) requires compliance with the second (to love one another), and compliance with the second entails compliance with the first. *See* id. at 232. Consider, in that regard, the Last Judgment passage in Matthew's Gospel:

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

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

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

42. DIETRICH BONHOEFFER, THE COST OF DISCIPLESHIP 41 (R.H. Fuller trans., 1995) (1937) writes: "when Christ calls us, his call leads to death." *Cf.* HELMUT GOLLWITZER ET AL., DYING WE LIVE: THE FINAL MESSAGES AND RECORDS OF THE RESISTANCE (1956); Terry Eagleton, *Lunging, Flailing, Mispunching*, LONDON REV. BOOKS, Oct. 19, 2006 (reviewing RICHARD DAWKINS, THE GOD DELUSION (2006):

> The central doctrine of Christianity . . . is, in the words of the late Dominican theologian Herbert McCabe, that if you don't love you're dead, and if you do, they'll kill you. Here, then, is your pie in the sky and opium of the people. It was, of course, Marx who coined that last phrase; but Marx, who in the same passage described religion as the "heart of a

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(Sarah also believes that the ultimate fulfillment of our created nature—which, Sarah believes, is mystical union in love with God and with one another[43]—can be neither fully achieved nor even fully understood in our earthly life.[44] "Now we see only reflections in a mirror, mere riddles, but then we shall be seeing face to face. Now, I can know only imperfectly; but then I shall know just as fully as I am myself known" [1 Corinthians 13:12]. But in our earthly life, Sarah believes, we can make an important beginning.)[45]

The "love" in Jesus' counsel to "love one another" is not *eros* or *philia* but *agape*.[46] To love another in the sense of *agape* is *to see her (or him) in a certain way* (namely, as child of God and sister/brother to oneself) and therefore *to act toward her in a certain way*.[47]

heartless world, the soul of soulless conditions," was rather more judicious and dialectical in his judgment on it than the lunging, flailing, mispunching Dawkins.

43. *Cf.* Charles Taliaferro, *Why We Need Immortality*, 6 MOD. THEOLOGY 367 (1990).

44. *See* Byron L. Sherwin, *Jews and the World to Come*, FIRST THINGS, June/July 2006, at 13. *Cf.* GRAHAM GREENE, MONSIGNOR QUIXOTE (1982), at 221:

> The Mayor didn't speak again before they reached Orense; an idea quite strange to him had lodged in his brain. Why is it that the hate of a man—even of a man like Franco—dies with his death, and yet love, the love which he had begun to feel for Father Quixote, seemed now to live and grow in spite of the final separation and the final silence—for how long, he wondered with a kind of fear, was it possible for that love of his to continue? And to what end?

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

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

HABERMAS, *supra* note 10, at 80.

46. The literature in Christian ethics on *agape is* voluminous. Some recent titles include COLIN GRANT, ALTRUISM AND CHRISTIAN ETHICS (2001); GARTH L. HALLETT, CHRISTIAN NEIGHBOR-LOVE: AN ASSESSMENT OF SIX RIVAL VERSIONS (1989); STEPHEN J. POPE, THE EVOLUTION OF ALTRUISM AND THE ORDERING OF LOVE (1994); THE LOVE COMMANDMENTS: ESSAYS IN CHRISTIAN ETHICS AND MORAL PHILOSOPHY (Edmund N. Santurri & William Werpehowski eds., 1992); EDWARD COLLINS VACEK, SJ, LOVE, HUMAN AND DIVINE: THE HEART OF CHRISTIAN ETHICS (1994); TIMOTHY P. JACKSON, LOVE DISCONSOLED: MEDITATIONS ON CHRISTIAN CHARITY (1999); ANDRE COMTE-SPONVILLE, A SMALL TREATISE ON THE GREAT VIRTUES (Catherine Temerson trans., 2001), at 222–290; TIMOTHY P. JACKSON, THE PRIORITY OF LOVE: CHRISTIAN CHARITY AND SOCIAL JUSTICE (2003).

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

> There are, of course, many fascinating questions that can be asked about the love commandment. Does it command love as an emotion or simply that we act in a certain way? Kant, convinced that we can be morally bound only to that which is in our control, called

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Agape "discloses to us the full humanity of others. To become properly aware of that full humanity is to become incapable of treating it with contempt, cruelty, or indifference. The full awareness of others' humanity that love involves is an essentially motivating perception."[48]

The "one another" in Jesus' counsel is radically inclusive:

> You have heard how it was said, You will love your neighbor and hate your enemy. But I say this to you, love your enemies and pray for those who persecute you; so that you may be children of your Father in heaven, for he causes his sun to rise on the bad as well as the good, and sends down rain to fall on the upright and the wicked alike. . . . You must therefore set no bounds to your love, just as your heavenly Father sets none to his. (Matthew 5:43–48)[49]

emotional love pathological love and claimed that it could not be our duty to feel it. What is actually commanded he called practical love—which is simply acting morally as Kant conceived acting morally.

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

48. Timothy Chappell, Book Review, 111 MIND 411, 412 (2202) (reviewing GAITA, *supra* note 23). Chappell is here describing "Gaita' s view" and says that it is "reminiscent of course of Simone Weil and Iris Murdoch." Id. *See* GAITA, *supra* note 23, at xxxiii:

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

Compare ALAIN FINKIELKRAUT, IN THE NAME OF HUMANITY: REFLECTIONS ON THE TWENTIETH CENTURY (2000), at 5–6 (commenting on Primo Levi's encounter at Auschwitz with the German chemist Doktor Engineer Pannwitz): "To Doktor Pannwitz, the prisoner standing there [Levi], before the desk of his examiner, is not a frightened and miserable man. He is not a dangerous or inferior or loathsome man either, condemned to prison, torture, punishment, or death. He is, quite simply, not a man at all."

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

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

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As it happens, Sarah embodies Jesus' extravagant counsel to "love one another just as I have loved you." She loves all human beings. Sarah loves even "the Other": she loves not only those for whom she has personal affection, or those with whom she works or has other dealings, or those among whom she lives; she loves even those who are most remote, who are unfamiliar, strange, alien, those who, because they are so distant or weak or both, will never play any concrete role, for good or ill, in Sarah's life.[50] Sarah loves even those from whom she is most estranged and toward whom she feels most antagonistic: those whose ideologies and projects and acts she judges to be not merely morally objectionable but morally abominable.[51] Sarah loves even her enemies; indeed, Sarah loves even those who have violated her, who have failed to respect her inherent dignity. Sarah is fond of quoting Graham Greene to her incredulous friends: "When you visualized a man or a woman carefully, you could always begin to feel pity. . . . When you saw the corners of the eyes, the shape of the mouth, how the hair grew, it was impossible to hate. Hate was just a failure of imagination."[52]

Such love—such a state of being, such an orientation in the world—is obviously an ideal. Moreover, it is for most human beings an extremely demanding ideal; for many persons it is also an implausible ideal.[53] Why

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

50. *See* NORMAN GERAS, THE CONTRACT OF MUTUAL INDIFFERENCE: POLITICAL PHILOSOPHY AFTER THE HOLOCAUST (1998), at 67:

> The claims of the intimate circle are real and important enough. Yet the movement from intimacy, and to faces we do not know, still carries the ring of a certain local confinement. For there are the people as well whose faces we never encounter, but whom we have ample means of knowing *about*. . . . [T]heir claims too, in trouble, unheeded, are a cause for shame.

51. *See* Gaita, *supra* note 23, at xviii–xix: "[T]he language of love . . . compels us to affirm that even . . . the most radical evil-doers . . . are fully our fellow human beings."

52. GRAHAM GREENE, THE POWER AND THE GLORY (Penguin ed. 1940), at 131. For a dissenting view on hate, *see* Meir Y. Soloveichik, *The Virtue of Hate*, FIRST THINGS, Feb. 2003, at 41. As the CHRON. HIGHER EDUC. stated, in an e-mail notice on this article dated Feb. 13, 2003:

> Rabbi Soloveichik asks: "Is an utterly evil man . . . deserving of a theist's love?" and, reflecting on his conversations with Christian clergymen, concludes that there is "no minimizing the difference between Judaism and Christianity on whether hate can be virtuous." He examines the "theological underpinnings" for each faith's approach to hate and notes that "the crucifixion is a story of a loving God seeking humanity's salvation," but that "not a single Jewish source asserts that God deeply desires to save all humanity."

For vigorous criticism by religious Jews and others of Soloveichik's essay and a response by Soloveichik, *see* Correspondence: *Jews and Christians, Hate and Forgiveness*, FIRST THINGS, May 2003, at 2–9.

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

> I have never been able to understand how it was possible to love one's neighbors. And I mean precisely one's neighbors, because I can conceive of the possibility of loving those who are far away. I read somewhere about a saint, John the Merciful, who, when a hungry

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should anyone embrace the ideal? Why should anyone want to be (or to become) such a person—a person who, like Sarah, loves even the Other? This is, existentially if not intellectually, the fundamental moral question for anyone: Why should I want to be the sort of person who makes the choices, who does the things, I am being told I should make and do.

And in fact, Sarah's interlocutor presses her with this question: "Why should I want to be the sort of person who, like you, loves the Other? What reason do I have to do *that*?" Because that is essentially the question about the ground of the normativity in the claim that we should live our lives in a way that respects the inherent dignity of every human being, Sarah is puzzled; she thought that she had already answered the question. Sarah patiently rehearses her answer, an answer that appeals ultimately to *one's commitment to one's own authentic well-being:* "The most deeply satisfying way of life of which we are capable is one in which we 'love one another just as I have loved you.' By becoming persons who love one another, we fulfill—we perfect—our created nature and thereby achieve our truest, deepest, most enduring happiness."[54] It is now Sarah's turn to ask a question of her interlocutor: "What further reason could you possibly want for becoming (or remaining) the sort of person who loves the Other?"

> When he was deliberating about how to live, St. Augustine asked, "What does anything matter, if it does not have to do with happiness?" His question requires explanation, because he is not advising selfishness nor the reduction of other people to utilities, and even qualification, because other things can have some weight. All the same, the answer he expects is obviously right: only a happy life matters conclusively. If I had a clear view of it, I could have

> frozen beggar came to him and asked him to warm him, lay down with him, put his arms around him, and breathed into the man's reeking mouth that was festering with the sores of some horrible disease. I am convinced that he did so in a state of frenzy, that it was a false gesture, that this act of love was dictated by some self-imposed penance. If I must love my fellow man, he had better hide himself, for no sooner do I see his face than there's an end to my love for him.

FYODOR DOSTOEVSKY, THE BROTHERS KARAMAZOV, opening of ch. 5, IV (Constance Garnett trans., 1933).

54. Thus Sarah rejects as false Vacek's distinction between "natural-law ethics" and "mutual-love ethics." *See* Edward Collins Vacek, SJ, *Divine-Command, Natural-Law, and Mutual-Love Ethics*, 57 THEOLOGICAL STUD. 633 (1996):

> In natural-law ethics, something is right because it fulfills human nature, and the task is to discover and realize that nature. In mutual-love ethics, something is finally right because it is appropriate to our love relationship with God, and the fundamental moral task is to live in accord with this relationship.

For Sarah, what fulfills human nature is to live in a relationship of love with God and with other human beings. Vacek' s "mutual-love ethics" seems to me better understood not as an alternative to but as a version of "natural-law ethics." For an excellent explication of Aquinas's understanding of the relation between self-love and other-love (and also between self-love and love of God), *see* Gallagher, *supra* note 38; *see also* PORTER, note 36, at 209–210.

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> no motive to decline it, I could regret nothing by accepting it, I would have nothing about which to deliberate further.[55]

A clarification may be helpful here. Does Sarah do what she does for the Other—for example, does she contribute to Bread for the World as a way of feeding the hungry—for a self-regarding reason? Does she do so, say, because it makes her happy to do so? No. Although feeding the hungry does make Sarah happy, that is not why she does it. Given the sort of person she is, the reason—the other-regarding reason—Sarah feeds the hungry is this: "The hungry are my sisters and brothers; I love them." Now, a different question: Why is Sarah committed to being the sort of person she is and why does she believe that everyone should want to be such a person? Pace Augustine, Sarah's answer to that question is self-regarding: "As persons who love one another, we fulfill our created nature and thereby achieve our truest, deepest, most enduring happiness."[56] According to Sarah, it is not individual acts of love that necessarily make one happy; it is, rather, becoming a person who loves the Other "just as I have loved you." "[S]elf-fulfillment happens when we are engaged from beyond ourselves. Self-fulfillment ultimately depends on self-transcendence. This is essentially the claim that is made by religion, that the meaning of our lives is to be found beyond ourselves."[57]

55. Stephen Scott, *Motive and Justification*, 85 J. PHIL. 479, 499 (1988). On the term "happiness," *see* Julia Annas, *Virtue and Eudaimonism,* 15 SOC. PHIL. & POL'Y 37, 53 n. 35 (1998):

> Despite the differences between *eudaimonia* and happiness which I have explored in this essay, and which are striking to philosophers reflecting on virtue and happiness, "happiness" is clearly the correct translation for *eudaimonia* in ancient literature of all kinds, and it would be a mistake to conclude that we should translate *eudaimonia* by some other term.

Compare Richard Taylor, *Ancient Wisdom and Modern Folly*, 13 MIDWEST STUD. IN 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 compared to what the ancients meant by *eudaimonia. Fulfillment* might be a better term, though this, too, fails to capture the richness of the original term. . . . The concept of happiness in modern philosophy, as well as in popular thinking, is superficial indeed in comparison.

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

57. GRANT, *supra* note 46, at xix. Sarah agrees with Grant. She understands Aquinas to have defended substantially the same position. *See* note 54. *Cf.* David O. Brink, *A Puzzle about the Rational Authority of Morality*, 6 PHIL. PERSP. 1, 22 (1992):

> Unless agent-neutral reasons are necessarily superior reasons, the best solution would be to argue that agent-relative reasons, properly understood, support other-regarding moral requirements as well. So friends of agent-neutrality would do well to cultivate the resources

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It bears emphasis that Sarah does not believe that she should be the sort of person she is because God has issued a command to her to be that sort of person—a command that, because God is entitled to rule, to legislate, she is obligated to obey. For Sarah, God is not best understood in such terms. A theistic religious vision does not necessarily include, though some conventional theistic religious visions do include, a conception of God as supreme legislator, issuing directives for human conduct.[58] For Sarah, for whom God is love, not supreme legislator, some choices are good for us to make (or not to make)—and therefore we ought (or ought not) to make them—not because God commands (or forbids) them but because God is who God is, because the universe—the universe created and sustained by God who is love in an act that is an expression of God/love—is what it is, and in particular, because we human beings are who we are.

For Sarah, "[t]he Law of God is not what God legislates but what God is, just as the Law of Gravity is not what gravity legislates but what gravity is."[59] Sarah believes that because God is who God is, because the universe is what it is, and because we are who we are, and not because of anything commanded by God as supreme legislator, the most fitting way of life for us human beings—the most deeply satisfying way of life of which we are capable—is one in which we children of God, we sisters and brothers, "love one another just as I have loved you."

IV. IS THERE A PLAUSIBLE SECULAR RESPONSE?

Sarah is deeply skeptical that any secular ground can bear the weight of—that any secular worldview can embed—the twofold claim that every human being has inherent dignity and is inviolable.[60] (Recall that "is

of strategic and metaphysical egoists, even if they reject the rational egoist assumption that all reasons for action are agent-relative.

(For Brink's discussion of "metaphysical egoism," *see* id. at 18–22. *See also* David O. Brink, *Self-Love and Altruism*, 14 SOC. PHIL. & POL'Y 122 (1997). Augustine, Aquinas, and Sarah are all what Brink calls "metaphysical egoists.")

58. Indeed, for some religious believers, such a "God" is an idol. *Cf.* Charles Larmore, *Beyond Religion and Enlightenment,* 30 SAN DIEGO L. REV. 799, 799–802 (1993).

59. John Dominic Crossan, *Case against Manifesto*, 5 LAW TEXT CULTURE 129, 144 (2000). For a version of divine command theory—albeit an unconventional version—that has a strong affinity with Sarah's moral "theory," *see* Martin Kavka & Randi Rashkover, *A Jewish Modified Divine Command Theory,* 32 J. RELIGIOUS ETHICS 387 (2004). In discussion, Recep Senturk said that he does not see any conflict between a loving God and a legislating God. The Holy Scriptures of Judaism, Christianity, and Islam (Senturk said) always portray God as both a loving God and a legislating God. I do not mean to suggest that there is a conflict. For Sarah, nonetheless, "the Law of God is not what God legislates but what God is, just as the Law of Gravity is not what gravity legislates but what gravity is." *Cf.* id. at 411: "[W]e think that there is no philosophical ground for understanding 'obedience to God' in the sense [of] 'obedience to propositional sentences uttered by God.'"

60. *See* Glenn Tinder, *Can We Be Good without God: The Political Meaning of Christianity*, ATLANTIC, Dec. 1989, at 69, 80 (passages rearranged and emphasis added):

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inviolable" equals "we should not violate any human being" equals "we should live our lives life in a way that respects the inherent dignity of every human being.") Sarah wonders whether there is anything one who is not a religious believer can say that is functionally equivalent to "the unashamedly anthropomorphic . . . claim that we are sacred because God loves us, his children."[61]

Australian philosopher Raimond Gaita, who is an atheist,[62] observes (in the passage that serves as the epigraph for the preceding section of this essay) that "[i]f we are not religious, we will often search for one of the inadequate expressions which are available to us to say what we hope will be a secular equivalent of [the religious articulation that all human beings, as beloved children of God, are sacred]." Examples of the hoped-for secular equivalent: "We may say that all human beings are inestimably precious, that they are ends in themselves, that they are owed unconditional respect, that they possess inalienable rights, and, of course, that they possess inalienable dignity." In Gaita's reluctant judgment, "these are ways of trying to say what we feel a need to say when we are estranged from the conceptual resources we need to say it."[63]

Now, to doubt, as Sarah does, that any secular ground can bear the weight of the twofold claim that every human being has inherent dignity and is inviolable is not to doubt that a nonbeliever can both affirm that every human being has inherent dignity and live her life accordingly. Nonetheless, 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

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

For Tinder's book-length treatment of the relevant issues, *see* GLENN TINDER, THE POLITICAL MEANING OF CHRISTIANITY: AN INTERPRETATION (1989).

61. *See* n. 23 and accompanying text.

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

63. *See* id.

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solve the question of the effective sources of the moral strength and moral convictions of those "virtuous pagans."[64]

This essay is partly about what Kolakowski calls "the question of validity."

In addressing that question, I am not suggesting that morality cannot survive the death of God. There is, after all, not just one morality in the world; there are many. Nor am I suggesting that one cannot be good unless one believes in God. Many people who do not believe in God are good, even saintly,[65] just as many people who believe in God—including many Christians, as Desmond Tutu has reminded us—are not good.[66] Nonetheless, it is obscure to Sarah what ground one who is not a religious believer can give for the twofold claim that every human being has inherent dignity and that we should live our lives accordingly. It is especially obscure to her what ground a resolute atheist can give.[67]

64. LESZEK KOLAKOWSKI, RELIGION, IF THERE IS NO GOD: ON GOD, THE DEVIL, SIN, AND OTHER WORRIES OF THE SO-CALLED PHILOSOPHY OF RELIGION 191 (1982) (emphasis added).

65. Kristen Monroe's study of altruists and altruism is relevant here: MONROE, *supra* note 31, at 216.

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

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

67. *Cf.* RIST, *supra* note 22 at 267:"Although a 'moral saint' may exist without realist (and therefore religious) beliefs, yet his stance as a moral saint cannot be *justified* without recourse to realism."; Taylor, *supra* note 25, at 61:

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

As to the other question Kolakowski identifies—"the question of the effective sources of the moral strength and moral convictions of those 'virtuous pagans"'—Jürgen Habermas offers only a bleak response:

> 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

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Imagine a cosmology according to which the universe is, finally and radically, meaningless[68]—or, even if meaningful in some sense, not meaningful in a way hospitable to our deepest yearnings for what Abraham Heschel called "ultimate relationship, ultimate belonging."[69] Consider, for example, Clarence Darrow's bleak vision (as recounted by Paul Edwards):

> 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.

Habermas, *supra* note 10, at 81–82.

68. Bruce Ackerman has announced: "There is no moral meaning hidden in the bowels of the universe." BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE (1980), at 368. *See also* BERTRAND RUSSELL, MYSTICISM AND LOGIC (1917), at 47–48:

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

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

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

FRIEDRICH NIETZSCHE, THE WILL TO POWER (Walter Kaufmann & R.J. Hollingdale trans. & Walter Kaufmann ed., 1967), at 169.

69. 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," writes Heschel:

> It is a cry in which all pretensions are abandoned. Are we alone in the wilderness of time, alone in the dreadfully marvelous universe, of which we are a part and where we feel forever like strangers? Is there a Presence to live by? A Presence worth living for, worth dying for? Is there a way of living in the Presence? Is there a way of living compatible with the Presence?

ABRAHAM J. HESCHEL, WHO IS MAN? (1965), at 75. *See also* DOSTOEVSKY, note 53, at 235: "For the secret of man's being is not only to live but to have something to live for. Without a stable conception of the object of life, man would not consent to go on living, and would rather destroy himself than remain on earth, though he had bread in abundance." (This is one of the Grand Inquisitor's statements in bk. V, ch. 5.) *Cf.* W.D. Joske, *Philosophy and the Meaning of Life, in* THE MEANING OF LIFE 248, 250 (E.D. Klemke ed., 1981): "If, as Kurt Vonnegut speculates in The Sirens of Titan, the ultimate end of human activity is the delivery of a small piece of steel to a wrecked space ship wanting to continue a journey of no importance whatsoever, the end would be too trivial to justify the means."; ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS (1981), at 586:

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> 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.[70]

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."[71]

Where is there a place in a cosmological view like Darrow's and Weinberg's, Sarah wonders, for the morality of human rights to gain a foothold? For one who believes that the universe is utterly bereft of transcendent meaning, why—in virtue of what—is it the case that every human being has inherent dignity and is inviolable? Richard Posner apparently shares Sarah's lack of comprehension:

> Thomas Nagel is a self-proclaimed atheist, yet he thinks that no one could really believe that "we each have value only to ourselves and to those who care about us." Well, to whom then? Who confers value on us without caring for us in the way that we care for friends, family, and sometimes members of larger human communities? Who else but the God in whom Nagel does not believe?[72]

If the cosmic role of human beings was to provide a negative lesson to some others ("do not 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.

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

71. John Leslie, *Is It All Quite Simple? The Physicist's Search for a Theory of Everything*, 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*, N.Y. 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?"

72. Richard A. Posner, *The Problematics of Moral and Political Theory*, 111 HARV. L. REV. 1637, 1687 (1998), citing THOMAS NAGEL, THE LAST WORD 130 (1997). *Cf.* James Boyd White, *Talking*

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Sarah is inclined to concur in R.H. Tawney's view (except that where Tawney says "all" morality, Sarah would say something like "our" morality): "The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God."[73] One need not be a religious believer to concur in Tawney's view. Jeffrie Murphy, for example, insists that it is, for him, "very difficult—perhaps impossible—to embrace religious convictions," but he nonetheless claims that:

> the liberal theory of rights requires a doctrine of human dignity, preciousness and sacredness that cannot be utterly detached from a belief in God or at least from a world view that would be properly called religious in some metaphysically profound sense. . . . the idea that fundamental moral values may require [religious] convictions is not one to be welcomed with joy [by secular enthusiasts of the liberal theory of rights]. This idea generates tensions and appears to force choices that some of us would prefer not to make. *But it still might be true for all of that.*[74]

Raimond Gaita says much the same thing:

> The secular philosophical tradition speaks of inalienable rights, inalienable dignity and of persons as ends in themselves. These are, I believe, ways of whistling in the dark, ways of trying to make secure to reason what reason cannot finally underwrite. Religious traditions speak of the sacredness of each

about Religion in the Language of Law: Impossible but Necessary, 81 MARQ. L. REV. 177, 197–199 (1998) (explaining why he has difficulty understanding what one who is not a religious believer might be saying in affirming the Declaration of Independence's insistence on the "equality" of all human beings).

73. R. H. TAWNEY' S COMMONPLACE BOOK 67 (J.M. Winter & D.M. Joslin eds., 1972). On Aug. 13, 1913, Tawney wrote in his diary the passage accompanying this note. Three days earlier, on Aug. 10, he quoted in his diary T.W. Price, Midland secretary of the Workers' Educational Association and lecturer at Birmingham University:

> Unless a man believes in spiritual things—in God—altruism is absurd. What is the sense of it? Why shld [*sic*] a man recognize any obligation to his neighbor, unless he believes that he has been put in the world for a special purpose and has a special work to perform in it? A man's relations to his neighbors become meaningless unless there is some higher power above them both.

Id. *Cf.* Dennis Prager, *Can We Be Good without God*? 9 ULTIMATE ISSUES 3, 4 (1993): "If there is no God, you and I are purely the culmination of chance, pure random chance. And whether I kick your face in, or support you charitably, the universe is as indifferent to that as whether a star in another galaxy blows up tonight."

74. Jeffrie Murphy, *Afterword: Constitutionalism, Moral Skepticism, and Religious Belief, in* CONSTITUTIONALISM: THE PHILOSOPHICAL DIMENSION 239, 248 (Alan S. Rosenbaum ed., 1988) (emphasis added).

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human being, but I doubt that sanctity is a concept that has a secure home outside those traditions.[75]

Nietzsche asked: "Now suppose that belief in God has vanished: the question presents itself anew: 'who speaks?"'[76] Echoing Nietzsche's question a horrific 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.[77]

V. JOHN FINNIS'S SECULAR RESPONSES

As I report above, Sarah is deeply skeptical that any secular ground can bear the weight of the twofold claim that every human being has inherent dignity and is inviolable. But perhaps Sarah's skepticism is misplaced. Let us consider John Finnis's affirmative secular responses to question whether the morality of human rights is true (or at least partly true)—whether, that is, we (or at least some of us) have conclusive reason to live the sort of life the morality of human rights claims that we—every one of us—should live: *a life in which we strive never to violate any human being, never to treat any human being as if she lacks inherent dignity; a life in which we strive always to respect the inherent dignity of every human being?*

75. Gaita, *supra* note 23, at 5. I have trouble squaring what Gaita says in the passage accompanying this note, and in other passages I have quoted in this essay, with what he says in this passage:

> Although I fully acknowledge that it is our religious tradition that has spoken most simply (and perhaps most deeply) about this when it declared that all human beings are sacred, I think that the conception of individuality I have been articulating, even as transformed by a language of love nourished by the love of saints, can stand independently of explicit religious commitment and independently of speculation about supernatural entities. What grew and was nourished in one place, I say, might take root and flourish elsewhere.

Id. at xx.

76. NIETZSCHE, *supra* note 68, at 157.

77. Arthur Allen Leff, *Unspeakable Ethics, Unnatural Law*, 1979 DUKE L.J. 1229, 1249. *See also* John T. Noonan, Jr., *Posner's Problematics*, 111 HARV. L. REV. 1768 (1998):

> These three propositions [if no lawgiver, no law; if no law, no judge; if no judge, no judgment], which have the strength of self-evidence, sum up the predicament of most of the academic moralists who are Judge Posner's targets. These moralists acknowledge no lawgiver and no judge. Their vulnerability is patent. The attempts to pronounce moral judgments are doomed to failure.

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Alan Wolfe has remarked that "[a]mong Catholic intellectuals, as well as some who are not Catholic, the most important Catholic inheritance is the natural-law [moral] tradition . . ."[78] The distinguished legal and moral philosopher John Finnis, who is Roman Catholic, works in that tradition.[79] Finnis "believes that a major contribution of his account of ethics is its demonstration of clear and reliable moral truths about moral actions . . . that appeal to all rational persons" without regard to whether they are religious believers.[80] If Finnis's "account of ethics" succeeds in demonstrating "clear and reliable moral truths about moral actions that appeal to all rational persons," including those who are not religious believers, perhaps Finnis' s account can provide a secular response to the question why all of us should live a life in which we strive never to violate any human being, never to treat any human being as if she lacks inherent dignity. Does Finnis's account succeed?

Twenty-seven years ago, in *Natural Law and Natural Rights (NLNR)*, Finnis argued that no one should intentionally harm (any aspect of) the well-being of another, because to do so would be to act contrary to the requirement "of fundamental impartiality among the human subjects who are or may be partakers of [the basic human goods]."[81] Assuming that intentionally to harm the well-being of another is to act contrary to Finnis's requirement of fundamental impartiality, why should one avoid acting contrary to the requirement? Until Finnis answers that question, he has not provided a ground for the normativity—for the "should"—in the claim that no one should intentionally harm the well-being of any human being.

The totality of Finnis's brief answer in *NLNR* to that, the ground-of-normativity question, is that it is unreasonable for a human being, who presumably values his own well-being, intentionally to harm the well-being of another human being: "[My own well-being] is [not] of more value than the well-being of others, simply because it is mine: intelligence and reasonableness can find no basis in the fact that A is A and not B (that I am I and not you) for evaluating (our) well-being differentially."[82]

78. Alan Wolfe, *The Intellectual Advantages of a Roman Catholic Education,* CHRON. HIGHER EDUC., May 31, 2002.

79. We need to distinguish between "natural law" as a moral tradition and "natural law" as a jurisprudential tradition. John Finnis works in both traditions. *See, e.g.*, JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS (1980); JOHN FINNIS, AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY (1998). However, I am interested here only in Finnis's work in the natural-law moral tradition. For important contemporary work on and in the natural-law jurisprudential tradition, *see* MARK C. MURPHY, NATURAL LAW IN JURISPRUDENCE AND POLITICS (2006).

80. Thomas W. Smith, *Finnis' Questions and Answers: An Ethics of Hope or Fear?*, 40 AM. J. JURIS. 27, 29 (1995). According to Catholic (and Scottish) philosopher John Haldane, "the late Elizabeth Anscombe . . . was keen to emphasise that the content of the natural law is simply the content of ethics, so far as it is independent of revelation." John Haldane, *Ethics and Natural Law,* THE TABLET [London], Jan. 27, 2007, at 18.

81. FINNIS, NATURAL LAW, *supra* note 79, at 107.

82. Id. at 107.

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Let us assume that one is committed to "intelligence and reasonableness." Finnis's answer in *NLNR* does not work. One may reply to Finnis:

> My own well-being is not of more value *to whom* than the well-being of others?[83] My own well-being—or the well-being of someone I love, like my child—may well be of more value *to me* than your well-being; or your well-being may be of no value to me; in some situations, your well-being—your continued existence—may be a disvalue to me. (Your well-being is probably of more value *to you* than my well-being; or my well-being may be of no value to you; or my continued existence may be a disvalue to you.) If your well-being is of no value to me, it is not necessarily "unreasonable" for me intentionally to harm your well-being in an effort to achieve something of great importance to me or to someone I love. As Richard Joyce (among others) has noted, "even if we allow that in valuing his own humanity, Al, on pain of irrationality, must accept that others value their own humanity as he does, this falls dramatically short of his being rationally required to value their humanity."[84]

Given that the brief answer he gives to the ground-of-normativity question in *NLNR* does not work, it is not surprising that Finnis has returned to the question in a recent essay, "On 'Public Reason"' (2006).[85] The different answer Finnis now gives is substantially the answer Sarah gives—but without Sarah's or any other theology. Finnis claims in the essay that "friendship"—in the sense of "goodwill towards other persons"—is a basic good for every human being.[86] It is clear in the context of the essay that Finnis means goodwill toward not just some but all other persons. To act contrary to what is a basic good for oneself is "self-mutilating."[87] To attack the well-being of another person is to act contrary to what is a basic good for oneself: friendship; it is to act not with goodwill toward him or her whose

83. To say that X is of value (or that X has value) is to say that X is of value *to* (or that X has value *for*) someone(s) (e.g., John Finnis) or something(s) (e.g., a cat or a plant). That X is of value, whether instrumental or intrinsic, to A does not entail that X is also of value to B. Similarly, that Y is a reason for A—a *practical* reason, a reason for choosing to do *this* rather than *that*—does not entail that Y is also a reason for B.

84. JOYCE, *supra* note 3, at 126. In 1985, Jeffrey Goldsworthy made substantially the same criticism of Finnis's argument: J.D. Goldsworthy, *God or Mackie? The Dilemma of Secular Moral Philosophy*, 30 AM. J. JURIS. 43, 73–77 (1985). Goldsworthy concluded:

> [John] Finnis has tried to do in two pages what . . . others have devoted entire books 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.

Id. at 75. *See also* Mark R. Discher, *Does Finnis Get Natural Rights for Everyone*? 80 NEW BLACKFRIARS 19 (1999). *Cf.* Jeffrey Goldsworthy, *Fact and Value in the New Natural Law Theory*, 41 AM. J. JURIS. 21 (1996).

85. John Finnis, *On 'Public Reason'* (April 2006). Notre Dame Legal Studies Paper No. 06-37. Available from SSRN at http://ssrn.com/abstract=955815.

86. Id. at 11.

87. Id. at 16.

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well-being one attacks but with ill will. Therefore, concludes Finnis, to attack the well-being of another person is self-mutilating. As Finnis puts it:

> Because one's pursuit of fulfillment would be unreasonable and self-mutilating if it were indifferent to friendship and to the worth of the instantiation of human goods in the lives of other people, one needs look to putting in order one's relations with one's fellows, one's communities. The name for that order, and to one's constant concern for it, is justice.[88]

This, then, is Finnis's most recent answer to the question about the ground of the "should" in the claim that no one should intentionally harm the well-being of any human being: To attack the well-being of another is to mutilate oneself—it is to attack one's own well-being—and so (assuming one is committed to one's own well-being) one has conclusive reason not to attack the well-being of another. Moreover, argues Finnis, this truth "is not something we just invent; rather, it *becomes clear to us* by experience, thought-experiment, discussion, rational judgment."[89]

I say above that the answer Finnis now gives to the ground-of-normativity question is substantially the answer Sarah gives—but without Sarah's or any other theology. Unlike Sarah, Finnis means his response to stand independently of any theological premises. Recall Sarah's religious response to the ground-of-normativity question: because God is who God is, because the universe is what it is, and because we are who we are, the most fitting way of life for us human beings—the most deeply satisfying way of life of which we are capable—is one in which we children of God, we sisters and brothers, are persons who "love one another just as I have loved you." In his response, by

88. Id. at 16–17.
89. Id. at 17. *See* id. at 17–18:

> One cannot . . . have order in one's soul (will) without anticipating and doing what one reasonable can to promote and respect an order of equal justice in one's societies, one's associating or communion with one's fellows. And it would be folly to expect justice and friendship to exist in any society whose members are not concerned to promote and maintain such rational, desire-integrating order in their individual souls (wills). Moreover, just as no-one could intelligently call a society good whose members treat each other as robbers treat their victims, so no-one could intelligently call good the life of an individual who is enslaved to his subrational desires for gratification and thus, too, cut off from the reality, as opposed to spurious imitations, of friendship. In each type of case—the individual and the society—the order in question is good because it is intelligent and reasonable, and the corresponding forms of disorder are so far forth unreasonable and bad. And this appropriateness of good order in the individual and society is not something we just invent; rather, it *becomes clear to us* by experience, thought-experiment, discussion, rational judgment.
>
> So, both because its desirability is discovered rather than dreamed up and because being reasonable is central to what we find ourselves to be (*in potentia*) and reasonably want to become and remain (in act), we can call this reasonable order in the soul and in society "*natural*"—something *naturally* good. And since in each type of case the good, reasonable, natural order can and must be picked out in the form of normative propositions directing one towards individual and social choices promotive of respectful of good order, the relevant directive propositions are called *laws*.

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contrast, Finnis responds without reference to God or God's created order. We can imagine Finnis—or, indeed, an agnostic or even an atheist—saying to Sarah:

> Like you, I believe that by be(com)ing persons who love one another, to that extent we fulfill our nature and thereby achieve our truest, deepest, most enduring happiness. But unlike you, I do not want to rely on any claim about our "created" nature: a nature created by God. Instead, I want to rely only on a claim about our nature, whether or not there is a God and, if there is a God, whether or not our nature is created by God. Given the nature we humans have, the most fitting way of life for us human beings, the most deeply satisfying way of life of which we are capable, is one in which we love one another—"one another" in your radically inclusivist sense, which includes even the Other. (Look at all those fulfilled other-lovers: they have a serenity and centeredness that cannot fail to impress.) That fact, coupled with our commitment to our own authentic well-being, is the ground of normativity.[90]

The fundamental problem with the position just articulated, as compared to Sarah's, is this: in the absence of a larger metaphysical context with which it coheres—indeed, in which it makes sense as an integral part of the whole—the alleged invariable connection between "being persons who love one another (in the radical sense of 'one another')" and "fulfilling (perfecting, completing) our nature" seems contrived; it seems too good to be true. Sarah's religious position is embedded in—and has whatever plausibility or implausibility it has because of its embeddedness in—a particular religious worldview: a particular web of religious beliefs, especially the beliefs that (1) every human being is a beloved child of God and a sister/brother to every other human being; and (2) human beings are created by God to love one another.

By contrast, it is a presupposition of the secular position—Finnis's position—that it holds even if the universe is just what Clarence Darrow and Steven Weinberg (among others) have proclaimed it to be: a cosmic process bereft of ultimate meaning. As Darrow put it: "This weary old world goes on, begetting, with birth and with living and with death, and all of it is blind from the beginning to the end."[91] According to the Darrowian-Weinbergian worldview, human beings, far from being created "in the image of God,"[92] are merely the unplanned, unintended yield of random mutation and natural selection. But, lo and behold, it just happens that the nature of human beings—the nature evolution has bequeathed them—is such that being a person who "loves one another just as I have loved you" is the most deeply satisfying way of life of which human beings are capable. That

90. I am grateful to Chris Eberle and Steve Smith for suggesting this position to me.
91. *See* Edwards, *supra* note 70, and accompanying text.
92. *See* note 34.

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free-floating secular position seems so ad hoc. In e-mail discussion, Steve Smith has observed that:

> [w]ithout some suitable meta-story, it just seems incredible that everyone would find happiness/fulfillment in becoming the kind of person who cares about [all] others. . . . [I]f "evolution" is the substitute story, then it seems more plausible to imagine that we would be constructed for struggle, and would find fulfillment in squashing our competitors. I realize that a degree of altruism can be accounted for in terms of promoting the survival of a group with similar genes, but any broader inclination to serve others seems incompatible with the evolution story. And if no story at all is offered, so that the line is "I don't know how, but that's just the way we're made—basically we're all cut out to be nice guys," the contrary evidence seems overwhelming."[93]

Now, few would deny that the social nature of human beings is such that a person is better off in virtue of being part of a network of loving family and friends and also in virtue of being a member of a safe, secure political community. But that is a far cry from claiming that the nature of human beings is such that being a person who "loves one another just as I have loved you (in the radical sense of 'one another')" is the most deeply satisfying way of life of which human beings are capable.[94]

93. E-mail from Steven Smith to Michael Perry, Sept. 16, 2002. *See also* Michael Ruse, *Evolutionary Ethics: A Defence, in* BIOLOGY, ETHICS, AND THE ORIGINS OF LIFE 93, 104–105 (Holmes Rolston III ed., 1995). *Cf.* H. Allen Orr, *Darwinian Storytelling*, N.Y. REV., Feb. 27, 2003, at 17, 20, (reviewing STEVEN PINKER, THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE (2002):

> [T]he moral circle expands, [Pinker] says, by the principle of reciprocal altruism, a sociobiological theory that shows how kindness can spread even among unrelated individuals. To Pinker, then, the moral circle is primarily "pushed outward by the expanding networks of reciprocity that make other human beings more valuable alive than dead." This network is facilitated by "trade, cultural exchanges, and people-to-people activities."
>
> But this is silly. The notion that our moral circle expanded by reciprocity is in many instances ahistorical nonsense. Men had plenty of "people-to-people" interaction with women while condemning them to second-class citizenship. And slaveholding Southerners had more "cultural exchanges" and "people-to-people activities" with African-Americans than did abolitionist Northerners. At what point in history did our "networks of reciprocity" with women and slaves become sufficiently dense that the calculus of reciprocity demanded that we grant them the vote and freedom? The question is absurd. The fact is that for every case in which morality plausibly expanded by reciprocity there is another in which it expanded by selfless moral reasoning, political or religious struggle, or even court rulings that forced a rule of conduct on those who initially opposed it. And it should be evident that a morality that bids us care for the severely handicapped cannot be explained by an expectation of reciprocity.

94. Recall here Richard Rorty's contrast between "the rather rare figure of the psychopath, the person who has no concern for any human being other than himself" and "the much more common case: the person whose treatment of a rather narrow range of featherless bipeds is morally impeccable, but who remains indifferent to the suffering of those outside this range, the ones he or she thinks of as pseudohumans." Richard Rorty, *Human Rights, Rationality, and Sentimentality, in* ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 111, 123–124 (Stephen Shute & Susan Hurley eds., 1993). According to Rorty, moral philosophy, to its detriment, has "systematically neglected" the latter in favor of the former." Id.

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Sarah's religious response to the ground-of-normativity question reminds us that in the real world, if not in every academic moralist's study, fundamental moral questions are intimately related to religious (or metaphysical) questions; there is no way to address fundamental moral questions without also addressing, if only implicitly, religious questions.[95] (That is not to say that one must give a religious answer to a religious question, such as the question, for example: Does God exist? Obviously many people do not give religious answers to religious questions.)[96] In the real world, one's response

Rorty's "much more common case" is also much more common than the person at the other extreme from the psychopath: someone actively concerned about the well-being of every human being. We sometimes mark just how *uncommon* such an exemplary person is in the real world by calling her a "saint."

Even if there is no plausible secular response to the ground-of-normativity question that engages us here, there are no doubt plausible secular reasons—indeed, plausible self-regarding secular reasons—for wanting the law, including international law, to establish and protect some human-rights claims. In an address to the World Conference on Human Rights in June 1993, U.S. Secretary of State Warren Christopher argued that:

> [A] world of democracies would be a safer world. . . . States that respect human rights and operate on democratic principles tend to be the world's most peaceful and stable. On the other hand, the worst violators of human rights tend to be the world's aggressors and proliferators. These states export threats to global security, whether in the shape of terrorism, massive refugee flows, or environmental pollution. Denying human rights not only lays waste to human lives; it creates instability that travels across borders.

Warren Christopher, *Democracy and Human Rights: Where America Stands*, 4 U.S. Department of State Dispatch 441, 442 (1993). *See also* WILLIAM F. SCHULTZ, IN OUR OWN BEST INTERESTS: HOW DEFENDING HUMAN RIGHTS BENEFITS US ALL (2002), at xix:

> respect for human rights both in the United States and abroad has implications for our welfare far beyond the maintenance of our ethical integrity. Ignoring the fates of human rights victims almost anywhere invariably makes the world—our world—a more dangerous place. If we learned nothing else from the horrific events of September 11, perhaps we learned that.

See also William W. Burke-White, *Human Rights and National Security: The Strategic Connection*, 17 HARV. HUM. RTS. J. 249 (2004). *Cf.* Jerome J. Shestack, *An Unsteady Focus: The Vulnerabilities of the Reagan Administration's Human Rights Policy*, 2 HARV. HUM. RTS. Y.B. 25, 49–50 (1989) (listing several reasons that should "motivate an administration to afford human rights a central role in United States foreign policy as a matter of national interest").

However, self-regarding rationales for the law's establishing and protecting some human-rights claims bear much less weight than we would like to think. *See* Richard B. Bilder, *Human Rights and U.S. Foreign Policy: Short-Term Prospects*, 14 VA. J. INT'L L. 597, 608 (1974): "[Self-regarding] arguments are hard to prove and not fully persuasive. Despite considerable effort, it has been difficult to construct a wholly convincing 'selfish' rationale for major U.S. national commitments to promote the human rights of foreigners."

95. *See* PETER GEACH, GOD AND THE SOUL 127–28 (1969).

96. Jürgen Habermas acknowledges "that a philosophy that thinks postmetaphysically cannot answer the question that [David] Tracy . . . calls attention to: Why be moral at all?" Habermas, *supra* note 10, at 81. What Habermas then goes on to say is really quite remarkable:

> At the same time, however, this philosophy can show why this question does not arise meaningfully for communicatively socialized individuals. We acquire our moral intuitions in our parents' home, not in school. And moral insights tell us that we do not have any good reasons for behaving otherwise: for this, no self-surpassing of morality is necessary. It is true that we often behave otherwise, but we do so with a bad conscience. The first

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to fundamental moral questions has long been intimately bound up with one's response—one's answers—to certain other fundamental questions: Who are we? Where did we come from; what is our origin, our beginning? Where are we going; what is our destiny, our end?[97] What is the meaning of suffering? Of evil? Of death? And there is the cardinal question, the question that comprises many of the others: Is human life ultimately meaningful or instead ultimately bereft of meaning, meaning-less, absurd?[98] If any questions are fundamental, *these* questions—"religious or limit questions"[99]—are fundamental. Such questions—"naïve" questions, "questions

> half of the sentence attests to the weakness of the motivational power of good reasons; the second half attests that rational motivation by reasons is more than nothing [*auch nicht nichts ist*]—moral convictions do not allow themselves to be overridden without resistance.

Id. Let us put aside the fact that "we" acquire our moral "intuitions" in many places besides (or in addition to) our parents' home—in the streets, for example. The more important point for present purposes is that we 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. The real world is full of what Primo Levi called "us-ism":

> Those on the Rosenstrasse who risked their lives for Jews did not express opposition to anti-semitic policies per se. They displayed primarily what the late Primo Levi, a survivor of Auschwitz, called "selfishness extended to the person closest to you . . . us-ism." In most of the stories that I have heard of Aryans who risked their lives for Jews to whom they were married, they withdrew to safety, one by one, the moment their loved ones were released. Their protests bring home to us the iron limits, the tragically narrow borders, of us-ism.

Nathan Stoltzfus, *Dissent in Nazi Germany*, ATLANTIC, Sep. 1992, at 87, 94.

97. "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?" HESCHEL, *supra* note 69, at 28. "All people by nature desire to know the mystery from which they come and to which they go." DENISE LARDNER CARMODY & JOHN TULLY CARMODY, WESTERN WAYS TO THE CENTER: AN INTRODUCTION TO RELIGIONS OF THE WEST 198–99 (1983). "The questions Tolstoy asked, and Gauguin in, say, his great Tahiti triptych, completed just before he died ('Where Do We Come From? What Are We? Where Are We Going?'), are the eternal questions children ask more intensely, unremittingly, and subtly than we sometimes imagine." ROBERT COLES, THE SPIRITUAL LIFE OF CHILDREN 37 (1990).

98. Communities, especially historically extended communities—"traditions"—are the principal matrices of religious answers to such questions:

> Not the individual man nor a single generation by its own power, can erect the bridge that leads to God. Faith is the achievement of many generations, an effort accumulated over centuries. Many of its ideas are as the light of the star that left its source a long time ago. Many enigmatic songs, unfathomable today, are the resonance of voices of bygone times. There is a collective memory of God in the human spirit, and it is this memory which is the main source of our faith.

Abraham Heschel *Faith,* 10 THE RECONSTRUCTIONIST, Nov. 3 & 17, 1944. For a later statement on faith incorporating some of the original essay, *see* ABRAHAM J. HESCHEL, MAN IS NOT ALONE (1951), at 159–176.

99. DAVID TRACY, PLURALITY AND AMBIGUITY: RELIGION, HERMENEUTICS, HOPE (1987), at 86.

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with no answers," "barriers that cannot be breached"[100]—are "the most serious and difficult . . . that any human being or society must face."[101] John Paul II was surely right in his encyclical, *Fides et Ratio*, that such questions "have their common source in the quest for meaning which has always compelled the human heart" and that "the answer given to these questions decides the direction which people seek to give to their lives."[102]

Of course, John Finnis understands all this: He is, after all, a devout Roman Catholic. Nonetheless, we may fairly wonder, after considering John Finnis's efforts, whether the natural-law moral tradition in which Finnis participates, *when shorn of any theological premises, in particular theological premises about our created nature*, is adequate to the challenge of answering the ground-of-normativity question that engages us here: Do we have conclusive reason

100. MILAN KUNDERA, THE UNBEARABLE LIGHTNESS OF BEING (1984), at 139, the narrator, referring to "the questions that had been going through Tereza's head since she was a child," says that:

> the only truly serious questions are ones that even a child can formulate. Only the most naive of questions are truly serious. They are the questions with no answers. A question with no answer is a barrier than cannot be breached. In other words, it is questions with no answers that set the limits of human possibilities, describe the boundaries of human existence.

101. DAVID TRACY, THE ANALOGICAL IMAGINATION (1981), at 4. Tracy adds:

> To formulate such questions honestly and well, to respond to them with passion and rigor, is the work of all theology. . . . Religions ask and respond to such fundamental questions . . . Theologians, by definition, risk an intellectual life on the wager that religious traditions can be studied as authentic responses to just such questions.

Id.

102. John Paul II, On the Relation between Faith and Reason: Fides et Ratio, issued on Sept. 14, 1998. In the introduction to Fides et Ratio, John Paul II writes:

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

Id. at Intro., pt. 1. *See also* id., ch. 3, pt. 26. (Fides et Ratio would more accurately be named Fides et Philosophia.) We find a similar statement in the Second Vatican Council's Declaration on the Relation of the Church to Non-Christian Religions (Nostra Aetate, 1):

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

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to live a life in which we strive never to violate any human being? We may fairly wonder, that is, whether philosopher and classicist John Rist is not right that:

> philosophers who, like [Germain] Grisez and Finnis, attempt to argue that God need not be invoked in [debates about moral obligation] are no more able to avoid him than was Kant, who, attempting to show that morality needs no metaphysical foundations (in his understanding of metaphysical), had to allow that without the ultimate sanction of God, his moral universe would collapse.[103]

I can imagine Finnis responding to Rist and others along these lines:[104]

> To make the moral arguments I want to make, I do not need to appeal to theological premises. I agree with Sarah about why human nature is as it is. In making the moral arguments I want to make, however, I do not need to stake out a position on why human nature is as it is.

Well, I wonder. The view of human nature that Finnis, qua Christian, shares with Sarah is one according to which the most fitting way of life for us human beings, the most deeply satisfying way of life of which we are capable, is one in which, inter alia, we love one another—in which we love even the Other—"just as I have loved you." I wonder whether that view of human nature is plausible—I wonder how plausible it can be—for one who does not take seriously a theological worldview like that sketched by Sarah. That is the worry I am left with after considering Finnis's most recent response to the ground-of-normativity question.

VI. A BRIEF COMMENT ON KANTIAN MORALITY

The principal alternative to the natural-law moral tradition in which Finnis participates is the Kantian moral tradition. (Richard Posner has noted that "Kant's footprints are all over modern moral theory.")[105] Does Kantian moral philosophy, unlike Finnis's natural-law moral philosophy, have the resources to provide a plausible secular (nontheological) response to the ground-of-normativity question?

Properly understood, normative reasons—reasons for a human agent to make this choice rather than that or, more generally, to live this sort of life rather than that, to be this sort of person rather than that—are agent-relative ("internal") as distinct from agent-neutral ("external").[106]

103. RIST, *supra* note 22, at 259–260. *Cf.* id. at 2: "[Plato] came to believe that if morality, as more than 'enlightened' self-interest, is to be rationally justifiable, it must be established on metaphysical foundations."

104. Steve Smith, in discussion, has helped me to imagine Finnis responding along these lines.

105. Posner, *supra* note 72, at 1664 n. 48.

106. For a compelling argument in support of the claim that *normative* reasons must be internal (agent-relative), *see* JOYCE, *supra* note 3, at 106–134. *See also* GEACH, *supra* note 95, at

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Put another way, there are no categorical imperatives, only hypothetical imperatives: "This is what you should do if you value, if you care about, X.[107] So any argument in support of the "should" in a claim that one should live one's life in a certain way must appeal ultimately to some value to which the agent(s) to whom the argument is directed is (are) committed.[108] We may safely assume that virtually any agent to whom such an argument is directed is committed to this value: her own well-being; whatever else she is committed to, she is committed to her own flourishing, to her own happiness in the sense of eudaimonia.[109]

Recall that Sarah's ground for normativity appeals to an agent's commitment to her own well-being. That an agent disbelieves what Sarah says about the requirements of the agent's authentic well-being is beside the point—as is the possibility that what Sarah says is false. If the agent is committed (as virtually any agent is) to her own well-being, and if she believes what Sarah says about the requirements of her well-being, then she has conclusive reason to live the sort of life the morality of human rights claims she should live, to be the sort of person the morality of human rights claims she should be.

The fatal problem with Kantian moral philosophy is its rejection of the human agent's commitment to her own well-being as the fundamental ground of moral normativity. I do not usually find myself in agreement with Roger Scruton, but in this instance I do:

> The weakness of the Kantian position lies in its attribution of a "motivating force" to reason—in its denial of Hume's principle that reason alone cannot be a motive to action. The Aristotelian position involves no commitment to the idea of a "pure practical reason." It recognises that practical reasoning concludes in action only because it begins in desire. The "practical syllogism"

xix, 121–122. *Cf.* Henry B. Veatch, *Modern Ethics, Teleology, and Love of Self*, 75 MONIST 52, 60 (1992):

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

107. For a discussion of this point, with citations to several relevant pieces, *see* PERRY, *supra* note 4, at 9–23.

108. *See* Sharon Street, Constructivism about Reasons (Aug. 15, 2006) (unpublished draft).

109. On well-being, *see supra* note 55 and accompanying text.

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> has a practical premise, and to the agent with evil desires no reason can be given that will, by its sheer force as a reason, suffice to make him good. . . .
>
> Aristotle's invocation of happiness, as the final end of human conduct, is essentially correct. Happiness is the single final answer to the question "why do that?," the answer that survives the conflict with every rival interest or desire. In referring to happiness we refer, not to the satisfaction of impulses, but to the fulfillment of the person. . . .
>
> But what is happiness? Kant dismissed the idea as empty: happiness, he argued, simply stands for the generality of human desires: it means different things for different people, and provides no coherent motive of its own. Following Aristotle, however, I shall propose an idea of happiness as a kind of "flourishing."[110]

Simon Blackburn makes essentially the same point. Referring to "the [Kantian] view that reasons that are seen only in the pull of the will and of love are not real reasons at all," Blackburn writes that "when we reflect what a cold picture of human nature that [view] implies, I think we should find it rather sad. . . . We can still do moral philosophy if we recognize that many of our concerns have passion and desire as their ancestors.[111] Scruton and Blackburn are not alone. I could also quote, for example, philosophers as diverse in their orientations and sensibilities as Charles Taylor[112] and Richard Rorty.[113]

110. ROGER SCRUTON, SEXUAL DESIRE: A MORAL PHILOSOPHY OF THE EROTIC 325, 326 (1986).

111. Simon Blackburn, *Am I Right?* N.Y. TIMES BOOK REV., Feb. 28, 1999, at 24, reviewing T. M. SCANLON, WHAT WE OWE TO EACH OTHER (1999) (passages rearranged).

112. As Charles Taylor has explained, contemporary Kantian moral philosophy:

> 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.

CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY (1989), at 3. Taylor continues:

> [Such moral 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. 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.

Id. *See also* id. at 4, 14–15, 63–64, 79, 87; Charles Taylor, *A Most Peculiar Institution, in* WORLD, MIND, AND ETHICS: ESSAYS ON THE ETHICAL PHILOSOPHY OF BERNARD WILLIAMS 132 (J. E. J. Altham & Ross Harrison eds., 1995); Charles Taylor, *Iris Murdoch and Moral Philosophy, in* IRIS MURDOCH AND THE SEARCH FOR HUMAN GOODNESS 3 (Maria Antonaccio & William Schweiker eds., 1996).

113. *See* Rorty, *Justice as a Larger Loyalty, in* JUSTICE AND DEMOCRACY: CROSS-CULTURAL PERSPECTIVES 9, 11 (Ron Bontekoe & Marietta Stepaniants eds., 1997).

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Like Finnis's natural-law moral philosophy, Kantian moral philosophy seems utterly bereft of the resources needed to provide a plausible secular response to the ground-of-normativity question that engages us here: Do we have conclusive reason to be(come) the sort of person the morality of human rights claims that we should be, a person who strives never to violate any human being, never to treat any human being as if she lacks inherent dignity; a person who strives always to respect the inherent dignity of every human being?[114]

VII. SO WHAT IF THERE IS NO PLAUSIBLE RESPONSE?

Assume, dear reader, that neither Sarah's nor any other religious response to the ground-of-normativity question that engages us here is plausible. Assume, too, that no secular response is plausible. So what? What difference does it make?

> Would it be a good idea to treat "justice" as the name for loyalty to a certain very large group, the name for our current largest loyalty, rather than the name for something distinct from loyalty? Could we replace the notion of "justice" with that of loyalty to that group—for example, one's fellow-citizens, or the human species, or all living things? Would anything be lost by this replacement?
>
> Moral philosophers who remain loyal to Kant are likely to think that a *lot* would be lost. Kantians typically insist that justice springs from reason, and loyalty from sentiment. Only reason, they say, can impose universal and unconditional moral obligations, and our obligation to be just is of this sort. It is on another level from the sort of affectional relations that create loyalty. Jürgen Habermas is our most prominent contemporary philosopher to insist on this Kantian way of looking at things: the thinker least willing to blur either the line between reason and sentiment, or the line between universal validity and historical consensus. But contemporary philosophers who depart from Kant, either in the direction of Hume (like Annette Baier) or in the direction of Hegel (like Charles Taylor) or in that of Aristotle (like Alasdair MacIntyre), are not so sure. . . .
>
> What Kant would describe as [a conflict] between moral obligation and sentiment, or between reason and sentiment, is, on a non-Kantian account of the matter, a conflict between one set of loyalties and another set of loyalties. The idea of a *universal* moral obligation to respect human dignity gets replaced by the idea of loyalty to a very large group—the human species.

114. Neo-Kantian efforts fare no better. *See, e.g.*, CHRISTINE M. KORSGAARD WITH G.A. COHEN, RAYMOND GEUS, THOMAS NAGEL, AND BERNARD WILLIAMS, THE SOURCES OF NORMATIVITY (Onora O'Neill ed., 1996); ALAN GEWIRTH, REASON AND MORALITY, chs. 1–2 (1978); ALAN GEWIRTH, THE COMMUNITY OF RIGHTS, ch. 1 (1996). On why Korsgaard's argument fails, *see* JOYCE, *supra* note 3, at 123–133. On why Gewirth's argument fails, the published literature is voluminous; my favorite critique is unpublished: Timothy S. Bishop, Gewirth on the Justification of Moral Rights (undated manuscript, on file with author). The fundamental problem with arguments such as Gewirth's and Korsgaard's is that they overlook the:

> notorious gap between accepting that my own self-determination is of value to me and others' self-determination is of value to them, on the one hand, and me valuing their self-determination, on the other. I can come to recognise that valuing for me and valuing for them have the same structure, but it does not automatically follow that I should assign the same value to them.

Fabian Freyenhagen, Book Review, NOTRE DAME PHIL. REVS. Sep. 23, 2006.

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Richard Rorty would certainly reject both Sarah's position and Finnis's position, because Rorty rejects any position, secular as well as religious, that relies on the idea of human nature:

> [H]istoricist thinkers [ever since Hegel] have denied[:] that there is such a thing as "human nature" or the "deepest level of the self." Their strategy has been to insist that socialization, and thus historical circumstance, goes all the way down, that there is nothing "beneath" socialization or prior to history which is definatory of the human. Such writers tell us that the question "What is it to be a human being?" should be replaced by questions like "What is it to inhabit a rich twentieth-century democratic society?"[115]

Rorty writes approvingly of "this historicist turn," which, he says, "has helped free us, gradually but steadily, from theology and metaphysics—from the temptation to look for an escape from time and chance. It has helped us substitute Freedom for Truth as the goal of thinking and of social progress."[116] In his embrace of the cause of human rights, Rorty relies on what we may call "Eurocentric" sentiments: the sentiments of twenty-first-century North Americans and Western Europeans. Rorty refers, at one point, to "our Eurocentric human rights culture."[117] As Bernard Williams observed:

> 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 . . . "What does it show us about being human?" and asking, on the other hand, "What does the persistence of such problems show us about being twentieth-century Europeans?"[118]

Rorty counsels that we abandon what he calls "human rights foundationalism,"[119] which, in Rorty's estimation, has proven a futile project.[120] Worse, it is an "outmoded" project.[121] (I understand the project of trying to respond to the ground-of-normativity question to be at least one version of the project Rorty calls "human rights foundationalism.") There is, Rorty suggests, a better project for those of us who embrace the cause of human

115. Richard Rorty, Contingency, Irony, and Solidarity (1989), at xiii.
116. Id.
117. Rorty, *supra* note 94, at 126.
118. Bernard Williams, *Auto-da-Fe*, N.Y. Rev., Apr. 28, 1983, at 33.
119. Rorty, *supra* note 94, at 116.
120. *See, e.g.*, id. at 124–125:

> Kant' s account of the respect due to rational agents tells you that you should extend the respect you feel for people like yourself to all featherless bipeds. That is an excellent suggestion, a good formula for secularizing the Christian doctrine of the brotherhood of man. But it has never been backed up by an argument based on neutral premises, and it never will be.

121. Id. at 116.

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rights: "We see our task as a matter of making our own culture—the human rights culture—more self-conscious and more powerful, rather than demonstrating its superiority to other cultures by an appeal to something transcultural," like human nature, created or evolved.[122] We should try to convert others to our human rights culture, says Rorty—to our local "we," to our Eurocentric sentiments and preferences—partly through a process of "manipulating sentiments, [of] sentimental education,"[123] a process in which we tell "sad and sentimental stories."[124] Rorty suggests that:

> the rhetoric we Westerners use in trying to get everyone to be more like us would be improved if we were more frankly ethnocentric, and less professedly universalist. It would be better to say: Here is what we in the West look like as a result of ceasing to hold slaves, beginning to educate women, separating church and state, and so on. Here is what happened after we started treating certain distinctions between people as arbitrary rather than fraught with moral significance. If you would try treating them that way, you might like the results.[125]

For many (most?) of us who embrace the cause of human rights, the fundamental wrong done, when the inherent dignity of any human being is not respected—when any human being is violated—is not that our local ("Eurocentric") sentiments are offended. The fundamental wrong done

122. Id. at 117. *See* id. at 117–118. *See also* RORTY, *supra* note 115, ch. 9 (*Solidarity*). In this regard, Rorty stands in stark contrast to John Paul II, who was a religious defender of the morality of human rights, and to Noam Chomsky, who is a secular defender.

> The great concern of our contemporaries for historicity and for culture has led some to call into question . . . the existence of "objective norms of morality" valid for all peoples of the present and the future, as for those of the past. . . . It must certainly be admitted that man always exists in a particular culture, but it must also be admitted that man is not exhaustively defined by the same culture. . . . [T]he very progress of cultures demonstrates that there is something in man which transcends those cultures. This "something" is precisely human nature: This nature is itself the measure of culture and the condition ensuring that man does not become the prisoner of any of his cultures, but asserts his personal dignity by living in accordance with the profound truth of his being.

John Paul II, *Veritatis Splendor*, 23 ORIGINS 297, 314 (1993).

> A vision of future social order is . . . based on a concept of human nature. If in fact man is an indefinitely malleable, completely plastic being, with no innate structures of mind and no intrinsic needs of a cultural or social character, then he is a fit subject for the "shaping behavior" by the state authority, the corporate manager, the technocrat, or the central committee. Those with some confidence in the human species . . . will try to determine the intrinsic human characteristics that provide the framework for intellectual development, the growth of moral consciousness, cultural achievement, and participation in a free community.

NOAM CHOMSKY, FOR REASONS OF STATE (1973), at 404.

123. Rorty, *supra* note 94, at 122.

124. Id. at 119.

125. Rorty, *supra* note 113, at 19–20.

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is that somehow the very order of the world—the normative order of the world—is transgressed:

> Outside our philosophical study . . . we don't think we're merely "expressing our acceptance" of norms calling for mutual respect and social justice when we make (sometimes great) personal sacrifices in order to comply with these norms. We act as if we think that the authority of these norms is not "in our heads" or traceable only to social conventions and our (cognitive or affective) reactions to them, but "real."[126]

For many of us who embrace the cause of human rights, the fundamental wrong done at Auschwitz and the other Nazi death camps, for example, was not that our local sentiments were offended, but that the normative order of the world was violated. Given Sarah's understanding of the normative order of the world, Auschwitz constitutes, for Sarah, a terrible violation of who God is, of what the universe is, and, in particular, of who we human beings are.

Now, we might be quite wrong to believe—it might be a false belief—that the world has a normative order one transgresses whenever one violates any human being. But if we are wrong, if our belief is false—at least, if we have no reason to be other than agnostic about the issue—and if we nonetheless coerce others and perhaps even, at the limit, kill others in the name of protecting the inherent dignity of human beings, then, pace Rorty, are we not coercing and killing in the name of nothing but our local sentiments and preferences, our Eurocentric human rights culture? Does Rorty want us to say something like this: "It's a brutal world out there. It's either them or us—either their sentiments and culture or ours. It's not that might makes right. It's that there is no right, only might. May our might, not theirs, prevail!" Rorty did once say something like that:

> [W]hen the secret police come, when the torturers violate the innocent, there is nothing to be said to them of the form "There is something within you which you are betraying. Though you embody the practices of a totalitarian society which will endure forever, there is something beyond those practices which condemns you."[127]

Against the background of Rorty's comments, let us ask: Should we who embrace the cause of human rights abandon "human rights foundationalism"; should we abandon the project of trying to ground, whether on religious or secular premises, the claim that every human being has inherent dignity and is inviolable? If we were to abandon the project of trying

126. JEAN E. HAMPTON, THE AUTHORITY OF REASON 120 (Richard Healey ed., 1998). Thanks to George Wright for calling this passage to my attention.

127. RICHARD RORTY, CONSEQUENCES OF PRAGMATISM (1982), at xlii.

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to ground that claim, what would we then be left with? Our Eurocentric sentiments and preferences?[128] ("When the secret police come. . . .") How

128. We would be left with a morality based on rational self-interest, but such a morality is too slender a reed to bear the cause of human rights. DAVID GAUTHIER, MORALS BY AGREEMENT (1987), which is an example of such a morality, is illustrative. *Cf.* Robert Sugden, *The Contractarian Enterprise, in* RATIONALITY, JUSTICE AND THE SOCIAL CONTRACT: THEMES FROM *Moral by Agreement* 1, 8 (David Gauthier & Robert Sugden eds., 1993):

> At the core of [Gauthier's project] is the thought that traditional moral theory relies on the supposed existence of entities, such as God or goodness, which are external to human life yet somehow matter. A defensible morality should dispense with such mysterious entities, and accept that life has no meaning outside itself.

Gauthier argues:

> 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 they able to do so, and that rational persons will frequently comply with those mutual constraints in their interactions.

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). As Peter Vallentyne observes, "[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." Peter Vallentyne, *Gauthier's Three Projects, in* id. at 1, 2. Vallentyne's next comment helps us see the chasm between a morality like Gauthier's and a morality that can support human-rights claims:

> [Gauthier's contractarian] view of the relationship between the individual and society has some implications about which even the most committed contractarians are uneasy. If justice is wholly a matter of reciprocity, do we have any obligation to support people who are so severely handicapped that they can offer us nothing in return? . . . Gauthier has to concede that the handicapped lie "beyond the pale of morality tied to mutuality"; if we have moral duties in these cases, [Gauthier's] theory cannot account for them. Each of us may feel *sympathy* for the handicapped, and if so, the welfare of the handicapped will be among the ends we pursue; but this is a matter of preference, not moral obligation.

Id. It is not only the handicapped that lie beyond the pale of a morality of rational self-interest; it is also all those other persons around the world—the weakest of the weak, the most marginalized of the marginalized—whom we in rich, powerful nations need not fear and whose cooperation to achieve our goals we need not secure.

Gauthier writes that MORALS BY AGREEMENT:

> is an attempt to challenge Nietzsche's prescient remark, "As the will to truth . . . gains self-consciousness . . . morality will gradually perish." It is an attempt to write moral theory for adults, for persons who live consciously in a post-anthropomorphic, post-theocentric, post-technocratic world. It is an attempt to allay the fear, or suspicion, or hope, that without a foundation in objective value or objective reason, in sympathy or in sociality, the moral enterprise must fail.

David Gauthier, *Moral Artifice*, 18 CAN. J. PHIL. 385, 385 (1988). In the end, however, Gauthier does not challenge Nietzsche so much as he embraces a Nietzschean conception of justice. Nietzsche writes:

> 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

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much weight these sentiments and preferences would be able to bear—and for how long—is an open question. Listen to the Polish poet and Nobel laureate, Czeslaw Milosz:

> What has been surprising in the post–Cold War period are those beautiful and deeply moving words pronounced with veneration in places like Prague and Warsaw, words which pertain to the old repertory of the rights of man and the dignity of the person.
>
> I wonder at this phenomenon because maybe underneath there is an abyss. After all, those ideas had their foundation in religion, and I am not over-optimistic as to the survival of religion in a scientific-technological civilization. Notions that seemed buried forever have suddenly been resurrected. But how long can they stay afloat if the bottom is taken out?[129]

> 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?"

Friedrich Nietzsche, *All Too Human, in* BASIC WRITINGS OF NIETZSCHE 148 (Walter Kaufmann trans., 1973). I suspect that if we abandon the claim that every human being is inviolable, all we will be left with is a Nietzschean morality that not only cannot support but is deeply hostile to many of the most basic human-rights claims that we who embrace the cause of human rights want to make.

129. Czeslaw Milosz, *The Religious Imagination at 2000,* NEW PERSP. Q., fall 1997, at 32. *See also* Gaita, *supra* note 23, at xviii–xix:

> [T]he language of love . . . compels us to affirm that even those who suffer affliction so severe that they have irrevocably lost everything that gives sense to our lives, and the most radical evil-doers, are fully our fellow human beings. On credit, so [to] speak, from this language of love, we have built a more tractable structure of rights and obligations. If the language of love goes dead on us, however, if there are no examples to nourish it, either because they do not exist or because they are no longer visible to us, then talk of inalienable natural rights or of the unconditional respect owed to rational beings will seem lame and improbable to us. Indeed, exactly that is happening.

In e-mail discussion, Steve Smith writes:

> Insofar as humans have the quality of "dignity" or (as I prefer) "sacredness," perceptive sincere persons may well be able to perceive that quality without even knowing or giving much thought to the "ground" of the quality. So they don't need to believe in God in order to accord this respect to human beings. Their understanding would be seriously incomplete, of course, but their moral commitment might still be perfectly sincere.
>
> The problems arise when (a) they try to give a secular account of this quality—because the account will be deficient—and/or (b) they affirmatively embrace a naturalist cosmology of the sort you associate with Darrow and Weinberg, because that cosmology will tend to subvert their initial more innocent perception of the sacredness of life. In other words, "sacredness" won't be intelligible in the naturalist ontological worldview, and so the worldview and the moral commitment will be inconsistent.
>
> But even so, insofar as people are able to maintain inconsistencies (and many of us are prodigiously talented at that), they can hold both to a naturalist worldview and to genuine moral commitments, including commitments to human rights.

E-mail from Steven Smith to Michael Perry, Mar. 18, 2005. This seems right to me—though the accommodation that Smith describes seems to me ultimately unstable.

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Perhaps some who have no ground—who find any religious ground implausible but can discern no plausible secular ground—are more confident about their conviction that every human being has inherent dignity and is inviolable than they would be about any possible ground for their conviction. ("I have reached bedrock and this is where my spade is turned.")[130] Perhaps some will say that they have no time to obsess about possible grounds for their conviction because they are too busy doing the important work of "changing the world."[131] But still this question intrudes: If, as their (bedrock?) conviction holds, the Other, even the Other, truly does have inherent dignity and truly is inviolable, what else must be true; what must be true for it to be true that the Other has inherent dignity and is inviolable? That question brings us back to something I say above: the morality of human rights is deeply problematic for many secular thinkers because that morality is difficult—perhaps to the point of impossible—to align with one of their fundamental convictions, what Bernard Williams called "Nietzsche' s thought": "[T]here is, not only no God, but no metaphysical order of any kind.[132]

Again, the point is not that morality cannot survive the death of God. There is not just one morality; there are many.[133] The serious question is whether a particular morality—the morality of human rights—can survive the death (or deconstruction) of God. (Was it such a morality Nietzsche saw in the coffin at God's funeral?) Nietzsche's thought ("not only no God, but no metaphysical order of any kind") and the morality of human rights (every

130. LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS, sec. 217 (1953), *quoted in* HILARY PUTNAM, THE MANY FACES OF REALISM (1987), at 85.

131. *See* Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHIL. & PUB. AFF. 315, 317 (2004):

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

Sen then adds, however:

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

132. *See supra* note 22.

133. Including, for example, David Gauthier's Nietzschean morality, which has no need for God. *See supra* note 128.

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human being has inherent dignity and is inviolable) are deeply antithetical to one another. Which will prevail?[134]

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

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

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