

**THE MORALITY OF HUMAN RIGHTS:
A NONRELIGIOUS GROUND?¹**

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According to Niklas Luhmann, the language of reverence has been discredited by the downfall of metaphysics. Logically taken further, that means that "the postulate that all human life is holy no longer exists". The predominantly religious structures which provided the foundations of the concept of dignity, creatureliness and being in the image of God are no longer compellingly binding or even illuminating in the secular world.³

Richard Rorty, the leading postmodernist liberal theorist, . . . concedes that liberalism, once so jealous of its autonomy from Biblical faith, is in fact parasitic upon it. In his essay "Postmodern Bourgeois Liberalism," he describes secular liberals like himself as "freeloading atheists." They continue to rely on the Judeo-Christian legacy of

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³ Regina Ammicht-Quinn, "Whose Dignity Is Inviolable? Human Beings, Machines and the Discourse of Dignity," in Regina Ammicht-Quinn, Maureen Junkwer-Kerry & Elsa Tamez, eds., *Concilium 2003/2: The Discourse of Human Dignity* 35, 40. The claim that "the postulate that all human life is holy no longer exists" was made by Peter Singer, quoted in an interview in *Der Spiegel*, Nov. 25, 2001.

concern with human dignity despite their rejection of the revealed truth that alone could support this concern. . . . For Rorty, God is dead but secularized Christian morality continues. This is precisely one of the scenarios envisaged by Nietzsche in *The Gay Science*: "God is dead, but given the way men are there may still be caves for thousands of years in which his shadow will be shown." True, only 125 of those years have now passed, but on the evidence of Rorty's thought, it's hard to believe that this sort of shadow play still has centuries to run.⁴

The Morality of Human Rights

The name of the state where I was born and raised--Kentucky--has been said to derive from a Native American word meaning "a dark and bloody ground".⁵ An apt name for the century in which we were born and raised is a dark and bloody time--indeed, *the* dark and bloody time: The twentieth century "'was the bloodiest in human existence,' . . . not only because of the total number of deaths attributed to wars--109 million--but because of the fraction of the population killed by conflicts, more than 10 times more than during the 16th century."⁶ The list of twentieth-century horrors, which goes on and on at mind-numbing length, includes much more than wars, however. As the century began, King Leopold II of Belgium was presiding over a holocaust in the Congo; it is estimated that between 1880 and 1920, because of a system of slave labor, the population of the Congo "dropped by approximately ten million people."⁷ From

⁴ Clifford Orwin, "The Unraveling of Christianity in America," *The Public Interest*, Spring 2004, at 31-32. (In the last sentence of the passage accompanying this footnote, the original states "his" sort of shadow play, but Clifford Orwin tells me that this is a typo--that "his" should be "this".)

⁵ See, g.g, Darcy O'Brien, *A Dark and Bloody Ground* 1 (1993). Whether "Kentucky" does in fact derive from a Native American word for "a dark and bloody ground" is doubtful. See <http://www.continuitypress.com/faqs.html>. The "dark and bloody ground" refers to the area along the Cumberland River in both Kentucky and Tennessee where many Indians v. Indian battles took place before and for a time after the European settlers came into the area. See id.

⁶ Kim A. McDonald, "Anthropologists Debate Whether War Is Inevitable among Humans," *Chronicle of Higher Education*, Nov. 22, 1999 (quoting Carol Nordstrom, an anthropologist at the University of Notre Dame).

⁷ Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* 233 (1998). The causes--all of them related to the system of slave labor--were several: murder, starvation, exhaustion, exposure, disease, and a plummeting birth rate. See id. at 225-234. As Hochschild observes, this was "a death toll of Holocaust dimensions." Id. at 4. See also

1915 to 1923, the Ottoman Turks, who were Muslim, committed genocide against the Armenian minority, who were Christian.⁸ Not counting deaths inflicted in battle, Stalin was responsible for the deaths of over forty-two million people (1929-53); Mao, over thirty-seven million (1923-76); Hitler, over twenty million (1933-45), including over ten million Slavs and about five and a half million Jews.⁹ One need only mention these countries to recall some more recent atrocities: Cambodia (1975-79), Bosnia (1992-95), Rwanda (1994).¹⁰ Sadly, this recital is just to scratch the surface.¹¹ For an exhaustive and exhausting account of the grim details, one can consult the two-volume *Encyclopedia of Genocide*, which reports:

Alan Riding, "Belgium Confronts Its Heart of Darkness," *New York Times*, Sept. 21, 2002. The holocaust in the Congo was not an isolated event. See, e.g., Ross A. Slotten, "AIDS in Namibia," 41 *Soc. Sci. Med.* 277 (1995):

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

See also Giles Foden, "Rehearsal for Genocide," *New York Times Book Rev.*, Apr. 20, 2003, at 15 (reviewing Uwe Timm, *Morenga* (2003)).

⁸ Israel W. Charney, ed., *I Encyclopedia of Genocide* 61-105 (1999); Peter Balakian, *The Burning Tigris: The Armenian Genocide and America's Response* (2003); Belinda Cooper, "Turks Breach Wall of Silence on Armenians," *New York Times*, Mar. 6, 2004.

⁹ *Id.* at 29 (Table 5). "[The Nazi] genocides likely cost the lives of about 16,300,000 people: nearly 5,300,000 Jews, 260,000 Gypsies, 10,500,000 Slavs, and 220,000 homosexuals, as well as another 10,000 handicapped Germans." *Id.* at 439. "The Nazi genocide against the Jews--the Holocaust, as it has generally come to be known as--is estimated to have resulted in the murder of about five and a half million Jews in Nazi-occupied Europe, around half the number targeted in the notorious Wannsee Conference of January 1942." Ian Kershaw, "Afterthought: Some Reflections on Genocide, Religion, and Modernity," in Omer Bartov & Phyllis Mack, eds., *In God's Name: Genocide and Religion in the Twentieth Century* 377 (2001).

¹⁰ See, e.g., Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda* (1998). For a narrative of the failures by the United States to respond to recent genocides, see Samantha Power, "A Problem from Hell": *America and the Age of Genocide* (2002).

¹¹ One could go on and on. See, e.g., Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (1997); Mark Danner, *The Massacre at El Mozote: A Parable of the Cold War* (1994). See also Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America* viii (2002): "Through 1944, when lynchings first began to decline strongly, [the

In total, during the first eighty-eight years of [the twentieth] century, almost 170 million men, women, and children were shot, beaten, tortured, knifed, burned, starved, frozen, crushed, or worked to death; buried alive, drowned, hanged, bombed, or killed in any other of the myriad other ways governments have inflicted deaths on unarmed, helpless citizens and foreigners. Depending on whether one used high or more conservative estimates, the dead could conceivably be more than 360 million people. It is as though our species has been devastated by a modern Black Plague.¹²

In the midst of the countless grotesque inhumanities of the twentieth century, however, there is a heartening story, amply recounted elsewhere:¹³ the emergence, in international law, of

Tuskegee Institute] recorded 3,417 lynchings of blacks . . . Not until 1952 did a year pass without a single recorded lynching."

¹² I Encyclopedia of Genocide, n. #, at 28. "[G]enocide--intentional acts to eliminate in whole, or in substantial part, a specific human population--[has] claimed the lives of some 60 million people in the 20th century, 16 million of them since 1945, when the watchword was 'Never again.' Genocide has, in fact, been so frequent, the number of victims so extensive, and serious attempts to prevent it so few, that many scholars have described the 20th century as 'the age of genocide.'" Roger W. Smith, "American Self-Interest and the Response to Genocide," *The Chronicle*, July 30, 2004. See also Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (1999).

Given the subject of this chapter, I should emphasize that I am painfully aware (who isn't?!) that "religion has played an important role in several outbreaks of genocide since World War I." Omer Bartov & Phyllis Mack, "Introduction," in Bartov & Mack, n. #, at 1. But the role religion has played is not invariably negative, as Bartov and Mack explain:

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

Id.

¹³ See, e.g., Louis B. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States," 32 *American U. L. Rev.* 1 (1982); Robert F. Drinan, *Cry of the Oppressed: The History and Hope of the Human Rights Revolution* (1987).

the morality of human rights. The morality of human rights is not new; in one or another version, the morality is very old.¹⁴ But the emergence of the morality 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."¹⁵ The twentieth century, therefore, was not only the dark and bloody time; the second half of the twentieth century was also the time in which a growing number of human beings the world over responded to the savage horrors of the twentieth century by affirming the morality of human rights.¹⁶ The emergence of the morality of human rights makes the moral landscape of the twentieth century a touch less bleak.

As it has emerged in international law, 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 and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.¹⁷ The Universal

¹⁴ See Leszek Kolakowski, *Modernity on Endless Trial* 214 (1990):

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

¹⁵ Tom J. Farer & Felice Gaer, "The UN and Human Rights: At the End of the Beginning," in Adam Roberts & Benedict Kingsbury, eds., *United Nations, Divided World* 240 (2d ed. 1993).

¹⁶ In the final decade of the twentieth century, the Security Council of the United Nations established two international criminal tribunals, one (in 1993) to deal with atrocities committed in the former Yugoslavia since 1991 and the other (in 1994) to deal with atrocities committed in Rwanda in 1994. In 2001, pursuant to the Rome Statute of the International Criminal Court (1998), the International Criminal Court was established, with jurisdiction over the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. See Henry J. Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals* 1143-98 (2d ed. 2000).

¹⁷ The Universal Declaration was adopted and proclaimed by the General Assembly of the United Nations on Dec. 10, 1948. The ICCPR and the 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

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."¹⁸ As the International Bill of Rights makes clear, then, the fundamental conviction at the heart of the morality of human rights is this: Each and every (born) human being--each and every member of the species *homo sapiens sapiens*--has inherent dignity¹⁹ and is therefore inviolable.²⁰

- o To say that all human beings have *inherent* dignity is to say that their dignity inheres in nothing more particular than their being human beings;²¹ it does not inhere, for

opened for signature, ratification and accession by the General Assembly of the United Nations on Dec. 16, 1966. The ICESCR entered into force on Jan. 3, 1976, and as of June 2004, has 149 state parties. The ICCPR entered into force on Mar. 23, 1976, and as of June 2004, has 152 state parties. 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. (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).) So the United States is a party to the ICCPR but not to the ICESCR.

- ¹⁸ 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: . . .

¹⁹ Cf. Robert Kraynak & Glenn Tinder, eds., *In Defense of Human Dignity: Essays for Our Times* (2003); Vicki C. Jackson, "Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse," 65 *Montana L. Rev.* 15 (2004).

²⁰ On the qualifier "born", see chapter 2 at 000-000. Except when I discuss the issue of abortion, in chapter 2, I tend to bracket the born/unborn distinction and say simply that according to the morality of human rights, all human beings have inherent dignity.

²¹ Cf. Charles E. Curran, "Catholic Social Teaching: A Historical and Ethical Analysis 1891-Present 132 (2002):

example, in their "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²²

o To say that all human beings are inviolable is to say (in the words of the *Oxford English Dictionary*) that they are "not to be violated; not liable or allowed to suffer violence; to be kept sacredly free from profanation, infraction, or assault."²³ It is to say that no one--ourselves, of course, included--should violate any human being. It is also to say that no one should tolerate others doing so: We should do what we can, all things considered, to prevent others from violating any human being. By declining to do what we can, all things considered, to keep her "sacredly free from profanation, infraction, or assault," we fail to respect her inviolability--her "not-to-be-violatedness"--and thereby become complicit in violating her.

o But what does it mean to "violate" a human being? The inherent dignity of every human being and the inviolability--the not-to-be-violatedness--of every human being are inextricably related: According to the morality of human rights, one violates a human being if one denies that she has, or treats her as if she does not have, inherent dignity.

The morality of human rights responds to what is perhaps the most basic of all moral questions: Which human beings are inviolable--all, some, or none? Moreover, the morality of human rights is, for many secular thinkers, problematic, because it is difficult--perhaps to the point of impossible--to align with one of their reigning intellectual convictions, what Bernard Williams called "Nietzsche's thought": "[T]here is, not only no God, but no metaphysical order of any kind . . ."²⁴

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.

²² 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." I discuss the relation of the *moral* idea of human rights to the *legal* goal of nondiscrimination in the chapter 4.

²³ 8 Oxford English Dictionary 51 (2d ed. 1989).

To say that every human being is inviolable is not to say that no other sentient creatures are inviolable. Moreover, to say that a particular class of sentient creatures is not inviolable is not to say that those creatures are entitled to no moral consideration.

²⁴ Bernard Williams, "Republican and Galilean," *New York Rev.*, Nov. 8, 1990, at 45, 48 (reviewing Charles Taylor, *Sources of the Self: The Making of Modern Identity* (1989)).

**The Morality of Human Rights:
A Religious Ground**

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.²⁵

Again, the claim that every human being is inviolable is the claim that every human being is "not to be violated; not liable or allowed to suffer violence; to be kept sacredly free from profanation, infraction, or assault." As I said, this is equivalent to the claim that no one should either violate any human being or tolerate others doing so. The claim that every (born) human being is inviolable is controversial.²⁶ (The claim that every human being, unborn as well as born, is inviolable--which claim I address in chapter 2--is even more controversial.) Not

²⁵ Raimond Gaita, *A Common Humanity: Thinking about Love and Truth and Justice* 23-24 (2000). Cf. Jürgen Habermas, *Religion and Rationality: Essays on Reason, God, and Modernity* 162 (Eduardo Mendieta, ed., 2002): "[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."

²⁶ Though the claim does seem to be axiomatic for liberal democracy. See n. # [Gladstone]. Cf. Charles Larmore, "The Moral Basis of Political Liberalism," 96 *J. Philosophy* 599, 624-25 (1999) (arguing that "our commitment to [liberal] democracy . . . cannot be understood except by appeal to a higher moral authority, which is the obligation to respect one another as persons").

everyone agrees that all human beings are inviolable. Some believe that--or act as if, or both--no human beings are inviolable. Others believe that--or act as if, or both--only some human beings are inviolable: the members of one's own tribe, for example, or of one's own nation.²⁷ The claim that all human beings are inviolable needs to be defended. *Why* are all human beings inviolable? *In virtue of what* is it the case that no one should violate any human being (or tolerate others doing so)? "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."²⁸

²⁷ See n. # and accompanying text [Rorty's "psychopath" quote]. A variation on the question, Which human beings are inviolable?, is this question: Who is a human being; that is, who is truly, fully human? Women? Nonwhites? Jews? Cast as the claim that only some individuals are truly, fully human, the claim that only some human beings are inviolable has been, and remains, quite common. See generally Alain Finkielkraut, *In the Name of Humanity: Reflections on the Twentieth Century* (2000). According to Nazi ideology, for example, Jews are not truly, fully human. See Michael Burleigh & Wolfgang Ipperman, *The Racial State: Germany, 1933-1945* (1991); Johannes Morsink, "World War Two and the Universal Declaration," 15 *Human Rights Q.* 357, 363 (1993). There are countless other examples, past and present. See Richard Rorty, "Human Rights, Rationality, and Sentimentality," in Stephen Shute & Susan Hurley, eds., *On Human Rights: The Oxford Amnesty Lectures 1993* 111, 112 (1993):

Serbian murderers and rapists do not think of themselves as violating human rights. Further they are not doing these things to fellow human beings, but to *Muslims*. They are not being inhuman, but rather are discriminating between the true humans and the pseudohumans. They are making the same sort of distinction as the Crusaders made between the humans and the infidel dogs, and the Black Muslims make between humans and blue-eyed devils. [Thomas Jefferson] was able both to own slaves and to think it self-evident that all men are endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, "participates more of sensation than reflection." Like the Serbs, Mr. Jefferson did not think of himself as violating *human* rights.

The Serbs take themselves to be acting in the interests of true humanity by purifying the world of pseudohumanity.

This position--that only some individuals are truly, fully human--should be painfully familiar to Americans. See Dray, n. #, at 101: "[T]he bestselling *The Negro Beast, or 'In the Image of God'* (1900) by Charles Carroll[,] a hodgepodge of dubious biblical interpretations and bogus science, . . . made the straightforward assertion that the Negro is not really a human being at all, not part of what Carroll called the 'Adamic family' that originated in the Garden of Eden." See also H. Shelton Smith, *In His Image, But ...: Racism in Southern Religion, 1780-1910* (1972).

²⁸ 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)).

I want to sketch a religious defense of--a religious ground for--the claim that every human being is inviolable. In particular, I want to sketch a religious ground for morality of human rights, which holds that every human being has inherent dignity and is therefore inviolable. The ground I am about to sketch is certainly not the only religious ground for the morality of human rights. (A similar ground could be developed on the basis of Jewish materials,²⁹ for example, or of Islamic materials.³⁰) It is, however, the religious ground with which I am most familiar.

Let's imagine a religious believer named Sarah. Sarah affirms that each and every human being is inviolable. Asked why--in virtue of what--every human being is inviolable, Sarah, a theist, responds that every human being is sacred. The morality of human rights holds that every human being is inviolable because every human being has inherent dignity. Sarah does not distinguish between saying, as she usually does, that every human being is sacred and saying, as the International Bill of Rights does, that every human being has inherent dignity. For Sarah, the two predicates--"is sacred", "has inherent dignity"--are equivalent. Sarah could translate her "is sacred" into "has inherent dignity" without remainder. In responding that every human being is inviolable because every human being is sacred, Sarah affirms the morality of human rights.

Predictably, Sarah's response elicits a further inquiry: "Why--in virtue of what--is every human being sacred?" (Just as the Preambles of the UDHR, the ICCPR, and the ICESCR each elicits the question: "Why--in virtue what--does every human being have inherent dignity?"³¹)

²⁹ According to Michael Lerner, editor of *Tikkun*, Sarah's existential orientation--her love for the Other--is as Jewish as it is Christian:

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).

Michael Lerner, "Jesus the Jew," *Tikkun*, May/June 2004, at 33, 00.

³⁰ [Consult Recep Senturk about Islamic materials.]

³¹ The UDHR, the ICCPR, and the ICESCR are famously silent on this question. This is not surprising, given the plurality of religious and nonreligious views among those who profess commitment to the documents. See Jacques Maritain, "Introduction," *Human Rights: Comments and Interpretation* 9-17 (1973). (The original edition of this book was published in 1947.)

Sarah gives a religious explanation: Speaking the words of *The First Letter of John*, Sarah says that "God is love."³² ("Whoever fails to love does not know God, because God is love." 1 John 4:8. "God is love, and whoever remains in love remains in God and God in him." 1 John 4:16.³³) Moreover, God's act of creating and sustaining the universe is an act of love,³⁴ and we human beings are the beloved children of God and sisters and brothers to one another.³⁵ (As

³² According to Sarah, God's "be-ing" is God's "do-ing", and God's do-ing (or God's principal doing) is ceaseless loving.

³³ The translations here and elsewhere in this chapter are those of *The New Jerusalem Bible* (1985).

³⁴ Simone Weil wrote: "God created through love and for love. God did not create anything except love itself, and the means to love." Simone Weil, *Waiting for God* 123 (Emma Craufurd, tr., 1951).

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

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.

Cf. Thomas Nagel, "Much Ado: There Is No Alternative to the Existence of Something," *Times Lit. Supp.*, May 7, 2004, at 3 (reviewing Bede Rundle, *Why There Is Something Rather Than Nothing* (2004)).

³⁵ Cf. Kristen Renwick Monroe, *The Heart of Altruism: Perceptions of a Common Humanity* 216 (1996):

[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

Hilary Putnam has noted, the moral image central to what Putnam calls the Jerusalem-based religions "stresse[s] equality and also fraternity, as in the metaphor of the whole human race as One Family, of all women and men as sisters and brothers."³⁶) Every human being is sacred, says Sarah, because every human being is a beloved child of God and a sister/brother to every other human being.³⁷ 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 is³⁸--as in "Gracious God, gentle in

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.

³⁶ Hilary Putnam, *The Many Faces of Realism* 60-61 (1987). In an essay on "The Spirituality of The Talmud", Ben Zion Bokser and Baruch M. Bokser state: "From this conception of man's place in the universe comes the sense of the supreme sanctity of all human life. 'He who destroys one person has dealt a blow at the entire universe, and he who sustains or saves one person has sustained the whole world.'" Ben Zion Bokser & Baruch M. Bokser, "Introduction: The Spirituality of the Talmud," in *The Talmud: Selected Writings* 7 (1989). 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.

³⁷ Cf. Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* 474 (1995) (quoting Lee Khan Yew, Senior Minister of Singapore, on the outcry over the sentence of flogging given to Michael Fay for vandalism): "To us in Asia, an individual is an ant. To you, he's a child of God. It is an amazing concept."

³⁸ See Richard P. McBrien, ed., *The HarperCollins Encyclopedia of Catholicism* 43 (1995)

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

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

your power and strong in your tenderness, you have brought us forth from the womb of your being and breathed into us the breath of life."³⁹

Sarah's explanation provokes a yet further inquiry: "Let's assume, for the sake of discussion, that every human being is sacred--and sacred for the reason you give. How does the sacredness of every human being support the claim that every human being is inviolable--the claim, that is, that no one should violate any human being? (Or: "How does the inherent dignity of every human being support the claim that no one should violate any human being?") Sarah responds that the God who loves us has created us to love one another.⁴⁰ We are created by God to love what is sacred--what is beloved of God--and therefore we are created to love one another. (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 this state to be "not an ontological unity such that either the lover or the beloved ceases to have his own individual

1274) is particularly well known for developing the role of analogy in theological discourse.

(But, not *all* theological language is analogical; *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.

³⁹ [UCC Book of Worship, p. 111.]

⁴⁰ 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.

existence, [but rather] a unity at the level of affection or will by which one person *affectively* takes the other to be part of himself and the goods of the other to be his own goods."⁴¹) 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' commandment, reported in John 13:34, to "love one another . . . just as I have loved you."⁴² By becoming persons of a certain sort--persons who discern one another as sacred and love one another as such--we fulfill our created nature.⁴³ "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.)⁴⁴

⁴¹ David M. Gallagher, "Thomas Aquinas on Self-Love as the Basis for Love of Others," 8 Fascicolo 000 (1999).

On the relation between loving one another and loving God, see n. #.

⁴² 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.

⁴³ In his book *After Theory* (2003), Terry Eagleton writes that "Aristotle thought that there was a particular way of living which allowed us . . . to be at our best for the kind of creatures we are. This was the life conducted according to the virtues. The Judaeo-Christian tradition considers that it is the life of charity or love. What this means . . . is that we become the occasion of each other's self-realization. It is only through being the means of your fulfillment that I can attain my own." Quoted in David Lodge, "Goodbye to All That," *New York Rev.*, May 27, 2004, at 39, 41.

⁴⁴ In the Gospel, there are two great commandments, not one. See Matthew 22:34-40: "But when the Pharisees heard that he had silenced the Sadducees they got together and, to put him to the test, one of them put a further question, 'Master, which is the greatest commandment of the Law?' Jesus said to him, 'You must love the Lord your God with all your heart, with all your soul, and with all your mind. This is the greatest and the first commandment. The second resembles it: You must love your neighbor as yourself. On these two commandments hang the whole Law, and the Prophets too.'" See also Mark 12:28-34; Luke 10:25-28. Cf. J.L. Mackie, *Ethics: Inventing Right and Wrong* 243 (1977): "D.D. Raphael, in 'The Standard of Morals', in *Proceedings of the Aristotelian Society* 75 (1974-75) follows Edward Ullendorff in pointing out that whereas 'Thou shalt love thy neighbor as thyself' represents the Greek of the Septuagint (Leviticus 19:18) and of the New Testament, the Hebrew from which the former is derived means rather 'You shall treat your neighbor lovingly, for he is like yourself.'"

What is the relation between the two commandments? In the view of great German Catholic theologian Karl Rahner, not only is there no tension between the commandment to love God and the commandment to love one another, there is "a radical identity of the two loves." Karl Rahner, 6 *Theological Investigations* 231, 236 (1969). In his "Reflections on the Unity of the Love of Neighbor and the Love of God", Rahner wrote: "It is radically true, i.e. by an

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

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

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

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

Indeed, Sarah believes that in some situations, we love most truly and fully--and therefore we live most truly and fully--by taking the path that will probably or even certainly lead to our dying. "Greater love than this has no man . . ." ⁴⁵

(Sarah also believes that the ultimate fulfillment of our created nature--which, Sarah believes, is mystical union, in love, with God and with one another⁴⁶--can be neither fully achieved nor even fully understood in our earthly life.⁴⁷ "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." (I Corinthians 13:12.) But in our earthly life, Sarah believes, we can make an important beginning.⁴⁸)

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.

⁴⁵ Cf. Helmut Gollwitzer et al., *Dying We Live: The Final Messages and Records of the Resistance* (New York: Pantheon Books, Inc. 1956). In *Discipleship*, Dietrich Bonhoeffer wrote that "when Christ calls us, his call leads to death." [cite.]

⁴⁶ Cf. Charles Taliaferro, "Why We Need Immortality," 6 *Modern Theology* 367 (1990).

⁴⁷ Cf. Graham Greene, *Monsignor Quixote* 221 (1982): "The Mayor didn't speak again before they reached Orense; an idea quite strange to him had lodged in his brain. Why is it that the hate of a man--even of a man like Franco--dies with his death, and yet love, the love which he had begun to feel for Father Quixote, seemed now to live and grow in spite of the final separation and the final silence--for how long, he wondered with a kind of fear, was it possible for that love of his to continue? And to what end?"

⁴⁸ 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, n. #, at 80.

The "love" in Jesus' counsel to "love one another" is not *eros* or *philia*, but *agape*.⁴⁹ To love another in the sense of *agape* is *to see her (or him) in a certain way* (i.e., as child of God and sister/brother to oneself) and, therefore, *to act towards her in a certain way*. *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."⁵⁰ 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.)⁵¹

⁴⁹ The literature in Christian ethics on *agape* is voluminous. Some recent titles include: Colin Grant, *Altruism and Christian Ethics* (2001); Garth L. Hallett, *Christian Neighbor-Love: An Assessment of Six Rival Versions* (1989); Stephen J. Pope, *The Evolution of Altruism and the Ordering of Love* (1994); Edmund N. Santurri & William Werpehowski, eds., *The Love Commandments: Essays in Christian Ethics and Moral Philosophy* (1992); Edward Collins Vacek, SJ, *Love, Human and Divine: The Heart of Christian Ethics* (1994); Timothy P. Jackson, *Love Disconsolated: Meditations on Christian Charity* (1999); André Comte-Sponville, *A Small Treatise on the Great Virtues* 222-90 (Catherine Temerson, tr., 2001); Timothy P. Jackson, *The Priority of Love: Christian Charity and Social Justice* (2003).

⁵⁰ Timothy Chappell, Book Review, 111 *Mind* 411, 412 (2202) (reviewing Raimond Gaita, *A Common Humanity: Thinking about Love and Truth and Justice* (2000)). Chappell is here describing "Gaita's view" and says that it is "reminiscent of course of Simone Weil and Iris Murdoch." *Id.* See Gaita, n. #, at xxxiii:

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

Compare Finkelkraut, n. #, 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."

⁵¹ 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

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. ("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."⁵²) Sarah loves even those from whom she is most

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

In *The New Jerusalem Bible*, a footnote 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."

⁵² Norman Geras, *The Contract of Mutual Indifference: Political Philosophy after the Holocaust* 67 (1998). Cf. Samuel Brittan, "Making Common Cause: How Liberals Differ, and What They Ought To Agree On," *Times Lit. Supp.*, Sept. 20, 1996, at 3, 4:

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

(There is an echo of Gladstone in something said by Michael Gerson, President Bush's chief speech writer: "To put it simply, it's a fairly radical belief that a child in an African village

estranged and towards whom she feels most antagonistic: those whose ideologies and projects and acts she judges to be not merely morally objectionable, but morally abominable. ("[T]he language of love . . . compels us to affirm that even . . . the most radical evil-doers . . . are fully our fellow human beings."⁵³) Sarah loves even her enemies; indeed, Sarah loves even those who have violated her.⁵⁴ 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."⁵⁵

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.⁵⁶ Why should anyone embrace the ideal? Why should anyone want to

whose parents are dying of AIDS has the same importance before God as the president of the United States." Quoted in Elisabeth Bumiller, "Evangelicals Sway White House on Human Rights Issues Abroad," New York Times, Oct. 26, 2003.)) Listen, too, to Herman Melville: "But this august dignity I treat of, is not the dignity of kings and robes, but that abounding dignity that has no robed investiture. Thou shalt see it shining in the arm that wields a pick or drives a spike; that democratic dignity which, on all hands, radiates without end from God Himself! The great God absolute! The centre and circumference of all democracy! His omnipresence, our divine equality!" Herman Melville, *Moby Dick* 126 (Penguin Classics ed. 0000). Thanks to George Wright for calling this passage to my attention.

⁵³ Gaita, n. #, at xviii-xix.

⁵⁴ [Mention Jesus' response to Judas, after Judas betrayed Jesus.]

⁵⁵ Graham Greene, *The Power and the Glory* [page] (1940). For a dissenting view on hate, see Meir Y. Soloveichik, "The Virtue of Hate," *First Things*, February 2003, at 41. As the Chronicle of Higher Education stated, in an e-mail notice on this article dated Feb. 13, 2003: "Rabbi Soloveichik asks: 'Is an utterly evil man . . . deserving of a theist's love?' and, reflecting on his conversations with Christian clergymen, concludes that there is 'no minimizing the difference between Judaism and Christianity on whether hate can be virtuous.' He examines the 'theological underpinnings' for each faith's approach to hate and notes that 'the crucifixion is a story of a loving God seeking humanity's salvation,' but that 'not a single Jewish source asserts that God deeply desires to save all humanity.'" For vigorous criticism, by religious Jews and others, of Soloveichik's essay, and a response by Soloveichik, see "Correspondence: Jews and Christians, Hate and Forgiveness," *First Things*, May 2003, at 2-9.

⁵⁶ It seems to have been an implausible ideal for Ivan Karamazov:

I have never been able to understand how it was possible to love one's neighbors. And I mean precisely one's neighbors, because I can conceive of the possibility of loving those who are far away. I read somewhere about a saint, John the Merciful, who, when a hungry frozen beggar came to him and asked him to warm him, lay down with him, put his arms around him, and breathed into the man's reeking mouth that was festering with

become (or to remain) 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 become the sort of person who makes the choices, who does the things, that I am being told I should make/do. And, in fact, Sarah's interlocutor presses her with this question: "Why should I want to become the sort of person who, like you, loves the Other? What reason do I have to do *that*?"⁵⁷ Sarah is puzzled; she thought that she had already answered that 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."⁵⁸ Now it is Sarah's turn to ask a question of her interlocutor: "What further

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, tr., 1933).

⁵⁷ Distinguishing "reasons" from "motives" in this context is deeply problematic. See 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.

See also n. # [Scott, Scruton, etc.].

⁵⁸ Thus, Sarah rejects as false Vacek's distinction between "natural-law ethics" and "mutual-love ethics". See Edward Collins Vacek, SJ, "Divine-Command, Natural-Law, and Mutual-Love Ethics," 57 *Theological Studies* 633 (1996): "In natural-law ethics, something is right because it fulfills human nature, and the task is to discover and realize that nature. In mutual-love ethics,

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 no motive to decline it, I could regret nothing by accepting it, I would have nothing about which to deliberate further.⁵⁹

We can now see how Sarah's religious ground for the claim that every human being is inviolable does what any ground for the claim must do: specify the source of normativity--the source of the "should" in the claim that no one should violate any human being. Appealing to our commitment to our own authentic well-being, Sarah explains that the extent we become persons who love one another, to that extent we fulfill--we perfect--our created nature and thereby achieve our truest, deepest, most enduring happiness. No religious or nonreligious

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, "Thomas Aquinas on Self-Love as the Basis for Love of Others," n. #.

⁵⁹ Stephen Scott, "Motive and Justification," 85 J. Philosophy 479, 499 (1988). On the term "happiness", see Julia Annas, "Virtue and Eudaimonism," 15 Social Philosophy & Policy 37, 53 n. 35 (1998): "Despite the differences between *eudaimonia* and happiness which I have explored in this essay, and which are striking to philosophers reflecting on virtue and happiness, 'happiness' is clearly the correct translation for *eudaimonia* in ancient literature of all kinds, and it would be a mistake to conclude that we should translate *eudaimonia* by some other term." Compare Richard Taylor, "Ancient Wisdom and Modern Folly," 13 Midwest Studies in Philosophy 54, 57, 58 (1988): "The Greek *eudaimonia* is always translated 'happiness,' which is unfortunate, for the meaning we attach to the word *happiness* is thin indeed compared to what the ancients meant by *eudaimonia*. *Fulfillment* might be a better term, though this, too, fails to capture the richness of the original term. . . . The concept of happiness in modern philosophy, as well as in popular thinking, is superficial indeed in comparison."

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," 000 Social Philosophy & Policy 257, 273-76 (2001).

ground for the claim that every human being is inviolable is complete that fails to specify the source of normativity.

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? She does not. (This is not to say that feeding the hungry doesn't make Sarah happy. It does. But this is not why she feeds the hungry.) Given the sort of person she is, the reason--the *other-regarding* reason--Sarah feeds the hungry is: "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 this question *is* self-regarding: "By becoming persons who love one another, we fulfill our created nature and thereby achieve our truest, deepest, most enduring happiness."⁶⁰ According to

⁶⁰ Sarah's eudaimonistic, love-animated morality will not sit well with those whose thinking is under the influence of Kant. (They are many: "Kant's footprints are all over modern moral theory." Richard A. Posner, "The Problematics of Moral and Political Theory," 111 Harvard L. Rev. 1664 n. 48 (1998).) I concur in what Simon Blackburn says to such thinkers: "We can still do moral philosophy if we recognize that many of our concerns have passion and desire as their ancestors rather than truth and reason." Simon Blackburn, "Am I Right?" New York Times Book Rev., Feb. 28, 1999, at 24 (reviewing T. M. Scanlon, *What We Owe to Each Other* (1999)). Referring to "the view that reasons that are seen only in the pull of the will and of love are not real reasons at all", Blackburn continues: "[W]hen we reflect what a cold picture of human nature that [view] implies, I think we *should* find it rather sad." Id. I concur, too, in what Roger Scruton and Richard Rorty say, in the following passages, to such thinkers:

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" 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".

Roger Scruton, *Sexual Desire: A Moral Philosophy of the Erotic* 325, 326 (1986).

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.

Richard Rorty, "Justice as a Larger Loyalty," in Ron Bontekoe & Marietta Stepaniants, eds., *Justice and Democracy: Cross-Cultural Perspectives* 9, 11 (1997).

Listen, too, to Charles Taylor, who is speaking about neo-Kantian moral philosophy:

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

Charles Taylor, *Sources of the Self: The Making of the Modern Identity* 3 (1989). 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

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."⁶¹

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.⁶² 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

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 J. E. J. Altham & Ross Harrison, eds., *World, Mind, and Ethics: Essays on the Ethical Philosophy of Bernard Williams* 132 (1995); Charles Taylor, "Iris Murdoch and Moral Philosophy," in Maria Antonaccio & William Schweiker, eds., *Iris Murdoch and the Search for Human Goodness* 3 (1996).

⁶¹ Grant, n. #, at xix. Sarah agrees with Grant. She understands Aquinas to have defended substantially the same position. See Gallagher, "Thomas Aquinas on Self-Love as the Basis for Love of Others," n. #. Cf. David O. Brink, "A Puzzle about the Rational Authority of Morality," 6 *Philosophical Perspectives* 1, 22 (1992): "Unless agent-neutral reasons are necessarily superior reasons, the best solution would be to argue that agent-relative reasons, properly understood, support other-regarding moral requirements as well. So friends of agent-neutrality would do well to cultivate the resources of strategic and metaphysical egoists, even if they reject the rational egoist assumption that all reasons for action are agent-relative." (For Brink's discussion of "metaphysical egoism", see id. at 18-22. See also David O. Brink, "Self-Love and Altruism," 14 *Social Philosophy & Policy* 122 (1997). I suppose that we could say that Augustine, Aquinas, and Sarah are a species of what Brink calls "metaphysical egoists".)

⁶² 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).

Law of Gravity is not what gravity legislates but what gravity is."⁶³ 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."⁶⁴

Religion and Morality

Attempts to found a morality outside religion are similar to what children do when, wishing to replant something they like, they tear it out without the roots and plant it, rootless, in the soil. . . . [R]eligion is a particular relationship that man establishes between his own separate personality and the infinite universe, or its origin. And morality is the permanent guide to life that follows from this relationship.

--Leo Tolstoy⁶⁵

⁶³ 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 doesn't see any conflict between a loving God and a legislating God. The holy scriptures of Judaism, Christianity, and Islam (Senturk said) always portray God as both a loving God and a legislating God. I 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.'"

⁶⁴ The question whether any ground for claiming that every human being has inherent dignity is, *qua* religious, plausible is substantially a question about the plausibility of religious faith--a question well beyond the scope of this book. On the plausibility of religious faith, see, e.g., Jürgen Habermas, *Religion and Rationality: Essays on Reason, God, and Modernity* (Eduardo Mendieta, ed., 2002); Hilary Putnam, "The Depths and Shallows of Experience," May 9, 2002, University of California at Santa Barbara, <http://www.srhe.ucsb.edu/lectures/text/putnamText.html>. See also Stephen M. Barr, *Modern Physics and Ancient Faith* (2003).

⁶⁵ Leo Tolstoy, *A Confession and Other Religious Writings* 150 (Jane Kentish trans., Penguin Books ed. 1987). Cf. John M. Rist, *Real Ethics: Rethinking the Foundations of Morality* 2 (2002): "[Plato] came to believe that if morality, as more than 'enlightened' self-interest, is to be rationally justifiable, it must be established on metaphysical foundations . . ."

Before we move on to address the central issue of this chapter (a nonreligious ground?), I want to make a brief comment about the relevance of religion to morality. Though religious believers have, at the very least, a strong intuitive sense of religion's intimate relation to morality, some who are not religious believers are not so sure: They wonder precisely how--some even wonder whether--religion is relevant to morality.⁶⁶

I suggested earlier that this is perhaps the most fundamental of all moral questions: *Which human beings are inviolable--all, some, or none?* Much of modern secular moral philosophy reflects its religious geneology in staking out a radically inclusive position on this question. Indeed, the proposition that every human being has the same moral status is axiomatic for so many secular moralities that many secular moral philosophers have come to speak of "the moral point of view" as the point of view according to which "every person [has] some sort of equal status".⁶⁷ Bernard Williams noted that "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."⁶⁸ Whether or not there is a nonreligious ground for the "moral point of view", I hope that this chapter makes clear the direct relevance of Sarah's religion (or of Judaism, for example, or of Islam) to the question: Which human beings are inviolable?

Consider another fundamental moral inquiry: *What states of affairs are good--truly good--for human beings, whether some human beings or all human beings, and what states of affairs are bad for them? What states of affairs are friendly to or even constitutive of authentic human well-being (eudaimonia), and what states are hostile to or even destructive of*

⁶⁶ See J.L. Mackie, *Ethics: Inventing Right and Wrong* 48 (1977): "[W]hat [can we] make of morality without recourse to God, . . . what [can we] say about morality if, in the end, we dispense with religious belief?" Richard Joyce, from a secular perspective, offers one response to Mackie's inquiry: morality is a myth. See Richard Joyce, *The Myth of Morality* (2001). J. Budziszewski, from a religious perspective, offers substantially the same response. See J. Budziszewski, "The Second Tablet Project," *First Things*, June/July 2002, at 23. By contrast, Michael Moore argues that morality has no need for God. See Michael S. Moore, "Good Without God," in Robert P. George, ed., *Natural Law, Liberalism, and Morality* 201 (1996). For a critique of Moore's position, see Steven D. Smith, "Natural Law and Contemporary Moral Thought: A Guide from the Perplexed," 42 *American J. Jurisprudence* 299 (1997).

⁶⁷ James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* 239 (1987).

⁶⁸ Bernard Williams, *Ethics and the Limits of Philosophy* 14 (1985).

it? Recall that according to Sarah, 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 "love one another just as I have loved you." By becoming persons of a certain sort--persons who love one another--we perfect, we fulfill, our created nature; we thereby achieve our truest, deepest, most enduring happiness. Maybe Sarah is deluded about all this, but Sarah's religion is undeniably relevant to the question about human well-being. Not that one must affirm Sarah's religious beliefs in order to be a person who loves the Other. Some religious believers who do not affirm Sarah's religious beliefs, and some who are not religious believers at all, love the Other. (Some who affirm Sarah's religious beliefs do not, in spite of that affirmation, succeed in becoming persons who love the Other.) But still we may wonder whether there is any nonreligious warrant for thinking that human well-being--human flourishing--consists in being (becoming, remaining) such a person.

Finally, consider this moral question: *When confronted with the choice whether to act to bring about a state of affairs that is good for some human beings but that is bad for others, what choice may I make? What choice should I make? For example, may/should I choose to act to bring about a state of affairs that is good for me or my family or my country, but that is bad for you or your family or your country?* Sarah's religion is undeniably relevant to this question too. Assume that, like Sarah, you believe that we human beings are called to "love another just as I have loved you"--and that we fulfill our created nature and thereby achieve our truest happiness by becoming persons who "love one another". Assume, too, that you have succeeded in becoming, to some extent, such a person. As such a person, you will resolve at least some conflicts between what is good for you (your family, etc.) and what is good for someone else (someone else's family, etc.) differently from the way you would have resolved them had you not succeeded, to some extent, in becoming such a person.⁶⁹ Again, one need not affirm Sarah's religious beliefs in order to be a person who loves the Other. But, again, the question remains whether there is any nonreligious warrant for thinking that the truest, deepest, most enduring human fulfillment consists in being such a person.

The relevance of Sarah's religion--and of other religions--to fundamental moral questions is, on reflection, not surprising. 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.⁷⁰ (This is *not* to say that one must give a religious answer to a religious question, like the question, for example, Does God exist? Obviously many people do not give religious answers to religious questions.⁷¹) In the real world, one's response to fundamental

⁶⁹ See Garth L. Hallett, *Priorities and Christian Ethics* (1998).

⁷⁰ See Peter Geach, *God and the Soul* 127-28 (1969).

⁷¹ Jürgen Habermas' has acknowledged "that a philosophy that thinks postmetaphysically cannot answer the question that [David] Tracy . . . calls attention to: why be moral at all?" Habermas, n. #, at 81. What Habermas then goes on to say is really quite remarkable:

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?⁷² 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?⁷³ If any questions are fundamental, *these* questions--"religious

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

Id. Let's put aside the fact that "we" acquire our moral "intuitions" in many places besides (or in addition to) our parents' home--in the streets, for example. The more important point, for present purposes, is that we 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*, September 1992, at 87, 94.

⁷² "In an old rabbinic text three other questions are suggested: '*Whence* did you come?' '*Whither* are you going?' 'Before *whom* are you destined to give account?'" Abraham J. Heschel, *Who Is Man?* 28 (1965). "All people by nature desire to know the mystery from which they come and to which they go." Denise Lardner Carmody & John Tully Carmody, *Western Ways to the Center: An Introduction to Religions of the West* 198-99 (1983). "The questions Tolstoy asked, and Gauguin in, say, his great Tahiti triptych, completed just before he died ('Where Do We Come From? What Are We? Where Are We Going?'), are the eternal questions children ask more intensely, unremittingly, and subtly than we sometimes imagine." Robert Coles, *The Spiritual Life of Children* 37 (1990).

⁷³ 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

or limit questions"⁷⁴--are fundamental. Such questions--"naive" questions, "questions with no answers", "barriers that cannot be breached"⁷⁵--are "the most serious and difficult . . . that any human being or society must face . . ."⁷⁶ John Paul II is 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."⁷⁷

generations, an effort accumulated over centuries. Many of its ideas are as the light of the star that left its source a long time ago. Many enigmatic songs, unfathomable today, are the resonance of voices of bygone times. There is a collective memory of God in the human spirit, and it is this memory which is the main source of our faith." From Abraham Heschel's two-part essay "Faith", first published in volume 10 of *The Reconstructionist*, Nov. 3 & 17, 1944. For a later statement on faith, incorporating some of the original essay, see Abraham J. Heschel, *Man is Not Alone* 159-76 (1951).

⁷⁴ David Tracy, *Plurality and Ambiguity: Religion, Hermeneutics, Hope* 86 (1987).

⁷⁵ In Milan Kundera's *The Unbearable Lightness of Being* the narrator, referring to "the questions that had been going through Tereza's head since she was a child", says that "the only truly serious questions are ones that even a child can formulate. Only the most naive of questions are truly serious. They are the questions with no answers. A question with no answer is a barrier than cannot be breached. In other words, it is questions with no answers that set the limits of human possibilities, describe the boundaries of human existence." Milan Kundera, *The Unbearable Lightness of Being* 139 (1984).

⁷⁶ David Tracy, *The Analogical Imagination* 4 (1981). Tracy adds: "To formulate such questions honestly and well, to respond to them with passion and rigor, is the work of all theology. . . . Religions ask and respond to such fundamental questions . . . Theologians, by definition, risk an intellectual life on the wager that religious traditions can be studied as authentic responses to just such questions." Id.

⁷⁷ 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 Introduction, pt. 1. See also id. at chapter 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?

**The Morality of Human Rights:
A Nonreligious Ground?⁷⁸**

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 had died.

--Friedrich Nietzsche⁷⁹

There are many for whom Sarah's religious ground for the morality of human rights--her religious ground for insisting that every human being is has inherent dignity (Sarah says "is sacred") and is therefore inviolable--holds no appeal; for many of these, Sarah's ground holds no

⁷⁸ To forestall misunderstanding, let me emphasize: To doubt that there is an adequate nonreligious ground for the inviolability of the Other is not to doubt that a nonbeliever can affirm that the Other is inviolable--and can act accordingly. (Nor is to deny that a believer can act barbarically.) However, as the Polish philosopher Leszek Kolakowski has written: "When Pierre Bayle argued that morality does not depend on religion, he was speaking mainly of psychological independence; he pointed out that atheists are capable of achieving the highest moral standards . . . and of putting to shame most of the faithful Christians. That is obviously true as far as it goes, *but this matter-of-fact argument leaves the question of validity intact; neither does it solve the question of the effective sources of the moral strength and moral convictions of those 'virtuous pagans.'*" 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). This chapter is about what Kolakowski calls "the question of validity". See also Rist, n. #, at 267: "Although a 'moral saint' may exist without realist (and therefore religious) beliefs, yet his stance as a moral saint cannot be *justified* without recourse to realism."

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 has 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 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, n. #, at 81-82.

⁷⁹ [Nietzsche, *Thus Spake Zarathustra*, quoted in George Parkin Grant, *English Speaking Justice* 77 (1985).]

appeal precisely because it is *religious*. What ground can someone give who is not a religious believer and, so, rejects Sarah's and any other religious ground? (We could also ask what ground one can give who, though a religious believer, professes religious beliefs different from Sarah's--a Buddhist, for example.⁸⁰ But that's not the question that engages me here.) Can any nonreligious ground bear the weight of the claim, which both Sarah and the International Bill of Rights make, that every human being--even the Other--has inherent dignity and is therefore inviolable? In particular, is there 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."⁸¹ As Australian philosopher Raimond Gaita, who is an atheist,⁸² observes in the passage I've used as the epigraph for the preceding section of this chapter: "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 [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 [i.e., religious] resources we need to say it."

1

Glenn Tinder is skeptical that any nonreligious ground can support the claim that all human beings have inherent dignity (and are therefore inviolable):

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

⁸⁰ See, e.g., Abdullahi A. An-Na'im et al., eds., *Human Rights and Religious Values: An Uneasy Relationship?* (1995); Wm. Theodore de Bary & Tu Weiming, eds., *Confucianism and Human Rights* (1998); Dan Cohn-Sherbok, ed., *World Religions and Human Rights* (1992); Carrie Gustafson & Peter Juviler, eds., *Religion and Human Rights: Competing Claims?* (1999); John Kelsay & Sumner B. Twiss, eds., *Religion and Human Rights* (1994); LeRoy S. Rouner, ed., *Human Rights and the World's Religions* (1988); Max L. Stackhouse, *Creeds, Society and Human Rights* (1986); Arlene Swidler, ed., *Human Rights in Religious Traditions* (1982); Robert Traer, *Faith in Human Rights: Support in Religious Traditions for a Global Struggle* (1991)

⁸¹ See n. # and accompanying text.

⁸² See John Haldane, "The Greatest of These Is Love, as an Atheist Reminds Us," *The Tablet* [London], Dec. 9, 2000, at 1678 (reviewing Gaita's book).

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.⁸³

Is Tinder right? The point here is *not* that morality cannot survive the death of God. There is no one single morality; there are many moralities in the world. Nietzsche may have been right to see *a* morality, or *some* moralities, in the coffin at God's funeral, but not *every* morality. Nor is the point that one cannot be good unless one believes in God. Many people who do not believe in God are good, even saintly,⁸⁴ just as many people who believe in God--including many Christians, as Archbishop Desmond Tutu has recently reminded us--are not good.⁸⁵ The point is just that it is obscure what ground one who is not a religious believer can give for the claim that every human being has inherent dignity. It is especially obscure what ground a resolute atheist can give.

Imagine a cosmology according to which the universe is, finally and radically, meaningless⁸⁶--or, even if meaningful in some sense, not meaningful in a way hospitable to our

⁸³ Glenn Tinder, "Can We Be Good without God: The Political Meaning of Christianity," *Atlantic*, December 1989, at 69, 80 (passages rearranged and emphasis added). For Tinder's book-length treatment of the relevant issues, see Glenn Tinder, *The Political Meaning of Christianity: An Interpretation* (1989).

⁸⁴ Kristen Monroe's study of altruists and altruism is relevant here. See Monroe, n. #.

⁸⁵ See Desmond Tutu, quoted in Jim Wurst, "Archbishop Tutu Examines Link Between Religion and Politics," *U.N. Wire*, March 18, 2004 (reporting on 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.

⁸⁶ Bruce Ackerman has announced: "There is no moral meaning hidden in the bowels of the universe." Bruce A. Ackerman, *Social Justice in the Liberal State* 368 (1980). See also Bertrand Russell, *Mysticism and Logic* 47-48 (1917):

deepest yearnings for what Abraham Heschel called "ultimate relationship, ultimate belonging".⁸⁷ Consider, for example, Clarence Darrow's bleak vision (as recounted by Paul Edwards):

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* 169 (Walter Kaufmann & R.J. Hollingdale, trs., & Walter Kaufmann, ed., 1967).

⁸⁷ For the person deep in the grip of, the person claimed by, the problem of meaning, "[t]he cry for meaning is a cry for ultimate relationship, for ultimate belonging", wrote Heschel. "It is a cry in which all pretensions are abandoned. Are we alone in the wilderness of time, alone in the dreadfully marvelous universe, of which we are a part and where we feel forever like strangers? Is there a Presence to live by? A Presence worth living for, worth dying for? Is there a way of living in the Presence? Is there a way of living compatible with the Presence?" Heschel, *Who Is Man?*, n. #, at 75. See also Fyodor Dostoevsky, *The Brothers Karamazov* 235 (Norton ed. 1976): "For the secret of man's being is not only to live but to have something to live for. Without a stable conception of the object of life, man would not consent to go on living, and would rather destroy himself than remain on earth, though he had bread in abundance." (This is one of the Grand Inquisitor's statements in chapter 5 of Book Five.) Cf. W.D. Joske, "Philosophy and the Meaning of Life," in E.D. Klemke, ed., *The Meaning of Life* 248, 250 (1981) ("If, as Kurt Vonnegut speculates in *The Sirens of Titan*, the ultimate end of human activity is the delivery of a small piece of steel to a wrecked space ship wanting to continue a journey of no importance whatsoever, the end would be too trivial to justify the means."); Robert Nozick, *Philosophical Explanations* 586 (1981) ("If the cosmic role of human beings was to provide a negative lesson to some others ('don't act like them') or to provide needed food to passing intergalactic travelers

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."⁸⁸

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."⁸⁹

Where is there a place in a cosmological view like Darrow's or Weinberg's for the morality of human rights--for the conviction that all human beings have inherent dignity--to gain a foothold? For one who believes that the universe is utterly bereft of transcendent meaning, why--in virtue of what--does every human being have inherent dignity? Richard Posner apparently shares my 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?"⁹⁰ I'm inclined to concur in R.H.

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.").

⁸⁸ Paul Edwards, "Life, Meaning and Value of," 4 Encyclopedia of Philosophy 467, 470 (Paul Edwards, ed., 1967). Whether Clarence Darrow was in fact "one of the most compassionate men who ever lived" is open to question. For a revisionist view of Darrow, see Gary Wills, *Under God: Religion and American Politics*, chs. 8-9 (1990).

⁸⁹ 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," *New York Times Book Rev.*, Mar. 7, 1993, at 11 (reviewing, inter alia, Weinberg's book): "Reductionism [in physics] may be a fruitful research method, but it is a bleak philosophy. . . . If the world is but a collection of inert atoms interacting through blind and purposeless forces, what happens to . . . the meaning of life?"

⁹⁰ Posner, n. #, at 1687 (citing Thomas Nagel, *The Last Word* 130 (1997)). Cf. James Boyd White, "Talking about Religion in the Language of Law: Impossible but Necessary," 81 *Marquette L. Rev.* 177, 197-99 (1998) (explaining why he has difficulty understanding what one

Tawney's view (except that where Tawney says "all" morality, I would say something like "our" morality): "The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God."⁹¹ 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." Murphy continues: "[T]he idea that fundamental moral values may require [religious] convictions is not one to be welcomed with joy [by nonreligious 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.***"⁹² 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 human being,⁹³ but I doubt that sanctity is a concept that has a secure home outside those traditions.

who is not a religious believer might be saying in affirming the Declaration of Independence's insistence on the "equality" of all human beings).

⁹¹ J.M. Winter & D.M. Joslin, eds., R.H. Tawney's *Commonplace Book* 67 (1972). On Aug. 13, 1913, Tawney wrote, in his diary, the passage accompanying this note. Three days earlier, on Aug. 10, he quoted in his diary T.W. Price, Midland secretary of the Workers' Educational Association and lecturer at Birmingham University: "Unless a man believes in spiritual things--in God--altruism is absurd. What is the sense of it? Why shld [sic] a man recognize any obligation to his neighbor, unless he believes that he has been put in the world for a special purpose and has a special work to perform in it? A man's relations to his neighbors become meaningless unless there is some higher power above them both." Id. Cf. Dennis Prager, "Can We Be Good Without God?," 9 *Ultimate Issues* 3, 4 (1993): "If there is no God, you and I are purely the culmination of chance, pure random chance. And whether I kick your face in, or support you charitably, the universe is as indifferent to that as whether a star in another galaxy blows up tonight."

⁹² Jeffrie Murphy, "Afterword: Constitutionalism, Moral Skepticism, and Religious Belief," in Alan S. Rosenbaum, ed., *Constitutionalism: The Philosophical Dimension* 239, 248 (1988) (emphasis added).

⁹³ Gaita, n. #, at 5. I have trouble squaring what Gaita says in the passage accompanying this footnote, and in other passages I've quoted in this chapter, 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

Nietzsche asked: "Now suppose that belief in God has vanished: the question presents itself anew: 'who speaks?'"⁹⁴ 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.⁹⁵

2

The morality of human rights is broader than the claim that every human being is inviolable; according to the morality of human rights, every human being is inviolable *because* every human being has inherent dignity. However, one may want to claim that every human being is inviolable without claiming that every human being has inherent dignity (or, as Sarah

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.

⁹⁴ Nietzsche, *The Will to Power*, n. #, at 157.

⁹⁵ Arthur Allen Leff, "Unspeakable Ethics, Unnatural Law," 1979 *Duke L. J.* 1229, 1249. See also John T. Noonan, Jr., "Posner's Problematics," 111 *Harvard 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."

says, is sacred). What ground can one give for the claim that every human being is inviolable if one is not a religious believer--or if one is a religious believer but nonetheless wants to ground the claim on a nonreligious basis? John Finnis, a Roman Catholic who works within the Thomistic natural-law tradition,⁹⁶ "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 independent of . . . religious beliefs."⁹⁷ Does Finnis provide a *nonreligious* ground, if not for the morality of human rights, at least for the claim that every human being is inviolable, that no one should violate any human being?

In *Natural Law and Natural Rights*, Finnis argues that no one should act for the purpose of harming (one or another 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]."⁹⁸ Let's assume that to intentionally harm the well-being of another is to act contrary to the requirement of fundamental impartiality. Why is fundamental impartiality a requirement? Put another way: Why should I avoid acting contrary to the requirement? Until Finnis has answered this question, he has not specified the source of normativity--the source of the "should" in the claim that no one should violate any human being. (Again, this is what any ground for the claim that no one should violate any human being must do: specify the source of normativity.) The totality of Finnis' brief answer to this fundamental question is that it is *unreasonable* for me, who values my own well-being, to intentionally 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."⁹⁹ Let's put aside the possibility that being "reasonable" may not be one's overriding goal in life. Even on its own terms, Finnis' answer doesn't work. One may reply to Finnis: "My own well-being is not of more value *to whom* than the well-being of others?"¹⁰⁰ My

⁹⁶ See, e.g., John Finnis, *Natural Law and Natural Rights* (1980); John Finnis, *Aquinas: Moral, Political, and Legal Theory* (1998). 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 tradition . . ." Alan Wolfe, "The Intellectual Advantages of a Roman Catholic Education," *Chronicle of Higher Education*, May 31, 2002.

⁹⁷ Thomas W. Smith, "Finnis' Questions and Answers: An Ethics of Hope or Fear?," 40 *American J. Jurisprudence* 27, 29 (1995).

⁹⁸ John Finnis, *Natural Law and Natural Rights* 107 (1980).

⁹⁹ *Id.*

¹⁰⁰ 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.

own well-being--or the well-being of 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 to violate your well-being so as to serve my own well-being."¹⁰¹ In 1985, Jeffrey Goldsworthy made precisely this criticism of Finnis' argument in an essay in the *American Journal of Jurisprudence*.¹⁰² 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."¹⁰³ Finnis' failure does not inspire confidence that the resources of the natural-law tradition in which he participates are up to the challenge of providing a nonreligious ground for the claim that no one should violate any human being.¹⁰⁴

¹⁰¹ See Joyce, *The Myth of Morality*, n. #, at 126: "[E]ven 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." For Joyce's response--his persuasive response, in my judgment--to the claim that reasons are agent-neutral rather than agent-relative, see *id.* at 126-33. See also Brink, "A Puzzle about the Rational Authority of Morality," n. #, 18-22; Brink, "Self-Love and Altruism," n. #. Cf. Rorty, "Justice as a Larger Loyalty," n. #, at 19: "I see no point in saying that it is more rational to prefer one's neighbors to one's family in the event of a nuclear holocaust, or more rational to prefer leveling off incomes around the world to preserving the institutions of liberal Western societies. To use the word 'rational' to commend one's chosen solution to such dilemmas, or to use the term 'yielding to the force of the better argument' to characterize one's way of making up one's mind, is to pay oneself an empty compliment."

Terence Cuneo has observed, in correspondence, that my critique of Finnis presupposes an "internalist" (or "agent-relative") rather than an "externalist" (or "agent-neutral") account of reasons--in particular, of reasons for action. He then suggests that I "conditionalize" my critique: If Internalism is true and Externalism is false, then Finnis's and similar arguments fail. E-mail from Terence Cuneo to Michael Perry, Nov. 13, 2002. In my judgment, internalism *is* true and externalism *is* false. See Geach, n. #, at xix, 121-22.

¹⁰² J.D. Goldsworthy, "God or Mackie? The Dilemma of Secular Moral Philosophy," 1985 *American J. Jurisprudence* 43, 73-77. 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," 1996 *American J. Jurisprudence* 21.

¹⁰³ *Id.* at 75.

¹⁰⁴ A prominent secular argument for human rights is Alan Gewirth's. See Alan Gewirth, *Reason and Morality*, chs. 1-2 (1978); Alan Gewirth, *The Community of Rights*, ch. 1 (1996). Gewirth's argument has been extremely controversial, to say the least. See, e.g., Edward Regis,

I doubt that a natural-law morality of human rights can stand without theological support. Finnis is a religious believer, and we can easily imagine him providing theological support.¹⁰⁵ In particular, we can easily imagine Finnis endorsing Sarah's religious ground--or one very much like it. (Finnis might want to say, for example, that "my own well-being is not of more value *to God* than the well-being of others. I am not *more* sacred than other human beings.") But then Finnis's ground of human inviolability would be religious. "As they should have foreseen, 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 . . ."¹⁰⁶

3

John Finnis is one of the most important moral philosophers now teaching in an English-speaking law school.¹⁰⁷ Two other scholars fit the same profile: Ronald Dworkin and Martha Nussbaum. Has either Dworkin or Nussbaum done what Finnis has failed to do: provide a

ed., Gewirth's Ethical Rationalism (1984); Brian Barry, Theories of Justice 285-88 (1989). For a careful restatement and defense of Gewirth's argument, see Deryck Beyleveld, The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth's Argument to the Principle of Generic Consistency (1991). For a skeptical response to Beyleveld, see Marcus G. Singer, "Gewirth, Beyleveld, and Dialectical Necessity," 13 Ratio Juris 177 (2000); for Beyleveld's reply, see Deryck Beyleveld, "A Reply to Marcus G. Singer on Gewirth, Beyleveld and Dialectical Necessity," 15 Ratio Juris 458 (2002). Whether or not Gewirth's argument is sound, it bears emphasis that, as Garth Hallett has observed, "Gewirth does not argue that the [Principle of Generic Consistency] is true, but only that any agent who wishes to be rational must accept it." Garth L. Hallett, Greater Good: The Case for Proportionalism 135 (1995). Hallett then writes, in a footnote: "In *The Dialectical Necessity of Morality*, 15, Deryck Beyleveld makes this point more clearly than does Gewirth: 'Use of the dialectically necessary method implies that Gewirth is not attempting to establish the PGC itself as a truth. What he attempts to establish as a necessary truth is the proposition "A PPA [Prospective Purposive Agent] contradicts that it is a PPA if it does not accept/act in accordance with the PGC."' Id. at 184 n. 29.

¹⁰⁵ Finnis gestures in this direction in the final chapter of *Natural Law and Natural Rights*. See Finnis, *Natural Law and Natural Rights*, n. #, at 371-410 ("Nature, Reason, God"). See also John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (1991).

¹⁰⁶ Rist, n. #, at 259-60.

¹⁰⁷ Finnis teaches in two English-speaking law schools: Oxford University, where he is . . . , and the University of Notre Dame, where he is . . .

nonreligious ground, if not for the morality of human rights, at least for the claim that every human being is inviolable?¹⁰⁸ Let's look first at Dworkin.

In writing about abortion and euthanasia, Dworkin asserts that "[w]e almost all accept, as the inarticulate assumption behind much of our experience and conviction, that human life in all its forms is *sacred*. . . ." ¹⁰⁹ "For some of us," writes Dworkin, the sacredness of human life "is a matter of religious faith; for others, of secular but deep philosophical belief."¹¹⁰ According to Dworkin, "there is a secular as well as a religious interpretation of the idea that human life is sacred[;]"¹¹¹ the conviction that every human being (or, as Dworkin says, "life") is sacred "may be, and commonly is, interpreted in a secular as well as in a conventionally religious way."¹¹²

Dworkin elaborates: "[T]he nerve of the sacred lies in the value we attach to a process or enterprise or project rather than to its results considered independently from how they were produced."¹¹³ The sacredness of human beings is rooted, for nonreligious persons, in two basic facts about human beings. First, every human being is "the highest product of natural creation. . . . [T]he idea that human beings are special among natural creations is offered to explain why it is horrible that even a single human individual life should be extinguished."¹¹⁴ Second, "each developed human being is the product not just of natural creation, but also of the kind of deliberative human creative force that we honor in honoring art."¹¹⁵ "The idea that each individual human life is inviolable is therefore rooted . . . in two combined and intersecting bases of the sacred: natural *and* human creation."¹¹⁶

¹⁰⁸ Like Finnis, Dworkin, and Nussbaum, I teach in a university law school. This no doubt has something to do with the fact that my focus in this chapter is on moral philosophers who teach in university law schools.

¹⁰⁹ Ronald Dworkin, "Life Is Sacred. That's the Easy Part," New York Times Magazine, May 16, 1993, at 36.

¹¹⁰ *Id.*

¹¹¹ Ronald Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* 195 (1993).

¹¹² *Id.* at 25.

¹¹³ *Id.* at 78.

¹¹⁴ *Id.* at 82. See *id.* at 81-84.

¹¹⁵ *Id.* at 82.

¹¹⁶ *Id.* at 83.

The life of a single human organism commands respect and protection, then, no matter in what form or shape, because of the complex creative investment it represents and because of our wonder at the . . . processes that produce new lives from old ones, at the processes of nation and community and language through which a human being will come to absorb and continue hundreds of generations of cultures and forms of life and value, and, finally, when mental life has begun and flourishes, at the process of internal personal creation and judgment by which a person will make and remake himself, a mysterious, inescapable process in which we each participate, and which is therefore the most powerful and inevitable source of empathy and communion we have with every other creature who faces the same frightening challenge. The horror we feel in the willful destruction of a human life reflects our shared inarticulate sense of the intrinsic importance of each of these dimensions of investment.¹¹⁷

For Sarah, every human being is sacred in this *religious* sense: Every human being is a child of God and a sister/brother to oneself. For Dworkin, every human being is sacred in this *nonreligious* sense: Even if, *pace* Darrow and Weinberg, the universe is nothing but a cosmic process bereft of ultimate meaning, "each human being" is nonetheless, according to Dworkin, "a creative masterpiece"¹¹⁸--a masterpiece of "natural *and* human creation."¹¹⁹ Sarah gave a theological explanation for the connection between the premise that every human being is sacred (or has inherent dignity) and the conclusion that no one should violate any human being. What explanation does Dworkin give? How does he specify the source of normativity? How does Dworkin get from "every human being is a creative masterpiece" to "no one should violate any human being"? Recall Dworkin's statement that "the nerve of the sacred lies in the value we attach to a process or enterprise or project rather than to its results considered independently from how they were produced."¹²⁰ Recall too his statement that "[t]he life of a single human organism commands respect and protection . . . because of our wonder at the . . . processes that produce new lives from old ones . . ."¹²¹ The nonreligious source of normativity, for Dworkin, is the value "we" attach to every human being understood as a creative masterpiece; it is "our" wonder at the processes that produce new lives from old ones.

But to whom is Dworkin referring with his "we" and "our"? Imagine someone saying to a Nazi: "This Jew, too, no less than you, is a creative masterpiece, and we attach great value to her. No one, therefore, should violate her." The Nazi can reply: "Who is this 'we'? *You* attach great value to the Jew. *We*, however, do not; we attach no value to her. Even if we assume, for

¹¹⁷ Id. at 84.

¹¹⁸ Id. at 82.

¹¹⁹ Id. at 83.

¹²⁰ Id. at 78.

¹²¹ Id. at 71.

the sake of discussion, that the Jew, too, is a creative masterpiece--a creative masterpiece in the sense and for the reason you've indicated--we would still attach no value to her. Indeed, given what else we believe about Jews, we would still disvalue her." The obvious problem with Dworkin's specification of the source of normativity--and, therefore, with his nonreligious ground--is that Dworkin assumes a consensus among human agents that has never existed: Many people do not attach much or even any value to every human being; indeed, many people disvalue some human beings. Moreover, even if these people were to accept Dworkin's claim that every human being is a creative masterpiece--a masterpiece of "natural *and* human creation"--this would not necessarily change anything: One can accept that someone (or something--a book, e.g.) is a creative masterpiece, in Dworkin's secular sense, without attaching much value to her. Dworkin's specification of the source of normativity--his reliance on what "we" value--is a kind of whistling in the dark.

4

Martha Nussbaum, a moral philosopher deeply engaged by issues of human rights,¹²² specifies substantially the same source of normativity that Dworkin specifies and thereby runs into the same problem. Nussbaum writes that "the good of other human beings is an end worth pursuing in its own right, apart from its effect on [one's] own pleasure or happiness."¹²³ (It is clear, in her essay, that by "other human beings" Nussbaum means not just *some* other human beings but *all* other human beings.) But *why* is the good of other human beings an end worth pursuing in its own right? What, for Nussbaum, is the source of normativity--the source of the "should" in the claim that one should pursue the good of other human beings and therefore, at a minimum, not violate any human being? Nussbaum reports, in the final paragraph of her essay, that "it seems to be a mark of the human being to care for others and feel disturbance when bad things happen to them."¹²⁴ For Nussbaum, then, the source of normativity is this care/feeling, which, according to Nussbaum, is rooted in "the basic social emotion" of "compassion";¹²⁵ the source of normativity is our "care" for all human beings and our "feel[ing of] disturbance when bad things happen to them."

Therefore, the subversive question "Who is this 'we'?" again intrudes. Did Nazis care about Jews and feel disturbance when bad things happened to--indeed, were inflicted on--them?

¹²² [cites.]

¹²³ Martha C. Nussbaum, "Skepticism about Practical Reason in Literature and the Law," 107 Harvard L. Rev. 714, 718 (1994).

¹²⁴ Id. at 744. Michael Ignatieff seems to follow much the same approach as Nussbaum. See Michael Ignatieff, *Human Rights as Politics and as Idolatry* 88-89 (2001).

¹²⁵ See also Martha C. Nussbaum, "Compassion: The Basic Social Emotion," 1996 Social Philosophy & Policy 27 (1996); Martha C. Nussbaum, "Compassion and Terror," *Daedalus*, Winter 2003, at 10.

We could ask the same question about so many other pairings: Turks/Armenians in the early part of the twentieth century, for example, Serbs/Muslims and Hutus/Tutsis in the last decade of the century. It is certainly a mark of the normal human being to care for *some* other human beings--for example, and especially, the members of one's own family or clan or tribe. But it is certainly not a mark of all (normal) human beings--it is not a mark of "the human being" as such--to care for *all* other human beings and to feel disturbance when bad things happen to them.¹²⁶ Listen to Claude Lévi-Strauss:

[T]he concept of an all inclusive humanity, which makes no distinction between races or cultures, appeared very late in the history of mankind and did not spread very widely across the face of the globe. . . . For the majority of the human species, and for tens of thousands of years, the idea that humanity includes every human being on the face of the earth does not exist at all. The designation stops at the border of each tribe, or linguistic group, sometimes even at the edge of a village. So common is the practice that many of the peoples we call primitive call themselves by a name which means "men" (or sometimes . . . "the good ones," the "excellent ones," the "fully complete ones"), thus implying that the other tribes, groups, and villages do not partake in human virtue or even human nature, but are, for the most part, "bad people," "nasty people," "land monkeys," or "lice eggs." The often go so far as to deprive the stranger of any connection to the real world at all by making him a "ghost" or an "apparition." Thus curious situations arise in which each interlocutor rejects the other as cruelly as he himself is rejected.¹²⁷

As if to affirm Lévi-Strauss' point, Richard Rorty has contrasted "the rather rare figure of the psychopath, the person who has no concern for any human being other than himself[.]" to "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

¹²⁶ Not everyone is an altruist--indeed, few are--and those who are strike us as remarkable and exemplary, even saintly, human beings. See Monroe, n. #.

¹²⁷ Claude Lévi-Strauss, *Structural Anthropology*, vol. 2, 329 (Monique Layton, tr., 1983). See also Finkelkraut, n. #, at 5-24.

To accept the idea that all people in the world form a single humanity is not . . . the same thing as recognizing that they all belong to the human species. What distinguishes mankind from most other animals is precisely the fact *that he does not identify with others of his kind*. A cat for a cat has always been another cat. A man, on the other hand, must fulfill a set of Draconian conditions or be crossed off the list, without any recourse, of those counted as members of human society. From the very beginning, man jealously reserved the title of man for only those identified with his own community.

range, the ones he or she thinks of as pseudohumans."¹²⁸ According to Rorty, moral philosophy, to its detriment, has "systematically neglected" the latter in favor of the former.¹²⁹ (Rorty's "much more common case" is also much more common than the person at the other extreme from the psychopath: someone 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".)

The consensus (or human sentiments) on which Nussbaum relies (we "care for others and feel disturbance when bad things happen to them"), like the substantially similar consensus on which Dworkin relies ("the value we attach to" all human life), is, alas, a phantom. And no phantom can begin to fill the void left by the death of God. Nietzsche declared: "Naiveté: as if morality could survive when the *God* who sanctions it is missing! The 'beyond' absolutely necessary if faith in morality is to be maintained."¹³⁰ Now, I am not a professional philosopher; I am a law professor. But it does seem to me that Philippa Foot is right on target when she says about much contemporary secular moral philosophy: "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 . . ."¹³¹

¹²⁸ Rorty, "Human Rights, Rationality, and Sentimentality," n. #, at 123-24. Cf. Richard Joyce, "The Fugitive Thought," 34 J. Value Inquiry 463, 470:

[A] thesis of natural sympathy is only sensible when this sentiment is presented as a natural disposition or propensity. To present the-good-of-fellows as the object of a desire which all people have, a desire from which no one could escape, is to divest the thesis of much of its attraction. We are all too familiar with counter-examples. Besides, we may credit the wielder of the ring of Gyges with all sorts of non-selfish desires. Perhaps his caring for the interests of his friends, family and community is not motivated by self-interest at all. But none of this will be sufficient for grounding imperatives proscribing his inflicting harm upon the inhabitants of the neighboring valley.

¹²⁹ Id.

¹³⁰ Nietzsche, *The Will to Power*, n. #, at 147. Commenting on "anthropocentrism, [which] by abolishing all horizons of significance, threatens us with a loss of meaning and hence a trivialization of our predicament", Charles Taylor has written: "At one moment, we understand our situation as one of high tragedy, alone in a silent universe, without intrinsic meaning, condemned to create value. But at a later moment, the same doctrine, by its own inherent bent, yields a flattened world, in which there aren't very meaningful choices because there aren't any crucial issues." Charles Taylor, *The Ethics of Authenticity* 68 (1991).

¹³¹ Philippa Foot, *Natural Goodness* 103 (2001). Cf. Alan Levine, "Introduction: The Prehistory of Toleration and Varieties of Skepticism," in Alan Levine, ed., *Early Modern Skepticism and the Origins of Toleration* 1, 4 (1999): "Far from attempting to justify liberalism to outsiders or on first principles, Rorty and Rawls prefer not to take up the challenge. Content

Is there a way to revise the sort of nonreligious argument that Dworkin and Nussbaum each make (each in his/her own way)--in particular, is there a way to specify the source of normativity--so that the argument is not vulnerable to the Nazi's insistent "Who is this 'we'?"?

Recall that according to Sarah, we human beings are created by God to love one another--and to love one another not just now, in our earthly life, but forever. The most fitting way of life for us human beings, therefore--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 are persons who "love one another just as I have loved you." By becoming such persons, we fulfill--we perfect--our created nature and thereby achieve our truest, deepest, most enduring happiness. That fact,

to harmonize our preexisting opinions, they do not and cannot address the fundamental challenges that Nietzsche, for example, poses."

Finnis, Dworkin, and Nussbaum are not Kantian or neo-Kantian moral philosophers. Frances Kamm, however, is one of the most important contemporary neo-Kantian philosophers. See F.M. Kamm, *Morality, Mortality: Death, and Whom to Save from It* (1993); Frances Myrna Kamm, *Morality, Mortality (Vol. II): Rights, Duties, and Status* (1997). Unfortunately, Kamm fails even to address the question why every human being is inviolable. In an otherwise laudatory review of a book by Kamm, philosopher Jeff McMahan writes:

The burden of the third and final part of the volume is to explain why it is generally not permissible for one to engage in killing even when, by doing so, one could prevent a greater number of killings from occurring. Here, Kamm's central contention is that people must be regarded as inviolable, as ends-in-themselves. . . . [Kamm's] arguments often raise difficult questions that the book fails to address. A conspicuous instance of this is Kamm's failure to identify the basis of our moral inviolability. 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.

McMahan, n. #, at 31 (reviewing Kamm, *Morality, Mortality (Vol. II): Rights, Duties, and Status*).

Christine Korsgaard is another of the most important contemporary neo-Kantian moral philosophers. See Christine M. Korsgaard, *Creating the Kingdom of Ends* (1996); Christine M. Korsgaard with G.A. Cohen, Raymond Geus, Thomas Nagel, and Bernard Williams, *The Sources of Normativity* (Onora O'Neill, ed., 1996). Unlike Kamm, Korsgaard does address the question of "the basis of our alleged inviolability". For a critique of Korsgaard's argument, which she presents in *The Sources of Normativity*, see Joyce, *The Myth of Morality*, n. #, at 123-33. Joyce's critique is, in my judgment, persuasive.

coupled with our commitment to our own authentic well-being, is, according to Sarah, the source of normativity.

An atheist or agnostic might respond to Sarah along these lines: "I agree with some of what you say: Like you, I believe that by becoming persons who love one another, to that extent we fulfill our nature and thereby achieve our truest, deepest, most enduring happiness. But I disagree with you that we human beings have a 'created' nature: a nature created by God. I believe that we have only an *evolved* nature: the nature that evolution has bequeathed us. Nonetheless, given the nature that blind evolution has fortuitously bequeathed us, 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. This fact, coupled with our commitment to our own authentic well-being, is the source--the nonreligious source--of normativity. True, I can't prove that human beings have the evolved nature I believe they have, though it is a matter of conviction for me that they do have it. (Look at all those fulfilled other-lovers: They have a serenity and centeredness that cannot fail to impress.) However, I am no worse off in this regard than you are, Sarah: You can't prove that human beings have the created nature you believe they have; nonetheless, it is a matter of conviction for you that they do have it."¹³²

This nonreligious position, unlike the sort of nonreligious position that Dworkin and Nussbaum each (in his/her own way) espouse, is not vulnerable to the Nazi's "Who is this 'we'?" retort, because the position neither presupposes nor asserts that "we" do in fact attach value to all human life (Dworkin) or that "we" do in fact "care for others and feel disturbance when bad things happen to them" (Nussbaum). (This position is vulnerable to disbelief by the Nazi--but so, too, is Sarah's religious position. What position isn't?) In my judgment, the fundamental problem with this position, 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 "becoming 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 it has whatever plausibility or implausibility it has because of its embeddedness in--a broader family of religious claims, especially the claims that (a) every human being is a beloved child of God and a sister/brother to oneself and (b) human beings are created by God to love one another. By contrast, it is a presupposition of the nonreligious position that 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."¹³³ Far from being created "in the image of God",¹³⁴ human beings are merely the unplanned,

¹³² I am grateful to Chris Eberle and Steve Smith for suggesting this position to me.

¹³³ See n. # and accompanying text.

¹³⁴ See n. #.

unintended yield of random mutation and natural selection. But, lo and behold, it just happens that the evolved nature of human beings 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. This free floating nonreligious position seems so ad hoc, as if those who espouse the position were determined to cleave to a consoling belief about human nature long after the religious vision in which the belief has traditionally been embedded has ceased to have, for them, credibility.¹³⁵ Now, few would deny that the social nature of human beings is such that a person who is part of a network of loving family and friends is better off in consequence thereof than one who is not. But this is a far cry from claiming that the evolved nature of human beings is

¹³⁵ 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." E-mail from Steven Smith to Michael Perry, Sept. 16, 2002. See also Michael Ruse, "Evolutionary Ethics: A Defence," in Holmes Rolston III, ed., *Biology, Ethics, and the Origins of Life* 93, 104-05 (1995); H. Allen Orr, "Darwinian Storytelling," *New York 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.

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.¹³⁶

In any event, and for whatever reasons, the nonreligious position I have sketched here is not a position that either Dworkin or Nussbaum espouses. So far as I am aware, it is not a position that any contemporary secular moral philosopher has advanced. Is this some evidence of the implausibility of the position?¹³⁷

¹³⁶ Cf. Rorty, "Human Rights, Rationality, and Sentimentality," n. #, at 123-24 (contrasting "the rather rare figure of the psychopath, the person who has no concern for any human being other than himself[,]" to "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").

If, like Sarah, one believes that every human being is truly sacred--truly a beloved child of God and a sister/brother to oneself--and that our created nature is truly fulfilled by becoming persons who "love another just as I have loved you," then one also believes that to act contrary to God's creation is to violate no less a reality than God. (If I violate your beloved children, do I not violate you as well as your children?) By contrast, if one believes neither in God nor, therefore, in the metaphysical sacredness of every human being, but does believe that our evolved nature is fulfilled by becoming persons who love one another, then one believes that to act contrary to one's nature is violate . . . what? Evolution? To speak of "violating" evolution is surely to speak metaphorically: How does one "violate" evolution? Sarah says: "In violating the Jews, the Nazis violated God's creation and, therefore, God." What does Sarah's interlocutor say? That in violating the Jews, the Nazis acted contrary to blind evolution?

¹³⁷ I have suggested here that there is no nonreligious (secular) ground for the claim that every human being has inherent dignity (and is therefore inviolable)--or for the claim that every human being is inviolable, that no one should violate any human being. But this is not to deny that there are secular reasons--self-regarding secular reasons--for wanting the law, including international law, to protect some rights (rights-claims). For example, there are self-regarding secular reasons for wanting the law to protect rights that are constitutive of democratic government, like the right to freedom of speech. As U.S. Secretary of State Warren Christopher explained in an address to the World Conference on Human Rights in June 1993: "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* xix (2002) ("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."); William W. Burke-White, "Human

Rights and National Security: The Strategic Connection," 17 *Harvard Human Rights J.* 249 (2004). Cf. Jerome J. Shestack, "An Unsteady Focus: The Vulnerabilities of the Reagan Administration's Human Rights Policy," 2 *Harvard Human Rights Yearbook* 25, 49-50 (1989) (listing several reasons that should "motivate an administration to afford human rights a central role in United States foreign policy as a matter of national interest"). However, a self-regarding rationale for protecting human rights may bear less weight than some think. See Richard B. Bilder, "Human Rights and U.S. Foreign Policy: Short-Term Prospects," 14 *Virginia J. International 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."

**Does It Matter If There's No Nonreligious Ground?
Rorty's Call to Abandon "Human Rights Foundationalism"**

Richard Rorty would certainly reject the position on which I've just commented, because he would reject any position that relies on the idea of *human* nature, including one, like Nussbaum's, that relies on the idea of *human* sentiments. Rorty denies what, according to Rorty,

historicist 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?"¹³⁸

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."¹³⁹ In his affirmation of human rights, Rorty does rely on sentiments, but not on *human* sentiments, the existence of which he denies. Rather, 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".¹⁴⁰ 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*?'"¹⁴¹

Earlier I asked what ground one who is not a religious believer might try to provide for the morality of human rights--or, at least, for the claim that every human being is inviolable. Rorty is not a religious believer; his answer: *Don't bother*. Rorty recommends that we abandon what he calls "human rights foundationalism",¹⁴² which, in Rorty's estimation, has proven a futile project.¹⁴³ Human rights foundationalism is not merely futile; worse, it is "outmoded".¹⁴⁴ There

¹³⁸ Richard Rorty, *Contingency, Irony, and Solidarity* xiii (1989).

¹³⁹ Id.

¹⁴⁰ Rorty, "Human Rights, Rationality, and Sentimentality," n. #, at 126.

¹⁴¹ Bernard Williams, "Auto-da-Fé," *New York Rev.*, Apr. 28, 1983, at 33.

¹⁴² Rorty, "Human Rights, Rationality, and Sentimentality," n. #, at 116.

¹⁴³ See, e.g., id. at 124-25: "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

is, Rorty suggests, a better project for those of us who embrace the cause of human 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.¹⁴⁵ 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,"¹⁴⁶ a process in which we tell "sad and sentimental stories".¹⁴⁷ Rorty suggests that

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."

¹⁴⁴ Id. at 116.

¹⁴⁵ Id. at 117. See id. at 117-18. See also Rorty, *Contingency, Irony, and Solidarity*, n. #, ch. 9 ("Solidarity"). In this regard, Rorty stands in stark contrast to John Paul II, who is a religious defender of the morality of human rights, and to Noam Chomsky, a secular defender. See Noam Chomsky, *For Reasons of State* 404 (1973):

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.

See also John Paul II, *Veritatis Splendor*, 23 *Origins* 297, 314 (1993):

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.

¹⁴⁶ Rorty, "Human Rights, Rationality, and Sentimentality," n. #, at 122.

¹⁴⁷ Id. at 119.

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.¹⁴⁸

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 but violated, is not that our local ("Eurocentric") sentiments are offended. The fundamental wrong done 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'."¹⁴⁹) 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 that one transgresses whenever one violates the inherent dignity of 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, aren't we coercing and killing in the name of nothing but our Eurocentric 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.'"¹⁵⁰

Against the background of Rorty's comments, let us ask: Should we--we who embrace the cause of human rights--abandon "human rights foundationalism"; should we abandon the project of

¹⁴⁸ Rorty, "Justice as a Larger Loyalty," n. #, at 19-20.

¹⁴⁹ Jean E. Hampton, *The Authority of Reason* 120 (Richard Healey, ed., 1998). Thanks to George Wright for calling this passage to my attention.

¹⁵⁰ Richard Rorty, *Consequences of Pragmatism* xlii (1982).

trying to ground, whether on religious or nonreligious premises, the claim that each and every human being is inviolable (either because, as the morality of human rights holds, each and every human being has inherent dignity or for some other reason)? If we were to abandon the project of trying to ground the claim that no one should violate any human being, what would we then be left with?

This is what we would be left with: groundless human-rights-claims.¹⁵¹ Or, more accurately, we wouldn't be left with human-rights-claims at all; we would be left with human-

¹⁵¹ Another thing we would be left with is a morality based on rational self-interest. But such a morality is too slender a reed to bear the weight of the human-rights-claims that we who embrace the cause of human rights want to make. David Gauthier's *Morals By Agreement* (1987), which is an example of such a morality, is illustrative. (Cf. Robert Sugden, "The Contractarian Enterprise," in David Gauthier & Robert Sugden, eds., *Rationality, Justice and the Social Contract: Themes from Moral By Agreement* 1, 8 (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 Peter Vallentyne, ed., *Contractarianism and Rational Choice: Essays on David Gauthier's Moral By Agreement* 323, 330 (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 has written that *Morals By Agreement* "is an attempt to challenge Nietzsche's prescient remark, 'As the will to truth . . . gains self-consciousness . . . morality will gradually

rights-preferences rooted in human-rights-sentiments. ("When the secret police come . . .") How much weight these sentiments and preferences would be able to bear--and for how long--is an open question. Listen to the Czech 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?¹⁵²

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 Canadian J. Philosophy 385, 385 (1988). In the end, however, Gauthier does not challenge Nietzsche so much as he embraces a Nietzschean conception of justice. Nietzsche wrote: "Justice (fairness) originates among those who are approximately *equally powerful*, as Thucydides . . . comprehended correctly. . . . [J]ustice is repayment and exchange on the assumption of an approximately equal power position. . . . Justice naturally derives from prudent concern with self-preservation; that means, from the egoism of the consideration: 'Why should I harm myself uselessly and perhaps not attain my goal anyway?'" Friedrich Nietzsche, "All Too Human," in Basic Writings of Nietzsche 148 (Walter Kaufmann, tr., 1973). I suspect that if we abandon the claim that all human beings are inviolable, all we will be left with is a Nietzschean morality that not only cannot support, but that is deeply hostile to, the human-rights-claims that we who embrace the cause of human rights want to make.

¹⁵² Czeslaw Milosz, "The Religious Imagination at 2000," New Perspectives Quarterly, Fall 1997, at 32. Cf. Gaita, n. #, at xviii-xix:

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

Perhaps they who have no ground--who find any religious ground implausible but can discern no plausible nonreligious ground--will want to say: "I have reached bedrock and this is where where my spade is turned."¹⁵³ But, still, this question intrudes: If, as their bedrock conviction holds, the Other, *even the Other*, truly *is* inviolable, what *else* must be true; *what must be true for it to be true that the Other is inviolable?* This question brings us back to something I said near the beginning of this chapter: The morality of human rights is, for many secular thinkers, problematic, because it is difficult--perhaps to the point of impossible--to align with one of their reigning intellectual convictions, what Bernard Williams called "Nietzsche's thought": "[T]here is, not only no God, but no metaphysical order of any kind . . ."¹⁵⁴

As I emphasized earlier: The point is not that morality cannot survive the death of God. There is no one single morality; there are many.¹⁵⁵ The serious question is whether the morality constituted by the claim that each and every human being is inviolable--which includes any morality constituted by the morality of human rights--can survive the death (or deconstruction) of God.¹⁵⁶ (Was it such a morality that Nietzsche saw in the coffin at God's funeral?) Nietzsche's thought and the morality of human rights are two of the most profound, and

¹⁵³ Ludwig Wittgenstein, *Philosophical Investigations*, sec. 217 (1953), quoted in Hilary Putnam, *The Many Faces of Realism* 85 (1987).

¹⁵⁴ See n. #.

¹⁵⁵ Including, for example, Gauthier's Nietzschean morality. See n. #.

¹⁵⁶ 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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profoundly subversive, ideas of our time. Moreover, each is subversive of the other. Which is more likely to prevail?