

**TRUTH, POLITICS,
AND UNIVERSAL
HUMAN RIGHTS**



JANET HOLL MADIGAN



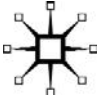
Truth, Politics, and Universal Human Rights

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Janet Holl Madigan

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*To my children, David, Joseph,
Dominic, Andrew, and Maria,
Fight the good fight; finish the race;
keep the faith. (2 Tim. 4:6)*

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Introduction

None can love freedom heartily, but good men; the rest love not freedom, but license.

—John Milton

Rights discourse is like respiration in the American body politic. Rights are so integral to our understanding of citizenship that invoking them is nearly as reflexive as breathing. Our nation was founded on the principle of natural rights—the idea that because human beings have an inviolable worth that is logically prior to the establishment of government, the most important rights are recognized, rather than conferred. All other positive rights, such as those enumerated in the Constitution, are seen as ultimately having their source in the basic natural rights of life, liberty and the pursuit of happiness.

Due to the importance of natural rights to our political culture, a certain linguistic carelessness which employs rights terminology as a shorthand way to speak about what is morally right, and a sense among the citizenry that the government ought to provide them with what is good, we find today that almost any issue of social importance is couched in the language of rights. The law, as the protector of such rights, is therefore seen as essential to the achievement of a good life. And yet, we need only peruse the daily newspaper, sample the offerings of television and cinema, or consult the typical college professor or recent Supreme Court ruling to discern the attitude that the human dignity upon which natural rights are founded is so indefinable and open-ended that the law must avoid any pretense whatsoever of acting as a moral guide in the conduct of human life. The founding principles of our nation are increasingly considered to be not life and liberty, but rather liberty and life. Autonomy is regarded as *the* fundamental right from which all other rights necessarily flow. Life itself, once regarded as

the law's chief occupation, is now thought to be at the service of personal freedom. The individual person, who was once the focus of the law's protection, is now at risk of being subsumed within a greater concern for rights themselves. Thus, modern man will easily "proclaim his social sympathy and strike a militant posture in defense of rights, but he can no longer explain why that biped who conjugates verbs should be the bearer of 'rights.'"¹ In our relentless search for autonomy, we have lost our sense of what it means to be human. This fact is most salient in the field of bioethics, where the very definition of man is continuously altered to justify increasingly ambitious attempts to exert human control over life and death.

The ideal of untrammelled individual autonomy that is waved like a flag nearly everywhere today grows out of a worldview which supposes that objective principles of right and wrong do not exist, or are irrelevant to the conduct of human life. Thus, it is supposed, there are no ultimate limits that need to be respected, and man is absolutely free to make of himself whatever he likes. But we should think very carefully before pledging our allegiance to such a view. What is to be gained by crossing the line between recognizing the inviolable moral worth of the individual, and holding the individual in such high regard that he becomes the source of value itself? Man's unbridled conquest of nature culminates in the idea that the last frontier to be conquered is *human* nature. But once this battle is won, we must ask with C. S. Lewis, "Who, precisely will have won it?" For "the power of Man to make himself what he pleases means the power of some men to make other men what *they* please. ... There neither is nor can be any simple increase of power on Man's side. Each new power won *by* man is a power *over* man as well. Each advance leaves him weaker as well as stronger."²

Once we eschew the objective values that gave meaning to the words "good" and "evil," and presume that their meaning is a matter of personal opinion, the result is necessarily a society where the parameters of humanity and moral worth are set by those with the power to do so. But then, by what principle are the powerful to decide what is good? In fact, "At the moment of Man's victory over Nature, we find the whole human race subjected to some individual men, and those individuals subjected to that in themselves which is purely 'natural'—to their irrational impulses. Nature, untrammelled by values, rules the Conditioners and, through them, all humanity. Man's conquest of Nature turns out, in the moment of its consummation, to be Nature's conquest of Man."³

Asserting rights outside the context of man's integral connection to both society and truth results not in man's liberation, but in the exploitation of the weaker elements of society by the stronger, who are but slaves themselves to their own unchecked appetites.

In *The Republic*, Socrates suggests that he and his young interlocutors move their discussion of justice from the level of the individual to that of the city, which being larger, will make justice "easier to observe closely" (369a). In like fashion, this book looks to the existence of universal human rights as an example writ large of the relationship between the person, society, and objective truth. To think about the meaning of natural rights on the international level is necessarily to consider them in the most fundamental sense.

The concept of human rights represents an entirely new principle in world politics in its assumption that individuals, not just states, are the proper subject of international law. The Universal Declaration of Human Rights was written largely in reaction to Nazi Germany's total disregard for objective moral principles, in the hope of providing a moral basis for judging the state's treatment of the individual. Unlike America's founding document, the Declaration of Independence, the Universal Declaration was intentionally written without reference to a Creator in order to recognize in secular (read "nondenominational") terms the objective moral principles necessary to the just ordering of the relationship between citizen and state. Even at the time of its creation, the Declaration was challenged by those who contended that the values expressed therein did not represent universal values. This debate has only grown over time, and today academic journals, library shelves, and UN documents are crammed with various explanations of the universality of human rights. Within this camp is another debate regarding which specific human rights are paramount. Regardless of the various ways in which they are defined, human rights are essentially thought to represent the inviolable moral worth, or dignity of the human being.

Most present day defenders of universal human rights, however, are not philosophically equipped to support their case, since they are attempting to articulate a vision of universal human nature independent of objective moral principles. They cannot justify the universality of human rights insofar as they insist on defining them outside of the conceptual universe from which such rights derive their meaning. In other words, the dominant arguments for universality are themselves relativistic and incapable of supporting their own tenets. They do not provide

the hoped-for morally “neutral” explanation of human dignity, but rather a new moral philosophy altogether which upholds personal autonomy as the highest good. Thus, the current philosophical justifications for universal human rights, pursued to their logical conclusions, actually undermine the idea of human dignity. They threaten to replace the “hard,” obvious tyranny, which human rights language was devised to combat, with a “soft” tyranny—less discernible and therefore, perhaps, all the more insidious.

Despite this, the very existence of the Universal Declaration of Human Rights and the general respect with which the idea of human rights is regarded does tell us something about the relationship between humanity and the world. The struggle to recognize a natural human dignity that exists apart from government fiat shows that our deepest yearnings are for a good beyond the political realm. But in what does our dignity reside? Starting with the assumption that ontological questions are too controversial to be useful in articulating a vision of human rights, modern defenders of universal human rights take man himself as the highest good. Seeking transcendence without truth, mankind worships itself at the expense of the weakest elements of society. The person is understood not as the human being simply, but as the autonomous human. The result is nothing more than a travesty of authentic human rights—a high-minded device for legitimizing the interests of the strong.

How did we get to this point? What can explain our philosophical impoverishment when it comes to understanding human dignity in a way that is not subject to whim, and how can we find our way out of this dilemma? Such questions call for a closer look into the relationship between the individual, truth, and the political order. The ancient philosophers upheld the importance of truth, sometimes at the expense of individual happiness; moderns focus on the happiness of the individual to the point of disregard for truth. Spanning this yawning gap is the advent of Christianity, which upholds both the human person and objective truth in equal measure. Modern rights philosophy properly begins with Grotius and Locke, who, in reacting to the gauntlet of political realism tossed down by Machiavelli, and to Christianity itself, construct a political philosophy that is ultimately divorced from the idea of objective good. This leads inevitably to our current crisis of understanding in human rights.

The logic of natural law is the only anchor capable of keeping human rights from bobbing aimlessly about in a sea of meaninglessness.

If truth does not exist, neither do human rights. We must therefore reconsider the question of human rights from the perspective of natural law. Using St. Thomas as a guide, this book ponders the meaning of human rights from the standpoint of an ordered universe. From this vista, it is apparent that if human rights are to be based in anything other than the raw exercise of power, there can be no human “right” to abortion.

It may well be that all of the goods that are enumerated in the Universal Declaration of Human Rights—such as the right to work, leisure, health care, material comfort, and even the right to a democratic form of government—are not really rights in the proper sense of the term. But it is clear that we cannot plausibly suggest that these goods nevertheless *ought* to be provided without first recognizing that human beings are integrally tied to one another as part of an ordered whole.

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Part I

*Universal Human Rights and the
Impoverishment of Moral Discourse*

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Never knowing where we're going,
We can never go astray.

From "Evolutionary Hymn," by C. S. Lewis

On December 10, 1948, the United Nations General Assembly, without a single dissenting vote, adopted the Universal Declaration of Human Rights. "The mightiest nations on earth bowed to the demands of smaller countries for recognition of a common standard by which the rights and wrongs of every nation's behavior could be measured."¹ It challenged the idea that the conduct of a sovereign state toward its citizens was strictly its own business. It heralded the fall of colonial empires and influenced numerous postwar constitutions, including those of Germany, Japan, and Italy. It inspired the international human rights activists who try to hold governments accountable to their promises.²

Today, the concept of human rights is an essential element in the discourse of international relations. Every nation professes concern for human rights, paying lip service to the idea even if they have no intention of complying with human rights treaties. "There is thus a broad, if shallow consensus that states—even in anarchic international relations—should respect the individual and collective human rights of persons."³ This represents a fundamental shift in the mindset governing international relations, signaling that states now view human rights not simply as concessions to be made at the expense of national interest, but, rather, as an intrinsic element of "long term" national interest itself.⁴

Despite the high moral ideals that inspired the drafting of the Universal Declaration, many of its present-day defenders are unable to articulate a coherent explanation of the principles on which it is grounded. To determine why this is so, the following three chapters contrast the idea of human rights as understood by the framers of the Universal Declaration of Human Rights with the way the concept is actually discussed and defended in contemporary scholarship.

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CHAPTER 1

The History of Human Rights in International Law

Human rights as we understand them today are the result of a gradual evolution in international law. Since the Peace of Westphalia in 1648, if not sooner, the key principles of international relations were territorial sovereignty and domestic jurisdiction. This meant that a state's treatment of individuals within its borders was its own affair. What we consider human rights issues were matters of national jurisdiction. But the emergence of human rights principles, in a sense, represents international law's formal recognition of the human dignity, or moral worth, of every person.

This idea is neither new, nor exclusively Western. Indeed, the idea of the dignity of all human beings and their ensuing obligation toward one another has been present throughout history and across cultures. The emergence of human rights in international law is simply a broad manifestation of this. Human rights law is the codification of the principle of concern beyond one's own self-interest.¹ Human rights did not really start with Western philosophy, although the West did greatly facilitate the "fuller consideration, articulation, and eventual implementation" of these ideas.²

Of course, the equal worth of all persons proclaimed by philosophy was not always echoed in practice. One can note the discrepancy between the writings on liberty of Locke, Montesquieu, and Mill, for example, and their willingness to apply this principle to colonial peoples. Similarly, the U.S. Constitution, rooted in principles of equality, nevertheless did not initially provide it for blacks, women, Native Americans and the poor.³ It was not until the nineteenth century that changing

conditions brought greater opportunity for uniting the principle of human rights with state practice. As many governments were overthrown by foreign and civil wars, nations became more democratic. Liberalism flourished, and the idea of state sovereignty was challenged. The forces of modernity simultaneously created an opportunity for greater exploitation of people and the means whereby such mistreatment would be exposed as never before. Even as industrialization led to greater exploitation of the worker, new inventions like the telegraph, railroad, and steamship brought distant places closer, increasing awareness of the conditions of people around the globe. This set the stage for envisioning “the general sentiment of civilized mankind,” and “the principles of humanity and universal brotherhood” that would later be articulated by the Universal Declaration of Human Rights.⁴

In international law in the nineteenth century, various exceptions were made to the principle of state sovereignty in order to prohibit piracy, extend protections to sick and wounded combatants as well as prisoners of war, and to set guidelines for state treatment of foreign nationals.⁵ Furthermore, the advancement of free market economics helped make abolition an international issue, since goods from non-slave holding countries competed poorly with the cheaper products of slave labor. The creation of the International Committee of the Red Cross in 1863 led to the “Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 1864.”⁶ Also known as the Red Cross Convention, it was “the first multilateral treaty in history designed to protect the individual in times of war.” It required its signatories “to acknowledge and respect the neutrality or immunity of military hospitals and their staffs ... in order that they might provide equal medical care for wounded soldiers regardless of their nationality.”⁷ This inspired the creation of more treaties, known as “humanitarian law,” “Red Cross law,” or “human rights law in armed conflict.” Unlike the earlier laws of war, which were concerned with things like ships and weapons, humanitarian law dealt with people.⁸ By 1899, the Hague Conventions would be explicitly focused on all sorts of rights—rights of the wounded, rights of surrender, and rights of prisoners of war and non-combatants. The establishment of the League of Nations in 1919 brought a new regard for the concerns of fringe groups, since it was believed that discontented minorities in central Europe had helped cause World War I. It was also established to provide for the people of former enemy colonies, and to regulate the treatment of minorities as specified

in the 1919 peace agreements.⁹ But despite their expression of concern for individuals, these treaties still required the cooperation of governments to have an effect.¹⁰ “Concern for individual welfare was framed and confined within the state system” when the conditions of individuals either “threatened international order” or “impinged on the economic interests of other countries.”¹¹

It was not until the creation of the United Nations Charter in 1945 that the human rights movement really took wing, mostly in reaction to the horrors of Nazism. “Post war leaders either displayed a moral reaction to fascist atrocities, or they believed that states engaging in gross violations of human rights were also likely to violate the law against aggressive war.”¹²

Article 55 of the UN Charter pledged to promote relations among nations based on equal rights, to ensure good economic and social conditions, to foster international cooperation, and to create “universal respect for, and observance of, human rights.” This led to the adoption, without a negative vote, of the Universal Declaration of Human Rights in 1948. The Universal Declaration (which is not a treaty) was proclaimed as a “common standard of achievement for all peoples and all nations.” It covered a wide range of rights, from civil and political rights (concerning liberty and security, equality before the law, due process, and freedom of movement and expression) to economic and social rights (such as the right to work, to paid vacations, to social security and to education). Although the declaration is not legally binding by definition, it is still considered legally important. “Some see it as having given content to the Charter pledges, partaking therefore of the binding character of the Charter as an international treaty. Others see both the Charter and the Declaration as contributing to the development of a customary law of human rights binding on all states.”¹³

In 1966 two treaties on international human rights were produced (entering into force ten years later), thus legislating the proclamations of the Universal Declaration. The International Covenant on Civil and Political Rights includes protection of the right to life and freedom from genocide, slavery, torture, and discrimination. It protects freedom of movement, expression, religion and conscience, the right to marriage, and the right to due process of law.¹⁴

The International Covenant on Economic, Social, and Cultural Rights offers myriad goods to individuals. It promises that states will, as far as possible, enforce working rights (to fair wages, vocational guidance

and training, safe conditions, holidays with pay, social security and the freedom to join trade unions and to strike); protections for the family; an adequate standard of living (including freedom from hunger and adequate clothing and housing); and the rights to education and participation in cultural life. “Derogations and limitations by law are permitted if they are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in democratic society.”¹⁵

In addition to these covenants, human rights are also the subject of international law in The Convention on the Prevention and Punishment of the Crime of Genocide (1948); The International Convention on the Elimination of All Forms of Racial Discrimination (1965); The Convention on the Elimination of Discrimination Against Women (1979); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and the Convention on the Rights of the Child (1989).

The Universal Declaration of Human Rights: Taking Conscience for a Guide

The events leading to the drafting of the Universal Declaration of Human Rights, and the intentions of its framers shed light on the meaning of universality. The experience of World War II was directly responsible for the creation of the Universal Declaration of Human Rights, for Nazi Germany brought the face of moral evil to light in a way that seemed unprecedented. As Mary Midgley comments on the Nazi rise to power:

[I]t was not just a local affair for the Germans but was the business of everyone in Europe ... not just because the threat of another war might damage the local interests of people in other nations. It was because of the specific moral moves that the Nazis were making, moves which mattered to everybody... The unbridled nationalism, the propaganda for racism, the justification of brutal methods of repression and the general cultivation of hatred were the direct concern of us all. These things did not strike us as merely the unavoidable eccentricities of bizarre foreigners but either as evils that we ought to somehow to resist or—in the case of those who

supported Nazism—as a creed to be welcomed. Nazi Germany, like Stalinist Russia, fell within our own moral universe.¹⁶

As one of the drafters put it, “the war by its total disregard of the most fundamental rights was responsible for the Declaration.”¹⁷ After World War II, it suddenly seemed urgent to articulate the idea of human dignity—the notion that all persons possess moral worth, and are valuable apart from their apparent utility—because Nazi Germany had directly opposed this idea. The purpose of the Universal Declaration of Human Rights, then, was to prevent another Holocaust or something like it. “Hearing about and experiencing the horrors of the war convinced the drafters of the rightness of what they were doing. The moral outrage thus created gave them a common platform from which to operate and do the drafting.”¹⁸

The Universal Declaration was a conscious attempt to reject everything Nazi Germany stood for—especially the notion that conscience was simply myth and that there was no principle higher than reason of state. The drafters of the Declaration formed the various articles and specific language of the document out of a sense of collective shock over Hitler’s actions. They emphasized that the Declaration was drafted because “disregard and contempt for human rights ha[d] resulted in barbarous acts which ha[d] outraged the conscience of mankind.”¹⁹

By using the phrase “the conscience of mankind[,]” the drafters generalized their own feelings over the rest of humanity. Taking a position diametrically opposed to Hitler’s, they believed that any morally healthy human being would have been similarly outraged when placed in similar circumstances. This shared outrage explains why the Declaration has found such widespread support.²⁰

National Socialism was a totalitarian system, founded on racism, which presumed an “organically indivisible national community” calling for “the total breakdown of the dividing line between persons and their state.” The principles of the Universal Declaration stood in sharp relief to this, emphasizing that the good of the citizen is prior to that of the state, which must never be permitted to violate individual dignity or rights.²¹

Article One of the Universal Declaration affirms that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a

spirit of brotherhood.” Article Two proclaims that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.” These two articles lay the foundation for the rights which follow, such as the political rights enumerated in Articles 18–21: “Having witnessed the destruction of all democratic rights under National Socialism and having seen them replaced with the abhorrent Fuhrer principle,” the drafters “had no doubts about these political rights as being genuine human rights. The experience of the war had reinforced their belief that [these] rights ... are universally the first ones dictators will seek to deny and destroy.”²²

Article Three of the Declaration, which recognizes that everyone has the right to “life, liberty, and security of person” was particularly important in light of the contempt with which Nazism regarded some human lives. “Hitler had said in *Mein Kampf* that ‘if the power to fight for one’s own health is no longer present, the right to live in this world of struggle ends.’ He did not want any ‘half-measures’ in this respect and therefore opposed letting ‘incurably sick people’ as well as the elderly and insane ‘steadily contaminate the remaining healthy ones.’”²³ Article Four’s prohibition of slavery and servitude was partly in answer to Nazi Germany’s “attenuated forms of slavery which were vigorous in practice: for instance, the status of persons who were deported to Germany was certainly worse than that of ancient slaves.”²⁴ The Article’s use of the word servitude was meant “to cover such practices as the way in which the Nazis had treated their prisoners of war and the traffic in women and children.”²⁵ Article Five of the Declaration, which prohibits “torture (and) cruel, inhuman, or degrading treatment or punishment” arose in response to the medical experiments conducted in the concentration camps. It clearly rejected the idea that human beings may be subjected to medical experiments or suffering without their consent, even if the ends of such pursuits are good.²⁶

When the principles of life and liberty are held in contempt, mockery of the law is soon to follow. Thus, the universal Declaration also includes seven articles treating legal human rights, for the drafters realized how far Nazism had compromised the German legal system.²⁷ Article Six, which says that “everyone has the right to recognition everywhere as a person before the law,” sounded very basic, but was felt to be necessary in light of the fact that leaders like Hitler had determined that people considered to be slaves could not marry, or be creditors or property owners.²⁸ Article Nine, which stipulates that “no one shall be

subjected to arbitrary arrest, detention or exile,” stood opposed to Nazi practice in which the government could always find a “reason” for arrest: “for the standard of legality was whether something conflicted with the German National Socialist world view.”²⁹ Article Ten says that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Jonathan Morsink catalogs the ways that Nazism was opposed to this principle:

Hitler ruined the independence of the courts by his appointment of Nazi cronies at all levels of the justice system and by the establishment of special courts that dealt with the crimes listed in his own decrees, [including] the doctrine of creative interpretation, which allowed judges to “adapt” the Weimar Constitution to life under the Führer; the teleological method, which led judges to look for an ideological meaning and intent behind and underlying the laws; the concept of a material crime, which was any activity that ran counter to the National Socialist world view ... the doctrine of grasping the essences, according to which judges grasped the whole of a situation and did not linger too much on the details of a case.³⁰

If the drafters of the Universal Declaration did not hesitate to boldly affirm the importance of conscience as a guide in human affairs, they were somewhat reticent when it came to illuminating the fount from which it sprung. The principles of liberty, equality, and fraternity laid out in Article One of the Declaration are basically reiterations of eighteenth century Enlightenment principles. But where the thinkers of that era regularly appealed to God or Nature as the source of rights, the drafters of the Declaration purposely avoided such references.³¹ This was partially in response to the delegates who were nonbelievers, but also because some delegates believed the principles of God and Nature were in conflict.³² At any rate, they decided that reference to God was not necessary for reasoning one’s way to the existence of rights.³³

The drafters did not think that omitting references to God and Nature would weaken the Declaration since it indicated in various places that rights adhere to human beings *qua* human, and not through governments, courts, or any other outside agencies.³⁴ Delegate Rene Cassin later wrote that the term “universal” was meant to show that the Declaration “was morally binding on everyone, not only on the governments

that voted for its adoption. The Universal Declaration, in other words, was not an ‘international’ or ‘intergovernmental’ document; it was addressed to all humanity and founded on a unified conception of the human being.³⁵ This reinforced the fact that the Declaration was not meant to be a legally binding treaty, but rather meant to serve as a moral basis for other documents. As Jonathan Morsink notes, “It is precisely because these rights are inherent in people and not the gifts of history or circumstance that they can be used as standards against which history and circumstance are to be judged.”³⁶

And yet, despite the determination of the delegates to keep rights “grounded” in what is “human,” the Declaration does point beyond itself. Morsink points out that Article One’s stipulation that everyone is “endowed with reason and conscience,” is not meant to imply that these are the *basis* of human rights, but are rather the instruments by which we discover that such rights exist.

By using the language they did, they took the position that every normal human being would have had the same reaction when placed in similar circumstances. This is the heart of the classical theory of moral intuitionism[,] ... which supposes that people everywhere have a moral sense or faculty that—unless it is blocked—gives them unaided access to the basic truths of morality.³⁷

Thus, human rights are universal not because they come *from* human beings, but because human beings, possessing reason and conscience, are able to *discover* the values human rights represent.³⁸ By saying that rights are “recognized, rather than conferred,” the Declaration “implicitly rejected the positivist position” that “there is no higher law by which the laws of nation-states can be judged.”³⁹ So even though the Declaration was not specific as to the foundation of human nature, it definitely affirmed that human nature is universal.

A final point to bear in mind is that the drafters of the Declaration did not see human rights as a *means* of attaining peace, but rather viewed peace as a byproduct of respecting human rights. This is evident through the document’s “backward-looking” recognition that “disregard and contempt for human rights *have resulted* in barbarous acts which *have outraged* the conscience of mankind,” a statement which “[is] not in [itself] aimed at world peace.”⁴⁰ Although social harmony certainly requires the recognition of the equal worth of all people, the desire for justice itself

does not create human rights. Such rights are inherent in human nature; acknowledging this fact is what guides governments and individuals in treating others with the respect that will eventually create a climate of world peace.⁴¹ Thus, “while the drafters surely thought that proclaiming this Declaration would serve the cause of world peace, they did not think of the human rights they proclaimed as only or merely a means to that end.”⁴² They were to be upheld then, as ends in themselves, for the simple reason that to respect rights, was right.

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CHAPTER 2

The Relativism of Universality

Cultural Relativism: The Argument and Its Critique

Despite the best efforts of the framers of the Universal Declaration of Human Rights to achieve a basis for human rights not bound to any particular cultural tradition, the debate has never subsided as to whether there can be such things as universal human rights, or whether human rights are culturally relative. Western capitalist, socialist, and developing nations offer competing conceptions of human rights. Developing countries reject standards rooted in European liberal, democratic traditions for emphasizing civil and political rights over social welfare rights. This leads to the broader question of how we are capable of prioritizing rights at all.

In general, cultural relativism stipulates that normative values are not universal, but contextual; therefore, “members of one society may not legitimately judge or condemn the social practices of other traditions.” In its most extreme form, “relativism denies the existence of legitimate cross-cultural standards for evaluating human rights practices and exempts certain variations in social practices and institutions from external criticism.”¹

If no objective standard exists for judging the acceptability of human rights, and there is no legitimate basis for condemning the social practices of other states, then the recognition of human rights depends upon particular cultural practices.² The result may be a far cry from a spirit of universal brotherhood. Some cultures may deem values like

universal political participation or equal protection of individuals inappropriate. Even when abstract rights, such as justice, freedom, and equality *are* accepted, they often mean different things in different cultures. Relativism ultimately endorses this outcome, exempting particular cultures from all external critique by holding that “each state should espouse its own conception of what human rights entail as a social institution based upon its cultural preferences and political ideology.”³ Practically speaking, this locates universal human rights not in unchanging truths, but in the whim of the most powerful members of international society.

But one can use both plain facts and philosophical argument to undermine the more extreme views of cultural relativism. Empirically speaking, from the standpoint of international law, one can certainly argue for the existence of at least a limited international moral order. For example, the peremptory *jus cogens* norms of international law are regarded by all states as universal. They protect such fundamental values as the right to life and prohibit genocide, torture, slavery, “prolonged arbitrary detention, and systemic racial discrimination.”⁴ Standing on a higher plane than positive law, they are nonderogable and may be modified only by the emergence of a subsequent norm of equal character.⁵ As previously explained, the very existence of the United Nations Charter indicates that at a minimum, the *idea* of human rights is important to everyone. This “necessarily implies some degree of common standards, thereby necessitating an exception to the fundamental rule of absolute state sovereignty.”⁶ In short, international law does reflect *some* core of common values.

Philosophically, relativism is untenable and seems doomed to collapse under the weight of its own logical inconsistency:

It affirms at the same time that (a) there are no universal moral principles; (b) one ought to act in accordance with the principles of one’s own group; and (c), (b) is a universal moral principle... If it is true that no moral principles exist, then the relativist engages in self-contradiction by stating the universality of the relativist principle.⁷

In addition, even if the cultural relativist were to argue that there can be no moral principle except for (b), the argument is epistemologically weak—for if we are in fact somehow able to discover a single universal principle, why should it be (b) rather than something else?⁸

The outcome of the cultural relativist viewpoint, therefore, is to admit of several normative systems or of none at all. This of course forces the international community to tolerate, under the banner of cultural diversity, even the most oppressive regimes; for in fact, these are always the governments that appeal to the principle of cultural diversity as a justification for committing human rights abuses.⁹

Fernando Teson charges that “normative relativism amounts to the worst form of moral and legal positivism: it asserts that the rules enacted by the group are necessarily correct as a matter of critical morality.” It is also extremely conservative, encouraging states to mimic pre-existing domestic law and practice, regardless of how far they deviate from the principles of human rights.¹⁰ In sum, “normative relativism runs counter to the principle that persons have moral worth *qua* persons and must be treated as ends in themselves, not as functions of the ends of others.”¹¹

Current Arguments for Universality

The Autonomy View

The case for cultural relativism fails on its own terms, and not so much because proponents of universal rights have demonstrated the superiority of their view. In fact, a look at the most common arguments for universality reveals that they too are based on relativism—albeit unknowingly—and are therefore unsustainable for the same reasons. The predominant arguments for universal human rights are based on what may be called the “autonomy view.” According to this position, human dignity resides in the individual’s ability to choose and act freely. But as will become evident, freedom pursued for its own sake poses serious challenges to the idea of universality.

The autonomy view is most fully expressed in the work of Jack Donnelly, arguably one of the most prolific and best-known proponents of universal human rights. Donnelly lays out his argument for universal rights as follows: Rights are universal because they are the equivalent of human nature and are therefore possessed by every “member of homo sapiens” everywhere. Human nature, according to Donnelly, is not fixed, but open-ended—the result of self and social creation. Therefore, human rights must ensure the flourishing of human nature by upholding

individual autonomy. The second premise, however far from leading logically to Donnelly's conclusion, actually undermines the point of his argument. Let us see how this happens.

Donnelly's first step is to define rights. He clearly emphasizes that rights are *not* to be confused or equated with dignity. They are not "benefits, duties," or "privileges," but rather "special entitlements of *persons*." They are "conceived as naturally inhering in the human person," are inalienable, and held by individuals in relation to society.¹²

Human rights are *equal* rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all). They are also *inalienable* rights: one cannot stop being human, no matter how badly one behaves or how barbarously one is treated. And they are *universal* rights, in the sense that today we consider all members of the species *Homo sapiens* "human beings," and thus holders of human rights.¹³

So human rights are intrinsically connected to human nature itself. But in Donnelly's scheme, the fact that a person has inalienable rights that stand apart from government fiat tells us nothing about the existence of a moral order. Indeed he takes great pains to distinguish between *having* a right and *knowing* what is right. For example, I may have a moral obligation to give food to a starving man, for helping the needy is the *right* thing to do. But this does not mean that the man *has a right* to my bread. Donnelly subscribes to Dworkin's idea of "rights as trumps" and therefore insists that respecting the rights held by others is of greater importance than simply doing what is right—"to violate a right goes well beyond merely falling short of some high moral standard."¹⁴ Having a right is presumably more effective than having the knowledge of what is right, since the latter is merely prescriptive, whereas "claiming a right *makes things happen*."¹⁵ The contrast between being right and having a right is largely what distinguishes the modern philosophical tradition from classical theories.¹⁶

For Donnelly, having a right is preferable to knowing what is right because the former is based in human will, whereas the latter is simply God's will. Thus, the idea of an objective standard *outside* human agency is completely irrelevant to the justification of rights. But if this is true, how do we *know* that rights are universal and not simply products of a particular culture? Donnelly explains that rights are universal because they flow from the common moral nature of all people. "Since all human

beings ‘have’ the same basic nature and have it ‘equally’, the rights based on this nature must be universal and held equally by all.”¹⁷

Human rights attach to all people by virtue of their humanity. In Donnelly’s view, they are not to be thought of as a reflection of one’s proper relation to the moral order or to society—they are simply one more aspect of human being, as much a part of our genetic makeup as having two arms. Human rights, then, sanction no duty to others (apart from respecting their rights in return). Violating someone’s human rights is equivalent to denying his nature; to renounce one’s own human rights would be to “destroy one’s humanity, to de-nature oneself, to become other (less) than a human being.”¹⁸ Rights, for Donnelly, are synonymous with human nature. Therefore, it would seem that what may be said about rights may be equally claimed about human nature. In this sense, human nature is as much a matter of choice as the rights that attach to it.

Human rights are not “given” to man by God, nature, or the physical facts of life; to think of them in such terms is to remain tied to a vision of human rights as things. Like other social practices, human rights arise from human action. Human rights represent the choice of a particular moral vision of human potentiality and the institutions for realizing that vision.¹⁹

The concept of human rights, then, is the outward expression of how we have chosen to define human nature. Human rights are “needed” for human dignity—they are the tools whereby man realizes a particular vision of human nature, which Donnelly thinks of as a “social project more than a presocial given.”²⁰ They represent both the nature we “choose,” and the institutions that bring this choice into being. It must logically follow, then, that human nature is determined to a large degree by our type of government:

A government which does in fact protect human rights will radically transform human nature, [for] to the extent that human rights are protected and implemented, they would actually *create* the envisioned person, so long as that vision lay within the limits of human possibility.²¹

If human nature is not fixed by God or nature, then there is no specific limit to what human beings can or should achieve. Indeed, Donnelly

implies that human beings can make of themselves whatever they wish, as long as biology permits and the correct political institutions are available. In fact, human rights allow the individual and the state to take turns forming each other:

“Human nature” is thus conventional; one’s very nature is in part the result of individual and social actions.... “Human nature” thus appears as a *project*; just as an individual’s “nature” or “character” results from the interaction of natural endowment, environmental influences, and individual action, the species (or rather, society) creates its essential nature out of itself.... Human rights are less about the way people “are” than about what they might become.... The relationship between human nature, human rights[,]and political society is thus “dialectical.” Human rights shape political society, so as to shape man, so as to realize the possibilities of human nature, which provided the basis for these rights in the first place. And without human rights, the “real” human being is almost certain to be split—alienated or estranged—from his (moral) nature ... the claim of inalienability of human rights is not one of practical impossibility[,] but rather a claim of moral impossibility; one cannot lose such rights and live the life of a human being.²²

So for Donnelly, human nature is *conventional* and determined by human will. One cannot look to moral principles to define human nature, he supposes, because moral principles are created by human beings: “Moral and political arguments require a firm place to stand. But that place appears firm largely because we have agreed to treat it as such. ‘Foundations’ ‘ground’ a theory only through an inescapably contentious decision to *define* such foundations as firm ground.”²³

Donnelly earlier distinguished between having a right and knowing what is right. The latter implies the existence of an objective moral order, and supposes that a fully human life is lived in accordance with this order. But in Donnelly’s scheme, it would seem that human beings are only capable of reaching their potential through a government with the proper human rights policy. Thus, Donnelly explains that even though non-Western traditional cultures may prize Western values like “life, speech, religion, work, health, and education,” these are understood “in terms of duties that are neither derivative from nor correlative to rights, or at least not human rights.”²⁴ He finds this problematic indeed, for although the traditional approach would work in a “relatively decentralized, non-bureaucratic, communitarian society,” such a society no longer

exists: “Westernization, modernization, development, and underdevelopment—the dominant, contemporary, social, and economic forces—have in fact severed the individual from the small, supportive community.” He concludes that “In such circumstances, human rights appear as the natural response to changing conditions, a logical and necessary evolution of the means for realizing human dignity.”²⁵

Donnelly says that the animating principle of human rights is that of “equal concern and respect” toward all human beings. Since in his view there is no “set” human nature or objective moral standard to which our actions should conform, this principle leads “naturally” to a “political emphasis on autonomy.” He notes that “Personal liberty, especially the liberty to choose and pursue one’s own life, clearly is entailed by the idea of equal respect. For the state to interfere in matters of personal morality would be to treat the life plans and values of some as superior to those of others.”²⁶ In other words, when human beings have no higher purpose than to “create” themselves, the only type of society in which they can be fully “human” is a liberal society that upholds personal autonomy as its highest value.²⁷

Overall, there are three major problems with this theory: Its premises are incompatible with the idea of universality, it precludes the sense of community spirit necessary to realize universal rights, and it is subject to the same criticisms Donnelly levels at other concepts of human nature, particularly, natural law.

The most obvious flaw in Donnelly’s theory of “universal” human rights is the logical conundrum he falls into by arguing that although human nature is conventional, the human rights which spring from it apply to all. Although it seems patently impossible to stipulate that human rights can be both historically conditioned *and* universal, Donnelly circumvents the issue by supposing that since “rights are based on universal human potentials” they are held equally by all.²⁸ He continues:

If human nature is fixed, original sin and its secular analogues present a most serious political problem. An essentially plastic nature, however, directs our attention to the more manageable question of how man is formed by history and society, and how we can intervene in the process.²⁹

Donnelly’s position, then, is essentially this: human nature is not fixed; it is composed of good and bad elements, the former being protected by human rights. Human beings are progressive, though not inevitably so,

and human nature is formed, but not fully determined, by historical processes. He thus presents a somewhat attenuated version of historicism. We may say that a single natural right exists, which is the right to potentiality. Human beings have no particular *ends* as such, only (near) limitless moral possibilities. If God or nature is irrelevant to the idea of human being, then we may suppose that human rights and human nature are conventional. Therefore, Donnelly holds autonomy as the defining mark of human dignity and believes Western liberal institutions to be the sole guarantors of this dignity.

Donnelly's concept of human rights is not unlike Rousseau's general will: both describe phenomena that simultaneously emerge from and determine our behavior. But in subscribing to Rousseau's belief in the plasticity of human nature, Donnelly falls prey to a similar dilemma. For as Strauss argues, if "man's humanity is the product of the historical process," then to the extent that history is accidental, "it cannot supply man with a standard, and if that process has a hidden purpose, its purposefulness cannot be recognized except if there are trans-historical standards."³⁰

In fact, what Donnelly actually seems to support is not the concept of *universal* rights, but of *unanimous* rights. For he notes that "the particular list of rights that we take as authoritative today reflects a contingent response to historically specific conditions ... our list of authoritatively recognized human rights may change in response to changes in our understanding of human dignity, the emergence of new threats, and social learning concerning the institutions, practices, and values necessary to realize that dignity."³¹ Without objective standards, the proposition that human nature can be both freely chosen and universal works only if all societies unanimously "choose" the same nature. But by Donnelly's logic, there is no reason why they should do so—for his theory upholds process over end, *choice* over *truth*, as the measure of legitimacy. As a result, the inevitable question is not "What is human nature?" but rather, "*Who shall decide* what is human nature?" Without the existence of an objective moral order, "truth" is necessarily subject to the whim of the strong.

A case in point is Donnelly's confident supposition that although, "all major regional civilizations have at times been dominated by views that treated some significant portion of human beings as 'outsiders' who were not entitled to guarantees that could be taken for granted by 'insiders,'" this is no longer true; for "the basic moral equality of all human

beings is not merely accepted, but strongly endorsed by all leading comprehensive doctrines in all regions of the world.”³² Based on this, one would have to wonder how Donnelly views the practice of abortion. For if its permissibility is really grounded in the principles of liberalism, as most liberals are wont to claim, then this would be an example of a “leading comprehensive doctrine” that *does* claim that some *homo sapiens* are not entitled to full moral consideration. We will return to this point in the final chapter.

Even if we grant the supposition that all humans can simultaneously “choose” the same nature, Donnelly’s theory would still be problematic for universality. For if human nature is indeed created by social institutions, then who we are, or whether or not we lead fully human lives depends not upon ourselves, but upon the effectiveness of our governments. While it may be desirable for government to help us achieve a life of dignity, dignity should not *depend* on government for its existence. Furthermore, if human nature is conventional, it is continually subject to the changing winds of circumstance and opinion. Thus, Donnelly acknowledges that the current list of human rights is always liable to alteration—not only because material circumstances may change, but because “the underlying moral vision” by which they are justified “may also evolve.”³³

From this, there would seem to be no way to prevent what is considered to be truly “human” from changing over time. If so, the only permanent good for humans is autonomy, or the ability to perpetually “choose” what our nature will be. Not only does such a view render pre-modern thinkers irrelevant, it also means that the only living arrangement suitable for a human being is liberal society. In this way, and also by equating human nature with human rights, Donnelly finds a way to dismiss non-liberal societies without ever really having to consider their philosophies. Autonomy has become the new standard by which cultures are measured.

Does the assumption that a fully human life requires the proper institutions mean that those living in nonliberal societies are not fully human? Or does Donnelly mean to say that such regimes treat people *as though* they were not fully human, and that is why they are wrong? If the latter, then he would have to admit that being human is a quality that transcends political institutions.

Donnelly admits that it will take a very special sort of liberalism for his concept of human rights to work. But it is a type of liberalism that

simply cannot be supported by the theoretical foundations he sets. He admits that the Western, or liberal idea of human rights, which features “largely isolated individuals holding (only) property rights and ‘negative’ civil and political liberties, would, if accurate, mean that the liberal tradition is radically incompatible with the demands of internationally recognized human rights.”³⁴ Instead, Donnelly advocates a “radical or social democratic” brand of liberalism that embraces economic and social rights as well as civil and political rights. But why *should* anyone go out of their way to ensure the economic rights of another person? Donnelly has already dismissed the concept of duty as irrelevant to his vision, and does not presume that human beings have any specific purpose other than to be autonomous. It is not clear how this supposition can embrace obligation to others.³⁵

Classical natural right and natural law theories, however, do not have this problem, insofar as they stipulate that the universe is ordered and that human beings occupy a particular place within that order. They are informed by a teleological world view which holds that all living things have a natural end that determines what sort of life is good for them, and that for human beings, this is determined through the use of reason.³⁶ In classical philosophy, the good life requires careful attention to the *telos*, or *end*, of human being. This involves perfecting our nature, which in turn sanctions obligations to others. It is assumed that man is by nature sociable and cannot reach his natural perfection in isolation. Therefore, “the perfection of his nature includes the social virtue par excellence, justice; justice and right are natural.”³⁷

Although Donnelly stipulates that autonomous individuals do have duties to the larger community, the fact is that his view stems from a philosophy that assumes community to be founded on self-interest—that is, upon the desire to escape what are, depending on one’s view, the horrors or inconveniences of the state of nature. Donnelly wants Lockean liberalism, with perhaps a greater emphasis on community spirit than Locke himself would have called for. But in stipulating human will as the source of human rights, it is difficult indeed to find the commonality required for social democratic liberalism, and impossible to achieve universality. For despite Donnelly’s good intentions, the secular humanism he advocates cannot help but make the individual both the center of the universe and the measure of all things. Absent any idea of *telos* or objective standards transcending humanity, how do we know whether a

human right is universal? If the only universal aspect of human nature is potential, if human rights are simply a “particular moral vision,” then stipulating their universality is problematic. As Clifford Orwin and Thomas Pangle argue:

If man as a subject of rights is merely the product of ever-changing historical and cultural conditions, if he is nothing more than the malleable matter of an endless process of transformation, then there is nothing in him that can serve as the needed star for “human rights.” There can be no rational or permanent standard by which to guide our growing power for self-transformation and self-destruction and nothing in us that can claim exemption from social engineering and manipulation.³⁸

On a final note, Donnelly’s argument is, interestingly enough, subject to the same criticisms he levels against natural law. He charges Thomas Aquinas, for example, with being soft on tyranny, since the philosopher did not believe in the natural right of the people to rebel. He says that “Natural law is only a standard of judgment, not a warrant to act. Natural law gives the people no *rights* to change their rulers.” Even if people do choose to rebel, “natural law is not the moral foundation for the action of the people against the tyrant; self government is consistent with, but not demanded by, the natural law and ‘natural right.’”³⁹

What Donnelly neglects is that Aquinas insists that the ruler must always govern according to the common good, and that there are limits to our tolerance of the ruler—nobody is required, for instance, to obey a law in direct opposition to a divine commandment. But this aside, Donnelly’s concept is as conducive to tyranny as any other—for if human rights are not grounded on any standard lying outside of human agency, they are necessarily defined by the powerful element of society, be it a tyrant or a tyranny of the majority. It can hardly be otherwise if truth is completely subject to human choice.⁴⁰

Furthermore, Donnelly’s theory is no more enforceable than he allows natural law to be. A common criticism of natural law aims at its prescriptive nature—in the way it looks to how human beings *should* act as opposed to how they *do* act. Donnelly levels this charge indirectly when he supposes that knowing “what is right” is not nearly as powerful or effective as “having a right.” Yet he never really proves that the latter is a more effective way to protect dignity:

An appeal to human rights is testimony to the absence of enforceable positive rights.... One *claims* a right only when its enjoyment is threatened or denied.... All rights claims are a sort of “last resort.” Rights are actually claimed only when one doesn’t “have” the right (in the sense that it is not receiving direct or objective enjoyment) or fears that it cannot be enjoyed without assertive exercise.... Thus the primary political functions of human rights, once we move from opposition to positive action, are likely to lie in the guidance they provide in founding a regime or revising its basic structure.... In other words, human rights provide a standard of legitimacy for any government.⁴¹

Here Donnelly basically admits that the whole point of human rights is to get governments to think about what they *should* do, and this seems to not be much different from the function of natural law. But whereas natural law is based on transcendent standards, Donnelly’s concept requires for its validity nothing more than majority agreement. As a result, the realization of universal human rights is impossible without universal democracy. In addition, the concept threatens to trample the very values of individuality and autonomy that liberals so cherish. For as Michael Freeman argues, Donnelly’s theory implies that “The moral beliefs of majorities are binding on dissenting minorities.” Indeed:

This is inconsistent with the view usually held by human rights theorists, and accepted by Donnelly, that individuals and minorities are not necessarily obliged to conform to the values of majorities. If Donnelly were to argue that this consensus is binding because it is a consensus for human rights, he would have to provide a reason for allowing it to override the logic of cultural relativism.⁴²

In the end, then, Donnelly’s work offers, arguably, one of the most comprehensive attempts to construct a theory of universality on secular humanist grounds. But it is evident that such a theory has trouble in supporting its own tenets, let alone proving its superiority to competing ideas.

Liberalism and Relativism: Not-so-Strange Bedfellows

Robert D. Sloane argues for the liberal conception of human rights in a new way. Like Donnelly, he views autonomy as the lodestar of universal

human rights. But he also realizes, as noted above, that the premises of the liberal view and cultural relativism are essentially the same. Sloane supposes that since both sides invoke autonomy as a justification for their arguments, this somehow vindicates the dignity-as-autonomy principle as the proper foundation for universal human rights.⁴³

Sloane does not deny the claims of “narrative relativism,” which “calls attention to the failure of universal human rights to acknowledge the critical reliance of cultures on implicit narratives that inform their normative framework.”⁴⁴ But he says that the arguments for cultural relativism establish, “at best,” that we lack “standards independent of specific historical, cultural, and linguistic contexts” by which “to evaluate competing value hierarchies.” The absence of such standards, however, does not refute the “normative universality of human rights,” but simply demonstrates that the term “universal” should “not be understood in a transcendental or ontological sense—as a scientific claim about the ‘true’ nature of the world and its inhabitants.” In fact, Sloane says that the chief purpose of human rights is to offer the protections under which “reasonable individuals can hold disparate, but equally valid, opinions about ultimate questions of value.”⁴⁵

Basically then, the only universal truth is that truth is relative, and therefore, the fundamental right is one to autonomy, by which each person determines his or her standard of good. Sloane’s argument is of course logically the same as that of relativism, as he himself recognizes when he says “cultural relativism in fact invokes—and absent some presently unarticulated alternative, must invoke—the liberal values of reasonable tolerance and autonomy in any attempt to repudiate international human rights law.”⁴⁶ Sloane supposes that since cultural relativism and the liberal view of universality are both grounded in the principle of autonomy, this proves that the view which explicitly acknowledges this (liberalism) is correct. But of course, another possibility, overlooked by Sloane, is that *both* views are therefore wrong.

By liberalism, Sloane is referring to “the primacy of the individual as the fundamental unit of concern and measure of value—a conception of rights as political ‘trumps’ against the demands of the state or community, a commitment to some measure of democratic participation in government, a concern with preserving autonomy, and finally, some notion of equality.”⁴⁷ Certainly, these are admirable goals. The problem is that by making the individual the *source* of these goods, liberalism can ultimately lead to a philosophy that undermines the very person it aims to uphold.

Sloane claims that natural law is an insufficient basis for human rights because it “includes no necessary connection to the human subject,” since natural law is more concerned with God, or the order of the cosmos, than with individual human beings.⁴⁸ He prefers a natural rights approach, since it effects “a crucial shift in the locus of universality, from ‘nature’ or ‘divinity’ to ‘human.’” He continues that “from the standpoint of the history of philosophy, then, the universality of human rights resides in either transcendental features of the natural world, or alternatively, in some essential, peculiar features of human beings, *qua* human.”⁴⁹ This is really an oversimplification of the ideas of natural law and natural rights, however, and establishes a false dichotomy between the two, in its assumption that universality resides in either the transcendental nature of the natural world or in the inner features of humans. In fact, natural law is concerned with both the individual and his/her relation to the larger whole. Sloane speaks as though natural law has nothing to say about particular people, when in fact its primary focus is the human person—not as the measure of all things, but as being located within a larger order.

Sloane admits that natural law and the moral precepts that flow from all major world religions “render claims of universal human rights coherent because they make strong claims about the ultimate ontological status of the world and its inhabitants.” Despite this, there is no unanimous consensus about the nature of reality; therefore, “natural law and other ontologically-based theories undermine a central value of human rights itself—the tolerance of reasonable pluralism.”⁵⁰

In saying that natural law undermines “reasonable pluralism,” Sloane advances the fallacious argument that the absence of agreement is equivalent to the absence of truth. In fact, natural law would welcome a “reasonable” pluralism—that is, a philosophy in which the use of reason is employed to discern the dictates of natural law in particular situations. For Sloane, however, the only truth is that we must agree to disagree, and the only way to universalize such a notion is to make tolerance of different expressions of personal autonomy the overriding principle of judgment, since “no single ‘conception of the good’—is right for everyone.” Autonomy is therefore the highest value; for “choice is the prerequisite for individuals to give meaning to their lives.”⁵¹

With this, Sloane believes he has defeated relativism. He has admitted that a liberal conception of human rights values the principle of

autonomy above all; he has shown that defending cultural relativism also requires invoking the principle of autonomy; and from this, he draws the conclusion that the liberal conception of human rights is correct. But it is not at all clear how agreement between liberals and relativists vindicates the liberal view rather than simply revealing that the two camps are more alike than they are different. Indeed, Sloane rightly points out that “We live in a world, not of competing relativisms—‘these values embody the good for a circumscribed set of persons leading lives in this particular cultural context’—but of competing universalisms—‘these values embody the good.’”⁵² This seems to be a more honest assessment of the way human beings think and act. Unfortunately, Sloane believes that this notion undermines respect for universal human rights by demanding “adherence to specific values,” and “attendant behaviors.” Liberalism, on the other hand, is distinguished by “its commitment to autonomy—that is, the idea that individuals should be free to assess and potentially revise their existing ends.”⁵³

It bears repeating that the framers of the Universal Declaration of Human Rights believed in a universal human nature. By defining human nature as essentially autonomous and self-creating, liberal optimists like Donnelly and Sloane eradicate the very foundation of universality. The real danger to universal human rights, it turns out, comes not from those arguing for respect for cultural differences, or even from regimes who abuse human rights in the name of cultural relativism (for their hypocrisy is evident enough to preclude their being taken seriously), but rather from those who would elevate the principle of autonomy from a value to be pursued to the source of value itself. Their arguments unwittingly sustain the realist contention that power and self interest are the driving forces of international relations, and that human rights will therefore be defined by the strong.

Sentiment as Foundation

According to Richard Rorty, the problem with most theories (and particularly those centered on autonomy) lies in the fact that they are based on the rational, as opposed to the emotional nature of human beings. Rorty explains that although rationality is traditionally thought to be the universally shared moral attribute that grounds morality, this is in fact irrelevant to the idea of universal human rights:

The emergence of the human rights culture seems to owe nothing to increased moral knowledge, and everything to hearing sad and sentimental stories.... Since no useful work seems to be done by insisting on a purportedly ahistorical human nature, there probably is no such nature, or at least nothing in that nature that is relevant to our moral choices.⁵⁴

Rorty sees rationality as a subjective term which obstructs, rather than advances, our understanding of human rights. More often than not, it is employed by human rights violators who regard their victims as sub-human or as children who are not fully rational. In other words, “human” tends to be viewed as synonymous with “rational.” And the “rational” is simply whatever a particular community defines it to be.⁵⁵ Therefore, Rorty argues, the success of the human rights movement depends not on convincing violators that their actions are “irrational”—for this will always be a losing battle—but rather, on stoking world outrage over their crimes, because sentiment is a universal attribute more commonly agreed upon than rationality. The chief difference between humans and animals, Rorty contends, is not that we think whereas they merely feel, but that “we can feel *for each other* to a much greater extent than they can.” Therefore, human rights advocates must focus on “manipulating sentiments” and “sentimental education” which “acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human.”⁵⁶

The solution to the human rights problem, then, is simply a matter of instilling the proper emotions in people. The difficulty in this, however, is that without stipulating a fixed human nature and an objective moral order, it is hard to know what the appropriate emotional response should be in a given situation. But Rorty is emphatically against dealing with this issue. He argues that thinkers today are less interested in asking “What is our nature?” than in asking “What can we make of ourselves?” As a result, he says, “we are much less inclined than our ancestors to take ‘theories of human nature’ seriously,” but are “coming to think of ourselves as the flexible, protean, self-shaping animal, rather than as the rational animal or the cruel animal.”⁵⁷ Like Donnelly, Rorty argues that what is important about human nature is not its end, but rather its potential. Hope replaces knowledge, offering the possibility that “if we can work together, we can make ourselves into whatever we are clever and courageous enough to imagine ourselves becoming.”⁵⁸

But in using plasticity as the criterion for human good, Rorty falls into the same trap as Donnelly; for his theory culminates in the view that what is really important is “progress,” which implies that what is newer is always better. As a result, Rorty, having argued well about the importance of sentiment, often jumps to conclusions that are at odds with some of his premises. For example, he initially makes some good points about the dangers of excluding certain groups from the definition of “humanity”—the plight of blacks and women being a case in point. He then goes on to say that since it is widely believed today that prejudice “against racial or religious groups” is wrong, it is now easy to convert students to “standard liberal views about abortion, gay rights, and the like. You may even get them to stop eating animals.... You do this by manipulating their sentiments in such a way that they imagine themselves in the shoes of the despised and oppressed.”⁵⁹

Such manipulation, Rorty contends, will produce generations of “nice, tolerant” people, which in the end is all the human rights movement needs to flourish. Because Rorty views humans as “flexible, protean, and self shaping,” rather than being constrained by any notion of natural limits or purpose, he supposes, to the detriment of his argument, that modern liberal views are necessarily correct. So even though he has argued forcefully against the practice of deciding who shall count as “human,” he does not seem to notice that the permissibility of abortion depends largely upon our willingness to exclude a certain class of *homo sapiens* from the definition of humanity.

Furthermore, Rorty seems to be traveling down the road paved by the so-called bioethicist Peter Singer in leaving open the possibility of granting animal rights equal protection as human rights. For if rationality is irrelevant and the only criterion for validity is sentimentality, then who is to say that some animals do not possess as much capacity as human beings for pity? Certainly, they do not kill arbitrarily as humans seem to do. Is Rorty prepared to add a universal declaration of animal rights to be defended by international law? We are more than our emotional makeup, and this is why we need reason to combat evils like prejudice, which, after all, is based on nothing more than an emotional response to a particular group of people. It is only through the guidance of reason that we are capable of making sense of our emotional responses in the first place. For, as Aristotle teaches, to be angry is easy. But to be angry in the proper way, at the proper time, and for the proper reason, is

not so easy. This is why our emotions, while not to be dismissed, must nevertheless be under the direction of reason.⁶⁰

Certainly, Rorty's plan could increase tolerance. But this does not necessarily lead to the idea of universal rights. After all, we could all put ourselves in the shoes of another and perhaps understand *what* makes the murderer commit the crime. But does empathizing with someone's troubled childhood or impoverishment, for example, eradicate the evil of the deed? If so, then the acceptability of an act amounts to whether or not it can evoke a favorable emotional response—a sad truth that seems to play out far too often in U.S. courtrooms. The danger of appealing strictly to sentiment is that the popular sentiments of the day are not always correct. Furthermore, Rorty's theory, even more than the others, paves a short road to tyranny. For if truth resides in *feeling*, human rights will be defined by whoever is most adept at manipulation. Invariably, this is the person with the most access to the media, or with the glibbest tongue. Without reference to an objective idea of human good, how shall we hold government leaders accountable for offensive actions?

Rorty's theory is also incompatible with universality because although the capacity for sentiment may be universal, the way it is manifested across culture is not.⁶¹ Since what is important for Rorty is the manipulation of sentiment, it is difficult to see how he can argue that one culture's "feelings" about a particular human right are inferior or superior to another's as long as the feelings are just as intense.

Rorty makes the important point that human beings are as much distinguished by their capacity for friendship and sentimentality as by their ability to reason. In downplaying the latter to the point of irrelevancy, however, he obliterates the possibility of judging whether our emotional responses are correct. He argues against the idea of an ahistorical human nature, but has offered nothing other than a different theory of human nature—one positing that humans are feeling beings, as opposed to thinking and feeling beings. But as we have seen, stressing sentimentality over reason does not necessarily cultivate a greater appreciation of human rights, nor does it, in its Machiavellian overtones, break out of the realist world view in which the ability to wield power, whether as brute force or subtle manipulation, always trumps all questions of right and wrong.

Evolution and Human Rights

John O'Manique seems to understand the importance of an objective standard to the idea of universality but does not want to acknowledge the need for natural law. He argues that human life is not beholden to an independent measure of truth, but rather creates its own truth through evolution. What is interesting is that the more O'Manique tries to deny the importance of teleology to the idea of universality, the more he unwittingly proves the necessary connection between the two.

O'Manique points out that as acceptance of rationalist and theist foundations for human rights has waned, so too has the case for universality. Western explanations have become "a confusing mixture of the inalienable and universal rights of the natural law tradition, Western declarations, and the state-created privileges of the positivist." Even though human rights declarations cite dignity as a source, "neither the concept of human dignity nor its connection with rights ... are objective or fundamental. Dignity as recognized and granted by others is subjective and variable."⁶²

O'Manique's argument implies that neither empirical nor prescriptive explanations of human rights sufficiently support the idea of universality. "If rights are identified with the exercise of rights, then they come and go; they are augmented or reduced according to the decisions of powerful agents in society." If so, then law is the basis of human rights, which are therefore conventional. If the validity of rights rests in "recognition and acceptance," then human rights are based in "social value systems" and are therefore not universal since they are not found in all societies.⁶³ So we must think of a new way to describe rights. O'Manique realizes that when rights are defined as purely human creations, universality is threatened. He recognizes the need for an objective source of human rights. But instead of looking to natural law for this, he calls for "new foundations" based in science. Such a basis for human rights would be "sufficiently devoid of ethnic content so as to be globally acceptable and applicable."⁶⁴ To this end, O'Manique turns to the concept of evolution.

Evolution, of course, pertains to the way a species develops and survives. What universal rights, then, would the principle of evolution entail? To begin with, O'Manique notes that *any* claim to a universal right must be one that every human being could make and could expect others to accept. To be inalienable, the "claim and its justification must

arise from within the claimant and not from some other agents.” Something needed for survival would fit this bill. O’Manique concedes that this does involve a moral principle—namely, that survival is good. But he says that this does not compromise the objectivity of his theory, since this belief is “virtually universal.” For human beings, however, survival means more than just existing; indeed, human evolution has also produced self awareness, through which “we create goals, design paths to them, and attempt to achieve them by effecting some self-conscious control over our tendencies as well as over our environment.” We are able to “transcend” our “biological roots,” which means that “we can neither ignore genetic factors nor reduce our behavior to them.” He concludes that “Human aspirations are not to the mere maintenance of existence but to the fulfillment of life.”⁶⁵

O’Manique adamantly insists that it is not teleology, but evolution that drives human beings toward the self-understanding that enables them to develop morally. Moral development, it would seem, is as necessary to human beings as life itself. All humans need is to associate with others, to express themselves, to enjoy a degree of autonomy, and to have access to “love and beauty.” O’Manique contends that these human needs are the foundation of universal rights since they “can be observed and even empirically confirmed within the social sciences and psychology.”⁶⁶ He does admit that in attempting to answer the question of what is good for human beings, his concept is “essentially normative.” But he insists that in being founded on a “fundamental principle of the evolutionary process,” namely, that development enhances survival, it is “based on a foundation that, unlike moral systems or attitudes, is not itself a human creation.”⁶⁷

O’Manique acknowledges that “if a right is to be universal and inalienable, then it must be based on something other than human authority or even human attitudes or value systems which, as human creations, vary over space and time.” Yet his argument for evolution as an objective measure of human rights turns out to be an exercise in wishful thinking; for he admits that the notion that one may have a right to a particular thing that promotes development cannot be “confirmed or denied empirically.” Everything still turns on the question of what is the best life for a human being—a question that is best answered through a teleological response.

Consider the following: Teleology posits that all things have an end or a function, and that this determines what kind of life is good for

them. In the view of Aristotle and Aquinas, for example, the universe is ordered by an unmoved mover; all things, to varying degrees, tend toward an imitation of this form. As we move up the chain of being, we find man has something possessed by no other thing—animate or inanimate—*logos*, or reasoned speech. The function of man is to reflect the unmoved mover through his awareness, derived from reason, of his relationship to his fellow man and the world. Human beings, like all living species, must survive; but unlike other species, they must also strive to attain truth—that is, to reach for something *beyond* their own survival. Truth, in the end, is more important for man than survival alone because it is a good more proper to his nature. This is why the moral dimension is so necessary to human life. The evolutionary view, put in teleological terms, supposes that all living things have a single function—survival. So if human beings require a moral life, ultimately this must be because it is necessary for the survival of the species.

Both the teleological and the evolutionary views of human nature posit that certain things are good for human beings, in all times and circumstances. But the evolutionary theory actually fails to answer the question of *why* human beings should be moral. For if evolution holds that morality enhances human survival, how can it explain why morality sometimes requires actions that seem detrimental to one's own survival—such as observing rules of warfare at the risk of one's own life or the lives of one's troops? Why should humans be moral if they can survive just as well without morality? In the evolutionary view, there is no real incentive for *individuals* to act morally; for the only purpose higher than individual human existence is survival of the species.

What this amounts to is not an objective principle, as O'Manique hopes, but the idea that mankind itself is the highest good. Truth must be whatever enables the species to survive. So how do we use this to criticize the human rights practices of other regimes? Without a transcendent standard, how do we know that their actions will not, in the end, produce a better species of human being than our own actions will? Furthermore, if evolution shows that human beings need reflection, love, and beauty to survive, then why are evil characters not selected out of the species, instead of continually cropping up throughout time? Why was the twentieth century among the bloodiest epochs in history?

Overall, it is difficult to see how the idea of human flourishing can fit into a strictly evolutionary thesis since the term, as O'Manique uses it,

implies an entire normative dimension, which begs the question of *how* human beings should best develop. The answer to this question is largely prescriptive—it cannot be proven empirically. O'Manique seems to be saying that human beings seek certain goals because they *should*—in other words, because certain things are *good* for human beings. Now, from a strictly evolutionary standpoint, organisms either develop or they die. But it is perfectly possible for a human being to “survive” in the ordinary sense of the word and not “develop” as a human being. We can choose whether or not to pursue the good life.

Finally, O'Manique's theory, like those discussed heretofore, seems to require that we consider ourselves to be morally superior to preceding generations. This is hardly self-evident and also contrary to the idea of universality; for it implies that what is good for one generation is not necessarily good for the next. But universality of human rights requires, above all, the idea that human nature is unchanging and that certain goods are perennial—two ideas to which evolutionary theory is intrinsically opposed.

The Need for a Foundational Approach

In his book *Human Rights as Politics and Idolatry*, Michael Ignatieff seems to recognize the danger of making rights ends in themselves, or in expecting them to accomplish all the things that human rights documents set out to do. He wants to expound a practical theory of universality, based on what we can realistically expect human rights to accomplish. His “thin” universalism in many ways affirms the principles of natural law set forth by St. Thomas. Ignatieff, however, believes that practicality requires that we eschew “foundational” principles. But as with all other non-foundational theories of universality, this, too, opens the door to the forces of tyranny. What is interesting about Ignatieff is that the more he tries to argue against universal principles as the basis of human rights, the more convincingly he (unwittingly) makes the case for a return to natural law.

There are two main components to Ignatieff's argument: an explanation of what human rights are and an account of where they come from. He begins by affirming that the Universal Declaration of Human Rights was really a reaction to the effects of nihilism as represented by

Nazi Germany—a “return by the European tradition to its natural law heritage, a return intended to restore *agency*, to give individuals the civic courage to stand up when the state ordered them to do wrong.”⁶⁸ He explains that “The most essential message of human rights is that there are no excuses for the inhuman use of human beings.” Human rights are “to provide a universalist vantage point from which to criticize and revise particularistic national law” (16). The chief purpose of rights, then, is to provide a means by which individuals can stand up for themselves in the face of government injustice.

Just as natural law holds that there are primary principles of justice that are general and universal and secondary principles which represent the application of these to specific situations, Ignatieff suggests that the Universal Declaration of Human Rights offers a universal standard that, to some degree, must be permitted to be interpreted freely among different cultures. Human rights, in practice, must be consistent with the principles they represent. Nevertheless, since “individual agency” is a key component of human rights, groups must be free, as far as possible, to rule themselves. It would therefore be oxymoronic for some governments to impose their idea of human rights on others (18). But just as natural law holds that the interpretation of secondary principles must not conflict with the meaning of rights on the primary level, “coercive human rights interventions are permissible in ‘strictly defined cases of necessity,’ such as “where human life is at risk” (18).

This implies that all human rights are not of equal importance, and that life is more fundamental than liberty. Next to life, the paramount fact that human rights must respect is that human beings are free agents. As such, nations should not be expected to adhere to the long list of rights enumerated within the UN human rights documents, but should be free to decide when and how to implement human rights. Thus, “shared belief in human rights ought to be compatible with diverging attitudes concerning what constitutes a good life.” He explains that “Another way of putting the same thought is that people from different cultures may continue to disagree about what is good, but nevertheless agree about what is insufferably, unarguably wrong.” This leads to the conclusion that “Human rights can command universal assent only as a decidedly ‘thin’ theory of what is right, a definition of the minimum conditions for any kind of life at all” (56).

Ignatieff is wisely on guard against the dangers that occur when rights are made an end in themselves. He recognizes that power, even

when exercised in the cause of human rights, is always at risk of being abused (47) and warns against the tendency to make human rights a secular religion, which turns it “into a species of idolatry: humanism worshipping itself” (53). So far, Ignatieff would seem to agree that the current arguments for human rights, grounded in secular humanism, are conducive to tyranny.

But rather than attempting to rethink the idea of human dignity to determine what makes human rights universal, Ignatieff turns away entirely from dignity as a source of human rights (54). The problem with such a ground for human rights, he believes, is that human beings often fail to act with dignity. He denies that there is any natural human attributes that can serve as a basis for universality. Reason is inadequate; for the “exterminatory nihilism of the Nazis” demonstrated that “any ethics that takes only reason for its guide is bound to seem powerless when human reason begins to rationalize its own exterminatory projects” (81).

Nor can we look to empathy as a basis for rights, he says; for in actual experience, human beings are not naturally disposed to be concerned for others outside of their immediate circle. “The Holocaust showed up the terrible insufficiency of all the supposedly natural human attributes of pity and care in situations where these duties were no longer enforced by law.” Indeed, “the Universal Declaration set out to reestablish the idea of human rights at the precise historical moment in which they had been shown to have had no foundation whatever in natural human attributes” (79–80).

Ignatieff believes that a more realistic and therefore more universal ground for human rights lies not in any theory of human nature, but rather in the lessons of history:

[History teaches] that human beings are at risk of their lives if they lack a basic measure of free agency; that agency itself requires protection through internationally agreed standards; that these standards should entitle individuals to oppose and resist unjust laws and orders within their own states; and finally that when all other remedies have been exhausted, these individuals have the right to appeal to other peoples, nations, and international organizations for assistance in defending their rights. These facts ... have been demonstrated most clearly in the catastrophic history of Europe in the twentieth century. (55)

Such a historical conception of human rights, Ignatieff argues, does not need to appeal to principles of nature or dignity. He advocates an understanding of human rights based on “human beings as they are, working on assumptions about the worst we can do, instead of hopeful expectations of the best.” He advises that the foundation of human rights is to be found not in “human nature” but in “human history;” that is, “on what we know is likely to happen when human beings do not have the protection of rights. We build on the testimony of fear, rather than on the expectations of hope” (80).

Apparently, Ignatieff believes history provides a more neutral basis for human rights since, presumably, everyone can agree on what has already happened. He says that theories that ground rights in human dignity, however, are controversial “because each version of them must make metaphysical claims about human nature that are intrinsically contestable.... Foundational claims of this sort divide, and these divisions cannot be resolved in the way humans usually resolve their arguments, by means of discussion and compromise” (54). This is why, although he has previously described human rights as upholding a kind of moral standard, Ignatieff is quick to assert that rights must not be thought of as “trumps;” for this notion (wrongly) implies that rights resolve political controversies. “In fact,” he says, “the opposite is the case. When political demands are turned into rights claims, there is a real risk that the issue at stake will become irreconcilable, since to call a claim a right is to call it nonnegotiable, at least in popular parlance” (20).

Another thing that obscures our understanding of rights, Ignatieff contends, is the existing conflict between religious believers and secularists regarding the nature of human rights. He says that religious believers think that unless one acknowledges that human beings are sacred, there is no special reason for protecting them with rights (82). In order to be consistent, humanists, or nonbelievers, must reply that “there *is* nothing sacred about human beings,” but that history proves that human rights are “necessary to protect individuals from violence and abuse.... Human rights is the language though which individuals have created a defense of their autonomy against the oppression of religion, state, family, and group.” Thus, “The fundamental moral commitment entailed by rights is not to respect, and certainly not to worship. It is to deliberation.” This facilitates the “compromises that will keep conflicting claims from ending in irreparable harm to either side” (84).

Ignatieff implies that because religious believers hold “moral absolutes,” they cannot make any contribution to the case for universal human rights since, in his view, moral absolutes preclude dialogue. The humanist view appears to be more compatible with his “thin” theory of universalism; for it makes no assumptions about human beings as being rational, empathetic, or children of God. It holds only that they have a right to deliberate about their treatment of each other. But where does *this* right—the right to deliberate—come from? What Ignatieff does not seem to realize is that a moral commitment to “deliberation” inherently assumes that people are “sacred”—if by that word we are to mean that they are all entitled to moral equality. To say that someone has a right to “deliberate” is to presume that there is something about that person that is worthy of respect, despite our particular feelings about him or whether or not we feel like listening. Ignatieff unwittingly confirms this point when he looks to the writings of Primo Levi, a secular Jew and Holocaust survivor, as an “exemplary testimony to the capacity of secular reason to describe the enormity of evil” (86). He cites a passage from Levi concerning the way he was looked at by a Nazi chemist:

That look was not one between two men; and if I had known how completely to explain the nature of that look, which came as if across the glass window of an aquarium between two beings who live in different worlds, I would have also explained the essence of the great insanity of the third German [reich]. (3)

Ignatieff sees this as an example of the moral intuition that human rights are designed to embody—that “our species is one, and each of the individuals who compose it is entitled to equal moral consideration”(3–4). Here, however, is where his appeal to history as the basis of human rights begins to break down. For Levi said that the great evil of the Nazis lay in their refusal to see the Jew as a fellow human being. But the humanist, according to Ignatieff, must eschew the idea that there is anything special about human beings, and maintain instead that there is less suffering if people can effectively protest against government injustice. But was the essence of Levi’s charge that he had no way to protest injustice, or that it was terribly wrong for the Nazis to deny the essential moral worth of the Jew? Ignatieff may look to Levi for the “secular” viewpoint, but the fact is that regardless of whether one acts from consciously religious motives, any-

one who lives by the principle that *all* human beings deserve equal moral consideration confirms the believer's view that human beings are sacred.

We might also question how well Ignatieff's explanation of deliberation as the function of human rights works in the absence of foundational principles. He suggests that human rights should be understood "as a language, not for the proclamation and enactment of eternal verities, but as a discourse for the adjudication of conflict." Rather than moral absolutes, rights are better thought of as tools to create a "common framework, a common set of reference points that can assist parties in conflict to deliberate together" (20). If rights are trumps, they assume the status of moral absolutes. Ignatieff realizes the absurdity of assigning such value to all of the goods held out by human rights documents, a move which ultimately forces more conflict than cooperation among world actors. The idea that rights are tools, and not trumps is useful if we acknowledge that there are few human goods that are truly universal—that is, applicable in all times and in all situations. Ignatieff, however, wants to say that we should be able to employ rights as tools without assuming there are any shared universal values. If that is the case, one is left wondering how any dialogue can occur at all.

Ignatieff concedes that although the function of human rights is to provide us with a common language for dealing with conflicts, in the most contentious matters, like abortion, a common language "does not necessarily facilitate agreement." He notes that both sides in the abortion debate "agree that the inhuman use of human life should be prohibited, and that human life is entitled to special legal and moral protections. Yet this is hardly common ground at all, since the two sides disagree as to when human life commences, and as to whether the claims of the mother or the unborn child should prevail." He states that it is therefore "an illusion" to presume that human rights can "define a higher realm of shared moral values that will assist contending parties to find common ground." What really leads to agreement are "political factors" such as "shared exhaustion with the conflict, dawning mutual respect, joint mutual recognition—all these must be present, as well as common commitment to moral universals, if agreement is to be reached" (21).

So although Ignatieff initially claims that the chief function of human rights is to enable discussion, he admits that in the more contentious situations, conversation is impossible without a "common commitment to moral universals." Ignatieff seems to have made the opposite point of what he intended. He may prefer to think of human rights as

simple talking points rather than moral trumps, but the concept cannot perform even this less exalted role unless it is anchored in universal truth.

In fact, as will be discussed in the following chapter, the very existence and function of language indicates that human beings are moral by nature—we think and act in terms of universal rights and wrongs. We cannot coherently hold that the idea of human rights is by nature a dialogue but does not by nature represent universal values. The second statement is implicit in the first. If there could be no possibility of agreement on moral matters, there would be no point in talking at all. Disagreement should not mean the end of dialogue, but rather, a more concerted effort to return to the premises of our own arguments.

Ignatieff asks “Why do we need an idea of God in order to believe that human beings are not free to do what they wish with other human beings—that human beings should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will? These intuitions derive simply from our own experience of pain and our capacity to imagine the pain of others ... indeed the strength of a purely secular ethics is its insistence that there are no ‘sacred’ purposes that can ever justify the inhuman use of human beings” (88). But this is an appeal to sentiment as a foundation of rights, which Ignatieff has already discounted. Besides, if we are to justify actions solely on the basis of whether we want to be on the receiving end and maintain, as the secularist must, that there is nothing special about human beings, then we must consider animals and plants as our moral equals.

So human rights cannot be used as tools for dialogue without some prior stipulation of foundational principles. Neither can they be justified by the so-called “neutral” standard of history, for looking to history as a standard is useless at best and dangerous at worst. Without independent standards of judgment, how are we to interpret the lessons of history in the first place? The “lessons” of history can always be rewritten; the first principles of justice are unchanging. If history is the foundation for rights, then we must wait for terrible things to happen before we are capable of making judgments. The horrors of Nazi Germany may have opened the eyes of the world to the existence of evil like nothing before, but how do we know that this is the worst that human beings can produce? A final problem with making history the criteria for forming moral judgments is that history can be subjective—if we cannot judge historical events against the backdrop of moral verities, who is to say what history teaches? Or, if we are to remember the horrific world of Orwell’s

1984, in which all accounts of history are continually rewritten by agents of a totalitarian government, who is to say that history even happened? In order to remain intelligible, Ignatieff's theory of human rights as a means of dialogue requires a much greater reliance on universal moral principles than he wishes to admit.

Ignatieff's analysis of human rights in many ways points to the concept of natural law—in the argument that secular humanism cannot stand as the measure of human rights without collapsing into “idolatry” or “humanism worshipping itself,” and also in the idea that the truly universal values are not represented by the whole catalogue of human rights, but comprise a much smaller list of obligations revolving around negative liberties. He comes close to illuminating the reality of human rights in international politics. He provides a sound and sober analysis of the possibilities and limitations of universal human rights. But his view is ultimately flawed, insofar as he shies away from the notion that if human rights are universal, it is because they are rooted in universal moral principles. Instead, Ignatieff holds that we know universal human rights solely on the basis of the lessons of history. But historical justification makes the interpreters of history the sole guarantors of truth. It also carries with it the notion that we control truth simply by virtue of our place in time. This has the effect of confining truth to the subjective realm of the human mind. Thus, Ignatieff's approach to human rights, like any other that eschews the idea of transcendent standards of justice, runs the risk of degenerating into the will of the stronger, as those with the power to control historical interpretation determine what the lessons of history are and how they should be applied.

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CHAPTER 3

Human Rights as Moral Principles

A look at the dominant arguments for human rights has revealed the folly of attempting to say something universally true about human beings without appeal to objective norms. Legal philosopher Michael Perry seems to understand this, and contends that the very notion of human rights (the idea that “*certain things ought not to be done to any human being and certain other things ought to be done for every human being*”¹) stems from the “religious” response to the “problem of meaning.” According to this view, the universe is ultimately “meaningful in a way hospitable to our deepest yearnings.” We are all somehow “bound or connected to the world,” to each other, “and, above all, to Ultimate Reality in a profoundly intimate way.” He contrasts this with a “non-religious” view, which holds that man is “an alien, an exile, homeless, in a world, a universe, that is strange, hostile, pointless, absurd.”²

According to Perry, there is no reason to respect human rights unless one believes that all people are intrinsically connected to one another. “Indeed, if the Other really is, in some deep sense, one’s sister/brother, then it would be surprising if every non-religious person were existentially disconnected from that truth.” But Perry notes, “to be connected to that truth existentially ... is not necessarily to affirm it intellectually.”³

Thus, the true iniquity of a human rights violation does not reside in the affront it may pose to popular sentiment. “It is that somehow, the very order of the world—the *normative* order of the world—is transgressed.”⁴ A normative world order is essentially the natural law presumption that human beings possess a common nature, which means that some things are good for all people, and should be pursued, and

some things are bad for all people, and should be avoided. The idea of an ultimate universal good for everyone, however, does not preclude the fact that there can be a plurality of particular goods for different cultures, depending on different situations.⁵

Perry's argument about the need to construct a logical argument for universal human rights is helpful, but his decision to refer to moral questions as being "religious" plays into the hands of the modern cultural ethos which presumes that bringing moral issues to the public square is the equivalent of the state establishment of religion. Let us see why this is not the case.

Law and Morality

Perry's analysis points to a larger consideration that is most relevant to the case for universality: To speak intelligibly about human rights, we must recognize that we are dealing with moral principles and identify human rights as such. This requires setting aside the notion that moral principles should not be discussed in the public square and acknowledging the connection between law and morality. Much has been made of the question of whether law may enforce "morality." But we should bear in mind that law is itself a moral principle. The work of Hadley Arkes is most instructive here. In his book, *First Things: An Inquiry into the First Principles of Morals and Justice*, which builds upon Aristotelian moral philosophy, Arkes explains that the law exists "for the sake of enforcing a rule of right and wrong, whose validity no longer depends entirely on the self-interest of the parties." According to these kinds of rules, which are part of "the logic of morals," we are responsible for upholding certain behaviors, regardless of whether we have personally consented to do so. The existence of laws prohibiting slavery or child abuse, for example, indicates that we believe there is a rule involved in these cases that is valid apart from the opinion of those engaging in such practices.⁶ Like the logic of morals, the logic of law is such that the first principles upon which it is based are true regardless of whether or not a particular individual assents to them.

Nevertheless, the tendency in law and politics these days, Arkes notes, is to suppose that moral discourse belongs entirely within the realm of private religious belief or personal opinion. Even though we admit that morality deals with the most important questions regarding

the conduct of our lives, it is presumed that moral judgments are necessarily reached apart from logic, reason, and demonstration. But moral propositions are, by nature, very different from statements of personal, private belief; for they refer to things that are universally right or wrong, applicable to all people.⁷ The purpose of moral argument is to identify the grounds on which any action is said to be justified. When we recognize that a particular act—for example, killing innocent life—is wrong, logic dictates that we “forbid that act to people generally or universally—which is to say, we forbid it with the force of law.” In this sense, we might say that law is not substantially different from morality, but is in fact dependent upon it—for law exists only because of the moral principles by which we understand actions to be either right or wrong.⁸

The idea of law as being founded on moral principles is so essential that even the legal positivist H. L. A. Hart acknowledged that rules against murder, violence, and theft overlap with basic moral principles and therefore possess a “necessary non-arbitrary status.” For “such rules are so fundamental that if a legal system did not have them there would be no point in having any other rules at all.”⁹

Arkes explains that law belongs to the logic of morals; moral propositions are universal by nature because they embody principles that are necessarily and categorically true.¹⁰ Setting aside the modern contention that politics should not deal with questions of truth, he considers necessary truths, “propositions that cannot be contradicted except with propositions that are themselves self-contradictory.” An example of this is the law of contradiction. We cannot “know” the law of contradiction from existing definitions; rather we must comprehend it before we are able to grasp any definition in the first place. Necessary truths are “first principles.” They cannot be understood demonstratively because they are the foundation upon which all demonstration is based.¹¹

Another example of a necessary truth is that human beings are rational; for to argue that they are not would entail providing reasons, and this is, of course, an act of reason. The existence of morals is also a necessary truth. If Smith, for instance, tries to argue that morals do not exist, he would have to claim that since he does not accept the existence of morals, nobody else would be justified in obliging him to respect the logic of morals. To make this claim, however, is to say that it would be *wrong* for anyone else to demand that Smith respect moral principles. One would have to use the logic of moral principles to refute the idea of moral principles.¹²

First principles, then, are necessary truths; they cannot be contradicted, except with a statement that is itself contradictory. Therefore we must assume they exist before we can talk coherently about anything else. It is true that morals are sometimes rejected, but this does not disprove their existence or their usefulness. Indeed, this is unavoidable to some degree since moral decisions are made by free agents who are capable of choosing their own course of action. It would make no sense to say that a rock, when dropped, is obliged to fall down and is blameworthy if it does not. Blame or praise can logically attach only to an agent who is responsible by virtue of being free.¹³

Like the autonomy theory, the logic of morals presupposes that an essential quality of human being is the ability to freely choose one's actions. But unlike the autonomy theory, the logic of morals holds that decisions can be right or wrong, independent of consensus. Law may be imperfectly articulated or administered, but this no more invalidates the moral principles on which it rests than the existence of oblongs disproves the idea of a perfect circle.¹⁴ To suppose otherwise is to engage in self-contradiction. Arkes notes that "The fallacy that forms the central premise in cultural relativism" is that "the presence of disagreement confirms the absence of truth. That is, the variety of opinion which exists on the nature of virtue and vice is usually taken in itself as proof of the proposition that there are no understandings of morals that are universally true." But of course, the statement that there is no truth is itself a universal proposition, which is rendered invalid the moment that someone disagrees with it.¹⁵

The point of this is not to insist that all legal systems must embody the same elaborate moral code beyond the minimum content of natural law. Rather, it is simply to point out that the logic of morals and the logic of law are synonymous. Citizens can debate among themselves as to the proper application of the law in various contexts, but we are mistaken to believe that the law itself is, or should be, morally "neutral." Laws are framed, interpreted, and administered by human beings. Because they are human beings, neither lawmakers nor judges make decisions in a moral vacuum. As Robert Bork notes, the supposition that law must be silent on questions of value does not render a law that is "morally neutral," but rather, a law "in the service of a different morality."¹⁶

The Supreme Court's treatment of free speech is a case in point. The First Amendment's free speech clause was devised to protect the political speech that is necessary to the workings of our republican form of

government. But in recent years it has increasingly been interpreted to mandate protection of obscenity and pornography, forms of expression that Americans restrained for two hundred years. Bork explains that historically, the prohibition of profanity, lewdness, and obscenity was not considered unconstitutional because “such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”¹⁷

This understanding had changed by 1971, however, when the Supreme Court heard the case *Cohen v. California*, concerning a young man who had walked into a crowded Los Angeles court house wearing a jacket that said “F*** the draft.” Justice Harlan asked, “How is one to distinguish this [word] ... from any other offensive word?” Harlan claimed that there was no “readily ascertainable general principle” by which anyone could judge whether or not speech was offensive.¹⁸

Harlan’s assumption that “one man’s vulgarity is another’s lyric” is of course a staple of moral relativism. As Bork notes, “On that ground, it is impossible to see how law on any subject can be allowed to exist if any citizen disagrees with it. One man’s armed robbery is, after all, another’s just redistribution of wealth.”¹⁹ Of course, Harlan defended the decision as an instance of protecting political speech. But if words are so subjective, how did he in fact know that the speech was political, or that Cohen was not, as Arkes puts it, literally encouraging those around him to “make love to the wind?”²⁰

But we could know that Cohen was making a political speech precisely because words are not subjective in their import, and we could know these things for the same reasons that were brought forth, years earlier, to refute logical positivism: The functions of condemning or commending, of deriding or applauding, are moral functions, and they are rooted in our language. The words that carry these functions may change over time, but the functions persist, and if they do, it must be possible for most people to understand at any moment the words that are established in our language as terms of rebuke or praise ... that moral function will always be contained in our language, because it is part of the constitution of our own natures, as moral beings.²¹

In the area of pornography as an expression of “speech,” the Court struck down a congressional statute that mandated that cable television

channels “primarily dedicated to sexually-oriented programming” must “limit their transmission to hours when children are unlikely to be viewing.” The Court ruled that the pornographer’s right of expression prevails over the sensibilities of the audience, who must protect themselves by “simply by averting their eyes.” But Bork notes, many people will not look the other way, and the result will be a gradual deterioration in social standards of morality, truth, and beauty. He adds that “the suffocating vulgarity of popular culture is in large measure the work of the Court.” The Court did not invent indecency, but it prevented communities from attempting to contain it. “Base instincts are always present in humans, but better instincts attempt, through law and morality, to suppress pornography, obscenity, and vulgarity. When the law is declared unfit to survive, not only are base instincts freed, they are also validated.”²²

Another example of an interpretation of law that, in deference to the god of personal autonomy, purports to be morally neutral is found in the Supreme Court’s treatment of abortion. In *Roe v. Wade*, the Court supposed that the question of when life began was strictly personal, and determined by one’s experiences, religion, and “moral standards.” It was, in other words, a controversial moral issue, and for that reason the government could not presume to impose the protection of unborn life on women unwilling to carry a pregnancy to term. Writing for the majority, Harry Blackmun opined:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.²³

The Court further entrenched this principle in *Planned Parenthood of South-Eastern Pennsylvania v. Casey*, when it ruled:

Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not mandate our own moral code.... At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.²⁴

Abortion, according to the Court, is a moral issue and therefore beyond the scope of politics and the law. But if the law is not applicable to cases regarding the “most basic principles of morality,” we are left wondering to what it *does* apply. The Court’s treatment of abortion is not an example of a morally neutral law, but the vigorous assertion of a morality that deems personal autonomy to be a more important value than life itself. The result is that an entire class of *homo sapiens* is effectively rendered insignificant and outside the purview of the law.²⁵

As jurisprudence goes in the United States, so it often goes internationally and vice versa. The U.S. Constitution and the Universal Declaration of Human Rights are both informed by a natural rights philosophy, and some scholars believe there is a reciprocal influence between the two. Louis Henkin notes:

One notable source for the catalog of rights in the Universal Declaration was the Constitution of the United States and its 200 years of interpretive jurisprudence. In turn, during the half century since the Declaration was proclaimed, it has been a rich source for new “rights instruments” and has enriched rights in older polities. Rights in the United States have not been overt, avowed beneficiaries of the Declaration, but they have not escaped its subtler influences.²⁶

As was mentioned earlier, the drafters of the Universal Declaration intended to establish a moral standard based on human dignity to guide the creation of national constitutions. Whereas Madison said that “if men were angels, no government would be necessary,” Henken similarly notes that “if national laws and institutions were fully effective ... there would be no need for international human rights laws and institutions.”²⁷ The Universal Declaration, then, is meant to provide a standard by which national actions may be measured. Henkin believes that Lyndon Johnson’s Great Society was a response to the values contained in the Universal Declaration which was, after all, “designed to inspire national laws and national legal-political cultures.” He concludes that, knowingly or not, the Universal Declaration “and what it represents in the international culture of the past half century, has had its influence on the U.S. Constitution and on the laws of the United States.”²⁸

Because they are primarily moral principles, human rights norms do not emerge, as international law typically does, from questions of state interest. Rather, their origins lie in the “strongly held principled ideas

(ideas about right and wrong)” of individuals, “and the desire to convert others to those ideas.”²⁹ Human rights norms are the products of a collaboration of individuals within governments, international organizations, and nongovernmental organizations (NGOs). NGOs, for example, through a process of “almost pure persuasion,” solicit “the support of powerful state actors who endorse the norms and make normative socialization a part of their agenda.”³⁰

Respect for human rights may be largely at the mercy of the state. But human rights are often framed and put into play through the critical efforts of NGOs. Thus, the human rights that are said to be part of international law are not a simple reflection of national interests, but are also indicative of the activities of special interest groups.³¹ Remember that universal human rights are meant to stand as moral principles directing the actions of states with regard to their citizens. But when the NGOs and UN committees that frame the rights are driven by a commitment to radical individual autonomy pursued under the guise of moral “neutrality” on the part of the state, human rights inevitably degenerate from universal moral principles to the preferences of powerful groups.

The possibility of this kind of tyranny is demonstrated in a recent article by William Schulz, Executive Director of Amnesty International USA, who notes with approval that human rights norms “reflect either the views of those who are at the moment holding the power, or the principles that have managed to claim a consensus among enough people that the powerful dare not challenge them.”³² Like Donnelly, Schulz finds the source of truth in consensus. He deems natural law too problematic because he does not believe it is possible to determine what characteristics are “of sufficient import to serve as a basis for the delineation of rights.”³³ Truth, he implies, is to be discovered in majority opinion. Thus, he says, “What do we do with the ancient Uro people of Peru, who did not believe they were human at all and hence would a priori reject any notion of human nature? We tell them they are wrong, of course, just as we tell solipsists they are wrong on the grounds that the vast majority of us say they are.”³⁴

For Schulz, the will of the majority is the only legitimate ground for distinguishing right from wrong. He argues that to determine the essence of human nature, we must not consult some small group, but rather the “widest possible number of responsible agents,” or run the risk of “having the rules set by a dictator, an elite or a cabal of power-mongers.”³⁵ Of

course, if majority opinion is what makes something right, then a “responsible agent,” is, by definition, one who endorses the majority view. Furthermore, “universal” rights justified on such a basis are not permanent, for Schulz notes that human rights “evolve” like “all laws and standards:”

Human rights at the international level rely upon the same principle that the U.S. Supreme Court invokes when it determines that “evolving community standards,” concerning what constitutes pornography or whether it is acceptable to execute the mentally retarded, influence the interpretation of justice.... Rights that are grounded in international consensus—even “semi-sensus”—and elaborated in formal treaties and conventions are far more likely to be perceived as politically legitimate than notions of what Truth or Nature does or does not justify.³⁶

Schulz has implied that the chief problem with natural law is that its content is usually determined by elites who then proceed to impose their “views” on everyone else. Instead, he argues, truth is more accurately discerned through majority consensus. But he sees no irony in the fact that when it comes to rights, it is precisely elites like court justices, UN bureaucrats, and special interest groups within the UN who determine the standards of morality that are to apply to the majority, on grounds that are increasingly arbitrary.³⁷

Are Rights Really Universal?

Attempts to define human rights without reference to transcendent standards cannot theoretically support universality. Donnelly correctly argues that there is no point in claiming a right to something that one already enjoys. Rights *should* be conceptualized as devices for protecting the weak from the strong. But we have seen that without an objective measure of good, there is no guarantee that rights will not deteriorate into instruments of tyranny. The only way to avoid this is to justify rights according to universal principles—applicable in all times and places and not subject to conceptual tinkering, however well intentioned it might be. Only from such a basis can we ensure that rights will truly protect the weakest and most vulnerable members of the human race, and not be used as devices to legitimize the desires of the strong.

Of the arguments for universal human rights, the most pervasive in today's law and politics is the autonomy view, which supposes that in the absence of truth, the only way for human beings to live peaceably together is by making tolerance the highest social value. This requires a liberal democracy in which individual autonomy is valued for its own sake. But the idea that the only universal truth is that we must agree to disagree is logically meaningless; for the statement itself is nullified as soon as someone disagrees with it.

As much as the proponents of the culture of autonomy might protest otherwise, the fact remains that the ability to think and act according to moral principles is intrinsic to human nature. All of us, self-professed relativists and autonomists included, abide by rules we hold to be universally true. The question perhaps is not *whether* we should think in terms of universal values, but *what* those values should be.

If the source of human dignity is to be located in the act of choosing and self-creating, then the law must revolve around that principle and uphold personal liberty as the highest social value. The struggle for human rights is thus the fight to establish a worldwide culture of individual autonomy. But this comes with a consequence: Life is not sacred but merely instrumental, valuable only insofar as it is a vehicle for the realization of the "self." If autonomy is the highest value, there are no grounds to criticize the actions of others who are simply acting autonomously. Ultimately, this argument results in a thinly veiled absolutism in which the law, while professing to be completely neutral on questions of value, actually advocates an alternative morality altogether that is subversive to the cause of human rights.

How did we get to this point? Is the notion of radical individual autonomy a bastardization of the natural rights philosophy out of which the concept of universal human rights has grown, or merely its logical consequence? This question will be considered through an examination of the progression of political philosophy from Plato to Locke. We will then turn to the philosophy of Thomas Aquinas to ponder anew whether there really are any universal human rights, and if so, what they might be.

Part II

*Soul Keeping and State Building:
Principles and Politics
from Plato to Machiavelli*

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And I suppose that until now no greater good has arisen for you in the city than my service to the god. For I go around and do nothing but persuade you, both younger and older, not to care for bodies and money before, nor as vehemently as, how your soul will be the best possible.

You should think this one thing to be true: that there is nothing bad for a good man, whether living or dead, and that the gods are not without care for his troubles.

—Plato’s “Apology of Socrates”

If one considers everything well, one will find something appears to be virtue, which if pursued would be one’s ruin, and something else appears to be vice, which if pursued results in one’s security and well-being.

A prince, and especially a new prince, cannot observe all those things for which men are held good, since he is often under a necessity to maintain his state, of acting against faith, against charity, against humility, against religion. And so he needs to have a spirit disposed to change as the winds of fortune and variations of things command him, and as I said above, not depart from good, when possible, but know how to enter into evil, when forced by necessity.

—Niccolo Machiavelli, “The Prince”

The Universal Declaration of Human Rights was a conscious attempt to infuse morality into world politics. But most efforts to provide a justification for those principles have fallen flat because each argument fails to sustain the idea of universality to the extent that it partakes of the cup of secularism. In fact, the concept of universal human rights is doomed to remain unintelligible unless the person is understood as existing in relation to a larger whole, which is not merely the sum of human beings, but an objective truth transcending humanity itself.

This idea is certainly not new. It was the point from which the classical and medieval philosophers took their bearings. Yet they expounded a comprehensive philosophy of politics and human nature without ever resorting to the terminology of rights. When and why did the language of rights become necessary for understanding human beings in relation to each other? If our current language of human rights is inadequate for

universality, what set today's concept of human dignity so far adrift from what appears to have been its original philosophical mooring?

The following five chapters trace the connection between truth and politics in the philosophy of Plato, Aristotle, St. Augustine, Machiavelli, Grotius, and Locke. The classical and medieval philosophers talked much about truth, but not at all about rights. Modern thinkers speak of rights, but not truth. An important question then, concerns how the emergence of *rights* talk in our political discourse relates to the decline of truth as a standard for law and politics. Have we distorted the original understanding of natural rights, or is the notion of natural rights itself inimical to the idea of objective moral principles? Put differently, have today's human rights advocates bastardized the tradition of Locke, in whom the concept of natural rights reaches fruition, or are they rather the concept's true philosophical heirs?¹

CHAPTER 4

Natural Right: The “Philosophic Quest for the First Things” in Plato and Aristotle

The idea of a transcendent standard outside the political order figures heavily in the writings of the ancient Greeks. We find it, for example, in Sophocles, whose heroine *Antigone* disobeys the law of the city in deference to a higher, unwritten law. In Plato, the idea is most succinctly expressed in the theory of the forms, which holds that reality is that which is permanent and unchanging. Everything contained in the contingent world of human action and experience is merely an imitation of the form of the Good. We are most fully “ourselves,” that is, most fulfilled in our nature, when we seek and understand the idea of the Good.¹ This idea is essentially what Strauss termed classical “natural right,” or the “philosophic quest for the first things,” which “presupposed not merely that there are first things but that the first things are always and that things which are always or are imperishable are more truly beings than the things which are not always.”²

For the classical philosophers, man’s purpose is to unite with the eternal good, through thoughtful action directed by a well ordered soul. Human nature reaches its fulfillment when the order of the soul perfectly imitates the order of nature, the idea of the Good. Given this purpose of human being, then, politics must cultivate the virtues that lead to a well-ordered soul. “The city has therefore ultimately no other

end than the individual. The morality of civil society or of the state is the same as the morality of the individual.”³

And yet, despite the fact that the city’s chief preoccupation is the virtue of the citizen, the two are different. The city, with needs that are temporal, perishable, and specific, often clashes with the individual, whose ends are permanent, universal, and divine. Hence, there is a necessary tension between the needs of political life and the highest life simply. Ironically, this tension finds its most poetic expression in the work of the philosopher Plato, who certainly believed in the first principles that would be necessary to ground an intelligible account of universal human rights. Let us turn to two Platonic dialogues, *The Republic* and *The Laws* to see how this is so.

Plato’s Republic: The Best Regime

Plato’s *Republic* is a dialogue between Socrates and a number of young men regarding the nature of justice. It consists of ten books. Book I considers justice in general. In Books II–IV, Socrates constructs a “city in speech” for the purpose of magnifying the question of justice, so that, having been seen on a larger level, it might be more easily recognized in the individual. In Books V–VII, Socrates shows that the city in speech cannot exist unless it is ruled by philosophers. Books VIII–IX discuss the way that various types of political regimes come into being and pass away. Finally, Book X offers a poetic explanation of what justice means for the man who is truly just.

The key question of the *Republic* is whether justice is *natural*, existing as a transcendent standard above the realm of human action, or *conventional*, a product of human choice and nothing more than the will of those in power. The fiery Thrasymachus, Socrates’s chief philosophical rival, challenges the idea of natural justice with a charge Socrates never fully answers:

Justice and the just are really someone else’s good, the advantage of the man who is stronger and rules, and a personal injury to the man who obeys and serves. Injustice is the opposite, and it rules the truly simple and just; and those who are ruled do what is advantageous for him who is stronger, and they make him whom they serve happy but themselves not at all.... The just is the advantage of the stronger, and the unjust is what is profitable and advantageous for oneself. (343c–44c)⁴

So according to Thrasymachus, “justice” is simply the name we give to the good of those in power—it is conventional. But it is significant that despite his venomous attack on the idea of natural justice, Thrasymachus is still careful to distinguish the ideal of justice (the “truly” just) from what passes for justice in the actual world (the “really” just)—a design Machiavelli would later trace in his pledge to uncover the *effective*, rather than the *objective* truth. According to Thrasymachus, we need not look far to observe that in the real world, injustice triumphs over “true” justice every time. Those who strive to be good are merely simpletons in the face of life’s harsh realities, and the man who is *truly* just always has less than the man who is not. Thus, Thrasymachus does not deny the existence of true justice, but considers it to be irrelevant in a world where might trumps right.

Socrates, evading the fundamental truth of this assertion that unjust men often do profit at the expense of those who are just, begins to press Thrasymachus into claiming that injustice itself is *truly* good. After much prodding, Socrates then begins to speak for Thrasymachus, noting that “Plainly, you’ll say that injustice is fair and mighty, and since you also dared to set it down in the camp of virtue and wisdom, you’ll set down to its account all other things we used to set down as belonging to the just” (348e–49a).

Although Thrasymachus, losing interest in further discussion, accepts Socrates’s restatement of his position, it should be noted that the argument has changed tack. For Thrasymachus’s own claim was that “true” justice may exist as an ideal, but observation of the world shows that unjust men profit at the expense of just men. In Socrates’s rendering, the claim is transposed to mean that there are no absolute values or real distinctions between good and bad. From the relativity of values, it is but a short way to demonstrate the circularity of all argument and the meaninglessness of all discourse (349b–50c). At this point, Thrasymachus, apparently defeated, vows to remain quiet for the duration of the discussion, feigning agreement with anything Socrates says (350d). Socrates, then, has shown that obliterating the distinction between good and evil precludes meaningful discourse, but he has not refuted Thrasymachus’s original claim—the only one spoken in his own words—that in reality, it is the bold assertion of human will, and not its supplication to higher principles, that often determines the course of worldly affairs.

The real issue of Book I, then, is precisely whether justice—that is, the Good, or Truth—exists and makes a difference to human life. After

Thrasymachus has slunk off to the background, Glaucon, steps up and wants to know if there is “a kind of good that we would choose to have not because we desire its consequences, but because we delight in it for its own sake” (357*b*). He seems to answer his own question in the negative as he recalls the story of the ring of Gyges, in which a magical ring renders its wearer invisible. He notes that in such a case where one is guaranteed impunity from punishment, “we would catch the just man red-handed going the same way as the unjust man out of a desire to get the better; this is what any nature naturally pursues as good, while it is law which by force perverts it to honor equality” (359*c*).

Adeimantus adds that Glaucon’s question cannot be answered by appealing to divine authority, given what is known about the nature of the gods, who are either unconcerned with human affairs or are “persuaded and perverted by sacrifices, soothing vows and votive offerings” (365*e*). Instead, he asks, “Of what profit is justice in itself to the man who possesses it, and what harm does injustice do? ... Show what each in itself does to the man who has it—whether it is noticed by gods and human beings or not—that makes the one good and the other bad” (367*d–e*).

The question, then, is about how justice benefits one’s *soul*, unseen by men and apparently inconsequential to the gods who care more for human flattery and supplication than for human beings themselves. This seems to speak to the heart of Thrasymachus’s challenge. Socrates evades an answer, redirecting the question of justice from the individual soul to the level of the city. He explains that the city and the soul are alike insofar as both remain healthy when they fulfill their end, or purpose. Just as the consummate human life achieves a certain self-sufficiency or wholeness, through the rule of the passions by the intellect, the city attains a self-sufficiency of all that is lacking in its individual members (369*b*). The city begins to fall away from health when it seeks not simply what it needs, but all those “luxurious” things which cater to the passions, including fancy foods, furnishings, clothing, jewels, and entertainment (373*a–c*). As the city becomes more immersed in the pursuit of *things*, the land it possesses is insufficient. Thus, “we must cut off a piece of our neighbor’s land,” and “they in turn from ours, if they let themselves go to the unlimited acquisition of money, overstepping the boundary of the necessary” (373*d*). War is caused by materialism. It begins when the city neglects its primary purpose—self-sufficiency—for the gratification of the passions.

If the purpose of the city is self-sufficiency, then the way to restore the city to its original health is to refocus its sight on that alone which is self-sufficient and loved for its own sake: Truth; the first principle; the unchanging, eternal fact. Socrates now begins to speak of the *god* as opposed to the *gods*:

The god is not the cause of all things, but of the good.... Do you suppose the god is a wizard, able treacherously to reveal himself at different times in different *ideas*[;] at one time actually himself changing and passing from his own form into many shapes, at another time deceiving us and making us think such things about him? Or is he simple[,] and does he least of all things depart from his own *idea*? ... Are [not] things that are in the best condition least altered and moved by something else? ... In this way, the god would least of all have many shapes. (380c–81b)

It is pointless to be moral if the gods are capricious in their judgment; but the *god* as described by Socrates is steady—unchanging, affecting but unaffected by human opinion. God cannot lie or deceive because God is pure reality itself, the source of everything in existence. For Plato, then, the highest perfection of a thing lies in its origin. The city may be restored to health only by returning its focus to its original, singular purpose of self-sufficiency. This calls for rule by those who live according to the intellect, the most self-sufficient aspect of human nature. Philosophers seek wisdom, which in turn seeks truth—the only thing loved for its own sake. Only philosophers can see beyond human opinion to the unchanging form of the good; for they “are always in love with that learning which discloses to them something of the being that *is* always and does not wander about, driven by generation and decay” (485b). Only philosophers can rule in accordance with reality:

They would look away frequently in both directions toward the just, fair, and moderate by nature and everything of the sort, and again, toward what is in human beings; and thus, mixing and blending the practices as ingredients, they would produce the image of man, taking hints from exactly that phenomenon in human beings which Homer too called god-like and the image of god. (501b)

Philosophers understand what is “just, fair, and moderate *by nature*”: The essential source from which all good things flow is the *idea* of the

good or natural right (505a–b). Standing above human opinion, it is perhaps only partially accessible to human reason; nevertheless, the wise can discern “what looks like a child of the good and most similar to it” (1506e).

Socrates uses the examination of justice at the city level to discuss the *idea* of the good. It is perhaps through this concept that he comes closest to responding to Thrasymachus’s claim. For Thrasymachus had contrasted *real* justice—that is, our observation of the workings of human nature in the world—with *true* justice, or what we understand that justice *should* be. In distinguishing the “is” from the “ought,” Thrasymachus demonstrates that he has some understanding of what is right by nature, even if that standard is often rejected.

In Book VII’s “Allegory of the Cave,” Socrates endeavors to show that *true* justice is more *real* than Thrasymachus thinks. He describes the human condition as that of one imprisoned in a cave, bound at the legs and neck. The prisoner faces a wall, which is covered with shadows, cast by objects passing before a distant fire. Unaware that he is bound and immobile, and never having seen the fire burning from behind, he mistakes the shadows for reality (514a–15c). If only the prisoner could somehow manage to turn and look at the fire, he would know that what he mistook for “reality” actually had its source in something else. And if he could break free of his shackles and step out of the cave and into the sunlight, he would find that even the fire, the source of the opinions in the cave, in turn has its source in something higher. Thus, Socrates explains that all our opinions about reality, to the extent that they are correct, are informed by the idea of the good:

In the knowable, the last thing to be seen and that with considerable effort is the *idea* of the good; but once seen, it must be concluded that this is in fact the cause of all that is right and fair in everything—in the visible it gave birth to light and its sovereign; in the intelligible, itself sovereign, it provided truth and intelligence—and that the man who is going to act prudently in private or in public must see it (517c).

Socrates teaches that most people, imprisoned in their own dark caverns of opinion, are unaware that a higher reality exists outside particular experience, rendering human opinion insignificant by comparison. Just as the sun is not merely light, but the source of all light, the idea of the good is not knowledge, but the source of knowledge. Human

intelligence, therefore, is meaningful only insofar as it returns to the source whence it came:

The soul is also characterized in this way. When it fixes itself on that which is illumined by truth and that which *is*, it intellects, knows, and appears to possess intelligence. But when it fixes itself on that which is mixed with darkness, on coming into being and passing away, it opines and is dimmed, changing opinions up and down, and seems at such times not to possess intelligence (508*d*).

Politics, then, is the “art of turning around”—directing the regime away from the shadows and toward the light. One rules well by virtue of knowledge, and knowledge is the discovery, rather than the creation, of ideas (518*a–e*). Socrates teaches that however often injustice may seem to take precedence in worldly affairs, no regime can long survive without some recognition of the idea of the Good, which alone is permanent and independent of human opinion and action. Philosophers are the most fit to rule and also the least willing to do so, for they know that true happiness resides *outside* the city, beyond the realm of opinion. Nevertheless, they are the only ones in a position to benefit the city, for only they can point it to something beyond itself. In this way, Plato implies that a tension exists between the needs of politics and the highest human life. The relationship between philosophy and the city is both symbiotic and antagonistic. Just as the soul animates the body, philosophy, in its grasp of the universal and eternal, acts as the life force of the political regime, which, like the body, is temporal and particular by nature. The city survives only to the unlikely degree that it ascends to the realm of philosophy, and philosophy thrives only insofar as it descends to the arena of politics; for the philosophical life is not possible unless the city itself accommodates it.⁵ Thus, we find in Plato a certain “lack of fit” between the end of human life and the conditions for achieving it.

The Laws: The Second Best Regime

The *Laws* is Plato’s exposition of the second best regime, and one might initially think it offers a practical alternative to the *Republic’s* government of philosopher kings. But no less than the *Republic* does it establish the importance of soul to politics. It demonstrates to an equal degree the

necessity of philosophy for good rule. And like the *Republic*, the *Laws* shows that Plato's comparison of the individual soul with the political regime is wholly unsatisfactory.

The dialogue occurs between three old men, the main character being a nameless Athenian stranger, perhaps Socrates, who teaches that the purpose of politics is to nurture soul, the essence and "general principle" of human nature (318*a*, 650*b*).⁶ As the *Republic* demonstrates, the case for politics as the art of soul keeping depends on refuting the claim that justice is the will of the stronger and its assumption that politics is only about power or survival. Such a view, explains the Athenian stranger, derives from the notion that the gods are either nonexistent or uncaring about human things. The Athenian seems to agree that the gods of the city are fictitious, and points instead to a higher reality surpassing conventional deities. Indeed, he launches a potent defense not of *gods*, but of *God*. Whereas Socrates employs poetic imagery to this end, the Athenian, in Book X, uses logic.

To demonstrate that God is not absent or uncaring, the Athenian presents what the natural law tradition would come to understand as the theory of the unmoved mover, which holds that the governing force of the universe is something that acts upon all, but is not acted upon itself (892*a*–95*b*). In contrast to the idea of materialism, he asserts that the first principle of nature cannot be "fire, water, earth, and air," but must be something *animate*, like soul. If soul is primary, then the things pertaining to it are prior to those concerning the body and the rest of the material world.⁷ To comprehend the first cause, all we need to do is observe that things around us—oceans, planets, stars, animals—move. All motion we can observe is only the latest among a long chain of transformations. The "coming into being of all things" occurs "when the original cause, obtaining growth, proceeds to the second transformation, and from this to the next, and when it arrives at the third, it allows of perception by perceivers. By this transformation and change, everything comes into being" (894*a*).

Inanimate objects may move—waves crash on the shore, leaves rustle in the wind, but *something* must have caused the motion. And only something that is *alive* is "always capable of moving itself as well as others" (894*b*). Furthermore, the first cause must possess not only the power to move, but also the ability to do so *willingly*—for even slugs and bugs can creep and crawl, but they do so out of instinct, ultimately driven by the force of something else.

Human beings, possessing reason, also have the ability to undertake actions freely. Hence, soul is responsible for our doing good or evil; for the motions of the soul, which include “deliberating, opining correctly and falsely, rejoicing, being pained, being bold, being fearful, hating, and desiring,” direct the “secondary motions of bodies and drive all things to growth and decay.” When soul “takes as a helper Intelligence—god, in the correct sense,” it directs all movements “toward what is correct and happy, while when it associates with lack of intelligence it produces in all things just the opposite to these” (897*a–b*). In this way, intelligence is the sole link to the good and is therefore superior to the gods. *God* in the correct sense is not the typical god described by the poets, but rather, the Good that can be apprehended only through wisdom. Since soul is the cause of all human actions, it is also the proper focus of political rule. This requires government by those who can best direct the citizens toward the intangible goods of the soul (898*d*).

Although *the Laws* and the *Republic* offer a sound teaching on the soul, their specific political recommendations are wholly unsatisfactory. The *Republic*, which concerns the education of the guardian or “golden” class and admittedly looks not to the good of the individual, but of the city as a whole, seems to call for the complete obliteration of one’s sense of self. It would abolish not only private property, but family relationships as well. Even what might be thought of as the most singular aspect of oneself—one’s sexuality—would be eradicated through the nude but unerotic, joint gymnastics of men and women and the communal marriages of the guardian class. The *Laws* offers much of the same, only applied to the education of ordinary citizens as opposed to the “golden” class. Because the *Laws* purports to offer a solution that is not ideal but more practicable, it is worth examining more closely how well this addresses the real needs of human beings.

After providing a lengthy account of how the law should be structured (to honor the things of heaven rather than earth) the Athenian then turns the discussion to the “human things,” which consist “above all in pleasures and pains and desires” (732*e*). Although the philosophically inclined will obey the law willingly, most people—driven by the desire for food, drink, and sex—will not. For them the Athenian recommends a regime very much like an efficient day care center—one that will occupy them with stories and games (804*b*) and supervise every aspect of life. Those who are not philosophic, according to the Athenian, cannot grasp the true nature of the good. Therefore, their every pursuit

must be governed. For if people are not capable of true virtue, that is, of the love of the wisdom that orders the soul, then they must at least be restrained from loving the wrong thing—be it the “erotic love of wealth that prevents a person from having leisure to look after anything except his private possessions,” or the love of power which regulates interactions through violence (831–32c).

Unfortunately, it is not merely money or material things that citizens must avoid loving too much—the principle also extends to their families, friends, religion, and education as well. Like the guardian class in the *Republic*, the citizens of the *Laws* enjoy no private life. Marriages are officiated, children conceived, and domestic disputes resolved with one purpose in mind, which is the health of the city. The city even takes precedence over the most natural bond of all—that between mother and child—since a man must “cherish his land, as part of the fatherland, more than children cherish their mother,” (740a) and fertile couples must hand their offspring over to a childless couple, if need be. Even religion must be banished from the private sphere, lest unsupervised citizens worship in the wrong way (910c). The same approach applies to matters of education, which is provided only to the extent as is *necessary* for the public good. Citizens learn only as much as is needed for “war, household management, and the management of the city” (809c).

The Athenian implies, then, that if one’s total energy cannot be directed toward philosophy, then it must instead be channeled completely into civic life. But this rubs against the grain of human nature. Replacing the particular attachment to home and family with the generalized love of polis is like burning the trees to save the forest. The art of politics, after all, concerns not just the city, but the citizens who comprise it. The Athenian claims that the good of the city is necessarily one’s own good, but never adequately explains why this is so. He overlooks the value of particular relationships (i.e., love) between family and friends in fostering social stability and virtue—something Aristotle argues for quite persuasively in the *Ethics*.

In the end, Plato provides us with a valuable teaching on the importance of first principles to politics—namely, that unless the political regime is nourished and sustained by truth, growing in it as a flower in the sunlight and unless it is capable of pointing beyond itself, it will inevitably deteriorate. But in attempting to draw a precise analogy between the regime and the individual soul, Plato leaves us feeling most uneasy; for both the *Republic* and the *Laws* require citizens to deny any

part of their humanity that concerns the body as well as the soul. If the regime is to be modeled on soul, then Plato seems to teach that its non-philosophic members must exist for the sake of civic life just as the body must exist for the sake of the soul. But the city, after all, is composed not of *parts* (heads and hearts and limbs), but of *persons*. And every person, from philosopher king to simple artisan, is a composite of intellect, heart, and body. The people of Plato's regimes do not appear to be whole. The uneasiness that Plato evokes may indeed stand as testament to the fact that political regimes *cannot* be compared to individuals—that the two differ not just in size, but in kind.⁸

Aristotle and Human Happiness: The Perfect and the Possible

For Plato, the transcendent idea of the Good must be discerned and upheld as the standard for a good political regime. Aristotle's purpose is the same, and both his *Nicomachean Ethics* and the *Politics* open with a discussion of the good. He explains that the city is a type of partnership. All partnerships exist to attain some good, "and the partnership that is most authoritative of all" is the one that "aims at the most authoritative good of all. This is what is called the city or the political partnership" (1252a1–5).⁹

The aim of politics, then, is not merely the protection of life and property, but the achievement of the most authoritative good for human beings.¹⁰ Thus, politics itself will be shaped largely according to our understanding of "the good." We therefore turn to Aristotle's *Ethics*, which presents an extended discussion of the nature of the good. In this way, we will determine how Aristotle views the relationship between principle and politics.

Like Plato, Aristotle does not doubt the existence of a transcendent good, but unlike Plato, he questions its precise applicability to human affairs, for how will anybody "be a better physician or general for having contemplated the absolute idea" (I.vi.1097a9–11)?¹¹ In Aristotle's view, the good is best determined not by gazing at a pattern in the sky, but by observing human actions and discovering the end to which they tend. Thus, while Plato finds the good to be a paragon, a pure form of which all human endeavors are at best an imitation (and therefore a falling

away), Aristotle sees the good as welling up from below. It is the *end* of human actions (and therefore a fulfillment of them), “that for the sake of which everything else is done” (I.vii.1097a19). He says:

The supreme good seems to be something final. Consequently, if there be some one thing which alone is a final end, this thing—or if there be several final ends, the one among them which is the most final—will be the Good which we are seeking. In speaking of degrees of finality, we mean that a thing pursued as an end in itself is more final than one pursued as a means to something else.... Now happiness above all else appears to be absolutely final in this sense, since we always choose it for its own sake and never as a means to something else. (NE, I.vii.1097a28–b3)

The supreme good is *final*, existing only for its own sake, and *self-sufficient*, lacking nothing. This of course is very similar to Plato’s description of truth, which as the first cause is that which is most self-sufficient. In this way, Aristotle does not really depart from the viewpoint of his teacher, but simply supplies the omega to Plato’s alpha. He provides an alternative way of making the good intelligible—not by looking to the heavens, but by examining the things of the ground, more readily detected in their proximity. Thus, in Aristotle’s own words, “by changing its ground the argument has reached the same result as before” (I.vii.1097a25).

In human beings, the supreme good is happiness, for only happiness is loved for its own sake. It is not employed in the pursuit of anything else, but being “final and self-sufficient,” it “is the end at which all actions aim” (I.vii.1097b20). Man is the only creature possessing an intellect to govern his actions. He will be happy to the degree that he lives according to his nature: “It follows that the Good for man is the active exercise of his soul’s faculties in conformity with excellence or virtue, or if there be several human excellences or virtues, in conformity with the best and most perfect among them. Moreover, this activity must occupy a complete lifetime” (I.vii.1098a15–20).

The exercise of virtue is man’s highest function because virtuous activities are the most self-sufficient. A truly virtuous action is one performed for its own sake and not for any external purpose, reward, or recognition. The highest virtue, which is “thought to rule and lead us by nature,” is the “activity of contemplation” (X.vi.1177a12–18).

For contemplation is at once the highest form of activity, (since the intellect is the highest thing in us, and the objects with which the intellect deals are the highest things that can be known) and also it is the most continuous, for we can reflect more continuously than we can carry on any form of action.... Also the activity of contemplation will be found to possess in the highest degree the quality that is termed self-sufficiency.... Also the activity of contemplation may be held to be the only activity that is loved for its own sake. (X.vi.1177a20–1177b5)

Contemplation, in being the most continuous and self-sufficient virtue, bears the closest resemblance to the idea of the good. Thus, it is prior to the other virtues, just as the unmoved mover is prior to all else in creation. But there are a number of other virtues that must be perfected before one is capable of contemplation. All virtues may be classified as either intellectual or moral. Moral virtue involves the regulation of the passions—“it is a fixed disposition to observe the mean—to feel or do not too much and not too little—in the various departments of conduct.”¹² Moral virtue predisposes us, as far as possible, to live according to reason, which belongs to the realm of intellectual virtue.

Intellectual virtue has a twofold function: It directs the contingent realm of human actions through prudence, but more importantly it enables man to grasp “first principles”—those “eternal truths” that exist “of necessity” (VI.iii.1139a20–24). As discussed in chapter 3, the first principles are those “from which deduction starts, which cannot be proved by deduction; therefore, they are reached by induction” (VI.ii.1139a30). They are not demonstrable in themselves, but are the point from which all other knowledge must take its bearing.¹³

We apprehend the first principles through Intelligence, which the philosopher Josef Pieper has described as “insight,” most akin in its operation to the ability to see.¹⁴ Aristotle explains that “intelligence apprehends definitions which cannot be proved by reasoning” (VI.viii.1142a26). Wisdom is the ability to comprehend both the first principles and the conclusions that follow them. It is, in a sense, the proper direction of intelligence; it is the knowledge of the first principles themselves and the awareness of their application to everything else that can be known (VI.vii.1141a15–20).

Although Aristotle is probably quoted most often in his assertion that “man is a political animal,” his discussion of intellectual virtue

shows that he, no less than Plato, believes that man must unite as far as possible with the eternal truth grasped by the intellect. Like Plato, he believes the best human life to be that of the philosopher:

If then the intellect is something divine in comparison with man, so is the life of the intellect divine in comparison with human life.... [W]e ought so far as possible to achieve immortality, and do all that man may to live in accordance with the highest thing in him.... [I]t may even be held that this is the true self of each, inasmuch as it is the dominant and better part. (X.vii.1177b30–78a2)

But according to Aristotle, the supremely happy life is exceedingly rare, since “not in virtue of his humanity will the man achieve it, but in virtue of something within him that is divine.” Nevertheless, man must aspire to the philosophic life much as Plato’s regime must aspire to the “pattern laid out in the heavens.” But to a much greater degree than Plato, Aristotle recognizes the limits of our ability to live a purely philosophic life. For as humans, we are composites of body and soul, and therefore even the most philosophic one among us does not possess a “nature self-sufficient for the activity of contemplation” (X.vii.1178b35). This is why Aristotle devotes so much effort to explaining “the life of moral virtue,” which affords a “secondary degree” of happiness (X.viii.1178a9). Moral virtue, which is directed by prudence, regulates nearly every aspect of human life, including our passions and our interactions with others (X.viii.1178a10–20).¹⁵

Although Aristotle defines wisdom as the higher good, he sets it aside to focus mostly on prudence, which is more closely related to the political life. In this way, we may say that Aristotle devotes much more of his teaching to understanding practical matters. But Aristotle’s discussion of the intellectual virtues shows that although he sets his gaze on the “human” things, he never wavers from the belief that the human is intrinsically connected to the “divine.” Human things may vary over time, but this does not change the fact that the prudence by which we govern our affairs is ultimately subordinate to a single, unchanging reality. For prudence involves not just the calculation of what is advantageous for oneself in a given situation, “but what is advantageous as a means to the good life in general” (VI.v.1140a25–27).¹⁶

It would seem that modern philosophy has adopted half of Aristotle’s teaching; for (especially in Locke) it focuses on prudence,

defined as the rational attainment of one's ends, but does not attach those ends to any higher reality. Modernity sees the fulfillment of human nature as deliberation, and the sign of deliberating well is the achievement of one's desires. Insofar as it enables different individuals to attain their diverse interests, political science comes to be seen as the ultimate fulfillment of all human need, as if prudence were an end in itself. This is certainly the lesson of Machiavelli and his philosophical heirs. Aristotle himself best sums up the contrast between his own view and that of modernity:

It is absurd to think that Political Science or Prudence is the loftiest kind of knowledge, inasmuch as man is not the highest thing in the world.... It is also clear that Wisdom cannot be the same thing as Political Science, for if we are to call knowledge of our own interest wisdom, there will be a number of different kinds of wisdom. (VI.vii.1114**b**30–32)

So despite his famous maxim that “man is a political animal,” Aristotle does not identify politics as man's highest pursuit because political actions are never ends in themselves. In fact, politics can be detrimental to the life of true virtue because it is often pursued simply as a means to winning honor, which is “too superficial to the good for which we are seeking, since it appears to depend on those who confer it more than on him upon whom it is conferred, whereas we instinctively feel that the good must be something proper to its possessor and not easy to be taken away from him” (I.v.1095**b**23–25).

If man's purpose is to live as far as possible according to the “divine” aspect of his nature, then the political life can never fulfill the highest aspirations of human beings. In fact, Aristotle holds that we are much more inclined toward family and private associations; for “man is by nature a pairing creature even more than he is a political creature, inasmuch as the family is an earlier and more fundamental institution than the state” (VIII.xii.1162**a**15–20). In the *Laws*, Plato assumes that the life of moral virtue is attained through wholehearted dedication to the life of the polis. Aristotle recognizes that moral virtue is best attained through personal relationships, and that this in turn benefits the state. For “friendship appears to be the bond of the state; and lawgivers seem to set more store by it than they do by justice, for to promote concord, which seems akin to friendship, is their chief aim.” Indeed, “the highest form of justice seems to have an element of friendly feeling in it” (VIII.i.1155**a**23–30).

But like Plato, Aristotle sees an interdependent relationship between the individual good and the good of the state. The tension in his work derives from the fact that our desire to participate in political institutions does not correspond to our need for them. Aristotle, no less than Plato, believes politics to be a necessary means to happiness; for we require a good political structure to help us order the various competing human inclinations.¹⁷ Although private activity may be preferable, good politics is still necessary. As noted in the *Politics*, “When he has reached his *telos* [single end] the human being is the best of animals, but when apart from *nomos* [law] and justice, the worst” (1.1253a31–33).¹⁸

Politics structures human life not so much through our activity in its institutions, but through the presence of laws, since “it is difficult to obtain a right education in virtue from youth up without being brought up under right laws” (*Ethics*, X.ix.1179b34). If we consider Aristotle’s assertion that rationality is the highest virtue of human beings, and that we should strive for this insofar as is possible, it is easy to see how politics is part of the human good. As Stephen Salkever notes, “We need to live in cities, not as an end in itself or as a perfect expression of our humanness, but because it is generally the case that by living according to reasonable laws and customs we can develop and support our biologically inherited potentiality for living rationally.”¹⁹

In fact, one of the most important roles of the political structure is in promoting the inclination toward family and friendship. For to the extent that the law fails to educate in moral virtue, “it would seem to be the duty of the individual to assist his own children and friends to attain virtue” (X.ix.1180a33). Thus, the family and the political regime are interdependent. A good government will safeguard and promote the family, which in turn supplies the moral education that makes good citizens. It also checks against excessive attachment to political affairs, which feeds on a love of victory and crowds out the virtues of rationality and moderation.²⁰

The reality of political life is complex. For while we may be rational, we are not perfectly so; and while we may be sociable, the community we live in does not define us as individuals. Therefore, if the political realm is to educate citizens in virtue, it must support the unique personal relationships where virtue is cultivated in the first place.²¹ Politics, then, is not an end in itself, but rather, an “umbrella” under which the life of moral virtue is lived. Aristotle is like Plato in his supposition that the first principles, which are the object of contemplation, are the ultimate

purpose of human thought and action. But unlike Plato, Aristotle is content to remain in the cave—for the cave is the realm of moral virtue, which marks the highest life most people will achieve. Nevertheless, it is in the recognition that we *are* still in the cave that meaningful action can take place. We might say that in contrast to Plato's philosopher king—who rules in a top-heavy manner, reshaping society back to the pure form of its origin by force-feeding public life—Aristotle's approach is from the bottom up, getting politics to cultivate the personal relationships through which we might privately ascend to the divine.

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CHAPTER 5

The Philosophic First Things in the Light of Christianity

It may be argued that Plato and Aristotle took reason as far as it could possibly go in understanding the meaning of human existence, and yet, it was not far enough. Although Plato correctly discerned that the search for happiness could never rest in political life, his solution seemed wholly unsatisfactory not only in the way the regimes proposed in the *Republic* and the *Laws* diminished the importance of particular relationships (especially family) to happiness, but also in the supposition that the good life was the preserve of a very small minority, the philosophers. It seems hard to escape the conclusion that for Plato, the vast majority of humanity serves no other purpose than to make philosophic life possible for the few. Aristotle, on the other hand, understood the importance of the particular relationships found in family and friendship to moral virtue and a happy life. But like Plato, he still believed that the highest human life was that of philosophy. Thus, both Plato and Aristotle taught that uniting with truth was the highest and most important human endeavor—but the exact nature of truth was not known.

Christianity forever altered the relationship between truth and politics. In Christianity, truth is transcendent, but no longer unknown; its nature is revealed for all to see. God is not a remote unmoved mover or abstract force of intelligence, but rather, a loving father. This leads to a new understanding of wisdom and the requirements for the best human life. Christianity instituted a radical equality across the board, eradicating what was (for the ancients) the necessary tension between philosophy and politics. Let us see how this was done.

For the ancients, the highest human life is that which seeks wisdom; it is the life lived for truth. Christianity, too, holds that the highest human life is that lived for truth; but truth is now understood as God, and one need not be a philosopher to know him. In the words of one of the twentieth century's most prolific Christian philosophers, John Paul II,

In dismantling barriers of race, social status, and gender[,] Christianity proclaimed from the first the equality of all men and women before God. One prime implication of this touched the theme of truth. The elitism that had characterized the ancients' search for truth was clearly abandoned. Since access to the truth enables access to God, it must be denied to none. There are many paths which lead to truth, but since Christian truth has a salvific value, any one of these may be taken, as long as it leads to the final goal, that is, to the revelation of Jesus Christ.¹

The fundamental equality of Christianity is not that of modern philosophy, which supposes all men to be equally base. It lies rather in the recognition that although there is one *telos*, or single end, for human beings, it may be reached through a number of different paths, among which philosophy is but one option.²

So Christianity posits that there are as many different insights to the same truth as there are individuals. But the fact that everyone has access to truth in no way diminishes the importance of philosophy, for revelation must always be reasonable, and all Christians are called to know God at the highest level of which they are capable. For some, this will be philosophy; for others, it will be something different. Christianity does not nullify the real differences between people, but stipulates the equality of all at the most fundamental level: Everyone, philosopher and non-philosopher alike, is capable of leading a fully human life. The ancients had taught that the moral virtue cultivated in particular relationships disposed one's soul, as far as possible, to intellectual virtue—the highest virtue attainable by human beings. Christianity holds that the highest human life is not a single pattern to which only the most intellectually adept can conform. It is rather the highest life attainable for each individual. The intellectual and moral virtues are both equal paths to the same end. Unlike classical philosophy, Christianity posits that truth is accessible to everyone—it is not an esoteric club, but rather a vast, open wilderness to be explored by all, in which may be found as many particular treasures as there are individuals.

Prior to Christianity, love of wisdom demarcated the essential difference between the philosopher and the non-philosopher. It also underscored the tension between living the highest human life and establishing the conditions to make such a life possible. In positing a human end that did not distinguish between philosopher and common man, Christianity solved the social problem; for loving truth now *necessarily* requires loving others. “Christian wisdom or the knowledge of the divine truth is not only reconcilable with but inseparable from the love of neighbor.”³

Prior to Christianity, loving truth meant loving universal, abstract *concepts*. Now, the love of truth includes the love of particular persons as well. The logical explanation for this lies in the revelation that God is no remote or disinterested force, but has created the entire universe and has an ongoing interest in its existence, taking stock of even the hairs on our heads.⁴ To unite with truth is to make ourselves like it. For the ancients, this meant to philosophize, since pure intelligence seemed to be the primary principle governing the universe. Philosophy was the highest form of love because it alone was loved for its own sake, without the inherent selfishness that taints all other forms of human love. Human beings were free to the degree that their passions were ruled by reason, just as the lower elements were ruled by the higher in the order of nature.

Christianity, too, holds that living the highest human life requires moderating the passions. But revelation posits that man possesses not just a natural end, but also a supernatural end, which is to attain eternal union with God. We move closer to this end to the degree that we are able to act as images of God. How is this done? Well, the fundamental relationship between God and the universe may be expressed as that of Creator to that which is created. God, who is bound by no necessity, creates freely. All things are contained in God, so the act of creation is an act of giving. God imparts little bits of himself into all of creation, but to human beings gives the most significant part—reason and free will. So we act as images of God when we freely give ourselves as gifts to one another—that is, when we love one another. The very nature of revelation, which is not the fruit of human effort, but freely bestowed upon man, confirms God’s primary role as one of giving.⁵

To imitate God, then, is to love; real love is the gift of oneself. This is not at odds with the idea of philosophy; for we might say that even philosophy is the product of giving, for once thoughts are shared, they no longer belong solely to oneself. Every act of conversation involves a

certain letting go. *Logos*, or reasoned speech, sets humans apart from the animals by showing that reasonableness and the ability to give, the traits by which we imitate God, are the distinctly human traits.⁶

Like classical philosophy, then, Christianity maintains that there is a symbiotic relationship between social life and the attainment of truth. In fact, we might say that Christianity facilitates social relations through the idea that the capacity for faith is as much a defining mark of human dignity as the ability to reason. How so? Classical philosophy clearly posited that man, to the extent that he is fully human, is a thinking creature. To be a human being to the highest degree is to be above all a reasoning being—a being who seeks *knowledge*. Christianity concurs that man is rational, but holds that rationality is ultimately dependant on faith. As John Paul II notes,

There are in the life of a human being many more truths which are simply believed than truths which are acquired by way of personal verification. Who, for instance, could assess critically the countless scientific findings upon which modern life is based? Who could personally examine the flow of information which comes day after day from all parts of the world and which is generally accepted as true? Who in the end could forge anew the paths of experience and thought which have yielded the treasures of human wisdom and religion? This means that the human being—the one who seeks the truth—is also the one who lives by belief.⁷

Belief, it seems, is the true cement of social life, for accepting things on faith requires trusting others. If we were not creatures who *believed* and *trusted* first of all, we would not be capable of walking out the door, getting into the car, going to the doctor, or eating in a restaurant. “Belief is often humanly richer than mere evidence because it involves an interpersonal relationship and brings into play not only a person’s capacity to know, but also the deeper capacity to entrust oneself to others.”⁸ All human relationships bear out the fact that truth is derived not solely by reason, but by faith insofar as we trust others. It is in this way that friendship nurtures reason, since “reason too needs to be sustained in all its searching by trusting dialogue and sincere friendship.” This is affirmed by the ancients, “who proposed friendship as one of the most appropriate contexts for sound philosophical enquiry.”⁹

Just as Aristotle taught that by living with others, one learns the moral virtue that is necessary for obtaining intellectual virtue, Christianity

teaches that living in harmony with others aids one's attainment of God. But whereas Aristotle viewed human association as ultimately a means to a higher truth, for Christianity, human relationships, like all aspects of creation, are both a means to and a reflection of truth. This is why God, in the book of Genesis, says it is not good for man to be alone. "[H]e can exist only as a 'unity of the two,' and therefore *in relation to another human person.*" Therefore, "Being a person in the image and likeness of God thus also involves existing in a relationship, in relation to the other 'I.' This is a prelude to the definitive self-revelation of the Triune God: a living unity in the communion of the Father, Son, and Holy Spirit."¹⁰

Christianity, then, solved the dilemma of accepting or rejecting the cave by embracing both options. In this, it bears a certain resemblance to Aristotelian philosophy. Living in union with others would be as integral to the good life as contemplating truth. But by elevating friendship and family to the level of philosophy, Christianity obliterated what the ancients held to be the necessary tension between politics and human happiness. Never again would politics be the necessary gateway to the highest human life.

The City of God and the City of Man

St. Augustine is one of the first and most influential thinkers to discuss Christianity and politics. In *the City of God*, he illuminates the significance of this new relationship in three ways. First, he holds, in agreement with the ancients, that politics, being worldly, is unlikely to point man to his highest aspirations, which are transcendent. Second, also in agreement with the ancients, he teaches that man's final end, the City of God, should nevertheless be the pattern toward which politics must strive. Finally, in opposition to the ancients, he indicates the point mentioned above, that there is no longer a necessary tension between politics and the highest human life.

Like the ancients, Augustine is no idealist when it comes to human nature, and he does not expect politics, a human invention, to be intrinsically capable of fulfilling the purpose of human existence, which is transpolitical.

Two cities have been formed, therefore, by two loves: the earthly by love of self, even to contempt of God; the heavenly by love of God, even to contempt of self. The former glories in itself, the latter in the Lord. For the one seeks glory from men; but the greatest glory of the other is God, the witness of conscience.... And when these two cities severally achieve what they wish, they live in peace, each after its kind. (XIV, 8)¹¹

Left to its own devices, human nature is simply incapable of achieving anything real, lasting, or true. Augustine sounds almost like Machiavelli later would in his assessment of fallen human nature. But unlike Machiavelli, Augustine, like the ancients, believes that human nature can and should be improved. Although man is born into original sin, he “becomes good” when “grafted into Christ by regeneration” (XV, 1).

Until men learn to subject their bodies to their souls and their souls completely to God, they cannot act with true justice. Therefore, there is no true justice in human society (XIX, 21). Augustine seems to be acknowledging the argument of Thrasymachus, that human communities and laws are often formed around the interest of the stronger, when he says that “true justice has no existence save in that republic whose founder and ruler is Christ” (II, 21). But just because true justice is unlikely to be achieved on earth, Augustine, unlike Thrasymachus, does not discount the importance of trying to reach at least a semblance of justice. A community, defined as “an assemblage of reasonable beings bound together by a common agreement as to the objects of their love,” will be “a superior people in proportion as it is bound together by higher interests, inferior in proportion as it is bound together by lower.” Augustine argues that any society, to the extent that it is to be considered superior, will be firmly anchored in truth—that is, God. For virtue left so untethered will quickly degenerate into vice (XIX, 24).

By stressing man’s supernatural end of union with God, Christianity automatically exempts human society from being able to deliver the one thing of which human beings are most needful. Hence, as in classical philosophy, our expectations of what politics can achieve are low. Augustine warns against placing our faith in human institutions, which, like all things in creation, are inherently precarious and finite, for “when, where, how in this life can these primary objects of nature be possessed so that they may not be assailed by unforeseen accident?” (XIX, 4). But there is also a positive side to Christian realism; for once the political regime has been delivered from its responsibility of enabling the highest human life, it is no longer *necessarily* in tension with human ends.

The earthly city, which does not live by faith, seeks an earthly peace, and the end it proposes, in the well-ordered concord of civic obedience and rule, is the combination of men's wills to attain the things which are helpful to this life. The heavenly city, or rather the part of it which sojourns on earth and lives by faith, makes use of this peace only because it must, until this mortal condition which necessitates it shall pass away. Consequently, so long as it lives like a captive and a stranger in the earthly city, though it has already received the promise of redemption, and the gift of the Spirit as the earnest of it, it makes no scruple to obey the laws of the earthly city, whereby the things necessary for the maintenance of this mortal life are administered; and thus, as this life is common to both cities, so there is a harmony between them in regard to what belongs to it. (XIX, 17)

The earthly city seeks a limited, temporal peace and is therefore simply an ordering of a combination of wills. Peace is its end and highest good. The highest good of the heavenly city is union with God. The political regime one lives in is incidental to the attainment of real human happiness.

It should be noted that to say that truth is accessible to all does not mean that truth is a matter of individual determination. It is still an objective measure standing over and above all human activities and associations, including politics.¹² As Ernest Fortin put it, "Christianity liberates man neither by removing him from the cave nor by promising to dispel the shadows in which it is immersed but by supplying him with standards of judgment that are ultimately independent of the regime and the pervasive influence of its principles."¹³ The highest human good is still attained outside of politics, but is no longer dependent upon the political regime.¹⁴

The pagan philosophers believed that the right kind of regime was necessary to make philosophy—and therefore the attainment of truth—possible. But Christianity does not depend on political support for survival.¹⁵ Therefore, the needs of the political life are not necessarily in tension with those of the city of God, since both, in their proper spheres, are legitimate. In Plato, the tension derives from the fact that it is only through the city that the philosophical life can be achieved; yet, the end of philosophical fulfillment is often at odds with that of the city. Philosophers are to reenter the cave and rule, not out of any desire to rejoin society, but simply as a survival measure—to preserve the possibility of philosophy. Average people are merely pawns to this end, but they nevertheless benefit from having philosophical rule. In the manner of trickle-down economic theories, philosophical activity will rain benefits

upon a multitude with which it remains essentially unconcerned. One might say, then, that in classical philosophy, the benefits to the city from philosophical activity are *accidental* and not an essential component of the activity of philosophy. But to the degree that individuals practice Christianity, the benefits to the city are *substantial*, with peaceful social relations being not merely an effect, but an intrinsic aspect of the practice of Christianity.

In Christianity then, truth, being freed from the fetters of politics, assumes more than ever before a real sense of universality. Because the truth has been revealed apart from the political regime, it can never again be considered the preserve of any one type of regime. It speaks to individuals rather than communities and requires no one particular stock of people. “God’s promise in Christ now became a universal offer: no longer limited to one particular people, its language and its customs, but extended to all as a heritage from which each might freely draw.”¹⁶ Augustine notes,

This heavenly city then, while it sojourns on earth, calls citizens out of all nations, and gathers together a society of pilgrims of all languages, not scrupling about diversities in the manners, laws, and institutions whereby earthly peace is secured and maintained, but recognizing that, however various these are, they all tend to one and the same end of earthly peace. (XIX, 17)

Unlike most proponents of modern universal human rights who seek to rework all nations through the mold of democracy, Christianity embraces a multiplicity of regimes. For, as John Paul II notes, “no one culture can ever become the criterion of judgment, much less the ultimate criterion of truth with regard to God’s revelation. The Gospel is not opposed to any culture, as if in engaging a culture the Gospel would seek to strip it of its native riches and force it to adopt forms that are alien to it.”¹⁷

St. Thomas: From Natural Right to Natural Law

It is perhaps due to Christianity’s freedom from association with any one political regime that St. Thomas has been criticized by moderns for not being democratic enough. Since chapter 9 will be devoted to the thought

of St. Thomas, we will turn to him only briefly here. For now, his importance lies in the way he signals the shift from ancient natural right, which viewed truth as existent yet unknown and perhaps unknowable, to natural law, which implies in addition a lawgiver and a known dictate to be obeyed. Ernest Fortin describes the natural law as understood by St. Thomas in the following way:

As a law of *nature*, the natural law shares in reason and cannot be reduced exclusively to the will of God. The actions that it commands or forbids are intrinsically good or bad; they are not good or bad simply as a result of their being commanded or forbidden by God. As a *law*, however, it also contains an explicit reference to God's will, to which it owes its moving force. It thus stands midway between the natural right doctrine of the nonreligious philosophic tradition on the one hand and the strict voluntarism of the nonphilosophic religious tradition on the other. It is distinguished from the latter in that it defines law as essentially an act of reason rather than of the will, and it differs from the former in that it conceives of God not only as the final cause of the universe or the unmoved mover who moves all things by the attraction that he exerts on them but as a lawgiver and an efficient cause who produces the world out of nothing and by his ordinances actively directs all creatures to their appointed end.¹⁸

Although Thomas believed knowledge based on revelation to be superior to unassisted reason, he never overlooked the fact that the content of revelation must always be reasonable. Indeed, among the major thinkers of the medieval period, Thomas was one of the few to hold that reason need not be in opposition to revelation. He effected “a reconciliation between the secularity of the world and the radicality of the Gospel, thus avoiding the unnatural tendency to negate the world and its values while at the same time keeping faith with the supreme and inexorable demands of the supernatural order.”¹⁹

Leo Strauss, in a famous statement, pinned the blame for the emergence of modern political philosophy on Thomas, charging that modern natural law was in part a reaction to Thomas's “absorption of natural law theory by theology.”²⁰ Was modernity a reaction to Thomas necessarily, or simply to Christianity itself? Did Christianity lead philosophy astray? Perhaps modernity's rejection of truth as a standard for politics is better explained by G.K. Chesterton, who said, “The Christian ideal has not been tried and found wanting. It has been found difficult; and left untried.”²¹

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CHAPTER 6

Machiavelli and the Low Road to Modernity

Chesterton's observation would seem applicable to Machiavelli, who, clearly accepting that one cannot serve both God and Caesar, opts instead for the latter. In his claim to be pursuing the *effectual* truth, in his rejection of philosophical knowledge in favor of consequentialism (the idea that the ends justify the means), in his insistence that human nature is base and will remain so despite the noble pull of law, and in his severing of the ends of politics from the ends of human beings, Machiavelli seems modern. Yet a close examination of his works leaves us wondering how new Machiavelli's teaching is, after all. Does Machiavelli blaze any untrodden trail, or is he simply a post-Christianity Thrasymachus? Is the current crisis of meaning in human rights attributable to the thought of Machiavelli or to something different? This chapter examines Machiavelli's lowering of the ends of politics and considers whether this teaching really departs from what the classical philosophers knew. It then discusses the aspects of Machiavelli's philosophy, which really are novel—those concerning international relations.

The Fork in the Philosophical Road

Machiavelli undoubtedly broke from Plato and Aristotle in questioning the usefulness of a natural order to political life. Recall that in *the Republic*, the knowledge of justice that produces a good political regime depends upon philosophy, which in turn depends upon subverting the base passions to the intellect. Justice in the virtuous city—in the city which

strives for the good—is achieved by subverting the multitude to the philosophers, who alone possess theoretical knowledge and can therefore expose the shadows on the wall of the cave as mere opinions. Thus, it is presupposed that all human beings are *not* created equal, and that this makes a difference in politics.

The ancients, in striving for virtue, necessarily destroyed the notion of equality in the process; for knowledge was the only way to true virtue, and the path of philosophy was open to a precious few. Plato's best and second best regimes fail to satisfy because he never met the pressing task of defining the purpose of existence for the many, other than to make the philosophic way of life possible for the few. Plato seemed to have taken reason as far as it could possibly go, and yet, something was missing. It was as if the ancient philosophers, in their quest for the philosophic first things, were traveling along a path that forked at the dawn of Christianity, branching off into a high road (the city of God) and a low road (the city of man). One could choose the high road and retain the ancient emphasis on objective truth, virtue, and reason, but to do this would require that one speak in Christian terms, or at least tackle seriously the veracity of Christian tenets. Or one could reject Christianity and truth altogether, as Machiavelli seems to have done. As we will see, the fork in the road is real enough, and Machiavelli makes a clear choice. For that reason, his words often resonate with a certain honesty. The real difficulty seems to come with Grotius and Locke, who, wanting it both ways, deny the fork exists. Talking the talk of the city of God, they walk the walk of the city of man, and as a result, miss the road entirely, leading modern philosophy into a thicket of theoretical confusion from which it is still trying to emerge.

The Apparent Novelty of Machiavelli: Lowering the Ends of Politics

The first point of departure between Machiavelli and the ancients is in his explicit preference for the shadows to the light. A central component of his teaching is the notion that politics should not attempt to elevate human nature but must rather play to its depravity. Having spent many hours studying classical philosophy, Machiavelli declares it to be useless

to the real politics which constitute life in the cave; for in setting its gaze toward the sky, it looks to ideal regimes that will never come to be. He opts instead for the “effectual truth” of the matter: “for it is so far from how one lives to how one should live that he who lets go of what is done for what should be done learns his ruin rather than his preservation.”¹

And the truth about human nature, Machiavelli argues, is that men are not prone to virtue but are rather “ungrateful, fickle, pretenders and dissemblers, evaders of danger, eager for gain.” Politics should be guided accordingly; for a man who always tries to be good will “come to ruin among so many who are not good. Hence it is necessary to a prince, if he wants to maintain himself, to learn to be able not to be good and to use this and not use it according to necessity.”² Machiavelli explains that if one’s subjects are “corrupt,” the prince must “follow their humor to satisfy them, and then good deeds are your enemy.”³

Most people are not good by nature; they are not even educable to the good. Note that Machiavelli implies here that the prince, who must learn how “not to be good,” is already virtuous on some level, and therefore superior to most people. Machiavelli observes that the kind of government the prince will have depends on the type of human material available. Aristotle said something similar, but he believed that the good ruler would raise the people to the highest level of which they were capable. For Machiavelli, the good prince molds not the people but *himself* and is better or worse, depending on their character.

If classical philosophy is about truth, modern political philosophy as espoused by Machiavelli is primarily about appearances. If aspiring to higher standards does not result in actual regimes that are good, and the purpose of politics is to order human society in a way that is useful, then Machiavelli concludes that appearances are enough for ruling. The best princes are those who keep their word lightly, who are clever enough to outwit others, and who always overcome those who abide by honest principles:

Thus, you must know that there are two kinds of combat: one with laws, the other with force. The first is proper to man, the second to beasts; but because the first is often not enough, one must have recourse to the second. Therefore it is necessary for a prince to know well how to use the beast and the man...[This] means that a prince needs to know how to use both natures; and the one without the other is not lasting...if all men were good, this teaching would not be good; but because they are

wicked and do not observe faith with you, you also do not have to observe it with them.⁴

The best ruler is not the one who sees beyond the cave, but rather the master manipulator of the shadows within. Now, this is not altogether different from Aristotle's practical philosophy or even from the Christian understandings of politics. The difference for Machiavelli is that the light outside the cave is completely irrelevant to social life. By favoring appearances over truth and by holding that the standard of good is not beyond the cave but only a product of the results produced inside, Machiavelli casts politics in a consequentialist mode:

Everyone sees how you appear, few touch what you are; and these few dare not oppose the opinion of many, who have the majesty of the state to defend them; and in the actions of all men, and especially of princes, where there is no court to appeal to, one looks to the end. So let a prince win and maintain his state; the means will always be judged honorable, and will be praised by everyone. For the vulgar are taken in by the appearance and the outcome of a thing.⁵

If the good is measured not by an outside standard, but by results, it logically follows that the paramount virtue is one of *action*. This explains why the praise that Machiavelli does extend to the ancients centers on the "spirited" pagan virtues of strength and honor. The law that was so paramount to ordering the ancient community is now replaced with power; for the "principle foundations" of all nations are "good laws and good arms." There "cannot be good laws where there are not good arms, and where there are good arms there must be good laws..."⁶ Machiavelli thus lays the groundwork for Hobbes' famous assertion that all law is the will of the sovereign. If the source of law is nothing higher than the power of the ruler, and the ruler is successful or not (that is, maintains his rule or not) based upon the results he produces, then it follows that anyone who understands how to use power is qualified to rule. Indeed, "a prince should have no other object, nor any other thought, nor take anything else as his art but the art of war and its orders and discipline."⁷

In sum, Machiavelli holds that to rule effectively, one must be virtuous or not, depending upon the circumstance. He argues that in political life, consequentialism takes precedence over virtue, and that one who tries to be good among so many who are depraved will never succeed. It remains to be seen, however, whether this teaching is in fact new.

The Subtle Similarities between Machiavelli and the Ancients

When we revisit *the Republic*, we find that Machiavelli seems to be nothing more than a latter-day Thrasymachus. Recall the discussion in Book I of *the Republic*. Thrasymachus defines justice in the world as the will of the stronger and contrasts it with “true” justice, thus demonstrating that he is still operating in the same moral universe as Socrates. Now recall Machiavelli’s scathing assessment of human nature and his insistence that the prince, living among so many who “are not good,” also learn “how not to be good.” Like Thrasymachus, Machiavelli holds that moral goodness and worldly success do not necessarily go together. And like Thrasymachus, he prefers success to virtue. Like Thrasymachus, he argues that in an evil world, the game is won not by those who are perfectly just, but by those who can be perfectly unjust:

Such [unjust] methods are exceedingly cruel, and are repugnant to any community, not only to a Christian one, but to any composed of men. It behooves, therefore, every man to shun them, and to prefer rather to live as a private citizen than as a king with such ruination of men to his score. None the less, for the sort of man who is unwilling to take up this first course of well doing, it is expedient, should he wish to hold what he has, to enter on the path of wrong doing. Actually, however, most men prefer to steer a middle course, which is very harmful; for they know not how to be wholly good nor yet wholly bad.⁸

Machiavelli’s teaching on human nature marks no real innovation from former opinions. Like Thrasymachus, he proposes to discuss justice in his own words. Like Thrasymachus, he argues only for the definition of justice on the level of the city,⁹ and like Thrasymachus, he claims that this is the will of the stronger (hence, all the instructions about maintaining one’s power). Like Thrasymachus, he believes that it is better to be “wholly bad” than just slightly so; and like Thrasymachus, he says that those who are “truly” good necessarily come to ruin among so many who are not. The “truly” good are simply high-minded simpletons who quickly drown in the sea of politics. Machiavelli seems, too, to realize the folly in trying to obliterate the distinction between the simply bad and the simply good. If not, he would probably speak of individuals not as evil and wretched, but rather, as Hobbes later would, as mere matter in motion.

Furthermore, Machiavelli's teaching on equality is not far removed from Plato's; for he clearly believes that the prince must be superior to the multitude. Remember that in supposing that the prince must sometimes learn how "not to be good," in order to deal with the people on their own level, Machiavelli has implied that the prince already possesses more virtue than the public. Like Plato, he views religion as a necessary tool for coercing the multitude into obedience—to do the things that prudent men understand by reason alone.¹⁰ Plato and Aristotle, recognizing that the ability to philosophize existed in man by virtue of something "divine," knew the marriage of philosophy and politics depended upon chance. For Machiavelli, who is concerned only with the animal nature of man, chance is less formidable; indeed, as we will see below, conquering fortune is simply a matter of controlling human events. He is confident that the prince will be able to do this.¹¹ Both Plato and Machiavelli suppose that prudence is attainable by the few alone.¹² Both believe that only the few are deserving of the really good things in life, while the masses, like cattle, require not happiness, but contentment.

There is one final important similarity between Machiavelli and Plato: both the prince and the philosopher king are, in different ways, dependent upon the support of the people—the philosopher king, for survival, and the prince, for existence itself. Socrates takes it for granted that the philosopher king will be ridiculed or killed by the ignorant masses who are blinded by the light of truth. Nevertheless, the philosopher must make the risky descent into the cave, not out of genuine concern for the public, but in order to make the philosophic life possible. Philosophy promises a life far superior to politics, but it requires the proper political regime to survive—just as the soul needs the body. Machiavelli's prince needs the people as well, but for a different reason. He cannot be a ruler in the absence of subjects because his power is based not on an external standard, but upon his ability to work with what is in front of him. He is not as self-sufficient as the philosopher but is rather a master craftsman who derives his identity from what he *does*. He is less an embodied soul than the muscle of a limb.

For this reason, the prince must retain the support of the people, even if through deceit; for he is nothing without them. This is why he must at all costs avoid the hatred and contempt of his subjects.¹³ "The best fortress there is, is not to be hated by the people because although you may have fortresses, if the people hold you in hatred, fortresses will not save you."¹⁴

So given Machiavelli's restatement of the position of Thrasymachus, his agreement with Plato and Aristotle about the basic inequality of all men and his acknowledgment that rule by the "best" is in some sense dependant upon the lower order of society, in what way is his teaching "wholly new?"

Machiavelli's New Ground

The novelty of Machiavelli may be simply in the unstated recognition of the fork in the philosophical road created by Christianity. Machiavelli says that he has "decided to enter upon a new way, as yet untrodden by anyone else."¹⁵ If there was indeed a new way to go, it may have been due less to Machiavelli's own innovation than to the fact that Christianity, for the reasons stated above, presented a "wholly new" way of looking at the world, with which all previous opinions must reckon. Plato's Socrates had supposed that the virtues of the polis and the person were the same. Christianity showed that individuals and cities differ not only in number, but in *kind*—there is no necessary unity between the soul of a citizen and the "soul" of the city. Indeed, the good of one's soul is often in opposition to the demands of politics, and living in a good city is only accidental to being a good individual. Plato saw an analogy between the city and the soul; Christianity taught that the city of man and the city of God were alike only by the coincidence that the former was populated solely by members of the latter. The city as such could not possess a soul, only a number of individual souls. The earthly and the heavenly cities each had a proper function in their own realm. But like Plato, Christian philosophy stressed the importance of the city of God—the "pattern laid out in the heavens," in Plato's words—for guiding life in the city of man. The good life below was attainable only insofar as one strove for the good that lay above. Machiavelli accepts the division between the two cities and chooses to live solely according to the city of man. He makes the political realm an entity unto itself where different rules apply.

In this context, then, it may be significant that all of Machiavelli's teachings revolve around the notion of maintaining the stability of the state. Indeed, in *The Discourses*, he indicts the Church for attempting to occupy both the heavenly and earthly realms, thus placing Italy in danger of foreign domination.¹⁶ Machiavelli finds pagan religion to be much more conducive than Christianity to fostering the fierce nationalism that

inspires men to die for country. “For our religion, having taught us the truth and the true way of life, leads us to ascribe less esteem to worldly honor.”¹⁷ He contrasts the “magnificence” of the sacrifices of pagan religions with the “humility that characterizes ours,” in which there is “no display of ferocity or courage.” Whereas Christianity glorifies “humble and contemplative men,” pagan religions praise “magnanimity, bodily strength, and everything else that conduces to make men very bold. And, if our religion demands that in you there be strength, what it asks for is strength to suffer rather than strength to do bold things.” As a result, Christianity has “made the world weak” and “handed it over as a prey to the wicked, who run it successfully and securely since they are well aware that the generality of men, with paradise for their goal, consider how best to bear, rather than how best to avenge, their injuries.”¹⁸

Machiavelli laments the fact that Christian martyrs gladly march to their deaths for God, but not for their country. Although he correctly presumes that Christianity in itself does not require pacifism, there does not seem to be much beyond this with which to reconcile Christianity to Machiavelli’s political vision. Indeed, chapters 15 and 18 of *The Prince* deal extensively with the idea that the good of the soul is pursued only at one’s own political expense.

So Machiavelli’s teaching is directed not to the prince’s soul, but to his survival. A prince who is so focused will realize his position is threatened not just by usurpers from within, but by foreign enemies as well. The prince’s survival, therefore, is directly tied to the preservation of the state against the threat of foreign domination.¹⁹ In this way, the new political morality is to be dictated by international relations. In insisting that the regime look outward to its own survival, rather than inward to the souls of its citizens, Machiavelli not only departs from Plato in demonstrating that the political regime is a wholly different entity than the individual, but also lays the foundation for liberalism. For classical liberalism, too, is concerned not so much with the inner morality of the individual as with his self preservation in a hostile world.

This is further confirmed by Machiavelli’s teaching on *fortuna* in *The Prince*. If politics is to be understood primarily as maintaining the interests of the state, and the international realm is, in social contract terms, a war of all against all, then the only necessary virtues are those relating to war. This demands boldness and strength, which enable one to make things happen as opposed to letting them happen. It also means standing alone in the world, depending on nobody and nothing but

oneself.²⁰ It is only with the pagan virtues of strength and boldness that princes can control the destiny of their state. Too often, Machiavelli explains, men assume that “worldly things” are “so governed by fortune and by God, that men cannot correct them with their prudence.” On account of this, they allow themselves to be blown about by the winds of chance. Therefore, he says, “I judge that it might be true that fortune is arbiter of half of our actions, but also that she leaves the other half, or close to it, for us to govern.” Therefore, “[I]t is better to be impetuous than cautious, because fortune is a woman; and it is necessary, if one wants to hold her down, to beat her and strike her down. And one sees that she lets herself be won more by the impetuous than by those who proceed coldly.”²¹

It is interesting to note that Machiavelli begins by wondering whether *worldly* things are governed by God and fortune, but then drops all mention of God to explain how fortune is to be conquered. This leaves the impression that Machiavelli is using “worldly” here in the same sense that he does in *The Discourses*, where he contrasts “worldly honor” with the “truth” and “true way of life” of the heavenly city.²² If this is so, then the exhortation to conquer fortune would be in keeping with all the aspects of Machiavelli’s teaching we have explored heretofore: that politics should be wholly focused on and pursued by means of the secular, and should remain forever divorced from all notions of the city of God. For Machiavelli, God, existing in the realm of the supernatural, does not pertain to the particular, earthly ends of politics. He therefore crowns *fortuna* queen of the earthly city. *Fortuna* can be conquered because human beings can always exert control over political events, which are, after all, composed of human actions; they cannot exert control over God. One gains entry into the heavenly city by molding his soul to the unchanging reality of God. In secular politics, conversely, one alters individual actions in response to the changing winds of human acts and opinions. Of course, the very idea that there can be any real division between man’s ultimate end and his actions is highly problematic, casting doubt over Machiavelli’s true motives in mentioning God. But then, a serious reader of Machiavelli is unlikely to believe that his teachings are in any way compatible with Christianity.

This becomes clearer in the final chapter of *The Prince*, where Machiavelli pleads to the monarch Lorenzo to liberate Italy from her oppressors:

One may see how she prays God to send her someone to redeem her from these barbarous cruelties and insults...Nor may one see at present anyone in whom she can hope more than in your illustrious house, which with its fortune and virtue, supported by God and by the Church of which it is now prince, can put itself at the head of its redemption...the sea has opened; a cloud has escorted you along the way; the stone has poured forth water; here manna has rained; everything has concurred in your greatness. The remainder you must do yourself. God does not want to do everything, so as not to take free will from us and that part of the glory that falls to us.²³

By describing a military and political challenge through the use of biblical imagery, Machiavelli is again leading the way to a state-centered understanding of politics. The one in need of a redeemer is not mankind, but the state itself. Redemption is not the eternal salvation of a soul, but the earthly survival of a nation. The new deliverance issues not from God, for the purpose of a transcendent standard or end, but from a man, for the purpose of the willful control of human events. Given Machiavelli's opinions thus far, including his view of religion as a means of inspiring men to fight for their country, perhaps his use of biblical language here is not so much to imply that God himself sanctions any means for the liberation of Italy, but rather to illustrate the new understanding of politics—the path of the low road on which man himself becomes king of the earthly city. Although Machiavelli chooses this option, he seems to have grappled more seriously with the political implications of Christianity than have his successors. Clearly, Machiavelli has made his choice—“better to reign in hell, than serve in heaven.” We now turn to Grotius and Locke to learn how modern philosophy responded to that choice.

Part III

*The Decline of Truth and the Rise of
Rights in the Thought of Grotius and Locke*

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It makes all the difference in the world whether we put truth in the first place, or in the second place.

—John Morley

The Christian vision of human beings as created in the image and likeness of God resulted in a disjunction between the city of God and the city of man. It denied both the ancient idea of the fundamental inequality among men and its insistence that truth and politics were codependent, albeit in tension. Machiavelli seemed to accept the gulf between the heavenly and earthly cities, but opted for rule in the city of man. His essential truthfulness lay in his recognition that Christianity is often at odds with political success. Machiavelli seemed to say that one could choose to be “truly” good and expect to fail politically, or win the game at the risk of one’s soul. Regardless of Machiavelli’s personal views on the existence of God, any reader, casual or careful, is unlikely to derive from him the impression that Christian virtue and political success are compatible. In this way, Machiavelli maintains the classical and Christian distinction between politics and soul.

Machiavelli had rejected the ancient and Christian emphasis on an objective moral order. Hugo Grotius (1583–1645), partly in response to this view, wrote *The Law of War and Peace* (1625), which offered a new theory of natural law that in effect proposed a marriage between the heavenly and earthly cities. The ultimate success of such an attempt might be judged by the fact that this work, which earned Grotius the title of “Father of International Law,” is believed to have laid the basis for the 1648 Treaty of Westphalia, which ended the Thirty Years War by creating a system of independent states in which national sovereignty trumped any other standard of justice.¹ In other words, it is Grotius, the theologian, who provides the grounds for positivism, which heralds legal right over moral right and which, to this day, is the chief philosophical rival to the idea of natural law. This section examines the ways that Grotius’s new natural law actually contributed to political philosophy’s rejection of first principles and how his premises meet their logical conclusion in the writings of John Locke. Through his implicit denial of original sin, Grotius looks to will, rather than truth, as the chief human end and thereby significantly alters the traditional understanding of natural law.

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CHAPTER 7

The Grotian Response to the Realist Challenge

In his monumental work, *The Law of War and Peace*, Grotius aims to defend the idea of natural law against the views of certain realists who challenge its validity. He cites ancient thinkers like Thucydides, who contends that justice is defined as the interest of the stronger, and Carneades, who supposes there is no natural law because all creatures are “impelled by nature” toward their own advantage, so that “consequently, there is no justice, or if such there be, it is supreme folly, since one does violence to his own interests if he consults the advantage of others” (Proleg. 5, 9).¹ This view has serious ramifications for both the idea of law itself and for international law. If all law is based in convention, or the will of men, rather than nature, it imposes no real obligation unless it carries a sanction that makes obedience more advantageous than disobedience. And as there are often no real sanctions in the international sphere, there is not, properly speaking, international law.²

In response to this challenge, Grotius sets out to “improve” the doctrine of natural law, perhaps assuming that a realist like Machiavelli rejects traditional natural law theory because it, rather than he, lacks something. In so doing, Grotius radically alters natural law theory, chiefly through a subtle denial of the biblical idea of fallen human nature. This results in a far more subjective understanding of rights than that found in either the Christian or classical teaching.

The Denial of Fallen Nature

Grotius denies that any tension exists between individual self-interest and the good of society. Rather, he insists that man has “an impelling desire” to live in a society that is peaceful and organized according to the measure of his intelligence, with those who are of his own kind” (Proleg. 6).³ He notes that “in children, even before their training has begun, some disposition to do good to others appears ... sympathy for others comes out spontaneously at that age” (Proleg. 7). This may be true, but it is also the case that in children, selfishness is as prominent a sentiment as sympathy, and probably stronger. Augustine, writing many years before Grotius, said that “if babies are innocent, it is not for lack of will to do harm, but for lack of strength.”⁴ He said that due to original sin, no person is ever entirely free of guilt or at least the proclivity to sin.⁵ To say that every man is impelled to live peacefully with others may be partly true, but it does not provide a full picture of human nature. Grotius, in describing men as *essentially* altruistic, appears to be speaking of them not as they should be, but as they are in fact. In this very subtle way, Grotius has begun to dismantle the traditional Christian understanding of human nature as fallen, crippled by original sin and in need of grace in order to overcome itself and fulfill the purpose of its creation.

Grotius makes abundant reference to Scripture throughout the *Law of War and Peace*, and it is in these references that we sometimes see most clearly his rejection of the biblical view of human origin. In his examination of the root of ownership, for example, he presents a novel reading of the Book of Genesis, which reflects his emphasis on human will and earthly peace over the will of God and absolute truth. Grotius notes that in the beginning, as well as after the Flood, God gave man the right to take whatever resources he needed. But private ownership soon resulted in conflict:

This primitive state might have lasted if men had continued in great simplicity, or had lived on terms of mutual affection such as rarely appears.... Evidence showing the simplicity of the state of the first men who were created is to be found in their nakedness. Among them there was ignorance of vices rather than knowledge of virtue.... Men did not, however, continue to live this simple and innocent life, but turned their thoughts to various kinds of knowledge, the symbol for which was the tree of knowledge of good and evil, that is, a knowledge of the things of which it is possible to make at times a good use, at times a bad use. (II.2.2.1–2)

One might inquire about the necessity of consulting Scripture for the origin of civil society, since traditional Christianity holds that the story of Genesis is not necessarily literally true, but represents the way man has fallen from God's grace. But since Grotius has chosen to invoke it to describe man's origins, we should meet him on his own terms. Genesis says that in the beginning, man was in harmony with God. God gave him stewardship of the Garden of Eden, which was a land of plenty. The fall of man—that is, his estrangement from God—occurs through an act of disobedience, the partaking of the tree of knowledge of good and evil. Man falls, not through the pursuit of knowledge, but through the attempt to become like God by making himself the arbiter of truth. He falls through a refusal to be subject to the order of creation.⁶

Grotius emphasizes that in the beginning men were in harmony *with each other*. They lived simply, and there was plenty for all. Then men learned about good and evil, defined as knowledge of how to *use* things, or to be “crafty.” Men created “various inventions devised for the advantage of life.” The cultivation of various arts for survival, such as agriculture and grazing, brought with it rivalry arising “from the difference in pursuits,” and from this came violence and greed (II.ii.2). Man falls, not by attempting equality with God, but through the use of his (presumably) God-given talents. The initial peace could have lasted had men only “lived simply.”

Apart from the fact that this contradicts his earlier description of men as being inclined to natural harmony, there is another problem. For Grotius, living simply does not mean living with just the bare necessities of life, but rather in a state of uncultivated reason. The first men he describes, lacking all knowledge of virtue and vice, sound very much like the noble savage Rousseau will write about later. As in Rousseau, “mutual affection” among men is apparently contingent upon uncultivated reason. Man's fall occurs not through attempting to be the arbiter of objective truth, but through using his reason to develop the tools for survival. Man's rational nature, therefore, would seem to be in conflict with his social nature. But this is at odds with the law of nature as Grotius describes it, which stipulates that men are reasonable *and* peace seeking. Thus, for Grotius, the fall is so inevitable that we might as well consider man's fallen state to be his natural state. But God, the author of nature, cannot contradict the natural law. This must mean, then, that God *intended* for man to live in the “natural-as-fallen” state. Thus, human nature is as God wills it to be. (Proleg. 12) In this way, Grotius

eradicates the perennial plague of the natural law tradition—the tension between the “is” and the “ought.” For him, natural law is how things *are*, not how they *should* be. Indeed, his views are much more in keeping with social contract philosophy than with Christian philosophy, a point that becomes salient in the thought of Locke.⁷

In the new formulation, natural law is less an overarching guide for human beings or an inner tug toward the dictates of conscience than it is a *description* of human nature as it is.⁸ And since Grotius has implied that man’s primary purpose is not so much union with God as union with others (i.e., peace), natural law is simply the “maintenance of the social order”—that is, the preservation of this human instinct for society, supported by the faculties of speech and intelligence (Proleg. 8). Law exists not to direct, but to preserve the order already found within the nature of man. The law of nature is thus consonant with the nature of man (Proleg. 9).

The two most significant aspects of human nature are the social impulse and the ability of every human being to decide what is “agreeable or harmful”—in other words, to act rationally (which, as we shall see, is not so much in keeping with ancient philosophy as it superficially appears). This is why Grotius says the *essence* of law “lies in leaving to another that which belongs to him, or in fulfilling our obligations to him” (Proleg. 10). For respecting others’ property maintains sociability, while fulfilling obligations entails the act of promising—all important for Grotius because through promising we define ourselves as rational beings in association with others; beings who make choices and are held accountable for them.⁹

The Departure from the Thomistic Tradition

Because promises form the fundamental cornerstone of the law of nature and are entirely within the realm of human will, Grotius elevates the importance of consent while diminishing the reach of the natural law. By grounding the natural law in the consensual realm of compacts and agreements, he hopes to provide a more “concrete” way of making the natural law known—through the historical fact of actual agreements.¹⁰ But in naming the law’s *function*, or purpose, as its essence, Grotius departs from Thomistic natural law. In so doing, he effects a shift from

the understanding of right as *objective*, describing the “correct” state of affairs, to *subjective*, dependent upon human will.¹¹ Human reason is thus elevated from a *participant* in objective truth to its *arbiter*. Let us see how this is done.

First, Grotius differs from Thomas in his views regarding the essence of law. Following Aristotle, Thomas held that everything could be understood according to the “four causes”: material, efficient, final, and formal. Thomas’s definition of law is “an ordinance of reason for the common good made by him who has the care of the community, and promulgated”¹² (I–II, *q.90a.4, c.*). The material cause, or the things out of which something is made (the substance through which it exists) would be, in the case of law, the “community or human acts within society.” The efficient cause, or that which affects the final result of a thing, like a sculptor to clay or an artist to paint, is “the one who has care of the community and makes and promulgates the law.” The final cause is the purpose; it is “the cause that contributes to the effect by being desired.”¹³ In the case of law, the final cause, or purpose, is the common good. The formal cause, the most essential element, is the way the organization and function of all the parts come together to make something what it is—much as the way all the parts of a watch come together in a particular way to form a time-telling instrument, as opposed to, say, one that makes music. The formal cause of law is its nature as a “promulgated ordinance of reason.”

The essence of law, then, the element that makes it a *law* more than any other type of thing, is that it is a *reasonable* directive that is *promulgated*, or known—either through public proclamation or by the light of nature (I–II, *q.90, a.4*). For Thomas, the essence of the law, as the essence of anything, is in its form; for it is only through *form* that proper function is possible. Grotius, however, holds that the essence of law is in its purpose rather than its form. And the purpose of law is to get all people to respect each other’s property and to honor their contracts. If the essence of law is in its *function*, then it is not really law unless it achieves its purpose. The obligatory force of the law is thus paramount. Grotius notes that “counsels and instructions of every sort, which enjoin what is honourable indeed but do not impose an obligation, do not come under the term statute or law” (I.1.9.1). The precepts of natural law, as formerly understood, may point to the good but do not constitute law unless they can be made strictly obligatory.

Grotius, therefore, is concerned not necessarily with the virtue of what the law proposes, but rather with the fact that we are bound to

obey it. The essential component of his natural law theory is the obligation imposed by promises. For Grotius, promising is critical to our identity as rational beings in society with others. A “perfect promise” is most conducive to this, since it “has an effect similar to alienation of ownership” (II.11.4.1). It is fully intended by the conferring parties *and* given an outward sign (usually legal force). A perfect promise is determined by *reason*—and thus cannot be conferred by “madmen, idiots, and children.” It requires *understanding*—that is, full knowledge as to what the promise entails, and *autonomy*—to be freely delivered, without fear, which also implies having the *power* to deliver the promise (II.11.5–8).

For Thomas, the fundamental principle of natural law is that “good is to be done, evil is to be avoided.” This places man squarely within a universe of objective moral polarities—that is to say, the parameters of man’s identity and actions are set between the preexisting standards of good and evil. Man is not free to question these standards, only to direct his own actions accordingly. Free will is of course critical to human existence, but is valued more for its end (union with God) than its mere exercise.

For Grotius, the fundamental principle of natural law is that “promises must be kept” (II.9.4) because it is through promising that we affirm our nature as he defines it. If the focus of the law of nature is peace, as opposed to truth, the “first things” are those most conducive to peace. Through promising we define ourselves as rational, autonomous beings in relation to others. Promising is so essential to defining human nature that promises must be kept even among enemies (III.1.18).

The fact that Thomas cites the basic premise of natural law as the maxim, “good is to be done and evil is to be avoided,” shows that he views human actions as conforming to natural law rather than constituting it. He is careful to point out that the natural law exists first and foremost as part of God’s eternal plan, and is thus derived from the eternal law—“the supreme exemplar cause of all things in the universe” which “exists in the mind of God.”¹⁴ Human beings grasp the natural law through “participation” in the eternal law, and thus man, as the “participating entity,” resembles “the exemplar cause,” though in “a limited, deficient, or imperfect way.”¹⁵ For Grotius, natural law exists first, not in the mind of God, but in the mind of man; for moral baseness or necessity is determined solely on an act’s agreement with a rational nature and *consequently* is forbidden or commanded by God. God’s relationship to the law, then, seems to be incidental:

The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that *in consequence* such an act is either forbidden or enjoined by the author of nature, God.... The acts in regard to which such a dictate exists are, in themselves, either obligatory or not permissible, and so it is understood that necessarily they are enjoined or forbidden by God. (I.1.10.1–2, emphasis added)

For Thomas, the eternal law is like some deep, unfathomable well. Natural law (which is simply human participation in the eternal law) is like a bucket that draws from the well, taking as much as is appropriate to its capacity and constitution. Knowledge of the bucket's contents alone may indeed be sufficient for achieving earthly peace, but in Thomas we are ever conscious of the fact that the bucket is drawn from a larger source. Good and evil exist independent of human reason but can nevertheless be discerned by human reason insofar as it participates in the greater reality of eternal law. The well is the only source of water, and therefore the bucket must draw from it or remain dry.

We might say that Grotius, in his approach to natural law, replaces the well of truth with the bucket of reason. It is *in consequence* of its relation to reason that an act is either commanded or forbidden by God. Thus, it would appear that human reason determines, rather than discovers, natural right.¹⁶ Again, this contrasts with Socrates, who did not suppose that natural right is ever fully known, or knowable to human beings, and with Thomas as well, who cited as the main distinction of natural law not its relationship to human reason, but rather, its relationship to the eternal law, or God's reason. Grotius implies that human society is a product of our own free will, which is nevertheless approved by God since it is beneficial to our earthly survival. Thus, God approves what we deem necessary to our protection. In this sense, both civil law and our understanding of God's divine will have their source in the will of man. In a very subtle way, then, Grotius, no less than Machiavelli, heralds the power of human will. But rather than supposing, like Machiavelli, that human will is necessarily in opposition to God's will, Grotius simply asserts that human will, when directed toward the health of society, is God's will. Although Grotius never explicitly denies the idea of the eternal law, his failure to mention it in any context, coupled with his heavy emphasis on human beings as the source of natural law, results in an overall move toward the idea of truth as subjective rather than objective.

The Political and Theological Implications of Grotius

Grotius alters traditional natural law's relationship between theology and politics in two important ways. First, he rejects God as an essential component of just politics. Second, he redirects the natural law to an inward, rather than an upward, movement, and in so doing, actually moves natural law further from the spirit of the ancients he hopes to emulate.

Let us begin with the former point. In relating political life to human nature, Grotius makes a sweeping alteration to Thomas's order of natural inclinations. For Thomas, the precepts of the natural law relate to three levels of inclination: An inclination to the good of self preservation that we share with all living things; an inclination to things which human nature "shares with the other animals," such as sexual intercourse, the "education of children, and the like"; and finally, the highest inclination, to that which is uniquely human—reason. "[T]hus man has a natural inclination to know the truth about God and to live in society, and in this respect, whatever pertains to this inclination belongs to the natural law" (I-II, *q.94, a.2*). "Grotius's treatment of the natural law truncates it, directly retaining only the third of Thomas's three levels as part of it, and of that third, only the part about social life."¹⁷ For Grotius, the natural law points to nothing other than man's inclination to society.

The glaring question is whether we can drop God from the equation and keep a realistic vision of sociability. Grotius describes humanity as the "mother of nature," locating the source and summit of natural law not in the heavens, but on the earth, in human nature itself. For him, the way to know the natural law is to look within, to the human trait of sociability. Thomas, on the other hand, describes natural law as man's participation in God's eternal law, that is, the way in which man, through reason, comes to some understanding about the order of creation. It is an upward movement—the way in which mortal man unites himself with the eternal.

For the ancients, too, "rationality pointed toward political life, but also pointed beyond it, or even against it, toward philosophy or wisdom as the natural end of human kind."¹⁸ Thus, as Aristotelian as Grotius may seem, we should remember that for Aristotle, the significance of all human relationships lay in the fact that they enabled one to be virtuous—that is, to live according to truth. But with the dawn of revelation, truth had a name—God. So, perhaps it now seemed to Grotius that in

order to remain faithful to Aristotle, who spoke in terms of truth, but not God, a Christian writer had to focus on sociability while ignoring the idea of God altogether. But does retaining the ancient emphasis on community without its accompanying reverence for the transcendent bring us closer to the actual spirit of Aristotle, or further away?

The first indication of a move *away* from the ancient spirit is that Grotius seems to find the ordering principle of the universe to be *will* rather than reason. For although the law of nature would be true even if we were to concede “that there is no God,” Grotius says that the law finds its source not only in “the essential traits implanted in man” by nature, but also in “the free will of God” because “of his having willed that such traits exist in us” (Proleg. 12).

Through mixing references to God with a definition of secular natural law, Grotius seems to be saying that the law of nature, based on human will, is also God’s will. So far, Grotius has found authority for God’s will not so much in the fact that it is *reasonable* as in the fact that it is God’s will. But are the things Grotius attributes to God’s will reasonable? He claims that men are peace seeking because God willed that we should be weak and lacking many things for life, so that we might desire the help of others and therefore pursue the social life (Proleg. 16). But if we are to turn to Scripture, (which Grotius cites numerous times as a source of authority) we find that man, in the beginning, was lacking nothing necessary to life itself. Although he had need of a “suitable companion,” this was to fulfill spiritual, as opposed to survival needs.¹⁹ If God wills that we be weak, this seems to imply that we live in society because God deprives, rather than provides.

We must question both the theological and logical plausibility of utilizing the methods of classical philosophy while divorcing it from its ends (which are in some ways more compatible with traditional Christianity than Grotius’s version). For this dilutes the most significant aspects of both the classical and Christian traditions. It is interesting to note that many scholars tend to focus on the Stoic and Aristotelian aspects of Grotius’s thought, virtually ignoring the significance of the fact that his work teems with references to God and Christianity. Stephen Forde, for example, writes that Grotius identifies a “pre-civil state when men lived without the benefit of government.”²⁰ What Forde fails to mention is that Grotius identifies this state with the book of Genesis. But as we have seen, what he says flatly contradicts the message of Genesis. So why does he refer to the Bible at all?

It may be that Grotius, an avowed Christian, is nevertheless “rebellious” against Thomas by returning to ancient philosophy, most of which seems consistent and true in its own context. The big question is whether one can really synthesize this with Christian revelation, without “baptizing” Aristotle, so to speak. Can we really go back in time, especially when biblical truths fulfilled the highest aspirations of the ancient ideas? Despite all the references to Scripture, the kernel of Grotius’s philosophy seems to be that God is ultimately irrelevant to politics. This resonates with, rather than rails against, the Machiavellian notion that God has left human beings in charge of the “worldly” things.

The classical writers saw politics as necessary on some level to man’s attainment of the transcendent. Natural right was not fully known and was perhaps unknowable, but it nevertheless provided guidelines for living well. The only way to live well was to unite oneself to a higher reality. The highest human life lay outside the political order. Politics was moral to the extent that it enabled private citizens to pursue virtuous lives.

Grotius represents the modern attempt to seek an alternative to Thrasymachus, Machiavelli, and the general view that there can be no morality in politics. To appeal to the transcendent now, however, would seem to require that one come to terms with the one God of revealed religion. Grotius, perhaps attempting to offer a less controversial natural law, avoids appeals to the transcendent while focusing on the lower goal of the ancients: sociability. But we must remember that for the ancients, politics was not an end in itself, but a means to something higher. Socrates did not dismiss the gods of the city out of hand, but judged them by the measure of truth. According to Christianity, however, God *is* truth. So it would seem that in order to contemplate the transcendent in a philosophic fashion, one must at least consider Christianity on its own merits, just as Socrates did the myths of the city. In order to avoid the whole sticky prospect, Grotius and those following him choose instead to admit half of the ancient equation: rationality and sociability, without dependence on the transcendent. In this way, Grotius, by focusing on the more “concrete” (that is, descriptive) aspects of natural law, hopes to improve its chances of being observed.²¹

But in explaining God’s will solely by reference to human will, and basing all natural laws on this, Grotius paves the way for an “eventual untheistic theory, with man’s sociability becoming the sole premise.”²² In choosing a natural law that is easy to follow and in dropping the nettlesome notion of God from the idea of morality, Grotius undermines the

very notion of obligation that he wishes to make a cornerstone of natural law. As Richard Tuck notes:

He simply assumed that men want to be responsible and social beings even though they may suffer as individuals for those wants in the short term, and that the law of nature obliges them to follow their natural bent. No special explanation of why it is rational for individuals to do so seemed necessary to Grotius.²³

When objective truth is dropped from the moral equation, there is no basis from which to judge human interactions. This becomes evident in Grotius's treatment of international law.

Grotius and International Relations

To recap our earlier discussion, the purpose of Grotius's work is to establish a new understanding of natural law—one free of theological fetters and more in the tradition of the ancient thinkers. This, Grotius believes, is the only way to answer the challenge that justice is the will of the stronger. To do this without entangling the question in theological issues requires looking at human nature as it is everywhere observed. This yields the conclusion that human beings are sociable and rational. The law of nature stands not as an outside measure for which human beings must strive, but rather describes human nature and simply preserves it. In this way, Grotius can describe law as it is, rather than as it should be.

The main problem we have noted with Grotius's thought thus far is the way in which he attempts to make this theory compatible with Christianity. He defines man's purpose, not as union with God, but as union with fellow man—that is, peaceful coexistence. Grotius's attempt to separate principle from practice results in both moral and theoretical confusion. But this is certainly not his aim. Just as Socrates tries to explain the just man by reference to the just city in the *Republic*, Grotius draws a similar analogy between the relations among individuals and the relations among nations. He notes that just as the purpose of law is to preserve the peace toward which human beings naturally tend, the purpose of war is to preserve the peace between nations: for war “is undertaken in order to secure peace, and there is no controversy which may

not give rise to war.” Therefore, “it will be in order to treat such controversies, of any and every kind, as are likely to arise” (Book I.I). International society is an arena of perpetual war and threat of war. Indeed, war is “not a contest but a condition” and includes not only public war, but also private war, which is “more ancient than public war and has, incontestably, the same nature as public war; wherefore both should be designated by one and the same term” (Book I.i.2).

After having expounded a theory of human nature in the *Prolegomena* and drawing the connection between human relations and international relations, Grotius in Book I goes on to ask whether war can be just—injustice being defined as anything “in conflict with the nature of society of beings endowed with reason” (I.3.1.34). Justice on the international level is guided by the same principle as justice on the civil level—the observance of the law of nature. Thus, if the society of nations is to be considered lawful, then war must be marked by the same justice that marks civil society.²⁴ If the law of nature in civil society is determined by the rational nature of man, then the law of nature in international society encompasses whatever “is believed to be such among all nations, or among all those that are more advanced in civilization” (I.1.12.1). The law of nature, then, may be found in the customary law of nations.

Nations, like human beings, seek peace. All war is undertaken for the sake of peace. To determine what the law of war should be, we must first ask what war is. Grotius defines war as simply the ordinary state of relations among nations, as well as a particular battle or dispute between parties. Like politics, war is just insofar as it is conducive to the peaceful and rational nature of man. Grotius then looks more specifically at the question of whether war conforms to the law of nature and finds that it does, since the aim of war is “the preservation of life and limb, and the keeping or acquiring of things useful to life.” Right reason prohibits “only that use of force which is in conflict with society,” which is whatever “attempts to take away the rights of another” (I.2.4–5).

So far, Grotius has attempted to claim that the law of nature is evident in our observation of mankind and of nations. By grounding his theory in simple observations, he believes he has avoided traditional natural law’s disjunction between principle and practice. But as we shall see, Grotius’s further observations of international relations only serve to undermine, rather than support, this theory. To begin with, recall the importance Grotius attaches to promising. He notes that “nothing is so

in accord with the law of nature,” and “so in harmony with the good faith of mankind as that persons should keep the agreements which they have made with one another” (II.11.1.4). As noted earlier, the maxim that “promises must be kept,” is essential to the entire Grotian scheme of natural law and human society.²⁵

But especially in war, enemies often do not keep promises, driven as they are by national interest rather than principles of morality. If promising is critical to the existence of the law of nature, Grotius has not bridged the *ought* and the *is*. Thus he notes that sometimes “something is said to be permissible, not because it can be done without violence to right conduct and rules of duty, but because among men it is not liable to punishment . . . in this sense we often see what is permitted contrasted with what is right” (III.iv.2–3.642). The law of nations, or customary law, regarding conduct in warfare is concerned not necessarily with what is “right,” but what is “lawful:”

It is permitted to harm an enemy, both in his person and in his property; that is, it is permissible not merely for him who wages war for a just cause, and who injures within that limit, a permission which we said at the beginning of this book was granted by the law of nature, but for either side indiscriminately. . . . As a consequence, he who happens to be caught in another's territory cannot for that reason be punished as a murderer or a thief, and war cannot be waged upon him by another on the pretext of such an act. (III.4.3)

In other words, it is “permissible,” or “legal,” in warfare for combatants to do anything whatsoever to each other, including killing any foreigner who is in one's territory (III.4.6, 7), as well as killing women, children, prisoners of war, and surrendering enemies (III.4.9–12). In war, all is permitted; for “from external indications it can hardly be adequately known what is the just limit of self-defense, of recovering what is one's own, or of inflicting punishments; in consequence it has seemed altogether preferable to leave decisions in regard to such matters to the scruples of the belligerents rather than to have recourse to the judgments of others” (III.4.3–4).

If outsiders are not qualified to judge the limits of what is necessary to nations in war, then the standards for *Jus in bello*, or just war, are subjective. Belligerents must determine for themselves what shall be permissible. Once a nation has “defined” itself and its position with regard to

another nation through a “promise” of declared war, its actions are beyond the scrutiny of other nations. In this way, Grotius’s account of international relations is a prelude to liberal theory. For liberalism similarly holds that once an individual defines himself through reasoned choice, there can be no further question of the morality of his actions. In this sense, the principles that drive liberalism are born out of the observance of the law of nations.

But after allowing that virtually all behaviors are legal in the conduct of war, Grotius goes on to qualify this statement, noting that morality forbids most of the actions the law of nations would seem to allow:

I must retrace my steps, and must deprive those who wage war of nearly all the privileges which I seemed to grant, yet did not grant to them. For when I first set out to explain this part of the law of nations, I bore witness that many things are said to be “lawful” or “permissible” for the reason that they are done with impunity, in part because coercive tribunals lend to them their authority; things which, nevertheless, either deviate from the rule of right (whether this has its basis in law strictly so called, or in the admonitions of other virtues), or at any rate may be omitted on higher grounds and with greater praise among good men. (III.10.1.1)

Thus, Grotius argues that “if the cause of a war should be unjust, even if the war should have been undertaken in a lawful way, all acts which arise therefrom are unjust from the point of view of moral injustice. . . . In consequence the persons who knowingly perform such acts, or co-operate in them, are to be considered of the number of those who cannot reach the Kingdom of Heaven without repentance” (III.10). He looks to Scripture to determine what morality requires:

The New Testament I use in order to explain—and this cannot be learned from any other source—what is permissible to Christians. This, however, contrary to the practice of most men, I have distinguished from the law of nature, considering it as certain that in that most holy law a greater degree of moral perfection is enjoined upon us than the law of nature, alone and by itself, would require. (Proleg. 50)

Just as Socrates in Book X of the *Republic* justifies morality not purely by reason, but by faith, Grotius must do the same. But the problem is that Grotius, unlike the ancient and medieval thinkers, has untethered nature

from truth. In the end, this only makes him inconsistent; for he describes the law of nature as the way human beings *are*, but his discussion of war makes it obvious that the law of nations (or the practice of the vast majority of states) is at odds with this. Although he has equated the law of nature in civil society with that in international society, he adds that in the conduct of war, nations must appeal to a higher morality than this. But on Grotius's own formulation, there is not really any higher morality than that of his truncated natural law. For throughout much of the work, he has implied that his natural law is in perfect harmony with Christianity. In so doing, he has emasculated Christianity, and it is a little late in the game to now expect it to engender fruitful moral discourse. As Zuckert argues, "Grotius appears able, at best, to generate a hypothetical obligation: to live according to one's nature, one ought to obey the natural law. But where is the obligation to live according to nature?"²⁶

But the inconsistencies are problematic only insofar as we suppose that human nature and the state are the same. Grotius tries to discuss the proper interaction of states by reference to the proper interaction among humans—and the latter by reference to human nature in general.²⁷ His observations about human nature seem inadequate; his observations about international politics do not. Thus, it may be the case that Grotius reinterprets natural law with the ultimate aim of creating something applicable to the law of nations. And indeed, if he is among those who sow the first seeds of liberalism, this may be why we find liberalism more appropriate to describe an *international* society. For it is only on the international level that one may consistently posit that self interest, will, and peace trump questions of truth—because a state in relation with other states, unlike a human being in relation with others, is not an individual with a soul whose life points beyond itself, but rather, an organization existing solely for the protection of the individuals within.²⁸

Basically, with regard to international politics, Grotius has described what the existing conditions are and noted that they are legal. He then wants to say that although they are legal, they are not necessarily moral. But he has no principles of morality from which to appeal; for on his own formulation, natural law has been stripped of its obligatory function. Grotius may accurately describe the dynamics of international politics, but he cannot, from his own premises, legitimately judge them.

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CHAPTER 8

Locke's Natural Law: The Answer to Grotius's Prayer

Grotius answers the realist challenge by severing the natural law's intrinsic connection with objective truth. John Locke brings this line of argument to its logical conclusion in his *Questions Concerning the Law of Nature*. In this work, he quietly rejects the tenets of traditional natural law theory and suggests that the primary moral fact regarding man is not reason or sociability, but self-preservation. Nevertheless, Locke clearly intends to distance himself from the Hobbesian idea of self-preservation as mere survival.

Grotius says that human dignity is rooted in the rational, social element of human nature. Promising, as the outward sign of this rational sociability, is the most important dictate of natural law, thus confirming the relational dimension of human being as the primary moral fact. But the claim that human beings are, or should be, moral carries no weight unless human life is seen as pointing beyond itself. Absent the possibility of divine sanction, Grotius's opinion that men tend naturally to cooperation is no more convincing than Machiavelli's insistence that they do not.

Locke grounds his formulation of natural law in the isolated individual, whose dignity consists in autonomy. Self-preservation—that is, preservation not merely of life but of the *self*—is the fundamental dictate of nature. This lays the foundation for the *Second Treatise of Government*, in which property, as the manifestation of self-ownership, is to Locke what promises are to Grotius. Just as Grotius found promises to be the best expression of human sociability and therefore the main focus of nat-

ural law, Locke, in his *Second Treatise*, views property—defined as ownership of both the self and the products of the self’s expenditure of labor—as the primary moral fact. The focus of natural law is now the individual. Let us turn first to the *Questions on the Law of Nature* to see how Locke’s natural rights theory evolves.

The New Natural Law: Preservation of the Self

Many scholars routinely disregard Locke’s *Questions*, since the work was written early in his career and he never chose to publish it. Yet as we shall see, there is no real inconsistency between this book and Locke’s later writings. In fact, the law of nature, as articulated in the *Questions*, shares the same theoretical basis as the natural rights theory of government advanced in Locke’s famous *Second Treatise*. It is also reflected in one of his final works, *The Reasonableness of Christianity*.

Locke’s *Questions* presents eleven inquiries concerning natural law—eight of which are answered with extended reflections. The discussion moves along by way of three arguments which explain that natural law exists (Question I), the various ways in which it is known (Questions II, IV, V, VII), and why the natural law is obligatory (Questions VIII, X, XI). Three of the questions are followed only by short answers consisting of two or three words. Locke’s silence, however, speaks volumes; for these lacunae signal his departure from both classical and Hobbesian natural law and point to his new construction of natural rights theory.

For Locke, the law of nature exists because God exists. We can discern this through our reason, which shows us that all things in the natural world have an order to their operation, and “there is nothing in all this world so unstable, so uncertain that it does not recognize authoritative and fixed laws which are suited to its own nature” (Fol. 9).¹ The notion that our observations of nature point logically to the existence of a superior power is nothing new, but the similarities between classical natural law and Locke’s version end here. In fact, Locke’s explanation of promulgation, or how the law of nature is known, in Questions II–IV, marks an abrupt departure from Thomistic natural law and lays the groundwork for his eventual teaching on the natural rights of man.

The law of nature is knowable, Locke says, by the light of nature. But he does not understand this term in the classical sense, as the intuitive apprehension of first principles by rational beings. Instead, the law of nature consists only of “the kind of truth whose knowledge man can, by the right use of those faculties with which he is provided by nature, attain by himself and without the help of another.” This means that neither revelation nor tradition can be the source of natural law; for while both contain knowledge which is useful (including “reverence and love for the divinity,” as well as “obedience” and “faith in keeping promises, truthfulness, clemency, liberality, purity of morals, and the other virtues” [Fol. 27]), such knowledge is not learned primarily from one’s own use of reason, but rather, is passed on by others (Fol. 23–24). And as Locke explains, “if the law of nature could be learned from tradition, this would be a matter of faith rather than knowledge, since it would depend more on the authority of the speaker than the evidence of the thing itself, and thus, in the end, it would be a derivative rather than an innate law” (Fol. 30).

In fact, the natural law as Locke constructs it appears to have less in common with tradition and revelation than does its classical predecessor. In Question IV, Locke, in stark contrast to St. Thomas, denies that the natural law is inscribed in the minds of men and known intuitively, as is evidenced by the wide variation in moral conduct observed in people throughout the world (Fol. 143). Thomas, of course, would respond that competing versions of morality among human beings do not render the natural law invalid. He would argue that all people subscribe to the same fundamental precept—“Good is to be done, evil is to be avoided.” It is in applying this precept to the practical conditions of life that men differ. But unlike Thomas, Locke does not view the natural law as immanent—it is neither universally known nor practiced.² He flatly denies the Thomistic idea that the natural law can be known through inclination and seems to believe that even the most basic principles can be grasped only with great effort:

For a man to penetrate into the hidden nature of these things by reasoning and arguments based on sensible and obvious things, there is need for the concentrated meditation of the mind, thought, and care ... they must gird themselves for work, and that wealth which has been hidden in the darkness must be excavated with great labor. It does not offer itself up to

the idle and indolent, nor indeed to all who seek it, since some till to no avail. But, if we should discover only a few who are guided by reason in the concerns of their daily life, there is no wonder that concerning this law, which is not so easily apprehended, there is such a great variety of opinions among mortals. (Fol. 34–35)

Thus, in Question III, Locke asks, “Does the law of nature become known to us by tradition?” and answers simply, with no further elaboration, “It does not.” In the lacuna of this short answer, Locke signals that the tenets of traditional morality are altogether distinct from the new theory he is proposing. Although the principles of traditional natural law, inscribed on the heart, could also be learned through revelation and tradition, the law of nature as Locke understands it is something different from ordinary morality.

Once the subtle distinction has been drawn between traditional natural law and Locke’s version, in Question V he explains that the “light of nature” by which natural principles are known consists of sense and reason. Reason is the “discursive faculty of the soul which progresses from the known to the unknown, and deduces one thing from another by the certain and valid consequences of propositions” (Fol. 50). All reason must build on information that comes to us initially through the senses.

To know how sense and reason lead us to knowledge of natural law, Locke says, we must first establish the principles by which any law is known: There must be a superior, or a lawgiver, to whom one is subject, and the will of that superior must be known (Fol. 52). When we use our senses to examine the world, Locke says, our reason perceives an order to the world and concludes that “it could not have been formed by chance and accident into a frame so fitting, so perfect everywhere and wrought with such skill.” Thus, there must exist some “powerful and wise creator,” not only because man could not create himself out of nothing, but because “if man were creator of himself, someone who could give himself being, who could bring himself into the world, he would also have granted himself an eternal duration for his existence.... For it is impossible to imagine anything so hostile and inimical to itself which, though it could grant itself existence, would not at the same time preserve it” (Fol. 55).

If man would not be so “hostile” as to limit his own life, one might justifiably wonder whether the hostile party is God, who holds the keys to life and death. Thus, while reason may point to the existence of a

creator, it does not necessarily imply that he is loving and providential. Indeed, although Locke notes that reason can lead us to the knowledge of God, he also points out that we might “reasonably” doubt whether the idea of God is natural to man, since “there exist some races in the world who recognize no divine power at all” (Fol. 57). But even among those peoples that do not recognize the existence of God,

There exists nowhere a race so barbarous, so far removed from all humanity, that it does not take joy in the use of the senses and is not superior to brute beasts in the privilege of reasoning and the faculty of argumentation.... And for this reason all men, wherever they are, are adequately provided by nature for the investigation of god in his works. (Fol. 58)

We find here the crux of Locke's subtle argument. For although the “use of the senses” and the power of reasoning are natural to man, the longing for God, or truth, is not. Man *might* reason his way toward the existence of God, but if he does, he may be disappointed with what he finds (particularly given the less than providential portrait of God Locke will provide in the *Second Treatise*). Nevertheless, whether man rationally assents to the existence of God is less important than the fact that he has the ability to do so.

So according to Locke, the first thing that can be discerned through reason is that a lawgiver, God, exists. The next thing to do is to find out what the lawgiver expects of us.

It seems that the function of man is what he is naturally equipped to do; that is, since he discovers in himself sense and reason, and perceives himself inclined and ready to perform the works of god ... then, he perceives that he is impelled to form and preserve a union of his life with other men, not only by the needs and necessities of life, but he perceives also that he is driven by a certain natural propensity to enter society.... And indeed, there is no need for me to stress here to what degree he is obliged to preserve himself, since he is impelled to this part of his duty, and more than impelled, by an inner instinct. (Fol. 60–61)

Note that man “perceives” that his function is to do the works of God and “perceives” that he is impelled to live in society. But when it comes to survival, man is in fact “impelled” and “more than impelled” to survive by an “inner instinct.” The more forceful presentation of the

survival urge in contrast to the need to know God and live in society indicates wherein, for Locke, the important fact of human nature lies. Again, this reinforces the deep difference between him and the Christian natural law tradition.

And yet, this argument is immediately followed by the second of Locke's short "lacuna" answers, in which he states simply that the law of nature cannot be known from the natural inclination of mankind. Thus it would appear that the drive for self-preservation, while constituting the chief natural inclination of man insofar as any can be discerned, is not the whole of the law of nature. Just as Locke in Question III implicitly rejects the connection between traditional natural law and his version, in Question VI he equally rejects the lowered Hobbesian connection between the law of nature and mere survival. This is confirmed in Question VII where Locke argues that even though self-preservation seems to be the "primary and fundamental law of nature," it is not observed everywhere, since in some cultures slaves, servants, and wives willingly accompany deceased kings to the tomb (Fol. 75). The instinct to preservation may be the most universal attribute among men, but it is not the essence of the natural law, which is concerned with both preservation and the process of reason.

This becomes clear in Locke's discussion of why the natural law is obligatory. Following the definition of law he laid out earlier, Locke affirms that in order to be binding, a law must issue from a higher power and be known by those to whom it is directed. Although the threat of punishment can obligate those who refuse to follow the dictates of reason, Locke insists that obligation essentially derives from "the power and that authority which someone holds over another; either by right of nature and creation, since all things are rightly subject to that by which they have both first been created and continue to be preserved, or by the right of donation, as when god, to whom all things belong, has transferred some part of his authority to another" (Fol. 85). Obligation is a matter of respecting the right of another, which in this case, seems to belong to God who gives us life and *preserves* it. But as we shall see more clearly in the *Second Treatise*, Locke seems to believe that man bears nearly as much responsibility as God for creating and preserving a meaningful life.

Thomas, who called law a "dictate of reason for the common good, made by him who has care of the community and promulgated" (*ST*, I-II, q.90, a.4), found the essence of law in its formal cause—in the way

the various elements of law come together to make it what it is. The law is obligatory because it is reasonable, promotes the public good, and is issued by a valid authority. Grotius saw the essence of law in its function. So for him, we must obey the law because it facilitates peace; we are obliged to be sociable. Locke, however, locates the essence of the law in its efficient cause or source. The law is obligatory by virtue of the authority of the lawgiver: "Indeed, we are bound to something because he, under whose power we are, would will it" (Fol. 86).

We are bound to the law of nature, Locke says, because God so wills it. But he adds that "we are only bound to what a legislator has in some manner made known and published as his will" (Fol. 87). Thus, it would seem that we are only obligated by the natural law if we can know God's will with certainty. If we cannot determine the will of God, we are not bound to uphold the natural law. Locke proceeds to supply several reasons as to why men *are* bound to uphold the natural law, but it soon becomes clear that these undermine, rather than reinforce the idea of God as lawgiver.

The law of nature is binding, Locke explains, because it meets the requirements of law: God, the author of the law, willed it and "published it sufficiently that anyone could know it, if he were willing to devote time and energy, and turn his mind to its understanding" (Fol. 88). But Locke's earlier arguments make clear that the natural law is not readily apparent, and that very few people seem to be in a position to discover it. This casts doubts on the legitimacy of the natural law.³

Locke says that since God is superior to all things and gave us possession of our "body, soul," and "life," "it is right that we live obedient to the prescription of his will" (Fol. 88). But what is the prescription of God's will? For Locke, the natural law is not to be found in human inclination, tradition, or common opinion. It can be understood only as the fruit of an activity of the mind; and this, as we have seen, may lead to doubts about the goodness of God. How then are we to know the will of God, and why should we obey it? In fact, Locke's view is more conducive to the idea that man is an autonomous being in possession of natural rights than an image of God who owes allegiance to the natural law.

In fact, Locke's discussion of how we know the natural law and why it is obligatory is a tangle of contradictions. On the one hand, he says that God made the natural law sufficiently well known that anyone can grasp it; on the other, he says that it is extremely difficult to know. He says reason will lead one to conclude that God exists, but he also admits

that many reasonable people do not admit the existence of God. Furthermore, Locke contends that “if the law of nature is not binding on men, god’s divine, positive law cannot be binding” (Fol. 89); for both laws are derived from the existence of God as lawmaker. In this way, the aspersion Locke has cast on the obligatory character of natural law calls into question the divine law as well. In fact, the only point on which Locke is consistent is that the natural law mandates self-preservation. It is the only good to which human reason universally points. According to reason, self-preservation must be the highest good. Why? Reason may say God gives me existence; it may also say that God has made life enormously difficult. If the essence of law is its obligatory power, then natural law can be binding only if it commands something we will never disobey. Self-preservation alone fits this bill.

Following this discussion is the third of Locke’s short answer questions, in which he states that the natural law is not binding on brutes—in other words, the essence of the law of nature may be self-preservation, but this must not be understood as simple animal survival. It is preservation in accordance with the self-awareness that is proper to man. Viewed together, these “lacuna” questions clear the ground for a new theory of natural rights. Unlike that of the Christian tradition, the new natural law does not encompass truths that are both inscribed on the heart and passed down through tradition; for traditional faith might be at odds with the kind of God to which Locke’s reasoning points. The new natural law does not call man to connect with a transcendent reality, but neither is it about bare survival. It is about *self*-preservation—that is, man’s self-creation and preservation as an autonomous, rational, choosing being. In the *Second Treatise*, Locke will develop the point that although God may supply the very raw materials of human existence, man is the creator of the *self* through his own rational activity. Cultivation of the self, then, is man’s chief aspiration and end.

It may be argued that Question IX is the coda to Locke’s statement on the new law of nature. Questions X and XI, taken together, seem to imply that although Locke rejects traditional natural law, he believes its emphasis on virtue to be good for the community, particularly in its prohibition of “stealing and killing” (Fol. 94) and in its urging of “reverence and fear of the divinity, a sense of duty toward one’s parents, the love of one’s neighbor, and other feelings of this kind” (Fol. 95). As Michael Zuckert notes, “Whatever its defects, the natural law tradition has something crucial to say, and Locke does not want to demolish its hold on the

minds of his compatriots. Nature may guide human beings to pursue their own advantage, but the result of a “natural” life is not pretty.... In other words, morality, more or less of the sort endorsed in the natural law tradition, is part of the answer to the problem nature poses for human existence.”⁴ Just as Grotius spends much of *De Jure Belli Ac Pacis* undermining Christianity only to return to it as the justification for abiding by the rules of war, Locke seems to want to reap the benefits of traditional natural law without accepting its premises.

Self-Preservation and the Foundation of Government

In the *Questions*, Locke's subtleties and silences speak volumes about self-preservation as the essence of natural law. This philosophy provides the cornerstone for the natural rights theory advanced in *The Second Treatise of Government*, to which we now turn. Like Grotius, Locke denies original sin, which ultimately leads to the notion that God is less than providential, if not hostile. From this view, it is but a short step to replacing the old idea of natural law with a new theory of natural rights, in which the source of dignity is rooted not merely in man as a human being, but in man as an autonomous being. This leads directly to the philosophical assumptions governing current human rights theories. The three salient features of Locke's *Second Treatise*, then, are his discussion of the state of nature, in which he views the principle of self-preservation as man's origin and end; the resulting view of community as essentially unnatural; and from this, consent as the new principle upon which government should be based.

Despite his frequent references to Scripture, Locke's views regarding the origin and purpose of human society are less congruent with Genesis than with the theories set forth in the *Questions*. Just as Genesis describes the origin of man and thus informs the entire content of revelation that follows, Locke's description of the state of nature, the original human condition, lays the foundation for his discussion of man's function and therefore, the purpose of government.

Locke begins, not with the idea that man has fallen away from a loving God, but, as already established in the *Questions*, that the providence of God is limited. The chief end of man is therefore not union with

God, but self-preservation, defined as protection of life, liberty, and property. The law of nature, which Locke equates with the will of God, commands “the peace and *preservation of all mankind*.” To violate this law is to act contrary to reason and equality, “which is that measure god has set to the actions of men, for their mutual security” (II.6–8).⁵

What links mankind together, then, is the need for protection and preservation. Where the ancients and Christians viewed truth, or God, as the fulfillment of the natural law, Locke, following Grotius, uses the idea of God not as an end in itself, but as a means to preserving the earthly community. And building on the definition laid out in the *Questions*, he shows in the *Second Treatise* that “preservation” entails not merely survival, but the conduct of an autonomous life. For Locke, life, liberty, and property are all equally important aspects of the self.

The preservation of life necessitates ownership; for “God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, i.e. improve upon it for the benefit of life, and therein lay out something upon it that was his own, his labour” (V.32). To live is to work. Property is the result of labor and therefore an extension of self-preservation.

Of course, this reverses the order of events in Genesis, which says that before the Fall, man was given dominion of the earth, but without the need for heavy labor. As Michael Zuckert notes, “Locke thus collapses two phases of biblical history and entirely overlooks the key event, the Fall. The condition of penury that requires labor is, according to Locke, the condition of the beginning in itself, not a punishment or curse. In the very act of suggesting biblical support for his doctrine, he shows instead the severe difference between himself and the Old Testament authors.”⁶

This is confirmed in Locke’s later work, *The Reasonableness of Christianity*, in which he repeatedly emphasizes that “the state of paradise was a state of immortality, of life without end.”⁷ When man disobeyed God by eating from the forbidden tree, he had to leave the garden and its attendant state of immortality. The descendants of Adam, being born outside of the Garden of Eden, lost eternal life by default. But Locke insists that subsequent generations inherited nothing else from the first parents—certainly not original sin; for “can the Righteous God be supposed, as a punishment of one sin wherewith he is displeased,

to put a man under a necessity of sinning continually, and so multiplying the provocation?"⁸ In fact, *The Reasonableness of Christianity*, like *The Second Treatise* and *The Questions*, views the entire history of the Fall through the lens of immortality and loss of immortality. For Locke, the Fall is understood not so much as man's separation from God and the resulting death of the soul, but as the termination of physical life: "I must confess by death here, I can understand nothing but a ceasing to be, the losing of all actions of life and sense."⁹ Whereas traditional Christianity portrays the event as a fundamental loss of grace, the life of God in the soul, Locke views the Fall in a much more literal sense. In the Garden of Eden, man possessed immortality. In being turned out of the Garden, he lost access to the tree of life. Therefore, as a matter of logic, his children, being born outside the Garden, would lose eternal life as well.¹⁰

Locke's denial of original sin and his heavy emphasis on the loss of immortality leads to a different theology than that upheld by traditional Christianity. By concentrating less on our severed relationship with God itself and more on its consequence—mortality—Locke enables self-preservation to assume the mantle of a divine command. Mankind inherits from Adam a proclivity, not to sin, but to death. Therefore, we do not have to overcome original sin to reunite ourselves with God; we have only to preserve ourselves as far as possible.

Returning to *The Second Treatise*, we see that for Locke, it appears man was placed on earth to work for survival. Labor, now forming an integral part of man's *telos*, is thus elevated to the level of the sacred.¹¹ Something becomes our own when we mix our labor with it; for we all possess property in our own person, and "whatsoever he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his *property*" (V.27). But magnifying the importance of man's work has the effect of diminishing the significance of God's; for one crop that man has cultivated is worth far more than anything provided by nature (V.40):

It is labour then which puts the greatest part of value upon land ... man, by being master of himself, and proprietor of his own person, and the actions or labour of it, had still in himself the great foundation of property. (V.43–44)

As with Grotius, Locke's conclusion runs counter to the biblical truth he ostensibly sets down as his premise. For we see here that it is man, not God, who puts the value on property, which, without man, "would be scarcely worth anything" (V.43).¹² As Locke contends in his *Essay Concerning Human Understanding*, human beings, like "unassisted nature," have so little raw intellectual endowment that "of all the men we meet with, nine parts of them are what they are, good or evil, useful or not, by their education."¹³ Although Locke takes care to identify man as the "workmanship" and "property" of God, "sent into the world by his order and about his business" (II.6), he makes clear that most of what God has given, including man himself, is fairly useless apart from human labor and ingenuity.

Property thus affirms man as an autonomous being who defines himself through dominion—the extension of *self*. In the Christian tradition, man's true identity is found, paradoxically, through an emptying of self, so as to be filled with God. According to Locke, however, the true self is not given by God and discovered by man, but *created* by man when he mixes the labor of his rational mind with the raw material of human nature. Preservation of the *self* is the task of man. Liberty and possessions, then, are as fundamental as life, since they are the means whereby man makes his life meaningful. For Locke, man's dignity is conferred, not by his very being, but by what he makes of himself. The autonomous self is to Locke what promises are to Grotius—the "primary moral fact" upon which the law of nature rests.¹⁴

This notion has profound effects on our understanding of community, which is now understood not so much as a good in itself but as a tool for self-preservation. In Genesis, for example, marriage is the foundation of society. Man's purpose is not earthly survival—for death does not come to man until he turns away from God—but rather, to live in union with God. Marriage is established not for survival's sake, but because it was "not good for man to be alone." Through his relationship with another, man is better able to live as an image of God.

Locke, in contrast, sees marriage primarily as being necessary for the survival of children, who, unlike other animals, remain dependent for a very long time (VII.80). The idea of marriage as a survival tool leads to an understanding of community that undermines the goodness of God. According to Locke, God, determining that man should not be alone, "put him under strong obligations of necessity, convenience, and inclination to drive him into society, as well as fitted him with understanding and language to continue and enjoy it" (VII.77). Thus, we begin with a

God who deprives, making us weak to *drive* us into society. Language and understanding seem to be thrown in as consolation prizes. In Genesis, however, the story is the other way round. *Because* we are made in the image of God, we have language and understanding, and *this* is why we need others—not for self-preservation.

In misrepresenting the facts of Genesis, Locke establishes the environment in which natural rights philosophy can flourish. A less than providential God thrusts man into a formidable world where he must labor heavily in order to survive. So harsh is the natural environment that man requires the help of others who, unfortunately, pose new threats to survival. Soon, man requires protection not only from the environment, but from other people. Community is not natural, but merely useful insofar as it aids in the performance of man's only "duty," which is to create and preserve the self. Whereas traditional natural law imposed duties on man based on the view that the self is inextricably tied to some Other (be it truth in the ancient tradition or God and fellow man in the Christian sense); for Locke, man is beholden primarily to himself. Therefore, he possesses not a natural duty toward the Other, but a natural right to self-preservation.

Locke appears to differ from Hobbes in defining a law of nature that is more reason-bound than the latter's theory of matter in motion, but it does not take long for the distinction to break down. For although the law of nature permits violence only in response to a threat against preservation, remember that for Locke, life itself is intrinsically tied to the idea of autonomy. Thus, any potential threat to one's autonomy is equivalent to a threat to preservation:

He who attempts to get another man into his absolute power, does thereby *put himself into a state of war* with him; it being to be understood as a declaration of a design upon his life ... for nobody can desire to *have me in his absolute power*, unless it be to compel me by force to that which is against the right of my freedom, *i.e.* make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away that *freedom* which is the fence to it... I have no reason to suppose, that he, who would *take away my liberty*, would not, when he had me in his power, take away everything else. And therefore it is lawful for me to treat him as one who has *put himself into a state of war* with me, *i.e.* kill him if I can. (III.17; emphasis original)

Furthermore, the state of war may be ongoing; for the innocent party retains a right “to destroy the other whenever he can, until the aggressor offers peace, and desires reconciliation on such terms as may repair any wrongs he has already done, and secure the innocent for the future” (III.20). Now, Locke insists that there is a vast difference between the state of nature (“men living together according to reason, without a common superior on earth with authority to judge between them”) and a state of war (“force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief”), but there seems to be a very thin line of separation.¹⁵ For in reality men are poor judges in their own case due to “self love, [...] ill nature, passion,” and desire for revenge. All these things “carry them too far in punishing others; and hence nothing but confusion and disorder will follow” (II.13). Thus, although violence toward others is a violation of the natural law, which should “be plain and intelligible to all rational creatures,” individual men are either ignorant of it, “for want of study,” or so biased toward their own interests as to effectively distort its teaching (IX.125).

If community is a natural, organic whole, then justice will be preserved by whomever is charged with its care. For Locke, however, community is not natural. Justice begins and ends with the individual. If the law of nature is preservation, and all men are fundamentally equal, man is obliged not only to preserve himself but “to preserve the rest of mankind” (II.6). Anyone who harms another violates the law of nature and thus “becomes dangerous to mankind.” Therefore, “*every man hath a right to punish the offender, and be executioner of the law of nature*” (II.8; emphasis original). But the natural executive power—the right to punish transgressors of the law of nature—only adds to the existing anarchy, since as Locke acknowledges, men are so prone to “ill nature, passion, and revenge,” which “will carry them too far in punishing others” (II.13).

Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society.... The inconveniences that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek *the preservation of their property*. (IX.124; emphasis original)

Men's inability to observe justice in situations concerning themselves or their neighbors makes for a relatively short trip from the so-called peace in Locke's state of nature to the confusion and chaos that reign in that of Hobbes.¹⁶ Government exists, not so much to preserve the natural community of men, as to preserve the autonomous individual to which the law of nature applies. Just as the resources found in nature are not worth much until they are mixed with labor, neither is human nature of much value on its own without the hard work of establishing civil law. Like the garden, man too must be cultivated.

Since the individual is so inept at upholding the natural law, Locke says we can hardly expect a monarch, who is but a man, to do much better. Because men perform so poorly their right to execute the law of nature, the best government will consist of more than one person and be representative. The legislature assumes a mantle of extreme importance; for it "*is not only the supreme power of the common-wealth, but sacred and unalterable in the hands where the community have once placed it.*" The sanction of the legislature, "which the public has chosen and appointed," is the source of validity for all social edicts; "*for without this the law could not have that, which is absolutely necessary to its being a law, the consent of the society*" (XI.134; *emphasis original*).

This is a far cry from Thomas, for whom the fundamental precept of natural law is to do good and avoid evil. Of course, the very terms "good" and "evil" evoke an entire moral universe in which man performs a specific role. The most important fact in the view of the ancients and the Christian philosophers is that natural right or natural law ultimately points man beyond temporal society; earthly peace is both a by-product of and a means to union with the transcendent.

Grotius sought a definition of natural law more descriptive than prescriptive and thus concluded that the natural law was whatever preserved man's status as a reasonable and sociable being. Human reason, and not objective truth, thus became the measure of law. It is in his work that we first find the rejection of end for process; for he defines evil as whatever is not reasonable. In Locke, we see the logical outcome of placing process over truth: The legislature, as the chosen and appointed will of the people, now takes the place of natural law insofar as it stands as the measure of civil laws. What gives the law its validity is not truth, but consent. The essence of law is not, as Thomas would have it, in its formal cause (the right ordering of its structure and purpose). Nor is it, in Grotian fashion, in its function, or end. Rather, the essence of law now

consists in its efficient cause, or *source*, which in the case of government, refers to the process by which it comes about. The efficient cause is the legislature, which, by definition exists for the preservation of the people.¹⁷ Like Grotius, Locke looks to the will of God to support a natural law of questionable theological pedigree:

Thus the law of nature stands as an eternal rule to all men, *legislators* as well as others. The *rules* that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, *i.e.* To the will of God, of which that is a declaration, and the *fundamental law of nature being the preservation of mankind*, no human sanction can be good, or valid against it. (XI.135; emphasis original)

The law of nature represents God's will, and God's will is the preservation of mankind. Thus Locke joins Grotius in lowering the ends of government and providing a theological justification for this that denies original sin. Unlike the plentiful gardens described in Genesis, in Locke's theology God has provided not abundance but only the very raw materials by which man ekes out existence by the sweat of his brow. The exodus from the state of nature is not a fall from the law of God, but more like an escape from the consequences of living according to that law. This leads to the idea that human society is unnatural and the world, hostile.¹⁸ Out of this sense of man's fundamental isolation, the language of rights is born. It is worth noting that a "right" to something is never claimed unless one's exercise of it is threatened. The very language of natural rights, then, as opposed to natural law, indicates that society is inherently unsafe. The implication seems to be that we cannot really develop unless we are left alone. In this sense, liberty is the universal right most conducive to the natural law mandate to self-preservation.

Reason is essential to Locke's law of nature, but only insofar as it assists our self-preservation; it is not to be cultivated as an end in itself.¹⁹ This is a dramatic departure from the classical and Christian understanding of reason. For Plato, Aristotle, and the Christian tradition, the existence of objective truth was a critical element in understanding human existence. The ancient/medieval traditions held that human happiness comes from imitating, or uniting ourselves, to the Good. Truth, or God, is pure reason, or soul, but human beings have bodies as well as souls, and the body is often the primary obstacle to achieving union with

truth. Now, at least for Aristotle and St. Thomas, this does not mean that the body and all its inclinations are bad, but that to remain good, we must keep our will and our passions properly in check. Adherence to the natural law is the means by which human beings achieve their place in the eternal plan. Ultimately, then, God or nature is good; evil comes only from the misuse of creation. The chief obstacle to human happiness, then, is the disordered soul.

For Locke, the ongoing importance of God to a meaningful human life is questionable. God created us, but is not necessarily providential. He supplies us with only very raw material, over which we must labor heavily in order to survive. Our primary goal is not union with God, or truth, but rather, our own preservation. If survival is the highest end, the focus shifts from the mind to the body; there is no need to cultivate reason for its own sake because man is no longer striving for an end beyond his own existence.²⁰ The chief obstacle to our happiness now is not our own inner, moral failure, but rather, other people and their interference with our self-preservation. Thus, the solution to the human dilemma is not to be found in the inner recesses of the soul, but in the outer structure of social institutions. Modern man is no longer considered to be a social creature whose identity is defined by his relation to another, but a solitary being caught in the cruel vice grip of requiring for his survival the same people who pose the greatest threats to it. The path to happiness no longer consists in a well-ordered soul, but in an artificial society of well-ordered structures, created by man for the purpose of being left alone.

Self-Preservation and Self-Love

So we find that the epistemological failure of contemporary human rights is not the result of an erroneous reading of Locke, but simply the inevitable outcome of the chain of ideas set in motion by Grotius in the attempt to establish a natural law untethered from the anchor of truth. The very concept of natural rights, ironically, stems from a world view that is unlikely to inspire the altruism necessary to uphold such rights. Therefore, Locke, like Grotius before him, ultimately depends upon Christian morality to supply the defects of his own formulation of natural law. In *The Reasonableness of Christianity*, he goes so far as to assert that it is all but impossible for one to be moral by relying on traditional

natural law alone. For “the knowledge of morality, by mere natural light (how agreeable soever it be to it), makes but a slow progress, and little advance in the world” due to men’s “passions, vices, and mistaken interests, which turn their thoughts another way.”²¹

The importance of Christianity to morality, explains Locke, lies not just in the reasonableness of its dictates, but more importantly, in the authority of its lawgiver—remember that Locke locates the validity of the law in its source. Ancient religions, while possessing lawgivers, were not necessarily reasonable, and ancient philosophy, while reasonable, was insufficient to compel men to morality. Indeed, “hearing plain commands is the sure and only course to bring them to obedience and practice. The greatest part cannot know, and therefore they must believe.”²² Christianity supplies the “plain commands” that are so vital to the vast majority of mankind who will never learn how to be good by their own lights. Furthermore, explains Locke, virtue has never been regarded by most men as its own reward, despite the exhortations of the philosophers. It is only through Christianity’s promise of eternal life that men can be motivated to be good.²³ Self-preservation is all men can really know; it is the only basis from which to appeal to them. According to Locke, we obey God, not so much because we love him and hate to offend him, but because we want to escape the punishment of hell. While this is true to a degree, it is not what traditional Christianity would uphold as the essence of man’s relationship with God.

On the whole, Locke’s *Reasonableness of Christianity* does not contradict the argument of his *Questions Concerning the Law of Nature*. Both works assert that traditional natural law cannot really be grasped by most men. This leads Locke in the *Questions* to advocate a new natural law, based strictly on the idea of the preservation of the self. In the *Second Treatise*, Locke asserts that this new law of nature, self-preservation, is the will of God, a view he reinforces in *The Reasonableness of Christianity*, with its heavy emphasis on the Fall as the loss of physical mortality.

One might look at the relativism that has been identified as pervading current theories of human rights and rightly argue that neither Grotius nor Locke would agree with the direction that such theories have taken. Nevertheless, the innovations introduced in traditional natural law theory by these two thinkers, however subtle, have had far reaching effects, much as a very small pebble thrown into a pond emits ripples far exceeding its own size. Let us consider for a moment the ramifications for natural law and politics by the seemingly small changes effected by Grotius and Locke.

For St. Thomas, man has an earthly end and a supernatural end. Both ends are directed toward the love of truth. Through unassisted human reason, man can progress to the point of loving virtue for its own sake. Knowledge of the natural law alone, which dictates subordinating passion to reason, doing good, and avoiding evil, is sufficient for earthly peace. But, Thomas would say, we cannot fully attain our supernatural end without the benefit of revelation.

Grotius and Locke discern the dictates of natural law from the idea of the self. Locke sees self-preservation (meaning preservation of the “self”—the rational nature, as well as the life of man) as the only valid tenet of natural law. It is the only thing that can be naturally grasped by man, and is therefore the cornerstone of society. This, however, does not sufficiently motivate men to adhere to traditional morality for its own sake; they will respond only to the promise or privation of preservation. Christianity, in offering the reward of eternal life, is therefore necessary to supply what is lacking in both traditional natural law and the new natural law as formulated by Grotius and Locke.

But by placing Christianity in the service of politics, Locke has made it less relevant to the attainment of human happiness. As a result, someone who rejects Christianity does not have a sufficient reason to be moral. For Thomas, Christianity is the fulfillment of natural law in that it is the greatest fulfillment of love—on the natural level, the love of truth, and on the supernatural level, the love of God. Love of God flows more naturally in the classical formulation, because the natural law itself affirms the connection of each to some Other. Looking at Locke's formulation of natural law, we can see that love of God does not flow naturally from self-preservation, which is based on love of self. In fact, despite Locke's exhortations, Christianity is less apt to be followed by those who have taken to heart his idea that the fundamental tenet of natural law is self-preservation.

For the ancient philosophers and St. Thomas, however, close adherence to the natural law, which is based on the love of truth, can sufficiently instruct men to form a good government, but can also point them to something higher. Close adherence to Locke's natural law leads one to selfishness, which must then be corrected by Christianity, which does not follow logically from the premises Locke has laid.²⁴

In the end, we might say that there are two basic human needs: the need to live and the need to love. The need to love is arguably more pressing than the survival urge; for people often risk their lives for the noble love of friends or country, or conversely, for the ignoble love of

harmful things like drugs or power. Plato certainly understood this and believed that the chief end of education lay in directing human love to the true and the good. The fact that the drive for preservation is carried out instinctually, whereas the object of love is a matter of choice, shows that love is a higher act.

The ancients believed the best society would be ordered on the love of truth; Christianity showed that loving truth is the same as loving God. But once the love of truth revealed itself in this way, modern philosophers looked for an alternative approach to politics. They turned instead to the lower human need, the need to live. As the necessary condition for love and all other endeavors, preservation is certainly our most basic need. However, meeting this need alone does not satisfy the higher human need to love.

Before dismissing the need to love as irrelevant to political life, one should note that virtually every injustice in history—beginning with the act that precipitated the Fall (which is at least a figurative, if not a literal reality)—can be traced back in one way or another to the motive of self-love. Emphasizing preservation only reinforces self-love because it upholds the autonomous individual as the primary moral fact. By making preservation the object of natural law and labeling this as the will of God, Locke, ironically, makes Christianity itself less compelling because he has turned man's gaze inward, rather than outward. Love is always directed toward some Other; preservation, toward oneself. Focusing on preservation to the disregard of love is likely to have the opposite of its intended effect, as so aptly demonstrated by the tendency of modern society to advocate killing as the “compassionate” thing to do. Thus, the modern trend toward human rights reveals an inherent desire to connect to something or someone beyond one's immediate self-interest, but we have rejected the philosophical training by which to do so properly.²⁵ So we attempt to universalize our own self-love and end up with nothing more than selfishness in altruistic clothing.

Universal human rights, at their best, represent the enduring principles of human dignity and freedom; principles which continually evade our grasp as they bob about in a world still reeling from the tidal wave of modernity. In such a world we may find that the surest beacon of hope is that which still remains on the shore from which Machiavelli so cavalierly embarked. Perhaps it is time to moor our storm-tossed ship in the natural law philosophy of Thomas Aquinas. Perhaps we are finally ready to acknowledge that sometimes, to progress is to return.

Part IV

*Being and Goodness:
The Alpha and Omega of Human Rights*

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If I am to discuss what is wrong, one of the first things wrong is this: the deep and silent modern assumption that past things have become impossible. There is one metaphor of which the moderns are very fond; they are always saying “You can’t put the clock back.” The simple and obvious answer is “You can.” A clock, being a piece of human construction, can be restored by the human finger to any figure or hour. In the same way society, being a piece of human construction, can be reconstructed upon any plan that has ever existed.

—G. K. Chesterton from “What’s Wrong with the World”

A closer look at the changing relationship between principle and politics reveals that the language of “rights” grows out of a world view that refuses to acknowledge objective standards of “right.” Reacting to the “theological-political” problem presented by Christianity, modern philosophy rejected the idea of an objective good for human beings in favor of a politics based on the “low but solid” ground of the practical concerns of life. This did not, however, quench man’s innate thirst for transcendence—the concept of universal human rights presupposes the existence of nonderogable principles of human dignity, which entitle all people to a certain moral respect regardless of the will of particular governments or individuals. Modernity, then, has not satisfied man’s deepest yearnings; it has merely robbed him of the ability to understand and express them. The first principles of morality, so essential to the notion of universality, have been sacrificed on the altar of personal autonomy. In addition to sowing ontological confusion, this also creates practical difficulties for the enforcement of human rights; for based on the logic of this position, there is no reason to rank any particular right of greater importance than all the others. Worse still, it opens the door to a kind of tyranny wherein the full benefit of human rights extends only to those who are fully autonomous and hence fully “human.”

We must return to the foundational basis of the goods that rights are meant to protect. We cannot speak of universal rights if there is no universal human nature to which such rights attach. In turn, we cannot speak of universal human nature if there is no single end for human beings. A logically consistent argument for universal human rights must be supported by the first principles that informed classical philosophy. Therefore, chapter 9 turns to the work of Thomas Aquinas, who

provides a comprehensive explanation of human nature and law, based on the assumption that the universe is ordered. From there, chapter 10 discusses in further depth a point that was made earlier in the book: If human rights are to have any meaning at all, there cannot be a human “right” to abortion.

Dignity in the Breach: The Human Being and the Concentration Camp

Before moving on to discuss St. Thomas, it is worth reflecting for a moment on the event that was the chief impetus to the recognition of universal human rights. Following the Holocaust, the need to articulate a vision of human dignity assumed a sudden urgency. But human dignity is universal only insofar as it does not depend for its existence on human opinions or beliefs, which can change with the times. Ironically, it is in the writing of concentration camp survivor Primo Levi, Michael Ignatieff’s secular champion, that we find a very powerful testimony to this fact. While Levi is an avowed non-believer, his work affirms that objective moral principles exist and make a difference to human beings.

The Holocaust, as the Universal Declaration put it, “shocked the conscience of mankind.” But what made the Holocaust such an exceptional affront to the principle of human dignity? Levi’s writings indicate that the real malignity of the Holocaust was not simply in the number of lives it claimed, but in the way that it deprived an entire ethnic population of the essence of their humanity by eradicating their ability to reason and to act according to moral principles.

Levi explains that the first step in the process of obliterating one’s humanity was to strip him, not just of his clothing, hair, and personal effects, but of his ability to use language. Prisoners were deliberately kept in a state of ignorance as to what was occurring to them. “[I]f we speak, they will not listen to us, and if they listen, they will not understand.”¹

This “not being talked to” had rapid and devastating effects. To those who do not talk to you, or address you in screams that seem inarticulate to you, you do not dare speak. If you are fortunate enough to have next to you someone with whom you have a language in common, good for you, you’ll be able to exchange your impressions, seek counsel, let off

steam, confide in him; if you don't find anyone, your tongue dries up in a few days, and your thought with it.²

Drowning in a sea of unintelligible language, Levi remembers the inherent need for communication manifested in his ability, even forty years later, to remember meaningless phrases from languages he didn't know—"the mental equivalent of our bodily need for nourishment, which drove us to search for potato peelings around the kitchens: little more than nothing, better than nothing."³ Prisoners tried to save themselves, "some by begging for shreds of information; some spreading without discernment triumphant or disastrous information, true, false, or invented; some who sharpened eyes and ears to seize and try to interpret all signs offered by men, the earth, and the heavens." Cut off from their families and countries of origin, prisoners were deprived of communication with the external world as well.⁴

Contrasting the brutal and coarse German spoken in the Lager with proper German, Levi notes that "it is an obvious observation that where violence is inflicted on man it is also inflicted on language."⁵ We might say that the converse is also true—where violence is inflicted on language, it is inevitably inflicted on mankind because the capability for language is essential to our humanity. It is through language that we reason, form judgments, bond with others, and make sense of the world. Language, in other words, confirms what Aristotle would call our *telos*—our end as rational, social creatures.

As the philosopher Josef Pieper points out, language is the "medium" through which "the common existence of the human spirit" is sustained. Therefore, "if the word becomes corrupted, human existence itself will not remain unaffected and untainted."⁶ This is due to the twofold function of language: "First, words convey reality. We speak in order to name and identify something that is real, to identify it for *someone* of course—and this points to the second aspect in question, the interpersonal character of human speech." Once the reality of something is identified, man longs to describe it. "[B]ut to whom?" asks Pieper. "The other person is already in the picture; what happens here is already communication. In the very attempt to know reality, there already is present the aim of communication."⁷ Pieper concludes:

The degradation ... of man through man, alarmingly evident in the acts of physical violence committed by all tyrannies (concentration camps,

torture), has its beginning ... at that almost imperceptible moment when the word loses its dignity. The dignity of the word, to be sure, consists in this: through the word is accomplished what no other means can accomplish, namely, communication based on reality.⁸

Language confirms that we are intrinsically connected to both our fellow man and a truth that transcends social relationships. When the word loses its dignity, we lose our sense of reality and community. Levi alludes to this when he notes that “to accept the eclipse of the word, was an ominous symptom: it signaled the approach of definitive indifference.”⁹

This leads to the next step in the assault on the prisoners’ humanity, for in their degradation, they are prevented from being able to make sense of things, and therefore, the ability to act morally. Levi notes that “The conviction that life has a purpose is rooted in every fibre of man, it is a property of the human substance.”¹⁰ In the Lager, however, men were stripped of any chance to make sense of life. They were deliberately denied the most basic necessities—like the spoons that were so essential to consuming the watery broth that served as their only source of nourishment—and placed in a state of such complete oppression that simple survival demanded they steal from each other. Left in a perpetual state of cold, exhaustion, and hunger, they were literally incapable of focusing on anything other than the present moment. “The deprivation to which [prisoners] were subjected led them to a condition of pure survival, a daily struggle against hunger, cold, fatigue, and blows in which the room for choices (especially moral choices) was reduced to zero.”¹¹ Levi adds, “But here in the Lager there are no criminals nor madmen; no criminals because there is no moral law to contravene, no madmen because we are wholly devoid of free will, as our every action is, in time and place, the only conceivable one.”¹²

One has to fight against the current, to battle every day and every hour against exhaustion, hunger, cold and the resulting inertia; to resist enemies and have no pity for rivals, to sharpen one’s wits, build up one’s patience, strengthen one’s will-power. Or else, to throttle all dignity and kill all conscience, to climb down into the arena as a beast against other beasts[.] ... Many were the ways devised and put into effect by us in order not to die[.] ... Survival without renunciation of any part of one’s own moral world—apart from powerful and direct interventions by fortune—was conceded only to very few superior individuals, made of the stuff of martyrs and saints.¹³

Levi concludes that National Socialism does not sanctify its victims, but to the contrary, “degrades them, it makes them resemble itself, and this all the more when they are available, blank, and lacking a political or moral armature.”¹⁴ Thus, one of the greatest affronts to humanity was that survival in many cases required one to renounce the behavior that ordinary morality would require.

The breakdown of language signals the breakdown of community. Because the prisoners were deprived of language, the harshness of life in the camps had an even more deleterious effect, for it only reinforced the fact that they were utterly alone:

[T]he enemy was all around but also inside, the “we” lost its limits, the contenders were not two, one could not discern a single frontier but rather many confused, perhaps innumerable frontiers, which stretched between each of us. One entered hoping at least for the solidarity of one’s companions in misfortune, but the hoped for allies, except in special cases, were not there; there were instead a thousand sealed off nomads, and between them a desperate covert and continuous struggle. This brusque revelation ... was so harsh as to cause the immediate collapse of one’s capacity to resist.¹⁵

The war of all against all that was forced by conditions in the concentration camp had, as part of its aim, the utter loneliness of the prisoners. Levi explains that the isolation experienced in the Lager is not found in ordinary life, where man seldom loses himself because he is never totally alone:

... [E]veryone is normally in possession of such spiritual, physical and even financial resources that the probabilities of a shipwreck, of total inadequacy in the face of life, are relatively small. And one must take into account a definite cushioning effect exercised both by the law, and by the moral sense which constitutes a self-imposed law; for a country is considered the more civilized the more the wisdom and efficiency of its laws hinder a weak man from becoming too weak or a powerful one too powerful.¹⁶

But in the Lager things are different: here the struggle to survive is without respite, because everyone is desperately and ferociously alone. If some *Null Achtzehn* vacillates, he will find no one to extend a helping hand; on the contrary, someone will knock him aside, because it is in no one’s

interest that there will be one more “musselman” [word used to describe the “weak, the inept, those doomed to selection”] dragging himself to work every day; and if someone, by some miracle of savage patience and cunning, finds a new method of avoiding the hardest work, a new art which yields him an ounce of bread, he will try to keep his method secret, and he will be esteemed and respected for this, and will derive from it an exclusive, personal benefit; he will become stronger and so will be feared, and who is feared is, ipso facto, a candidate for survival.¹⁷

It is important to note that although conditions in the camp resemble the Hobbesian state of nature, Levi never assumes that this is man’s natural state—indeed, the very injustice of the whole thing is rooted in the fact that man has been reduced to conditions that are subhuman. Stripped of the ability to communicate and alienated from his fellow man, the prisoner is unable to make sense of the world. Survival is directly correlated with one’s willingness to ignore the ordinary rules of morality. Those who do not survive, are “drowned”:

... [T]hey are overcome before they can adapt themselves; they are beaten by time, they do not begin to learn German, to disentangle the infernal knot of laws and prohibitions until their body is already in decay, and nothing can save them from selections or death by exhaustion. Their life is short but their number is endless, they, the ... drowned, form the backbone of the camp, an anonymous mass, continually renewed and always identical, of non-men who march and labour in silence, the divine spark dead within them, already too empty to really suffer. One hesitates to call them living; one hesitates to call their death death, in the face of which they have no fear, as they are too tired to understand...if I could enclose all the evil of our time in one image, I would choose this image ... [of] an emaciated man, with head dropped and shoulders curved, on whose face and in whose eyes not a trace of a thought is to be seen.¹⁸

The great evil of the Holocaust, then, lies not simply in hunger, exhaustion, or even death, but in relegating human beings to a bestial existence in which they can no longer think for themselves or make sense of the world. It is the evil of reducing men to mere empty shells and then sending them to their deaths like dogs, with no awareness that death means anything at all.

Finally, we should note that the concentration camps usually caused the prisoners to give up all hope, which is itself an elemental aspect of

human nature. In fact, Levi credits his very survival to the pity of Lorenzo, a civilian who gave him food and sent some letters for him:

I believe it was really due to Lorenzo that I am alive today; and not so much for his material aid, as for his having constantly reminded me by his presence, by his natural and plain manner of being good, that there existed a just world outside our own, something and someone still pure and whole, not corrupt, not savage, extraneous to hatred and terror; something difficult to define, a remote possibility of good, but for which it was worth surviving[.] ...¹⁹

... Lorenzo was a man; his humanity was pure and uncontaminated, he was outside this world of negation. Thanks to Lorenzo, I managed not to forget that I myself was a man.²⁰

Levi may consider himself a non-believer, but in fact he comes across more as one who is angry with God than as one who does not believe. He says that “if for no other reason than that an Auschwitz existed, no one in our age should speak of Providence,”²¹ although he admits that God was not far from his mind during the times when he narrowly escaped death. But this is less significant than the fact that Levi’s writing as a whole bears witness to the idea that there is a discernible order in which human beings perform a particular role. Levi relays a conversation he had with a Frenchman in which he tries to explain Dante’s *Divine Comedy*. Struggling under the pressure of crossing a language barrier within the very limited time that is afforded them to speak, Levi tries to convey the meaning of the poem. He is filled with a sense of urgency, and the conviction that it is absolutely essential to understand. He quotes:

“Think of your breed; for brutish ignorance
Your mettle was not made; you were made men,
To Follow after knowledge and excellence.”

As if I also was hearing it for the first time: like the blast of a trumpet, like the voice of God. For a moment I forget who I am and where I am. Pikolo begs me to repeat it. How good Pikolo is, he is aware that it is doing me good. Or perhaps it is something more: perhaps, despite the wan translation and the pedestrian, rushed commentary, he has received the message, he has felt that it has to do with him, that it has to do with all men who toil, and with us in particular[.] ...²²

* * *

... I must tell him, I must explain to him about the Middle Ages, about the so human and so necessary and yet unexpected anachronism, but still more, something gigantic that I myself have only just seen, in a flash of intuition, perhaps the reason for our fate, for our being here today[.] ...²³

The Holocaust represents the logical outcome of the argument that the universe is not ordered. If neither God nor nature provides, life is ultimately senseless and unintelligible; everything is permitted. Levi may be nondenominational, but he is not secular, if by that word we are to mean someone who does not believe in transcendent standards. The very act of his writing is an attempt to make sense of things. Levi's explanation of why Auschwitz was wrong is a powerful testimony to all that is right.

CHAPTER 9

Being and Goodness: The Essence of Life and Law in the Philosophy of St. Thomas

Despite all attempts to prove otherwise, the very idea of human rights is inextricably tied to the concept of morality—that is, to the idea that there are certain standards of right and wrong regarding the treatment of people that are independent of particular human opinions. If we are willing to admit that our very ability to converse with each other is itself evidence of at least some universal truth, perhaps it is time to turn to St. Thomas to consider the significance of this truth for human life

“Being” as the Fount and Fullness of the Good

Being: The Foundation of the Good

For St. Thomas, the whole of natural law can be summed up in the phrase that “good is to be done, evil is to be avoided.” While this sounds remarkably simple, the very notion of “good” raises important questions about the meaning of human nature and the subsequent framing of human laws. For Thomas, *being* is the foundation of all good. Something is more or less good to the extent that it possesses fullness of

being. The ultimate human good is happiness, and the practice of virtue is an important component to its achievement. The purpose of law is, at root, to protect being, since a good community requires good individuals. Let us see how Thomas goes through these steps to arrive at his exposition of natural law.

The *Summa Theologica* consists of three parts. Part I concerns the nature of God and the procession of all creatures from God. Part II is the consideration first, of human acts generally, and second, of human acts specifically. Part III is a discussion of Christ as the way of all creatures back to God. The organization of these parts indicates that human beings originate from, and find their end, in God. Our examination will focus on Part II.

“Good is to be done. Evil is to be avoided.” Before he can discuss what is good for human beings, Thomas carefully examines the nature of good generally. He explains that being and goodness “are really the same;” they are, respectively, the foundation and fulfillment of anything in existence. Goodness is whatever “is in some way desirable.” A thing is truly desirable only “insofar as it is perfect; for all desire their own perfection.” And it is perfect only insofar as it has achieved the fullness of its actuality (*I.q.5.a.1.c.*).¹

In other words, all things in existence are good. That which possesses the fullness of goodness has attained its perfection; it is “simply good.” Anything which has not yet attained its perfection is good, “but only relatively” (*I.q.5.a.1.r.1*). All things are in various states of becoming. Something is more or less good to the extent that it has the fullness of being.

For Thomas, a thing is perfectly good when it fulfills its proper form and function (*I.q.49.a.2.c.*). A piece of a jigsaw puzzle, for example, possesses a particular form by which it fulfills a particular function—contributing to the finished product, which is a beautiful picture. The puzzle is good insofar as the placement of the pieces moves it to its proper end. Putting the pieces together properly means the difference between harmony and distortion.

Evil does not exist of itself, but is simply a lack, in a privative sense, of being. So, for example, a man may lack a lion’s strength, but that is not an evil; for he lacks nothing that is proper to his nature. It would be an evil, however, for a man to be without sight; for that is a deprivation of something proper to the nature of the eye (*I.q.5.a.3.c.*). Thomas says that evil has a cause “not directly, but accidentally” because intention is

not part of the essence of evil. Nobody *intends* to do evil; even a wicked person acts for what he perceives to be a good. Because evil is a lack of something, someone cannot really intend to accomplish evil; for intention and action are by nature movement toward something. Evil is simply the disordered use of what is good. Thus, Thomas says that the goodness of something depends upon “what it is in itself, and on its order to the whole universe, wherein every part has its own perfectly ordered place” (I.q.49.a.3.c.).

Happiness: The Fullness of the Good

Now that he has explained the nature of good in general, Thomas discusses the nature of the good for man. The good for man will consist in the perfection of his form and function. This requires first of all the right use of what is proper to man’s nature. So Thomas looks to the will, which is the power by which we make use of what we have. “Hence from a good will, which makes a man use well what he has, man is called good, and from a bad will he is called bad” (I.q.48.a.6.c.).

The ancients revere the intellect for its ability to grasp universal truth; the moderns prefer the will and its pursuit of particular desires. Thomas steers a middle ground. He maintains that the intellect is, in general, higher than the will insofar as its object, or that for which it strives, is “more simple and more absolute than the object of the will.” But he also allows that the will can be higher and superior to the intellect if its object is “higher” than that of the intellect. Therefore, “the love of God is better than the knowledge of God; but on the contrary, the knowledge of corporeal things is better than the love thereof” (I.q.82.a.3.c.).

Thomas explains that free will is primarily that which sets man apart from the animals, since it involves choosing, which encompasses the totality of man insofar as it applies to both the rational and appetitive nature. Choice (and subsequently, free will), is primarily an appetitive power, since it is rooted in the desire for something. But it is regulated by the cognitive power, whereby man makes judgments about which things are to be preferred and pursued (I.q.83.a.3.c.).

The appetite, which moves man to his end, is good insofar as it is a power—that is, a movement toward something. The task of reason is not to beat the appetite into submission but to train it to desire the right things. Thomas places himself squarely between the ancients and the

moderns by showing that ultimately, a proper will is all that is necessary for a fully human life (that is, one that attains its end). Although the intellect is the “highest” aspect of man, the fulfillment of human nature can be reached in ways apart from philosophy. Free will, like the autonomy so cherished by moderns, concerns choice. But in sharp contrast to modern philosophers, Thomas insists that choice is properly exercised not when it is valued for its own sake, but only when it is directed toward that which lies outside the soul. People may have different ways of pursuing the good, based on their particular talents and situations, but all actions should tend to the *bonum universale*, or ultimate good, of man.

The human condition may be partly described as an appetite or a longing, but it is a longing that must be informed by reason. Although the ability to choose is an essential feature of human being, choice is a truly *human* act only if employed, not for its own sake, but for the achievement of man’s proper end, happiness. So essential is happiness to human nature, man cannot choose not to want it.

But as Josef Pieper notes, to say that “man by nature seeks happiness” is to imply that “by nature he does not already possess it.... Man is not happy by virtue of his being. Rather, his whole existence is determined precisely by the non-possession of ultimate gratification.”² But there cannot be several ultimate kinds of happiness, based on the variety of personal choices. Thomas explains that happiness, as man’s final end, has the nature of something singular:

It is therefore necessary for the last end so to fill man’s appetite, that nothing is left besides it for man to desire. Which is not possible, if something else be required for his perfection. Consequently it is not possible for the appetite so to tend to two things, as though each were its perfect good. (I–II.q.1.a.5.c.)

If happiness is something singular, it cannot consist in that which exists for the sake of something else. So, for example, happiness cannot reside in wealth, which man pursues “as a remedy for his natural wants.” Happiness, which by nature endures forever, cannot reside in fame and glory, which are based on human opinion and often fail (I–II.q.2.a.3.c.). Happiness cannot reside in power, since “power has the nature of a principle ... whereas happiness has the nature of a last end.” Furthermore, power can tend to good or evil, but happiness is man’s “proper and

perfect good.” Finally, happiness, which is proper to man, cannot reside merely in bodily goods, since in attributes like strength and size, man is “surpassed by many animals.” Out of all the various human goods—wealth, power, honor, glory—only happiness can satisfy in and of itself. “Having gained happiness, man cannot lack any needful good” (I-II.q.2.a.4.c.).

Since “that which constitutes happiness is something outside the soul,” happiness may be thought of as the quenching of a thirst (I-II.q.2.a.7.c.). The thirster seeks something outside of himself. Existence alone cannot be happiness, for as Pieper observes, “the allaying of the thirst cannot consist simply in the mere continued existence of the thirster.”³ Man desires the “whole good—goodness so very good there is nothing in it which is not good, and nothing outside of it which could be good. Nothing less than this *bonum universale* can quench completely and ultimately man’s deepest thirst.”⁴

Thus, Thomas notes that “happiness is man’s supreme perfection. Now, each thing is perfect in so far as it is actual, since potentiality without act is imperfect. Consequently, happiness must consist in man’s last act” (I-II.q.3.a.2.c.). The essential quality of happiness, then, is a kind of realization, or completeness. Happiness is self-sufficient. Man is therefore happiest when engaged in the most complete, or self-sufficient activity. This is contemplation. Echoing Aristotle, Thomas says:

In men, according to their present state of life, the final perfection is in respect of an operation whereby man is united to God . . . by one, continual, everlasting operation. But in the present life, in as far as we fall short of the unity and continuity of that operation, so do we fall short of perfect happiness. Nevertheless it is a participation of happiness: and so much the greater, as the operation can be more continuous and more one. Consequently the active life, which is busy with many things, has less of happiness than the contemplative life, which is busied with one thing, i.e., the contemplation of truth. (I-II.q.3.a.2.c.)

Contemplation, an end “sought principally for its own sake,” is chiefly an operation of the speculative intellect, which grasps first principles and is therefore higher than the practical intellect, which directs man’s particular actions and passions. The speculative intellect is concerned with “*what a thing is, i.e., the essence of a thing.*” As man observes various effects around him, he naturally wants to understand their causes.

“Consequently, for perfect happiness the intellect needs to reach the very Essence of the First Cause. And thus it will have its perfection through union with God as with that object, in which alone man’s happiness consists” (I–II.q.2.a.8.c.).

Contemplation means that “the whole energy of our being is ultimately directed toward attainment of insight.”⁵ It is the instant in which we make sense of our existence. This resonates with Levi’s description of the flash of understanding achieved when discussing Dante with a fellow prisoner. The ancients too saw contemplation as man’s highest end, but they believed it to be the sole province of the philosophers. But for Thomas, contemplation does not require philosophy, although this can be a fine means to its end in those so inclined. As Josef Pieper describes it, contemplation is a way of knowing that is reached “not by thinking but by seeing.” It is grasped through “intuition,” which is “the perfect form of knowing” because it is “knowledge of what is actually present.” Thinking, however, “is knowledge of what is absent.”⁶ So, for example, we can “think” about a unicorn by building on our knowledge of horses and horns. Yet this is not the same as contemplation, which “does not merely move toward its object, but already rests in it.”⁷ Contemplation is a kind of seeing; it is the instant in which we make sense of the universe, the world, and our very existence. Pieper notes:

[C]ognition is essentially seizure of the world and grasping of reality. To know is by the nature of knowing to have; there is no form of having in which the object is more intensely grasped.... No other material thing can be present in the space occupied by a house, a tree or a fountain pen. But where there is mind, the totality of things has room; it is “possible that in a single being the comprehensiveness of the whole universe may dwell.” ... Happiness is attained in an act of cognition because there is no other perfect way in which we can truly obtain “the whole good,” and all reality in general.⁸

Levi said that the conviction that life has a purpose is “rooted in the very fiber of our being.” The autonomy theorists cherish the idea that life has meaning, although they believe such meaning is chiefly imputed by man. Contemplation is the faculty by which we can understand the purpose of life. It “directs its gaze straight at the heart of objects. In so doing, it perceives in the depths a hitherto hidden, nonfinite relationship.”⁹ In this sense, contemplation encompasses poetry, philosophy, religion, and

science—it is about perceiving a greater reality behind ordinary objects. “Everything holds and conceals at bottom a mark of its divine origin,” and “one who catches a glimpse of it ‘sees’ that this and all things are ‘good’ beyond all comprehension,” and “seeing this, he is happy.”¹⁰

Happiness and Virtue

The “good” of anything, then, is contained in the fullness of its being. The ultimate good for man is happiness. Although there may be a number of ways to attain happiness, the nature of happiness as a final end is the same for all—it is the union of the individual with a greater reality. The activity which most closely approximates man’s final end is contemplation, through which man gains insights into the purposefulness of life and the world. But contemplation is not an automatic process; it is rather like an art that must be cultivated. So how do we live so as to open ourselves to the possibility of contemplation?

The first step to achieving happiness is the right disposition of the will—we must want the right things (I–II.q.a.4.c.). Like Aristotle, Thomas understands that because man is a composite of body and soul, his ultimate happiness will not be achieved in defiance of the body, but will rather be facilitated by it. Therefore, good actions are as essential as the proper disposition of the mind to achieving happiness. Man cannot possess happiness without some movement on his part, since “Happiness naturally belongs to God alone,” for only God is “not . . . moved towards Happiness by any previous operation.” Man, on the other hand, “obtains it by many movements of works, which are called merits . . . happiness is the reward of works of virtue” (I–II.q.5.a.7.c.). Man approaches happiness by performing the actions that are most suited to his nature. These are the actions that are done voluntarily—by freely moving oneself toward an end with full knowledge of what one is doing and why (I–II.q.6.a.1.c.). Thomas explains that human acts “consider first the general principles, and secondly, matters of detail” (I–II.q.6). In other words, human nature is wired to seek first principles and act according to them. The will is not an end in itself, but exists for the purpose of moving us toward happiness.

Although the contemplative life is higher than the active life, we cannot achieve it apart from the right actions. The will must be trained to move in accordance with its proper end. Good habits are essential to this. Thomas notes that habit is “a disposition in relation to a thing’s

nature, and to its operation or end, by reason of which disposition a thing is well or ill disposed thereto" (I-II.q.49.a.4.c.). If habits dispose a being to drawing "close to the ideal type toward which it is tending, they are good habits. If, on the contrary, they draw it away from this ideal, they are bad habits."¹¹ Because habit concerns beings whose nature consists of "potentiality and act," it does not apply to the idea of God, "whose substance is its own operation, which is itself for itself." Nor does habit apply to anything in a "state of potentiality in regard to something else," but only to that which is "capable of determination in several ways and to various things" (I-II.q.49.a.4.c.). So habit would not apply to the ordinary operations of nature, like growth, but only to those actions which man can freely undertake.

We might say that habits apply uniquely to man, but only if man has a natural end. If man's operation were an end to itself, like Rousseau's "sweet sentiment of existence," then he would be on par with God. Man needs habits only insofar as there is something to be achieved outside of his immediate self interest. Habits confirm man's unique status as a being who is free to accept or reject the dictates of his nature.¹² Thomas explains that good habits culminate in virtue, "*a good quality of the mind, by which we live righteously, of which no one can make bad use*" (I-II.q.55.a.4.c.; emphasis original). Quoting Aristotle, he explains that virtue "is that *which makes its possessor good, and his work good likewise*" (I-II.q.55a.3.c.; emphasis original).

Virtue is the result of a well-directed will. Because man is a composite of body and soul, human acts require both intellectual virtue, which directs reason, and moral virtue, which regulates the appetite.¹³ Following Aristotle, Thomas identifies the purely intellectual virtues as wisdom, science, and understanding. Now, truth can be either self-evident, such as the proposition that "*the same thing cannot be affirmed and denied at the same time,*" and known in itself, or known through deduction or by way of something else. Understanding, or intelligence, concerns the grasping of first principles (I-II.q.57.a.2.c.; emphasis original).¹⁴ Truths that are deduced, rather than self evident, "no longer depend upon the intellect, but on reason."¹⁵ As Etienne Gilson explains, reason can tend "toward conclusions which are last in a given genus," which is science, or it "can also tend toward conclusions which are absolutely last—the highest conclusions of all," which is wisdom. As that which "bears on last causes and on the object which is both the most perfect and most universal," wisdom "judges not only understanding and its principles, but also science and its conclusions."¹⁶

But Thomas explains that it is not enough for man, using the intellectual virtues, to know what is right. He must *do* what is right. “For a good life consists in good deeds. Now in order to do good deeds, it matters not only what a man does, but also how he does it; to wit, that he do it from right choice and not merely from impulse or passion.” Like Aristotle, Thomas explains that prudence, or “right reason about things to be done,” acts as a kind of gateway between the intellectual and moral virtues. “Right choice” requires a “due end” and the proper means to that end. The lower moral virtues direct the appetite to the right end. Prudence is the intellectual virtue that directs reason in the method of achieving the appetite’s proper end (I–II.q.57.a.5.c.).

Prudence may reveal the right course of action one should take, but this does not mean that sound reason is all that is required for man to act well, or that every bad action is due to ignorance. This is because “the appetitive faculty obeys the reason not blindly, but with a certain power of opposition.” In other words, we do not always do what we know we should. Therefore, says Thomas, “for a man to do a good deed, it is requisite not only that his reason be well disposed by means of a habit of intellectual virtue; but also that his appetite be well disposed by means of a habit of moral virtue” (I–II.q.58.a.2.c.).

Thus, Thomas maintains the middle ground between those who suppose that human beings are either exclusively animals who speak (and ruled by passions), or gods who sleep (and concerned only with intellectual virtue). He shows that there is a necessary partnership between the intellectual and moral virtues because man cannot escape the reality of both his body and his soul.¹⁷ It is not enough that man is able to choose his own course of action; to remain integrated and whole, he must choose well. This is impossible without reliance on the intellectual virtues, and especially on those first principles which are grasped by understanding. But likewise, knowledge of first principles is pointless unless one is willing to carry them out in particular circumstances.

Through understanding, man may be rightly disposed to universal principles of action, but this does not guarantee proper reasoning in particular cases where passion may interfere with thinking. Only through moral virtue does man acquire the habits by which he can properly regulate the passions and therefore be capable of performing the actions that are truly human. Universal principles of right are thus meaningless without the individual moral virtue to apply them. Therefore, moral virtue applies to the totality of man—reason and appetite.

The four principle moral virtues are prudence, which we have just discussed, justice, temperance, and fortitude. Acts are virtuous, and therefore, good, insofar as they are ruled by reason. Prudence is reason itself. Justice is the reasonable regulation of external acts in general by assigning “to each his due, neither more nor less.”¹⁸ The virtue of fortitude prevents the passions from “withdrawing us from following the dictate of reason” due to “fear of danger or toil.” It strengthens man to obey “that which reason dictates, lest he turn back” (I–II.q.61.a.2.c.). The virtue of temperance curbs the passions from “inciting to something against reason.” Of the moral virtues, Thomas explains, justice is the highest, since, in dealing with subjects outside of one’s immediate self-interest, it is “most akin to reason.” He adds that, “Among the other moral virtues, which are about the passions, the more excellent the matter in which the appetitive movement is subjected to reason, so much the more does the rational good shine forth in each. Now in things touching man, the chief of all is life, on which all other things depend.” Therefore, fortitude, which subordinates the appetite to reason in “matters of life and death,” is ranked just below justice. Next is temperance, which regulates the appetite in matters pertaining to the conduct of life, like eating and sexual intercourse (I–II.q.66.a.4.c.).

The more universal an object is, the more excellent it is considered to be. Note that although life is of chief importance and that on which “all other things depend,” justice is deemed more excellent, since it considers not just the life of one man, but ordering the right operations between two or more people. This helps us to understand that life, while being the most fundamental value, may sometimes be taken with justification in order to preserve other lives, such as in warfare or self-defense. But again, all the moral virtues are ultimately subsumed under wisdom, the highest of the intellectual virtues, since it “considers the Supreme Cause, which is God” (I–II.q.66.a.5.c.).

Prudence, which directs the highest aspect of human affairs, could not be greater than wisdom “*unless*, as stated in *Ethic. Vi.7*, *man were the greatest thing in the world.*” And if man is the center of the universe, there is no reasonable way to speak about virtue, dignity, or universal rights. “For prudence has no business with supreme matters which are the object of wisdom: but its command covers things directed to wisdom, viz., how men are to obtain wisdom. Wherefore prudence, or political science, is, in this way, the servant of wisdom; for it leads to wisdom, preparing the way for her, as the doorkeeper for the king” (I–II.q.66.a.5.r.1; emphasis original).

“Good is to be done; evil is to be avoided.” This seemingly simple phrase contains many layers of embedded meaning. To sum up: Everything in existence has goodness to some degree. Perfect goodness is the fullness of being. A thing becomes more completely good as it approaches the fullness of being. The good of man is happiness. Happiness may be achieved in a variety of ways, but nevertheless constitutes the single end of a common human nature encompassing a wide variety of individuals. Happiness resides in knowing truth; knowing truth is called contemplation. When man is engaged in contemplation, he may be thought of as discerning the meaning of life, discovering the order in nature and the essential interconnectedness of all creation, or coming to the realization that all things and actions are meaningful. In short, through contemplation, man realizes that life has a purpose. Man opens himself to the possibility of contemplation by living a life that is most properly human—that is, one directed by free will. In order to voluntarily tend toward the good, man must be strengthened by good habits, which lead to virtue—the quality of the mind by which one lives rightly. And although the highest aspiration of man is union with something that is outside of himself—the divine—this does not mean that the body has less relevance than the soul. Indeed, it is only through the proper use of the appetitive nature—that is, through actions directed by moral virtue—that man is free to pursue the intellectual virtues at all.

The idea of human rights takes its bearings from the notion that all people possess an intrinsic moral worth. Thomas shows how this worth is intrinsically connected to the one final end of all human beings—the happiness which resides in the contemplation of truth. Given this, what is the function of universal human rights? Indeed, can the idea of universal rights find a place in Thomistic philosophy at all? To answer these questions, let us return again to Thomas’s discussion of natural law.

Natural Law and Community: Human Good and the Common Good

Recall Thomas’s definition of law: “Law is an ordinance of reason for the common good, made by him who has care of the community, and promulgated” (I–II.q.90.a.4.c.). Since it exists to direct human actions, the main element of law is reason; for it is through reason that man strives for his natural end, happiness. But since every individual is part of a greater community, a valid law must be directed to “universal happiness,” which is

“the common good” (I–II.q.90.a.2.c.). For Thomas, the common good and the individual good are inextricably tied. The common good is the condition wherein the citizens of a political community are able to pursue their ends as individuals. The end of each individual is happiness; the law protects the common good by protecting the ability of individuals to pursue happiness.

We should bear in mind that the idea of a common good is not possible unless all people really do possess a common end. If the final good of human being is not the same for everyone, then there can be no *common* good, but only the greatest good for the greatest number, or the good as defined by the most powerful element of society. To speak coherently of a common good, we must begin from principles that are unchanging and applicable to all. This is only possible from the standpoint of the assumption that the universe is ordered.

In chapter 7 it was noted that for Thomas, all law has its source in the eternal law, or Divine Providence, which governs the “whole community of the universe” by “Divine Reason” (I–II.q.91.a.1.c.). Natural law is the means by which man partakes of the eternal law. “The light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light” (I–II.q.91.a.2.c.). The eternal law is the source of the natural law from which human laws are derived, insofar as they are guided by right reason.¹⁹

If the most important function of the law is to provide for the common good, a regime does not necessarily have to be democratic to be valid. The type of government is less important than the end for which government exists.²⁰ In fact, a law that provides for the common good not only helps people to be good *citizens*, it helps them to be good *simply*, since the common good is that “true good,” which is “regulated according to Divine justice.” But if the lawgiver aims not for that which is “simply good, but useful or pleasurable to himself, or in opposition to Divine justice, then the law does not make men good simply, but in respect to that particular government” (I–II.q.92.a.1.c.). If a state is to be truly good, it is vital that its rulers be virtuous. But the same degree of virtue is not as necessary on the part of the citizens; for “it is enough for the good of the community, that the other citizens be so far virtuous that they obey the commands of their rulers” (I–II.q.92.a.1.r.3).

So far, we have seen in Thomas that a universal law, such as one pertaining to international human rights, must be, first and foremost, a true

law—that is, it must contain the proper elements of law. It must be reasonable and directed to the common good. The common good, which pertains to the happiness of the community, is best secured through adherence to the natural law, which dictates that good is to be done and evil avoided. To do “good,” each person should act virtuously, for this best fulfills the end of human nature. The common good is, by definition, universal. Any law that justifies something that is not truly good for all people, then, is not law in the proper sense. A valid law must be reasonable; for reason is what leads man to the fullness of being. It follows from this that any law that takes us away from the direction of reason is not law in the proper sense. Now, the general common good of any society requires that individuals be free to pursue their ends as human beings. But on the level of particular societies, laws will vary insofar as different circumstances call for different applications of the natural law. Thomas says,

Since the speculative reason is busied chiefly with necessary things, which cannot be otherwise than they are, its proper conclusions, like the universal principles, contain the truth without fail. The practical reason, on the other hand, is busied with contingent matters, about which human actions are concerned: and consequently, although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. (I-II.q.94.a.4.c.)

A truly universal law—one applicable to all people in all circumstances—would concern only principles of speculative reason, which would yield universal conclusions. But as we descend from the level of understanding universal principles to the application of those principles in specific situations, the natural law will prescribe different things. Thus, Thomas explains that the law of nations concerns “those things which are derived from the law of nature, as conclusions from premises, *e.g.*, just buyings and sellings and the like, without which men cannot live together.... But those things which are derived from the law of nature by way of particular determination, belong to the civil law, according as each state decides on what is best for itself” (I-II.q.95.a.4.c.).

This explains why most people seem able to agree on general principles, but disagree on the application of those principles. Many things can interfere with the process of reasoning from principles to conclusions,

“since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature.” In some cases, it is simply that “the greater the number of conditions added” to the principle, “the greater the number of ways in which the principle may fail” (I–II.q.94.a.4.c.). The principles of natural law, then, are true for all, but the application of those principles are less universal as they concern more particular actions. If we keep the law to the level of first principles, then it will necessarily focus more on prohibiting, rather than prescribing, actions. For the former can be universally applied, while the latter will vary according to individual situations and resources. On the most fundamental level, “rights” is a superfluous term; for the only “rights” prescribed by natural law are those which correspond precisely to duties.

Natural law is concerned with things that are necessary to man as man. The precepts of natural law are self-evident; so for example, the proposition “*Man is a rational being*, is, in its very nature, self-evident, since who says *man* says *a rational being*.” Thomas explains that the first thing that is apprehended is the notion of *being*, which encompasses everything in existence. From this follows the principle that “*the same thing cannot be affirmed and denied at the same time*, which is based on the notion of *being* and *not-being*: and on this principle all others are based.” Similarly, *good* is the first thing grasped by the practical reason, which directs action, “since every agent acts for an end under the aspect of good.” Taken together, these two principles provide “the first precept of the natural law,” which is “that *good is to be done and pursued, and evil is to be avoided*. All other precepts of the natural law are based upon this” (I–IIq.94.a.2.c.).

To be coherent, any directive that is based on natural law—as Thomas would say, any law in the true sense of the word—cannot stand in opposition to its premises. Thus, if law, which is an ordinance of reason, is to direct human beings to their end, it must respect, first of all, *being*, or life, which must exist before any reasoning can occur at all. After that, the law must promote human nature’s threefold inclination to the good: First, to preservation, which man “has in common with all substances.” Next, to those things which man has in common with other animals, such as “sexual intercourse, education of offspring, and so forth.” Finally, “there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society” (I–IIq.94.a.2.c.).

As Etienne Gilson notes, “Man is, to begin with, a being like all others. More particularly, he is a living being, like all other animals. Finally, by the privilege of his nature, he is a rational being. Thus it is that three great natural laws bind him, each in its own way.”²¹ Being, or life, is the foundation of all things that are necessary to man. “Good” is anything that contributes to the fullness of being; “evil” is anything that diminishes being. Based on this, we must conclude that, apart from an act necessary to defend life itself, there cannot be a universal “right” to any action that intentionally causes the death of another, or oneself.

Those who view autonomy as the highest element of man and the mark of human dignity might believe that suicide is consistent with a life lived according to one’s own choosing. But Thomas’s three-part order of inclinations clearly precludes suicide or euthanasia as an affront to being, the very foundation of man’s ability to be autonomous in the first place. Because life is the basis of all human goods, it can be taken only when life itself is at stake, as in self-defense or just war. It should be noted that natural law permits capital punishment only if there is no other way to defend the community from the criminal. This is hardly the case in modern society.²²

Human laws should reflect, or at least not contradict, the order of inclinations found in natural law. Thus, law must promote man’s beginning (or *being*) by preserving life, and his end (or *telos*) by protecting his ability to live virtuously. Man possesses a “natural aptitude for virtue,” but it cannot be perfected without the help of another, since it consists mainly in withdrawing the person from the “undue pleasures” to which he is strongly inclined. For some, parental instruction will suffice; but for those “not easily amenable to words,” it is necessary “to be restrained from evil by force and fear, in order that, at least, they might desist from evil-doing, and leave others in peace, and that they themselves, by being habituated in this way, might be brought to do willingly what hitherto they did from fear, and thus become virtuous.” Thomas explains that “this kind of training, which compels through fear of punishment, is the discipline of laws” (I–II.q.95.a.1.c.).

And so with Thomas we see that laws are meant to promote the well being of not only the citizens, but the criminal as well. The main purpose of law is not to erect barriers so that we may leave each other alone, but to promote the virtue that enables the friendships that lead to true community. It is important to realize that this does not mean that the law should be expected to literally prescribe virtuous acts. It means, rather,

that it would be wrong for the law to do anything that would positively impede man's capacity for moral virtue, as did Nazi Germany in the concentration camps. Thomas, citing Isidore, says, "law should be *possible both according to nature, and according to the customs of the country*":

Many things are permissible to men not perfect in virtue, which would be intolerable in a virtuous man.... Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained; thus human law prohibits murder, theft and such-like. (I-II.q.96.a.2.c.; emphasis original)

Law, especially universal law, must be a floor which men cannot sink below rather than a ceiling to which they must rise up. And the floor, it would seem, must consist of protecting those things necessary to man—the three-tiered order of inclinations of natural law. So any universal law must prohibit, first and foremost, all offenses to being, or life. It would seem necessary that it offer some protection for the family, which is the embodiment of the fullness of human life in its role as both the cradle of "being" (by ensuring the preservation of the species), and the seed-bed of virtue (through its role as the primary teacher of the young). A universal law may not be able to prescribe the specific good habits that lead to virtue; it must, however prohibit practices that intentionally aim at rendering one incapable of free will, such as those undertaken in the concentration camps and in other forms of torture.

A human rights regime based on natural law would focus primarily on life—from its basis, or foundation, to its end, or purpose. Because life is the *sine qua non* of every other good to which reason can aspire, its preservation is the most crucial task of the law. That the first concern of law must be the preservation of life may seem obvious to the point of simplicity, but to uphold life as an absolute good would actually effect a radical shift in the direction that U.S. and international law has taken in the past thirty years, particularly with regard to abortion.

Although no international treaties specifically recognize abortion as a human right, many abortion rights NGO's, such as the International Women's Health Coalition (IWHC), the Center for Health and Gender

Equity, the Feminist Majority, Ipas (the manufacturer of the portable abortion machine), and International Planned Parenthood Federation, to name just a few, lobby very hard at the UN for the outward recognition of abortion as a fundamental human right. Where that is not possible, they push for broad judicial interpretation of human rights treaties that will find an “implied” right to abortion among specific treaty provisions. Indeed, where abortion does not exist as a “hard” norm specifically granted by human rights documents, it is generally understood at the UN to be included under the rubric of “sexual and reproductive health” asserted in various documents.²³

The conviction that abortion ought to be regarded as a universal human right clearly illustrates the consequences of holding personal autonomy as the law’s fundamental precept. An examination of the arguments employed to justify abortion yields the conclusion that if the concept of universal rights is to have any meaning whatsoever, there can never be a human “right” to abortion.

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CHAPTER 10

The Logical Impossibility of Abortion as a Human Right

Abortion and the Logic of Morals

T rue universality is possible only on the level of the first principles of practical reason. On this level, rights correlate precisely with duties. X's right to life, for example, is exactly correlated with Y's duty to refrain from killing X. The only "rights" that can properly be called universal in this sense are those concerning the protection of innocent life and the prohibition of any practice that directly impedes one's ability to be virtuous. While determining the content of the latter category of right is certainly important, it is more urgent to concentrate on the human rights revolving around the protection of life. For as St. Thomas would say, *being* is the foundation of goodness and therefore the essential ground for enjoying any other human right. This is all the more pressing to address given the fact that the idea of life as an absolute value is very much in dispute these days. Thus, a natural law defense of human rights necessarily begins with the protection of life itself.

No reasonable person would deny that the Holocaust was a violation of human rights. Far more contentious is the notion that there can be no human "right" to an abortion. But why should this be so? Indeed, why is the subject of abortion often deemed "off-limits" in polite company? Why do most politicians avoid the topic whenever possible rather than, in the manner of true statesmen, help articulate the terms of the public debate?¹ In part, this is because, beginning with *Roe v. Wade*, abortion, like any other controversial moral issue, has been relegated to the status of an "inscrutably religious or 'theological' matter." Thus, Blackmun could write in his majority opinion in *Roe* that the Court

“need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.”²

As shown in chapter 1, this argument contains the fallacy that lack of agreement disproves the existence of truth. It is also a result of the “tendency in our public discourse to equate moral questions with matters of religious faith or private belief, which cannot be judged finally as true or false.”³ But moral questions, or at least, questions regarding the most fundamental moral precepts, are not outside the purview of law, but are rather part and parcel of its order and operation.

From the standpoint of natural law, there cannot be a universal human right to an abortion for two reasons: First, as an act which involves the destruction of innocent human life, abortion violates the principle of being, which is the foundation of human good. Life, or being, is the prerequisite for all other human goods. As such, it is a paramount value and cannot be taken in the name of any lesser good (the principle of self-defense does not really apply to abortion, as will be explained momentarily). Second, abortion can be justified only by an argument that violates the logic of morals; that is, an argument whose justification stands in contradiction to the very principles that it upholds. Let us begin with the first objection to abortion.

Although abortion proponents might, at one time, have been able to profess ignorance as to when life begins, modern science has effectively rendered this stance intellectually implausible. Indeed, even the most ardent abortion proponents do not really deny that a human life is exterminated in abortion. If they did, there would be no need for Bill Clinton’s oft repeated mantra that abortion should be “safe, legal and rare.” If abortion were no different from a tonsillectomy, it would be promoted as a public good, rather than a lamentable choice.⁴

The principle of self-defense does not really apply to abortion; for deadly force is permissible only when one’s life is in immanent danger. Even a normal pregnancy carries certain risks, but despite society’s frequent invocations that abortion should be permitted to save the life of the mother, it should be recognized that there is virtually no condition in which having an abortion is necessary to save one’s life. In fact, one of the first proponents of the abortion movement, former President of Planned Parenthood, Dr. Alan Gutmacher, could concede as early as

1967 that “it is possible for almost any patient to be brought through pregnancy alive unless she suffers from a fatal illness such as cancer or leukemia; and if so, abortion would be unlikely to prolong, much less save life.”⁵ The treatment of certain medical conditions, like tumors or ectopic pregnancy, may require the removal of the uterus or the administration of drugs which would unintentionally result in the death of the fetus. This is very different, however, from directly aborting the fetus as either an end or a means, and in fact, such procedures have never actually been illegal.

Nor can abortion be justified in the case of a pregnancy resulting from rape; for the law that sanctions this places a disproportionate burden on the fetus. As Dr. Bernard Nathanson (one of the foremost leading advocates of legalized abortion who later became pro-life) notes in the case of children conceived in rape: “If a part of the human community were not at stake, no woman should be required to undergo the degradation of bearing a child in these circumstances, but even degradation, shame, and emotional disruption are not the moral equivalent of life. Only life is.”⁶

Once it is admitted that abortion does exterminate life, the only way to defend it is by supposing that the life it takes is not as morally significant as the lives of other human beings. To hold this view, however, is to suppose that the fetus, at some arbitrary point, attains the characteristics which make it human. But human development is continuous; “each step along the way will bring a further articulation of what is built into the nature of the offspring.”⁷ At no point in our development do we change *substantially* into a human being from something else. The fully grown Professor Doe who stands before the class teaching Constitutional Law is the same John Doe who was once an adolescent, child, infant, fetus, and embryo. He may have become smarter, stronger, or taller along the way, but each of these features are simply additional qualities, or accidents, that further individuate him from other human beings.⁸ Life is a continuum, and at no point along the way do we change from one substance into another. Now, while a fetus may be a potential teacher, doctor, or plumber, he is never a *potential* human being in the way that a pile of wood is potentially a house.⁹ The fertilized egg, unlike the pile of wood, contains within itself the principle of its movement and cannot possibly develop into anything other than a human being.

This brings us to the second reason why abortion cannot be a human right. For once we begin to distinguish between different “types”

of human life, as opposed to considering life simply, we have fallen into a state where we are no longer logically equipped to discuss human rights. For if man has the power to alter the definition of what is human, there can be no natural standards of right and wrong regarding the treatment of humans. All law becomes positive law; for “rights” are nothing more than the expressed preferences of those in power.¹⁰

Human rights are by definition natural rights; they are rights inhering *naturally* in our human nature, independent of government fiat. To claim a universal “human right” to an abortion requires denying the humanity of the fetus, who is no different genetically whether in or out of the womb. This in turn requires the reliance on an arbitrary definition of “human,” which contradicts the very logic by which we make sense of rights in the first place. Rights exist for the purpose of enabling the weak to invoke claims against the powerful elements of society. To suppose that the meaning of “human being” is not a self evident truth but is rather determined by dominant opinion, positive law, or some other criterion, is to employ a rationalization that is not substantially different from that invoked to support slavery. Therefore, it is helpful to consider a syllogism Lincoln posed concerning the logic of slavery:

You say A. is white, and B. is black. Is it color then: the lighter having the right to enslave the darker? Take care. By this rule, you are to be slave to the first man you meet, with a fairer skin than your own.

You do not mean *color* exactly? You mean the whites are *intellectually* the superiors of the blacks, and therefore have the right to enslave them? Take care again. By this rule, you are to be slave to the first man you meet, with an intellect superior to your own.

But, say you, it is a question of interest; and, if you can make it your *interest*, you have the right to enslave another. Very well. And if he can make it his interest, he has the right to enslave you.¹¹

If the *homo sapien* occupying the womb has a lesser claim to life because it is dependant on its mother for sustenance, then so does every other infant, as well as those who are too disabled to care for themselves. If a *homo sapien* in the womb has a lesser claim to life because it is not yet capable of being autonomous, then neither should this claim be extended to the person who is in a coma, mentally handicapped, or for that matter, sleeping. In fact, there is no argument for denying life to the being in the womb that cannot also be applied to any other member of the human race at various times in life.

As a matter of logic, the case against abortion seems fairly elementary. Most serious thinkers do not deny that abortion extinguishes life; they simply assume that the life claimed by abortion is not one worthy of the full protection of the law. This view predominates in American universities. Abortion law, rightly or wrongly, has been largely framed by the federal judiciary, which is highly influenced by academics, whether through books, lectures, or amicus curiae briefs.¹² The opinions of those in academia are important; for besides influencing their students, academics help to mold the minds of judges and lawmakers, who in turn formulate the laws which shape the public mind. Therefore, let us now turn to three legal scholars to consider the argument for abortion as a fundamental right.

Whose Life Is It, Anyway?

One particularly influential book, by the eminent Ronald Dworkin, is *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom*. Although Dworkin asserts time and again that abortion is a waste of human life, his argument is thoroughly pro-abortion. It is based on two premises: that a fetus is not a person, and therefore, not protected by the Constitution; and that abortion is a “religious” issue, and therefore irreconcilable with reasoned debate.

Dworkin suggests that much of the abortion deadlock revolves around the mistaken notion that people are arguing over whether a fetus is a person with rights and interests, thus making the abortion controversy “more confrontational and less open to accommodation than it should be.”¹³ In fact, Dworkin says there are two arguments against abortion: a “derivative objection” that says abortion is wrong “because it violates someone’s right not to be killed,” and a “detached objection” which “does not presuppose any particular rights or interests” but assumes that “government has a detached responsibility for protecting the intrinsic value of life” (11).

The scalding rhetoric of the “pro-life” movement seems to presuppose the derivative claim that a fetus is from the moment of its conception a full moral person with rights and interests equal in importance to those of another member of the moral community. But very few people—even those who belong to the most vehemently anti-abortion groups—actually believe that, whatever they say. The disagreement that actually divides

people is a markedly less polar disagreement about how best to respect a fundamental idea we almost all share in some form: that individual human life is sacred. (13)

Most people, Dworkin says, don't really view the fetus as a person or they would not think there is ever a situation in which abortion should be legal. He argues that the majority of citizens oppose abortion because it takes a life, rather than for the reason that it is murder (13–14). In other words, abortion may take life, but it does not take life away from some *one*; hence, opposition to abortion is a “detached” objection. For, “life” is apparently a principle to be respected rather than something that adheres to anyone in particular. And rights, of course, apply not to principles, but to persons. Dworkin helpfully points out that most religious denominations oppose abortion using the terminology of the sanctity of life, rather than that of rights (36–38). He admits that the Catholic Church is an exception to this rule (one might think this is significant to the point Dworkin is trying to make, given that Catholicism is one of the world's largest religious denominations, if not the largest). For, it maintains that “every human being” has a “right to life from physical integrity from the moment of conception until death” (39). But he discounts this position as being worthy of much consideration, since for most of its history the Church opposed abortion on the grounds that it violated the sanctity of life (40–46).

Of course, it is worth noting here that the obsession with rights talk is a relatively new phenomenon, and the fact that the Church has begun speaking in such language fairly recently is hardly a reason to discount what it says. We have already noted that in the modern age, rights terminology has become the *lingua franca* of moral discourse. And following the Supreme Court's enumeration of a “right” to abortion in 1973, perhaps it became more necessary to speak of fetal rights as a reminder that the abortion right sanctions the killing of another human being. At any rate, why should the idea that life is sacred be so very distinct from the notion that human beings have a right to live? Why would we believe it to be important that people have a “right” to life, if life does not hold some intrinsic value? In other words, does Dworkin's distinction between the derivative and the detached objection to abortion really make any sense?

Whether or not the distinction is plausible, it is essential to Dworkin's argument. The law may value life, but it grants rights only to

persons. Dworkin admits that abortion does take a human life, but it apparently does so only in some vague sense of the term—certainly, the life taken is not the life of a *person*. Only a person, Dworkin says, can have rights and interests protected by the law. Dworkin implies that although destroying such a life (which, again, must not really belong to some *one*, but is rather representative of a vague *principle*) would be a “terrible insult” to its intrinsic value, a human in the womb has no more “interest” in not being destroyed than does a “beautiful sculpture” or a “baby carrot.”

But why should we assume the fetus has no interest of its own? Dworkin implies that the fetus is essentially no different from a vegetable or a statue because 1) Its growth is dependant on “external help from a pregnant woman or from scientific ingenuity”; 2) It lacks self-consciousness; 3) It is unable “[to] enjoy or [to] fail to enjoy, to form affections and emotions, to hope and expect, to suffer disappointment and frustration;” and 4) Dworkin claims it cannot feel pain until mid-gestation (16–19). Now, science has not yet conclusively determined when the fetus is able to feel pain, although this point is probably reached well before the time Dworkin sets.¹⁴ But pain is really beside the point, after all. Employing Lincoln’s syllogism here, we could note that if the permissibility of killing depended upon whether it inflicted pain, then homicide would be unobjectionable as long as the victim were anaesthetized in advance. As for 2), we might note that even babies that are already born—and many other human beings as well—lack the type of self-consciousness that Dworkin believes is requisite for personhood. Nevertheless, Dworkin maintains that the important considerations are, “When does a human creature acquire interests and rights? When does the life of a human creature begin to embody intrinsic value, and with what consequences?” (22).

Personhood for Dworkin hinges on three justifications: First, as was already noted, a level of self consciousness sufficient to identify one’s “interests;” second, what public opinion says a person is; and third, what the Constitution determines a person to be. Inevitably, as it must be when life itself ceases to be an absolute value, Dworkin’s main justification for denying personhood to the fetus depends on what he perceives as the dominant public opinion. In fact, a consistent strand of Dworkin’s thought, which appears at every turn in his argument, is that abortion is justified because regardless of what anyone says, everyone believes it should be permitted.

Again, it seems axiomatic to say that life, by definition, must belong to some *one*, but Dworkin prefers to regard life as somehow intangible and vague, noting that “it is in principle wrong to terminate a life even when no one’s interests are at stake” (34). He concludes that the “real argument against abortion is that it is irresponsible to waste human life without a justification of appropriate importance” (58). Therefore, the true ground for opposition to abortion is that it violates the “intrinsic value” of human life in general “and is therefore a grave moral wrong unless the intrinsic value of other human lives would be wasted in a decision *against* abortion” (60).

It is comforting to know that sometimes abortion shows more respect for human life than giving birth. You see, Dworkin assures us, everyone really believes in the same thing—the sanctity of life. What we disagree on is what gives life its sanctity. “Almost everyone shares, explicitly or intuitively, the idea that human life has objective, intrinsic value that is quite independent of its personal value for anyone, and disagreement about the right interpretation of that shared idea is the actual nerve of the great debate about abortion” (67). Thus, although “almost everyone accepts the abstract principle that it is intrinsically bad when human life, once begun, is frustrated, people disagree about the best answer to the question of whether avoidable premature death is always or invariably the most serious possible frustration of life” (90). What makes life “sacred,” then, is more determined by the subjective beliefs of people than by any objective standard. Of course, once we deny that human life has any overriding, nonderogable value, the door to killing in all kinds of other contexts is opened up, as Dworkin demonstrates later in his book when he argues for euthanasia.

For Dworkin, life is valuable in two ways: by reason of its “natural creation,” and (more importantly, as it turns out) by virtue of “the kind of deliberative human creative force” that includes the influence of family, culture, and choices made (82). In fulfillment of the principles set afoot by Locke, Dworkin values the personal investment that goes into life more than life itself. For he says, “It is terrible when an infant dies but worse, most people think, when a three-year-old child dies and worse still when an adolescent dies” (87). This sort of logic probably makes sense only to someone who has never lost an infant or a three-year-old child. And as one critic notes, if the value of human life is a subjective matter, why not suppose that the newer life is worth more, being less constrained by personality and choices already made?¹⁵

Here, as in many other places throughout the book, Dworkin relies very heavily on what he says most people believe. In fact, most of the time he implies that he is not so much constructing his own argument as simply articulating majority opinion. How Dworkin has determined that this is what “most people” think, or whether he has ever sought opinions outside of his particular philosophical circle is not clear. But his main point is obvious: The human in the womb cannot really be a person with rights and interests of its own because nobody really thinks that it is.¹⁶ But denying the personhood of the fetus on the grounds of public opinion results in a tautological argument: because we don’t believe the fetus is a person, we condone abortion at least some of the time; and because we condone abortion at least some of the time, we do not regard the fetus as a person.

This tautology points to a larger problem with Dworkin’s argument. He explains early on that his book is an attempt to do “philosophy from the inside out:”

Theory can connect with practice ... from the outside in: we can construct general theories of justice or personal ethics or constitutional interpretation from general assumptions about human nature or the structure of language or thought, or from first principles of some other character, and then try to apply those general theories to concrete problems. Or we can ... begin with practical problems, like the question of whether the law should ever permit abortion or euthanasia, and if so in which circumstances, and then ask which general philosophical or theoretical issues we must confront in order to resolve those practical problems. (29)

Philosophy done from the outside in would begin with the principle that “innocent human life must not be taken,” and from that, conclude that abortion, in taking innocent life, is wrong. Dworkin’s approach consists of taking a position—abortion is permissible—and justifying it by constructing a world view that is compatible with it. Theoretically speaking, this is like trying to conform reality to our individual desires, rather than the other way round.

Dworkin’s approach is based in his theory that, rightly or wrongly, most people believe that abortion should be legal, so the law should permit it. But even if we assume Dworkin’s assessment of public opinion is correct (and it is far from clear that it is), we should recognize that public opinion does not form in a vacuum; the law is a great teacher. The fact

that a practice is endorsed by the law is a crucial first step toward its being accepted by the public. Dworkin bases much of his argument about abortion on the opinions he says people hold. Yet Americans today condone abortion at much higher rates than they did before it was legalized. When the highest court in the land sets standards, the public is eventually influenced.

So far, Dworkin's most compelling case for denying the personhood of the *homo sapien* before birth rests on what he says "most people" think. He then turns to the Constitution for support. In approaching the subject of constitutional interpretation, Dworkin contrasts the view of a "constitution of *principle*," which "lays down general comprehensive moral standards that government must respect, but that leaves it to statesmen and judges to decide what these standards mean in concrete circumstances" with a "constitution of *detail*" which must be interpreted according to "only the very specific, concrete expectations of the particular statesmen who wrote and voted for them." The former perspective, Dworkin says, is an "exhilarating, stirring vision of political community," while the latter is simply a "collection of independent historical views and opinions unlikely to have great unity or even complete consistency" (119).

Dworkin suggests that opposition to abortion is necessarily grounded in the latter, strict constructionist view of constitutional interpretation (124). Although it may be true that many judges frame opposition to *Roe v. Wade* in those terms, thereby arguing that the legalization of abortion should be left to the determination of the states, is that necessarily the only criterion for judging that the ruling in *Roe v. Wade* was incorrect? In fact, Dworkin sets up a false dichotomy by holding that one is either a strict constructionist and therefore against abortion, or one believes in a constitution of principle and therefore must support abortion as a constitutional right. But why must the constitution of principle view necessarily support abortion? Could we not suppose that justices should be free to interpret the Constitution, but not to declare, as a fundamental right, something that is in direct opposition to the nation's founding principles?

Dworkin suggests that trying to gage original intent is a needlessly complex and confusing task, and in any case, is not necessarily a helpful tool for determining how to apply constitutional principles to cases today. He explains that the personal opinions of the Framers may have been in conflict with the "abstract principles of political morality" that they established in the Constitution. A judge today may think the

Framers “mistaken” in their opinions or reasoning. “Today’s judges may believe, in other words, that the author’s abstract and concrete convictions were in conflict; if so they, the judges, must decide themselves which to follow (137).

So if the specific views of the Framers were in conflict with any of the Constitution’s general foundational principles (as in the case of slavery, for example), then it would seem reasonable to interpret the law by the light of the general principle rather than by the Framers’ specific views. In a similar vein, although the ratifiers of the Fourteenth Amendment may have supported school segregation, it makes perfect sense for a later generation of judges to use the Fourteenth Amendment’s general provisions for racial equality as a basis for striking down segregation laws. With much amazement, Dworkin cites a passage from Robert Bork that supports this view of interpretation, which is the view Dworkin himself endorses. In that passage, Bork says:

In short, all that a judge committed to original understanding requires is that the text, structure and history of the Constitution provide him not with a conclusion but with a major premise. The major premise is a principle or stated value that the ratifiers wanted to protect against hostile legislation or executive action. The judge must then see whether that principle or value is threatened by the statute or action challenged in the case before him. The answer to that question provides his minor premise, and the conclusion follows.¹⁷

Dworkin says that Bork’s analysis “comes to this: the Constitution enacts abstract principles that judges must interpret, as best they can, according to their own lights.” By this, however, Dworkin apparently means that judges must interpret the law, not according to the main premises of the Constitution, but on the basis of their own political opinions. Thus, he says, Bork supports the Court’s decision in *Brown v. Board of Education of Topeka*, which outlawed school segregation, even though this was not a specific aim of the Framers of the Fourteenth Amendment’s equal protection clause, simply because “he is personally convinced that racial segregation is a piece of unjustified discrimination” (141). Dworkin then charges Bork with a criticism that he would be hard pressed to avoid himself: once one “abandons the reductive strategy that limits the force of the equal protection clause to its authors’ own specific convictions, then he has no other means of checking the abstract language. He is in a kind

of free-fall, in which originalism can mean anything and the only check on his judgment is his own political instinct” (143).

In fact, the passage cited by Dworkin suggests something different, not unlike the process of natural law reasoning: Perhaps Bork is simply saying that one must interpret the Constitution according to its fundamental principles. When applying the Constitution to a particular case, one cannot reason properly to a conclusion that contradicts a major premise, much as natural law holds that one cannot reason properly from primary principles to secondary principles that are in conflict with those. It may be safe to say, as Dworkin does, that the Framers intended to supply future generations not with concrete opinions, but with abstract principles by which to govern. But it is also true that the founding generation was probably better equipped than many of today’s judges to reason correctly. Dworkin says that we must “seek genuine constraints in the only place where they can be found: in good argument” (145). But as Arkes points out, many of those occupying the bench today have been educated in ways that have deprived them of the ability to engage in moral reasoning.¹⁸ And yet, this ability is precisely what Dworkin relies upon. For he says that “if two different views about the best interpretation of some constitutional provision” are in conflict, “we should prefer the one whose principles seem to us best to reflect people’s moral rights and duties because the Constitution is a statement of abstract moral ideals that each generation must reinterpret for itself” (111). But keeping true to his “inside out” philosophy, Dworkin does not apply this principle to all cases across the board, but only those that he supposes confirm his preexisting opinions.

Take, for example, the due process and equal protection clauses of the Fourteenth Amendment, under which no state “shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” It is true that nothing in the Fourteenth Amendment specifically permits or prohibits abortion. What reason, then, would there be for privileging Dworkin’s position—that the Fourteenth Amendment should be interpreted as permitting abortion—over a position that would extend the protections of the Fourteenth Amendment to humans in the womb? It would seem that according to the premises Dworkin himself sets, a broad approach to constitutional interpretation should prohibit abortion, since in the case of conflicting interpretations, “we should prefer one whose principles seem to us best to reflect people’s moral rights and

duties.” Is life not a more fundamental value than liberty, since it is the very basis of liberty?¹⁹

Perhaps sensing that a broad interpretation of the Constitution might reasonably lead to this position, Dworkin, very ironically, shifts his justification of abortion from the grounds of a “constitution of principle” to one based, in the style of a strict constructionist, on the beliefs and practices of the Framers of the amendment. He says the amendment cannot be interpreted to prohibit abortion; for when it was adopted, “many states had liberal abortion laws ... but no court declared that these laws violated the equal protection clause ... nor did any substantial number of politicians ... suggest that these liberal laws were unconstitutional.” Dworkin concedes that in the nineteenth century, these laws were replaced by laws that “prohibited or strictly regulated abortion,” but he is quick to note that these laws were probably adopted “not out of concern for fetuses,” but “to protect the health of the mother and the privileges of the medical profession” (111–12). Furthermore, Dworkin adds, “the structure and detail of the anti-abortion laws show ... that even the strictest states rejected the idea that a fetus is a constitutional person” (112).

So although he has resoundingly criticized the idea of the need for interpreting the Constitution in light of the beliefs and intentions of its Framers, he is of a different opinion when it comes to abortion. Even if we grant as true Dworkin’s questionable supposition that anti-abortion laws had little to do with concern for the unborn, it is hard to see why attitudes regarding abortion at the time of the framing should still be considered authoritative today (especially in light of scientific advances in identifying the beginning of life), when other practices that existed at that time, like school segregation, are now rightly deemed to be forbidden by the equal protection clause. Dworkin adds finally that “even the most stringent laws did not punish abortion as severely as they did ordinary murder ... it was simply assumed that even in principle abortion is not so serious a matter as murder” (112). To this one might respond that the law does not punish manslaughter as seriously as first degree murder, but in both cases it acknowledges the existence of a body on the floor, so to speak. In short, Dworkin enthusiastically supports interpreting the Constitution according to what he deems the more advanced knowledge and principles of our time. Yet when considering abortion, he looks not to the many recent scientific advances that confirm the presence of life in the womb, but rather to the opinions and practices of those living in the nineteenth century.

Furthermore, Dworkin admits that “the Supreme Court sometimes upsets conventional understanding about what the Constitution requires” and cites *Brown v. Board of Education of Topeka* and *Roe v. Wade* as examples of this. “But in each of these cases, the Court could appeal to established, more general constitutional principles that plausibly condemned the practices it held unconstitutional. It could claim, that is, that the legal history was inconsistent. In each case, moreover, substantial legal and public opinion had already been converted to the new opinion the Court endorsed” (112). The effect of this is as follows: First, Dworkin, citing state practice and common opinion in the nineteenth century, says that the unborn are plainly not to be considered as constitutional persons under the protection of the Fourteenth Amendment. Then he admits that *Roe* was a case of the Court’s upsetting “conventional understanding” about abortion, which implies that in 1973 the unborn would not have been seen as so plainly outside the purview of the Fourteenth Amendment. Thus, state laws regulating abortion must be construed as “inconsistent” with *Roe’s* more “enlightened” interpretation of the Fourteenth Amendment. And in such cases, Dworkin notes, judges must rule on the basis of constitutional generalities or the moral principles contained therein. But again, nowhere in the Constitution is liberty privileged over life. Dworkin then claims that in *Roe*, the Court endorsed what was already the reigning public opinion anyway. But if this is the case, how did the Court upset any “conventional understanding?” In fact, before *Roe v. Wade*, a greater segment of the public was against, rather than in favor, of abortion.²⁰

But even aside from these considerations, Dworkin’s familiar habit of falling back onto what he says “most people believe” suggests that public opinion is itself the light by which the Constitution must be interpreted. Dworkin suggests that the courts, when issuing opinions, are really speaking for most people, or at least most reasonable people. He notes, for example, that the Court could have declared the fetus a constitutional person only by defining it as a person in the “moral sense”—that is, “a human being with rights and interests of its own that should be protected by rights,” but that this “proposition is scarcely intelligible, and very few people believe it.” Furthermore, Dworkin notes, all “responsible” people, even critics of *Roe*, agree with Blackmun that a fetus should not be a constitutional person. (Why holding a different opinion should render one “irresponsible” Dworkin does not say.) Anyone who disagrees with Blackmun’s decision commits the double sin

of relying “not only on a moral conviction but on a particularly odd and unpopular one” (112). Of course, one might respond here that the very idea of a moral principle is that it is true, regardless of whether many or most people endorse it. Principles have no meaning at all if they are based on the shifting sands of public opinion. We might also question the idea of distinguishing between what we acknowledge to be pre-born humans and humans who are persons in the “moral sense,” and note that never in our nation’s history, except in the case of slavery, was such systematic violence toward an entire group of humans condoned on the basis of their not being persons in “the moral sense.”

Dworkin says that “the legal history that so strongly influences constitutional interpretation is not directly relevant to moral questions,” noting that Blackmun “pointed out in his opinion in *Roe v. Wade*, for example, that American law had never in the past treated fetuses as constitutional persons. That is a strong argument against interpreting the Constitution to include them at the present day” (110). It would seem, then, that Dworkin’s support of the Constitution as “a statement of abstract moral ideals” applies only when it will lead to an outcome that he personally supports. If such an approach might lead to an outcome that Dworkin does not like, such as prohibiting abortion, then Dworkin says we must look, not to moral principles, but rather, to how the law has treated such persons in the past. Dworkin’s “inside out” philosophy, which has the convenient effect of rationalizing whatever opinions one may happen to hold, is powered by an upside down logic whereby personal opinion is the standard against which the first principles of morality must be measured.

After arguing that constitutional interpretation has offered no support for the personhood of unborn humans in the past, the next step is to deny the possibility of it ever doing so in the future by labeling abortion a “moral” issue, which, according to Dworkin, means it is “religious” and therefore beyond the province of the law. He says that abortion views are always formed by religious beliefs:

We may describe most people’s beliefs about the inherent value of human life—beliefs deployed in their opinions about abortion—as *essentially* religious beliefs.... How then shall we classify a belief as religious? ... by asking whether it is sufficiently similar in content to plainly religious beliefs. On that test, the belief that the value of human life transcends its value for the creature whose life it is—that human life is impersonally and

objectively valuable—is a religious belief, even when it is held by people who do not believe in God (155–56).

On these grounds, we would be hard pressed to identify many political beliefs that are *not* religious, since the basic prohibitions that are essential to law—against killing, stealing, and the like—have already been enumerated in the Ten Commandments. Dworkin’s argument is, of course, all part of the same confusion that Arkes identifies as resulting from the mistaken notion that to speak in terms of morality is to speak in terms of religion, which Americans do not do in polite company. Almost as a fail-safe measure in the event his argument for abortion is not accepted, Dworkin conveniently sets up the conflict as being between two religious beliefs. He notes that whether one thinks the value of life is due to God or the “intrinsic importance of human creative investment,” the belief “affirms an essentially religious idea, that the importance of human life transcends subjective experience” (156–57).

Dworkin here is simply making a point that Arkes made earlier—that to think and speak in terms of moral absolutes is part of what it means to be human. But in consigning moral language to the area of inscrutable religious beliefs, Dworkin not only handily removes the issue of abortion from public discussion, but also finds new grounds to defend it. For if someone desires an abortion due to their “religious” beliefs, then it must be protected by the First Amendment, since “a state has no business prescribing what people should think about the ultimate point and value of human life, about why life has intrinsic importance, and about how that value is respected or dishonored in different circumstances” (164–65). He adds that “it would be remarkable if so basic a right did not figure in the best interpretation of constitutional liberty and equality as well,” since the right is “fundamental to the concept of ordered liberty” (166).

We might plausibly ask here why abortion needs to be construed as “religious” at all, when as a moral issue (just like any other form of killing), it can be so easily talked about using plain logic. Why not discuss it on this ground, noting that if we have the right to take innocent lives in some contexts, there is no valid reason to oppose killing in other contexts? Dworkin admits over and over that the fetus is a “human life” if not a “human being.” Opposition to abortion does not need to be grounded in any other basis but the moral principle that innocent human life may not be killed. For all their insistence that arguments

against abortion can be grounded only on the basis of religious belief, proponents of abortion like Dworkin, ironically, are the ones who must avoid recourse to plain logic, relying instead on convoluted metaphysical argument to justify what they admit is an act of killing. But even if we were to consider abortion as a “religious” issue, this does not necessarily prevent the law from regulating it. The law prohibits polygamy, after all, as well as the killing of human beings in other religious rituals. Why should it permit abortion out of respect for someone’s “religious” beliefs?

In the end, Dworkin implores people to have a higher regard for human life than that suggested by the high numbers of abortions performed each year: “If people did *not* think it transcendently important that human lives not be wasted by abortion, then they would not have the kind of commitment my argument assumes most people do have” (167). So the success of Dworkin’s argument ultimately depends on people holding a belief (namely, that abortion is wrong) that is in opposition to its premises. For Dworkin and probably most other abortion proponents, legal abortion is the essential component to complete sexual autonomy. But Dworkin admits that it is important that people do not routinely resort to abortion as a procreative liberty, but instead think it “transcendently important” that lives not be wasted. More transcendently important, we might ask, than enjoying unlimited, unhindered sexual liberty? If that is his view, would it not be better served by a law that sets limits on abortion rather than providing it on demand, for any reason whatsoever?²¹ As Dworkin surely knows, the law is a teacher. The standards it sets eventually filter out into the public consciousness. Are there any other instances where society would be better served by disregarding what are held to be the fundamental principles of the law?

Abortion as “Self”-Defense

We have identified abortion as an offense to being, or life, and as wrong based on the specific principle that innocent life must not be taken. But what if the life taken is not so innocent after all? That is the premise of *Breaking the Abortion Deadlock: From Choice to Consent*, in which Eileen L. McDonagh defends abortion on new grounds. Dworkin tried to construct a justification for abortion that admitted the humanity, but denied the personhood, of the preborn human. McDonagh goes a step further in admitting its personhood, but she condones abortion anyway. The

key question, she says, is not whether the fetus is a person, but whether a woman has the right to consent to what a private party (the fetus) does to her body when “it causes pregnancy.”²² She views pregnancy not as the direct result of sexual intercourse but rather the result of a “fertilized ovum” implanting itself in a woman’s uterus. “Even in a medically normal pregnancy,” she explains, “the fetus massively intrudes on a woman’s body and expropriates her liberty.” If a woman does not consent to this, all manner of deadly force is allowable to stop the fetus, since “the latitude for the use of deadly force in self-defense in our culture and legal system extends beyond threats to one’s life alone and includes threats of serious bodily injury and the loss of liberty, as in rape, kidnapping or slavery” (7).

The state, therefore, is obligated not only to permit abortions, but also to positively assist women in procuring them through funding. For “if the state removes abortion funding from health policies as a means for protecting the fetus as human life, then the state must also stop the fetus as human life from intruding upon the body and liberty of a woman” (8). In this way, “by showing how the fetus’s status as human life actually justifies the use of deadly force to stop it from imposing wrongful pregnancy,” says McDonagh, “this book uses pro-life premises to get to pro-choice conclusions:”

Justifying abortion rights and funding on a consent-to-pregnancy principle does not require that the fetus be a subhuman entity. Rather, the pro-life premise that the fetus is a person strengthens rather than diminishes women’s right to an abortion and also to abortion funding ... the fetus’ status as a person would confer no right to use another person’s body without consent since no born person possesses such a right ... this way of framing abortion rights does not necessitate devaluing the fetus by dehumanizing it. In this sense, it opens the door to greater, not less, respect for the fetus. (12–13)

McDonagh thus joins Dworkin in the happy conclusion that abortion actually increases respect for human life. Rather than dwell on such logical absurdities, let us consider the essential components for the validity of this argument: The fetus is a person. The fetus is a person who is a hostile aggressor, even if its aggression is unintentional. Deadly force is a justifiable response to this aggression, if it is undertaken without a woman’s consent.

McDonagh scoffs at the common court and cultural emphasis on pregnancy as being different from other relationships “rather than

developing the legal parallels between a pregnancy relationship and other types of relationships” (37). To what then, would we compare the pregnancy relationship? For McDonagh, the fetus is best compared to a rapist, an enslaver, or an intruder.²³ Setting aside the biological fact that men and women who engage in sexual intercourse do cause a pregnancy, McDonagh claims that the real reason a woman becomes pregnant is “because the fertilized ovum implants itself in her body and maintains that implantation over a protracted period of nine months.” She claims that the Court’s failing to lay the sole responsibility of the pregnancy on the fertilized ovum results in the notion of “*immaculate pregnancy*, that is, the view that pregnancy is a condition that simply ‘comes to a woman,’ without any clear identification of the physical agent that brings about this pregnant condition” (33).

Yet it would seem that it is McDonagh’s definition that is more in tune with the notion of immaculate pregnancy, since in her view it is as if the woman did nothing whatsoever to contribute to the pregnancy. Indeed for her, a woman no more causes a pregnancy by her behavior than she causes a rape by walking down the street late at night (43). McDonagh says that the fetus “is a vital, living, active entity with tremendous power. It alone has the power to transform a woman’s body from a nonpregnant to a pregnant condition” (35–36).

McDonagh admits that the fetus is criminally innocent of its imposition on its mother since its actions are not conscious and willful. Nonetheless, its behavior “falls into that category of action in which the law assigns objective fault even without the presence of conscious intention” (36). Like a mentally incompetent rapist, the fetus must bear responsibility for its crime. Even if the fetus is to be construed as an invader or unwelcome guest, one may wonder whether deadly force is an appropriate response when after all, in the vast majority of cases the pregnancy will eventually end with no loss of life on the part of the mother. But McDonagh insists that “Nonconsensual pregnancy, like nonconsensual sexual intercourse, is a condition that must be stopped immediately because both processes severely violate one’s bodily integrity and liberty” (12).

Based on this logic, one would have to wonder why an already born human should be regarded any differently. It can be plausibly argued that newborn infants take a greater toll on their parents—in terms of loss of liberty as well as physical and mental exhaustion—than they do before they have been born. If any loss of liberty is the equivalence of violence

that must be stopped, why not throw the baby out the window if you cannot wait for what might be hours for the adoption agency to come and take him away? Interestingly, for all the analogies that McDonagh employs to describe the personal relationship between a fetus and its mother—from rapist to enslaver to someone who accidentally runs you over with a car—she overlooks the most obvious analogy, if that is even a proper term—the relationship between parents and their already born offspring. But as we shall see, that is certainly the most appropriate way to describe what actually happens during a pregnancy.

Again, McDonagh's argument is based on two premises: The fetus has initiated the pregnancy and is therefore an aggressor, and the woman who does not consent to this may legitimately use deadly force to stop it. Let us consider the first claim more closely. McDonagh charges that pregnancy is "initiated and maintained" by the fetus (62). She says the changes that occur to a pregnant woman's body are "portrayed by medical texts as a product of the fertilized ovum's intrusion and aggression." She then refers to such a book, dubiously entitled *Preventing Birth: Contemporary Methods and Related Moral Controversies*, which offers a description of the process of implantation by the "advancing fertilized ovum," peppered with verbs like "penetrate," "extensively colonize," and "destroy" (69). McDonagh considers the changes pregnancy causes in circulation, cardiac volume, and hormonal levels as "massive physical transformations" that are so damaging to bodily integrity and personal liberty that one is left wondering why abortion is not more common than childbirth.

In short, the justification for abortion is tied to the way that a fetus "coerces" a woman into being pregnant and the notion that it is an "extraordinary injury if a woman does not consent to pregnancy"; for the fetus "directly intrudes on and takes the bodies and liberty of others to meet its physical needs. While the survival of a born infant depends on others responding to its needs, the survival of pre-born human life depends on its brute force capability to take from others what it needs, regardless of whether there is consent to give" (141). Thus, "[t]he fetus seriously injures her, even in a medically normal pregnancy, by forcing pregnancy on her against her will" (89). If pregnancy is really as bad as all that, one would think society should positively discourage a woman from "consenting" to it, much as we would discourage her from remaining in an abusive relationship.

But is the woman's body really coerced into pregnancy? To coerce means primarily "to force to act or think in a given way by pressure,

threats or intimidation.”²⁴ Does the body exhibit the same biological signs in pregnancy that it does when threatened by some other invading force, like disease? In fact, just the opposite is the case: A woman’s monthly cycle, in which fluctuating hormonal levels produce changes in cervical mucus and the uterine lining, exists for the sole purpose of receiving and nourishing a fertilized egg.²⁵ The woman’s body itself determines whether there will be a fertilized egg at all and if it will be accepted. In McDonagh’s terms, this would have to be the equivalent not of simply provoking rape by dressing provocatively, but of physically initiating sexual relations with a man. During implantation of the fertilized egg into the endometrium, or womb, the woman’s body in no way responds as it would to infection or any other invading force. Just the opposite, it does everything possible to accommodate the zygote and facilitate its implantation. So far from being an unwanted guest, the embryo couldn’t implant at all without permission from the uterus:

Implantation is a highly coordinated event that involves both embryonic and endometrial participation. The endometrium expresses a sophisticated repertoire of proteins during the menstrual cycle many of which help to define a period of receptivity collectively known as the “window of implantation.” Many of these factors, which are temporarily aligned with this window, are now seen as chemical messengers that are recognized by the embryo and facilitate embryonic growth and differentiation.²⁶

Implantation is the result not of a hostile invasion, but rather the chemical factors involved in a process called “cell signalling,” which “involves the new human embryo and the cells of the lining of the womb chemically communicating with each other” in order to “create an optimally advantageous endometrial environment at the time the human embryo attempts to implant.”²⁷ Furthermore, successful implantation also depends upon the work of integrins, molecules that aid in binding the embryo to the endometrium.²⁸

Pregnancy, then, is not initiated by the embryo, but rather by the woman’s body, although successful implantation depends upon the highly coordinated interaction between the two. The body reacts to the new embryo not as it does to a hostile aggressor or infection; the immune system actually alters so the embryo will not be rejected. Finally, we should remember that coercion requires that one be forced to do something under threat of personal harm. But at no time is the mother’s body in jeopardy if the embryo is rejected. Just the opposite, maternal

resistance to the embryo would not result in harm to herself, but to the embryo instead.

Finally, the embryo does not act upon its mother the way a parasite acts upon its host. If it truly robbed her of vital nutrients, the vast majority of women would emerge from childbirth needing to gain weight rather than lose it. In fact, all of the bodily changes that so horrify McDonagh are undertaken precisely in order for the woman's body to accommodate both the baby's needs and her own.

In a footnote, McDonagh concedes that "it is true that self-defense does not apply as a justification for the use of deadly force if the victim of aggression has provoked that aggression." But she denies that this applies to pregnancy:

It is apparent that it is not that a woman provokes a fetus but that her body is attractive to a fetus, much as a woman might be sexually attractive to a man. Being attractive to a private party, however, does not give that party the right to intrude on one's body, liberty or even property. Owning an attractive house, car, or personal items, for example, does not give private parties who are attracted to them the right to take them from you. (229n75)

But as we have seen, a woman's body does not merely get in the way of fetal aggression, but takes an active role in ensuring the embryo's successful implantation. The embryo is "attracted" to the woman's body—not as one walking down the street is attracted to a pretty house, but rather, as one walking down the street might enter a dwelling plastered prominently with signs reading "Open House." Regardless of whether a woman consciously wishes to be pregnant, her body has already consented—and communicated with the embryo in the only fashion possible. A clear invitation has been issued. To deny this would be the equivalent of using sign language to invite a deaf person into your home, and to continuously offer that person meals and a bed, all the while loudly protesting from the next room that he is not welcome.

McDonagh says that even if a woman implied tacit consent to a pregnancy by not aborting immediately, consent must be ongoing throughout the pregnancy, so she retains the right to abort at any time. "A woman who seeks an abortion gives explicit notice that she does not consent to engage in a pregnancy relationship with a fetus. By seeking an abortion, she is actively expressing her explicit objection, not her implicit

assent” (68–69). Expressing her explicit objection to whom? Certainly not to the fetus, who is being actively nurtured by her body even as she walks into the abortion clinic. Justifying abortion in this way is the same as “revoking” your consent to house the deaf person by pumping a bullet into him.

In the end, we must suppose that for McDonagh, as for so many feminist writers and perhaps modernity as a whole, the real fly in the ointment is not the tiny being in the womb but nature itself. The cry, “I will not serve!” rings out once again as modern man (or woman) seeks out new grounds for the conquest of nature. To this end, McDonagh denies that pregnancy is a natural process:

The word *natural* refers to processes that occur without human intervention, like hurricanes, floods, fires, earthquakes, diseases and death. If a person becomes involved in these processes, they are no longer regarded as natural but, rather, as caused at least in part by human agency ... therefore, it is precisely the claim of pro-life forces and others that the fetus must be considered to be a person that starkly contradicts any depiction of pregnancy as natural. To the extent that pregnancy is initiated and maintained by an entity that is a person, it is a product of human agency, not the product of forces of nature. (61)

It sounds as though McDonagh is saying that any process that involves human beings cannot be considered natural, or that human beings are not subject to natural processes. But this contradicts her earlier statement that “it makes no sense ... to say that people consent to the way in which their blood circulates or their eyes focus or that they consent to rain.” In this vein, she adds that “if the fertilized ovum were merely a physiological mass of cells, like a force of nature, the legal meaning of consent, defined as a concurrence of wills, would become an unnecessary and a meaningless concept” (60). So it seems that we must either regard the embryo as a “physiological mass of cells,” like a tumor (the old pro-choice argument grown stale in the light of medical advances), or deny that pregnancy is natural, since it involves human beings. So *natural* refers to what occurs through the force of nature. *Human* can refer only to what occurs through an act of the will. Pregnancy is not “natural” to human beings only if one lives entirely within a dualistic worldview which supposes that the body exists only for the purpose of gratifying the *self*, from which it is substantially detached. But such flights of fancy

are upended by reality at every turn, as pregnancy so aptly demonstrates. For the woman's body does consent to the pregnancy, regardless of what she consciously wills.

Perhaps the fact that in an unwanted pregnancy a woman's mind is in battle with her body renders the notion of consent moot, since McDonagh acknowledges that "legally, consent is an 'act of reason,' which must be a 'voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another'" (60). A woman may not appreciate the fact that her body has accepted a pregnancy, but on these grounds she might just as logically claim that her liberty rights are violated by menstruation, growth, or aging.

McDonagh is at least realistic enough to admit that abortion is no ordinary "medical" procedure; for she does not buy into the idea that the being occupying the womb is nothing more than a mass of cells. She says, "Like it or not, the reality is that abortion kills human life, however one constructs its stage of development and whether or not human life is synonymous with personhood" (189). But McDonagh's justification for abortion relies entirely on the assumption that the life taken is also the life of a person. We have seen all the ways that the fetus cannot be construed as a hostile aggressor or an unwanted intruder. So would McDonagh then be ready to admit that abortion kills persons without proper justification?

This is far from likely. McDonagh's apparent willingness to concede personhood to the pre-born human turns out to be a mere rhetorical trick; for throughout the book she reveals a thinly veiled contempt for this notion. She prefaces statements with the term, "*even if* the fetus were a person" (10, 38; emphasis added); suggests "tolerating" the "possibility that the fetus is a person" (20); and refers to pre-born humans as "fetuses who may or may not yet be people," or "potential life" (37), and to drive the point further home, "unborn potential life" (69) and "pre-born potential persons" (171). In the end, she confesses that although she has been "conceding the possibility that the fetus might be a person," this idea is based mainly based on "religious precepts" (190). So the fetus is a hostile intruder who must be stopped, and even if it is not, abortion, which admittedly takes human life, is a religious question that cannot be settled. Once again, the grounds for discussion have been conveniently swept out from under our feet. For modern philosophers, in stark contrast to St. Thomas, the failure of logic is the beginning of faith.

Is There a Right to Commit a Wrong?

So Dworkin admits that abortion takes a human life, but since this life does not belong to a *person*, abortion is not morally wrong. McDonagh goes a step further to argue that even though abortion does take the life of a person, it is still not morally wrong. In *Rethinking Abortion: Equal Choice, the Constitution, and Reproductive Politics*, Mark Graber goes so far as to admit that abortion *is* “morally wrong,” but that it should be permitted anyway. He proposes looking at abortion through the lens of “equal choice,” or equality under the law, promising to steer a pragmatic course between the typical pro-life and pro-choice claims, which are “universal claims ... ultimately grounded on abstract concepts and not on concrete realities.”²⁹ He says that “The foundational values of pro-choice, pro-life, and anti-*Roe* positions all enjoy broad popular support and all are deeply rooted in the American political and constitutional tradition. Americans cannot reach a consensus on abortion policy because they cannot choose among those values when they conflict” (37–38).

Abortion is contentious, Graber suggests, because one’s opinion of it is formed by moral principles that are not relevant to the way abortion policy is carried out in the real world. Apparently setting aside any claims to universal moral principles, Graber instead proposes to justify abortion based on the way abortion laws were enforced before *Roe v. Wade*, and what he says is likely to happen if the law ever again prohibits abortion. At first glance, Graber’s argument appears to be based on the claim that despite its illegality, abortion before *Roe v. Wade* was nearly as widespread as it is today. He contends that legal prohibitions did very little to stop abortion:

By a series of admittedly speculative extrapolations from various population trends, Dr. Christopher Tietze estimates that 70 to 90 percent of all abortions performed after *Roe* merely replaced illegal abortions that previous pro-life measures on the books had not prevented. If these hypotheses are correct, then evidence that 1.5 to 1.6 million legal abortions are now performed annually in the United States supports estimates of at least one million illegal abortions each year during the 1950s and 1960s. (66)

“Recriminalizing abortion,” Graber says, “will not protect the unborn because pro-life laws on the books are nearly impossible to implement.

Criminal measures succeed in practice only when the bulk of the community shares the sentiments embodied by the law. Because more Americans support abortion rights than in the past, localities that recriminalize abortion will experience even greater public pressure not to prosecute competent abortionists than we have seen historically” (73). Putting aside the fact that records of abortions were not kept in the days before *Roe* and that therefore the actual number of illegal abortions performed is a matter of contention between pro-life and pro-choice groups (and probably far lower than one million), let us suppose that Tietze’s “admittedly speculative” estimate is correct. One could still argue that legal abortion has contributed to the deaths of an additional five to six hundred thousand humans per year for over thirty years. But in fact, the actual statistic is irrelevant; for Graber’s argument does not really hinge on whether the number of abortions performed before *Roe* was greater than, fewer, or the same as it is today.

For Graber, the real problem with abortion before *Roe* lies not so much in the actual number of illegal abortions performed, but in the fact that abortion law was not democratically enforced. For while affluent white women were usually able to abort their fetuses without legal interference, the same law enforcement community “often prevented competent abortionists from offering their services to the general public.” Thus, in the enforcement of abortion laws, the poor were discriminated against, making it harder for the poor to have abortions and more dangerous when they did so. “Such selective enforcement,” says Graber, “places responsibility for policy making in the hands of unelected and often unaccountable police officers, prosecutors, judges, and juries” (12).

Graber says that abortion must remain legal under the principle of “equal choice,” which he describes as follows:

No state may make abortion policies that discriminate against poor persons or persons of color. Policies that intentionally distribute rights on the basis of economic class or race violate a venerated principle of Western civilization, *isonomia* or equality before the law... Hence, government officials may not constitutionally help establish or maintain an exclusive gray market that provides affluent white women with de facto immunities from statutory bans on abortion. When privileged women in a community are free to terminate their pregnancies without substantial medical and legal complications, all women must be accorded the same formal liberty. (76)

Graber’s heavy reliance on statistics and sociological data obscures the fact that equal choice actually has nothing to do with whether large

numbers of people were denied access to abortion pre-*Roe*. Interestingly, his clearest statement to this effect is buried in a footnote:

Pro-life advocates cannot parry equal choice attacks by noting that police officers and prosecutors failed to harass many physicians who performed abortions for the general public. Equal protection rights are violated whenever government officials privilege or harm *some* persons because of their race or socioeconomic status: victims of unconstitutional discrimination need not demonstrate that all or even most members of their class or caste have suffered disparate treatment. Warren McClesky's constitutional rights would have been violated had he been the only victim of race discrimination in the history of Georgia.³⁰

Graber's conjecture about the number of illegal abortions before *Roe* as a basis for "rethinking" abortion turns out to be a red herring. For abortion as an equal choice issue has absolutely nothing to do with this, nor with the number of illegal abortions that Graber says would ensue in the wake of new abortion bans. Even if abortion laws were strongly enforced in a particular state or the whole country, equal choice would still come into play. Wealthy people could afford to get an abortion elsewhere, or, thanks to their socioeconomic status, use their connections with those in the medical community to obtain an illegal abortion, just as wealthy or prominent people can use their connections to manipulate the system in any other way—whether it involves obtaining illegal drugs, engaging in income tax evasion, or avoiding the legal consequences of driving under the influence of alcohol.

The principle of equal choice, says Graber, forbids the law to place anybody at a disadvantage due to their color or class. If a practice puts even one member of a race or economic group at a disadvantage, equal choice has been violated. What can this mean other than that equal choice is a moral principle and therefore does not depend for its validity on any type of utilitarian calculations or endorsement by dominant opinion? So although Graber set out to defend abortion by looking not to any abstract moral principle but to the actual practice of people in the real world, he ends up invoking a moral principle after all—the principle of equal choice, which he holds to be valid in its own right and not dependant on the number of people to which it applies. Indeed, Graber says:

Unlike pro-choice arguments, which rely heavily on controversial moral claims and interpretive theories, equal choice arguments follow naturally

from political values and legal precepts that most Americans regard as axiomatic. Policies that grant affluent white women practical indulgences from the criminal law are inconsistent with widely held principles of justice as well as the plain, original, and historical meanings of the equal protection clause (118).

While equal choice may flow naturally from axiomatic principles, it is far from clear that abortion rights flow naturally from equal choice. In the words of Hadley Arkes, “it requires a radical misunderstanding of the notion of ‘equality’—or a critical detachment of ‘equality’ from any substantive moral sense—to claim on behalf of the poor an ‘equal right to do a wrong.’”³¹ Indeed, one wonders why equal choice should apply so urgently to abortion, when, as noted above and as Graber himself acknowledges, there are virtually scores of other areas of law enforcement where the rich have an unfair advantage over the poor. Graber says that “Pre-Roe abortion polices had a disparate impact on poor women and women of color because legal restrictions on reproductive choice were selectively enforced, and not because market societies normally distribute superior goods and services to more affluent citizens” (86). But as we have seen, Graber’s case for equal choice is not really based on the effectiveness of law enforcement, since it logically entails that abortion be kept legal if even one person is denied an abortion due to socioeconomic status. And yet, Graber does not believe that having the “right” to commit a “wrong” should extend to other instances in which affluent people may get away with a crime. For example, “Persons of color who commit felonies may be treated more severely than white felons by the legal system, but no one seriously maintains that homicide laws would be abolished if administered more evenhandedly. Affluent white Americans do not enjoy *de facto* immunities from the law against murder” (105).

So although nobody claims we should remove bans on homicide simply because the law is often broken or is sometimes administered unfairly, this is not the case with abortion. For “communities must make special efforts to prevent legal inequalities that differ in kind or in degree from the inequalities that inevitably plague the administration of most laws.” So even if societies cannot eradicate “all discriminatory law enforcement practices,” they should at least “remedy every equal protection wrong that violates other constitutional norms” (105). If equal choice primarily concerns practices that “violate other constitutional norms,” one is left wondering why it should apply so fundamentally to abortion, which in taking life, is itself in conflict with a constitutional norm.

Graber admits to believing that abortion is a “moral wrong,” and that “the number of abortions performed annually is indeed scandalous” (159–60). For the reasons noted earlier in this chapter, there would be nothing “morally wrong” or “scandalous” about abortion if it did not involve the taking of human life. But despite his self-professed moral reservations to abortion, Graber concedes that he is really pro-choice because, if ever confronted with an unwanted pregnancy in the family, he would probably choose abortion (159–60). Graber is entitled to his own opinion, but he also asserts, outrageously, that very few self-identified pro-lifers would remain so when challenged with an unplanned pregnancy. He says that “Significantly, pro-life women are as likely as other women to choose abortion when faced with an unwanted pregnancy. One study found that more than two-thirds of all women obtaining abortions were not clearly pro-choice prior to that experience. Some of these women thought abortion was justified in a few circumstances, but their abortions often did not satisfy those conditions” (100). Setting aside the dubious fact that in order to declare what the opinions of pro-life women “are” Graber cites sources that date mostly from sixteen to twenty years before the publication of his book.³² One cannot rely on data from self-labeled “pro-life” women seeking abortions to make inferences about actual pro-life women who might have had an unexpected pregnancy, but would not be in an abortion clinic to respond to such a survey in the first place.

Actually, it would be more logically consistent for Graber to avoid professing any hesitations about the morality of abortion, given the fact that doing so undermines his case for equal choice. For in labeling abortion a “moral wrong,” but admitting he would procure one for his own daughter if necessary, how can he then profess to uphold any other moral principles he might have, including that of equal choice? How is this any different from claiming to oppose homicide, yet being admittedly unsure about whether one would kill a spouse caught in the act of adultery? Indeed, what difference does it make if equal choice flows from “axiomatic” principles if people cannot ever be trusted to remain true to their own deeply held convictions? To claim that nobody would remain morally opposed to abortion when affected personally is to negate the very possibility of fundamental moral principles.

This is not to deny the difficult moral dilemma faced by someone who is unexpectedly pregnant and who might indeed be tempted to disregard principles previously held as true. But this is the very reason for

the existence of law in the first place. For law gives us the necessary support to do what is right when self-interest looms more apparent than duty. As Arkes explains, “To the extent that the law discouraged young people from taking life for reasons that were casual and self-serving, it saved them from an experience that would enduringly haunt the thoughtful. For those who would never suffer the strains of serious reflection, the law spared them from the arrogance of believing that their own, untutored reflexes on a matter like abortion were as good—and as worthy of respect—as any other reflection that had been produced on the subject.”³³

In the end, we might say that *of course* Professor Graber isn’t certain how he would react to an unwanted pregnancy in the family—for despite his apparent understanding of abortion as a “moral wrong,” he has shown, throughout the book, a remarkable obtuseness to the fact that abortion, in contrast with any other issue that might fall under equal choice, involves taking a life that is incontestably human. For example, in making his case for equal choice he compares laws against abortion with a hypothetical law that denies certain medical treatments to the elderly but is not strictly enforced, thus allowing the evolution of “an exclusive gray market in geriatric medicine.” Despite the fact that one gray market has the effect of preserving life and the other has the effect of taking it, Graber insists that there is no “relevant difference” between the two that would “justify condemning the former but not the latter” (15).

He says that “state policies that cause substantial race and class disparities without serving any legitimate social purpose normally violate the equal protection clause” (78). Is the protection of life not a legitimate social purpose? He also says that a “generous people committed to the spirit as well as the letter of constitutional equality would fund abortions for indigent women” (79). To this one might reply that a more “generous” response would be to support the protection of the weakest and most vulnerable members of the human race and their mothers as well.

Finally, in imagining a pro-choice “utopia” ruled by the principle of abortion as a “fundamental human right,” Graber suggests that the pro-life movement would be “discussed in the same way as *Dred Scott v. Sanford* and the pro-slavery movement. The school curriculum ensures that the next generation of voters is no more able to desire a United States without abortion rights than a United States with slavery” (134–35). He also compares pro-choice strategists to Union commanders in the Civil

War (142). Considering his own self-professed belief of abortion as a “moral wrong,” one would think Graber might shy away from trying to compare pro-choice thinking with the abolition of slavery, given that the validity of both abortion and slavery alike rests on the assumption that certain classes of human beings are not worthy of the full protection of law. And although Graber claims to be “agnostic” on the question of whether abortion is a fundamental right, the fact that he devotes an entire section of the book to devising tactics for keeping abortion legal confirms that he is nothing if not pro-choice.

Arkes has noted that “the flouting of the law cannot itself provide a moral justification for repealing a statute and pretending that the wrong we once condemned has ceased to be a wrong.”³⁴ We have seen that Graber’s justification of abortion does rely on invoking a moral principle—that of equal choice. Graber began from the position that abortion, while morally wrong, will occur even if it is illegal. Since this violates equal choice, abortion must be sanctioned by law. But we cannot logically invoke one moral principle (equality under the law) to justify violating another (the protection of life).

Human beings cannot avoid thinking and speaking in moral terms. Perhaps it is but a short step from stipulating that the law must condone what is morally wrong to embracing that act as a moral good. Indeed, in the end we are left wondering if the real “moral” principle Professor Graber means to uphold is not equal choice, but abortion itself. For in an almost Machiavellian flourish of irony, Graber summons the very forces that he says caused discrimination in abortion laws in the first place to keep abortion legal. Although the chief problem with pre-*Roe* abortion law supposedly lays in the fact that access was limited for poor people, Graber repeatedly admits that the affluent are far more likely than the poor to support abortion on demand.³⁵ And in fact, Graber advises, abortion will remain legal not by appealing to a rainbow coalition of the poor and disadvantaged, but rather by relying on the support of “economic, educational, and political elites,” who are more influential in the areas of politics and policy making than ordinary Americans. He explains that “Affluent Americans control politically valuable resources, they participate in politics more frequently and efficaciously than their fellow citizens, and they even vote more often than less fortunate citizens. Hence, when leading citizens are fairly united on a matter that sharply divides the rest of the populace, elite values should consistently be converted into the law of the land.” By becoming “obsessed with

mobilizing the dispossessed, many of whom are pro-life” abortion proponents “have not recognized that their fundamental strategic problem is getting affluent Americans who support reproductive choice to convert those policy preferences into political actions” (145–46).

Of course, all of this is entirely at odds with the flavor of the first half of the book, which is centered on the theme that the poor are unfairly disadvantaged when it comes to getting abortions. In the end, that all seems to be beside the point. For here, Graber admits that the wealthy are far more likely to be in favor of abortion than are the poor. Perhaps it is not what the poor want, but what “elites” like Professor Graber think they need that must carry the day. For although he has criticized past abortion laws on the grounds that they were undemocratic, he has no problem with calling on a band of nabobs, plutocrats, and assorted intelligentsia, who compose a distinct minority of Americans, to protect a “right” he says most poor people do not want anyway.

Graber says that “removing abortion from electoral politics will keep abortion legal” (147). He thus finds comfort in the fact that most Supreme Court justices are drawn from the abortion-minded “elite” pool of Americans, and in the reluctance of most politicians to change abortion policy. This means that abortion will remain legal, provided that strong pro-life candidates and justices are kept from holding offices. Thus, “proponents of legal abortion should concentrate their political energies on defeating strongly pro-life officials.” For “the difference between what a committed pro-life and an indifferent politician will accomplish in the near future is much greater than the corresponding difference between a committed pro-choice and an indifferent politician” (149–50). He concludes that “Legal abortion will indeed be best secured when reproductive choice depends on the outcome of no election” (155–56). So abortion is a fundamental right that must be protected from the hoards of unenlightened pro-life citizens who might vote for politicians that would try to overturn *Roe*. In the end, Graber’s project has not really been about rethinking the meaning of abortion; it is rather an act of pouring old wine into a new bottle. It is not so much a clarion call for equality under the law as a clever attempt to justify abortion anew by someone who is at least intellectually honest enough to admit that the current pro-choice arguments, “having little specific foundation in the plain, original, or historical meanings of the Fourteenth Amendment, must rely on very controversial theories of constitutional interpretation” (11).

Conclusion

Natural Law ... is not one among a series of possible systems of value. It is the sole source of all value judgments. If it is rejected, all value is rejected. If any value is retained, it is retained. The effort to refute it and raise a new system of value in its place is self-contradictory.

C. S. Lewis, "The Abolition of Man"

In the end, only a morality which acknowledges certain norms as valid always and for everyone, with no exception, can guarantee the ethical foundation of social coexistence, both on the national and international levels.

John Paul II, "Veritatis Splendor"

The terminology of natural and human rights springs from a philosophy that is, in the final analysis, inimical to the universal human dignity that such rights are meant to protect. Nevertheless, it seems very clear that rights discourse, like love in the old Gershwin tune, is here to stay. Regardless of the various ways in which they are articulated or defended, human rights are meant to express the inviolable moral worth of the individual. We must recognize that there is simply no logically consistent way to defend such a concept apart from natural law. But to acknowledge that natural law is an essential component of moral argument is no small concession—for it is to admit that the universe is ordered, and that this makes a difference to the conduct of human life.

When we view human rights from the standpoint of a natural order ruled by the principle that good must be done and evil avoided, we may realize that the rights that are actually *universal*, that is, the rights that are properly understood as *human* rights, are far fewer than those enumerated in the Universal Declaration of Human Rights. In fact, from what we learned from St. Thomas, we might say that the only universal rights

are to life and liberty, if we consider these in the following way: Life is the most fundamental right. It is not only the basis of every other good, but it also, by its very nature, delineates the limits of man's freedom. For however much we may like to think of ourselves as autonomous and however far we may believe we can carry out our conquest of nature, the one thing we cannot have ultimate control over is life itself. Nobody can choose not to be born; nobody can choose not to die. Life is the limit to our autonomy. Thus, it makes no sense to hold autonomy as a higher value than life.

If life sets the boundaries of freedom in the natural realm, then it should do so in the realm of human rights as well. Liberty is a fundamental human right as long as it is not understood as encompassing every privilege enjoyed in Western society, but only the freedom to fulfill our ends as human beings—that is, freedom in the service of life. Everyone deserves the opportunity to live an authentically human life. The right to be virtuous, then, is universal.

In its practical application, the right to be virtuous would uphold freedom of conscience. For we cannot really be virtuous unless we can choose the good freely. But what specific human right would embody freedom of conscience? This is harder to define and beyond the scope of this book. At a minimum, it would seem that nobody may be deprived of their *ability* to act according to moral principles. Torture would thus be a violation of human rights, since even more important than causing bodily injury, it renders one incapable of free will. Also, we would have to suppose that this human right would right would forbid the state to force someone to act in opposition to their conscience, if such an action would violate any fundamental moral principles. Articulated further, the principle of freedom of conscience might also include religious liberty, since for most people the religious community is an important means of developing the conscience. In addition, the family should be recognized as the fundamental embodiment of these two essential human rights; for it is through the family's role as the cradle of life and the seedbed of virtue that the human being receives his beginning and is directed toward his end.

As basic as the protection of life might seem, to uphold life as an absolute value would effect a radical change in the direction that human rights law is currently heading. It would be to deny that abortion, suicide, and euthanasia are fundamental human rights. It would also raise serious questions regarding the permissibility of capital punishment in the modern world.

In the end, the task of ensuring human rights—that is, achieving respect for those rights which are actually universal—may rely less on what can be enforced, which is notoriously difficult to do on the international level, and more on education. That is to say, the achievement of both the greater and lesser goals of human rights is ultimately dependent on the existence of a culture built on the understanding of not what human rights are, but more importantly, what they are *not*. Contemporary universalists seem to think that if only the world were entirely democratic, justice and peace would reign. But without a commitment to preserve the most basic rights, can we really expect much progress in achieving anything else?

The only real alternative to truth is nihilism. All moral philosophy, to the extent that it is true, already partakes of the natural law, regardless of whether or not this is acknowledged. Apart from natural law neither liberalism nor any other moral philosophy can remain true to its most basic principles. It is only through adherence to natural law that liberalism's important regard for the individual is truly respected. In the words of John Paul II:

[Moral] norms in fact represent the unshakable foundation and solid guarantee of a just and peaceful human coexistence, and hence of genuine democracy, which can come into being and develop only on the basis of the equality of all its members, who possess common rights and duties. *When it is a matter of the moral norms prohibiting intrinsic evil, there are no privileges or exceptions for anyone.* It makes no difference whether one is the master of the world or the “poorest of the poor” on the face of the earth. Before the demands of morality we are all absolutely equal.¹

Rights discourse may be the respiration of the democratic body politic, but natural law is the oxygen. Political philosophy can no more do without it than the lungs can do without air. We may stubbornly insist that we can breathe in its absence, employing various postures and techniques to enhance our exhalations, but we will inevitably find ourselves blue-faced and panting on the floor, reeling from the effects of our own self-induced asphyxiation. In the end, we must choose to acquiesce to the demands of nature and open ourselves to that for which our rights exist in the first place, lest we, in our “freedom,” suffocate to death.

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Notes

Introduction

1. Hadley Arkes, *Natural Rights and the Right to Choose* (Cambridge: Cambridge University Press, 2002), 2.
2. C. S. Lewis, "The Abolition of Man" (1943), in *The Essential C. S. Lewis*, ed. Lyle W. Dorsett (New York: Touchstone, 1988), 450–51.
3. *Ibid.*, 454.

Part 1

1. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), xv.
2. *Ibid.*, xvi.
3. David P. Forsythe, "Human Rights Fifty Years after the Universal Declaration: Reconciling American Political Science and the Study of Human Rights," *PS: Political Science and Politics* 31, no. 3 (September 1998): 507, available at http://web4.informark.galegroup.com/itw/info-mark/526/83/40554333w4/purl=rc_EAIM_0_.
4. Kathryn Sikkink, "Transnational Politics, International Relations Theory, and Human Rights: A New Model of International Politics Is Needed to Explain the Politics of Human Rights," *PS: Political Science and Politics* 31, no. 3 (September 1998): 517, available at http://web4.informark.galegroup.com/itw/info-mark/526/83/40554333w4/purl=rc_EAIM_0_.

Chapter 1

1. Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998), 6–11.
2. *Ibid.*, 6.
3. *Ibid.*, 30–31.
4. *Ibid.*, 37.
5. Malcolm N. Shaw, *International Law* (Cambridge: Grotius, 1991), 192.
6. Lauren cites *Treaties and Other International Agreements of the United States of America* (Washington, DC: Government Printing Office, 1968).
7. Lauren, *Evolution*, 60.
8. *Ibid.*, 61.
9. Shaw, *International Law*, 193.
10. Lauren, *Evolution*, 62–63.
11. Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), 15.
12. David P. Forsythe, *Human Rights and World Politics* (Lincoln: University of Nebraska Press, 1989), 10–11.

13. Ibid., 19.
14. Ibid., 20.
15. Ibid.
16. Mary Midgley, "Towards an Ethic of Global Responsibility," in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 171–72.
17. Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 37.
18. Ibid.
19. Quoted in *ibid.*, 90–91.
20. Ibid., 91.
21. Ibid., 38.
22. Ibid., 69.
23. Ibid., 39.
24. Ibid., 41.
25. Ibid.
26. Ibid., 42.
27. Ibid., 43.
28. Ibid., 44.
29. Ibid., 49.
30. Ibid., 50–51.
31. Ibid., 282.
32. Michael Ignatieff, "The Attack on Human Rights," *Foreign Affairs* (November/December 2001): 102, available at <http://web.lexis-nexis.com/universal/>.
33. Johannes Morsink, *Universal Declaration*, 285.
34. Ibid., 290; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 175.
35. Glendon, *A World Made New*, 161.
36. Morsink, *Universal Declaration*, 295–96.
37. Ibid., 300; Glendon, *A World Made New*, 147.
38. Morsink, *Universal Declaration*, 318.
39. Glendon, *A World Made New*, 176.
40. Morsink, *Universal Declaration*, 319.
41. Ibid., 313.
42. Ibid., 320.

Chapter 2

1. Douglas Lee Donoho, "Relativism versus Universalism in Human Rights: The Search for Meaningful Standards," *Stanford Journal of International Law* 27 (1991): 352.
2. Fernando Teson, "International Human Rights and Cultural Relativism," *Virginia Journal of International Law* 25, no. 4 (1985): 870.
3. Donoho, "Relativism versus Universalism," 354.
4. Theodor Meron, "On a Hierarchy of International Human Rights," *American Journal of International Law* 80 (1991): 11.
5. Karen Parker and Lyn Beth Neylon, "*Jus Cogens*: Compelling the Law of Human Rights," *Hastings International and Comparative Law Review* 12 (1989): 415.
6. Donoho, "Relativism versus Universalism," 358.
7. Teson, "International Human Rights," 888.

8. *Ibid.*, 889.
9. Jack Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly* 6 (November 1984): 412; Sumner B. Twiss, Abdullah A. An-Na'im, and Ann Elizabeth Mayer, "Universality versus Relativism in Human Rights," in *Religion and Human Rights*, eds. John Kelsay and Sumner B. Twiss (New York: Project on Religion and Human Rights, 1994), 38.
10. Teson, "International Human Rights," 893; Ken Booth, "Three Tyrannies," *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 37.
11. Teson, "International Human Rights," 892–93.
12. Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *American Political Science Review* 76 (1982): 304–6.
13. Jack Donnelly, *Universal Human Rights in Theory and Practice: Second Edition* (Ithaca, NY: Cornell University Press, 2003), 10.
14. Donnelly, "Human Rights," 304.
15. Jack Donnelly, *The Concept of Human Rights* (London: Croom Helm, 1985), 5.
16. Donnelly, "Human Rights," 305.
17. Donnelly, *Concept of Human Rights*, 9.
18. Donnelly, "Human Rights," 306.
19. Donnelly, *Concept of Human Rights*, 31; see also Donnelly, *Universal Human Rights*, 14.
20. Donnelly, *Universal Human Rights*, 15.
21. Donnelly, *Concept of Human Rights*, 31–32.
22. *Ibid.*, 32–34.
23. Donnelly, *Universal Human Rights*, 19–20.
24. Donnelly, "Human Rights," 306.
25. *Ibid.*, 312.
26. Donnelly, *Universal Human Rights*, 44.
27. *Ibid.*, 50.
28. Donnelly, *Concept of Human Rights*, 36.
29. *Ibid.*, 39.
30. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 274.
31. Jack Donnelly, "The Social Construction of International Human Rights," *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 84.
32. Donnelly, *Universal Human Rights*, 41.
33. Donnelly, *Concept of Human Rights*, 35.
34. Donnelly, *Universal Human Rights*, 88.
35. Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder, CO: Westview, 1995). Howard comes up against a similar problem. Like Donnelly, she sees autonomy as the cardinal virtue of human dignity, but argues that this cannot be achieved without a "social democracy" that guarantees economic rights. But when a community upholds autonomy as its highest good, it will find it most difficult to drum up the altruism necessary to make economic equality a reality.
36. Strauss, *Natural Right and History*, 7.
37. *Ibid.*, 129.
38. Clifford Orwin and Thomas Pangle, "The Philosophical Foundation of Human Rights," in *Human Rights in Our Time: Essays in Memory of Victor Baras*, ed. Mark F. Plattner (Boulder, CO: Westview, 1984), 2.
39. Donnelly, *Concept of Human Rights*, 48.

40. Michael Freeman says that Donnelly's constructivist approach is "alarming" for just this reason: "Human rights are reduced from universal values to either arbitrary products of power or particular cultural developments, ... Donnelly tries to establish foundations for human rights upon the concept of human dignity, but he admits that the concept itself is subject to contingency and therefore is not readily defensible." Michael Freeman, "The Philosophical Foundations of Human Rights," *Human Rights Quarterly* 16, no. 3 (1994): 512.
41. Donnelly, *Concept of Human Rights*, 21–22.
42. Freeman, "Philosophical Foundations," 492.
43. Robert D. Sloane, "Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Rights," *Vanderbilt Journal of Transnational Law* 34 (May 2001): 527, available at http://web3.informac.galegroup.com/itw/infomark/148/577/63851537w3/purl==rcl_EAIM_0.
44. *Ibid.*
45. *Ibid.*
46. *Ibid.*
47. *Ibid.*
48. *Ibid.*
49. *Ibid.*
50. *Ibid.*
51. *Ibid.*
52. *Ibid.*; Ken Booth, "Three Tyrannies," *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 56: "Cultural relativists and postmodernists will argue against universal ideas—'metanarratives'—while valuing tolerance as a universal. Clearly, there are no non-universals. Even the total rejection of universal human rights is a universalist position on human rights." See also in the same book "Universal Human Rights: a Critique," in which Chris Brown argues that even if liberalism is true, by nature it lacks the requisite moral authority that true universality requires.
53. Sloane, "Outrelativizing Relativism."
54. Richard Rorty, "Human Rights, Rationality, and Sentimentality," *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 119.
55. *Ibid.*, 124.
56. *Ibid.*, 122–23.
57. *Ibid.*, 115.
58. *Ibid.*, 121–22.
59. *Ibid.*, 126–27.
60. Aristotle, *The Nicomachean Ethics*, trans. H. Rackham (Cambridge, MA: Harvard University Press, 1926).
61. For more on this, see Frances V. Harbour, "Basic Moral Values: A Shared Core," *Ethics and International Affairs* 9 (1995): 155–70.
62. John O'Manique, "Universal and Inalienable Rights: A Search for Foundations," *Human Rights Quarterly* 12 (November 1990): 467.
63. *Ibid.*, 469.
64. *Ibid.*, 471.
65. *Ibid.*, 474–75.
66. *Ibid.*, 476.
67. *Ibid.*
68. Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001), 5.

Chapter 3

1. Michael Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998), 13. Emphasis original.
2. *Ibid.*, 14–15. Perry recently expanded on the idea of the religious dimension of human rights in his book, *Toward a Theory of Human Rights: Religion, Law, Courts* (New York: Cambridge University Press, 2007). However, it was released too late in the production process of this book to be included for comment.
3. *Ibid.*, 35.
4. *Ibid.*, 38.
5. *Ibid.*, 68–69.
6. Hadley Arkes, *First Things: An Inquiry into the First Principles of Morals and Justice* (Princeton, NJ: Princeton University Press, 1986), 16–18.
7. *Ibid.*, 19–21.
8. *Ibid.*, 25.
9. H. L. A. Hart, “Positivism and the Separation of Law and Morals,” *The Philosophy of Law*, ed. R. M. Dworkin (Oxford: Oxford University Press, 1977), 36. Elsewhere Hart refers to this concept as the “minimum content of natural law.” See H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 189–95.
10. Arkes, *First Things*, 27.
11. *Ibid.*, 51–52.
12. *Ibid.*, 76–77.
13. *Ibid.*, 53–54.
14. *Ibid.*, 131–32.
15. *Ibid.*, 132.
16. Robert Bork, *Coercing Virtue: The Worldwide Rule of Judges* (Washington, DC: AEI Press, 2003), 7.
17. *Ibid.*, 61.
18. Quoted in Arkes, *Natural Rights and the Right to Choose* (Cambridge: Cambridge University Press, 2002), 55.
19. Bork, *Coercing Virtue*, 62.
20. Arkes, *Natural Rights*, 55.
21. *Ibid.*, 56–57.
22. Bork, 64.
23. Quoted in Arkes, *Natural Rights*, 48.
24. *Planned Parenthood of South-Eastern Pennsylvania v. Casey* 505 U.S. 833 (1992).
25. “Courts inevitably assume the role of moral teachers. Normative values pronounced, even falsely, in the name of a constitution, often come to be accepted by the public and are then reflected and intensified in legislatures, schools, and other institutions.” Bork, *Coercing Virtue*, 12.
26. Louis Henkin, “The Universal Declaration and the U.S. Constitution,” *PS: Political Science and Politics* 31 (September 1998): 512.
27. *Ibid.*
28. *Ibid.*, 515.
29. Sikkink, “Transnational Politics, International Relations Theory, and Human Rights.”
30. *Ibid.*
31. For example, Bork notes that feminist NGOs “lobby for universal rights of abortion and for mandatory proportional (50 percent) representation in legislatures.” Furthermore, “Academics are another powerful group. Many of them maintain that their articles and their

speeches at conferences constitute evidence of international law. The claims of NGOs and academics do nothing to lessen the ambiguity and opacity or to heighten the legitimacy of that law. Yet it is claimed that nations have no choice but to adhere to law made in this fashion." *Coercing Virtue*, 37–38.

32. William Schulz, Robin Fox, and Francis Fukuyama, "The Ground and Nature of Human Rights: Another Round," *The National Interest* 68 (Summer 2002), under "Power, Principles and Human Rights," available at http://web2.informac.galegroup.com/itw/infomark/821/98/39907191w2?url=rcl_EAIM_0_.
33. *Ibid.*, under "Whose Rights?"
34. *Ibid.*
35. *Ibid.*
36. *Ibid.*
37. This particularly pertains to the International Criminal Court, which as Bork notes, "claims jurisdiction over every person in the world," even though "ratification was accomplished by nations representing less than half the world's population, in collaboration with the newly potent nongovernmental organizations (NGOs)." *Coercing Virtue*, 35.

Furthermore, pro-abortion NGOs, faced with the fact that no human rights document specifically recognizes abortion as a universal right may rely on the Courts to secure their agenda. In a recent strategy session, the Center for Reproductive Rights advocated "developing a jurisprudence that pushes the general understanding of existing, broadly accepted human rights law to encompass reproductive rights" by appealing to "treaty monitoring bodies," "International and regional adjudicative bodies," and by bringing "claims based on international law to national-level courts." Abortion advocates admit that by working for abortion as a universal right in this manner, "there is a stealth quality to the work; we are achieving incremental recognition of values without a huge amount of scrutiny from the opposition. These lower profile victories will gradually put us in a strong position to assert a broad consensus around our assertions." U.S. Congress. House. *Congressional Record—Extension of Remarks*. "Documents Reveal Deceptive Practices by Abortion Lobby." Representative Christopher H. Smith. December 8, 2003, P. E-2537-E2538.

Part 2

1. The main issue, then, is about the difference between the underlying assumptions of classical theories of natural law and natural right and the modern understanding of natural *rights*. Although natural right and natural law both stipulate an ordered universe in which objective truth stands as a measure of human actions, there is a distinction between the two: While natural right assumes the existence of objective truth, that truth is not entirely known or knowable. Natural law, fully expounded by Thomas Aquinas, presumes a more comprehensive knowledge of truth via the benefit of revelation. But for our purposes, the differences are far less significant for understanding human nature than the fact that both traditions stipulate that human beings are defined in terms of their relation to a normative order. The main question to be answered, then, concerns man's relation to the whole—how and when our concept of that shifted and the way it affects our understanding of the ends of politics.

Chapter 4

1. Lloyd Weinreb, *Natural Law and Justice* (Cambridge, MA: Harvard University Press, 1987), 31.
2. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 89.
3. *Ibid.*, 134.

4. Plato, *Republic*, trans. Allan Bloom (New York: Basic Books, 1968).
5. See Books VIII and IX, where Socrates leads an extensive discussion on the coming into being and passing away of the various types of regimes.
6. Plato, *The Laws*, trans. Thomas L. Pangle (Chicago: University of Chicago Press, 1980).
7. "Nature is the coming into being connected with the first things. But if soul is going to appear first, and not fire or air, and it's soul that has come into being among the first things, it would be most correct, almost, to say that it is especially by nature." (892b–c).
8. This was certainly one of Aristotle's criticisms of Socrates. He says that "it is best for the city to be as far as possible entirely one; for this is the presupposition Socrates adopts. And yet it is evident that as it becomes increasingly one it will no longer be a city. For the city is in its nature a sort of multitude, and as it becomes more a unity it will be a household instead of a city, and a human being instead of a household; for we would surely say that the household is more a unity than the city, and the individual more than the household. So even if one were able to do this, one ought not do it, as it would destroy the city." See *The Politics*, trans. Canes Lord (Chicago: University of Chicago Press, 1984), 2.2.1261a15–22.
9. Aristotle, *The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984).
10. For more on Aristotle's views regarding the idea of the city as tending to a higher good, see Ambler, "Aristotle's Understanding of the Naturalness of the City," *Review of Politics* 47 (1985): 163–85.
11. Aristotle, *The Nicomachean Ethics*, trans. H. Rackham (Cambridge, MA: Harvard University Press, 1926).
12. Rackham, Introduction to *ibid.*, xxii.
13. As Aristotle explains, "The first principles from which scientific truths are derived cannot themselves be reached by Science; nor yet are they apprehended by Art, nor by Prudence. To be a matter of Scientific Knowledge a truth must be demonstrated by deduction from other truths; while Art and Prudence are concerned only with things that admit of variation. Nor is Wisdom the knowledge of first principles either: for the philosopher has to arrive at some things by demonstration." (VI.v.8.vi.).
14. Josef Pieper, *Happiness and Contemplation*, trans. Richard and Clara Winston (South Bend, IN: St. Augustine's Press: 1998), 77–79.
15. We might say that Aristotle's discussion of moral virtue stands as a subtle criticism to the regime of Plato's *Laws*. For although that regime focused on the ordinary citizens, and thus was about education in moral, versus intellectual virtue, we find that the citizens of the *Laws* are not even truly morally virtuous, given the definition that Aristotle provides. Plato's regime precludes the free will necessary for true virtue. Aristotle notes: "As some people, we maintain, perform just acts and yet are not just men (for instance, those who do what the law enjoins but do it unwillingly, or in ignorance, or for some ulterior object, and not for the sake of the actions themselves, although they are as a matter of fact doing what they ought to do and all that a good man should), on the other hand, it appears, there is a state of mind in which a man may do these various acts with the result that he really is a good man: I mean when he does them from choice, and for the sake of the acts themselves.... [B]ut the supreme good only appears good to the good man: vice perverts the mind and causes it to hold false views about the first principles of conduct. Hence it is clear that we cannot be prudent without being good." (VI.xii.1144a15–37).

Just as Plato equates justice with the Good, Aristotle, in keeping with his grounded vision of human possibility, calls justice "perfect virtue," since it is moral virtue "displayed toward others" (V.i.1129b26). As true virtue is achieved through actions freely done, true justice is achieved not simply when the law is obeyed, but when it is obeyed from one's conscious choice: "Men suppose it requires no special wisdom to know what is just and what is unjust,

because it is not difficult to understand the things about which the law pronounces. But the actions prescribed by law are only accidentally just actions. *How* an action must be performed, *how* a distribution must be made to be a just action or a just distribution—to know this is a harder task than to know what medical treatment will produce health” (V.ix.1137a10–15). The actions prescribed by law are only “accidentally just” because true virtue is practiced voluntarily, and not out of fear of punishment; true virtue is practiced for its own sake, and the people who do so do not need the law to make them good. Thus, human laws may point us in the right direction and may certainly protect us from the worst types of injustice, but mere obedience to the law does not fulfill the requirement for the highest human life.

16. In contrast to Socrates, who noted that prudence is a faculty which can be equally used for good or ill, Aristotle is careful to emphasize that prudence, being essential to the function of man, achieves its proper end only when directed toward the achievement of the good. See also (VI.ix.1143b17–20): “Not every kind of correctness in deliberation ... constitutes deliberative excellence. A man of deficient self-restraint or a bad man may, as a result of calculation, arrive at the object he proposes as the right thing to do, so that he will have deliberated correctly, although he will have gained something extremely evil; whereas to have deliberated well is felt to be a good thing.... [Furthermore] one may arrive at what is the right thing to do, but not arrive at it on the right grounds, but by means of a wrong middle term. This quality then, which leads one to arrive at the right conclusion, but not on the right grounds, is still not deliberative excellence.”
17. Stephen G. Salkever, *Finding the Mean: Theory and Practice in Aristotelian Political Philosophy* (Princeton, NJ: Princeton University Press, 1990), 74–82.
18. See also *ibid.*, 77.
19. *Ibid.*, 180.
20. *Ibid.*, 191; Richard Mulgan also writes that the *Ethics* “supports a mixed ideal, with philosophy as the best activity but leaving room for statesmanship and citizenship if the opportunity arises as part of the social life of the *polis*.” Aristotle’s ethical treatises attack not the political life, but rather, the vices that often accompany unmoderated political activity, such as the “glorification of warfare and the pursuit of despotic or imperial power.” Richard Mulgan, “Aristotle and the Value of Political Participation,” *Political Theory* 18 (1990): 208–9.
21. Salkever, *Finding the Mean*, 244. Mulgan also notes, “The argument that man is a political animal does not imply that man must participate in politics to become virtuous, only that he must literally be a part of a *polis* and live under its laws. Political institutions have an ethical function in moral education of the individual, but it is primarily through the coercive authority they impose rather than through any opportunity for active political participation.” Mulgan, “Aristotle and the Value,” 205.

Chapter 5

Two points must be stressed at the beginning of this chapter. I have not addressed Stoicism because in its fundamental aim of achieving complete detachment from both the good and bad aspects of life, it in some ways comes closer to Eastern mysticism than Western philosophy, and therefore lacks a certain relevance to question of truth and politics as I am pursuing it. Also, it should be noted that the view of Christianity presented in this section is specifically Catholic Christianity. It was this type of Christianity (as opposed to the revealed law of other religious traditions like Judaism and Islam) against which modernity rebelled, and later “Christian” doctrines of natural law seem to me to be intrinsically connected with the very modern philosophy I am critiquing.

1. John Paul II, *Fides Et Ratio: On the Relationship between Faith and Reason* (Boston: Pauline Books, 1998), 51–52.
2. See 1 Cor. 12.4–12: “There are different kinds of spiritual gifts but the same Spirit; there are different forms of service but the same Lord; there are different workings but the same God who produces all of them in everyone. To each individual the manifestation of the Spirit is given for some benefit. To one is given through the Spirit the expression of wisdom; to another the expression of knowledge according to the same Spirit; to another faith by the same Spirit; to another gifts of healing by the one Spirit; to another mighty deeds; to another prophecy; to another discernment of spirits; to another varieties of tongues. But one and the same Spirit produces all of these, distributing them individually to each person as he wishes.
3. Ernest Fortin, “Political Idealism and Christianity,” in *Classical Christianity and the Political Order: Reflections on the Theological-Political Order*, ed. J. Brian Benestad (Lanham, MD: Rowman & Littlefield, 1996), 43–44. See also John Paul II, “*Without love of neighbor, made concrete in keeping the commandments, genuine love for God is not possible.*” *Veritatis Splendor* (Boston: Pauline Books, 1993), 26.
4. See Matt 10:29–32.
5. John Paul II, *Fides Et Ratio*, 26–27.
6. “The Lord Jesus, when he prayed to the Father ‘that all may be one ... as we are one’ (Jn 17:21–22), opened up vistas closed to human reason. For he implied a *certain likeness* between the union of the divine Persons and the union of God’s children in truth and charity. This likeness reveals that man, who is the only creature on earth which God willed for its own sake, cannot fully find himself except through a sincere gift of self.” John Paul II, *Mulieris Dignitatem: On the Dignity and Vocation of Women* (Boston: Pauline Books, 1988), 27–28.
7. John Paul II, *Fides Et Ratio*, 43–44.
8. *Ibid.*, 44.
9. *Ibid.*, 46.
10. John Paul II, *Mulieris Dignitatem*, 25–26. Emphasis original.
11. Augustine, *City of God*, trans. M. Dods, J. J. Smith, and G. Wilson (Edinburgh: n.p., 1872), repr. *St. Augustine: The Political Writings*, ed. Henry Paolucci (Washington, DC: Regnery Gateway, 1962).
12. See Etienne Gilson: “St. Augustine did not bequeath to his successors an ideal of a universal human city united in view of purely temporal ends proper to it; but it was enough that the City of God exist in order to inspire men with the desire to organize the earth into a single society made to the image and likeness of the heavenly city.” Foreword to *St. Augustine: The City of God*, trans. Gerald G. Walsh, S. J., Demetrius B. Zema, S. J., Grace Monahan, O. S. U. and Daniel J. Honan (Garden City, NY: Image Books, 1958), 32.
13. Fortin, “Political Idealism and Christianity,” 47–48.
14. Fortin, “St. Augustine,” in *History of Political Philosophy*, 3rd ed., ed. Leo Strauss and Joseph Cropsey (Chicago: University of Chicago Press, 1987), 203.
15. See Ernest Fortin’s description of classical philosophy: “For, if the city needs philosophy, philosophy itself needs the city. It is not a plant that grows in any soil and it requires for its nurture certain conditions that are not encountered everywhere.” *Classical Christianity and the Political Order: Reflections on the Theological-Political Order*, ed. J. Brian Benestad (Lanham, MD: Rowman & Littlefield, 1996) 43.
16. John Paul II, *Fides Et Ratio*, 89.
17. John Paul II, *Fides Et Ratio*, 91.
18. Fortin, “St. Thomas Aquinas,” in *History of Political Philosophy*, 3rd ed., ed. Leo Strauss and Joseph Cropsey (Chicago: University of Chicago Press, 1987), 268.

19. John Paul II, *Fides Et Ratio*, 59.
20. Strauss, *Natural Right and History*, 164.
21. G. K. Chesterton, *What's Wrong with the World* (Dodd, Mead and Company, 1910), repr. Ignatius Press, 37.

Chapter 6

1. Machiavelli, *The Prince*, Harvey C. Mansfield, Jr., trans. (Chicago: University of Chicago Press, 1985), chapter 15, 61.
2. *Ibid.*
3. *Ibid.*, chapter 19, 77.
4. *Ibid.*, chapter 18, 69.
5. *Ibid.*, chapter 18, 71.
6. *Ibid.*, chapter 12, 48.
7. *Ibid.*, chapter 14, 58.
8. Machiavelli, *The Discourses*, ed. Bernard Crick, trans. Leslie J. Walker, S. J. (Middlesex, England: Penguin, 1983), I.26.
9. For more on the ways that Thrasymachus resembles the city, see Leo Strauss, *The City and Man* (Chicago: University of Chicago Press, 1964), 78.
10. See Machiavelli, *The Discourses*, I.11.
11. See *Ibid.*, II.30: "For where men have but little virtue, fortune makes a great display of its power; and, since fortune changes, republics and governments frequently change; and will go on changing till someone comes along, so imbued with the love of antiquity that he regulates things in such a fashion that fortune does not every time the sun turns around get a chance of showing what it can do." See also *The Prince*, chapter 25.
12. In *The Laws*, Plato teaches that true prudence is an act of discernment—locating the gentle pull of truth, which is like a fine thread (Book I, 644e–45b). For Machiavelli, it is an overstatement—being bold enough to aim higher than is necessary (*Prince*, 22).
13. *The Prince*, chapter 19, 72.
14. *Ibid.*, chapter 20, 87.
15. *The Discourses*, Preface to Book I.
16. *Ibid.*, I.12.
17. *Ibid.*, II.2.
18. *Ibid.*
19. See *The Prince*, chapter 19, 72–73.
20. "For one should never fall in the belief you can find someone to pick you up. Whether it does not happen or happens, it is not security for you, because that defense was base and did not depend on you. And those defenses alone are good, are certain, and are lasting, that depend on you yourself and on your virtue." *Ibid.*, chapter 24, 97.
21. *Ibid.*, chapter 25, 98–101.
22. *The Discourses*, II.2.
23. *The Prince*, chapter 26, 102–3.

Part 3

1. Edward Dumbauld, "Editor's Introduction," in *Prolegomena to the Law of War and Peace*, by Hugo Grotius, trans. Francis W. Kelsey (Indianapolis, IN: Bobbs-Merrill, 1957), xiv.

Chapter 7

1. Hugo Grotius, *The Law of War and Peace* (1625) [Classics of International Law 3], ed. James Brown Scott, trans. Francis W. Kelsey et al. (Oxford: Clarendon, 1925).
Despite the clear and more recent statement of this position by Machiavelli, Grotius never mentions him by name, perhaps because Machiavelli's own writings present too clearly the lack of fit between the heavenly and earthly cities, an observation which we shall find to be evidently against Grotius's goals. See Thomas L. Pangle and Peter J. Ahrensdorf, *Justice among Nations: On the Moral Basis of Power and Peace* (Lawrence: University of Kansas Press, 1999), 168. See also Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, NJ: Princeton University Press, 1994), 127.
2. Zuckert, *Natural Rights*, 128.
3. Zuckert, *Natural Rights*, 136. This is essentially the Stoic doctrine.
4. Augustine, *Confessions*, trans. R. S. Pine-Coffin (London: Penguin, 1961), I.7.
5. "If I was born in sin and guilt was with me already when my mother conceived me, where, I ask you, Lord, where or when was I, your servant, ever innocent?" Augustine, *Confessions*, I.7.
6. See Genesis 2–3.
7. For further consideration of Grotius's denial of human nature as fallen, see Steven Forde, "Hugo Grotius on Ethics and War," *92 American Political Science Review* 1998, 639–48.
8. See *The Law of War and Peace*, Proleg. 39.
9. See Zuckert, *Natural Rights*, 147.
10. *Ibid.*, 148.
11. For more on the subjective aspect of Grotian natural law, see *ibid.*, 140–42.
12. St. Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (New York: Benziger, 1948). All references hereafter are to the *Summa Theologica*.
13. Henle, R. J., S. J., "Introduction to St. Thomas," in *Summa Theologiae I–II, qq. 90–97: The Treatise on Law* (Notre Dame, IN: University of Notre Dame Press, 1993), 42–45.
14. Henle, "Introductory Comment to Question 91, Article 2," 155.
15. *Ibid.*, 155.
16. We can see this principle at work in Grotius's discussion of human society and private property. He often implies that the law of nature originates in man, and is therefore approved by God, rather than that the law of nature originates in God and is therefore understandable by man: "It must be noted, however, that in the first instance men joined themselves together to form a civil society not by command of God, but of their own free will, being influenced by their experience of the weakness of isolated households against attack" (I.4.7.3). Private property, too, was "introduced by the will of man; but once introduced, the law of nature points out that it is wrong for me, against your will, to take away that which is subject to your ownership" (I.1.10.4).
17. Zuckert, *Natural Rights*, 142–43.
18. *Ibid.*, 139.
19. "How very significant is the dissatisfaction which marks man's life in Eden as long as his sole point of reference is the world of plants and animals (see *Gen* 2:20). Only the appearance of the woman, a being who is flesh of his flesh and bone of his bones (see *Gen* 2:23), and in whom the spirit of God the Creator is also alive, can satisfy the need for interpersonal dialogue, so vital for human existence. In the other, whether man or woman, there is a reflection of God himself, the definitive goal and fulfillment of every person." John Paul II, *The Gospel of Life: Evangelium Vitae* (New York: Random House, 1995), 63.
20. Forde, "Hugo Grotius," 640.

21. *Ibid.*, 641. Furthermore, in *The Invention of Autonomy* (Cambridge: Cambridge University Press, 1998), J. B. Schneewind points out that for Grotius, moral virtue is irrelevant to justice: “The point of justice has nothing to do with the agent’s motives. To be just is simply to have the habit of following right reason with respect to the rights of others” (77).
22. Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), 59–60.
23. *Ibid.*, 68.
24. Pangle and Ahrensdoerf, *Justice among Nations*, 169.
25. Pangle and Ahrensdoerf argue that Grotius’s prohibition of deceit between nations as a fundamental principle to be upheld at all costs plants him firmly within the Thomist camp (174). This may be true, to a degree. But one should bear in mind that Grotius’s disdain of lying stems not primarily from its being an offense against God, but in its being an offense against society, and therefore a violation of the fundamental directive of Grotius’s natural law, that promises should be kept.
26. Zuckert, *Natural Rights*, 191.
27. “The rights enjoyed by the atomic individuals in the Grotian state of nature filled out the moral world: the state possessed no rights which those individuals had not formerly possessed, and was the same kind of moral entity as them.” Tuck, *Natural Rights Theories*, 63.
28. One might wonder whether this claim can be reconciled with the larger theme of this book, namely, that international human rights are meant to represent moral principles. Here it should be remembered that the idea of human rights is chiefly concerned with the relationship between a state and its citizens, rather than the relationship of nations to each other. Still, as the cause of human rights continues to expand in an ever shrinking world, it may be that this view of international society may eventually evolve.

Chapter 8

1. John Locke, *Questions Concerning the Law of Nature* (1664), edited and translated by Robert Horwitz, Jenny Strauss Clay, and Diskin Clay (Ithaca, NY: Cornell University Press, 1990).
2. Zuckert argues that Locke rejects Thomism because he holds a different opinion about the things toward which man is naturally inclined. For Locke, “the natural inclinations are self-regarding and thus cannot be the source of the social virtues.... Nature is pure immanence—what works everywhere the same. Thomas, following Aristotle, was deploying a conception of nature of a different sort: nature exists as tendencies and ends; nature often fails in her operations.” Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, NJ: Princeton University Press, 1994), 202–3.
3. *Ibid.*, 206–10.
4. *Ibid.*, 214.
5. John Locke, *Second Treatise of Government* (1690), ed. C. B. Macpherson (Indianapolis, IN: Hackett, 1980). Emphasis original.
6. Zuckert, *Natural Rights*, 260. “Despite all that God has given man richly to enjoy, his neediness turns out to be his defining characteristic.... Neediness is God’s provision for man, and this sanctions and even sanctifies an emancipation of man’s acquisitive instinct.” Paul A. Rahe, *Republics Ancient and Modern: New Modes and Orders in Early Modern Political Thought*, vol. 2 (Chapel Hill: University of North Carolina Press, 1994), 271.
7. John Locke, *The Reasonableness of Christianity with A Discourse of Miracles and part of A Third Letter Concerning Toleration* (Stanford, CA: Stanford University Press, 1958), 26.
8. *Ibid.*, 27.
9. *Ibid.*, 27.
10. *Ibid.*, 26.

11. Thus, Rahe argues that Locke “provided the theoretical underpinnings for a new species of indirect government based on the presupposition that man is by nature not a political but a tool-making animal—and giving therefore to calculating reason, labor and trade a primacy once reserved for moral rationality, politics and war. For the first time in human history, it became possible for a philosophical teaching to supplant religious belief, become ‘the soul of a people,’ and come to serve as that ‘something’ in the constitution of the community ‘which is settled, permanent, and not to be called in question.’” Rahe, *Republics Ancient and Modern*, 289.
12. “In sum, nature provides few things, most unpalatable in themselves, ordinarily small in quantity or, when more profuse, rotting. Locke would first have us believe that humanity finds itself set in a world designed for it by a kindly father; later he shows it to be the sort of place a wicked stepmother might produce.” Zuckert, *Natural Rights*, 263.
13. Quoted in Rahe, *Republics Ancient and Modern*, 276
14. Zuckert, *Natural Rights*, 278.
15. *Ibid.*, 236.
16. Robert A. Goldwin, “John Locke,” *History of Political Philosophy*, 3rd ed., ed. Leo Strauss and Joseph Cropsey (Chicago: University of Chicago Press, 1987), 483.
17. Zuckert, *Natural Rights*, 224–34.
18. “Locke doubts that natural inclinations account for political life; for at the center of political life is coercion—the power of punishment (II 3). Political life must somehow go against the grain of human beings if violence is its defining character.” *Ibid.*, 229.
19. Reason “may guide man in his ‘pursuit of happiness.’ Or, to be more precise, it may direct him in his headlong flight from discomfort and death. But enslaved as it is to passions that know no bounds, it lacks an erotic divination of the good, and it can therefore play no direct role in determining his ultimate aim. Reason validates man’s natural inclination toward the ‘comfortable preservation’ of his being by surrendering to it.” Rahe, *Republics Ancient and Modern*, 269.
20. “The primary fact is want. But this want, this lack, is no longer understood as pointing to something complete, perfect, whole. The necessities of life are no longer understood as necessary for the complete life, or the good life, but as mere inescapabilities.... The goal of desire is defined by nature only negatively—the denial of pain.... It is this pain, and hence a defect, which gives man originally the most important of all rights: sufferings and defects, rather than merits or virtues, originate rights.” Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 250.
21. Locke, *Reasonableness of Christianity*, 61.
22. *Ibid.*, 66.
23. *Ibid.*, 68–70.
24. In *God, Locke and Equality: Christian Foundations in Locke’s Political Thought* (Cambridge: Cambridge University Press, 2002), Jeremy Waldron says that at the heart of Locke’s theory of equality is the notion that all human beings possess the intellectual capacity “to form and manipulate abstract ideas, which enables a person to reason to the existence of God and to the necessity of finding out what if anything God requires of him” (83). Once we have reasoned thus far, however only Christian revelation can specifically teach us what God expects of us (105–6). My point has been that much of what Locke says regarding our capacity to reason, however well intentioned it may be, has the effect of making human beings less inclined to follow the teachings of Christianity.
25. In *Who is my Neighbor? Personalism and the Foundations of Human Rights* (Washington, DC: Catholic University of America Press, 2005), Thomas D. Williams goes so far as to argue that the foundation of all human rights can be traced to the human need to love and be loved (180–97).

Part 4

1. Primo Levi, *Survival in Auschwitz and the Reawakening: Two Memoirs*, trans. Stuart Woolf (New York: Summit, 1986), 27.
2. Primo Levi, *The Drowned and the Saved*, trans. Raymond Rosenthal (New York: Summit, 1988), 93.
3. *Ibid.*, 95.
4. *Ibid.*, 101–2.
5. *Ibid.*, 97.
6. Josef Pieper, *Abuse of Language—Abuse of Power*, trans. Lothar Krauth (San Francisco: Ignatius, 1992), 15.
7. *Ibid.*
8. *Ibid.*, 33.
9. Levi, *Drowned and the Saved*, 101.
10. Levi, *Survival in Auschwitz*, 71.
11. Levi, *Drowned and the Saved*, 49–50.
12. Levi, *Survival in Auschwitz*, 98.
13. *Ibid.*, 92.
14. Levi, *Drowned and the Saved*, 40.
15. *Ibid.*, 38.
16. Levi, *Survival in Auschwitz*, 88.
17. *Ibid.*
18. *Ibid.*, 90.
19. *Ibid.*, 121.
20. *Ibid.*, 122.
21. *Ibid.*, 157–58.
22. *Ibid.*, 113–14.
23. *Ibid.*, 115.

Chapter 9

1. St. Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (New York: Benziger, 1948). All references hereafter are to the *Summa Theologica*.
2. Josef Pieper, *Happiness and Contemplation*, trans. Richard and Clara Winston (South Bend, IN: St. Augustine's Press, 1998), 27.
3. *Ibid.*, 36.
4. *Ibid.*, 40.
5. *Ibid.*, 58.
6. *Ibid.*, 74.
7. *Ibid.*, 74.
8. *Ibid.*, 65–66.
9. *Ibid.*, 86–87.
10. *Ibid.*, 88.
11. Etienne Gilson, *The Christian Philosophy of St. Thomas Aquinas* (Notre Dame, IN: University of Notre Dame Press, 1956), 256.
12. *Ibid.*, 258.
13. *Ibid.*, 261.
14. *Ibid.*, 262.
15. *Ibid.*
16. *Ibid.*

17. Although Aristotle also stipulated the necessary partnership between the intellectual and moral virtue, Thomas differs from the ancients in his assumption that achieving the highest human life does not necessarily require that one be a philosopher.
18. Gilson, 264.
19. See also (I–II.g.91.a.3.c.) and (I–II.g.93.a.3.c.).
20. Thus, John Paul II notes that while democracy is admirable, it is not in itself intrinsically connected to the human good: “Democracy cannot be idolized to the point of making it a substitute for morality or a panacea for immorality. Fundamentally, democracy is a ‘system’ and as such is a means and not an end. Its ‘moral’ value is not automatic, but depends on conformity to the moral law to which it, like every other form of human behavior, must be subject: in other words, its morality depends on the morality of the ends which it pursues and the means which it employs.” John Paul II, *The Gospel of Life: Evangelium Vitae* (New York: Random House, 1995), 127–28.
21. *Ibid.*, 266–67.
22. John Paul II notes that “The primary purpose of the punishment which society inflicts is ‘to redress the disorder caused by the offense.’ Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment of the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority also fulfils the purpose of defending public order and ensuring people’s safety, while at the same time offering the offender an incentive and help to change his or her behavior and be rehabilitated. It is clear that, for these purposes to be achieved, *the nature and extent of the punishment* must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent.” John Paul II, *Evangelium Vitae*, 99–100. Emphasis original.
23. This attitude was perfectly demonstrated at a June 2001 prepcom for a UN Special Session on Children. Andras Vamos-Goldman, who heads Canada’s permanent mission to the UN, was asked by U.S. Delegate Terry Miller to define the word “services” as it was to be used in a document calling for “full gender equality and equal access to services.” Vamos-Goldman replied, “The distinguished delegate of the United States knows that, *of course*—and I hate to use the word-but in ‘services’ is included abortion” (emphasis added). See Mary Jo Anderson, “The UN’s War against Children,” *Crisis: Politics, Culture and the Church* 19 (September 2001): 28.

The Center for Reproductive Rights advocates the development of “soft norms,” including “jurisprudence” or judicial interpretation, “interpretations of human rights treaty committees, rulings of international tribunals, resolutions of inter-governmental political bodies, agreed conclusions in international conferences and reports of special rapporteurs to interpret the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and even the Convention on the Rights of the Child (CRC), as granting a fundamental human right to abortion. U.S. Congress. House. *Congressional Record—Extension of Remarks*. “Documents Reveal Deceptive Practices by Abortion Lobby.” Representative Christopher H. Smith. December 8, 2003, P. E-2537-E2538.

Even the UN Children’s Fund (UNICEF) has transmogrified in recent years from an organization existing primarily to feed starving children, to one that has become increasingly focused on promoting abortion. See Douglas A. Sylva, PhD, *The United Nations Children’s Fund (UNICEF): Women or Children First*, White Paper Series Number Three (Catholic Family and Human Rights Institute International Organizations Research Group, 2003).

The campaign for abortion as a human right is not only a contradiction of the human right to life, but also undermines what should be the protection of the family. In their drive to eradicate all barriers to abortion, some abortion rights advocates also seek to reduce the role of parents in children's lives by eliminating requirements for parental consent for abortions for minors, noting that "it is often in the best interest of the child to be granted autonomy in decision-making." See Smith, *Congressional Record*, E2536.

Chapter 10

1. The frequency with which abortion is mentioned in the media and politics does not in any way stand as evidence that public leaders are truly confronting it as an issue. Indeed, the tired campaign stock phrase, which goes something like, "Well, I support abortion rights although I am personally opposed to the practice of abortion," is a perfect example of the way politicians evade a real conversation about the issue.
2. Quoted in Hadley Arkes, *First Things: An Inquiry into the First Principles of Morals and Justice* (Princeton, NJ: Princeton University Press, 1986), 360.
3. Ibid. Also see Arkes, *Natural Rights and the Right to Choose* (Cambridge: Cambridge University Press, 2002), 167.
4. Arkes, *Natural Rights*, 30.
5. American Life League, "Is abortion ever necessary?" available at <http://www.all.org/article.php?id=10216>. A quick internet search yields many concurring opinions among medical professionals. For example:

As of May 4, 2006, 480 physicians were signatories to a statement by the American Life League which stated, "I agree that there is never a situation in the law or in the ethical practice of medicine where a pre-born child's life need be intentionally destroyed by procured abortion for the purpose of saving the life of the mother," available at <http://www.all.org/article.php?id=10682>.

The Irish Medical Journal reported that when the National Maternity Hospital in Dublin studied the 21 maternal deaths occurring among 74,317 pregnancies from 1970–1979, it concluded that "Abortion wouldn't have saved the mother's life in a single case." See Peter Saunders, "Deadly Questions on Abortion (Part 2)," available at <http://www.cmf.org.uk/literature/content.asp?context=article&l1d=639>.

Many physicians also deny the necessity of abortion in saving a mother's life. See, for example, Association of Pro-Life Physicians, "Are There Rare Cases when Abortion is Justified?" available at <http://www.prolifephysicians.org/rarecases.htm>; and "Interview with Dr. George Isajiw, MD," available at <http://www.priestsforlife.org/media/interviewisajiw.htm>.
6. Bernard Nathanson, MD and Richard N. Ostling, *Aborting America* (Garden City, NY: Doubleday, 1979), 238.
7. Arkes, *First Things*, 364–65.
8. Robert George offers a similar illustration in his *In Defense of Natural Law* (Oxford: Oxford University Press, 1999), 212.
9. Arkes, *First Things*, 364–65
10. Arkes, *Natural Rights*, 31.
11. Abraham Lincoln as quoted in Arkes, *Natural Rights*, 83.
12. For an example, see Wesley J. Smith, *Culture of Death: The Assault on Medical Ethics in America* (San Francisco: Encounter Books, 2000), xii. Smith says that in the 1999 case *James H. Armstrong, MD v. The State of Montana*, the Montana Supreme Court invalidated a state law that would have required that only doctors perform abortions and issued a "radical

philosophical imperative” that could be reasonably be interpreted to mean that almost any medical procedure (like unnecessary amputation or physician assisted suicide, to name a few) is permitted “if it can be construed to involve obtaining ‘medical care from a chosen health care provider.’ He notes, “The primary authorities that the majority relied upon in expanding the reach of its ruling were philosophical treatises. Indeed, the most frequently cited authority was not a statute, a law case, or even a legal essay, but a philosophical discourse on the modern meaning of the ‘sanctity of human life’ contained in a book ... by the influential attorney/bioethicist Ronald Dworkin.... The Montana majority opinion cited Life’s Dominion so frequently and applied its reasoning so enthusiastically that it is no exaggeration to say the decision transformed Dworkin’s philosophy into the court-mandated health care public policy of the entire state of Montana, without a single citizen or legislator having the opportunity to cast a vote.”

13. Ronald Dworkin, *Life’s Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Vintage Books, 1994), 13.
 14. Bernard Nathanson, *The Hand of God: A Journey from Death to Life by the Abortion Doctor who Changed His Mind* (Washington, DC: Regnery, 1996), 142–43.
 15. Smith, *Culture of Death*, 19.
 16. Dworkin, *Life’s Dominion*, 97. Dworkin supports this assertion by noting that many people who hold “pro-life” views nevertheless condone abortion in the case of rape. Here we must agree with Nathanson’s contention that it is not logically consistent to make exceptions in the case of rape. For that misses the point of the objection to abortion. It would shift the grounds of the argument from upholding the sanctity of life or the right to life to that of taking responsibility for one’s actions. And although the victim of the rape deserves all the material and emotional support society can muster, such support cannot logically extend to taking the life of what is, after all, an innocent party.
- As Arkes puts it, “No one could pretend that the fetus, in these circumstances, would be anything other than the innocent issue of the act. What remains to be explained is why so many worldly people are willing to visit on this innocent party a punishment far more astounding than the punishment they see fit to impose on the assailant himself.” Arkes, *First Things*, 395–96.
17. Robert Bork, as quoted in Dworkin, *Life’s Dominion*, 141.
 18. Arkes, *Natural Right*, 2–6, 43.
 19. In arguing that the protections of the Fourteenth Amendment should be construed as extending to pre-born humans, Nathan Schlueter notes, “The unborn person interpretation has nothing to do with broadening or narrowing legal concepts to meet ever-evolving standards of morality accessible only to privileged elites. In such cases judges usually broaden or contract the meaning of the legal concept itself, as when they argue, for example, that the right to ‘liberty’ includes an absolute right to engage in behavior once regarded as legitimately subject to state ‘police power’ regulations.... In (this case) the legal concept—the protection of all human beings—remains unchanged. The only change comes from the clear development in scientific knowledge about when human beings come into existence.” Nathan Schlueter and Robert Bork, “Constitutional Persons: An Exchange on Abortion,” *First Things*, no. 129 (January 2003): 33.
 20. Arkes, *First Things*, 394.
 21. For explanations of why, despite the “trimester scheme” of *Roe*, the right to abortion has never really been constricted, see Ramesh Ponnuru, *The Party of Death* (Washington, DC: Regnery, 2006), 10–20 and Arkes, *Natural Rights*, 87–88.
 22. Eileen McDonagh, *Breaking the Abortion Deadlock: From Choice to Consent* (New York: Oxford University Press, 1996), 6.

23. In this way, McDonagh sets aside claims that abortion is similar to slavery, for “although the fetus is innocent of conscious intention and cannot control its behavior, it is not innocent of massively intruding on a woman’s body and liberty. Far from being the slave that is sacrificed in an abortion, the fetus is the one that enslaves the woman when it imposes a wrongful pregnancy,” 169.
24. *Webster’s II New Riverside University Dictionary*
25. See “The Menstrual Cycle,” available at <http://www.ovulation-calculator.com/conception.htm>: “At ovulation, the layer of mucus in the cervix ... becomes more fluid, allowing sperm to enter the uterus rapidly.” At other times, cervical mucus is of such a consistency as to completely block sperm altogether. The woman’s ovaries produce estrogen, which thickens the uterine lining and “increases blood flow to the uterus,” and progesterone which “causes the glands of the uterine lining to form secretions that help nourish a fertilized egg.” See also *The Merck Manual of Medical Information: Home Edition* (NJ: Merck Research Laboratories, 1997), 1137: The cells lining the fallopian tube facilitate fertilization and the subsequent development of the fertilized egg (zygote).
26. B. A. Lessey, “Endometrial Receptivity and the Window of Implantation,” *5 Baillieres Best Pract. Res. Clin. Obstet. Gynaecol* (October 2000), available at http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11.
27. John Wilks, BPharm, MPS MACPP, “The Impact of the Pill on Implantation Factors—New Research Findings,” *La Treve de Dieu*, available at <http://www.trdd.org/ETHMEDE.HTM>.
28. *Ibid.*
29. Mark Graber, *Rethinking Abortion: Equal Choice, the Constitution and Reproductive Politics* (Princeton, NJ: Princeton University Press, 1996), 36.
30. *Ibid.*, 196, no. 1. The reference to Warren McCleskey regards *McCleskey v. Kemp*, in which the Court ruled that “persons making equal protection attacks on capital sentencing processes ... had to ‘prove that purposeful discrimination had a discriminatory impact on (them),’” 92.
31. Arkes, *First Things*, 382. Arkes further adds, “The intractable question, of course, is whether there is a principle that justifies the laws on the books. If there is, then the *validity* of that principle cannot be affected in any way by showing that the laws are being widely disobeyed.”
32. The surveys Graber cites as evidence date back mostly to 1977, 1978, and 1980, with one reference to a source from 1984. Later he cites the same survey to support his claim that “one should not underestimate the power of hypocrisy or denial in American politics, particularly in light of evidence that man citizens firmly (and erroneously) believe that they would not seek an abortion or so counsel a loved one when faced with an unwanted pregnancy.” *Rethinking Abortion*, 147.
33. Arkes, *First Things*, 416.
34. *Ibid.*, 382. Also see *Veritatis Splendor*, where John Paul II argues the same point from a different angle: “It is quite human for the sinner to acknowledge his weakness and to ask mercy for his failings; what is unacceptable is the attitude of one who makes his own weakness the criterion of the truth about the good, so that he can feel self-justified, without even the need to have recourse to God and his mercy” (126).
35. Graber, *Rethinking Abortion*, 133, 136, 142, 144, 145.

Conclusion

1. John Paul II, *Veritatis Splendor* (Boston: Pauline Books, 1993), 96. Emphasis original.

Bibliography

- Ambler, Wayne. "Aristotle's Understanding of the Naturalness of the City." *Review of Politics* 47 (1985): 163–85.
- Anderson, Mary Jo. "The UN's War against Children." *Crisis: Politics, Culture and the Church* 19 (September 2001): 22–28.
- Aquinas, Thomas. *Summa Theologiae: I–II, qq. 90–97: The Treatise on Law*. Edited by R. J. Henle, S. J. Notre Dame, IN: University of Notre Dame Press, 1993.
- . *Summa Theologica*. Translated by Fathers of the English Dominican Province. New York: Benziger, 1948.
- Aristotle. *The Nicomachean Ethics*. Translated by H. Rackham. Cambridge, MA: Harvard University Press, 1926.
- . *The Politics*. Translated by Carnes Lord. Chicago: University of Chicago Press, 1984.
- Arkes, Hadley. *First Things: An Inquiry into the First Principles of Morals and Justice*. Princeton, NJ: Princeton University Press, 1986.
- . *Natural Rights and the Right to Choose*. Cambridge: Cambridge University Press, 2002.
- Augustine. *City of God*. Translated by M. Dods, J. J. Smith and G. Wilson. Reprinted in *St. Augustine: The Political Writings*. Edited by Henry Paolucci. Washington, DC: Regnery Gateway, 1962.
- . *Confessions*. Translated by R. S. Pine-Coffin. London: Penguin, 1961.
- Booth, Ken. "Three Tyrannies." In *Human Rights in Global Politics*, edited by Tim Dunne and Nicholas J. Wheeler, 31–70. Cambridge: Cambridge University Press, 1999.
- Bork, Robert. *Coercing Virtue: The Worldwide Rule of Judges*. Washington, DC: AEI Press, 2003.
- Chesterton, G. K. *What's Wrong with the World*. Dodd, Mead, and Company: 1910. Reprint, San Francisco: Ignatius, 1994.
- Donnelly, Jack. *The Concept of Human Rights*. London: Croom Helm, 1985.
- . "Cultural Relativism and Universal Human Rights." *Human Rights Quarterly* 6 (November 1984): 400–19.
- . "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights." *American Political Science Review* 76 (1982): 303–16.
- . "The Social Construction of International Human Rights." In *Human Rights in Global Politics*, edited by Tim Dunne and Nicholas J. Wheeler, 71–102. Cambridge: Cambridge University Press, 1999.
- . *Universal Human Rights in Theory and Practice*. 2nd ed. Ithaca, NY: Cornell University Press, 2003.
- Donoho, Douglas Lee. "Relativism versus Universalism in Human Rights: The Search for Meaningful Standards." *Stanford Journal of International Law* 27 (1991): 345–69.
- Dworkin, Ronald. *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom*. New York: Vintage Books, 1994.
- Dumbauld, Edward. Introduction, in *Prolegomena to the Law of War and Peace*, by Hugo Grotius, translated Francis W. Kelsey. Indianapolis, IN: Bobbs-Merrill, 1957.

- Forde, Steven. "Hugo Grotius on Ethics and War." *American Political Science Review* 92 (1998): 639–48.
- Forsyth, David P. "Human Rights Fifty Years after the Universal Declaration: Reconciling American Political Science and the Study of Human Rights." *PS.: Political Science and Politics* 31 (September 1998): 507–11.
- . *Human Rights and World Politics*. Lincoln: University of Nebraska Press, 1989.
- Fortin, Ernest. "The New Rights Theory and the Natural Law." *Review of Politics* 44 (1982): 590–612.
- . "Political Idealism and Christianity." In *Classical Christianity and the Political Order: Reflections on the Theological-Political Order*, edited by J. Brian Benestad, 31–63. Lanham, MD: Rowman and Littlefield, 1996.
- . "St. Augustine." In *History of Political Philosophy*, 3rd ed., edited by Leo Strauss and Joseph Cropsey, 176–205. Chicago: University of Chicago Press, 1987.
- . "St. Thomas Aquinas." In *History of Political Philosophy*, 3rd ed., edited by Leo Strauss and Joseph Cropsey, 248–75. Chicago: University of Chicago Press, 1987.
- Freeman, Michael. "The Philosophical Foundation of Human Rights." *Human Rights Quarterly* 16, no. 3 (1994): 491–514.
- George, Robert P. *In Defense of Natural Law*. Oxford: Oxford University Press, 1999.
- Gilson, Etienne. *The Christian Philosophy of St. Thomas Aquinas*. Notre Dame, IN: University of Notre Dame Press, 1956.
- Glendon, Mary Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2001.
- Goldwin, Robert A. "John Locke." In *History of Political Philosophy*, 3rd ed., edited by Leo Strauss and Joseph Cropsey, 476–511. Chicago: University of Chicago Press, 1987.
- Graber, Mark. *Rethinking Abortion: Equal Choice, the Constitution, and Reproductive Politics*. Princeton, NJ: Princeton University Press, 1996.
- Grotius, Hugo. *The Law of War and Peace*, 1625 [Classics of International Law 3, Volume 2, 1925]. Edited by James Brown Scott. Translated by Francis W. Kelsey, Arthur E. R. Boak, Henry A. Sanders, Jesse S. Reeves, and Herbert F. Wright. Oxford: Clarendon, 1925.
- Harbour, Frances V. "Basic Moral Values: A Shared Core." *Ethics and International Affairs* 9 (1995): 155–70.
- Hart, H. L. A. *The Concept of Law*. Oxford: Oxford University Press, 1961.
- . "Positivism and the Separation of Law and Morals." In *The Philosophy of Law*, edited by R. M. Dworkin. Oxford: Oxford University Press, 1977.
- Henkin, Louis. *The Age of Rights*. New York: Columbia University Press, 1990.
- . "The Universal Declaration and the U.S. Constitution." *PS.: Political Science and Politics* 31 (September 1998): 512–15.
- Howard, Rhoda E. *Human Rights and the Search for Community*. Boulder, CO: Westview, 1995.
- Ignatieff, Michael. "The Attack on Human Rights." *Foreign Affairs* (November/December 2001): 102–16.
- . *Human Rights as Politics and Idolatry*. Princeton, NJ: Princeton University Press, 2001.
- John Paul II. *Fides Et Ratio: On the Relationship Between Faith and Reason*. Boston: Pauline Books, 1998.
- . *The Gospel of Life: Evangelium Vitae*. New York: Random House, 1995.
- . *Mulieris Dignitatem: On the Dignity and Vocation of Women*. Boston: Pauline Books, 1988.
- . *Veritatis Splendor: The Splendor of Truth*. Boston: Pauline Books, 1993.
- Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen*. Philadelphia: University of Pennsylvania Press, 1998.

- Lessey, B. A. "Endometrial Receptivity and the Window of Implantation," *Baillieres Best Pract. Res. Clin. Obstet. Gynaecol.* October 2000. Available at http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11.
- Levi, Primo. *The Drowned and the Saved*. Translated by Raymond Rosenthal. New York: Summit Books, 1988.
- . *Survival in Auschwitz and The Reawakening: Two Memoirs*. Translated by Stuart Woolf. New York: Summit Books, 1986.
- Lewis, C. S. "The Abolition of Man." In *The Essential C. S. Lewis*, edited by Lyle W. Dorsett, 428–66. New York: Touchstone, 1988.
- . "Poems." In *The Essential C. S. Lewis*, edited by Lyle W. Dorsett, 416–23. New York: Touchstone, 1988.
- Locke, John. *Questions Concerning the Law of Nature 1664*. Edited and translated by Robert Horwitz, Jenny Strauss Clay, and Diskin Clay. Ithaca, NY: Cornell University Press, 1990.
- . *The Reasonableness of Christianity with A Discourse of Miracles and Part of A Third Letter Concerning Toleration*. Stanford, CA: Stanford University Press, 1958.
- . *Second Treatise of Government 1690*. Edited by C. B. Macpherson. Indianapolis, IN: Hackett, 1980.
- Machiavelli. *The Discourses*. Edited by Bernard Crick. Translated by Leslie J. Walker, S. J. London: Penguin, 1983.
- . *The Letters of Machiavelli*. Edited and translated by Allan Gilbert. Chicago: University of Chicago Press, 1961.
- . *The Prince*. Translated by Harvey C. Mansfield, Jr. Chicago: University of Chicago Press, 1985.
- McDonagh, Eileen. *Breaking the Abortion Deadlock: From Choice to Consent*. New York: Oxford University Press, 1996.
- Meron, Theodor. "On a Hierarchy of International Human Rights." *American Journal of International Law* 80 (1991): 1–23.
- Midgley, Mary. "Toward an Ethic of Global Responsibility." In *Human Rights in Global Politics*, edited by Tim Dunne and Nicholas J. Wheeler, 160–74. Cambridge: Cambridge University Press, 1999.
- Morsink, Johannes. *The Universal Declaration of Human Rights: Origins, Drafting and Intent*. Philadelphia: University of Pennsylvania Press, 1999.
- Mulgan, Richard. "Aristotle and the Value of Political Participation." *Political Theory* 18 (1990): 195–215.
- Nathanson, Bernard N., MD. *The Hand of God: A Journey from Death to Life by the Abortion Doctor Who Changed His Mind*. Washington, DC: Regnery, 1996.
- Nathanson, Bernard N., MD, and Richard N. Ostling. *Aborting America*. Garden City, NY: Doubleday, 1979.
- O'Manique, John. "Universal and Inalienable Rights: A Search for Foundations." *Human Rights Quarterly* 12 (November 1990): 465–85.
- Orentlicher, Diane F. "Relativism and Religion." In *Human Rights as Politics and Idolatry*, edited by Michael Ignatieff, 141–58. Princeton, NJ: Princeton University Press, 2001.
- Orwin, Clifford, and Thomas Pangle. "The Philosophical Foundation of Human Rights." In *Human Rights in Our Time: Essays in Memory of Victor Baras*, edited by Mark F. Plattner, 1–22. Boulder, CO: Westview, 1984.
- Pangle, Thomas L., and Peter J. Ahrens Dorf. *Justice among Nations: On the Moral Basis of Power and Peace*. Lawrence: University of Kansas Press, 1999.
- Panikkar, R. "Is the Notion of Human Rights a Western Concept?" In *Human Rights Law*, edited by Philip Alston, 161–88. New York: New York University Press, 1996.

- Parker, Karen, and Lyn Beth Neylon. "Jus Cogens: Compelling the Law of Human Rights." *Hastings International and Comparative Law Review* 12 (1989): 411–63.
- Perry, Michael. *The Idea of Human Rights: Four Inquiries*. New York: Oxford University Press, 1998.
- Pieper, Josef. *Abuse of Language—Abuse of Power*. Translated by Lothar Krauth. San Francisco: Ignatius, 1992.
- . *Happiness and Contemplation*. Translated by Richard and Clara Winston. South Bend, IN: St. Augustine's Press, 1998.
- Plato. *Four Texts on Socrates*. Translated by Thomas G. West and Grace Starry West. Ithaca, NY: Cornell University Press, 1984.
- . *The Laws of Plato*. Translated by Thomas L. Pangle. Chicago: University of Chicago Press, 1980.
- . *The Republic of Plato*. Translated by Allan Bloom. New York: Basic Books, 1968.
- Ponnuru, Ramesh. *The Party of Death*. Washington, DC: Regnary, 2006.
- Rahe, Paul A. *Republics Ancient and Modern*. Vol. 2, *New Modes and Orders in Early Modern Political Thought*. Chapel Hill: University of North Carolina Press, 1994.
- Rorty, Richard. "Human Rights, Rationality, and Sentimentality." In *On Human Rights: The Oxford Amnesty Lectures 1993*, edited by Stephen Shute and Susan Hurley, 111–34. New York: Basic Books, 1993.
- Salkever, Stephen G. *Finding the Mean: Theory and Practice in Aristotelian Political Philosophy*. Princeton, NJ: Princeton University Press, 1990.
- Schlueter, Nathan, and Robert Bork. "Constitutional Persons: An Exchange on Abortion." *First Things*, no. 129 (January 2003): 28–36.
- Schneewind, J. B. *The Invention of Autonomy*. Cambridge: Cambridge University Press, 1998.
- Schulz, William, Robin Fox, and Francis Fukuyama. "The Ground and Nature of Human Rights: Another Round." *The National Interest* 68 (Summer 2002): 113–24.
- Shaw, Malcom N. *International Law*. Cambridge: Grotius, 1991.
- Sikkink, Kathryn. "Transnational Politics, International Relations Theory, and Human Rights: A New Model of International Politics is Needed to Explain the Politics of Human Rights." *PS: Political Science and Politics* 31 (September 1998): 517–21.
- Sloane, Robert D. "Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Rights." *Vanderbilt Journal of Transnational Law* 34 (May 2001): 527.
- Smith, Wesley J. *Culture of Death: The Assault on Medical Ethics in America*. San Francisco: Encounter Books, 2000.
- Strauss, Leo. *The City and Man*. Chicago: University of Chicago Press, 1964.
- . *Natural Right and History*. Chicago: University of Chicago Press, 1950.
- Sylva, Douglas A., PhD. *The United Nations Children's Fund (UNICEF): Women or Children First*. White Paper Series Number Three. Catholic Family and Human Rights Institute International Organizations Research Group, 2003. Available at <http://fathersforlife.org/doc/c-fam-UNICEF.pdf>.
- Teson, Fernando. "International Human Rights and Cultural Relativism." *Virginia Journal of International Law* 25, no. 4 (1985): 869–98.
- The Merck Manual of Medical Information: Home Edition*. New Jersey: Merck Research Laboratories, 1997.
- Tuck, Richard. *Natural Rights Theories: Their Origin and Development*. Cambridge: Cambridge University Press, 1979.
- Twiss, Sumner B., Abdullah A. An-Nai'im, and Ann Elizabeth Mayer. "Universality versus Relativism in Human Rights." In *Religion and Human Rights*, edited by John Kelsay and Sumner B. Twiss, 30–59. New York: Project on Religion and Human Rights, 1994.

- 108th U.S. Congress, Session 1. House. *Congressional Record—Extension of Remarks*. "Documents Reveal Deceptive Practices by Abortion Lobby." Representative Christopher H. Smith. December 8, 2003. E2534–E2547.
- Waldron, Jeremy. *God, Locke and Equality: Christian Foundations in Locke's Political Thought*. Cambridge: Cambridge University Press, 2002.
- Weinreb, Lloyd. *Natural Law and Justice*. Cambridge, MA: Harvard University Press, 1987.
- Williams, Thomas. *Who Is My Neighbor? Personalism and the Foundations of Human Rights*. Washington, DC: Catholic University of America Press, 2005.
- Wilks, John, BPharm, MPS MACPP. "The Impact of the Pill on Implantation Factors—New Research Findings," *La Treve de Dieu*. Available at <http://www.trdd.org/ETHMEDE.HTM>.
- Zuckert, Michael P. *Natural Rights and the New Republicanism*. Princeton, NJ: Princeton University Press, 1994.

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