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Michael J. Perry

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PART ONE



THE MORALITY OF HUMAN RIGHTS

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

Regina Ammicht-Quinn¹

Richard Rorty, the leading postmodernist liberal theorist, . . . concedes that liberalism, once so jealous of its autonomy from Biblical faith, is in fact parasitic upon it. In his essay “Postmodern Bourgeois Liberalism,” he describes secular liberals like himself as “freeloading atheists.” They continue to rely on the Judeo-Christian legacy of concern with human dignity despite their rejection of the revealed truth that alone could support this concern. . . . For Rorty, God is dead but secularized Christian morality continues. This is precisely one of the scenarios envisaged by Nietzsche in *The Gay Science*: “God is dead, but given the way men are there may still be caves for thousands of years in which his shadow will be shown.” True, only 125 of those years have now passed, but on the evidence of Rorty’s thought, it’s hard to believe that this sort of shadow play still has centuries to run.

Clifford Orwin²

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1



The Morality of Human Rights

Notwithstanding their European origins, . . . [i]n Asia, Africa, and South America, [human rights now] constitute the only language in which the opponents and victims of murderous regimes and civil wars can raise their voices against violence, repression, and persecution, against injuries to their human dignity.

Jürgen Habermas¹

The name of my state of origin – Kentucky – has been said to derive from a Native American word meaning “a dark and bloody ground.”² An apt name for our century of origin is a dark and bloody time – indeed, *the* dark and bloody time: The twentieth century “‘was the bloodiest in human existence,’ . . . not only because of the total number of deaths attributed to wars – 109 million – but because of the fraction of the population killed by conflicts, more than 10 times more than during the 16th century.”³ The list of twentieth-century horrors, which plods on at mind-numbing length, includes much more than wars, however. As the century began, King Leopold II of Belgium was presiding over a holocaust in the Congo; it is estimated that between 1880 and 1920, as a result of a system of slave labor, the population of the Congo “dropped by approximately ten million people.”⁴ From 1915 to 1923, the Ottoman Turks, who were Muslim, committed genocide against the Armenian minority, who were Christian.⁵ Not counting deaths inflicted in battle, Stalin was responsible for the deaths of more than 42 million people (1929–53); Mao, more than 37 million (1923–76); Hitler, more than 20 million (1933–45), including more than 10 million Slavs and about 5.5 million Jews.⁶ One need only mention these countries to recall some more recent atrocities: Cambodia (1975–79), Bosnia (1992–95), Rwanda (1994).⁷ Sadly, this recital only scratches the surface.⁸ For an exhaustive and exhausting account of the grim

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details, one should consult the two-volume *Encyclopedia of Genocide*, which reports:

In total, during the first eighty-eight years of [the twentieth] century, almost 170 million men, women, and children were shot, beaten, tortured, knifed, burned, starved, frozen, crushed, or worked to death; buried alive, drowned, hanged, bombed, or killed in any other of the myriad other ways governments have inflicted deaths on unarmed, helpless citizens and foreigners. Depending on whether one used high or more conservative estimates, the dead could conceivably be more than 360 million people. It is as though our species has been devastated by a modern Black Plague.⁹

In the midst of the countless grotesque inhumanities of the twentieth century, however, there is a heartening story, amply recounted elsewhere:¹⁰ the emergence, in international law, of the morality of human rights. The morality of human rights is not new; in one or another version, the morality is very old.¹¹ But the emergence of the morality in international law, in the period since the end of World War II, is a profoundly important development: “Until World War II, most legal scholars and governments affirmed the general proposition, albeit not in so many words, that international law did not impede the natural right of each equal sovereign to be monstrous to his or her subjects.”¹² The twentieth century, therefore, was not only the dark and bloody time; the second half of the twentieth century was also the time in which a growing number of human beings the world over responded to the savage horrors of the twentieth century by affirming the morality of human rights.¹³ The emergence of the morality of human rights makes the moral landscape of the twentieth century a touch less bleak.

Although it is only one morality among many, the morality of human rights has become the dominant morality of our time. Indeed, unlike any morality before it, the morality of human rights has become a truly global morality; as the passage by Jürgen Habermas at the beginning of this chapter reflects, the language of human rights has become the moral lingua franca. Nonetheless, the morality of human rights is not well understood.

What does the morality of human rights hold? The International Bill of Rights, as it is informally known, consists of three documents: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.¹⁴ The Universal Declaration refers in its preamble to “the inherent dignity . . . of all members of the human family” and states in Article 1 that “[a]ll members of the human family are born free and equal in dignity and rights . . . and should act towards one another in a spirit of brotherhood.” The

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two covenants each refer in their preambles to “the inherent dignity . . . of all members of the human family” and to “the inherent dignity of the human person” – from which, the covenants insist, “the equal and inalienable rights of all members of the human family . . . derive.”¹⁵ As the International Bill of Rights makes clear, then, there is a twofold claim at the heart of the morality of human rights. The first part of the claim is that each and every (born) human being – each and every member of the species *homo sapiens sapiens*¹⁶ – has inherent dignity.¹⁷ The second part of the claim, which is implicit, is that the inherent dignity of human beings has a normative force for us, in this sense: We should live our lives in accordance with the fact that every human being has inherent dignity; that is, we should respect – we have conclusive reason to respect – the inherent dignity of every human being.

To say that every human being has *inherent* dignity is to say that the dignity that every human being has does not inhere in – it does not depend on – anything as particular as a human being’s “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁸ But to say this is not to say what the inherent dignity of every human being does depend on. What is the source, the ground, of this dignity – and of the normative force this dignity has for us? Why – in virtue of what – is it the case both that every human being has inherent dignity and that should we live our lives accordingly, that is, in a way that respects this dignity? (The International Bill of Rights is famously silent on this question. This is not surprising, given the plurality of religious and non-religious views among those who profess commitment to the Universal Declaration and the two covenants.¹⁹) I turn to this difficult, contested question in the next two chapters.

The twofold conviction that every human being has inherent dignity and that we should live our lives accordingly is so fundamental to the morality of human rights that when I say, in this book, “the morality of human rights,” I am referring to this conviction.

There is another way to state the conviction: Every human being has inherent dignity and is “inviolable”: not-to-be-violated.²⁰ According to the morality of human rights, if one’s reason for doing something to, or for not doing something for, a human being (call him Daniel) denies, implicitly if not explicitly, that Daniel has inherent dignity, one fails to respect Daniel’s inherent dignity; in that sense, one “violates” Daniel. (The Nazis explicitly denied that Jews had inherent dignity.²¹ Even if Bosnian Serbs did not explicitly deny that Bosnian Muslims had inherent dignity, they implicitly denied it: How else to understand what Bosnian Serbs did to Bosnian Muslims – the humiliation, rape, torture, and murder? In that sense, what Bosnian Serbs did to Bosnian

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Muslims constituted a practical denial – an existential denial – of the inherent dignity of Bosnian Muslims.) In the context of the morality of human rights, and therefore of this book, to say that (1) every human being has inherent dignity and we should live our lives accordingly (that is, in a way that respects this dignity) is to say that (2) every human being has inherent dignity and is inviolable: not-to-be-violated, in the sense of “violate” just indicated. To affirm the morality of human rights is to affirm the twofold claim that every human being has inherent dignity and is inviolable.

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2



The Morality of Human Rights: A Religious Ground

Only someone who is religious can speak seriously of the sacred, but such talk informs the thoughts of most of us whether or not we are religious, for it shapes our thoughts about the way in which human beings limit our will as does nothing else in nature. If we are not religious, we will often search for one of the inadequate expressions which are available to us to say what we hope will be a secular equivalent of it. We may say that all human beings are inestimably precious, that they are ends in themselves, that they are owed unconditional respect, that they possess inalienable rights, and, of course, that they possess inalienable dignity. In my judgment these are ways of trying to say what we feel a need to say when we are estranged from the conceptual resources we need to say it. Be that as it may: each of them is problematic and contentious. Not one of them has the simple power of the religious ways of speaking.

Where does that power come from. Not, I am quite sure, from esoteric theological or philosophical elaborations of what it means for something to be sacred. It derives from the unashamedly anthropomorphic character of the claim that we are sacred because God loves us, his children.

Raimond Gaita¹

As I explained in Chapter 1, the fundamental, twofold conviction at the heart of the morality of human rights holds that each and every (born) human being – each and every member of the species *homo sapiens sapiens* – has inherent dignity and is inviolable: not-to-be-violated. (Again, one violates a human being, according to the morality of human rights, if one's reason for doing something to, or for not doing something for, a human being denies, implicitly if not explicitly, that the human being has inherent dignity.) Now, the claim that every (born) human being has inherent dignity is controversial.² (The claim that every human being, unborn as well as born, has inherent dignity – which claim I address in Chapter 6, where I discuss abortion – is, of course,

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even more controversial.) Not everyone agrees that every human being has inherent dignity and is inviolable. Some believe that – or act as if, or both – no human being has inherent dignity. Others believe that – or act as if, or both – only some human beings have it: the members of one’s own tribe, for example, or of one’s own nation.³ The claim that every human being has inherent dignity and is inviolable needs to be defended. *Why* is it the case – *in virtue of what* is it the case – that every human being has inherent dignity and is inviolable?⁴

I want to sketch a religious defense of – a religious ground for – the conviction that every human being has inherent dignity and that we should live our lives accordingly. (Recall from the Introduction that the claim “every human being has inherent dignity and is inviolable” and the claim “every human being has inherent dignity and we should live our lives accordingly” are equivalent claims.) The ground I am about to sketch is certainly not the only religious ground for the morality of human rights. (A similar ground could be developed on the basis of Jewish materials,⁵ for example, or of Islamic materials.⁶) It is, however, the religious ground with which I am most familiar.

Let us imagine a religious believer named Sarah. Sarah affirms that every human being has inherent dignity and that we should live our lives accordingly. (For a reason that will soon be apparent, Sarah prefers to say that every human being “is sacred.” Nonetheless, for Sarah, each predicate – “has inherent dignity,” “is sacred” – is fully equivalent to the other; Sarah translates each predicate into the other without remainder.) In affirming this, Sarah affirms the morality of human rights. Predictably, Sarah’s affirmation elicits this inquiry: “Why – in virtue of what – does every human being have inherent dignity?” Sarah gives a religious explanation: Speaking the words of *The First Letter of John*, Sarah says that “God is love.” (“Whoever fails to love does not know God, because God is love.” 1 John 4:8.⁷ “God is love, and whoever remains in love remains in God and God in him.” 1 John 4:16.)⁸ Moreover, God’s act of creating and sustaining the universe is an act of love,⁹ and we human beings are the beloved children of God and sisters and brothers to one another.¹⁰ (As Hilary Putnam has noted, the moral image central to what Putnam calls the Jerusalem-based religions “stresse[s] equality and also fraternity, as in the metaphor of the whole human race as One Family, of all women and men as sisters and brothers.”)¹¹ Every human being has inherent dignity, says Sarah, because, and in the sense that, every human being is a beloved child of God and a sister/brother to every other human being.¹² Sarah is fully aware that she is speaking analogically, but that is the best anyone can do, she insists, in speaking about who/what God is¹³ – as in “Gracious God, gentle in your power and strong in your tenderness, you have

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brought us forth from the womb of your being and breathed into us the breath of life.”¹⁴

Sarah’s explanation provokes yet a further inquiry, an inquiry about the source of the normativity – the source of the “should” – in the claim that we *should* live our lives in a way that respects the inherent dignity of every human being: “Let’s assume, for the sake of discussion, that every human being has inherent dignity because, and in the sense that, every human being is a beloved child of God and a sister/brother to every other human being. So what? Why should it matter to me – to the way I live my life – that every human being has inherent dignity, that every human being is a beloved child of God and a sister/brother to me?” In responding to this important question about the source of normativity, Sarah – who “understands the authority of moral claims to be warranted not by divine dictates but by their contribution to human flourishing”¹⁵ – states her belief that the God who loves us has created us to love one another.¹⁶ (We are created not only to achieve union, in love, with one another; we are also created, Sarah believes, to achieve union, in love, with God. Sarah understands this state to be “not an ontological unity such that either the lover or the beloved ceases to have his own individual existence[, but rather] a unity at the level of affection or will by which one person *affectively* takes the other to be part of himself and the goods of the other to be his own goods.”)¹⁷ Given our created nature – given what we have been created *for* – the most fitting way of life for us human beings, the most deeply satisfying way of life of which we are capable, as children of God and sisters and brothers to one another, is one in which we embrace Jesus’s commandment, reported in John 13:34, to “love one another . . . just as I have loved you.”¹⁸ By becoming persons of a certain sort – persons who discern one another as bearers of inherent dignity and love one another as such – we fulfill our created nature.¹⁹ “We are well aware that we have passed over from death to life because we love our brothers. Whoever does not love, remains in death.” (1 John 3:14.)²⁰ Indeed, Sarah believes that in some situations, we love most truly and fully – and therefore we live most truly and fully – by taking the path that will probably or even certainly lead to our dying. “Greater love than this hath no man . . .”²¹

(Sarah also believes that the ultimate fulfillment of our created nature – which, she believes, is mystical union, in love, with God and with one another²² – can be neither fully achieved nor even fully understood in our earthly life.²³ “Now we see only reflections in a mirror, mere riddles, but then we shall be seeing face to face. Now, I can know only imperfectly; but then I shall know just as fully as I am myself known.” (I Corinthians 13:12.) But in our earthly life, Sarah believes, we can make an important beginning.)²⁴

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The “love” in Jesus’s counsel to “love one another” is not *eros* or *philia*, but *agape*.²⁵ To love another in the sense of *agape* is to see her (or him) in a certain way (that is, as a child of God and sister/brother to oneself) and, therefore, to act toward her in a certain way.²⁶ *Agape* “discloses to us the full humanity of others. To become properly aware of that full humanity is to become incapable of treating it with contempt, cruelty, or indifference. The full awareness of others’ humanity that love involves is an essentially motivating perception.”²⁷ The “one another” in Jesus’s counsel is radically inclusive: “You have heard how it was said, You will love your neighbor and hate your enemy. But I say this to you, love your enemies and pray for those who persecute you; so that you may be children of your Father in heaven, for he causes his sun to rise on the bad as well as the good, and sends down rain to fall on the upright and the wicked alike. . . . You must therefore set no bounds to your love, just as your heavenly Father sets none to his.” (Matthew 5:43–48.)²⁸

As it happens, Sarah embodies Jesus’s extravagant counsel to “love one another just as I have loved you.” She loves all human beings. Sarah loves even “the Other”: She loves not only those for whom she has personal affection, or those with whom she works or has other dealings, or those among whom she lives; she loves even those who are most remote, who are unfamiliar, strange, alien, those who, because they are so distant or weak or both, will never play any concrete role, for good or ill, in Sarah’s life. (“The claims of the intimate circle are real and important enough. Yet the movement from intimacy, and to faces we do not know, still carries the ring of a certain local confinement. For there are the people as well whose faces we never encounter, but whom we have ample means of knowing *about*. . . . [T]heir claims too, in trouble, unheeded, are a cause for shame.”)²⁹ Sarah loves even those from whom she is most estranged and toward whom she feels most antagonistic: those whose ideologies and projects and acts she judges to be not merely morally objectionable, but morally abominable. (“[T]he language of love . . . compels us to affirm that even . . . the most radical evil-doers . . . are fully our fellow human beings.”)³⁰ Sarah loves even her enemies; indeed, Sarah loves even those who have violated her, who have failed to respect her inherent dignity. Sarah is fond of quoting Graham Greene to her incredulous friends: “When you visualized a man or a woman carefully, you could always begin to feel pity. . . . When you saw the corners of the eyes, the shape of the mouth, how the hair grew, it was impossible to hate. Hate was just a failure of imagination.”³¹

Such love – such a state of being, such an orientation in the world – is, obviously, an ideal. Moreover, it is, for most human beings, an extremely demanding ideal; for many persons, it is also an implausible ideal.³² Why should anyone embrace the ideal? Why should anyone want to become

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(or to remain) such a person – a person who, like Sarah, loves even the Other? This is, existentially if not intellectually, the fundamental moral question for anyone: Why should I want to become the sort of person who makes the choices, who does the things, that I am being told I should make/do. And, in fact, Sarah's interlocutor presses her with this question: "Why should I want to become the sort of person who, like you, loves the Other? What reason do I have to do *that*?"³³ Because this is essentially the question about the source of the normativity in the claim that we should live our lives in a way that respects the inherent dignity of every human being, Sarah is puzzled; she thought that she had already answered the question. Sarah patiently rehearses her answer, an answer that appeals ultimately to one's commitment to one's own authentic well-being: "The most deeply satisfying way of life of which we are capable is one in which we 'love one another just as I have loved you.' By becoming persons who love one another, we fulfill – we perfect – our created nature and thereby achieve our truest, deepest, most enduring happiness."³⁴ Now it is Sarah's turn to ask a question of her interlocutor: "What further reason could you possibly want for becoming (or remaining) the sort of person who loves the Other?"

When he was deliberating about how to live, St. Augustine asked, "What does anything matter, if it does not have to do with happiness?" His question requires explanation, because he is not advising selfishness nor the reduction of other people to utilities, and even qualification, because other things can have some weight. All the same, the answer he expects is obviously right: only a happy life matters conclusively. If I had a clear view of it, I could have no motive to decline it, I could regret nothing by accepting it, I would have nothing about which to deliberate further.³⁵

A clarification may be helpful here. Does Sarah do what she does for the Other – for example, does she contribute to Bread for the World as a way of feeding the hungry – for a *self-regarding* reason? Does she do so, say, because it makes her happy to do so? She does not. (This is not to say that feeding the hungry doesn't make Sarah happy. It does. But this is not why she feeds the hungry.) Given the sort of person she is, the reason – the *other-regarding* reason – Sarah feeds the hungry is: "The hungry are my sisters and brothers; I love them." Now, a different question: Why is Sarah committed to being the sort of person she is, and why does she believe that everyone should want to be such a person? *Pace* Augustine, Sarah's answer to this question is self-regarding: "As persons who love one another, we fulfill our created nature and thereby achieve our truest, deepest, most enduring happiness."³⁶ According to Sarah, it is not individual acts of love that necessarily make one happy; it is, rather, becoming a person who loves the Other "just as I have loved you."