

Modernity and Its Religious Discontents: Religion and Public Reason

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OUR WORLD, lamented Weber, is “disenchanted.” Yet the rights talk of Pope John Paul II, Desmond Tutu, or Martin Luther King is hardly “godless and prophetless.” Nor, as Islam’s political resurgence reminds us, have the “ultimate and most sublime values” retreated from public life.¹ Here too religion is a stubborn inheritance. But what is the role of religious belief in complex, pluralist societies? Should religion disturb our undogmatic slumbers?

“What is the answer?” compels us to ask, like Gertrude Stein on her deathbed: “What is the question?” For we differ not only as to whether religion should figure in our public reason, but as to the very meaning of our differences.² In his magisterial treatise on justice, John Rawls effectively brackets religious belief under a “veil of ignorance.”³ But for Michael Sandel, Rawls’s gambit of assimilating religious belief to a set of “self-imposed” (or “self-authenticating”) preferences belies its meaning as religious⁴—in Paul Tillich’s words, a matter of “ultimate concern.”⁵

¹ Max Weber, “Science as a Vocation,” in *From Max Weber: Essays in Sociology*, trans. and ed. H. H. Gerth and C. Wright Mills (New York: Oxford Univ., 1946), pp. 148-55. See Peter Berger, “Secularism in Retreat,” in *Islam and Secularism in the Middle East*, ed. John L. Esposito and Assam Tamini (New York: New York Univ., 2000), pp. 38-51.

² See Kant, “What is Enlightenment?” trans. Peter Gay, in *The Enlightenment: A Comprehensive Anthology* (New York: Simon and Schuster, 1973), pp. 385-88. For Kant, “public reason” is principally that of the “scholar rationally addressing his public” (386). For John Rawls, “public reason” represents our “shared and public political reason.” See *Political Liberalism*, rev. ed. (New York: Columbia Univ. Press, 1996), pp. 9-11, 212-54; idem, “The Idea of Public Reason Revisited,” in *The Law of Peoples* (Cambridge MA: Harvard Univ. Press, 1999), pp. 129-80.

³ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge MA: The Belknap Press of Harvard Univ., 1999), pp. 118-23. In later writings, as we shall see, Rawls departs from such an “exclusive” conception in favor of an “inclusive,” and finally “wide” view of public reason.

⁴ Michael L Sandel, *Liberalism and the Limits of Justice*, 2d ed. (Cambridge: Cambridge Univ., 1998), pp. 192-93.

⁵ See Paul Tillich, *Systematic Theology*, vol. 1 (Chicago: Univ. of Chicago Press, 1951), pp. 11-15.

Such disputes, I believe, reflect what Hans-Georg Gadamer called the Enlightenment's "prejudice against prejudice"⁶—the Kantian belief that moral validity claims are independent of the ethical substance of tradition, including, *a fortiori*, religious traditions. Under the spell of modernity's disenchantment, we must, it seems, plump down for either the thin "politics of [universal] rights" (variations upon Kantian *Moralität*) or the thick tradition-dependent "politics of the common good" (Hegelian *Sittlichkeit*, albeit deprived of Reason's cunning).⁷ Yet such an antinomy, I argue in Section I, neglects what we *do* in public reasoning; and in particular, the rhetorical use of rights, e.g., in modern Roman Catholic social teaching or the American Civil Rights Movement. In Section II, I seek to show how Rawls's own arguments support a richer role for religion in the interpretation, motivation, and justification of such reasoning. And yet, as I argue in Section III, there remains a surplus of religious meaning, e.g., the "anamnesic solidarity" exhibited in Martin Luther King's "prophetic critique."

I. NEITHER THICK NOR THIN: THE ETHICS OF PUBLIC DISCOURSE

For Weber, the retreat of the "ultimate and most sublime" notions of the good left in its wake the fragmented values of a demystified polytheism, i.e., our differing, even irreconcilable ends. "The intrusion of reflection into life histories and cultural traditions," writes Jürgen Habermas, "has fostered individualism in personal life projects and a pluralism of collective forms of life."⁸ Far from being historically adventitious, the radical pluralism of our religious, philosophical, or moral doctrines is, in Rawls's words, "a permanent feature" of our democratic, political culture.⁹ For Kant's liberal heirs, the plurality of such traditions implies that political reason will be *common* (i.e., shared and public) only if we abstract from any comprehensive doctrine of the good.¹⁰

Our conception of justice, writes Rawls, "should be, as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm."¹¹ Under the veil of ignorance, Rawls's

⁶ See Hans-Georg Gadamer, *Truth and Method*, 2d. rev. ed., trans. Joel Weinsheimer and Donald Marshall (New York: Crossroad, 1991), p. 270. As Louis Dupré observes, "The Enlightenment's fight against [prejudices] stemmed itself from a prejudice and followed the Cartesian methodical rule that no position ought to be considered intellectually 'justified' before it was proven." *The Enlightenment and the Intellectual Foundations of Modern Culture* (New Haven: Yale Univ. Press, 2004), p. 10.

⁷ See Michael Sandel, "Introduction," in *Liberalism and Its Critics*, ed. Michael Sandel (New York: New York Univ. Press, 1984), pp. 4, 6, 10.

⁸ Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge MA MIT Press, 1996), p. 97. Cf. Rehg's splendid commentary, *Insight and Solidarity: A Study in the Discourse Ethics of Jürgen Habermas* (Berkeley: Univ. of California Press, 1994).

⁹ Rawls, *Political Liberalism*, p. 136.

¹⁰ Rawls, *A Theory of Justice*, pp. 485-86. Poor Ignatius of Loyola does not fare well here, being taken with Nietzsche as exemplifying moral fanaticism.

¹¹ Rawls, *Political Liberalism*, pp. 9-10. "In formulating such a conception," concludes Rawls, political liberalism applies the principle of toleration to philosophy itself." See Ronald Dworkin "Liberalism," pp. 113-43.

Kantian constructivism confines “nonpublic,” religious belief to the vestibule of such an inquiry; while Jürgen Habermas’s more comprehensive liberalism denies “higher or deeper” doctrines “any logical force on their own.”¹² For Habermas, the “secular sublation (*Aufhebung*) of ontotheology by the philosophy of history” demystifies the public sphere.¹³ And so too, for Robert Audi, only a purely “secular rationale” suffices for citizens’ motivation in advocating or supporting public policy.¹⁴

Still, what Weber once called the “grandiose fever” of religious ethics is far from spent.¹⁵ The disenchantment of Richard Rorty’s “post-modernist bourgeois liberalism” remains, in Rorty’s own terms, necessarily “local and ethnocentric.”¹⁶ Indeed, for critics of a communitarian stripe such as Alasdair MacIntyre or Michael Walzer, our very conception of justice derives from the fragmented ethical substance of our differing philosophical and religious doctrines. Harking back to the Romantic critique of the empty formalism of Kantian morality (*Moralität*), such theorists envision the self as constituted in the ensemble of social relations, the distinctive mores of Hegelian ethics (*Sittlichkeit*).¹⁷

For MacIntyre, the thinness of liberal tolerance is finally vacuous; our universal rights’ talk, in Bentham’s words, mere “rhetorical nonsense.”¹⁸ Inspired by MacIntyre’s retrieval of Aristotelian virtue, Stanley Hauerwas’s ecclesial ethics denies that there is any “universal ethic grounded in human nature *per*

¹² Rawls, “Reply to Habermas,” in *Political Liberalism*, p. 378.

¹³ Jürgen Habermas, “To Seek to Salvage an Unconditional Meaning without God Is a Futile Undertaking: Reflections on a Remark of Max Horkheimer,” in *Justification and Application: Remarks on Discourse Ethics*, trans. Ciaran Cronin (Cambridge MA: MIT Press, 1993), pp. 133-46, at 136. In Habermas’s words, “from religious truths, after the religious world views have collapsed, nothing more and nothing other than the secular principles of a universalist ethics of responsibility can be salvaged...” *Die neue Unübersichtlichkeit* (Frankfurt-am-Main: Suhrkamp, 1985), p. 52. Habermas subsequently qualifies this subscription of religion to the pastness of the past; see “Transcendence from Within, Transcendence in this World,” in Habermas, *Religion and Rationality: Essays on Reason, God, and Modernity* (Cambridge MA: MIT Press, 2002), pp. 67-94.

¹⁴ Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge Univ. Press, 2000), pp. 86-100. In Audi’s words, “one has a (prima facie) obligation to abstain from advocacy or support of a law or public policy that restricts human conduct, unless in advocating or supporting it one is sufficiently motivated by (normatively) adequate secular reason” (p. 96).

¹⁵ Weber, “Science as a Vocation,” 148ff.

¹⁶ Richard Rorty, “The Priority of Democracy to Philosophy,” in *The Virginia Statute of Religious Freedom: Two Hundred Years After*, ed. Robert Vaughan (Madison: Univ. of Wisconsin Press, 1988), p. 259. Cf. Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge Univ. Press, 1989), p. 45.

¹⁷ Cf. Hegel’s criticism of Kantian *Moralität* in the *Philosophy of Right* (*Hegel’s Philosophy of Right*), trans. T. M. Knox (Oxford: Oxford Univ. Press, 1952), par. 135. In postmodern criticism, however, tradition exhibits no ontological *telos*.

¹⁸ Bentham, *Anarchical Fallacies*, p. 523. See Alasdair MacIntyre, *After Virtue*, p. 69.

se,”¹⁹ while other, less sectarian critics seek a distinctively religious interpretation of rights. For Michael Perry, the very idea of human rights is “ineliminably religious”; while, in a similar vein, Max Stackhouse, grounds human rights in “transcendent moral laws.”²⁰

The issue is thus joined. Is the most reasonable doctrine a thin public morality, e.g., a “moral Esperanto” of rights? Or as Walzer urges, must we concede that “morality is thick from the beginning, culturally integrated” in particular narrative traditions?²¹ Or may we discern yet a third possibility, a *via media* neither thick nor thin? Such, I will argue, is the heritage of modern Roman Catholic social teaching, echoed, I believe, in the rhetoric of the South African Truth and Reconciliation Commission (TRC) and the American Civil Rights Movement. (Roman Catholic social teaching commends itself in such a reconstructive inquiry since it offers one of the most systematically developed *theological* interpretations of human rights. Moreover, as we shall see, developing magisterial doctrine, together with King’s legacy, inspired Rawls’s own revised, “wide view” of public reason which we consider below.)

From its inception with Leo XIII’s epochal encyclical, *Rerum novarum* in 1891, modern Roman Catholic social teaching defended a rich, religiously inspired doctrine of the common good (the *bonum commune* of the medieval schoolmen). Only later would the modern rhetoric of human rights—through the travails of John Courtney Murray in particular—be grafted onto the tradition, most notably in John XXIII’s *Pacem in terris* and the Conciliar texts, *Gaudium et spes* and *Dignitatis humanae*.²² In a characteristically irenic turn, Pope John resolves the seeming antinomy of rights and the common good by stipulative fiat. *Pacem in terris* glosses the pre-modern teleology of *Mater et magistra* (depicting the common good as “the sum total of those conditions of social living, whereby [we] are enabled to achieve [our] own integral perfection”²³) in deontological terms of human rights: “It is agreed that in our time the common good is chiefly guaranteed when personal rights and duties are maintained.”²⁴

Limited internally by the like dignity or intrinsic worth of others, liberty is positively oriented to good

¹⁹ Stanley Hauerwas, *The Peaceable Kingdom* (South Bend IN: Univ. of Notre Dame Press, 1983), pp. 60-61.

²⁰ Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford Univ. Press, 1998), pp. 11-41; Max Stackhouse, “Human Rights and Public Theology,” in Gustafson and Juviler, *Religion and Human Rights*, p. 13.

²¹ Walzer, *Thick and Thin*, pp. 7, 4.

²² Cf. *Pacem in terris*, #53-66, 132-41; *Gaudium et spes*, #25f., 30; *Dignitatis humanae*, #6-7; *Populorum progressio*, # 22-24, 43-75; *Sollicitudo rei socialis*, #38-40. See David Hollenbach, *The Common Good and Christian Ethics* (Cambridge: Cambridge Univ. Press, 2002); Charles Curran, *Catholic Social Teaching: A Historical, Theological, and Ethical Analysis* (Washington, D.C.: Georgetown Univ. Press, 2002).

²³ *Mater et magistra*, #65.

²⁴ *Pacem in terris*, #60. The statement continues: “The chief concern of civil authorities must therefore be to ensure that these rights are acknowledged, respected, coordinated with other rights, defended and promoted, so that in this way each one may more easily carry out his duties. For ‘to safeguard the inviolable rights of the human person, and to facilitate the fulfillment of his duties, should be the chief duty of every public authority’.” Such a rights-based interpretation permits Pope John to extend the common good globally in *Pacem in terris* #139. See Radio Message of Pius XII, Pentecost, June 1, 1941, AAS XX-XIII, 1941, p. 200; cf. *Gaudium et spes* #26, and *Dignitatis humanae* #6.

of moral community as, in Jacques Maritain's words, "a whole composed of wholes,"²⁵ i.e., neither an artifice of interest, as in liberal contractarian thought, nor the "local and ethnocentric" hypostasis of communitarian mores. We realize the limited good of moral community in which all share singly, not en masse, when the "inviolable rights of the human person" are preserved in what John Courtney Murray defines as "public order."²⁶ In the Church's modern social teaching, the mundane common good is thus "chiefly guaranteed" in the institutional protection of rights presumed in the "worthy persuasion" of free and equal citizens.²⁷

One might, of course, dismiss the Church's belated rapprochement with modernity as, in Rorty's words, "merely quaint."²⁸ But there is, I believe, a rich vein to be mined in Pope John's teaching.²⁹ Let me elaborate. I have argued elsewhere, pace Bentham, that the "sense" of rights rests precisely in their suasive, rhetorical force.³⁰ My *rights*, that is, warrant a set of intersubjectively valid (legitimate) claims. *Human* claim-rights, in turn, show forth our respect for what the Universal Declaration calls the "dignity and worth of the human person"; while *basic* human rights preserve the conditions (or capabilities) of practically rational agency.³¹ For in ascribing worth, rather than mere price to persons as agents, we implicitly valorize the prerequisites of their exercising agency, i.e., not only our negative, civil liberties, but basic security and subsistence—the social and economic claim-rights upheld by the encyclical tradition.³²

In exhibiting the banality of goodness rather than "the ultimate and most sublime values" of our

²⁵ Jacques Maritain, "The Person and the Common Good," *The Social and the Political Philosophy of Jacques Maritain*, ed. Joseph W. Evans and Leo R. Ward (New York: Charles Scribner's Sons, 1955), p. 85.

²⁶ See John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), pp. 155-74. Cf. Murray, "Memo to Cardinal Cushing concerning Contraception Legislation," in Leon Hooper, ed. *Bridging the Sacred and the Secular: Selected Writings of John Courtney Murray, S.J.* (Washington, D.C.: Georgetown Univ. Press, 1994), pp. 81-86.

²⁷ See *Dignitatis humanae* #4. "Positive," correlative duties to preserve and protect agents' basic capabilities (the objects of basic rights) generate such structural imperatives, e.g., the state's obligation to guarantee citizens' basic welfare. See Gewirth, *The Community of Rights*, pp. 106-65.

²⁸ Rorty, *Contingency, Irony, and Solidarity*, p. 45.

²⁹ See David Hollenbach, "A Communitarian Reconstruction of Human Rights: Contributions from Catholic Tradition," in *Catholicism and Liberalism: Contributions to American Public Philosophy*, ed. R. Bruce Douglas and David Hollenbach (Cambridge: Cambridge Univ., 1994), pp. 127-50.

³⁰ See "The Children of Babel: Reconstructing the Common Good," in the *Annual* of the Society of Christian Ethics (1998), pp. 161-76.

³¹ "Universal Declaration of Human Rights," in Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), p. 310.

³² See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton Univ. Press, 1980), pp. 5-87. Alan Gewirth terms these "the generic goods of agency," inasmuch as they are presupposed in any reasonable conception of flourishing or perfection. See Gewirth, *Human Rights* (Chicago: Univ. of Chicago Press, 1982), pp. 41-78. Cf. Alan Gewirth, *The Community of Rights* (Chicago: Univ. of Chicago Press, 1996), pp. 31-70.

comprehensive doctrines, basic human rights, we might say, are the grammar of our practical (rational) rhetoric³³—what Aristotle called “reasoned speech.”³⁴ Rights rhetoric is not only subsumed in diverse ideologies or varied narrative traditions. In Andrey Sakharov’s words, “the ideology of rights” can “serve as a foothold for those...who have tired of the abundance of ideologies, none of which have brought...simple human happiness.” The defense of human rights, says Sakharov, “is a clear path toward the unification of people in our turbulent world, and a path toward the relief of suffering.”³⁵

Neither a thin, abstract metanarrative as in Rawls’s “Kantian Constructivism,”³⁶ nor a culturally determined, thick narrative, as in Alasdair MacIntyre’s neo-Aristotelian critique,³⁷ rights rather configure/refigure our narrative (*sittliche*) traditions, as in the critique of apartheid.³⁸ Our well-formed narratives, we may say, thus comprise a family of language-games, which, as such, are not rigidly limited but open-textured.³⁹ And it is just this open-textured, family resemblance (in the properly circumstantial instantiation of a rights regime) that permits us to speak of a common, civic good as the end or discursive *telos* of our *shared*, political reasoning.⁴⁰

As grammar vanishes into speech, so the logic of rights is expressed in what is concrete and particular, e.g., the religiously inspired practice of the South African Truth and Reconciliation Commission (TRC). And yet discerning such family resemblance in the political discourse of complex, pluralist societies, presumes our first seeing the families aright—I cannot begin with the abstract idea of my relatives and proceed to construct my extended family. To paraphrase Kant, grammar without language is empty; language without knowledge of grammar is blind. We do not, after all, speak grammar but grammatically, so that the grammar of rights must be narratively embodied, or in Kantian terms, schematized, as King’s rights rhetoric in his

³³ See Ludwig Wittgenstein, *Philosophical Investigations*, third edition, trans. G. E. M. Anscombe (New York: Macmillan, 1958), pt. 1, pars. 497, 664.

³⁴ Aristotle, *Politics* 1253a9ff. “Nature...does nothing without some purpose; and for the purpose of making man a political animal she has endowed him alone among the animals with the power of reasoned speech....Speech....serves to indicate what is useful and what is harmful, and so also what is right and what is wrong.” Aristotle, *The Politics*, trans. T. A. Sinclair (New York: Penguin, 1962), p. 28. We may translate *logos* as “argument” in practical discourse (cf. NE 1094b13, 1095a30, 1104a1).

³⁵ Andrey Sakharov, as quoted in Burns H. Weston, “Human Rights,” in *Human Rights in the World Community: Issues and Action*, ed. Richard Pierre Claude and Burns H. Weston, 2nd ed. (Philadelphia: Univ. of Penn. Press, 1992), p. 30.

³⁶ See Rawls, *Political Liberalism*, pp. 88-129.

³⁷ See MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: Univ. of Notre Dame Press, 1988), pp. 88-145, 326-403.

³⁸ Cf. Paul Ricoeur’s threefold *mimesis*, *Time and Narrative*, vol. 1, trans. Kathleen McLaughlin and David Pellauer (Chicago: Univ. of Chicago Press, 1984), pp. 52-87.

³⁹ Wittgenstein, *Philosophical Investigations*, pt. 1, pars. 68, 179.

⁴⁰ Public *reasoning* is thus an exercise of prudential (phronetic), rather than merely technical rationality, even as we parse public reasoning’s *telos* in terms of agents’ basic human rights.

“Letter from Birmingham City Jail.”⁴¹ For only as schematized in our narratives is the complex interplay of rights and correlative duties exhibited as coherent (integral and comprehensive) rhetorical practice.⁴² And as in any natural language, the relation of grammar and narrative remains vital—our sense of civil rights is not fixed *in abstracto*, but forged in the narrative history of their application, e.g., in the civil rights movement.

II. RE-ENCHANTING THE PUBLIC SPHERE

In his most recent writing, Rawls concedes as much. Inspired by King’s legacy, Rawls relaxes the strictures of his earlier “method of avoidance.”⁴³ His revised or “wide view” of public reason now permits reasonable (religious) comprehensive doctrines to “be introduced in public reason at any time,” provided that public reasons, in accordance with the duty of civility, are duly presented.⁴⁴ Thus while “the wide view of public political culture” permits us, says Rawls, to introduce “the familiar story of the Good Samaritan,” his “proviso” bids us “justify our proposal in terms of proper political values.”⁴⁵ And yet, we have seen, such values are not given as a moral Esperanto. Public reasons are rather the currency of “what we do” in public reasoning in which distinctive religious beliefs figure, i.e., in the interpretation, motivation, and justification of rights claims. Consider, then, Luke’s familiar story.

Interpretation

The parable, we recall, is prompted by the lawyer’s question “who is my neighbor?” following upon his

⁴¹ Kant describes the schema of a concept as “a rule for the synthesis of the imagination,” i.e., a rule linking concepts (*a posteriori* or *a priori*) to perception (*Critique of Pure Reason*, 135, B 81). In practical reasoning, this synthetic role is played by the “type” of pure, practical judgments, i.e., a realm or kingdom of ends (*Critique of Practical Reason*, 68-71). By analogy, the ideal of a well-formed narrative schematizes the grammar of rights by specifying correlative duties and hence generating particular action-descriptions. Construed thus, the kingdom of ends is not a type for the abstract, ahistorical subject, but historicized, concretely in social narrative.

⁴² The schematization of a rights regime, we may say, will be integral if it reflects the relative priority or weight of rights claims in relation both to other rights and non-rights claims; and comprehensive if it honors all pertinent claim-rights (negative and positive).

⁴³ John Rawls, “The Idea of an Overlapping Consensus,” *Oxford Journal of Legal Studies* 7 (1987): 1-25, at 12-13; *Political Liberalism*, pp. 9-11, 150-54.

⁴⁴ The ideal of public reason, and the duty of civility it implies, is realized whenever judges, legislators, chief executives, and other government officials, as well as citizens, viewed as “ideal legislators,” explain to other citizens “their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable.” Political conceptions are reasonable only if they satisfy the criterion of reciprocity: our exercise of political power is proper “only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions.” (*Political Liberalism*, pp. xlviff., 217f.; “The Idea of Public Reason Revisited,” pp. 135-37.)

⁴⁵ Rawls, *Political Liberalism*, pp. li-iii; “The Idea of Public Reason Revisited,” pp. 144, 146. For an analogous argument, see Kent Greenawalt, *Religious Conviction and Political Choice* (New York: Oxford Univ. Press, 1988).

“reading of the law... ‘You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and our neighbor as yourself’” (Lk. 10: 26-7). The “exemplary narrative,” writes Wolfgang Schrage, “shows that the obligation to love has no limits: love does not reach a boundary beyond which nothing is required.” For “love does not follow the dictates of convention and prejudice but dares to ignore them, dares with sovereign freedom to surmount the barriers that separate people. A person who loves can see in anyone a neighbor in need.”⁴⁶ Not even our enemy (as Samaritans were for Jews) is beyond the pale of agape.

Now, in their pastoral letter on the economy, the U.S. Roman Catholic bishops introduce the Gospel story as an exemplary narrative of the “dual command of love that is at the basis of all Christian morality.” Enjoining “mutual care and respect” for the dignity or “sacredness of every person as a creature formed in the image and likeness of God,” such neighbor-love, in turn, is “made real” in redeeming persons’ fundamental rights. For such basic rights to security, subsistence, and civil liberties, say the bishops, are “the prerequisites for a dignified life in community.”⁴⁷

In their modern-day reading of the law, the bishops, in Rawls’s words, manifest their allegiance to “the democratic ideal of public reason.” For in satisfying the Rawlsian proviso, the bishops *ratify* their “commitment to constitutional democracy” and the duty of civility—political virtues, says Rawls, upon which our overlapping consensus depends.⁴⁸ But showing their allegiance is not logically antecedent to, or independent of public reasoning—it is just what citizens, including citizens of faith, do in realizing “the democratic ideal.” We may, that is, distinguish, without separating, public reasons (the propositional content of claim-rights) from public reason (the rhetorical practice of claim-making) manifesting the political virtues rooted in our comprehensive doctrines.

Satisfying the Rawlsian proviso attests, then, to the family resemblance of our reasonable comprehensive doctrines, whether sacred or secular—what the Universal Declaration calls our common “faith in fundamental human rights, in the dignity and worth of the human person.”⁴⁹ And yet, such satisfaction may be implicit, as in King’s “Letter from Birmingham City Jail,” in which civic and religious narratives are intertwined, or even symbolic, as when “young ministers of the gospel and a host of their elders” engaged in nonviolent resistance.⁵⁰ Religious literacy—what Rawls calls “the mutual knowledge of citizens’ recognizing one

⁴⁶ Wolfgang Schrage, *The Ethics of the New Testament*, trans. David E. Green (Philadelphia: Fortress, 1988), pp. 74, 76.

⁴⁷ U.S. Catholic Bishops, “Economic Justice for All,” in *Catholic Social Thought: The Documentary Heritage*, ed. David J. O’Brien and Thomas A. Shannon (Maryknoll NY: Orbis Books, 1992) #43, 68, 79.

⁴⁸ Rawls, “The Idea of Public Reason Revisited,” pp. 153-54, 157; *Political Liberalism*, pp. xlii-li; Rawls, “The Idea of an Overlapping Consensus,” p. 17; “The Idea of Public Reason Revisited,” p. 157.

⁴⁹ “Universal Declaration of Human Rights,” 310.

⁵⁰ Martin Luther King, “Letter from Birmingham City Jail,” in *A Testament of Hope: The Essential Writings of Martin Luther King, Jr.*, ed. James Melvin Washington (San Francisco: Harper and Row, 1986), pp. 289-302, at 302. In King’s words, “One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo-Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the

another's reasonable comprehensive doctrines"⁵¹—permits us to interpret the family resemblance aright, guarding against misreadings, as of King's nonviolent resistance or *jihad* in Islam.

Neither is such mutual recognition morally nugatory. For disenchanting the public sphere, e.g., as envisioned by Rorty, tacitly abets the extremes of religious quietism and fanaticism—the former, as in King's or Tutu's critique, by absolving religion of its public role, the latter by divesting its public role of logical force. Invoking religious wisdom, precisely as religious, moreover, guards against investing the State with quasi-idolatrous ultimacy—surreptitiously sacralizing civic discourse. And so the benefits of citizens' mutual knowledge of the comprehensive religious doctrines in which such allegiance is rooted, says Rawls, “bring out a positive ground for introducing such doctrines”—one finally irreducible to mere “self-imposed” or “self-authenticating” preferences.⁵²

As King's words testify, however, such positive grounds are not restricted merely to ratifying a prevailing consensus—for as Rawls says, “the content of public reason is not fixed”—our public reasoning may be distorted, even systematically so.⁵³ Introducing the Gospel story reminds us how the dictates of convention and prejudice conspire against our heeding what King called the “deep groans and passionate yearnings of those that have been oppressed.”⁵⁴ For in the Gospel story, impartial regard for my neighbor's rights justifies preferential attention for my neighbor in distress. The narrative of the Good Samaritan reveals the boundless, universal scope of love precisely in enjoining a moral solidarity with those who suffer.⁵⁵ Thus the lesson that our moral entitlement to equal respect or consideration justifies preferential treatment for those whose basic rights are most imperiled⁵⁶—in Camus's phrase, our taking “the victim's side.”⁵⁷

In the Church's preferential option for the poor, “seeing and having compassion” (Lk. 10: 33) both illumines the occasion of acting, and inspires appropriate institutional redress where the victim is legion—Jon Sobrino's words, “a whole suffering people on the way.”⁵⁸ For if, as Rawls avers, we regard ourselves as all

Declaration of Independence.”

⁵¹ Rawls, “The Idea of Public Reason Revisited,” p. 154.

⁵² Rawls, “The Idea of Public Reason Revisited,” p. 154.

⁵³ Rawls, *Political Liberalism*, p. liii.

⁵⁴ Schrage, *The Ethics of the New Testament*, p. 74; King, “Letter from Birmingham City Jail,” p. 298.

⁵⁵ Schrage, *The Ethics of the New Testament*, pp. 78, 81.

⁵⁶ See Gene Outka, *Agape* (New Haven: Yale Univ. Press, 1972), p. 20. Cf. Ronald Dworkin, *Taking Rights Seriously* (Cambridge MA: Harvard Univ. Press, 1978), p. 227.

⁵⁷ Albert Camus, *The Plague* (New York: Alfred A. Knopf, 1960), p. 230.

⁵⁸ Jon Sobrino, “Companions of Jesus” in *Companions of Jesus: The Jesuit Martyrs of El Salvador* (New York: Orbis, 1990), p. 13. In King's words, “One day we must come to see that the whole Jericho road must be transformed so that men and women will not be constantly beaten and robbed as they make their journey on life's highways. True compassion is more than flinging a coin to a beggar...It comes to see that an edifice which produces beggars needs restructuring.” (“A Time to Break Silence,” in *A Testament of Hope*, pp. 231-44, at 241.)

equally worthy of being represented, then the claims of those denied such recognition, often through systemic suppression of their basic rights, become morally exigent.⁵⁹ “[O]ur God is a God who has a bias for the weak,” says Tutu,

and we who worship this God, who have to reflect the character of this God, have no option but to have a like special concern for those who are pushed to the edges of society, for those who because they are different seem to be without a voice.⁶⁰

So it is, “passing to the victims’ side” (Lk. 10:34), i.e. seeing the victims’ point of view (their epistemic or hermeneutical privilege), emerges as a touchstone of the legitimacy of our prevailing institutional arrangements; only thus can we offer an equitable assessment of our legal enactments, juridical decisions, economic policies, etc.⁶¹ For at issue is not merely a fair, consensual arrangement of inequalities, e.g. Rawls’s difference principle, but the fairness or impartiality of the consensus itself, i.e. citizens’ equitable representation in their common social institutions.

Luke’s familiar story becomes the “moral squint”⁶² through which Christians see (Lk. 10:30) and respond compassionately (Lk. 10:33), lest like the priest and Levite of the tale, “members of the oppressor race” too readily “see and pass by” (Lk 10:32-32). Indeed, where political values are distorted, realizing the ideal of public reason, may, in Rawls’s words, “require that [religious] comprehensive reasons be invoked,”⁶³ i.e., reasons distinctively, though not uniquely religious. Just as rights, then, play a critical role in re-figuring religious narratives, e.g., in condemning apartheid as heresy, so religious comprehensive reasons con-figure our public reasoning. In his prophetic critique, King and Tutu implicitly satisfy the Rawlsian proviso by *revising* public reasons. And in our own day, the Catholic bishops invoke the parable in their brief for a “new cultural consensus” regarding the mutually implicative, basic economic rights of the poor.⁶⁴

Familiar tales in other religious traditions, of course, serve no less to schematize basic rights rhetoric, so that Christian, Muslim, or Jew “do likewise” (Lk. 10:37)—the family resemblance (or overlapping consensus) of their stories supporting an integral and comprehensive culture of rights. For interpreted thus, our religious doctrines and their institutional mediation nurture the *habitus* of rights, disposing us to see our

⁵⁹ See Rawls’s appeal to the Gospel parable as supporting “a special concern for the poor, as in the Catholic social doctrine.” “The Idea of Public Reason Revisited,” p. 155, n. 55.

⁶⁰ Tutu, *God Has a Dream*, p. 66.

⁶¹ In Ricoeur’s words, the “parable does not relieve me of the responsibility of answering this question: what does the concept of ‘neighbor’ mean in the present situation? This may be to justify an institution, amend an institution, or criticize an institution.” Paul Ricoeur, “The Socius and the Neighbor” in *History and Truth*, trans. Charles A. Kelbley (Evanston: Northwestern University, 1965), p. 105.

⁶² The phrase “moral squint” is drawn from Robert Bolt, *A Man for All Seasons* (New York: Random House, 1990) 19.

⁶³ Rawls, *Political Liberalism*, p. 251, n. 41 (emphasis added).

⁶⁴ U.S. Catholic Bishops, “Economic Justice for All,” #43, 64-68, 79.

“neighbor, the masses,”⁶⁵ and to respond by redeeming their basic rights, especially where they are most imperilled. Religious traditions enrich our civic *paideia* (what Martha Nussbaum calls our “civic imagination”), just as they remind us of lacunae in our civic practices.⁶⁶ And thus, to the positive roles played by religious reason in ratifying and revising our proper political values, we note yet a third; for the religious schematization of rights guides us in their practical *application*.

The grammar of rights, after all, is not self-interpreting (as warrants, rights justify, but do not fully explain or rationalize action). Redeeming my claim-right that you do, or refrain from doing A, presumes the morally relevant description of A. But that A *is* rightly described, e.g., as redeeming my claim-rights to civil liberty, is not given *tout court*. Moral perceptions must be tutored, e.g., by the spirituals of the civil rights movement. For only against the rich religious backdrop of “the Negro Churches” did the putative selfevidence of rights appear. Here, says King, religious stories and tropes inspired the “strong, persistent, and determined action” warranted by basic rights.⁶⁷

As in the civil rights movement or the TRC, religious wisdom enriches reason’s interpretive repertory. A heritage of nonviolent resistance or the rituals of social reconciliation model culturally fitting schematizations of basic rights—and, in particular, the positive duties of institutional protection and provision implied by a rights regime. Considerable variations may, of course, be wrung on these themes—the American civil rights movement inspired civil resistance against apartheid in South Africa, just as Ghandi’s *ahimsa* inspired King. But the culturally integrated embodiment of a rights regime precludes simple emulation. We cannot avoid the properly hermeneutical question of how, in a particular setting, the common good is best realized—how the *habitus* of rights is nurtured, e.g., in a modern Muslim polity.

Basic rights, after all, presume citizens’ effective participation, not only in the implementation of policy, but in the design of society’s basic structure. Religiously affiliated institutions of civil society play a notable role, both in promoting a culturally fitting ethos of rights, and in generating the social capital expended in their defense.⁶⁸ In neither case is religion merely epiphenomenal to public reason—as Walzer might say, public reason is thick (in invoking religious wisdom) before it is thin (redeeming proper political values).

“[C]itizens of faith who cite the Gospel parable of the Good Samaritan,” says Rawls, “do not stop there, but go on to give a public justification for the parable’s conclusions in terms of political values.”⁶⁹ And yet, satisfying the Rawlsian proviso, we have seen, not only ratifies prevailing political values, for these are not given *a priori*, as a final metavocabulary of rights. Our reading of the law may itself be revised, even as rights talk is schematized in going and doing likewise, e.g., in the non-violent mobilization of the black Churches.

⁶⁵ M.-D. Chenu, “*Les masses pauvres*,” in G. Cottier et al. *Eglise et pauvreté* (Paris: Cerf, 1965), pp. 169-76, at 169.

⁶⁶ Martha Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Cambridge MA: Harvard Univ. Press, 1997), p. 88.

⁶⁷ King, “Letter from Birmingham City Jail,” pp. 297-98.

⁶⁸ See Robert Putnam, “The Prosperous Community: Social Capital and Public Life,” *American Prospect* 13 (1993); and “Bowling Alone: America’s Declining Social Capital,” *Journal of Democracies* 6 (1995); and Jerome Baggett, *Habitat for Humanity: Building Private Homes, Building Public Religion* (Philadelphia: Temple Univ. Press, 2001).

⁶⁹ Rawls, “The Idea of Public Reason Revisited,” p. 155.

King, like the U.S. bishops, “goes on” under the rubrics of a deliberative, rather than vacuous tolerance, i.e., through what David Hollenbach felicitously terms “intellectual solidarity.”⁷⁰ For if, as citizens of *faith*, their religious wisdom moves them to see and have compassion, so as *citizens* of faith, their rights rhetoric addresses the “unfinished business in the American experiment in freedom and justice for all.”⁷¹

We may speak, then in summary, of a religious/moral dialectic in which distinctive religious traditions support the discursive finality of the common good, i.e., the set of fitting civic virtues and institutional arrangements best suited to redeem agents’ basic human rights. Religious, as other narrative traditions, are not merely relegated to the background culture as private or nonpublic preferences.⁷² Nor, as Rorty insists, is the price of religious liberty religion’s privatization in a disenchanted public sphere.⁷³ For only with religious literacy (which includes what Rawls calls declaration, conjecture, and witness) do we fully ratify, revise, and apply the grammar of the common good.⁷⁴ Yet precisely so, the reverse moral/religious dialectic tempers the *telei* of our particular narrative traditions, so that the learning is mutual.

Motivation

In response to his critics, Archbishop Desmond Tutu remarked that “[v]ery few people objected to the heavy spiritual, and indeed Christian, emphasis on the [Truth and Reconciliation] Commission.... It meant that theological and religious insights and perspectives would inform much of what we did and how we did it.”⁷⁵ In the preceding section, I argued that such theological and religious perspectives serve to schematize

⁷⁰ See Hollenbach, *The Common Good and Christian Ethics*, p. 168. What Rawls calls “the reasonable”, says Hollenbach, is “forged in the interaction that forms the rich give-and-take among the diverse communities that form culture and civil society, including religious communities.” Hollenbach cites the leadership of Rev. Martin Luther King in the civil rights movement as illustrating the “constant symbiosis and mutual influence” of faith and public reason (pp. 168-69). Cf. Hollenbach, *The Global Face of Public Faith: Politics, Human Rights, and Christian Ethics* (Washington, D.C.: Georgetown Univ. Press, 2003); Michael L Sandel, *Liberalism and the Limits of Justice*, pp. 216ff.

⁷¹ U.S. Catholic Bishops, “Economic Justice for All,” #9, cf. #20-22.

⁷² Cf. Michael J. Perry, *Morality, Politics, and Law: A Bicentennial Essay* (New York: Oxford Univ. Press, 1988); Perry, *The Role of Religion in American Politics* (New York: Oxford Univ. Press, 1991). Cf. also Robin Lovin, “Perry, Naturalism, and Religion in Public,” *Tulane Law Review* 63 (1989): 1517-39.

⁷³ Richard Rorty, “Religion as a Conversation-Stopper,” *Common Knowledge* 3 (1994): 3.

⁷⁴ Rawls, “The Idea of Public Reason Revisited,” pp. 155-56. The consensual reciprocity of civility entails our interpretation of comprehensive religious doctrines, e.g., the witness of Christian nonviolence, which need not themselves be reciprocally justified. Here too, the general hermeneutical maxim holds of interpreting the part (schematized rights) in terms of the whole (comprehensive doctrine). Cf. Lovin, “Perry, Naturalism, and Religion in Public,” pp. 1528-32.

⁷⁵ Tutu, *No Future without Forgiveness*, p. 72. In Tutu’s words, “The Commission...accepted my call for prayer at the beginning and end of our meetings, and at midday when I asked for a pause for recollection and prayer. In the Human Rights Violations Committee, we agreed that when victims and survivors came to our victim-oriented hearing to testify about their often heart-rending experiences, we would have a solemn atmosphere with prayers, hymns and ritual candle lighting to commemorate those who had died in the

our rights rhetoric in the always unfinished business of public reasoning. As in the TRC, rights talk unfolds in properly circumstantial application, i.e., less talk about rights than the talk rights make possible, e.g., victims' testimony. And such testimony may introduce religious *topoi* and tropes like forgiveness and reconciliation, not least because religious liberty is itself a public, political value.

We may, however, deny that human rights are "rhetorical nonsense" without presuming that rights need always be trumps.⁷⁶ We may, that is, acknowledge a human right to basic health care, yet still concede that it may be overridden by other claim-rights, e.g., intellectual property rights to antiretroviral drugs; other moral claims, e.g., utilitarian appeals to collective security interests; or even non-moral, prudential claims, e.g., rational self-interest. Merely invoking rights, even for Rawls, does not perspicuously determine their suasive (or logical) force. Philippa Foot's argument that one may reject morality and "be convicted of villainy, but not of inconsistency," after all, is not a subtle brief for villainy; its gravamen is rather that morality must itself be conceived as "a system of hypothetical imperatives," justified by the "subjectively and conditionally necessary" aims of social living.⁷⁷ So too, Richard Rorty dismisses our "desperate hope for a non-contingent and powerful ally" in the defense of rights, whether this be "the common core of Platonism, or religious insistence on divine omnipotence, and of Kantian moral philosophy." The "emergence of the human rights culture seems to owe nothing to increased moral knowledge," says Rorty, "and everything to hearing sad and sentimental stories."⁷⁸

Now, one may read the parable of the Good Samaritan as merely a sentimental story—yet only if we neglect its *narrative* import. For the exemplary story is prefaced by the lawyer's question, "Teacher, what must I do to inherit eternal life?" (Lk. 10:25). And his "reading of the law" is just that; a divine command of *agape*.⁷⁹ The parable of the Good Samaritan extends the bonds of obligation, even to one's professed enemy: "Do this," says Jesus, "and you will live" (Lk. 10:28). One *must*, in Camus's words, "take the victim's side."

Other religious traditions say no less in adumbrating their distinctive paths toward the relief of suffering. Instilling an ethos of rights through the cultivation of character (*ethos*), they not only illumine the context or rhetorical *locus* (*topos*) of applying rights, but underwrite their suasive force *as* rhetoric. In King's words, "Before I was a civil rights leader, I answered a call, and when God speaks who can but prophesy?"⁸⁰ Our

struggle."

⁷⁶ See Ronald Dworkin, *Taking Rights Seriously* (Cambridge MA: Harvard Univ. Press, 1978), p. xi.

⁷⁷ Philippa Foot, "Morality as a System of Hypothetical Imperatives," *Virtues and Vices* (Oxford: Basil Blackwell, 1978), pp. 161ff., 170.

⁷⁸ Richard Rorty, "Human Rights, Rationality and Sentimentality," in *The Politics of Human Rights*, ed. Brad Savi (London: Verso, 1999), pp. 67-83, at 78, 71.

⁷⁹ Even Rorty, who cites "Elizabeth Anscombe's famous argument that atheists are not entitled to the term 'moral obligation'," would seem to concede the theists' "ought." Cf. Anscombe, "Modern Moral Philosophy," in *Ethics, Religion and Politics: The Collected Philosophical Papers of G. E. M. Anscombe*, vol. 3 (Oxford: Blackwell, 1981), pp. 26-42.

⁸⁰ Martin Luther King, "Why I am Opposed to the War in Vietnam," a sermon preached at Ebenezer Baptist Church, April 30, 1967, 3, 4, as quoted in James Cone, "Martin Luther King, Jr. And the Third World," in *The Future of Liberation Theology: Essays in Honor of Gustavo Gutiérrez*, ed. Marc H. Ellis and Otto

“faith in fundamental human rights”—precisely as trumps—may thus itself be religiously inspired: Not only may motivation be overdetermined, where discrete religious and secular reasons are invoked, e.g., for religious liberty;⁸¹ religious attitudes and beliefs may explain (precisely as they *ultimately* justify) our “faith” in public reason,⁸² i.e., our playing the language game of rights. Indeed, as Rawls argues in his latest work, precisely in sustaining an overlapping consensus, such distinctively religious reasons (i.e., values “ultimate and sublime”) abet the stability of modern constitutional democracies.⁸³

Justification

Our distinctive religious traditions enrich our practice of rights—motivating, and guiding us in their fitting application, e.g., through stories, parables, or *hadiths*. So too, our religious, comprehensive conceptions provide what Rawls calls “grounding reasons,” for “the roots of democratic citizens’ allegiance to their political conceptions lie in their respective comprehensive doctrines.”⁸⁴ And yet Rawls fails to explicate the logical force of such a genetic account—just how, that is, citizens’ public political reasons are grounded (justified) in their differing, nonpublic comprehensive doctrines.

For Habermas, we saw, the justification of public reasons must be entirely immanent; for, inasmuch as “the critique of reason is its own work,” there is “neither a higher nor a deeper reality to which we could appeal.”⁸⁵ The “rational sublation of theology and its essential contents” renders distinctively religious grounding reasons, if not religion itself, otiose.⁸⁶ For Rorty, conversely, grounding reasons are themselves illusory. In Rorty’s agnostic piety, “no trace of divinity” remains, either in the form of a divinized world or a divinized self” (i.e., whose subjective claim-rights are objectively vindicated).⁸⁷ Curiously, Habermas and Rorty alike betray the Enlightenment “prejudice” that a universal morality of rights must (a) admit of rational justification, independent of (b) “religious conceptions of transcendent powers or states and their relation to human beings.”⁸⁸ In the spirit of Kantian *Moralität*, Habermas affirms (a) as grounds for “methodological

Maduro (Maryknoll NY: Orbis, 1989), pp. 346-57, at 353.

⁸¹ See Audi, *Religious Commitment and Secular Reason*, pp. 86-100.

⁸² See Daniel A. Dombrowski, *Rawls and Religion: The Case for Political Liberalism* (New York: State Univ. of New York Press, 2001), pp. 114-16; Paul J. Weithman, *Religion and the Obligations of Citizenship* (Cambridge: Cambridge Univ. Press, 2002), pp. 148-79.

⁸³ See Rawls, *Political Liberalism*, pp. xlvii ff.; “the Idea of Public Reason Revisited,” pp. 179-80.

⁸⁴ Rawls, *Political Liberalism*, p. lv, n. 30; “The Idea of Public Reason Revisited,” p. 153.

⁸⁵ Habermas, *Between Facts and Norms*, p. xli.

⁸⁶ Habermas, “Reflections on a Remark of Max Horkheimer,” p. 137.

⁸⁷ Rorty, *Contingency, Irony, and Solidarity*, p. 45.

⁸⁸ Gene Outka and John P. Reeder, “Introduction,” in *Prospects for a Common Morality*, ed., Gene Outka and John P. Reeder (Princeton NJ: Princeton Univ. Press, 1993), p. 5.

atheism” with respect to (b)⁸⁹; while Rorty denies that (a) can be satisfied, so that religious conceptions (b) remain but “local and ethnocentric” mores—“the tradition of a particular community, the consensus of a particular culture.”⁹⁰

Our rhetorical gambit, however, permits us to affirm (a), while recognizing the logical force of “higher or deeper” doctrines (b) comprising our overlapping consensus. In his “Letter from Birmingham City Jail,” King appeals to just such an overlapping consensus of the Scriptures; the writings of Augustine, Aquinas, Luther, John Bunyan, Tillich and Reinhold Niebuhr; the Jewish theologian, Martin Buber, as well as Jefferson and Lincoln.⁹¹ A pragmatic justification of my claim-right that you do, or refrain from doing A, after all, requires only that we show that A is rationalized by your best reasons, all things considered (where your best reasons are satisfied by the substance of basic rights). An overlapping consensus regarding the sense and modal status of basic rights, that is, warrants the judgment “segregation is morally wrong,” even if the ultimate backing of such public reasons remains itself nonpublic. Curiously and curiously, as Alice might say, Habermas himself offers just such a pragmatic, appeal to the performative contradiction entailed by denying my implicit claim, i.e., to equality of respect and recognition.

We may, that is, say, with Wittgenstein, “This is simply what I *do*,” when “I have exhausted the [rational] justifications” for the practice of rights.⁹² The grammar of rights need not, as Kant believed, be transcendently justified, independently of all experience. But, pace Rorty, we may still speak of a theological “bedrock,” i.e., distinctively religious grounding reasons exhibiting “what I *do*” (my phronetic self-knowledge) in honoring the proper political virtues of civility, tolerance, reasonableness, et al. Habermas—and Rorty—turn their spade on the very religious grounding reasons they would deny.⁹³ And such grounding reasons may differ: Christians, Jews, Moslems, and Buddhists may justify their “faith in fundamental human rights, in the dignity and worth of the human person” in their respective narrative traditions.

“Standing on holy ground,” i.e., the bedrock of my faith, I may thus offer distinctive reasons for my faith in dignity, even if the sense or meaning of dignity itself is not “ineliminably religious.” Citizens of faith “read the law,” seeing, i.e., recognizing in anyone a neighbor in need, and responding compassionately, i.e., with due respect. We may, then, emulate the bishops, and parse the scriptural injunction of *agape* in terms of our neighbor’s basic rights: the moral grammar, that is, of recognizing and respecting our neighbor as the first

⁸⁹ See Habermas, “Transcendence from Within, Transcendence in this World” 74-78; Habermas, “A Conversation about God and the World,” in *Religion and Rationality: Essays on Reason, God, and Modernity*, pp. 147-67, at 160.

⁹⁰ Rorty, “The Priority of Democracy to Philosophy,” p. 259.

⁹¹ King, “Letter from Birmingham City Jail,” pp. 293-98.

⁹² Wittgenstein, *Philosophical Investigations*, pt. 1, par. 217.

⁹³ For Habermas too, the unschematized, or in his words “unsaturated” character of modern moral rights requires positive, interpretative specification; but there seems no compelling reason to restrict our ethical (*sittliche*) inheritance to the dogmatically secular. A formal-pragmatic vindication of rights—one, that is, that renounces a transcendental foundation—cannot deny, a priori, the “logical force” of religion. See *Between Facts and Norms*, pp. 82-131.

“Thou.”⁹⁴ So too, Tutu writes of distinctively theological “grounding reasons,” i.e., that

what endows human beings, every single human being without exception, with infinite worth is... the fact that each one of us has been created in the image of God. This is something intrinsic... It means that each one of us is a God-carrier, God’s viceroy, God’s representative. This is why treating anybody as if they were less than this is veritably blasphemous.... That is what filled some of us with such a passionate commitment to fight for justice and freedom. We were inspired not by political motives but by our biblical faith.⁹⁵

In sum: (a₁) “what I *do*” in public reasoning is exhibit my “faith...in the dignity and worth of the human person” in redeeming public reasons (“fundamental human rights”). (a₂) Such common faith, as attested in the Universal Declaration, suffices as a proximate ground/justification of public reasons. (b₁) Yet we need not take “the dignity and worth of the human person” to be a self-evident verity, as Kant’s “fact of pure reason.” Indeed, even if performatively vindicated as for Habermas, our “faith” is typically borne in our “higher or deeper” doctrines. (Conscience need not make Kantians of us all!) As Mary Ann Glendon writes of the Universal Declaration, “basic human rights rest on ‘common convictions’” implicit in our differing comprehensive (sacred and secular) doctrines.⁹⁶ (b₂) “What I *do*” in public reasoning is exhibit my faith, which, in expressing such a comprehensive doctrine, may provide ultimate grounding reasons, e.g., for Tutu, our creation in the *imago dei*.

Precisely in grounding public reasons, public reason(ing)—“what we do”—thus shows forth, in a performative (illocutionary) fashion, the family resemblance of our comprehensive doctrines. King’s faith in the “moral law or the law of God” grounds his conviction that “any law that degrades human personality is unjust”—a conviction not less public or common, for being prophetic.⁹⁷ For Audi too, public reasons, e.g., that “segregation statutes are unjust,” must be commonly “intelligible” and “minimally reasonable.” Neither the sense nor modal status of such reasons is fixed by a single, comprehensive justificatory theory (the “deepest available ground”).⁹⁸ Yet, we have seen, the intelligibility of King’s faith, as the modal status of “moral law,” does bear reference to its deepest ground—here, as Wittgenstein says, his “spade is turned.”⁹⁹ And grounding reasons remain just that—his spade *is* turned (that our “justifications have run out” implies, not a rhetorical anomie, but rather that we lack further justification: “what I do” suffices).

We need not, then, trim King’s letter of religious reference or parse Tutu’s rhetoric in purely secular

⁹⁴ Ricoeur, “The Socius and the Neighbor,” pp. 98-109; Søren Kierkegaard, *Works of Love*, trans. Howard and Edna Hong (New York: Harper and Row, 1966), p. 69.

⁹⁵ Tutu, *No Future without Forgiveness*, p. 11.

⁹⁶ Glendon, *A World Made New*, p. 222, citing UNESCO Committee on the Theoretical Bases of Human Rights, “Final Report” in *Human Rights: Comments and Interpretations* (London and New York: Wingate, 1949), pp. 258-59.

⁹⁷ King, “Letter from Birmingham City Jail,” p. 293.

⁹⁸ Audi, *Religious Commitment and Secular Reason*, pp. 90-91.

⁹⁹ Wittgenstein, *Philosophical Investigations*, pt. 1, par. 217.

terms.¹⁰⁰ Nor need we assume with Audi that only secular reasons suffice for citizens' motivation; for like Habermas's methodological atheism, Audi's principle of secular motivation betrays an *ignoratio elenchi*: What is "proved" is not required by public reasoning; and may even violate the Rawlsian proviso by tacitly imposing the Enlightenment's prejudice against (religious) prejudice.¹⁰¹

A BRIEF EXCURSUS: THE CATHOLIC CHURCH AND PUBLIC REASONING

In the preceding sections, I have argued that a discursive reconstruction of the common good, i.e., as the narrative schematization of rights, illumines the complex role played by religious traditions in modern, pluralist societies. In grounding, explaining, and interpreting public reason—indeed, to the degree it does so—religion reveals itself to be both public and reasonable. Roman Catholic social teaching is, in this respect, exemplary, inasmuch as it incorporates a rich, communitarian understanding of human rights in its public reasoning. And yet, in tempering or in Ricoeur's terms, configuring our public discourse, the Church's own teaching is itself refigured.¹⁰²

As we noted above, the "turn" in her social teaching from a perfectionist, eudaimonistic teleology to a rights-based conception of the common good permitted the Church to speak to the modern world. In *Pacem in terris*, *Gaudium et spes*, and *Dignitatis humanae*, the Church recognizes the basic rights and correlative duties of moral persons, including religious liberty.¹⁰³ These rights, as *Pacem in terris* proclaims,¹⁰⁴ are internally limited, and hence legitimately restricted by the like rights of others in our public reason, i.e., the shared public and political reason governing the deliberation of pluralist polities.¹⁰⁵ Further restrictions upon agents' liberty or welfare rights must be persuasively redeemed in public discourse; reasons offered, that is,

¹⁰⁰ As Rawls observes, public reasons are thin, yet neither simply sacred nor secular. See "The Idea of Public Reason Revisited," pp. 143–44.

¹⁰¹ It would be more in keeping with the tenor of Audi's argument to say the grounding of dignity is not "specifically religious or theological" rather than to insist upon it being secular. So too, the political virtues and not merely policy are overdetermined. See *Religious Commitment and Secular Reason*, p. 43.

¹⁰² See The Congregation for the Doctrine of the Faith, "Doctrinal Note on Some Questions regarding The Participation of Catholics in Political Life" (Nov. 24th, 2002), <http://www.vatican.va/roman_curia/congregations/cfaith/documents>; U.S. Catholic Bishops, "Faithful Citizenship: A Catholic Call to Political Responsibility" (Feb. 2nd, 2004) <<http://www.usccb.org/faithfulcitizenship>>.

¹⁰³ The mutual learning to which I referred above is illustrated by Murray's recognition of doctrinal development: The Council's achievement in *Dignitatis humanae*, says Murray, "was to bring the Church, at long last, abreast of the consciousness of civilized mankind, which had already accepted religious freedom as a principle and as a legal institution." John Courtney Murray, "The Declaration on Religious Freedom: Its Deeper Significance," *America* 114 (April 23, 1966): 592. Rawls cites Murray approvingly in "The Idea of Public Reason Revisited," pp. 166–67, n.75; 170, n. 83.

¹⁰⁴ *Pacem in terris*, #28ff., 60ff.

¹⁰⁵ See John Rawls, *Political Liberalism*, pp. 9–11, 212–54.

must be internally (rationally) persuasive to the agents affected.¹⁰⁶

Such a discursive conception of the terrestrial common good implies, in words of *Dignitatis humanae* that “the freedom of the human person be respected as far as possible, and curtailed only when and in so far as necessary.” Believers are admonished to “avoid any action which seems to suggest coercion or unworthy persuasion.”¹⁰⁷ A disciplined pluralism, that is, tempers the Church’s own worthy persuasion:

(1) As we argued in Section II, the Church, as any religious actor in civil society, is entitled to introduce its comprehensive doctrine “in public reason at any time,”¹⁰⁸ provided, in Rawls words, that public reasons are duly presented, e.g., in a public, political conception of human rights.¹⁰⁹

(2) Such basic human rights frame our public policy deliberation, permitting a lexical indexing of feasible policies.¹¹⁰ Policies, that is, are (a) governed by rights as deontic side-constraints¹¹¹ in terms of “negative duties” of avoiding deprivation, and (b) subject to consequential evaluation in terms of “positive duties” of protection and provision. As we saw, assignment of duties will be relative to prevailing political, social, and cultural circumstances: of the set of policies deemed feasible, which will best satisfy persons’ mutually implicative basic rights, e.g., to civil liberties, security, or adequate nutrition, all things considered?¹¹²

(3) Since public policies, unlike personal maxims, address what Ronald Dworkin terms “external preferences,” i.e., preferences with respect to the “assignment of goods and opportunities to others,”¹¹³ the consequential assessments of (b) will favor those policies most likely to protect persons’ basic rights, or provide their substance where fitting, all things considered.

The assumptions of limited altruism, the prospect of imperfect compliance, or substantive differences

¹⁰⁶ Habermas, *Moral Consciousness and Communicative Action*, pp. 43-115.

¹⁰⁷ *Dignitatis humanae* #7, 4. See John Courtney Murray, “The Declaration of Religious Freedom: A Moment in Its Legislative History,” in *Religious Liberty: An End and a Beginning*, ed. J. C. Murray (New York: Macmillan, 1966).

¹⁰⁸ See *Dignitatis humanae* # 7, “It comes within the meaning of religious freedom that religious bodies should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole of human activity.”

¹⁰⁹ Rawls, “The Idea of Public Reason Revisited,” p. 146.

¹¹⁰ Other interpretations of public reasons may, of course, be presented; yet consistent with the conception of the common good in *Pacem in terris* and the Conciliar texts, they must be consistent with basic human rights claims.

¹¹¹ See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 28-35.

¹¹² Sen favors “incorporating the value of right fulfilment and the disvalue of right violation in the assessment of resulting states of affairs”; yet policies that violate (2, a), whether directly by denying basic rights or indirectly by condoning such denial, must, I believe, be treated as limit cases. Even if certain rights violations are subject to consequential assessment, abetting torture would never be permissible. See Amartya Sen, *On Ethics and Economics* (Oxford: Basil Blackwell, 1987), p. 73, cf. 47-51, 70-78.

¹¹³ Dworkin, *Taking Rights Seriously*, pp. 234ff.

regarding the implementation of rights, typically limit politically feasible options. If utilitarianism illicitly extends the principle of personal to social choice, so we err in assimilating personal and external preferences—as if public policy were merely personal morality “writ large.”¹¹⁴ As Aquinas reminds us,

[H]uman law does not prescribe concerning all the acts of every virtue: but only in regard to those that are ordainable to the common good—either immediately, as when certain things are done directly for the common good,—or mediately, as when a lawgiver prescribes certain things pertaining to good order, whereby the citizens are directed in the upholding of the common good of justice and peace.¹¹⁵

Heeding Thomas’s wisdom in the discursive redemption of public validity claims, presumes that the Church duly respect her differing, yet overlapping publics; for as we have seen, the currency of distinctive religious belief may not be fully redeemed (or redeemable) in the public discourse or legal institutions of religiously pluralist democracies. As other actors in civil society, the Church remains free to make her case (the boundaries between intra- and extramural argumentation are seldom clear and distinct, nor are considerations of feasibility always perspicuous). In imperfectly just societies, to be sure, public reason itself requires that we oppose unreasonable orderings of political values, e.g., unrestricted abortion policy. It is rather the nondiscursive, legal imposition of distinctively religious beliefs, i.e., nonpublic reasons not satisfying the Rawlsian proviso in (1) that is disallowed as “unworthy persuasion.”¹¹⁶ The Church’s wisdom, conversely, is shown by the civility of her saying (public reasoning), i.e., that her moral beliefs framed in the discourse of rights do admit of public vindication.¹¹⁷

III. THE SURPLUS OF RELIGIOUS MEANING

Still here is a surplus of religious meaning—expressed, not only in the overdetermination of public reasons (where a religious rationale is superimposed upon a secular one), but in the distinctively religious signification public reasons bear for the disciple. To heed Jesus’s command, “Go and do likewise” as the

¹¹⁴ See Rawls, *A Theory of Justice*, pp. 19-24.

¹¹⁵ Cf. Aquinas, *Summae theologiae* (hereafter cited as ST)1-2, q. 96, a. 3.

¹¹⁶ In Rawls’s words, “Reasonable persons think it unreasonable to use political power, should they possess it, to repress other doctrines that are reasonable yet different from their own.” (“The Idea of Public Reason Revisited,” p. 176, n. 93.) The requirements of reasonableness and civility likewise limit the scope of ecclesial influence. While the Church favors the most reasonable ordering of public, political values, it cannot legitimately insist that public officials abide by nonpublic reasons—even if their comprehensive doctrine deems such values true or valid.

¹¹⁷ Undue emphasis upon the extrinsic authority of magisterial pronouncements in public deliberations may even undermine reception of the intrinsic authority of the Church’s social teaching. Media portrayal of the Church’s opposition to abortion as dependent upon distinctively religious beliefs, for instance, reduces her ethical teaching to a species of etiquette—which, we are reminded, must not be “imposed” upon others. Indeed, the paucity of civil discourse regarding abortion in the U.S. gives credence to the liberal tenet that beliefs regarding abortion are merely expressions of incommensurable interests, which, argument unavailing, must be accorded the greatest latitude. The more vehement the passion, undisciplined by public reason, the more plausible the public defense of our “negative” liberty to choose as we see fit.

summary of the law is not merely to comply with our neighbors' rights in answer to the lawyer's question (what Karl Rahner terms the "essentialist" requirements of morality¹¹⁸). For to the lawyer's question in the parable, "who is my neighbor?" (Lk. 10:29)—seeking a precise delimitation of rights and duties—Jesus replies with a question of his own, "Who is it that proved himself neighbor?" (Lk. 10:36).¹¹⁹ The distinctively Christian virtue of *solidarity* defines the disciple's horizon of discernment; for "to be a Christian," says Gustavo Gutiérrez, "is to draw near, to make oneself a neighbor, not the one I encounter in my journey but the one in whose journey I place myself."¹²⁰ Christianly, one must not only take the victim's side, for religious ethics is not less than just; one must incarnate Jesus' compassion in taking it *as* one's own, i.e., in what Walter Benjamin calls "anamnestic solidarity."¹²¹

Finally, it is not the lawyer—or reader—who sets the limits of love: "who is my neighbor?" even if the limits are extended universally. One must rather answer Jesus' question—*become* neighbor to the *anawîm*, i.e., "what I do." In King's words, one must, as the Samaritan, "project the 'I' into the 'thou'."¹²² Such is the deontic form of love (*agape*); for the disciple is not the still point from which love radiates. Rather, what is commanded is one's very self; "oneself demanded," says Karl Rahner, "in the concreteness of one's heart."¹²³ And in this "serving," disciples form the "beloved community"—beloved in the Beloved who, as Augustine says, becomes neighbor to our wounded humanity.¹²⁴

There is thus, for the disciple, no teleological suspension of the ethical. One becomes neighbor by defending the rights of the poor. And though our rights talk is not "ineliminably religious," still "going and doing likewise" bears a religious imprimatur. For not only, is "the struggle for human rights...an inescapable

¹¹⁸ See Karl Rahner, "On the Question of a Formal Existential Ethics," in *Theological Investigations* vol. 2, trans. Karl H. Kruger (Baltimore: Helicon, 1963), pp. 217-34. Essential ethics refers to the set of universal, action-guiding moral norms ascertained by natural reason (e.g. respect for persons' basic rights); we need not assume that such norms rest upon a foundationalist or essentialist metaphysics.

¹¹⁹ See John Donahue, "Who is My Enemy? The Parable of the Good Samaritan and the Love of Enemies," in *The Love of Enemy and Nonretaliation in the New Testament*, ed. Willard M. Swartley (Louisville KY: Westminster/John Knox, 1992), pp. 137-56.

¹²⁰ Gustavo Gutiérrez, "Toward a Theology of Liberation" (1968), in *Liberation Theology: A Documentary History*, pp. 62-76.

¹²¹ See Walter Benjamin, *Illuminations*, ed. H. Arendt (New York, 1969), pp. 253ff. Cf. Thomas McCarthy, *Ideals and Illusions: On Reconstruction and Deconstruction in Contemporary Critical Theory* (Cambridge MA: MIT Press, 1991), pp. 205-10.

¹²² Martin Luther King, "I See the Promised Land," in *A Testament of Hope*, pp. 279-86, at 284.

¹²³ Karl Rahner, "The 'Commandment' of Love in Relation to the Other Commandments," in *Theological Investigations*, vol. 5, trans. Karl H. Kruger (New York: Seabury, 1966), pp. 439-59, at 453; cf. Karl Rahner, "The Theology of Freedom," in *Theological Investigations*, vol. 6, trans. Karl and Boniface Kruger (New York: Seabury, 1974), pp. 178-96.

¹²⁴ See Gerard Manley Hopkins, "As Kingfishers Catch Fire," in *The Poems of Gerard Manley Hopkins*, 4th ed., ed. W. H. Gardner and H. M. MacKenzie (New York: Oxford Univ. Press, 1970), p. 90; Augustine, *Quaestiones Evangeliorum* 2:19.

imperative,” for “anyone who believes in God.” “The struggle for human rights,” says Jon Sobrino, is an *in actu* concretization of our faith in God.”¹²⁵ Not only, then, must a citizen of faith, as the prophet Micah says, “act justly” (Micah 6:8), so too acting justly is tempered by love (*agape*). For love, in the familiar Lukan parable, “justices.” Finally, the surplus of religious meaning (to “go and do likewise”) may render what is morally supererogatory, religiously obliging, e.g., King’s or Archbishop Oscar Romero’s martyrdom for the sake of human rights. In times of uncivil strife, civic rapprochement and compliance with a regime of rights may, indeed, depend upon such supererogatory *evangelical* inspiration. In *No Future without Forgiveness*, Tutu writes of the “magnanimity” of victims “who were made to suffer so grievously, yet despite this are ready to forgive”—a magnanimity, says Tutu, upon which the future of a stable democratic regime itself rests.¹²⁶ In a religious sublation of morality (*Aufhebung*), we are “standing on holy ground.”¹²⁷

CONCLUSIONS

In bidding us take the victims’ side as our own, *agape* not only inspires the ratification, revision, and application of rights in an ethics of solidarity, but grounds our rhetoric of rights. Invoking the Gospel story reveals how the interpretative, explanatory, and justificatory roles of reasonable, religious doctrines are internally related. For the very reasons that ultimately justify our rhetoric of rights explain our immanent compliance with a rights’ regime, and temper our interpretation: if she is to “walk humbly with her God” (Micah 6:8), the disciple must “see and have compassion” even as compassion (*esplanchnisthe* signifies being moved in one’s inmost heart), itself becomes a “way” of seeing. In Sobrino’s words,

Instead of functioning as a mere thesaurus of citations to be invoked in support of a particular teaching—on human rights or anything else—scripture becomes a demand and a challenge, yes, but then lucidity, inspiration, and beatitude.¹²⁸

¹²⁵ Jon Sobrino, *The Spirituality of Liberation: Toward Political Holiness*, trans. Robert R. Barr (Maryknoll NY: Orbis, 1988), p. 104.

¹²⁶ Tutu, *No Future without Forgiveness*, p. 43. Tutu notes that the “commitment to reconciliation” of “[n]early all the leaders in the black community” was “due to the influence and witness of the Christian Churches.” Theology prevents us from demonizing our enemies, thereby holding them “responsible for their deeds.” “Theology says they still, despite the awfulness of their deeds, remain children of God with the capacity to repent...” (pp. 73-74).

¹²⁷ Desmond Tutu, in Simon Wiesenthal, *The Sunflower: On the Possibilities and Limits of Forgiveness* with a symposium, Harry James Cargas and Bonny V. Fetterman, ed., rev. ed. (New York: Schocken Books, 1997), p. 267.

¹²⁸ Sobrino, *The Spirituality of Liberation*, p. 104.