

Theocentrism and Human Rights: A Critical Argument 1

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Abstract 5
Human rights discourse in the West has a deep connection to Christian theology and what might be
called ‘theocentrism.’ This view locates human rights in the God-created order of the world—and not in
the capacities of sentient beings. This article examines and criticizes some recent theocentric arguments.
It focuses in particular on the claim made by some theocentric human rights defenders that secular indi-
vidualism and democracy are wrong-headed and runs counter to Christian theology. This article provides
a critique of recent theocentric arguments about human rights and briefly discusses an alternative that
locates rights in the capacities of sentient beings. 6
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I. Introduction 15

Human rights discourse in the West has a deep connection to Christian theology. 16
Locke, for example, thought that human rights were objective moral entitlements 17
that were found in the structure of God-created natural law.¹ But some scholars 18
and religious leaders worry that the extension of Christian ideas toward individu- 19
alism and democracy is wrong-headed. Despite several centuries of secularization, 20
some argue that the idea of individual rights is a bad idea that runs counter to 21
Christian theology. Robert Kraynak² has argued that Christian faith is only com- 22
patible with a hierarchically ordered view of the universe and some form of central 23

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¹ See: John Locke, *Letter Concerning Toleration* (1689) in Steven M. Cahn, ed., *Classics of Modern
Political Theory* (New York: Oxford University Press, 1997; *Second Treatise of Government* (1690) (India-
napolis: Hackett, 1980); *The Reasonableness of Christianity* (1695) (Oxford University Press, 1999). 31
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² Robert P. Kraynak, *Christian Faith and Modern Democracy* (Notre Dame, IN: University of Notre
Dame Press, 2001). 33
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1 monarchic power; and Joan and Oliver O’Donovan³ have argued against liberal
 2 human rights and democracy (and against the liberal sympathies of Christians
 3 such as Maritain⁴ and even Pope John Paul II). Humanists may think that this is
 4 simply a *reductio ad absurdum* of Christianity: if Christianity is opposed to liberal-
 5 democracy, then so much the worse for Christianity. Although I am sympathetic
 6 to this humanist critique, I believe that one must take seriously the theocentric
 7 criticism of human rights discourse since it challenges us to find some ground for
 8 human rights ideas other than in the creative power of God. The most plausible
 9 alternative is to locate human rights in the capacities of sentient beings.

10 The purpose of the present article is to provide a critique of recent theocentric
 11 arguments about human rights. I won’t attack theocentrism directly here with an
 12 argument against the existence of God. Rather, I will argue that rights discourse
 13 should avoid the ‘speciesist’ assumptions of the theocentrists who argue that rights
 14 are grounded in the God-given endowment of members of the human species.
 15 Theocentrism is closely linked to what Peter Singer called “speciesism”⁵ insofar as
 16 the natural order is supposed to be Created by God, with humans uniquely at the
 17 top. The alternative is to move beyond both speciesism and theocentrism and to
 18 locate rights in the capacities of sentient beings.

19 II. Contemporary Theocentrism

20 I use the term ‘theocentrism’ here in an effort to echo discussions by Singer, Tom
 21 Regan,⁶ and others who critique speciesism and anthropocentrism. Moreover, the
 22 term theocentrism is meant to be a reminder of the hierarchical view in which
 23 God is the center and His creatures are on the periphery. By the theocentric argu-
 24 ment, I mean an argument that claims that human rights discourse only makes
 25 sense in a God-centered universe, where the Creator God establishes for us some-
 26 thing like ‘right order.’ The theocentrism I have in mind here is Christian theo-
 27 centricism (but we should note that other religious traditions, such as Islam, make
 28 similar sorts of arguments).⁷ Nicholas Wolterstorff⁸ is one of the most important

29 ³ Joan Lockwood O’Donovan ‘Rights, Law, and Political Community: A Theological and Historical
 30 Perspective’ (Jan. 2003) 20:1 *Transformation*, pp. 30–38; Oliver O’Donovan and Joan Lockwood
 31 O’Donovan, *Bonds of Imperfection: Christian Politics, Past and Present* (Grand Rapids, MI: William B.
 32 Eerdmans, 2003).

33 ⁴ Jacques Maritain, *Man and the State* (Washington: Catholic University of America Press, 1998).

34 ⁵ Peter Singer, *Animal Liberation* (New York: Avon Books, 1990).

35 ⁶ Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983).

36 ⁷ See the discussion of Islamic approaches in Jack Donnelly, *Universal Human Rights in Theory and
 37 Practice* (Cornell University Press, 2002).

38 ⁸ Nicholas Wolterstorff, ‘Sacred and Inviolable’ (Review of Perry, *The Idea of Human Rights: Four
 39 Inquiries*) (Spring 2002) 62: 2 *The Review of Politics*, 378–382; Wolterstorff, *Justice: Rights and Wrongs*
 40 (Princeton: Princeton University Press, 2008).

recent proponents of this idea, along with Michael J. Perry,⁹ the O'Donovans, and others. The theocentric argument holds that the idea of a God-given right order provides a better foundation for the idea of rights than the idea of individual creatures with inherent rights, such as was developed by Locke and others in the Enlightenment. It is true that Locke and Enlightenment thinkers such as Jefferson remain theocentric insofar as they base rights in our God-given endowment. But the Lockean tradition is too individualistic and Jeffersonian institutions are too secular, when viewed from the point of view of the contemporary theocentrists. The Lockean view separates individuals and claims that the state is the result of a social contract. The contemporary theocentrists worry about the pernicious result of some of the interrelated ideas of contemporary secular rights discourse: subjectivism and voluntarism, possessive individualism, and the very idea of the state as a social contract. O'Donovan puts it this way:

In a wholly secularized liberal democratic polity, where the only coherent public moral language is that of subjective rights, the only universally respected right will be that of freedom, understood as the sovereignty of the subject over his/her physical and moral world, that is, the subject's emancipation from all externally imposed material and spiritual constraints on his/her freedom of choice. In such a polity, rights claims are only limited by two horizons: the expanding horizon of technological ingenuity and the shrinking horizon of the public purse. Both have already become causes of popular unease, as the gathering clouds of ecological disaster reveal the Faustian character of technological hubris to ever-more people; and ever-more taxpayers are coming to realize that their political investment is subject to the law of diminishing returns, given the inflationary logic of rights.¹⁰

It is fairly easy to see that this critique is closely connected to a broad political and ethical critique of secular society. A further worry, as articulated by the late Pope, John Paul II, is that secular human rights language can be used to support claims about the right to privacy and the right to satisfaction that are then used to support perverse sexual practices, the right to abortion, the right to assisted suicide, and other ideas that appear to violate the God-created order.

While the worry about sexual immorality is a minor point, an important point made by defenders of the theocentric argument is that recourse to some idea about the right order of the universe and the endowment of the human species provides the only way to include disabled human beings, fetuses, or even human embryonic stem cells within the class of beings who have rights. I think that it is true that those who reject theocentrism in thinking about rights have to find a way to ground rights in basic capacities without thereby leaving out disabled members of our own species. To do so, we may have to admit that some non-human beings have rights as well. This extension of rights to non-humans simply

⁹ Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998).

¹⁰ Joan Lockwood O'Donovan, "Rights, Law, and Political Community: A Theological and Historical Perspective" *supra note 3*, p. 37.

1 does not fit well within the theocentric framework in which God creates species
2 distinctions and establishes natural order based on those distinctions.

3 I will briefly sketch a more positive view of rights as grounded in the capacities
4 of sentient beings toward the end of this paper. Such an approach does not rely
5 upon species differences as given by God. Rather, it reflects a more naturalistic
6 approach to the idea of rights. If the problem is that by grounding rights in
7 capacities, we exclude some humans with diminished capacities, then the solu-
8 tion is to be more inclusive about the sorts of capacities that matter. Thus I will
9 suggest that once we eliminate God-created species differences from moral con-
10 sideration, we may have to expand our thinking about the range of beings who
11 can be said to have rights. This idea has been discussed by a variety of authors (e.g.
12 R.M. Frey,¹¹ Tom Regan,¹² David DeGrazia,¹³ and Peter Singer).¹⁴ My aim here is
13 to contribute to this conversation by arguing against the theocentric approach to
14 rights.

15 One of the most important problems with the religious argument is its reliance
16 on God as the mediator for rights claims. This approach does not look directly at
17 the suffering of others as a basis for rights claims. Rather, it maintains that rights
18 are found either in the image of God that we see in man or in God's rights over
19 us as Creator. This is the sense for describing this approach as theocentric: it puts
20 God in the middle, with rights emanating from God through His creative activ-
21 ity. I will argue here that we should move beyond this theistic idea.

22 III. Historical and Contemporary Background

23 The history of human rights in the modern era begins with the idea that men are
24 endowed by their Creator with inalienable rights. Thus the idea of rights has long
25 been explicitly linked to Christian theology. Locke put it this way:

26 The state of nature has a law of nature to govern it, which obliges every one: and reason, which is
27 that law, teaches all mankind, who will but consult it, that being all equal and independent, no one
28 ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship
29 of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the
30 world by his order, and about his business; they are his property, whose workmanship they are, made
31 to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in
32 one community of nature, there cannot be supposed any such subordination among us, that may
33 authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks
34 of creatures are for ours.¹⁵

35 ¹¹ R.M. Frey, 'Animals' in Hugh La Follet, ed., *The Oxford Handbook of Practical Ethics* (New York:
36 Oxford University Press, 2003).

37 ¹² Regan, *The Case for Animals* *supra* note 6.

38 ¹³ David DeGrazia, *Animal Rights: A Very Short Introduction* (Oxford: Oxford University Press,
39 2002).

40 ¹⁴ Peter Singer, *Animal Liberation* *supra* note 5.

41 ¹⁵ John Locke, *Second Treatise of Government* *supra* note 1, Chap 2, sec. 6.

Locke's idea of rights locates our rights in the fact that human beings are the property of the Creator, who is the central organizing power and sovereign master. No one may violate our life, liberty, or possessions—not even the state—because these blessings are bestowed upon us by God. Moreover, the Creator gave us each the same faculties and a common nature. This is an important argument against inequality: we are all the same before God. The theological source of this idea is not a minor point for Locke. Indeed Locke was committed to the idea that Christianity was a reasonable doctrine and to the defense of scripture, publishing *The Reasonableness of Christianity* in 1695, five years after publication of the *Two Treatises of Civil Government*.¹⁶ And Locke is infamous for stating that toleration should extend across Christian sects but that atheists cannot be tolerated because atheism 'dissolves all' and leaves the atheist without morality or a moral ground upon which to challenge intolerance.¹⁷

Sources for the idea of rights may be found in other religious traditions. But Christianity provided fertile ground for this idea. Christianity emphasizes the personal relationship between God and man and the idea that man is created in God's image. Martin Luther's idea that human beings are both priests and kings takes this idea further. By the 17th and 18th Centuries, Western Christians had discovered the idea of natural rights and they articulated this idea in religious language.

More contemporary philosophical accounts of rights have generally attempted to avoid such a theological grounding. Or at least they have attempted to connect the theological idea to a more secular approach. Dworkin notes, for example, that the idea that human beings are 'sacred' can be interpreted in a 'secular' as well as a 'religious' way.¹⁸ The point here is that the use of language such as 'sacred' is meant to show that rights are inviolable or absolute. The dispute is, of course, about whether a secular grounding is sufficient to produce inviolable rights or whether some religious ground is needed. Most authors recognize that the theocentric approach to rights has a long and important history that includes Locke's own contributions to human rights discourse. On Rawls' interpretation of this history, however, the point of Locke's focus on God is to direct our attention toward the generality of principles of right.¹⁹ Rawls, of course, thinks that it is not

¹⁶ John Locke, *The Reasonableness of Christianity* *supra* note 1. For a detailed discussion see Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002).

¹⁷ John Locke, *Letter Concerning Toleration* *supra* note 1.

¹⁸ Ronald Dworkin, *Life's Dominion* (New York: Vintage, 1994), p. 25.

¹⁹ "Traditionally the most obvious test of this [the generality] condition is the idea that what is right is that which accords with God's will. But in fact this doctrine is normally supported by an argument from general principles. For example, Locke held that the fundamental principle of morals is the following: if one person is created by another (in the theological sense), then that person has a duty to comply with the precepts set to him by his creator. This principle is perfectly general and given the nature of the world on Locke's view, it singles out God as the legitimate moral authority" [John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard, 1971), p. 132].

1 necessary or even desirable to invoke theology to ground the idea of human rights
 2 and that a suitable level of generality is attainable by using the heuristic of his
 3 ‘original position.’ In the end, Rawls’ account of rights bases them upon a person’s
 4 status as a citizen within a well-ordered society and not upon the theological
 5 principles of some “comprehensive doctrine.”²⁰

6 Contemporary philosophical approaches to human rights are often either
 7 deliberately antagonistic to religion or seek to side-step religion in order to attain
 8 consensus that includes a variety of religious believers and non-believers. The first
 9 option—the anti-religious or humanistic approach—is found, to cite one recent
 10 example, in Brian Orend’s book, *Human Rights*.²¹ Orend concludes that appeals
 11 to “metaphysical humanity” are not persuasive: “In the face of assertions about
 12 faith, souls and God, many reasonable people are left asking for more. In my
 13 judgment, appeals to metaphysical properties are neither necessary nor sufficient
 14 to ground human rights-holding status.”²² More recently, Alan Dershowitz begins
 15 his book on human rights by bashing the religious idea of rights that he finds,
 16 among other places, in the thinking of George W. Bush. Dershowitz writes: “If
 17 only it were true that a God, in whom everyone believed, had come down from
 18 the heavens and given the entire world an unambiguous list of the rights with
 19 which He endowed us. How much easier it would be to defend these sacred rights
 20 from alienation by mere mortals. Alas, the claim that rights were written down by
 21 the hand of the divinity is one of those founding myths to which we so desper-
 22 ately cling.”²³

23 The second option is articulated by Rawls in his attempt to avoid religion
 24 entirely. Theological speculation runs counter to certain constraints about what
 25 sorts of reasons are to be accepted in public discourse. In Rawls’ language, the
 26 original position requires that we conceal our commitment to ‘comprehensive
 27 doctrines’ behind the veil of ignorance such that representatives of a variety of
 28 religions can come together to achieve consensus about human rights. In other
 29 words, theological speculation has no legitimacy in the sphere of public reason
 30 in which we are trying to establish a political conception of justice. This is related
 31 to Rawls’ conclusion regarding religious toleration: even if we believe in the
 32 truth of a religious idea, it would be unreasonable to use the state to enforce this
 33 idea.²⁴

34 Now the Rawlsian approach has provoked a backlash. Some authors argue that
 35 a Rawlsian approach to human rights is not sufficiently sensitive to the profun-

36 ²⁰ See, for one example, John Rawls, *Justice as Fairness* (Cambridge, MA: Harvard, 2001), p. 201.

37 ²¹ Brian Orend, *Human Rights: Concept and Context* (Peterborough, Ontario: Broadview Press,
 38 2002).

39 ²² *Ibid.*, p. 45.

40 ²³ Alan Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York: Basic
 41 Books, 2004), p. 2.

42 ²⁴ Rawls, *Justice as Fairness supra* note 21, pp. 183–4.

dity of belief in comprehensive schemes. Authors such as Michael Sandel²⁵ argue that it is preposterous to believe that the right is prior to the good and that rights can be grounded in the political consensus of so-called ‘unencumbered selves.’ Scholars like Macpherson²⁶ and Donnelly²⁷ have also criticized liberals (including Locke but with a primary focus on Rawls and other contemporaries) for perverting the natural law tradition by over-emphasizing possessive individualism at the expense of another more robust conception of the self. And still other scholars, such as Tuck²⁸ and Tierney,²⁹ have argued that the idea of natural human rights extends back beyond Locke’s bourgeois appropriation of the idea into the natural law tradition of the Christian Middle Ages. Most authors would agree with Mahoney³⁰ (and critics such as Orend³¹ and Dershowitz)³² that the idea of human rights at least has a religious history—even if it has grown beyond its theocentric origin.

IV. The Christian Tradition

As mentioned, the discussion and defense of human rights has a Christian heritage that extends back through Locke at least to Martin Luther. But the Christian defense of rights is not merely historical. Contemporary Christians continue to use the language of rights; and some argue that rights language can only be understood from a theocentric perspective. Occasionally the Christian approach has been a bit self-serving, as human rights language is used to argue in favor of religious liberty and against those nations (from the former Soviet Union to China and Sudan today) that restrict the free movement of Christians. But the Christian defense of human rights can be traced back to commandment to love your neighbor as yourself. The Christian defense of human rights holds that Jesus’ radical re-interpretation of this Hebraic ideal extends love in a universal and equal way to all. One source for this is the parable of the Good Samaritan in Luke. Here, Jesus responds to the question of “who is my neighbor?” by indicating that neighborly love should transcend sectarian and ethnic boundaries (the Samaritan was a

²⁵ Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).

²⁶ C.B. Macpherson, *Political Theory of Possessive Individualism* (Oxford: Clarendon, 1962).

²⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2002).

²⁸ Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).

²⁹ Brian Tierney, *The Idea of Natural Rights* (Grand Rapids, MI: William B. Eerdmans, 1997).

³⁰ Jack Mahoney, *The Challenge of Human Rights: Origin, Development, and Significance* (Malden, MA: Blackwell Publishing, 2007).

³¹ Orend, *Human Rights* supra note 22.

³² Alan Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York: Basic Books, 2004).

1 stranger who did the right thing in stopping to help his wounded ‘neighbor’). On
 2 Michael Perry’s interpretation of this idea, the Christian idea of loving the neigh-
 3 bor is not merely a command that must be obeyed; rather it is the fruit of a reli-
 4 gious worldview that includes the brotherhood and sisterhood of all human
 5 beings.

6 What makes the imperative a religious human response and not merely a secular one is that the
 7 response is the existential yield of a religious conviction about how the world (including we-in-the-
 8 world) hangs together: in particular the conviction that the Other is, finally, one’s own sister/
 9 brother—and should receive, therefore, the gift of one’s loving concern.³³

10 Although Locke and others developed this idea in the context of Protestantism,
 11 this is not specifically a Protestant idea. Catholic thinkers also use the language of
 12 human rights. The Catholic Church has embraced the idea of human rights for
 13 several decades. In 1963, Pope John XXIII articulated a view of human rights in
 14 Pacem in Terris as follows:

15 Any well-regulated and productive association of men in society demands the acceptance of one
 16 fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed
 17 with intelligence and free will. As such he has rights and duties, which together flow as a direct
 18 consequence from his nature. These rights and duties are universal and inviolable, and therefore
 19 altogether inalienable.³⁴

20 This idea was rearticulated in 1968, by Pope Paul VI in his first Peace Day mes-
 21 sage, where he argued that respect for human rights was essential to peace. And
 22 the idea has been repeated by popes ever since. John Paul II used the idea to
 23 articulate his pro-life or consistent ethic of life view, concluding that the right to
 24 life meant that abortion, euthanasia, war, etc. were all immoral. The basic idea of
 25 Christian human rights is grounded in a theocentric conception of the dignity of
 26 the human person. And this idea is supposedly based in scripture. As mentioned
 27 above, key texts in the New Testament include ideas about love of the neighbor
 28 and Jesus’ creative expansion of these ideas to include strangers. But ultimately,
 29 the idea is traced back to the Genesis account of creation: human beings are cre-
 30 ated in the image of God and thus they have absolute value. Pope John Paul II
 31 begins his reflection on the ‘Gospel of Life’ with a claim with a direct reference to
 32 Genesis 2:7: “The Gospel of life, proclaimed in the beginning when man was cre-
 33 ated in the image of God for a destiny of full and perfect life.”³⁵ And the Gospel
 34 of Life goes on to say that since human beings are created in God’s image it is

³³ Michael J. Perry, *The Idea of Human Rights: Four Inquiries supra* note 9, p. 21.

³⁴ Pope John XXIII, *Pacem in Terris*, para. 9 (from Vatican website: http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html).

³⁵ Pope John Paul II, *Evangelium Vitae* para. 7 (from Vatican website: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html).

wrong to kill human beings, whether fetuses or the aged and infirm. And the Pope argues that one of the main problems for the Gospel of Life is that modern secular democracies end up allowing killing in the name of liberty and human rights.

V. Challenging the Christian Basis

It is important that Christians embrace the idea of human rights. But there are problems with grounding human rights in Christian theology. Those who argue that the idea of human rights has its most adequate and essential grounding in the conceptual and textual depths of the Judeo-Christian tradition find it hard to accept non-theological approaches to human rights. Moreover, the basic standpoint here is connected to defenses of divine command theories of ethics. And such ethical theories are susceptible to the humanistic critique of divine command ethics that extends from Paul Kurtz³⁶ back through Bertrand Russell,³⁷ all the way to Plato's *Euthryphro*.³⁸

We do not have space here to re-visit in detail the Divine Command theory and its critiques. But let us note that the divine command theory still has its defenders among philosophers, say for example in the work of Robert M. Adams³⁹ and Phillip L. Quinn.⁴⁰ Defenders of the Divine Command theory of ethics claim that God is both *the source* of ethics and *the motive force* for ethical behavior. Robert M. Adams explains the first idea by claiming that God is the 'constitutive standard of excellence.' For Adams, this also means that "being excellent in the way that a finite thing can be consists in resembling God in a way that could serve as a reason for loving the thing."⁴¹ Human rights would thus be grounded in the human resemblance to God. Moreover, divine command theorists will also argue that the theocentric account gives us a much stronger reason to respect human rights than any anthropological or social contract theory can give us.

The more specific claims about the theological source of human rights have been defended by a variety of philosophers including Tierney,⁴² Kraynak,⁴³ Perry, and Wolterstorff. For these authors, the concept of human rights makes little

³⁶ Paul Kurtz, *Forbidden Fruit: The Ethics of Humanism* (New York: Prometheus Books, 1988).

³⁷ Bertrand Russell, *Why I am Not a Christian* (New York: Touchstone, 1967).

³⁸ Plato, *Euthryphro* in Edith Hamilton et al., *The Collected Dialogues of Plato* (Princeton: Princeton University Press, 2005).

³⁹ Robert M. Adams, *Finite and Infinite Goods* (Oxford: Oxford University Press, 2002).

⁴⁰ Phillip L. Quinn: *Divine Commands and Moral Requirements* (Oxford: Clarendon Press, 1978); 'The Recent Revival of Divine Command Ethics' in (Fall 1990), 50 *Philosophy and Phenomenological Research Supplement*, 345–365; 'The Primacy of God's Will in Christian Ethics' (1992) 6 *Philosophical Perspectives: Ethics*, pp. 493–513.

⁴¹ Robert Merrihew Adams, *Finite and Infinite Goods supra* note 40, p. 36.

⁴² Brian Tierney, *The Idea of Natural Rights supra* note 30.

⁴³ Robert Kraynak, *Christian Faith and Modern Democracy supra* note 2.

1 sense apart from Christian theology and divine command ethics. The basic idea
 2 is that human beings have sacred value because they are created so that they
 3 resemble God in such a way that we have a reason for loving them and for not
 4 violating their rights. Now admittedly, there is an important move from the idea
 5 of what is lovable to the idea of what has rights. But the theological approach
 6 bridges that gap by fleshing out the idea of what is sacred and what has dignity.
 7 Again, the idea of what is sacred or what has dignity is grounded in a theocentric
 8 account of how all value is derived from God's creative activity. Perry sums this
 9 up nicely: "there is no intelligible (much less persuasive) secular version of the
 10 conviction that every human being is sacred; the only intelligible versions are
 11 religious."⁴⁴

12 The general problem that provokes this sort of conclusion is the idea that secu-
 13 lar or humanistic foundations of rights-talk are unstable, relativistic, and incapa-
 14 ble of generating universal consensus. MacIntyre concluded quite some time ago
 15 now, that "natural or human rights are fictions" because the secular humanist
 16 tradition was unable to ground the idea in any adequate way.⁴⁵ More recently
 17 Perry has argued against secular approaches to human rights such as Dworkin's,
 18 Nussbaum's,⁴⁶ and Rorty's⁴⁷ by claiming that there is no consensus about human
 19 experience that allows the sort of universality that human rights claims are sup-
 20 posed to have. And Jeffrey Stout⁴⁸ and Stanley Hauerwas⁴⁹ have each also noted
 21 this problem. Thus the conclusion might appear to be that either rights are merely
 22 conventional (and so unstable and relativistic) or that they must be grounded, as
 23 Perry argues, in a religious idea about the sacredness of human beings. Nicholas
 24 Wolterstorff has recently taken this conclusion a step further and argued that
 25 rights can only be adequately grounded in a certain version of Christian theol-
 26 ogy.⁵⁰ It is this last view that I will critically examine in the rest of the paper,
 27 especially as presented recently by Nicholas Wolterstorff.⁵¹

28 ⁴⁴ Michael J. Perry, *The Idea of Human Rights: Four Inquiries* supra note 9, p. 11.

29 ⁴⁵ Alasdair MacIntyre, *After Virtue* (Notre Dame University Press, 1981), p. 70.

30 ⁴⁶ Perry critiques Martha Nussbaum, 'Human Functioning and Social Justice: In Defense of Aristote-
 31 lian Essentialism' (1992) 20 *Political Theory* as well as 'Non-Relative Virtues: An Aristotelian Approach'
 32 in Nussbaum and Amartya Sen eds., *The Quality of Life* (Oxford: Clarendon Press, 1993). For Nussbaum's
 33 more recent views see Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press,
 34 2006).

35 ⁴⁷ Perry focuses on Richard Rorty's *Contingency, Irony, Solidarity* (Cambridge: Cambridge University
 36 Press, 1989).

37 ⁴⁸ Jeffrey Stout, *Ethics After Babel* (Princeton: Princeton University Press, 2001) and *Democracy and
 38 Tradition* (Princeton: Princeton University Press, 2004).

39 ⁴⁹ Stanley Hauerwas, *A Better Hope: Resources for a Church Confronting Capitalism, Democracy, and
 40 Postmodernity* (Grand Rapids: Brazos, 2000) and *Performing the Faith* (Grand Rapids: Brazos, 2004).

41 ⁵⁰ See Wolterstorff's review of Perry: "Sacred and Inviolable" supra note 8.

42 ⁵¹ This account follows a lecture that Wolterstorff gave as a Plenary Address at the meeting of the
 43 American Academy of Religion in November 2007. He received a standing ovation from nearly half of
 44 the large audience in attendance after telling the audience that the only legitimate grounding of human
 45 rights was found in the Judeo-Christian tradition. Perhaps this should be expected from a group of reli-

VI. The Argument Against Theocentrism

Perry and Wolterstorff argue that human rights can have no adequate secular grounding because, as Perry puts it, the idea that human beings are sacred can only be explained in religious language. This could remain as a negative argument against secular and humanistic approaches to human rights. If so, then the conclusion would be a skeptical one: that we cannot attain the level of universality or objectivity that is necessary to ground absolute claims about human rights. But one need not view such a negative or skeptical argument as refuting a secular or humanistic approach to human rights. Pragmatists and humanists might agree with this fallibilist conclusion: there is no reason to presume that we must have an absolutely universal ideal of human rights. Moreover, we may want to reevaluate the claim that all human beings are sacred, especially when this is interpreted to mean that only human beings are sacred. While we should extend the idea of rights as far as we possible can to include as many human beings under its protective umbrella as possible, it may be that in order to extend it in this way, we may have to include some non-human beings under its protection. And we should admit that it is possible that some human beings do not have rights: those who are brain dead, in a vegetative state, or who have some other sort of severe incapacity.

The theocentric approach which locates rights in the endowment given to human beings by God relies upon the supposedly God-created distinction between human beings and nonhuman animals. Such a distinction really only makes sense within a theistic world-view that takes the Genesis story at least somewhat literally and that believes that species distinctions are God-created facts. But after Darwin, such a way of looking at the world is very difficult to support. It is more plausible to conclude that human beings are not by nature any more *sacred* than non-human beings. We have some more developed capacities than other species. But these differences in capacity do not create qualitatively different sorts of beings.

A further problem is that the theocentric approach has no good reason to tolerate those who do not accept this religious idea. Without a certain kind of religious faith, according to this argument, rights talk is absurd. Since the absolute grounding of rights is supposed to be located in God's fiat, other traditions or ideas about rights are seen as false or inadequate. A non-absolute ground for human rights is rejected as insufficient; and any attempt to ground rights in an absolute other than God's fiat is also rejected as ultimately incoherent. This is problematic because it ends up in a kind of intolerance toward non-religious people, such as

gion scholars but it should also be noted that the AAR is known for its recognition of religious diversity. What is troubling is that Wolterstorff's argument does not acknowledge that rights claims can be grounded in diverse religious traditions (and even in non-religious traditions). Wolterstorff's address was based upon his new book, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008).

1 we saw in Locke's condemnation of atheism. Apparently, only Christians ade-
2 quately comprehend the idea of rights; so non-Christians have a view that is
3 either immoral (if they reject the idea of rights) or incoherent (if they accept the
4 idea without its proper grounding). In our diverse world, such a view is not
5 acceptable.

6 The theocentric argument for human rights is widely affirmed by those who
7 argue against secularization and who argue that non-theocentric arguments about
8 human rights amount to a pernicious sort of relativism. One should note the
9 important subtext to the theological argument as presented by Wolterstorff and
10 others: if human rights can only be grounded in Christian theology, this means
11 that the majority of human beings who do not accept this theology cannot have
12 an adequate understanding of human rights. Indeed, defenders of this sort of
13 account will find it difficult to accept that non-Christians have any adequate
14 conception or commitment to human rights. In other words, the fact of religious
15 (and non-religious) diversity—and the vast consensus about human rights among
16 those who come from a variety of traditions—gives us good reason to be suspi-
17 cious of the attempt to locate human rights in Christian theology.

18 There are two main moves in Wolterstorff's argument. First, he claims that the
19 idea of human rights is modeled on the idea of God's rights. Second, he claims
20 that the modern attempt to ground rights in capacities, which he identifies with
21 the Kantian tradition, is inherently flawed because it is unable to extend the idea
22 of human rights to many beings who are human—the disabled and others who
23 lack those capacities. This culminates in a slippery slope sort of argument that
24 claims that without a theological grounding for human rights, we will end up
25 killing Alzheimer's patients and others who lack the capacities that the modern
26 tradition emphasizes.

27 Let's examine these two basic arguments in more detail.

28 A. *The Theological Argument*

29 The theological argument claims that the idea of dignity and the idea of rights is
30 derived from the idea of God himself as the being of dignity par excellence.
31 Locke's argument held that we derived our rights from God as the creator and
32 property holder. But Wolterstorff's idea goes deeper into the analogy between
33 God and man. According to Wolterstorff, the very idea of harm or wrong begins
34 with the idea that God can be harmed or wronged. One might support this view
35 by a close reading of the Old Testament. God is routinely wronged by the
36 Hebrews. And indeed, the 10 Commandments begin with a list of ways in which
37 God can be wronged. One must then give God what he deserves. As the Creator
38 and Ruler of the universe—that is, as a being with infinite dignity—he deserves
39 devotion, love, and respect. Thus Wolterstorff argues that the idea of what it
40 means to harm or wrong a human being is based upon an analogy with what it
41 means to harm or wrong God. To make this analogy work, one must recall that

human beings are supposed to be created in the image of God. Human dignity is derivative of the dignity of God.

A similar sort of argument is made by Luther when he argues in Concerning Christian Liberty that the meaning of Christianity is that each human being is both a priest and king, sharing through Christ the dignity of king. I can't help but point out that Luther's argument about the dignity of man expresses intolerance toward nonbelievers: the kingship and priesthood and dignity of man is reserved for Christians only. Luther puts it this way:

Nor are we only kings and the freest of all men, but also priests for ever, a dignity far higher than kingship, because by that priesthood we are worthy to appear before God, to pray for others, and to teach one another mutually the things which are of God. For these are the duties of priests, and they cannot possibly be permitted to any unbeliever... But to an unbelieving person nothing renders service or work for good. He himself is in servitude to all things, and all things turn out for evil to him, because he uses all things in an impious way for his own advantage, and not for the glory of God.⁵²

Setting the possibility of religious intolerance aside for the moment, let's note that this sort of argument is itself derivative of cosmological and theological speculation. If one accepts traditional Christian cosmology and the Divine Command theory of ethics, then this will make perfect sense. All value is derived from the Creator: and the value of the human is grounded in the value of the Maker. A less cosmological rendering of the argument might emphasize that is supposed to help us avoid relativism by turning respect for dignity into a moral absolute. When human dignity is grounded in the *imago dei*, then human rights become absolutes which can never be violated, for to violate human rights and insult the dignity of man would also be to insult God Himself.

This argument can be rejected for a number of reasons. First and most obviously, it hinges upon the acceptance of Christian theology. One needs further proof that there is a God, that He really created human beings in His image, and that He does demand the sort of dignity and respect described here. There is much more to be said here than I can in this short article, including the problem noted above about global religious diversity. So I will focus on the very particular theological idea that is central to this argument: the very idea that God can be wronged or harmed.

If God is omnipotent, infinite, and eternal, then it is not clear how He can be harmed. But this idea of wronging God is central to the idea that harm to humans is understood on analogy with harm to God. And indeed, it is needed to make sense of much of the Old Testament in which God's anger is motivated by the wrongs done to Him. One possibility is that when God is wronged, He is not harmed. Wrongs can be done without harming the person or the thing that is

⁵² Martin Luther, *Concerning Christian Liberty*, Part 2 (from Project Wittenberg on-line library: <http://www.iclnet.org/pub/resources/text/wittenberg/luther/web/cclib-2.html>).

1 wronged (e.g., it might be wrong to lie to you, even though the lie does you no
 2 harm). But if God is not harmed, then his wrath and displeasure is not ‘personal.’
 3 Rather, it is ‘principle’ in the sense that His anger is about the violation of ethical
 4 principles. When God’s wrath erupts in response to a lack of piety, for example,
 5 the problem is not that God feels hurt or neglected—a perfect God cannot be
 6 hurt. Rather, the problem is that the principle of respect or piety has been vio-
 7 lated. But if we follow the argument this far, we are left with a version of the
 8 Euthyphro argument against Divine Command theory. If God’s wrath is princi-
 9 pled in this way, then what matters is the principle and not the will of God.

10 At any rate, the theocentric approach seems to get things backwards. God
 11 cannot really be harmed because He can lose nothing. But human beings can be
 12 harmed because of their fragility and finitude. Mortal human beings can be
 13 stripped of everything and reduced to nothing; God can never suffer this sort of
 14 loss.⁵³ To ground the idea of harm or the idea of rights upon analogy with harm
 15 to God is to ignore the actual concrete experience of human mortality, fragility,
 16 and susceptibility to harm.

17 Moreover, the theological approach offers consolations that can minimize the
 18 harms that human beings suffer. It should be recalled that in the Beatitudes Jesus
 19 promises that all the harms of this life will be overcome in the Kingdom of God.
 20 This can serve as consolation for harm but when such harms are consoled in this
 21 way, then it appears that the moral significance of the harm is minimized. Thus for
 22 some Christians, moral life is grounded in the Divine Command and not in the
 23 concrete face-to-face experience of the suffering other. In other words, the need to
 24 respond to the demands of suffering others can be minimized when human rights
 25 and human experience are mediated by God.⁵⁴ This is why a theist like Antonin
 26 Scalia can claim that for Christians—who believe in the afterlife and God’s eternal
 27 reward—death is no big deal. But in order to take the claims of human rights seri-
 28 ously, it seems that we should think precisely that death is a big deal.

29 B. *The Argument Against Capacity*

30 Wolterstorff’s second argument is against the modern attempt to ground rights in
 31 human capacities. He locates this approach in Kant and his emphasis on rational
 32

33 ⁵³ A Christian might object that the immortal soul of human beings cannot suffer absolute loss either.
 34 And a Christian might also object that the heart of Christian theology is the claim that God does undergo
 35 absolute loss in the death of the Christ. But the point is that this all requires extensive theological specu-
 36 lation that leads us away from the very real losses that are suffered by those who enslaved, oppressed, and
 37 killed in the real world.

38 ⁵⁴ A Christian might respond that the parable of the Good Samaritan appears the demand this sort of
 39 face-to-face recognition of human suffering and need. But we should note that the Wolterstorff argument
 40 does not itself begin from this sort of face-to-face encounter. I discuss Christian ethics and the parable of
 41 the Good Samaritan in Andrew Fiala, *What Would Jesus Really Do? The Power and Limits of Jesus’ Moral*
 42 *Teachings* (Lanham, MD: Rowman and Littlefield, 2007).

autonomy. One of his basic arguments against this view is that it cannot extend the idea of human rights to many beings who are members of the human species but who lack human capacities, from fetuses to the disabled and the elderly. Wolterstorff then turns to a slippery slope sort of argument that is intended to be a coup de grace against the capacity approach. The slippery slope argument that claims that without a theocentric grounding for human rights, we may end up killing Alzheimer's patients and others who lack the capacity for rational autonomy. Or as John Paul II puts it, the secular grounding of rights allows for all sorts of pernicious uses of freedom: from abortion to euthanasia.

The first part of this argument—the point about capacity—is important. It points to a fundamental principle about how we should understand the idea of rights. The second part—the slippery slope—is frankly something of a distraction. There are good reasons not to kill Alzheimer's patients that have very little to do with theology; and there may be good arguments against euthanasia or abortion that do not rely upon God. Surely we can draw an inclusive line against killing that includes humans with diminished capacities without appeal to theology; and this line may include fetuses, depending upon how we flesh out the question of potentiality. But one risk is that in drawing such an inclusive line, we may have to include some animals—since some of them have capacities that are greater than some diminished humans and the actual capacities of fetuses.

The problem here is that if we claim that animals possess rights of some sort, then the *imago dei* argument is reduced to absurdity. Recall that the basic idea is that human beings are created in the image of God. If we were to include animals among the beings that have rights, then they too would have to be created in the image of God. But this runs counter to the Genesis account and to most of the Christian way of understanding the dignity of man. A cynical atheist might further wonder whether it is true that an anencephalic baby is also created in the image of God. But the theist can respond by a claim about the capacities of the species *homo sapiens*: the species is created in the image of God; and this is true even if some specimens are abnormal or deficient.

While Wolterstorff traces the capacity argument back to Kant, this argument is really more properly focused on those who understand rights in terms of cognitive capacity more broadly construed than Kant would allow. Animal rights activists and pro-abortion writers such as Tom Regan, Peter Singer, Mary Anne Warren,⁵⁵ and Michael Tooley⁵⁶ have sought to establish that cognitive capacity is essential for us to speak of anything like rights or a claim to moral consideration. One typical example of this way of arguing can be found in the work of

⁵⁵ Mary Anne Warren, *Moral Status: Obligations to Persons and Other Living Things* (Oxford: Oxford University Press, 2000). Also see Warren's influential article, 'On the Moral and Legal Status of Abortion' (Jan. 1973) *The Monist*, pp. 43–61.

⁵⁶ Michael Tooley, 'Abortion and Infanticide' (1972) 2:1 *Philosophy and Public Affairs*, pp. 37–65.

1 R.G. Frey.⁵⁷ Frey argues that speciesist arguments are wrong because they are
 2 merely unfounded declarations of faith in the idea that God created the difference
 3 between humans and animals. Moreover, any morally relevant difference must be
 4 based upon differentiated experiential capacities because it is these capacities—
 5 especially the capacity to experience harm and to suffer—that are the focus of
 6 moral claims against us. Frey admits that some humans have experiential capaci-
 7 ties that are below those of some animals. So we are faced with a choice: either we
 8 exclude some humans (the cognitively deficient, the senile, the disabled, and per-
 9 haps fetuses) from moral concern or we include some nonhuman animals. But
 10 assuming that we do not want to exclude such members of our own species, we
 11 should include some animals in the sphere of moral concern.

12 Now Wolterstorff's argument gets things the other way round. He assumes
 13 that since we would not want to exclude cognitively deficient humans, we must
 14 retreat to a speciesist argument about human rights. But the only way to defend
 15 this idea is to retreat still further to theology—since the capacity argument con-
 16 siders species boundaries to be somewhat unreliable as a guide to rights.

17 **VII. Conclusion: The Argument in Favor of a Capacity Approach**

18 We should look to harms in order to understand the idea of rights. And these
 19 harms should not be understood in reference to the Creator (as Locke and Wolt-
 20 erstorff each in their own way argue). Rather these harms are experience directly
 21 by those who are harmed. Thus the primary source for rights is the capacity to
 22 experience harm. Rights are not merely formal principles that are abstractly
 23 related to an account of a duty to God. Rather, they are claims that those who
 24 suffer make upon us; and such claims make sense to us because of empathy and
 25 our ability to see the suffering of others. Wolterstorff admits this—as do others in
 26 the theological discussion such as Perry and even John Paul II. But this approach
 27 goes wrong when it moves beyond empathy to the theocentric argument. Instead
 28 of making this move, we should remain focused on empathy and the claims of
 29 those finite beings who suffer.

30 Those who have been harmed tell us so with their faces and their voices. They
 31 scream out in pain and they complain of oppression and wrong (this may not
 32 include fetuses—but that's a point for a different paper). Empathy and the ability
 33 to see the suffering of others is part of the Christian tradition. Indeed, the parable
 34 of the Good Samaritan, which we referred to above, reminds us the importance
 35 of being able to see the suffering of others. But to see the suffering of others, we
 36 do not need Christian theology. Rather, compassion and empathy are important
 37 values in multiple faith traditions. And empathy is most likely located in a basic

38

⁵⁷ See Frey's article "Animals" *supra* note 12.

cognitive capacity shared by human beings (and perhaps by some non-human beings as well).

The idea of rights must be grounded in the experience of those who suffer. But suffering is not a complex cognitive event. Rather, it only requires minimal consciousness or sentience. Thus Alzheimer's patients can be said to suffer and also those with a variety of disabilities and children and perhaps even fetuses. But so too can animals suffer. A non-theocentric account of rights must ground rights in the claims of those who suffer and are harmed. Unjustified suffering is wrong because the suffering being does not like it; not because of some harm to God or some affront to His rule as Creator of these beings (as Locke put it).

This approach has much in common with Nussbaum's "human capabilities" approach. Nussbaum bases her idea of rights and entitlements upon essential claims about the basic capabilities of the human species. Her claims about these capabilities are supposed to be grounded empirically. And if there are exceptions such that some individual humans lack some of these basic capacities—say through disability or disadvantage—Nussbaum argues that the claims about the capacities of the species show us that we should take care to provide such disabled individuals with adequate extra support. For Nussbaum, entitlements "are not based solely upon the actual 'basic capabilities'" a person has; but "on the basic capacities characteristic of the human species.... Such entitlements would not exist were capabilities based only on individual endowment, rather than on the species norm."⁵⁸

I agree with this for the most part. But it is important to note that the second of Wolterstorff's objection still holds contra Nussbaum. Although she stipulates that individual capacity is not the relevant place to look for rights, one could still object that only beings with the actual capacities are entitled to make rights claims. The difficulty is that empirical generalizations about what Nussbaum calls "the species norm" can be articulated in a way that ignores the disabled and the disadvantaged, despite what Nussbaum claims to the contrary. Theists want to argue that the solution to this problem is to refer back to God and the fact that the species is created in the image of God.

But a more obvious and direct solution to this problem is simply to lower the bar in terms of which capacities must be respected so that it is easier to include the disabled. Nussbaum does just this in arguing that bodily need is the place to begin in thinking about dignity and rights. And Nussbaum does want to extend the capabilities approach to include the disabled and even the non-human. So it is surprising that Nussbaum focuses on the capabilities of the 'human species' as she does in the above quotation. Rather, the better place to start would be to focus on the capabilities of sentient animals. I maintain that it is only by 'expanding the circle' in this way (to borrow a metaphor from Peter Singer) that we can

⁵⁸ Martha Nussbaum, *Frontiers of Justice* *supra* note 47, 285.

1 find a non-theocentric way to ground rights in the capacities of sentient beings.
2 The theological tradition has been an important historical source for the idea of
3 rights. But the time has come for us to move beyond the theocentric grounding
4 of rights and find a way to ground rights directly in the suffering of sentient
5 beings.