

9-1-2000

# Is There a Measure on Earth?: Sacred Possibilities for the Secular Discourse on Human Rights

Mieke Holkeboer

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Human Rights Law Commons](#)

---

### Recommended Citation

Mieke Holkeboer, *Is There a Measure on Earth?: Sacred Possibilities for the Secular Discourse on Human Rights*, 2000 BYU L. Rev. 867 (2000).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2000/iss3/8>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

## Is There a Measure on Earth?: Sacred Possibilities for the Secular Discourse on Human Rights

*Mieke Holkeboer\**

### I. INTRODUCTION

In a recent article entitled *Human Rights: The Midlife Crisis*, Michael Ignatieff declares provocatively that “[h]uman rights has become the major article of faith of a secular culture that fears it believes in nothing else.”<sup>1</sup> In a less pessimistic vein, University of Chicago theologian David Tracy has spoken similarly of the quasi-religious dimension of contemporary human rights talk: “In one sense,” Tracy explains, “a concern with human rights is becoming something like an international civil religion.”<sup>2</sup> For Tracy, however, this civil religion is not the faith of a fearful, agnostic culture but a reality with a positive role to play. Indeed, he warns of its fragility: “[I]f that reality is not to dissipate before the conflict of ideologies that surround and permeate it, some reasons must be forthcoming to affirm its grounds.”<sup>3</sup>

Our question relates to the tension that lies between these two views. What is the relationship between religion and human rights? Or, more descriptive of the complexity we now enter, what are the relationships—practical, historical, and conceptual—between religion and human rights that shape the articulation and promotion of human rights today? Does human rights discourse need religion? If yes, what would this mean? Would religion include nontheistic faiths? Alternatively, is it possible that the real tension at the heart of contemporary human rights discourse is not about religion at all but about morality? Might David Bromwich’s words about contemporary society aptly speak to our present questions and crisis? “[T]he deeper

---

\* Research Associate, DePaul College of Law Center for Church-State Studies.

1. Michael Ignatieff, *Human Rights: The Midlife Crisis*, N.Y. REV. BOOKS, May 20, 1999, at 58.

2. David Tracy, *Religion and Human Rights in the Public Realm*, DAEDALUS, Fall 1983, at 237, 247.

3. *Id.*

conflict today may not be between those who adhere to a religious doctrine and those who do not, but between those who believe some moral goods are not negotiable and those who wonder what that could mean.”<sup>4</sup>

Whether religion<sup>5</sup> or morality is more deeply rooted, our Gordian knot lies in the pervasive political clashes that arise among particular claims to universality and nonnegotiable ways of being human. Still, what makes the religion button especially hot, in part, is that freedom of religion and not freedom of morality is protected as a universal human right. Thus, it can conceivably outweigh or “trump” other legal considerations in a manner that claims to a freedom of morality, of course, could not. Whatever practical difficulties we encounter, we, at least those of us who want to retain the critical ability to judge human behavior, assume morality is in some sense universal; we cannot assume that religion is universal in this same general sense.<sup>6</sup>

For relativists and nonrelativists alike, morality is a matter for cross-cultural reasoning and discussion. Indeed, for many, a discussion about morality is the needed dialogical foundation for any kind of “rights” talk.<sup>7</sup> A critical, cross-cultural discussion of religion, however, or religiously-based policies and practices, is far more problematic, in part for a lack of common vocabulary and history and in part because what is deemed nonnegotiable in religion is too often relegated, by insiders and outsiders, to the nonrational or irrational and

4. David Bromwich, *Dover Beached*, NEW REPUBLIC, Aug. 23, 1999, at 29, 32-33.

5. “Religion” in this human rights context is delimited as in the inclusive sense codified in the International Bill of Rights.

6. Christian ethicist Lisa Sowle Cahill sharpens this practical point about the need for nonrelativist affirmations:

[A]t the level of experientially recognized and practically important needs, social ethics proceeds on the assumption of a shared humanity and at least a fundamentally shared moral vision, whether or not the philosophical warrants for that assumption are clearly in place. *Without some essential unity of human moral experience and common recognition of values, virtues, and vices, social criticism in the name of justice would be impossible.*

LISA SOWLE CAHILL, *SEX, GENDER, & CHRISTIAN ETHICS* 33 (1996) (emphasis added).

7. Judith Jarvis Thomson draws such a moral map:

[T]he concept of a right is only one among many moral concepts, and understanding what it is to have a right requires us to get a sense of how that concept is related to the others . . . . We might think of morality as a continent and of rights as a territory or realm somewhere in it; understanding what is within the realm of rights requires getting a sense of where in the continent it lies.

JUDITH JARVIS THOMSON, *THE REALM OF RIGHTS* 3 (1990).

to the ahistorical or strictly transcendent. Too often a tradition's own evolving logic and multivalent history are efficiently homogenized and offered as a kind of predetermined capsule, like the over-packaged "Asian values," rather than as an organic whole open to and the product of dialogue.<sup>8</sup>

Ethicists and philosophers join the discussion with their queries about whether human rights can be framed and promoted apart from the underlying questions and vastly varying answers concerning human being, morality, and the good. If human rights is indeed a kind of international civil religion, is this glue enough to get us the necessary international consensus on matters of human dignity? Theologians, in turn, have wondered (and disagreed!) about our human capacity to acknowledge the religious or transcendent dimension of human being cross-culturally, to locate the proverbial elephant, in other words, of which each culture grasps a part. At the heart of many theologians' queries lies a practical question: how can theology, theism, and inter-religious dialogue lay a road for religious tolerance and human rights promotion?

Finally, legal scholars and practitioners, with their own vocabulary and framework, join the ethicists, theologians, philosophers, and others in the babble of contemporary human rights discourse to articulate the crisis as they experience it. They pose questions of normativity with urgency in light of increasing conflicts between religious or belief-related human rights<sup>9</sup> and other universal human rights. Are belief-related human rights more fundamental than any other? Can, for example, religious freedom claims ever trump violated rights of women or permit racial discrimination? How, in such circumstances, do we choose the pyrrhic victor without placing one culture's values above another's, without determining what is and is not legitimate religion?

How, in addition, can international human rights treaties effectively address the disconnect between the promises of their state par-

---

8. See Amartya Sen, *Human Rights and Asian Values: What Lee Kuan Yew and Li Peng Don't Understand About Asia*, NEW REPUBLIC, July 14 & 21, 1997, at 33.

9. I have used the term "belief-related rights" to include the rights of agnostic, atheistic, and nonbelieving persons. Acknowledging the incompleteness of each term singly, in this paper "religious human rights" and "belief-related human rights" will be used interchangeably. For a discussion of the conceptual difficulties attending the exclusive use of the term "religious human rights," see David Little, *Studying "Religious Human Rights": Methodological Foundations*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 49 (John D. van der Vyver & John Witte, Jr. eds., 1996).

ties (those at the table) and the customs and beliefs of communities within the states that have made no such promises (those not at the table), often minority communities whose practices the states themselves are hesitant to judge (here, the tension between minority rights and human rights)? To what forum can we finally appeal to render a universally normative ordering of conflicting rights?

## II. THE INTERNATIONAL HUMAN RIGHTS DOCUMENTS: A PESSIMIST'S SECULARITY OR SACRED POSSIBILITIES?

It is not surprising, in light of what is at stake, that part of the human rights debate has been focused on whether international documents like the Universal Declaration of Human Rights ("UDHR") and the United Nations Charter have a religious or secular foundation. For Ignatieff the secularity of the international human rights documents—and particularly of the seminal UDHR (1948)—provides a veneer of concord beneath which the friction of discordant values builds. Thus, despite over fourteen hundred rounds of voting on practically every word and clause of the Declaration of Human Rights, and its subsequent adoption by forty-eight countries as diverse as Lebanon, Chile, France, China, and Ukraine, what lurk in the interstices of the UDHR's original language for Ignatieff are "silences . . . that need to be confronted":

The "mid-life crisis" of human rights is not just about the discrepancy between what states say and do. There is also a philosophical crisis: a sense that the silences in the Universal Declaration need to be confronted. The secularism of [the UDHR's] premises is ever more open to doubt in a world of resurgent religious conviction.<sup>10</sup>

Ignatieff's assertions raise at least two questions here. First, was the UDHR merely the thin political compromise that he assumes? Is it, in other words, silences we must confront, or can we imagine the Declaration's drafting rather as a rigorous battle of practical reason where what remain are not unarticulated differences but deep disagreements (a possibility, in my view, with considerably more promise)? Second, is the secularity of the international human rights documents inherently opposed, as Ignatieff suggests, to those indi-

---

10. Ignatieff, *supra* note 1, at 60.

viduals and cultures with religious convictions?<sup>11</sup> Is it, in other words, a secularity imbued with pessimism, a “lowest common denominator[],” as he describes it, “enabling people to pretend to share more than they actually do,”<sup>12</sup> or is it a secularity with more sacred possibilities, a space where religious visions of human being are subjected to their truest, most universal measure?

In addition to the endless rounds of voting and the diversity of countries represented in the UDHR’s final language, our knowledge of the Declaration’s drafting sessions suggests that the question of religion and human rights was posed repeatedly and vigorously discussed.

The preparatory work of the Universal Declaration makes clear that no particular religion was to be deemed the foundation for human rights. For example, in drafting the Universal Declaration, the issue was raised as to whether to include some reference to a deity in the preamble and in Article 1, such that Article 1 would read that “human beings are created in the image of God . . . [and] are endowed by nature with reason and conscience.” The drafters deliberately rejected any references to a deity or to the immortal destiny of human beings so as not to impose the philosophical concepts of natural law (which derives from one particular religion) on countries to which it was alien and also not to impose it on nonbelievers.<sup>13</sup>

Despite Ignatieff’s foreboding about the latent clashes at the heart of the Universal Declaration, he does imagine a secular defense of human rights to which human beings could universally appeal. What he describes as “moral reciprocity” is, he suggests, a nonreligious, nonmetaphysical foundation capable of buoying contemporary human rights discourse. Moral reciprocity is grounded for Ignatieff in a kind of biologically based common sense. It is, as he says, the idea

---

11. At a recent discussion I attended on “religious leadership and human rights” at the 1999 Parliament of the World’s Religions, held in Cape Town, South Africa, one of the panelists spoke of the “paradox” of religious leaders resonating so strongly to a secular document like the Universal Declaration. It seems too often that the notion of “secularity” is seen to be somehow antithetical to religion. But what is paradoxical about religions finding themselves in the UDHR?

12. Ignatieff, *supra* note 1, at 58.

13. See Courtney W. Howland, *The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis Under the United Nations Charter*, 35 COLUM. J. TRANSNAT’L L. 271, 341 (1997).

that we cannot conceive of any circumstances in which we or anyone we know would wish to be abused in mind or body. That we . . . possess the faculty of imagining the pain and degradation done to other human beings as if it were our own [ ] is *simply a fact about us as a species*. . . . Such [a] *natural fact*[ ] about human beings provide[s] the grounds for an entitlement to protection . . . [and] right[s] . . .<sup>14</sup>

Whether we assume that the ability to imagine the suffering of others is simply a natural fact about the human species depends, of course, on what we mean by “natural.” Ignatieff clarifies his intentions when he avers with some certainty that this “secular defense of human rights—based on practical historical experience and a minimalist anthropology—will necessarily leave religious thinkers unsatisfied.” How, we might well ask, do “religious thinkers” think? How do they argue? Too many, like Ignatieff, assume that “religious thinkers” or simply persons with particular faith convictions will be unable to enter into discussions about human being and human rights based on “practical historical experience” and “minimalist anthropology” alone. What is unsatisfying, I would argue, is not a conversation based on human history and experience but Ignatieff’s belief that this excludes religion. In other words, what he calls a minimalist anthropology does not appear to me to be minimalist at all, and what he calls practical historical experience should not exclude religious experiences.

What I want to question is the notion that any anthropological or historical parsing of human experience could ever fully exclude the deeper questions and interpretations raised by religious and philosophical visions of human being. More foundational for the human rights debate than any single “natural” human capacity is the cross-cultural conversation about human being and its purposes. Ignatieff’s effort to stick to the “natural facts” does not stabilize this conversation but only inappropriately curtails it.

*A. The Word “Sacred” and its So-called Secular Co-option: Michael Perry*

On the other side of the river from Ignatieff’s attempted eschewal of metaphysics (through his appropriation and use of the term “natural fact”) are the efforts of legal scholar Michael Perry and

---

14. Ignatieff, *supra* note 1, at 60-61 (emphasis added).

others to reclaim human rights territory for “religious thinking.” Prominent in Perry’s work is his mission to clarify and strengthen the word “sacred” after its thinning and co-option at the hands of secularists like Ronald Dworkin. In his recent book, *The Idea of Human Rights*, Perry takes up this project by asking rhetorically, “Is there any intelligible secular version of the claim that every human being is sacred—or, instead, is the claim inescapably religious and the idea of human rights, therefore, ineliminably religious?”<sup>15</sup>

Perry begins, in other words, by recognizing the secular currency of the word “sacred” in the contemporary human rights debate and, particularly, how it has functioned for some secularists as a kind of grounding for human rights. If, so goes his logic, it can be argued that the word “sacred” necessarily belongs within a religious framework (i.e., that there is no intelligible secular version of the claim that every human being is sacred), then he believes the argument will have been made for the “ineliminably religious” foundations of human rights.

After an etymology of the word “religion” and a quotation about the human need for existential meaning by Albert Camus, Perry moves to an articulation of what he intends by the word “religious”: “To say that a conviction is ‘religious’ . . . is to say that the conviction is embedded in a religious vision or cosmology, that it is an aspect, a constituent, of such a vision: *a vision according to which the world is ultimately meaningful . . .*”<sup>16</sup>

Thus, for Perry, “religious vision” appears to be tantamount to a vision that renders the world (and, presumably, one’s place therein) “ultimately meaningful.” But why exactly is an affirmation of life’s ultimate meaning necessarily “religious” and not simply an affirmation that one is not depressed? On a common-sense level, we might join Perry in affirming that what makes the human being sacred and therefore worthy and in need of human rights has to do with the individual’s irreplaceability in a scheme where meaning (and, particularly, the meaning of life) transcends an individual’s own immediate limits. And yet, Perry himself asks, “For persons who do not count themselves religious, what does it mean to say that every human being is sacred?”<sup>17</sup> For Dworkin, as Perry understands him, a nonreli-

15. MICHAEL PERRY, *THE IDEA OF HUMAN RIGHTS: FOUR INQUIRIES* 5 (1998).

16. *Id.* at 16 (emphasis added).

17. *Id.* at 26-29.

gious account of human sacredness is based upon two intersecting grounds: namely, that the individual human being in its uniqueness is at once the highest product of natural creation and the highest product of human creative force.<sup>18</sup>

For Perry, this account uses the term “sacred” in a subjective or weak sense that is ultimately not adequate to the work it must do: something is sacred *because* it inspires awe in us. Perry’s claim is that Dworkin fails to move us effectively toward an understanding of human sacredness in the strong, objective sense: namely, that something *is* sacred and *therefore* it inspires awe in us. How, he asks, can we move from an agnosticism about the universe’s ultimate meaning to an affirmation that every human being is nevertheless sacred? And yet this question is framed by assumptions about religion and nonreligion that we have already queried, namely, Perry’s equating of secularity in human rights discourse with agnosticism about ultimate meaning.

In other words, we might accept Perry’s assertion that human sacredness depends upon ultimate meaning without conceding that we are speaking “religiously” or without affirming a religious foundation for human rights based upon Perry’s particular definition of religious vision. By the same token, we might accept Perry’s linking of human sacredness to an affirmation of ultimate meaning without imbuing this sacred anthropology with any particular substantive metaphysical backdrop. There are, to put it otherwise, different ways of relating secularity, ultimate meaning, and religion than the way Perry relates these ideas: secularity, in particular, need not be antithetical to religion.

Perry’s critique seems to have to do with a circularity he detects in Dworkin’s account. If the human being is sacred merely because it inspires us to call it such, then how shall this human sacredness be anchored apart from our potential inflation or watering down of this subjective appellation? In other words, on what firm foundation does Dworkin establish human sacredness such that human beings “count” in a vision that transcends our own subjective evaluations? Over a prevailing relativism, how can we affirm cross-culturally not only human rights but also the transcendent value of human beings that they are intended to ensure?

---

18. *See id.* at 26-27.

These concerns are important ones. We need to be able to articulate why cultural-political trumps like “Asian values” or even similar trumps attempted within the language of human rights are not acceptable. Perry belongs among those who reject postmodern declarations of relativism and take up instead the more difficult constructive work of responding to these human rights challenges. And yet the stronger metaphysical foundation Perry seeks over Dworkin’s secular sacredness has a circularity of its own. To repeat, the strong, objective sense of sacredness that Perry asserts (and critiques Dworkin’s secular account for failing to reach) is the following: something *is* sacred and *therefore* it inspires awe in us.

In terms of linguistics and logic, we can appreciate the distinction between the “weak, subjective” and the “strong, objective” accounts. And yet, when we consider claims to particular religious foundations or freedoms as trumps of other human rights (as when claims of religious human rights are placed in opposition to the human rights of women), what does Perry’s distinction (between weak and strong) offer methodologically or substantively that helps us to adjudicate this conflict? Is there any sense—legal or otherwise—in which strong, objective language about anthropology (some account of God’s relationship to human beings or some other kind of sacred anthropology) can appropriately triumph over so-called weak, subjective language about human dignity? In other words, were we to grant Perry’s grounding of human sacredness in religious vision as he defines it, would this bring us to concede his related argument that human rights have a necessarily religious foundation? What tools would this affirmation provide for the larger debate over the relationship between religion (and religious human rights) and the growing end of human rights? What finally is gained if Perry has indeed taken us from Dworkin’s secular version of sacredness to one framed in an excessively inclusive religious vision? Is Perry’s grounding in religious vision ultimately any stronger (more effective in cross-cultural dialogue) than Ignatieff’s allegedly metaphysics-free account of “moral reciprocity”?<sup>19</sup>

---

19. Richard Bernstein frames the constructive divides effectively:

There is still an underlying belief that . . . the only viable alternatives open to us are

*B. The Quest for the "God-given and Reasonable": Max Stackhouse*

Like Michael Perry, Christian ethicist Max Stackhouse seeks an anchor for human rights that might buoy them against claims (coming, he points out, from the east and west) that rights are culturally specific and appropriate for those moored in the western philosophical tradition alone. He joins human rights critics in observing instability in philosophical thought, social analysis, and even moral judgment as foundations for human rights, vulnerable as they all are to self-interests and improper rationalizations. The problem, as he frames it, is that these disciplines do not stand on their own and need therefore to be recognized as subject to a reality that transcends them. "[A]ll of the[se disciplines] need to be seen as subject to standards, purposes, and an unconditioned reality greater than our wisdoms, systems, judgments, and religions can generate or discover alone. 'Logos' requires 'Theos.' Theology is required."<sup>20</sup>

Indeed, Stackhouse girds his argument for the necessity of theology by considering the historical record of those who have eschewed its wisdom.

[I]t is those movements that have repudiated theology that have been the source of the greatest destruction of our times, the greatest violators of human rights. One might speak of Papa Doc's Haiti, of Pol Pot's Cambodia, of Marcos's Philippines, of Mao's China, of Stalin's Soviet Union, and of dozens of petty tyrants in Latin America, and Africa—all of whom rejected theology in favor of "modern scientific" approaches to social reality.<sup>21</sup>

The historical point loses its strength in the next sentence, however, where Stackhouse himself points out: "Of course, South Africa

---

*either* some form of objectivism, foundationalism, ultimate grounding of knowledge . . . *or* that we are ineluctably led to relativism, skepticism, historicism, and nihilism.

. . . .  
The problem is not just an intellectual one . . . . At issue are some of the most perplexing questions concerning human beings: what we are, what we can know, what norms ought to bind us, what are the grounds for hope.

RICHARD J. BERNSTEIN, *BEYOND OBJECTIVISM AND REALISM: SCIENCE, HERMENEUTICS, AND PRAXIS* 2-4 (1983).

20. Max Stackhouse, *Human Rights and Public Theology: The Basic Validation of Human Rights*, in *RELIGION AND HUMAN RIGHTS: COMPETING CLAIMS?* 12, 21 (Carrie Gustafson & Peter Juviler eds., 1999) [hereinafter Stackhouse].

21. *Id.*

and Iran would also have to be mentioned, but a thorough analysis is unlikely to find developments there to be genuinely theological, even if they were religious.”<sup>22</sup>

What is this difference between theology and religion upon which Stackhouse is trading? What indeed is this distinction that he deems potent enough to explain away the doctrinal underpinnings of apartheid, as if they were merely “religious” and not worthy of the name “theology”? Theology, as he defines it, is that discipline “by which we analyze the comparative worth of various religious claims according to their capacity to offer a viable comprehending view of life and meaning for all.” It is, in other words, a discipline that, with its critically evaluative tools, presumably stands above the conflicts engendered in the name of “religion.” Thus, “even if much in every religion is identity-based and culturally particular, some *theological—that is, some God-given and reasonable*—normative insights bind all humanity together.”<sup>23</sup> Theology for Stackhouse is that universal which transcends all particular religious claims and the moil that so often accompanies them.

And yet, when is theology ever in a position to evaluate religious systems according to whether they provide “a comprehending view of life and meaning for all”? In other words, what sort of theology would be at once so neutral and so informed as to stand above the fray of conflicting religious truths and effectively evaluate the heart of each particular religious system? Legal scholar and human rights expert Louis Henkin articulates the difficulty eloquently: “the world is not yet educated,” he suggests, “to Professor Stackhouse’s distinction between religion and theology, and it is likely to continue to judge ‘theology’ by what religion, or particular religions, profess and practice and preach.”<sup>24</sup>

In addition to Professor Stackhouse’s distinction between theology and religion is his relating of the terms “God-given” and “reasonable.” What makes theology normative, Stackhouse suggests, is its ability to provide a universal rationality that transcends all fallible human arguments. As Stackhouse avers, “the ‘logos’ of ‘theos’ may well be the most rational ground for holding to human rights . . .

---

22. *Id.* at 21.

23. *Id.* at 15 (emphasis added).

24. Louis Henkin, *Human Rights: Religious or Enlightened?*, in RELIGION AND HUMAN RIGHTS: COMPETING CLAIMS? 31, 33 (Carrie Gustafson & Peter Juviler eds., 1999).

Indeed, theological ideas are often the unacknowledged and indispensable root of those non-religious universalist philosophies that also support human rights.<sup>25</sup> But what is the relationship between this rationality, this “logos of theos,” and the rationality upon which fallible human arguments are made? What is this logos that includes and founds—albeit unacknowledged—even secular arguments for human rights made by nonreligious philosophies? Stackhouse’s search for a normative basis for human rights that is somehow God-given, theological, and reasonable seems in conflict with his own universalist definition of theology. If theology is indeed that practice “by which we [might] analyze the comparative worth of various religious claims,” then where is the allowance for the givenness of religion, be it God-given or otherwise?

If, as Stackhouse seems to suggest, theology is engaged in a genuine exercise of practical reason, then it cannot stand above the fray. Theology cannot stand above and judge, cross-culturally, all penultimate religious claims and, at the same time, be “the most rational ground for holding to human rights,” an assumption that implies the construction of human arguments and judgments (the ascription “most rational” will need to be acknowledged by a consensus of parties in the conversation of practical reason).

Professor Stackhouse’s quest for a normative theology and universal rationality is in the end a quest for a higher ground and authority than human despotism, self-interest, and failure.

[E]ach person by virtue of being human must be accorded a dignity and a respect that precludes violation of his or her person, relationships, and convictions. Still, further, *because all peoples and cultures stand under a universal “higher authority” that humans did not construct and cannot deconstruct*, people may seek to change the unjust laws of various nations, the unjust conventions of any cultures, or the unjust practices of any religion that permits or advocates violation of that core . . . .

[All of this] because some things are so sacred that no regime is competent to control their existence.<sup>26</sup>

In this he joins all others in the transgenerational human rights community that have held out for the possibility that human rights

---

25. Stackhouse, *supra* note 20, at 16.

26. *Id.* (emphasis added).

could triumph over the politics of rights violations. Some things are indeed so sacred as to transcend the control of all penultimate religious mandates and political regimes. And yet Stackhouse's "higher authority" has brought us no nearer than Perry's attempted retrieval of the objective sense of the word "sacred" or indeed than the human rights movement as a whole to a practical ability to separate this transcending sacredness from unjust religious and political practices.

Stackhouse seeks a foundation for human rights talk that would at once transcend *realpolitik* and equip us to adjudicate among increasing claims made in the name of "rights." In the end, however, he asserts a kind of utopia, calling it alternately "theology," "universal rationality," and an "unconditioned reality greater than our wisdoms" for which he can draw no map. We are instinctively aware of the ideals to which Stackhouse points, but we remain as ill-equipped as before for the journey to which his thinking beckons us: be it from religions to theology; from our conflicting wisdoms to a universal rationality; or from our political constructions to that "universal 'higher authority' that humans did not construct and cannot deconstruct."<sup>27</sup>

We have seen, on the one hand, a genuine concern for more deeply rooted foundations, the search for a measure on earth that would transcend the fray of religious and political conflicts and contribute toward peace. For Michael Perry and Max Stackhouse, this foundation cannot be conceived apart from a religious or theological framework. And yet we have observed among other thinkers a discomfort with any such foundation that would claim a universality inclusive of and appropriate for every particular way of being human. For Michael Ignatieff in particular, it is a "moral reciprocity" based on a minimalist anthropology and practical historical experience rather than any inclusive religious foundation that will ground our cross-cultural quest to strengthen human rights.

We have heard in the larger human rights debate (of which this paper offers a mere sliver) positions that seek to avoid the religious or spiritual dimensions of human existence, assuming that they are too divisive and can somehow be successfully bypassed. We have heard also at the table the frustration of many religious believers that

---

27. *Id.*

secularist human rights defenders minimize the importance of religious and other belief-related human rights. Where do we go from here?

### III. BEYOND ARGUMENT: DAVID TRACY'S INQUIRY INTO VARIOUS INTUITIONS OF THE GOOD

In the end, and at bottom, for the human rights movement, insistence on the nontheistic foundations of the contemporary human rights idea reflects a quest for universal acceptance and universal commitment to a common moral intuition articulated in specific agreed-upon terms. The *Universal Declaration* is not antireligious; it is not even nonreligious. It is—many believe—a magnificent articulation of our common morality and an essential support for religion, for religions, for humankind, in the troubled hopeful world of the new millennium.<sup>28</sup>

We recall from this paper's beginning David Tracy's reminder of the fragility of the present-day human rights movement and his call for "reasons . . . forthcoming to affirm its grounds."<sup>29</sup> What role, we now ask, will religious thinking play, if any, in this work? What form will these reasons take and in what forums will they be debated? Finally, if human rights has become a kind of international civil religion, how deep will its foundations need to go? In the pages remaining, I would like to sketch briefly some of the constructive possibilities Tracy presents and point to at least one concrete example where I see Tracy's line of thinking put into practice.

Tracy begins with the question of what is to count as public. Publicness in a pluralistic culture, be it of a single society or the cross-cultural culture of the human rights movement, requires reasoned argument and discussion among the culture's participants. "To provide reasons is to render one's claims shareable and public . . . [and] to be willing to engage in argument. Argument is the most obvious form of public discourse."<sup>30</sup> Second (and it is important not to read this as relativism), truth in this public realm is neces-

---

28. See Louis Henkin, *Religion, Religions, and Human Rights*, 26.2 J. RELIGIOUS ETHICS 229, 234 (1998).

29. Tracy, *supra* note 2, at 247.

30. David Tracy, *Human Cloning and the Public Realm: A Defense of Intuitions of the Good*, in CLONES AND CLONES: FACTS AND FANTASIES ABOUT HUMAN CLONING 194 (Martha C. Nussbaum & Cass R. Sunstein eds., 1998) [hereinafter *Human Cloning*].

sarily a truth of consensus—a consensus, as Tracy frames it, “of the community of inquiry cognizant of and guided by the criteria and evidence of whatever the particular subject matter under discussion demands.”<sup>31</sup>

Public consensus in this vision is no mere intersection or overlapping of self-interests but the imperfect product of an ongoing commitment to debate, inquiry, and deliberation about matters of common concern. In simple terms, public consensus in Tracy’s view is made possible when a living community of inquiry engages in a debate where no argument enters with privileged status and all are subject to the equal burden to persuade. This, as we know, is not necessarily a harmonious process, nor is it always an unbiased one, but, in this public realm, disagreement is itself to be valued as a sign of publicness and true exchange, and it neither necessitates nor permits violence.

If, for Tracy, reason is the prime candidate for publicness, he nevertheless concedes the limits of argument and finds at argument’s edge a second candidate for publicness, as necessary as, but distinct from, the first, namely, “an inquiry into various intuitions of the good, including those expressed in art and religion.”<sup>32</sup> What is at stake here is not how much room the “public” arena makes for the “private” religious and philosophical visions of individuals and communities. At stake and in crisis in this delimitation of public and private is the very life of the public arena itself. When the international public relies upon argument alone and uses as this argument’s foundation only a technical or instrumental reason (where, for example, rights are discussed procedurally but not the goods these rights are intended to secure), then publicness itself is in danger.

Indeed, Tracy suggests that the current tensions and impasses about the relationship between religion and human rights reveal the overly narrow and positivist understanding of reason prevalent today. This in view, Tracy suggests that finding a place for religious concepts in public dialogue and inquiry about human rights (or any other matter of our common life) is a project intimately and logically related to expanding our sense of what is public and our understanding of human reason as a whole. When religious and philosophical intuitions are excluded from the cross-cultural conversation about

---

31. *Id.* at 194-95.

32. *Id.* at 195.

human rights, then this conversation and its ability to promote human goods is impoverished.

What then do religious intuitions of the good look like, and how do they relate to human rights? Tracy sees disclosive paradigms and symbols in (among many other discourses) the Jewish tradition on the importance of embodiment, the Catholic social justice tradition on relationality among human beings, as well as Buddhist traditions on our relationships to nonhuman creatures. And yet despite the insights into the good that religious resources can point to, Tracy does not suggest that religious visions should be eligible for the public realm based upon their inherent goodness. Indeed, what he calls the “ethical and cognitive ambiguity” of religion is for him yet another reason why religious disclosures must be accessible to the public realm. “[T]his cognitive and ethical ambiguity of religion, with its disclosure of the true and false, the good and the evil . . . should be sufficient evidence to warrant the belief that religions are crucial phenomena for all in the public realm to risk interpreting.”<sup>33</sup>

The reality that brings Tracy to affirm the role of religion in the human rights debate is the need for a methodology other than the tolerance of retreat. To put it simply: we as citizens and human beings, as believers and nonbelievers, need to learn civility, how to speak to and disagree with one another. We need room beyond but related to the human rights grammar for describing our various and sometimes conflicting ideas about human being, its limits, and what transcends it. Without these cross-cultural efforts, be they local, national or international, we will have no community of inquiry and only “Fish’s first law of tolerance dynamics” where “tolerance . . . is exercised in an inverse proportion to there being anything at stake.”<sup>34</sup>

As Tracy names the crisis and the hope:

unless we learn to converse better and argue more clearly with one another on how to provide better descriptions of and reflection upon our distinct visions of the human good, we are all in danger of allowing the promise of cultural and religious pluralism to slide into a kind of Will Rogers pluralism one where you never met an

---

33. *Id.* at 197.

34. David Little, *Tolerance, Equal Freedom, and Peace*, in *THE ESSENCE OF LIVING IN A FREE SOCIETY* 153, 157 (W. Lawson Taitte ed., 1997) (quoting STANLEY FISH, *THERE’S NO SUCH THING AS FREE SPEECH AND IT’S A GOOD THING, TOO* 217).

opinion you didn't like. Any responsible pluralist has met unacceptable opinions and intuitions and, when pressed, should be able to state clearly just why this opinion is wrong.<sup>35</sup>

#### IV. "TO SPEAK AND BE HEARD": THE PARK RIDGE CENTER FOR HEALTH, FAITH, AND ETHICS

In 1994, Cairo, Egypt, was host to the United Nations' International Conference on Population and Development. At the conference, U.N. member nations and nongovernmental organizations convened to find solutions for and take action with respect to problems of reproductive health and population stabilization. If the conflict that erupted there between religious and secular leaders was surprising to some, perhaps it should not have been. For the conference agenda implied assumptions about some of the most hotly contested topics of our day, from the nature of the family to gender and sexuality. What pluralistic forum could hope to take up these issues without clash?

At Cairo, and later at the Beijing Conference on Women, religion appeared to many, and particularly to many in the press, as divisive and the enemy of progress in matters of human rights and development. The question that emerged from the Cairo events for the Park Ridge Center was this: How can believers, drawing upon both their reason and the internal resources of their respective traditions, "consistently advance . . . understanding and make progress in dealing with profound issues of the sort that surfaced at Cairo?"<sup>36</sup>

The multiphased, six-year project that this question inspired, "To Speak and Be Heard," began with a gathering of nineteen people, most of whom had been participants or close observers at the U.N. Cairo Conference. Coming from seven world religious communities (the Baha'i faith, Buddhism, Christianity, Hinduism, Judaism, Islam, and the Native American traditions) and spanning the political spectrum from liberal to conservative, they were interviewed about the place of religion in public policy debates. How, they were asked, could the internal resources of their respective traditions inform these cross-cultural discussions? Should faith traditions and people of faith be participants at local, national, and international forums

---

35. *Human Cloning*, *supra* note 30, at 197.

36. Martin E. Marty et al., *Principles of Religious Civil Discourse* (visited Mar. 24, 2000) <<http://www.prchfe.org/publications-special-handbooks-rpd.html>>.

where matters of public import are at stake? And what kind of rules might facilitate effective and serious public conversation involving people of faith?<sup>37</sup>

The immediate product of these interviews was a handbook of guidelines, one set for religious participants and one for policymakers, for use in religious and otherwise pluralist conversations about matters of common care. The less tangible but no less vital product of these interviews is, I would suggest, a contribution to the reinvigoration of publicness. We recall Michael Ignatieff's words about a moral reciprocity based upon a minimalist anthropology and practical historical experience that would necessarily leave religious thinkers unsatisfied. On the other side of the debate we recall Max Stackhouse's call for the normativity of the "God-given and reasonable" beyond all proposals, practices, and claims of particular religions.

What is constructively achieved by the "religious thinking" of David Tracy, as well as the pragmatic work of projects like the Park Ridge Center's "To Speak and Be Heard," is an enrichment of public reason and an expansion of its participants. Both Tracy and Park Ridge, in their own ways, transcend the public/private, religious/secular dualisms that thwart Ignatieff's and Stackhouse's respective quests for normativity. Now the intuitions of faith traditions stand alongside other insights of human experience in the discussions of the human condition and human history at the heart of the human rights debate. Now a place is made for intuitions of the good, religious and otherwise, without setting them up as contestants in a process that will ultimately eliminate them.

This call to religious and philosophical inquiry at the limits of human argument is by no means the "answer" to the "question" of human rights promotion. Instead, it is almost a kind of common-sense suggestion, albeit one that must ultimately take up the complexities of both religion and human rights. As Tracy puts it:

[I]f we are to find out if we share any basic values (visions of the good) at all about what is human about a human being, the religions can and should be viewed as traditions of great and subtle complexity on these very issues and, at their best, as ancient and highly developed depositories of rare wisdom for any open-minded inquirer.<sup>38</sup>

---

37. *See id.*

38. *Human Cloning*, *supra* note 30, at 199.