

ABORTION AND RIGHTS LANGUAGE

by

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For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order, and about his business, they are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one anothers uses, as the inferior ranks of Creatures are for ours.

John Locke

Outside the circle of post-Enlightenment European culture, the circle of relatively safe and secure people who have been manipulating each others' sentiments for two hundred years, most people are simply unable to understand why membership in a biological species is supposed to suffice for membership in a moral community.

Richard Rorty

The fallacy in the anti-abortion argument lies in the shift from the scientifically accurate claim that the foetus is a living individual of the species *Homo sapiens* to the ethical claim that the foetus therefore has the same right to life as any other human being. Membership of the species *Homo sapiens* is not enough to confer a right to life.

Peter Singer

This is our first task, caring for our children. It's our first job. If we don't get that right, we don't get anything right. That's how as a society we will be judged.

President Barack Obama, commenting on the Newtown, Connecticut shooting

The modern position seems only another manifestation of egotism, which develops when man has reached a point at which he will no longer admit the right to existence of things not of his own contriving. From somewhere in his self-centered being he brings plans which he would truculently impose.

Richard Weaver

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Preface

The abortion debate is a rhetorical phenomenon. This statement is not intended to be reductive, to deny that there are other important angles from which the practice of abortion can be viewed: medical, psychological, sociological, historical, religious, and so forth. To say that the abortion debate is a rhetorical phenomenon is to focus on the idea that the practice of intentionally ending gestating human lives in the womb inevitably gives rise defenses of and attacks on that practice, and these defenses and attacks are unavoidably rhetorical. The defenders and attackers may not consciously put it this way (they may say that their communication is philosophical or theological or legal), but it remains the case that whenever people speak about the topic of abortion they are engaged in rhetoric, because they are seeking to persuade others to agree to a certain belief, policy, or course of action. Out of the many possible definitions of rhetoric, I will employ Kenneth Burke's, namely: rhetoric is "the use of language as a symbolic means of inducing cooperation in beings that by nature respond to symbols."¹

To say that the abortion debate is rhetorical is to make the rather obvious observation that the anti-abortion laws that were passed in the 19th century in the United States came into existence as a result of rhetorical efforts in legislatures, and they were overturned in the 1973 *Roe v. Wade* decision as a result of rhetorical efforts which persuaded a majority of the Supreme Court justices. Since then, the ongoing debate has continued to take the form of rhetorical skirmishes in law courts, in philosophical discussion, and in the court of public opinion.

¹ Burke, *A Grammar of Motives and A Rhetoric of Motives* (Cleveland: World Pub., 1962), 567.

My particular focus is on the use of rights language in this ongoing debate, since such language is obviously a crucially important element of modern Western culture; this importance, however, is not matched by conceptual clarity. It is not the case that there is an agreed upon understanding of the concept of rights in Western culture, while differences arise only in the details of how the concept of rights should be applied in specific cases. No, there is no consensus on rights at the conceptual level. And to make matters more complicated, some authors, aware of this lack of consensus, conclude that rights language should be abandoned. The first part of this thesis, “Rights Language in Disarray,” offers a survey of this terrain, showing how:

- many people use rights language as a rhetorical weapon in public debate, but without having reflected on the concept of rights;
- some intellectuals use rights language more reflectively, but they have not been able to establish a consensus on the concept of rights;
- some intellectuals suggest that rights language should be abandoned.

I conclude the first part with a brief glance in the direction of John Locke, noting that Locke’s political philosophy and views on rights are sometimes employed by pro-life advocates, sometimes by pro-choice advocates, and sometimes pro-life advocates think that Locke’s thought supports the pro-choice view. I have not found any pro-choice advocates who think that Locke’s position supports the pro-life view, but if I could that would round out perfectly the case I wish to make: Locke’s thought is like a Rorschach image; he should not be viewed as an oracle who can provide a solution for our ongoing debate.

The first part of this thesis, just summarized, seeks to paint a picture of rights language as a confusing element of contemporary culture. The second part, “An Attempt at

Reconstruction,” seeks to present my own case for how the concept of rights should be understood with regard to the abortion debate. I make this case in several steps. First, I note how the Supreme Court decisions that have established the right to abortion have done precisely that: they have *established* a right, which is an act of rhetorical construction. The pro-life response to this position often takes the form of a natural law argument, which contrasts “rights as a rhetorical construction” with “rights as built into the fabric of the cosmos, which are recognized by reason.” I suggest, however, that this is a false dichotomy. Rights are always a rhetorical construction, but this does not mean that the pro-choice side has an advantage. To see that rights are always a construction merely transposes the debate into a different area of thought; it brings into question the moral quality of the constructive efforts.

I argue that the efforts of pro-life advocates to rhetorically construct a world using rights language are preferable to the parallel efforts of the pro-choice advocates. This aspect of my argument has two main parts, which are (1) historical and (2) anthropological. On the historical side, (1) I draw on the thought of René Girard to make the case that the headwaters of the concept of rights in Western history are found in the Bible. Intimations of the equality and dignity of all human beings are found in key texts in the Bible, alongside a critique of the cultural phenomenon of scapegoating violence. These crucial strands of insight worked as a subtle yeast within Western culture for many centuries, eventually giving birth to our modern culture, with its great sensitivity to victimage and scapegoating. Rights language, Girard argues, is not a fruit of the Enlightenment’s rejection of religious tradition; it is a fruit of that tradition itself. This view maintains that rights language ought to be understood at the deepest level as an attempt to build a linguistic hedge around human

beings to protect them from victimage. Thus, *the history of rights language is crucially important to understanding the proper employment of rights language.*

This idea works as a critique of the pro-choice position by arguing that that position employs rights language **primarily** to facilitate the unencumbered autonomy of the individual agent, *not* to protect human beings from victimage. The notion that women need access to abortion to overcome their victim status is a **secondary** rhetorical move designed to elicit sympathy, which is exactly what Girard's theory of culture predicts as the necessary move in a culture that has been deeply influenced by the Bible. The self-contradictory nature of this rhetorical strategy, however, is seen when one notes that "autonomy" is a concept that seeks to lift the individual out of the fabric of human history, with its implicit claim that human beings are not products of historical developments and contemporary sociological pressures. This attempt to exist ahistorically leads to the paradoxical result that a new class of (unacknowledged) victims must be created, unborn children, in order to facilitate the escape of another class of victims (women) from the situation of victimhood. Girard's thought, with its very thought-provoking psychological and historical insights, brings these issues to the forefront; most of the literature of the abortion debate does not.

(2) Rhetorical criticism is a sub-field within the study of rhetoric. Various approaches to rhetorical criticism have been identified and described, such as those presented in Sonja Foss's widely used textbook *Rhetorical Criticism: Exploration and Practice*.² Foss summarizes and gives examples of Neo-Aristotelian criticism, cluster criticism, ideological criticism, metaphor criticism, and pentadic criticism, among other approaches. The basic framework that I will be employing in this thesis is dimensional

² Sonja K. Foss, *Rhetorical Criticism: Exploration and Practice*, 4th ed. (Long Grove, Ill.: Waveland Press, 2009).

anthropology criticism. This is not mentioned by Foss, because it is my own approach, but I am not claiming originality with regard to the concept of dimensional anthropology itself, which has clear roots in the religious and philosophical texts of the ancient world; it is found also in the writings of many authors up to the present day. I am simply applying the concept as an approach to rhetorical criticism, with a particular focus on the abortion debate.

Dimensional anthropology is the idea that there are three principal dimensions of reality as it is inhabited by human beings: the vertical axis (or the Great Chain of Being), the horizontal plane (sociality), and individual selfhood in time. Although rhetorician and literary critic Kenneth Burke did not consciously use the phrase “dimensional anthropology,” I find that concept to be present in his writings. His two most famous titles are *A Grammar of Motives* and *A Rhetoric of Motives*. In my interpretation, the grammar is wrestling with the vertical axis, and the rhetoric is addressing the horizontal plane. Burke mentioned at various times that he was planning to write a third volume, which would be called *A Symbolic of Motives*. In his words: “The *Grammar* dealt with the universal paradoxes of substance. . . . The *Symbolic* should deal with unique individuals. . . . The *Rhetoric* . . . considers the ways in which individuals are at odds with one another, or become identified with groups more or less at odds with one another.”³ That the rhetoric and the symbolic correspond with the horizontal and the individual is clear; the connection of the grammar with the vertical is somewhat more hazy, though I think it can be explained as follows. The key term at the beginning of the *Grammar* is “substance,” which means, etymologically, “that which stands under” something. If a person is standing on the ground, then the ground is that person’s substance. But the word substance is often used in the

³ Burke, *A Grammar of Motives* and *A Rhetoric of Motives*, 544-6. [20-22 in *A Rhetoric of Motives* published as a separate volume.]

philosophical and theological tradition to refer to what is inside the person, not what is outside. The Greek word *hypostasis* means literally under- (*hypo*) stand (*stasis*); but this word is translated into modern English as “person.” Burke wrestles with this inner / outer paradox in the opening chapters of his *Grammar*.⁴ I connect this with the vertical axis by noting that the human body is that which stands under, supports, makes possible, the human person (the soul or psyche). The brain is a physical organ, but our mind is more than just the firing of synapses in the brain. Burke’s distinction between motion and action is helpful here. Our bodies, as physical entities, are in motion, in that our hearts are beating, our lungs are breathing, our intestines are digesting, and so forth. But when our minds decide to *act* in a particular way, then we are speaking about *action* rather than *motion*.⁵ These terms, action and motion, refer to the individual selfhood and the vertical dimensions, with the added note that our actions are almost always set within a horizontal social scene. Our individual actions have a rhetorical vector.

Further examples of the dimensions in Burke’s thought serve to illuminate the approach to rhetorical criticism that I am seeking to articulate and employ. Burke refers to “the rights of men as *individuals*, in *dialectical opposition* to men as a group,” in the context of his discussion of Rousseau and the emergence of individualism in the modern world. “Unheralded, even unnoticed, another ‘fall’ had taken place. And instead of the individual as microcosmic replica of the popular macrocosm, we got the individual *against* the group, men *against* society.”⁶ Note also this key passage in the Introduction to the *Grammar*:

Theological, metaphysical, and juridical doctrines offer the best illustration of the concerns we place under the heading of Grammar; the forms and methods

⁴ Burke, *A Grammar of Motives*, 23, for example.

⁵ Burke, *A Grammar of Motives*, 135-36.

⁶ Burke, *A Grammar of Motives*, 364.

of art best illustrate the concerns of Symbolic; and the ideal material to reveal the nature of Rhetoric comprises observations on parliamentary and diplomatic devices, editorial bias, sales methods, and incidents of social sparring. However, the three fields overlap considerably. And we shall note, in passing, how the Rhetoric and the Symbolic hover about the edges of our central theme, the Grammar.⁷

The concept of dimensional anthropology, as I conceive it, understands the drama of human life as constantly occurring at the intersection of the dimensions; the fields, or dimensions, cannot fail to “overlap.”

Consider also this key passage from the *Rhetoric*, which discusses another triad:

Order, the Secret, and the Kill:

We have given much thought to the hierarchic (Order, the ladder, cosmologized by the middle ages in what Lovejoy calls “the Great Chain of Being”). We have tried to show how it involves the Secret (though insofar as the “conspiratorial” secret merges into the private secret, it leads to themes that belong under Symbolic). At the moment we are centering our attention upon the Kill.⁸

Burke calls Order / Secret / Kill “three motives” around which human relations circulate. He says that “the fullness of dialectic (‘reality’) is continually being concealed behind the mists of one or another of these rhetorical overemphases.”

When we consider two key works by rhetorician and philosopher Richard Weaver, *Ideas Have Consequences* and *Visions of Order*, we find that he made a particularly clear

⁷ Burke, *A Grammar of Motives*, xx.

⁸ Burke, *A Grammar of Motives* and *A Rhetoric of Motives*, 789 [265 in one volume version of *Rhetoric*].

use of dimensional anthropology. References to the individual, the community, nature, and God are sprinkled throughout both books. The last chapter of *Ideas*, for example, called “Piety and Justice,” argues that there are three main forms of piety that Weaver recommends, which are directed toward nature, other people, and the past. He criticizes modern culture for embracing impiety by (1) viewing nature [the lower part of the vertical axis] as a hostile entity that needs to be conquered through science and technology, by (2) seizing the right to dispose of the lives of others [the horizontal plane] in holocausts and wars, and by (3) treating the past with contempt [the self’s journey through time]. Weaver argues that modern people tend to exhibit a “spoiled-child” psychology that is narrowly egocentric and trapped in the present moment in time, cut off from the wisdom of the philosophical and religious traditions of western culture.

In Weaver’s writing, we can see that the positive and negative terms he often employs express the dimensions. Here are some examples: “Fraternity directs attention to others, equality to self; and the passion for equality is simultaneous with the growth of egotism”(*Ideas*, 42). “The prevailing attitude toward nature is that form of heresy which denies substance and, in so doing, denies the rightfulness of creation”(*Ideas*, 171). “The modern formula of unconditional surrender—used first against nature and then against peoples—impiously puts man in the place of God by usurping unlimited right to dispose of the lives of others”(*Ideas*, 175). “Personality in its true definition is theomorphic. Individuality, on the other hand, may be mere eccentricity or perverseness. Individualism, with its connotation of irresponsibility, is a direct invitation to selfishness, and all that this treatise has censured can be traced in some way to individualist mentality. But personality is that little private area of selfhood in which the person is at once conscious of his relationship

to the transcendental and the living community”(*Ideas*, 181). “The road away from idolatry remains the same as before: it lies in respect for the struggling dignity of man and for his orientation toward something higher than himself which he has not created”(*Visions of Order*, 91). Other passages could be quoted to round out a summary chart of Weaver’s terminology along these lines:

Good vertical (upper)	Openness to transcendent truth, beauty, and goodness
Bad vertical (upper)	Closedness to transcendent truth, beauty, and goodness; putting oneself in the place of God; idolatry
Good individual dimension	Personality, seasoned maturity, self-discipline
Bad individual dimension	Selfishness, egotism, irresponsibility, individualism
Good social plane	Fraternity, the living community
Bad social plane	Collectivism, war, political damnation, unlimited right to dispose of others
Good vertical (lower)	Living in harmony with nature
Bad vertical (lower)	Either seeing human beings as naturally good “flowers” (the Romantic fallacy), or seeing nature as a threat to be dominated through technology

Weaver’s overall message can be summed up as a challenge to western culture that is articulated along the lines of dimensional anthropology. The dimensions of reality are the fixed structures within which we live. We are asked: How we will live in the dimensions? Will we inhabit them in a complex way that symphonically holds them together, or will we insist upon tearing them apart? When human beings are healthy, philosophically speaking, they will live in harmony with nature, with other human beings, and with the Creator; they will inhabit the dimensions coherently. When human beings are unhealthy, they allow their egotism to distort and tear asunder the complexity of reality, placing the dimensions in a state of war with each other. Rhetoric that is sound, for Weaver, will persuade people to

embark on a journey toward the Center, where the dimensions of reality are integrated with each other.⁹

Kenneth Burke was known as a left-wing intellectual, Weaver as a conservative. That both of them would employ what I call “dimensional anthropology” is a notable convergence. In this thesis I will employ dimensional anthropology as a matrix for rhetorical criticism. If human existence is set within the complexity of the intersecting dimensions, how are the dimensions made visible in the arguments that people make about abortion? To me, that is a fascinating question.

The normative moral philosophy that I will present builds on the idea that holding these dimensions in a creative tension and balance is a healthy way of living; on the contrary, to rhetorically overemphasize one of them and denigrate or ignore the others is unhealthy. How this perspective relates to rights language is not difficult to see. The slave-owners, for example, overemphasized the vertical axis; their claim to have a “right” to own other human beings who they rhetorically construed as “inferior” was a false use of rights language. A collectivist society, which overemphasizes the horizontal plane, and forces everyone to conform to a monolithic vision, will claim that it has the “right” to incarcerate or eliminate anyone it deems to be an “enemy” of the society. That the individual selfhood dimension can also be overemphasized is the central claim in my critique of the pro-choice position. I argue, in a nutshell, that there is an observable difference between rights language that emanates from one of the dimensions, a dimension which is being lobbied for in an unbalanced way, and rights language that seeks to hold all of the dimensions together in a balance.

⁹ The chapter on “Fragmentation and Obsession” in *Ideas* is a meditation on the “center.”

My argument thus takes aim, in its concluding phase, at John Rawls, who is a prominent proponent of the concept “right before good.” I assert, contra Rawls, that rights language cannot actually function as a screen behind which people can hide from moral criticism; this is the clear lesson to be learned from the slave-owner and his rights claims. The good, in the sense of a person’s deepest intuitions about reality and ethics, always precedes and gives rise to rights language. Any claim to have a “right” to do something comes pre-loaded with moral assumptions, and those assumptions are put on display, not hidden, when rights language is employed. When a particular dimension of reality is being rhetorically overemphasized, and that leads to a certain form of rights language, the overemphasis can and will be pointed out by those who inhabit the dimensions differently.

In my considered judgment, when historical and anthropological reflections are brought into the abortion debate, the pro-choice use of rights language becomes very difficult to defend. The difficulty here is highlighted by Emmanuel Levinas when he says that “The right of man, absolutely and originally, takes on meaning only in the other, as the right of the other man.”¹⁰ Rights language, properly employed, prevents violence against other human beings, rather than facilitating lethal action. This is an insight which the pro-choice position finds itself compelled to reject. Pro-choice advocates argue that even though the inhabitant of the womb is a human being, that basic fact is not sufficient to protect it from being killed.

Richard Weaver has argued that there are certain basic categories of argument that we see over and over again in various contexts: arguments of definition, analogy, consequences, and authority.¹¹ This thesis culminates in an argument of definition. In my

¹⁰ Levinas, *Alterity and Transcendence* (New York: Columbia University Press, 1999), 127.

¹¹ Weaver, “A Responsible Rhetoric,” *Intercollegiate Review* 12, no. 2 (Winter, 1976-77): 81-87.

final chapter, I seek to sketch the outline of a normative definition of the concept of “human rights.” Referring again to Burke’s description of rhetoric, perhaps I will fail in my attempt to use “language as a symbolic means of inducing cooperation” through my proposed definition of rights; but, at the very least, I hope to stimulate readers to articulate their own definitions with a heightened sensitivity to the factors that are involved in such a task. Such readers may approach this topic from various perspectives: English / Rhetoric, Philosophy, Political Science, History, Anthropology, Religion, and so forth. The abortion debate, by its very nature, cannot be confined to a narrow disciplinary focus. I hope to show that dimensional anthropology rhetorical criticism is a flexible enough approach to engage such a wide variety of readers.

Part One: Rights Language in Disarray

Chapter 1. Rights language is often used, but less often questioned

Rights language is an important aspect of contemporary American politics and cultural discussion. It is also very puzzling because there is so little consensus concerning what rights language means. When advocates of widely differing, and perhaps opposing, social policies invoke rights language and believe that it decisively supports their cause, both the importance and the puzzling nature of rights are brought to the forefront of our consciousness. The abortion debate is a particularly clear example of this puzzlement.

Rights language is used by many Americans, but apparently without a significant level of philosophical reflection having preceded that use. John Simmons expresses this point when he notes that American school children learn by rote that human beings “are endowed by their Creator with certain unalienable rights . . .” but Americans in general, as adults, “know and live by much of the specific content of the Lockean conception of rights, without having bothered to explore its foundations or its theoretical superstructure.”¹ I will illustrate the idea that Americans use rights language without having reflected on it by looking briefly at comments on the Internet, then at ideas expressed by a small group of graduate students, then at two books on abortion.

I did a search to locate comments which had been posted by various individuals on the Internet, looking for the use of rights language in discussions of the abortion debate. Pro-

¹ Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), 14.

choice posters made comments such as these: “A fetus should not have greater rights than born people.” “The fetus relies entirely on the body of another to exist. If the woman does not wish to gestate then that is her decision—if it were otherwise then it would mean that a non-sentient thing would have more rights than a sentient woman.” “Abortion rights are fundamental to all other rights. If you cannot exercise control over your own body, your rights are severely curtailed.” “There’s only one argument, and that is that no one has the right to tell another human being what to do with their body. Period, end of subject. If you don’t want to get an abortion, then don’t get one. Otherwise, mind your own business.” Pro-life posters made comments such as these: “It’s a human life, it’s not a choice, it’s a child; what about the baby’s rights?” “Abortion is extremely barbaric and no child (whether you want to use the term baby, fetus, embryo or zygote) deserves this! This is the worst form of child abuse. This is a very serious human rights issue!!” “What abortion rights activists actually want is the right to kill, yes, murder the child that results from the natural act of procreation. So when abortion activists talk about ‘reproductive rights’ they are speaking falsely. On the other hand, when pro-life activists speak of fighting for the right to life of unborn babies, they are speaking truthfully.”

I am obviously quoting snippets, without the surrounding context, but a more complete presentation of the posts would reinforce rather than undermine the point I am making. Comments such as these typically consist of nothing but assertions. The posters typically show no awareness that they should be asking questions, such as: What are rights? Where do they come from? How would we know what rights are and where they come from? What is the history of rights language in the West and how is that history relevant to present day debates which employ rights language?

My next example of the lack of general attention to these deeper questions draws on my experience of teaching graduate students enrolled in a Master of Liberal Arts program. I asked the students to answer this question: “Where do rights come from?” The answers they provided present a glimpse of the confused state of rights language within American culture in general. Some examples of the student comments:

- “The Declaration [of Independence] gives us three basic rights, the right to life, liberty and the pursuit of happiness. Does the law restrict or promote rights? We do not have a right to murder or steal; but we do have a right to learn and work. What defines a right? Wikipedia defines a right as a legal, social, or ethical principle of freedom or entitlement. Does a woman have the right to take away those rights of the unborn? They did not ask to be conceived, nor did they ask to be aborted. I think that a right is more defined in terms of an individual’s morality, based upon their beliefs, wants and opinions on what is termed ‘right.’ They will make their own justification for the right of the action regardless of the legal structure, social standard or ethical theory in place. The same reason thieves will continue to steal and women will continue to have abortions, it is their right, an entitlement that they will choose to do with what they may.”
- “I believe everybody has the right to do whatever they want as long as they do not hurt anyone else. As Americans, we consider our Constitution to set the framework of our legal rights. These legal rights however, do not always align with the morals and values of other people. I am not religious but consider the Ten Commandments to be a basic moral code which most people live by whether they are religious or not.”

- “My immediate answer to the question: Where do rights come from? Would be the government. I guess that the rights that I have as an American citizen were granted to me by our Founding Fathers. All through history it was accepted that rights were granted by those in power to those being ruled. That is why our Founding Fathers came up with the American Declaration of Independence. The Declaration of Independence states: That all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are Life, Liberty, and the Pursuit of Happiness. In the Declaration of Independence the term ‘Creator’ is used which to me means God. It would then be naive to assume that our rights only come from those granted by the Declaration of Independence. It seems to me that rights evolve from human thought and as much as we would like to think otherwise, are granted. Our rights differ from one culture or society to another and while we would like to think that some of them are inalienable, they are subject to being diminished under a host of circumstances.”
- “When I talk about rights I always preface the conversation with my belief that rights only exist when a second party is willing to respect the rights of the other party. Given that, I think rights are extended to a person by a respective society’s tolerances. I think this idea stems from the social contract theory proposed by Rousseau.”
- “I believe that certain rights are God given and are universal. One of these rights being the right to life. Within the laws of the United States people have the right to life, liberty, and the pursuit of happiness. Human rights is a hotly debated subject, and when put into the context of a fetus’s right to life it becomes even more

controversial. My belief is that every human being (or potential human being) has the inherent right to life. This right is grounded into the foundations of society worldwide. Regardless of personal religion, everyone in every culture has some idea of what is acceptable and there is nowhere on earth where killing another person without reason is acceptable. Therefore, rights come from God and from the laws of individual countries.”

I could go on for many more pages with such quotations, but I will stop there. It is clear that this basic question, “Where do rights come from?”, is responded to with confused and incoherent ideas. These are written by graduate students, not high school or college students. Would graduate students in philosophy and political science be able to provide somewhat more articulate comments? Maybe, maybe not. The general picture painted here provides a window into American culture, and that picture is bleak. Americans in general use rights language, but they are not well informed when they do so; they have not been led to think carefully about rights language in their formal (or informal) education.

Is the situation different in the thinking of intellectuals? In general, scholars are more sensitive to questions about key philosophical concepts, but a major source of disappointment for me when I read scholarly works on the abortion debate is the paucity of reflection on the meaning of rights language in such works. If one were to locate one hundred random uses of the word “rights” in the literature on abortion, perhaps only two or three would show even the slightest glimmer of awareness that rights language is ambiguous and needs to be explained and defended instead of just used. I present now two examples of this lack of attention, which is the common practice.

David Boonin's book, *A Defense of Abortion*, spends 281 pages on "rights-based" arguments against the moral permissibility of abortion, and 42 pages on "non-rights-based" arguments. He says that all of the pro-life arguments that he is aware of fail to persuade him to abandon his support for the moral and legal acceptability of abortion, and the book lays out in detail why that is the case. Since the bulk of the book focuses on rights-based arguments, one might reasonably expect that it would contain a discussion of the concept of rights as a starting point: what are they? where do they come from? etc. It contains no such discussion. A reader who notes that feature of the book is reasonable in concluding that Boonin thinks that "rights" are philosophically unproblematic; the only question that is interesting to him is whether or not a fetus should be viewed as having them.

Christopher Kaczor's book, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*, is a pro-life response to Boonin's book and other similar works. Kaczor covers the same ground as Boonin, but interprets the evidence of embryology as supporting the pro-life case. What is notable for our purposes here, however, is that even though the word "rights" appears in the subtitle of the book and in the title of a chapter ("Does the Human Embryo Have Rights?"), the book contains no substantive discussion of the concept of rights at all. The chapter just referred to focuses on the concept of the "personhood" of the embryo, but it does not consider *rights* as a philosophical problem. It seems to assume that a person is a rights bearer, but makes no argument to establish that point. Questions about "rights" as a concept are not within Kaczor's field of vision anywhere in the book, just as they were not within Boonin's field of vision.

These books by Boonin and Kaczor represent well the literature on abortion more generally. Most of this literature employs rights language, but without any awareness of the

deeper questions that can be asked about such language. There is a lack of curiosity in developing this line of thought. The next two chapters will examine some of the relatively rare contributions that do actually explore some of the deeper questions about rights language.

Chapter 2. Pro-choice views of rights

I will draw on William Edmundson's *An Introduction to Rights*, which provides an effective summary of the approach to thinking about rights that seems to be most common in modern, liberal societies. Edmundson outlines two main variations on this approach to rights, the Interest Theory and the Choice Theory. For the Interest (or Benefit) Theory, rights serve to foster the interests of the rights holder. An implication of this is that "only beings capable of having interests are candidate rights-holders."¹ Edmundson notes that by itself this is somewhat vague; there is plenty of room for debate about what sorts of entities could be construed as having interests: animals, fetuses, social groups, inanimate objects, and so forth. But it is clear that the most common use of rights language in this line of thought would be in regard to self-aware human beings. The Choice (or Will) Theory of rights is slightly different. In this view, "Nothing counts as a right unless it has an assignable right-holder, and no one counts as a right-holder unless she holds the option of enforcing or waiving the duty correlative to the right."² The function and purpose of rights language, for this theory, is very clearly to promote individual autonomy. Edmundson says that this view of rights is the one most commonly at work in the practices of legal officials in the developed Western world. One key consequence of this view is that infants and mentally incompetent adults cannot be rights-holders. This can be "finessed" by introducing the notion of protecting rights for these human beings through proxies.³

¹ Edmundson, *An Introduction to Rights* (New York: Cambridge University Press, 2004), 121.

² Edmundson, *An Introduction to Rights*, 122.

³ Edmundson, *An Introduction to Rights*, 124-25.

It should be noted that these “interest” and “choice” approaches to thinking about rights are not religious, in the sense that they do not point to God as the source of rights. They are also not historical in that they do not rely upon a particular historical narrative regarding the development of rights language as a key component of its justification. Rather, the typical form of argument in defense of this view of rights consists of assertions that, it is hoped, will be met with understanding and agreement in the audience that is hearing or reading the assertions. For example: “The legal conventions tell us that the law recognizes a right in X against Y only where Y has a duty to X, and X may decide whether or not to hold Y to the duty.”⁴ Imagine page after page of argumentation such as this, and you can grasp that this approach to rights language is not religious or historical. But to say that this approach is not historical does not mean that it does not have a history. Edmundson, for example, begins his book with references to the medieval canon lawyers, Thomas Aquinas, William of Ockham, Hugo Grotius, Thomas Hobbes, Samuel Pufendorf, John Locke, Immanuel Kant, and the American and French Revolutions. But in the main heart of his discussion of Wesley Hohfeld, and contemporary debates about the Interest and Choice theories, the historical narrative has dropped out of sight and become irrelevant. It is as if the history of the invention of rights language is like a ladder that is tossed away once one has used it to climb up to a higher level.

* * *

I present now perspectives from some pro-choice philosophers, who have commented on the concept of rights. These authors have been chosen because they are prominent and influential shapers of the abortion debate over the past several decades.

⁴ Edmundson, *An Introduction to Rights*, 123.

Michael Tooley, along with Peter Singer, is known in philosophical circles for approving of not only abortion but also infanticide. In his book *Abortion and Infanticide* there is a section on “Persons and Rights” which is relevant for our consideration. Tooley clearly favors the Interest Theory of rights, as seen in his argument that if we consider Mary, a hypothetical adult, and the embryo that later developed into Mary, we could only say that the embryo had a right not to be aborted if it had an interest in its own continued existence. And a “subject of interests, in the relevant sense of ‘interest,’ must necessarily be a subject of conscious states, including experiences and desires.” Because an embryo is not physiologically developed enough to have self-conscious experiences and a desire to continue its own existence, therefore it cannot be a rights bearer.⁵ Tooley uses rights language extensively in this section of the book, but he only recognizes one legitimate construal of the meaning of that language—the Interest Theory to which he subscribes. He does not seriously consider alternative worldviews that would posit a different way of construing the relationship between time, personhood, rights, and the appropriateness of lethal action by human beings against other human beings. His argument thus reads as assertions made from the perspective of one particular theory of rights, without having made a case for the superiority of that theory in relation to alternative theories.

Judith Jarvis Thomson is famous in philosophical circles for her 1971 journal article “A Defense of Abortion,” which has been very widely read and discussed. We need to consider here, however, her substantial treatise, *The Realm of Rights*, which was published in 1990. The book has two main parts, “Rights: What They Are,” and “Rights: Which They Are.” The first part discusses such general concepts as claims, privileges, powers, duties, tradeoffs, and so forth. The second part treats topics such as bodily rights, trespass, harm,

⁵ Tooley, *Abortion and Infanticide* (New York: Oxford University Press, 1983), 118-19.

liberty, abortion, property rights, and so forth. It is notable that there is no section entitled “Rights: Whence They Come.” The origin of rights, considered historically or metaphysically, is not of sufficient interest to her to warrant a place in her table of contents. There are a few scattered references to thinkers such as Hobbes and Locke in the book, but it is clear that her approach is an example of the generally ahistorical cast of thought that we noted above.

Thomson discusses the topic of abortion in her chapter on liberty. Approximately twenty years after her famous article, she takes the opportunity to address the issue again, but without using the article’s odd imagery of the kidnapped violinist, who was connected to another person’s kidneys via medical tubing for nine months. Thomson frames the discussion of abortion by saying that women have a right to liberty and a right to own their own bodies. These two overlapping rights are what Wesley Hohfeld calls a “privilege,” and Thomson presumes that they form a solid basis for the right to abortion, unless the right of another human being could somehow limit them. This would be the embryo, since she quickly dismisses the possible claim of the father of the embryo (to protect his developing offspring from death) as being irrelevant. Thomson argues that an embryo “is not a person at all”; therefore it cannot possibly be in a position to make a claim against the woman. “A bit of human life is lodged inside the woman, and she wants it out. How can anyone think it has a claim against her that it stay?”⁶ She acknowledges that the embryo is involved in a process of development that is leading to it becoming a person at some point in the *future*, but she argues that it is only the ontological status of the embryo *now* that is morally relevant to the question of its rights. Thomson says, somewhat vaguely, that rights are “gradually” acquired

⁶ Thomson, *The Realm of Rights* (Cambridge, Mass.: Harvard University Press, 1990), 291.

by the embryo as it develops into a baby, but what this might mean for late term abortions and infanticide is left unexplained.

Certain key aspects of the problem of abortion are left unstated in Thomson's argument. She is clearly working with individualistic assumptions; the rights bearer is the individual woman, who is abstracted from relationships with the father, with her relatives, friends, etc. She is not considered as a member of society, with a certain ethnicity, economic situation, personal history, and so forth. Pressures placed upon her by others to have an abortion are not considered. How she may be impacted psychologically by having an abortion is not considered. What her argument implies regarding human beings living in harmony with nature, or, on the contrary, seeing nature as a threat that must be mastered through technology, is never mentioned.⁷ The notion that rights language has a connection with violence and victimization in human history is not considered. The general social consequences of permissive and non-permissive policies regarding abortion are not considered. To draw on Kenneth Burke's terminology, the "circumference of vision"⁸ within which Thomson reflects on the topic of abortion is extremely narrow, and this narrowness is an aspect of her thought of which she seems to be unaware. She does not consider, and reject, a more communal, rather than individualistic, theory of rights; that she needs to do that to more clearly explain her theory of rights does not seem to occur to her.

Ronald Dworkin is a major voice in contemporary moral and legal philosophy, who has written on rights and on abortion, which makes it appropriate to consider his perspective in this context. In his book *Taking Rights Seriously*, Dworkin critiques utilitarianism

⁷ See John Wilcox, "Nature as Demonic in Thomson's Defense of Abortion," in Baird and Rosenbaum, *The Ethics of Abortion*.

⁸ Burke, *A Grammar of Motives*, 77: ". . . the choice of circumference for the scene in terms of which a given act is to be located will have a corresponding effect upon the interpretation of the act itself."

because it does not safeguard the rights of individuals with sufficient zeal. He also attacks statist legal positivism, which holds that governments can simply declare what rights are and who holds them. This can obviously lead to totalitarianism. The alternative which Dworkin prefers is a version of political liberalism that places the main weight on the rights of individuals over against the state and the broader society.

Dworkin argues that the root of all rights is the right to equal concern and respect that should be given to each individual human being. “The individual” is his key concept; it is contrasted with “society,” “the community,” or “the state,” which are vaguely menacing, ill-defined entities against which the individual must be protected. This highly individualistic perspective leads to a key theme of the book, Dworkin’s support for judicial activism. Because the individual may be oppressed by the majority imposing its will, there is a need for judges to function as super-governors, vetoing such oppression. This leads Dworkin into a conundrum that he does not seem to fully acknowledge. Because the judicial branch is an integral part of the state, his central concern to protect the individual against the state becomes tangled up in itself. He wants to warn against legal positivism, but ends up affirming a position that holds that it is appropriate for judges to construct new rights that were not articulated in the Constitution. The government can, it turns out, declare through assertion what rights are and who holds them, as long as it is only the judicial branch that does so, not the executive or legislative branches. Dworkin’s view also entails the belief that judges have the ultimate authority in deciding what their authority is in relation to the other branches, which is unsurprisingly self-exalting. It is ironic, however, as one reviewer points out, that this book entitled *Taking Rights Seriously* lacks “any full treatment of the notion of

right itself, which he takes as his central thesis.”⁹ Alan Dershowitz concurs: “I have been unable to find a single place where [Dworkin] presents a comprehensive theory of the origin of rights.”¹⁰ For the reader who is looking for substantive discussions of the ontology, epistemology, and history of rights, this book is disappointing.¹¹

The book in which Dworkin addresses the issue of abortion most fully is entitled *Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*. In this work Dworkin argues that the abortion debate is usually framed as a struggle between those who believe that personhood, and a right to life, begins at birth, and those who believe that personhood, and a right to life, begin at conception. He tries to persuade the reader that this is a false way of framing the debate, because pro-life advocates cannot rationally believe that an early embryo is at that moment in time a person, with interests that need to be protected by rights. Because this cannot be a rational belief, and because pro-life advocates sometimes approve the legality of abortion in case of rape or other “hard cases,” Dworkin suggests that the proper framing of the debate is not in terms of rights, but in terms of more ambiguous concepts such as the “intrinsic value” and “sacred character” of a human life at various stages of development.¹²

Dworkin’s positive case for why abortion should be legal relies on the concept of religious freedom. He views beliefs about the meaning of life in general and the sacredness

⁹ Alan White, “Taking Rights Seriously,” *Philosophical Quarterly* 27 (Oct. 1977): 380.

¹⁰ Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York: Basic Books, 2004), 237, n. 17.

¹¹ Richard Primus says: “Theorizing about law, Dworkin knows, is part of legal argument; interpretive legal theories are not descriptions that stand outside the game but rather moves within the game. . . . It is therefore ironic that Dworkin’s leading contribution to the theory of rights is a definition of rights as a legal concept and that Dworkin sometimes treats that definition as regulating substantive argument rather than being part of what legal and political argument contests.” *The American Language of Rights* (Cambridge, UK: Cambridge University Press, 1999), 11.

¹² Dworkin, *Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (New York: Knopf, 1993), 11.

of fetal life in particular as deeply “religious.” I put that word in quotes to indicate that he is referring to someone’s fundamental take on reality; in this sense even atheists are “religious.” For the government to impose a particular belief about the moral value of fetal life on the population in general would be to deny individuals their religious freedom. If *Roe v. Wade* is overturned, Dworkin says, “that would be a bleak day in American constitutional history, for it would mean that American citizens were no longer secure in their freedom to follow their own reflective convictions in the most personal, conscience-driven, and religious decisions many of them will ever make.”¹³

While it is clear that pro-life advocates are unimpressed by this predictable line of argument, because it is seen by them as overly individualistic, it is interesting to note that this book was not warmly received by all pro-choice advocates. The notorious advocate of abortion and infanticide, Peter Singer, for example, wrote a negative review of the book.¹⁴

Singer’s own use of rights language in connection with abortion is quite similar to Michael Tooley’s, which has already been summarized earlier in this chapter. The fetus is not sufficiently developed to be a rights-bearer; therefore, killing it is morally unproblematic. Singer is notorious, however, for pushing the implications of this idea to what even other pro-choice advocates consider to be an unacceptable extreme. He says that abortion ends the life of a being that is “more like that of a plant than of a sentient animal like a dog or a cow.”¹⁵ He defends infanticide by arguing:

¹³ Dworkin, *Life’s Dominion*, 172.

¹⁴ *BMJ: British Medical Journal*, 307, no. 6911 (Oct. 23, 1993): 1077-1078. “Though I support the conclusion that abortion should be freely available, Dworkin’s invocation of the sanctity of human life is far too vague to justify his use of it or to explain what he means by this much criticised idea. There is an astonishing absence of references to the past two decades of serious philosophical discussion of the issues that he raises.”

¹⁵ Singer, *Practical Ethics*, 3rd ed. (New York: Cambridge University Press, 2011), 136.

Newborn babies cannot see themselves as beings that might or might not have a future, and so they cannot have a desire to continue living. For the same reason, if a right to life must be based on the capacity to want to go on living, or on the ability to see oneself as a continuing mental subject, a newborn baby cannot have a right to life. Finally, a newborn baby is not an autonomous being, capable of making choices, and so to kill a newborn baby cannot violate the principle of respect for autonomy. In all this, the newborn baby is on the same footing as the fetus.¹⁶

Singer is arguing, quite consciously and deliberately, that infanticide is not morally wrong because it does not kill a rights bearer, under either the “interest” or “choice” theory of rights. He says that strict conditions should be put on infanticide, but these restrictions “owe more to the effects of infanticide on others than to the intrinsic wrongness of killing an infant.”¹⁷

It is interesting to consider Singer’s view, that membership in the human species does not bring with it the right to life, in relation to an essay by Richard Rorty on human rights. Rorty discusses the atrocities that took place in the former Yugoslavia: “We in the safe, rich, democracies feel about the Serbian torturers and rapists as they feel about their Muslim victims: They are more like animals than like us.”¹⁸ Rorty identifies the flaw in violent human behavior as a refusal to accept the idea that human rights should be intrinsically connected with being a human being:

¹⁶ Singer, *Practical Ethics*, 152.

¹⁷ Singer, *Practical Ethics*, 154.

¹⁸ Rorty, “Human Rights, Rationality, and Sentimentality,” in *On Human Rights: The Oxford Amnesty Lectures 1993*, edited by Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 113.

Outside the circle of post-enlightenment European culture, the circle of relatively safe and secure people who have been manipulating one another's sentiments for two hundred years, most people are simply unable to understand why membership in a biological species is supposed to suffice for membership in a moral community. This is not because they are insufficiently rational. It is, typically, because they live in a world in which it would be too risky—indeed, would often be insanely dangerous—to let one's sense of moral community stretch beyond one's family, clan, or tribe.¹⁹

Rorty seems to be arguing here that membership in the human species necessarily entails having human rights; this contradicts Singer's clear assertion to the contrary: "The fallacy in the anti-abortion argument lies in the shift from the scientifically accurate claim that the foetus is a living individual of the species *Homo sapiens* to the ethical claim that the foetus therefore has the same right to life as any other human being. Membership of the species *Homo sapiens* is not enough to confer a right to life."²⁰ I have no reason, however, to believe that Rorty is out of step with the pro-choice view that is generally hegemonic within academic circles.²¹ I can only conclude, in other words, that the apparent divergence between the two thinkers is due to a certain lack of clarity in Rorty's argument in this particular essay.

The pro-choice approach to the use of rights language is illustrated very powerfully and succinctly in an article by Alberto Giubilini and Francesca Minerva entitled "After-birth

¹⁹ Rorty, "Human Rights, Rationality, and Sentimentality," 125.

²⁰ Singer, <http://www.scotsman.com/the-scotsman/opinion/comment/analysis-why-it-s-irrational-to-risk-women-s-lives-for-the-sake-of-the-unborn-1-2467196> Accessed Aug. 16, 2012

²¹ See Rorty's comment on page 127 regarding the desirability of converting students to "standard liberal views of abortion" and other social issues.

Abortion: Why Should the Baby Live?”²² The authors argue that both fetuses and newborn infants are “potential persons,” not “actual persons” because they lack sufficient neurological development to be aware of themselves and to possess aims in life that would be unfulfilled if they were to be killed. “If the death of a [severely handicapped] newborn is not wrongful to her on the grounds that she cannot have formed any aim that she is prevented from accomplishing, then it should also be permissible to practice an after-birth abortion on a healthy newborn too, given that she has not formed any aim yet.”

For the authors, who subscribe to the Choice Theory of rights, only “actual persons” are subjective bearers of a right to life, and fetuses and babies “lack those properties that justify the attribution of a right to life to an individual.” In this worldview, an individual has a right to life, as an individual, if that individual is sufficiently developed so as to have aims as an individual. The authors show no awareness of or interest in the notion that an alternative view might suggest that rights language is social or communal. This leads the authors into a conundrum that they do not seem to recognize. In order for a person to be a bearer of the right to life they need to have been nurtured and cared for by other human beings until they have reached a stage of neurological development sufficient for them to have “aims.” The right to life has thus been given to them by the community that raised them; a right is a *gift*. But the basis of the authors’ argument seems to be that a right is an *achievement*, and if the individual has not made this achievement, then they can be killed. They wisely do not provide any recommendations on the method of killing that should be used in after-birth abortions, such as smothering with a pillow or lethal injection, perhaps because the morally problematic (outrageous?) nature of their thesis would be difficult to

²² Alberto Giubilini and Francesca Minerva, “After-birth Abortion: Why Should the Baby Live?” *Journal of Medical Ethics* 39 (2013): 261-63. <http://jme.bmj.com/content/39/5/261.full.pdf%20html> accessed Aug. 23, 2013.

obscure at that point. They also do not specify at what point in time killing the infant becomes unacceptable because it has developed too much, perhaps because the arbitrariness of their thesis would be difficult to obscure at that point. Their argument can be summarized as: “potential persons” do not possess the *right* to life; “actual persons” possess the *right* to kill “potential persons” if they want to carry out those killings. The authors do not reveal, at least to this reader, the slightest glimmer of awareness that their understanding of the word “right” might need to be explained and defended at some length. If the community is the gift giver, then what does it say about the community as a moral body if it as a matter of “normal” behavior is killing vulnerable human beings?

This notion of rights as a gift from the older generation to the younger is not original with Giubilini and Minerva. Judith Jarvis Thomson’s famous essay “A Defense of Abortion” includes this passage:

If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, *they have given it rights* [emphasis added], and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it.²³

It is interesting to note that both essays agree that the older generation gives rights to the younger, while they seem to disagree about the morality of infanticide. Giubilini and Minerva explicitly argue that difficulty in providing for a child *is* an acceptable reason for killing a newborn.

²³ In Baird and Rosenbaum, *The Ethics of Abortion*, 254.

The use of rights language by Giubilini and Minerva makes no reference to God as the transcendent source of rights, as we find in the American Declaration of Independence. It seems clear that their worldview, which is shared by many inhabitants of contemporary Western culture, is “secular,” though in an ambiguous sense. Because there is no transcendent, vertical, source of rights, the assumption is that human beings are the source of rights in the sense that they can choose whether or not to give birth to and raise another human being who will become a bearer of rights. The traditional idea that “we are all God’s children” has been replaced by “we are all gods.” We human beings are now the locus of sovereignty, the grantors of rights, the controllers of life and death.²⁴ This, I propose, is an accurate summary of the view of rights that is shared by various pro-choice advocates. As we will see in the next chapter, this approach to rights language has not won universal acceptance in contemporary society.

²⁴ For a helpful historical narrative elucidating this point, see Jean Bethke Elshtain, *Sovereignty: God, State, and Self* (New York: Basic Books, 2008).

Chapter 3. Pro-life views of rights

I present this position after the pro-choice view of rights because there is a sense in which the recent pro-life defenses of “natural rights” are reactions against the position that was just summarized, from observers who were shell-shocked by what the *Roe v. Wade* decision revealed about subtle changes that had happened in contemporary culture. The pro-life position had been hegemonic in American culture from the late nineteenth century up to the 1960s and 70s, when it lost its grip on the popular imagination. Pro-life intellectuals have thus had to think through the questions once again and rearticulate what they consider to be a sound understanding of the concept of rights, after suffering a stinging defeat in the public square, to the alternative view of rights which we surveyed in the previous chapter.

George Parkin Grant’s small book *English-Speaking Justice* provides a thoughtful overview of modern political philosophy.¹ He comments on major names such as John Locke, Immanuel Kant, Friedrich Nietzsche, Martin Heidegger, and John Rawls, leading up to a pointed commentary on *Roe v. Wade* toward the end of the book. His central message concerns what he calls “the absence of philosophy” in North American and British political life.² This absence entails unthinking acceptance of the liberal dogma “right is prior to good,” and a subservient attitude toward technology. ‘Wherever technology leads, human beings should follow’ is the notion that Grant rejects, arguing that we should think philosophically about our ends in life and make technology serve those ends.

¹ George Parkin Grant, *English-Speaking Justice* (Notre Dame: University of Notre Dame Press, 1985). Grant (1918-88) was a prominent Canadian philosopher.

² Grant, *English-Speaking Justice*, 68.

Grant's critique of *Roe* focuses on the contradiction that has often been noted in the text of the decision. On the one hand, the court pleads agnosticism: "We need not resolve the difficult question of when life begins"; on the other hand, to legalize abortion the court must declare that the unborn will not be "recognized in the law as persons in the whole sense." The court must resolve the difficult question even though it claims that it is not doing so. Grant's commentary claims to reveal the philosophical confusion on display in *Roe*. He says that this "liberal" decision "raises a cup of poison to the lips of liberalism" because of its "unthought ontology."³ The justices negate the right to life of the inhabitant of the womb by declaring what it is *not*; it is *not* a person. Making this move relies on making an ontological distinction between members of the human species. But the term *person* is not scientific; it is philosophical and rhetorical. The justices, by making this type of assertion, are "loosing a terrible question." What is it about the members of the human race that makes the liberal rights of justice our due? "Has the long tradition of liberal right any support in what human beings in fact are?" Could the state simply assert that the definition of "person" is whatever the state wants it to be at a given time? What does that imply for handicapped newborns, the severely mentally ill, those in a coma? The justices are declaring that some living members of the species *homo sapiens* are to be recognized as rights bearers and others are not, but they provide no philosophical argumentation as to how that distinction should be made and why it is valid at all to make the distinction. This evasion of basic philosophical questions is possible, according to Grant, because the history of the 20th century has placed the English-speaking world over against fascism and communism, where the bad guys are clearly visible—and they are not us. This historical situation has allowed us to keep ontological questions "in the wings," as we proceed forward in history counting on

³ The key pages I am quoting are 71-73.

our common decency as people and on the strength of our democratic traditions. But in a decision such as *Roe* the need to justify our account of rights “begins to walk upon the stage.” The justices, Grant implies, are like playwrights whose characters have nothing to say at the most crucial point in the play.

Grant notes that Nietzsche had already seen past this situation. The inertia of the theological and democratic traditions may carry people along for a period of time, but what happens when that inertia dissipates, when the old gods die? Why should we continue to talk about rights at all, if that language is simply pointing to empty social conventions? “Once we have recognized ‘history’ as the imposing of our wills on the accidental world, does not ‘justice’ take on a new content?”⁴ Grant sums up:

How, in modern thought, can we find positive answers to the questions: (i) what is it about human beings that makes liberty and equality their due? (ii) why is justice what we are fitted for, when it is not convenient? Why is it our good? The inability of contractual liberals (or indeed Marxists) to answer these questions is the terrifying darkness which has fallen upon modern justice.⁵

Grant’s reference to “contractual liberals” points to the Interest and Choice theories which were summarized in the previous chapter. While Grant does not articulate in this small book an account of how rights language *ought* to be employed, it is not difficult to see that his sympathies lie with the approach to rights language that is employed by most pro-life intellectuals.

⁴ Grant, *English-Speaking Justice*, 80.

⁵ Grant, *English-Speaking Justice*, 86.

A complementary perspective is seen in Mary Ann Glendon's book *Rights Talk*.⁶ The chapter titles give a broad overview of her critique of the way most pro-choice advocates use rights language: "The Illusion of Absoluteness," "The Lone Rights-Bearer," "The Missing Language of Responsibility," "The Missing Dimension of Sociality." Glendon argues that the traditional manner of employing rights language, which arose out of natural law philosophy, placed rights within a complex nexus of the dimensions of human existence. During the nineteenth and twentieth centuries, however, there has been a slow but sure development of another style of rights language that is highly individualistic. Glendon points to *Roe v. Wade* as the event when this new style of thought made a decisive breakthrough. The individual pregnant woman was now a "lone rights-bearer," whose right to privacy was absolute. This meant in practice that the legal and social environment fashioned by *Roe* left a woman in difficult circumstances in a position of social isolation in which she is being told implicitly by the culture surrounding her that she should see herself as being in a zero-sum clash with the inhabitant of her womb. This cultural message, that pregnancy leads to a drastic life-and-death either/or, is not necessary, Glendon suggests. It is one way of construing reality, when other ways are possible. The *Roe* decision simply accepts this either/or construal, which means that the decision lacked an openness to seeing the plight of the woman and the child as being held together; thus there was no attempt to search for solutions to the problem of difficult pregnancies in the realm of increased social support.⁷

Glendon argues that the use of rights language in politics and in cultural discussion of issues such as abortion has suffered from a collapse into egoistic modes of thought and life. Drawing on works of cultural criticism such as Robert Bellah's *Habits of the Heart* and

⁶ Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991).

⁷ Glendon, *Rights Talk*, 65.

Christopher Lasch's *The Culture of Narcissism*, she paints a picture of contemporary American life as characterized by rights language in service of "I want."⁸ In contrast, the usage of rights language that she lobbies for is a training in citizenship that equips a person with the virtues needed for the maintenance of a healthy democratic society. Such a usage will not presume that individuals are strangers to each other, who place themselves in an antagonistic relation to society; it will connect, rather than disconnect, rights language from moral philosophy; it will stress that people who expect to be treated justly must themselves act justly. She sums up her message:

It is becoming plain that our liberal regime of equality and personal freedom depends, more than most theorists of liberalism have been willing to admit, on the existence and support of certain social assumptions and practices: the belief that each and every human being possesses great and inherent value, the willingness to respect the rights of others even at the cost of some disadvantages to one's self, the ability to defer some immediate benefits for the sake of long-range goals, and a regard for reason-giving and civility in public discourse.⁹

Her baseline contention in the book is that rights language is not primarily a subject for rarified philosophical argumentation; it is a symptom of the psychological state of development of the people who employ it.

Rowan Williams, a theology professor who served as Archbishop of Canterbury from 2002-2012, is a well-known supporter of the pro-life position on abortion. His essay "Do Human Rights Exist?" provides another angle on the attempt by pro-life advocates to

⁸ Glendon, *Rights Talk*, 173.

⁹ Glendon, *Rights Talk*, 179.

articulate the foundations of their viewpoint.¹⁰ Williams notes that the ancient practice of slavery was dealt a serious, though subtle, blow, by the early Christian notion that the master and the slave share a common relationship with God through baptism. This subtle deconstruction of the institution of slavery took many centuries to come to fulfillment, but when we look back in hindsight we can see that it is the embodiment of human beings that is key to the concept of rights. I can say that I own a particular table, or a particular \$20 bill, or a piece of land, but is it ever legitimate for me to say that I own another human being? Today, it is easy for us to answer that question “No” without realizing how difficult it was for that insight to be articulated in human history. Williams says that “the human body cannot in the Christian scheme of things be regarded as an item of property.”¹¹ It is not simply that we should not view the bodies of other human beings as our property, we should not view our own bodies as our property either. To do so, as in the common pro-choice phrase, “a woman should be able to control her own body,” implies a faulty dualism, as if the person and their body were two different things. Human beings do not *inhabit* bodies, they *are* bodies.

Williams is critiquing the pro-choice worldview at a very deep level, by arguing that the foundation of rights is not conscious selfhood but bodily existence. “The irreducible core of human rights is the liberty to make sense as a bodily subject; which means that the inviolability of the body itself is where we should start in thinking about rights.”¹² Rights belong to human beings not because they have certain capabilities but because they exist as bodies which communicate their existence to others. Such communication happens at a pre-verbal level. This is true at the level of biology, for example, in that the implantation of the

¹⁰ Rowan Williams, *Faith in the Public Square* (New York: Bloomsbury, 2012), 149-59.

¹¹ Rowan Williams, *Faith in the Public Square*, 152.

¹² Rowan Williams, *Faith in the Public Square*, 155.

embryo in the wall of the uterus sends signals to the mother's body that are responded to at a hormonal level. Without mentioning Emmanuel Levinas, Williams seems to be presenting the notion that there is always a "face" of the embodied human being that is speaking to us, if we have ears to hear. We may not have such ears; we may choose to be morally deaf. Where human rights are competently recognized, there is a healthy reciprocity; "my own liberty not to be silenced, not to have my body reduced to someone else's instrument, is nourished by the equal liberty of the other not to be silenced."¹³

Any secular account of the foundations of rights is likely to fall prey to the patterns of power that are already well established in society. Those who are more articulate, more powerful, more wealthy, and so forth, will always have greater rhetorical resources to assert their interests in the public square. The theological viewpoint Williams is articulating, on the other hand, holds that the bodies of human beings are related to their Maker before they are related to any humanly constructed systems of power and dominance. The essential philosophical judgment that animates the pro-choice view is the concept that rights language has no other function than facilitating systems of power; such systems are always trying to establish "fictions of control, the notion that you 'own' your body, your world, your future or whatever."¹⁴ Williams seeks to persuade us to relinquish the attempt to grasp for power; we ought to relax, to be receptive, to see our lives and the lives of other human beings as free gifts that come from above.

Another notable example of pro-life employment of rights language is found in Joseph Ratzinger's (Pope Benedict XVI) book *Christianity and the Crisis of Cultures*. The book outlines the main tensions between traditional Christian and modernizing worldviews,

¹³ Rowan Williams, *Faith in the Public Square*, 156.

¹⁴ Rowan Williams, *Faith in the Public Square*, 6.

and the second section is on “The Right to Life.” The Pope seeks to encourage those who struggle against the legalization and cultural acceptance of abortion that has happened in the last several decades in the West. Against those who would tell pro-lifers that they should give up their cause and acquiesce to the new reality, he says that there are no “small murders” that should be accepted as the new normality. He affirms the legitimacy of rights language as a general feature of modern life, but takes strong exception to the way it is deployed to facilitate abortion:

. . . this claim to exercise real rights is demanded to the detriment of the life of an innocent human being whose rights are not even taken into consideration. In this way, one becomes blind to the right to life of another, the smallest and weakest person involved, one without a voice. The rights of *some* individuals are affirmed at the cost of the fundamental right to life of *another* individual. This is why every legalization of abortion implies the idea that law is based on power.¹⁵

The Pope is pointing out that the harm principle (people should be free to act as they please as long as they don’t harm others) is violated by legalized abortion. He says that the recoil against the experience of WWII that led to the Universal Declaration of Human Rights should have resulted in protection for the weakest and most vulnerable human beings, but it did not.

The right to life, he says, is the most fundamental right, and it belongs to human beings *by nature*; the state *recognizes* this right, it does not *confer* it. Human beings ought to be recognized in this way not because of any characteristics or capabilities they may or may not have, but simply because they exist as living beings:

¹⁵ Joseph Ratzinger, *Christianity and the Crisis of Cultures* (San Francisco: Ignatius Press , 2006), 62-63.

It follows that a state that claims the prerogative of defining who is and who is not the subject of rights, and that consequently accepts that some persons have the right to violate the fundamental right to life of other persons, contradicts the democratic ideal, although it continues to appeal to this claim. Such a state imperils the very basis on which it governs. For when it accepts that the rights of the weakest may be violated, it also accepts that the law of the jungle prevails over the rule of law.¹⁶

This reference to the law of the jungle has a particular resonance in Europe, where there is widespread awareness that the heart of Nazi propaganda was a vision of reality, “red in tooth and claw,” in which the powerful eliminate at will all of those who are deemed weak.

The Pope is aware, of course, that the common response to his message from those who support abortion as a right is that the inhabitant of the womb is “not a person” and thus cannot be a rights bearer. The last point in his argument addresses this response directly. “The moral drama, the decision for good or evil, begins with our eyes, when we choose whether or not to look at the face of the other.”¹⁷ In language that echoes the writings of Emmanuel Levinas, he speaks of how the face of the other calls to me and asks for care and hospitality. When we say that the fetus is a thing, not a person, we are revealing the moral character of our vision of reality. We are refusing to see a child on the way as a traveller through time, just as every reader of the Pope’s words was in the womb, and is still. The scientific facts of embryology can be compiled as carefully as one wishes to do so, but they cannot compel us to “see” the inhabitant of the womb one way or the other. Science does not control morality; our deepest moral intuitions will direct us either to dominate those human

¹⁶ Ratzinger, *Christianity and the Crisis of Cultures*, 64.

¹⁷ Ratzinger, *Christianity and the Crisis of Cultures*, 65.

beings who are weaker than us, or to make space for them, with compassion. It takes courage to do that, when voices in human culture are crying out for violence against the weak. Pontius Pilate asked the question “Who is man?” when he was put between a rock and hard place. He lacked the courage to see that man, the person, the human being whose face we are called to see and protect, “is precisely the one who is most weak and defenseless, the one who has neither power nor a voice to defend himself.”¹⁸ In Pope Benedict’s rhetorical description of our situation, when we acquiesce to injustice the consequences fall back on our own head; we diminish our own humanity when our moral vision is willfully darkened. Is this message very far away from the words of Martin Luther King, Jr.?

I turn next to Jacques Maritain, whose works chronologically precede those we have been considering. I place him last because I view his perspective as an excellent summary of the worldview that underlies the post-*Roe* critiques we have been considering. Maritain expresses effectively the world which was lost; the post-*Roe* critiques believe that it should not have been lost.

In his essay “The Rights of Man and Natural Law,” Maritain speaks quite clearly the language that I refer to as dimensional anthropology. He refers, for example, to the person having a capacity for independence that creates “a certain tension between the person and society.”¹⁹ There is also in the person, however, a “vertical” relationship, in that the “taproot” of personality is not society, but God. God is the Creator of human beings, who have been given a particular human nature, an essence. This does not mean, of course, that human beings are robots; we have free will. We can turn our wills toward limited, earthly ends, which brings corruption into human life, or we can turn our wills toward God, who is

¹⁸ Ratzinger, *Christianity and the Crisis of Cultures*, 67.

¹⁹ Jacques Maritain, *Christianity and Democracy* and *The Rights of Man and Natural Law* (San Francisco: Ignatius Press, 1986), 103.

our highest end and goal. Because reality is complex, our turnings toward earthly ends can take a variety of forms. Maritain describes, for example, the “bourgeois-individualist conception,” which sees the role of the State as allowing room for “scattered individuals, each absorbed in his own well-being.”²⁰ The “communist-totalitarian conception” hopes to accomplish the domination of nature by industry. The “totalitarian-racist conception” seeks the domination of some human beings by others.

For Maritain, the phrase “natural law” points to the unwritten law that is built into each human being as a creature of God, and this law is the source of rights. He says that we are “enmeshed” in the laws of the cosmos, and are a part of “the immense family of created natures”; because all share in the same “spiritual nature” as creatures of God, we possess rights vis-à-vis other men.²¹ The natural law tells us that we must not kill others; therefore we must respect the others as having the right to life. Writing in response to the totalitarianisms of the mid-20th century, Maritain says that “some have turned against these rights with an enslaver’s fury.” Therefore, we need an “intellectual and moral revolution” to “reestablish on the basis of a true philosophy our faith in the dignity of man and in his rights and in order to discover the authentic sources of this faith.”²² Speaking historically, he says that it was the New Testament that awakened this understanding of the person and rights, which could not have been fully conceived in “pagan antiquity, over which the law of slavery cast its shadow.” Maritain gestures in a direction that will later be developed further by René Girard, when he says that the Gospel led to an awakening, which was “little by little to spread forth, with regard to the requirements of the natural law, over the realm of man’s

²⁰ Maritain, *Christianity and Democracy*, 124.

²¹ Maritain, *Christianity and Democracy*, 146.

²² Maritain, *Christianity and Democracy*, 147.

life here on earth.”²³ Rights language, in other words, is an emergent phenomenon in human history, with traceable roots in the Bible.

Maritain, who is well-known for being one of the drafters of the Universal Declaration of Human Rights, said: “We all agree on the rights, as long as no one asks us why.” In my opinion, he spoke too soon. It has turned out that we do not agree on the rights, as the abortion debate illustrates, precisely because the deeper philosophical assumptions about reality that are at work in the thinking of various people are so divergent.

The purpose of this chapter has been to present a sampling of pro-life views on the concept of rights, to show how different they are from the pro-choice views that were surveyed in the previous chapter. This is clearly a clash of quite different worldviews. It is not the case that there is consensus within modern Western culture on the *theory* of rights, with a divergence on how the theory should be *applied* to the specific issue of abortion. Rather, the abortion debate brings into high relief quite different theoretical approaches to the concept of rights.

I have not criticized the pro-life views in this chapter because I agree with them; my concern, as will be unpacked in the latter part of this thesis, is that the pro-life views should understand themselves to be attempts at rhetorical persuasion. Why do some people articulate a vision of personhood and rights that focuses on individuals and sentience (at a particular, synchronic, moment in time), while others articulate a vision that sees personhood and rights diachronically, socially, and theologically? That is a question for which dimensional anthropology rhetorical criticism provides suggestive answers, which I will explore more fully in Part Two below.

²³ Maritain, *Christianity and Democracy*, 147-48.

Chapter 4. Critics of rights

We have seen that pro-choice advocates favor an approach to rights language that sees it as facilitating the freedom of action of conscious individuals, according to their choices or interests, while pro-life advocates favor an approach to rights language that sees it as holding together the texture of being in society. Some commentators, aware of this fragmentation, have come to the conclusion that rights language is not useful because it is simply a surface level enactment of philosophical divergences at a deeper level.

Simone Weil, whose thought was forged in the years leading up to World War II, makes some rather harsh comments on “rights” in her essay “Human Personality.” She asserts that the language of rights, with its “commercial flavor,” arose in ancient Rome. She connects Rome and Hitler in this way:

The Romans, like Hitler, understood that power is not fully efficacious unless clothed in a few ideas, and to this end they made use of the idea of rights [Germany] allows only one right to her victims: obedience. Ancient Rome did the same.

It is singularly monstrous that ancient Rome should be praised for having bequeathed to us the notion of rights. If we examine Roman law in its cradle, to see what species it belongs to, we discover that property was defined by the *jus utendi et abutendi* [the right to use or destroy one’s

property]. And in fact the things which the property owner had the right to use or abuse at will were for the most part human beings.¹

Weil argues that the Greeks did not speak of rights, but of *justice*, a quite different concept. She associates the Christian tradition with this Greek root, with the major addition of *love* as the chief principle of moral thought. For Weil, language that evokes justice calls people to also pay attention to love of the neighbor. Rights language, on the other hand, awakens a “spirit of contention. To place the notion of rights at the center of social conflicts is to inhibit any possible impulse of charity on both sides.”²

Alasdair MacIntyre’s *After Virtue* has been a major impetus for discussion and argument in moral philosophy over the past thirty years. It contains this memorable passage:

. . . there is no expression in any ancient or medieval language correctly translated by our expression ‘a right’ until near the close of the middle ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century. From this it does not of course follow that there are no natural or human rights; it only follows that no one could have known that there were. And this at least raises certain questions. But we do not need to be distracted into answering them, for the truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns.³

¹ *Simone Weil: An Anthology* (New York: Weidenfeld & Nicolson, 1986), 61-62.

² *Simone Weil: An Anthology*, 63.

³ MacIntyre, *After Virtue: A Study in Moral Theory*, 2nd ed. (Notre Dame, Ind.: University of Notre Dame Press, 1984), 69.

The fact that MacIntyre does not see rights language employed in ancient Rome, as Weil and many other scholars do, is strange. But even if that is set aside, why MacIntyre chose to say “before about 1400” is not made clear. That date is inaccurate in the wake of Brian Tierney’s *The Idea of Natural Rights*, which describes the emergence of (post-Roman) rights language in the writings of the Decretists in the late 1100s.⁴ MacIntyre is assuming that because a certain vocabulary was not present in an earlier time periods, therefore the social reality to which the modern vocabulary is pointing is non-existent. He does not consider the possibility that rights language could have emerged gradually and legitimately out of historical roots. MacIntyre’s overall message is a polemic against modern moral philosophy, which he claims has become fragmented, incoherent, and unable to build any solid foundations for itself. He seems to accept the idea, popular in contemporary academic circles, that rights language is a relatively modern invention, created by Enlightenment philosophers who were seeking to rebuild the modern world on non-religious premises after they rejected theological virtue language. Since those modern philosophers are the targets of his polemic, he attacks their core vocabulary by claiming that rights are like unicorns. But this polemic blinds him to the reality that his own hero, Aquinas, uses rights language, just as many other medieval thinkers did, and that this use can be understood as a creative evolution of the tradition-based moral thinking that MacIntyre seeks to recover.

I refer to this aspect of MacIntyre’s thought here because he is a note-worthy critic of the whole enterprise of rights language, not from the *left*, but from the *right*, in the sense that his call that moral philosophy should return to Thomist and Aristotelian roots is a prominent example of conservative thought. We turn next to an example of how the whole enterprise of

⁴ Brian Tierney. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Grand Rapids, Mich.: Eerdmans, 2001).

rights language can be criticized from the *left*, with particular emphasis on the contemporary abortion debate.

Mary Poovey has published an essay under the title: “The Abortion Question and the Death of Man.”⁵ Poovey aligns herself with the social constructivist philosophical school associated with Jacques Derrida, Michel Foucault, and Judith Butler. This perspective tends to view the concepts of “individual rights” and “autonomy” as naïve illusions, because there is no isolated “individual” that pre-exists society. There is no “essence” or “core” of the individual that is not created by social and institutional forces. The dominant rhetoric of the pro-choice movement has relied on these naïve illusions, which generates the question that Poovey seeks to address in her essay: How could pro-choice thinking proceed if claims about individual rights were to be abandoned? She states: “I confess that I’m not sure that the discourse of rights could—or even should—be jettisoned completely at this moment. Given the political capital this discourse has accrued in the history of the United States, perhaps it should simply be reworked”⁶ A statement such as this reveals a way of thinking for which the language of the Declaration of Independence and the Bill of Rights is naïve and old-fashioned. Rights are passé, and rights language could only be employed as a tool that is used to achieve certain political ends.

Poovey describes *Roe* as a confused decision that is filled with “rhetorical equivocations” and “torturous” and “paradoxical” logic.⁷ She asserts that the *Webster* decision “was not so much a decision as a series of deferrals and refusals to decide.”⁸ “In

⁵ Published in *Feminists Theorize the Political*, edited by Judith Butler and Joan W. Scott (New York: Routledge, 1992), 239-56.

⁶ “The Abortion Question and the Death of Man,” 254.

⁷ “The Abortion Question and the Death of Man,” 245-46.

⁸ The *Webster* decision allowed the State of Missouri to impose some restrictions on the practice of abortion, such as preventing state-employed doctors from aborting viable fetuses, and not allowing state-owned facilities to be used for abortions, unless the woman’s life was in danger.

cutting through *Roe*'s skein of fine distinctions, the authors of *Webster* implicitly acknowledged the anomalous, nonunitary nature of these entities [the pregnant woman and the 'potential human'] and therefore implicitly exposed the fact that the Constitution's language of individualized rights is not adequate to cover all of the guises in which so-called persons appear."⁹ Poovey is arguing, in other words, that the language of individual rights, which was formulated in earlier centuries by white men who had political power, and who were seeking to consolidate that power, was based on what she calls a "metaphysics of substance" that presumed that individuals have an inner "core" that precedes all social relationships. The inadequacy and falsity of this philosophical worldview is to blame for the torturous logic in which we are now entangled if we seek to apply that worldview to the problem of abortion. Poovey continues: ". . . unless the relationship between biological embodiment and sociolegal personhood can be worked out there is no obvious reason to grant personhood to an infant upon birth, since a neonate is no more capable of independent life than is the fetus. Pregnancy, abortion, and the fierce debates that have materialized around the latter make it clear that these issues need to be aired. Indeed, the crisis of legitimacy that now torments the legal community may well result from the profession's continued reluctance to subject these problems to a public discussion."¹⁰ This comment parallels very closely the remarks made by George Parkin Grant regarding the avoidance of important philosophical questions in the jurisprudence of abortion.

Poovey is attacking the common ways in which her fellow pro-choice advocates have relied on the language of individualistic rights to make their case. This has entailed the use of what she considers to be false philosophical concepts, formulated by men, to advance

⁹ "The Abortion Question and the Death of Man," 247-48.

¹⁰ "The Abortion Question and the Death of Man," 249.

the cause of women's liberation. She points out that this entails that the exact same language of individual rights can and will be used by those on the other side:

. . . the *Webster* decision has begun to reveal why the metaphysics of substance constitutes an inadequate basis for all the arguments thus far advanced for the right to legal abortions. Most obviously, *Webster* has disclosed the fact that the central terms abortion advocates have tried to defend are susceptible to appropriation and reactionary redeployment by abortion opponents. In the mouths of antiabortionists, 'choice,' 'privacy,' and 'rights' invert effortlessly into their opposites, precisely because, regardless of who uses them, these terms belong to a single set of metaphysical assumptions.¹¹

Poovey's message seeks to undermine the common use of rights language in the debate about abortion, but it is not made clear in her brief essay what alternative vocabulary could replace rights language.

"A house divided against itself cannot stand" is a phrase from the Bible (Mark 3:25), that was employed to great rhetorical effect by Abraham Lincoln. Over the past three chapters, we have surveyed the use of rights language by pro-choice and pro-life advocates, and we have glanced at critics of rights language. It is hard to avoid the conclusion that rights language is in complete disarray in our time. It is not simply the case that pro-life and pro-choice advocates both use rights language, which casts a pall of skepticism over such language; there are also very articulate thinkers who seek to debunk the use of rights language entirely. If a truly compelling case for the meaning of rights language can be made,

¹¹ "The Abortion Question and the Death of Man," 249.

they are not aware of it.¹² If rights language can be compared to a house, a political dwelling place for a society, which is rhetorically constructed, then profound disagreement about the meaning of rights language signifies that the house is badly constructed and in danger of collapsing. The fact that there is a bitter and seemingly intractable debate over abortion is a sign that the collapse has already happened. There is no consensus about rights, which means that the concept of rights is functioning as a site of battle, not as the oil that lubricates the social engine and keeps it running.

The previous paragraph employed several metaphors (house, battle, oil), which can be added to MacIntyre's preferred metaphors (unicorns and witches). Because rights are not physical objects, but a linguistic practice, we always wrestle with such metaphors to convey rhetorically what rights are. I will suggest yet another metaphor, a garden. According to the notion that rights language expresses a "social contract," when people form a society they agree with each other, at least implicitly, to establish a system within which all individuals, and the government, form a complicated nexus of checks and balances. Everyone gives up something in order to dwell within a system that provides a sense of security for all. But what if the notion of a social contract were to be compared to a community garden in the middle of a city? City Hall has purchased a vacant lot and set it aside as a garden, with the understanding that the residents of the neighborhood will come together, form a committee, and manage the garden. The committee will decide to plant vegetables A, B, and C, in these rows of soil, flowers D, E, and F in these other rows, and so forth. But what if the committee is so deeply divided in its discussions that it can never agree on a plan of action? No working consensus can be achieved. In that case, nothing ever gets planted and the vacant

¹² Sonu Bedi is also not aware of such a case. See his *Rejecting Rights* (New York: Cambridge University Press, 2009).

lot simply remains full of weeds. As an analogy with rights language, if rights are the *fruit* of consensus, of a social contract, and if there is no consensus within society as to what rights language means, then *there are no rights*. This disquieting suggestion entails that it is illegitimate for both pro-choice and pro-life advocates to use rights language, if rights are viewed as arising from a “social contract.” It seems impossible today to hold such a view of the origin of rights because of the lack of consensus that we have been investigating.

Chapter 5. John Locke is the source of our confusion

It is a commonplace to say that the *American Declaration of Independence* was to a great extent a summary of John Locke's *Second Treatise of Government*. If the word "summary" seems too mild, one could replace it with "plagiarism."

The thinking of the founding fathers of the American republic was deeply influenced by Locke. In Locke's age, the late 17th century, his critique of absolute monarchy was ahead of its time, so much so that he did not put his name on the title page of the *Second Treatise*, fearing possible arrest and execution if he did. By the time the colonists were preparing to break from the mother country, one century later, his ideas had come to fruition and were employed as a key inspiration for the emerging political philosophy of the American colonies.

When we fast-forward to our own time and note that both pro-life and pro-choice advocates use rights language to make their arguments, a question naturally arises. If Locke taught us to use rights language and to place it at the center of political discourse, then can the disarray of rights language today be blamed on Locke? Was there a lack of clarity in his thinking that has produced a lack of clarity in ours, because we are mimicking his rhetoric without digging deeper to sort out the foundations of rights language? This line of questioning seems very valid when we glance, ever so briefly, at a few examples of how commentators on the abortion issue refer to Locke as a key authority in political philosophy.

Gary Glenn presents a pro-life argument which focuses on the concept of “inalienable rights.”¹ He quotes Locke to support his case, arguing that the state of nature is “a state of liberty, yet it is not a state of licence; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession.”² Human beings cannot legitimately sell themselves into slavery or commit suicide. The rights to life and to liberty are inalienable. This entails that the pro-choice argument that a woman has a right to do whatever she wants with her own body, and with the fetus inside her body, is not congruent with Locke’s philosophy. That argument is rooted in *license*, not *liberty*, which is precisely what Locke speaks against, according to Glenn. The article, which was written not long after *Roe v. Wade*, contends that that decision was “establishing a constitutional right to abortion on demand”³ that contradicts the concept of the unalienable⁴ right to life in the *Declaration of Independence* and in Locke’s *Second Treatise*. He concludes the article with the idea that Locke’s thought is framed by the belief that there are limits to human action, while pro-choice feminism is a “liberation” program that is similar to Marxism in that it wants to abolish the notion of limits and radically reshape society and human nature.

In contrast, James Bowers uses Locke to support a pro-choice perspective in his book *Pro-Choice and Anti-Abortion*. Bowers stresses the notion that Locke supports a distinction between public and private spheres of action. Within the private sphere, “the Lockean individual must be viewed as an autonomous moral agent” who exists in a realm of

¹ Gary D. Glenn, “Abortion and Inalienable Rights in Classical Liberalism,” *American Journal of Jurisprudence* 20 (1975): 62-80.

² Locke, *Second Treatise*, 2.6.

³ Glenn, “Abortion and Inalienable Rights,” 76.

⁴ Glenn uses *inalienable* in his article, while the Declaration uses *unalienable*; I cannot discern any philosophical significance in the alternate spellings.

liberty not controlled by broader social beliefs and practices.⁵ Human beings use their reason within the private sphere to decide on the course of action in life that is best suited to their own interests and goals. Bowers refers to certain passages in the *Second Treatise* and in Locke's letters on toleration to support his case. He also quotes, with approval, the majority opinions in *Roe v. Wade* and *Casey*, claiming that they articulate a Lockean legal and political philosophy. For example: "Thus, at the 'heart of [Lockean] liberty is the right to define one's own concept of existence, of meaning, of the Universe, and of the mystery of human life. Beliefs about these matters [and others] could not define the attributes of personhood were they formed under the compulsion of the state.'"⁶ The quotation within the quotation comes from the *Casey* decision, and the word [Lockean] in brackets was put there by Bowers. It is clear that Bowers believes that Locke's concept of rights solidly supports the pro-choice position, as it has shaped American political life through the power of the Supreme Court.

Hadley Arkes, on the other hand, draws on Locke to support his pro-life argument in *Natural Rights and the Right to Choose*. His overall message is that Locke and the founding fathers of America had a strong belief in the concept of *natural* rights, rights which are grounded in the nature of reality. Such rights protect the unborn child, who is a real, living, being, a part of reality. Arkes claims that it is precisely this idea of *natural* rights which has been slowly but surely rejected by the judicial class during the 20th century, leading up to *Roe v. Wade* and the string of affirming decisions that followed it. Arkes asserts that the natural rights view of Locke contradicts the legal positivism that is now hegemonic in America, which claims that the Supreme Court can arrogate to itself the power to invent new

⁵ Bowers, *Pro-Choice and Anti-Abortion: Constitutional Theory and Public Policy* (Westport, Conn.: Praeger, 1994), 20.

⁶ Bowers, *Pro-Choice and Anti-Abortion*, 21.

rights and can proclaim those new rights to be absolute, beyond the reach of legislatures. This contradicts the concept of the separation of the branches of government which was central to Locke's political philosophy. The case that Arkes makes against the pro-choice position is summed up well in this sentence: "In the course of defending this new 'right' to abortion, they have talked themselves out of the notion of 'natural rights' held by Lincoln and the American Founders."⁷ Arkes believes that Locke taught Lincoln and the Founders the first principles of political and legal philosophy.

An overview of attitudes regarding the connection between Locke and abortion would not be complete without mentioning that some pro-life advocates believe that Locke supports the *pro-choice* cause. Francis Canavan, for example, paints a picture of pro-choice thinking as relying on an atomistic view of rights, as if a fetus had to say to its mother: "May I trespass upon your private property by living in your womb for nine months?" If the woman says no, then the fetus can be killed. Canavan argues that this style of thinking about rights was taught to us by John Locke, who assumed that "each man is an island, of which he is the sole owner." Lockean rights language among modern Westerners becomes individualistic and contractual. "They formed the relationship so that each one could better protect his individual proprietary rights, and society's government has no function other than to protect those rights." A woman's womb is her property, which she can defend against intruders.⁸ An almost identical argument is made by another pro-life advocate, David Schindler, in his article: "The Repressive Logic of Liberal Rights." Schindler argues that the

⁷ Arkes, *Natural Rights and the Right to Choose* (New York: Cambridge University Press, 2002), 173.

⁸ Canavan, *The Pluralist Game: Pluralism, Liberalism, and the Moral Conscience* (Lanham, Md.: Rowman & Littlefield, 1995), 129-131.

modern view which places a woman in competition with her fetus and gives her the ability to abort it is a logical extension of Locke's philosophy.⁹

What have we learned from this ping-pong overview of recent attempts to make connections between Locke and abortion? It seems clear that Locke's thought is a Rorschach image that can be interpreted differently by different people. It does not logically compel one way of thinking rather than another in the matter of abortion. Locke refers to "rights" in his writings, but he does not actually clarify the concept at a deep enough level to prevent future generations from using the concept to pursue opposite ends. There are some strands of his thought which have shaped and energized modern, individualistic philosophical ideas, but there are other strands of his thought which are rooted in traditional theological views of God's creation and supervision of humanity. It isn't the case that one approach to interpreting Locke is wrong and the other is right. The differing interpretations reveal the ambiguities inherent in his thought. This is not a criticism of him, per se, simply an acknowledgement of reality. That Locke is to a great extent the source of our confusion about rights should be seen not as an attack on him but rather as an attack on the idea that he can be pointed to as an oracle who solves problems that we ourselves are tasked with solving.¹⁰

⁹ David L. Schindler, "The Repressive Logic of Liberal Rights," *Communio* 38 (Winter 2011): 523-47. "... the subject of rights for Locke, properly speaking, is the autonomous adult individual of whom we can say that he is fully able to dispose of his own possessions and person, and who is thus independent" (527).

¹⁰ This general comment on Locke is supported by the words of John Dunn, one of the most prominent Locke scholars in recent decades, which are worth quoting at length: "Great historical movements are never the product of a single person's achievements. But there is a real justice in seeing the European Enlightenment as Locke's legacy: both his triumph and his tragedy. As it turned out, the culture which he wished to fashion did not become easier to believe in and to live the better it was understood. Instead it fragmented alarmingly. Shared religious good intentions gave way to shared secular good intentions; and the latter, too, gave way to violent and acrimonious wranglings over which secular intentions truly are good. The clearer his view of what men can know became, the less convincing became his view of how they have good reason to live their lives. If the Enlightenment was genuinely his legacy, it was scarcely the legacy which he wished to leave. We are all of us the children of his failure." John Dunn, *Locke* (New York: Oxford University Press, 1984), 21.

Part Two: An Attempt at Reconstruction

Chapter 6. Rights language is rhetorical

Part One of this work painted a picture of rights language within our contemporary cultural context, emphasizing that rights are asserted, or are used as weapons in public debates, quite often, but careful reflection on the meaning of rights language is much more rare. The lack of consensus among various thinkers who have written about rights was noted, and a few thinkers, just to complicate things, question the validity of rights language altogether. The central goal of Part Two is to articulate the elements of a philosophical and historical perspective on rights language which I find to be worthy of consideration as an alternative to the welter of competing views summarized above. I have no doubt that my suggestion will become a part of the welter, but at the very least it can claim to have arisen out of a certain sensitivity to the deep questions that are raised by rights language.

This chapter will outline the sense in which rights language is always an act of rhetorical construction. Margaret MacDonald's essay entitled "Natural Rights"¹ is a helpful starting point for us, as she begins her essay by arguing that there are three main possibilities for the type of utterance that rights language could be: (1) tautological or analytical propositions, that is, rules for using symbols, (2) empirical or contingent propositions, which state matters of fact, and (3) assertions of moral value.² The main body of the essay claims that the phrase "natural rights" has been an endless site of controversy (appearing "self-

¹ The essay was originally published in the *Proceedings of the Aristotelian Society 1947-48*. I am using the reprint in *Theories of Rights*, edited by Jeremy Waldron (Oxford: Oxford University Press, 1984).

² *Theories of Rights*, 23.

evident” to Jefferson and “nonsense” to Bentham), because it has been used as if it were a “curious hybrid” of (1) and (2), when it should have been recognized as belonging in category (3). To say, for example, that a slave has a “natural right” to be free seems to combine the idea that we can observe as an empirical fact (2) that a particular slave is a human being just like other human beings; and we can define the essence (1) of human nature as “freedom,” regardless of, or transcending, the social conditions and beliefs of any particular society. Through this hybrid blending of definition and observation we can arrive at the language of “natural rights.” This approach runs aground, however, on the reality that human beings can empirically observe the same phenomenon and interpret it differently; we can also argue interminably about the definition of concepts such as “freedom” and “human nature.” The abortion debate often consists of a clash between different people, who are looking at the same phenomenon of fetal development, but connecting that phenomenon with morality differently. Hume’s is/ought problem is still with us, which points out the great difficulty of making a transition from definitions (1) or facts (2) to moral assertions (3).

MacDonald’s preference for the third category is expressed in this way: “Assertions about natural rights are assertions of what ought to be as a result of human choice. . . . To assert that ‘Freedom is better than slavery’ or ‘All men are of equal worth’ is not to state a fact but to *choose* a side. It announces *This is where I stand.*”³ To say this places rights language within the realm of moral values and aspirations for the future; it does not solve the problem of interminable argument, of course, because people obviously differ in their moral evaluations of possible human actions. But at least the purpose and social function of

³ *Theories of Rights*, 34-35. Emphasis in original.

rights language is clarified, when it is clearly seen that it seeks to rhetorically construct a social milieu that is attuned to certain moral aspirations.

The anthology that includes the MacDonald essay illustrates this point well. It includes chapters by Gregory Vlastos, H.L.A. Hart, Alan Gewirth, David Lyons, T.M. Scanlon, Ronald Dworkin, J.L. Mackie, and Joseph Raz, who carry on a spirited debate among themselves about “natural rights,” utilitarianism and rights, individualism and community, and the relationship between rights discourse and the foundations of moral and political philosophy. The fact that there is no consensus among the authors and that they are all seeking to persuade their readers to adopt a certain viewpoint provides an example of MacDonald’s central thesis that the use of rights language is always an act of moral construction.

That rights language is always an attempt at persuasion, with the goal of shaping social and political practices in a particular way, coheres well with Kenneth Burke’s understanding of rhetoric, which he outlines in phrases such as these: “. . . the use of words by human agents to form attitudes or to induce actions in other human agents . . .”; “. . . the use of language as a symbolic means of inducing cooperation in beings that by nature respond to symbols.”⁴ While Burke does not discuss rights language, per se, it is not at all difficult to see that his reflections on what he calls “the dialectic of constitutions” are congruent with a rhetorical treatment of rights. Burke defines a constitution as: “an *act* or body of acts (or enactments), done by *agents* (such as rulers, magistrates, or other representative persons), and designed (*purpose*) to serve as a motivational ground (*scene*) of subsequent actions, it being thus an instrument (*agency*) for the shaping of human

⁴ Burke, *A Rhetoric of Motives*, 41, 43 [565, 567 in one vol. ed.].

relations.”⁵ The slave-owning Old South, for example, lived by a particular construal of its constitutional substance; the increasingly abolitionist North had gradually moved toward a different constitutional substance in the decades leading up to the Civil War. Nazism was a jarring move into a new constitutional substance that was marked by the inclusion and exclusion of large groups of people based on cultural labels; the liberal West saw this as an unacceptable development that needed to be overcome through war. In the wake of Burke we can reflect that a “constitution” is a living document that is written in the minds of human beings; rights language will be one key feature of how that living document is enacted on the stage of history.

Celeste Condit’s book *Decoding Abortion Rhetoric* is premised on the insight that moral arguments about abortion, and the use of rights language, are always acts of social and rhetorical construction. She says, for example: “Because the fetus has characteristics both like and unlike those of a human being, the classification of the fetus is a contingent matter, rationally undecidable and rhetorically constructed, rather than a basic fact of nature. As a consequence, rather than relying on some natural, logical classification, we must *choose* how to count the fetus.”⁶ The chapters of the book provide a history of the abortion debate in the United States from 1960 to 1985, analyzing how various pro-life and pro-choice perspectives were philosophically articulated and then presented as strategies of public persuasion.

If rights language is always a social construction, it follows that the Supreme Court’s 1973 decision *Roe v. Wade* was an act that invented, or constructed, the right to abortion in the United States. That this is in fact the case is clear from the uncontroversial observation

⁵ Burke, *A Grammar of Motives*, 341.

⁶ Celeste Condit, *Decoding Abortion Rhetoric: Communicating Social Change* (Urbana: University of Illinois Press, 1990), 206-07.

that before *Roe* there was a general consensus in American society that the anti-abortion laws that were on the books were not at odds with the Constitution and the Bill of Rights.⁷ That such laws *were* at odds with the Constitution was an argument that began to be made by a few voices in the 1960s and early 1970s. Their arguments were obviously very persuasive to the Supreme Court, because the Court used the *Roe* decision as an opportunity to take these minority voices and turn their message into the law of the land. There is an apt biological metaphor for what happened, gastrulation, which is the event in embryonic development in which the cells that had formerly been on the outside of the structure become the inside. The blastula turns itself inside out and becomes the gastrula. The Supreme Court took the voices calling for an end to all anti-abortion laws, which seemed to be marginal voices at first, and made their argument the central, privileged view in interpreting the Constitution. The voices which sought to maintain the legal prohibition of abortion were cast from the inside to the outside, in terms of their previous position of hegemony.

When the text of the *Roe v. Wade* decision is examined, the difficulty of this act of gastrulation is evident:

The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be

⁷ This history is recounted in Joseph Dellapenna, *Dispelling the Myths of Abortion History* (Durham, NC: Carolina Academic Press, 2005), 672-77: "As late as 1970, journalist Linda Greenhouse described the claim to a constitutional right to abortion as 'fantastic, illusory. The Constitution is searched in vain for any mention of it'" 677.

protected by the Bill of Rights or its penumbras, see *Griswold v. Connecticut*; *Eisenstadt v. Baird*; or among those rights reserved to the people by the Ninth Amendment, *Griswold v. Connecticut*.⁸

Notice the key words that indicate that this is an example of rhetorical construction: “a right, said to be possessed,” “Appellant would discover this right,” and in the use of three “ors” which indicate a search for an effective argument.

A substantial portion of *Roe* is dedicated to a historical overview of abortion practices and laws in England and the United States during the past few centuries. This passage summarizes well the conclusions of Justice Blackmun:

It is thus apparent that at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today.

The historical account given by Blackmun has been sharply criticized by pro-life scholars;⁹ for our purposes here, the accuracy of his account is not the salient issue. The mere fact that he felt impelled to frame the discussion of abortion within a particular rhetorical construction of history is the key point:

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as *Union Pacific R. Co. v. Botsford*, the Court has recognized that a right of personal privacy, or a

⁸ I have edited the text slightly to make it flow more smoothly [“*Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972)”], and so forth.

⁹ Joseph Dellapenna’s *Dispelling the Myths of Abortion History* is more than 1,000 pages long. It contains thousands of footnotes to the literature.

guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment; in the Fourth and Fifth Amendments; in the penumbras of the Bill of Rights, *Griswold v. Connecticut*; in the Ninth Amendment; or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. These decisions make it clear that only personal rights that can be deemed “fundamental” or “implicit in the concept of ordered liberty,” are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage; procreation; contraception; family relationships; and child rearing and education. This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.¹⁰

The fudge words, such as “areas or zones” and “roots,” the search for the appropriate Amendment to serve as a basis for the right to privacy, and the phrase “as we feel it is” all show that this is an act of rhetorical construction. During the first oral argument of *Roe* before the Supreme Court, Sarah Weddington, the lead lawyer for the pro-choice side, was asked about the constitutional basis of her claims, and she referred to “the due process clause, equal protection clause, the Ninth Amendment, and a variety of others. . . .” Justice Stewart, who later voted to legalize abortion, “quipped ‘and anything else that might obtain,’

¹⁰ I have omitted from this quotation the references to specific cases, to make the text flow more smoothly.

provoking laughter from the audience. To which Weddington responded, ‘yeah, right,’ and laughed.”¹¹

A very common line of criticism of *Roe* from the pro-life side concerns its equivocation on the question of fetal personhood. The decision states very clearly:

The appellee [the State of Texas] and certain *amici* argue that the fetus is a “person” within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant’s case, of course, collapses, for the fetus’ right to life would then be guaranteed specifically by the Amendment.

Justice Blackmun is here admitting that if the fetus is rhetorically constructed by society as having legal personhood, then abortion cannot be legalized because it is a form of homicide. The equivocation is seen in the Court’s claim that it is not deciding when legal personhood begins, when in fact it is:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer. . . . the fetus, at most, represents only the potentiality of life. . . . the unborn have never been recognized in the law as persons in the whole sense.

Justice Blackmun implicitly recognizes the point that Celeste Condit made later, which was quoted earlier in this chapter: the “natural facts” of fetal development do not automatically

¹¹ See Clarke Forsythe, *Abuse of Discretion: The Inside Story of Roe v. Wade* (New York: Encounter Books, 2013), 99-100.

compel a particular rhetorical construction of the beginning of legal personhood. A choice must always be made in that regard. The Constitution is unclear on that point, and it is also unclear on which branch of the government has the sovereign authority to make that choice. Hence, the intractability of the abortion debate in American society.

The dissenting Justices in *Roe*, Byron White, with William Rehnquist concurring, put their finger on the key issues at stake:

I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant women and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 States are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the woman, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but, in my view, its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court.

That a "new" right is being rhetorically invented, by being "fashioned" and "announced," is noted, and rejected.

In the *Webster* decision of 1989, *Roe* was upheld, but it was narrowed, in a partial victory for the pro-life side. Justice Blackmun made clear in his dissent that he feared that one day in the not too distant future *Roe* would be overturned:

The plurality decision is filled with winks, and nods, and knowing glances to those who would do away with *Roe* explicitly, but turns a stone face to anyone in search of what the plurality conceives as the scope of a woman's right under the Due Process Clause to terminate a pregnancy free from the coercive and brooding influence of the State. The simple truth is that *Roe* would not survive the plurality's analysis, and that the plurality provides no substitute for *Roe*'s protective umbrella.

I fear for the future. I fear for the liberty and equality of the millions of women who have lived and come of age in the 16 years since *Roe* was decided. I fear for the integrity of, and public esteem for, this Court.

. . . The plurality [is] insensitive to the fact that millions of women, and their families, have ordered their lives around the right to reproductive choice, and that this right has become vital to the full participation of women in the economic and political walks of American life.

. . . To overturn a constitutional decision that secured a fundamental personal liberty to millions of persons would be unprecedented in our 200 years of constitutional history.

This passage suggests that Justice Blackmun (along with members of American society in general) has not thought through the philosophy of rights language very clearly. If rights are a product of the human imagination, if they can be invented, then they can also be de-invented. That is the obvious implication of an approach to rights language that sees it as a social convention, as a malleable practice that can evolve as society evolves. The social constructivist view of rights rejects the idea of "natural rights," rights which are built into

the fabric of the universe. The constructivists, when the winds of opinion blow against them, cannot claim that the change is harming the fabric of the universe, because they believe that there is no such fabric. If they are being honest and candid, they could only say that their opinion is losing its grip on hegemony, because some other definition of “liberty” and “equality” is (perhaps temporarily) gaining power. Justice Blackmun’s “fear for the future,” in other words, is the logical outflow of the philosophy of rights that he himself has adopted. This is the point that he seems not to grasp.

The text of the *Casey* decision, from 1992, suggests that Blackmun’s fears were unfounded in terms of the politics of the Supreme Court, even though they were well founded for philosophical reasons, as I just argued. *Casey* reaffirmed *Roe* in perhaps the strongest way that it could be reaffirmed, by emphasizing that the Court has the sole authority on the question of the legality of abortion, and that the pregnant woman has the sole authority on the question of the morality of abortion. The *Casey* decision continues the unstated theme of the earlier decisions, that rights language is not in any sense a mirror of nature; it is a social construction. However, it is usually not seen as such by those who are doing the constructing. Consider the following phrases from *Casey*: “Liberty finds no refuge in a jurisprudence of doubt. Yet nineteen years after our holding that the Constitution protects a woman’s right to terminate her pregnancy in its early stages, *Roe v. Wade*, that definition of liberty is still questioned.” In other words, the way the definitions of “liberty” and “right” were constructed in *Roe* should have been accepted by all Americans; we don’t understand why that didn’t happen. “Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code.” This statement does not

acknowledge that the word “liberty” is rich with moral meaning. The justices *were* mandating their own moral code, because to define “liberty” and “rights” for a society is an act of moral constructivism. “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state.” These, the most famous sentences of the decision, have been criticized from many different angles by pro-life advocates. For my purposes here, it is germane to note that the justices are constructing a second floor on top of *Roe*’s first floor by so clearly articulating that individualism in morality must be the context within which the word “rights” is given its meaning. To have a “right” is to have, as an individual, a freedom of action that is not constrained in any way by the beliefs of the surrounding society. Not only must an individual be free to act as they choose as long as they don’t harm others; the individual must also be free to define the concept “others” as they choose. That this way of constructing the situation deconstructs the harm principle of liberal political philosophy is not being recognized (because the justices do not have enough philosophical and rhetorical self-awareness to realize that that is what they are doing).

* * *

To recap, I have argued that Margaret MacDonald was correct when she said that the use of rights language is a case of the assertion of moral values. It is a way of saying: I think human beings would be better off if the word “rights” were given *this particular meaning* in our society. Celeste Condit argues correctly when she says that the personhood, and thus the rights, of the inhabitant of the womb is always a rhetorical construction. I have shown how

the pro-choice decisions of the Supreme Court are examples of such a rhetorical construction.

Pro-choice philosophers have a tendency to be insensitive to this point. The common mode of argumentation in authors such as Mary Anne Warren, Michael Tooley, Peter Singer, and David Boonin is this: first, I will define the word “person”; then I will say that the fetus does not fit this definition; then I will end with the moral conclusion: “Therefore it is acceptable to kill the fetus.” Notice that this procedure moves from definition to empirical observation to moral conclusion. What is not being recognized is that to define a word in a particular way is itself a moral act. There is no “neutral” starting point that is not moral and not rhetorical. This is Margaret MacDonald’s point, and I think that she is correct.

I can imagine, however, a pro-life advocate responding to this analysis in this way: “That many people today believe that rights are a rhetorical construction is an obvious fact; but that is precisely the problem. By rejecting the idea that rights are ‘natural,’ that they are built into the fabric of the universe, we have created a moral wasteland in which the stronger can always claim they have a ‘right’ to do away with the weaker. We need to return to the belief that rights are built into the fabric of the universe; we need to return to natural law.” This view is expressed, with great erudition and force, by Hadley Arkes and other thinkers who write along similar lines.¹² His book *Natural Rights and the Right to Choose* presupposes a natural law perspective as a platform to criticize the pro-choice position on abortion and the style of rights language that it usually employs. As is common among pro-life advocates, Arkes draws a parallel between the abortion debate today and the debate over slavery in the 19th century. He claims that just as black slaves were denied personhood

¹² See also works by Robert George (*The Clash of Orthodoxies: Law, Religion, and Morality in Crisis*), John Finnis (*Natural Law and Natural Rights*), J. Budziszewski (*What We Can’t Not Know*), and Francis Beckwith (*Defending Life: A Moral and Legal Case Against Abortion Choice*).

before the law in the *Dred Scott* decision, so also are unborn children denied personhood before the law in *Roe v. Wade*. Arkes contends that both of these denials are rooted in a rejection of the basic insight of the Declaration of Independence, that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” This sentence, for Arkes, expresses a sound understanding of natural rights: rights have a transcendent source; they are woven into the fabric of nature; that fabric can be discerned through reason. This understanding pushes toward greater inclusion of human beings within the community of those protected by the law against the whims of those who wield power. This inclusion brings in all people regardless of skin color or age since conception. Arkes maintains that to assert abortion as a “right” is parallel to asserting slave-owning as a “right.” But the logic of those positions, as he interprets and critiques them, leads to a deconstruction of the concept of rights itself, so that “they [pro-choice judges and intellectuals] cannot give an account any longer of why other human beings have a claim to be the bearers of ‘rights’ in any strict sense. They cannot vindicate then their own rights, and for that reason, they are not in a position any longer to vindicate the rights of others.”¹³

While my sympathies lie with the pro-life case, I suggest that what is being set up here is a false dichotomy. Arkes’ book, *Natural Rights and the Right to Choose*, is seeking to persuade its reader to conceive of rights in a certain way. It is trying to construct a social world in which people use rights language to protect the inhabitant of the womb. The difference between Justice Blackmun and Arkes is not that one is actively constructing a view of rights language and the other is passively repeating a view that can be read directly

¹³ Arkes, *Natural Rights and the Right to Choose*, 172-73.

off of the phenomena of nature. Both are rhetorically constructing; the divergence between them needs to be specified differently, which is my task in the next several chapters.

Chapter 7. Rights language is superficial

The fact that both sides in the abortion debate tend to use rights language, and think that it decisively supports their cause, is a significant observation, because it leads one to note that the use of such language seems to reside at a superficial level of consciousness. There must be “deeper” experiences, intuitions, and ideas lying underneath the surface usage, just as currents in the ocean might lead one area of water to be colored slightly differently than another area, even though a casual observer may simply see *water*. I will present two approaches to the task of understanding what truly separates the pro-life and pro-choice worldviews: (1) realism vs. nominalism as philosophical stances, and (2) dimensional anthropology.

An essay on “Stasis,” by Otto Dieter, first published in 1950, is helpful in clarifying our task in this chapter.¹ Dieter provides an overview of stasis theory in ancient Greek and Roman rhetoric. Stasis theory was an approach to discerning the real point at issue whenever there is an argument, controversy, or divergence of opinion on a particular topic. The term “stasis” is the opposite of “kinesis”: it is a lack of movement, a standing still. When one tosses a ball up in the air, there will be a split second when it is no longer going up, but it has not yet started falling down. That is the moment of stasis. This concept from Aristotle’s physics was applied metaphorically to debating rhetors. Usually, rhetors are enacting their own kinesis, making their arguments, advancing their causes. But when two combatants are

¹ Otto Alvin Loeb Dieter, “Stasis,” *Speech Monographs* 17 (1950): 211-41. Reprinted in *Landmark Essays on Classical Greek Rhetoric*, edited by Edward Schiappa (Davis, Cal.: Hermagoras Press, 1994).

forced to stop their kinesis, stand still, and clarify the heart of the matter about which they are disagreeing, then they are “finding the stasis” of the debate.

Realism and Nominalism

How can we “find the stasis” of the abortion debate? How can we move beyond the superficial level at which the different camps are enacting their kinesis by unreflectively using rights language? I suggest that one of the deep currents flowing underneath the debate can be helpfully described as the ongoing argument between realism and nominalism, which began in the Middle Ages.

The debate over realism and nominalism that was conducted in the 1200s and 1300s, if we pay attention to it at all (which is unlikely), probably strikes us as abstract and uninteresting. Thinkers such as Thomas Aquinas, Duns Scotus, and William of Ockham put forward various theories in epistemology and metaphysics. They were trying to sort out how a concept such as “catness” relates to living lions, tigers, and house cats. Are universal categories real, and do they shape actual living beings, or are they simply constructs of the human mind? The “realist” position tended to maintain that there are principles and structures woven into the fabric of the universe, that the human mind is capable of grasping through the right exercise of reason. The anti-realist, or nominalist, position tended to argue that the principles and structures pointed to by the realist are generated by the human mind in its attempt to make sense of the phenomena it is observing. Arguments about realism and anti-realism have continued down to the present day in various areas of thought in the sciences and humanities.

Kenneth Burke and Richard Weaver have made comments that illuminate aspects of this topic. Burke, for example, says:

Scientific “naturalism,” we have suggested, is a lineal descendant of nominalism, a school that emerged in the late Middle Ages as an opponent of scholastic realism. And we have sought to sum up the distinction between realism and nominalism, from the standpoint of strategies, by saying that *realism considered individuals as members of a group*, and that *nominalism considered groups as aggregates of individuals*. We thus observe that the nominalist controversy, finally incorporated in the Franciscan order, prepared for scientific skepticism in undermining the group coordinates upon which church thought was founded, and also prepared for the individualistic emphasis of private enterprise.²

That the rise of individualism and of nominalism are two aspects of the same historical process is emphasized by Burke:

[If nominalism is] carried out consistently, it obliterates all notions of consubstantiality, however defined, hence obliterating the Grammatical basis of social community. Grammatically, it leaves us with a world of individuals, united only by monetary symbols and the deceptions of an idealistic rhetoric.³

He goes on, in *A Grammar of Motives*, to argue that the period of the American and French revolutions was mainly shaped by the struggle of “the people” against the Crown and the nobility to establish the key representative class in society. When the Crown and the nobility had been dethroned the scene was changed; the new scene required a new opponent:

² Burke, *The Philosophy of Literary Form: Studies in Symbolic Action*, 2nd ed. (Baton Rouge: Louisiana State University Press, 1967), 125-26.

³ Burke, *A Grammar of Motives*, 251.

[W]hen the cooperating member in this *agon*, the monarch, had been removed, his vital contribution to the definition of popular essence was gone (for of primary importance in the locating of what one *is*, is the locating of what one is *against*). As a result, we got a different notion of the individual: not the individual as an *integral* part of the popular whole, but the individual as a *divisive* part of the popular whole.

Unheralded, even unnoticed, another “fall” had taken place. And instead of the individual as microcosmic replica of the popular macrocosm, we got the individual *against* the group, men *against* society.⁴

Burke’s comments here illuminate occasions in our world today when people argue that the primary purpose of rights language ought to be a recognition of the need for individuals to be freed from the tyrannical imposition of the moral beliefs of others.

Richard Weaver also made comments on nominalism. The central argument of his most famous and influential book, *Ideas Have Consequences*, is that nominalism is the key to everything that is wrong with the modern world: “The defeat of logical realism in the great medieval debate was the crucial event in the history of Western culture; from this flowed those acts which issue now in modern decadence.”⁵ While Burke had Marxist leanings, Weaver is known as an architect of contemporary conservative thought. That they would agree, at least to a certain extent, in criticizing the nominalism-individualism connection is a notable convergence. Like other commentators, Weaver refers to William of Ockham as the key figure:

⁴ Burke, *A Grammar of Motives*, 364.

⁵ Weaver, *Ideas Have Consequences* (Chicago: University of Chicago Press, 1948), 3.

It was William of Ockham who propounded the fateful doctrine of nominalism, which denies that universals have a real existence. His triumph tended to leave universal terms mere names serving our convenience. The issue ultimately involved is whether there is a source of truth higher than, and independent of, man; and the answer to the question is decisive for one's view of the nature and destiny of humankind.⁶

The picture that Weaver paints contends that what began as subjectivism in the realm of knowledge became slowly but surely subjectivism in ethics and politics. If human beings do not view themselves as fitting into a pre-established cosmic order, but as imposers of their own schemas of interpretation, then it is not much of a leap for them to set themselves up as the center of their own moral universe. This could be done through collectivist schemas, such as Nazism and Stalinism, but it comes closer to the logical conclusion of nominalism when it is done individualistically:

The modern position seems only another manifestation of egotism, which develops when man has reached a point at which he will no longer admit the right to existence of things not of his own contriving. From somewhere in his self-centered being he brings plans which he would truculently impose. . . . It is the nature of unlimited egotism to deny any source of right ordering outside itself. It is a state of belligerence toward the nonself.⁷

Weaver's proposed solution to what he perceives as the problems of the modern world is a reinvigorated version of the realism that had been rejected. In this passage he calls it idealism:

⁶ Weaver, *Ideas Have Consequences*, 3.

⁷ Weaver, *Ideas Have Consequences*, 171-72.

Now the return which the idealists propose is not a voyage backward through time but a return to center, which must be conceived metaphysically or theologically. They are seeking the one which endures and not the many which change and pass, and this search can be only described as looking for the truth. They are making the ancient affirmation that there is a center of things, and they point out that every feature of modern disintegration is a flight from this toward periphery. It is expressible, also, as a movement from unity to individualism.⁸

Weaver concludes his argument with the idea that nominalism has led to three principal impieties, namely, impiety toward nature, toward other human beings, and toward the past. If the ego exalts itself as the ruler of its own universe, then nature is viewed as something to be mastered through technology, unwanted human neighbors are disposed of through “holocausts and wars,” and the past is not a source of wisdom for apprentices in the art of living, it is nothing but backwardness to be ignored.

While the high-level arguments about different variations of realism and nominalism, as conducted in philosophy journals, are irrelevant to the average person, public debates about ethical issues such as abortion draw heavily on the concepts of realism and nominalism, even though members of the public may have never heard those terms. It is my contention that to a great extent what we call the “pro-life” and “pro-choice” positions are contemporary expressions of moral realism and nominalism.

The pro-life side, to employ a broad paraphrase, holds that rights are built into the fabric of the universe, that the laws of society ought to reflect awareness of stable, objective moral principles, and that the inhabitant of the womb has an intrinsic nature that unfolds

⁸ Weaver, *Ideas Have Consequences*, 52-53.

through time, a nature that should be protected by law because it is the same nature shared by all human beings regardless of age. The pro-choice side tends to maintain that rights are rhetorical constructions which serve the needs of individuals in pluralistic societies, laws change over time to adapt to changing belief systems, and the inhabitant of the womb does not have an intrinsic nature that could somehow outweigh the will of the pregnant woman. The personhood of the fetus is solely a product of the pregnant woman's openness to grant that personhood.

Jean Bethke Elshtain's book *Sovereignty: God, State, and Self* articulates a realist perspective that is similar to Richard Weaver's. Her text presents a broad survey of Western thought, tracing the defeat of realism and the gradual rise of nominalism in the modern world. She also points to William of Ockham as a key figure who turned away from the Thomistic style of realist philosophy to an "individualist ontology" that had huge implications for the future.⁹ She calls individualism's picture of the human being a "sovereign self" and notes that "sovereign selves are not linked to others, by contrast to the alternative view that we are, in some sense, all brothers and sisters."¹⁰ Elshtain says that the nominalist, sovereign self "is the sole judge of his or her own good."¹¹ She says that Sartre's phrase "hell is other people" summarizes well the fruit of extreme individualism.¹² The sovereign self wages a war against nature, seeking "mastery, control, domination"; positive attitudes toward eugenics and abortion flow directly out of such a view.¹³

Mary Ann Warren's essay "On the Moral and Legal Status of Abortion" summarizes the common pro-choice argument that the word "person" ought to be defined in terms of

⁹ Elshtain, *Sovereignty: God, State, and Self* (New York: Basic Books, 2008), 39.

¹⁰ Elshtain, *Sovereignty*, 172.

¹¹ Elshtain, *Sovereignty*, 182.

¹² Elshtain, *Sovereignty*, 186.

¹³ Elshtain, *Sovereignty*, 205-09.

certain capacities, such as the ability to feel pain, reasoning, self-motivation, the capacity to communicate, and self-awareness.¹⁴ Since a fetus lacks these capacities, it fails to meet the definition of a person, and it can be killed without moral wrongdoing, because only persons are bearers of a right to life. Rights language functions in this view to facilitate the freedom of action of (adult) individuals; if a genetically individuated member of the human species, a fetus, has not yet achieved the capacity for autonomous action that an adult has, then that individuated entity is not to be counted as a member of the community of rights bearers. Rights language marks out those in the “in-group” and those in the “out-group.” The act of writing this essay is an act of rhetorical construction by Warren, in which she is naming, defining, the fetus as a member of the “out-group.” The pro-life worldview would respond to this essay by suggesting that rights language is functioning appropriately when it serves to link together members of the community in harmonious relationships of care and support; rights language ought to work against acts of definitional exclusion which serve to pave the way for violence against vulnerable members of the human community. Because humans are physical beings, arising out of the stuff of nature, we should not see yet-to-be-fully-developed creatures as alienated from us, as mere clumps of cells to be killed. We all began as embryos.

The moral relativism of the nominalist worldview is seen clearly in the Supreme Court’s *Casey* decision. The famous “mystery” passage argues that each woman should be granted “the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of

¹⁴ In Robert M. Baird and Stuart E. Rosenbaum, eds., *The Ethics of Abortion: Pro-Life vs. Pro-Choice*, 3rd ed. (Amherst, N.Y.: Prometheus Books, 2001), 274-75.

personhood were they formed under the compulsion of the state.”¹⁵ Each individual is able to create, apparently out of whole cloth, her own metaphysics and moral and political philosophy, so that she can, as an individual, define whether or not abortion is morally acceptable, *for her*. The phrase about the compulsion of the state recalls another aspect of the nominalist worldview, which had been articulated by Kenneth Burke earlier in this chapter, when he spoke of the “fall” that occurred in the modern world, which pitted the individual *against* the surrounding society. “Hell is other people,” limiting one’s unfettered liberty.

Within the pro-choice worldview, the status of the inhabitant of the womb is contingent upon the will of the woman. If she wants to be pregnant, then she is nurturing and bringing into existence a new person; if she does not want to be pregnant, then the inhabitant of her womb is described as “fetal matter” which is specifically denied the right to life. This view is stated very clearly by Marjorie Reiley Maguire: “The personhood begins when the bearer of life, the mother, makes a covenant of love with the developing life within her to bring it to birth. . . . At the moment when the mother bonds with the fetus, the fetus becomes a Thou to her rather than an It.”¹⁶ This nominalist view, that the inhabitant of the womb does not have an objective status, but a contingent, subjective status, can be taken a step farther, when some pro-choice advocates argue that not only should abortion be allowed, but infanticide should be as well, if there is no consent to the continued existence of a born baby. We saw that position argued above, in Chapter 2, by Guibilini and Minerva, who are echoing the earlier arguments of Michael Tooley and Peter Singer.

¹⁵ In Baird, *The Ethics of Abortion*, 95-96.

¹⁶ Maguire, “Personhood, Covenant, and Abortion,” in *Abortion and Catholicism: The American Debate*, edited by Patricia Beattie Jung and Thomas A. Shannon (New York: Crossroad, 1988), 109.

There is an ambiguity, however, in the way the pro-choice case is sometimes made. When pro-choice philosophers provide lists of criteria that should be used to define personhood, such as Mary Anne Warren's well-known list (consciousness, reasoning, self-motivated activity, the capacity to communicate, the presence of self-concepts), then it appears as if these philosophers are making a realist argument. There are definite criteria, recognized by reason, which can be used to state whether or not a particular living member of the human species is a person; this presents itself as an *objective*, not a *subjective*, argument. This is an optical illusion, however, because it is still the same nominalist worldview that is giving rise to the argument. It is simply the case that the element of contingency, of choice, has been elevated to a higher level of thought. Instead of the individual woman who is pregnant being the hinge point, it is now the pro-choice philosopher, who is choosing to define personhood in a certain way. The criteria chosen arise out of the philosopher's nominalist attempt to come up with an interpretive scheme and impose that scheme onto reality; another philosopher can choose other criteria and impose those onto reality. There is no "right answer" in such matters, only various opinions, from the nominalist point of view.

Dimensional Anthropology

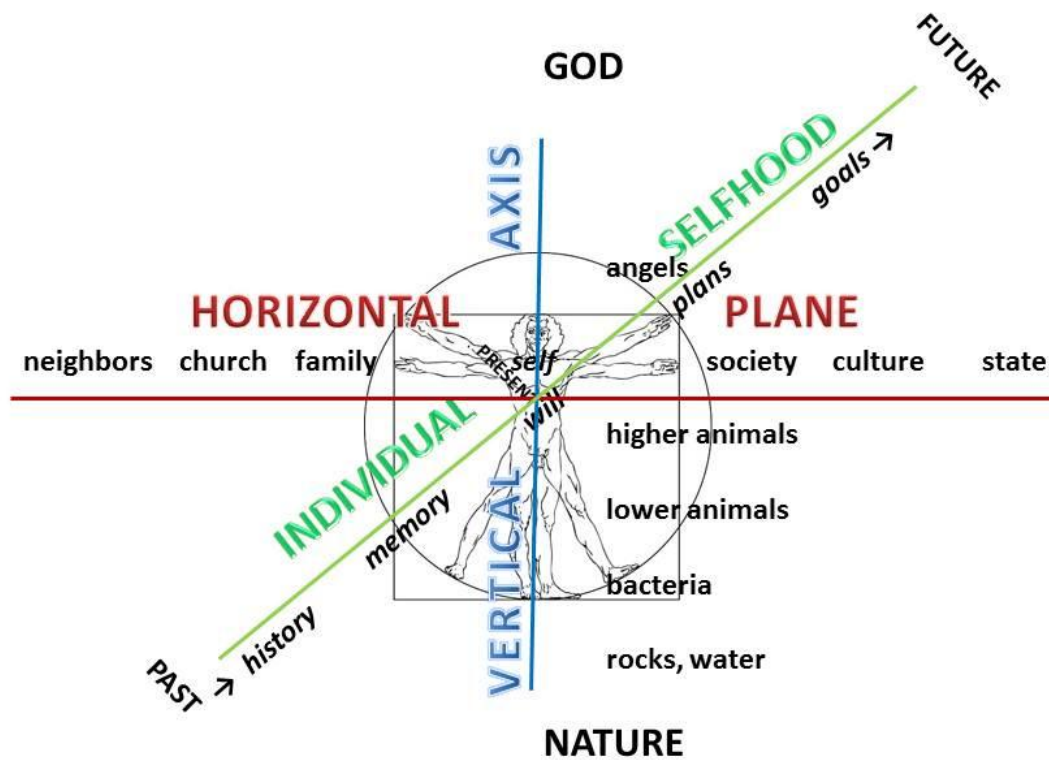
I turn next to dimensional anthropology, a different, though related, approach to grasping why pro-life and pro-choice advocates use rights language so differently. In brief outline, this approach to philosophical anthropology starts with the idea that there are three main dimensions of reality as it is inhabited by human beings: first, the vertical axis of God and nature, traditionally called the Great Chain of Being; second, the horizontal plane of human

social relations; third, individual human selfhood in time. In higher education, the dimensions are studied in various fields:

- The vertical axis is studied in physics, geology, chemistry, biology, zoology, anthropology, and theology.
- The horizontal plane is studied in sociology, political science, cultural anthropology, and economics. Applied fields include social work, law, business, rhetoric, and education.
- The personal dimension is studied in psychology, philosophy, and literature. Applied fields include psychological counseling and creative writing.

The vertical axis is evoked by words such as hierarchy, monarchy, master and slave, spirit and matter, the infinite and the finite. It is the site of pitched battles between fundamentalists and Darwinian materialists over basic questions of human origins. The horizontal plane is evoked by words such as democracy, diversity, equality, the common good, church and state. It is the site of battles between advocates of various social and political philosophies, such as Marxism and free market capitalism. The trajectory of individual selfhood is evoked by words such as inwardness, individualism, free will, narcissism, autonomy, and growth in virtue. It is the site of battles between proponents of conflicting visions of human flourishing. Within the vertical axis, all human beings share a *sameness*; we are all embodied creatures who breathe the same oxygen, and we are all created in the image of God. On the horizontal there is immense *diversity*: language, ethnicity, nationality, skin color, religion, and so forth. Within the trajectory of selfhood there is an individual *uniqueness*.

The sources of human suffering can also be correlated with the dimensions. The vertical axis is associated with “natural evils” such as cancer, tornadoes, and earthquakes. The horizontal plane is associated with “moral evils” such as war, crime, and scapegoating. Individual selfhood is the dimension of personal temptations and addictions, harmful behaviors that are often self-destructive. The line between good and evil does not just run “down the middle of each human heart,” as the common cliché has it, it runs down the middle of each dimension, and human personhood is the event that happens when these dimensions dynamically intersect with each other. “Dimensional anthropology” as a concept is simply a way of focusing our attention persistently on that intersection and its complexity. Visually presented:



Dimensional anthropology has a long tradition. The Bible refers to the created world and to love of God (vertical), self (individual), and neighbor (horizontal), and the theological tradition flowing out of the Bible contains many reflections on the dimensions. St. Thomas Aquinas said: “by the theological virtues man is directed to God; by temperance and fortitude, to himself; and by justice to his neighbor.”¹⁷ He was drawing on St. Augustine’s theological anthropology: “Augustine says: *There are four things to be loved; one which is above us, namely God, another, which is ourselves, a third which is nigh to us, namely our neighbor, and a fourth which is beneath us, namely our own body.*”¹⁸ In our time, references to individuals, society, nature, and God form the warp and woof of thousands of books and essays. On a high philosophical level, we have the writings of Eric Voegelin, who said: “God and man, world and society form a primordial community of being. The community with its quaternarian structure is, and is not, a datum of human experience. It is a datum of experience insofar as it is known to man by virtue of his participation in the mystery of its being. It is not a datum of experience insofar as it is not given in the manner of an object of the external world but is knowable only from the perspective of participation in it.”¹⁹ Martin Buber, in his famous work *I and Thou*, says that there are three spheres in which relations arise: “life with nature,” “life with men,” and “life with spiritual beings.”²⁰ There is also the recent work of theological anthropology by David Kelsey entitled *Eccentric Existence*. Part One of this 1,000 page book focuses on living as a creature of God the Creator; the virtue addressed is faith. Part Two focuses on individual existence in time; the virtue addressed is

¹⁷ Aquinas, *Summa Theologiae*, 1-II, 72.4.

¹⁸ Aquinas, *Summa Theologiae*, 2-II, 25.12.

¹⁹ Eric Voegelin, *Order and History, Volume 1: Israel and Revelation* (Baton Rouge: Louisiana State University Press, 1956), 1.

²⁰ Buber, *I and Thou* (New York: Scribner, 1970), 56-57.

hope. Part Three focuses on reconciliation; the virtue addressed is love of neighbor. A coda at the end discusses the image of God in human beings as a “triple helix.”

Consider also this list of book titles: Nikolai Berdyaev: *Solitude and Society*. Reinhold Niebuhr: *Moral Man and Immoral Society*. Ian Barbour: *Nature, Human Nature, and God*. Thomas Finger: *Self, Earth & Society*. Jean Bethke Elshtain: *Sovereignty: God, State, and Self*. Zygmunt Bauman: *The Individualized Society*. James Ogilvy: *Many Dimensional Man: Decentralizing Self, Society, and the Sacred*. Michael Novak: *Free Persons and the Common Good*. Angela Tilby: *Soul: God, Self, and the New Cosmology*. Terry Cooper’s *Dimensions of Evil: Contemporary Perspectives* discusses natural evil, individual evil, and systemic / social evil. I could go on and on with a list like this, but I will stop there; it is clear that talking about the dimensions is part of our common intellectual world.

How does dimensional anthropology illuminate the use of rights language? It does so by enabling us to note that human beings often emphasize a particular dimension and use it as a focal point for their interpretation of reality. This interpretation will set up a framework within which rights language is articulated. The Nazis, for example, were enamored with what they took to be the implications of Charles Darwin’s notion of natural selection.²¹ Nature is the sphere of the survival of the fittest; it is red in tooth and claw. Human beings should not view themselves as separate from or transcending nature; they should enthusiastically live as highly intelligent animals, and they should assert their strength. Those who consider themselves to be superior should dominate and if necessary

²¹ Richard Weikart’s *Hitler’s Ethic: The Nazi Pursuit of Evolutionary Progress* (New York: Palgrave Macmillan, 2009) discusses this topic thoroughly.

eliminate those who they have labeled as inferior and sickly. In that way, the evolutionary progress of humanity will be advanced.

This worldview leads to a clear pattern in the use of rights language. Hitler said in a speech to army officers:

We are all beings of nature, which—inasmuch as we can see it—only knows one harsh law, the law that gives the right of life to the stronger and takes the life of the weaker. We humans cannot exempt ourselves from this law. . . .

On this earth we observe the unswerving struggle of living organisms with each other. One animal lives, in that it kills the other.²²

In another speech he said:

Decisive is the power that peoples possess; it shows that before God and the world the stronger has the right to accomplish his will. From history one sees right in itself is useless, if behind it does not stand a mighty power. Whoever does not have the power to accomplish his right finds the right alone completely useless. The strong always triumph . . . All of nature is an unceasing struggle between strength and weakness, a constant victory of the strong over the weak.²³

It follows clearly from this line of thought that the idea that all human beings have an intrinsic dignity and a right to life is rejected. Forms of “human rights” language that sought to protect the disabled, the sick, or the mentally ill were seen by Hitler as degenerate and contemptible. The Nazi regime put its view of rights into practice by actively killing such persons and by labeling entire groups such as Jews and Gypsies as inferior races that needed

²² Quoted in Weikart, *Hitler's Ethic*, 4.

²³ Quoted in Weikart, *Hitler's Ethic*, 43.

to be exterminated like “parasites” within the body of humanity. Hitler’s view, in sum, sought to pull humanity down into the lower part of the vertical axis (nature), and to reinterpret morality, law, politics, and rights accordingly.

Communism in the Soviet Union is an example of a worldview that takes a particular interpretation of the horizontal plane as its focal point. The Revolution is intended to transform society as a whole by breaking down the bourgeois notion of individual property rights in favor of the rights of workers to a just wage and humane working conditions. The notion of rights must be stripped of any individualistic presuppositions and be reconfigured to focus on the right of society as a whole to create the conditions for its own health and well-being. Common notions of individual rights and political freedoms block social progress; therefore they must be swept away and replaced with the idea of the economic rights of the class of workers. Since the Revolution is a utopian vision it cannot be slowed down or halted by a concern to protect the right to life to particular individuals. Therefore anyone who has been labeled by the government as a counter-revolutionary can be arrested, jailed, and executed.

The pro-choice manner of using rights language, which has already been presented at great length in earlier chapters, clearly takes individual selfhood as its focal point and uses that dimension to trump the others. Antonia Senior, a British writer, says, for example:

A growing movement in America, spearheaded by Sarah Palin, is pro-life feminism. This attempts to decouple feminism from abortion rights, arguing that you can believe in a woman’s right to be empowered without believing in her right to abort. Its proponents report a groundswell of support among young women looking to reinvent their mothers’ ideology. But you cannot

separate women's rights from their right to fertility control. The single biggest factor in women's liberation was our newly found ability to impose our will on our biology. . . . If you are willing to die for a cause, you must be prepared to kill for it, too.²⁴

The "will" is a key word that evokes the dimension of individual selfhood; "our biology" points to the realm of nature, the lower part of the vertical axis.

Another common theme in pro-choice argumentation expresses the notion that the concept of individual rights is essential in fending off the menacing presence of society, "others," the horizontal plane. The woman who is pregnant must be viewed as the *sole* authority in abortion decision-making. If there are laws preventing access to abortion, they are the imposition of some people's moral beliefs onto individuals. The fact that this could be a majority view, even a vast majority, is irrelevant within a political philosophy which views *individual* rights as a trump card that is always superior to democratic legislative processes. This is the view that was entrenched in the *Casey* decision of the Supreme Court, after being less clearly articulated in *Roe v. Wade* under the concept of the "right to privacy."

Summary

It is sometimes said, by pro-choice advocates, that the abortion debate, at its core, is about whether one sees the rights of the pregnant woman to self-determination as being stronger than the right to life of the fetus, or vice versa. From the pro-life point of view, however, this is not an accurate description of the core, the stasis, of the debate. It is actually the case, they would say, that the pro-choice understanding of what rights are and what rights language

²⁴ Antonia Senior, "Yes, Abortion Is Killing, But It's the Lesser Evil," *The Times* (London), 30 June 2010.

should be used to accomplish arises out of a different worldview than the worldview that pro-lifers embrace. I outlined the latter worldview in my comments earlier in this chapter on realism. For realism, *everything is connected*; the cosmos is a vast nexus of interwoven elements and relationships. For nominalism, *everything is separate and individuated*. Different uses of rights language arise out of this fundamental divergence in ways of interpreting and inhabiting reality. The pro-choice view sees the individual as separate from and menaced by society, and as constantly threatened in her life plans by the natural event of pregnancy and gestation. The purpose of rights language is thus to facilitate the freedom of action, the agency, of the isolated self; the self must be able to exercise its will without any fetters, and it is able to do that if it is viewed as a rights bearer in a position of sovereignty. As such a rights bearer, the self is able to kill the gestating human being and is able to justify that killing in her own eyes.

The pro-life view, arising out of moral realism, understands the purpose of rights language very differently. If the cosmos is a complex network of dimensions, and if it has invisible principles, structures, and moral laws built into it, that the human mind is capable of comprehending and becoming attuned to, then “rights” are a concept that points to the overall harmonious ordering of the beings within the cosmos. Human beings, in that they often mistreat and harm one another, are placing themselves at war with reality. They are *imposing* their will, which may be a will that is bent toward the use of violence against others to manage the difficulties of living. The proper use of rights language is thus, in this worldview, to build a linguistic hedge around human beings to prevent them from being victimized by others. This is a very different view than the one which sees the purpose of rights to be the facilitation of the freedom of action of the individual.

In this chapter I have presented two approaches to understanding, at a deep level, why pro-choice and pro-life advocates use rights language so differently. I have focused on two possible worldviews, realism and nominalism, and on dimensional anthropology. In the next chapter I will expand on the historical roots of the pro-life understanding of rights language.

Chapter 8. René Girard and rights language

Conventional opinion holds that pro-choice advocates believe that rights language is a social construction and that pro-life advocates, in contrast, believe that rights are built into the fabric of the universe. In Chapter 6 above, I argued that rights language is always a social construction; in Chapter 7 I argued that the realist tradition in thought, which undergirds the pro-life view, more competently expresses the truth of the human condition, while the pro-choice nominalist tradition is seriously defective. It seems that these two chapters are contradicting each other. It is the task of this chapter to explore this apparent contradiction, and to point the way toward a possible resolution, by considering how the *history* of the concept of rights is essential to understanding the *meaning* of rights today. My argument along these lines draws heavily on the writings of French scholar René Girard, which have the potential to provide a thought-provoking intervention in the abortion debate. He suggests an alternative to the dichotomy: rights are either rhetorically constructed to advance individual liberties, or they are recognized as built into the fabric of reality, with the goal of preventing victimage.

Before I begin discussing Girard directly, I need to set the stage by referring briefly to a book by Alan Dershowitz entitled *Rights from Wrongs: A Secular Theory of the Origins of Rights*. While the book can be criticized for its tendency to set up and knock down straw men, its central thesis is actually intriguing, and it comes very close to what I consider to be the correct understanding of the origins of rights. The straw men aspect of the book is seen in the ease with which Dershowitz thinks that he can summarize and dispense with the idea

of natural law and natural rights. He relies on simplistic dichotomies and thinks that attacking “fundamentalists” rather than taking seriously the writings of the leading natural law theorists today is an appropriate method of argumentation.

His central thesis is that neither God nor nature can be seen as the source of rights because it is too difficult to know the mind of God (even if God were to exist), and nature is amoral. No amount of study of the *Is* of nature can ever lead to the *Ought* of moral and legal philosophy. Dershowitz also rejects legal positivism, which holds that rights simply are whatever the government in a particular time and place says they are. That view justified slavery and the Holocaust. Dershowitz presents the idea that the only sound basis for rights is the historical experience which we human beings have of moral wrongs. Past cultural practices such as human sacrifice, the Inquisition, witch-hunts, slavery, Nazism, Stalinism, and so forth, are clear examples of the grossly immoral behavior of which human beings are capable. It is out of the pain and suffering caused by such episodes that we human beings have come to articulate the notion of *rights*; rights arise out of the experience of moral wrongs in history:

My approach to rights first identifies the most grievous wrongs whose recurrence we seek to prevent, and then asks whether the absence of certain rights contributed to these wrongs. If so, that experience provides a powerful argument for why such rights should become entrenched. This bottom-up approach builds on the reality that there is far more consensus about what constitutes gross injustice than about what constitutes perfect justice. If there

can be agreement that certain rights are essential to reduce injustice, such agreement constitutes the beginning of a solid theory of rights.¹

This is an intriguing idea, because, as we will see shortly, it fits so well with the theory of the origin of rights that arises out of Girard's thought. But the view of Dershowitz is underdeveloped, because he has not reflected deeply enough on the word "we" in the first sentence just quoted. If "we" are able to articulate and defend rights because we are aware of clear historical evils, then why is abortion such a huge, intractable controversy? Pro-life and pro-choice advocates are aware of the same historical wrongs, but they disagree about how to apply the moral lessons that history teaches to the issue of abortion. Given that lack of consensus, Dershowitz's appeal to consensus about historical wrongs and the lessons they clearly teach is obviously a chimera. He begs the key question: "What cultural process has been at work in Western history to give us the sensitivity to recognize victimage when we see it?" Girard can lead us to deeper reflections on the questions that Dershowitz is on the verge of seeing but cannot answer because he cannot quite bring them into articulation.

Outline of Girard's psychology

While most summaries of René Girard's thought begin with mimetic desire, there is actually a deeper starting point: *lack*. Girard argues that once basic biological needs, such as hunger, are satisfied, human beings enter into a state of great uncertainty about what they should desire. They have a sense of lack, of internal deficiency, and they begin to look around at other human beings to see what they desire.² People begin to copy, to imitate, others believing that those others, by possessing certain things or by having a certain status, are

¹ Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York: Basic Books, 2004), 82.

² Girard, *Violence and the Sacred* (Baltimore: Johns Hopkins University Press, 1977), 145-46.

enjoying a greater fullness of being. Not wanting to be inferior, people imitate the desires of others and thus become rivals of those others to possess those things that others are desiring. This pattern of behavior is seen very clearly in small children when they struggle over a toy even when many other equivalent toys are present in a room. Among adults, the pattern is the same, though it is usually more subtle. (Or not so subtle, as in the case of the Chinese young man who sold his kidney to acquire an iPad.) Because mimetic desire leads to rivalry, it is a formula for turning society into a war of all against all. A meltdown into chaotic social disintegration is avoided through the “scapegoat mechanism,” a phrase that Girard copied from Kenneth Burke.³ By channeling violent impulses toward a helpless victim, a society avoids general chaos and creates a sense of cultural cohesion and “peace.”

This is the tiniest possible thumbnail sketch of Girard’s basic understanding of human psychology, which he developed over hundreds of pages of commentary on European novelists and on vast swaths of anthropological literature.⁴ The arbitrariness of the process of scapegoating indicates a social situation in which the concept of rights has not yet been invented. If individuals had “rights” then they could not be turned into scapegoats by the psychological needs of society. The very fact that we today talk about rights has been made possible by the fact that we have experienced an “exodus” from the primitive milieu of unconscious mimetic desire and scapegoating. But how did that exodus happen?

The Bible takes the side of victims, not oppressors

³ Burke, *Permanence and Change: An Anatomy of Purpose*, 2nd ed. (Indianapolis: Bobbs-Merrill, 1965 [originally published in 1935]), 16.

⁴ See Girard, *Deceit, Desire, and the Novel: Self and Other in Literary Structure* (Baltimore: Johns Hopkins University Press, 1965), *“To Double Business Bound”: Essays on Literature, Mimesis, and Anthropology* (Baltimore: Johns Hopkins University Press, 1978), *The Scapegoat* (Baltimore: Johns Hopkins University Press, 1986), and *Things Hidden since the Foundation of the World* (Stanford: Stanford University Press, 1987).

Girard claims that the “modern” world we inhabit is not the fruit of leaving the Bible behind; it is the fruit of the Bible. He argues that the exodus from the scapegoat mechanism began with certain key passages in the scriptures.

The scapegoat mechanism works by facilitating the blaming of victims. Those who are killed as scapegoats are labeled as evildoers, witches, deviants, traitors, and so forth. When they are killed it is believed, by the mob doing the killing, that the victims are receiving just retribution for their evil character; but this is a form of false consciousness. The violent crowd is imposing this taint of evil onto the one it is killing. This form of consciousness is exposed as false when stories are told which reveal that the victim is innocent and that the violent crowd is being unjust by committing an act of scapegoating. Girard notes that this unveiling of the scapegoat mechanism is the key thread that runs through the Bible.

The story of Cain and Abel, for example, conveys the message that the violent one killed his brother unjustly, out of envy (which is another word for mimetic desire). Cain is described as the “builder of the first city” in Genesis 4:17; he is the founder of human civilization, which from that point forward is a Cainite culture, a violent culture. The story of Joseph and his brothers amplifies this theme, as Joseph is cast out of the family by his envious brothers. He later forgives them, which points to divine transcendence of human violence. Girard also wrote a book about the character of Job in which he argues that Job’s “friends” are representatives of a society which is trying to label him as an evildoer.⁵ Many Psalms are written from the point of view of an innocent victim who is surrounded by an accusatory mob. The Suffering Servant figure in the book of Isaiah is another example of a character who is portrayed as unjustly receiving the verbal abuse and violence of a crowd.

⁵ Girard, *Job, the Victim of His People* (Stanford, Calif.: Stanford University Press, 1987).

That the Christian tradition sees the Suffering Servant as a prefigurement of Christ makes perfect sense, from Girard's point of view, because Christ is the ultimate scapegoat. He is clearly portrayed in the gospels as the innocent one who is falsely accused and killed through the collusion of a violent mob and the Roman authorities. The mythology or ideology that is generated by the scapegoat mechanism must always portray the victim as guilty, as evil. The central thread of the Bible turns that idea upside down. The victim is innocent; the violent crowd is guilty.

The Bible's "concern for victims" gradually morphed over many centuries into rights language

Girard maintains that the central theme of the Bible, which I have just summarized, has functioned as an engine of cultural change, slowly but surely, over many centuries. While the scapegoat mechanism remained hegemonic, as seen in phenomena such as the Crusades, the Inquisition, anti-Semitic pogroms, and so forth, the biblical text was at work as a kind of yeast gradually working in western culture to undermine scapegoating and to give birth to a new type of culture in which violence is condemned instead of defended. The modern world is thus broadly characterized by what Girard calls "*le souci de victimes*," concern for victims.⁶ Because the stories in the Bible, and the immensely powerful story of Christ, have shaped our consciousness at such a deep level, it is now the case that when people lobby for a certain type of social change, they do so by claiming that a certain form of victimage must be denounced and left behind. That basic pattern is seen in Marxist thought, which stresses how workers are victimized by rich business owners, in feminism, which stresses the imperative for women to be freed from historical patterns of male oppression, in the Civil

⁶ Girard, *I See Satan Fall Like Lightning* (Maryknoll, N.Y.: Orbis Books, 2001), ch. 13.

Rights Movement and the anti-apartheid movement, which stressed racial oppression, in the call for same-sex marriage, which draws on the marginalization of sexual minorities, and so forth. The argument about abortion today is engaged through competing narratives of victimization; either women are being victimized or unborn children are being victimized. One side holds up a photograph of a woman lying dead in a pool of her own blood in a hotel room as a result of a botched illegal abortion; the other side holds up a photograph of a bloody aborted baby. As Girard says: “the victims most interesting to us are always those who allow us to condemn our neighbors. And our neighbors do the same.”⁷

It is clear from the unfolding logic of Girard’s argument that the use of rights language in modern Western culture is a particularly salient aspect of what he has described as “concern for victims.” Rights language has as its goal the building up of a linguistic wall that is trying to protect people from being victimized. In Girard’s words: “The essential thing in what goes now as human rights is an indirect acknowledgement of the fact that every individual or every group of individuals can become the ‘scapegoat’ of their own community. Placing emphasis on human rights amounts to a formerly unthinkable effort to control uncontrollable processes of mimetic snowballing.”⁸

Supporting voices

Is Girard’s view that rights language has roots in the Bible an oddball opinion that has no support from other scholars? No, it is not difficult at all to find other authors who say similar things and who fill out the historical narrative that informs Girard’s account. Support for Girard’s general thesis about the historical roots of rights language is found in Nicholas

⁷ Girard, *I See Satan Fall Like Lightning*, 164.

⁸ Girard, *I See Satan Fall Like Lightning*, 168.

Wolterstorff's book *Justice: Rights and Wrongs*. Without mentioning Girard or showing any trace of having read him, Wolterstorff argues that the roots of Western notions of rights are found in the Bible; he refers specifically to the passages that speak of the requirements of social justice, namely, that there must be special concern to protect the weak and vulnerable: "widows, orphans, resident aliens, and the poor."⁹ This concern for marginalized human beings (who are prime candidates for scapegoating, according to Girard)¹⁰ is the origin of the Western notion that *all* people should be recognized as having certain basic rights which cannot be ignored or trampled on by the powerful. Wolterstorff's narrative covers the full sweep of history from the ancient world up to the present, and is fully conversant with the contemporary philosophical discussion of rights in Hohfeld, Dworkin, Rawls, et al. My brief reference to this magisterial book does not begin to do it justice.

Micheline Ishay's large anthology, *The Human Rights Reader*, begins its history with selections from the Bible, which are placed alongside texts from the Code of Hammurabi, Plato, Aristotle, Cicero, and Confucius.¹¹ Various works by Jewish scholars consider the relationship between the Bible, the Talmud, and rights language, such as David Novak's *Covenantal Rights: A Study in Jewish Political Theory*, Haim Cohn's *Human Rights in the Bible and Talmud*, and Milton Konvitz's anthology *Judaism and Human Rights*.¹² Christian scholars have also made similar contributions, for instance: Walter Harrelson, *The Ten Commandments and Human Rights*; George Newlands, *Christ and Human Rights*; Christopher Marshall, *Crowned with Glory & Honor: Human Rights in the Biblical*

⁹ Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008), 75.

¹⁰ See Girard's chapter "Stereotypes of Persecution" in *The Scapegoat*.

¹¹ Micheline Ishay, *The Human Rights Reader: Major Political Essays, Speeches, and Documents from Ancient Times to the Present*, 2nd ed. (New York: Routledge, 2007).

¹² David Novak, *Covenantal Rights: A Study in Jewish Political Theory* (Princeton, N.J.: Princeton University Press, 2000); Haim Hermann Cohn, *Human Rights in the Bible and Talmud* (Tel Aviv: MOD Books, 1989); Milton R. Konvitz, ed., *Judaism and Human Rights*, 2nd ed. (New Brunswick, N.J.: Transaction Publishers, 2001).

Tradition; and Esther Reed, *The Ethics of Human Rights: Contested Doctrinal and Moral Issues*.¹³ John Witte has edited a collection of essays entitled *Christianity and Human Rights* which includes chapters on the Bible and on various periods in Western history up to the present.¹⁴ I would be remiss if I did not mention that when Martin Luther King, Jr. gave his “I Have a Dream” speech and referred to “justice rolling down like waters,” he was quoting the book of Amos. The Civil Rights movement drew on deep roots of biblical imagery that had formed the core experiences of black churches in the United States for more than a century.

David Hart’s *Atheist Delusions: The Christian Revolution and Its Fashionable Enemies* provides a narrative account of Western history that supports Girard’s perspective. Hart describes the Roman Empire as being animated by “a pervasive, relentless, and polymorphous cruelty.”¹⁵ He claims that Christianity, arising out of the biblical tradition which seeks to protect human beings from victimage, was a form of sedition against the Roman world:

The old and the new faiths represented two essentially incompatible visions of sacred order and of the human good. They could not coexist indefinitely, and only a moral imbecile could unreservedly regret which of the two it was that survived. The old gods did not—and by their nature could not—inspire the building of hospitals and almshouses, or make feeding the hungry and

¹³ Walter J. Harrelson, *The Ten Commandments and Human Rights* (Philadelphia: Fortress Press, 1980); G.M. Newlands, *Christ and Human Rights: The Transformative Engagement* (Aldershot, Eng.: Ashgate, 2006); Christopher D. Marshall, *Crowned with Glory & Honor: Human Rights in the Biblical Tradition*. (Telford, Pa.: Pandora Press), 2001; Esther D. Reed, *The Ethics of Human Rights: Contested Doctrinal and Moral Issues* (Waco: Baylor University Press, 2007).

¹⁴ John Witte, Jr. and Frank S. Alexander, eds. *Christianity and Human Rights: An Introduction* (New York: Cambridge University Press, 2010).

¹⁵ David Bentley Hart, *Atheist Delusions: The Christian Revolution and Its Fashionable Enemies* (New Haven: Yale University Press, 2009), 122.

clothing the naked a path of spiritual enlightenment, or foster any coherent concept of the dignity intrinsic to every human soul; they could never have taught their human charges to think of charity as the highest of virtues or as the way of union with the divine.¹⁶

Hart has read Girard, and his book unpacks many facets of the history of Christianity's influence on Western culture that are left sketchy or implicit in Girard's own writings. Hart points out that when critics today attack Christianity for being "patriarchal," they usually do not realize that their sensitivity to the unjust treatment of women was itself birthed into the world by Christianity.¹⁷ This echoes Girard's idea that "the modern Western world has forgotten the revelation in favor of its by-products."¹⁸ Our thinking is a product of the powerful sensitivity that the gospels have generated, sensitivity to all forms of victimage. We think, however, that this sensitivity is something that we ourselves have generated; we think that we are the Light when we are actually seeing by a Light that has been shining in history.

This notion that the Judeo-Christian tradition is the source of rights language and concern for victims is also confirmed, in an inverted way, by Friedrich Nietzsche. He argued that the Enlightenment thinkers who claimed that they had rejected religious faith were speaking falsely as long as they held fast to notions of universal human rights. Concern to protect the vulnerable is a "slave morality" that expresses the *ressentiment* of the weak against the strong. This Judeo-Christian idea is rejected by Nietzsche, and he sees the momentum of that idea carrying over into Enlightenment thought which proclaimed the universal rights of human beings. Girard recognizes very clearly that Nietzsche is the most

¹⁶ Hart, *Atheist Delusions*, 124.

¹⁷ Hart, *Atheist Delusions*, 166-82.

¹⁸ Girard, *The Scapegoat*, 205.

prominent opponent of the historical narrative that Girard is advancing regarding the Bible's role as a kind of moral yeast which transforms culture slowly but surely.¹⁹ Nietzsche poses the either/or of concern for victims or the will to power in the starkest possible way in *On the Genealogy of Morality* and other works: "The 'salvation' of the human race (I mean, from 'the Masters') is well on course; everything is being made appreciably Jewish, Christian or plebian (never mind the words!). The passage of this poison through the whole body of mankind seems unstoppable."²⁰ What Girard calls a moral yeast, with positive effects, Nietzsche calls a poison. Nietzsche continues: "Through Christianity, the individual was made so important, so absolute, that he could no longer *be sacrificed*: but the species endures only through sacrifice. . . . And this pseudo-humaneness called Christianity wants it established that *no one should be sacrificed*."²¹ Girard asserts that in texts such as these Nietzsche sees the historical impact of the Bible's taking the side of the victim—and he rejects it. Girard claims that nothing written before or after Nazism clarifies its spiritual essence as effectively as these words of Nietzsche.²²

Conclusion

I have now covered enough ground to conclude that Girard is not a *political theorist* of rights, but he is an *epistemologist* of rights. His account of human psychology and his narrative of Western history provide an explanation of how we have come to "know" that rights language is giving voice to important truths of human experience. Due to the deep and

¹⁹ See Girard's comments on Nietzsche in *I See Satan Fall Like Lightning*, 172, and other places scattered throughout the book. See also Girard's "Nietzsche versus the Crucified," in *Modern Language Notes* 99 (1984): 816-35, reprinted in *The Girard Reader*.

²⁰ Nietzsche, *On the Genealogy of Morality* (New York: Cambridge University Press, 1994), 21.

²¹ Nietzsche, *The Will to Power* (New York: Random House, 1967), 142 [emphasis added].

²² Girard, *I See Satan Fall Like Lightning*, 175.

subtle influence of the Bible on our consciousness, we are sensitized to the many ways that we can mistreat each other as human beings, and our rights language is an aspirational practice that is always prodding us to stop the mistreatment.

Girard's perspective on history suggests that the concept of rights was birthed into the Western world through the medieval Catholic Church's canonization and preservation of the Bible, which allowed the ideas it contains to work their way into Western history as a moral yeast. This birthing turned out historically to enable Christianity's criticism of itself. As the Bible's unveiling of scapegoating made an impact on thinking, the moral wrongness of burning heretics at the stake, or engaging in witch-hunts, or viewing the indigenous inhabitants of the western hemisphere or of Africa as lesser life forms than white Europeans gradually became clear. The language of rights that slowly emerged out of the scholastic debates of the late middle ages, and out of the Reformation and Enlightenment eras, had as its goal the building of a linguistic wall around human beings to protect them from the various forms of unethical victimization of others that human beings often exhibit.

Girard is criticizing the standard historical narrative of individualistic liberalism, which tends to maintain that rights language is a modern invention. That narrative claims that rights language developed in the Enlightenment, as modern Westerners attempted to climb out from under the psychic rubble created by the wars of religion that followed the Reformation. Since it was allegedly clear that belief in religious dogmas led directly to wars, there was a need to separate church and state, to secularize politics. There was a need to replace the traditional language of (socially enforced) virtue with a language of (neutral) rights, which allowed individuals to choose their own vision of virtue. "Right before good" is the common expression for this. But Girard maintains, based on his psychological

analysis, that individual autonomy is an optical illusion (because we are deeply mimetic beings), and that the functional employment of rights language in the modern world has been the struggle against victimage. That struggle arises out of the influence of the Bible.

Girard's thought thus raises an interesting question: Is his argument theological, or not? Girard says that his core theory is scientific, secular, not theological. "I don't subscribe to religious atheism, but I do think that the approach to facts in the social sciences should be devoid of both religious and anti-religious assumptions."²³ Yet he also says that what he calls the moral yeast of the Bible's influence is another way of expressing the work of the Holy Spirit in human history.²⁴ Adding to the ambiguity of Girard's own words, we can note that those who comment on Girard in the secondary literature fall into the same patterns. Some claim that Girard's theory can be construed in a secular manner; some interpret it as theological anthropology.²⁵ An atheist could say that Girard's historical commentary is correct; rights language did arise out of the Bible; but this by itself does not mean that the Bible is "inspired by God." It can be seen as a collection of ancient documents having an entirely human provenance. But a theologian could also, with good reason, claim that rights have been built into the fabric of human culture by God's inspiration of the biblical authors; Girard's thought allows us to trace this historical process.

²³ Girard, *Evolution and Conversion* (New York: T.&T. Clark, 2007), 150. This comment by Girard was made in response to something that I had written: "Girard ought to drop the pretense of adhering to the methodological atheism of social science," Charles Bellinger, *The Genealogy of Violence* (New York: Oxford University Press, 2001), 88.

²⁴ See Girard's chapter on "History and the Paraclete" in *The Scapegoat*, 198-212.

²⁵ See, for example, Paisley Livingston, "I do not need Girard's hypothesis that the scientific project is a 'byproduct' of the 'subterranean' Revelation being wrought by the Holy Scriptures. My assumption is that many of Girard's original insights into human interaction and motivation are logically separate from such theological claims." *Models of Desire* (Baltimore: Johns Hopkins University Press, 1992), xvii-xviii. Note that Livingston thinks that Girard is making theological claims, which Girard himself denies. An example of a theological reading of Girard is provided in Mark Heim, *Saved from Sacrifice: A Theology of the Cross* (Grand Rapids: Eerdmans, 2006).

Regardless of this ambiguity, we can say that Girard's thought maintains that rights language was not invented in the 17th century, or the 12th, or some other century; its origins can be identified in a defuse sense as arising out of the concern in certain biblical texts to protect the vulnerable from victimage. To say that is *not* a theological claim, however; one can reject the idea that the Bible has a divine source and still affirm the historical observation that the Bible is the source of rights language. To say that *is* to deny that rights were invented out of thin air by "secular" Enlightenment thinkers. The subtle but inexorable historical forces that led to the rise of concern for victims have shaped our consciousness in ways that cannot be attributed to the imagination or will of any particular person or philosophical school. Contra Alan Dershowitz, who says that "rights must be invented by human beings, based on experiences,"²⁶ it is more correct to say that the Bible's influence on Western culture's rights language has "invented" us. Any inventing or rhetorical constructing of rights that we do cannot possibly be original—it can only be an echo of that influence, or perhaps a rebellion against it, as in Nietzsche.

This idea suggests a resolution for the apparent contradiction that I noted at the beginning of this chapter. On the one hand, I have sided with what is usually thought of as the "liberal" position in that I affirm that rights language is always a rhetorical construction. In terms of ethical commitments, however, I side with the "pro-life" position, which sees itself as a form of realism that insists that rights are *recognized* by human beings, not *invented* by them. I resolve this apparent contradiction by noting that no individual human being alive today, or who was alive in human history, can legitimately claim to have invented rights language. *Rights language has invented us*, by which I mean that our view of reality has been profoundly shaped by slow but inexorable historical forces over millennia.

²⁶ Dershowitz, *Rights from Wrongs*, 85.

When we articulate and employ rights language today, we are rhetorically constructing—but—we do so having a form of consciousness that has itself been constructed by history. The realist position, which holds that we should understand ourselves as apprentices who are open to being instructed, is suggesting that when we *recognize* rights as being built into the fabric of the universe we are acknowledging that there is a Builder who precedes us. (This Builder could be viewed as the Invisible Hand of History, or as God; I prefer the latter, but my argument here does not rely on that.) We can then become builders ourselves, with a lower case “b,” but our efforts are not ordinary, they are echoes. We can sing the song of rights, but we did not write it.

Chapter 9: John Locke is not the source of our confusion

In an earlier chapter I noted that John Locke's political philosophy is sometimes referred to with approval by both pro-life and pro-choice advocates. If we could bring him forward to our time in a time machine and have him read the literature of the abortion debate and then give his view, that would clear up the ambiguity that we have noted in current Locke interpretation. There is one passage in Locke's writings where he explicitly mentions abortion: "When it shall be made out that men ignorant of words, or untaught by the laws and customs of their country, know that it is part of the worship of God, not to kill another man; not to know more women than one; not to procure abortion; not to expose their children; not to take from another what is his, though we want it ourselves . . ." (*Essay Concerning Human Understanding*, Bk. 1, ch. 3, §19).¹ This does not work as a "proof-text," however, because it can be seen as simply reflecting the common opinion of Locke's day. It is possible that the time-traveler Locke might be converted to the pro-choice view after considering its arguments. I will now make a case for the notion that he would not.

It is fairly common in academic circles to describe the basic differences between the political philosophies of Thomas Hobbes and John Locke in a manner such as the following. For Hobbes, human beings are at root egoistic and aggressive; this dark vision of human psychology suggests that in the "state of nature" there will be a war of all against all; a government is needed to prevent generalized chaos and violence; if the state is very powerful and tyrannical, that is preferable to unchecked violence. For Locke, on the other

¹ This passage, and the general topic of Locke and abortion, is treated in Eric Manchester's essay: "Locke on Bodily Rights and the Immorality of Abortion: A Neglected Liberal Perspective," available from: <http://www.uflf.org/vol16/manchester06.pdf>, accessed May 30, 2012.

hand, the basic vision of human nature is not so dark; human beings are rational and sociable, and through their reason they can recognize the “laws of nature” which mandate the protection of life, health, liberty, and property; each person can act to protect the rights to life, health, liberty, and property, but it is better if this is handled by society acting corporately, rather than by individuals acting alone; the best sort of government is limited in its powers, not tyrannical, and it will rationally carry out the three main functions of government: legislation, unbiased judging, and effective enforcement of laws.

I suggest that the contrast between Hobbes and Locke is a rough parallel between the two types of social order envisioned by René Girard. Girard argues that a basic either/or can be seen in human history: the primitive scapegoating structure of society, which is seeking to prevent a war of all against all, and the alternative mode of structuring society which is the product of the Bible’s influence on human culture. (This either/or has ideal types at its poles: perfect violence and perfect peace. In history, actual societies are always somewhere in between.) For Hobbes, the state functions as a restraining power that keeps the potential for inter-human mayhem in check.² Human beings are always likely to kill each other unless they are restrained in their violence by a powerful state. In Locke, the more positive vision of human nature is an expression of how the world should operate in the wake of the Ten Commandments and the transforming message of Christianity. In this world, individuals are of great value and dignity; they can no longer be arbitrarily killed to satisfy the psychological needs of a mob; they have “rights” which must be acknowledged and protected. All human beings have these rights *naturally*; this is the way Locke expresses himself at the outset of the Second Treatise:

² See Wolfgang Palaver, “Hobbes and the *Katéchon*: The Secularization of Sacrificial Christianity,” *Contagion* 2 (1995): 57-74.

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order, and about his business, they are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one anothers uses, as the inferior ranks of Creatures are for ours. (§6)

Notice the clear theological grounding of this statement, and the emphasis on the equality of human beings, which was a very challenging aspect of Locke's message in a society that was very hierarchical. Locke was suggesting that a society that claimed to be Christian while rigidly subordinating some human beings to others was failing to grasp and live according to the Bible's message. In the very next paragraph, Locke continues to argue that the concept of "rights" has the goal of preventing human violence, or punishing it after the fact:

And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and *Preservation of Mankind*, the *Execution* of the Law of Nature is in that State, put into every Mans hands, whereby every one has right to punish the transgressors of that Law to such a Degree, as may hinder its Violation. (§7)

Rights language in Locke functions to protect people from having harm done to them. This is the primary vector within which Thomas Jefferson and the other founding fathers drew

upon Locke. The harm being inflicted on the colonists by the crown had become intolerable, triggering their assertion of their rights.

Jeremy Waldron's book *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* supports the notion that the theological foundation of Locke's political philosophy is not accidental or extrinsic; it is at the heart of his message. To remove that heart and treat Locke's argument in a purely "secular" manner is like expecting a human body to go on living after its heart has been surgically replaced with a cell phone. Waldron argues that the key theme of human equality in Locke is drawn directly from the Christian belief that all human beings are created by God in God's image. After claiming that "we have in Locke's mature corpus as well-worked-out a theory of basic equality as there is in the canon of political philosophy," he says that over years of study he came to the conclusion that "Lockean equality is not fit to be taught as a secular doctrine; it is a conception of equality that makes no sense except in the light of a particular account of the relation between man and God."³ This statement expresses his agreement with John Dunn that the *Second Treatise* is saturated with Christian assumptions, and Alasdair MacIntyre's comments to the same effect. Dunn makes this point, however, to treat Locke's political thought as a historical curiosity (because Dunn prefers secular political philosophy), while MacIntyre makes this point to align Locke with the Christian thought forms that he prefers.⁴

Pro-choice philosophers, generally speaking, prefer a secularized version of Locke's ideas as a platform for asserting individual autonomy as the key concept in modern political

³ Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (New York: Cambridge University Press, 2002), 6, 82. See also John Simmons: "God is too much at the center of Locke's thought for such secular, Kantian arguments to capture its essence." "The end of morality is set by God The sacredness of individual persons follows for Locke from their being special beings made by God in His image," *The Lockean Theory of Rights*, 44, 58.

⁴ See Waldron, *God, Locke, and Equality*, 12-13, and 44, referring to Dunn's *The Political Thought of John Locke* and to MacIntyre's *Whose Justice? Which Rationality?*.

philosophy. Being a “rights bearer” is crucial to this view, and the inhabitant of the womb is defined as insufficiently developed in mental capacities to be a rights bearer. But this view distorts Locke’s thought by cutting out its theological heart, and subtly changes the concept of rights from the prevention of victimization to the assertion of individual power to act (more specifically, *to kill*).

In my earlier chapter in which I claimed that Locke is the source of our contemporary confusion about rights language, I quoted pro-choice and pro-life authors, who both believed that Locke supported their position. I am now in a position to suggest, building on my previous discussion of nominalism and realism, that the ambiguity of Locke’s thought lies in the two trajectories of interpretation that are plausible to the interpreters. Those commentators who lean in a nominalist direction can read Locke as a nominalist / individualist. Those who lean in a realist direction can read Locke as a realist, who speaks of natural law and natural rights. There is sufficient ambiguity in his ideas to make either direction plausible in the minds of the various interpreters, but it is my contention that if Locke were here today, and if he could survey modern history, he would clarify his intentions by siding more clearly with realism, the theological tradition, and the defense of the inhabitant of the womb. I suggest that Locke would realize that the language of rights needs to be placed within a context of historical development, as Girard argues, rather than simply being read off of ahistorical “nature.”

Chapter 10. Does our use of rights language hide or reveal our moral character?

In the first part of this treatise, I painted a picture of rights language in disarray in our contemporary culture. Many people use rights language without having reflected on its meaning philosophically; among intellectuals, there is no consensus on what constitutes the correct use of rights language; some authors, aware of the disarray, suggest that rights language should be abandoned. I have attempted to outline a pathway for reconstructing rights language which draws on the thought of René Girard. This pathway is clearly historical. Rights language is an emergent practice in human history that has traceable roots in the Bible and in Jewish and Christian reflection on the Bible. Rights language brings into articulation concern for the protection of human beings from victimage. This brings to our awareness the idea that the most common ways of thinking about rights in connection with abortion tend to be ahistorical. The pro-life camp favors the language of “natural rights”; entities have rights because of their nature, their essence. It is sometimes said, as in the Declaration of Independence, that God “endows” such rights. But it is rarely recognized that the consciousness that would “see” such an endowment has been shaped by slow and subtle historical forces that have been at work for many centuries. The pro-choice position, as it has become hegemonic through the power of the Supreme Court, favors the language of the individual’s right to be fully “autonomous”; this is also ahistorical, in that the individual is being lifted out of the sinews of history and community, to become a godlike, disconnected consciousness, capable of spontaneously inventing his or her own moral world. While pro-choice intellectuals may pay some attention to the history of rights language (in Hobbes,

Locke, Kant, Mill, and so forth), their message ends up seeing the achievement of “autonomy” as a ladder that is kicked away after it has been used to climb up to a higher level. This higher level is a particular vision of individuality, in which the Self transcends nature, history, and culture, as Hannah Arendt observes: “Today we consider both history and nature to be alien to the essence of man. Neither any longer offers us that comprehensive whole in which we feel spiritually at home.”¹ It is my contention that the ladder cannot be kicked away. *The history of rights language is integral to the meaning of rights language.*

If, as I have argued, rights language is employed by human beings in an effort to rhetorically construct society in line with the values of the rhetor, then rhetorical criticism will inevitably lead us to questions of moral character, and such questions are unavoidably historical. Martin Luther King, Jr. and Adolf Hitler were both prominent and influential rhetors; there is a general consensus today that one used rhetoric as a force for good and the other as a force for evil. We can, and must, always ask: Are the values advanced by a particular rhetor good and commendable, or not? If there is such a thing as moral progress in history, is a particular rhetor’s message in tune with that progress, or not? If, as Kenneth Burke says, humans are symbol-using and symbol-*misusing* creatures,² how can we identify a misuse of a symbol such as “rights”?

The idea that our use of rights language reveals our moral character stands in a polemic relation to one of the key concepts of contemporary political liberalism, the

¹ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, 1951), 435. Along similar lines, see Pierre Manent: “In his immaturity, man lived between two worlds [divine grace and nature] and at times he thought there was one too many. Thanks to the labors of modern philosophy, he has arrived at autonomy and banished the other world, but he has lost this one.” *The City of Man* (Princeton: Princeton University Press, 1998), 198.

² Burke, “The Definition of Man,” in *Language As Symbolic Action* (Berkeley: University of California Press, 1966), 16.

assertion: “right before good.” This assertion claims that various people have various beliefs about good and evil, about right and wrong moral conduct. In their own eyes, these various people consider their own beliefs to be reasonable. In a modern, pluralistic, liberal society, such beliefs should be viewed as “private,” and individuals should be afforded the maximum possible liberty to live their lives according to their own beliefs. The concept of “rights” functions at the level of public reason to establish an environment of political and legal philosophy which values individual liberty above all else. The moral beliefs of individuals or communities, such as religious bodies, will guide the actions of those individuals or communities, but if those individuals or communities were to seek to change the law so that it conforms to their beliefs, then they would be guilty of seeking to impose their beliefs on others who have different opinions. Such an imposition is a sin against “public reason.”

I have been summarizing, in very broad terms, the argument of John Rawls, who is a key architect of contemporary liberal thought. Rawls argues that people who believe that abortion is morally wrong should live their lives in accord with that belief, but if they are reasonable, according to the conception of “public reason” that Rawls is advancing, then they will, of course, support the legalization of abortion that was achieved by *Roe v. Wade*, and they will vote for political candidates who support *Roe*. To vote for candidates who favor the overturning of *Roe* would be a sin against “public reason.” Note that this position outlined by Rawls has no interest in the substantive question of whether or not it is actually *true* that abortion is a moral evil. Rawls demotes that question to a mere matter of private interpretation of the good, when he says:

Catholics may reject a decision to grant a right to abortion. They may present an argument in public reason for denying it and fail to win a majority. But

they need not exercise the right of abortion in their own case. They can recognize the right as belonging to legitimate law and therefore do not resist it by force. To do that would be unreasonable: it would mean attempting to impose their own, comprehensive doctrine, which a majority of other citizens who follow public reason do not accept.³

Jeffrey Reiman agrees with the general outline of Rawls' position, but expresses it even more strongly: "I contend that there is a moral obligation to comply with the principles of liberalism that is based on reasons that override individuals' personal moral and theological views."⁴

The notion "right before good" can be clearly seen in the *Casey* decision of the Supreme Court: "Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code."⁵ There is a very deep philosophical blindness at work here. To treat the "liberty" of the individual as a trump card is to have already chosen a particular good, a certain moral vision of reality. That vision of good takes as its starting point the idea that any constraints on the freedom of action of individuals, even such a basic constraint as "thou shalt not kill," is unacceptable. The individual must have complete freedom to define what constitutes an "other" and thus what constitutes immoral killing. The full text of the decision makes that clear. The bad faith at work in the sentences quoted above is their refusal to admit that the Supreme Court *is* mandating its own

³ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), lvi-lvii.

⁴ Jeffrey Reiman, "Abortion, Natural Law, and Liberal Discourse: A Response to John Finnis," in *Natural Law and Public Reason*, edited by Robert P. George and Christopher Wolfe (Washington, D.C.: Georgetown University Press, 2000), 109.

⁵ In Baird and Rosenbaum, *The Ethics of Abortion*, 3rd ed., 95.

moral code, which is a historically conditioned (nominalist) vision of individualistic moral action.

An example of how “right before good” thinking plays out on the level of popular discussion is provided by an essay by Mary Elizabeth Williams in *Salon* entitled: “So What If Abortion Ends Life?” The author says: “. . . throughout my own pregnancies, I never wavered for a moment in the belief that I was carrying a human life inside of me.” She suggests that there is no need for pro-choice advocates to use euphemisms such as “uterine contents.” Instead, they should boldly speak in this manner:

All life is not equal. That’s a difficult thing for liberals like me to talk about, lest we wind up looking like death-panel-loving, kill-your-grandma-and-your-precious-baby storm troopers. Yet a fetus can be a human life without having the same rights as the woman in whose body it resides. She’s the boss. Her life and what is right for her circumstances and her health should automatically trump the rights of the non-autonomous entity inside of her. Always.⁶

The woman’s *right* to have an abortion is superior to the notion that society could possibly value the life of a vulnerable unborn human being as a *good* that should be protected.

Williams takes her argument to its logical conclusion: “I would put the life of a mother over the life of a fetus every single time—even if I still need to acknowledge my conviction that the fetus is indeed a life. A life worth sacrificing.” She does not seem to be aware, however, that the position she has outlined is simply “might makes right.” Those who have the power to kill vulnerable human beings should be able to do so. That position is actually an

⁶ Mary Elizabeth Williams, “So what if abortion ends life?: I believe that life starts at conception. And it’s never stopped me from being pro-choice.” *Salon* (Jan. 23, 2013). Available from http://www.salon.com/2013/01/23/so_what_if_abortion_ends_life/ Accessed Jan. 24, 2013.

abandonment of liberalism in favor of fascism, a fascism in the womb. Her rejection of the principle of equality among human beings, without any hesitation, makes that clear.

* * *

In my view, the concept of “right before good,” as applied to the issue of abortion, can be critiqued as follows: (1) it is deficient in rhetorical / historical awareness, (2) it is deficient in psychological awareness, (3) it rejects the Golden Rule. Regarding (1), we can note that rights language is always employed by human beings who live in a particular time and place, who are using that language for particular ends. Rights language has been used in history to articulate the reasons why the American colonies sought separation from England, to inspire a revolt against the French crown, to defend the practice of slave-owning, to attack the practice of slave-owning, to lobby for women’s ability to vote, to defend the rights of minorities such as Jews, to deny the rights of minorities such as Jews, and so on and so forth. Such a list could be expanded at great length.⁷ The existence, in this list, of the “bad apples,” such as uses of rights language to advance racism, means that rights language cannot function as a screen behind which people can hide. To suggest that it is such a screen is to not grasp the rhetorical, and historical, character of rights language. When Rawls says, for example, that those who believe that abortion is morally wrong need not exercise the right to abortion, he is not aware that he is making a statement that has a clear parallel: If you believe that slavery is wrong, then you should not own slaves (but don’t favor the abolition of slavery, because that would be “imposing your comprehensive doctrine of justice” on others).⁸

⁷ An excellent overview of the modern developments of rights language is provided in Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007).

⁸ This parallel is noted by John Finnis in his critique of Rawls, “Abortion, Natural Law, and Public Reason,” in *Natural Law and Public Reason*, 89.

Regarding (2), the position of Rawls and Reiman, which expresses well the Supreme Court's establishment of the right to abortion in its decisions from *Roe* to *Casey*, is also psychologically naïve. The concept of autonomy, which Reiman calls "self-governance," presumes that individuals think and live as isolated monads, separated from other human beings. This is false. The patterns of thought and action which we observe in human behavior are shaped by our socialization by our parents, our schooling, and the broader cultural context. René Girard has shown in his writings that human beings live according to mimetic desire; we are mistaken when we think that we have spontaneous "individual" desires: "The children repeat the crimes of their fathers precisely because they believe they are morally superior to them. This false difference is already the mimetic illusion of modern individualism, which represents the greatest resistance to the mimetic truth that is reenacted again and again in human relations. The paradox is that the resistance itself brings about the reenactment."⁹ Girard argues that the falsity of the notion that we can actually be "autonomous" as individuals is unveiled in the writings of certain key thinkers such as Shakespeare, Cervantes, Kierkegaard, Flaubert, and Dostoevsky, who are drawing on the anthropological insights made possible by the Bible.

The idea that standard pro-choice thinking is shown to be naïve by Girard's thought is amplified in "Another Look at Abortion" a chapter in Franklin Gamwell's *By the People, For the People*. Gamwell defends abortion by agreeing with the *Roe v. Wade* decision that "a human fetus is not a person *in the constitutional sense*; that is, not a person in the sense that grounds a claim to constitutional rights."¹⁰ A society that places great importance on rights language must know which human beings are rights bearers and which are not. That

⁹ Girard, *I See Satan Fall Like Lightning*, 20.

¹⁰ Gamwell, *By the People, For the People: A Political Voice for Progressive Christians* (Eugene, Or. : Wipf & Stock Publishers, 2010) , 53.

decision has to be made by someone, and Gamwell thinks that it was made well by the Supreme Court. “If a human fetus were a constitutional person, the state would be required to protect that person’s rights, above all its right to life. To do so, the state would have to limit the basic liberties of a pregnant woman, especially her freedom to control her own body in accord with her own conscience.”¹¹ He seeks to further bolster his argument by drawing on the notion that men and women must be treated with full equality in a modern democratic society. That notion by itself is not problematic, but he goes on to explain that: “[the woman’s] equal right to bodily control would be violated [by anti-abortion laws] because men who participate in the reproductive process would encounter no remotely similar restrictions on their liberty.”¹² Gamwell is arguing that because men are always fetus-less, equality between the sexes entails that women must always be able to be fetus-less when they want to be. “In sum, inclusion of a human fetus within the constitutional community would sacrifice the fundamental mutuality of ‘we the people.’”¹³ Gamwell is arguing that his ideal construction of a modern, liberal, democratic society must be based on the *exclusion* of a class of human beings from the community. The mutuality, or what Girard calls the unanimity, of human culture, must be based on the ability to *sacrifice* the inhabitant of the womb when the prospect of that child entering the world is disturbing to the plans of adults. The inhabitant of the womb is thus the scapegoat within the modern democratic order, because fetus-less maleness is the mimetic model to which women must conform.

This is the precise argument made powerfully by Bernadette Ward in her essay applying Girard’s thought to the problem of abortion: “The assertion that women’s sexuality can be just like men’s, however sincerely proclaimed, is deeply mimetic and biologically

¹¹ Gamwell, *By the People*, 53.

¹² Gamwell, *By the People*, 53-54.

¹³ Gamwell, *By the People*, 54.

oppressive. Such an unstable belief system requires sacrifice for its maintenance. If pregnancy is death to self, and sexual intercourse is required for self-fulfillment—both culturally conditioned notions—abortion seems to provide the only escape from the terrors of living in a woman’s body.”¹⁴ Girard’s insight that the “autonomy” proclaimed in the modern world is an optical illusion distracting us from the reality of our mimetic psychology is much more perceptive than Gamwell’s argument, because an individualistic “conscience” functions in the real world as the site at which social pressures impel a woman to kill her own offspring so that she can conform to patterns of behavior that have been fashioned by others. (Irene Vilar’s memoir, for example, recounts how it came to pass that she had fifteen abortions in fifteen years, with different partners. It illustrates in a powerful way Girard’s concept of the “eternal disciple” who is unable to escape from a sacrificial economy.)¹⁵ Conscience in the deeper and truer sense is precisely that capacity for moral backbone that would enable a woman to resist the social pressures that are impelling her to violate the moral principle of protection of the weak and vulnerable. The literature on abortion contains many accounts of women who came to deeply regret their abortions later in life. Gamwell’s notion of conscience has no way of accounting for this undeniable psychological phenomenon; Girard’s theory of personality and culture does account for it very well. When

¹⁴ Bernadette Waterman Ward, “Abortion as a Sacrament: Mimetic Desire and Sacrifice in Sexual Politics,” *Contagion* 7 (2000): 30. Another passage from Ward: “Abortion directs violence toward an entity which has human ancestry, but is denied the right to vengeance, which defines a person in the community. The real nature of the violence and the victim are concealed, in defiance of rationality, for the violence works in a powerfully conservative way to preserve the current social structure while satisfying mimetic cravings. The structural violence of a society which values the achievements of male bodies and denigrates those of female bodies remains in place, but women are allowed the chance to escape the violence by shedding their own blood and that of their offspring. The women remain eternal disciples, despising their own bodies as the source of their social constriction and seeking always to deflect the death of *being* that seems to be their lot. The fears assuaged by abortion are atavistic and at the root of human culture; the language of rights and social contracts does not touch them. Cooperation in abortion is cooperation in a sacrificial system, with all the deceit, oppression and futility that entails.” 33.

¹⁵ Irene Vilar, *Impossible Motherhood: Testimony of an Abortion Addict* (New York : Other Press, 2009). See Girard’s comments on Dostoevsky’s story “The Eternal Husband” in *Deceit, Desire, and the Novel*, 45-51, 69, 99.

the spell cast by mimetic processes is broken, a new sense of selfhood is born that is able to see how the subtle forms of violence in human social life have been deflected onto a scapegoat that is unable to defend itself.

The third avenue of critique of the notion “right before good” considers the Golden Rule, which states that we should treat others as we wish to be treated. The pro-choice position paints itself into a corner, in which it must reject this idea.

The essential falsity at the heart of slavery was the belief that some human beings are higher up on the Great Chain of Being than others. Those who were lower down were seen as beasts of burden, as agricultural animals, who could be bought and sold like cows or horses.¹⁶ This attitude of hierarchical distinction is referred to as “othering” by philosophers. The defenders of slavery were falsely creating in their imagination two different species of human beings, a higher and a lower. The higher thought of themselves as ontologically *other* in relation to the lower beings, the agricultural animals. Because Great Chain of Being thinking has a hierarchical structure, this can be described as *vertical othering*.

There have also been many examples in history of relations between human beings that can be described as structured by *horizontal othering*. The violence in Rwanda in 1994 was a case of the members of one tribe killing another. Because the “tribes” had been intermarrying for generations, this was a particularly bizarre episode of irrational violence. Other examples of horizontal othering include the conflicts between Serbs, Croats, and Muslims in the former Yugoslavia, or the strife between Sunni and Shiite Muslims in various parts of the Middle East. Horizontal othering is present when cultural labels are used to mark in-groups and out-groups that relate to each other with fear, hatred, and violence.

¹⁶ This point is developed effectively by David Brion Davis in his essay “At the Heart of Slavery,” in *The Image of God: Religion, Moral Values, and Our Heritage of Slavery* (New Haven: Yale University Press, 2001).

This is not *vertical*, because it does not involve Great Chain of Being thinking, but it is clearly *othering* because there must be a distinction that is made between the members of the groups, a distinction that carries enough weight ontologically to somehow justify violence against the out-group.

At the heart of pro-choice thinking, there is also a form of othering, which can be labeled *temporal othering*. The central argument made in defense of abortion is that the fetus is *not yet* a “person,” or a “human being,” who is a bearer of the right to life. The word “yet” acknowledges that the inhabitant of the womb is a being with a teleology; it is developing toward personhood, but it has not arrived yet at that status; it is an *other* in relation to you or I. Because we are older, we are persons, and we are in a position of sovereignty; therefore we can *impose* our will on the inhabitant of the womb and kill it if we do not want it to exist. As Giorgio Agamben says: “In modern biopolitics, sovereign is he who decides on the value or nonvalue of life as such.”¹⁷ Chantal Delsol echoes: “Dehumanization begins with the denial of human status, with the expulsion of certain humans beyond the frontiers of the species. One cannot brand others as ‘undeserving’ of human dignity without first branding them as ‘subhuman’—that is, without first dismissing them as radically other.”¹⁸

All three of the forms of othering just summarized—vertical, horizontal, and temporal—have in common that they are vectors of action within which human beings reject the Golden Rule, the vectors highlighted by dimensional anthropology. That this is the case with slavery and with horizontal othering is so obvious that it does not need argument. A slave owner does not want to be whipped and lynched; a Hutu does not want to be hacked to death with a machete. The abortion debate can be distilled down to this way of expressing

¹⁷ Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), 142.

¹⁸ Delsol, *The Unlearned Lessons of the Twentieth Century: An Essay on Late Modernity* (Wilmington, Del.: ISI Books, 2006), 13.

the stasis, the key either/or: *a pro-life advocate sees temporal othering as a possibility that ought to be rejected; a pro-choice advocate thinks of temporal othering as necessary for women's liberation.* The pro-life advocate believes that we ought to see in the inhabitant of the womb another “I,” because we all began as embryos. If we value our life we should realize that we have come into conscious existence because the previous generation protected and nurtured us; we should do the same with the younger generation. To seize for ourselves a lethal sovereignty cuts the bonds of life by rejecting the Golden Rule. The pro-choice advocate, on the other hand, either [1] refuses to see abortion as a rejection of the Golden Rule or [2] does see it as such, but justifies that rejection. The latter option [2] is expressed well by a character in a short story by Alice Walker: “Somewhere her child—she never dodged into the language of ‘fetuses’ and ‘amorphous growths’—was being flushed down a sewer. Gone all her or his chances to see the sunlight, savor a fig. ‘Well,’ she said to this child, ‘it was you or me, Kiddo, and I chose me.’”¹⁹ The *Salon* article by Mary Elizabeth Williams, referred to earlier in this chapter, is another example of this position. The former option [1] tries to argue that abortion does not break the Golden Rule because the “other” in the Rule’s “do unto others” only applies to equals, and because the inhabitant of the womb is not an “other” in that sense, its killing does not break the Rule. But there is no way that this argument can escape from the observation that there is an act of temporal othering at the root of this justification of lethal action. In the pro-choice view, the inhabitant of the womb is not an “other” (in the Golden Rule sense) because it is being rhetorically constructed as an inferior “other”; because it is being “othered.” A more convoluted and illogical position can hardly be imagined when it is realized that the one doing the othering was at one time in the past in the same position that he or she now claims is occupied by this “alien” other that can

¹⁹ Alice Walker, “The Abortion,” in *You Can't Keep a Good Woman Down* (New York: Harcourt, 1981), 70.

be killed with impunity. To view the inhabitant of the womb as an alien arises out a mode of inhabiting reality that is characterized by alienation from nature, from community, from history, from the Creator, and from one's own past as a living being.

I ask: Does a way of thinking deserve to be called "reasonable" if it self-interestedly declares itself to be immune from criticism because it has hidden itself behind a screen of individualistic "rights" that it itself has constructed? Is it "rational" to engage in othering, in preparation for engaging in actions which kill vulnerable human beings, when other forms of othering in recent human history are rightly rejected by rational people?

I have arrived at the conclusion that "reason" is not a faculty that is ahistorically built into all human beings. The defender of slavery, for example, would claim to be rational, if he were asked. But we today recognize that his reasoning was seriously flawed. We have a better grasp of the wrongness of slavery, and our thinking is thus more rational, not because we have a faculty that he lacked but because historical events and developments have given us a perspective on reality that he lacked. We are not superior to him in terms of our innate moral goodness; we are simply fortunate to have been born in a different time period. People in the future, one or two hundred years from now, will no doubt have a better grasp of certain moral truths than we have, and they will judge us, as we judge the slave owner. Our "reason," in sum, is not autonomous, but historical, which is to say that it is a *gift*—a gift of a special sort. This gift calls on us to employ it with a full sense of our responsibility as historical, rhetorical, and moral beings.

* * *

In the first chapter of this treatise I gave an account of how I asked my students "Where do rights come from?" The question flustered and confused them; it was a trick question

because it directed their attention away from themselves. If we want to know where rights come from *we need to look in the mirror*. When we grant or deny the right to life to other members of the human species, we are revealing our moral character. The notion “right before good” does not successfully create a space within which we can hide from this revelation. John Rawls and those who follow his thought seem to think that rights language functions as a kind of modest clothing which protects the dignity of the rights-bearer. I have come to believe, however, that rights language does the exact opposite; it strips naked, for all the world to see, the moral soul of the person using such language.

* * *

In this second part of this work, I have tried to construct a vision of how rights language ought to be used in the abortion debate. In the dichotomy that is often set up between those who see rights as socially constructed and those who see rights as built into the fabric of the universe, I have taken the counter-intuitive stance, for a pro-life advocate, of siding with the constructivist position. I do not see how the idea that rights are built into the fabric of the universe could be anything other than a view of the world that is itself a rhetorical construction. But in these last few pages I have argued that this stance simply reconfigures the abortion debate in a way that makes the discussion turn out even worse for the pro-choice position than it did under the critique of natural rights theorists such as Hadley Arkes. To say that rights language is always a rhetorical construction shines a spotlight on the moral character of the people doing the constructing. There is no place to hide from that intensely bright light.

I suggest that the truest use of rights language employs it as a linguistic hedge which seeks to prevent the victimization of human beings by other human beings. Rights language

is being used falsely when it functions to facilitate the freedom of action of those who would carry out lethal acts that end human lives. To grasp the truth and the falsity at work here is to be in tune with genuine moral progress.

I disagree with those who claim that—after all of the good and evil deeds which human beings have done, and all of the helpful and pernicious thoughts which human beings have thought in history, which provide us with rich opportunities for learning the positive and negative moral lessons of history—the best definition of moral progress that we can imagine is to use the noble tradition of rights language to facilitate the killing of millions of vulnerable human beings—by their mothers. To define moral progress in that way places our character in a very troubling light.

Chapter 11. What are human rights?

The purpose of the first part of this treatise was to paint a picture of the use of rights language in the abortion debate as a confused tangle. Rights language is crucially important in our culture, and also in complete disarray. The purpose of the second part of the treatise has been to probe more deeply to develop an understanding of the roots of the disarray. This was accomplished through examining realism and nominalism, dimensional anthropology, the history of rights language in the West, and the question of whether rights language hides or reveals our moral character. My purpose in this brief, concluding chapter is to try to answer the question “What are human rights?” more positively and constructively, rather than relying merely on critique. This is, however, only a sketchy outline.

1) **Rights are a linguistic phenomenon within some human cultures.** It is obviously not the case that all human cultures throughout history have employed rights language; therefore we need the word **some**. We need the phrase **linguistic phenomenon** because the word “rights” is not pointing to a physical object such as a tree or a table; the word “rights” is not hooked into the material world, but is an aspect of human language which seeks to play a role in human community.

2) **Rights language is rhetorical and moral** in the sense that it seeks to improve the quality of human life within community. Even the most dedicated individualist would agree with this statement, in that he or she would argue that the best community is one in which individuals are left alone to pursue their own ends. A more communitarian person would say that rights language improves the quality of social life by creating an atmosphere within

which people are more likely to help than to harm their fellow human beings. Rights language intends, in this view, to foster the development of social bonds and cooperation, which is the exact opposite of an anarchic war of all against all.

3) **Rights language is superficial** in the sense that it resides in the upper layer of a person's worldview. Deeper layers of a person's worldview include their philosophical or religious belief system, their emotions, and their deep intuitions about the nature of reality. Rights language is less likely to be used when people are talking about such matters, and more likely to be used when they are trying to advance a particular moral or political cause within the sphere of public debate and controversy. There, rights language attempts to persuade others to join in with a certain moral or political cause, but it often runs aground on the reality that those on the other side of the debate are also using rights language. Rights language, as it is commonly employed in today's philosophical and popular writings, seems to offer meager resources for leading public debate out of the cul-de-sac that it has led people into on the superficial level of consciousness.

4) **Our use of rights language reveals our moral character.** Slave-owners can claim that they have a right to own slaves; Nazis can claim that the strong have a right to kill the weak. The fact that a person uses rights language says nothing in itself about the philosophical quality of that use. The use of rights language by a person will be commendable and of high quality if that person's character is morally, philosophically, and psychologically mature. Maturity of character has two main components: 5) learning well the lessons that history teaches, and 6) integrating the complex dimensions of reality.

5) **The history of rights language is crucial to understanding the meaning of rights language.** The view that rights language has been employed only since the 1600s in Western

Europe is mistaken. The history of rights language as a linguistic practice, and as a deeply rooted moral concept, can be traced back to the Middle Ages, the ancient Greco-Roman world, and the world of the Bible. A broad understanding of this history leads to the awareness that rights language is less similar to a modern mechanical invention, like the locomotive, than it is to a slowly growing oak tree. Rights language seeks to build a linguistic hedge around human beings, protecting them from victimization. That all human beings should be protected, not harmed, is an idea that began to be articulated in the ancient world, but it has taken many centuries for it to work as a leaven within human culture, slowly but surely transforming it from within. Many people today simply assume the validity of this, without fully grasping how difficult it was for humanity to accept such ideas, because human culture, in its “default position” is more likely to create scapegoats than it is to protect human beings from victimage. The use of rights language today will be of high quality if the person who is using it has reflected deeply on the moral lessons about victimization that history teaches and allowed those lessons to accumulate within his or her consciousness; the person’s thinking and acting will be directed toward the struggle against victimization in our world today.

6) A rainbow, as a visual phenomenon, is an apt metaphor for explaining the concept of rights. A rainbow is a visual phenomenon which has three main elements: an observer, raindrops in the air, and a source of light. The observer is the subjective element in the phenomenon, in the sense that the rainbow is perceived within the consciousness of an individual. If the observer were travelling in a car, the rainbow would appear to be moving across the landscape. One cannot drive around a rainbow, as one could drive around a mountain, because it is an internal, subjective phenomenon. If a person is blind, they will

obviously not be able to see a rainbow; the capacity for vision is essential to the occurrence of the phenomenon. In the realm of rights, this corresponds to a capacity for moral vision in the human person. A Nazi, who does not see the right to life of the Jew, is morally blind.

The second main element is the raindrops in the air which are refracting light; this corresponds to the real (objective) existence of other human beings outside of the individual subject. Rights are not wholly subjective nor wholly objective; they are a complex event within which the subjective and the objective are synthesized. When I recognize and respect the rights of others, it is *I* who is doing the respecting of *others*.

But it is obvious that there is a third element that is needed, a source of light. Rainbows are seen during the daytime, not at night. This element of the metaphor points to the theological basis of rights language. In a purely materialistic universe, devoid of a Creator, there is no meaningful basis for rights language.¹ If all human behavior is simply reduced to brain chemistry, which is further reduced to the motions of atoms, then there is no particular reason why it would make sense to use rights language in articulating a normative vision for human culture. The killing of the Jew by the Nazi would be no more a violation of human rights than would the killing of an impala by a cheetah be a violation of impala rights, or than would the consumption of a fly by a venus flytrap be a violation of fly rights. Nature is simply a vast field of activity within which organisms kill other organisms. When Richard Dawkins says, for example, that in nature there is “no design, no purpose, no

¹ Christian Smith argues this case effectively in “Does Naturalism Warrant a Moral Belief in Universal Benevolence and Human Rights?” in *The Believing Primate: Scientific, Philosophical, and Theological Reflections on the Origin of Religion*, edited by Michael J. Murray and Jeffrey Schloss (Oxford: Oxford University Press, 2009), 292-317.

evil and no good, nothing but blind pitiless indifference,” he could have, and should have, added the phrase “no rights.”²

Rights language is intrinsically theological, in the sense that it calls human beings to relate to each other according to a vision of the good that comes from above, from God. The moral aspirations that lead human beings to transcend nature, “red in tooth and claw,” do not have a naturalistic explanation. When we act morally, with compassion, with self-restraint, with self-sacrificing concern for others, with nonviolence, with reason that controls our emotions, we are bearing witness to our creation by God in the image of God. There is no microscope ever made or that will ever be made that could enable a scientist to “see” the chemical processes in our brain that is the “cause” of such moral action. The Creator is the transcendent source of such action, when we live our lives attuned to that source.

The agent-based or subjective dimension of rights corresponds to the individual, whose moral character is brought into question by how they use rights language. The horizontal or objective / social dimension of rights corresponds to other human beings when our moral character is such that we can truly see their face and act toward them with love and justice. The vertical dimension, which we are outlining now, spans the poles which are traditionally referred to as God and nature, spirit and matter, the infinite and the finite. This is the backbone of reality. Rowan Williams points to this dimension when he argues that thinking about human rights needs to begin with awareness of the human body, which cannot ever be legitimately viewed as a piece of property. The body of each human being is related to its Creator “before it is related to any human system of power. . . . the irreducible core of human rights is the liberty to make sense as a bodily subject; which means that the

² Richard Dawkins, *River Out of Eden: A Darwinian View of Life* (New York: Basic Books/Harper Collins, 1995), 133.

inviolability of the body itself is where we should start in thinking about rights.”³ This approach of Williams, from the bottom up, dovetails well with the approach of Nicholas Wolterstorff, from the top down. Wolterstorff says that because God loves “each and every human being equally and permanently, then natural human rights inhere in the worth bestowed on human beings by that love. Natural human rights are what respect for that worth requires.”⁴ Williams and Wolterstorff are seeing the same phenomenon, which I am calling the backbone of reality, but they are describing it from below and from above.

In sum, rights language is healthy and commendable when it is creatively synthesizing the three dimensions of reality: the seer, the seen, and the source of light. Without the source of light, rights language as a linguistic practice becomes chaotic and confused; it is ignorant armies clashing in the night. There will be mutually contradictory theories of rights, such as we see in the modern world, and even when there is some agreement on the content of rights, as in the Universal Declaration of Human Rights, it will remain the case that there is no agreement on the philosophical foundations of those rights, and the rhetoric of such “universal” rights will accomplish little in stemming the flow of blood within human history. Consider these words by Vaclav Havel:

Politicians at international forums may reiterate a thousand times that the basis of the new world order must be universal respect for human rights, but it will mean nothing as long as this imperative does not derive from the respect of the miracle of Being, the miracle of the universe, the miracle of nature, the miracle of our own existence. Only someone who submits to the authority of the universal order and of creation, who values the right to be a

³ Rowan Williams, *Faith in the Public Square*, 154-55.

⁴ Nicholas Wolterstorff, *Justice: Rights and Wrongs*, 360.

part of it and a participant in it, can genuinely value himself and his neighbors, and thus honor their rights as well.⁵

The three key dimensions I have been referring to are all woven together here beautifully.

Consider also this quotation from Kierkegaard:

From the beginning of the world, no human being exists or has existed who is the neighbor in the sense that the king is the king, the scholar the scholar, your relative your relative—that is, in the sense of exceptionality or, what amounts to the same thing, in the sense of dissimilarity—no, every human being is the neighbor. In being king, beggar, rich man, poor man, male, female, etc., we are not like each other—therein we are indeed different. But in being the neighbor we are all unconditionally like each other. Dissimilarity is temporality's method of confusing that marks every human being differently, but the neighbor is eternity's mark—on every human being. Take many sheets of paper, write something different on each one; then no one will be like another. But then again take each single sheet; do not let yourself be confused by the diverse inscriptions, hold it up to the light, and you will see a common watermark on all of them. In the same way the neighbor is the common watermark, but you see it only by means of eternity's light when it shines through the dissimilarity.⁶

Rights language that is healthy is not just a synthesis of the subjective and the objective, self and other—it is that synthesis when seen with a source of light that is transcendent. The lower part of the vertical axis, nature, does not by itself give us moral wisdom. It is the

⁵ Vaclav Havel, "The Need for Transcendence in the Postmodern World," <http://www.worldtrans.org/whole/havelspeech.html>

⁶ Kierkegaard, *Works of Love*, 89.

upper part of the vertical axis, which gestures toward God, that makes it possible for us to see the rainbow, and thus to be a genuine protector of human rights.

Nominalism is the name for the variety of attempts that have been made by human beings to impose their partial, biased, views, which reflect an overemphasis on a particular dimension of reality. The rainbow analogy is my attempt to explain the concept of human rights from a realist perspective. But realism needs to see itself, I suggest, as having been rhetorically constructed by the influence of the Bible over many centuries. Realism has a transcendent source; it is not a direct reading of the phenomena of “nature.”

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VITA

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From 1998 to the present, he has maintained the Wabash Center Guide to Internet Resources in Religion. From 1998-2000 he worked as a theological librarian at Regent College in Vancouver, British Columbia. Since 2000 he has been on the faculty of Brite Divinity School, serving as Theological Librarian, and as an Assistant (2001-2006) and Associate (2006-present) Professor of Theology and Ethics. He has also taught as an adjunct professor in the Master of Liberal Arts program at Texas Christian University. He has attended conferences of the American Academy of Religion, the American Theological Library Association, the Søren Kierkegaard Society, the Colloquium on Violence and Religion, and University Faculty for Life.

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ABSTRACT

ABORTION AND RIGHTS LANGUAGE

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The abortion debate in the United States today is considered, with a particular focus on the use of rights language. The methodology of interpretation is dimensional anthropology rhetorical criticism, an approach developed by the author, which focuses on nature, divine transcendence, society, and individuality as the key dimensions within which rhetorical arguments are made regarding abortion. The first part of the thesis demonstrates that the use of rights language in the abortion debate (and in Western culture more generally) is in disarray. The second part of the thesis argues that: (1) rights language is always rhetorical, (2) dimensional anthropology enables us to understand better why different people use rights language in the way that they do, (3) René Girard's account of the historical roots of rights language in the West is important to consider, (4) the pro-choice position can be criticized from the pro-life perspective as a failure to maintain balance within the dimensions.