

PHILOSOPHY, THEOLOGY, AND LAW

The subject of this book is moral absolutes, i.e., kinds of action forbidden or required by morality whatever the circumstances or consequences.ⁱ Positive moral absolutes (e.g., *Provide for your family, no matter how*) swallow up all other moral requirements, and are for that reason hard to defend. And even negative absolutes must be few in number; otherwise we should be paralyzed. Nonetheless, moral absolutes, should we be able to discover them, would have considerable strategic importance, since they place limits on how moral judgments can diverge and thus allow moral reasoning to proceed without having to evaluate an endlessly widening range of options (usually on consequentialist grounds). If I do not have to consider killing my wife when she is in a bad mood, I will find moral judgment quite a bit simpler.

1.1. Ethics and Morals

I have become skeptical of the philosophical casuistry attempted in my *Ethics of Homicide*ⁱⁱ -- which is not the same as withdrawing the conclusions reached there. Philosophers who address social issues find themselves in the thick of political conflicts and messy personal situations to which the somewhat abstract forms of reasoning they favor are less than adequate. Contemporary practices need to be judged in the light of the expectations and understandings of those who take part in or are affected by them, which will supply premises that narrow the range of philosophical disagreement on issues of special ethics. The question of affirmative action, for example, makes sense only against the background of what one of the more astute writers on the issue frankly refers to as "the American Dream" -- i.e., the understanding of justice at which many citizens of the

United States have arrived in the Twentieth Century.ⁱⁱⁱ What is of greatest importance in discussions of applied ethics is not the conclusions reached by this or that writer, but what issues are taken as open for discussion. We take the wrongness of slavery for granted when we discuss surrogate mothering, but in fact the issue was only settled in America by a bloody Civil War. Casuistry, carried out in independence of religious belief on the one hand, and settled laws and *mores* on the other, quickly turns into a merely rhetorical exercise, in which one manipulates concepts to reach a foreordained conclusion. A philosopher cannot count on enough agreement, in advance of argument, to make possible a persuasive argument concerning controversial issues. One can always choose a narrower subset of one's contemporaries for one's audience, but -- except for some religious communities -- one is left to define that subset essentially for oneself.

It is necessary to distinguish *morals*, or the inherited principles of conduct to which we with varying degrees adhere, from *ethics*, or philosophical reflection on such principles.^{iv} Some people have strict morals; others have loose morals, and others no morals at all (and those who are strict on one set of issues may be loose on another), well before anyone reflects systematically on moral issues. There are many people who have moral codes but have never reflected on their philosophical justifications or implications, whereas ethics without morals is impossible (though some professional ethicists are reputed to approximate this condition). Morals were taught long before ethics arose, both in the life of the species and the life of the individual. Philosophical ethics is organized according to principles, whereas morals are organized by topic: communication, life and death issues, sexual morals, and so forth.

The experience of diversity of morals suggested a conclusion that Socrates and Plato strove to combat, that the moral code of any society is a conspiracy of the weak to keep the strong in line, which the superior person will happily disregard. But refuting sophistic egoism is not the same

thing as deriving a code of conduct, and Plato's reasons for his striking practical proposals are notoriously cryptic. Appeals to the privileged intuitions of the philosopher-king (or queen) only raise the issue, who is to count as a genuine philosopher, and who as a counterfeit. Even if we settle on some overarching moral theory and attempt relentlessly to apply it to concrete cases, we will quickly discover a looseness of fit between ethics and morals that interferes with our endeavor. Let us now suppose that we have somehow justified a moral code, and need only to apply it to the messy circumstances in which we find ourselves. The language we use in formulating that code, be it abstract like *utility* or concrete like *adultery*, is open-textured, and requires judgment in its application. Philosophers are no better at making the prudential judgments involved in applying it than are men and women of other sorts. And the same is true about the predictions about consequences (including the consequences of changes in our laws and *mores*) that play a large role in moral and political reasoning. .

Sometimes concrete cases are invoked to test abstract theories. But philosophers have been prepared to defend even the most repellent conclusions. The constraints on moral argument here are social -- and for that reason historically conditioned -- rather than philosophical, though they still may represent the ordinary person's grasp of moral truth rather than the de facto conventions of a given group.

A recurrent skepticism about ethical theory has a significant effect on moral reasoning, especially in the practical contexts (institutional review boards, for example) in which some philosophers find themselves these days. No longer -- or so many philosophers argue -- should we accept a top-down model of moral reasoning; on the contrary the interpretation of what has happened so far in the group in which the problem arise, and what its possible futures may be, plays an essential role in deliberation. In short the moralist needs to construct a description of the

problem situation, place the conflicting views of the parties within it, and thus point the way toward a resolution that will take into account the legitimate concerns of everyone involved. On this view, the moralist is no longer an expert in applying some moral theory, but is one among other participants in a process.

But even a perfect process may have a deficient, perhaps even a gravely unjust, result; moral philosophers dare not renounce the transcendence of moral obligation lest they end up sanctioning Nazism and the like. Still, no process is in fact perfect: those who believe a result to be deficient can always point to a deficiency in the process: either some interest has been systematically neglected, or one or more parties are ideologically closed to dialogue with the others, or indulge in systematic irrationalism. And examination of the issues that arise in contemporary society discloses that not only our particular understandings, but also the larger meta-narratives in which these narratives are embedded, are contested. For this reason moral disputes are as interminable on the process view as on any other.

Saints and martyrs are more important to the moral life than are philosophers. Even a philosopher like Socrates can find himself bound in conscience to oppose the dominant forces of his society, even if his reasons for so doing transcend the capacities of philosophical argument. One does not stop being a citizen or a moral agent, with an obligation to take a stand against evil, just by reading Wittgenstein. But we need somehow to distinguish saints and martyrs, even saints and martyrs with whom we disagree, from crackpots. One way of attempting to do so is their ability to appeal to a moral rule, for example that against the killing of innocent people, which we ourselves accept although we may not apply it as stringently as they do.

1.2. Philosophy and Theology

One philosophical tradition dismisses religion as morally irrelevant.^v Such an approach has some plausibility if we believe we can discover a fundamental moral principle, by which inherited codes can be evaluated and, where necessary, revised. But those of us who have grown skeptical of such a project have no alternative but to begin with the morality we have inherited from our ancestors, will ourselves transmit, in improved or impoverished form, to our descendants. And this morality is religiously entangled, so that those who wish to preserve something approximating traditional morality, while rejecting its accompanying religion, face a somewhat difficult problem. Belief in moral absolutes is particularly tied to the belief that moral requirements are divine commands, which we dare not violate for any reason. But other widely held moral principles, such as the inherent dignity of all persons, also have religious roots.

I here use Christian ethics as my example of religiously influenced moral reasoning, since I know the Christian tradition best. It does not seem appropriate, however, in a philosophical essay, to make acceptability to Christians a criterion for judging ethical theories^{vi}. Though one never escapes one's skin, a clear-headed Christian thinker still needs to distinguish between discourse addressed to fellow believers, and discourse addressed to all reasonable people -- even when reasonableness is understood as including a respectful attitude toward tradition.

Our moral tradition is a mixed affair, in which Christian elements exist alongside elements drawn from many other sources, including the Enlightenment and the Romantic Movement. A believing Christian will hope that the Christian elements in our tradition will prevail in a fair contest, but the contest still remains to be fought. Moreover, the implications of Christian belief for ethics (and for many other branches of philosophy) are now contested among self-described

Christians: what interpretations are acceptable is a matter for the Christian community (in exactly what way is itself contested) rather than for a philosopher.

The intuitive case for accepting some moral absolutes is strong, even without appealing to distinctively Christian notions. One critic of Joseph Fletcher's "new morality" cites "the rule against rape or ... using violence against an invalid, or babies, or the aged ... or peddling dope to children."^{vii} Groups that question such examples, say on the ground that one can benefit children by using drugs to liberate them from social convention, are nonetheless likely to hold moral absolutes (or virtual absolutes) of their own, say against informing on one's comrades to the enemy (for example, to the police). As Joram Graf Heber sums it up, "the appeal of absolutism lies in the value of the convictions we hold and our obstinate unwillingness to give them up."^{viii}

«USIX»One argument for traditional morality (including traditional moral absolutes) has a highly pragmatic character. One cannot invent a moral code even for oneself, and the constraints on doing so for a society, many of whose members are not given to reflection, are even more severe. And the evils that arise if we do not control our instincts and appetites are very grave. Hence we need to accept strict moral rules from our cultural background, and accept whatever losses adherence to them in difficult cases may entail. Nonetheless, many people, and not only philosophers, have affirmed, on the basis of a reflective consideration of experience, that all moral rules have exceptions. So the debate about moral absolutes is hardly over.

1.3. The Relevance of Moral Theology

Moral issues continue to be debated in relatively conventional religious contexts. And the families and informal communities, in which they also arise, are in significant ways like religious communities, though their lack of a formal doctrinal structure changes the character of the resulting discussions. But many of our religious and informal communities, including those, which at one

time had a reputation for solidarity of opinion, are now deeply divided. And the members of such communities are in disagreement, not only about the merits of particular issues, but also about the appropriate methods of moral reasoning and the range of legitimate opinion within the community. They also disagree about the question addressed in this book, whether there are sorts of actions that are wrong regardless of circumstances or consequences.

One should not expect theology to provide lucid solutions to problems left open by philosophy. For legalists and antinomians -- to use the polemical terms each uses for the other -- both have their favorite proof texts,^{ix} and their favorite hermeneutical strategies.^x The issue is not one that divides Roman Catholics and Protestants,^{xi} or corresponds to community boundaries of any other sort, but one that afflicts all reflective men and women. Hence not only the Bible, but also subsequent expressions of our various traditions, and "natural law" authorities such as Aristotle^{xii} and the common morality of the West^{xiii} are all open to multiple interpretations. Moral theology is of interest to philosophers in rather the way the law is, as the application of norms to actual human problems within the context of some particular community. In the case of the law, we are concerned with the settlement of disputes and the imposition of sanctions on transgressors. In the case of moral theology we are concerned with moral exhortation and the counseling of persons of troubled conscience -- all carried on within a community's whose self-understanding is expressed in ritual and (in a non-derogatory sense) myth. And both law and moral theology bring out a feature of moral discourse not always salient for ethical theory: the utility of clear and firm rules of conduct, to help us avoid both endless scruples of conscience and unlimited rationalizing.

1.3.01. Styles of Interpretation

An important methodological issues concerns interpretation, especially of authoritative texts such as the Bible and the Constitution; or of vaguer traditions such as the American way of life. Views on interpretation are to be understood as impulses and rhetorical strategies first, and as doctrines and methods only second.

At one end of the spectrum, fundamentalism^{xiv} responds to challenge by hardening doctrine and drawing the lines between those within and those without the community with increased sharpness.^{xv} Fundamentalists hold that the interpretation and application of such texts is self-evident to any "right-thinking" person,^{xvi} and that those who would adapt them to the felt necessities of the time are in bad faith. (A typical bit of fundamentalist reasoning, frequently cited in the literature, is as follows: Psalm 110 must have been written by David, since Jesus so quotes it -- ignoring the possibility that Jesus was simply using the customary name of the book of Psalms.) Usually the fundamentalist appeal is to some earlier, supposedly pristine, state of their tradition, but one sort of Catholic fundamentalism responds to challenge by making extreme claims for the authority of the (present) Pope.

Taken seriously (or, if you will, literally), fundamentalism leaves a community without capacity to adapt to changed circumstances, including advances in knowledge. But in fact fundamentalists have shown considerable capacity for innovation; their common sense is -- as is often the case with human beings -- better than their logic.

At the other end of the spectrum, deconstructionists hold that authoritative texts and traditions can be made to mean whatever an individual or group wants to make of them (and consequently are without effective authority). Deconstruction leaves a community without any norms, especially for the guidance of the rising generation, and thus invites a fundamentalist

response. Deconstruction and fundamentalism thus reinforce one another. For both assume that once space has been created for what Richard John Neuhaus calls "hermeneutical legerdemain"^{xvii} there are no limits to its operation.^{xviii}

1.3.02. Revealed Norms

Christians, like Jews and Moslems, traditionally hold that God has set forth certain moral standards (the Ten Commandments, for example). And God is immune to the limitations that afflict human legislators and those who formulate customary codes. Hence -- it might be thought -- believers can quickly conclude that some moral norms, i.e., those revealed by God, are absolute. Even in the most religious of moralities, moral absolutes must be the exception rather than the rule. But there is no absurdity in God's having revealed certain *prima facie* duties. And although God is immune to error and limitation, His human interpreters are not. Hence flexibility in the application of norms -- in technical language, equity -- is not excluded by appeal to their divine origin. The Ten Commandments do not recognize exceptions, but they do not include a no-exceptions clause either.

1.3.03. Infallibility

Many believers hold, not only that God has revealed certain norms, but also that these norms have been infallibly expressed in the documents of their tradition. The precise extent of this infallibility is disputed: some Catholics affirm,^{xix} whereas others deny,^{xx} that the teaching against contraception formulated in «MDUL»*Humanae Vitae*«MDNM» (1968), and other concrete teachings of the same sort, are infallible. Some people hold that we can reach infallible judgments about moral issues, without appeal to the collective judgment of some community, by examining the actions themselves or our individual consciences -- possibly, but not necessarily, thought of as the voice of God.^{xxi}

Questions of infallibility and exceptionlessness are not the same. We may have an infallible source for prima facie duties, or for moral rules that become obsolete as a result of historical changes. And exceptionless norms may rest on the authority of the individual's fallible conscience. But the two issues manifest the same deeper question: whether (and if so how and to what extent) it is possible to entrench our moral standards against the vicissitudes of historical and personal circumstance.

1.3.04 Judging the Heart

A maxim of Christian ethics that has become part of our common moral consciousness is *Judge not, lest you be judged*. This does not mean that we should cease to have moral standards, nor that we should not apply them to one another's conduct. Nor does it mean that, in cases of dispute, the more permissive interpretation of a rule is always to be favored. But it does bar any inference that the more rigorous position is for that reason alone the more virtuous one, as well as positions that exclude or minimize the possibility of good faith moral error.

The most important implication of the maxim against judging is that it requires a distinction between a person's deepest intentions and dispositions -- which are known to God alone -- and the behavioral and consequential features of his actions, which for social purposes may (and indeed must) be subjected to scrutiny. And self-examination has an important social dimension. Hence an approach to moral issues that neglects the behavioral and consequential features of our actions, and focuses entirely on an agent's orientation of reason and will, either is socially useless or breaches the precept against judging others.

Philosophers under the influence of Wittgenstein will argue as follows. Intentions and dispositions are meaningless unless somehow tied to behavior -- though necessary and sufficient behavioral conditions for their presence are not required. It is nonsense to suppose that someone

whose every visible act shows a deeply evil disposition is somehow good at heart, or that someone whose every visible act is that of a saint is nonetheless a deep-dyed scoundrel. We may lack knowledge of a person's circumstances and temptations, but when these are fully known, there is nothing else to know.

But we are here dealing with a maxim of Christian morality, however secular the context in which it may sometimes appear. Hence it is legitimate to point out that, according to the Christian faith. *God* knows our deepest intentions and dispositions, and is entitled to judge us, as our fellow human beings are not. And from a human point of view, we never know everything about a person's circumstances and temptations. Moreover, in our understanding of the human personality, a small detail may turn out to make a very large difference. Humility in judging others can therefore be argued for, at least in part, on secular grounds.

1.3.05. Love and Law

The formulation, interpretation, and application of moral rules will be informed by one's outlook on human beings and their world. If one is a Christian, one's moral understanding will be shaped by the centrality of unselfish love. But the tempering of the Law in the interests of love is not to be confused with a permissive interpretation of the Law. Questions about moral absolutes cannot be resolved by invoking a desire to make life easier for troubled people. In fact, the denial of moral absolutes may make life more difficult, in that it makes it more difficult to know what one ought to do.«

1.3.06. Grace

No serious morality can long avoid the question of grace. For whether our morality is customary, religious, philosophical, or personal in its origins, some people will find its requirements too hard to keep. Peter Singer plausibly -- though not necessarily correctly^{xxii}--

derives from utilitarian premises an obligation to observe a vegetarian diet, and to live on next to nothing and send one's surplus to people in Africa. But some people are as incapable of this way of life as they are of celibacy. And the same sort of incapacity exists for standards resting on individual self-interest, such as abstention from alcohol by recovering alcoholics.

In such a situation, there are two unappealing possibilities. One of them is to make a compassionate exemption from the moral law in favor of those who find it too hard to keep -- a strategy that quickly leaves us without any moral standards. For human beings can have an orientation to any form of behavior whatever, including rape and murder. Or we can declare those incapable of keeping the moral law ("hardened criminals," for example) moral outlaws -- exempt in principle from all moral requirements, even those they do not find initially difficult. Respectable people will protect themselves against such persons, both physically and psychologically, but will not attempt to address them in moral terms. Only what Charles Taylor has called a "moral source"^{xxiii} a Power capable of overcoming moral impotence and empowering us to put into practice the principles to which we adhere in theory -- can resolve the discrepancy we experience between the demands of our conscience and the limitations of our nature.

1.3.07. Sin

The antitype of grace is sin, not in the sense of specific transgression, but of deeply ingrained alienation from God (or -- more broadly -- whatever else one takes as one's moral source).

Theological liberals tend to deplore the influence of St. Augustine on the morality of the West, but he identified a strain in human nature that it would be dangerous to forget. There is abundant evidence for a perverse, even demonic, strain in the human make-up: perhaps the Saint located it too much in the region of the pelvis, but it is there. (It may not even be malice, in the strict sense of a desire to do evil for its own sake: a delight in the use of one's powers, and a corresponding

impatience with any constraint however necessary, will have many of the same practical consequences as malice.) This strain in our nature, and the need of any morality to control it, means that the most superficially reasonable moral position is not always in fact the most reasonable one. For a superficially reasonable moral argument make may dangerous concessions to the dark side of human nature.

1.3.08. God's Friendship

When a religious moralist says that an action offends God, he does not mean only that, unless the agent repents, he will be damned. He also means that it entails a present breach with God which the agent -- as in the case of a tragic sinner -- may recognize and regret, although he is unable to free himself from it.^{xxiv} Such alienation differs from alienation from a friend or a human community in that -- if theism is true -- it can never be justifiably incurred. But, for reasons I explain later, *never offend God* does not count as a moral absolute in the sense employed in this book.

1.3.09 Reward and Punishment

The possibility of divine reward and punishment, especially punishment after death, has often been pictured in luridly hedonistic terms. It is difficult to integrate such rewards and punishments into ordinary morality -- to avoid, for example, the conclusion that it is a good deed to kill a newly baptized infant, whose salvation will thereby be assured. One cannot appeal to the threat of hell fire to support the assertion that otherwise innocent actions are wrong. For a Power that punished and rewarded human beings at random could not be believed when It purported to reveal Its intentions.

1.3.10. Dostoevsky's Maxim

The best-known claim that morality and religion are essentially linked is Dostoevsky's maxim, *If God does not exist, then everything is permitted*. This maxim does not mean that atheists are without moral principles, or even that moral discussion cannot proceed, at least for a while, without appealing to theological considerations. In its most defensible sense, it means that morality without God will reveal its incoherence under pressure.

More specifically, morality without God breaks down in the following ways. (1) The morality discovered by examining our considered moral judgments is heterogeneous in character, and includes both consequentialist and deontological elements. We must find some way of avoiding the conclusion that this morality is inconsistent, for if we accept the doctrine of most logicians, that from a contradiction everything follows, such a morality will enable us to justify whatever we might desire to do.^{xxv} The alternative is to wall off inconsistencies through a variety of ad hoc devices.

(2) Moral standards need to be independent both of the *mores* of society and the inclinations of individuals, even when both of these have been purged by reflection. Moreover, unlike mathematics, the standards of morality have an imperative character that sometimes conflicts with custom and inclination. Kant's Categorical Imperative, hanging in metaphysical midair, is not a satisfactory articulation of this phenomenon.^{xxvi} If moral standards derive from or express the judgments or attitudes of human individuals or groups, there is no reason to expect them always to be consistent. Nor is there any reason to expect them always to override, even in principle, the preferences of individuals and the *mores* of society. But if they derive from a wise and benevolent God, we can both exclude incoherence and account for the imperative character of moral judgment.

1.4. Legal and Political Aspects

The civil law may seem to provide at least a partial answer to the questions of this book. For its norms are relatively clear, and its sanctions, though not perfectly reliable, are less mysterious than those which religion supplies. Moreover, there are serious arguments that some legal norms, for example those protecting free expression, should be held as absolute, even when observing them has significant costs. Free expression, it is argued, is so vital to the welfare of our society that it is worthwhile accepting such costs rather than making exceptions to the rules protecting it. And in general it may be highly useful to take certain matters off the political agenda, even "for good and all," so that men and women can live together in the confidence that their rights in such matters will be respected.

But, in some circumstances, a virtuous citizen will act outside the law and sensible officials ignore his violations, regardless of any formal authorization to do so.^{xxvii} And if this is true of citizens, how much more will it be the case of officials sworn to preserve and protect the institutions of their society in times of stress. Thus rules protecting free speech are by their very nature subject to one exception, that when the survival of the society that sustains free expression is at issue, all bets are off. (Though cautions against decisions taken in panic are always in order; domestic Communists did not in fact pose a "clear and present danger" to America's survival during the 1950s.) The subordination of free speech to the common good does not mean that it protects only one's political friends, only that sufficiently extreme circumstances may require exceptions to all merely political rules.^{xxviii} Yet liberal theorists have never been happy with the pragmatic status their principles must have on their larger assumptions. John Rawls, for example, begins his *Theory of Justice* with a ringing declaration of faith:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.^{xxix}

But in subsequent writings he has based his views on justice on an appeal to "overlapping consensus" that undercuts his invocation of the peremptory claims of truth.^{xxx} Nonetheless, he persistently attempts to protect liberal principles against revision or exceptions by ruling out potentially disruptive sorts of considerations from reasoning about justice and political liberty.^{xxxi}

Crucial to Rawls's finished argument for political absolutes is his conception of public reason, i.e., of a constrained form of reason to which we are limited, at least when we discuss central constitutional issues. This conception of reasonableness limits not only the deliberations of legislators and judges, or the dialogue among citizens, but even the private reasons on which an individual citizen votes. As Rawls puts it, "the ideal of public reason not only governs the public discourse of elections insofar as the issues involve those fundamental questions, but also how citizens are to cast their vote on those questions" (p. 215).

This sort of constraint disenfranchises many voters, for it denies their right to vote their convictions. To ask Catholics, feminists, or Mormons to ignore their beliefs when voting, or to refrain from joining with others like themselves to express shared concerns in the public arena, is on its face both repressive and, in a generally open society, absurd.

Rawls defends his strategy by appealing to civic fairness (p. 217). But fair-mindedness requires us to listen to men and women whose positions may require us to modify our conception of public reason, at least as if they are expressed in a reasoned manner. Rawls in fact concedes that

citizens like the abolitionists and Martin Luther King may appeal to their comprehensive views, so long as the end result is to strengthen public reason (Lect. VI, § 8). Moved perhaps by piety, he is even prepared defend Abraham Lincoln's "Second Inaugural with its prophetic (Old Testament) interpretation of the Civil War as God's punishment for the sin [of] slavery, falling equally on North and South" on the ground that "what he says has no implications bearing on constitutional essentials or matters of basic justice [!]" (p. 254).

A sort of benign Machiavellianism is possible. Persons exercising authority are entitled not to recite the exceptions to norms whenever they invoke them -- at least if there is no plausible reason to suppose that such exceptions obtain in the case at hand. Imagining foreign invasion when nothing of the kind is occurring, except perhaps in the overheated imaginations of partisans, is a dangerous proceeding. But may we go further and deny exceptions that we in fact fully intend to and expect to make (and regard ourselves as entirely justified in making)? I should say not, except insofar as law^{xxxiii} is regarded as a mere array of rules, from which any reasonable person would depart from upon occasion. For to introduce an element of deceit into the fundamentals of social life has devastating implications. I have in mind the citation of moral considerations to warrant one's own actions and criticize those of others. If one's morality is treated as a fact about one's self like one's ancestry, lying about it, say to the Nazis, presents a different question.

I conclude by attempting to state in what sense this book represents a philosophical inquiry, as opposed to a theological reflection or an explication of the «MDUL»mores«MDNM» of late twentieth century America. While I presume the acceptance of at least vaguely Christian moral views, believing Jews, agnostics, and atheists are among my intended readers. I am particularly interested in addressing the sort of agnostic who wishes to maintain the broadly Christian character of our moral tradition, on the ground that this is the only sort of morality a society such as ours can

be brought to accept. On the other hand, the moral sensibility of my own time is too incoherent to be susceptible of the sort of reconstruction I attempted in *The Ethics of Homicide*. Hence my argument is intended to appeal to men and women of reflective conscience, who may frequently find themselves required to take a critical attitude toward the *mores*.

NOTES

ⁱ For further conceptual refinement, and an important distinction between strong and weak absolutism, see Joram Graf Haber ed., *Absolutism and its Consequentialist Critics* (Lanham, Md.: Rowman and Littlefield, 1994), Introduction.

ⁱⁱ Ithaca, N.Y.: Cornell University Press, 1978. Paperback ed.; Notre Dame: University of Notre Dame Press, 1990.

ⁱⁱⁱ Louis Katzner, "Is the Favoring of Women and Blacks in Employment and Educational Opportunities Justified?" *Philosophy of Law*, Joel Feinberg and Hyman Gross eds., (Belmont, Calif.: Wadsworth, 1980), p. 356.

^{iv} I here develop further lines of thought begun in my essay, "Theory and Practice in Ethics," *Moral Theory and Moral Judgments in Medical Ethics*, Baruch A. Brody ed. (Dodrecht: Kluwer, 1988), pp. 213-23. For further discussion see Stanley G. Clarke and Evan Simpson eds., *Anti-Theory in Ethics and Moral Conservatism* (Albany: SUNY Press, 1987).

^v On how this view came to dominate the American academy, see George M. Marsden, *The Soul of the American University* (New York: Oxford University Press, 1994).

^{vi} This sentence is directed against J.L.A. Garcia, "Love and Absolutes in Christian Ethics," in Thomas P. Flint ed., *Christian Philosophy* (Notre Dame: University of Notre Dame Press, 1990), pp. 163-3 and 193 n.1

^{vii} John W. Swomley, Jr., Book Review in Fellowship, November 1966; reprinted in Harvey Cox ed., *The Situation Ethics Debate* (Philadelphia: Westminster, 1968), p. 87. None of these rules is taught plainly in Scripture, in the way a prohibition on theft or homosexual practices is.

^{viii} *Absolutism and its Consequentialist Critics*, p. 2.

^{ix} A Christian legalist can cite Mark 10:19, where Jesus endorses the Mosaic Law. A Christian antinomian will prefer John 13:34, where Jesus proclaims the "new commandment" of love.

Citations on both sides could be multiplied.

^x For a Biblical defense of situation ethics, see O. Sydney Barr, *The Christian New Morality* (New York: Oxford University Press, 1969). Garth Hallett, *Christian Moral Reasoning* (Notre Dame: University of Notre Dame Press, 1967), ch. 4, defends "value-balancing" with the help of the later Christian tradition. For the legalist response, see John Finnis, *Moral Absolutes* (Washington, D.C: Catholic University of America Press, 1991).

^{xi} For a comparison between Protestant and Catholic approaches to moral issues, see James F. Gustafson, *Protestant and Roman Catholic Ethics* (Chicago: University of Chicago Press, 1978).

^{xii} Finnis, *Moral Absolutes*, pp. 31-34, points out that Aristotle recognizes moral absolutes, including a prohibition of adultery (*Nichomachean Ethics*, 1107a9-17). But adultery for Aristotle included intercourse with a married woman by a man not her husband, and not, as it does for us, intercourse by a married man with a woman other than his wife.

^{xiii} Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Clarendon Press, 1987), ch. 4, invoke "common morality" to support a moral argument for unilateral nuclear disarmament. But, though a morality that rules out consequentialist reasoning as radically as theirs does may be true, it can hardly claim to be common.

^{xiv} On the problems of definition, see the essays by Jarislov Pelikan, George M. Marsden, Clark H. Pinnock, and James Davison Hunter in Norman J. Cohen ed., *The Fundamentalist Phenomenon* (Grand Rapids: Eerdmans, 1990), chs. 1-4, as well as Martin E. Marty and R. Scott Appleby,

"Conclusion," in their collection *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991), ch. 15.

^{xv}Ernest R. Sandeen, *The Roots of Fundamentalism* (Chicago: University of Chicago Press, 1970), sees fundamentalism as primarily a millenarian movement. But millenarianism is a stiffening of resistance to the modern world -- both by emphasizing those elements of the Christian tradition most offensive to modern people and by asserting that the modern world itself is destined for imminent destruction.

^{xvi} On the centrality of common sense epistemology in the hermeneutics and polemics of American fundamentalism, see Marsden, *Fundamentalism and American Culture* (New York: Oxford University Press, 1980), esp. ch. 24

^{xvii} Neuhaus, *The Catholic Moment* (San Francisco: Harper, 1990).

^{xviii} James Barr, *Fundamentalism* (London: SCM Press, 1977), esp. ch. 1, argues that the issue for Protestant fundamentalists at least is not interpretation but Biblical inerrancy. But with sufficient hermeneutical agility, any difficulty can be overcome.

^{xix} E.g., John C. Ford, S.J., and Germain Grisez, "Contraception and the Infallibility of the Ordinary Magisterium," in Ford *et al.*, *The Teaching of Humanae Vitae* (San Francisco: Ignatius, 1988), pp. 117-219.

^{xx} E.g., Francis A. Sullivan, S.J., *Magisterium* (New York: Paulist, 1983), pp. 140-52.

^{xxi} David Solomon calls this position "moral fideism."

^{xxii} See my "Moral Basis of Vegetarianism," *Philosophy*, October 1978, for an evaluation of Singer's arguments.

^{xxiii} Taylor, *Sources of the Self* (Cambridge, Mass.: Harvard University Press, 1989).

^{xxiv} See Dietrich and Alice von Hildebrand, *Morality and Situation Ethics* (Chicago: Franciscan Herald Press, 1966), ch. 3.

^{xxv} See my article, "The Conscious Acceptance of Guilt in the Necessary Murder," *Ethics*, April 1978.

^{xxvi} See my *Relativism, Nihilism, and God* (Notre Dame: University of Notre Dame Press, 1989) and Leszek Kolakowski, *Religion* (New York: Oxford University Press, 1982).

^{xxvii} For a detailed study of this problem, see Mortimer R. Kadish and Sanford H. Kadish, *Discretion to Disobey* (Stanford, Calif.: Stanford University Press, 1973).

^{xxviii} This sentence is directed against Stanley Fish, *There's No Such Thing as Free Speech ... and it's a Good Thing, Too* (New York: Oxford University Press, 1994).

^{xxix} Rawls. *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 3.

^{xxx} "Kantian Constructivism in Ethics," *Journal of Philosophy*, 77 (1980), 515-72; "Justice as Fairness: Political not Metaphysical," *Philosophy & Public Affairs*, 14 (1985), 223-51; and "The Idea of Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (1987), 1-25. Rawls's later work is brought together in his *Political Liberalism* (New York: Columbia University Press, 1993), which I cite parenthetically in the text.

^{xxxi} For example, "that we have one conception of the good rather than another is not relevant from a moral standpoint. In acquiring it we are influenced by the same sort of contingencies that lead us to rule out knowledge of our sex and class." ("Fairness to Goodness," *Philosophical Review*, 84 [1975], 337.)

^{xxxii} I am indebted to James L. Nelson for pointing out the need for this distinction.