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### The Rhetoric of Anti-Relativism in a Culture of Certainty

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## The Rhetoric of Anti-Relativism in a Culture of Certainty

HOWARD LESNICK†

[THE DUKE OF] NORFOLK (*Walks away and turns*) All right—we're at war with the Pope! The Pope's a Prince, isn't he?

[SIR THOMAS] MORE He is.

NORFOLK And a bad one?

MORE Bad enough. But the theory is that he's also the Vicar of God, the descendant of St. Peter, our only link with Christ.

NORFOLK (*Sneering*) A tenuous link.

MORE Oh, tenuous indeed.

NORFOLK (*To the others*) Does this make sense? . . . You'll forfeit all you've got—which includes the respect of your country—for a theory?

MORE (*Hotly*) The Apostolic Succession of the Pope is (*Stops; interested*) . . . Why, it's a theory, yes; you can't see it; can't touch it; it's a theory. . . . But what matters to me is not whether it's true or not but that I believe it to be true, or rather, not that I *believe* it, but that *I believe* it . . . .

Robert Bolt, *A Man for All Seasons*<sup>1</sup>

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† Jefferson B. Fordham Professor of Law, University of Pennsylvania. This Essay had its genesis in a paper prepared for a conference on "Law and Democracy in the Empire of Force," held at the University of Michigan Law School in April 2007. I thank Professors James Boyd White, of Michigan, and H. Jefferson Powell, of Duke University, Law Schools, for inviting me to participate and for very helpful comments on the paper. I also acknowledge, with thanks, the insights of Professors Edward A. Hartnett, of Seton Hall, and Amelia J. Uelmen, of Fordham University, Law Schools.

1. ROBERT BOLT, *A MAN FOR ALL SEASONS* 91 (1990).

Nothing can count as a reason for holding a belief except another belief.

Donald Davidson<sup>2</sup>

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#### INTRODUCTION

The unholy trinity of much public discourse today is Liberalism, Secularism, and Relativism. Like a (very small) deck of cards, they are often thought to support one another, to engender one another, at times allowed even to stand in for one another semantically. Whether as three or as one, they are widely viewed as the root cause of much of our social malaise.

Let me start with expressions of the evils of the first two “isms,” chosen almost at random:

Liberalism . . . seems unable to arrest the barbarism of modern culture; indeed, contemporary liberalism is implicated in many of the most corrosive moral and intellectual trends of our time.<sup>3</sup>

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2. DONALD DAVIDSON, *A Coherence Theory of Truth and Knowledge*, in *SUBJECTIVE, INTERSUBJECTIVE, OBJECTIVE* 137, 141 (2001).

3. Matthew Berke, *A Jewish Appreciation of Catholic Social Teaching*, in *CATHOLICISM, LIBERALISM, AND COMMUNITARIANISM: THE CATHOLIC INTELLECTUAL TRADITION AND THE MORAL FOUNDATIONS OF DEMOCRACY* 235, 237 (Kenneth L. Grasso et al. eds., 1995).

The general climate of society . . . shows a radical loss of the sense of the transcendent, a devaluation of the religious dimension of human experience, and a great disregard for spiritual values. As a consequence of this general social impoverishment caused by secularism, life both personal and social is more and more guided by practical atheism, which leaves unchecked the worst human tendencies and thus delivers people to the other great vices of these societies: individualism, utilitarianism, hedonism, materialism, and consumerism.<sup>4</sup>

I find sadly apt the description of our culture as “corrosive,” in some ways even “barbaric,” and as widely characterized by “individualism, utilitarianism, hedonism, materialism, and consumerism.”<sup>5</sup> I also deeply deplore the “radical loss of the sense of the transcendent”<sup>6</sup> in contemporary society. I find seriously problematic, however, the tendentious attribution of such social evils to the influence of relativism, liberalism, and secularism, especially because it serves to obscure the fact that the political outlook of many of the severest critics of liberalism and secularism often legitimates that very catalogue of social ills.

To me, the terms liberalism and secularism are too protean for words, and I will not address their responsibility for prevalent social evils. I offer instead a critique of anti-relativism.

### I. ANTI-RELATIVISM

I confess at the outset that my claim will in no way be new; indeed, were it not for anti-relativism’s robust popularity, my objection to its rhetoric could justly be viewed as banal. But almost any day one can find published efforts to claim warrant for a set of moral positions by standing firm against relativism.

The truth of a moral claim cannot be established by an objection to relativism.<sup>7</sup> At best, the objection can succeed

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4. HERMINIO RICO, JOHN PAUL II AND THE LEGACY OF *DIGNITATIS HUMANA*E 205 (2002) (attributing this view to Pope John Paul II).

5. *Id.*

6. *Id.*

7. In this claim, I am following Clifford Geertz, who, in coining (so far as I am aware) the term, “anti anti-relativism,” called anti-relativism “an antique

(if it is not merely declaimed) in establishing that such a claim may have “truth value,” that its truth is not “only a feeling” or “just a matter of opinion,” but it does not begin to address the question whether the proposition posited or asserted correctly expresses the truth of the matter. Indeed, it is only because I reject relativism, as I do, that I can contend that the widespread use of the charge of relativism to allow one to avoid engaging with claims to a different “knowledge” of the truth regarding a moral issue is not simply annoying but wrongful; a form of rhetorical immorality, if you will. The wrong is compounded when, as too often is the case, the charge sweeps all whose moral sensibilities differ into the same derisively labeled trash pail, and compounded further when defense of a position on anti-relativist grounds is bound up with a repellant indifference to the human suffering the position casually overlooks or seeks to justify.

The anti-relativist might object at the outset that I am misconceiving the claim. It is not a specific moral position—a single ethical assertion, say, divorce is a wrongful act (whether always or only in specified circumstances)—that one is seeking to support (in the example, by attacking a defense of the moral standing of divorce) as based on relativism. That claim might well be termed a category mistake, supporting a challenged ethical contention with a meta-ethical one. The relevant claim, this contention maintains, is rather that what might be termed a “culture of relativism” in contemporary society creates a generalized aura of lassitude about the truth of many moral scruples, such that people come to take a “live and let live” attitude toward a whole range of conduct previously thought freighted with (negative) moral significance. That fog dispelled, the immorality of such conduct once again will appear plain.

The claim so articulated begs the question, however, of the moral status of the panoply of “moral scruples” that previously reigned unchallenged. The critique is often based not on lassitude, but on an assertedly long overdue emergence of a more penetrating morality, recognizing and

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mistake.” Clifford Geertz, *Anti Anti-relativism*, 86 AM. ANTHROPOLOGIST 263 (1984), reprinted in RELATIVISM: INTERPRETATION AND CONFRONTATION 12, 12 (Michael Krausz ed., 1989). With Geertz, my effort is “to counter a view rather than to defend the view it claims to be counter to.” *Id.* at 12.

seeking to work free of the pervasive *immorality* of (formerly) prevailing moral norms. To stay with the example, it is not divorce but rather imprisoning people (usually women) in oppressive marriages that is wrongful. Expressing the emancipatory claim in relativist terms is indeed at times an unfortunate way of making what is in truth a profoundly content-laden moral objection.<sup>8</sup> But the counter-charge against “relativism” is nonetheless a device to reaffirm the traditional moral position without needing to engage seriously with the morality-grounded concerns of its critics. That it may succeed in diverting attention from the need for such an engagement is hardly a defense.

Whether the conflict in moral norms is posed as a matter of the general cultural environment or of specific moral questions, my contention is that the issue is evaded by framing it as the infirmity of relativism.

Objecting to the misuse of questioning the soundness of relativism does not of course warrant ruling objections to relativism out of bounds, and I will say why I do reject it as a meta-ethical stance. The focus on relativism is a distraction from recognition of the significance of conflicts in justified beliefs about a moral question; what is condemned as a “culture of relativism” may in fact be (less ringingly) a “culture of conflicting justified beliefs,” concededly complicating our moral environment, but all things considered constituting an enrichment, or at the least a potential enrichment, of it.

## II. RELATIVISM

The primary question I will consider has arisen in settings as inconspicuous as was Geertz’s venue—the 1983 annual meeting of the American Anthropologists Association—and as unprecedentedly public as was the prelude to the 2005 Conclave of the Roman Catholic College of Cardinals, where in his last published statement prior to being elected Pope, Cardinal Joseph Ratzinger, with a very large percentage of the people of the world attending closely, condemned a perceived “dictatorship of relativism”:

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8. “The claim that moral laws are unjust is inescapably a moral claim.” ROBERT P. GEORGE, MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY 3 (1993).

[R]elativism, which is letting oneself be tossed and “swept along by every wind of teaching,” looks like the only attitude up to today’s standards. We are moving toward a dictatorship of relativism that does not recognize anything as certain and has as its highest goal one’s own ego and one’s own desires.<sup>9</sup>

In somewhat more than twenty years Geertz’s “anti anti-relativism” has garnered approximately 500 Google entries; in slightly more than twenty months Pope Benedict’s “dictatorship of relativism” some 50,000.<sup>10</sup> But that disparity has no evaluative import, in either direction.

Geertz devoted much of his critique to a demonstration of the rhetorical excesses of anti-relativists in anthropology.<sup>11</sup> I prefer to look here at the target of the firing squad, and its appropriateness as a target, rather than at the ammunition used to dispatch it. What is “relativism”? There is of course a variousness in the beliefs of self-described relativists, but it will serve for present purposes to note two variants. The first, emphasizing what morality is thought to be *relative to*, is well summarized by Judge Richard Posner:

[T]here are no *interesting* moral universals. There are tautological ones, such as “murder is wrong” where “murder” means “wrongful killing” . . . . But what counts as murder . . . varies enormously from society to society. There are a handful of rudimentary principles of social cooperation . . . that may be common to all human societies . . . . But they are too abstract to be criterial. Meaningful moral realism is therefore out, and a form (not every form) of moral relativism is in. Relativism in turn invites an *adaptationist* conception of morality, in which morality is judged—nonmorally, in the way that a hammer might be judged well or

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9. Cardinal Joseph Ratzinger, *Future Pope’s Homily for Conclave’s Opening*, 34 ORIGINS 720 (2005). The quoted passage is from the Letter to the Ephesians 4:14. A slightly different translation appears in the official text:

[L]etting oneself be “tossed here and there, carried about by every wind of doctrine,” seems the only attitude that can cope with modern times. We are building a dictatorship of relativism that does not recognize anything as definitive and whose ultimate goal consists solely of one’s own ego and desires.

Cardinal Joseph Ratzinger, *Mass Pro Eligendo Romano Pontifice* (Apr. 18, 2005), [http://www.vatican.va/gpII/documents/homily-pro-eligendo-pontifice\\_20050418\\_en.html](http://www.vatican.va/gpII/documents/homily-pro-eligendo-pontifice_20050418_en.html).

10. As of April 1, 2007.

11. Geertz, *supra* note 7, at 15-17.

poorly adapted to its goal of hammering nails into wood or plaster—by its contribution to the survival, or other ultimate goals, of a society or some group within it . . . . [M]oral progress is in the eye of the beholder.<sup>12</sup>

This approach sees morality as a matter of convention and function, a description of social practices and utilities, lacking any basis for noninstrumental evaluation. A stronger version of relativism as to morality asserts that, when one says that a certain practice is “wrong” (or “right,” in the moral sense; “immoral” or “moral”), he or she can only be telling you something about the speaker. Morality, David Hume asserted, “is more properly felt than judg’d of.”<sup>13</sup> To a relativist (Hume was not), the feeling cannot be evidence of a truth existing independently of it, to which it points, because there is no “truth to which it points”; there exists only a “taste,” “preference,” or condemnatory practice of the evaluator. On this view, as my former colleague, Michael Moore, put it: “[T]he only thing to be said about watermelons or concentration camps is that some people like them and some people don’t.”<sup>14</sup>

Moore’s *bon mot* has to be understood in context. Of course, it is not literally the “only” thing a relativist (professed or otherwise) would say. Richard Rorty, for example, although he urges us to “give up the idea that the point of discourse is to represent reality accurately,”<sup>15</sup> would unquestionably not be neutral in his judgment of concentration camps.<sup>16</sup> What a relativist would not do is ground a negative judgment about concentration camps in a commitment to a “mind-independent” truth.

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12. RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 6 (1999) (citation omitted).

13. DAVID HUME, *A TREATISE OF HUMAN NATURE* 470 (L.A. Selby-Bigge ed., 1986).

14. Michael Moore, *Moral Reality*, 1982 WIS. L. REV. 1061, 1064.

15. RICHARD RORTY, *PHILOSOPHY AND SOCIAL HOPE* 85-86 (1999). “[M]oral progress’ is at least in part a matter of increasing moral knowledge . . . about something independent of our social practices . . . .” *Id.* at 84. While regarding the term as an “epithet,” he acknowledges that his views fit his own conception of a relativist: “of course we pragmatists never call *ourselves* relativists.” *Id.* at xvi.

16. See his endorsement of Judith Shklar’s famous definition of a liberal as one who believes that “cruelty is the worst thing we do.” RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY*, at xv (1989).



Moore's and Ratzinger's statements have in common a critical stance toward relativism—and a tendency to describe it in ways that maximize its unacceptability to a reader or listener. It is necessary to be careful about taking the content or meaning of a disputed way of thinking from one who is opposed to it. Ratzinger's "definition" of relativism is pure invective; few if any relativists think that all positions are equal, or regard "one's own desires" as unquestionable; it is only that one's values or goals cannot be evaluated by an external standard of truth, for no such external standard exists. Whether that is a distinction without a difference is a fair question, which I will address in context; the answer should not, however, be taken for granted.

It is also necessary to try to untangle the relation between relativism and secular thinking, and between relativism and liberalism, describing those relations unaffected by any presumptive condemnation or embrace of any of them. I will begin with relativism and secularism.

### III. RELATIVISM AND SECULARISM

It has often been observed that all secular philosophies since Descartes begin in doubt; therefore in one sense they do not (in Cardinal Ratzinger's words) "recognize anything as certain."<sup>17</sup>

The official English text also renders his words as, "every wind of doctrine," referring to relativism as "the only attitude that can cope with modern times."<sup>18</sup> This is a significantly more cautious statement than "every wind of teaching', [which] looks like the only attitude up to today's standards."<sup>19</sup> Although the modification obviously intended to retain a pejorative cast, were the statement regretful rather than militant I would readily agree that relativism often "seems the only doctrine that can cope with modern times." Religions begin in faith, their adherents often

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17. Ratzinger, *Future Pope's Homily for Conclave's Opening*, *supra* note 9, at 720. The official English text uses the word, "definitive," rather than "certain," evidencing a careful attention to nuance and toning the statement down a bit. See Ratzinger, *Mass Pro Eligendo Romano Pontifice*, *supra* note 9, at 2.

18. Ratzinger, *Mass Pro Eligendo Romano Pontifice*, *supra* note 9, at 2.

19. Ratzinger, *Future Pope's Homily for Conclave's Opening*, *supra* note 9, at 720.

committing themselves to positing the truth of specific (albeit often differing) premises.<sup>20</sup> Yet, as Arthur Leff pointed out a generation ago,<sup>21</sup> most secular philosophies soon coast along with grounding premises that, if not held with certainty, are deemed “proven” by the rhetorical device of positing assignment of the burden of proof to an unprovable “contradictory value.”<sup>22</sup> For their part, relativists too accept the “truth” of specific propositions as working hypotheses, rationally (if only provisionally) grounding action.<sup>23</sup>

A tight nexus between relativist and secular thought has been propounded in three different ways; the first two seek to protect religious belief by condemning relativism, the third, proceeding from a critical stance toward religion, seeks to protect relativism by claiming that non-relativist thinking is essentially religious. As usually stated, all are fallacious, in my judgment.

20. This is not the only way in which religion is primarily understood. However, it is the sense most widely encountered, and the one most relevant to the present discussion. For one presentation of a common taxonomy of what, to people thinking of themselves as religious, religion is primarily about, see GEORGE A. LINDBECK, *THE NATURE OF DOCTRINE: RELIGION AND THEOLOGY IN A POSTLIBERAL AGE* (1984). Lindbeck classifies the several conceptions of religion as “cognitively propositional,” primarily involving “informative propositions or truth claims about objective realities”; “experiential-expressive,” described as “noninformative and nondiscursive symbols of inner feelings, attitudes, or existential orientations”; and “cultural-linguistic,” which are “communally authoritative rules of discourse, attitude, and action.” *Id.* at 16-18.

21. Arthur Allen Leff, *Unspeaking Ethics, Unnatural Law*, 1979 DUKE L. J. 1229.

22. *See id.* at 1240. Also, as Leff notes:

If a series of values is set forth to be justified—“proved” in the strong sense . . . all attempts will necessarily fail. On the other hand, if the set includes a value that is to prevail unless some other contradictory value is “proved,” then the value not requiring proof will always win.

*Id.*

23. John Dewey put the matter clearly:

If inquiry begins in doubt, it terminates in the institution of conditions which remove need for doubt . . . . This settled condition is a demarcating characteristic of genuine belief. . . . [Yet] [t]he “settlement” of a particular situation . . . is no guarantee that that settled conclusion will always remain settled. . . . [T]here is no belief so settled as not to be exposed to further inquiry.

JOHN DEWEY, *LOGIC: THE THEORY OF INQUIRY* 7-8 (1938).

A. *Acceptance of (Some Set of) Religious Beliefs is the Only Safeguard Against Relativist Thinking*

As Dostoevsky's Ivan Karamazov famously put it: "Without God . . . everything is permitted."<sup>24</sup> The most one can charitably say about this claim is that it is somewhat understandable: One who does not have a secular consciousness might well imagine that one who does will tend to doubt the claim of moral reality, and will therefore lack any basis for denying the "permissibility" of any act. Ivan's *fear* is widely shared, and not to be sneered at. However, the generalization is infirm both logically and empirically. Many who reject theistic metaphysics honestly hold, and can respectably defend, a belief in the existence and discernment of moral truth, transcending personal or cultural boundaries. More fundamentally, those not holding such a belief almost never deem everything "permitted," albeit they are using the word in a sense that does not posit an external source of constraint.<sup>25</sup> That both sorts of

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24. FYODOR DOSTOEVSKY, *THE BROTHERS KARAMAZOV* 589 (N. Point Press 1990).

25. Reference to philosophers as different as Michael Moore and Martha Nussbaum suffices to establish the truth of these two sentences. Regarding Moore, see Michael S. Moore, *Good Without God*, in *NATURAL LAW, LIBERALISM, AND MORALITY* 221, 260 (Robert P. George ed., 1996) (concluding that "God does no work at all" in grounding the "objectivity of morals."). Martha Nussbaum, writing of "ethical standards that are independent of the norms and traditions of a particular culture," maintains that such a non-relativist conception "does not mean that justice and equality and personhood are supposed to be extra-human and ahistorical standards. For some philosophers who talk this way (e.g. Plato) they are; for others (Socrates, Aristotle, Kant, Mill) . . . they are not." Martha C. Nussbaum, *Valuing Values: A Case for Reasoned Commitment*, 6 *YALE J.L. & HUMAN.* 197, 214 (1994).

*United States v. Seeger*, 380 U.S. 163, 165-66, 173 (1965), gave powerful recognition to the existence and salience of binding moral scruples not grounded in religious belief as that term is typically understood. Although eligibility for exemption from the draft on the basis of conscientious objection to participation in war was limited by Congress to those whose objection was grounded in "religious training and belief," defined as belief in "a Supreme Being," the Court deemed eligible for exemption an applicant who declared himself unable to avow such a belief. The Court of Appeals held:

When Daniel Andrew Seeger insists that he is obeying the dictates of his conscience or the imperatives of an absolute morality, it would seem impossible to say with assurance that he is not bowing to "external commands" in virtually the same sense as is the objector who defers to the will of a supernatural power.

skeptics may not live up to their beliefs and professions in no way distinguishes them from religious folks.

Tendencies apart, as a claim of entailment the proposition either begs the question or is a non sequitur. Arthur Leff, describing God—whether “He” exists or not—as the “unchallengeable creator of the right and the good,” famously claimed that, absent God, “the only available evaluators are people,” and no premise said to ground a moral position can withstand “the grand sez who.”<sup>26</sup> It is a fundamental error, however, to read “challengeable” as “non-existent.” Anti-relativists may contend that, without God, *all* moral deliberation is a facade, rationalization justifying willfulness. They are flat-out wrong in this, however. Rationalization is an ever-present temptation, and belief in God hardly inoculates one against its hazards,<sup>27</sup> for the question how one discerns the Will of God remains. “Challenge” is as common within religiously-grounded moral disputation as it is across the religious-secular divide. That the “right answer” is sometimes in dispute does not imply that there are no wrong answers, or that all contenders are of equal merit.<sup>28</sup>

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326 F.2d 846, 853 (2d Cir. 1964), *aff'd in part, rev'd in part*, 380 U.S. 163 (1965). The Supreme Court agreed, finding that “the statute does not distinguish between externally and internally derived beliefs.” 380 U.S. at 186.

Moreover, as the references to Rorty, *supra* notes 15-16 and accompanying text, make clear, even those denying the existence of any culture-independent moral standards nonetheless draw moral boundaries, albeit ones relative to culture.

26. Leff, *supra* note 21, at 1230, 1233.

27. Indeed, the very confidence of anti-relativists in the matter tempts me to wonder whether their confidence manifests an (understandable) desire to be “lashed to the mast” of a transcendental authority, lest they too lapse into rationalization, and thereby into error.

28. I find Nussbaum, *supra* note 25, at 206-09, especially helpful on this point. Matthew Berke, on the other hand, falls into a polarized analysis that blocks his awareness of the point made in the text. “In the absence of any final standards,” he asserts (regarding relativism), “the individual is completely free to determine right and wrong for himself or herself, and to live accordingly.” Berke, *supra* note 3, at 240. Yes, in a sense; and in the *presence* of final standards, an individual is “completely free” to misperceive or misapply them.

B. *Relativism is Necessarily Grounded in a Secular Outlook on the World*

While the previous claim presumes a rejection of (or an aversive reaction to) relativism in order to support acceptance of a religious outlook, one making this assertion typically presumes a rejection of secular thinking in order to support a rejection of relativism. Empirically, it is probably true that most relativists are nonreligious. Those who are not are likely to think of themselves as pluralists rather than relativists.<sup>29</sup> To their detractors, the distinction is of no great importance.<sup>30</sup> Religious pluralists, however, may appropriately cavil at having their mere existence falsified by being termed an oxymoron. There is a sense in which they do “relativize” their religious professions, which a more traditional theist honestly regards as oxymoronic. In doing that, however, the theist is staking a claim to a certain definition of “religion,” and sincerity and bewilderment (even anger) at having to surrender exclusive possession of one’s most dearly cherished words does not suffice to establish title.

C. *Belief in the Existence of the Mind-Independent Reality of Moral Principles is Necessarily a “Religious” Belief, Whether Acknowledged or Disclaimed*

This claim is ordinarily made by one who views religion as an inherently defective mystification, and seeks to support relativism as the only way to steer clear of such failings. It is perhaps less commonly encountered today than it was a few generations ago. Richard Rorty, although careful to distinguish the religious from the secular realist, regards them for this purpose as equally benighted: “Anybody who thinks that there are well-grounded theoretical answers to . . . moral dilemmas . . . is still, in his

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29. For example, see the essays contained in *THE MYTH OF CHRISTIAN UNIQUENESS: TOWARD A PLURALISTIC THEOLOGY OF RELIGIONS* (John Hicks & Paul F. Knitter eds., 1987). In particular, see Langdon Gilkey, *Plurality and Its Theological Implications*, in *id.* at 37, and Paul F. Knitter, *Toward a Liberation Theology of Religions*, in *id.* at 178, 181-90.

30. See, e.g., *CHRISTIAN UNIQUENESS RECONSIDERED: THE MYTH OF A PLURALISTIC THEOLOGY OF RELIGIONS* (Gavin D’Costa ed., 1990). In particular, see Leslie Newbigin, *Religion for the Marketplace*, in *id.* at 135, and Paul J. Griffiths, *The Uniqueness of Christian Doctrine Defended*, in *id.* at 157.

heart, a theologian or a metaphysician.”<sup>31</sup> This usage presumes, a bit subliminally, the inherent incompatibility of claims about the nature of reality with respectable intellectual work.<sup>32</sup> Ironically enough, it is similar to the use of the term “relativist” as an epithet, of which Rorty justly complains.<sup>33</sup> In truth, the charge that secular realists are in fact religious is made as a rhetorical move: when coming from a secular relativist, it is meant to consign them to a world-view held in a certain amount of disdain; when coming from a religious anti-relativist, it serves (in a psychologically complex way) to undermine the legitimacy of a secular avowal by asserting that moral realism is no less a religion, which the relativist presumably looks down upon (although the speaker does not).

One can, however, support a claimed connection between moral realism and religion without a pejorative cast on a quasi-definitional ground. Clifford Geertz describes “the heart of . . . the religious perspective” as “the conviction that the values one holds are grounded in the inherent structure of reality, that between the way one ought to live and the way things really are there is an unbreakable inner connection.”<sup>34</sup>

A strikingly similar assertion comes, interestingly, from a very different thinker. Bertrand Russell wrote over a century ago of “the position which we have become accustomed to regard as specially religious, maintaining that, in some hidden manner, the world of fact is really harmonious with the world of ideals.”<sup>35</sup> God, Russell asserts, is “the mystic unity of what is and what should

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31. RORTY, *supra* note 16, at xv.

32. Michael Moore, presenting the case for the validity of the claim of moral realism, begins by acknowledging that the term “conjures up images of a kind of Aurora Borealis, but without the lights.” Moore, *supra* note 14, at 1062. I have suggested that, “when the talk is in religious terms . . . the image comes with lights, and the charge of mystification is that they dazzle rather than illuminate.” HOWARD LESNICK, LISTENING FOR GOD: RELIGION AND MORAL DISCERNMENT 53 (1998).

33. See *supra*, note 15.

34. CLIFFORD GEERTZ, ISLAM OBSERVED: RELIGIOUS DEVELOPMENT IN MOROCCO AND INDONESIA 97 (1968).

35. BERTRAND RUSSELL, *A Free Man's Worship*, in MYSTICISM AND LOGIC 46, 49 (1951).

be.”<sup>36</sup>

It would not, however, be faithful to the spirit of Geertz’s “inductive” approach to the problem of “defining” religion<sup>37</sup> or to Russell’s self-described skepticism<sup>38</sup> to use insights such as these as a basis for ascribing a religious orientation to one who is fervently claiming to be a non-believer.

To me, the core of the matter is this: Whether secular thinking is in error is an ontological, not an empirical or pragmatic, question. To attack secularism as promoting relativism, or to attack relativism as grounded in secularism, engages with neither secular nor relativist thinking. Even if in the process it did not mistake the source (or the consequence) of a moral stance that it means to dispute, it would be rhetorically objectionable, for it displaces attention from the *content* of that stance.

The truth, of course, is that both secular and relativist thinking share, to a substantial degree, a common cause—a market economy—which at the same time legitimates the very “individualism, utilitarianism, hedonism, materialism, and consumerism”<sup>39</sup> that many anti-relativists selectively deplore. As Craig M. Gay, examining “The Recent Evangelical Debate Over Capitalism,”<sup>40</sup> puts the matter:

[T]he market economy has institutionalized . . . a particular kind

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36. *Id.*

37. Geertz abjures the search for a “universal property” that “divides religious phenomena off from nonreligious ones with Cartesian sharpness,” in favor of “a set of inexact similarities, which are yet genuine similarities, [which] we sense to inhere in a given body of material.” GEERTZ, *supra* note 34, at 96-97. He terms this approach “a definitional procedure of a more inductive sort . . . . We are attempting to articulate a way of looking at the world, not to describe an unusual object.” *Id.*

38. Russell, *supra* note 35, at 49-50. Additionally,

When we have realised that Power is largely bad, that man, with his knowledge of good and evil, is but a helpless atom in a world which has no such knowledge, the choice is again presented to us: Shall we worship Force, or shall we worship Goodness? Shall our God exist and be evil, or shall he be recognised as the creation of our own conscience?

*Id.*

39. RICO, *supra* note 4, at 205.

40. This is the subtitle of his book, CRAIG M. GAY, WITH LIBERTY AND JUSTICE FOR WHOM?: THE RECENT EVANGELICAL DEBATE OVER CAPITALISM (1991).

of rationality. “[T]he cost-profit calculus . . . powerfully propels the logic of enterprise . . . rationalizing . . . man’s tools and philosophies, his medical practice, his picture of the cosmos, his outlook on life, everything in fact including his concepts of beauty and justice and his spiritual ambitions.”

. . . .  
. . . [M]odern secularization and decadence are not entirely attributable to “secular humanism.” Indeed, the nineteenth-century cultural pattern to which many of those on the evangelical right would have us return—a pattern in which capitalism was more firmly bounded by the constraints of family, church, and community—was at least in part destroyed by capitalism itself.<sup>41</sup>

Yet, far too many self-professed anti-relativists are quick to defend the ethic of a market economy, directing their ire elsewhere.<sup>42</sup>

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41. *Id.* at 233-34 (quoting JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 123-24 (1950)). Jeff Powell describes “[t]he accumulation of private possessions, the rejection of intrusive social impositions, and the assertion of individual autonomy” as “constitutive elements of American society . . . for most if not all of the nation’s history.” H. Jefferson Powell, *The Earthly Peace of the Liberal Republic*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 71, 85 (Michael W. McConnell et al. eds., 2001). He posits further that “American society implicitly identifies the human good with [a] comfortable, materialistic life . . . and is organized around the endless reproduction of that lifestyle for those with the means . . . .” *Id.* Also see the critique of the “dominance of the market over increasingly large domains of social and cultural life” in David Hollenbach, *Afterword: A Community of Freedom*, in CATHOLICISM AND LIBERALISM: CONTRIBUTIONS TO AMERICAN PUBLIC PHILOSOPHY 327-32 (R. Bruce Douglass & David Hollenbach eds., 1994).

42. See, for example, Todd Whitmore’s critique of Michael Novak’s failure to recognize that “the seemingly unending quest for more and more of ever more specialized and refined items and services in a consumer society is a spiritual and moral malady.” Todd David Whitmore, *John Paul II, Michael Novak, and the Distance Between Them*, 21 ANN. SOC’Y CHRISTIAN ETHICS 215, 224 (2001). See also, for a perhaps trivial, but telling, example, Richard John Neuhaus, *A Word for Commercializing Christmas*, FIRST THINGS, Dec. 1993, at 66, 76, warning his readers to be “braced for this year’s round of campaigning against the commercialization of Christmas,” Neuhaus goes on: “Last year the National Council of Churches (NCC) got a broad array of religious leadership types to sign on with a ‘Campaign to Take Commercialism Out of Christmas.’” He quotes approvingly a description of the NCC’s stance as “spiritual arrogance in a kind of snobbish hostility to the simple pleasures people get in buying, giving, and receiving.” *Id.* Neuhaus goes on, stating, “I see no sympathy toward the instinct of generosity nor any real appreciation of the genuine blessing of material prosperity. Advertisers and merchants are demonized, and their legitimate economic vocations are demeaned.” *Id.*



## IV. RELATIVISM AND LIBERALISM

What of the relation between relativism and liberalism? I have already commented (silently) on the claim that relativism flows from liberalism by proffering as a paradigmatic avowal of one core meaning of relativism, that of a paradigmatic conservative, Judge Richard Posner.<sup>43</sup> Recognizing, however, that the example may establish no more than the almost boundless variousness of meaning that the term, liberalism, has—Posner's support for "free market" allocations might even garner him that appellation—I will rely instead on another noted Chicago conservative, Cardinal Francis George.

Cardinal George has supplied a penetrating and balanced account of the several arenas of thought in which the terms liberal and conservative each have varying but mutually reinforcing meanings. It is, in my judgment, fair-minded, respectful and careful, and worth quoting extensively:

[In] the political context, . . . [c]onservatives usually associate themselves with the constituted authorities, giving them the benefit of the doubt so that the order which saves us from anarchy and social violence can be maintained. Liberals contribute to the common good by beginning most often with a suspicion about abuse of authority and a critique of the exercise of power. They are a "loyal opposition," loyal to the goals of good government but not to the established rulers when the rulers themselves impede the achievement of those goals.

In the economic context, . . . liberals are more concerned with the distribution of wealth and look to government to see that the political equality of all citizens is mirrored, at least roughly, in their economic equality . . . . Conservatives . . . tend to be more concerned with the conditions of the creation of wealth and understand that the right to economic initiative cannot be separated from other individual rights and freedoms. In a business economy, they argue, all are enriched in time, even if there are serious inequalities for a time . . . .

In the psychological context, "liberal" and "conservative" describe attitudes or mindsets toward societal change. Conservatives are closed to changes which threaten good order and liberals are more open to the risk of proposed change . . . .

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43. POSNER, *supra* note 12, at 6.

In epistemological theory, . . . respective stances toward the foundations of knowledge differentiate liberals and conservatives . . . Conservative certitude and the legitimate quest for certitude about the foundations either of faith or of an intellectual discipline can be pushed into fundamentalism; liberal criticism of the same foundations can degenerate into skepticism or . . . relativism . . .<sup>44</sup>

These attributions rigorously avoid exaggeration or pejorative; I find in them nothing that a liberal or conservative need seriously disavow or object to. (Indeed, one would need to look elsewhere—although perhaps no further than the remainder of the essay—even to infer from them which stance the author favors). His only assertion of the connection between liberalism and relativism—“liberal criticism can degenerate into relativism”—obviously presumes the infirmity of relativism, but he is speaking about liberalism, not relativism. He resists any urge further to link the two, and in place of the bogey that anti-relativist rhetoric so often heatedly conjures up, we find in his words only a cautionary admonition, one that liberals would do well to take to heart.<sup>45</sup>

Cardinal George’s ability and willingness to speak empathically of views he does not himself hold aids me to

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44. Francis George, *How Liberalism Fails the Church: The Cardinal Explains*, COMMONWEAL, Nov. 19, 1999, at 24. Although of lesser relevance here, Cardinal George’s explication of the meaning of these terms in one additional context, that of “American religion,” deserves not to be omitted. He asserts:

[L]iberal religion treats God as an ideal, a goal expressing all that is best in human experience, while the real agents of change in the world are human persons. Religious language is important poetry, agnostic about who God is, but expressive of our experience of wholeness. . . . Worship may be structured but, at its heart, religion is ethical and the social agenda central. By contrast, conservative religion is keenly aware of God’s agency. God is real, independent, powerful, active. God’s presence is felt in prayer and in the reading of his holy word. Religious language is most often literal, and the Bible is often read much like a newspaper . . . . The social agenda tends to be peripheral, because God will change things at . . . some . . . moment we can only wait for.

*Id.* at 25.

45. An exchange with Ed Hartnett has led me to recognize—too late to correct the error—that my passing agreement with Cardinal George’s admonition does not adequately attend to its importance and relevance. See *infra*, note 112 and accompanying text.

realize that much of the asserted linking of liberalism and relativism may proceed from an unacknowledged conflation of relativism and *pluralism*. The similarities are real, yet the differences are fundamental. Pluralism asserts that, although objective criteria support (at least some) of our ethical choices, a person's or group's beliefs (however strongly held) do not justify insisting that others, who believe the contrary, nonetheless live by them. Pluralism is an approach to the question of how a *society* should respond to the fact that there is a great (although not limitless) diversity of moral norms among people of good will. To the extent that pluralism speaks to us as individuals, it affects our opinions and beliefs, not by altering their content or even the assurance with which we hold them, but rather ameliorating the intensity and fervor with which we assert them and the stance that we take toward those whose moral sense differs from our own.

There are some who regard the pluralism of civil society as, at best, a regrettable necessity, perhaps hopefully a temporary one, until enough of their fellow citizens come to see the rightness of their views that there is the political will needed to act on them. However, pluralism as a philosophical stance—and here it may well be intertwined with political liberalism—is rooted in a celebration, rather than a grudging and resigned acceptance, of the diversity of moral insight. Pluralism proceeds from the belief that as humans we are created (and this word can be understood in religious or secular terms) with the capacity and the desire to seek, to discern, and to follow the good, but that in all of those capacities and desires we are limited—in no way more than in our capacity to know that we have authoritatively found the Truth.

In this way, it may supply what Lawrence Hinman terms a “middle ground” between relativism and realism (which he terms “absolutism”), one that “incorporates insights from both”:

From relativism, it retains the sensitivity to the contextuality of our moral beliefs and the recognition that moral disagreement and conflict are permanent features of the moral landscape. From absolutism, it retains the commitment to the relevance of reasoned discourse in the moral life and the belief that some moral positions

are better than others.<sup>46</sup>

It would be naïve to suggest that those who scornfully dismiss relativism, on pondering the ways in which pluralism differs from it, would find pluralism attractive. I do think that their continuing critique would necessarily focus more authentically on the matters genuinely at issue, which I will explore in the succeeding sections of this Essay.

## V. TRUTH AND CERTAINTY

To return to what I believe is the fundamental failing of anti-relativism, the attempt to support a moral claim by attacking relativism, ignores—or, worse yet, diverts attention from—the fact that any assertion of a truth about morality raises, but does not answer, the question, how one knows it. Jeffrey Stout has made the point well, in my judgment:

I claim that positing a transcendent Moral Law (or the like) does not help explain what it is for a moral proposition to be true. Nor, I claim, does such a posit help as a criterion for judging the truth of moral propositions. [However,] neither of these claims . . . implies that there are no moral truths.<sup>47</sup>

To speak as Stout does is to insist that a claim of the truth of a moral matter engages the distinction between there being a “truth of a matter” (which exists independent of what anyone believes regarding it) and the justification for believing the truth of an assertion regarding its content. The existence of such a distinction is certainly open to challenge, but it should not be elided, whether by one who doubts the reality of a mind-independent truth or by one who is certain that he or she knows what the content of that truth is.

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46. LAWRENCE HINMAN, *ETHICS: A PLURALISTIC APPROACH TO MORAL THEORY* 48 (1994). On the need for pluralism to “police its boundaries,” see JOAN F. GOODMAN & HOWARD LESNICK, *THE MORAL STAKE IN EDUCATION: CONTESTED PREMISES AND PRACTICES* 100-03 (2000).

47. JEFFREY STOUT, *ETHICS AFTER BABEL: THE LANGUAGES OF MORALS AND THEIR DISCONTENTS* 35 (2001). Simon Blackburn notes that “you can admit the authority of truth without immediately supposing you possess it.” SIMON BLACKBURN, *TRUTH: A GUIDE* 29 (2005). Yes, and you can *proclaim* the authority of truth without *establishing* that you possess it.

The distinction is challenged frontally by many relativists. Denying the existence of “a transcendent Moral Law,”<sup>48</sup> they draw their inspiration from John Dewey, to whom both belief and knowledge describe the same condition, which he termed “warranted assertibility” and which he described as “the institution of conditions which remove need for doubt”<sup>49</sup>:

*Belief* may be so understood as to be a fitting designation for the outcome of inquiry. . . . The word *knowledge* is also a suitable term to designate the objective and close of inquiry . . . . That which satisfactorily terminates inquiry is, by definition, knowledge; it is knowledge because it is the appropriate close of inquiry . . . . [T]he term “warranted assertion” is preferred to the terms *belief* and *knowledge*. It is free from the ambiguity of these latter terms . . . .<sup>50</sup>

What Dewey regarded as removing an ambiguity to me creates it. It is true that relativists would not *define* knowledge, as most philosophers ordinarily do, as belief that is true as well as justified<sup>51</sup> because such usage suggests that “true” has a meaning that goes beyond “justification” or “warrant.” Since relativists deny that suggestion, they naturally will deem the standard definition question-begging. However, by giving “truth” a meaning that effectively conflates it with justification, they are also begging the question (although assuming a different answer).

It seems clearer to retain the verbal distinction, while allowing relativists to preserve their objection to the metaphysical existence of truth so defined, rather than to define the issue away. Preserving the distinction between belief and knowledge permits us readily to understand one another across that critical boundary, without necessarily crossing it, in either direction. For a non-relativist to assert that a specific moral norm is “true” is most usefully understood as a claim about (an instance of) the content of

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48. *Id.*

49. DEWEY, *supra* note 23, at 7.

50. *Id.* at 7-9.

51. Linda Zagzebski, for example, refers to “[t]he traditional proposal that knowledge is true belief based upon good reasons . . . .” Linda Zagzebski, *What is Knowledge?*, in THE BLACKWELL GUIDE TO EPISTEMOLOGY 92, 95 (John Greco & Ernest Sosa eds., 1999).

reality, and is a coherent statement to one who believes that no such reality exists, as well as to one who believes to the contrary.

If “knowledge” denotes truth, its existence cannot be verified.<sup>52</sup> “I may *know*, but do I know (or only believe) that I know; if I do (know), do I know (or only believe) that I know that I know;” et seq.—but it can be believed with greater and greater justification. The assertion that one “knows” is a *functional* claim, asserting that the extent of persisting uncertainty is of no existential or decisional significance. Conceptually, it may be faulted as analogous to taking a last step to disregard or overpower (rather than respect or transcend) Zeno’s Paradox: If, having begun in Philadelphia, I successively travel one-half of the distance to Ann Arbor 100 times, it is “true” that I am not yet there, but I may nonetheless have a compelling reason to act as if I am, and no reason to act as if I am not. Indeed, in most circumstances, to say that I am not yet there would simply be a bit of pedantry, even though neither inductively nor deductively can the gap remaining be bridged.

The millions of people who would join Job in insisting, “I *know* that my Redeemer liveth,”<sup>53</sup> have taken that “last step” as their first, by reason of religious faith. Faith may ground certainty, as may love (and *perhaps* even hope), but reason cannot.<sup>54</sup> Martha Nussbaum, writing of “Love’s Knowledge,” terms that condition “cataleptic”: “The cataleptic impression is said to have the power,” she writes, “just through its own felt quality, to drag us to assent, to

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52. What Jeremy Waldron writes about justice is more broadly apt: “No matter how often or emphatically we deploy words like ‘objective,’ a claim about what justice *objectively* requires never appears except as someone’s view . . . . Although there may *be* an objective truth about justice . . . it inevitably comes to us as one contestant view among others.” Jeremy Waldron, *The Circumstances of Integrity*, 3 LEGAL THEORY 1, 13 (1997).

53. *Job* 19:25 (emphasis added).

54. Arthur Leff again remains persuasive:

One would think that a fully considered moral position, the product of deep and thorough intellectual activity, one that fits together into a fairly consistent whole, would deserve more respect than shallow, expletive, internally inconsistent ethical decisions. Alas, to think that would be to think wrong: labor and logic have no *necessary* connection to ethical truth.

Leff, *supra* note 21, at 1238.

convince us that things could not be otherwise.”<sup>55</sup> One may then be speaking loosely of “certainty,” yet have warrant for the avowal.

But certainty is necessarily a condition that describes the stance toward reality of the person-believing (or knowing). It cannot be a statement *about* the world external to the speaker, for no one has unmediated access to reality or unmediated access to anyone else’s assertion of such access.<sup>56</sup> Even Euclid never “looked on Reality bare.”<sup>57</sup>

To the “certain” believer—whether the source of certainty is faith, love, or reason—it will not appear so, and for him or her to speak as if nothing has been said about

55. MARTHA C. NUSSBAUM, *Love’s Knowledge*, in *LOVE’S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* 261, 265 (1990).

56. Access to another’s claim is necessarily mediated by belief in the truth of the other’s access. Robert Bellah felicitously asserts, “[t]here is no truth that truths itself,” Robert N. Bellah, *At Home and Not At Home: Religious Pluralism and Religious Truth*, *CHRISTIAN CENTURY*, Apr. 19, 1995, at 425; and David Luban terms revelation “esoteric,” in the sense that “to rely on it is to have faith in the prophets who communicate the revelation.” David Luban, *A Theological Argument Against Theopolitics*, 16 *INST. FOR PHIL. & PUB. POL’Y REP.* 10, 13 (1996). Jeff Powell describes the opposition of seventeenth century British Protestants to any exposition of Scripture that “went beyond the text [as], of necessity, a ‘human invention,’ ‘which a discreet Man may do well; but ’tis his Scripture, not the Holy Ghost[s].’” H. Jefferson Powell, *The Original Understanding of Original Intent*, 98 *HARV. L. REV.* 885, 889-90 (1985) (quoting JOHN SELDEN, *TABLE-TALK: BEING THE DISCOURSE OF JOHN SELDEN ESQ.* 45 (1699)). One of the most famous teachings of George Fox, founder of the Religious Society of Friends, challenges those whose “knowledge” of God is not based on direct personal experience but on the witness of others (even those who, in his mind, were History’s highest witnesses to Truth). Margaret Fell, an early supporter and later his wife, reports first hearing Fox preach in these words:

[T]he scriptures were the prophets’ words, and Christ’s and the apostles’ words, and what as they spoke they enjoyed and possessed, and had it from the Lord . . . [t]hen what had any to do with the scriptures, but as they came to the spirit that gave them forth. You will say, Christ saith this, and the apostles say this; but what canst thou say? . . . [W]hat thou speakest, is it inwardly from God?

Margaret Fox, *The Testimony of Margaret Fox*, in 1 *THE WORKS OF GEORGE FOX* 49, 50 (1975). On hearing this, Margaret Fox “cried bitterly. . . [w]e are all thieves, we are all thieves, we have taken the scriptures in words, and know nothing of them in ourselves.” *Id.*

57. Edna St. Vincent Millay may have led us to understate the matter, I am suggesting, when she began a sonnet, “Euclid alone has looked on Beauty bare.” EDNA ST. VINCENT MILLAY, *Euclid Alone has Looked on Beauty Bare*, in *THE SELECTED POETRY OF EDNA ST. VINCENT MILLAY* 155 (2001).

“reality bare” is to belie that certainty. It cannot be inherently improper to refuse to do so. Yet, there is a boundary, I suggest, the crossing of which is not justified by certainty of belief. I will use the term triumphalism to describe that which lies across that boundary, and turn now to its exploration.

## VI. TRIUMPHALISM

To me, the essence of triumphalism—whether in religion, nationalism, or any other profound source of values<sup>58</sup>—is the movement beyond holding a set of beliefs as “known,” as to be true and certain, to maintaining that such certainty suffices to delegitimize any claim that the contrary belief of another may be justified. That is just the difference that Robert Bolt’s Sir Thomas More (as quoted in the epigraph to this Essay) realized and, after a momentary spontaneous lapse, respected regarding his commitment to the truth of the Papal claim to the authority given by Jesus to St. Peter. More would not take an oath avowing that which contradicted his actual belief. It was the fact of his belief, and not the truth of its foundation (although he believed it to be true), that was dispositive.

More was confronting a dissonance between his speech (the oath)<sup>59</sup> and his beliefs. More typically, the conflict is between the sense of certainty about the truth of one’s beliefs and the fact that others question their truth (and what may follow from them). Clifford Geertz has described felicitously the reason why conversation in that context is challenging. He writes of “the collection of notions a people has of how reality is at base put together” as its world view, and the “general style of . . . the way they do things and like to see things done” as its ethos.<sup>60</sup> He describes “the office of religious symbols” as to “render the world view believable

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58. The primary example of the merging of nationalist and religious grounds is Israel, as its renewed existence (after 1900 years) and continued survival is understood by many Jews (and Christians). Certain varieties of “American exceptionalism” fit this model, usually (although perhaps not necessarily) through a religious foundation, which sees this country as in some unexplained way the special object of providential care. I will not address the phenomenon of nationalist triumphalism, whether religiously based or not.

59. “What is an oath but words we say to God?” BOLT, *supra* note 1, at 140.

60. GEERTZ, *supra* note 34, at 97.



and the ethos justifiable . . . by invoking each in support of the other,”<sup>61</sup> and observes:

Seen from outside the religious perspective, this sort of hanging a picture from a nail driven into its frame appears as a kind of sleight of hand. Seen from inside, it appears as a simple fact. . . . [R]eligious beliefs . . . are regarded as being not conclusions from experience . . . but as being prior to it. For those who hold them, religious beliefs are not inductive, they are paradigmatic; the world . . . provides not evidences for their truth but illustrations of it. They are a light cast upon human life from somewhere outside it.<sup>62</sup>

What to the believer is obvious, to the skeptic is simple question-begging. What the one sees in the other as obduracy (or worse), the other sees in the one as triumphalism (or worse). The willingness to entertain the possibility that one’s fundamental avowals are in error is to one a fateful step on a dark and slippery road to apostasy; the unwillingness to take that step is to the other a mark of subjection (nascent or full-blown) to “tyranny over the mind.”<sup>63</sup>

Alvin Plantinga, defending the ethical permissibility of believing that his religion is true and that other beliefs, when contrary to it, are false, observes:

I must concede that there are a variety of ways in which I can be and have been intellectually arrogant and egotistic; I have certainly fallen into this vice in the past and no doubt am not free of it now. But am I really arrogant and egotistic just by virtue of believing what I *know* others don’t believe, where I can’t show

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61. *Id.*

62. *Id.* at 97-98. Note that what Geertz denies regarding religious beliefs is not their foundation in experience, but that they embody “conclusions from experience.” *Id.* at 98. The grounding “paradigm” may be an “experience,” but it is not itself the product of reflection. Quakers claim that faith can be grounded on each person’s direct unmediated experience of the Divine Presence. See Fox, *supra* note 56.

63. On the wall of the Jefferson Memorial in Washington, D.C., is the inscription: “I have sworn upon the alter of God eternal hostility against every form of tyranny over the mind of man.” Thomas Jefferson Memorial: Statue Chamber Inscriptions, <http://www.nps.gov/archive/tlje/memorial/inscript.htm> (last visited Oct. 8, 2007).

them that I am right?<sup>64</sup>

The problem, however, is deeper than the presence or absence of such ethically dubious personality traits as arrogance or egotism. Some—not all, but some—religious people regard their faith as primarily concerning the truth of certain propositions about the nature of reality, including the authority of religious texts or institutions to express or propound such truths and their moral implications.<sup>65</sup> Part of that set of beliefs is often a felt obligation to be exceedingly wary of attempts to be persuaded to violate one or more of the norms of their faith.<sup>66</sup> It is also true that, for many believers, the matter is not one of conscious will, for they do not regard their assent as a voluntary decision. Paul Griffiths has described the experience of such people this way:

[T]here is a long (and usually complicated) story to be told about why I find myself involuntarily moved to assent to these claims at a particular time. Usually, that story will involve reference to habits, skills, and knowledge I've gained in the past, but in all cases the upshot is the same: I find myself irresistibly moved to assent . . . I cannot deliberate and then decide whether to believe it or not. When I find myself assenting to some claim (believing it, taking it as true), then, my assent typically does not involve choice or deliberation. It is simply given to me.<sup>67</sup>

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64. Alvin Plantinga, *Pluralism: A Defense of Religious Exclusivism*, in *THE RATIONALITY OF BELIEF AND THE PLURALITY OF FAITH: ESSAYS IN HONOR OF WILLIAM P. ALSTON* 191, 200 (Thomas D. Senior ed., 1995) (emphasis added).

65. See, e.g., PAUL J. GRIFFITHS, *AN APOLOGY FOR APOLOGETICS: A STUDY IN THE LOGIC OF INTERRELIGIOUS DIALOGUE* 9-12 (1991). For a capsule description of contending approaches, see *supra* note 20.

66. For some (not all) such people, more is at stake than the outcome of a disagreement, more or less friendly, about a matter of metaphysics, ethics or public policy. In the friendly disputant's expressions may be heard the voice of Satan. Of course, holding the belief that the beliefs of another person (or worse, a person who holds to such beliefs) are the work of the Devil is a moral hazard, and might lead the believer into seriously wrongful speech or conduct. Wariness is therefore an appropriate response; a preemptive dismissal is not. The one so believing will assert the defense of truth as justification, which the other will regard as compounding the felony. That this leads to an infinite regress is a problem, but that observation is not a solution to the problem.

67. PAUL J. GRIFFITHS, *PROBLEMS OF RELIGIOUS DIVERSITY* 26 (2001). An elaboration of this phenomenon, more textured than Griffiths's but with a very similar final lesson for non-believers, has been articulated by Jewish theologian

Non-religious people should therefore be cautious about dismissing as triumphalist or impositional the reluctance or unwillingness of some (again, not all, but some) religious believers to find legitimacy or (in some sense) validity of other religions, to acknowledge that others may have justification for holding their understanding of the truth, or to engage in “dialogue” about matters of belief (or morality grounded in belief) with those who disagree.<sup>68</sup> All other things being equal, openness to dialogue across difference is, in my judgment, a good, but it is not inherently a universal moral imperative, and all else is not always equal.<sup>69</sup> The matter turns on the specifics of the individual actor’s motivation, intention, and—especially—actions. Imposition is a serious wrong; a triumphalist attitude alone may best be thought of as simply a source of interpersonal incompatibility.

However, triumphalist attitudes tend to leach into

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Neil Gillman:

What distinguishes the “insider” from the “outsider” is that for the former, the whole coheres in an ultimately satisfying way. . . . [M]ost of the major religions are rich and variegated enough . . . that as a whole, the tradition still works for many . . . . How all of this works itself out in the life experience of any one individual is subtle and complex. But . . . [t]he decision can not be made from the outside. Religious commitments are probably the most existential issues we face. We have to be prepared to jump in and live within a tradition before we can appreciate its strengths and weaknesses.

NEIL GILLMAN, SACRED FRAGMENTS: RECOVERING THEOLOGY FOR THE MODERN JEW 33-34 (1990). For a discussion of the way in which the process “works” in primarily an experiential rather than a cognitive way, see MARK S. MASSA, CATHOLICS AND AMERICAN CULTURE 156-58 (1999) (discussing the work of Emile Durkheim as a “social scientific version of one of the most ancient and revered Christian dictums . . . *lex orandi lex credendi* . . . ‘the law of praying founds the law of believing’”).

68. For a clear and (in my judgment) fair-minded introduction to the variety of views about the stance that Christian traditions and individuals should take toward other religions—a subject that has produced a voluminous literature—see generally PAUL F. KNITTER, NO OTHER NAME?: A CRITICAL SURVEY OF CHRISTIAN ATTITUDES TOWARD THE WORLD RELIGIONS (1985).

69. For the classic statement of the traditional Jewish wariness about “dialogue” with Christians, see Joseph B. Soloveitchik, *Confrontation*, 6 TRADITION 5 (1964). Rabbi Soloveitchik wrote just as significant change was about to appear. See Eugene B. Borowitz, *A Nearness in Difference: Jewish-Christian Dialogue Since Vatican II*, COMMONWEAL, Jan. 13, 2006, at 17, 19-20 (describing the author’s experience of the radical change over the past four decades in the setting in which Jewish-Christian dialogue takes place).

actions. Indeed, the expression of an attitude is itself an action, in the practical sense that it can “pinch” those who do not share its wellsprings. This, I believe, is the core of the problem of the appropriateness of certain forms of public prayer: What to the devout may be simply a legitimate desire to express deep-seated feelings of gratitude or dependency on “He from whom all blessings flow,” when joined by a large percentage of the like-minded cannot help but constrain the freedom of those who differ.<sup>70</sup>

More broadly, “certain” believers need to realize that their certainty, like the belief to which it relates, is “theirs,” not only in the sense that it is an aspect of their identity, but that it cannot escape its boundary in the self. As a statement about the world, it may well be true but its truth (like all such truths) is not verifiable.<sup>71</sup> Donald Davidson’s dictum (a portion of which is quoted in the epigraph to this Essay) seems on point to me: “What distinguishes a coherence theory [which Davidson espouses] is simply the claim that nothing can count as a reason for holding a belief except another belief.”<sup>72</sup> At the same time—and for the

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70. Cf. Marvin E. Frankel, *Religion in Public Life—Reasons for Minimal Access*, 60 GEO. WASH. L. REV. 633, 633-43 (1992). Judge Frankel asks, “Why . . . the proliferation of committees and public officials insisting that crèches be placed . . . on the public squares?” He answers, “[t]he reason . . . is exactly to show those others who’s boss. This is Christian country. If you don’t like it, as you presumably don’t, you know what you can do.” *Id.* at 639. The issue is not resolvable, in my view, by a judicial judgment about the presence or absence of “coercion.” The concept is hostage to the Supreme Court’s deep divisions about its meaning. See *Lee v. Weisman*, 505 U.S. 577 (1992), for the conflicting approaches espoused by Justice Kennedy for the Court, *id.* at 580, and Justice Scalia for four dissenters, *id.* at 631 (Scalia, J., dissenting). However, the problem is deeper than that. As Stephen Gey wisely comments: “The choice seems to be between a narrow version of coercion theory, which produces coherent but unacceptable results, or a broad version . . . which is incoherent and unpredictable but [potentially] compatible with . . . religious liberty.” STEPHEN GEY, *RELIGION AND THE STATE* 247 (2d ed. 2006). More fundamentally, an occasional retrospective adversarial adjudication, whether focused on motive or effect, is inherently incapable of resolving the dispute satisfactorily.

71. See *supra* text accompanying note 52.

72. DAVIDSON, *supra* note 2, at 141. To a similar effect is Sanford Levinson:

If someone argues to me that God requires X, whether X be social justice for the poor or the prohibition of eating pork, it simply cannot count as a reason for *my* doing X unless I share a view of the world that includes both the ontological reality of God’s existence and the epistemological possibility of ascertaining divine desire.

Sanford Levinson, *The Multicultures of Belief and Disbelief*, 92 MICH. L. REV.

same reason—the “justification” that others may have for their conflicting beliefs does not contradict the believers’ own certainty, since justification makes no truth claim. The two incompatible beliefs may therefore reside, compatibly, though uncomfortably, alongside one another.

A special complexity arises because of the need to consider the proper reach of the principle that members of a religious community may claim the right, free of adverse judgment from those who are not members, to attempt to keep “the faithful” faithful. I grew up feeling quite aggrieved by what I regarded as the efforts of the Roman Catholic Church to induce the polity to adopt its views regarding such matters as the censorship of movies, restrictions on the sale of contraceptives, and the availability of several varieties of medical intervention in life-threatening emergencies. I now see those past efforts as not so much aimed at me and other non-Catholics than as primarily reflecting the Church’s concern for the moral environment of its communicants, increasingly attracted by the blandishments of a society responsive to other voices on moral issues.<sup>73</sup> Whether and how a religious leader is obliged to keep in mind and make clear what his intended audience is, and to take responsibility for the wider scope of his predictable audience,<sup>74</sup> is a singularly elusive question.

To articulate the problem in the terms I have does not imply that a religious community may not police its boundaries by setting conditions on the permissibility of actions (or even speech) of its communicants as a condition

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1872, 1879 (1994).

73. Steven Smith ably describes “The Spiritual Hazards of Religious Pluralism” from the perspective of the “devout believer,” in a chapter titled, *The (Compelling?) Case for Religious Intolerance*, in STEVEN D. SMITH, *GETTING OVER EQUALITY: A CRITICAL DIAGNOSIS OF RELIGIOUS FREEDOM IN AMERICA* 144, 152-58 (2001).

74. Pope Benedict XVI, on the eve of his election to that office, made the statement I quoted earlier (and have quarreled with) in a Homily during a Mass, a central moment in what is ordinarily a deeply private religious service. *Supra* note 9; *supra* text accompanying note 17. Yet his words were, predictably, almost instantly transmitted throughout the world—to millions of Catholics, to be sure, but to millions of non-Catholics as well. Similarly, an essay of his titled, *Relativism: The Central Problem for Faith Today*, was first delivered to a gathering of Roman Catholic Bishops, but has been (foreseeably) widely read. Cardinal Joseph Ratzinger, *Relativism: The Central Problem for Faith Today*, 26 *ORIGINS* 309 (1996).

of membership.<sup>75</sup> Nor does it presume that such a community (or an individual member) should not seek to influence the polity at large, in an effort to bring the civil law, binding on all, into correspondence with its moral beliefs on a matter. In my judgment, it is as appropriate for such a community to do that as for any participant in the polity.<sup>76</sup> Individuals and institutions, religious and secular alike, are entitled to contend for a voice in setting public norms, whether cultural or legal.

However, questions of the appropriateness and justification of such efforts, and the actors' responsibilities for adverse consequences on the quality of public life, are not exhausted by the issue of entitlement. Today, when examples such as censorship of movies and access to birth control are no longer at center stage, the issue remains. The adversarial manner in which Pope John Paul II engaged what he called "the culture of death"<sup>77</sup> perhaps reflected a concern (shared by many Protestants, Jews, and Muslims, as well as not a few non-believers) with the moral climate of contemporary society, especially its effect on the practices of Roman Catholics. However, he described his teachings as embodying moral norms accessible through reason and therefore binding on all persons.<sup>78</sup> Although, to that extent,

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75. Whether and when some forms of inducements (such as shunning, in insular communities), even if addressed only to co-religionists, press too hard upon the limits of that interest, is a separate question.

76. Happily, I do not regard the validity of that judgment as within the scope of this Essay. See, from among a torrent of writing on the subject, KENT GREENAWALT, *PRIVATE CONSCIENCES AND PUBLIC REASON* (1995); KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* (1988).

77. See, e.g., POPE JOHN PAUL II, *THE GOSPEL OF LIFE* [*EVANGELIUM VITAE*] § 28, at 50 (1995), available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html) ("[W]e are facing an enormous and dramatic clash between good and evil, death and life, the 'culture of death' and the 'culture of life.'").

78. See, e.g., *id.* § 2, at 4-5:

The Church knows that this *Gospel of life*, which she has received from her Lord, has a profound and persuasive echo in the heart of every person—believer and non-believer alike . . . [E]very person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart . . . the sacred value of human life . . . and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself are founded.

he spoke outside of the “certainty” of revelation, all who differed were denounced as “relativists,” whatever their objections to the morality of his “culture of life,” and regardless of the secular or religious grounding of those objections.

The reflexive move from a judgment of immorality to the espousal of regulation or prohibition by the secular law is an especially problematic move. Being certain of the truth of one’s beliefs, rejecting the thought of dialogue with those who differ, refusal to entertain the possibility that they might be justified in their beliefs—all these might be justified as authentic, conscientiously held points of view. Invoking the power of the State to constrain, or even place at risk, the lives of others for their failure to see the world that way is quite another step. This is a large and complex area, and there would be no utility in my cataloguing my own evaluation of specific morally grounded public policy overtures. I mean only to claim validity for a genuine caution, and respect for difference, by those seeking to see public law adopt their understanding of moral truth. It is one thing to oppose the decriminalization of post-viability abortion; it is quite another to encourage pharmacists (especially on a broad scale or in areas lacking a plenitude of consumer choices) to refuse to fill prescriptions for “morning after” or birth control pills, on the ground that they are illicit methods of contraception or “abortifacients.”<sup>79</sup>

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For a measured description and appraisal, see James F. Childress, *Moral Rhetoric and Moral Reasoning: Some Reflections on Evangelium Vitae*, in *CHOOSING LIFE: A DIALOGUE ON EVANGELIUM VITAE* 21, 28-32 (Kevin Wm. Wildes & Alan C. Mitchell eds., 1997) (analyzing the Pope’s “metaphor of war, enemy, conspiracy, and so forth”).

79. A number of scholars writing out of the Roman Catholic tradition have expressed measured reflections on the emergent approach of the Vatican. Herminio Rico’s study, *John Paul II and the Legacy of Dignitatis Humanae* is a carefully nuanced, sympathetic-yet-critical, account of Pope John Paul’s preference for “the seeking of direct political influence” over “the patient formation of consciences and, though that change, achieving the transformation of the social consensus.” RICO, *supra* note 4, at 169-76. David Hollenbach grounds in the work of John Courtney Murray an eloquent case for “intellectual humility” in engaging with the “full array of intellectual currents present in culture” today. DAVID HOLLENBACH, *THE GLOBAL FACE OF PUBLIC FAITH: POLITICS, HUMAN RIGHTS, AND CHRISTIAN ETHICS* 142 (2003). “The virtue of society,” he maintains,

is built from the bottom up, not mandated from the top down, and it is

Moreover, it is far from clear whether, and how far, the institutional interest in keeping the “flock” from straying justifiably applies to a communicant’s participation in public life. Examples are strongly worded pastoral admonitions, whether coming from a Catholic prelate or an Orthodox Rabbi, to vote in public elections a certain way, and selective applications of internal sanctions to highly visible members of its faith community who hold, or are seeking, public office.<sup>80</sup>

The rapidity and scope of the changes in prevailing norms of morality in many aspects of public and private life—too rapid and broad-ranging for some, too slow and limited for others—have produced vast areas of resentment and anger, further poisoning the atmosphere and making nearly everyone feel unheard and disempowered. In the context of that maelstrom, an attempt to unravel the multiple threads that should properly be brought to bear on more-or-less public discourse may seem simply naïve. The narrow question I am considering here is whether one may justly complain of *any* input into public policy, not that it is religiously motivated, but that the attempt to gain support for a contested moral position by attacking relativism may be a demagogic diversion of attention from the merits of the question or a triumphalist constriction of the possibility of conscientious disagreement regarding them.

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built by citizens who take responsibility for their lives and for the well-being of society through active participation in public life. A fundamental element of this social well-being is a robust commitment to the freedom of one’s fellow-citizens.

*Id.* at 139. For additional thoughtful analyses from within the Catholic tradition, see M. Cathleen Kaveny, *The Limits of Ordinary Virtue: The Limits of the Criminal Law in Implementing Evangelium Vitae*, in CHOOSING LIFE: A DIALOGUE ON *EVANGELIUM VITAE*, *supra* note 77, at 132; Todd David Whitmore, *What Would John Courtney Murray Say?: On Abortion and Euthanasia*, COMMONWEAL, Oct. 7, 1994, at 16. Writing from an Evangelical Protestant perspective, David Skeel and William Stuntz have developed a sophisticated case for great restraint in moving from moral to legal prohibitions. David A. Skeel, Jr. & William J. Stuntz, *Christianity and the (Modest) Rule of Law*, 8 U. PA. J. CONST. L. 809 (2006).

80. For a sensitive and careful approach to this question from a Roman Catholic perspective, see Amelia J. Uelmen, *The Spirituality of Communion: A Resource for Dialogue with Catholics in Public Life*, 43 CATH. LAW. 289, 305-08 (2004). The difficulty is compounded as to members of religious traditions whose leaders do not simply counsel their communicants on public issues, but whose theology makes the counsel binding on their actions.



The contours of the frontier that I have sought to describe are less substantive than attitudinal. They reflect the concerns I have expressed: the use of “anti-relativism” as a rhetorical diversion of the discourse, and the practice (which I have termed triumphalism) of going beyond the assertion of a certain commitment to the truth of a moral belief, to scornful dismissal of the possibility that others may be justified in believing otherwise. Whether such cautions have a greater capacity than substantive ones to penetrate the maelstrom is not altogether clear.

## VII. MORAL REALISM

I want now to turn from claims to “know” the truth of a moral matter to issues raised by one making no such highly confident claim, but still asserting a justified belief about a disputed moral claim. To believe something, in the sense I am using the term here, is to think that it is probably true.<sup>81</sup> The belief in question may be based on a hunch, an isolated intuition, or simply a habit of some kind. On examination, one may find no special reason to prefer it over its denial, but in the absence of a felt need for inquiry or an encounter with an occasion for skepticism, it simply resides in the mind undisturbed, if only for the time being.

Justification for belief requires something more. I cannot attempt here—or, truth be told, anywhere—a developed expression of the conditions that constitute justification for belief. Suffice it to say that I find persuasive the approach suggested by John Rawls’s notion of “considered judgment in reflective equilibrium.”<sup>82</sup> What I understand by that state is that the belief in question has a stabilizing and resonating coherence with my overall understanding of the world and my place in it, and specifically with my overall moral judgments. As I suggested earlier,<sup>83</sup> justified belief differs from knowledge

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81. I am speaking of “belief” in the sense of what has been termed “belief that,” as distinguished from “belief in,” which connotes trust or commitment. Many assert that religious belief is more properly seen as of that latter kind. See, e.g., MARCUS BORG, *THE HEART OF CHRISTIANITY: REDISCOVERING A LIFE OF FAITH* 25-42 (2004). Compare the differing views described *supra* note 20.

82. JOHN RAWLS, *A THEORY OF JUSTICE* 46 (1971); see also *id.* at 46-53 (presenting a fuller discussion of Rawls’s approach).

83. See *supra* text accompanying note 52.

because knowledge (in the sense that seems most useful to me) denotes truth, which is a metaphysical and not merely an epistemological concept, and cannot be verified. While both a relativist and a realist may speak in a similar way of justified belief, they differ in that the former can assert that two inconsistent beliefs may each be “true” for one of two belief-holders, while the realist’s assertion would be that both beliefs may be justified, but no more than one can be true.

This is not the place, and I am not the person, for a full presentation of the case for believing (and believing oneself justified in believing) that moral realism is true. Nonetheless, since I have made extensive use of the notion, and have made it somewhat relevant to the burden of this Essay to assert that I am not a relativist, I think it warranted, perhaps required, that I offer a summary of the considerations that ground my beliefs. All of them are relevant, some more weighty than others; together I find them a persuasive set.

It bears noting, first, that my moral claims *appear* to be statements about a state of affairs that exists outside of my perceptions of it (although that statement is, of course, a perception of mine). More importantly (since a relativist might understand his or her moral claims in that general way), it seems to be the case that my own (like others’) beliefs as to the right and wrong of a matter tend to be bound up in an underlying conviction that those beliefs are actually true. A person asserting that a certain act is right (or wrong) does not ordinarily appear simply to be telling us something about himself or herself, or his or her affinity group.<sup>84</sup>

It is also the case that awareness of the variousness of moral norms and their evolution across time and cultures may (as an empirical matter) be the cause of relativist beliefs, but it does not logically imply it. Indeed, despite the

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84. As Sidney Morgenbesser notes, “the person is attempting simultaneously to affirm something about his own approvals, and also to claim that if the person addressed knew of certain factors or if he underwent certain experiences, he would agree with him in attitude.” Sidney Morgenbesser, *Approaches to Ethical Objectivity*, in MORAL EDUCATION 72, 77 (Barry I. Chazan & Jonas J. Soltis eds., 1973). The word “certain” is so open-textured that I can agree with Morgenbesser, although I suspect that my list of necessary “factors” and “experiences” would be longer than his.

salience of that awareness, I think it less significant than the existence of a startling amount of moral agreement.<sup>85</sup>

Beyond that, exploration of the bases of change and divergence themselves actually supports realist premises. It places the question in context to think about the issue as it comes up in the scientific realm. John Searle notes<sup>86</sup> that the fact that “scientific revolutions” take place supports, rather than undermines, belief in mind-independent truth: “[W]e would not bother to change our account from classical physics to relativity physics except on the presupposition that there is a way the universe really is, and we are trying to get as close as we can to stating how it is.”<sup>87</sup> In the moral arena, Richard Shweder and Jeffrey Stout have persuasively undermined reliance on two classic situations proffered as counter-examples of the reality of moral truth. Their analyses are powerful and the lessons they draw are of general import.

Shweder considers Richard Posner’s claim that the context in which infanticide and slavery were practiced in the ancient world made them morally appropriate, and that such a realization implies the truth of relativism. Posner reasoned:

Infanticide is abhorred in our culture, but routine in societies that lack the resources to feed all the children that are born. Slavery is routine when the victors in war cannot afford to feed or free their captives, so that the alternative to slavery is death . . . . It is provincial to say that “we are right about slavery . . . and the Greeks wrong,” so different was slavery in the ancient world from racial enslavement, as practiced, for example, in the United States until the end of the Civil War, and so different were the material conditions that nurtured these different forms of slavery . . . . The inhabitants of an infanticidal or slave society would say with equal

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85. For excellent examples of articulation of the presence of an important core of intercultural agreement on the fundamental norms of morality, see SISSELA BOK, *COMMON VALUES* 13-19 (1995); Richard Shweder, *Moral Realism Without the Ethnocentrism: Is it Just a List of Empty Truisms?*, in *HUMAN RIGHTS WITH MODESTY: THE PROBLEM OF UNIVERSALISM* 65 (Andras Sajo ed., 2004).

86. The term Searle uses is “external realism,” by which he means that “there exists a way that things are that is independent of our representations of how things are.” John Searle, *Reality and Relativism: Shweder on a Which?* *Hunt*, 6 *ANTHROPOLOGICAL THEORY* 112 (2006).

87. *Id.* at 113.

plausibility that infanticide or slavery is presumptively good, though they might allow that the presumption could be rebutted in peaceable, wealthy, technologically complex societies.<sup>88</sup>

Far from seeing these culture-specific differences as probative of the truth of relativism, Shweder draws from Posner's explanations just the opposite lesson:

Judge Posner constructs and interprets both infanticide and slavery . . . as cases that are intelligible as morally valid practices . . . by representing each practice as a means to a universally recognized moral good—namely the reduction of physical harm (to already born children and to the slaves themselves, respectively). . .

Posner's argument is potentially persuasive because he is able to direct our attention to the moral integrity of local contexts; and those local contexts become morally intelligible precisely because he can presuppose and thus trade on our common sense revelation of a base set of moral truths. . . .

The correctness of a moral judgment may well be relative to circumstances. Nevertheless, implicit in Posner's argument is the idea that . . . with an informed understanding of the local scene any rational person should be able to recognize those practices, in those instances and under those circumstances, as local instantiations of some universal moral ideal . . .<sup>89</sup>

Stout considers Sartre's famous account of the young man who had to choose between supporting his aged mother and joining the French Resistance, which Sartre characterizes as "supporting the conclusion that moral judgments express unreasoned choices."<sup>90</sup> "Yet," Stout goes on:

Sartre is able to paint the dilemma in considerable detail, and each detail is itself a sample of the moral knowledge that Sartre is trying to deny us. In showing or saying that one consideration balances another he reveals his own recognition of the nature and force of the various considerations, and appeals to our own recognition of their nature and force. Dilemmas of this kind show

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88. Richard Posner, *The Oliver Wendell Holmes Lectures: The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1650-51 (1998).

89. Shweder, *supra* note 85, at 88-89.

90. STOUT, *supra* note 47, at 46. Such a view is not relativism, for it suggests the absence of even a relative-to-circumstances basis for rational preference, but has in common with it a denial of the realist claim—a susceptibility to the response that Stout makes in the passage in the text. *Id.*

us, sometimes quite vividly and poignantly, where our moral uncertainties, and thus our probable areas of moral disagreement, are. But they don't show that there's no such thing as moral truth or justified moral belief. In fact . . . they trade on the assumption that certain moral beliefs are justified and true in making their point.<sup>91</sup>

How far Stout's argument carries one implicates the question whether moral discernment "runs out," as it were, so that as to some highly specific questions there is no "right answer." I consider that question briefly below.<sup>92</sup>

In considering the weight of these factors, it is important to realize that much of the resistance to the acceptance of moral realism is supported by the attachment to it of the baggage of several thoughts or qualities that (rightly) seem dubious, but which are plainly separable. I here address five:

(i) To speak of the "existence" of moral truth is not to assert that, in Thomas Nagel's words, "they must be real objects of some other kind."<sup>93</sup> Interestingly enough, the same mistaken assumption is made, by believers and skeptics alike, about the necessary meaning of an avowal of the existence of God. Gordon Kaufman writes of the need to "de-reify" God-language:

[D]evotion to the "creator/lord" today should be understood as consisting in the attempt to live in rapport with the movements of life and history that provide the actual context of our human existence; it is to attempt to be in tune with what we discern as the nature of things . . .<sup>94</sup>

Writing out of the tradition of Reconstructionist Judaism, Rabbi Harold Kushner observes: "God is not an entity out in space somewhere[:]"<sup>95</sup> the question of God's

91. *Id.* at 46-47.

92. See *infra* text accompanying notes 101-08.

93. THOMAS NAGEL, *THE VIEW FROM NOWHERE* 144 (1986). I find Nagel's succinct discussion of realism and anti-realism cogent and persuasive. *Id.* at 138-52.

94. Gordon D. Kaufman, *Reconstructing the Concept of God: De-reifying the Anthropomorphisms*, in *THE MAKING AND REMAKING OF CHRISTIAN DOCTRINE* 96, 102 (Sarah Coakley & David A. Pailin eds., 1993).

95. HAROLD KUSHNER, *WHEN CHILDREN ASK ABOUT GOD* 98 (1976).

existence need not be thought of as one “about the population of Heaven.”<sup>96</sup>

One may reject these theological views and yet recognize that the traditional assumption confuses the familiar and the essential, whether the question arises with respect to religious or philosophical language.

(ii) John Finnis is perhaps the best-known contemporary philosopher who espouses a morality of “exceptionless norms.”<sup>97</sup> The classic expression of such an approach is Kant’s assertion of an obligation to tell the truth to a would-be murderer who has asked one for the whereabouts of his or her intended victim.<sup>98</sup> While one holding such a view of morality would probably be a realist, it is neither logically nor empirically true that moral realism entails, or even inherently tends toward, such an avowal. The existence of mind-independent truth is a different matter from the question of its content, and recognition that a moral judgment should be nuanced, qualified, or context-specific makes its truth more difficult to discern and articulate, and multiplies points of potential disagreement, but it doesn’t introduce a subjectivity that was not otherwise warranted. One may say that Kant is right in asserting a broad deontological justification for the immorality of lying, and nonetheless dispute his application of it to the instance stated.<sup>99</sup> Insisting on drawing the line at telling the truth to would-be murderers applies, rather than eliminates, an asserted distinction between right and wrong.

(iii) Realist metaphysics is not at all inconsistent with uncertainty about the correctness of particularized moral judgments. Indeed, a coherentist conception of justification for belief<sup>100</sup> implies the possible existence of circumstances

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96. *Id.* at 56.

97. JOHN FINNIS, *MORAL ABSOLUTES: TRADITION, REVISION, AND TRUTH* 1-6 (1991).

98. See Immanuel Kant, *On a Supposed Right to Lie Because of Philanthropic Concerns*, in *GROUNDING FOR THE METAPHYSICS OF MORALS* 63, 63 (James W. Ellington trans., Hackett Publ’g Co. 1993) (1785).

99. See Michael S. Moore, *Torture and the Balance of Evils*, 23 *ISR. L. REV.* 280, 315-16 (1989); see also Dietrich Bonhoeffer, *What is Meant By Telling the Truth?*, in *LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE* 262, 264 (Sissela Bok ed., 1989).

100. See *supra* notes 82-84 and accompanying text.

in which the complexity or subtlety of the factors that bear on a moral question, and the limits of the evaluator's access to knowledge of some of those factors, make uncertainty in application wholly predictable and wholly appropriate. If I may be forgiven for an egregious mix of metaphors, that we "see through a glass, darkly" does not imply that "there is no there there." Jeffrey Stout puts the matter more elegantly: "We should not confuse doubting that there is a single best thing to do in a given case with doubting that there is a moral truth with respect to that case."<sup>101</sup>

This question is presented, although not resolved, if one rejects (in the case at hand, or in general) blanket condemnation (*a la* Finnis) of a given act regardless of considerations of justification. Abortion is, of course, the premier case in point. To one who finds the act of intentionally inducing an abortion to be illicit without regard to any further considerations—whether from the moment of conception, the end of the possibility of "twinning," the fortieth day of pregnancy, the onset of viability, or any other assertedly critical moment in fetal development—the issue of uncertainty does not arise (except, at times, with respect to those facts). That one such as myself deems such views morally infirm, does not imply that every instance of "abortion on demand" is a morally acceptable "choice."<sup>102</sup> I believe that the factors bearing on a proper moral judgment are not only various and subtle, but are often not fully accessible to anyone but the mother, especially so to outsiders to her family. I am certain that many abortions lack, and that many have, moral acceptability, but I also believe, no less strongly, that even a careful appraisal of the relevant factors will often not enable an outsider to judge the matter very confidently.<sup>103</sup>

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101. STOUT, *supra* note 47, at 47.

102. I hope it is obvious that the truth of the sentence in the text would not be vitiated by disagreement with my view as to the morality of abortion. For moral assertions grounded in their faith traditions but roughly congruent with my views, see EVANGELICAL LUTHERAN CHURCH IN AMERICA, A SOCIAL STATEMENT ON ABORTION (1991), available at <http://www.elca.org/SocialStatements/abortion/>; and Presbyterian Church (U.S.A.), <http://www.pcusa.org/101/101-abortion.htm> (last visited Sept. 6, 2007).

103. For a rigorous, sensitive, and probing illustration of the variousness and complexity of the question, see James A. Gustafson, *A Protestant Ethical Perspective*, in THE MORALITY OF ABORTION: LEGAL AND HISTORICAL PERSPECTIVES 101 (John T. Noonan ed., 1970). For a more general discussion,

The barriers to epistemic confidence are formidable, and for that reason alone legal barriers or other coercive responses are, in my judgment, morally unjustified.

Abortion to one side, I believe that epistemic modesty in judging the moral universe of others is often morally appropriate, and that its absence is a morally hazardous trait, but whether that judgment is right or wrong, epistemic modesty is not inconsistent with a realist view of morality.

(iv) The polar concern is equally misplaced. Moral realism does not warrant, or justifiably lead to, excessive certainty about moral judgments. Realists about moral questions—I defer to the next paragraph reference to judgments based on revelation—have in principle no lesser capacity than relativists to recognize the tentativeness of their moral beliefs. Katharine Bartlett has wisely described an outlook that a sensible moral realist would find wholly apt, one of “an ideal of self-critical commitment whereby I act, but consider the truths upon which I act subject to further refinement, amendment, and correction.”<sup>104</sup> She goes on:

Some “truths” . . . seem to confirm the view that truth does exist (it must; these things are true) if only I could find it . . . . The problem is the human inclination to make this list of “truths” too long, to be too uncritical of its contents, and to defend it too harshly and dogmatically. Positionality [the word she coined to describe her approach] reconciles the existence of reliable, experience-based grounds for assertions of truth . . . with the need to question and improve these grounds.<sup>105</sup>

It is here that religiously-grounded morality presents a conceptually more challenging context. To the certain believer, certainty does not inhere only in questions of the sort that Geertz calls “world-views,” how reality is put together.<sup>106</sup> Those views accredit with like certainty

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developing a position consistent with (although different from) that taken in the text, see Rosalind Hursthouse, *Virtue Theory and Abortion*, 20 PHIL. & PUB. AFF. 223 (1991).

104. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 883-84 (1990).

105. *Id.*

106. *See supra* text accompanying note 34.



epistemological premises about the truth of moral principles, however “uncritically” embraced or many in number.<sup>107</sup> A believer asked to accept the “justification” for contrary beliefs will experience the request as demanding more than simple humility.<sup>108</sup>

Yet the one seeking to engage a moral question from a different faith tradition, or from none, cannot be expected to find Bartlett’s admonition against speaking “too harshly and dogmatically” sufficiently put aside. I do not know a way out of this impasse.

(v) Finally, moral realism is not inconsistent with a commitment to pluralism in social policy. It unnecessarily gives credence to the rhetoric of anti-relativism to assert a relativist morality—“it is all relative,” or “it is just your opinion”—in responding to a moral claim one rejects, when the response in actuality would be that the claim either has no moral valence or is in fact immoral.<sup>109</sup> Anti-anti-relativism can therefore properly espouse a (limited) form of anti-relativism of its own, but without the rhetorical fervor that often accompanies objections to relativism. Our society is quick to treat the assertion that another is in error as on (or over) the edge of a required tolerance for diverse

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107. See, for example, the many moral precepts contained in the 613 *mitzvot* (incumbent obligations) of Orthodox Judaism or the 2865 paragraphs of the Roman Catechism.

108. It would be a play on words for a Protestant Christian to respond, “I am ‘justified’ by faith, not by respect for persons who lack it (although I have that),” but the response would have appropriate salience nonetheless.

109. An example of the former is, in my judgment, an objection to homosexual sex: whatever the undeniable moral significance of much sexual activity, I see no basis for regarding the sex of one’s partner as a morally salient factor. An example of the latter (a morally grounded position that is itself immoral) is the exclusion of homosexuals from access to various benefits available to heterosexuals in analogous relationships. Of course, these examples are highly contestable; suffice it to say that I believe that homosexual sex is not per se immoral, whether the contrary belief is justified or not, and that seeking to bring about a legal response based on moral condemnation of homosexuality is an immoral act. For some “pointing” discussions (all religiously grounded), see RICHARD B. HAYS, *THE MORAL VISION OF THE NEW TESTAMENT* 400 (1996); John B. Cobb, Jr., *Being Christian About Homosexuality*, in *HOMOSEXUALITY AND CHRISTIAN FAITH* 89 (Walter Wink ed., 1999); Jeffrey Stout, *How Charity Transcends the Culture Wars*, 31 *J. RELIGIOUS ETHICS* 169 (2003). However, this is not the place to argue the correctness of my beliefs, for their truth or falsity has nothing to do with relativism, whether dragged into the debate by one side or the other.

viewpoints.<sup>110</sup> To disagree is not intolerance (although one can be intolerant in disagreement). To say that you are wrong is not to attempt to silence you (although it might be expressed in such a way, or lead to such an attempt). To respond to a moral avowal by shifting the focus from a challenge to its correctness to a relativist claim is the converse of the failing of the anti-relativist. If a red herring is thrown into your fishing pail, (*a fortiori*, if you find yourself having thrown one in<sup>111</sup>) don't proceed to examine it; throw it overboard.

### CONCLUSION

According to a rabbinical interpretation, the Lord said to Moses: "Wherever you see the trace of man, there I stand before you . . . ." When engaged in a conversation with a person of different religious commitment I discover that we disagree in matters sacred to us, "does the image of God I face disappear? Does God cease to stand before me?"

Abraham Joshua Heschel<sup>112</sup>

In considering the destructive force of conclusory or triumphalist dismissals of opposing positions with the label "relativism," I seek more than the elimination from the conversation of a diversion. Greater acknowledgment of the fact that important controversies in contemporary society

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110. For two eloquent and troubled accounts of this phenomenon among students, see generally Kay Haugaard, *Suspending Moral Judgment: Students Who Refuse to Condemn the Unthinkable*, CHRON. HIGHER ED., June 27, 1997, at B4; Robert L. Simon, *The Paralysis of 'Absolutophobia'*, CHRON. HIGHER ED., *supra*, at B5, ("Discussion of moral issues need not consist of two fanatics asserting conflicting principles they regard as self-evident; it can involve dialogue, the consideration of the points raised by others, and an admission of fallibility on all sides."). These essays are excerpted in GOODMAN & LESNICK, *supra* note 46, at 107-11).

111. I owe to Ed Hartnett my belated realization that a relativist response is plainly far more widespread in contemporary society than my passing parenthetical admonition implies. How much greater, what accounts for its appeal, and why I believe that my critique of anti-relativist talk nonetheless retains its salience, are complex questions, which for better or worse I do not address here.

112. ABRAHAM JOSHUA HESCHEL, *No Religion is an Island, in NO RELIGION IS AN ISLAND: ABRAHAM JOSHUA HESCHEL AND INTERRELIGIOUS DIALOGUE* 8 (Harold Kasimov & Roger Sherwin eds., 1991).

are a product of a diversity of justifiably held discernments of moral truth can prompt efforts to enhance:

- apprehension of the need to articulate the epistemological bases of one's beliefs;
- self-awareness about expressions that cross the frontier between justified belief and certainty;
- openness to the possibility that incompatible beliefs (though strongly believed to be in error) may nonetheless be justified; and
- resistance toward the temptation to caricature opposing positions, and to demonize those who hold them.

To the extent that all that happens,<sup>113</sup> disagreement will surely persist, perhaps not even be lessened in extent. It would be naive to presume otherwise. However, it is not beyond hope to look toward a lessening of its intensity and hostility, and a greater recognition of the compatibility between a proper continuing assertion of what one believes to be the Truth and a genuine (yet bounded) receptivity to pluralism in the setting of social policy.<sup>114</sup>

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113. Cathleen Kaveny bases her response to the Encyclical, *Evangelium Vitae*, in significant part on the dual assertion that “many women who consider access to abortion to be a fundamental aspect of their freedom are *epistemically justified* although tragically *wrong* in this belief.” Kaveny, *supra* note 79, at 146.

114. David Hollenbach has written a marvelously rich, sophisticated, thought-provoking—and *heartening*—study of the contours, possibilities, and importance of what he terms “intellectual solidarity” in “a community of freedom.” DAVID HOLLENBACH, *THE COMMON GOOD AND CHRISTIAN ETHICS* (2002).