

**RELIGION, MORALITY, AND LAW  
IN LIBERAL DEMOCRATIC SOCIETIES:  
DIVINE COMMAND ETHICS AND THE SEPARATION  
OF RELIGION AND POLITICS**

**T**HE relation between religion and morality is a perennial concern both for ethical theory and for reflective people interested in practical matters of morality or citizenship. There are at least two major strands in Western theism that bear on the question. One is divine command ethics, which takes moral obligation to be in some way grounded in God's commands. The second is the view that although moral obligation is not grounded in divine commands, God is an infallible source of moral direction and any commands that genuinely represent God's will are morally paramount. I want to consider both strands and, more broadly, a related form of theological voluntarism. In the light of a discussion (in Sections I and II) of how morality may be conceived in each case, Section III will take up the question of the autonomy of ethics, roughly the question of how, if at all, ethics can be independent of theology (and, by implication, of any other source of special knowledge or authority beyond ordinary human reason). In Section IV, I suggest some basic points about the relation between morality and law that, given the kind of autonomy I defend, is appropriate to a liberal democracy. The final section indicates the bearing of my overall position on the proper balance between religious and political considerations.

**I. TWO THEOLOGICAL ROUTES TO MORAL STANDARDS**

If we presuppose a conception of God common to the theology of the leading Western religions — Christianity, Judaism, and Islam — we may assume that God is omniscient, omnipotent, and omnibenevolent. This may be assumed, at any rate, if we bypass certain theological issues regarding the nature and scriptural interpretation of these attributes and take as our guide the prevailing view among philosophers of religion and philosophical theologians.<sup>1</sup> On the assumption of omniscience, God is infallible in moral matters; on the assumption of omnibenevolence, God may be expected never to command any conduct that is ultimately wrong.<sup>2</sup> This way of speaking presupposes that moral rightness, wrongness, and obligation are not grounded in God's will. Otherwise it would be at best misleading to speak of God as infallible in moral matters. There would be no room for the kind of error ruled out by the notion of infallibility.

There is, however, at least one plausible (cognitivist) view for which speaking of God as infallible in moral matters is altogether consistent with the conception of God implied by omniscience, omnipotence, and omnibenevolence. I refer to the view that basic moral truths are necessary and that divine omnipotence does not entail the power to alter necessary truths (nor their being based on divine action, a different point, since it is intelligible that God might establish such truths, but in the same act put them beyond possible change). Omnipotence can be understood as existing within, not above, the necessary truths. I take Thomas Aquinas to have held roughly this view, and I believe that there need be nothing impious about it.<sup>3</sup>

What I am calling the second major strand in Western theology, then, affirms divine infallibility in ethical matters *within* the domain of necessary truths, taken to include the basic moral truths. The first major strand, represented by various versions of the divine command theory of the basis of ethics, is perhaps even more

<sup>1</sup>Even here I speak mainly about philosophical theology as pertaining chiefly to Christianity and Judaism. I am leaving aside the rejection, e.g., by process theologians, of the traditional idea of omnipotence.

<sup>2</sup>Two assumptions should be mentioned here. First, although on one version of divine command theory (noted in the text) it is a truism that God does not command wrong-doing, I do not presuppose such a view here and so am assuming that God's absolute goodness would preclude commanding any deed that is *ultimately* a case of wrong-doing (though this entailment is not quite self-evident). Second, I assume cognitivism in ethics, but a version of infallibility can be made out even on a noncognitivist view. In part the idea would be that even beyond the point that there is no straightforward sense of 'falsehood' for a non-cognitive utterance, God's perfect goodness would preclude God's violating whatever standard a (non-subjectivist) noncognitivist might maintain. This would preclude God's commanding, hence expressing a kind of approval of, a deed that "should" be the object of disapproval (whatever that 'should'-statement means).

<sup>3</sup>Thomas says, e.g., that "[w]hatever implies a contradiction does not come within the scope of divine omnipotence, because it cannot have the aspect of possibility. Hence it is more appropriate to say that such things cannot be done, than that God cannot do them" (*Summa Theologica*, Q. 25, Art. 3); and he also holds that "[t]he precepts of the natural law are . . . self-evident" (*Summa Theologica*, Q. 94, Art. 2), where that notion seems to entail what is

now called analyticity and certainly appears to entail necessity. I hasten to add that neither self-evidence as Aquinas understood it (nor analyticity as I construe it) entails obviousness. As Scott MacDonald has noted,

Aquinas's requirement that *scientia* be grounded in propositions that are known by virtue of themselves [*per se nota*] has been misunderstood as requiring that the foundations of *scientia* must be propositions that are self-evident in such a way that they are clearly and obviously true to any normal adult or competent language user . . . Aquinas denies that the fact that many have rejected some proposition shows that it cannot be known by virtue of itself.

See "Theory of Knowledge," ch. 6 of Norman Kretzmann and Eleonore Stump, eds., *The Cambridge Companion to Aquinas* (Cambridge and New York: Cambridge University Press, 1993), 178–9. Cf. John Finnis's point that "The first principles of practical reason are 'demonstrable' and 'self-evident'. This does not mean that they are data-less intuitions or 'felt certainties', or that one cannot be mistaken about them, or that they cannot be defended by rational considerations." See *Aquinas* (Oxford and New York: Oxford University Press, 1998), 87 (footnotes omitted).

<sup>4</sup>For discussion of both kinds of position, with criticism of the former and a plausible defense of the latter, see Robert M. Adams's essays on the divine command theory in his *The Virtue of Faith* (Oxford and New York: Oxford University Press, 1987).

widely represented and may be argued to be Biblically authenticated by the story of Abraham and Isaac.

The two most important kinds of view in this territory are what we might call the semantic and the ontic versions of the divine command theory. On the former, moral terms have a theological *meaning*; for instance, 'obligatory' (in its central, moral sense) means 'commanded (for us) by God'. On the latter, it would not mean this and there would thus be no semantic equivalence; but the property of being obligatory would be that of being commanded by God, and indeed the obligatoriness of an act that is obligatory would be constituted by its being (directly or indirectly) divinely commanded.<sup>4</sup> This property identity would be a case of ontic equivalence. (In general, I shall speak of obligatoriness rather than use the full range of general moral terms in this family; what is wrong can be conceived as that which we are obligated to avoid, what is right as what we are not obligated not to do, and so forth. I am ignoring the possibility that not all obligations corresponding to divine commands are moral, as opposed to, say, religious; but we could for specificity say that moral obligatoriness is moral commandedness, that religious obligatoriness is religious commandedness, etc.)

The semantic and ontic views are importantly different. On the semantic view, someone with no concept of God cannot even understand moral terms; they would be conceptually beyond the person's ken. Moreover, someone who has the concept of God but believes there is no God must deny that there is anything objectively obligatory. Such a person could regard some ascriptions of obligation as excusable though erroneous, perhaps even as rational given the evidences some people might have for them, but not as true, since apart from God's existence there would be no basis for objective obligation. On the ontic view, however, the concept of the obligatory, like other moral concepts, need not be theological. Thus, although an obligatory act could not fail to be divinely commanded, at least implicitly, one could still *know* that an act is obligatory without knowing that it is so commanded. Identifying moral with theological properties does not automatically foreclose the number or variety of cognitive handles by which we can grasp moral properties. In practice, then, those who hold the ontic form of divine command theory can take a point of view from which they can see moral issues in non-theological terms and, in principle, much as do those who take moral properties to be independent of divine will.

## II. A DIVINE COMMANDABILITY THEORY OF MORAL OBLIGATION

In the light of the points made in the previous section, it may be possible to bring the two theo-ethical views closer together and at the same time facilitate

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communication and debate in moral matters between religious and non-religious people. Suppose that, with some versions of divine command theory, one took the property of being obligatory to be the same property as that of being divinely commanded, but also took “*both*” to be grounded in—thus supervenient, in a strong sense, on—non-moral, “natural” properties belonging to the type of obligatory act in question. For instance, acts of justice to one’s students might be obligatory in virtue of one’s special relation to them — involving, for example, one’s assurances of grading them on merit — and also commanded by God for that very reason (this leaves open that God have other, perhaps quite different reasons as well). Its divine commandedness, which on this view is the same property as its obligatoriness, is thus in a sense embedded in its non-moral grounds.<sup>5</sup>

What we now have is a strong divine command theory, since the moral properties of acts are identified with divine commandedness or some property built from it, as in the case of permissibility and wrongness. We also have, however, a necessary basis for such commands, in the light of which we can understand both their infallibility and their grounding in the kinds of natural properties in terms of which moral concepts are commonly understood outside theological contexts and in the light of which we can see the appropriateness of the commands. The grounding can be (as I think it is in such cases and will here take it to be) a priori as well as necessary; but the position that moral properties are grounded in natural ones could probably also be worked out for a theory on which the grounding is empirical and perhaps contingent as well.<sup>6</sup>

It might appear that if this a priori natural groundedness view of moral properties is correct, then divine moral commands are translatable into secular terms, in which case divine command ethics would be quite different from what it is commonly taken to be.<sup>7</sup> But even apart from the strict sense of ‘translatability’ in which

<sup>5</sup>This notion of embeddedness is suggested in my initial essay in Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham: Rowman and Littlefield, 1997), n. 21.

<sup>6</sup>In at least the former case, the question of how the view would preserve God’s freedom arises, but this kind of question confronts for any view on which God does not determine necessary truths. I see no more reason to say God does is not free in commanding of us what is obligatory — or at least in viewing it as obligatory — than to say God is not omnipotent owing to the unalterability of necessary truths. (This is not to say there is not some reason and much to be puzzled about.)

<sup>7</sup>Cf. The translatability argument offered by

Thomas M. Schmidt in “Religious pluralism and democratic society,” *Philosophy and Social Criticism* 25, 4 (1999): esp. 50–55, in which he speaks of religious beliefs as capable of being “translated into secular political reasons” (50). If I understand his intention, he is not making a strict synonymy claim but perhaps something in the vicinity of the kind of claim of a priori connection that I am indicating in the text.

<sup>8</sup>This is of course an intuitionist view, and I have defended it in a number of places (using an account of self-evidence consistent with Aquinas’s), including “Moderate Intuitionism and the Epistemology of Moral Judgment,” *Ethical Theory and Moral Practice* 1 (1998): 14–34, and, in much more detail, *Intuition and Intrinsic Value*, in progress.

it implies the synonymy of a translated expression with any other expression constituting a translation of it, this reading would be too strong. The idea I am proposing is that there is an *a priori* connection between moral obligation and certain non-morally discernible grounds of it; but this does not entail that, from a true statement of a particular obligation, the relevant grounds are readily apparent in the way a self-evidently implied consequence or presupposition often is, as where, in giving a reason for denying that a person is in a room, someone says that it is empty, leaving unstated the obvious truth that if a room is empty then no one is in it. The grounds of statements of moral obligation are often not so plain, and are sometimes not plain at all. Let me develop this idea.

There are several important points. First, we can know *a priori* what *kinds* of grounds are appropriate for one or another kind of obligation, for instance, that special attentions to a person may be warranted by familial relationships and that our missing an appointment may be justified by someone's being injured when we alone can help, even without knowing just what the grounds (if any) are when an obligatory action of the kind in question occurs. Thus, I can know, from your telling me that you have a family obligation to travel to New York, what kinds of grounds you have without being able to determine or even reasonably surmise just what your actual grounds are. Second, there are kinds of grounds, such as killing and causing pain, which can be known, *a priori*, to imply specific kinds of *prima facie* obligation.<sup>8</sup> The natural groundedness position also allows that one could know the meaning of, say, 'She ought to give to each of her grandchildren the same share in her estate' without knowing the grounds for this as applying to a particular person, though not without knowing something of the range of relevant kinds of grounds. Similarly, although one could not know the truth of such a judgment (first-hand) without knowing how to tell *whether* it is true (or at least what counts as evidence for it), one would not need to know in virtue of just what factors it *is* true. (The qualification 'first-hand' is intended to allow for the possibility of testimonially based knowledge even apart from a knowledge of how to tell whether the judgment is true. Even here, however, a case could be made that understanding the concepts involved in the judgment requires at least a rough sense of how to tell whether it is true.)

Looking at the relation between obligations and their grounds from the other direction, even a person with an adequate concept of moral obligation could know, of the grounds for a true judgment of moral obligation, that they obtain, without knowing that the judgment holds. There is no simple formula that takes us from knowing the existence of such grounds to a judgment of (overall) obligation they warrant, even if in some cases, as where two obviously comparable offenders are

to be given prison sentences, it is obvious that some *prima facie* obligation of comparable sentencing obtains.

Moreover, the ability to see that a set of grounds warrants a judgment does not entail automatically seeing this point upon considering those grounds in the abstract. Such a consideration need not evoke the thought, much less the judgment. This is particularly so if the consideration occurs in abstraction from a question of moral appraisal or from a context calling for moral judgment. The capacity in question is like the ability, on the part of someone with sufficient aesthetic sensitivity, to see the beauty of a poem when one comes to understand it after careful reading. The reading may be casual or a mere fulfillment of an assignment, and the understanding it brings need not yield a sense, much less a judgment, of beauty; but it warrants both. The degree of warrant is greater in proportion to aesthetic sensitivity, and analogous points hold for moral sensitivity in relation to perception of grounds for moral judgment. It should be added that one could similarly have grounds for taking an act to be divinely commanded and not realize that it is. This important point is as well accommodated on the view that the concepts of divine commandedness and of obligatoriness represent the same naturally grounded property as on the view that moral properties are grounded in divine commands.

If the *a priori* groundedness version of divine command theory is adopted, then, morality need not be construed as grounded in God's commands, even if its directives are taken to be necessarily in accord with God's will as infallibly directed toward the right. Specifically, provided we consider an act's possession of moral properties to be necessary given the relevant non-moral grounds of those properties, we can take it that necessarily, to be obligatory is to be divinely commanded — or at least divinely commandable — since the property in question, which we refer to both theologically and in purely moral language, is grounded in a single set of natural properties. I say 'commandable' rather than 'commanded' in part because general moral truths can hold even in a world in which there is no one to whom God issues commands.

An alternative view — open to divine command theories independently of whether they hold the *a priori* groundedness view outlined here — is that an act is obligatory provided it is of a type that, at *some* time, God commands at least indirectly.<sup>9</sup> Thus, if abstention from bearing false witness is commanded explicitly and it clearly follows that a form of bearing such witness is looking on without exhibit-

<sup>9</sup>Cf. the view that "Principles of moral obligation constituted by divine commands are not timeless truths, because the commands are given by signs that occur in time. People who are not in a region of space-time in which a sign can be known are not subject to it." See Robert Merrihew Adams, *Finite and Infinite Goods* (New York and Oxford: Oxford Uni-

versity Press, 2000): 270. It appears that the constitution relation intended by Adams is incompatible with *a priori* status for the relevant moral principles.

<sup>10</sup>See W. D. Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930), esp. ch. 2.

ing a hint of disapproval or doubt when one person accuses another of a major crime that one knows the second did not commit, such complicity might be regarded as indirectly prohibited by the original command. As this example suggests, it will not always be clear what follows from a command, or, especially, what follows with sufficiently clarity to be construed as indirectly commanded by God with the issuance of the original command. The seriousness of this problem is one reason for favoring a commandability view.

There is a further reason for taking a kind of commandability, in the sense of ‘command-worthiness,’ to be central for divine command ethics. At least the majority of the moral principles that guide everyday life — including some that apparently have a kind of Biblical endorsement — express *prima facie* rather than absolute obligations. The obligation to avoid lying is apparently one; the obligation not to steal is apparently another; and, at least on the assumption that the obligation not to kill is not restricted in content to non-self-defensive cases, even that obligation seems to be another. As Ross and many other philosophers have argued, *prima facie* obligations can conflict and when they do, it may not be obvious what one’s final obligation is, i.e., what, overall, one (morally) ought to do.<sup>10</sup> If one takes a commandability view, one can treat deeds representing what one is finally obligated to do as meriting divine command even though they are not always directly commanded and also where (as in some cases of difficult moral decision) they are not even indirectly commanded. This approach allows taking what God has actually commanded as obviously also commandable; but commands to obey principles, such as the injunction to honor our parents, may be understood as creating *prima facie* obligations and hence, in some cases, not representing the commandable acts that are our final obligation where a conflict of obligations makes that determinable only be reflection.

In this context, it is noteworthy that the two commands Jesus singles out as primary are to love God with all our hearts and to love our neighbors as ourselves. These do not even purport to specify act-types. Loving, in the relevant sense, is not an act, though there are acts of love and — more important here — acts of nurturing and expressing the kind of love in question. We are to discover the appropriate acts, inner and outer, by (among other things) appropriately internalizing scripture and following the right role models, above all Jesus himself.

Once commandability is brought into the picture, it begins to appear that obligatoriness is being identified not with being in accord with some divine act such as a command, but in relation to some intentional and presumably volitional divine state. On this view, the property of being obligatory may be conceived as that of accordance with divine will regarding the actions proper for created beings,



but an act-type's having this property does not entail God's actually commanding it for created beings, even indirectly.<sup>11</sup> Thus, it is metaphysically impossible that these the "two" properties, being obligatory, and being in accord with God's will for (actions) of created beings, not belong to the same deeds; but we may still say both that the application of obligatoriness to a type of action can be known on non-theological grounds — indeed on naturalistic grounds — and that theists as well as non-theists can make use of this point in conducting their ethical life. If, moreover, we take knowledge of necessary truths to be inherent in the divine nature, we can also say that obligatory actions are those that are in a certain way in accord with God's nature. The accord, moreover, is not merely with God's cognitive nature — with the divine intellect; on the assumption of omnibenevolence, we may take it that fulfilling our obligations is in accord with the divine will.

If we are to speak of obligatoriness as equivalent to the property of (an action's) according with the divine will, we move from a divine command theory strictly so called to a *divine commandability theory*. But if, as is plausible, commandability is a feature of divine will, we still have a form of theological voluntarism. We now must distinguish (among other things) between God's antecedent will and consequent will, i.e., "God's preference, regarding, a particular issue considered rather narrowly in itself, other things equal . . . [as opposed to] God's preference regarding the matter, all things considered."<sup>12</sup> If we take the view that what God wills in the latter way must actually occur, then we cannot plausibly take obligatoriness to be equivalent to what God wills in that way. (Plainly, not everything obligatory is actually done.) But even what God wills in

<sup>11</sup>Presumably any plausible divine command ethics should take account of this point, since it will seek to make sense of our possibly discovering the moral status of an action regarding which there is no divine command — unless, of course, it is supposed that God has already set forth a complete set of moral axioms and implicitly commands any act implied, by however many intermediate steps, in them. We should also note that what accords with God's will here must be more than simply consented to by God, since otherwise evils whose existence is contingent (which is perhaps all of them) would have to be conceived as divinely willed.

<sup>12</sup>Adams, *Finite and Infinite Goods*, 259.

<sup>13</sup>Philip L. Quinn addresses this difficulty in his wide-ranging study "Divine Command Theory," in Hugh LaFollette, ed., *Ethical Theory* (Oxford: Blackwell, 2000), esp. pp. 54–63. Quinn also discusses Adams's competing view, on which God's commands are morally central. Cf. Richard Swinburne's view that "There are certain minimal duties to one's

fellow men which are duties whether or not there is a God" and "As all actions that are good for other reasons [besides being objects of a divine commandment] are also commended by God, in each case there are two reasons for doing the action and two good desires which we could indulge by doing it." See *Responsibility and Atonement* (Oxford and New York: Oxford University Press, 1989), 123 and 134 respectively.

<sup>14</sup>Adams, in "A Modified Divine Command Theory" (in *The Virtue of Faith*) notes this view and cites Locke as a case in point. See esp. 108–9. For an indication of how one might make out a constitutive divine command theory regarding the good, see William P. Alston, "Some Suggestions for Divine Command Theorists," in his *Divine Nature and Human Language* (Ithaca and London: Cornell University Press, 1989).

<sup>15</sup>This is surely Kant's view in the *Groundwork of the Metaphysics of Morals*, first section.



the former way may be roughly a basis for divine commands in moral matters. The second interpretation of accord with God's will leaves open, however, the possibility that some actual divine commands, such as the command to Abraham to sacrifice his son, do not correspond to God's will. Whatever one says here, that case raises difficulties for theological voluntarism. Rather than pursue possible resolutions of those difficulties,<sup>13</sup> my purposes are better served by proceeding to the question of the connection between the right and the good in relation to voluntarism.

In part because there is an apparently essential connection between, on the one hand, rightness and other deontic notions, and, on the other hand, axiological notions like that of the good, something should be said here about how the suggested a priori groundedness view of obligation and other deontic concepts is related to axiological concepts, above all that of the good. One might expect a divine command theory (or at least a divine commandability theory) of moral obligation to apply also to the good, for instance to take good states of affairs to be grounded in some divine attitude. One might specify God's antecedent will here, as opposed to God's consequent, sometimes merely permissive will. For there are evil states of affairs that God would surely not "finally" will, as opposed to permitting them (these might include certain wrongful free actions and perhaps some bad states of affairs resulting from them). But in fact it is perfectly consistent to hold a constitutive version of divine command theory for the deontic notions (whether semantic or ontic) and to treat goodness differently.<sup>14</sup>

Indeed, if the concept of goodness or some other suitably far-reaching axiological notion is not conceived as appropriately independent of God, then ascriptions of goodness to God become problematic and (in my judgment) we encounter serious difficulties in understanding even what it means for God to be loving. Clearly, being loving entails a disposition to seek or care about the good of the beloved (for its own sake, not merely instrumentally). Granting that God is infallible about what constitutes our good, there seem to be a priori limits (vague though they may be) on what this is, much as there are such limits on what can be morally right. The notions of the good and the right are intrinsically connected, at least in that one kind of goodness — moral goodness in persons (which is presumably the basic kind of moral goodness) — is constituted at least mainly by a suitable kind of commitment to pursue the right.<sup>15</sup> If goodness were entirely grounded in divine will, then, moral standards could not be independent of it in the way they apparently are. It should also be noted that, on the theological constitution view of goodness imagined, the words "God saw that it was good," so prominent in Genesis, are at best puzzling. Even apart from the theological authority of such utterances, they

seem to have a straightforward applicability that is at best difficult to account for on the theological constitution view of goodness.

### III. THE EPISTEMIC AUTONOMY OF ETHICS

In very broad terms, we may now draw two major conclusions. First, it appears that for the most plausible theo-ethical views in both of the Western theological traditions we have considered, moral concepts are not intrinsically theological, though for certain divine command theories moral properties are. Second, even given the ultimate ontic relation between moral and theological properties that goes with the most plausible divine command ethics, it is possible — at least if we abstract, as I do here, from general skepticism — to know moral truths on a non-theological basis. We might say, then, that consistently with the theological traditions in question, however much ontic dependence there may be of the moral on the theological in the domain of relations between moral properties and more basic ones — and even on the assumption of identity between moral properties on certain theological ones — ethics can be autonomous in the sense that is most important for both everyday life and political philosophy: the epistemic sense.

In affirming the epistemic autonomy of ethics, I do not mean to imply that every moral truth is knowable (or even justifiably believable) apart from any non-moral knowledge. This is surely false even if the basic moral truths are, as both mainstream intuitionism and perhaps Kantianism as well have it, self-evident. For singular moral judgments of the kind essential for moral life, such as the judgment that I must in fairness give *x* an A in a course since I give *y* an A, presuppose not only the existence of people, but also the truth of factual propositions about them, such as that *x* and *y* are both my students and both have equivalent results on their papers.

There is a further point relevant here. Even self-evident propositions are not necessarily incapable of being known on the basis of something further, such as more general self-evident propositions. Epistemic autonomy, in the moderate sense I intend, is a matter of not needing support or explanation from some other domain than that of moral principles and morally relevant natural facts; it does not entail the impossibility of receiving it. An autonomous nation could receive help from another one in explaining and enforcing its laws, even if it could also manage to do both without that help.

Given this epistemological conception — on which we can achieve moral knowledge and moral justification by a combination of secular and theological paths, one can at once affirm the epistemic autonomy of ethics and still maintain

<sup>16</sup>For a defense of intuitionism that argues for this in some detail, see, e.g., Chs. 3 and 11–12 in my *Moral Knowledge and Ethical*

*Character* (Oxford and New York: Oxford University Press, 1997).

that we can have better grounded moral views — and perhaps come to know a wider range of moral truths — by inquiry into theological ethics. Omniscience implies that God knows all moral truths and indeed knows any propositions from which they are derivable, as well as the proposition that they *are* thus derivable; omnibenevolence implies that God may be expected, if not to reveal moral truths to humanity, at least to have created us and our world so that there are limits to how badly mistaken we can be given a sufficiently conscientious inquiry into moral questions. This second point needs amplification.

It is plain that God has not created a world in which signs of divine governance, or even of God's existence, convince all who conscientiously try to find them that God exists. Can we plausibly suppose that God would consign such people to failure even in the endeavor to find moral principles that guide life in a way that is morally satisfactory so far as can be expected of creatures who have not found their creator? Their incalculable theological loss would then be compounded in ways that seem incongruous with God's omnibenevolence. One might think that no punishment is great enough for such a sin, even if it is some sense committed in a conscientious way. I doubt this. There is surely reason to think that any punishment exacted by, or any suffering imposed by, a loving God will be limited. It is even doubtful that one can properly appreciate one's punishment, or have a chance to learn from suffering in the way human beings under God should, without knowing at least some major moral truths.

The points in the previous paragraph are controversial, particularly within theological traditions that emphasize human wickedness and corresponding divine punishment. It may still be asked why we must suppose human reason can discern genuine moral truths. Perhaps reason is too defective for the task. This seems to be at variance with the facts. Here I must confine myself to just two supporting points. First, I have contended that there are some general moral truths that we may, through reflection, know or at least justifiedly believe (I take this to be a position that few would deny).<sup>16</sup> Second, I cannot see from considerations of natural theology or from any plausible interpretation of the Bible that either of these two important sources provides any reason to doubt that we can determine many basic moral truths through the use of human reason, at least if we include religious texts and religious traditions as sources of data, as any reasonable, adequately informed moral inquirer will. (I take it as clear these are important sources of data relevant to understanding morality even if not taken to be divinely inspired and indeed even on certain atheistic or theologically non-cognitivist views.) Does anyone (other than on general skeptical grounds) want to deny that killing people, brutality to them, lying, cheating, and stealing are *prima facie* wrong, or that in some cases —

as where we ourselves are the victims — it is clear, even apart from theological assumptions, that they are wrong all things considered?

If I am correct in taking ethics to be epistemically autonomous, and if I am right in my natural-theological case for the existence of non-theologically accessible grounds for (hence a secular path to) moral truths, then for religious people who can grasp this and who are aware of human fallibility in theological and moral matters, a reasonable ideal is an integration between their best religiously inspired moral reflection and their best secular moral reflection — a *theo-ethical equilibrium* (as I have called it in earlier work<sup>17</sup>). There is, to be sure, a two-way street here: one can revise religiously inspired moral views in the light of secular moral reflection, and vice versa.

#### IV. MORALITY AND LAW

Many religious people, whether or not they adhere (as many do) to a divine command ethics, take religiously enjoined moral principles to be essential for good government. Government requires enforcement of laws; indeed, that function is central for genuine government as opposed to mere social control, and is arguably its most important function. Even apart from any commitment to natural law, theory or even to theism, one may agree with some version of Aquinas's view that "every law is ordained to the common good" — at least taken to refer to *justified* laws.<sup>18</sup> The position that religiously enjoined (or at least religiously inspired) moral principles are essential for good government may or may not be combined with the view — compatible with Aquinas's — that there are epistemically independent grounds for taking basic moral principles to be essential for it. It is common among both religious and non-religious people, however, to hold the latter view. This moral groundedness view of good law-making does not entail that all morally obligatory deeds should be legally required. In a reasonable form, the position is that certain moral principles and moral rights should be an underpinning for at least a basic core of law. Thus, protections of life and liberty should be backed by penal sanctions, and, correspondingly, laws should not be passed that compromise these protections or reduce the security or liberty of citizens.

Anyone who holds this view will notice that as it becomes unclear whether a kind of conduct is morally permissible, legal prohibition becomes less clearly desirable, if desirable at all, and that in private matters, such as typical promises made between spouses, legal regulation may be inappropriate even where morality speaks unequivocally. It should also be stressed that the suggested moral groundedness view of (at least much) good law does not entail a natural law conception of

<sup>17</sup>My most detailed statement to date is in Ch. 5 of *Religious Commitment and Secular Reason* (Cambridge and New York: Cambridge

University Press, 2000).

<sup>18</sup>*Summa Theologica*, Q. 90, Art. 2

what law is, say that it is a morally sound directive duly enacted and adequately promulgated by a legitimate sovereign. The moral groundedness view is normative, not conceptual; it is compatible with a positivistic, largely proceduralist conception of the nature of law.

There are of course other views of the appropriate basis of law, but only some version of the view that law should be properly responsive to morality is adequate to liberal democracy. This is a view about how law should function in such a society. It is not either a natural law view about what constitutes a genuine law or a sociological view about how laws actually do function. I suggest, however, that even apart from the specific task of understanding the proper function of law in liberal democracy, only something like this moral responsiveness thesis can adequately explain the plausibility of the view that we who live in such a society should respect the law; and apart from this thesis, I doubt that we can fully explain the plausibility of the view that there is, in addition, a *prima facie* moral obligation to obey the law. (There are, to be sure, tacit consent theories of the basis of this obligation, but I think tacit consent does not generate a moral obligation of the kind in question apart from a presumption of moral responsiveness.)

To offer a detailed theory of just how law should reflect morality in liberal democracies is a major undertaking that cannot possibly be accomplished here. I raise the question of how law should reflect morality mainly to pave the way for arguing that although it should, this holds only within certain constraints. I maintain that there are plausible views of the relation between theology and ethics which enable — and indeed encourage — religious people to constrain their efforts to influence the law morally, in particular, to avoid doing so on the basis of theologically based ethical considerations taken by themselves without an evidentially adequate ground that can be appreciated by those in different religious traditions — or none. This is surely what they would want in adherents of a religion with standards incompatible with their own. The point holds not only for laws, particularly coercive ones (which is arguably all of them), but also for coercive public policies. The point does not imply, however, that there is not a major place for religious ideals to influence law and public policy. Where adequate secular reason supports the same laws and policies, religious citizens may properly express such support on the joint basis of both kinds of grounds.

It is in the interest of all of us to have available a set of standards that, as rational citizens, we can all appeal to in seeking to settle questions of law and social policy and by reference to which any restrictions of our liberty must have an adequate justification. But even apart from this do-unto-others perspective, there is reason to want such standards. Given the epistemic autonomy of ethics, together

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with the reasonable presumption, for Western theism, that God would see to it that a conscientious use of secular reason would lead to discovering the major moral truths essential for civilized human life, we may have justified confidence that no set of legal standards abridging religious freedom or other basic human rights would carry the reflective assent of adequately informed, fully rational citizens.

## V. RELIGIOUS FREEDOM AND GOVERNMENTAL NEUTRALITY

If, in support the laws and public policies they favor, conscientious citizens should seek to have adequate grounds that are epistemically independent of theology, the same surely holds for the state and hence for individuals insofar as they represent the state, say for legislators and judges. Indeed, quite apart from the standards that should be observed by conscientious citizens acting individually, the state in a liberal democracy should be neutral regarding religion. By this I mean not that its actions should have no effect on religion — an unrealistic and unwise constraint — nor that it should be indifferent toward religion, but that it should be both impartial among different religions and accord no preference to the religious as such.<sup>19</sup>

To be sure, insofar as religious commitments determine people's sense of identity — of who they are at the deepest level — respect for them is appropriate as an expression of the kind of concern for the individual liberty and the welfare of citizens that is quite properly characteristic of liberal democracies. Here religion may warrant as deep concern on the part of the state as any cultural or institutional source of one's sense of identity, and in some circumstances it may warrant deeper concern than any other. The profound concern in question is not, however, with religion as such, and the possibility that religion is paramount among the cultural and institutional sources or the sense of identity is a contingency that is compatible with the kind of state neutrality in question.

Some grounds for this neutrality, such as protection of the freedom of religious minorities, are implicit in what has been said. What I propose to consider in this last section is why the need for state neutrality does not go further. If, in part to protect the freedom of minorities, we should separate church and state, why should we not also ask the state to be neutral regarding the good, so that, for instance, it cannot prefer utilitarianism to Kantianism, or vice versa?

<sup>19</sup>I defend this view in detail in *Religious Commitment and Secular Reason*. For a case that, in a liberal democracy, state neutrality need not go beyond impartiality, see Nicholas Wolterstorff's contribution to Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square*.

<sup>20</sup>For a plausible defense of this negative conception of morality see Bernard Gert,

*Morality* (Oxford and New York: Oxford University Press, 1998); and for some critical discussion of the view (including a case that his theory is not as negative as he makes it sound), see my critical study of this book, "Reasons and Rationality in the Moral Philosophy of Bernard Gert," forthcoming.

<sup>21</sup>See *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

Here many religious people, quite apart from a commitment to some version of divine command morality, and even if they accept a strong separation of church and state, will dissent. Many of them will hold that the state should maintain and even promote certain standards of human flourishing, including at least the secular ones implicit in the broad notion of the common good appropriate to any society that wishes to constitute anything like a community. There will also be related negative constraints. Plainly, there are theories, and general conceptions, of the good for human beings that are not an appropriate basis for the underlying structure of law in a liberal democracy. There are also corrupt conceptions that are not even an appropriate basis of a single piece of legislation on a minor segment of public life. But the almost unrestricted exclusion of conceptions of the good favored by some neutralists — and indeed a separation of the state from the good on a par with its separation from the church — is surely excessive.

It must be granted that if morality is properly conceived as an institution directed essentially toward preventing or reducing evils,<sup>20</sup> it is natural to suppose that the law should share this goal. Such a view of morality may be one route (or even the main route) to the libertarian version of liberalism. But there is no sharp distinction, and perhaps no workable one of any kind, between preventing harm and promoting some good. Consider education. Compulsory education is essential to prevent the harms attendant upon ignorance. Can we, however, reasonably design a required curriculum with no presuppositions as to what counts as good human functioning, what skills are needed for good citizenship, and what is worth knowing for its own sake? Surely not.

Another view that some neutralists might take is that although government should promote human well-being, that goal must be characterized in terms that are, as regards intrinsic goodness, value-neutral. This approach is represented by John Rawls's appeal to "primary goods," such as respect and economic security, goods which he takes every rational person to want but does not regard as intrinsically good.<sup>21</sup> Using this kind of strategy, welfare liberalism can claim to be as neutralist toward intrinsic goodness as libertarianism. In my view, that claim is at best a surface truth. Primary goods are functional equivalents of intrinsic goods. They need not earn their justificatory power by instrumental merits, yet in their name the state can do much the same things it can do in the name of intrinsic goods.

Moreover, if we do not assume that there are some kinds of things that are intrinsically good and, instead, we tie the goods suitable as a basis for structuring a liberal state (presumably some kind of welfare state in the current world situation) to human psychology as we understand it — in the sense that we assume there are some things every rational person wants — social justice will be at the mercy of



the contingencies of our understanding of human beings and, quite possibly, of human desires. One way to see how this kind of view can be stretched is to consider a striking remark of B. F. Skinner's in his *Beyond Freedom and Dignity*: the point is not to design a world that will be liked by people as they now are, but to design one that will be liked by the people who live in it.<sup>22</sup> Given how people's desires can be influenced by fashion, circumstances, and demagoguery, and given the growing specter of a technology that can alter our very genes, one wants moral and political theories that, in an overall way, at least, can tell us in advance of such sea changes that they do or do not conduce to human good. At the very least, we need a way to judge human desires independently of what they happen to be — or can be made to be by manipulation.<sup>23</sup>

To be sure, any plausible theory of the basis of liberal democracy will affirm at least two values as essential constituents in such a society: liberty and basic political equality, where the latter requires a one-person one-vote standard as a central element. The first value is essential to a democracy's being liberal, the second to its being the kind of democracy liberalism is concerned with, and arguably to being a democracy at all. Even if one insists that the state should be neutral on every other value and particularly toward overall conceptions of the good, one will need at least two kinds of normative commitment: first, some kind of account or theory of the sorts of harms or evils that warrant such restrictions of liberty as are necessary and, second, in order to determine eligibility to vote, a theory of competence to do so. Here it is plain that some things will be functionally intrinsic evils; but I suspect that some will also be functionally intrinsic goods. Recall the matter of compulsory education, which surely is a requirement for achieving competence to vote — at least at the legislative level and in complex matters. A required curriculum in the formative years of childhood will inevitably promote certain values and will presuppose a fairly definite conception of human flourishing. I do not

<sup>22</sup>See B. F. Skinner, *Beyond Freedom and Dignity* (New York: Knopf, 1971), 156.

<sup>23</sup>I am of course implicitly rejecting an instrumentalist conception of rational action and of practical reason in general. Detailed arguments to this effect are given in my *The Architecture of Reason*, forthcoming from Oxford University Press. It is important to realize that even a neutralist about the relation between the state and its institutions and citizens can reject instrumentalism and indeed hold that liberal democracy is committed to moral principles at the deepest level. For a statement of this point about liberal democracy see Charles Larmore, "On the Moral Basis of Political Liberalism," *Journal of Philosophy* XCVI (1999): 599–625. For a detailed argument to

show that, in addition, liberal democracy cannot be neutral with respect to conceptions of the good — or at least that the case made by Rawls and Larmore against perfectionism fails — see David McCabe, "Knowing about the Good," *Ethics* 110 (2000): 311–338. McCabe, says, e.g., that "anti-perfectionist liberalism relies on subjectivism or skepticism about the good" and that "Rawls has not shown that the information the parties do have behind the veil is inadequate to generate any shared perfectionist ideals" (312–313). (I take it that instrumentalism is plausibly conceived as subjectivist in a way that supports skepticism about the good: if there is any good at all on this view, it is a matter of the fulfillment of desires not themselves subject to substantive rational constraints.

deny that a good case can be made (even if in the end it is perhaps unsuccessful) for designing a political structure in which the state is as nearly neutral as possible about the good; but there are drastic limits to how far this can go in a liberal democracy.

To understand such limits, we need at least two distinctions: first, a distinction between neutrality in matters of taste and plan of life and neutrality in matters of basic value and basic moral standards; and second, a distinction between structural neutrality — roughly, neutrality at the constitutional level — and policy neutrality. A liberal state need not be neutral about freedom, about justice — distributive as well as retributive — about education, or about health care; it should be neutral (within the limits of protection of the population) about the aesthetic preferences of citizens in their own dwellings, their choice of friends, and their vacation preferences. A liberal *government*, however, need not be neutral in matters left open by a sound structure in a liberal state, including aesthetic preferences such as the architectural style of government buildings or socioeconomic preferences regarding the proportion of funds directed toward education as opposed to upkeep of national parks. In these matters, as in many that must be decided in order for a government to maintain civic order, simple majority vote is normally an adequate basis for policy.

There is one further pair of distinctions needed here. The first is between disagreement in theory and disagreement in practice; the second is a related distinction between disagreement *on* reasons and disagreement *in* reasons. It is too often assumed that where people cannot agree on theories of the good they cannot in practice agree on questions of concrete action. But surely this is a mistake. Even a Kantian and a utilitarian can agree that the danger of an epidemic justifies compulsory inoculation when there is a safe, reliable vaccine. In part, neutralists may be thinking of the highly plausible point that a liberal state should not presuppose any specific ethical theory. Even apart from any theory they may hold, however, people may disagree on the second-order question whether a kind of consideration constitutes a reason or a good reason, even if in the first-order matter of *giving* reasons or making judgments or inferences they regard much the same factors as reasons and accord them similar weight. Consider the idea that there is *prima facie* moral reason to do good deeds (I refer to what W. D. Ross called the duty of beneficence). Stated in the abstract, this idea is likely to be initially puzzling and probably controversial. But the same people who differ on its truth may agree, with respect to a wide range of acts done to help others, both these acts they are good and that their being so was a reason (justification, ground, warrant) for doing them. The agreement may be imperfect; but that would hold for the application of many factual

terms as well.

To argue that a liberal-democratic state need not be neutral with respect to the good, and even to quite definite standards of human flourishing that correspond to nurturing human good and reducing the evils besetting humanity, is not to argue for any specific social program or any particular socioeconomic arrangements. There are many ways for the state to promote adequate education and guarantee a health care system. There are also many kinds of economic arrangements, and I cannot see that the normative standards to which a liberal democracy may be committed imply, in a world like ours, any one specific economic system, or, say, a particular level of taxation, if indeed they entail that taxation is a requirement for social justice. They may, however, warrant some restrictions of economic liberty in the interest of preserving basic political equality. If, for instance, vast wealth can produce unacceptable disproportions that undermine that equality, some restrictions in the use of wealth might be warranted. There are also arguments from considerations about morality or human good that can support a standard of distribution like Rawls's difference principle. My purposes here, however, do not require exploring the many possibilities that arise here. My aim has been only to show how some of the essential commitments of liberal democracy take it beyond the structural minimum indicated by a strong neutralist position and into a domain where commitment to a number of standards of human good is appropriate.<sup>24</sup>

Overall, then, I see no reason to think that plausible religious groundings of moral standards must conflict with plausible secular groundings of them or even that the same person cannot quite properly endorse groundings of both kinds. There is indeed much reason to expect overlap between major religiously enjoined moral standards and plausible secular ones. The ethical commandments of the famous ten expressed by Moses come readily to mind, as do the injunctions to do unto others as you would have them do unto you and to love one's neighbor as oneself. Even apart from this overlap, it is fruitful to seek a theo-ethical equilibrium: one can learn something in both secular ethics and in religious ethics from comparing the basic standards and warranted judgments on each side with counterparts on the other side. The overlap between the two sets of standards does not, however, imply an epistemic dependency running either way, and I have defended the epistemic independence of ethics.

Whether we start from a religiously based or a secularly based ethics, we are likely to want the law in a liberal democracy to be responsive to sound moral stan-

<sup>24</sup>For a case that, on moral grounds appropriate in structuring liberal democracies, they should give a significant weight to a standard of equality. See Richard W. Miller, "Liberalism and Equality," in progress.

<sup>25</sup>For helpful comments on earlier versions

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dards. Here, however, there are good reasons to undertake to have adequate secular grounds for any legal rules one advocates — the more so the more coercive they are — even if one also has religious reasons for one's position and feels more strongly about those as one's inspiration for supporting a given law or public policy. The importance of having adequate secular grounds for legal rules and public policies is greater in constitutional matters than in other matters of social policy. This applies to many cases that involve instituting majority preference when basic liberties are not in question and an overarching standard is already in place. Consider the distribution of funds to different poor nations. One question is the overall amount; another, still further from being a constitutional matter, is the question is proportions and specific mode of delivery. Similar points hold for decisions about the specific content of required pre-college public education. The type of content is a major public policy issue; the specific curriculum, given the type, is far more a matter for decision by the relevant experts who interpret such policy in consultation with the affected segment of the population. In all these areas, as in many others, there is reason to think that it is possible to achieve an integration among theological, moral, and legal considerations. A good integration of this kind can enhance both our justification for normative and legal standards and our motivation to live up to them. It is among the best possible kinds of basis for democratic citizenship.<sup>25</sup>