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GROUNDING NORMATIVE ASSERTIONS:
ARTHUR LEFF'S STILL IRREFUTABLE, BUT
INCOMPLETE, "SEZ WHO?" CRITIQUE*

Samuel W. Calhoun[†]

INTRODUCTION

Professor Derrick Bell's story, *The Space Traders*,¹ posits that extraterrestrial beings arrive in the United States to propose a Trade: they will provide the means to enable the country to pay its debts, protect its environment, and ensure its energy supply, all in exchange for only one thing—to take all African Americans back to the aliens' home star. The story then recounts a frenzied sixteen days of politics, protests, and legal maneuvering, resulting in the forced deportation to an unknown fate of twenty million black men, women, and children: "Heads bowed, arms now linked by slender chains, black people left the New World as their forebears had arrived."²

This Article will consider several issues suggested by Bell's story. If one assumes that some readers would approve and others would disapprove of how the African Americans were treated, what might one say about the differing views? Are they simply different in the same way that one person might vacation in San Francisco while another person chooses New York City? Or is it possible to say that one view is wrong? And if one view is said to be wrong, is the meaning that the

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† Professor of Law, Washington and Lee University School of Law. The generous (and long-suffering) assistance of the Frances Lewis Law Center, Washington and Lee University, is gratefully acknowledged. Thanks also to those who read earlier drafts and to those who helped me develop my thoughts on the relationship between morality and faith: Dorothy Brown, Paul Carter, David Caudill, Maureen Cavanaugh, Bill Geimer, Peter Hoadley, Steven Hobbs, Lyman Johnson, John Knox, Lash LaRue, Uncas McThenia, Brian Murchison, Colleen Murphy, Jim Phemister, Louise Teitz, Job Seese, Tom Shaffer, Betty Rae Stevick, Earl Stevick, Mark Trapp, Joe Ulrich, Brad Wendel, and several members of my family. I would also like to thank the participants in a 1997 Washington and Lee School of Law faculty workshop and the participants in a workshop at the 2002 Christian Scholars' Symposium. Special thanks are due to Mark Grunewald and Rick Kirgis, who have provided significant help to this project in its various permutations over many years.

1. Derrick Bell, *Faces at the Bottom of the Well* 158-194 (Basic Books 1992).
2. *Id.* at 194.

view *actually* is wrong or merely that it is wrong in the opinion of the person speaking? And even if every single person agrees as to whether or not the Trade should have been made, does this show that the consensus view is *actually* right? Are there any circumstances under which one could conclude that what was done was right or wrong in an absolute sense?

While this Article will consider anew the question of how one grounds normative assertions, its starting point is the work of the late Professor Arthur Leff of Yale.³ In several pieces written toward the latter half of his distinguished career, Leff examined a number of standard methods for grounding normative assertions.⁴ He believed that each failed to provide a solid foundation for moral judgments. None provided a satisfactory answer to what Leff called “the grand sez who?”—a universal taunt by which a skeptic may challenge the standing/competency of the speaker to make authoritative moral assessments.⁵ In fact, Leff argued, as a matter of logic, that no system of morals premised in mankind alone ever could withstand the taunt. His provocative conclusion was that the only unchallengeable response to “the grand sez who?” is “God says.”⁶

3. Tragically, Arthur Leff died in 1982 at the age of 46.

4. The most famous of these articles is Arthur A. Leff, *Unspeakable Ethics, Unnatural Law*, 1979 Duke L.J. 1229 [hereinafter Leff, *Unspeakable Ethics*]. One of Leff’s colleagues calls the piece “justly celebrated.” Owen M. Fiss, *Making Coffee and Other Duties of Citizenship*, 91 Yale L.J. 224, 227 (1981). Professor Albert Alschuler says it is a “classic article.” Albert W. Alschuler, *Law Without Values: The Life, Work, and Legacy of Justice Holmes* 197 n. 22 (U. Chi. Press 2000). Professor Phillip Johnson describes as “brilliant” the lecture at Duke that led to the article. Phillip E. Johnson, *Nihilism and the End of Law*, *First Things* 19, 20 (Mar. 1993). Interestingly, Leff’s widow states that Leff was reluctant to write the Duke article, which “said what he knew about fundamental issues,” because he feared that to do so was “presumptuous unless disciplined by an enormous amount of sheer scholarship.” Susan Z. Leff, *Some Notes About Art’s Dictionary*, 94 Yale L.J. 1850, 1851 (1985). The legal academy should be glad that Leff’s humility did not prevent him from writing the piece, which “made a powerful impression upon a generation of legal scholars.” Johnson, *supra* at 21. It is easy to empathize with one of Leff’s colleagues, who lamented the “intellectual loss” suffered when Leff’s untimely death deprived us of the scholarship that would have followed *Unspeakable Ethics*. Robert M. Cover, *Arthur’s Words*, 94 Yale L.J. 1848, 1848 (1985).

It should be noted that, despite what might be suggested by his widow’s statement above, the Duke article in fact revisits issues that Leff earlier had already discussed in depth. See Arthur A. Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 Va. L. Rev. 451 (1974) [hereinafter Leff, *Realism About Nominalism*]; Arthur A. Leff, *Law and Technology: On Shoring Up a Void*, 8 Ottawa L. Rev. 536 (1976) [hereinafter Leff, *On Shoring Up a Void*]; Arthur A. Leff, *Memorandum*, 29 Stan. L. Rev. 879 (1977) [hereinafter Leff, *Memorandum*] (reviewing Roberto M. Unger, *Knowledge and Politics* (1975)). Also see Edward A. Dauer & Arthur A. Leff, *The Lawyer as Friend*, 86 Yale L.J. 573 (1977) (brief mention of the subject).

5. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1230. For the exact quote, consult *infra* text accompanying n. 20.

6. *Id.* at 1230-1232. See Leff, *Memorandum*, *supra* n. 4, at 887-888. For unknown reasons, Leff sometimes uses “sez” and other times uses “says.”

In Part I, this Article will first summarize Leff's basic critique of how normative assertions typically are grounded. Next, the Article will demonstrate the critique's continued relevance and validity by evaluating three contemporary discussions of morality: (1) Judge Richard Posner's attack on what he refers to as "academic moralism," (2) Professor Edward Wilson's assertion that morality has a "biological basis," and (3) Professor Steven Pinker's attempt to distinguish between morality and our "innate human nature." Part II, while beginning with Leff's conclusion that God alone can be the source of moral absolutes, goes beyond where Leff was willing to go. Leff's recognition of God's indispensability was in the abstract only, as he did not discuss the "practical possibility of a this-world application" of a God-based moral system.⁷ This Article ponders the practical question, refuting some common objections to a God-premised morality, while acknowledging the existence of some genuine difficulties.

I. HUMAN-BASED NORMATIVE ASSERTIONS ARE ULTIMATELY INDEFENSIBLE

A. Leff's Critique

A 1999 symposium on legal ethics had the provocative title, "Lawyer Collaboration with Systems of Evil."⁸ The symposium brochure stated that "a distinguished panel of law professors . . . [would] examine a variety of instances, both historical and contemporary, in which lawyers may have collaborated with evil."⁹ Among the episodes examined were the role of lawyers in administering "the modern death penalty," managing "the tobacco industry's smoking-and-health disinformation campaign," and defending slavery.¹⁰ While the part played by lawyers in each example clearly is an important inquiry, a more fundamental issue is suggested by the phrase "Systems of Evil" in the symposium's title.

By labeling various events "evil," the symposium organizers revealed a belief that such a phenomenon as "evil" actually exists. This presumably would reassure Professor Robert Simon of Hamilton College. In a 1997 article, Simon expressed concern that his students in increasing numbers were unwilling to condemn any position as morally

7. Leff, *On Shoring Up a Void*, *supra* n. 4, at 540.

8. Symposium, *Lawyer Collaboration with Systems of Evil*, 5 *Roger Williams U. L. Rev.* 19 (1999) [hereinafter *Symposium*].

9. The quotation is from the brochure, a copy of which is in the possession of the author.

10. *Id.*

wrong.¹¹ The examples mentioned include the Holocaust, slavery, ethnic cleansing, and apartheid.¹² These students asserted “as though it were self-evident . . . [that] no one . . . has the right even to criticize the moral views of another group or culture.”¹³

Professor Simon himself shows no such reluctance. He believes that the examples can properly be condemned as “great evils.”¹⁴ Interestingly, however, he nowhere explains why “evil” is an appropriate designation. Likewise, the legal ethics symposium apparently did not explore, as a preliminary step to describing certain actions as “evil,” how one grounds such a normative evaluation.¹⁵ Because attaching the label “evil” is much easier than substantiating it, avoiding this core question simplified the two projects considerably.¹⁶

The starting point in identifying “evil” is to realize that to describe something as “evil” requires some standard of evaluation. No conduct can be called “evil” unless it falls far short when measured against some criterion of “goodness.” Similarly, no conduct can be called “immoral” or “wrong” unless it fails to meet a definition of “moral” or “right.” In sum, one necessarily can say that “X” is “evil/immoral/wrong” only if one already knows what is “good/moral/right.”¹⁷ Merely calling something “good/moral/right” will not make it so.

According to Professor Leff:

A statement in the form “you ought to do X,” “it is right to do X,” or “X is good” will establish oughtness, rightness, or goodness only if there is a set of rules that gives the speaker the power totally to determine the question.¹⁸

11. Robert L. Simon, *The Paralysis of “Absolutophobia,”* Chron. Higher Educ. B5 (June 27, 1997).

12. *Id.*

13. *Id.*

14. *Id.* at B6.

15. I base this assessment on the published papers resulting from the symposium. See *Symposium, supra* n. 8.

16. Because Professor Simon’s focus was on his students’ unwillingness to call something “evil” and the symposium’s focus was on lawyers’ complicity in “evil,” one could argue that it was beyond the scope of the two projects to delve into the foundational question of how one recognizes “evil.” Still, it is surprising that no attention whatever was given to the underlying definitional issue. The omissions might be explained by the recognition, perhaps only on a subconscious level, that the subject of how to ground moral assertions is so troubling that it was best left alone. See Leff, *On Shoring Up a Void, supra* n. 4, at 538 (the issue is one we are “impelled to ignore”); *Unspeakable Ethics, supra* n. 4, at 1233 (we desperately try “not to come to grips with it”).

17. See *infra* text accompanying n. 250 (relating C.S. Lewis’s point that one person’s idea of New York City can be more or less true than another person’s only if New York City is a real place rather than an imaginary one).

18. Leff, *Unspeakable Ethics, supra* n. 4, at 1232.

Leff's example of a normative proposition, "Thou shalt not commit adultery," makes his point clear.¹⁹ How could one ever conclude that it actually is wrong to commit adultery? "[W]hen would it be impermissible to make the formal intellectual equivalent of what is known in barrooms and schoolyards as 'the grand sez who'?"²⁰ The evaluation that adultery is wrong is "beyond question . . . [only if] the evaluator and its evaluative processes . . . [are] similarly insulated."²¹ This insight leads to what Leff calls "the central problem of ethics," determining "who has the power to set [the] rules for validating evaluations."²²

Leff tackles the problem by examining the possible replies to the question, "Why is it right to do X?"²³ Perhaps the most common response is that "It is right to do X because it is right to do X."²⁴ Leff finds this formulation to be inadequate because it "allows one to justify anything, merely by mentioning it twice in the same sentence."²⁵ Other typical responses fall into two main classifications. The first posits some particular state of affairs "to be good,"²⁶ often taking the form of "do-X-for-the-sake-of-Y."²⁷ Leff believes this to be "obviously a nonstarter in the great normative-grounding race. For every sensible person knows that the next question is 'And what's so marvelous about Y?'"²⁸ The second classification takes the form, "It is right to do X because P believes so" (where P = some person or group of persons).²⁹ This particular "ethical move"³⁰ comes in many varieties. One extreme instance is "the 'P = I' variation, a sort of radical individualistic intuitionism in which the good becomes what the speaker thinks it is."³¹ But to say "It is right to do X because I say so" still permits the reply,

19. *Id.* at 1230.

20. *Id.*

21. *Id.* By "insulated," Leff means "unchallengeable." *Id.* See *infra* text accompanying n. 38.

22. *Id.* at 1232.

23. Leff, *Memorandum*, *supra* n. 4, at 880.

24. *Id.* at 881; Leff, *On Shoring Up a Void*, *supra* n. 4, at 540. Leff is "personally very fond" of this approach because "it makes it so easy to generate an infinity of propositions of identical form, all of which possess undeniable logical validity." Leff, *On Shoring Up a Void*, *supra* n. 4, at 540.

25. Leff, *Memorandum*, *supra* n. 4, at 881.

26. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1239.

27. Leff, *On Shoring Up a Void*, *supra* n. 4, at 544; and see *id.* at 539-540.

28. Leff, *Memorandum*, *supra* n. 4, at 881.

29. *Id.* at 882.

30. *Id.*

31. *Id.* Leff calls this the "'God-is-me' approach," under which each person is a "Godlet." Leff, *Unspeakable Ethics*, *supra* n. 4, at 1235-1236.

“Who the hell are *you*[?]”³² The other extreme is to say “that ‘P = everyone.’”³³ “[M]ankind is so constructed that with respect to certain X’s all persons will believe that it is right to do X.”³⁴ Leff’s reaction is to ask, “[S]o what?”³⁵ “What is the *ethical* significance of a factual proposition even so universalized?”³⁶ Leff sees none. The existence of a universally held belief establishes only the existence of that belief. It tells us nothing about what constitutes “the right and the good.”³⁷

To Leff, only one type of system has “normative propositions—*oughts*—which are absolutely binding, wholly unquestionable, once found . . . [a] system . . . based upon the edicts of an unchallengeable creator of the right and the good.”³⁸ Such an entity would “be the unjudged judge, the unruled legislator, the premise maker who rests on no premises, the uncreated creator of values.”³⁹ If such a thing existed, Leff would call it “Him” or “God.”⁴⁰ A “God-grounded system has no analogues. Either God exists or He does not, but if He does not, nothing and no one else can take His place.”⁴¹ Thus, with respect to

the command “Thou shalt not commit adultery” . . . if (and only if) . . . the speaker is God, I ought not commit adultery. I ought not because He said I ought not, and why He said that is none of my business. And it is none of *my* business because it is a premise of *His* system that what He says I ought not to do, I ought not to

32. Leff, *On Shoring Up a Void*, *supra* n. 4, at 541. There is another serious problem with the “God-is-me” approach:

[W]ho validates the rules *for interactions* when there is a multiplicity of Gods, all of identical “rank?” . . . It is totally impermissible under such a conception for there to be . . . interpersonal comparisons of normativity: there is literally no one in a position to evaluate them against each other.

Leff, *Unspeakable Ethics*, *supra* n. 4, at 1235. Thus, under this view that Leff also calls “Personalism’[,] . . . everyone’s individual normative system” is validated. *Id.*

33. Leff, *Memorandum*, *supra* n. 4, at 882.

34. Leff, *On Shoring Up a Void*, *supra* n. 4, at 543.

35. *Id.* at 542. Leff describes this query as “the ethically universal solvent.” *Id.* at 545.

36. *Id.* at 543.

37. *Id.*; and *see* Leff, *Memorandum*, *supra* n. 4, at 883. To Leff, it is “twaddle” to ground “an ethical system on what people [even all of them] in fact believe and do.” Dauer & Leff, *supra* n. 4, at 575.

38. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1230.

39. *Id.*

40. *Id.* at 1230-1231.

41. *Id.* at 1231. Without God, mankind has what Leff calls “a Gödel problem: how to validate the premises of a system from within itself.” Leff, *Memorandum*, *supra* n. 4, at 887-888. *See* Ernest Nagel & James R. Newman, *Gödel’s Proof* (NY U. Press 1958). This is no more possible in ethics than it is “in any other system.” Leff, *On Shoring Up a Void*, *supra* n. 4, at 545-546. Any attempt “to make something in the world—mankind—into the good and still reserve the right to judge its goodness . . . [is] doomed.” Leff, *Memorandum*, *supra* n. 4, at 887. The effort suffers from a “*necessary* logical insufficiency.” Leff, *On Shoring Up a Void*, *supra* n. 4, at 539.

do.⁴²

In sum,⁴³ Leff's analysis is that apart from grounding in God's will, there is no ultimately unassailable ethical proposition.⁴⁴ But Leff did not "clarify the special status of God as the foundation of an ethical . . . system" so that he could then "discuss whether or not [God] exists and can ground such a system for us."⁴⁵ Rather, Leff's purpose was to "push[] [our] face" into the terrifying reality that our society has at its core "a bare, black void . . . the total absence of any defensible moral

42. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1231. See Leff, *Memorandum*, *supra* n. 4, at 888; *infra* n. 222.

43. The foregoing is but a summary of Leff's basic critique. In particular, only a few examples are given of the alternatives for grounding moral precepts that Leff rejects. Others appear elsewhere in this article. See *infra* n. 80 (rejecting reflectiveness as the test of moral truth); n. 95 and accompanying text (rejecting logical consistency as the test of moral truth); n. 215 and accompanying text (rejecting fervency of belief as the test of moral truth). Two other options rejected by Leff will be briefly mentioned here. The first is what Leff calls "Descriptivism," a "whoever-wins-is-God" approach." Leff, *Unspeakable Ethics*, *supra* n. 4, at 1235. Because this view validates whatever normative system that in fact is in place, "it is impossible to say that anything ought or ought not to be." *Id.* at 1234. The second rejected alternative is any concept of natural law "detached . . . from [an] unnatural lawgiver." Leff, *On Shoring Up a Void*, *supra* n. 4, at 546. "[F]ound" ethical precepts are dispositive only if they have "supernatural grounding. God's will is binding because it is His will that it be." Leff, *Unspeakable Ethics*, *supra* n. 4, at 1232. There are no other circumstances under which "the unexamined will of anyone else [can] withstand the cosmic 'says who' and come out similarly dispositive[.]" *Id.* Dropping God as the basis of natural law leaves only

two choices, treating existence . . . as rightness itself, or smuggling into the universe a natural law which, though not trans-empirical, [is] somehow supervalid over other existing things—that is, creating a new "God" on the sly, keeping up the self-deception by keeping the referent linguistically shadowy.

Leff, *On Shoring Up a Void*, *supra* n. 4, at 546.

44. The logic of Leff's conclusion likewise is unassailable. See *supra* n. 41. As he argues: For evaluations you need an evaluator. Either whatever the evaluator says is good *is* good, or you must find some superior place to stand to evaluate the evaluator. But *there is no such place in the world to stand. From the world*, only a man can evaluate a man, and unless some arbitrary standards are slipped into the game, all men, at this, are equal.

Leff, *Memorandum*, *supra* n. 4, at 888 (first emphasis in original). See Leff, *Unspeakable Ethics*, *supra* n. 4, at 1229-1230 & 1230 n. 1 (apart from God, "there cannot be any normative system ultimately based on anything except human will") & 1233 ("If we are trying to find a substitute final evaluator [to replace God], it must be one of us, some of us, all of us—but it cannot be anything else."). Phillip Johnson states it this way: "Every alternative rests ultimately on human authority, because that is what remains when God is removed from the picture." Johnson, *supra* n. 4, at 21.

Leff, of course, was not the first to recognize that to discard God is to create enormous, if not insurmountable, obstacles for grounding morals. A principal theme of Dostoevsky's work is that without God, there can be no such thing as right and wrong. See e.g. Fyodor Dostoevsky, *The Brothers Karamazov* 80, 381 (Bantam Classic ed. 1981). And Nietzsche, far from exulting that "God is dead," knew that this fact would present the specter of nihilism: "When God and any supernatural sanction of our values are questioned, the bottom falls out of our values, and they have no basis anymore." Walter Kaufmann, *Nietzsche* 150 (4th ed., Princeton U. Press 1974); see *id.* at 101, 125-128.

45. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1232.

position on, under, or about anything.”⁴⁶ This “hollow” center results from the impoverishment, “even unto total bankruptcy, of present-day ethical theory, its failure to generate *any* justification for the freely used terms ‘good’ and ‘bad,’ ‘right’ and ‘wrong’ . . . as criteria for belief and action.”⁴⁷

Leff’s reflections were written in the mid- to late-1970s. His conclusions are still valid and relevant today, as shown by an examination of three recent discussions of moral issues by Judge Richard Posner, Professor Edward Wilson, and Professor Steven Pinker.

B. Posner

Judge Richard Posner has long been one of the country’s most prolific and influential legal theorists. In a 1998 Harvard Law Review article,⁴⁸ Posner presents a scathing critique of “academic moralism.”⁴⁹ Posner’s target is a group of “present-day academic philosophers . . . [who] all want the law to follow the teachings of moral theory.”⁵⁰ Posner argues “that moral theory does not provide a solid basis for moral judgments, let alone for legal ones.”⁵¹ For this reason, among others, Posner concludes “that there is ‘nothing to’ academic moralism.”⁵² Posner’s critique was published with responses by Ronald Dworkin, Charles Fried, Anthony Kronman, John Noonan, Jr., and Martha Nussbaum.⁵³ This Article will not fully examine the interaction between Posner and his responders, but will consider what the interchange contributes to answering Leff’s question, “‘Why is it right to do X?’”⁵⁴

46. Leff, *On Shoring Up a Void*, *supra* n. 4, at 538.

47. *Id.* at 539.

48. Richard A. Posner, *The Problematics of Moral and Legal Theory*, 111 Harv. L. Rev. 1638 (1998) [hereinafter Posner, *Problematics*]. The article was “a revised and expanded version of the [Oliver Wendell] Holmes Lectures delivered at the Harvard Law School on October 14 and 15, 1997.” *Id.* at 1638 n. a1.

49. *Id.* at 1639-1640. Posner subsequently published his critique in book form. Richard A. Posner, *The Problematics of Moral and Legal Theory* (Belknap Press of Harv. U. Press 1999).

50. Posner, *Problematics*, *supra* n. 48, at 1639-1640.

51. *Id.* at 1638.

52. *Id.* at 1645.

53. Ronald Dworkin, *Darwin’s New Bulldog*, 111 Harv. L. Rev. 1718 (1998); Charles Fried, *Philosophy Matters*, 111 Harv. L. Rev. 1739 (1998); Anthony Kronman, *The Value of Moral Philosophy*, 111 Harv. L. Rev. 1751 (1998); John Noonan, Jr., *Posner’s Problematics*, 111 Harv. L. Rev. 1768 (1998); Martha Nussbaum, *Still Worthy of Praise*, 111 Harv. L. Rev. 1776 (1998). Posner then replied to his critics. Richard A. Posner, *Reply to Critics of The Problematics of Moral and Legal Theory*, 111 Harv. L. Rev. 1796 (1998) [hereinafter Posner, *Reply*].

54. It is particularly appropriate that Posner would be one of the examples used to demonstrate the continued validity of Leff’s critique of normative assertions. Posner is one of the theorists critiqued in Leff’s classic Duke Law Journal article. Leff, *Unspeaking Ethics*, *supra* n. 4, at 1242-1245. Moreover, Leff’s initial foray in this area was occasioned by his commentary on Posner’s *Economic Analysis of Law* (1973). Leff, *Realism About Nominalism*, *supra* n. 4. Leff

Posner's chief point is "that the criteria for pronouncing a moral claim valid are local, that is, are relative to the moral code of the particular culture in which the claim is advanced, so that we cannot call another culture 'immoral' unless we add 'by our lights.'"⁵⁵ Posner does not flinch from the full consequences of this view. No practice whatever—not adultery,⁵⁶ treason,⁵⁷ infanticide,⁵⁸ Nazi and Cambodian genocide,⁵⁹ human sacrifice,⁶⁰ female genital mutilation,⁶¹ suttee,⁶² slavery,⁶³ torturing babies for fun,⁶⁴ head-shrinking,⁶⁵ cannibalism,⁶⁶ or hurling virgins into volcanoes to stimulate crop growth⁶⁷—can be shown to be truly *wrong*. Posner admits that his position makes him "a moral relativist," but says that he does not "embrace . . . the 'vulgar relativism' that teaches . . . that we have a moral duty to tolerate cultures that have moral views different from ours."⁶⁸ He would be quite willing to stamp out certain practices prevalent in other cultures,⁶⁹

began his critique by examining "the hidden darkness from which the lawyer's current lust for economic illumination springs (for when you see a drunk flinch, you will never understand his action unless you know about the pink viper whose fangs he is trying to avoid)." *Id.* at 453. Leff viewed the "pink viper" in this case as our inability "to tell (or at least to tell about) the difference between right and wrong." *Id.* at 459. In view of our lack of "any rational and coherent way to express [our] intuitions," *id.* at 482, economic analysis of law is alluring because it allows us to keep "on talking . . . [by slipping] in our normatives in the form of descriptives." *Id.* at 459. To Leff, though, economic analysis's appeal was chimerical, "not notably likely to fill the echoing void." *Id.* at 482. Interestingly, in this, his first article discussing the grounding of normative assertions, Leff does not specifically recognize "God says" as the only logical way to fill the normative void. In his second effort concerning these themes, however, Leff states, "If God exists, and He has commands, and those commands are by definition righteous, and you know what those commands are, then you are 'right' to do them." Leff, *On Shoring Up a Void*, *supra* n. 4, at 540.

55. Posner, *Problematics*, *supra* n. 48, at 1642. Assertions concerning morality assert only "local fact[s], in the same way that the sentence 'It is 35 degrees Fahrenheit in Chicago today' asserts a local fact." *Id.* at 1643.

56. *Id.*

57. *Id.*

58. *Id.* at 1650. Even within a society which condemned infanticide, Posner would be unwilling to brand as really immoral a nonconformist who asserted the right to kill infants. *Id.* at 1644. He could only say such a person was "a lunatic, a monster, or a fool, as well as a violator of the prevailing moral code." *Id.*

59. *Id.* at 1652.

60. *Id.*

61. *Id.*

62. *Id.* at 1644.

63. *Id.* at 1650.

64. *Id.* at 1656.

65. *Id.* at 1653.

66. *Id.*

67. *Id.* at 1652.

68. *Id.* at 1642.

69. According to Posner, some moral codes have vanished because they were:

maladaptive If a moral code does not further the interests of the dominant groups in a society, or if it weakens the society to the point of making it vulnerable to conquest

but only because he found them to be “disgusting,”⁷⁰ not because they could be said to be “really” morally unsound.⁷¹

(even if only by arousing the fear or hatred of a stronger society), or if it engenders unbearable internal tensions, then either the code or the society will eventually become extinct; the moral code of the antebellum South, the moral code of the Nazis, and the moral code of the Soviet Union are all examples.

Id. at 1654; and *see id.* at 1641, 1652. But the disappearance of these codes cannot be called “moral progress.” *Id.* at 1654. They failed not because they “were immoral,” but because they were “unsound.” *Id.* Moreover, “[h]ad Hitler or Stalin succeeded in their projects, our moral beliefs would probably be different (we would go around saying things like ‘You can’t make an omelette without breaking eggs’).” *Id.*

70. *See id.* at 1644, 1652. To Posner, disgust is one of those “intractable emotions” (another is “sympathy”) that are the source of “people’s moral beliefs.” Larissa MacFarquhar, *The Bench Burner*, *The New Yorker* 78, 82 (Dec. 10, 2001). This view of the origin of morals is very reminiscent of Justice Holmes, who wrote:

“all I mean by truth is what I can’t help believing—I don’t know why I should assume except for practical purposes of conduct that [my] *can’t help* has more cosmic worth than any other—I can’t help preferring port to ditch-water, but I see no ground for supposing that the cosmos shares my weakness.”

Alschuler, *supra* n. 4, at 24. Thus, to Holmes, “moral preferences [were] ‘more or less arbitrary Do you like sugar in your coffee or don’t you? So as to truth.’” *Id.* at 1. Holmes also relied upon disgust to fill the gap left by the absence of moral absolutes:

“Disgust is ultimate and therefore as irrational as reason itself—a dogmatic datum. The world has produced the rattlesnake as well as me; but I kill it if I get a chance, as also mosquitos, cockroaches, murderers, and flies. My only judgment is that they are incongruous with the world I want; the kind of world we all try to make according to our power.”

Id. at 25.

The views of Posner and Holmes are similar enough that one is not surprised to learn that Holmes is Posner’s hero. MacFarquhar, *supra* at 88. Posner, in his Harvard Law Review article, acknowledges his debt to Holmes (and its appropriateness since Posner was delivering the Holmes Lectures) by describing his own moral views as “similar to the general moral stance of Oliver Wendell Holmes, Jr., as reconstructed from his fragmentary writings on morality.” Posner, *Problematics*, *supra* n. 48, at 1645. *See* Posner, *supra* n. 49, at vii (“one way to understand [his book] is as an extended homage to Holmes’s ideas about morality and law”).

71. *See* Posner, *Problematics*, *supra* n. 48 at 1645. Although this Article focuses on morals rather than law, *see infra* n. 224 and accompanying text, it is nonetheless worthwhile briefly to comment on the relationship between Posner’s disgust standard for evaluating conduct and his role as a judge. While Posner has stated that “[d]isgust when sufficiently widespread . . . is as solid a basis for legal regulation as tangible harm,” MacFarquhar, *supra* n. 70, at 82, this belief has not led him automatically to uphold statutes so motivated against constitutional challenge. It is proper for Posner as a judge to frame his views in the language of the applicable constitutional standard. Nonetheless, there is reason to doubt that Posner can fairly apply constitutional limitations to statutes that prohibit conduct that disgusts a state legislature more than it disgusts Posner himself.

This suspicion is raised by Posner’s dissenting opinion in *Hope Clinic v. Ryan*, 195 F.3d 857, 876 (7th Cir. 1999), which considered the constitutionality of Illinois’s ban of partial-birth abortion, a procedure in which all but the head of a living fetus is extracted from the womb before the fetus is killed by having its head crushed. The court, with limiting injunctions restricting the statute’s application, found the ban to be constitutional. *Id.* at 862, *rev’d*, 249 F.3d 603, 604-605 (7th Cir. 2001). *See Stenberg v. Carhart*, 530 U.S. 914 (2000) (finding Nebraska’s partial-birth abortion ban to be unconstitutional). In his dissent to the 1999 Seventh Circuit ruling, Posner stated that to apply the applicable constitutional standard of undue burden, one must understand “the peculiar and questionable character” of the challenged statute. 195 F.3d at 878. He was

It can thus be seen that to Posner, the inquiry “Is it right to do X?,” meant as an inquiry about absolute values, is irrelevant. Any answer would inevitably be rooted in a particular culture. Thus, no ultimately dispositive answer could ever be given.⁷² Posner thus in essence agrees with Leff—no absolute moral judgments are possible.⁷³

If Posner provides no help in identifying what is *truly* evil, his responders, with one exception, offer nothing more helpful. To Ronald Dworkin, “moral philosophy,” that is, “morality itself,” exists as an “intellectual domain[]” “conceptually distinct” from “moral sociology, anthropology, and psychology”:

especially impacted by the fact that the partial-birth abortion ban would not prohibit crushing a fetus’s head while the fetus was “entirely within the uterus.” *Id.* at 879. Posner believes that “there is no meaningful difference between the forbidden and the privileged practice. No reason of policy or morality that would allow the one [killing the fetus while wholly within the womb] would forbid the other [partial-birth abortion].” *Id.* Posner therefore branded the ban as “irrational,” *id.* at 880, a pejorative label that led him (together with the lack of a health exception) to conclude that the ban imposed an undue burden upon women seeking an abortion. *See id.* at 880-885.

Posner plainly suggests that were there a “meaningful difference between the forbidden and privileged practice[s],” the ban would not be irrational. A “meaningful difference” is evident. In a partial-birth abortion, the fetus mostly is outside the uterus—born—before it is killed. The procedure therefore constitutes or closely approaches infanticide. *See Stenberg*, 530 U.S. at 106-108 (Thomas, J., dissenting). A partial-birth abortion ban therefore is rational, a completely appropriate way for a state legislature to express its disgust with infanticide. But Posner, because the ban does not prevent killing a fetus by crushing its head while the fetus is totally within the womb, insists that the partial-birth procedure is not “a particularly cruel or painful or horrifying mode of abortion.” 195 F.3d at 879. (Posner, J., dissenting). Posner’s inability to grasp the distinction between the two procedures is unfathomable, since he himself acknowledges that “the line between feticide and infanticide is birth. Once the baby emerges from the mother’s body, no possible concern for the mother’s life or health justifies killing the baby.” *Id.* at 882.

Posner’s position in fact appears disingenuous. He labels as “uninformed” those who view partial-birth abortion as “akin to infanticide; they didn’t realize that the only difference between it and the methods of late-term abortion that are conceded all round to be constitutionally privileged is *which way the fetus’s feet are pointing.*” *Id.* at 880 (emphasis added). The distinction plainly involves more than the *direction* of the fetus’s feet. In the partial-birth procedure, the entire fetus, except the head, is outside of the uterus, *see id.* at 861, and a substantial portion, roughly from the waist down, protrudes into the open air, outside of the woman’s body altogether. Yet Posner somehow is able to state that in the partial-birth procedure, only the fetus’s feet are outside the uterus. *Id.* at 879. Posner’s factual distortions render particularly ironic his decrying the irrationality of the legislatures that enacted partial-birth abortion bans. *See id.* at 879-880.

72. This is true not only for disagreements between cultures, but also for disagreements within a particular culture. *See supra* n. 58.

73. Leff was deeply distressed at our inability to ground ultimate moral assertions. *See supra* text accompanying n. 46 & *infra* nn. 347-351 and accompanying text. Posner, because he views disgust as a sufficient criterion for making evaluations, *supra* nn. 70-71 and accompanying text, presumably would not share Leff’s distress.

There is one caveat to the statement that Posner does not believe in moral absolutes—he agrees with Leff that God not only could ground, but also that God is the only possible ground for universal moral judgments. *See infra* nn. 101-102 and accompanying text. Like Leff, however, Posner was conceding this point in the abstract only. *See infra* nn. 217 & 261.

It is certainly possible, for example, for someone to think consistently that clitoridectomy has been widely accepted in many cultures, that its acceptance in some cultures and rejection in others . . . reflects only the different economic and other needs of the two societies, that no argument will ever change anyone's views about the practice, and that the practice is everywhere morally odious.⁷⁴

But Dworkin's response nowhere explores *how* one knows that the practice warrants global condemnation.⁷⁵ The only possible example of a moral arbiter that he even mentions is the Supreme Court in *Roe v. Wade*.⁷⁶ Dworkin argues that the Court, in holding that states must "respect individual autonomy in matters of personal morality," necessarily decided the moral issue of the status of early fetuses i.e., that killing them did "not involve any violation of rights."⁷⁷ While this description of *Roe* is logically correct,⁷⁸ Dworkin seems to recognize

74. Dworkin, *supra* n. 53, at 1719-1720.

75. Dworkin also fails to consider how to ground values in his criticism of "Darwinian pragmatism," the label he gives to an approach to morals (which Dworkin asserts is Posner's "intuitive but hidden conviction") that relies upon "nature's ability . . . [to make] certain inclinations, attitudes, sympathies, and dispositions *natural* in different communities." *Id.* at 1736 (emphasis added). He considers this "Darwinian moral biology," *id.* at 1735, inferior to the moral system he favors, one in which we rely on "our own ability to identify appropriate norms and attitudes . . . [our own knowledge of] what is best for ourselves and our communities . . . [and our own effort to state] what goals we should collectively pursue, or what counts as an improvement." *Id.* at 1735-1736. Strikingly missing are any criteria for making all the significant determinations that Dworkin posits.

76. 410 U.S. 113 (1973).

77. Dworkin, *supra* n. 53, at 1729 & n. 43. While Dworkin says that the Court decided only that an "early fetus does not have interests of its own that entitle it to constitutional protection," *id.* at 1729-1730, it is incontrovertible that the Court in fact held that *at no point in the pregnancy* does a fetus have such interests. Under the *Roe* scheme, during the first trimester states could put no restrictions on abortion. During the second trimester, the only regulations allowed were those reasonably relating to the health of the mother. Even during the third trimester, the fetus was not accorded interests *of its own*. The Court held only that a State, to protect its own interests, could prohibit abortion, but not where the life or health of the mother would be jeopardized by prohibiting abortion. *Roe*, 410 U.S. at 164-165. Moreover, the broad nature of the health exception in effect meant that abortion was available on demand throughout pregnancy. See Samuel W. Calhoun & Andrea E. Sexton, *Is It Possible to Take Both Fetal Life and Women Seriously? Professor Laurence Tribe and His Reviewers*, 49 Wash. & Lee L. Rev. 437, 440-441 (1992).

Despite his great erudition, Arthur Leff also erred in describing the impact of *Roe*. In the fragment of his law dictionary completed prior to his death, Leff, in the definition of "abortion," stated incorrectly that the state, in very exceptional cases, could declare abortion illegal with respect to second-trimester fetuses. Arthur A. Leff, *The Leff Dictionary of Law: A Fragment*, 94 Yale L.J. 1855, 1867 (1985) [hereinafter Leff, *A Fragment*]. He also incorrectly stated that during the final trimester a state could approach "the previously prevailing criminal-law total ban on the practice of abortion." *Id.* For a similar error by Posner, see Posner, *supra* n. 49, at 134-135.

78. It is impossible to decide that fetuses can be killed throughout pregnancy, see *supra* n. 77, without necessarily depreciating their moral status to something less than living human beings. Thus, the *Roe* Court's statement that it "need not decide the difficult question of when life

that the Court did not *really* decide the moral status of fetuses. The decision shows only what the Court, “in its view,” believed.⁷⁹ One can easily imagine Leff’s response: Is there any quality of the Supreme Court that, as to the moral rightness of its decision, enables it to “withstand the cosmic ‘says who’”?⁸⁰

Responder Anthony Kronman is also unhelpful in answering Leff’s question, “‘Why is it right to do X’”? Kronman emphasizes the positive role of reason in contributing to the moral life. His starting point is to recognize that “good character is a necessary condition of moral soundness.”⁸¹ If the habits that define one’s character “are bad—if [a] young person’s character is vicious—there is little that philosophy can do to repair the damage.”⁸² But reason still has an important role:

begins,” 410 U.S. at 159, reveals a perspective that is stunningly obtuse.

79. Dworkin, *supra* n. 53, at 1729 n. 43. Posner argues:

Roe v. Wade left the moral issue exactly where it found it. To think otherwise is to suppose that the *Dred Scott* decision increased the moral worth of slavery, *Plessy v. Ferguson* the moral worth of racial segregation, and *Bowers v. Hardwick* the moral worth of antisodomy laws.

Posner, *Reply*, *supra* n. 53, at 1805.

80. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1232. That Dworkin in his reply to Posner fails to grapple with how to ground moral claims does not mean that he has never done so. Consider how elsewhere he evaluates the proposition that “[t]here is no moral objection to exterminating an ethnic group or enslaving a race or torturing a young child, just for fun, in front of its captive mother.” Ronald Dworkin, *Objectivity and Truth: You’d Better Believe It*, 25 *Phil. & Pub. Aff.* 87, 117-118 (1996). Although it would be “startlingly counterintuitive to think there is nothing wrong with genocide or slavery or torturing a baby for fun,” *id.* at 118, Dworkin assures us that he does “not mean that our convictions are right just because we find them irresistible, or that our inability to think anything else is a reason or ground or argument supporting our judgment.” *Id.* But then he immediately says the following:

[A]ny reason we think we have for abandoning a conviction is itself just another conviction, and . . . we can do no better for any claim, including the most sophisticated skeptical argument or thesis, than to see, whether, after the best thought we find appropriate, we think it so. If you can’t help believing something, steadily and wholeheartedly, you’d better believe it. Not, as I just said, because the fact of your belief argues for its own truth, but because you cannot think any argument a decisive refutation of a belief it does not even dent. In the beginning, and in the end, is the conviction.

Id.

Have I missed something? Does not Dworkin finally ground moral precepts on the very foundation he says that he avoids? Moral truth, in the end, boils down to convictions that are thoughtfully-held. Leff’s “sez who” response can be easily anticipated. Why should considered moral beliefs be given any more weight than those that are not? “Only if *someone* has the power to declare careful, consistent, coherent ethical propositions ‘better’ than the sloppier, more impulsive kinds. Who has that power and how did he get it?” Leff, *Unspeakable Ethics*, *supra* n. 4, at 1238. See *infra* nn. 95, 215 and accompanying text. This Leffian critique of Dworkin’s reasoning is especially fitting because Dworkin’s long article several times refers, with no attempt at evaluation, to the claim that without God there is no basis for morality. Dworkin, *supra* at 90, 91, 113, 123.

81. Kronman, *supra* n. 53, at 1756.

82. *Id.*

even the best character is likely to prove deficient in certain predictable ways, and when it does, reason provides needed supplementation, correction, and support, adding a depth to moral life that no set of habits, however virtuous, can supply.⁸³

It is obvious that Kronman jumps over the difficult terrain that troubles Leff. Who/What determines what is “bad,” “vicious,” “best,” “deficient,” and “virtuous”? Kronman’s response does not even attempt an answer.⁸⁴

Responders Martha Nussbaum and Charles Fried can be considered together because they do address, in similar ways, the foundational issue of how to justify moral claims. Nussbaum mentions “three prominent approaches to the question that can be found in the recent philosophical literature.”⁸⁵ The “‘reflective-naturalist’ view” posits that ethical judgments are normative because “they are the expression of a particular aspect of our makeup”—our “complex ethical faculties.”⁸⁶ The “‘reflective-eudaimonist’ view” similarly “understands normativity as something that derives from a part of our natural makeup,” but with a greater emphasis on the role of our “rational faculties.”⁸⁷ Neither view resolves Leff’s dilemma because “who says” that a moral assertion is *right* just because it is somehow derived from our “makeup.”⁸⁸ And

83. *Id.*

84. Two examples verify this statement. First, Kronman refers to Socrates’ reminding “Thrasymachus in *The Republic*, that the greatest question for each of us is how we ought to live our lives as a whole—the question of what our ultimate values and loyalties and goals should be.” *Id.* at 1753. See *id.* at 1766 (Kronman asserts that to take the subject of moral philosophy seriously, “a person must confront the questions of ultimate ends that give his or her entire life its direction and form.”). But Kronman never even mentions, much less evaluates, Thrasymachus’ contention “that ‘just’ or ‘right’ means nothing but what is to the interest of the stronger party.” Plato, *The Republic* 18 (Francis MacDonald Cornford trans., Oxford U. Press repr. 1968). The second example is Kronman’s discussion of how reason supplements character by “filling the gaps and resolving the conflicts among our moral habits.” Kronman, *supra* n. 53, at 1757. He considers a clash between two moral obligations, to tell the truth and to give “back to others what one owes them,” and evaluates fact patterns in which the two principles conflict. *Id.* at 1756. Completely missing is any substantiation that following these two principles in fact constitutes acting rightly. Kronman simply asserts that “[e]very man and woman of good character presumably believes these things and acts accordingly.” *Id.*

85. Nussbaum, *supra* n. 53, at 1789.

86. *Id.* at 1789-1790. This view considers “the human being [to be] an animal” possessing such faculties. *Id.* at 1789. “Ethical judgments are regarded as deliverances of our normative faculties, just as perceptual judgments are deliverances of our perceptual faculties.” *Id.*

87. *Id.* at 1790-1791. Reason guides the search for a “life plan.” *Id.* at 1790. Selecting this “general end” for one’s life results from “seeking coherence and fit within the scheme of one’s ends taken as a whole.” *Id.* at 1791. This approach to normativity is an example of what Fried calls “the method of reflective equilibrium.” Fried, *supra* n. 53, at 1747-1748.

88. According to Nussbaum’s description of the “‘reflective-naturalist’” view, rightness is an irrelevant issue. “Justification . . . requires reflectively sorting out the various deliberations of our faculties until we find the view that satisfies us [U]ltimate ends [are regarded] as dictated by our desires, which . . . [are] relatively inflexible and lacking in cognitive content.” Nussbaum,

how will rightness be determined when the “makeups” of different people yield different moral conclusions? Even if a particular position results from careful reasoning, what establishes that a considered moral precept is more correct than one that is impulsive?⁸⁹ At some point, for example, it will become necessary to evaluate the *ends* to which a particular reasoned approach is directed, and there are no noncontestable evaluative criteria.⁹⁰

The third approach Nussbaum discusses is neo-Kantianism. Under this view, conduct is ethical only if it is the choice of a specific human faculty, our practical reason, which is “free” and “self-legislating,” “the source of its own laws and its own ends.”⁹¹ Showing this type of choice generally requires “demonstrating that the maxim of the action can pass a test based upon Kant’s categorical imperative”⁹²: “Act only according to that maxim by which you can at the same time will that it should become a universal law’”⁹³ As Fried points out, Kant’s normative philosophy is characterized by “ingenuity, inventiveness, and sheer intellectual intricacy and dazzle.”⁹⁴ But *why* should Kant’s particular definition of ethical conduct be accepted? If a person claims that morality allows him to act one way even though everyone else must act in the opposite way, one can readily see that the person disagrees with Kant, but how does that establish that the person’s view *actually* is wrong?⁹⁵ Even Fried says that he is not sure that Kant’s “argument goes all the way through.”⁹⁶ But even if it did for Fried, why should that be

supra n. 53, at 1790.

89. As seen, Leff demonstrates that reflectiveness fails as a convincing arbiter of moral truth. See *supra* n. 80.

90. It is illuminating that Nussbaum, while acknowledging that “ends” are essential to the “reflective-eudaimonist” approach, see *supra* n. 87 and accompanying text, says nothing whatever about substance i.e., what is the content of those ends? Kronman is an example of how ends are sometimes sneaked into a value system premised in reason. See *supra* nn. 81-84 and accompanying text.

91. Nussbaum, *supra* n. 53, at 1791.

92. *Id.*

93. Immanuel Kant, *Foundations of the Metaphysics of Morals* xiii (Lewis White Beck trans., The Liberal Arts Press, Inc. 1959).

94. Fried, *supra* n. 53, at 1747.

95. Leff insists that the one who wants the freedom to act differently from everyone else cannot be shown to be wrong:

Nor is it “immoral” to say “All people are identical, so treat all of them identically except Morris Fleischfarb”—even though that one is pretty ugly as “rational” propositions go. Briefly, logical coherence is logical coherence; it becomes something else—right, or good—only if so stipulated.

Leff, *On Shoring Up a Void*, *supra* n. 4, at 544. See Leff, *Memorandum*, *supra* n. 4, at 881 (here the moral individualist is “Herman Shwelb”); Leff, *Realism About Nominalism*, *supra* n. 4, at 478 n. 70 (“Morris Schwelb”).

96. Fried, *supra* n. 53, at 1747.

dispositive for anyone else?

The only responder who refers to a potentially fruitful way for inquiring “‘Why is it right to do X?’” is John Noonan, Jr. Noonan believes that it is self-evident that “[t]here is no law without a lawgiver. There is no judge without a law. There is no judgment without a judge.”⁹⁷ “[A]ttempts to pronounce moral judgments” without acknowledging a lawgiver and a judge “are doomed to failure.”⁹⁸ Since Noonan seems to recognize that the law to which he refers must have a source outside man himself,⁹⁹ Noonan presumably would agree with Leff that apart from a “supernatural grounding,” there can be no “defensible moral position on, under, or about anything.”¹⁰⁰ Posner agrees as well. In *Problematics*, he states that only “faith in a Supreme Lawgiver” would justify belief in a moral law “that has tangible reality akin to that of the stars.”¹⁰¹ And in his reply to Noonan, Posner agrees with Noonan’s “central theses: that one needs a lawgiver if there are to be moral universals . . . that no human lawgiver could lay down universal moral duties; and that, in short, the only tenable ground for believing in a universal moral law is religious.”¹⁰²

C. Wilson

If Judge Posner’s belief that right and wrong are culturally determined offers no guidance for ascertaining what is *really* morally correct, Professor Edward Wilson, the Pulitzer-winning Harvard naturalist, may be more helpful. At least that is the suggestion of a 1998 symposium in the *Wilson Quarterly*,¹⁰³ consisting of an article by Wilson and responses by Richard Rorty and Paul Gross. The editor’s introduction laments the philosophical position that “has become the orthodoxy of the contemporary world”—the view that “all knowledge is ultimately subjective, individually or socially constructed, an expression

97. Noonan, Jr., *supra* n. 53, at 1768.

98. *Id.*

99. *Id.* at 1768 n. 2.

100. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1232; Leff, *On Shoring Up a Void*, *supra* n. 4, at 538, 540. See *supra* nn. 43-47 and accompanying text.

101. Posner, *Problematics*, *supra* n. 48, at 1649.

102. Posner, *Reply*, *supra* n. 53, at 1813. Thus, Posner apparently recognizes “that moral claims without a foundation in God cannot make that difficult philosophical movement from ‘is’ to ‘ought.’” David M. Smolin, *The Limits of Theory*, *First Things* 56, 57 (Aug./Sept. 1999) (reviewing Posner, *supra* n. 49). It is important to note, however, that Posner’s references to God are in the abstract only. See *infra* n. 261.

103. *Is Everything Relative? A Debate on the Unity of Knowledge*, *Wilson Q.* 14-49 (Winter 1998) [hereinafter *Is Everything Relative?*].

of power or will.”¹⁰⁴ This “doctrinaire relativism . . . forecloses any serious discussion of absolutes or universals.”¹⁰⁵ Most alarmingly, it also undermines any claim to universalism made on behalf of the “liberal ideals of human rights and justice.”¹⁰⁶ The editor asserts the need for a “common ground from which to build and evaluate human institutions and cultures” and credits Wilson for attempting to locate “such a foundation.”¹⁰⁷ Wilson “sets forth a bold alternative to our current intellectual relativism: a unifying knowledge that combines all disciplines in a biologically grounded understanding of ourselves and our world.”¹⁰⁸

Wilson begins by questioning the traditional distinction between the natural sciences and the other two “great branches of learning,” the social sciences and the humanities.¹⁰⁹ The natural sciences have increasingly “been connected by a web of causal explanation,” resulting in a “consilient explanation” of the “entire known universe, from the smallest subatomic particles to the reach of the farthest known galaxies.”¹¹⁰

[C]onventional wisdom, [however, has viewed the social sciences and humanities] as intellectually independent . . . separated . . . by an epistemological discontinuity, in particular by possession of different categories of truth, autonomous ways of knowing, and languages largely untranslatable into those of the natural sciences.¹¹¹

Wilson believes that this “traditional division of knowledge” is no longer defensible due to “the expansion of consilient cause-and-effect explanation outward from the natural sciences toward the social sciences and humanities.”¹¹² This expansion is based on the hypothesis, which has ever-growing support, “that all mental activity is material in nature and occurs in a manner consistent with the causal explanations of the

104. Jay Tolson, *The Many and the One*, Wilson Q. 12, 12 (Winter 1998).

105. *Id.* As evidence, the editor relies, in part, on Professor Robert Simon’s experiences with his students. *Id.* See *supra* nn. 11-13 and accompanying text.

106. Tolson, *supra* n. 104, at 13.

107. *Id.*

108. *Is Everything Relative?*, *supra* n. 103, at 15.

109. Edward O. Wilson, *Resuming the Enlightenment Quest*, Wilson Q. 16, 16-17 (Winter 1998).

110. *Id.* at 16. “Consilience . . . means the alignment (literally, the ‘jumping together’) of knowledge from different disciplines.” *Id.* The term also supplies the title to the book that his Wilson Quarterly article previews. See Edward O. Wilson, *Consilience: The Unity of Knowledge* (Knopf 1998) [hereinafter Wilson, *Consilience*].

111. Wilson, *supra* n. 109, at 17.

112. *Id.*

natural sciences.”¹¹³ Studying “the material origins and functioning of the human brain . . . appears increasingly available as a new foundational discipline of the social sciences and humanities.”¹¹⁴ The hypothesis also gives Wilson “[c]onfidence in the unity of knowledge—universal consilience.”¹¹⁵

Wilson describes human mental activity as “material” because of the key role played by the genes, which prescribe “epigenetic rules of mental development.”¹¹⁶ These rules, “the inherited neural pathways . . . by which the mind assembles itself,”¹¹⁷ operate as “developmental biases”¹¹⁸ and taken collectively constitute human nature.¹¹⁹ Wilson cites incest avoidance as an example of human conduct that “springs from a hereditary epigenetic rule.”¹²⁰ Anthropological research confirms the rule,

called the Westermarck effect [W]hen a boy and girl are brought together before one or the other is 30 months of age, and then the pair are raised in proximity . . . they are later devoid of sexual interest in each other; indeed, the very thought of it arouses aversion.¹²¹

Wilson does not contend that assessing “the human condition today”¹²² depends solely upon understanding hereditary rules. Culture also has a critical impact. In fact, it is the nature and effect of “gene-culture coevolution . . . [t]hat . . . is the central intellectual question of the social sciences and humanities.”¹²³ While

all culture is learned . . . its invention and transmission are biased by . . . human nature, [which is itself] prescribed by genes that evolved or were sustained over hundreds of thousands of years in primarily cultural settings.¹²⁴

This gene-culture interaction can be seen in the phenomenon of incest avoidance. Cultural incest taboos result from a hereditary “emotional incapacity [the Westermarck effect]”¹²⁵ fortified in many societies by a

113. *Id.* at 18.

114. *Id.* at 17.

115. *Id.* at 18.

116. *Id.* at 21.

117. *Id.* at 24.

118. *Id.* at 17. *See id.* at 24.

119. *Id.* at 17-18. *See id.* at 21, 23.

120. *Id.* at 23.

121. *Id.*

122. *Id.* at 18.

123. *Id.*

124. *Id.* at 17-18. *See id.* at 24.

125. *See supra* text accompanying n. 121.

rational understanding of the [harmful] consequences of inbreeding.”¹²⁶

Do Wilson’s views fulfill the editor’s hope for a compelling refutation of “doctrinaire relativism,” a firm foundation for the claimed universalism of “liberal ideals”? In terms of Wilson’s symposium article, the answer clearly is “No.” Wilson here does not even purport directly to address ethical issues. He does refer at one point to the search for “objective truth,” but he is not speaking about moral truth, but rather about “material phenomena of the outer world.”¹²⁷ In *The Biological Basis of Morality*,¹²⁸ however, Wilson does explicitly discuss the source of ethics. He posits that there are two competing explanations. Transcendentalists (religious and otherwise) “think that moral guidelines exist outside the human mind,” while empiricists “think them contrivances of the mind.”¹²⁹ Wilson is an empiricist.¹³⁰ He believes that ethical precepts “are very unlikely to be ethereal messages awaiting revelation They are more likely to be products of the brain and the culture.”¹³¹ Due to the effect of “epigenetic rules—hereditary biases in mental development,” individuals are “predisposed biologically to make certain choices.”¹³² Conduct which a society consistently favors eventually is expressed as a code of ethical principles.¹³³

Wilson’s empiricist formulation offers no help whatever in escaping relativism. For Wilson, “ought is just shorthand for one kind of factual statement, a word that denotes what society first chose (or was coerced) to do, and then codified.”¹³⁴ While Wilson realizes that societies may differ—ethical codes achieve their “precise form in each culture according to historical circumstance”¹³⁵—he nowhere suggests that it is appropriate to distinguish between ethical codes on the basis of *right* and *wrong*.¹³⁶ Instead, Wilson uses words like “enduring,”¹³⁷

126. *Id.* at 23.

127. *Id.* at 27. It is interesting, to say the least, that Wilson does not even try to satisfy the editor’s hope that a firm ground for liberal values might be found. See *supra* nn. 104-107 and accompanying text. That hope was puzzling from the outset, however, since the editor recognizes that “consilient knowledge” does not “propose moral ends and absolutes.” Tolson, *supra* n. 104, at 13.

128. Edward O. Wilson, *The Biological Basis of Morality*, A. Mithly, 53 (Apr. 1998).

129. *Id.* at 53.

130. *Id.* at 54.

131. *Id.* at 57.

132. *Id.* at 58.

133. *Id.* at 54.

134. *Id.* at 58.

135. *Id.* at 54.

136. This represents an apparent change in Wilson’s views. In 1978, he wrote:

Given that humankind is a biological species, it should come as no shock to find that populations are to some extent genetically diverse in the physical and mental properties

“stable,”¹³⁸ and “practicable,”¹³⁹ descriptions applicable to codes that are “consistent with human nature.”¹⁴⁰ It is these codes that will be successful, “whether adjudged good or evil by outsiders.”¹⁴¹ Praising conformity with human nature leaves two critical questions unanswered: (1) Are all aspects of human nature worthy of praise?¹⁴² (2) How are deviations from human nature to be evaluated?¹⁴³ Moreover, making success, rather than “good and evil,” one’s chief evaluative criterion, obviously ignores the deeper issue of whether there *really* is such a thing as right and wrong.

Richard Rorty, in his Wilson Quarterly response, also argues that Wilson’s empiricism fails to answer the question of what one ought to do. Rorty does not doubt the existence of “‘epigenetic rules,’ . . . rules hard-wired into our brain in the course of its evolution.”¹⁴⁴ To Rorty, however, these rules serve only the same purpose that hardware serves in a computer.¹⁴⁵ Hardware is certainly important, but one still must

underlying social behavior. A discovery of this nature does not vitiate the ideals of Western civilization. We are not compelled to believe in biological uniformity in order to affirm human freedom and dignity.

Edward O. Wilson, *On Human Nature* 50 (Harv. U. Press 1978) [hereinafter Wilson, *On Human Nature*]. Why affirm the “ideals of Western civilization” unless those ideals are morally superior to differing ideals? (I will skip here making Leff’s “says who?” challenge to Wilson’s assertion.) Twenty years later, however, Wilson states, in reply to the assertion of some philosophers that “[y]ou really can’t pass from *is* to *ought*”: “[I]f *ought* is not *is*, what is? To translate *is* into *ought* makes sense if we attend to the objective meaning of ethical precepts.” Wilson, *supra* n. 128, at 56-57. While this passage is difficult to interpret, it suggests that Wilson no longer believes that a supervening “ought,” like Western ideals, exists. But how would he now handle cultural diversity? When cultures differ there are conflicting “is’s.” What establishes “ought” then?

137. *Id.*

138. *Id.*

139. *Id.* at 56.

140. *See id.* Wilson describes such ethical codes as “wise[.]” *See id.* at 54.

141. *See id.* at 54.

142. It is fascinating that Wilson himself seems intuitively to recognize this issue. After offering an explanation of how biological and cultural evolution gave “rise to moral sentiments,” he says that there is a “dark side of the inborn propensity to moral behavior . . . xenophobia.” *Id.* at 59. While one would expect Wilson to consider whether xenophobia leads to stability in a culture (as he subsequently does, *see id.* at 62-63), his choice here of the word “dark” is surprising. It suggests moral condemnation—that xenophobia is *wrong*. Since Wilson rejects ethical evaluations in terms of right and wrong, *supra* nn. 134-141 and accompanying text, what possibly could justify this conclusion?

143. Consider a person who commits incest, thereby violating one of the epigenetic rules of human mental development. *See supra* text accompanying nn. 120-121. Wilson presumably would only be able to say that such a person did not share the common aversion to incest. At most, if incest violated a norm of that particular culture, *see supra* text accompanying nn. 125-126, Wilson could add that the person had violated a cultural norm. But Wilson could not say that what the person had done was wrong.

144. Richard Rorty, *Against Unity*, Wilson Q. 28, 32 (Winter 1998).

145. *Id.* at 33-34.

choose what program to install.¹⁴⁶ The humanities, not the natural sciences, provide guidance here. Questions concerning program—what “sort of society to create, or [what] kind of person to be”—can be adequately explored now, without waiting for more knowledge about how our brains (the hardware) work.¹⁴⁷

But Rorty himself fails to provide what the editor longs for—a solid foundation for a “claim to universalism” for liberal ideals. He merely states that “the Enlightenment . . . is . . . the origin of most of the good things that have happened in the last couple of hundred years.”¹⁴⁸ One is reminded of Leff’s candidate for answering the question, ““Why is it right to do X?””—““It is right to do X because it is right to do X.””¹⁴⁹ To Rorty, “Enlightenment ideals”¹⁵⁰ are right because they just are.¹⁵¹ Leff’s “cosmic ‘says who’” is an obvious response.¹⁵²

Paul Gross in his response is also unable to provide any persuasive alternative to relativism. Gross admires Wilson greatly. A consilience approach, by enabling us “to get at the uniformities, the basics, of human nature,” is critical to “an adequate understanding of the human condition, which is a social condition.”¹⁵³ Without this understanding,

146. *Id.* at 34.

147. *Id.*

148. *Id.* at 36.

149. *See supra* n. 24 and accompanying text.

150. Rorty, *supra* n. 144, at 37.

151. Establishing what is right by sheer assertion is not new for Rorty. Consider, for example, his recommendation for how Western liberals should respond to the charge that their belief in human equality is only “a Western eccentricity,” rejected by “most of the globe’s inhabitants”: “So what? We Western liberals do believe in it, and so much the better for us’” Richard Rorty, *On Ethnocentrism: A Reply to Clifford Geertz*, 25 *Mich. Q. Rev.* 525, 531 (1986). This statement could easily be misunderstood as just another manifestation of Posner’s argument that all moral precepts are local. *See supra* n. 55 and accompanying text. Rorty in fact does believe that moral standards “are parochial, recent, eccentric, cultural developments.” Rorty, *supra* at 532. But Rorty differs from Posner in a significant respect. Posner openly abandons any attempt to label the varying standards of different cultures as either right or wrong. *See supra* nn. 72-73 and accompanying text. Rorty, on the other hand, states: “Our moral view is, I firmly believe, much better than any competing view It is . . . [false to say] that there is nothing to choose between us and the Nazis.” Richard Rorty, *Trotsky and the Wild Orchids*, in *Wild Orchids and Trotsky* 29, 44 (Mark Edmundson ed., Penguin 1993). Posner, it will be recalled, would say only that the Nazis disgusted him, not that they were wrong. *See supra* nn. 59, 69-71 and accompanying text. Posner’s position is more internally coherent than Rorty’s. Posner, believing that there are no universal moral standards, recognizes that one can no longer make moral judgments trans-culturally. Rorty, while agreeing with Posner that cultural norms are merely local, still insists on making cross-cultural moral assessments. But he does so with no foundation other than his own “say so.”

152. *See supra* text accompanying n. 80.

153. Paul R. Gross, *The Icarian Impulse*, *Wilson Q.* 39, 48 (Winter 1998). Astonishingly, Gross asserts that it was *science* that made possible the elimination of slavery. *Id.* But as Posner points out, “[t]he abolitionist movement was powered much more by religious enthusiasm than by Enlightenment rationality, which diluted its universalistic moral principles with ‘scientific’

“social justice will remain—just—a utopianism.”¹⁵⁴ But what is “social justice” and how exactly does “understanding” lead to it? To Gross, understanding the “biological correlates of . . . a sense of justice” will help us “*appreciate* [it] better. And to appreciate [its] deep meaning . . . is surely to diminish cruelty, to foster a fundamental kind of justice based upon respect for life.”¹⁵⁵ But “who says” that generally diminishing cruelty is the *right* thing to do? What if someone believes that justice *requires* maximum cruelty whenever possible? Gross provides no answer other than his own assertion.

D. Pinker

In a 1997 New York Times Magazine article, Steven Pinker, then a professor of psychology at MIT, discussed two recent notorious American cases of infanticide.¹⁵⁶ He soon found himself involved in what must have been a very uncomfortable debate. While Pinker asserted that his goal was to help the reader understand the tragedies,¹⁵⁷ Michael Kelly in the Washington Post¹⁵⁸ and Andrew Ferguson in The Weekly Standard¹⁵⁹ both accused Pinker of defending infanticide rather than simply explaining it. Pinker indignantly (and accurately) responded that his article makes it clear that he believes that infanticide is immoral.¹⁶⁰ A more complete examination of Pinker’s views, however, shows that he provides no convincing grounding for his position. He provides no answer to Leff’s “grand sez who’?”

Pinker’s discussion of infanticide reflects his views on the nature of the human mind. In his widely-praised 1997 book, *How the Mind Works*, Pinker asserts:

The mind is a system of organs of computation, designed by natural selection to solve the kinds of problems our ancestors faced in their foraging way of life, in particular, understanding and

racism.” Posner, *supra* n. 49, at 42 n. 66.

154. Gross, *supra* n. 153, at 48.

155. *Id.* at 49.

156. Steven Pinker, *Why They Kill Their Newborns*, 6 N.Y. Times 52 (magazine) (Nov. 2, 1997). In 2003 Pinker moved from MIT to Harvard University.

157. *Id.*

158. Michael Kelly, *Arguing for Infanticide*, A23 Wash. Post (Nov. 6, 1997).

159. Andrew Ferguson, *How Steven Pinker’s Mind Works*, Wkly. Stand. 16 (Jan. 12, 1998).

160. Steven Pinker, *Arguing Against Infanticide*, Wash. Post A26 (Nov. 21, 1997); Steven Pinker, *A Matter of the Soul*, Wkly. Stand. 6 (letter to the editor) (Feb. 2, 1998). While Pinker in his original article did clearly condemn infanticide, his discussion of the traits of newborns comes close to suggesting that it is permissible to kill them. He says, for example, that “immature neonates” do not possess “morally significant traits . . . any more than mice do.” Pinker, *supra* n. 156, at 54. At the very least, such a statement makes one wonder why in the world Pinker still objects to killing newborns.

outmaneuvering objects, animals, plants, and other people.¹⁶¹

The key to understanding infanticide, Pinker's article claims, is to recognize natural selection's impact. "Mammals are extreme among animals in the amount of time, energy and food they invest in their young, and humans are extreme among mammals."¹⁶² Because "[p]arental investment is a limited resource . . . mothers must 'decide' whether to allot it to their newborn or to their current and future offspring."¹⁶³ This type of "triage" was common in "human evolutionary history" and we all "inherited [the] brain circuitry that led to [such] decisions."¹⁶⁴ Natural selection does not "push the buttons of behavior directly; [but] it affects our behavior by endowing us with emotions that coax us toward adaptive choices."¹⁶⁵

If human emotions, responding "to the signals of the long-vanished tribal environment,"¹⁶⁶ do indeed sometimes coax us toward infanticide, how can Pinker assert that "[k]illing a baby is an immoral act"?¹⁶⁷ Because, as his book makes clear, Pinker rejects "the naturalistic fallacy, that what happens in nature is right."¹⁶⁸ In a statement plainly revealing his main difference from Wilson,¹⁶⁹ Pinker affirms that "virtue [has] nothing to do with what natural selection designed us to accomplish in the ancestral environment."¹⁷⁰ Rather, "science and ethics are two self-contained systems . . . separate spheres of reasoning."¹⁷¹ And "both are important."¹⁷² Science "allows us to understand what makes us tick"¹⁷³—our "innate human nature."¹⁷⁴ But we must also be willing "to make moral arguments when moral issues come up"—to reason "from principles of rights and values."¹⁷⁵

161. Steven Pinker, *How the Mind Works* 21 (W.W. Norton & Co. 1997) [hereinafter Pinker, *How the Mind Works*].

162. Pinker, *supra* n. 156, at 52.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 53-54.

167. *Id.* at 52.

168. Pinker, *How the Mind Works*, *supra* n. 161, at 50.

169. Pinker differs from Wilson's current view. Wilson once viewed morals in a way similar to Pinker's present position. *See supra* n. 136.

170. Pinker, *How the Mind Works*, *supra* n. 161, at 52.

171. *Id.* at 55. Pinker's perspective is cited by Fried to support the position that a rigorous and unremitting "evolutionary account of the human mind" does not render "ethical reflection . . . meaningless and unavailing." Fried, *supra* n. 53, at 1749. It will be shown that Fried's confidence in Pinker is misplaced.

172. Pinker, *How the Mind Works*, *supra* n. 161, at 47.

173. *Id.* at 56.

174. *Id.* at 46.

175. *Id.* at 47. Pinker's position here is very similar to Rorty's. *See supra* text accompanying nn. 144-147.

Because he refuses to endorse a Wilson-like empiricist conception of ethics, Pinker initially may seem to offer a plausible alternative to relativism. This is not the case. Pinker believes that “ethical theory requires idealizations like free, sentient, rational, equivalent agents whose behavior is uncaused . . . even though the world, as seen by science, does not really have uncaused events.”¹⁷⁶ Thus, as stated by Andrew Ferguson, for Pinker

[m]orality . . . is based on a pretense—on believing, provisionally, something science tells us is untrue This will strike many people as a rather rickety platform from which to launch the pursuit of right and wrong.¹⁷⁷

Pinker provides an equally “rickety” foundation for moral inquiry in his 2002 book, *The Blank Slate*.¹⁷⁸ Pinker still rejects the naturalistic fallacy:

[T]here is nothing morally commendable about the products of evolution As Katharine Hepburn says to Humphrey Bogart in *The African Queen*, “Nature, Mr. Allnut, is what we are put in this world to rise above.”¹⁷⁹

But “how do we do it? Where in the causal chain of evolved genes building a neural computer [the human brain] do we find a chink into which we can fit the seemingly unmechanical event of ‘choosing values’?”¹⁸⁰ One possibility is the recognition that

[i]f . . . the mind is a system with many parts, then an innate desire is just one component among others. Some faculties may endow us with greed or lust or malice, but others may endow us with sympathy, foresight, self-respect, a desire for respect from others
¹⁸¹

Even if true, Pinker says nothing about what determines which faculty *ought* to govern in any given case. For example, in a man’s actions toward a defenseless woman, should lust or sympathy prevail? Lust would appear initially to have the upper hand in view of findings that “[o]pportunistic rape could be a Darwinian adaptation that was specifically selected for.”¹⁸²

176. Pinker, *How the Mind Works*, *supra* n. 161, at 55.

177. Ferguson, *supra* n. 159, at 21.

178. Steven Pinker, *The Blank Slate: The Modern Denial of Human Nature* (Viking 2002) [hereinafter Pinker, *The Blank Slate*].

179. *Id.* at 163; *see id.* at xi, 103, 141-142, 164, 422.

180. *Id.* at 165-166.

181. *Id.* at 166.

182. *Id.* at 364. As will be shown, Pinker in fact strongly condemns rape. He fails, however, to provide any satisfactory ground for his opposition. *See infra* nn. 201, 205-206 and

Another of Pinker's theories to show how morality emerged is the human "capacity to feel pleasure and pain."¹⁸³ A person

is better off if he never gets shoved into the mud, but he can hardly demand that others refrain from shoving him if he himself is not willing to forgo shoving others. And since one is better off not shoving and not getting shoved than shoving and getting shoved, it pays to insist on a moral code, even if the price is adhering to it oneself.¹⁸⁴

"[H]e can hardly demand" is the key phrase showing why Pinker's argument fails. *Why* can one "hardly demand" to be able to shove others, but not have them shove him? Pinker refers to "an intrinsic logic of ethics,"¹⁸⁵ but this is based only upon Pinker's *pure assertion* that such reciprocity is ethical. Many people *have* adopted a philosophy of "Not everyone, just me!"¹⁸⁶ They have insisted "that 'here,' the point in space one happens to be occupying at the moment, is a special place in the universe."¹⁸⁷ Pinker clearly communicates his own disapproval and that of "moral philosophers through the ages,"¹⁸⁸ but he says nothing that could *substantiate* that such conduct is morally wrong.¹⁸⁹

Moral judgment via pure assertion is characteristic of Pinker.¹⁹⁰

accompanying text.

183. *Id.* at 187.

184. *Id.* See *id.* at 168-169, 192-193.

185. *Id.* at 193.

186. See *id.* at 187.

187. See *id.*

188. *Id.*

189. See *supra* n. 95 (showing Leff's rejection of logical consistency as the test of moral truth). The moral principle being discussed in this paragraph of the text is, of course, the Golden Rule. Pinker embraces this principle, but provides it with only the chimerical grounding of flat assertion. He thus ignores the Golden Rule's only meaningful foundation—the will of God. See *infra* n. 357.

190. Earlier, *supra* n. 151, Posner's view of morals was shown to be "more internally coherent" than Rorty's. Posner's approach is also logically superior to Pinker's "pure assertion" approach to moral evaluation. This is clearly shown by considering what each says about moral progress. Posner recognizes that any reference to moral progress is meaningless without "an objective order of morality that . . . enable[s] moral comparisons to be drawn between us and our predecessors." Posner, *supra* n. 49, at 23-24. Posner's point is undeniable. As C.S. Lewis states (in a different context):

If things can improve, this means that there must be an absolute standard of good [for comparative purposes] There is no sense in talking of "becoming better" if better means simply "what we are becoming"—it is like congratulating yourself on reaching your destination and defining destination as "the place you have reached."

C.S. Lewis, *Evil and God*, in *God in the Dock: Essays on Theology and Ethics* 21, 21 (Walter Hooper ed. 1970). See *infra* text accompanying n. 250. Since Posner believes that no objective morality exists, *supra* nn. 55-73 and accompanying text, "there is no moral progress in any sense flattering to the residents of wealthy modern nations—that we cannot think of ourselves as being morally more advanced than head shrinkers and cannibals and mutilators of female genitalia." Posner, *supra* n. 49, at 23; see *supra* n. 69. Pinker, on the other hand, refers to "the obvious

For example, in *How the Mind Works*, Pinker calls racial discrimination wrong because “it is unfair to deny a social benefit to individuals because of factors they cannot control.”¹⁹¹ If another person asserts that fairness *requires* denying benefits on the basis of race, Pinker provides no basis whatever for believing that his own view is right.¹⁹² Pinker repeats his assertion-based condemnation of racial discrimination in *The Blank Slate*.¹⁹³ The book contains a cornucopia of additional moral judgments based only on assertion: “decimation of native Americans . . . is indeed one of the great crimes of history”;¹⁹⁴ war is “morally despicable”;¹⁹⁵ “compensatory social policies” are just;¹⁹⁶ the Nazis were “sickening”;¹⁹⁷ stem cell research is “humane”;¹⁹⁸ “one *ought* to ignore certain group-wide averages when judging an individual”¹⁹⁹; “sodomy between consenting men” is a morally irrelevant issue;²⁰⁰ “[i]njunctions against murder and rape . . . have a transcendent and universal warrant”;²⁰¹ women’s liberation “is one of the great moral achievements of our species”;²⁰² it is wrong for “parents to beat, humiliate, deprive, or neglect their children, because those are awful things for a big strong person to do to a small helpless one”;²⁰³ people have “inalienable rights . . . [because] they are sentient human beings.”²⁰⁴ Listing Pinker’s moral assessments is not meant to indicate either my agreement or

[moral] progress that has taken place over millennia.” Pinker, *The Blank Slate*, *supra* n. 178, at 166. But given his complete failure to establish any objective criteria of morality, Pinker’s rosy view of human history is self-deceived.

191. Pinker, *How the Mind Works*, *supra* n. 161, at 50. Pinker argues as well “that a victim of discrimination experiences it as a uniquely painful sting . . . that a group of victims is liable to react with rage . . . [and] that discrimination tends to escalate into horrors like slavery and genocide.” *Id.*

192. The same thing can be said for Pinker’s other justifications, *supra* n. 191, for calling racial discrimination wrong. What if a person likes to cause others pain and see them “react with rage”? And while Pinker labels slavery and genocide “horrors,” what if another person believes these to be morally commendable?

193. Pinker, *The Blank Slate*, *supra* n. 178, at 145.

194. *Id.* at 119.

195. *Id.* at 120.

196. *Id.* at 150-151.

197. *Id.* at 153.

198. *Id.* at 189.

199. *Id.* at 205.

200. *Id.* at 274.

201. *Id.* at 269. In view of Pinker’s rejection of God as the basis of morals, *infra* text accompanying n. 209, what could he possibly mean by “transcendent”?

202. *Id.* at 337.

203. *Id.* at 398.

204. *Id.* at 425. Pinker’s grounding is an interesting contrast to Jefferson’s, who grounded “unalienable rights” in endowment by a Creator. *The Declaration of Independence* para. 2 (U.S. 1776).

disagreement with his conclusions.²⁰⁵ My subject in this Article is how one *grounds* moral precepts. Pinker uses pure assertion.²⁰⁶

A final point demonstrating that Pinker's evolutionary argument fails to show that morality has "an external reality"²⁰⁷ is his extraordinary statement that:

[w]hatever its ontological status . . . a moral sense is part of the standard equipment of the human mind. *It's the only mind we've got*, and we have no choice but to take its intuitions seriously. If we are so constituted that we cannot help but think in moral terms . . . then morality is as real *for us* as if it were decreed by the Almighty or written into the cosmos.²⁰⁸

An obvious weakness is that Pinker says nothing about how right and wrong are to be determined when moral intuitions differ. But the passage is telling at a more significant level. The phrase "[w]hatever its ontological status" may suggest that Pinker actually is not all that interested in the ontological question. At the very least, it shows that Pinker finds unconvincing his own arguments about the reality of moral truth. The phrase "morality is as real *for us* as if it were decreed by the Almighty" is especially significant. Pinker is correct that humans have powerful moral feelings—morality *seems* real. The issue, though, is whether morality *is* real. One of Pinker's objectives for *The Blank Slate* is to show that morality can be grounded apart from God.²⁰⁹ Leff, of course, argued that it cannot—"decreed by the Almighty" is an objective morality's only possible source. Pinker's failure to show otherwise is

205. I also do not in any way question Pinker's good faith in the positions he holds.

206. Another example demonstrates this definitively. Pinker states that we can distinguish "between a defensible moral position and an atavistic gut feeling . . . [because] with the former we can give reasons why our conviction is valid. We can explain why torture and murder and rape are wrong . . ." Pinker, *The Blank Slate*, *supra* n. 178, at 274. But what explanation does he give? To Pinker, "good reasons for a moral position are not pulled out of thin air: they always have to do with what makes people better off or worse off, and are grounded in the logic that we have to treat other people in the way that we demand that they treat us." *Id.* at 274-275. Could there be reasoning any more circular (Something that Pinker elsewhere criticizes in others. *Id.* at 309.)? Who says that conduct is moral if it "makes people better off" or that it is immoral to reject a principle of reciprocity? See *supra* nn. 183-189 and accompanying text. Pinker obviously does, but his methodology of flat assertion is an archetype for pulling moral principles "out of thin air." As has been shown, Rorty, see *supra* nn. 150-151 and accompanying text, and Gross, see *supra* text accompanying n. 155, adopt the same assertion-premised approach to morality. Taken together, the three men provide strong corroboration of Leff's thesis that the most common grounding for moral precepts is "It is right to do X because it is right to do X." See *supra* n. 24 and accompanying text.

207. Pinker, *The Blank Slate*, *supra* n. 178, at 270.

208. *Id.* at 193.

209. *Id.* at 187. Ironically, the moral feelings that Pinker stresses are in fact one powerful indication that God actually exists. See *infra* nn. 252-257 and accompanying text.

yet further confirmation that Leff is right.²¹⁰

Part I has shown that Posner, Wilson, and Pinker say nothing to challenge Leff's conclusion that our society lacks "any defensible moral position on, under, or about anything."²¹¹ It is interesting to note, however, that Leff himself was quite willing to assert moral positions. In his 1979 Duke Law Journal piece, for example, Leff, after spending the entire article showing that apart from "supernatural grounding" everything with respect to right and wrong is "up for grabs,"²¹² concludes as follows:

Nevertheless:

Napalming babies is bad.

Starving the poor is wicked.

Buying and selling each other is depraved.

Those who stood up to and died resisting Hitler, Stalin, Amin, and Pol Pot—and General Custer too—have earned salvation.

Those who acquiesced deserve to be damned.

There is in this world such a thing as evil.

[All together now:] Sez who?

God help us.²¹³

This is a charming ending, but it plainly provides no answer to the dilemma Leff describes so well.²¹⁴ Apart from a God who has spoken

210. The illusory nature of Pinker's foundation for morals has another important consequence. In the book's last chapter, Pinker, in a warning to postmodernists, says:

It is ironic that a philosophy that prides itself on deconstructing the accoutrements of power should embrace a relativism that makes challenges to power impossible, because it denies that there are objective benchmarks against which the deceptions of the powerful can be evaluated.

Id. at 426. Another irony is that Pinker, to whom the "notion of objective truth," *id.*, is so important, fails to recognize that under his arguments objective truth remains only a *notion*. Only if objective truth *actually exists* are there "benchmarks" to evaluate "the deceptions of the powerful." And, as Leff shows, the only possible grounding for such "benchmarks" is God.

211. Leff, *On Shoring Up a Void*, *supra* n. 4, at 538. See *supra* text accompanying nn. 43-47. Leff found this conclusion terrifying. See *supra* text accompanying n. 46 & *infra* nn. 347-351 and accompanying text.

212. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1249.

213. *Id.* Mark Tushnet calls this passage "Arthur Leff's famous prose poem." Mark V. Tushnet, *The Left Critique of Normativity: A Comment*, 90 Mich. L. Rev. 2325, 2327 (1992). For Leff's propensity to assert moral claims, see *infra* text accompanying n. 238 & *infra* n. 243.

214. Phillip Johnson calls this dilemma

the modernist impasse. Modernism is the condition that begins when humans understand that God is really dead and that they therefore have to decide all the big questions for themselves. Modernism at times produces an exhilarating sense of liberation: we can do whatever we like, because there is no unimpeachable authority to prevent us.

the moral evaluations listed, there is no defensible basis for any of Leff's assertions.²¹⁵ One also wonders what Leff meant by his concluding "God help us." He earlier had refused to inquire into the possibility of a real-life God-based ethical system,²¹⁶ yet ends his article with an appeal for God's help. Leff most probably used the phrase facetiously.²¹⁷ This

Modernism at other times is downright scary: how can we persuade other people that what they want to do to us is barred by some unchallengeable moral absolute? Johnson, *supra* n. 4, at 19-20. Leff confirms the accuracy of Johnson's description:

If we are trying to find a substitute evaluator, it must be one of us, some of us, all of us—but it cannot be anything else. The result of that realization is what might be called an exhilarated vertigo, a simultaneous combination of an exultant "We're free of God" and a despairing "Oh God, we're free."

Leff, *Unspeakable Ethics*, *supra* n. 4, at 1233; *see id.* at 1229.

215. The quotation's "Sez who?" suggests that Leff realizes this point. There is, however, that opening "Nevertheless." Also, Leff uses the words "bad," "wicked," "depraved," "deserving of damnation," and "evil." Such strong condemnatory language reveals his powerful convictions. In the end, though, Leff recognizes that these provide insufficient grounding for moral claims:

I do believe that the style of a belief or action, its burning, coruscating power in someone's life, is irrelevant to its validity—at least as that term is used here. In other words, authenticity has no bearing on logical sufficiency. A deeply felt conviction is a different matter of fact from a flip and casual one, but both are still just matters of fact. And it will not do to say that the "right" is that which one considers the right with one's whole heart and soul, for the last clause amounts to nothing other than a new definitional variation, no more "valid" (though no less) than any other.

That does not mean I deny the existence of deep and passionate beliefs, facts that stir people to their depths. All I deny (and it may not be much) is that these deep beliefs about the nature of the right and the good are logically any different from shallow ones.

Leff, *On Shoring Up a Void*, *supra* n. 4, at 545.

It is interesting that here Leff uses the phrase "logical sufficiency." Just as the deep/shallow distinction between moral beliefs makes no difference in this regard—to ground normative assertions—earlier it was shown that to Leff the logical/illogical distinction is similarly irrelevant. *See supra* n. 95 and accompanying text.

Consequently, despite the confusion potentially generated by his famous conclusion, Leff's bottom line critique stands inviolate—without God's saying so, there is no satisfactory grounding for moral assertions. Thus, Alan Dershowitz is misguided to desire "[a] world in which people do good things because that's the right thing to do, not because God says to do it." Alan Dershowitz's *Perfect World*, *Harv. Mag.* 25 (Jan./Feb. 2003). Without God, there are no such categories as "good" and "right." Philip Bobbitt is also mistaken in his discussion of "the pricelessness of human beings." Philip Bobbitt, *Reflections Inspired by My Critics*, 72 *Tex. L. Rev.* 1869, 1966 (1994). Humans have this value "because of all earthly things, [they] are capable of love[.] To maintain this belief in the face of the inevitable pricing of human worth requires faith." *Id.* For Bobbitt, though, it is not essential that this "faith" involve belief in God. *Id.* at 1966-1967. It is certainly possible to believe in human "pricelessness" by faith that lacks a transcendent object, but without a God who has accorded mankind this attribute, such faith is an illusory ground for valuing human beings. Finally, Lance Morrow makes a fatal error in his recent reflections upon evil. Lance Morrow, *Evil: An Investigation* (Basic Books 2003). Although his otherwise insightful book contains numerous references to God, Morrow fails to recognize God's indispensability to moral judgment. *See e.g. id.* at 104-105, 109-110.

216. Leff, *supra* n. 4, at 1232.

217. It is, of course, impossible exactly to ascertain Leff's personal beliefs concerning God's existence. Certain passages in his work seem to refer to God as real. His Stanford piece, in discussing the possibility of God's existence, states (the speaker is The Devil in a hypothetical letter to Roberto Unger): "My own opinion is that the Hand that holds you suspended over my

would be tragic if in fact a right-defining God exists and has spoken to us, thereby guiding our quest to understand what is *truly* right and wrong. This Article's next objective is to consider some of the issues involved in genuinely seeking God's help.

II. "GOD SAYS" AS THE BASIS FOR MORAL CLAIMS

Turning to God for understanding on moral issues is a widespread phenomenon. The practice is an everyday occurrence in the ordinary lives of billions of people—Jews, Muslims, and Christians, among others—who believe in God.²¹⁸ Beyond the realm of private life, conceptions of "the right" rooted in God have driven social movements of tremendous significance. The abolitionist and civil rights movements are obvious examples. In the 2000 presidential election, Democratic Vice-Presidential candidate Joseph Lieberman, a devout Jew, was especially open in linking his faith to the public policies he advocated.²¹⁹

fiery pit doesn't abhor you, but has forgotten completely that It has anything in It." Leff, *Memorandum*, *supra* n. 4, at 888. This, at most, suggests only that God exists, with nothing to imply that God has any interaction whatever with mankind. Elsewhere, Leff is even more skeptical: "It may once have been awful to contemplate the possibility that the hand which held you suspended over the fiery pit despised you. It may be worse to contemplate the probability that there is nothing in that awful notion." Leff, *On Shoring Up a Void*, *supra* n. 4, at 548; *see infra* nn. 237-240 and accompanying text. In this same piece, Leff states that it would be astonishing to think we *have* successfully traversed the three discontinuities of Copernicus, Darwin, and Freud, and are no longer seriously troubled at having learned that we are inconsequential in the universe, unexceptional among animals [sic], and non-autonomous as rational beings.

Leff, *On Shoring Up a Void*, *supra* n. 4, at 548. Leff elsewhere explains that games appeal to humans because in "real life" it is difficult "to determine how one came out." Arthur A. Leff, *Law and*, 87 *Yale L.J.* 989, 1001 (1978) [hereinafter Leff, *Law and*]. "[I]t is a joy independent of victory to be engaged in an activity that allows for a determinate result. Even clearly losing may, at least some of the time, be a pleasant alternative to a lifetime of never knowing." *Id.*; and *see* Bruce A. Ackerman, *Agon*, 91 *Yale L.J.* 219, 221 (1981).

All in all, the written record is highly suggestive that Leff did not believe in God. This conclusion is supported by Leff's colleague, Owen Fiss, who implies that Leff was hardly enthusiastic about Fiss's "search for objective truth." Fiss, *supra* n. 4, at 228. Fiss also characterizes Leff's scholarship as "veer[ing] off in the direction of nihilism." *Id.* at 227. Leff himself tried to convince Fiss that his (Leff's) office "was some sort of nihilist abyss." *Id.* at 228. Finally, however, one cannot be sure. Fiss himself believed that Leff's "professed nihilism was . . . inconsistent with all that [he] knew about him." *Id.* Fiss often told Leff that in expressing such "substantive views . . . [Leff] was only pulling [his] leg." *Id.* If Fiss is correct, Leff's masked rejection of nihilism could reflect undisclosed theism (although not necessarily, because non-religious persons can reject nihilism too, at least in their subjective beliefs. As Part I argues, however, and as Leff himself so plainly understood, only God can substantively *ground* a repudiation of nihilism).

218. The 2003 *New York Times Almanac* reports that of a world population of just over six billion, *id.* at 448, there are 15 million Jews, *id.* at 485, 1.3 billion Muslims, *id.* at 486, and 2 billion Christians. *Id.* at 485.

219. *See* Daniel O. Conkle, *Religion, Politics, and the 2000 Presidential Election: A Selective Survey and Tentative Appraisal*, 77 *Ind. L.J.* 247, 253-256 (2002). For example, Lieberman "cited

Moral assertions premised in God no doubt have sometimes occurred for cynical reasons,²²⁰ but generally such statements make a claim about truth. The speaker's point is that, because "God says," we can know that "X is *actually* right." All God-grounded truth claims rest upon three critical presuppositions. Each must be valid if God is to be of any help in grounding conceptions of "the right." The first is that there really is a God.²²¹ The second is that the God one looks to is the God who actually exists. The third is that this true God communicates knowledge concerning "the right" in incontestable ways.²²² Each of

God's creation—and the human equality that it implies—in support of civil rights and nondiscrimination policies." *Id.* at 254.

220. Such cynical reasons would include gaining political advantage by appealing to the faithful.

221. Any God who is fabricated by humans obviously will not do as a grounding for morals. This type of feckless God (because actually non-existent) apparently is the kind of God Stephen Jay Gould had in mind in his effort to reconcile science and religion. Gould, "America's unofficial evolutionist laureate," Robert Wright, *The Accidental Creationist*, *The New Yorker* 56, 56 (Dec. 13, 1999), argued that science and religion really were not in conflict because they "operate in complementary (not contrary) fashion in their totally different realms: science as an inquiry about the factual state of the natural world, religion as a search for spiritual meaning and ethical values." Stephen Jay Gould, *Dorothy, It's Really Oz*, *Time* 59 (Aug. 23, 1999). While this seems conciliatory on first reading, what does it mean to say that God has nothing to do with "the factual state of the natural world"? Is this not a subtle way of saying that science deals with facts, while religion deals with myth? See Phillip E. Johnson, *The Wedge of Truth: Splitting the Foundations of Naturalism* 95-102 (InterVarsity Press 2000). That this was in fact Gould's view is supported by Robert Wright, who says that Gould "bolsters . . . [the] caricature of . . . [Darwinism] as an atheist plot" by his depiction of "evolution as something that can't possibly reflect a higher purpose." Wright, *supra* at 56. Because Gould in a television interview stated that religion is "just a story that we tell ourselves," Kenneth Miller comes close to accusing him of being duplicitous in expressing respect for religion. Kenneth R. Miller, *Finding Darwin's God* 169-170 (1999) [hereinafter Miller, *Finding Darwin's God*].

In discussing whether God *really* exists, this Article will focus on a God who *matters* to humans i.e., a God who is involved with mankind. This is the kind of God believed in by Jews, Muslims, and Christians. See *supra* n. 218 and accompanying text. There are, of course, other conceptions of God. Edward Wilson, for example, states that he leans "toward deism The existence of a cosmological God who created the universe (as envisioned by deism) is possible" Wilson, *Consilience*, *supra* n. 110, at 263. See Wilson, *On Human Nature*, *supra* n. 136, at 1, 191-192, 205. Steven Pinker states that he too "does not argue against the existence of God." Pinker, *The Blank Slate*, *supra* n. 178, at 187. He points out that some biologists speak favorably of "a sophisticated deism." *Id.* Wilson and Pinker, however, both reject the concept of a personal God in relationship with human beings. See Pinker, *How the Mind Works*, *supra* n. 161, at 554-558; Wilson, *Consilience*, *supra* n. 110, at 263, 287-288. Subpart A of this Part will demonstrate that their arguments fail.

222. A famous example in which these three presuppositions are evident is Lincoln's Second Inaugural, in which he calls the Union, "with firmness in the right, as God gives us to see the right . . . [to] strive on to finish the work we are in." 8 *The Collected Works of Abraham Lincoln* 333 (Roy P. Basler ed., Rutgers U. Press 1953). What Lincoln urged makes sense only if he looked to a God who actually exists and who has communicated about right and wrong. See Sanford Levinson's views, *infra* n. 311, for general support of the proposition that God-premised truth claims rest upon these three presuppositions.

It might be argued that God-grounded truth claims require yet another presupposition—that God can be trusted to know what is right. What if God actually is evil? See Pinker, *The Blank*

these presuppositions can be attacked, but Part II will show that many of the most common criticisms are not persuasive. Using Christianity as an example,²²³ however, Part II will also show that despite a God-based morality's conceptual superiority to all other moral systems, grounding moral precepts within a God-premised system is not free of complex issues.

The points considered in this Part have perplexed and divided mankind for thousands of years. This Article obviously will not be the last word on the subject. It is hoped, though, that a helpful contribution will be made to what will certainly be an ongoing debate. The focus will be on the *grounding* of moral claims. Two closely related issues are not covered. The proper role of law in enforcing moral claims is not discussed. No one seeks legal enforcement of every personally held moral position. Consequently, everyone, not only Christians, must decide which moral claims should be reinforced by law. This is an important and fascinating topic, but beyond the scope of this Article.²²⁴ The second omitted topic is the proper rhetoric to be used in public debate. For example, if a Christian's moral view on a particular matter is premised ultimately in the Bible, should the Christian always be explicit about this Biblical foundation?²²⁵

A. Is There a God?

God-based morality is possible only if God exists. An initial issue,

Slate, *supra* n. 178, at 189. But, if as shown in Part I of this Article, no definitive judgments about right and wrong can exist without God, there is no possible grounding for calling evil something that God says is good (and vice versa). Leff puts it this way, in the context of a discussion of a God-given command, "Thou shalt not commit adultery":

[I]n a God-based system, we do not define God's utterances as unquestionable, the way that we might state that a triangle has three sides and go on from there and only from there. We are not doing the defining. Our relationship to God's moral order is the triangle's relationship to the order of Euclidean plane geometry, not the mathematician's. We are defined, constituted, as beings whose adultery is wrong, bad, unlawful. Thus, committing adultery in such a system is "naturally" bad only because the system is supernaturally constituted.

Leff, *Unspeakable Ethics*, *supra* n. 4, at 1231 (emphasis in original).

223. Christianity is my focus for illustrative purposes because it is my own faith and thus the one with which I am most familiar.

224. For my own thinking on this subject, which has changed over time, see Samuel W. Calhoun, *Conviction Without Imposition: A Response to Professor Greenawalt*, 9 J. L. & Relig. 289 (1992) (written first, but delayed in publication); Samuel W. Calhoun, *Misreading the Judeo-Christian Tradition and the Law: A Response to Professor Smolin*, 15 U. Dayton L. Rev. 383 (1990) (written second); Samuel W. Calhoun, Book Review, 16 J. L. & Relig. 405, 411-413 (2001) (reviewing Elizabeth Mensch & Alan Freeman, *The Politics of Virtue: Is Abortion Debatable?* (1993)) (my most recent thoughts on the topic).

225. For a brief essay giving some of my thoughts on this subject, see Samuel W. Calhoun, *Are Religious Arguments Appropriate in Civil Discourse?*, 9 Christian Leg. Socy. Q. 32 (1988).

however, is whether the question of God's possible existence can suitably be examined in a work of legal scholarship. As previously noted, Leff refrains from any substantive examination of whether God exists. That issue, Leff says, "obviously[] is not something that can be decided here."²²⁶ This comment is difficult to interpret precisely. It might simply reflect the conclusion that, on prudential grounds, seriously to explore the issue is beyond the reach of the standard law review article. Given the formidable difficulties of such an endeavor, as this subpart will reveal, such an instinct is understandable.

Leff, however, might have meant that a law review article is by its very nature an inappropriate forum for discussing whether God exists. Such a thing simply is not done, just as some subjects are taboo in polite conversation. If this is Leff's meaning, I would respectfully disagree. Leff himself, *in several law review articles*, introduced the topic of the impact of God's non-existence on normative assertions. This in itself seems necessarily to render consideration of whether God exists not only relevant, but indispensable. Also, although Leff declares that God's existence cannot be decided, the articles generally proceed on the assumption that there is no God. For example, one piece concludes:

All I can say is this: it looks as if we are all we have. Given what we know about ourselves and each other, this is an extraordinarily unappetizing prospect; looking around the world, it appears that if all men are brothers, the ruling model is Cain and Abel. Neither reason, nor love, nor even terror, seems to have worked to make us "good," and worse than that, there is no reason why anything should. Only if ethics were something unspeakable by us, could law be unnatural, and therefore unchallengeable. As things stand, everything is up for grabs.²²⁷

It is intellectually indefensible to declare that one is not going to decide a matter—whether or not God exists—but nonetheless catalogue the profound impact upon normative reasoning of the *presumed* fact of God's non-existence.²²⁸ Moreover, whether intended or not, the effect is to stifle discussion of the issue critical to Leff's whole approach: does God exist or not?

226. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1232.

227. *Id.* at 1249. *See supra* n. 217.

228. As Phillip Johnson puts it, "Leff in effect placed the death of God in the place of God." Johnson, *supra* n. 4, at 22. Eliminating God by presuming His non-existence not only lacks intellectual rigor. The consequences of God's non-existence are devastating (Leff found them to be terrifying, *see supra* text accompanying n. 46 & *infra* nn. 347-351 and accompanying text). Why then presume God's non-existence, which necessarily saddles one with that dire impact?

But maybe Leff, in stating that whether or not God exists “obviously[] . . . [cannot] be decided here,” meant to assert that by nature such an issue is non-debatable. This might seem to be an implausible interpretation, but consider this startling passage from Leff:

If God is *defined* as a being whose commands are “right,” then they are right Then, for practical purposes, the only problem *in practice* . . . is one of the *existence* of God. But if that question is *assumed* to be a trans-empirical one, then it cannot be decided on the basis of any evidence; either God exists or He doesn’t, but the question is *neither* logical *nor* empirical. Hence, there can be no debate

Thus, it is necessary to drop here what is, in this form, a non-question. But it is well, even here, to warn everyone that if this ground of “right” is *not* accepted, that is, if the basis for the validity of right choices is not located in trans-empirical definition and assertion, there are very serious consequences for all other forms of ethical imperative.²²⁹

As a way of barring the issue of God’s existence from the debate, presuming God’s non-existence is child’s play compared to the tactic of declaring the issue to be non-debatable. The impact, however, is the same. Leff, by setting the ground rules, is able to declare out of bounds those views that he does not want to entertain.²³⁰ Even though Leff bases his conclusions on the non-existence of God, he silences those who would contest his premise by the *mere declaration* that the issue is non-debatable.²³¹ One is tempted to respond “sez who?” to Leff’s assumption that the existence of God is a “trans-empirical” issue. In fact, I will yield to the temptation—what, other than Leff’s own characterization, substantiates the assertion that the question of God’s existence “is *neither* logical *nor* empirical”? If by “empirical,” Leff intends the dictionary meaning of “relying or based solely on experiment and observation rather than theory,”²³² he may be correct that the

229. Leff, *On Shoring Up a Void*, *supra* n. 4, at 540.

230. Phillip Johnson argues that Leff would have found it impossible seriously to evaluate whether God exists because Leff, as a modernist—one who believes “that God is really dead,” *see supra* n. 214—could not call “modernism’s founding premise” into question “without ceasing to be a modernist.” Johnson, *supra* n. 4, at 22.

231. This passage is especially surprising because here Leff does what he once criticized Posner for doing. In Leff’s 1974 critique of Posner’s *Economic Analysis of Law*, he labels the new discipline “American Legal Nominalism” because “its basic intellectual technique is the substitution of definitions for both normative and empirical propositions.” Leff, *Realism About Nominalism*, *supra* n. 4, at 459. It is unfortunate that Leff followed this same path by “defining” the issue of God’s existence—an issue that Leff himself declares to be of crucial importance—as non-debatable.

232. *Webster’s New World Dictionary of American English* 445 (3d college ed., Pearson

existence of God will never be proven in the same way that the results of a particular scientific experiment can be replicated repeatedly.²³³ But to say that God's existence is an issue that cannot logically be discussed is unconvincing. First, Leff offers a *reason* for his apparent belief that God can no longer be taken into account.²³⁴ God has been pushed out by advances in human knowledge: Copernicus showed that humans are "inconsequential in the universe," and Darwin showed that we are "unexceptional among animals [sic]."²³⁵ This is a contestable assertion, and a major objective of this subpart is to show that Leff is wrong. Second (and this is where I will begin), Leff's own normative claims demonstrate that whether or not God exists is indeed an appropriate subject for rational discussion.²³⁶

The best starting point is Leff's first foray in critiquing normative assertions, his evaluation of economic analysis.²³⁷ In his conclusion, Leff seems to make a theistic moral claim:

We all know that all value is not a sole function of willingness to pay, and that it's a grievous mistake to use a tone which implies . . . that it is. Man may be the measure of all things, but he is not beyond measurement himself.²³⁸

Not expressly theistic, true, but consider Leff's accompanying footnote: "Man may even be changeable. God forbid that human nature should be inalterable—and there is even some theological warrant for the

Prentice Hall 1991).

233. Of course, as pointed out by Kenneth Miller, under this definition Darwinism would also be classified as non-empirical. See Miller, *Finding Darwin's God*, *supra* n. 221, at 21-22 (Miller repudiates this narrow definition of scientific inquiry, which "rejects the very idea that any theory about the past can be scientific." *Id.* at 22. He argues convincingly that "scientific inquiry" can be conducted about the past—although we cannot "witness the past directly . . . we can reach out and analyze it for the simple reason that the past left something behind." *Id.* at 22-23.). Christians believe that one day God's existence will be empirically proven i.e., every knee will bow and every tongue confess. See Phil 2:10-11 (All Biblical cites are from New Intl. Version.).

234. See *supra* n. 217.

235. Leff, *On Shoring Up A Void*, *supra* n. 4, at 548. Leff also mentioned Freud, who showed that humans are "non-autonomous as rational beings." *Id.* Discussing Freud is beyond the scope of this Article. Elizabeth Mensch and Alan Freeman have noted, however, that Freudianism, one of the three "great isms of the twentieth century that sought to replace religion as the source of human meaning and possibility," is a "rapidly fading blip[] on the screen of history." Elizabeth Mensch & Alan Freeman, *The Politics of Virtue: Is Abortion Debatable?* 154 (Duke U. Press 1993) (so are the other two purported replacements for religion, Marxism and existentialism, *id.*).

236. The discussion that follows in the text is also meant to contest Mark Tushnet's characterization of religion. Tushnet admits that religion provides one ground for making normative evaluations, but believes that it is not a ground "easily called rational." Tushnet, *supra* n. 213, at 2328.

237. Leff, *Realism About Nominalism*, *supra* n. 4.

238. *Id.* at 481.

suggestion that He did.”²³⁹ On the very next page, however, with no explanation, Leff speaks of “the echoing void” with respect to “rational and coherent” moral standards. This suggests that Leff’s earlier reference to God was not a serious confessional statement of Leff’s own belief that God exists.²⁴⁰ But it does not keep Leff’s moral claim from providing a logical argument for God’s existence.

Leff asserts a moral absolute: “We all know that value is not a sole function of willingness to pay” Leff cannot merely be stating his personal view, because his next idea is that man “is not beyond measurement himself,” a concept that necessitates a standard beyond any man’s opinion. In other words, Leff is saying that right and wrong are *real* categories, binding upon all mankind. Professor Phillip Johnson points out where this line of reasoning should inexorably lead:

If there is no ultimate evaluator, then there is no real distinction between good and evil. It follows that if evil is nonetheless real, then atheism—i.e., the idea of the nonexistence of that evaluator or standard of evaluation—is not only an extraordinarily unappetizing prospect, it is also fundamentally untrue. Because the reality of evil implies the reality of the evaluator who alone has the authority to establish the standard by which evil can deserve to be damned.²⁴¹

Leff, by asserting moral absolutes while refusing to acknowledge God’s existence, is himself acting illogically.

Leff’s body of work on normative assertions avoids this charge of illogical thinking only because later, although Leff continues to make moral assertions, he changes his mode of expression. He often is more tentative in his moral claims. For example, in the famous conclusion to his Duke piece, Leff asserts strong moral convictions, but, by his “sez who?,” informs us that these are only his personal moral assessments.²⁴² He thus escapes Johnson’s critique, which is directed at the proposition that evil *in the absolute sense* can exist without an extrinsic evaluator.²⁴³

239. *Id.* at n. 76.

240. *See supra* n. 217.

241. Johnson, *supra* n. 4, at 22. (Here Johnson was actually commenting on the famous ending to Leff’s 1979 Duke piece, *see supra* text accompanying n. 213; I believe that this is the wrong example to use, *see infra* nn. 242-243 and accompanying text.)

242. *See supra* text accompanying n. 213. Mark Tushnet says that Leff “was too sophisticated to believe that the judgments he uttered were simple statements of brute fact about the world.” Tushnet, *supra* n. 213, at 2328.

243. Thus, in my opinion, Johnson’s argument is flawed to the extent that he relies upon the conclusion to the Duke piece to ground his criticism of Leff. Leff’s dictionary fragment, however, contains several definitions with assertions concerning morality that, standing alone, could readily be taken as expressing moral judgments in the absolute sense. It states: (1) in the definition of “abnormal,” Leff, *A Fragment*, *supra* n. 77, at 1865, that “[a]n ‘abnormal’ Nazi Storm Trooper

Leff's assertion, however, of even personal moral claims is suggestive that an ultimate source of right and wrong may exist. When Leff tells us that "[n]apalming babies is bad,"²⁴⁴ he is appealing, in C.S. Lewis's words, "to some kind of standard of behavior which he expects [others] to know about."²⁴⁵ According to Lewis, this standard is a "Rule about Right and Wrong [that] used to be called the Law of Nature."²⁴⁶

... would most likely be a much better person than the 'normal' variety"; (2) in the definition of "abstraction," *id.* at 1878, that "all persons are entitled to equal treatment by a legal system *despite* the actual differences among them"; (3) in the definition of "accommodation," *id.* at 1891, that "[n]ot all conflict is a bad thing, for it frequently comes from a refusal to learn to live with evil, which refusal may be a good thing even counting the discomfort caused the refuser"; (4) in the definition of "allies," *id.* at 1999, that "[i]n the Second World War, 'the Allies' referred to the good guys . . . 'the Axis' to the bad guys"; (5) in the definition of "argumentum ad hominem," *id.* at 2056, that "adulterers and thieves" are lacking in virtue (stated implicitly); (6) in the definition of "artifice," *id.* at 2064, that "sneakiness" is a "pejorative" description; (7) in the definition of "atrocious," *id.* at 2090, that "the intentional machine-gunning of noncombatant women and children by armed forces in a war zone" is "[a]n instance of particularly revolting brutality"; (8) in the definition of "bondage," *id.* at 2191, that certain sexual practices are "a species of perversion." (One issue on which I wish there was more available information concerns Leff's views on abortion. Such evidence as there is suggests that he found the practice to be morally problematic. See *id.* at 2016 (the definition of "analogy") (see *infra* n. 344), 2146 (the definition of "begging the question"); Leff, *Law and, supra* n. 217, at 1007 n. 45; Fiss, *supra* n. 4, at 228 n. 4. Leff might have been even more troubled by abortion had he not, as the evidence also suggests, misunderstood the impact of the *Roe* decision. See *supra* n. 77.).

If Leff intended the foregoing statements to connote the existence of moral absolutes, then he subjects himself to Johnson's critique. See *supra* text accompanying n. 241. It might be argued, though, that Leff, when he made these moral assertions, implicitly (or at least in his own mind) attached the qualifier "sez who?" to each one. See *supra* n. 242 and accompanying text. Leff also might have meant only to convey in strong language his own *feelings* about particular subjects. For example, in saying that shooting women and children was "revolting brutality," perhaps Leff meant only that *he* found the practice to be revolting, not that it was revolting in an absolute sense. This latter interpretation gains support from Leff's definition of "bad": "The opposite of good i.e., a general pejorative evincing disapproval of whatever is so labelled . . ." Leff, *A Fragment, supra* n. 77, at 2115. Dworkin, however, argues that any such "non-cognitivist" or "[e]xpressivist" interpretation of moral statements is "dramatically revisionist":

People who say that it is unjust to deny adequate medical care to the poor do not think that they are just expressing an attitude or accepting a rule or standard as a kind of personal commitment. They think they are calling attention to something that is already true independently of anyone's attitude, including theirs, or of whether anyone, including them, has ever accepted any particular rule.

Dworkin, *supra* n. 80, at 108-109. See Posner, *supra* n. 49, at 11. Of course, if Dworkin is correct—if Leff's moral judgments were absolutist instead of merely expressivist—then Johnson's criticism of Leff's failure to acknowledge God's existence stands.

244. Leff, *Unspeakable Ethics, supra* n. 4, at 1249. See *supra* text accompanying n. 213. It is worth asking why Leff even feels compelled to frame his argument in moral language. Why not simply say that he does not prefer that babies be napalmed? Pinker argues that the human mind is so constituted that it "cannot help but think in moral terms." Pinker, *The Blank Slate, supra* n. 178, at 193; see *supra* text accompanying n. 208. Why are we "so constituted"? Is this not suggestive of a God who created us, a God whose existence is necessary to give right and wrong any meaning?

245. C.S. Lewis, *Mere Christianity* 3 (MacMillan Co. 1943, 1945, 1952).

246. *Id.* at 4.

People used to think the idea of what constituted decent human behavior “was obvious to everyone.”²⁴⁷ Lewis backs this up by arguing that if one compares “the moral teaching of, say, the ancient Egyptians, Babylonians, Hindus, Chinese, Greeks and Romans, what will really strike him will be how very like they are to each other and to our own.”²⁴⁸ Lewis argues that this “Law of Human Nature” is not merely a social convention, but rather is a “real truth[].”²⁴⁹ As evidence, Lewis reflects on the concept of moral progress:

The moment you say that one set of moral ideas can be better than another, you are, in fact, measuring them both by a standard, saying that one of them conforms to that standard more nearly than the other You are, in fact, comparing them with some Real Morality, admitting that there is such a thing as a real Right, independent of what people think, and that some people’s ideas get nearer to that real Right than others. Or put it this way. If your

247. *Id.*

248. *Id.* at 5. See Dworkin, *supra* n. 80, at 113 (“the degree of convergence over basic moral matters throughout history is . . . striking”). Lewis, *supra* n. 245, at 5, points out that he provides evidence for this claim in the appendix to another of his books, *The Abolition of Man*. That appendix cites specific sources (including, among many others, Jewish, Christian, and Hindu) to show that moral norms have been shared across a variety of cultures and eras. C.S. Lewis, *The Abolition of Man* 97-121 (paperback ed., Macmillan 1955) [hereinafter Lewis, *Abolition*]. Lewis refers to eight categories: (1) the law of general beneficence; (2) the law of special beneficence; (3) duties to parents, elders, and ancestors; (4) duties to children and posterity; (5) the law of justice; (6) the law of good faith and veracity; (7) the law of mercy; and (8) the law of magnanimity. *Id.*

While Lewis’s evidence of common norms is impressive, it leads Lewis to a conclusion in *Abolition* that I do not accept. His main point is that we must, without requiring proof of any kind, simply accept these traditional moral principles as valid, in fact as constituting what it means to be human. See *id.* at 52-53, 56, 60-61, 76-77.

The direct frontal attack “Why?”—“What good does it do?”—“Who said so?” is never permissible; not because it is harsh or offensive but because no values at all can justify themselves on that level. If you persist in that *kind* of trial, you will destroy all values, and so destroy the basis of your own criticism as well as the thing criticized.

Id. at 60-61. Lewis basically says that to talk about values at all, we must assume that traditional values are true, not because their commonality proves it, *id.* at 95, but simply because we need some criteria—a starting point—by which to evaluate our lives. But if traditional values are not in fact true, why should they be given precedence just because they are backed by the weight of historical acceptance? Also, if Lewis refuses to justify traditional values substantively, what is the basis for his viewing with alarm the consequences of abandoning them? See *id.* at 67-91. How can one say about the substitutes that Lewis abhors anything more than that Lewis dislikes them? Without some uncontroversial grounding, one cannot. In this regard, it is puzzling that Lewis says that “no values” can be justified at the level of “Why?” If in fact God exists and has spoken values, the “Why?” question has been definitively answered. Lewis recognizes this full well, as elsewhere he relies upon shared values as evidence that such a God indeed exists. See *infra* nn. 253-257 and accompanying text. In *Abolition*, though, Lewis expressly states that he is not “attempting any indirect argument for Theism.” Lewis, *supra* at 61. Here, he is not concerned with whether his “position implies a supernatural origin.” *Id.* By jettisoning God as its source, however, Lewis totally debilitates his defense of traditional morality.

249. Lewis, *supra* n. 245, at 10.

moral ideas can be truer, and those of the Nazis less true, there must be something—some Real Morality—for them to be true about. The reason why your idea of New York can be truer or less true than mine is that New York is a real place, existing quite apart from what either of us thinks. If when each of us said “New York” each meant merely “The town I am imagining in my own head,” how could one of us have truer ideas than the other? There would be no question of truth or falsehood at all. In the same way, if the Rule of Decent Behaviour meant simply “whatever each nation happens to approve,” there would be no sense in saying that any one nation had ever been more correct in its approval than any other; no sense in saying that the world could ever grow morally better or morally worse.²⁵⁰

One can imagine Leff protesting that even if Lewis is correct that most human cultures have the same basic standards of right and wrong, and that this common morality is the benchmark of moral progress, this is no proof that the shared view actually is *true* in an absolute sense.²⁵¹ Leff is correct that even universal acceptance of a moral position *in itself* does not irrefutably demonstrate that the position actually is right.²⁵² But Leff ignores what the presence of near universal moral norms suggests. Lewis speaks of the “inside information”²⁵³ that we humans have about mankind: “[W]e know that men find themselves under a moral law, which they did not make, and cannot quite forget even when they try, and which they know they ought to obey.”²⁵⁴ This is key information in our quest “to know whether the universe simply happens to be what it is for no reason or whether there is a power behind it that makes it what it is.”²⁵⁵ Lewis argues that

[i]f there was a controlling power outside the universe, it could not show itself to us as one of the facts inside the universe—no more than the architect of a house could actually be a wall or staircase or fireplace in that house. The only way in which we could expect it to show itself would be inside ourselves as an influence or a command trying to get us to behave in a certain way. And that is

250. *Id.* at 11. Posner, of course, argues this very thing—that, as Lewis put it, there is “no sense in saying that the world could ever grow morally better or morally worse.” See *supra* n. 190.

251. See *supra* nn. 33-37 and accompanying text.

252. Common moral norms, for example, may simply embody and endorse behavior that has been found conducive to a functioning human society, and “functioning” has no necessary correlation with moral correctness. This is plausible, but common moral norms could logically imply something quite different. See *infra* nn. 253-257 and accompanying text.

253. Lewis, *supra* n. 245, at 19.

254. *Id.*

255. *Id.*

just what we do find inside ourselves. Surely this ought to arouse our suspicions?²⁵⁶

Ought, that is, to make each of us suspect that there is indeed “Something which is directing the universe, and which appears in me as a law urging me to do right and making me feel responsible and uncomfortable when I do wrong.”²⁵⁷

It has been shown that Leff, no doubt without intending to, takes positions that logically support the existence of God. While many other cogent arguments for God’s existence can be made,²⁵⁸ it is unlikely that such proof will be incontestable.²⁵⁹ On the other hand, the standard

256. *Id.*

257. *Id.* at 20; see *supra* n. 244. In other words, the commonality of moral norms does not establish their validity, but rather points to a validating source outside of mankind. It might then seem to follow that, given this external validation, the moral norms themselves would necessarily be true. As will be argued later, however, common morality, despite the fact that God does write His laws on the hearts of men, cannot be considered as inevitably correct. The consciences of men, although given by God, are tainted by sin and thus unreliable as the sole arbiter of right and wrong. See *infra* n. 324 and accompanying text.

Given “Something . . . directing the universe,” moral rules can also be viewed as “directions for running the human machine. Every moral rule is there to prevent a breakdown, or a strain, or a friction, in the running of that machine.” Lewis, *supra* n. 245, at 55. This is a logical alternative to the view that common moral norms suggest nothing about moral correctness, but merely embody and endorse behavior that has been found conducive to a functioning human society. See *supra* n. 252. That moral norms facilitate human interaction could be by design rather than by chance.

258. The fact that billions believe in God, *supra* n. 218 and accompanying text, is not, in itself, dispositive evidence for God’s existence. Thus, Posner is correct that it would “mistake[] rhetoric for reality . . . [to treat] as evidence for the existence of God the fact that believers talk about God as existing.” Posner, *supra* n. 49, at 21. There are, however, powerful arguments that a personal God exists. Several recent compilations are (1) William Craig’s sections in a published debate on the subject, William Lane Craig & Walter Sinnott-Armstrong, *God? A Debate Between a Christian and an Atheist* (Oxford U. Press 2004); (2) Stephen M. Barr, *Modern Physics and Ancient Faith* (U. Notre Dame Press 2003) [hereinafter Barr, *Modern Physics*]; (3) Lee Strobel, *The Case for Faith* (Zondervan Publ. House 2000) [hereinafter Strobel, *Case for Faith*]; and (4) Patrick Glynn, *God: The Evidence* (Forum 1997). Importantly, however, all four authors acknowledge that reason alone cannot lead to belief in God. Craig & Sinnott-Armstrong, *supra* at 28 (Craig’s view); Barr, *supra* at 13; Strobel, *supra* at 253-256; Glynn, *supra* at 11-12, 19. The Bible is in accord, if “belief” is understood to mean a personal relationship with God. Such a relationship is impossible without His enabling power. See Matt 11:25-27; 1 Cor 2:14.

259. Stephen Barr says that it is best not to talk in terms of proof:

The materialist’s story [the worldview of scientific materialism] had a moral, but it did not constitute proof of materialism. There was no experiment that proved that only matter existed, nor was there any calculation that proved that the universe had no purpose. Nor did the materialist really ever claim that there was. What he claimed was that there were two pictures of the world, the religious and the materialist, and that the progress of science has revealed a world that looks more and more like the materialist picture, and less like the religious picture. It was a question, in other words, not of proofs but of expectations. Science, it was claimed, had fulfilled the materialist’s expectations and confounded the religious believer’s.

Barr, *Modern Physics*, *supra* n. 258, at 29. For an example of this type of materialist reasoning, see Richard P. Feynman, *The Relation of Science and Religion*, in *The Pleasure of Finding Things*

arguments that God does not exist are unpersuasive.²⁶⁰ This is clearly seen in the opinions of Wilson and Pinker, whose views about the basis of morality were criticized in Part I.²⁶¹

Their basic argument for the non-existence of a theistic God is an argument that also appealed to Arthur Leff: *As our scientific understanding of the physical processes of the universe grows, a God actively involved in the world becomes increasingly unnecessary. Thus, the existence of such a God becomes increasingly unlikely.*²⁶² The fallacies of this perspective will be demonstrated both generally and in the context of two specific areas of scientific understanding, brain science and evolution.

In making the basic argument for dispensing with God, Wilson substantially relies upon Isaac Newton, whose laws allowed “[a]t least part of God’s grand design [to] be written with a few lines on a piece of paper.”²⁶³ To Wilson, Newton pioneered “the relentless advance of . . . science [that has pushed] God’s immanence . . . to somewhere below

Out: The Best Short Works of Richard P. Feynman 249-250 (Jeffrey Robbins ed., Perseus Books 1999).

Barr claims that in fact the opposite is true, that “recent discoveries have begun to confound the materialist’s expectations and confirm those of the believer in God.” Barr, *Modern Physics*, *supra* n. 258, at 29. One prominent example is “[o]ne of the most dramatic discoveries in the history of science . . . that the universe began in an explosion that took place about 15 billion years ago.” *Id.* at 33. “[T]his ‘Big Bang Theory’ . . . is no longer seriously questioned.” *Id.*

[I]f it is true that the Big Bang was the beginning of time itself, as at least appears to be the case, then one of the central beliefs of Jews and Christians has been confirmed, and one of the assumptions that had prevailed among scientific materialists [that the universe was eternal] has been overthrown.

Id.

But as Barr states, confirmation of theistic expectations is not the equivalent of proof. According to Christian theology, a time will come when it would be proper to talk about proof. *See supra* n. 233.

260. Ultimately, of course, the non-existence of God can never be proven. It is impossible to prove a negative. The arrogance of one who makes the attempt is breathtaking—such an argument contends that nothing exists or can be known outside the knowledge of the particular speaker. *See infra* n. 274. Our focus, though, is on a God who is in relationship with humanity. *See supra* n. 221. This subpart will reveal the shallowness of arguments denying the existence of a theistic God.

261. Posner, the third primary subject of Part I, does not criticize the concept of a God-based moral system. As previously noted, Posner believes that a supreme lawgiver is the only plausible grounding for a universal moral law. *See supra* nn. 101-102 and accompanying text. Like Leff, however, Posner states this only as a matter of abstract logic. His position that there is no such thing as right and wrong presupposes the non-existence of God. That Posner believes this personally is suggested by The New Yorker profile in which, in explaining his attraction to Nietzsche, Posner describes his own personal philosophy as one “of self-assertion, [freed] from oppressive frameworks such as that created by religion or other dogmas.” MacFarquhar, *supra* n. 70, at 86. To me, these facts suggest that Judge Noonan is incorrect in concluding that Posner is open to the possibility of “the existence of a deity.” Noonan, *supra* n. 53, at 1774.

262. For Leff’s acceptance of this position, *see supra* nn. 234-235 and accompanying text.

263. Wilson, *Consilience*, *supra* n. 110, at 32.

the subatomic particles or beyond the farthest visible galaxy.”²⁶⁴ Wilson’s premise does not support his conclusion. Newton himself did not believe that God “set his clockwork in motion and abandon[ed] it.”²⁶⁵ He undoubtedly would have been amazed had he known that his discoveries, showing a universe that was “not just orderly but also intelligible,”²⁶⁶ would later be used to push God out of the world.²⁶⁷ A modern physicist, Stephen Barr, also has no difficulty in reconciling “the laws of nature . . . [which] form an edifice of great harmony and beauty,”²⁶⁸ with “the great monotheistic religions of the Bible, Judaism

264. Wilson, *On Human Nature*, *supra* n. 136, at 171. Recall that Wilson is willing to entertain the possibility that a deistic God exists i.e., one who may have somehow initially set things in motion, but then withdrew and no longer intervenes in human affairs. *See supra* n. 221.

265. James Gleick, *Isaac Newton* 108 (Pantheon Books 2003). *See infra* n. 267. Like Wilson, however, others have misconstrued Newton. A 1998 Newsweek article states that Newton’s “gravitational theory . . . [which] completes the mechanistic vision of the cosmos . . . leaves in a sliver of God—as the ‘first cause’ of the universe.” Sharon Begley, *Science Finds God*, Newsweek 46, 49 (July 20, 1998). Richard Lewontin calls this perspective “a cliché of intellectual history.” Richard Lewontin, *Billions and Billions of Demons*, The N.Y. Rev. of Books 28, 31 (Jan. 9, 1997) (book review). Frederick Crews believes that Newton (together with Copernicus and Galileo) warrants the label deicide. “After all, the subsiding of faith might have been foreseeable as soon as the newly remapped sky left no plausible site for heaven.” Frederick Crews, *Saving Us From Darwin*, The N.Y. Rev. of Books 24, 24 (Oct. 4, 2001) (the ludicrousness of this argument is apparent—how does a more accurate understanding of celestial motion refute the possible location of heaven in the physical realm, the entire universe, much less in a spiritual realm?).

266. Wilson, *Consilience*, *supra* n. 110, at 32.

267. There is some indication, though, that Newton in his lifetime was aware that secularized versions of Newtonianism were beginning to undermine “the religious-scientific world-view that [he] had created.” Frank E. Manuel, *The Religion of Isaac Newton* 49 (Clarendon Press 1974). Newton would have been “mortified” had he fully foreseen how his discoveries would be used “to transform the religious outlook of the West,” *id.* at 4, for at age seventy-one, at a time when others “were advertising the irreligious implications of Newton’s system . . . [he] proclaimed his belief in a personal God of commandments with plain words that harken back to the primitive sources of Judaic and Christian religion.” *Id.* at 16.

It is puzzling that Wilson argues for God’s displacement in view of his assertion that it was the Chinese’s lack of a concept of “a supreme being with personal and creative powers” that principally explains the failure of Chinese scientists to discover “universal principles In the absence of a compelling need for the notion of general laws—thoughts in the mind of God, so to speak—little or no search was made for them.” Wilson, *Consilience*, *supra* n. 110, at 33-34. Wilson’s point is stark refutation of Frederick Crews’s assertion that

intelligent design lacks any naturalistic causal hypothesis and thus enjoys no consilience with any branch of science. Its one unvarying conclusion—“God must have made this thing”—would preempt further investigation and place . . . science in the thrall of theology.

Crews, *supra* n. 265, at 27. Crews’s comment in fact reveals a stunning ignorance of the history of scientific progress, which is pervaded with people of religious faith striving to understand the world they believe that God made. For examples, *see* Barr, *Modern Physics*, *supra* n. 258, at 8-11; *infra* n. 268.

268. Barr, *Modern Physics*, *supra* n. 258, at 24. Barr argues that science has revealed increasing depths of order in the universe. One fascinating example involves the movement of heavenly bodies. Even “ancient astronomers” observed order in the heavens, but were confounded by the apparently irregular movement of the planets. *Id.* at 88. Johannes Kepler in

and Christianity.”²⁶⁹

Pinker, based upon developments in brain science, suggests that the fact of physical death disproves the immortal soul and by implication a God who creates and is in relationship with it. Consider how he responds to a condemnation of neonaticide by those who believe “that a deity injects a fertilized ovum with a ghostly substance, which registers the world, pulls the levers of behavior, and leaks out at the moment of death”²⁷⁰:

Unfortunately for that theory, brain science has shown that the mind is what the brain does. The supposedly immaterial soul can be bisected with a knife, altered by chemicals, turned on or off by electricity, and extinguished by a sharp blow or a lack of oxygen. Centuries ago it was unwise to ground morality on the dogma that the earth sat at the center of the universe. It is just as unwise today to ground it on dogmas about souls endowed by God.²⁷¹

the seventeenth century observed that the planets in fact moved in an orderly fashion—in elliptical orbits. *Id.* (Kepler, by the way, believed that his laws of planetary motion were “only a few representatives of the harmonies he saw” in the universe—“he was primarily a cosmographer enraptured by the aesthetic delights of God’s creation.” Owen Gingerich, *The Eye of Heaven: Ptolemy, Copernicus, Kepler* 329 (Am. Inst. Physics 1993)). Newton in turn explained that this elliptical structure resulted from the laws of physics, in particular the “inverse square law” of gravitational force. Barr, *Modern Physics*, *supra* n. 258, at 89-90. Newtonian science, however, did not “explain away the ‘order in the heavens.’ Quite the contrary. What Newton showed is that there is a more profound order pervading all of nature, which reveals itself in a particularly transparent way in the celestial motions.” *Id.* But the order does not stop here:

This inverse square law is a very special kind of law that results from the fact that the carrier of the gravitational force, the so-called “graviton” particle, is exactly massless. This masslessness of the graviton, in turn, is due to a very powerful set of symmetries called “general coordinate invariance” and “local Lorentz symmetry,” It is not important for the reader to understand what these symmetries are, just to know that the elegant elliptical shapes found by Kepler are only the tip of a huge iceberg of symmetric structure hidden in nature’s laws.

Id. at 90-91. To Barr, nature’s extraordinary orderliness is no reason to reject the existence of a theistic God. See *infra* n. 269 and accompanying text. To Wilson, however, if theoretical physicists ever achieve “the Theory of Everything, T.O.E., a system of interlocking equations that describe all that can be learned of the forces of the physical universe,” science will have “taken us very far from the personal God who once presided over Western civilization.” Wilson, *Consilience*, *supra* n. 110, at 287-288. It will be shown that Wilson’s own metaphysical views, not science, are what actually lead him to abandon the concept of a personal God. See *infra* nn. 288-298 and accompanying text.

269. See Barr, *Modern Physics*, *supra* n. 258, at 3, 17-18, 29. The argument for God’s existence “based on the order exhibited by the cosmos as a whole” is “the Cosmic Design Argument.” *Id.* at 69. Barr contrasts this with “the Biological Design Argument,” which concerns “the bodies or parts of bodies of living beings.” *Id.*

270. Steven Pinker, *A Matter of Soul*, *supra* n. 160, at 6. This is Pinker’s derogatory characterization of the argument by Patrick Ferguson that neonaticide is abhorrent because “human beings [are] persons from the start, endowed with a soul, created by God, and infinitely precious.” *Id.* (quoting Ferguson, *supra* n. 159, at 24).

271. *Id.* Pinker elsewhere states that “the belief . . . that morality rests on God’s endowing us with an immaterial soul . . . [is] becoming [a] rearguard struggle[.] against the juggernaut of

Pinker's response can hardly be taken seriously. He argues that the soul "can be bisected with a knife," etc., when his description is of acts taken against the physical body.²⁷² A more striking example of begging the question can scarcely be imagined.²⁷³ If the issue is whether there is an invisible, immortal soul that "leaks out" at death, the fact that the human body can be killed has no probative value whatever as to the matter in dispute.²⁷⁴

science." Pinker, *The Blank Slate*, *supra* n. 178, at 299. See Wilson, *Consilience*, *supra* n. 110, at 263 (a God who "intervenes in human affairs (as envisioned by theism) is increasingly contravened by biology and the brain sciences"), & 288 ("Science has taken us very far from the personal God who once presided over Western civilization.").

272. See *supra* text accompanying n. 271; Pinker, *The Blank Slate*, *supra* n. 178, at 129-130.

273. Pinker presumably would respond that he has not begged the question because, after all, "brain science has shown that the mind is what the brain does." See *supra* text accompanying n. 271. But who says that the soul is a physical emanation of the mind? Moreover, just as with Wilson, Pinker's basic point that scientific advances supplant God is not convincing. In *The Blank Slate*, Pinker describes at length progress in cognitive science, cognitive neuroscience, behavioral genetics, and evolutionary psychology. Pinker, *The Blank Slate*, *supra* n. 178, at 30-58. To Pinker, these developments exorcize what he calls "the ghost in the machine," *id.* at 31, a concept that includes not only the soul, *id.* at 10, 42, 43, 58, but also any belief that "there must be more to us than electrical and chemical activity in the brain." *Id.* at 10. Even if one assumes that Pinker's description of these developments is accurate, they do not substantiate his position. Any discovered properties of the brain could simply reflect God's design, just as Newton believed that "his discoveries in physics" were an aspect of a "search for knowledge that God had placed within his grasp." Freeman Dyson, *A New Newton*, *The N.Y. Rev. of Books* 4, 6 (July 3, 2003) (book review). See Sharon Begley, *Searching For the God Within*, *Newsweek* 59, 59 (Jan. 29, 2001) (concerning findings allegedly showing "that religious experiences are the inevitable outcome of brain wiring." Begley notes the believer's "retort: the brain's wiring may explain religious feelings—but who do you think was the master electrician?").

In addition, it is interesting that Pinker notes increasing support for the view that the human mind has "a universal complex design." Pinker, *The Blank Slate*, *supra* n. 178, at 55. Humans have "[a]n intuitive engineering, which we use to make tools and other artifacts. Its core intuition is that a tool is an object with a purpose—an object designed by a person to achieve a goal." *Id.* at 220. But Pinker says that we must "unlearn this intuitive engineering, which attributes design to the intentions of a designer." *Id.* at 223. The "signs of engineering that pervade[] the natural world" are just a "simulacrum." *Id.* at 51. While "divine design" is one of only two possible explanations for our "nonrandom, complex, and useful" "[c]ognitive and emotional faculties," *id.* at 52, Pinker opts for the second option, natural selection. *Id.* at 52, 55. But not only does natural selection leave key points about our universe unexplained, see *supra* n. 259 & *infra* nn. 277-278 and accompanying text, but also acceptance of natural selection does not automatically exclude God. See *infra* nn. 279-287 and accompanying text.

274. It is ironic that Pinker, trying to be so scientific, in making such a statement is not behaving like a scientist at all. As C.S. Lewis points out:

Science works by experiments. It watches how things behave. Every scientific statement in the long run, however complicated it looks, really means something like, "I pointed the telescope to such and such a part of the sky at 2:20 A.M. on January 15th and saw so-and-so," or, "I put some of this stuff in a pot and heated it to such-and-such a temperature and it did so-and-so." Do not think I am saying anything against science: I am only saying what its job is. And the more scientific a man is, the more (I believe) he would agree with me that this is the job of science—and a very useful and necessary job it is too. But why anything comes to be there at all, and whether there is anything behind the things science observes—something of a different kind—this is not a scientific

Pinker and Wilson both refer to human evolution as evidence that a theistic God has been supplanted.²⁷⁵ This view, of course, at a minimum requires that human evolution be true. While to Pinker and Wilson evolution is established fact,²⁷⁶ significant unanswered questions remain.²⁷⁷ But even if true, the idea of evolution does not in itself

question. If there is "Something Behind," then either it will have to remain altogether unknown to man or else make itself known in some different way. The statement that there is any such thing, and the statement that there is no such thing, are neither of them statements that science can make. And real scientists do not usually make them After all, it is really a matter of common sense. Supposing science ever became complete so that it knew every single thing in the whole universe. Is it not plain that the questions, "Why is there a universe?" "Why does it go on as it does?" "Has it any meaning?" would remain just as they were?

Lewis, *supra* n. 245, at 18.

Lewis is incorrect to state that science works only by experiment. See *supra* n. 233. Even eminent Darwinian scientists, however, have agreed with Lewis's point that assertions about possible spiritual realities are not within the proper realm of scientific inquiry. See e.g. Miller, *Finding Darwin's God*, *supra* n. 221, at 184-191.

275. See Pinker, *The Blank Slate*, *supra* n. 178, at 2, 30, 51-52; Wilson, *Consilience*, *supra* n. 110, at 263, 271; Wilson, *On Human Nature*, *supra* n. 136, at 3. It will be recalled that Leff also gave Darwin as a reason for believing in God's displacement. See *supra* nn. 234-235 and accompanying text.

276. See *supra* n. 275 and accompanying text. Stephen Jay Gould states:

[E]volution is as well documented as any phenomenon in science, as strongly as the earth's revolution around the sun rather than vice versa. In this sense, we can call evolution a "fact." (Science does not deal in certainty, so "fact" can only mean a proposition affirmed to such a high degree that it would be perverse to withhold one's provisional assent.)

Gould, *supra* n. 221, at 59. While one is naturally hesitant to place oneself in a category another considers "perverse," I do withhold my assent because of substantial gaps in the theory's explanatory power. See *supra* n. 259 & *infra* nn. 277-278 and accompanying text.

277. With respect to biological development, two particularly challenging issues are (1) the origin of life; and (2) the Cambrian explosion.

(1) Natural selection cannot answer the critical question of "how the first living thing originated." Barr, *Modern Physics*, *supra* n. 258, at 74. "[F]or natural selection to operate there already has to be life—that is, self-reproducing organisms able to pass on their traits genetically." *Id.* As Andrew Knoll puts it, in Darwinism, "the raw material of life is life." Andrew H. Knoll, *Life on a Young Planet* 72 (Princeton U. Press 2003). But "sometime, somewhere, in the earliest days of our planet, our first ancestors had to arise from something else"—that is, from something non-living. *Id.* at 173. "[T]he origin of such a sophisticated system that is both rich in information and capable of reproducing itself has absolutely stymied origin-of-life scientists." Strobel, *The Case for Faith*, *supra* n. 258, at 100 (quoting Walter L. Bradley). Evidence of this dilemma comes from a July 2003 display (sponsored by the Foundation for Global Community) on the campus of Washington and Lee University, entitled "A Walk Through Time . . . From Stardust To Us." Dozens of huge posters presented a Darwinian explanation of life. A poster labeled "Primordial Soup" ends like this: "Absorbing solar energy, as well as organic matter from Earth, comets, and asteroids, these pre-life forms become increasingly complex. Growing, maintaining, and self-regulating, they transform subtly, amazingly into living cells." The key word here is "amazingly," for, while various theories are mentioned, no definitive explanation is given for exactly how this transformation occurred. The reason is that no one "can yet present a detailed, step-by-step account of the origin of life from nonliving matter." Miller, *Finding Darwin's God*, *supra* n. 221, at 276. Knoll believes that the answer ultimately will be found in "chemistry that was both probable and efficient," but admits that at present "[w]e are not close to

necessarily displace God. For one thing, as noted by Stephen Barr, even if

Darwin has explained the formation of biological structure, that would at most affect one version of the Design Argument for the existence of God, namely the Biological Design Argument. It would leave completely untouched the Cosmic Design Argument, which takes as its starting point the structure of the universe as a whole [T]his structure, and in particular the structure of the laws of physics, cannot . . . be explained by some kind of theory of natural selection.²⁷⁸

Also, even if evolution is true with respect to biological structure, as Louis Menand notes, “a belief that species evolve is not incompatible with a belief in divine creation, or with a belief in intelligent design.”²⁷⁹

solving the riddle of life’s origins.” Knoll, *supra* at 88. An especially thorny aspect of the riddle is the “origin of the genetic code,” which Knoll calls “biology’s mystery of mysteries.” *Id.* at 82. See Strobel, *The Case for Faith*, *supra* n. 258, at 97-106.

(2) “About 570 million years ago, virtually all modern phyla of animals made their first appearance in an episode called ‘the Cambrian explosion’ to honor its geological rapidity.” Stephen Jay Gould, *Bully for Brontosaurus: Reflections in Natural History* 242 (Norton 1991). Richard Dawkins says that “[i]t is as though they were just planted there, without any evolutionary history.” Richard Dawkins, *The Blind Watchmaker: Why the Evidence of Evolution Reveals a Universe Without Design* 229 (new paperback ed., Norton 1996) [hereinafter Dawkins, *The Blind Watchmaker*]. The “Walk Through Time” campus display on evolution, *supra*, says that “[t]he great discoveries of Cambrian fossils suggest an explosion of life from virtually nowhere.” “[T]he major animal groups ‘appear in the fossil record as Athena did from the head of Zeus—full blown and raring to go.’” Jonathan Wells, *Icons of Evolution: Science or Myth?* 41 (Regnery Publ. 2000) (quoting Jeffrey Schwartz). One attempted explanation, based on molecular clock analysis, is that phyla divergence occurred much earlier than the fossil record reflects. See Scott Freeman & Jon C. Herron, *Evolutionary Analysis* 675-676 (3d ed., Pearson/Prentice Hall 2004). This theory “is captured in the quip that the Cambrian explosion had a ‘long fuse.’” *Id.* at 676. Even if one accepts the general validity of molecular clock analysis (which is not free from controversy, see Knoll, *supra* at 200-202), one still must explain “the discrepancy between the fossil record and the predictions of the molecular clock.” Freeman & Herron, *supra* at 676. The standard explanation requires “[o]ne simply to accept that the earliest . . . [species] were rare, gossamer, or minute organisms not likely to be preserved (or at least recognized) in the fossil record.” Knoll, *supra* at 204. See Freeman & Herron, *supra* at 676 (Darwin himself gave gaps in the fossil record as the probable explanation of the Cambrian explosion; see Charles Darwin, *The Origin of Species* 252-255 (Modern Library Ser. 1993)). Simple acceptance of a faulty fossil record, however, is problematic. See Phillip E. Johnson, *Darwin on Trial* 54-56 & 54 n. 3 (2d ed., InterVarsity Press 1993); Knoll, *supra* at 204; Wells, *supra* at 42-45. Small wonder then that the “‘long fuse’” theory remains only a “hypothesis,” see Freeman & Herron, *supra* at 676, and that the Cambrian explosion remains not only “one of the most stunning events in the history of evolution,” Douglas J. Futuyma, *Evolutionary Biology* 172 (3d ed., Sinauer Assocs. Inc. 1998), but also a “problem,” *id.* at 174, even a “knotty problem,” *id.* at 710, for evolutionary biology.

278. Barr, *Modern Physics*, *supra* n. 258, at 109. See *supra* nn. 268-269 and accompanying text; *infra* n. 279. Recall that to Newton himself, the Cosmic Design Argument did not entail the idea that God set the universe in motion and then turned away. See *supra* nn. 265-267 and accompanying text.

279. Louis Menand, *The Metaphysical Club: A Story of Ideas in America* 121 (Farrar, Straus & Giroux 2001). Strong general support for this view comes from Stephen Barr, in commenting on

Menand's comment raises the issue of theistic evolution. Is it possible that God used evolution as his creative method?²⁸⁰ Many say "yes,"

Richard Dawkins's description of the universe as the "Blind Watchmaker." In Dawkins's book of that name, he argues that "complicated things," while having "the appearance of being designed for a purpose," actually are formed by "the blind forces of physics Natural selection, the blind, unconscious, automatic process that Darwin discovered . . . has no purpose in mind If it can be said to play the role of watchmaker in nature, it is the *blind* watchmaker." Dawkins, *The Blind Watchmaker*, *supra* n. 277, at 1, 5. Dawkins chose this metaphor because of William Paley's famous 1802 argument for design based on one's natural reaction to finding a watch on the ground: the intricacy of the watch would lead one to think "that the watch must have had a maker: that there must have existed . . . an artificer or artificers, who formed it for the purpose which we find it actually used to answer; who comprehended its construction, and designed its use." *Id.* at 4. According to Barr:

[w]hat Dawkins does not seem to appreciate is that his Blind Watchmaker is something even more remarkable than Paley's watches. Paley finds a "watch," and asks how such a thing could have come to be there by chance. Dawkins finds an immense automated factory that blindly constructs watches, and feels that he has completely answered Paley's point. But that is absurd. How can a factory that makes watches be less in need of explanation than the watches themselves?

Barr, *Modern Physics*, *supra* n. 258, at 111.

To Barr, "that nature has the capacity to do these things should arouse wonder and puzzlement. It forces us to confront the question of whether there is something special about the laws of nature themselves that makes it possible." *Id.* And, in fact, nature's laws "are indeed very special. A slightly different set of laws would . . . have led to a completely lifeless, sterile universe." *Id.* Barr here is referring to what he calls "'anthropic coincidences,' . . . certain characteristics of the laws of physics [that] seem to coincide exactly with what is required for the universe to be able to produce life, including intelligent life like ourselves." *Id.* "[I]f the constants of nature—unchanging numbers like the strength of gravity, the charge of an electron and the mass of a proton—were the tiniest bit different, then atoms would not hold together, stars would not burn and life would never have made an appearance." Begley, *supra* n. 265, at 48. While such an approach is "[s]ometimes lampooned as [a] 'Goldilocks' hypothes[is] because [it] require[s] everything to be 'just right'" for life to evolve, Knoll, *supra* n. 277, at 241, Barr argues that such "very special" natural laws mean that "Darwinian evolution, far from disproving the necessity of a cosmic designer, may actually point to it. We now have the problem of explaining not merely a butterfly's wing, but a universe that can produce a butterfly's wing." Barr, *Modern Physics*, *supra* n. 258, at 112.

Do such coincidences prove that God exists? Knoll argues that the "'Goldilocks'" approach wrongly "assume[s] that because the conditions that facilitated our own evolution are particular, they must be rare." Knoll, *supra* n. 277, at 241. Even if only "one in a million" solar systems contained Earthlike planets, "[g]iven the dimensions of the universe, this would provide untold millions of potential incubators for intelligent life." *Id.* True enough, but as of yet there is no evidence that life in fact exists elsewhere in the universe. Even if life is present only on Earth, Barr acknowledges that mere chance could explain it if one posited an "infinitely large" universe with "an infinite number of planets." Barr, *Modern Physics*, *supra* n. 258, at 74-75. But this argument does nothing to explain the origin of the universe itself. See *supra* nn. 259 & 274. Moreover, Barr notes "[h]ow ironic" it is that to explain the origin of life without divine intervention, "it may be necessary to postulate an unobservable infinity of planets." Barr, *Modern Physics*, *supra* n. 258, at 75. Barr notes the same irony concerning a very similar alternative theory offered to explain the anthropic coincidences—that there are an infinite number of universes and therefore it is "no surprise [that] by chance one of them ha[s] conditions propitious for life," *id.* at 150—"to abolish one unobservable God, it takes an infinite number of unobservable substitutes." *Id.* at 157.

280. Any such view would be totally contrary to Darwin's purpose in writing *On the Origin of Species*. According to Menand,

although specific formulations of the argument vary significantly.²⁸¹ In general, theistic evolution appears to present a Catch-22 situation for its proponents. On the one hand, the position allows continued belief in God despite the evidence for evolution via natural selection.²⁸² As an

[w]hat was radical about . . . [the book] was not its evolutionism, but its materialism. Darwin wanted to establish something even his most loyal disciples were reluctant to admit, which is that the species—including human beings—were created by, and evolve according to, processes that are entirely naturalistic, chance-generated, and blind.

Menand, *supra* n. 279, at 121. This is accurate if “wanted to establish” is not meant to imply that Darwin from the beginning of his research wanted to displace God. The evidence is clear that Darwin was a creationist during his voyage on the *Beagle*. E.g. Randal Keynes, *Darwin, His Daughter, & Human Evolution* 30 (2001) (the author is Darwin’s great-great-grandson) [hereinafter Keynes, *Darwin, His Daughter*]. Darwin’s discoveries, however, largely on metaphysical grounds, eventually led him to abandon creationism. See *infra* n. 285. Thus, it is accurate to say that “Darwinian evolution is a theory about how nature . . . [alone is responsible for life’s diversity] without assistance from a supernatural Creator . . . ‘[E]volution’ in the Darwinian sense is by definition mindless and godless.” Phillip E. Johnson, *Defeating Darwinism* 15-16 (1997). See Frederick Crews, *Saving Us from Darwin, Part II*, *The N.Y. Rev. of Books* 51, 52 (Oct. 18, 2001). Theistic evolutionists reject the premise that evolution necessarily must have occurred godlessly.

281. At one extreme is the view that evolution is “a God-ordained and sustained” process that God used, purposefully, “to create all the glorious life that we see on this planet today.” Denis O. Lamoureux, *Evangelicals Inheriting the Wind: The Phillip E. Johnson Phenomenon*, in Phillip E. Johnson & Denis O. Lamoureux, *Darwinism Defeated? The Johnson-Lamoureux Debate on Biological Origins* 9, 26 (Regent College Publ. 1999) (Lamoureux prefers to be called an evolutionary creationist rather than a theistic evolutionist. *Id.* at 14.). At the other extreme is the belief that God did not use evolution intentionally to create particular life forms (including mankind). Rather, *it just so happened* that evolution had the results that we observe today. See Miller, *Finding Darwin’s God*, *supra* n. 221, at 232-239. Also see Begley, *supra* n. 265, at 50 (for other examples of advocates of the “just so happened” version of theistic evolution). To fully discuss theistic evolution is beyond the scope of this Article. I do not, however, agree with Knoll that

the reconciliation of traditional truths and science is almost trivially simple, requiring only that God, if present, be great enough to mix immanence into the nascent universe, enabling it to unfold over the eons, obedient to the laws of special relativity, nuclear chemistry, and population genetics. Science’s creation story accounts for process and history, not intent. Accepting its ancient [theological] counterparts as parables, then, eliminates conflict.

Knoll, *supra* n. 277, at 245. For the Christian, who believes God to be all powerful, the question is not whether He *could have used* evolution to create, but whether He *did use it*. This inquiry will inevitably be affected by how one views and interprets the Bible. Some theistic evolutionary perspectives are far removed from traditional understandings of the Scripture, see Cornelius G. Hunter, *Darwin’s God: Evolution and the Problem of Evil* 165-173 (2001), and by “Scripture,” I do not refer exclusively to what Knoll would call a “parable,” a reading of *Genesis* that requires a literal six-day creation. Even conservative Christian denominations have acknowledged that there are various acceptable interpretations of this passage. See *Report of the Creation Study Committee* (received by the General Assembly of the Presbyterian Church in America, June 2000). For an argument that all versions of theistic evolution are contrary to “the whole flow of events crucial to the gospel,” see John Rendle-Short, *Green Eye of the Storm* 247-248 (The Banner of Truth 1998).

282. Richard Dawkins is not so sure. After describing some of the ways in which theistic evolutionists try to “smuggle God in by the back door,” he criticizes these approaches (which he acknowledges cannot be disproved) for assuming

the existence of the main thing we want to *explain*, namely organized complexity
If we want to postulate a deity capable of engineering all the organized complexity in the

incidental benefit,²⁸³ theistic evolution blunts a standard criticism of the notion that God created via design—the evidence allegedly showing that God bungled the job.²⁸⁴ On the other hand, the advocate of theistic

world, either instantaneously or by guiding evolution, that deity must already have been vastly complex in the first place.

Dawkins, *The Blind Watchmaker*, *supra* n. 277, at 316. To Dawkins, *postulating* God is not sufficient—he wants an *explanation* of God’s existence. *See id.* at 316 & 141. *Whether* God exists clearly is a central question, as this subpart demonstrates, but it is absurd to demand an *explanation* for God. Given the gap between the divine and the human, that would be akin to asking a bowl to explain the existence of the potter who made it. *See* Rom 9:20-21; *cf. supra* n. 222 (showing the irrationality of human questioning of God’s normative judgments).

283. Another benefit is to defuse Wilson’s argument that “sociobiology can account for the very origin of . . . [religious belief] by the principle of natural selection acting on the genetically evolving material structure of the human brain.” Wilson, *On Human Nature*, *supra* n. 136, at 192. Wilson suggests that religious beliefs are undermined by the ability to explain them naturalistically. *See id.* at 3. But if theistic evolution (the teleological variety) is true, then God used the evolutionary process to lay the groundwork for religious belief.

If theistic evolution is untrue, Wilson’s proffered naturalistic explanation for religious belief must be addressed. Wilson believes that religious belief is “instinctual . . . and . . . hereditary, urged into birth through biases in mental development encoded in the genes There is an hereditary selective advantage to membership in a powerful group united by devout belief and purpose.” Wilson, *Consilience*, *supra* n. 110, at 281-282. But Wilson himself admits that the possibility of imagining “the biological construction of a mind with religious beliefs” does not in itself “dismiss transcendentalism or prove the beliefs themselves to be untrue.” *Id.* at 282. *See supra* n. 274. An additional argument is needed—the fact that

much if not all religious behavior could have arisen from evolution by natural selection Propitiation and sacrifice . . . near-universals of religious practice, are acts of submission to a dominant being. They are one kind of a dominance hierarchy, which is a trait of organized mammalian societies.

Wilson, *Consilience*, *supra* n. 110, at 282-283. Wilson’s analogizing religious faith to the dominance rituals of wolves and rhesus monkeys, *id.* at 283, no doubt shocks many readers, but the question is whether his contention is valid. Would an alien behavioral scientist, noting the semiotic resemblance between animal submissive behavior . . . and human obeisance to religious . . . authority . . . conclude, correctly, that in baseline social behavior, not just in anatomy, *Homo sapiens* has only recently diverged in evolution from a nonhuman primate stock[?]

Id. Wilson’s argument is pure speculation. First, he assumes anatomical evolution. Second, with respect to behavior, that human and animal activity both involve submission does not prove that the former originated in the latter. Such superficial similarity certainly does not disprove a divine origin for the religious impulse in humans. *See supra* n. 273.

284. Cornelius Hunter convincingly demonstrates that God’s alleged ineptness as a designer has from the beginning been a mainstay of Darwinism. For example, “God, according to Darwin, would not have made . . . the bat that we find in nature [because similar bones form its wing and leg, so different in purpose].” Hunter, *supra* n. 281, at 46-47. To Stephen Jay Gould, the orchid’s allegedly improvised composition belies a master designer. *Id.* at 47 (Gould’s obituary in *Newsweek* stresses Gould’s reliance on the Panda’s thumb, formed in an allegedly “roundabout way,” to critique the concept of “an omniscient God . . . [who] created according to some intelligent plan.” Jerry Adler, *Evolution’s Revolutionary*, *Newsweek* 59, 59 (June 3, 2002)). Steven Pinker joins this assembly of critics by noting the purported defective design of the human eye. Pinker, *The Blank Slate*, *supra* n. 178, at 51. *See* Hunter, *supra* n. 281, at 83. Theistic evolution automatically rebuts such criticism. If God did not specially design, but used evolution to create, then His alleged deficiencies as a designer are hardly an issue. Theistic evolution, however, is not needed to defend God against this particular attack. Hunter points out that all such criticisms “rely on an unspoken premise about the nature of God and how God would go about

evolution must confront the brutality of the evolutionary process. Some argue that evolution calls God's character into question. What kind of God would have created in this way?²⁸⁵ Also, does God's creating via such harsh methods communicate any moral principles applicable to

creating the world [S]uch speculations are religious, not scientific, for they hinge on one's personal concept of God." *Id.* at 84. Consequently, these critics offer only metaphysical, not scientific, reasons for rejecting the concept of a Creator. Moreover, their reasoning is not compelling. All such critics of God as designer are subject to the same criticism leveled at Gould—"Who is he to set the intellectual standard for God's creation[?]." Adler, *supra* at 59. See Hunter, *supra* n. 281, at 113 ("It is remarkable how often evolutionists feel free to dictate what God should and shouldn't do.").

285. See e.g. Miller, *Finding Darwin's God*, *supra* n. 221, at 16 (relating George Williams's questioning God's goodness based on the infanticidal mating practices of monkeys), 171 (relating Richard Dawkins's view that an evolutionary universe portrays "blind, pitiless indifference"), 185 (relating David Hull's view that "evolutionary theory . . . [reveals a God who] is careless, wasteful, indifferent, almost diabolical"); Pinker, *The Blank Slate*, *supra* n. 178, at 130 (evolution is "wasteful and cruel"); Wright, *supra* n. 221, at 65 ("Among the key ingredients in natural selection's creative energy are death and suffering, the casting aside of the 'unfit.'"). Arguments such as these have a distinguished lineage—they exerted a tremendous influence on Darwin himself, who, in propounding his theory of natural selection, was profoundly influenced by his beliefs about God:

Darwin repeatedly argued that God would never have created the world that the nineteenth-century naturalists were uncovering. Shortly after going public with his theory, Darwin wrote to a friend:

There seems to me too much misery in the world. I cannot persuade myself that a beneficent and omnipotent God would have designedly created the [parasitic wasp] with the express intent of their feeding within the living bodies of caterpillars, or that the cat should play with mice.

Hunter, *supra* n. 281, at 12. Hunter labels such arguments "negative theology," a metaphysical concept "because it requires certain premises about the nature of God. A great irony reveals itself here: evolution, the theory that made God unnecessary, is itself supported by arguments containing premises about the nature of God." *Id.* at 11. See *supra* n. 284. Hunter also reveals another irony. For Darwin, the ruthlessness of nature was not used to impugn God's character. Rather, it had precisely the opposite effect—by contributing to Darwin's formulation of the theory of natural selection, a theory that he believed saved God's reputation by attributing the brutality of nature to natural processes alone, forces that operated independently of God. See Hunter, *supra* n. 281, at 9-10, 12-16, 116-17, 131, 141; Keynes, *Darwin, His Daughter*, *supra* n. 280, at 56-57, 94-95, 304, 337 (it became more difficult for Darwin to excuse God for the harshness of life after he was compelled to grapple with the 1851 death of his beloved ten-year old daughter, Annie; see *id.* at 269-271, 335). Rather "than lay all that carnage at God's door," Darwin forsook his Christian faith. Crews, *supra* n. 265, at 24. For another metaphysical argument that significantly influenced Darwin, see *infra* n. 298.

It is obvious that there is nothing scientific about such theological arguments. Moreover, to the Christian, Darwin's repudiation of the Christian God is unjustifiable. Despite harshness in nature and human tragedy, God's reputation does not need whatever protection lies in removing Him from an active role in the world. Concerning nature's brutality (a challenge that confronts not only theistic evolution, but also the theory that God created by design, see Wright, *supra* n. 221, at 165 ["to note the ample dark side of evolution is simply to re-state the problem that any honest religion must confront: the problem of evil"]), Darwin apparently ignored the effects of the Fall, which the Bible teaches had a profound effect on the created order, Rom 8:19-21, as well as on mankind and our relationship with God. As for the death of loved ones, Christians experience grief as intensely as non-Christians, but understand that God uses even such hardships to work "for the good" in the lives of those who believe, that is, to conform us to the character of Christ. Rom 8:28-29.

human affairs?²⁸⁶

Despite these complexities, the concept of theistic evolution demonstrates that Pinker and Wilson are wrong in saying that evolution automatically renders God extraneous.²⁸⁷ The fact of the matter is that there is no *scientific principle* supporting Pinker's and Wilson's argument that because God works by discoverable laws, He must have disassociated Himself from mankind.²⁸⁸ Could there possibly be other

286. Some have used nature's harshness to invoke "God's blessing" on social Darwinism, a public policy premised in "survival of the fittest." See e.g. Wright, *supra* n. 221, at 59-60. Darwin himself "was particularly unhappy with the argument linking social progress with harsh treatment of people who were 'unfit' to survive in the struggle for life." Keynes, *supra* n. 280, at 326-327.

287. Interestingly, Frederick Crews suggests that the impulse to assert theistic evolutionary theories originates in a desperate desire to leave room amid the findings of science for God's existence—a presence believed necessary as a foundation for morals. See Crews, *supra* n. 280, at 51, 52. Part I of this Article has shown that God indeed is essential as a grounding for morality. The conclusion to Crews's essay offers further corroboration of this fact. After detailing mankind's destructive impact on the environment, Crews expresses the hope that Darwinism (the nontheistic version) could lead "toward a wider ethics commensurate with our real transgressions, not against God but against Earth itself and its myriad forms of life." *Id.* at 55. One can almost hear Leff's "sez who?" retort to Crews's use of the label "transgressions."

288. See *supra* n. 262 and accompanying text (It should be recalled that this argument also influenced Leff. *Id.*). Perhaps the most direct repudiating evidence is a recent survey of several hundred scientists showing that about forty per cent believe in a personal God and in personal immortality. Freeman & Herron, *supra* n. 277, at 64. In fairness, though, it should be acknowledged that it is indisputable that on occasion scientific discoveries have shaken religious faith. See *supra* n. 267. A prime example is the devastating impact of Darwinism upon Victorian Christianity. See Rendle-Short, *supra* n. 281; A.N. Wilson, *God's Funeral: The Decline of Faith in Western Civilization* (Norton, W.W. & Co., Inc. 1999). (For a convincing argument that this destructive effect largely resulted from Victorian Christianity's pre-existing deviation from a fully Biblical concept of God, see Hunter, *supra* n. 281, at 15-16, 127-133, 139-140, 148). Moreover, some contemporary Christians have expressed a similar point as a fear. Lee Strobel, for example, once was worried "that if scientists could convincingly demonstrate how life could emerge purely through natural processes, then there's no need for God." Strobel, *Case for Faith*, *supra* n. 258, at 92. See 'Saving Us from Darwin': An Exchange, *The N.Y. Rev. of Books* 63, 64 (Nov. 29, 2001) (Frederick Crews notes Alvin Plantinga's observation that increased knowledge risks squeezing God "out of the world altogether, thus making more and more tenuous one's reasons . . . for believing that there is such a person as God at all.")). This view of God as a "god of the gaps" relegates God to "whatever dark corners science ha[s] not yet brought to rational light." Kenneth L. Woodward, *How the Heavens Go*, *Newsweek* 52, 52 (July 20, 1998). A chief purpose of Kenneth Miller's *Finding Darwin's God* is to repudiate this perspective, which Miller says has been pervasive. See Miller, *Finding Darwin's God*, *supra* n. 221, at 16, 169, 190, 193, 210, 215-218. Miller points out, for example, that "[w]e could, if we wished, hold up the origin of life . . . as an unexplained mystery [see *supra* nn. 277 & 279], and find in that our proof of God at work." *Id.* at 275. But Miller argues

that there is no religious reason . . . for drawing a line in the sand at the origin of life. The trend of science is to discover and to explain, and it would be foolish to pretend that religious faith must be predicated on the inability of science to cross such a line [P]eople of faith believe their God is active in the present world, where He works in concert with the naturalism of physics and chemistry. A God who achieves His will in the present by such means can hardly be threatened by the discovery that He might have worked the same way in the past.

reasons, having nothing to do with science, that explain their rejection of a theistic God? There is substantial evidence that this is the case—evidence suggesting that the *real reasons* for their position are premised in their metaphysical views. Wilson argues, for example, that mankind created a personal God from a combination of factors, including: a desire for significance,²⁸⁹ an attempt to explain “where we came from, and why we are here,”²⁹⁰ the fear of death,²⁹¹ the desire to have a sense of control over life,²⁹² to give divine sanction to our moral views,²⁹³ and to enhance the power of those in authority.²⁹⁴ Pinker stresses the extent of human suffering.²⁹⁵ Both Pinker and Wilson are concerned about the negative impact of belief in an afterlife.²⁹⁶ They also emphasize the evil done by religious people, in both ancient and modern times.²⁹⁷

Id. at 276-277.

A discovery that natural processes can produce life would not prove God’s non-existence. What was the origin of the inert elements from which life allegedly derived? *See supra* n. 259. And what lies behind the laws of physics that allowed life to develop? *See supra* n. 279; *also see supra* n. 274. Moreover, as Miller states, such a finding also would not prove that God, should He exist, has withdrawn from involvement in the world. It would, though, undermine an important *affirmative proof* that God in fact exists. *See infra* n. 298. Again, however, this Article’s focus is not to *prove* that God exists, but to examine the claim that *science disproves* the existence of a theistic God. *See supra* nn. 260 & 221.

289. Wilson, *Consilience*, *supra* n. 110, at 6-7. “[T]he immanent, caring God of the Western monotheisms may never have been more than a fiction devised by members of a species that self-indulgently denies its continuity with the rest of nature” Crews, *supra* n. 265, at 24.

290. *Id.* One of the “appalling fears” that a “scientific worldview” has fostered is “that our universe may lack any discernable purpose.” Crews, *supra* n. 265, at 24.

291. Wilson, *Consilience*, *supra* n. 110, at 281; Wilson, *On Human Nature*, *supra* n. 136, at 27, 205.

292. Wilson, *Consilience*, *supra* n. 110, at 281.

293. *Id.* at 273, 277. This could be viewed as simply a more extreme example of what Posner believes to be a common human trait: “[W]e like to dress up our preferences and intuitions in universalistic language, giving a patina of objectivity to a subjective belief or emotion.” Posner, *Problematics*, *supra* n. 48, at 1653.

294. Rulers enhance their position via the supernatural sanction given to the rules of behavior they prefer. Wilson, *Consilience*, *supra* n. 110, at 277. The power of religious leaders grows as they “claim special access” to God. *Id.* at 284.

295. Pinker, *How the Mind Works*, *supra* n. 161, at 560. “[I]f the world unfolds according to a wise and merciful plan, why does it contain so much suffering? As the Yiddish expression says, If God lived on earth, people would break his windows.” *Id.* The flavor of this criticism of God is captured in Leff’s definition of “act of God” as “that which no reasonable God would do.” Leff, *A Fragment*, *supra* n. 77, at 1915-1916 (quoting J.A. MacLachlan).

296. Pinker refers to “mothers who drown their children so they can be happily reunited in heaven,” Pinker, *A Matter of Soul*, *supra* n. 160, at 6, and to “how such beliefs embolden suicide bombers and kamikaze hijackers.” Pinker, *The Blank Slate*, *supra* n. 178, at 189. Wilson worries that “[with] a second life waiting, suffering can be endured—especially in other people. The natural environment can be used up. Enemies of the faith can be savaged and suicidal martyrdom praised.” Wilson, *Consilience*, *supra* n. 110, at 268.

297. According to Pinker,

God has commanded people to do all manner of selfish and cruel acts: massacre Midianites and abduct their women, stone prostitutes, execute homosexuals, burn witches, slay heretics and infidels, throw Protestants out of windows, withhold medicine

The most significant feature of this deluge of arguments is its metaphysical nature. There is nothing empirical about these arguments, no appeal to evidence that can in any sense be called “scientific.” They therefore undercut Pinker’s and Wilson’s claim that it is “science” that leads them to reject a theistic God.²⁹⁸ Moreover, none of their

from dying children, shoot up abortion clinics, hunt down Salman Rushdie, blow themselves up in marketplaces, and crash airplanes into skyscrapers.

Pinker, *The Blank Slate*, *supra* n. 178, at 189. See Pinker, *A Matter of Soul*, *supra* n. 160, at 6. Wilson refers to the “genocidal wars” recorded in the Old Testament. See Wilson, *Consilience*, *supra* n. 110, at 6, 267, as well as “colonial conquest, slavery, and genocide.” *Id.* at 262; and see *id.* at 267.

298. See *supra* n. 271. There is nothing new in Darwinists’ relying on metaphysical arguments to reject concepts of God that they cannot accept. See *supra* n. 284. Darwin himself ultimately rejected the Christian God in part because of his distress over the doctrine of a final judgment. See James R. Moore, *Of love and death: Why Darwin 'gave up Christianity'*, in *History, Humanity and Evolution* 197, 203, 220-221 (James R. Moore ed., Cambridge U. Press 1989). Some Darwinists reject the concept of God altogether for purely metaphysical reasons. Richard Lewontin, for example, writes:

It is not that the methods and institutions of science somehow compel us to accept a material explanation of the phenomenal world, but, on the contrary, that we are forced by our *a priori* adherence to material causes to create an apparatus of investigation and a set of concepts that produce material explanations, no matter how counter-intuitive, no matter how mystifying to the uninitiated. Moreover, that materialism is absolute, for we cannot allow a Divine Foot in the door.

Lewontin, *supra* n. 265, at 31.

Kenneth Miller notes what is impossible to miss—Lewontin’s “prior commitment to philosophical materialism.” Miller, *Finding Darwin’s God*, *supra* n. 221, at 186. See Phillip E. Johnson, *The Unraveling of Scientific Materialism*, *First Things* 22, 24 (Nov. 1997) (“For scientific materialists [like Lewontin] the materialism comes first; the science comes thereafter.”). The significance of prior commitment is also evident in Frederick Crews’s comment on Richard Dawkins’s statement that “Darwin made it possible to be an intellectually fulfilled atheist.” Dawkins, *The Blind Watchmaker*, *supra* n. 277, at 6. To Crews, Dawkins meant

not that Darwinism requires us to disbelieve in God. Rather, if we are already inclined to apprehend the universe in strictly physical terms, the explanatory power of natural selection removes the last obstacle to our doing so . . . showing in principle that order could arise without an artificer.

Crews, *supra* n. 265, at 24. In other words, “organized complexity,” Dawkins, *The Blind Watchmaker*, *supra* n. 277, at 5, must be accounted for somehow, and mutation and natural selection are offered as the explanatory processes in the presumed absence of a Creator. It thus is easy to understand why Darwinism is aggressively defended. Darwinism *simply must be true* if “organized complexity” is to be explained apart from God. (Unless one posits, along the lines of Sir Francis Crick’s theory that aliens “sent a rocket ship to seed life on earth,” Michael J. Behe, *Darwin’s Black Box* 248 (Free Press 1996), that aliens also are responsible for life’s “organized complexity.” See *id.* at 248-249. This approach, however, leaves unexplained the origin of the aliens.) The proper question, though, is whether Darwinism in fact is true. Only then can it replace a Creator.

As previously stated, see *supra* nn. 259 & 277-278 and accompanying text, I believe that Darwinism fails to explain many important questions (I use Darwinism in its original sense as referring to a godless, naturalistic process; see *supra* n. 280). I realize that by including myself within what Posner calls the “substantial minority of Americans” who reject evolution, I also subject myself to his lumping me with those who “believe in astrology, UFOs, reincarnation, fortune-telling, diabolism, faith-healing, and other scientifically specious theories, phenomena, and practices.” See Posner, *Problematics*, *supra* n. 48, at 1680. Posner, though, thinks that

metaphysical arguments are compelling.²⁹⁹ In view of the previously

despite the fact that evolution “cannot be confirmed empirically . . . various forms of indirect evidence . . . together with the absence of an alternative theory for which there is any good evidence, cumulatively provide strong support for the theory of evolution.” *Id.* at 1646-1647. To the contrary, the evidence shows Darwinism’s explanatory inadequacies, whereas there is strong evidence for an alternative theory—God.

299. Wilson’s basic approach is to suggest that because the concept of a theistic God has certain perceived benefits for mankind, mankind likely fabricated the idea of a personal God to reap those benefits. See *supra* nn. 289-294 and accompanying text. As a general proposition, this argument proves nothing. That mankind *might have* fabricated God obviously does not establish that He does not exist, in the same way that the possibility that I have only imagined that my wife loves me (to reap the psychic benefits of being loved) does not establish that she does not actually love me. I will comment specifically on only two of Wilson’s points. His argument that the notion of God helps mankind confront the fear of death, see *supra* n. 291 and accompanying text, is a logical possibility, but hardly convincing. It is just as logical to say that people resist the idea of a God to avoid contemplating the prospect that there is an ultimate authority to which they will be answerable for their lives (this same point can be made about Darwin’s rejection of Christianity because he could not bear the concept of Hell. See *supra* n. 298). Wilson’s contention that mankind creates a personal God to provide a supernatural sanction to our moral precepts, see *supra* n. 293 and accompanying text, deserves special attention. A principal purpose of this Article is to demonstrate that without God right and wrong are meaningless concepts. Might not then the temptation be great to *manufacture* God to give an illusion of certainty to our moral views? See *supra* n. 287. Logically this is a possibility, but, as noted, *supra* n. 244, the very fact that we typically argue in moral terms is suggestive of God’s existence. Moreover, Wilson’s speculation about this possible motive for man’s creation of God proves nothing. It is just as logical to say that people (like Wilson) resist the idea of a personal God because they prefer a universe in which there are no unequivocal rules of conduct. See Leff, *Memorandum*, *supra* n. 4, at 889 (“[I]f there is a God, it’s even more terrifying, because then some things are not permitted, and men have got to find out which are which.”). Wilson’s assertion, however, is helpful in emphasizing a crucial point. If mankind did in fact fabricate God, this make-believe God does nothing whatever to ground moral propositions. This can be accomplished only by a God who actually exists. See *supra* n. 221.

Human suffering, stressed by Pinker, *supra* n. 295 and accompanying text, does not disprove a theistic God. See *supra* n. 285. And neither does a related fact of our world, the evil done by men (which in part explains human suffering). Leff indirectly questions the concept of a personal God on this basis in Memorandum, which is styled as a letter from The Devil to Roberto Unger. Leff, *Memorandum*, *supra* n. 4, at 879. The Devil’s final advice to Unger is: “Look around you at your species, throughout time and all over the world, and see what men seem to be like. Okay? Now take this hint from what you have seen: If He exists, Me too.” *Id.* at 889. Based on Leff’s own views as detailed in Part I, the circularity of any such critique is clear. Without God-given morals to begin with, how can it be said that what one condemns as evil actually is evil? See *supra* n. 222. Such attacks on the existence of God also give insufficient weight to human agency. The evil being condemned is that done by humans, whose free will and responsibility could quite logically be part of God’s plan for mankind.

The negative effects of a belief in an afterlife, *supra* n. 296 and accompanying text, do nothing to disprove that an afterlife in fact exists (and denial could well reflect a desire to avoid confronting the implications for one’s life). They could just as easily result from distorted thinking by the adherents of the religious faith in question. With respect to Christianity, Wilson’s list of negatives, *supra* n. 296, reveals a complete misunderstanding of fundamental Christian doctrine. Christians are called to: (a) alleviate the suffering of others, not remain indifferent, see e.g. Gal 6:10; (b) be stewards of God’s creation, see John Copeland Nagle, *Playing Noah*, 82 Minn. L. Rev. 1171, 1226-1230 (1998); and (c) love our enemies, see e.g. Matt 5: 43.

That religious people have committed evil acts, *supra* n. 297 and accompanying text, also does not disprove a theistic God. First, as just noted, apart from God, there is no ground for labeling any conduct evil. Second, Pinker too readily asserts that God commanded the acts that he

demonstrated weaknesses of their scientific arguments,³⁰⁰ it is clear that Pinker and Wilson fail to disprove the existence of a theistic God. Even if such a God exists, however, there are further obstacles to the concept of a God-premised morality.

B. Who is the Actual God?

God's existence does not ensure that looking to God can adequately ground moral assertions. One must seek moral truth from the God who actually exists. The world, though, offers many different conceptions of God. Wilson asserts that mankind has produced one hundred thousand different religions.³⁰¹ Presumably because of such diversity, he says that transcendentalism itself is "relativistic."³⁰² The suggestion is that diverse conceptions of God show that there is no one God who actually exists. This appears also to be the suggestion of the response by Mark Vlosky to Wilson's Atlantic Monthly piece:

Certainly most religious beliefs have by now been proved decidedly untrue. Those that have not are all in contention, and must therefore be mostly false too. For instance, if there's only one God, there can't be many. If we go to Heaven when we die, we can't be reincarnated. If communal dancing on the prairie brings rain, then the target of prayer is relative. If Jews are God's

condemns. See *supra* n. 297. That religious people *attribute* their behavior to God's command does not mean that God in fact commanded it. Christians, for example, have often claimed that the Bible requires conduct that is in fact contrary to Biblical principles. Pinker does, however, cite one example, the massacre of the Midianites, that suggests a serious issue that the Christian must squarely confront. While "massacre" arguably is an incorrect description for God's command that the Midianites be struck down (they are, after all, described as invaders), see Judg 6-7, Old Testament history does contain descriptions of God-commanded massacres, such as the sacking of Jericho (this may be one of the "genocidal wars" that trouble Wilson. See *supra* n. 297). See Josh 6. Since God, a holy Being, Isa 6:3, commanded it, the Christian necessarily must conclude that the act was not evil. See Francis A. Schaeffer, *Joshua and the Flow of Biblical History* 65-68 (1975) (the conquest of Canaan was God's judgment on the wickedness of its inhabitants). Thus, I would differ from Pinker as to the correct result in what he calls a "thought experiment":

What would be the right thing to do if God had commanded people to be selfish and cruel rather than generous and kind? Those who root their values in religion would have to say that we ought to be selfish and cruel. Those who appeal to a moral sense would say that we ought to reject God's command. This shows—I hope—that it is our moral sense that deserves priority.

Pinker, *The Blank Slate*, *supra* n. 178, at 189. As previously shown, Pinker fails to establish any persuasive grounding for morality. See *supra* nn. 176-210 and accompanying text. Moreover, Part I of this Article has demonstrated that God alone can ground moral precepts. Consequently, to reject God's command (assuming that one is referring to the God who actually exists and that one has correctly understood God's instructions) is to guarantee that one will be acting wrongly.

300. See *supra* nn. 262-288 and accompanying text.

301. Wilson, *On Human Nature*, *supra* n. 136, at 169.

302. Wilson, *Consilience*, *supra* n. 110, at 263. Some religious perspectives, such as Buddhism and pantheism, do not even involve the concept of a transcendent God.

favorite people, then Jehovah's Witnesses are not. If Mohammed supercedes Jesus, then Christ is not the main son of God. And so on. When faced with the plethora of contradictory religious convictions and the historical record that religious beliefs have overwhelmingly been exposed as superstitious fictions, it is irrational to state that remaining religious beliefs might be true.³⁰³

To the contrary, it would be irrational to argue that diverse conceptions of God show that no true God actually exists.³⁰⁴ If there is a God, He exists regardless of any incorrect conceptions of Him that people may have.³⁰⁵ He would exist in His true nature even if not one human had an accurate understanding.³⁰⁶

Even, however, if one grants that diverse conceptions of God do not demonstrate that no actual God exists, Vlosky does make a valid practical point. This subpart argues that only if one looks to the true God can God satisfactorily ground normative assertions. In view of the diverse conceptions of God, how can one know which version is the true God? Despite the significance of this subject, here only a few observations will be made. My chief purpose is not *to prove* that any particular concept of God is accurate. Rather, my main objective is much more simple, yet still of great importance—to show that *unless one is looking to the true God, the God one looks to cannot ground normative assertions*. Unless the Christian God is the true God, it is futile to look to Him to *ground* moral truth. Likewise, God as understood by Islam can *ground* moral truth *only if* Allah is the true God. The same thing can be said about the God of Judaism or any other

303. Letter from Mark Vlosky to the *Atlantic Monthly*, A. Mthly. 8 (July 1998).

304. Dawkins exemplifies this type of irrationality in commenting on various creation stories positing "a conscious designer":

It would obviously be unfairly easy to demolish some particular version of this theory such as the one . . . spelled out in Genesis. Nearly all peoples have developed their own creation myth, and the Genesis story is just the one that happened to have been adopted by one particular tribe of Middle Eastern herders. It has no more special status than the belief of a particular West African tribe that the world was created from the excrement of ants.

Dawkins, *The Blind Watchmaker*, *supra* n. 277, at 316. What exactly is Dawkins's argument here? That the mere fact of inconsistency between the two versions proves that both are untrue? This is fallacious reasoning. Under this approach, if one person says that the ocean contains salt water, but another argues that it contains milk instead, neither view can be true.

305. The Old Testament captures this idea wonderfully in God's statement to Moses: "I am who I am." Exod 3:14.

306. This is a sobering fact for mankind—a reminder of how critical it is that one be looking to the God who actually exists, not only to ground moral values, but also for every aspect of life. Assuming that there is in fact a God (the premise of this subsection), our conviction that our concept of God is correct will not protect us from the consequences of error should we in fact have been focusing our lives upon a non-existent God.

conception of God.³⁰⁷

Concerning the issue of which God is the true God, Vlosky is correct concerning one significant consequence of the many differing views—radically conflicting concepts of God cannot all be true.³⁰⁸ In this diverse field, each religion tries to demonstrate its validity. Christians,³⁰⁹ for example, believe that there are compelling arguments to show that the Christian God is the true God.³¹⁰ It would be foolish, however, not to expect resistance by those of other faiths or no faith to the claim that the Christian God is the exclusive ground of moral truth.³¹¹ Even if the Christian God were universally accepted,³¹²

307. The key word here is “ground.” It is possible that looking to a false God could *supply* correct moral principles, but only the true God can *ground* those principles. *See infra* n. 308.

308. *See supra* text accompanying n. 303. Thus, I believe that Muhammad Ali, a devout Muslim, created an erroneous impression when he was asked for his feelings about other religions. His response? “Rivers, ponds, lakes and streams. They have different names, but all contain water. Religions have different names but all contain truth.” *Face to Face With Ali*, Reader’s Dig. 90, 93 (Dec. 2001) [hereinafter *Face to Face*]. Ali’s answer suggests that to some extent it does not matter what religion one believes. But the various religions differ profoundly on a host of significant subjects, including the nature of God, the nature of man, and how God relates to man. How then is it feasible to say that it does not matter what God one believes in? This “one idea is as good as another” approach would make sense if by “God” we mean “whatever delusional idea concerning transcendence that helps one get through life.” Under this view of God, any palliative for life’s challenges that works is fine, regardless of contradictions among the alternatives. But the premise of this subpart is a God who actually exists, not different Gods manufactured according to varying human preferences. *Cf. supra* text accompanying n. 250 (C.S. Lewis makes the same point concerning moral assertions).

Ali, though, was more nearly correct in his statement that all religions “contain truth.” It has been previously noted that there is a similarity of moral precepts among many of the great faiths of the world. *See supra* nn. 244-248 and accompanying text. This commonality is highly suggestive of a God who created all mankind with a common conscience. *See supra* nn. 253-257 and accompanying text. Commonality in itself cannot satisfactorily ground moral precepts. That can be done only by the God who actually exists. *See supra* nn. 251-252 and accompanying text. But a religious faith whose basic concept of God is incorrect could nonetheless teach moral precepts that overlap (because of mankind’s common origin or because the moral principles God has established actually “work” in human society) with principles revealed by the true God. To the extent of this overlap, even a false religion can “contain truth,” although it can never serve to *ground* truth. For an interesting discussion of such matters from a Christian perspective, see Gerald R. McDermott, *Can Evangelicals Learn From World Religions?* (2000).

309. As previously noted, I am a Christian. *See supra* n. 223.

310. *See e.g.* Josh McDowell, *The New Evidence That Demands A Verdict* (T. Nelson 1999); Lee Strobel, *The Case for Christ: A Journalist’s Personal Investigation of the Evidence for Jesus* (Zondervan 1998).

311. Concerning how one of another faith could be expected to react to such a claim, I can conceptualize this best by honestly acknowledging my own response should those of a non-Christian faith claim that moral truth is grounded only in the teachings of their God. I would view their faith-based claims as irrelevant for the purpose of grounding moral truth. I would be interested in their views from sheer intellectual curiosity. I also believe that I could very well gain insight into moral truth by becoming knowledgeable about their beliefs. *See supra* n. 308 (I believe that I could learn in similar ways from people without religious faith). But as a *grounding* for moral claims, their views would not be persuasive to me.

substantial challenges to a God-based moral system would remain.

C. Has God Communicated Moral Truth in Incontestable Ways?

Although Leff did not inquire into whether there actually is a God, he did express some thoughts relevant to the challenges of a “practical

Concerning the likely reaction by those of no faith, the views of Professor Sanford Levinson are helpful. Levinson describes himself as a secularist, a liberal, and an agnostic. Sanford Levinson, *The Multicultures of Belief and Disbelief*, 92 Mich. L. Rev. 1873, 1876 & 1880 n. 41 (1994) (book rev.). He powerfully states his readily understandable reaction to the suggestion “that listeners of the religious discourse of others who do not share their religious premises should nonetheless accept or, indeed ‘cherish’ . . . that mode of speech”:

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. In the absence of the requisite ontology and epistemology, the statements predicated on them simply can have no real meaning for me. Similarly, that Scripture declaims about the creation, morality, or the occurrence of miraculous events provides no reason whatsoever for me to accept the particular account offered.

Id. at 1879. Levinson’s view is more colorfully summed up in his statement that he does not believe that divine revelation “is any more ‘real,’ ontologically,” than a “presumed message[] received from Venusian spaceships.” *Id.* at 1880 & n. 41. Because, however, he is “an agnostic rather than an atheist,” he would accord greater respect “to the believer in religious revelation than to the hearer of commands from Venus.” *Id.* at 1880 n. 41. He would not dismiss the former “as being necessarily deluded,” but he is “not so generously disposed” to the latter. *Id.* Levinson is thus more charitable in his opinion of theists than Professor Daniel Dennett, an atheist, who equates believing in God to believing in “the Easter Bunny” and “black magic.” Daniel C. Dennett, *The Bright Stuff*, N.Y. Times A11 (July 12, 2003).

312. A common objection to Christianity is that Christians often do evil. As has been shown, Pinker and Wilson both condemn the behavior of Christians as part of their rejection of a theistic God. *See supra* n. 297. We Christians have a number of cogent responses to such critiques. First, there is the circularity point already made—without God, how do Pinker and Wilson know that what they call evil actually is evil? *See supra* nn. 222 & 299. Second, we can stress all the evil that has been done in the name of secular philosophies, with Communism being a prime example. Third, we can point to all the good that Christians have done over the centuries. *See* D. James Kennedy & Jerry Newcombe, *What If Jesus Had Never Been Born?* (Thomas Nelson 1994). Fourth, we can stress that much of the evil done in the name of Christianity may have been committed by those who were not actually Christians or by Christians who were wrongly applying the faith. *See supra* n. 299. As will be shown, *infra* n. 318, Muslims now use such an argument to defend Islam against the criticism generated by the actions of Islamic terrorists. Fifth, we can argue that the failures of actual Christians do not logically call into question the existence of the Christian God—a core concept of the faith is that Christians will continue to sin as we struggle against our sinful natures as long as we live. *See* Rom 7:15-23. The fact remains, however, that Christians at times sadly have fallen short of the conduct that Jesus calls us to. *See* 1 Pet 2:12 (“Live such good lives among the pagans that . . . they may see [our] good deeds and glorify God on the day he visits us.”). As Francis Schaffer stated, “All too often people have not been wrong in saying that the church is ugly.” Francis A. Schaffer, *The Church Before a Watching World*, in 4 *The Complete Works of Francis Schaffer: A Christian Worldview* 113, 152 (2d ed., Crossway Books 1985). While such failures do not constitute disproof, they clearly undermine any effort to persuade others to look to the Christian God as the only grounding for moral truth. (Despite the importance of Christians’ fidelity to Jesus’ example as a testimony to non-Christians, ultimately whether another person becomes a Christian does not depend on this type of evidence or any other type of logical argument. *See supra* n. 258.).

this-world application³¹³ of a God-based moral system, should God exist. Humans would “have but one epistemological problem, to learn the will of God.”³¹⁴ Learning God’s will, however, would have its difficulties. There would be “a continuous controversy over what God says.”³¹⁵ But that struggle to understand is essential, because knowing what God’s commands mean is indispensable to the obedience they necessarily entail.³¹⁶ Even with understanding, one’s “work is not necessarily over. [One] may still work with the propositions, show their interactions, argue about their reach and implications, rationalize, restate, and reflect.”³¹⁷

Leff’s assertion of the complexity of practical application of God-based morals is clearly correct. This is so regardless of the identity of the true God. If Allah, for example, is God, does He condone or condemn violence against non-Muslims? Muslims are currently debating whether such violence is consistent with the Islamic faith.³¹⁸

313. See *supra* n. 7 and accompanying text.

314. Leff, *Memorandum*, *supra* n. 4, at 889. Leff believes that humans need do this only if God still cares. *Id.* at 888-889. I agree. One example of a non-caring God would be a God who exists, but is silent—He has communicated no information about right and wrong. If this were the case, God’s existence would provide mankind no advantage in knowing right and wrong over God’s non-existence i.e., as demonstrated by Part I, humanity would be left in a condition of total ignorance in classifying good and evil. Each person’s view would be purely idiosyncratic and non-authoritative. The major monotheistic religions, however, believe that God has communicated. This subpart assumes that they are correct, but will show that even so obstacles remain to ascertaining moral truth.

315. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1247 (Leff here is explicitly referring to the Constitution, but he says that his point is descriptive of “all divine pronouncements.”). Leff realizes that such disagreements have often manifested themselves in extreme behavior. See *infra* n. 328.

316. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1230-1231 (Leff uses the example of the command, “Thou shalt not commit adultery.”). Obedience is requisite because God commands it (“I ought not [commit adultery] because He said I ought not” *Id.* at 1231).

317. *Id.* at 1230. Leff here is not explicitly referring to a God-based system, but he is referring to a system whose normative propositions are “immune from further criticism.” *Id.* To Leff, only a God-based system could satisfy this criterion. See *supra* nn. 38-44 and accompanying text.

318. This debate, of course, intensified following the September 11 terrorist attacks. On one side is the view that Allah blesses such violence. The hijackers themselves had this perspective, as revealed by their written instructions found at the crash site of Flight 93: “God, I trust in you. God, I lay myself in your hands. There is no God but God We are of God, and to God we return.” Lisa Beamer, *Let’s Roll!* 194 (Tyndale House Publishers 2002). The contrast with Muhammad Ali’s belief is stark, as shown in an interview he gave on September 11, a few hours after the attacks:

Killing like that can never be justified. It’s unbelievable Islam is a religion of peace. It does not promote terrorism or killing people People say a Muslim caused this destruction. I am angry that the world sees a certain group of Islam followers who caused this destruction, but they are not real Muslims. They are racist fanatics who call themselves Muslims, permitting this murder of thousands.

Face to Face, *supra* n. 308, at 92-93.

Christianity, however, will be the religion primarily considered here.³¹⁹

Even if everyone were convinced that the Christian God is the only true God, there still would be challenges in grounding precepts about good and evil. How has God revealed His moral principles to mankind? Does God give clear answers to particular moral questions? Such questions are rife with thorny subsidiary issues. This is not the place to attempt a resolution, but merely describing them demonstrates that it is facile to claim that Christianity automatically supplies clear-cut answers to all questions about right and wrong.

Concerning God's revelation to mankind, how is one to view the Bible? What material properly belongs in it?³²⁰ Is the Biblical text reliable? Is it God-breathed i.e., direct revelation from God to man, or does it simply record the religious experiences of the authors?³²¹ If it is God's inerrant Word, do all Old Testament principles continue to apply today? Are all New Testament principles still applicable?³²² What principles govern the interpretation of Scripture? What is the Bible's relative authoritativeness vis-à-vis church tradition and human reason?³²³ Has God communicated moral truth in ways other than special revelation?³²⁴ Is the example of Jesus' life to be viewed as more

319. See *supra* n. 223.

320. What does one make of the fact, for example, that the Catholic and Protestant Bibles are not identical in content? For a helpful discussion of these matters, see F.F. Bruce, *The Canon of Scripture* (InterVarsity Press 1988).

321. John Shelby Spong is one who holds the latter view. See John Shelby Spong, *Why Christianity Must Change or Die* 107-108, 131 (Harper San Francisco 1998). Even a cursory review of Spong's book, however, shows that he debunks Christianity's core principles, those that for centuries have been the heart of the Christian message. See *id.* at 3-19 (where Spong methodically repudiates the Apostles' Creed). Applying the label "Christianity" to Spong's beliefs is like applying the label "baseball" to a game from which pitching and hitting have been eliminated.

322. One contemporary controversy concerns whether the Apostle Paul's proscription of women as religious teachers, 1 Tim 2:12, and his requirement that church elders be men, 1 Tim 3:2 and Titus 1:6, apply today to prohibit the ordination of women.

323. For a penetrating analysis that substantiates the primacy of the Bible, see J.I. Packer, *Fundamentalism and the Word of God: Some Evangelical Principles* (Eerdmans Publ. Co. 1958). For an example that accords significantly less weight to the Bible, see Harvey Cox, *A Schism Averted?*, Wall. St. J. A12 (Aug. 12, 2003).

324. For centuries, many have argued that there exists a natural law:

principles and norms that have prescriptive force for human choosing, norms and principles that do not depend for their existence or validity upon human choice or decision. *Natural law* refers to what reason can discover about rectitude in human choosing; these discoveries are not the product of revelation or the decrees of authority. Natural moral law might simply be called reason; observing it is a matter of doing what is "reasonable."

Gerard V. Bradley, *Natural Law*, in *Christian Perspectives on Legal Thought* 277 (Michael W. McConnell, Robert F. Cochran, Jr., & Angela C. Carmella eds., Yale U. Press 2001). The recent explosion of scholarship on this topic demonstrates its continuing significance. See e.g. J. Budziszewski, *What We Can't Not Know: A Guide* (Spence Publ. Co. 2003); *Written on the*

authoritative than moral norms stated in Scripture?³²⁵ What is the proper role of prayer in discerning God's answers to moral issues? For example, can prayer "trump" Scripture if a Christian "feels led" to a course of conduct contrary to Biblical teaching?³²⁶ The fact that Christians disagree today on all these points (and on some have disagreed for centuries) shows that even the general principles governing God's revelation to man are not free from controversy.

Concerning the clarity of God's answers to moral questions, does the Bible even speak directly to all the vexing moral issues of our day?³²⁷ What should one make of the fact that Christians historically have disagreed on many moral issues, with both sides relying on the Bible? For example, Lincoln in the Second Inaugural spoke of North and South in the Civil War "[b]oth read[ing] the same Bible, and pray[ing] to the same God; and each invok[ing] His aid against the other."³²⁸ The inability of Christians to speak in one voice on the issue

Heart: The Case for Natural Law (InterVarsity Press 1997); Robert P. George, *In Defense of Natural Law* (Oxford U. Press 1999); Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (ISI Books 2003); *Propter Honoris Respectum*, 75 Notre Dame L. Rev. 1597-1892 (2000) (symposium issue honoring John Finnis). This subject is too large for extended comment here, but I will make several observations. First, I share Leff's critique of any secular notion of natural law i.e. one not ultimately premised in God. See *supra* n. 43. The only version of natural law that I find at all plausible is theistic. Bradley, for example, *supra* at 277, refers to revelation as the source of natural law "in the extended sense of revelation indicated by the notion of its being 'written on their hearts.' This sense is that God is the author (creator) of all there is, including what humans discover 'on their hearts' by using their (created) capacity to reason." Second, I believe that God has endowed mankind with a conscience, see Rom 2:14-15, and that the resulting common moral norms, across time and culture, are persuasive evidence for God's existence. See *supra* nn. 253-257 and accompanying text. Nonetheless, I have misgivings about following Bradley in relying upon what "reason [unaided by special revelation] can discover about rectitude in human choosing." Doing so, in my view, gives insufficient weight to human sinfulness. See e.g. Jer 17:9; Rom 3:9-19; *supra* n. 257.

325. This refers to the argument, common with respect to the homosexuality issue, that the principal lesson of Jesus' life is his commitment not to exclude anyone. For example, He reached out to the outcasts of his day, such as Samaritans, women, lepers, and the deranged. See Spong, *supra* n. 321, at 122-125. This example is said to outweigh particular passages that appear to condemn homosexuality. See *id.* at 129-130. Spong's perspective, of course, reveals a much deeper disagreement about the very nature of Jesus and of the Scripture. The orthodox Christian view (which Spong rejects, see *supra* n. 321) is that Jesus came to fulfill the Law, not to change it. The very idea that the example of Jesus could contradict Scripture is incompatible with the notion that God is the author of Scripture and that Jesus is God.

326. Viewing the Bible as God's Word would lead one necessarily to repudiate this approach—God would not contradict Himself.

327. Clearly not. The Bible says nothing explicit, for example, about genetic testing or stem cell research. These gaps do not mean that something is missing that God wanted us to know. He gave us all the information He wanted us to have, even though sometimes we may wish for more. As will be demonstrated, *infra* n. 331, the foundational principles that the Bible contains do provide guidance in resolving issues that are not specifically addressed.

328. 8 *The Collected Works of Abraham Lincoln* 333 (Roy P. Basler ed., Rutgers U. Press 1953). The Civil War seems to be grim confirmation of Leff's observation that "determining just what it is that God says has a few epistemological difficulties strewn in its path, of sufficient

of slavery shows that an unamplified call to follow Biblical morality is sometimes too simplistic to be of much practical use.³²⁹ And what about controversial contemporary issues like abortion, the death penalty, homosexuality, and war? Christians disagree, sometimes vehemently, on such topics and others.³³⁰ Such widespread disagreement seems to show definitively that Christianity does not provide clear-cut answers to every moral problem.³³¹ Consequently, can it be said that Christianity

breadth and depth that whole peoples have been decimated as the question was debated in practice.” Leff, *On Shoring Up a Void*, *supra* n. 4, at 540.

329. And what does one do with the fact that the Bible not only does not flatly condemn slavery, but commands slaves willingly to obey their masters? *See e.g.* Eph 6:5-8; Col 3:22; 1 Tim 6:1-2. It seems that the Southern clerics were on solid ground in their arguments that the Bible in general sanctions slavery. *See e.g.* Thornton Stringfellow, *A Scriptural View of Slavery*, in *Slavery Defended: The Views of the Old South* 86-98 (Eric L. McKittrick ed., Prentice-Hall 1963). Given that I believe that the Bible is God’s Word, must I accept the moral permissibility of American slavery, even though everything in me recoils at the idea? Not at all. First, as emphasized by Mark Noll:

[A] hidden hand had to function in the exegetical process if the Bible were to justify the racial slavery that existed in the United States—and if faith in America’s Bible-only literalism were to be preserved. That hidden hand was the widespread, deeply ingrained, thoroughly American—though hardly biblical—conviction that among the peoples of the earth only Africans were uniquely set apart for chattel bondage.

Mark A. Noll, *The Bible and Slavery*, in *Religion and the American Civil War* 66 (Randall M. Miller, Harry S. Stout, & Charles Reagan Wilson eds., Oxford U. Press 1998). *See* Mark A. Noll, *America’s God: from Jonathan Edwards to Abraham Lincoln* 417-421 (Oxford U. Press 2002). Second, beyond racism, there were several characteristics of the practice of American slavery—including brutal treatment, literacy laws that denied access to the Bible, and the failure to protect slave marriages and families—that were contrary to Biblical commands. As demonstrated by Eugene Genovese, this disobedience led many Southern clerics to call for reform in the years prior to the Civil War. Eugene D. Genovese, *A Consuming Fire: The Fall of the Confederacy in the Mind of the White Christian South* 9-12, 23, 67 (U. Ga. Press 1998). During the War, the cries for reform intensified, as clerics warned that the South’s sins could well bring God’s judgment in the form of a Northern victory. *Id.* at 54-57, 59-60.

330. In Derrick Bell’s fable, *The Space Traders*, *see supra* nn. 1-2 and accompanying text, Christians disagreed about the proper response to the Space Traders’ offer. While some opposed the Trade, Bell, *supra* n. 1, at 177-178, television evangelists urged that rejecting the Trade would be blasphemous because the Trade was God’s chosen method for blessing America. *Id.* at 184. Interestingly, the only Christian opposition to the Trade that Bell describes is by a black Baptist minister (and even he does not make an argument explicitly premised in Christian principles). *See id.* at 177-178. Bell apparently believes that not one white Christian would oppose such a Trade. For my own view as to what Christianity would require, *see infra* nn. 357-360 and accompanying text.

331. It must be said, though, that on some issues disagreement does not reflect confusion in the moral guidance that the Bible provides, but deviation from that fidelity to the Bible that orthodox Christianity requires. I consider Christian disagreement on abortion an example of this phenomenon. Even though the Bible nowhere directly condemns the practice, the Bible does plainly teach that God created human life in His image. Gen 1:27. The Bible also teaches that God is sovereignly active in conception. *E.g.* Gen 21:1-2; and Job 31:15. “It would therefore be a willful act of defiance against the Creator intentionally to kill an unborn child whose conception is so intimately a Divine as well as a human act.” *Report of the Ad Interim Committee on Abortion, Adopted by the Sixth General Assembly of the Presbyterian Church in America* 1 (1978). Moreover, the Bible plainly teaches that God does relate personally to individual human lives

actually offers useful guidance in knowing moral truth? The answer is “yes,” for the crucial reason that the Bible does incontrovertibly state many of mankind’s most basic moral precepts.³³² For example, murder is forbidden.³³³ Without this grounding,³³⁴ no convincing moral case can be made that one should not murder. To be blunt, without God’s prohibition of murder, there would be no firm basis for condemning as morally wrong a pastime of idly shooting passersby from one’s second-story apartment.³³⁵

while still in the womb. Ps 51:5; 139:13-16; Jer 1:4-5. Finally, “‘the personal life of the Son of God on earth begins not when he was ‘born of the Virgin Mary,’ but when he was ‘conceived by the Holy Spirit.’ His human history, like ours, began at conception.” Charles Wingard, *The OPC and Abortion*, New Horizons 19 (Dec. 1997); see Matt 1:18; Luke 1:35. Consequently, the wholesale slaughter of preborn life occurring in the United States today can under Christian principles be termed nothing less than a moral abomination.

332. Christianity also provides principles essential to an aspect of the search for truth distinct from the end-product of the search—the search process itself. These include the duties to love one another, even to love our enemies (John 13:34; Matt 5:44); to forgive as we have been forgiven (Eph 4:32); to consider others better than ourselves (Phil 2:3); and to be humble (Col 3:12). For the Christian, evidencing these qualities is at least as important as the correctness of the position one takes on the specific moral issue in dispute. One of the most significant aspects of my Christian life at Washington and Lee has been my relationships with Christian colleagues with whom I have disagreed on a variety of substantive moral issues. At times, it has been a challenge for us to maintain the bond of brotherly affection to which we are called as Christians, but by God’s grace we have done so. This is a moral victory more sweet than had we reached consensus on the contested moral issue. This same challenge has occurred in my relationships with non-Christian colleagues with whom I have disagreed. Being loving in my attitudes and conduct, even (especially) in the midst of disagreement, is a clear demand of the faith.

In addition, Christianity provides the answer to the failures of various sorts that are sure to occur in the search for truth: (1) the failure to treat one’s fellow-searchers for truth (Christian and non-Christian) in accord with Biblical standards; (2) the failure correctly to ascertain the truth; and (3) the failure to live by those correct moral precepts that we do ascertain. (This Article addresses how to *know* right from wrong. *Doing* the right is perhaps an even more formidable challenge. See Kris Lundgaard, *The Enemy Within: Straight Talk about the Power and Defeat of Sin* (P. & R. 1998).) Christians know that such failures and others are inevitable and are blessed by the knowledge that the Bible also reveals that God has redeemed us from our many shortcomings.

333. Exod 20:13; Rom 13:9.

334. Although this section of the Article assumes both that there is a God and that the Christian God is He, for the Bible to ground the moral norm against murder the Biblical prohibition would have to be God’s revelation to mankind on that subject. If the Bible is anything less, if, for example, it only records the religious experiences of its human authors, see *supra* n. 321 and accompanying text, it is of no use in grounding moral precepts.

335. One thinks of the Nazi camp commander in the movie, *Schindler’s List*, who enjoyed randomly shooting prisoners, or the S.S. members in the movie, *The Pianist*, who tossed a wheelchair-bound elderly gentleman off of a balcony. Without God’s prohibition of murder, no one could convincingly demonstrate that it would be evil to adopt either of these activities for one’s chief recreation. Simply ascribing to a prohibition against murder a “transcendent and universal warrant,” without a divine source, as does Pinker, *The Blank Slate*, *supra* n. 178, at 269, not only makes a mockery of the word “transcendent,” see *supra* n. 201, but also accomplishes nothing worthwhile in grounding the principle. Posner suggests that not much would be lost because a prohibition against murder is only “tautological” anyway: “‘Murder is wrong,’ where ‘murder’ means ‘wrongful killing.’” Posner, *Problematics*, *supra* n. 48, at 1640; and see *id.* at 1650. The Bible, however, offers guidance on the meaning of “‘wrongful killing,’”

Many other bedrock moral concepts are plainly stated in the Bible, including: (1) one should not steal³³⁶; (2) spouses should not commit adultery³³⁷; (3) people have a duty to work to support themselves, but generosity toward the needy is commanded³³⁸; and (4) we should be compassionate,³³⁹ kind,³⁴⁰ humble,³⁴¹ and gentle.³⁴² Without Biblical grounding for these foundational moral principles,³⁴³ one could with equal persuasiveness contend, regardless of how widespread the condemnation by others, that right conduct consists of (1) stealing, (2) marital unfaithfulness, (3) laziness and selfishness, and (4) pitilessness, cruelty, pride, and harshness.

Having foundational moral principles does not mean that one can always readily ascertain right conduct in the day-to-day complexity of life. It might often initially be unclear how to apply an unequivocal Biblical norm in a given situation.³⁴⁴ For example, would it be loving to treat a friend in a particular fashion? But at least one knows that love is the required standard.³⁴⁵ Without this incontestable premise, one could apply whatever principle one liked, say, for instance, that it is admirable

distinguishing, for example, between unintentional killing and killing with malice aforethought. Deut 19: 4-5, 11-13; see Exod 21:12-14.

336. Exod 20:15; Rom 13:9.

337. Exod 20:14; Heb 13:4.

338. 2 Thess 3:10; 1 Tim 6:17-18. See Eph 4:28.

339. E.g. Eph 4:32. See Gal 6:2.

340. E.g. Gal 5:22; Eph 4:32. See Gal 6:9-10.

341. E.g. Eph 4:2; Phil 2:3.

342. E.g. Gal 5:22; Eph 4:2.

343. See *supra* n. 334 for what is necessary for the Bible to provide a satisfactory ground for these moral norms.

344. Such difficulties will necessarily exist in any system in which God does not communicate directly with each person to supply specific instructions on each and every moral question.

The abortion controversy is often cited as an example demonstrating that questions of application remain even if one knows a foundational principle. Both sides generally acknowledge that murder is prohibited. But is killing a fetus murder? Leff's definition of "analogy" states the issue like this:

Men and dogs are both "living" beings. Should intentionally killing a dog be "murder"? No, one says, dogs are dogs and men are human beings. Granted. How about men and fetuses? Well, they *are* both living instances of the same species but, well, the foetus isn't *born* yet, and may not be able to live outside the womb *When* is something so like something else that it should be treated the same, or so unlike that it should not[?].

Leff, *A Fragment*, *supra* n. 77, at 2016. However difficult such questions may be, based on God's revelation one can at least approach them from the premise that murder is wrong. See *supra* nn. 333-334 and accompanying text. The abortion debate would differ significantly if a disputant matter-of-factly stated that his governing principle was to murder as much as possible. See *supra* n. 335 and accompanying text. (As previously shown, my own view is that other Biblical concepts unequivocally demonstrate that abortion is a moral evil. See *supra* n. 331.). The Biblical prohibition of murder also demonstrates that killing abortionists is morally wrong.

345. See *supra* n. 332.

to double-cross all those who have been kindest over the years.³⁴⁶

CONCLUSION

This Article has shown the continued validity of Leff's assertion that, apart from grounding in "God says," "there cannot be any normative system ultimately based on anything except human will."³⁴⁷ As Leff states, this conclusion is "intellectually unsettling,"³⁴⁸ "ic[ily] unpleasant[],"³⁴⁹ and "a banal horror."³⁵⁰ Why? Because it means that moral views premised in anything other than God are groundless—"empty mouthings of content-free prescription."³⁵¹ This is true regardless of the universality of a particular moral stance or the passion with which it is held. Consider again, for example, the Space Traders' proposal in Derrick Bell's story.³⁵² Unless an evaluation was premised in God's truth, the goodness or evil of the Trade would be "up for grabs."³⁵³ Vociferous denunciations of the Trade's evil would warrant the same response Leff himself gave to the list of moral pronouncements that ended his famous Duke Law Journal article: "[All together now:] Sez who?"³⁵⁴ Leff then called for God's help,³⁵⁵ but, regrettably, not in a serious manner.³⁵⁶ Regrettable, because only with God's revelation can we know whether the Trade would be right or wrong.

346. Cf. Lewis, *supra* n. 245, at 5 (Lewis, to strengthen his argument that there has been consistency in moral codes across different cultures, asks his readers to imagine a country "where a man felt proud of double-crossing all the people who had been kindest to him"). As to how we know that double-crossing is inconsistent with love, see 1 Cor 13:4-7 for the Biblical definition of love. See Jonathan Edwards, *Charity and Its Fruits: Christian love as manifested in the heart and life* (Banner of Truth Trust ed., Banner of Truth Trust 1969) (1852) (a series of sermons on 1 Cor 13).

347. See Leff, *Unspeakable Ethics*, *supra* n. 4, at 1229-1230 & 1230 n. 1.

348. *Id.* at 1233.

349. Leff, *On Shoring Up a Void*, *supra* n. 4, at 545.

350. See *id.* at 538. Leff says "banal" is apt because we all know deeply "this critical nothingness" (he therefore eschews calling himself its "discoverer"). *Id.* "Horror" is apt "because, motivated by its terror," we are all "impelled to ignore it." *Id.* See *supra* n. 46 and accompanying text.

351. See *id.* Hence the tragedy and futility of Washington and Lee University's campus evolution display, see *supra* n. 277, that ended with the moral exhortations of the Earth Charter. Because the display's creators fail to premise their normative assertions in God, their concluding manifesto is a prime candidate for Leff's "sez who?" For other examples of concluding moral assertions that do not recognize God's indispensability, see Knoll, *supra* n. 277, at 246; Morrow, *supra* n. 215, at 266; Crews, *supra* n. 280, at 55 (see *supra* n. 287).

352. See *supra* nn. 1-2 and accompanying text.

353. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1249.

354. See *supra* n. 213 and accompanying text. The same thing can be said of any moral claim, including Dworkin's assertion that it is evil to torture babies for fun in front of their captive mothers. See *supra* n. 80.

355. See *supra* n. 213 and accompanying text.

356. See *supra* nn. 217, 237-240 and accompanying text.

For me, the answer is clear. The Trade would be evil because I believe that God would view it as evil. Many Biblical principles could be cited,³⁵⁷ but only one will be emphasized. Jesus taught that the second greatest commandment was, “Love your neighbor as yourself,”³⁵⁸ with “neighbor” to be construed in the broadest possible manner.³⁵⁹ Coercing all African Americans to leave their homes for an unknown fate is hardly loving one’s neighbors.³⁶⁰

As has been shown, this argument premised in Christian doctrine proves that the Trade actually would be evil only if (1) God exists, (2) the Christian God is the true God, and (3) the Bible communicates God’s moral truth condemnatory of the Trade. Leff, I believe, would agree that only such a “God-grounded system”³⁶¹ could make this particular ethical determination “unchallengeable.”³⁶² But, given these presuppositions, God actually does provide the help that Leff did not genuinely seek—He supplies the only grounding possible for moral truth.³⁶³

357. One other example is Jesus’ command to “[d]o to others as you would have them do to you.” Luke 6:31; and *see* Matt 7:12. Presumably, none of those forcing the African Americans to leave earth would have welcomed that fate for themselves.

It is crucial to note that Jesus’ command adequately grounds the Golden Rule only if Jesus’ statements are revelatory of God’s will. One clearly can still believe in the Golden Rule without premising it in a divine source. *See* Feynman, *supra* n. 259, at 251; *supra* n. 189 (Pinker). But those who do so are deluding themselves. To discard the Rule’s divine origin is to discard the only basis for accepting the Rule as enjoining morally correct behavior.

358. Matt 22:39.

359. Luke 10:25-37 (the Parable of the Good Samaritan). The Bible thus provides the essential grounding for Pinker’s pure assertion that we should love everyone in the world. *See* Pinker, *The Blank Slate*, *supra* n. 178, at 245.

360. *See supra* n. 346.

361. Leff, *Unspeakable Ethics*, *supra* n. 4, at 1231. Leff’s approach would not require that the God in question be the Christian God. But the same three presuppositions would have to be true for condemnation of the Trade to be viewed as a moral absolute: (1) God exists; (2) one believes in the true God; and (3) this true God has communicated principles that brand the Trade as evil.

362. *Id.* at 1249.

363. It is critical to recall that this Article rejects the idea of fabricating a God to ground moral propositions. *See supra* n. 221 and accompanying text & n. 299. Grounding for moral premises is a consequence, not the cause, of God’s existence.