

Phil 176/276G: Historical Philosophers—American Philosophy

Professor: Aaron Zimmerman
Email: aaronzimmerman@ucsb.edu

Office Hours: M&W 5-6PM
Office: South Hall 5707

Handout #3: The Political Potential of the Ideal of Natural Rights

1. Famous Invocations of Natural Right in American History

There is no doubt that Locke's doctrine of natural rights played a central role in the thinking of the American revolutionaries. We have critically examined the moral epistemology and metaphysics that informed Locke's theory and highlighted the role played by the idea of God in Locke's conception of man's creation on Earth and the rights and duties imposed on man in virtue of that creation. God created us as a species apart from the other animals: broadly equal to one another in intellect and virtue and not only different from but superior to the other species of animals in these regards. These claims are used as premises in Locke's arguments for: (1) the "natural" morality of treating animals as means to our ends, (2) the natural immorality of our treating each other in these ways even when we are not bound by the ties of family or tribe but encountering each other in a "state of nature," and (3) several historical conjectures about the creation of England and other civil societies through social contracts agreed to by equals, contracts which can be dissolved when the governments of these societies fail to meet their end of the bargain. Jefferson used Locke's theory to "justify to the world" the colonists' war for independence. Though this justification relies on several moral principles linking the actions of the English government ("is" premises) with the permissibility or justice of a violent revolt ("ought" conclusions), the founding fathers seemed to regard these principles as self-evident. But this was not Locke's view of their status as he denied the existence of self-evident substantive (or non-definitional) moral principles. The instrumental principle seems to have been the only substantive normative principle he accepted as self-evident.

When they drafted their Constitution years later, a second, overlapping set of American Revolutionaries incorporated this same idea of natural rights "retained by the people when not expressly transferred to the government." The US Constitution therefore contains many of Locke's ideas as to which rights must be abandoned and which could be retained within the civil society instituted by the adoption of that constitution by representatives of the people and their states. But it contains no explicit epistemology on a par with the claim to self-evidence Jefferson incorporated into his Declaration of Independence.

It can be seen, then, that a divine (or theologically laden) moral theory played an important role in the arguments, speeches and documents (or “discursive components”) of the founding of America. Though subsequent generations of philosophers in America came to doubt the existence of God en masse, and no consensus was reached as to the nature of moral knowledge, concepts of natural rights and their obviousness or self-evidence continued to play an important role in political debates, protests, and elections.

This state of affairs was a source of anxiety for many philosophers who endorsed the doctrine of natural rights when they read Darwin’s *On the Origins of the Species* (1859). James and Dewey were both raised by religious parents. Both were believers in the justice of the American revolution and the political system that originated in its wake. James and Dewey agreed that philosophers had a pragmatically important job to do in resolving the incoherence or conflict in their ideas of the origin of the human species and their belief in the natural rights of all members of that species.

This remains a problem for all those who feel the need to defend various components of the American political system that were (as a historical matter) “premised” in Locke’s doctrine. We support democratic ideals in public argumentation, but our acceptance of Darwin’s account of our origins in the modification of ancestral primates through “natural” (non-divine) processes of selection leads us to reject Locke’s account of humankind’s creation. Do we need another argumentative basis for our belief in human rights? What about the other components of our morality? Do we need some account of how we know what we claim to know about right and wrong? Is the “moral sense” theory of Hutcheson and Hume up to the task?

These philosophical worries are especially acute for those of us who reject so-called “Social Darwinism” and are wary of attempts to premise a new post-Lockean theory of moral and political obligation in Darwinian biology. Those of us who believe in universal rights to life and universal rights to basic liberties of movement, conscience, reproduction etc. might think it better to divorce morality from biology as much as possible than to accept a Darwinian morality. (The separation between biology and moral theory can never be complete because technology has not freed us from our biological needs for food and air and water and we still reproduce sexually and must labor to raise our children to reproductive age, and these biological facts are certainly relevant to any argument for or theory of human rights.) The history of animal life on Earth is best explained as the modification of populations through the evolution of phenotypes that promote the reproductive fitness of those individuals who have them in contrast with other members of the relevant populations who don’t. And if group selection is a reality, than this process of natural selection has occurred alongside

another: the evolution of phenotypes that favor the reproduction of those groups with members who have the relevant phenotypes in competition with other groups who either lack members with the phenotype or lack a sufficient number of them to win the competition. Optimists think human history has a tendency toward morality. But the Darwinian conception of morality is either morally neutral or repulsive. And, as a historical matter, Social Darwinism was involved in what we now think of as morally tragic events as it was a central component in the ideology of Nazis and other advocates of eugenics.

Philosophical Worries about Natural Rights: Historically, belief in natural rights was premised in a biological theory we now know to be false. Current biology does not seem to support this theory of natural rights, and it is unclear whether current biology can be used to support any moral theory or at least any moral theory acceptable to those of us dedicated to treating all people with a certain basic level of respect.

These philosophical worries are only deepened by reflection on the role belief in natural rights played in the abolition of slavery in the United States and the subsequent fight for the civil rights of freed slaves and their descendants. Though it was hotly debated in the 19th century, and a war was fought over the proposition, the gross immorality of slavery is a non-negotiable component of contemporary moral thought. If the doctrine of natural rights lacks epistemic support, and the immorality of slavery was traditionally defended on the basis of the doctrine of natural rights, we must either find a new argument for the immorality of slavery or convince ourselves that we don't need such an argument.

Utilitarians take the first option by arguing that slavery is (contingently) immoral because a slave-free society contains more happiness than a society with slaves. (We will discuss this further when we look at James' moral theory.) When used as a justification for the policies that provoked the US Civil War, the claim would be that outlawing slavery in the USA would produce more happiness within this population than would have resulted were slavery not abolished. Many thinkers reject utilitarianism because they think this justification is problematically **contingent**. Even if more overall happiness could have been produced by forgoing the war and allowing the South to retain its slaves, it would still have been immoral to permit slavery within the US. Enslaving people was wrong because of its effects on slaves, whether or not the slavery of some was a necessary means to the happiness of others. Indeed, many of us have the Kantian intuition that the happiness the slave masters derived from their immoral use of their slaves was inherently bad. Sadism and dehumanization detract from the goodness of any society of humans. Utilitarians are wrong to include these immoral pleasures in the "pro" column of their calculations. (Some utilitarians agree with this insofar as they discount pleasures and pains that are only

experienced by those who reject utilitarianism: e.g. the discomfort some people experience at seeing men kiss each other on the mouth.)

Though the paradigmatic pragmatist philosophers (e.g. James, Peirce, Dewey and Rorty) were heavily influenced by Mill, they did not accept Mill's utilitarianism. They all found it overly simplistic and preferred more "realistic" moral systems. But the Pragmatists all accepted Darwin's theory of the origins and biological trajectory of humankind and they all sought to reconcile that doctrine with a humanistic morality and a liberal set of political principles. They were all "political liberals" in Mill's sense.

Questions: Did their intellectual commitments force Pragmatists to embrace the other option we have identified? Were they forced to advocate belief in universal rights to life and liberty without pretending that the existence of these rights is self-evident and without proposing any biological or metaphysical premises that can be invoked to argue for them? Can we live with a morality that lacks the kinds of argumentative foundations Locke provided for the theory of natural rights when it was used by the founding fathers to justify their revolution?

This handout surveys the resources on the course webpage that show the importance that the idea of natural (or pre-legal) human rights played in the abolition of slavery in the United States and the continuing struggle against racial oppression and its evils in the aftermath of reconstruction. These resources, when coupled with reflections on the kind of morality Darwin's biology inspired (Handout 4), are meant to deepen our philosophical worries about the past function and current status of doctrines of natural rights, to help us see the preoccupations of the Pragmatists who lived through the US Civil War and the rise of Jim Crow in the years that followed its conclusion.

2. Frederick Douglas, "What to the Slave is the Fourth of July?" (July 5, 1852)

Douglas is writing five years before the US Supreme Court issued its decision in *Dred Scott v. Stanford* (1857), which found that the descendants of slaves could not be citizens and had no standing in court. The Dred Scott decision prevented the government from outlawing slavery in the territories, therein insuring that the slave states would have majority representation in the US Senate. This made the Civil War inevitable, though the beating of abolitionist Senator Charles Sumner on the floor of the US Senate a year earlier provides some indication of just how dysfunctional the system already was at that time.

Douglas (1818-1895) was an escaped slave who became a famous abolitionist orator. He begins this speech by praising the founding fathers. As "statesmen,

patriots and heroes, and for the good they did, and the principles they contended for.” He asks rhetorically whether these “great principles of political freedom and natural justice” have been extended to slaves, escaped slaves, freed slaves and their descendants, and answers that they have not. Notice here that Douglas embraces Locke’s principles of natural right and political obligation and is using these ideas to admonish his audience for failing to apply those principles to all men.

The blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me.

Whether we turn to the declarations of the past, or to the professions of the present, the conduct of the nation seems equally hideous and revolting. America is false to the past, false to the present, and solemnly binds herself to be false to the future.

Douglas imagines someone criticizing him for denouncing slavery in emotional terms instead of arguing for the immorality of slavery. But Douglas responds by insisting that arguments for the immorality of slavery are not needed at that point in history.

But, I submit, where all is plain there is nothing to be argued. What point in the anti-slavery creed would you have me argue? On what branch of the subject do the people of this country need light? Must I undertake to prove that the slave is a man? That point is conceded already. Nobody doubts it. The slaveholders themselves acknowledge it in the enactment of laws for their government. They acknowledge it when they punish disobedience on the part of the slave. There are seventy-two crimes in the State of Virginia which, if committed by a black man (no matter how ignorant he be), subject him to the punishment of death; while only two of the same crimes will subject a white man to the like punishment. What is this but the acknowledgment that the slave is a moral, intellectual, and responsible being? The manhood of the slave is conceded. It is admitted in the fact that Southern statute books are covered with enactments forbidding, under severe fines and penalties, the teaching of the slave to read or to write. When you can point to any such laws in reference to the beasts of the field, then I may consent to argue the manhood of the slave.

Recall the conditions on “moral appraisability” or moral agency that Locke acknowledges, conditions that can be traced back to Aristotle. To be a moral agent, one must have the intelligence necessary to comprehend the law and the self-control necessary to conform one’s behavior to the law as one understands it.

Douglas points out that African slaves are moral agents in this sense and regarded as such by the authorities who enforce the laws against them. Douglas highlights the inconsistency in the pro-slavery position. Slaves are treated like moral agents for the purposes of punishment even as orators argue that slaves are like children who cannot take care of themselves and cannot be expected to handle freedom properly.

Once he has argued that African slaves and their descendants are men (or people) in the sense of “men” relevant to moral/legal practice, he uses the Lockean doctrine of the natural rights of all men (or people) to argue against the morality of slavery. He explicitly invokes the Declaration of Independence in this regard.

Would you have me argue that man is entitled to liberty? That he is the rightful owner of his own body? You have already declared it.

He concludes,

What, to the American slave, is your 4th of July? I answer; a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade and solemnity, are, to Him, mere bombast, fraud, deception, impiety, and hypocrisy -- a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices more shocking and bloody than are the people of the United States, at this very hour.

Go where you may, search where you will, roam through all the monarchies and despotisms of the Old World, travel through South America, search out every abuse, and when you have found the last, lay your facts by the side of the everyday practices of this nation, and you will say with me, that, for revolting barbarity and shameless hypocrisy, America reigns without a rival.

Allow me to say, in conclusion, notwithstanding the dark picture I have this day presented, of the state of the nation, I do not despair of this country. There are forces in operation which must inevitably work the downfall of slavery. “The arm of the Lord is not shortened,” and the doom of slavery is certain. I, therefore, leave off where I began, with hope. While drawing encouragement from “The Declaration of Independence,” the great

principles it contains, and the genius of American Institutions, my spirit is also cheered by the obvious tendencies of the age.

His conclusion uses a poem to ask God to speed this transition to the realization of those principles of natural right asserted in the Declaration of Independence, these Lockean principles of natural right.

3. The Natural Rights Theology of Both “Immediatist” and “Gradualist” Critics of Slavery in the Antebellum Period between the Revolutionary and Civil Wars

As Daniel Malachuk writes,

There have always been two major critiques of abolitionism. The first critique, initiated by antebellum proslavery Southerners such as George Fitzhugh, rejected abolition’s natural rights as violating the neofeudal ideal it shared with reactionary Europeans such as Joseph de Maistre and Thomas Carlyle. Over the course of the twentieth century, however, explicit theories of hierarchical societies sputtered into “neo-Confederate” sentiments rather than a significant theoretical legacy.

The second critique of abolitionism, though, was made by liberals and included no objection to its natural rights basis. When, for example, the very first immediatist, David Walker, declared in his 1829 appeal that all black persons “must and shall be free”—for could not American whites “see your Declaration [and] understand your own language?”—liberal critics of immediatism did not object to Walker’s philosophy; on the contrary, they shared it.

What liberal critics of abolitionism objected to were Walker’s immediatist tactics, and in so doing, they initiated an essentially psychological critique of these tactics. Take, for example, the liberal critique of abolitionism developed by Massachusetts senator Daniel Webster. Like the abolitionists, Webster was fundamentally committed to natural rights; we can trace that commitment throughout his entire life. For example, in a November 1799 article, a teenaged Webster, disturbed by Napoleon’s recent coup d’état and forsaking of French revolutionary principles, assured his audience that Napoleon’s antics would do nothing to challenge Webster’s own convictions about natural rights. For when men—unlike Napoleon—justly “take arms to burst those chains that have bound them in slavery, to assert and maintain those privileges which they justly claim as natural rights, their object is noble, and we wish them success.” A half-century later, in a

February 1850 letter, Webster reiterated these same convictions to the abolitionist Unitarian minister William Furness when he explained that his crafting of the 1850 Compromise—which sought to balance California’s entry into the Union as a free state with a law strengthening the Constitution’s provision for the return of fugitive slaves (Article 4, Section 2, paragraph 3)—did not at all violate his fundamental belief that (and these are Webster’s words) “slavery is a continued and permanent violation of human rights.” However, he prudently reasoned, only the “mild influences of Christianity” would ever truly bring slavery to an end; his role as a statesman was to preserve the Union so that it would one day be able to protect the rights of the emancipated. That is why, Webster told Furness, he could in no way countenance the radical tactics of those “breaking up social and political systems, on the warmth, rather than the strength, of a hope that, in such convulsions, the cause of emancipation may be promoted.” Webster alludes here to immediatists such as Garrison, whose extreme tactics—including his 1833 demand that all systems supporting slavery “MUST BE BROKEN UP”—made them, in Webster’s eyes, not fellow natural rights liberals but radicals of a specific and dangerous temperament. Webster diagnosed that temperament a month later in a major March 7, 1850, congressional speech in which he explicitly contrasted his prudent support of the compromise bill with the rabid opposition of the abolitionists. The abolitionists’ real problem, Webster explained, was their temperamental inability to compromise. “There will sometimes be found men,” Webster observed, “with whom every thing is absolute; absolutely wrong, or absolutely right.” Even worse, he added, “they are apt . . . to think that nothing is good but what is perfect, and that there are no compromises or modifications to be made in consideration of difference of opinion or in deference to other men’s judgment.” Indeed, if they cannot get their way, these fanatics will happily destroy the world. “If their perspicacious vision enables them to detect a spot on the face of the sun, they think that a good reason why the sun should be struck down from heaven. They prefer the chance of running into utter darkness to living in heavenly light, if that heavenly light be not absolutely without any imperfection.”

Condensing the most recent work of historians, John Stauffer (in his contribution to Delbanco’s *The Abolitionist Imagination*) has nicely summarized the key points of this account. Prior to the 1830s, natural rights liberals sought mostly by legal means to bring an end to slavery, which they did throughout the North; slavery’s defenders in the South were effectively gradualists themselves in seeking to delay this reckoning only for their region. However, sometime in the 1830s, Southern neofeudalists began to defend slavery as a positive good, not just for the South and

Southern west but (disregarding the line drawn in the Missouri Compromise) the Northern west, the North itself (as the Dred decision suggested), and even the Caribbean, Mexico, and other parts of South America. Over the next thirty years, in response to this vision of a hemispheric slave empire, more and more white liberals reached the conclusions first grasped by black liberals such as Walker: the abolition of slavery (not its containment in the Old South) was the only way to stop the neofeudal radicals. When Lincoln finally recognized this too, he authored the grandest abolitionist statement of all, the 1863 Emancipation Proclamation. Over the course of these three decades, the natural rights basis of antebellum liberalism came into sharp focus.

Unfortunately, as modern scholars have grown philosophically disenchanted with natural rights, they have backdated their own disenchantment into the antebellum years. This is to some degree understandable. That great fin de siècle intellectual shift—what Weber called “secularization”—has convinced many academics ever since that any appeal to natural rights is too meta-physical, too religious even, to take seriously. So it makes some sense that such scholars have wished to find secularist precursors before the Civil War.

However, this is indeed wishful thinking. Antebellum liberals—dedicated to natural rights, and seeking (with admittedly different tactics) to realize them universally for all persons—were metaphysical, not political, liberals. Given this yawning philosophical canyon between yesteryear’s natural rights liberalism and today’s political liberalism, what if anything do liberals of the “ancient faith” have to offer political theorists today?

Is the question of natural rights itself moot? In contending that “the Civil War [not only] swept away the slave civilization of the South [but also] almost the whole intellectual culture of the North along with it,” Louis Menand nicely articulates a common scholarly assumption. That old intellectual culture—including the metaphysical fiction of natural rights—embarrassed postbellum American intellectuals such as William James; a more thorough rebuking of that old culture came at the hands of European intellectuals such as Charles Darwin, Friedrich Nietzsche, Sigmund Freud, and Weber. And, thus, over time, even liberalism—once the preeminent political theory of natural rights—itself finally shuffled off its metaphysics to become strictly political, **still championing human rights but without really believing in them.**

Is this enough, though? As long as we continue to read the antebellum period through the lens of Weber, we will feel like we have no choice. But

what if we tried on a different lens, perhaps (to offer a final provocation) one forged not by Weber but by a very different champion of the Weimar Republic, Thomas Mann. Following the catastrophe of the Great War, Mann, like Weber, urged liberals to step forward but not merely in defense of an “ethic of responsibility.” Instead, in a 1922 lecture titled *On the German Republic*, Mann sought “to win [his young student auditors] over to the side of the republic, of what is termed democracy, and what I term humanity” by returning, in effect, to natural rights liberalism. This is most evident in Mann’s startling turn in this lecture to, of all people, Whitman, “who once said,” Mann reports (of *Democratic Vistas*), “that at the core of democracy, finally, there resides a religious element.” Yes, perhaps we should hear in such strange old texts as *Democratic Vistas* and *On the German Republic* only the swan song of natural rights liberalism as performed by two thinkers who lived through the first modern wars but for whatever quirky reasons resisted the lesson of “disenchantment” learned so well by their peers. However, before we bid natural rights liberalism adieu, we must still acknowledge that it liberated four million persons from slavery.

Important Point: All of the major opponents of slavery were adherents to the ethics of natural rights articulated by Locke in his *Two Treatises* and recapitulated and extended in the Declaration of Independence. Indeed, the defenders of slavery came to reject that distinctively American morality entirely and to link themselves with a revival of feudalism. The critics of slavery only disagreed on the tactics best employed to end slavery, distinguishing themselves into “immediatists” and gradualists. (These are the ancestors of the “gradualist” camp King complains about in his *Letter from a Birmingham Jail*. See below.) Importantly, American intellectuals did not have a justification for ending slavery that was extra-Lockean in origin. They all built their case on Lockean foundations.

4. Abraham Lincoln’s *Gettysburg Address* (1863)

Lincoln delivered the *Gettysburg Address* during the Civil War, four months after the Union won the Battle of Gettysburg. Though it is not one of the nation’s founding documents, the *Gettysburg Address* has become one of the nation’s most important pieces of rhetoric and continues to be memorized by school children because it succinctly captures the nation’s expressed ideals or ethos: the values the nation declares in word if not in deed.

Lincoln begins by referencing the Declaration of Independence, which was signed “four score and seven years” before the occasion of Lincoln’s speech at

Gettysburg. He then claims that Locke's doctrine of our equal creation is the philosophical idea behind America's founding.

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

He ends the oration by summing up his view of America as a test of whether a people can live together under the Lockean ideal of natural equality.

We here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.

5. Martin Luther King Jr.'s *Letter from a Birmingham Jail* (1963)

On April 12, 1963 Martin Luther King Jr. was arrested for participating in a march against racial segregation in public schools, parks, restaurants, hotels and similar facilities. The march violated an April 10 injunction against “parading, boycotting, trespassing and picketing,” in Birmingham issued by Circuit Judge W.A. Jenkins. According to Wikipedia,

King wrote the first part of the letter on the margins of a newspaper, which was the only paper available to him. He then wrote further parts on bits and pieces of paper given to him by a trusty, which were given to his lawyers to take back to movement headquarters, where the pastor Wyatt Tee Walker and his secretary Willie Pearl Mackey began compiling and editing the literary jigsaw puzzle. He was eventually able to finish the letter on a pad of paper his lawyers were finally allowed to leave with him.

King begins the letter as a response to a criticism. The “gradualist” supporters of integration were arguing that sit-ins and marches and other non-violent means of disrupting daily life to force an end to racial segregation were “unwise and untimely.” Because of this theme, the letter is often studied for its contribution to the “theory of civil disobedience,” a philosophical topic that began with Socrates’ decision to accept a morally unjust punishment because of its “procedural justice” or conformity to law. King argues that we have an obligation to resist morally unjust laws when we lack the power to change them through legislative means.

King mentions Socrates in another context as well. Sometimes verbal or discursive arguments for the immorality of a state of affairs are not enough to motivate an audience to change the behaviors that perpetuate that state of affairs.

King describes non-violent political/economic action as the next step, and he thinks it utilizes the same psychological means toward change as do philosophical arguments.

I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood...My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure. Lamentably, it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as [pragmatist philosopher and theologian] Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.

King links the theory of justified civil disobedience to the theory of natural rights and natural laws by asking a question of moral epistemology. According to King, one is justified in breaking unjust laws; indeed, King suggests that we have an obligation to break these laws as an expression of our belief in their injustice. We are supposed to violate the laws in clear daylight to subvert the laws in reality and highlight the immoral state of affairs these laws help perpetuate. But King agrees that we have an obligation to follow just laws. The epistemological question is “How can we tell which laws are unjust?”

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us to consciously break laws. One may well ask: “How can you advocate breaking some laws and obeying others?” The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that, “an unjust law is no law at all.”...Now, what is the difference between the two? How does one determine whether a law is just or unjust?

To drive home the gap between “moral” and “legal,” King asks us to remember our history. Interestingly, he doesn’t remind us of the laws protecting slavery and

forcing the return of escaped slaves. Instead, he highlights more recent events in Europe.

We should never forget that everything Adolf Hitler did in Germany was 'legal' and everything the Hungarian freedom fighters did in Hungary was 'illegal.' It was 'illegal' to aid and comfort a Jew in Hitler's Germany. Even so I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country's antireligious laws.

King provides a list of answers to this question of how to distinguish moral from immoral laws:

(1) "A just law is a man made code that squares with the moral law or the law of God."

(2) "To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law."

Criticism: How do we **know** what is stated by the moral law or the law of God or the eternal natural law?

Remember Locke's answer: there are two sources: revelation and theistic biology (or "natural" religion) understood as the examination of nature to infer the creator's intentions for his creations.

Question: Is King's answer the same as Locke's?

(3) "Any law that uplifts human personality is just. Any law that degrades human personality is unjust."

Questions: Might a law "uplift human personality" at the cost of degrading the welfare of other animals? If so, uplifting human personality is insufficient for justice. The other direction is perhaps more pertinent here: "Degrade" is a morally loaded term. And some segregationists will disagree with King about whether the Jim Crow laws really degraded the personality of African Americans. But let us assume that the reader has acknowledged the degradation in question in light of King's description of the loss of self-respect experienced by black children, the police failing to investigate bombings of black churches, and the other horrors he's already detailed in the letter. How do we know that laws degrading the personality of some humans are unjust even if these same laws enable other humans to enjoy a form of life they are fighting to maintain? Might

the segregationist defend Jim Crow on these terms? Recall Malachuk's research on how the defenders of slavery came to reject the Lockean doctrine of the natural rights of men and argue for the justice of a feudal society in the American South. Indeed, the South fought the civil war to retain their slaves and many would have signed on to a second war to resist integration.

Of course, King says that segregation is bad for whites because it gives them a false sense of superiority. And we can agree that the exclusion of minorities from the lives of members of a majority is bad for that majority in other ways too. But the Southern whites didn't think of segregation as bad for them on the whole or they wouldn't have been fighting so hard against integration. And we saw above that King thought integration had been such a tough sell because "privileged groups seldom give up their privileges voluntarily." If we think of the whites at the time as obtaining "privileges" from segregation (e.g. economic advantages), we cannot think of it as wholly bad for them. How might we convince a white segregationist that humanity is itself valuable in a way that demands mutual respect between all humans? Is this self-evident? Does it need argumentative support for us? Must we try to **convert** the segregationist to our way of thinking of things with things **beyond or besides argument**? Is this what King is doing? Is he appealing to a moral sense or affectively laden conscience? How is the moral sense or conscience awakened in a white segregationist whose racial animus has the backing of the universal desire for economic and political advantage?

(4) "Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an "I it" relationship for an "I thou" relationship and ends up relegating persons to the status of things. Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and sinful."

The first line of thought can be powerful. It's like asking, "Don't you want to be friends?" As the "I" "thou" language conveys the kind of mutual recognition and respect that puts people on friendly terms. The claim that segregation was "dehumanizing" African Americans seems similar to the claim about degradation, which King has supported in his letter with the facts of the case. We might regard it as analytic or self-evident that "if black people were suffering from segregation in the ways described, then they were being degraded or dehumanized" depending on how we fix the meaning of "dehumanization." But the claim about objectification is hyperbole unless King thinks we treat the other animals as objects (and he was not a vegetarian as far as I know).

Question: Can the segregationist just use "human" in a different way, according to which it is not *dehumanizing* for a person he deems black or African-American

to be treated as less than equal to himself and the other people he deems European or white?

Imagine the segregationist just saying, “In excluding you from these activities and institutions, I am indeed treating you as less than *equal* to me and other whites (or whatever), but that’s not treating you as less than *human* because some races or breeds of human are better than other races or breeds. The people I think of as white are the only humans who have the rights you describe as “human” rights. Whites are the only people I am prepared to treat as “equal” in the relevant sense. The only people I respect.”?

Questions: Is there any argumentative response to this other than, “You are making it impossible for us to live in community with you. You are making it impossible not to resent you and dislike you.” Wasn’t Douglas right that argument must give out at this point? Did King really resist hating such people?

(5) “Paul Tillich has said that sin is separation. Is not segregation an existential expression of man’s tragic separation, his awful estrangement, his terrible sinfulness?”

King uses the language of “sin” here, a word that has a number of religious associations and is used by some people who believe that humans have souls that can be stained. Though “soul” might be thought of as shorthand for a psychological phenomenon that can also be described in the terms of cognitive neuroscience, for many people belief in the human soul depends on the acceptance of some form of dualism.

The idea that slavery is tragic because it separates races or breeds of human from one another is interesting. It would appeal to a reluctant segregationist who fears black people and would like to live in community were he or she assured of a similar desire on the part of those people who are trying to integrate into his or her schools, restaurants and buses. There were such people and King appealed to them. **Indeed, though I have tried to press basic questions in moral epistemology above about the foundations of our American ideology of natural rights by asking whether King could convince a white supremacist, it would be absurd to suggest that King had this audience in mind.** He says at the outset of the letter that he understands the hatred of the white supremacists much better than the inaction of those who considered themselves moderates on racial matters. Speaking of “awful estrangement” lets this “moderate” audience know that he and his people want to live in friendship.

King mixes a great deal of philosophy and religion into this letter. There can be no doubt that King is utilizing Lockean principles of moral and political

philosophy. This is perhaps most apparent when he writes of the “natural” freedom of men.

Oppressed people cannot remain oppressed forever. **The yearning for freedom eventually manifests itself**, and that is what has happened to the American Negro. Something within has reminded him of **his birthright of freedom**, and something without has reminded him that it can be gained.

And when he views the history of black people in American through the Jeffersonian lens.

I have no fear about the outcome of our struggles in Birmingham, even if our motives are at present misunderstood. **We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom.** Abused and scorned though we may be, our destiny is tied up with America’s destiny. Before the pilgrims landed at Plymouth, we were here. **Before the pen of Jefferson etched the majestic words of the Declaration of Independence across the pages of history, we were here.** For more than two centuries our forebears labored in this country without wages; they made cotton king; they built the homes of their masters while suffering gross injustice and shameful humiliation – and yet out of a bottomless vitality they continued to thrive and develop. **We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.**

One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality **standing up for what is best in the American dream and for the most sacred values in our Judaeo Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.**

But though King leans heavily on our American Religion, he uses several ideas beside Locke’s natural theology to argue against racial segregation.

Among these alternative arguments against segregation are various fully “forward looking” considerations or broadly “pragmatic” arguments for integration. On this way of thinking, we should believe in the equal rights of men and the injustice of those laws which prevent their equality in political and social standing because if we adopt this belief and reject these laws we can live together in mutual respect. We can have business relationships and friendships and other relations of mutual respect that we cannot have if we permit our interactions to be

restrained by racial boundaries. When King makes this argument he presupposes his audience's desire for friendship across racial boundaries.

Questions: Which moral arguments presuppose for their effectiveness this kind of desire for community? Do they all? Or do moral arguments ever work on people who don't care about being friends with the speaker? Is there something more minimal than a desire for friendship that can render the idea of rights grounded in a common humanity rhetorically or psychologically effective?

Further questions: Some people argue that beliefs are always passive responses to evidence and pressures of various kinds. According to these people, you can't adopt a belief for the effects of having that belief. Alternatively, Clifford argues (against William James), that it's always wrong or objectionable to believe on grounds other than evidence. Can we adopt a belief in the equal rights of man for the way of life this belief makes possible? How do we recommend that way of life to someone who does not already see its attractions?

King's Political Principles

(A) "An unjust code is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal."

Criticism: This is not quite right when interpreted in full generality. A property tax is not unjust simply because landless people don't have to pay it. A law instituting a military draft is not rendered immoral by including exemptions for conscientious objectors who can establish their religious or moral commitment to pacifism. What would be immoral would be a tax on black people with a built in objection for whites or a draft bill that only applies to black people. Is a draft immoral if it only applies to men and boys so that women and girls are exempted from mandatory military service? Surely, this depends on the role that classification by sex plays in the society in which it is being utilized. As the courts now recognize: race is a "suspect class." There isn't a fully general problem with any old law that creates burdens for some groups but not others. The problem has specifically to do with racial groupings and groupings of that sort: suspect groupings. Crucially, when we try to say something informative about which groupings are suspect, we return to the ideas about human rights, mutual respect and the brotherhood of man (or family of humankind) that King invokes at other points in his letter.

(B) “A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part enacting or devising the law.”

Questions: How much of a role must a person have in the enacting and devising of law if she is to be justly subjected to that law (and so justly punished for breaking it)? How does Locke’s theory of the social contract answer this question? How much effect do you have on the laws to which you are subjected? If voting is an essential part of this power and we care so much about this power, why do so many people fail to vote? How important are voting rights for racial integration?

(C) **King’s Doctrine of Civil Disobedience**

“In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.”

Task: Assess King’s criterion. Are there any US laws today that you think are unjust? Would you be justified in breaking them “openly and lovingly”? Would you have to allow yourself to be imprisoned and “accept the penalty” for your disobedience to be justified? Would you have to aim at arousing the conscience of the nation to be so justified? (Consider, in this light, the “civil disobedience” of Edward Snowden and Chelsea Manning. Did their leaking of state secrets satisfy King’s definition of justified civil disobedience?)

Faith v. Works: King’s Pragmatism

Though King does have faith in moral progress and is famous for saying, “The arc of the moral universe is long but it bends toward justice,” in 1956 at the end of the Montgomery bus boycott, in this letter he insists that time is “morally neutral” because “it can be used either creatively or destructively.”

Human progress never rolls in on the wheels of inevitability. It comes through the tireless efforts of men willing to be coworkers with God, and without this hard work, time itself becomes an ally of the forces of social stagnation.

What does King have in mind by “being coworkers” with God? Is this an effective way of integrating his Lockean ideas about the goodness of nature and

nature's God with his pragmatic insistence on the comparative importance of "works" in relation to words in our assessment and evaluation of one another?

Black Nationalism

It is important to remember that not all segregationists were white. There were many black people who thought a racial identity was important and that, given the legacy of slavery and Jim Crow, black people could only live good lives by separating themselves from whites and valuing each other properly. Unlike white nationalism, this was not invariably coupled with a belief in the moral or intellectual superiority of blacks compared to whites (though some black leaders argued for black superiority on the basis of history), but it did create an "unholy alliance" of the sort one sees today between, e.g., anti-Semites in Europe and leaders in Israel who both want European Jews to leave Europe for Israel. Whites who didn't want to live with black people and black people who only wanted to live with other black people converged on support for policies of segregation from opposing directions. King discusses black nationalists and the Nation of Islam in particular and argues that a violent race war will occur if this philosophy wins the minds of the black community. He argues that the comparative popularity of his own philosophy of non-violent protest with the aim of securing racial integration prevented a race war from happening in the 50s. If he is correct, this is a historically important example of the causally real effects of philosophy on the world. As Locke's theory of natural right played a causal role in the American Revolution, King's theory of peaceful integration played a causal role in preventing a second American Civil war.

Questions: How strong are King's arguments for integration when they are aimed at black nationalists? Do these arguments work at all? Or is segregation only bad when it is used to exclude people from certain goods? Even if "black nationalist" policies would exclude white people from the goods that come from associating with black people and culture, did black people have an obligation to share their culture with the descendants of those who had enslaved and oppressed their ancestors? How are our answers to these questions complicated by the existence of bi-racial and multi-racial people who have no "natural" place in a racially segregated world?