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working paper no. 32

Is Humanity Enough? The Secular Theology of Human Rights

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Posted on 2 May 2006

http://www.du.edu/gsis/hrhw/working/2006/32-fitzpatrick-2006.pdf

HUMAN RIGHTS AND GLOBAL JUSTICE CONFERENCE
29-31 MARCH 2006, UNIVERSITY OF WARWICK

Is humanity enough? The Secular Theology of Human Rights

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> Here one is reminded of a somewhat modified expression of Proudhon's: whoever invokes humanity is trying to cheat.
>
> Carl Schmitt, *The Concept of the Political*[1]

Thus spoke…

It may be risking some premonitory weariness, but the oft-repeated report of God's death given us by Nietzsche's supremely sane madman does provide my inescapable starting point.[2] In *The Gay Science* we find the madman, "having in the bright morning lit a lantern," proclaiming to a group of mocking moderns gathered in the marketplace that he is looking for God, only then to fix them in his stare and announce that God is dead and that, furthermore, "*We have killed him* – you and I! We are all his murderers."[3] The madman then puts a series of piercing questions to his audience. In muted summary: How could we possibly encompass this deed? How could we survive in the ultimate uncertainty that results from it? What substitutes will we have to invent to replace the murdered God? His audience is silent and disconcerted. He realizes he has "come too early," realises that news of this deicide,

of this "tremendous event," is still on its way, yet to reach "the ears of men." "This deed," he concludes, "is still more remote to them than the remotest stars – *and yet they have done it themselves!*"[4]

What of Nietzsche's own response to the deed? That response could be rendered in three related dimensions, moving at times now beyond *The Gay Science*. And all three are compacted in one of the madman's questions: "What festivals of atonement, what sacred games will we have to invent for ourselves?"[5] Nietzsche saw that deific substitutes were, for now, imperative. We "have to invent" them. This imperative can be discerned in his stricturing dear George Eliot for yet another English vice: the vacuous affirmation of Christian morality even though "[t]hey have got rid of the Christian God."[6] And indeed Nietzsche did mark and decry the emergence of such "new idols" as the "man" of humanism – "the religion of humanity" to borrow the phrase – and the state, the state that would still act like "the ordering finger of God."[7] There is, in short, a jostling pantheon of new idols involved in this first response of Nietzsche to the deicide.

There is, however, a monism imported by Nietzsche's second response. The festivals that have to be invented are ones of atonement, at-one-ment, the recovering of a unity.[8] "I fear we are not getting rid of God because we still believe in grammar… ."[9] Grammar, in this broad dispensation, enables us to act as if there were still a God-like "measure of reality" within which an entity, including a new idol such as the "human", could be constituted as a "thing in itself", a thing that can carry a

force of effective domination.[10] I will try to show how the appropriation in such terms of the "human" of human rights is ultimately impossible, but to show also that this impossibility is productive of possibility. Which leads, seamlessly enough, to Nietzsche's third deicidal response, to the coming of this "tremendous event…still on its way," and thence to overcoming the death of God. It is here that we come to a Nietzschean edge. With the death of God there forebodes a 'deep darkness', perhaps totalitarian comprehensions, conveyed by Nietzsche's prophecy for "the next century" of "the shadows that must soon envelop Europe."[11] And in the same written breath, this dread is diminished by exaltation, by the incipience of overcoming, by a new openness, "a new dawn," in which "our heart overflows with gratitude, amazement, forebodings, expectation…."[12] It is this exalted openness to possibility that suscitates the "human" of human rights. That openness, in turn, is carried by the "rights" of human rights – rights which, complicit as they may be in existent oppressions, can never be contained by these oppressions. It is in the rendering of this uncontainment that human rights become liberative.

Rights and the righteous

The historical rupture usually taken as generating modern secularism with its rights of "man" looks itself, when closely observed, rather more like continuity. Burleigh's irresistible account of religion and politics in the French Revolution reveals an intense reliance on substituted religious practices – reliance on, for example, massive religious festivals worshiping a plethora of "deified abstractions."[13] The very

"discourse of the Revolution was saturated with religious terminology:" Mirabeau for example wrote in 1792 that "the Declaration of the Rights of Man has become a political Gospel and the French Constitution a religion for which people are prepared to die."[14] The diversity of these resorts to the religious did not detract from the neo-monotheistic thrust of the Revolution. In one crucial respect, the demands of this monotheism on adherence and belief were even more extravagant than those of the monotheism it would replace. Before the revolution the sacral combining of the god's terrestrial dimension, "his" chosenness for a people and such, was combined with the god's illimitable efficacy by way of a transcendent reference. With the new monotheism, however, illimitable efficacy is now fixed, or fixed also, to an earthly domain. So, in one of the mass festivals, a "supreme intelligence" could be hymned as filling "all the worlds/Which cannot contain you," at the same time as it is deemed accessible to those "who built your altars."[15]

Of course it could readily be said that these were evanescent gods whose fleeting emergence in such a transitional period is thoroughly explicable. Countless thousands of people no longer gather to worship Robespierre's "Supreme Being" on the Champ de Mars, and so on. Certain contemporary attitudes to law could, as well, be seen as fitting this scenario of transience. So, to take one significant clarion, in place of "kings and priests," the regenerate people not only bring with them "a God, virtue, law" but they also present themselves as "a people ready to sacrifice itself wholly for law… ."[16] With such a founding of "the single universal religion…our law-makers are

the preachers, the magistrates, the pontiffs… ."[17] All of which may explain the confidence of the revolutionary regime in law's almost self-sufficient effectiveness when that regime, in 1790, enacted the restrictive *référé législatif* forbidding the interpretation of the law by judges; where interpretation was unavoidable it had to be referred to the legislature.[18] Understandably, the enactment did not last long. That these elevations of law were not just a matter of a passing and misplaced confidence is intimated by the monumentally enduring legacy of the Napoleonic period and its lapidary codes under which the "empire of liberty" was to be fixed forever in what Kelley describes as "an almost totalitarian effort of social control."[19]

Mirabeau's vaunting the Declaration of the Rights of Man and of the Citizen of August 26th 1789 as "a political Gospel" resonates aptly enough with its deific dimensions – the dimensions of a monotheistic god. Indeed the Declaration itself did explicitly "recognise and proclaim" the rights of man and of the citizen "in the presence and under the auspices of the Supreme Being." Notoriously, it enshrined that most idolatrous of new idols, the sovereign nation. And it did so in a way that combined nation's determinate existence with an infinite, a "universal" capacity to extend appropriatively beyond what that existence may be at any one time. This is no less an achievement than the combining of the like dimensions within monotheism, the "*coincidentia oppositorum*" sought out by Nicholas de Cusa "where impossibility appears," dimensions found in a god that is, crucially, "*unitas complicans* or Enfolding Oneness."[20] The great universal nation is announced in terms of Article 3

of the Declaration: “The principle of all sovereignty resides essentially in the nation. No body or authority may exercise any authority that does not proceed directly from the nation.” France thence provided the template not only for a monodynamic transformation within the national territory, but also for the aggressive extraversion of that same transformation. Even if the increasingly attenuated plausibility of a nation’s universal and messianic thrust has been taken on more by modern imperialism, this was, and remains, an imperialism of national sovereignty. The neo-deific abilities of the modern sovereign nation manifestly accommodate empire – the ability to subsist finitely yet extend infinitely, the ability to be both an emplaced entity and a universal extraversion. That wondrous combination of abilities has enabled nation not just to extend as a force of imperial domination but also to cohere as imperial concentrations of “leading” nations, such as “the great powers” or the “legalised hegemony” of certain predominant nations.[21] Even seemingly singular and pervasive imperialisms can operate as a focus for the conjoint power of several nations. Spanish imperialism provides an example from the early-modern period, and “American” imperialism provides a current one. And presaging a pending engagement, *human* rights provide a mantric ideology commensurate with this “global” scale.

Yet even as the Declaration introduced this overweening scheme, it put in place something of its antithesis. The Declaration further proclaims in Article 6: “Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation.” To fill the gap in the Declaration

between a surpassing sovereignty and this elevation of a demotic law, we have to resort to the spiritual parent of the Declaration, to Rousseau and to his pronouncing sovereignty to be "nothing other than the general will."[22] Of course an excessively well-worn criticism of Rousseau is that he reduced the relation between a free people and the sovereign to a totalitarian pervasion of the latter.[23] Yet there is much in Rousseau to indicate the contrary. True, for Rousseau "the sovereign power" is "wholly absolute, wholly sacred, wholly inviolable:" "The sovereign by the mere fact that it is, is always all that it ought to be."[24] And whilst I will indicate that there is a touch of inevitability to this, there is something of an alternative Rousseau who would implicate the opposite.

For this seemingly other Rousseau, "sovereign power" is limited by the "covenants constituting the social bond," covenants to do with an equality of citizens and a generality of rules secured by laws: "Laws are really nothing other than the conditions on which civil society exists."[25] Clearly, if they are the necessary conditions for the existence of the infinitely protean civil society or social bond, such laws cannot be constituently subordinate to an existent, a determinate sovereign. Rather, for Rousseau, "Gods would be needed to give men laws."[26] For laws to be effective and lasting, they had to come from a quasi-divine lawgiver possessed of an entirely disinterested "great soul," always selflessly attuned to possibility, and able "to make the Gods speak."[27] Yet further, even though the lawgiver's "task…is beyond human powers," it is a task the achievement of which Rousseau sees as necessary in

the world.[28] So, it is a task which Rousseau configures to the qualities of the lawgiver. In bestowing the laws of the constitution, the lawgiver has to create a social bond that integrates individuals into it, a bond believed in by those individuals, and one that is "lasting."[29] To perform these tasks, the god-like lawgiver has to be quite apart from the "nation" being so endowed, lacking in any authority, right, force or interest to create the laws. Not only is the law so given incapable of being encompassed by the determinate national sovereign, but for good measure, the only way in which the sovereign can act is "to make laws."[30] And Rousseau would go so far as to equate departure from the "voice" of law "alone" with a return to the divisive and "pure state of nature."[31]

This imperative vacuity in the giving of the law is matched by a putative solidity in the receiving of it. Rousseau provides a list of attributes needed for a people to be "fit to receive laws," attributes which amount to absolute autarchy.[32] He finds that "there is still one country in Europe fit to receive laws, and that is the island of Corsica."[33] Departing from the persistent prescription in *The Social Contract* that states should be small, Rousseau next resorts to the largeness of Poland as a propitious candidate for this autarchic fitness to receive laws.[34] In the evanescence of "elsewhere" I have shown that Rousseau undermines his own attributions of autarchy in his recognition that a nation must responsively relate to what is beyond it, and that indeed the nation depends on that relation for its very self-identity.[35] So whilst it may readily be conceded that the ineffable giving of the law needs some determinate

emplacement, that place cannot subsist and be without a responsive relation beyond it. I will return to these apposite imperatives once a similar divide has been extracted from the idea of the human.

Before that, the affirmation of a distinction, perhaps needed: it concerns the divide in modernity between (if the pleonasm can be tolerated) religious religion and political religion. To draw the distinction is not to say that this divide and the opposition in modernity between these two religions is not (only) because they are different, but it is (also) because they are the same. It is that similarity between the two, and the inclusive tendencies of each, which calls forth the explicit and intense effort that has for so long been put into enforcing their heterogeneity. The telling instance here is probably the United States where it is, historically and currently, the intimacy of relation between the two religions that provokes their strident separation. The distinction does have its pointed significance for human rights, however. Although there is a latter-day tendency to recruit religious religion in the cause of human rights, or vice versa,[36] the genealogy of human rights is characteristically tied to a secular humanism.

All too human

"It is…impossible," Fukuyama tells us, "to talk about human rights…without having some concept of what human beings actually are like as a species" – without some constitution of "human nature: the species-typical characteristics shared by all human beings qua human beings."[37] Then he would add that "there is an intimate connection

between human nature and human notions of rights, justice, and morality," before cautioning that "the connection between human rights and human nature is not clear-cut, however."[38] In a more resolutely tautological vein, Donnelly tells us that "human rights are literally the rights one has simply because one is a human being," before going on also to concede uncertainty.[39] It might help that we now have a history of the concept of "humankind" in Fernández-Armesto's engaging *So You Think You're Human?*.[40] Not that this would help ground the "human" of Fukuyama's scientistic positivism. Aptly enough, Fernández-Armesto's historical "human" would match Nietzschean ideas of history, ideas set against "a suprahistorical perspective, [against] a history whose function is to compose the finely reduced diversity of time into a totality fully closed upon itself;" but, rather, such a "human" would evoke a history that "is an unstable assemblage of faults, fissures, and heterogeneous layers that threaten the fragile inheritor from within or from underneath."[41] So, Fernández-Armesto's "human" is interminable, a labile creature whose confident criteria of self-identity have come and eventually gone, or assumed an irresolute half-life, whether these criteria are espoused as a positive marker of the human or, more typically, as its negation – criteria to do with abnormality, race and gender, various corporeal and genetic endowments, monstrosity and the sub-human, culture and language, rationality and dominion, among others. The upshot of so much disabuse is to leave us with, at least, a "precious self-dissatisfaction," so much so, Fernández-Armesto

concludes, that "if we were uncompromising mythbusters, we would tear up our human rights and start again."[42]

We do not have a comparable history of human rights but from its fragments we can see that many of the criteria that would go to differentiate the "human" as genus figure largely in constituting the "human" of human rights. Not only that, the "human" of human rights has contributed its own refined positivities and extended the range of what must be taken to be definitively human. So, in addition to rights being denied or attenuated because their would-be recipients are deemed not "human" in terms of the genus, or not "human" enough, the human of human rights must not be too backward, too traditional, and should be conspicuously affiliated with certain economic and political modes of existence.[43] Not only that, the human of human rights also makes a pointed contribution to the logic of exclusion intrinsic to the genus. This logic has it that the claim to the human is ontologically ultimate and, as such, universal. What is "other" to the human conceived as universal can only be utterly, irredeemably other. Such sharp discrimination shores up the perduring distinctness and inviolability of the "human." Not only that, being constituted in negation, this "human" compensates for the dissipation of the universal which would ensure were it positively, particularly emplaced. Human rights contribute to this logic in both negative and positive dimensions. By inferentially equating the human and certain rightful conduct, the prescriptions of human rights hone negation by heightening the insuperable, the inhuman alterity of the other. Positively, with human

rights equating right conduct with people who behave in specific ways, that people can claim, positively, to exemplify the universal. Hence, Simpson's witty designation "the export theory of human rights" wherein certain peoples need only regard human rights as something to be dispatched elsewhere. As Simpson says of a momentous negotiation over a human rights treaty, "whatever mixture of motives influenced the major powers as the primary actors in the negotiations, self-improvement certainly did not feature amongst them."[44] More loosely, yet still potently, there is the correspondent sense in which this "being in the right" carried by ideological appropriations of human rights links to the righteousness of *imperium* in its current manifestations.[45]

Impossibility and liberation

Of course, the absolutized "human" of such human rights would not survive a Nietzschean history. The impossibilities here are well rehearsed and can be concentrated in our inability to extend beyond and thence know a universal within which we have emplaced and defined ourselves. With modernity, the universal cannot assume content in a transcendent reference beyond. Nor can content form within the modern universal, for to come to the universal from within is never to encompass or be able to hypostatize it. The bringing of the universal into a determinate, and determinant, particularity can never be something irenically set. The particularity of its instantiation is, in its very being, continually subject to challenge and dissipation. Which is not to say that our existence is one of constant challenge and dissipation

only. Rather, we are also attuned universally or "totally" to the gathering in of effect and endowment in the "making sense" of existence:

> [T]he world beyond humanity – animals, plants and stones, oceans, atmospheres, sidereal spaces and bodies – is quite a bit more than the phenomenal correlative of a human taking-in-hand, taking-into-account, or taking-care-of: it is the effective exteriority without which the very disposition of or to sense would not make…any sense. One could say that this world beyond humanity is the effective exteriority *of humanity itself*, if the formula is understood in such a way as to avoid construing the relation between humanity and the world as a relation between subject and object. For it is a question of understanding the world not as man's object or field of action, but as the spatial totality of the sense of existence, a totality that is itself existent… .[46]

We could provide a focus for this existent, a focus beyond the human as containedly constituted and as Nietzsche's "thing in itself," by looking more intently at the human as a genus. This focus will, in turn, bring us to the question of law and the rights in "human rights." In "The Law of Genre," Derrida engages with a certain ambivalence in the notion of genre, including specifically "the human *genre*," and in so doing he intimates how "rights and the law are bound up in all this."[47] That which

designates the genre, the genre-designation (such as the human), has to be of yet not of what is designated. “Genre-designations cannot be simply part of the corpus” they designate for then they would, as it were, fuse indistinguishably with the corpus.[48] To mark the genre, the designation must stand apart from it. Yet not entirely apart, for if it is to be an apt designation, it must integrally relate to and be of the corpus. This imports another ambivalence. In resolving the constitution of the corpus “for the time being” the genre-designation:

> …gathers together the corpus and, at the same time, in the same blinking of an eye, keeps it from closing, from identifying itself with itself. This axiom of non-closure or non-fulfillment enfolds within itself the condition for the possibility and the impossibility of taxonomy. This inclusion and this exclusion do not remain exterior to one another; they do not exclude each other. But neither are they immanent or identical to each other. They are neither one nor two.[49]

This self-exclusion enables the genre-designation to continue as the locus of definition and decision as to what is to constitute the genre. All of which is not (only) the opening out of some putatively monadic genre to intrinsic diversity – to, in language used of human rights, pluralism and relativism. What is entailed is neither a

set unity nor a matter or disparate parts. It is a protean assembly measured with and against the genre-designation.

The rights in human rights can now make a pointed, if belated, appearance. Right provides a resolving force commensurate with the genre-designation. It combines a determinate enclosing of the corpus with a holding of it open to alterity. This is an apt stage at which to recall the genius of Rousseau where in *The Social Contract* he finds that the receiving of the law had to be within a determinate enclosing, but that the giving of the law had to come from an unattached openness. Lest this be seen as inadvertent genius, it may also be apt to note that the sub-title of *The Social Contract* is "Principles of Political Right," that "the social order is a sacred right which serves as a basis for all other rights,"[50] and that any "social order" has to combine its determinate existence with being receptive to alterity.

The "political" element of right inheres, at least partly in the imperative ability that right has to go beyond its existent content and thence to necessitate a decision on what its content will be thereafter. Rights then, in having the incessant capacity to be something other than what they determinately are, become in a sense ultimately vacuous – or deracinated and "abstract," to borrow perversely a criticism classically levelled at the Declaration of the Rights of Man and the Citizen.[51] Being in this way vacuous, it should occasion little surprise that rights, and human rights, are susceptible to occupation by effective powers – by nation and nations, by empire and "the market," and so on. Yet it is also the position that this vacuity shields human

rights from definitive subjection to any power, from enduring containment by any power. Such rights remain ever capable of extending beyond any determinate existence. They remain ever capable of surprising and countering any determinate existent. And they remain ever capable of orienting universally in their incipient responsiveness:

> …'universal human rights' designate the precise space of politicization proper; what they amount to is the right to universality as such – the right of a political agent to assert its radical non-coincidence with itself (in its particular identity), to posit itself as the 'supernumerary', the one with no proper place in the social edifice; and thus as an agent of universality of the social itself.[52]

With their intrinsic promise, a promise not confinable to any particularity, "universal" human rights provide a present instantiation of Nietzsche's third response to the death of God: with the expectant opening to being otherwise and to being anything, rights are always awaiting, always generating, but never succumbing to, realization. As such, they can come to accommodate the perception of Kafka's amenable ape that "everyone on earth feels a tickling at the heels; the small chimpanzee and the great Achilles alike."[53]

1. I am cheating also by deriving the quotation from the more immediately apt setting of Danilo Zolo, *Invoking Humanity: War, Law and Global Order*, trans. Federico and Gordon Poole (London: Continuum, 2002), where it provides the epigraph.

2. Friedrich Nietzsche, *The Gay Science*, trans. Josefine Nauckhoff (Cambridge: Cambridge University Press, 2001), 119-20 (section 125) – his emphasis.

3. Ibid. – his emphasis.

4. Ibid., 120 – his emphasis.

5. Ibid.. I have presumed to substitute "sacred" for the "holy" in Nauckhoff's translation. The German is "heilig" but "holy" would seem to be altogether inadequate in describing a deific substitute, and my obliging German dictionary indicates that "sacred" is equally acceptable.

6. Friedrich Nietzsche, *Twilight of the Idols*, trans. R. J. Hollingdale, in *Twilight of the Idols/The Anti-Christ* (Harmondsworth: Penguin Books, 1968). 69 (section 5 of "Expeditions of an Untimely Man"). More generally, and contrary to reputation, Nietzsche did see "the religious significance of life" as having a positively sustaining place in contemporary existence, and saw this often in the same respects as he had just excoriated others for holding them: Friedrich Nietzsche, *Beyond Good And Evil*, trans. Helen Zimmern (Mineola, New York: Dover Publications, 1997), 43 (section 61); and most conspicuously, Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Douglas Smith (Oxford: Oxford University Press, 1996), Third Essay.

7. Friedrich Nietzsche, *Thus Spoke Zarathustra*, trans. Walter Kaufmann, in *The Portable Nietzsche* (New York: The Viking Press, 1954), 160-1 (First Part "On the New Idol"; Friedrich Nietzsche, *Human, All Too Human*, trans. Marion Faber and Stephen Leyhmann (London: Penguin Books, 1994), 14 (para. 2). As for the borrowing, see one Thomas Paine, *The Crisis* under the head November 21, 1778: http://www.ushistory.org/Paine/crisis/singlehtml.htm. For the aforesaid "finger of God" see also *Exodus* (31:18).

8. For at-one-ment: Walter W. Skeat, *A Concise Etymological Dictionary of the English Language* (New York: Capricorn, 1963), 30.

9. Nietzsche, *Twilight*, 38 (section 5 "'Reason' in Philosophy").

10. Ibid., 50 (section 3 "The Four Great Errors"); Friedrich Nietzsche, *The Will to Power,* trans. Walter Kaufmann and R. J. Hollingdale (New York: Vintage Books, 1968), 14 (section 12), and generally 300-07 (sections 553-69). These points in the text are put together from different contexts in Nietzsche's work. At least one specific qualification: Nietzsche's "grammar" is probably not so much a sustaining of God in his absence as an evolutionary endowment: e.g. Nietzsche, *All Too Human*, 18-19 (para. 11).

11. Nietzsche, *Gay Science*, 199 (section 343). Cf. Nietzsche, *Genealogy of Morals*, 134-5 (Third Essay, section 27), for a broadly similar foreboding following on the coming of atheism and the end of morality, although the prophecy here is perhaps rather less pointed, the vista being one "for Europe over the next two thousand years" (135).

12. Ibid..These dissonant "overcomings" are notoriously associated with *Zarathustra*. Obviously I think that this work espouses the latter overcoming.

13. Michael Burleigh, *Earthly Powers: Religion & Politics in Europe from the French Revolution to the Great War* (London: HarperCollins, 2005), 81.

14. Ibid..

15. Ibid., 103.

16. Ibid., 94-5.

17. Ibid., 81.

18. Julius Stone, *Legal System and Lawyers' Reasonings* (London: Stevens, 1964), 213.

19. Donald R. Kelley, *History, Law and the Human Sciences: Medieval and Renaissance Perspectives* (Princeton: Princeton University Press, 1984), 42-3.

20. See Jasper Hopkins, *Nicholas of Cusa's Dialectical Mysticism: Text, Translation, and Interpretive Study of De Visione Dei*, Second Edition (Minneapolis: Arthur J. Banning Press, 1988), 159; Henry Bett, *Nicholas of Cusa* (London: Methuen, 1932), 122; Jasper Hopkins, *A Concise Introduction to the Philosophy of*

Nicholas of Cusa [De Possest],” Third Edition (Minneapolis: Arthur J. Banning Press, 1986), 4.

21. Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004), 68.

22. Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin, 1968), 69 (Book II, chapter 1).

23. E.g. Isaiah Berlin, “Two Concepts of Liberty, in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), chapter III.

24. Rousseau, *Social Contract*, 63, 77 (Book I, chapter 7; Book II, chapter 4). Some qualification is necessary, but more of that shortly.

25. Rousseau, *Social Contract*, 77, 81-3 (Book II, chapters 4 and 6).

26. Ibid., 84 (Book II, chapter 7).

27. Ibid., 87 (Book II, chapter 7).

28. Ibid., 86 (Book II, chapter 7).

29. Ibid., 84-5, 87, 99 (Book II, chapters 7 and 12).

30. Ibid., 101 (Book III, chapter 1).

31. Jean-Jacques Rousseau, *A Discourse on Political Economy* in *The Social Contract and Discourses*, trans. G. D. H. Cole (London: Everyman’s Library, 1986), 136.

32. Rousseau, *Social Contract*, 95 (Book II, chapter 10).

33. Ibid..

34. Jean-Jacques Rousseau, *The Government of Poland*, trans. Willmore Kendall (New York: Bobbs-Merrill, 1972), 14.

35. Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001), 148-9.

36. See e.g. David Hollenbach, *The Global Face of Public Faith* (Washington DC: Georgetown University Press, 2003), and John Nurser, *For All Peoples and All Nations* (Washington DC: Georgetown University Press, 2005). And for vice versa see Slavoj Zizek, "Human Rights and Its Discontents," http://www.lacan.com/zizek-human.htm.

37. Francis Fukuyama, *Our Posthuman Future: Consequences of the Biotechnology Revolution* (London: Profile Books, 2002), 101, 128.

38. Ibid., 101.

39. Jack Donnelly, *The Concept of Human Rights* (London: Croom Helm, 1985), 9, 21.

40. Felipe Fernández-Armesto, *So You Think You're Human?* (Oxford: Oxford University Press, 2004), see 7.

41. Michel Foucault, "Nietzsche, Genealogy, History" in his *Language, Counter-Memory, Practice: Selected Essays and Interviews*, trans. Donald F. Bouchard and Sherry Simon (Ithaca: Cornell University Press, 1995), 146, 152.

42 . Fernández-Armesto, *So you think*, 170.

43. See Rhoda E. Howard, "Cultural Absolutism and the Nostalgia for Community," *Human Rights Quarterly* 15 (1993): 315-38; George W. Bush, *The National Security Strategy of the United States of America* (Washington DC: The White House, 2002), Preface; Conference for Security and Co-operation in Europe (1999), *Charter of Paris for A New Europe*, http://www.osce.org/docs/english/1990-1999/summits/paris90e.html; and The Global Compact (2002), http://65.214.34.30/un/gc/unweb.nsf/content/UN_Report_061402.htm. Cf. Tony Evans, "International Human Rights Law as Power/Knowledge," *Human Rights Quarterly* 27 (2005): 1046-68, at 1057-59, 1062-64, 1066.

44. A. W. B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001), 347-8. Cf. Jacques Rancière, "Who Is the Subject of the Rights of Man?" *The South Atlantic Quarterly* 103 (2004): 297-310, 307.

45. See Anders Stephanson, *Manifest Destiny: American Expansion and the Empire of Right* (New York: Hill and Wang, 1995); Martin E. Marty, *Righteous*

Empire: The Protestant Experience in America (New York: Harper & Row, 1977), chapter 1; Jim Wallis, *God's Politics: Why the Right Gets it Wrong and The Left Doesn't Get It* (Oxford: Lion Hudson, 2005), chapter 9.

46. Jean-Luc Nancy, *The Sense of the World*, trans. Jeffrey S. Librett (Minneapolis: University of Minnesota Press, 1997), 55-6 – emphasis and first ellipsis in original.

47. Jacques Derrida, "The Law of Genre," trans. Avital Ronell, in Jacques Derrida, *Acts of Literature* (New York: Routledge, 1992), 224, 228.

48. Ibid., 230 – original emphasis not reproduced.

49. Ibid., 231.

50. Rousseau, *Social Contract*, 50 (Book 1, chapter 1).

51. Karl Marx, "On the Jewish Question," in *Early Writings*, trans. Rodney Livingstone and Gregor Benton (London: Penguin Books, 1992), 228-31; cf. Costas Douzinas, *The End of Human Rights* (Oxford: Hart Publishing, 2000), 95-100.

52. Slavoj Žižek, "Against Human Rights," *New Left Review* 34 (2005): 115-31, 131.

53. Franz Kafka, "A Report to an Academy," in *The Collected Short Stories of Franz Kafka* (London: Penguin Books, 1988), 250.