

Intrinsic and equal human worth in a secular worldview. Fictionalism in human rights discourse

Abstract— One of the most central ideas of secular, humanistic morality is the thesis of intrinsic and equal human worth. Paradoxically, it is very hard to place this thesis in a secular worldview, because an indifferent universe can not make room for intrinsic values and a priori human rights. Nevertheless, it would not be a good solution to jettison the whole human rights discourse. Therefore, this paper proposes the stance of moral fictionalism: to believe that the discourse entails or embodies a theory that is false, but to carry on employing the discourse, as if this were not the case, because it is useful to do so. As such, the ideas of intrinsic and equal human worth can be the subject of ‘disbelieving acceptance’ by the secular moral philosopher.

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1. Introduction: a disquieting suggestion

It can be argued that the content and the nature of morality is dependent on the worldview in which it functions. Any system of ethics involves metaphysical assumptions and reflects what Iris Murdoch has called a ‘*vision of life*’.¹ Therefore, I am convinced that the change from a theological to a secular worldview is a very important evolution for moral philosophy. It is the purpose of this paper to seriously consider the effects of that evolution on our thinking about intrinsic and equal human worth.

Many authors are blind to the impact of the radical change in worldview on morality and ethical theory. I don’t think we can give up the Judeo-Christian God and go on as before. In this paper we

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elaborate the controversial Nietzschean suggestion that morality after the death of God cannot be the same as before. It is strange that after Nietzsche, only a few authors seem to be conscious of the importance of secularisation for moral philosophy.²

The problem of modern moral philosophy is that many concepts and ideas in secular morality are borrowed from a religious context without which the concepts do not function well.³ In spite of secularisation, many modern moral philosophers are in fact ‘naïve atheists,’ because they continue to use theistic concepts, though in a secular way. For Richard Taylor, different contemporary philosophers are therefore apt to talk ‘debilitating nonsense,’ because they have retained the basic conception of ethics inherited from religion while abandoning the presuppositions that made it meaningful.⁴ That is also the reason why Louis Pojman declares that contemporary ethics is ‘an essentially bankrupt business’: it is living off the interest of religious capital, which it no longer recognises.⁵ For Balagangadhara, secular ethics and atheistic morality are merely ‘dressed-up theology.’ The contemporary ethical discussions are still based on secularised versions of deeply religious conceptions and intuitions.⁶

We want to consider whether this disquieting suggestion is also true for the ideas and concepts that form the basis of human rights discourse: intrinsic and equal human worth. The question that secularists have to answer is whether we can affirm the dignity and equality of individual persons – values we ordinarily regard as secular – without giving them transcendental and religious backing. If we

cannot, what do we have to do with the bankrupt business of human rights?

2. Equal intrinsic worth of people as a presupposition for (secular) moral discourse

The idea of equal human worth is central in almost all major ethical traditions in history. The bible, Rabbi Hillel, Confucius and the Indian epic the Mahabharata, all accept, in some form or other, a version of the golden rule that encourages equal consideration of interests.⁷ Furthermore, the experience of all human beings as sacred and intrinsically valuable is widely shared among religions and is the basis of many systems of religious ethics.⁸

In line with Kant, as well as other modern moral philosophers – and especially for humanists – the idea of equal and intrinsic human worth is a necessary condition for morality. This condition is a central presupposition of the egalitarian liberal stance of Dworkin, Rawls, and Nagel, as well as in Nozick’s libertarianism. The Benthamite version of utilitarianism (e.g. of Peter Singer) also uses the equality principle that each is to count as one and none is to count as more than one, in spite of the fact that, in that utilitarianism, people do not have intrinsic value.⁹

Of course, the idea of intrinsic and equal human worth is also the basis of human rights discourse. Every declaration of human rights alludes in one way or another to the concept of ‘the inherent dignity of

all human beings'. Article One of the Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights. By now most secular and many religious moral systems, theories, and practices accept that declaration as a legitimate and necessary basis. Human rights discourse is accepted as the lingua franca of international moral and political thought. Human rights are the universal *minimum minimorum* (a decidedly 'thin' theory of what is right) for every political and moral practice.¹⁰

Many secular moralists built upon and refer to the discourse of human rights, because for secularists the idea of human rights has replaced the earlier authority and certainty of religion as the basis for morality. In our time the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a 'world-wide secular religion'.¹¹ Human rights have become the major secular article of faith (Ignatieff even warns of 'idolatry') of a culture that fears it believes in nothing else.¹²

As such, the idea of intrinsic and equal human worth is one of the most important basic theses in secular morality. However, as we will see, the idea of intrinsic and equal human value has in fact a natural home in theological metaphysics, and does not easily fit into secular moral philosophy.¹³ For human rights are based on two ideas: first, that every human being is 'sacred'¹⁴ – or in secular terms: each and every human being is 'inviolable', has 'inherent dignity and worth', is 'an end in himself'. Second, *because* every human being is sacred, certain things ought not to be done to any human being, and certain other things ought to be done for every human be-

ing.¹⁵ This is called *the moral principle of human rights*: human rights are claim-rights and entail correlative moral duties of other persons.¹⁶ In the words of Mackie we could say that human rights entail an 'objective requirement'.¹⁷ The fact that people have human rights implies a categorical imperative: it express a reason for acting that is unconditional in the sense of not being contingent upon any present desire, preference, or interest of the agent.

It is very hard to place all this in a secular worldview, because an indifferent universe cannot make room for intrinsic values, the sacredness of human beings, and objectively prescriptive properties. The putative queerness of moral rights lies with the notion of moral bindingness. It seems that many secular moralists presuppose theses that they cannot really justify. The ideas of human dignity, worth, and sacredness appear to confuse what is with what ought to be. They are controversial because each version of them must make metaphysical claims about human nature and objective requirements beyond what we can know empirically.¹⁸

3. The project of naturalistic accommodation

One of the central aims of metaethical enquiry is to find a theory that can explain moral phenomenology and our ordinary use of moral discourse. Moral discourse and moral phenomenology have features and are built on common sense assumptions that cannot be denied in a metaethical theory. With

Timmons we can call this ‘the project of internal accommodation’: a plausible metaethical theory must be able to accommodate the various deeply embedded presumptions of people’s ordinary use of moral language.¹⁹

However, that is not all there is to the problem and its solution. A conceptual analysis is not enough. A metaethical theory always involves metaphysical and epistemological commitments, and it is essential that these commitments are at least conceivable in the given philosophical worldview. This is the project of ‘external accommodation: a plausible metaethical view should comport with plausible general views and assumptions from other relevant areas of inquiry.’²⁰

The first accommodation project has to do with what is called the ‘conceptual question’: if we use moral concepts, what do they mean and what kind of claims do we pretend to make? The latter accommodation project has to do with ‘the ontological, substantial question’: do moral properties, reasons, rights, etc., really exist, can the meaning in question be satisfied by the world?²¹

In this paper we begin from a naturalistic, secular outlook. It is not within the scope of this article to present an apologetic in defense of that worldview, nor do we presume to claim that it is the one and only meaningful worldview. Nonetheless, we can see that many modern moral philosophers and even moral theologians want to think about morality – like Grotius and Bonhoeffer said – *etsi deus non daretur*, as if God does not exist. Our argument is relevant for everyone who tries to contemplate an autonomous morality, a morality without God.

We can also see that the naturalistic assumption is quite common in the contemporary metaethical landscape. The attraction of this outlook ‘stems from the rise of modern science and the belief that science is our best avenue for discovering the nature of reality’.²² Therefore, irrealists as well as most contemporary realists are involved in the project of ‘naturalistic accommodation’: all non-scientific discourse (including aesthetic discourse, semantic discourse, moral discourse, etc.) must be accommodated to the scientific (naturalistic) worldview.²³ The facts, properties, and entities that metaethical theories use have to be part of the subject matter of science. Non-natural, supernatural, or occult entities, facts, and events are excluded.

In this paper we are interested in both accommodation projects. We are interested in the conceptual question about what the idea of intrinsic worth of human beings and the moral concept of human rights *mean*, but also in the substantial question about whether human beings *really* have intrinsic value and if human rights *really* exist in our naturalistic, secular worldview.

4. Intrinsic values in a secular universe

The inherent dignity and worth of human beings is a secular translation of the religious idea that every human being is sacred. In the Judeo-Christian context, human beings are sacred because they are unique creations of God and human life has an eternal destiny. Humans are inviolable by virtue of pos-

sessing the image of God. In a theistic universe, objective values were thinkable when they were defined as 'valuable in the eyes of God'. In this way, things could be valuable independent of particular value judgements of human beings. For that reason humans have objective value in a theistic universe, because God gives them that value.

However, the idea that human life is 'sacred' is still a central self-evident idea in modern moral philosophy, even where there is no longer room in it for God 'our father and creator'. The arguments, however, for the retention of the idea are not always clear.

4.1. Objective values: the conceptual level

What do we mean when we say 'X has objective, intrinsic value'? First, it means that the value of X is independent of every subjective judgement and independent of every particular context and conceptual framework in which X appears.²⁴ Something has objective, intrinsic value, when it is valuable *an sich*, 'independent of what people happen to enjoy or want or need or what is good for them'.²⁵ An objective value is 'not reducible to the value for anyone',²⁶ it is a 'value that is not dependent on or related to the valuing of (presumably or exclusively) human beings'.²⁷ Even intersubjective agreement would not give us objectivity.²⁸

Secondly, the objective value of X would give us inescapable reasons to act in a certain way. In the words of Mackie, intrinsic values are "objectively

prescriptive;" like Kant's categorical imperative they are "action-directing absolutely, not contingently upon the agent's desires and inclinations."²⁹ This presupposes that there are actions which we "have to do, regardless."

4.2. The ontological question

Can objective values really exist in a secular worldview? To find intrinsic values we need an impartial, objective stance, detached from every particular perspective. We must even go beyond the perspective of Homo sapiens, because what is valuable for human beings in general is not yet *intrinsically* valuable. But in a secular universe there is no perspective beyond that of Homo sapiens, because in that universe only people value. So, the category of values is essentially anthropocentric. Values are only ascribable from points of view constituted by human patterns of affective response. Values are by definition relational, and without somebody who values there are no values.³⁰ Mind-free values are impossible, because values are not written into the fabric of the universe. There are no values "vacuum packed within external objects."³¹ For this reason the Leibnizian idea of John Leslie, that mere 'existence' has objective value, even in a cold universe without creator or without human beings to evaluate things, is completely puzzling.³² It can be useful (e.g. for ecological reasons), but it is completely meaningless from a secular philosophical point of view, incapable

of projecting objective values onto our environment, as some ecocentrists would like to do.³³

Moreover if someone would take that objective stance, there would be no place left for values at all. From the most impartial position all values disappear behind the horizon of objectivity: nothing seems to have value, and all we see concerning human desires, motives, inclinations, and human values are just psychological images. We will not see any objective values, because when one looks at the world from outside, there is no room for values in the world at all.³⁴ A wholly dispassionate eye would be as blind to values as a black-and-white camera to chromatic colours.³⁵ From the objective point of view there may be no such thing as 'good,' 'bad,' or 'evil' because the universe is indifferent, even towards a nuclear holocaust. From that position, it would not be a contradiction – in the words of Hume – to prefer the destruction of the whole world to the scratching of my finger.³⁶ Seen from a completely detached position, the secular universe is indifferent and devoid of values. Intrinsic values are a *contradictio in terminis*: "Nothing has any objective value, because objectively nothing matters at all." Nagel calls this problem the paradox of "objective nihilism."³⁷

We cannot escape from our own particular conceptual frameworks, and moreover it would be impossible for us to perceive, to think, and to value without or outside of these frameworks. Our frameworks are a priori, constitutive and necessary for our perception, thinking, and valuing.³⁸ That results in values never being objective, but rather always related to our (human) conceptual frameworks.

However, there is also an ontological problem with the second conceptual feature of objective values: the objective prescriptivity. On this point, I agree with Mackie that there is a fundamental problem to accommodating moral objective values in our secular, naturalistic outlook. That kind of objective value is a metaphysical peculiarity. To accommodate the action-guiding authority of these values, we need a theistic universe where there is a sovereign that gives us inescapable reasons for acting in a certain way, or a Platonistic, Moorean metaphysics in which there is place for non-natural or super-natural intrinsically motivating qualities.³⁹ In a naturalistic and secular outlook, the automatic reason-giving force of intrinsic values is 'a magic force'.⁴⁰

As such, objective values are ontologically strange and play no explanatory role in a secular world.⁴¹ It would be much simpler to replace the idea of absolute values as moral qualities of objects and subjects 'with some sort of subjective response which could be causally related to the detection of the natural features on which the supposed quality is said to be consequential.' For Gauthier and Mackie, we do not have to presuppose objective values, the existence of values as the result of human preferences is enough. But if we want to discuss human rights, I think this is *not* enough.

4.3. How sacred are human beings in a secular universe?

If intrinsic values are no longer thinkable in a secular universe, this also implies that human beings or some of their qualities (like reason, freedom, or the capacity for moral deliberation) can have no intrinsic value. We can see that most of the people value (their) life and (their) autonomy, but this does not mean that life or autonomy has intrinsic value. On the contrary, from ‘a view of nowhere’ our value is zero and life is absurd. We are all of equal worth, utterly worthless.⁴² Nevertheless, Dworkin mentioned that the idea of intrinsic value is commonplace, and it has a central place in our shared scheme of values and opinions. He argues that secularists also have the “deep philosophical belief” that people are valuable in and of themselves⁴³: every human being is “sacred” because each human being is a “creative masterpiece of natural and human creation.”⁴⁴ However, it is not clear how this idea can make sense in a “chilling and impersonal” worldview. In a secular universe, a universe bereft of transcendent meaning, only “a weak or subjective sense” of sacred is thinkable: something is sacred *because* it inspires awe in us and we attach great value to it. Conversely, in “the strong or objective sense,” something is sacred and *therefore* it inspires awe in us and we attach great value to it. In fact, a secular philosopher cannot argue for the latter.⁴⁵

Moreover the sanctity of human life is no longer thinkable, because, among other things, existentialism, psychology, anthropology, and science have de-

stroyed every teleological, theological, metaphysical and essentialist notion of human beings. The “picture of an ahistorical nature centre, the locus of human dignity, surrounded by an adventitious and inessential periphery,” is no longer tenable.⁴⁶ The only things we have are the shifting sands of empirical human traits and it is not clear how it can be a solid basis for the idea of equal intrinsic human value. The idea that “human nature” as a metaphysical concept is no longer useful is troubling for human rights discourse, because it appears that this discourse cannot exist without a sort of “metaphysical comfort.”⁴⁷ In the end, what Iris Murdoch wrote about the moral philosophy of Sartre seems to be valid for all modern secular moral philosophy: “It is as if only one certainty remained: that human beings are irreducibly valuable, without any notion why or how they are valuable, or how the value can be defended.”⁴⁸

In the end, we must agree that the death of God does really change the worth of human beings. And this argumentation about the impossibility of intrinsic values in a secular context is an important difficulty for secular human rights discourse because “our rejection of objective values carries with it the denial that there are any self-subsistent rights.”⁴⁹

5. Human equality in a secular context

For the idea of human equality, the historical intervention of the Judeo-Christian tradition is also essential.⁵⁰ In the ancient Greek and Roman world it

would have been absurd to say that the least amongst human beings could, in the eyes of the gods or by any other standard, be of equal and immeasurable worth as the best. Philosophers such as Aristotle thought that humans were essentially unequal, depending on their ability to reason.

In the Judeo-Christian tradition, the idea of equality is founded on the personal and unique relation of God with every human being.⁵¹ Every man is written with his name in the palm of God's hand and is of the same worth in the eyes of God. All women and men are sisters and brothers because *every* man (including our enemy) is a child of God.⁵²

The thesis of equality is still a central concept in contemporary moral philosophy. But since the advent of modernity and secularisation, philosophers have been obliged to consider equality in another context, a context without God as metaphysical foundation. In fact, the secular egalitarians are in search of a non-metaphysical and non-religious proposition equivalent to the theological doctrine that all humans have been created equal in the image of God, with immortal souls of inestimable and unique worth.⁵³

In the current literature, there is a plethora of secular egalitarian theories, but the philosophical task is not self-evident. Since secular philosophers cannot use non-empirical characteristics like the eternity of the soul to ground equality, they have to look for empirical qualities like reason or freedom, but then it is hard to see how these qualities can give us *equal* worth. Take any capacity and it seems that humans differ. Given the empirical obser-

vations, it is hard to believe that humans are equal in any way at all.⁵⁴

Many secular philosophers use a formal argument: the idea of equality is the result of the moral point of view. As Sidgwick wrote: "the good of any one individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other."⁵⁵ Also following Nagel, the basic insight that follows from the impersonal standpoint is that everyone counts the same. When the moral point of view is defined as an impartial point of view, from that moral point of view everyone's life matters and no one is more important than anyone else. "If you matter impersonally, so does everyone."⁵⁶ In fact, the idea of equality is the result of the universalisation of the agent's valuing of herself. The argument is, however, defective, because the only thing that is said is that from the remote impersonal view we can see that (unless in some exceptional situations) everyone values his/her life, but this psychological fact does not say anything about the equal and intrinsic worth of this people. The above discussion has so far shown that from the perspective of the universe everyone is indeed of equal worth, but in fact equally worth-less and unimportant. Moreover, this 'definitional strategy' – the moral point of view *is* to look at people impartially, granting every person an equal status – fails to respond to the fundamental challenge: why should people take this moral point of view? Why should I take the impartial view at all?⁵⁷

6. Human rights

The modern appeal to ‘human dignity’ and ‘human rights’ is the secular translation of the old religious idea that people have intrinsic and equal worth. Human rights are the results of our strong moral intuition and our assumption that people have equal intrinsic worth that may not be infringed upon. For many authors the assumption that each person possesses inviolability based on inalienable natural rights seems to be ‘self-evident’.⁵⁸ Often, no further argument is given than that moral rights must protect equal, intrinsic human worth and dignity. However, as we have seen, equal and intrinsic human worth cannot be rationalised in a secular context. Therefore we have reasons to also question the validity of the human rights discourse.

From the perspective of philosophy, it is argued that people have these human rights a priori and that the human rights claims are universal and absolutely valid. That people have some a priori, universal rights implies that they have these rights independent of any particular judgement or context. This denies that, analogous to the concept of values, the concept of rights is also a *relational* one. Just like a value that nobody values, a right that nobody acknowledges is empty and does not exist. The idea that people have rights without someone giving them these rights is inconsistent. In a theistic universe, it is possible to conceive of rights and values independently of human judgements, but even there, they do not exist independent of every appraisal. God was the objective valuer who gave

people intrinsic worth and a priori rights. Therefore there is a lot of truth in Balagangadhara’s remark that the notion of rights is “quite incomprehensible without the presence of the notion of sovereignty.”⁵⁹ In a secular universe only people can give appraisal, so the idea of intrinsic worth and a priori rights become flawed. The God-given rights and the intrinsic worth that people had in the eyes of God had to evolve to values and rights *an sich* (objective values and rights), but as we have seen, a secular universe cannot make room for that. As such, human rights and the correlative moral duties are remnants outside of the framework of thought that made them really intelligible.⁶⁰

We will shortly consider two important arguments for the justification of human rights and show that both are defective because they work with a notion of intrinsic value.

The first line of argumentation proceeds in two steps.⁶¹ First, because an agent *X* must have certain necessary goods, *X* logically must also hold that she has rights to these goods. Second, because from an impersonal viewpoint every human has the same basic needs, therefore everyone can equally claim her rights.⁶² In the same way that Nagel’s impartial view is the necessary precondition to viewing human equality (*supra*); the impartial view is also the necessary precondition to acknowledging human rights.

This argument does not succeed. The first step presupposes the intrinsic worth of human life. It is only *because* human life has intrinsic worth that people can claim *rights* to the goods necessary to life. The ‘fact’ that people value their lives and need certain goods to live their lives is insufficient for a

claim to rights, because we agree with the definition that “*X* has a right if and only if *X* can have rights, and other things being equal, an aspect of *X*’s well-being (his interest) is a sufficient reason for holding other person(s) to be under a duty.”⁶³ According to this definition, if *X* claims a right to necessary goods, all other people have an absolute and objectively prescriptive *moral duty* to guarantee that *X* has access to sufficient necessary goods. This is only true if the life of *X* has objective value and if this objective value of *X*’s life gives other people a moral reason to protect it as much as possible. If the life of *X* has no worth at all, or only has worth in the eyes of (some) people, the need for some necessary goods can not be sufficient for a claim to rights, because we cannot justify an absolute moral duty on that basis. Without the intrinsic value of life, people do not have an objective (moral) duty to protect the life of *X*. But as we have seen, we cannot accommodate the idea of intrinsic value of something (inclusive of human life) in a naturalistic, secular worldview.

In the same way, the second step is defective. From the impersonal view we see only that everyone has the same needs, but this ‘fact’ does not say anything about the moral rights of these people. Saying that all people *need Y* is not logically equivalent to saying that everybody has the *right to Y*.⁶⁴ From the latter it follows that others ought not to interfere with my getting *Y*, while from the former it does not. According to the definition we mentioned above, speaking about rights does imply that certain interests of *X* are a sufficient reason to create a duty for other people to defend these interests, while speaking merely about needs does not imply any

duty at all. The needs of persons only create an objective moral duty when the lives of human beings are intrinsically valuable.

The second line of argumentation is the Kantian one. It says that because people have some intrinsically valuable qualities like autonomy, rationality, the capacity for moral deliberation or life plans, everybody has to respect their rights to use these capacities.⁶⁵ But as we have seen, the secular universe cannot make space for *intrinsically* valuable qualities. Moreover, it seems that the Kantian position of philosophers like Rawls, Dworkin, and Nagel is mysterious because, like magicians, they pull rabbits out of empty hats.⁶⁶ The move from ‘Agent *X* has capacity *Z*’ to ‘Everyone ought to value and respect *X*’ is not a logical one. Some human capacities like rationality and freedom contribute to a worthwhile life, but from their instrumental worth we can not derive intrinsic value or human rights. That people have some capacities does not make them, nor the capacities, intrinsically valuable. Rorty, who rejects every project of human rights foundationalism as futile and outmoded, writes about this second argumentation: “Kant’s account of the respect due to rational agents tells you that you should extend the respect you feel for people like yourself to all featherless bipeds. That is an excellent suggestion, a good formula for secularizing the Christian doctrine of the brotherhood of man. But it has never been backed up by an argument based on neutral premises, and it never will be.”⁶⁷

7. The human rights discours is still alive

We cannot consider here all the arguments for the justification of human rights. Since the time of the Enlightenment the history of philosophy is full of efforts to find foundations for the acceptance of moral rights without reference to God. The rights discourse has been grounded by comprehensive theories about human nature, human rationality or autonomy, well-being, rational or sensational intuitionism, etc.⁶⁸ However, it seems that when God and the possibility of a supernatural cosmology are rejected, the idea that human beings have unique, equal, and intrinsic value is merely “a human invention.”⁶⁹ If this is right and if this idea of the sacredness of human beings is a necessary element of the idea of human rights, these rights seem to be – in the famous words of Bentham – “nonsense upon stilts.”⁷⁰

For sure, we do not question whether there are rights as the result of implicit or explicit human conventions, law, or custom. What we question is the idea of *moral* rights that are alleged to belong to human beings as such and that are cited as a reason for holding that people *ought* not to be interfered with in their pursuit of life, liberty, and happiness. For the existence of this kind of rights, too much is being asked of the secular, naturalistic worldview, and the suggestion of asking less strips philosophical human rights discourse of its very purpose. Any analysis of the meaning of moral rights that omits the claim to intrinsic prescriptivity is incomplete, but

this claim cannot be accommodated in a naturalistic, secular worldview. Therefore, we must agree with MacIntyre’s bold thesis that natural or human rights are nothing more than ‘fictions’. There are no rights attaching equally to all human beings simply *qua* human being, whatever the context, and there are no rights that give us objectively prescriptive reasons to act in a certain way. “A belief in them is one with belief in witches and in unicorns.”⁷¹

Nonetheless, finding the flaws in the discourse about witches is not the same as finding the flaws in the human rights discourse, because the latter implies many practical problems. Human rights discourse, after all, seems terribly important to us, because the intuition that people have equal intrinsic worth is very strong and is the basis of most of our morality. From the perspective of the phenomenology of moral experience, we could say that the acceptance of some objective values and rights is unavoidable, because the alternative is not *credible*.⁷² As Kant remarked, it is ‘a moral fact’ that we are confronted with the categorical imperative. The idea of rights is a result of this Kantian moral phenomenology. Our rights discourse is the objectification of the human intuition and moral experience that some things just *ought* to be done, while other things should not be. It cannot be elaborated here, but the idea that our intuition that we have inescapable requirements can be explained by evolutionary psychology is plausible.⁷³ If this hypothesis is right, we can see that natural selection has provided us with a tendency to invest the world with intrinsic values that it does not contain and categorical demands which it does not make. Therefore it is very difficult

for human beings to deny their “traditional conscience,”⁷⁴ with the human rights discourse as an essential part of it.

Moreover, the idea that people have equal and intrinsic worth is deeply embedded in our Judeo-Christian culture. As we have seen, the sacredness of humanity fits easily into a theistic worldview, but with the secularisation and the change of our worldview the idea has not been questioned at all. The idea became “self-evident,” “definitionally true” or “intuitively obvious.”⁷⁵ Especially after Kant, most philosophers and modern theologians have tried to maintain the nature and content of (theistic) morality in a secular context.⁷⁶ Our fundamental intuitions about human dignity have been preserved intact despite all of the transformations and changes that the Western theistic culture has undergone over the centuries.⁷⁷

It seems that people cannot simply do away with rights discourse. Even if we could, the question arises, *should* we? It is not simply that rights discourse is flawed and has no ultimate foundations, that the discourse is not precious. What we *do* with our rights discourse, once we see its flaws, is a pragmatic issue, to be resolved by reference to what is the optimal practical outcome.⁷⁸ It is easy to see that human rights discourse is very useful in everyday life, if we propose to live in a human and morally acceptable world.⁷⁹ We all think that a world with equal human rights is a less dangerous and more just and civilised world.⁸⁰ People may not agree why we have rights, but they can agree that we need them.⁸¹ Moreover, rights discourse with its normative component guarantees that for our intuitive

must-be-done actions, we indeed feel motivation and obligation to do these actions (likewise, *mutatis mutandis*, for must-not-be-done actions), independent of the consequences of these actions, the context or our particular life aims. As such, it serves to combat our notorious weakness of will.

8. Moral fictionalism

Thus, secularists are confronted with the following dilemma: because the human rights discourse is useful and confirms our deepest moral intuitions, doing away with it incurs a cost; on the other hand, keeping a flawed discourse also comes at a price, for truth is a very valuable commodity.⁸² To resolve this tension we can suggest the stance of ‘fictionalism’: the possibility of maintaining the discourse but taking an attitude other than belief towards it (uttering it without assertoric force). Normally, when a discourse is flawed (astrology, the phlogiston discourse, alchemy), it is abandoned altogether. For several reasons this kind of abolitionism is not preferable here. Because the moral rights discourse is a useful one and there are different (moral, psychological, cultural) reasons why we cannot simply do away with it, we should keep it without believing in it.

In the 19th century, fictionalism was a quite popular stance about ontological metaphysical matters. The most famous as-if philosopher is the neo-kantian Hans Vaihinger (1852-1933).⁸³ For him fictions are necessary elements in the progress of our

thoughts about nature, religion, mathematics, culture, law, and morality. Vaihinger argues that it is not only possible to look at the world as if some thoughts are true, even if we are not sure that it is really true (in case of a hypothesis or in the case of religion); we can also judge that something is the case, that we accept that it is, while knowing that it is not, for example because it is self-contradictory.⁸⁴ Vaihinger defends the possibility of fictive judgements: judgements “made with the consciousness of its non-validity, but at the same time it is tacitly presupposed that this operation is permissible, useful and appropriate.”⁸⁵

At the end of the 20th century, fictionalism has made a small comeback. It has been applied to mathematics (Field), nonobservables (van Fraassen), modality (Nolan, Rosen), identity, and existence claims.⁸⁶ Recently fictionalism has also been used as an alternative in the metaethical debate about realism and irrealism.⁸⁷ In *The myth of morality* Richard Joyce argues that moral discourse is hopelessly flawed because essential notions such as the practical authority and the inescapability of moral imperatives (by definition categorical, objectively prescriptive imperatives) cannot be reasonably defended. Nevertheless – and this is the difference with some other sceptical authors about the existence of categorical imperatives⁸⁸ – he writes explicitly that we may be able to carry on with the categorical moral discourse as a ‘useful fiction.’

In line with Vaihinger, Joyce argues that it is possible to ‘accept’ *p* while ‘disbelieving’ *p*.⁸⁹ We all experience the attitude of ‘disbelieving acceptance’ when we read fictive books or watch movies. We all

feel sadness when inspector Morse dies, but nobody would say that she *really* believes that Morse died. To feel sadness is not irrational or a matter of self-deception, since we can, at any time, readopt the critical perspective from which we know very well that the book or movie is fiction.⁹⁰

To understand ‘fictionalism’, we must introduce the concept of ‘critical contexts.’ Joyce gives the example of Hume’s scepticism. In a critical (philosophical) context, Hume doubts the existence of other minds and of the external world. However, this doubt does not prevent him from living his life as if there were other minds and an external world: he interacts with other minds, he dines and plays a game of backgammon. Does it follow that he disbelieves the sceptical theses after all? No, it does not. The point is that what a person believes cannot be simply read from his actions, speech, and thought in every day contexts. What people really believe is the result of critical reflection in critical contexts like the philosophy classroom, but fortunately we do not have to spend our life in that classroom.⁹¹

The examples of the Morse-fan and Hume’s scepticism illustrate that fictionalism is not necessarily an incoherent philosophical position. There are many other examples of fictionalism: we live as if we have a free will and are autonomous, atheist Darwinists live as if their lives have ultimate meaning, we look at our children as if they are the most wonderful children in the world, and we think as if there is a real difference instead of a gradual difference between animals and human beings. A subject who believes that not-*p* but lives and acts as if *p* is not completely irrational, self-deceived, or schizophrenic.

I think that fictionalism can also be applied to the situation of human rights discourse. Although we use this discourse everyday, we can admit – in the critical context of the philosophy classroom – that we do not *really* believe in the truthfulness of the discourse. We can continue to utilise human rights discourse and the consequent categorical positive and negative duties, without believing that these rights and obligations are *real*. We could say that we must live as if there are absolute prohibitions and act as if human life has a peculiar value, quite beyond the value of any other natural things. In a critical context we must say that human rights are ‘useful fictions,’ but outside the philosophy classroom – in real life – intrinsic human value and human rights are useful to motivate and oblige people to live a morally acceptable life. I agree with Joyce that it can be ‘perfectly rational’ to accept some fictions, if we are justified in believing that these fictions will prompt an emotional reaction and if we are justified that this reaction may lead to desirable ends (say, by influencing our motivations against temptations of defecting).⁹² This is certainly the case with the idea of human rights. I think that it is possible to see that the moral rights discourse is a useful one, and this usefulness doesn’t depend upon its being *believed*. What Joyce attempts to argue concerning morality as such is also true for the moral rights discourse as an essential part of morality: human rights discourse can continue to furnish significant benefit, both at a societal and an individual level, even when it has the role of a fiction.⁹³

So, fictionalists look at the human rights discourse as a useful but fictive objectification of very

strong moral intuitions.⁹⁴ Because of these strong intuitions, I think fictionalism is more a descriptive than a normative stance. In fact, it is not really possible to choose freely to adopt the fictionalist position regarding human rights – analogously, it is not possible for a depressed atheist Darwinist to choose freely to act as if life has meaning, when he doesn’t have any feeling or intuition that life has meaning. If someone (*S*) agrees with our thesis that moral rights discourse is in error but *S* lacks any intuition about equal and intrinsic value of human life, *S* has no reason at all to take a fictionalist stance towards the idea of human rights. However, if *S’* agrees with our thesis that moral rights discourse is in error, and *S’* has very strong intuitions that human life is sacred, there is a good chance that *S’ will find herself* in the position of a fictionalist concerning human rights. Without explicit deliberation, *S’* will continue to act and to live as if the human rights discourse is not in error. So, *S’* did not choose on a conscious and reasonable basis for fictionalism, she can only see, a posteriori, that she is in the position of a fictionalist. So it is difficult to argue for fictionalism in a normative way, rather it is a description of a possible attitude towards intuitive ideas which cannot be reasonably defended. People can only see that they still act and live as if human rights exist, even if they know that in a secular universe there is nothing that gives us a reason to believe that they really exist.

Does this mean that if some fictionalists were members of an advice committee for human rights policies, their deliberations would be uncritical or fictive? It does not. No doubt, they would discuss on a highly reflective and critical level and they would

fervently defend their decisions as if they were real. Nevertheless this context is not the *most* critical context to reflect the nature of morality and the nature of human rights, and neither is that the purpose of the committee.⁹⁵

9. Conclusion

In the secular universe, there is no place for intrinsic and equal human value. Given a naturalistic, secular worldview, we are not able to accommodate these commonsense assumptions that are at the basis of human rights discourse. However, this does not imply that we must jettison human rights discourse. We have proposed and explained the concept of fictionalism. Human rights discourse has no grounds in our secular worldview, but because the discourse is deeply embedded in our culture and in our daily life, because the intrinsic value of people is a very strong moral intuition, and because rights discourse is useful to living a moral life, human rights discourse should be retained. The ideas of intrinsic and equal human worth can be the subject of 'disbelieving acceptance' for the secular moral philosopher. This is the Fictionalism thesis. It is not merely a negative thesis: it also helps to save morality in our age of secularisation, science, deconstruction, and the consequent 'legitimation crisis'.

Notes:

¹ R.W. Lovin & F.E. Reynolds (eds.), *Cosmogony and ethical order: new studies in comparative ethics* (1985); I. Murdoch, I., *Vision and choice in morality*, 30 *Proceedings of the Aristotelian Society, Suppl. Vol.* 32 (1956-7)

² Some examples are G.E.M. Anscombe, *Modern moral philosophy*, 33 *Philosophy* 1 (1958); S.N. Balagangadhara, *Comparative anthropology and moral domains. An essay on selfless morality and the moral self*, in 1 *Cultural Dynamics* 98 (1988); J.D. Goldsworthy, *God or Mackie: the dilemma of secular moral philosophy*, in 30 *American Journal of Jurisprudence* 45 (1985); J.M. Gustafson, *Theology and Ethics* (1981); J.M. Gustafson, *Ethics from a theocentric perspective* (1984); A. MacIntyre, *After virtue* (1981); B. Mitchell, *Morality: religious and secular. The dilemma of the traditional conscience* (1980); M.J. Perry, *Is the idea of human rights ineliminably religious?*, in M.J. Perry, *The idea of human rights. Four inquiries* 11 (1998); L.P. Pojman, *Is contemporary moral theory founded on a misunderstanding?* In 22 *Journal of Social Philosophy* 49 (1991); Pojman, L.P., *A Critique of Contemporary Egalitarianism: A Christian Perspective*, in 8 *Faith and Philosophy* (1991a); L.P. Pojman, *On equal human worth: a critique of contemporary egalitarianism*, in L.P. Pojman & R. Westmoreland (eds.), *Equality. Selected readings* 282 (1997) (reprint of *Are equal human rights based on equal human worth?* in 52 *Philosophy and phenomenological research* 605 (1992); L.P. Pojman, *Ethics: religious and secular. On the metaphysical basis of morality*, in 70 *The Modern Schoolman* 1 (1992); Pojman, L.P., *Reflections on the Basis of Contemporary Secular Ethics*, in 26 *Journal of Social Philosophy* (1995); R. Taylor, *Ethics, faith and reason*

(1985); G. Tinder, *Can we be good without God: the political meaning of christianity*, in 264 *The Atlantic* 69 (1989); A.E. Van den Beld, *God, morality, and the transformation of human beings*, in A.W. Musschenga (ed.), *Does Religion Matter Morally? The critical reappraisal of the thesis of morality's independence from religion* 31 (1995); A. Van Den Beld, *The morality system with and without God*, in 4 *Ethical Theory and Moral Practice* 383 (2001).

³ MacIntyre, *supra* note 2; Anscombe, *supra* note 2.

⁴ Taylor, *supra* note 2 at 2, 77.

⁵ Pojman (1991), *supra* note 2.

⁶ Balagangadhara, *supra* note 2.

⁷ Cf. P. Singer, *How are we to live?* 273 (1997).

⁸ See D. Cohn-Sherbok (ed.), *World religions and human liberation* (1991); A.D. Falconer & M. Hurley (eds.), *Understanding human rights: an interdisciplinary and interfaith study: the proceedings of the international consultation held in Dublin 1978* (1980); H. Küng & J. Moltmann (eds.), *The ethics of world religions and human rights* (1990); Rouner, L.S. (ed.), *Human rights and the world's religions* (1988); Swidler, E. (ed.), *Human rights in religious traditions* (1982); Tergel, A., *Human rights in cultural and religious traditions* (1998); Traer, R., *Faith in human rights: support in religious traditions for a global struggle* (1991).

⁹ See S.F. Krantz, *Refuting Peter Singer's ethical theory: the importance of human dignity* (2002).

¹⁰ Cf. M. Ignatieff, *Human rights as idolatry*, in A. Gutmann (ed.), *Human rights as politics and idolatry* 56, 75 (2001).

¹¹ E. Wiesel, *A tribute to human rights*, in D. Yael, E. Stamatopoulou and C. J. Dias (eds.), *The Universal Declaration of Human Rights: Fifty years and beyond* 3 (1999).

¹² Ignatieff, *supra* note 10 at 53, 77.

¹³ Mitchell, *supra* note 2 at ch. 9; Pojman, *supra* note 2; Perry, *supra* note 2; M. Stackhouse, *Human rights and public theology*, in C. Gustafson & P. Juviler (eds.), *Religion and Human rights: competing claims?* Ch. 2 (1999).

¹⁴ We use the word sacred to indicate the link to the theistic framework from whence the idea of intrinsic human worth is derived. Of course the word 'sacred' has theistic connotations, but it can also be interpreted in a secular way. (cf. R. Dworkin, *Life's dominion: an argument about abortion, euthanasia, and individual freedom* 25, 81-84 (1993))

¹⁵ Perry, *supra* note 2 at 12-3; J. Raz, *On the nature of rights*, in 93 *Mind* 194 (1984).

¹⁶ Cf. A. GEWIRTH, *Common morality and the community of rights*, in G. Outka & J.P. Reeder (eds.), *Prospects for a common morality* 37 (1993); D. Little, *The nature and basis of human rights*, in G. Outka & J.P. Reeder (eds.), *Prospects for a common morality* 83 (1993).

For a compelling discussion of the "correlative duties" implied in a commitment to human rights, see: H. Shue, *Basic rights: subsistence, affluence, and U.S. foreign policy* ch. 2 (1980). Samuel Pufendorf (1632- 1694) was one of the first philosophers to mention the correlativity of rights and duties in his *De jure naturae et gentium* (*On the Law of Nature and of Nations*), 1672.

¹⁷ J.L. Mackie, *Ethics. Inventing right and wrong* ch. 1 (1977).

¹⁸ R. Rorty, *Human rights, rationality and sentimentality*, in S. Shute and S. Hurley (eds.), *On human rights: the Oxford Amnesty Lectures 1993* 111 (1993); R. GARNER, *On the genuine queerness of moral properties and facts*, in 68 *Australian journal of philosophy* 137 (1990); Ignatieff, *supra* note 10 at 54; Mackie, *supra* note 17.

¹⁹ M. Timmons, *Morality without foundations. A defense of ethical contextualism* 11ff. (1999).

²⁰ Timmons, *supra* note 19 at 12.

²¹ Mackie, *supra* note 17 at 35.

²² Timmons, *supra* note 19 at 13.

²³ Often the naturalistic accommodation project results in moral irrationalism and non-descriptivism: A. Gibbard, *Wise choices, Apt Feelings* (1990); S. Blackburn, *Spreading the world* (1984); Timmons, *supra* note 19; Mackie, *supra* note 17. However, a version of naturalistic moral realism has recently been elaborated by D. Brink, *Moral realism and the foundations of ethics* (1989); R. Boyd, *How to be a moral realist*, in G. Sayre-McCord (ed.), *Essays on moral realism* 181 (1988); N.L. Sturgeon, *Moral explanations*, in G. Sayre-McCord (ed.), *Essays on moral realism* 229 (1988); P. Railton, *Moral realism*, in 95 *Philosophical Review* 163 (1986). The version of moral realism defended by McDowell and Platts is more in line with G. Moore's intuitionism. It is not clear if they are really interested in the project of naturalistic accommodation, because their versions of realism cannot succeed without some non-naturalist moral metaphysics. (J. McDowell, *Mind, Value and Reality* (1998); M. Platts, *Ways of meaning* (1979); *ibid.*, *Moral reality and the end of desire*, in *ibid.* (ed.), *Reference, truth and reality* (1980); *ibid.*, *Moral realities* (1991).

²⁴ There is also another interpretation of intrinsic value that we do not use here: something has intrinsic value when it is *not* sought as a means to any other end; e.g. *eudaimonia* for Aristotle or 'the pleasures of human intercourse and the enjoyment of beautiful things' for G. Moore in his *Principia ethica* (ch. 6 (1903). This approach is concerned with people's attitudes towards something, while our approach concerns the nature of the thing itself. (cf. C.M. Korsgaard, *Two distinctions in*

goodness, in 92 *Philosophical Review* 169 (1983); T. Smith, *Viable values* 63 (2000); J. O'Neill, *The varieties of intrinsic value*, in 75 *The monist* 119 (1992); J.J. Thomson, J.J., *On some ways in which a thing can be good*, in 9 *Social philosophy and policy* 96 (1992); N. Lemos, *Intrinsic value* (1994).

²⁵ Dworkin, *supra* note 14 at 69-71, note 9.

²⁶ T. Nagel, *The view from nowhere* 153 (1986).

²⁷ O'Neill, *supra* note 24.

²⁸ Mackie, *supra* note 17 at 22.

²⁹ Mackie, *supra* note 17.

³⁰ A.W. Price, *Varieties of objectivity and values*, in 83 *Proceedings of the Aristotelian Society* 103 (1983); Smith, *supra* note 24 at 97ff.

³¹ *Id.* at 67.

³² J. Leslie, *Value and existence* (1979); *ibid.* Voor een samenvatting van Leslie's opvattingen: „Efforts to explain all existence, 87 *IN-Mind* 181 (1978); and *ibid.* en, *The world's necessary existence*, 11 *IN-International journal for the philosophy of religion* 207 (1980);.

³³ A. Naess, *The shallow and the deep, long-range ecology movement, a summary*, in 16 *Inquiry* 95 (1973); *ibid.*, *Deep ecology and ultimate premises. Rethinking man and nature: towards an ecological worldview*, in 18 *The Ecologist* 128 (1988); A. Naess en D. Rothenberg, *Ecology, community and lifestyle. Outline of an ecosophy* (1989); E. Goldsmith, *The way: an ecological world-view*, 18 *The ecologist* (1988). We can find the same problem in H. Jonas (trans. in collaboration with Herr, D.), *The imperative of responsibility: in search of an ethics for the technological age* (1979).

³⁴ Nagel, *supra* note 26 at 141, 146-7, 209.

³⁵ Price, *supra* note 30 at 106.

³⁶ *Treatise of Human Nature*, bk. 2, pt. 3, sec. 3.

³⁷ Nagel, *supra* note 26 at 146.

³⁸ H. Putnam, *Reason, truth and history* (1981). This was also an important insight of phenomenology and hermeneutics. Cf. Merleau-ponty, M., *La Phénoménologie de la perception* (1945) & H.-G. Gadamer, *Wahrheit und Methode* (1960).

³⁹ cf. G. Moore, *Principia ethica* (1903); McDowell, *supra* note 23.

⁴⁰ Ph. Foot, *Morality as a system of hypothetical imperatives*, in 81 *The Philosophical Review* 305 (1972); Anscombe, *supra* note 2 at 8; Garner, *supra* note 18.

⁴¹ Mackie, *supra* note 17 at 38-42; D. Gauthier, *Morals by agreement* 55ff. (1986); G. Harman, *The nature of morality* ch. 1 (1977); *ibid.*, *Explaining value and other essays in moral philosophy* (2000).

⁴² Pojman (1991) *supra* note 2 at 57; *ibid.* (1992) *supra* note 2 at 19.

⁴³ See also: R. Dworkin, *Life is sacred: that's the easy part*, in *New York Times Magazine* 36 (may 16 1993).

⁴⁴ Dworkin, *supra* note 14 at 81-4.

⁴⁵ Cf. Perry, *supra* note 2 at 28-9.

⁴⁶ R. Rorty, *The priority of democracy to philosophy*, in A. Malachowski (ed.), *Reading Rorty* 280 (1990); K. Bayertz, *Human dignity: philosophical origin and scientific erosion of an idea*, in K. Bayertz (ed.), *Sanctity of life and human dignity* 73 (1996).

⁴⁷ R. Rorty, *Solidarity or Objectivity?* in M. Krausz (ed.), *Relativism: interpretation and confrontation* 45 (1989).

⁴⁸ I. Murdoch, *Sartre, Romantic rationalist* 81 (1953).

⁴⁹ Mackie, *supra* note 17 at 173.

⁵⁰ Taylor, *supra* note 2 at 79; Pojman (1997) *supra* note 2 at 295.

⁵¹ Cf. H. Putnam, *The many faces of realism* 60-1 (1987); D. Tracy, *The analogical imagination: Christian*

theology and the culture of pluralism 4 (1981); Perry, *supra* note 2 at 16-7.

⁵² cf. Matthew 5: 43-48; Luke 6: 27-36.

⁵³ Pojman (1992) *supra* note 2 at 17.

⁵⁴ Pojman (1997) *supra* note 2 at 294.

⁵⁵ H. Sidgwick, *The Methods of Ethics* 382 (1907).

⁵⁶ T. Nagel, *Equality and Partiality* 11 (1991); *ibid.* *supra* note 26 at 171ff.

⁵⁷ Perry, *supra* note 2 at 30-1.

⁵⁸ cf. R. Nozick, *Anarchy, state and utopia* ix (1974); J. Rawls, *A theory of justice (revised edition)* 3 (1971 (1999)); R. Dworkin, *Taking rights seriously* 184 (1978).

⁵⁹ Balagangadhara, *supra* note 2 at 107.

⁶⁰ Anscombe, *supra* note 2; MacIntyre, *supra* note 2.

⁶¹ cf. A. Gewirth, *The basis and content of human rights*, in A. Gewirth, *Human rights: essays on justification and applications* 41 (1982).

⁶² This kind of argumentation is also the basis of the capability approach of A. Sen and M. Nussbaum. (cf. A. Sen, *Capability and well-being*, in M.C. Nussbaum & A. SEN, *The quality of life* 30 (1993); M.C. Nussbaum, *Human functioning and social justice*, in 20 *Political Theory* 202 (1992); M.C. Nussbaum, *Sex & Social Justice* (1999). Nussbaum is inspired by the Aristotelian tradition and gives a list of essential universal human needs. Human rights (she prefers to speak of capabilities) and ideas about human development follow from these needs. For a critique on the essentialistic view on human beings and the Aristotelian view on human flourishing, see: B. Williams, *Ethics and the limits of philosophy* ch. 3 (1985); D. Charles, *Perfectionism in Aristotle's political theory: reply to Martha Nussbaum*, in 185 *Oxford Studies in Ancient Philosophy*, suppl. Vol. (1988).

⁶³ Raz, *supra* note 15 at 195.

⁶⁴ MacIntyre, *supra* note 2 at 67.

⁶⁵ For some efforts to provide a Kantian foundation for human rights, see: R. Alexi, *Discourse theory and human rights*, in 9 *Ratio Juris* 209 (1996); C.M. Korsgaard, *The Sources of Normativity* (1996); J. Rawls, *A theory of justice* 441ff. (1971); Dworkin (1978), *supra* note 58 at 184ff.:

⁶⁶ Pojman (1991), *supra* note 2 at 59 and *ibid.* (1992), *supra* note 2 at 14.

⁶⁷ Rorty (1993), *supra* note 18 at 124-25.

⁶⁸ In our time, different authors have argued that comprehensive doctrines are not necessary for the foundation of human rights. They describe human rights as 'a neutral concern', the result of 'an unforced overlapping consensus.' Human rights can be justified without appeal to any particular idea of human nature and independent of people's particular comprehensive conceptions of the good life. (cf. J. Rawls, *The law of peoples*, in S. Freeman (ed.), *John Rawls: collected papers* 551ff. (1999); T.M. Scanlon, *The difficulty of tolerance* (2003); C. Taylor, *Conditions of an unforced consensus on human rights*, in J.R. Bauer & D.A. Bell (eds.), *The east asian challenge for human rights* 124 (1999); Ignatieff, *supra* note 10. However, as Donnelly mentions, the scope of the overlapping consensus is not boundless. Although internationally recognized human rights do not depend on any particular religious or philosophical doctrine, they are *not* compatible with all comprehensive doctrines. For Donnelly, participation in the overlapping consensus is only possible for those who see 'human beings' as a fundamental moral category and who see human beings as in some important sense equal and autonomous actors. (J. Donnelly, *Universal human rights in theory and practice* 40-1, 51-3 (2003²)).

⁶⁹ S. Hampshire, *Morality and pessimism*, in S. Hampshire (ed.), *Public and private morality* 17ff. (1978).

⁷⁰ For the attacks by Bentham, Burke and Marx to the natural rights tradition: J. Waldron (ed.), *Nonsense upon stilts* (1987).

⁷¹ MacIntyre, *supra* note 2 at 69-70.

⁷² Nagel, *supra* note 26 at 154ff..

⁷³ R. Joyce, *The myth of morality* ch.6 (2001).

⁷⁴ Cf. Mitchell, *supra* note 2.

⁷⁵ Balagangadhara, *supra* note 2 at 110.

⁷⁶ Nietzsche was the first to see that this (modern) project is impossible. For Nietzsche the death of God implied an *Umwertung aller Werte*, and he insisted upon morality 'beyond good and evil'.

⁷⁷ Balagangadhara, *supra* note 2 at 106.

⁷⁸ Cf. Joyce, *supra* note 73 at ix-x; Donnelly, *supra* note 68 at 18ff.

⁷⁹ J.L. Mackie, *Can there be a right-based moral theory*, in J. Waldron (ed.), *Theories of Rights* 168 (1984).

⁸⁰ J. Feinberg, *Social philosophy* 93ff. (1973). That human rights are useful is also the basis of the Universal Declaration of Human Rights (1948). The preamble of the Declaration starts with:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...."

⁸¹ Ignatieff, *supra* note 10 at 55.

⁸² See S. Haack, *Concern for truth: what it means, why it matters*, in P.R. Gross, N. Levitt & M.W. Lewis (eds), *The Flight from Science and Reason* 57 (1996).

⁸³ H. Vaihinger, *The philosophy of 'As if'* (1949).

⁸⁴ There is a difference between 'agnostic' fictionalism that says 'I do not know whether *T* is true, but it is highly useful and therefore I shall accept it,' and 'atheistic' fictionalism that says 'I have sufficient reason for believing that *T* is false, but it is highly useful and therefore I shall accept it'. (Joyce, *supra* note 73 at 190) The former (the weak form of fictionalism) is defended by Pierre Duhem and Bas van Fraassen (*infra* note 86). In the line of Vaihinger, Joyce argues for the latter, for strong fictionalism.

⁸⁵ Vaihinger, *supra* note 83 at 261.

⁸⁶ See M. Kalderon (ed.), *Fictionalist approaches to metaphysica* (forthcoming from Oxford University Press); H. Field, *Science Without Numbers: a defence of nominalism* (1980); *ibid.*, *Realism, Mathematics, and Modality* (1989); B.C. Van Fraassen, *The scientific image* (1980); D. Nolan, *Reflexive fictionalisms*, in 56 *Analysis* 23 (1996); *ibid.*, *Three problems for 'strong' modal fictionalism*, in 87 *Philosophical Studies* 259 (1997); G. Rosen, *Modal Fictionalism*, in 99 *Mind* 327 (1990); *ibid.*, *A problem for fictionalism about possible worlds*, in 53 *Analysis* 71 (1993); *ibid.*, *Modal fictionalism fixed*, in 55 *Analysis* 67 (1995); S. Yablo, *Does Ontology Rest on a Mistake?*, in 72 *Proceedings of the Aristotelian Society* Suppl. Vol. 229 (1998); *ibid.*, *Go figure: a path through fictionalism*, in 25 *Midwest Studies in Philosophy* 72 (2001)

⁸⁷ See Joyce, *supra* note 73 at ch. 7&8; *Ibid.* *Moral fictionalism*, in Kalderon, *supra* note 86 at ch. 9; M.

Kalderon, *Moral fictionalism* (forthcoming from Oxford University Press). There is also an article *Moral Fictionalism* under submission by D. Nolan, G. Restall and C. West. For a critical review NEWMAN, J., *The fictionalist analysis of some moral concepts*, in 12 *Metaphilosophy* 47 (1981); N.J.Z. Hussain, *The return of moral fictionalism*, unpublished paper presented at the conference *Moral theory after Nietzsche*, February 14-15, 2003.

⁸⁸ Mackie, *supra* note 17; Garner, *supra* note 18; Foot, *supra* note 40; Gauthier, *supra* note 41; Harman, *supra* note 41.

⁸⁹ For the (alleged) difference between 'believing' and 'accepting': J. Raz, *The amoralist*, in *Engaging reason. On the theory of value and action* 273 (1999a); L.J. COHEN, *An essay on belief and acceptance*, 4ff. (1992); H. Putnam, *Philosophy of logic* 68ff. (1971).

⁹⁰ Joyce, *supra* note 73 at 196. See also R. Joyce, *Rational fear of monsters*, in 40 *British Journal of Aesthetics* 209 (2000) as a reaction on C. Radford, *How can we be moved by the fate of Anna Karenina?*, in 49 *Proceedings of the Aristotelian Society*, suppl. 67 (1975).

⁹¹ Joyce, *supra* note 73 at 190ff.

⁹² Joyce, *supra* note 73 at 198.

⁹³ *Ibid.* at 205, ch. 8.

⁹⁴ For an attempt to ground human rights on the basis of (rational) intuitionism, see: Little, *supra* note 16. For him the moral authority of human rights ultimately rests on our common intuition or recognition that certain acts are 'transparently wrong'. See also L. Henkin, *The Age of Rights* 6 (1996).

⁹⁵ Cf. Joyce, *supra* note 73 at 220.