Theological Studies
55 (1994)

NO AMNESTY FOR SORROW: THE PRIVILEGE OF THE POOR IN CHRISTIAN SOCIAL ETHICS

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THEIRS IS A familiar litany, a census of suffering—the millions of poor and hungry, the dull algebra of children dying each day of hunger and hunger-related illness. Victims of life's natural lottery, their lives are not "important failures."[1] For like the man who fell among thieves in Jesus' parable, they are noticed only to be ignored, forgotten; their anguish leaves no mark upon our world (Luke 10:29–37).

What shall we say of their strange, yet familiar tale? Like the priest and Levite of the parable, we are tempted to "pass by on the other side," consumed with matters of greater theological import (Luke 10:31–32). Yet if theology is inspired by discipleship, it cannot be remote from the nameless, half-dead stranger. In the words of Archbishop Oscar Romero, we must "approach him or her as did the good Samaritan," for only in "seeing and having compassion" do we "make our way" (Luke 10:33).[2]

Luke depicts the poor as heirs of the Good News (Luke 4:14–22), yet the moral status of their claims remains the subject of dispute. Gustavo Gutiérrez interprets "the defense of human rights under [the] new formality" of the "rights of the poor,"[3] while liberal theorists such as Joel Feinberg dismiss the very notion of such positive rights as but an "exercise of rhetorical license."[4] In Maurice Cranston's words, rights to subsistence or "material benefits for the mass of the people"

[1] The United Nations Children's Fund (UNICEF) estimates that 35,000 children die each day of chronic hunger or related illness (*State of the World's Children 1993* [Oxford: Oxford University, 1993] 29). The phrase "not an important failure" is from W. H. Auden's "*Musée des Beaux Arts*," in *The Collected Poetry of W. H. Auden* (New York: Random House, 1945) 3.

[2] Oscar Romero, "The Political Dimension of the Faith from the Perspective of the Option for the Poor," in *Liberation Theology: A Documentary History*, ed. and trans. Alfred T. Hennelly, S.J. (Maryknoll, N.Y.: Orbis, 1990) 292–303, at 295.

[3] Gustavo Gutiérrez, *The Power of the Poor in History*, trans. Robert R. Barr (Maryknoll, N.Y.: Orbis, 1983) 87–88; see likewise Jon Sobrino, *Spirituality of Liberation: Toward Political Holiness*, trans. Robert R. Barr (Maryknoll, N.Y.: Orbis, 1988) 103–14.

[4] Joel Feinberg, *Social Philosophy* (Englewood Cliffs, N.J.: Prentice-Hall, 1973) 66–67.

are best left to the twilight realm of "utopian aspiration."[5] Critics of liberalism object in a similar vein that the partiality and partisan nature of Romero's "option for the poor" reduce the biblical concept of the poor to the class morality of "the proletariate in the marxist sense." For Joseph Cardinal Ratzinger, an interpretation so inimical to the common good betrays "the true meaning of ethics."[6]

While biblical justifications have been offered for asserting the privilege of the poor, the ethical tenor of such criticisms invites a critical ethical response.[7] One wonders, that is, whether the biblical belief that "the poor merit *preferential* attention, whatever may be [their] moral or personal situation"[8] represents a suspension of the ethical ideal of the *common* good, or whether Gutiérrez's "theocentric" invocation of the rights of the poor can be reconciled with the central role of impartiality or fairness in modern, pluralist societies.[9] For, as the remarks of Feinberg and Cranston attest, the preeminent role of "justice as fairness" in modern liberal theory casts doubt upon the very legitimacy of such preferential attention.

In these pages, I will first offer a brief historical critique of the liberal understanding of impartiality and its modern exposition in the writings of John Rawls. In light of that critique, I will then argue that the privilege of the poor, in its moral and epistemic aspects, is vindi-

[5] Maurice Cranston, *What Are Human Rights?* (New York, Basic Books, 1962) 35, 41.

[6] See Joseph Cardinal Ratzinger, "Liberation Theology" (1984), in *Liberation Theology: A Documentary History* 367–74, at 371, 373; Congregation for the Doctrine of the Faith, "Instruction on Certain Aspects of the 'Theology of Liberation' " (Vatican City, 1984), in *Liberation Theology: A Documentary History* 393–414, at 404, 411–12. It should be noted that Cardinal Ratzinger accepts "a love of preference" for the poor, which, he argues, must be divested of any ideologically reductive implications (Congregation for the Doctrine of the Faith, "Instruction on Christian Freedom and Liberation" [March 22, 1986], in *Liberation Theology: A Documentary History* 461–97, at 482–83).

[7] Cf. Stephen J. Pope's illuminating "Proper and Improper Partiality and the Preferential Option for the Poor," *TS* 54 (1993) 242–271; and Patrick H. Byrne, "*Ressentiment* and the Preferential Option for the Poor," *TS* 54 (1993) 213–241. In his critique of Nietzschean *ressentiment*, Byrne considers the implications of Lonergan's conception of charity as "being in love in an unrestricted fashion," yet does not develop the distinctively ethical or systemic aspects of "personal conversion" (ibid. 233, 236). And though Pope adumbrates a "morally justifiable" care (*cura*) for the needy, his analysis does not attend to the full ethical import of their claims (ibid. 252, 268–271).

[8] See Final Document, Third General Conference of the Latin American Bishops, "Evangelization in Latin America's Present and Future" (Puebla de los Angeles, Mexico, Jan. 27-Feb. 13, 1979) no. 1142, as quoted in Gustavo Gutiérrez, *A Theology of Liberation: History, Politics, and Salvation* (Fifteenth-Anniversary ed., trans. Caridad Inda and John Eagleson [Maryknoll, N.Y.: Orbis, 1988]) xxxviii (emphasis added).

[9] Gutiérrez, "Option for the Poor," trans. Robert R. Barr in *Mysterium Liberationis: Fundamental Concepts of Liberation Theology*, ed. Ignacio Ellacuría and Jon Sobrino (Maryknoll, N.Y.: Orbis, 1993) 235–50, at 239–40.

cated by the ideal of impartiality itself. Such a general ethical assessment, I conclude, illumines the distinctive theological implications of the privilege of the poor for the disciple who "sees and has compassion" (Luke 10:33).

THE IDEAL OF IMPARTIALITY

The expression "such and such a distribution is *impartial*" is best conceived syncategorematically, for though bearing the form of a description, it does not signify a particular (e.g. equalitarian) allocation.[10] The function of the expression is rather to generate descriptions in terms of the appropriate distributive criteria, such as desert, merit, need, rights, etc., so that relevantly similar cases are treated similarly.[11] When Tennyson's Ulysses proclaims "I mete and dole / Unequal laws unto a savage race,"[12] he is not, for that reason, sinning against impartiality, for as Plato says in the *Laws,* "equal treatment results in inequality when it is given to what is unequal—unless given in due measure."[13]

Whether a preferential attention to the poor is impartial thus depends upon the maxims interpreting due measure—whether, that is, the morally relevant or "justicizing" features of interpersonal comparisons derive from interpretations of agents' merit, need, or, as in the liberal critique, their equal rights or (negative) liberties.[14] For if, as Rawls contends, a fair distribution is one in which agents' liberty is "restricted only for the sake of liberty," recognizing the (positive) claims of the poor may seem dangerously utopian.[15] And yet the primacy of liberty is by no means perspicuous; its privileged role emerges as the denouement of a historical argument to which we will now turn.

The Rule of Liberty

Unravelling the social tapestry of the *polis* and the *civitas Dei,* the modern contract theorists spun the new morality of liberty (*liberum*

[10] For an analogous interpretation of the predicate "intentional," cf. Donald Davidson, *Essays on Actions and Events* (Oxford: Clarendon, 1980) 3–19.

[11] See Gregory Vlastos, "Justice and Equality," in *Social Justice,* ed. R. Brandt (Englewood Cliffs, N.J.: Prentice-Hall, 1962) 31–72, at 35. Impartial appraisals thus imply both the interpretation and consistent application of the relevant moral norms.

[12] Alfred Lord Tennyson, *Tennyson: A Selected Edition,* ed. Christopher Ricks (Berkeley: University of California, 1989) 141.

[13] Plato, *The Laws,* ed. E. B. England, 2 vols. (New York: Manchester University, 1921) 757a.

[14] Vlastos, "Justice and Equality" 35.

[15] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap/Harvard University, 1971) 302; cf. Charles Frankel, *Human Rights and Foreign Policy,* Headline Series 241 (New York: Foreign Policy Association, 1978) 36–49.

arbitrium) divested of natural finality (*libertas*). While in the contemplative *eudaimonia* of Aristotle "felicity of this life . . . consisteth . . . in the repose of a mind satisfied," it is precisely the want of this which impresses Hobbes. "For there is no such *finis ultimus* (utmost aim) nor *summum bonum* (greatest good) as is spoken of in the books of the old moral philosophers. . . . Felicity is the continual progress of the desire, from one object to another; the attaining of the former being still but the way to the latter."[16]

No longer limited by the ideal of the good life (i.e. as specified by the *telos* of the common good), freedom, for Hobbes, was merely one's power to do "as he will himself, for the preservation of his own nature; that is to say, of his own life."[17] The "Law of Nature" (*lex naturalis*) was but a fetter of hindrance upon our "Right of Nature" (*jus naturale*) to do "what [one] has a will to."[18] Society was itself a grand artifice, a voluntary compact in which mutual obligation derived from subjective right (*jus subjectivum*) rather than natural obligation. And though Locke harks back to the "judicious Hooker's" Thomism,[19] the leitmotif of liberalism is no longer the objective *law* (*jus objectivum*) of the medievals, but the "natural, inalienable and sacred *Rights* of Man."[20]

For heirs of the liberal tradition, the attenuation of teleology to technical or instrumental reasoning implies a plurality of ultimate (intrapersonal and interpersonal) values. Prudence (*phronēsis*), once ordered to the good of the *polis* as a "perfect community," has become *technē,* the art of achieving "our own good in our own way."[21] It is, indeed, the very incommensurability of our ends that leads us to cherish our freedom to choose. For in the absence of objective social values, liberty to "do what [one] has a will to" do emerges as our foremost right. And since, as Isaiah Berlin observes, "liberty in this sense means liberty *from;* absence of interference," our liberal heritage is loathe to recognize any but negative rights or immunities.[22] In Feinberg's words, only "passive negative" rights (not to be done to) merit the title of exceptionless human rights, while "positive" social and

[16] Thomas Hobbes, *Leviathan,* chap. 11, in *British Moralists 1650–1800,* ed. D. D. Raphael, vol. 1 (Oxford: Clarendon, 1969) 32–33.

[17] Ibid. chap. 14 (Raphael 1.38–39). [18] Ibid. chap. 21 (Raphael 1.55).

[19] John Locke, *The Second Treatise of Government,* ed. Thomas P. Peardon (Indianapolis: Bobbs-Merrill, 1952) 4.

[20] *Déclaration des Droits de l'Homme et du Citoyen* (emphasis added). See A. P. d'Entrèves, *Natural Law,* 2d ed. (London: Hutchinson, 1970) 61–62.

[21] In John Stuart Mill's words, the "only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it" (*On Liberty,* ed. Gertrude Himmelfarb [New York: Penguin, 1974] 72).

[22] Isaiah Berlin, *Four Essays on Liberty* (London: Oxford University, 1969) 127.

economic rights, e.g. an entitlement to adequate nutrition, are dismissed as rhetorical license.[23] For while negative rights or immunities enjoin duties of forbearance, an entitlement to food, shelter, security, or education encumbers liberty with obligations which "determineth and bindeth."[24] Whence the gravamen of the liberal critique, for preferential attention to such positive rights in social policy can only conspire against our liberty.

Justice as Fairness

One might, of course, reject such a limited moral palette in favor of the richer biblical motifs of *sedāqāh* (justice) or Christian discipleship. Yet such a critique (which we will entertain below) might readily be dismissed as unpersuasive or even quaint if we fail to show its moral import for a religiously pluralist, modern society. I will, accordingly, offer an internal criticism of Rawls's defense of the liberal ideal of impartiality as a prelude to our reflections on the privilege of the poor.

In terms reminiscent of Berlin, Rawls regards "the fact of pluralism" as "a permanent feature of the public culture of modern democracies."[25] Our differing, deeply opposed, and finally incommensurable conceptions of the good admit of no discursive justification.[26] So it is, amidst the perpetual rivalry of our ultimate values the ultimacy of liberty cannot merely be asserted; its "lexical priority" must be shown. The first principles of justice are not presupposed as in Kant's ideal contract, but rather depicted as the *outcome* of an original agreement. Invoking the heuristic device of a social contract, Rawls assumes that self-interested choice under the "veil of ignorance" in the original position is tantamount to fair or impartial choice once the veil is lifted.[27] His mutually disinterested rational choosers aspire to pure procedural justice at the highest level, for they are bound by neither an "independent [material] criterion for the right result" nor "prior moral ties to each other."[28] Since they are "not required to apply, nor are they bound by, any antecedently given principles of right and justice," their suit-

[23] Feinberg, *Social Philosophy* 88. Maurice Cranston argues that rights to food or other material benefits were "unknown to Locke and the natural rights theorists of the eighteenth century" (*What Are Human Rights?* 34). For a different interpretation, see A. I. Melden, *Rights and Persons* (Berkeley: University of California, 1977) 237–42.

[24] Hobbes, *Leviathan,* chap. 14 (Raphael 1.39).

[25] Rawls, "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (1987) 1–25, at 4. See also Rawls, *Political Liberalism* (New York: Columbia University, 1993) 133–72.

[26] Rawls, *Political Liberalism* xv, xviii, 133.

[27] Rawls, *A Theory of Justice* 60–64, 150–61, 190.

[28] Ibid. 86, 128.

ably constrained prudential choice will itself define the appropriate principles of justice,[29] i.e. (1) the lexical priority of liberty and (2) the equitable arrangement of social and economic inequalities so as to accord with "fair equality of opportunity" and the "greatest benefit of the least advantaged."[30]

The latter "difference principle" may justify a preferential attention to the poor, yet the lexical priority of liberty (which stipulates that liberties must be fulfilled fully prior to the satisfaction of any other claims) casts doubt upon the status of their rights, i.e. whether claims of subsistence are fittingly described as rights, or if so, what moral weight they possess in defining due measure. One might mine this Rawlsian vein, yet a more radical critique commends itself; for the tacit, evaluative premises of the original position belie the pure procedural primacy of liberty.

As we have seen, the principles defining impartial judgment are themselves recursively justified in Rawls's appeal to the parties' fair or impartial choice. The hypothetical choice justifying liberty is subject to what Rawls regards as reasonable requirements flowing from our nature as free and equal moral persons, e.g. "the veil of ignorance and the symmetry of the parties with respect to one another," the "formal constraints of the concept of right," and the "stipulation that [society's] basic structure is the first subject of justice."[31] So constrained, the parties' choice respects the distinction of persons and their differing, even incommensurable conceptions of the good.

In later writings, Rawls acknowledges that the priority of liberty may obtain only under conditions of a modern, democratic society (what Richard Rorty terms "postmodernist bourgeois liberalism") rather than "*sub specie aeternitatis*."[32] Yet, whether in its universalist (Kantian) or historicist (Humean) form, Rawls's gambit of recurring to impartial choice depends upon a substantive ideal of the moral person. For citizens of a well-ordered society regard themselves as "all equally worthy of being represented" by the contracting parties,[33] i.e. as

[29] Rawls, "Kantian Constructivism in Moral Theory," *Journal of Philosophy* 77 (1980) 515–572, at 523–4.

[30] Rawls, *A Theory of Justice* 302–3; see *Political Liberalism* 5–6.

[31] Rawls, "Kantian Constructivism" 530; see *Political Liberalism* 11, 89–129, 257–88. Society's basic structure signifies its "main political, social, and economic institutions" as a unified, intergenerational "system of social cooperation."

[32] Rawls, *A Theory of Justice* 587. See Richard Rorty's historicist interpretation of Rawls in "The Priority of Democracy to Philosophy," in *Prospects for a Common Morality*, ed. Gene Outka and John P. Reeder (Princeton, N.J.: Princeton University, 1993) 254–78.

[33] Rawls, "Kantian Constructivism" 546.

"moral persons with a right to equal respect and consideration in the design of their common institutions."[34] Prudential choice is thus *intrinsically* limited by respect for the equal worth of rational agents, recalling the Aristotelian distinction of *technē* (instrumental reasoning) and *phronēsis* (the prudential expression of moral self-knowledge in *praxis*). For the ideally regulative status of the moral personality is reflectively exhibited or represented rather than constructed in hypothetical, prudential choice. Conceding that the equal respect owed persons regardless of their social roles is fundamental, Rawls introduces a substantive conception of worth in the depiction of the original position, so ensuring that the lexical priorities of justice "represent the value of persons that Kant says is beyond all price."[35]

A formal, procedural conception of justice as fairness, explicating Kant's formal formula of the categorical imperative (i.e. the "formal principle of right"), depends then upon an antecedent recognition of the material formulation of respect for persons.[36] The regulative constraint of formal universalizability presumes the *prior* recognition of what Rawls terms a moral conception of the person, for only if agents are accorded equal respect to "form, to revise, and rationally to pursue a conception of the good" will the original position yield the appropriate principles of justice.[37] To concede this, however, is to admit that rationality is not *ab ovo* disinterested, for the maxim of respect (which requires not only impartiality but unanimity in the choice of a particular conception of justice) implies that persons are bound by prior moral ties to each other.[38]

The Kantian maxim, we may say, prescribes that one must respect and try to understand another person's conception of the good; and yet, as Bernard Williams observes, under conditions of exploitation that consciousness may be suppressed or destroyed. The more extreme the degradation, indeed, the more likely it is that its victims "do *not* see themselves differently from the way they are seen by the exploiters; either they do not see themselves as anything at all, or they acquiesce passively in the role for which they have been cast."[39] And yet neither

[34] Rawls, "Fairness to Goodness," *Philosophical Review* 84 (1975) 536–54, at 539.

[35] Rawls, *A Theory of Justice* 511, 586.

[36] See Immanuel Kant, *Groundwork of the Metaphysic of Morals,* trans. H. J. Paton (New York: Harper and Row, 1964) 436–37 (pages refer to the Prussian Academy edition, vol. 4).

[37] Rawls, "Kantian Constructivism" 525.

[38] Rawls, *A Theory of Justice* 140–42, 263.

[39] Bernard Williams, "The Idea of Equality," in *Problems of the Self* (Cambridge: Cambridge University, 1973) 230–49, at 236–37; see Berlin's observation that the "triumph of despotism is to force the slaves to declare themselves free" (*Four Essays on Liberty* 165).

the formal constraints of impartiality nor unanimity suffice to preclude "the awful sense of self-hatred and self-disgust" which leads victims, in Desmond Tutu's words, to "cry out for the flesh pots of their days of bondage."[40] In the design of the original position, such passive acquiescence in servitude is rather deemed inconsistent with the moral conception of free and equal citizens endowed with moral powers (and correlative interests in their realization). Respecting another *as* a moral agent thus presumes respect not only (1) for her particular conception of the good, but (2) for her "moral power" or capacity, in Rawls's terms, to "form, to revise, and rationally to pursue" such a conception. Imposing the veil of ignorance and so bracketing the parties' particular intentions, reveals their "highest-order interest" *as* moral persons in the exercise of rational agency. Such an interest, says Rawls, is "supremely regulative as well as effective," governing our "higher-order interests in sustaining and promoting the realization of our particular conceptions of the good."[41]

Our highest-order interest in rational agency, consistent with such an ideal of the moral person, may in turn be specified by agents' entitlements to the general prerequisites of its exercise. Alan Gewirth terms these the "generic features of action": the provision of basic liberties (defining the scope of my actions) and security and subsistence (delimiting the possibilities of action open to me).[42] Such basic entitlements or "generic rights" are mutually implicatory, for they derive less from a particular conception of the good than from the presuppositions of agency itself. Thus even so staunch a defender of liberalism as Isaiah Berlin concedes that, were I to betray "my friend under threat of torture, perhaps even if I act from fear of losing my job, I can reasonably say that I did not act freely."[43] One cannot, then, dismiss positive rights as rhetorical license, for as Rawls himself concedes, the complete scheme of equal liberty must ensure, at least, the basic conditions of well-being if liberty is to retain its status as a fundamental right. For Rawls's original choosers, the lexical priority of liberty depends upon the basic, structural satisfaction of subsistence and security claims, for until "the basic wants of individuals can be

[40] Desmond Tutu, "The Theology of Liberation in Africa," in *African Theology en Route*, ed. Kofi Appiah-Kubi and Sergio Torres (Maryknoll, N.Y.: Orbis, 1979) 162–75, at 167.

[41] Rawls, "Kantian Constructivism" 525.

[42] Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago, 1982) 41–78. My appeal to Gewirth rests on his analysis of rights as the prerequisites of agency rather than the normative implications of his principle of generic consistency.

[43] Berlin, *Four Essays on Liberty* 130 n. 1.

fulfilled, the relative urgency of their interest in liberty cannot be firmly decided in advance."[44]

Lest we seem to be conjuring positive rights from the thin premises of liberalism—like real rabbits from an imaginary hat—let us recall that it is the premises themselves (invoked in defining due measure) we questioned, i.e. the supposition of mutually disinterested, technical rationality and the lexical priority accorded individual (negative) liberty over positive social goods. For, as we have seen, neither a technical reduction of prudence nor a purely procedural conception of justice will suffice to justify the priority of liberty. Indeed, the justification of liberty as a right depends upon a positive respect for persons as moral agents, and hence for the generic conditions of their agency, whether these be interpreted as basic rights to liberty, security, or subsistence.

Our moral entitlement to equal respect, explicated in terms of our basic rights, thus constitutes *a limine* a common good, internally constraining liberty of choice (*liberum arbitrium*). For the ideal of an "ethical commonwealth"[45] in Kant's terms, in which each agent is respected as such, antecedently limits my conception of the good without thereby subordinating it to a single and general comprehensive conception which, Rawls fears, "could be maintained only by the oppressive use of state power."[46] On the contrary, attaining impartial consensus, as in Rawls's thought experiment, *presupposes* our respect for the rights of agency. Pace Hobbes, one's right to do what one has a will to do is limited by the claim-rights of others, and indeed only thus acquires the status of a right. And as the maxim of respect implies the conditions of its application, so may we say that the basic, structural ideal of the common good is specified by a regime of basic rights—in the words of Ignacio Ellacuría, the "union of structural conditions" presumed (even by Rawls's original choosers) for fair and impartial choice.[47]

THE PRIVILEGE OF THE POOR ETHICALLY CONSIDERED

While a lengthy rehearsal of these arguments would take us far afield, it suffices for our present purposes to note that our moral enti-

[44] Rawls, *A Theory of Justice* 542–43; see also 243–51.

[45] Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (New York: St. Martin's 1929) A 808 = B 836; see *Religion within the Limits of Reason Alone*, trans. Theodore M. Greene and Hoyt H. Hudson (New York: Harper and Row, 1960) 87–93.

[46] Rawls, "The Idea of an Overlapping Consensus" 4.

[47] Ignacio Ellacuría, "Human Rights in a Divided Society," in *Human Rights in the Americas: The Struggle for Consensus* (Washington: Georgetown University, 1982) 56. Such a construal, I believe, shows the logical correlation of dignity, human rights, and the common good in modern Roman Catholic social teaching.

tlement to *equal* respect or consideration justifies *preferential* treatment for those whose basic rights are most imperiled—in Camus' phrase, our taking "the victim's side."[48] For inasmuch as equal consideration does not entail identical treatment, one may distinguish legitimately between indiscriminate regard for moral persons and discriminate response to their varied situations.[49] What Thomas says of *unequals*—that a servant who is ill merits greater attention than a son who is not—pertains, a fortiori, to equals. The satisfaction of *equal* basic rights, in materially dissimilar conditions, justifies a discriminate response.[50]

The Rights of the Poor

In social ethics, such as a discriminate response finds expression in the graduated moral urgency of differing human rights, i.e. the (lexical) priority of persons' basic rights over other, less exigent claims, e.g. property rights; and in the differing material conditions presupposed for the satisfaction of the same human rights.[51] A regime of rights may thus embody a legislative or juridical preference for the least favored in society and differential material entitlements corresponding to the differing intrapersonal and interpersonal prerequisites of agency, e.g. the greater nutritional needs of pregnant women.[52] The rights of the poor refer us to the *particular* circumstances, e.g. lack of nutrition, potable water, etc., under which *universal* claim-rights are legitimately asserted and enforced. The privilege of the poor rests less, then, in the restrictive attribution of rights than in the moral exigency of their universal claims: the *cri de coeur* of *any* agent who suffers from hunger, who is subject to torture, whose basic liberties are systemically suppressed.[53]

[48] Albert Camus, *The Plague* (New York: Alfred A. Knopf, 1960) 230. In the present context, the term "victim" is an evaluative moral description referring to those suffering deprivation of their basic rights; as such, it is reducible neither to class membership nor to a particular psychological state.

[49] See Gene Outka, *Agape* (New Haven: Yale University, 1972) 20. Cf. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University, 1978) 227.

[50] Thomas Aquinas, *Summa theologiae* 2-2, q. 31, a. 2. See Pope, "Partiality and the Preferential Option" 263.

[51] For a rights-based analysis of priority principles for public policy, see Henry Shue, *Basic Rights* (Princeton, N.J.: Princeton University, 1980) 111–30.

[52] Jean Drèze and Amartya Sen, *Hunger and Public Action* (Oxford: Clarendon, 1989) 37–42.

[53] The lexical priority of basic rights reveals the moral significance of basic needs, even if not all needs worthy of care fall under the rubric of justice. Neither are basic rights (e.g. civil-political liberties) simply reducible to "special care for the needy"; see Pope, "Partiality and the Preferential Option" 258. Indeed, as Shue argues, taking the

The Epistemic Privilege of the Poor

Our reflections upon the twofold implication of the maxim of respect, i.e. that each agent (1) is equally worthy of being represented in the design of society's common institutions, and that (2) such representation presumes the institutional protection of persons' basic rights, permit us to understand the *moral* relevance of an epistemic or hermeneutical privilege of the poor. For if we regard ourselves as all equally worthy of being represented, then the claims of those denied such representation, often through systemic suppression of their basic rights, become morally imperious.[54] Seeing the victims' point of view (their epistemic or hermeneutical privilege) thus emerges as a touchstone of the legitimacy of our prevailing institutional arrangements; only thus can we offer an equitable assessment of our legal enactments, juridical decisions, economic policies, etc. For at issue is not merely a fair, consensual arrangement of *inequalities,* e.g. Rawls's difference principle, but the fairness or impartiality of the consensus itself, i.e. persons' equitable representation in their common social institutions.[55] Where, conversely, persons' basic rights are denied, consensus may well be illusory (if agents' moral powers are repressed in passive acquiescence in servitude) or coerced (if their point of view is systemically suppressed).

The epistemic or hermeneutical privilege of the poor, we may say, rests not in canonizing a particular point of view, but rather in revealing the partiality of such illusory or coerced consensus—the "systematic distortions" of our communicative interaction.[56] Merely including the poor in existing institutional arrangements will not suffice, for *only* if the rights of the poor, including a fortiori their participatory rights, are respected can we arrive at true (valid) judgments of due measure in the design and implementation of policy (hence their properly epistemic privilege). Such judgments correspond to what Rawls terms "imperfect procedural justice" where "there is an independent criterion for the correct outcome" (respect for the basic rights of the

victims' side implies not only duties to aid the deprived, but duties to protect from deprivation (*Basic Rights* 16–18, 60).

[54] Rawls, "Fairness to Goodness" 539.

[55] Shue argues that such representation entails "effective participation," i.e. "genuine influence upon the fundamental choices among the social institutions and the social policies" that protect and promote our basic rights, and "where the person is directly affected, genuine influence upon the operation of institutions and the implementation of policy" (*Basic Rights* 71).

[56] See Jürgen Habermas, "The Hermeneutic Claim to Universality," in Joseph Bleicher, ed., *Contemporary Hermeneutics* (Boston/London: Routledge and Kegan Paul, 1989) 190–203.

poor), even if no decision procedure invariably ensures their satisfaction.[57] Yet inasmuch as a procedure for determining public policy will be fair or impartial only if it respects the rights of the poor, their moral and epistemic privilege is vindicated. "The irruption of the poor in history" from "passive resignation" is not a mere grace note added to the theory of justice, but a dominant motif, nowhere better illustrated than in the case of hunger.[58]

Hunger as Moral Tragedy

In our everyday morality, we typify the hungry as victims of life's natural lottery. Their wretchedness, though lamentable, is divested of *moral* tragedy; as we have seen, the positive rights of the poor to subsistence are denied or subordinated to our negative immunities from interference, as we, like the priest and Levite of the parable, "pass by on the other side." Taking the victims' side, conversely, reveals the natural lottery to be rigged. Jean Drèze and Amartya Sen assess the persistence of hunger in terms of entitlements, defined as the set of commodities, e.g. food, over which one may establish command through formally or informally recognized rights of ownership.[59] Famine, endemic in Africa, and chronic undernourishment, afflicting over 786 million people in the developing world,[60] thus represent "entitlement failures"—failures of persons to enjoy customary or legal claim-rights to food and other prerequisites of nutritional well-being, e.g. access to health care, medical facilities, elementary education, drinking water, and sanitary facilities.[61]

Defining hunger as an entitlement failure remedies the lacunae of other pertinent indices, e.g. aggregative indices of food availability, since famine may persist despite relative increments of per capita food availability if persons lack rights to enjoy it. Our definition, moreover,

[57] Rawls, *A Theory of Justice* 86.

[58] Gutiérrez, *The Truth Shall Make You Free,* trans. Matthew J. O'Connell (Maryknoll, N.Y.: Orbis, 1990) 8–11.

[59] Drèze and Sen, *Hunger and Public Action* 9–17, 56–61; see Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon, 1981) 1–8, 45–51, 154–66. Such rights may consist in initial endowments or be acquired through exchange, either with nature in the form of production, or through trade. Attending to persons' entitlements permits us to incorporate other relevant indices, e.g. total food availability, caloric or protein norms, etc. in our estimates of nutritional deprivation, while recognizing the integral relation of a right to food to other forms of entitlement requisite to nutritional well-being. Unlike mere aggregative indices, e.g. of total food availability, entitlement assessments reveal, moreover, the disproportionate vulnerability of certain groups, in particular women and children.

[60] World Food Programme, *1993 Food Aid Review* (Rome: World Food Programme, 1993) 10–11.

[61] See Drèze and Sen, *Hunger and Public Action* 9, 12–14, 24, 42–47, 65–68.

has the further virtue of revealing the *morally* tragic character of hunger, for as Rigoberta Menchú observes, "it is not fate which makes us poor."[62] Famine is never merely a natural epiphenomenon of drought or Malthusian scarcity; indeed, the remarkable expansion of modern economies "has made it, perhaps for the first time, possible to guarantee adequate food for all."[63] In extremis, such guarantees may take the form of aid, yet as we have seen, the systemic nature of deprivation requires institutional redress. Under the rubric of the common good, domestic and global policies must protect persons against entitlement failures by enforcing their (mutually implicatory) claim-rights,[64] e.g. subsistence claims not only to potable water and food, but to land tenure, employment, and educational opportunities, especially for women, liberties ensuring their effective civil-political participation (the denial of which is often at the root of internecine conflict), and security against torture or intimidation when such claims are made.[65]

The persistence of hunger and the recurrence of famines are thus at once "morally outrageous and politically unacceptable."[66] For far from overstepping the ethical (universal) requirements of impartiality, taking the victims' side reveals the moral tragedy of "our neighbor, the masses."[67] Yet if the privilege of the poor is not merely edifying, religious rhetoric, one may still demur that our philosophic "reading of the law" (Luke 10:26–27) falls short of Gutiérrez's theocentric, prophetic interpretation—a lacuna we will now address in our final section.

THE PRIVILEGE OF THE POOR CHRISTIANLY CONSIDERED

"The poor are preferred," says Gutiérrez, "not because they are necessarily better than others from a moral or religious standpoint, but because God is God . . . for whom the last are first." Such rhetoric "shocks our ordinary, narrow understanding of justice; it reminds us that God's ways are not our ways (cf. Isa 55:8)."[68] Yet the "theocentric, prophetic option . . . demanded by [God's] love" is not an ineffable

[62] Rigoberta Menchú, *I, Rigoberta Menchú: An Indian Woman in Guatemala,* ed. Elisabeth Burgos-Debray, trans. Ann Wright (New York: Verso, 1984) 133.

[63] In a similar vein, entitlement assessments (as indicative of persons' basic capabilities) permit us to account for intrapersonal and interpersonal variations in nutritional requirements; see Drèze and Sen, *Hunger and Public Action* 3, 35–45.

[64] Structural adjustment programs failing to respect the lexical priority of these basic rights are justly censured; see *World Resources: A Report by the World Resources Institute* (New York: Oxford University, 1992) 32–35.

[65] Shue, *Basic Rights* 52–53, 60, 67–87.

[66] Drèze and Sen, *Hunger and Public Action* 3–4.

[67] M. D. Chenu, "*Les masses pauvres,*" in G. Cottier et al., *Eglise et pauvreté* (Paris: Cerf, 1965) 169–76, at 169.

[68] Gutiérrez, "Option for the Poor" 241.

command—a Barthian aporia in which reasons cease to figure.[69] In this concluding section, I wish to argue, rather, that the divine command of *agapē* (1) provides ultimate justification for the rights of the poor (as prescriptive norms of what Karl Rahner terms "essential ethics"), (2) even as it illumines the disciples' form of life (3) in the "formal, existential ethics" of Christian discernment.[70] For in the words of the prophet Micah, the divine will is not veiled in mystery; "this is what Yahweh asks for you, only this: to act justly, to love tenderly, and to walk humbly with your God" (Micah 6:8).

"To Act Justly"

Our defense of the rights of the poor is not, as Barth might fear, an "armistice with the peoples of Canaan."[71] For although the suasive force of such rights is justified proximately by the maxim of respect for persons, the maxim itself finds ultimate vindication in the theocentric law of *agapē*. The biblical injunction bids us respect our neighbor as irreducibly valuable prior to distinctions of merit or desert. Yet as in the tale of the Good Samaritan, such impartial respect for my neighbor's equal dignity justifies preferential attention for my neighbor in distress.[72] The exemplary narrative of the Good Samaritan reveals the boundless, universal scope of *agapē* precisely in enjoining a comprehensive solidarity with those who suffer.[73]

Our theocentric reading of the law thus retraces our earlier steps, for, though semantically richer, the law of love underpins the moral maxim of equal respect (and eo ipso the "justicizing" criteria of the claims that give it force). As in modern Roman Catholic social teaching, the essential dignity of persons implies respect for their basic claim-rights (as a moral minimum). So we may say that distributive justice is "the privileged way of charity."[74] For in a world where the

[69] Ibid. 240.

[70] Karl Rahner, "On the Question of a Formal Existential Ethics," in *Theological Investigations* 2, trans. Karl H. Kruger (Baltimore: Helicon, 1963) 217–34. "Essential" ethics refers to the set of universal, action-guiding moral precepts ascertained by natural reason (e.g. respect for the basic rights of persons); one need not assume that such precepts depend upon an "esssentialist" metaphysics.

[71] Karl Barth, *Church Dogmatics* II/2, trans. G. W. Bromiley et al. (Edinburgh: T. and T. Clark, 1957) 524.

[72] See Outka, "Universal Love and Impartiality," in *The Love Commandments: Essays in Christian Ethics and Moral Philosophy,* ed. Edmund N. Santurri and William Werpehowski (Washington: Georgetown University, 1992) 1–103, at 10–11.

[73] See Wolfgang Schrage, *The Ethics of the New Testament,* trans. David E. Green (Philadelphia: Fortress, 1988) 74–81.

[74] Paul Ricoeur, "The Socius and the Neighbor," in *History and Truth,* trans. Charles A. Kelbley (Evanston, Ill.: Northwestern University, 1965) 105.

victim of the parable is legion—in Sobrino's words, "a whole suffering people on the way"—there is no biblical suspension of the ethical.[75] One "loves tenderly" only if one "acts justly."[76]

The essential rights of the poor thus limn our personal, existential discernments, so that we see the moral tragedy of our neighbor, the masses. In this respect, the ecclesial option for the poor is the proper horizon, rather than mere object of Christian discernment. And yet the necessity of seeing, i.e. of discernment, implies that identification with the poor and hungry cannot be reduced to the immediacy of personal encounter—although such is typically a necessary mediation.[77] One must not, in Paul Ricoeur's words,

> enclose oneself within the letter of the parable of the good Samaritan, nor . . . impose upon it a personalist anarchism. The parable does not relieve me of the responsibility of answering this question: what does the concept of 'neighbor' mean in the present situation? This may be to justify an institution, amend an institution, or criticize an institution.[78]

In answer to this question, the martyred Jesuits and women of the Central American University, the UCA, sought to make theirs "a university with a heart of flesh." In Sobrino's words, they

> never passed by on the other side like the priest and the Levite in the parable, so as to avoid meeting and being affected by the people's suffering. . . . They never sought refuge in academic work to avoid the needs of the people, as if university knowledge was not also subject to the *primary ethical and practical requirement* to respond to the cry of the masses. So the inspiration of all their work and service was this compassion and pity, which they truly put first and last.[79]

"To Love Tenderly"

Yet if the Christian "justices," so justice bears the mark of love, for, as Sobrino notes, compassion illumines the context of "acting justly."

[75] Jon Sobrino, "Companions of Jesus," in Jon Sobrino et al., *Companions of Jesus: The Jesuit Martyrs of El Salvador* (Maryknoll, N.Y.: Orbis, 1990) 13.

[76] Our elaboration of Gutiérrez's understanding of the rights of the poor addresses Pope's criticism of "an excessively meritarian notion of justice," without implicitly universalizing and thereby attenuating the moral sense of need. Since, moreover, the priority of such rights pertains to society's basic structure, a "complex account of justice" may incorporate other criteria, e.g. merit, special relations, etc. in other spheres of justice ("Partiality and the Preferential Option" 256, 267—71).

[77] Such identification implies one's solidarity with victims as victims, i.e. one's loyalty to the cause of vindicating their rights. Complex differences internal to communities of the poor, e.g. attitudes to women, preclude any premature adoption of their interpretative perspective as such.

[78] Ricoeur, "The Socius and the Neighbor" 105.

[79] Sobrino, "Companions of Jesus" 13, 40, emphasis added; see also Ellacuría's address, "The Task of a Christian University" (ibid. 147–51).

If, like the lawyer, anxious to justify ourselves, we ask "Who is my neighbor"?—seeking a precise delimitation of rights and duties—Jesus replies with a question of his own, "Who is it that proved himself neighbor?"[80] The response, "the Samaritan," disturbs the even tenor of the parable; for the Samaritan, my enemy, not only proves himself neighbor, but in exemplifying neighborliness as the fulfillment of the law, is the one whom I must imitate: "Go and do likewise!" (Luke 10:37).

Jesus' parable is not, then, merely a hortatory midrash illustrating the great command of love. For the question posed in Jesus' reading of the law is not finally "Whom shall I love?" as if I were myself the stillpoint from which love radiates, but rather "Who shall I become (prove myself to be) in loving?"[81] The word of the parable "seduces" the hearer (Jer 20:7), forging "an eschatological unity of promise and demand," not "complete until the hearer is drawn into it as participant. . . . The parable invites, nay, compels [one]" to make a decisive response.[82]

So Jesus, in salvific irony, answers the lawyer's first question, "What must I do to live?" in reversing the second. For the command "to love the Lord with "*all* your heart, with *all* your soul, with *all* your strength, and with *all* your mind, and your neighbor as yourself" (Luke 10:27) is fulfilled not in this or that deed of love, but in one's "selving"[83] as neighbor. What is commanded is one's very self, says Rahner, "oneself demanded in the concreteness of one's heart" (one's "fundamental option").[84] In terms more prosaic, we might say that the "law" of love cannot simply be subsumed in the class of essential moral rules

[80] See John Donahue, *The Gospel in Parable* (Philadelphia: Fortress, 1988) 128–34.

[81] In Kierkegaard's words, "Christ does not speak about recognizing one's neighbor but about being a neighbor oneself, about proving oneself to be a neighbor, something the Samaritan showed by his compassion" (*Works of Love,* trans. Howard and Edna Hong [New York: Harper and Row, 1962] 38).

[82] Robert Funk, *Language, Hermeneutic, and Word of God* (New York: Harper and Row, 1966) 214, 220.

[83] See Gerard Manley Hopkins, "As Kingfishers Catch Fire," in *The Poems of Gerard Manley Hopkins,* 4th ed., ed. W. H. Gardner and H. M. MacKenzie (New York: Oxford University, 1970) 90.

[84] Rahner, "The 'Commandment' of Love in Relation to the Other Commandments," in *Theological Investigations* 5, trans. Karl H. Kruger (New York: Seabury, 1966) 439–59, at 453; see "The Theology of Freedom," in *Theological Investigation* 6, trans. Karl and Boniface Kruger (New York: Seabury, 1974) 178–96; and Rahner's observation that "freedom is not simply the capacity to do this or that but (formally) a self-disposing into finality" ("Reflections on the Unity of the Love of Neighbour and the Love of God," in *Theological Investigations* 6, 231–49, at 240).

or action-guiding precepts, e.g. the "golden rule."[85] Rather the parable, in evoking the disciple's decisive response, reveals, in Wittgenstein's words, "simply what I do" as neighbor.[86] And yet the locution, pace Barth, is not a rhetorical aporia (in which I act without reason), for what I do reveals what it is for me to follow Jesus on the "way," i.e. to "put on the mind of Christ" (Phil 2:5), acting in accordance with those reasons, attitudes, and beliefs befitting his disciple. Here, no further reasons are necessary: "I have reached bedrock, and my spade is turned."[87]

The words of the parable are thus proven true in the community of disciples, for true love rests not in loving the other as oneself, i.e. as merely one's *alter ego,* but in letting the Thou of the other appear (as one becomes neighbor to the nameless, half-dead stranger).[88] The Samaritan sees the man fallen among thieves not in respect of his social titles (the "socius" in Ricoeur's terms), nor indeed, as his generalized "other-I," but as one who appears in compassion as "the first-Thou."[89] The Samaritan enters the world of the *anāwîm,* and what was strange becomes familiar.

"To Walk Humbly with Your God"

And so the words of the parable draw us to the one who speaks them. As patristic allegory "identified the Samaritan with Christ coming to the aid of wounded humanity," so Jesus is the parable of God's "selving" (in the kenotic exaltation of Phil 2:1–11).[90] His word, the disciple avers, is love's word, his command of love, love's command, unveiling

[85] In his hermeneutical criticism, James Gustafson distinguishes moral (prescriptive) and theological (illuminative) uses of Scripture in Christian ethics. In these pages, I argue that the "law" or command of *agapē* may itself function illuminatively by revealing a form of life, i.e. the way (*hodos*) of discipleship. See Gustafson, "The Place of Scripture in Christian Ethics: A Methodological Study," *Theology and Christian Ethics* (Philadelphia: United Church, 1974) 129–138.

[86] Ludwig Wittgenstein, *Philosophical Investigations,* 3d ed., trans. G. E. M. Anscombe [New York: Macmillan, 1958] part 1, par. 217.

[87] Ibid. While indebted to Rahner's analysis of the fundamental option, I differ in favoring a Wittgensteinian construal. For rather than assuming a transcendental ordination of the individual's nonreflexive consciousness to Absolute Being, I interpret one's option as fundamental inasmuch as it expresses "what I do" when "I have exhausted the justifications." Such an interpretation permits us to emphasize the intrinsically social aspect of putting on "the mind of Christ" (Phil 2:5).

[88] See Kierkegaard, *Works of Love* 69.

[89] Ricoeur, "The Socius and the Neighbor" 98–109.

[90] John Donahue, *The Gospel in Parable* 133–34. See Augustine, *Quaestiones Evangeliorum* 2.19; cf. also *De Natura et Gratia* 43, 50.

the way of a crucified love. For in becoming neighbor to the *anāwîm,* the disciple loves *as* he/she is loved. And here, truly, we reach bedrock, for Christ suffers, the Gospels tell us, because he is love, because in a fallen world, to "see and have compassion" is to be one with the beloved—even, in the words of Goethe, "to be nailed to the cross in the thirtieth year."[91]

The irony is complete, for "what I must do to *live*" (my *metanoia*) is "turn" to the world of the poor, of the half-*dead* stranger—in Romero's words, "becoming incarnate in their world, . . . proclaiming the good news to them," even to the point of "sharing their fate."[92] For in Christ, one is always already in communion with the *anāwîm;* one's identification implies not merely taking the victim's side (the essential requirement of ethics), but taking the victim's side as one's own (the formal, existential demand of love). If for Rahner, essential ethics defines the sphere of universal norms, e.g. rights, subsuming the *casus,* a formal, existential ethics pertains to one as "*individuum ineffabile,* whom God has called by name, a name which is and can only be unique."[93] And yet, my "selving" is never in abstracto. One discerns from within the world/word of the parable in which the *individuum ineffabile* of the *other* appears. "To be a Christian," says Gutiérrez, "is to draw near, to make oneself a neighbor, not the one I encounter in my journey but the one in whose journey I place myself."[94]

"Acting justly" is thus never merely a matter of doing the right deed as a *casus* of universal law. One must, rather, emulate the Samaritan in passing to the "side" of the poor. Our moral judgments express a sense of the fitting, so that one "sees and has compassion" (*esplanchnisthē* signifies being moved in one's inmost heart) even as compassion (as a fore-structure of understanding) becomes a way of seeing. Compassion not only guides us in the fitting application of universal norms, e.g. the rights of the poor, but gives rise to existential (personal and ecclesial) imperatives. One acts for justice's sake even when justice itself does not strictly oblige, as when, in the concreteness of one's heart, one proves oneself neighbor as did Romero and the martyrs of El Salvador.[95]

[91] Johann Wolfgang von Goethe, as quoted in Karl Barth, *Church Dogmatics* IV/2, 391.

[92] Romero, "The Political Dimension of the Faith" 298.

[93] Rahner, "On the Question of a Formal Existential Ethics" 226–27.

[94] Gutiérrez, "Toward a Theology of Liberation" (1968), in *Liberation Theology: A Documentary History* 62–76, at 74.

[95] The distinctively Christian character of the privilege of the poor rests, then, in its ultimate, theocentric grounding in *agapē,* the illumination of the context of "acting justly," and the formal, existential imperatives which, though ethically (universally)

Conclusions

While our ethical reflections adumbrate the Christian's response, they fail to exhaust it; for "seeing and having compassion" entails not merely doing the deeds of justice, but doing them with "the mind of Christ Jesus" (Phil 2:5). If the ethical maxim of respect bids me love my neighbor as myself, i.e. respect my neighbor's rights, so the word of Jesus demands my selving as neighbor to the *anāwîm,* my loving even as I am loved. In Luke's parable, it is their tale Jesus tells, a tale of solace (of the stranger who "sees and has compassion") and of intimate betrayal (of the priest and Levite who "see and pass by"). Have I eyes to see and ears to hear? For the parable recalls us to the "unimportant failure" of Calvary, of the Crucified amidst the crucified. Here tragedy is redeemed in tragedy, and the law, "costing not less than everything," is written on our hearts.[96]

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supererogatory, may be perceived as love's demand. For a more detailed exposition, see William O'Neill, "The Distinctiveness of Christian Morality: A Dispute Revisited, *Philosophy and Theology* 7 (1993) 405–23.

[96] T. S. Eliot, "Four Quartets," in *The Complete Poems and Plays: 1909–1950* (New York: Harcourt, Brace and World, 1952) 145.