

Love, Justice, and Natural Law:
On Martin Luther King, Jr. and Human Rights

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There is no question that Martin Luther King, Jr., has a prominent place in the twentieth century history of human rights. Not only is he recognized for the role he played as an activist in, and symbol of, the movement that improved the treatment of African Americans, but his work and words also inspired a broad range of what could be called human rights movements, particularly in the global South. Yet the canon in which King is placed is often that of human rights in practice, as opposed to human rights in theory. The implication is that human rights are an assumed end; King mobilizes the means. His oratory receives more attention than his thought. He is taken to be a rhetorician, not a philosopher, and his ideas are of little interest. Those who take the enactment of social justice as primary also are not particularly interested in King's ideas. For them, "human rights" sounds like a highfalutin notion, a phrase used to mobilize a certain class (educated white liberals) to support a grassroots social movement. For them, if human rights in theory is human rights as ideology, and King is concerned with the only sort of human rights that matters -- the practice of protesting injustice.

Perhaps by taking King's ideas seriously the implicit bifurcation of the human rights canon between theory and practice will come into question -- and along with it the view of human rights as first world ideology that is supported by and supports that bifurcation. Taking King's ideas seriously is a tricky business, for he was, indeed, a rhetorician. Although he was trained as a theologian -- *Doctor King* -- his theological views were eclectic. While some scholars and commentators have attempted to systematically interrogate and organize his

intellectual influences and affiliations, kneading rhetorical language into theological or philosophical argument, here I will suggest a different approach. My interest is in King's words as rhetoric, but I do not take the label of rhetoric as pejorative. I take it as calling attention to performance, to what King's language *does*. And I will argue that this is where King contributes to discussions of human rights, through his rhetoric of natural law which, in its performative dimension, provides a dynamic, flexible fount from which a human rights imagination (including human rights "theory") can be renewed.

King's rhetoric of natural law is particularly potent, and has often been ignored. The dismissal of natural law language as "mere" rhetoric betrays an allergy to religion, to taking religious language seriously, endemic amongst academics and the cultural elite -- at least until recently. Under the ideology of secularism, the only logical possibility is that religious language is "mere" rhetoric: speculation about what it would mean if it were anything more is only suited for seminaries and divinity schools.¹ As the obvious limits of the ideology of secularism have become evident, with the increasing in-your-face, in-the-news presence of those who take their religion seriously, this has begun to change. The conservative legal scholar Robert George has suggested that the divorce of human rights and natural law is itself a product of secularist ideology, that once secularist dogma is abandoned a continuous, robust tradition in which human rights and natural law are deeply intertwined will come into view.² For George, both King is a pillar of this tradition. Tantalizing as this conclusion is, it also elides the all too obvious differences between, say, King and the conservative U.S. Supreme Court Justice Clarence Thomas, whom George also associates with this tradition. An examination of King's views of natural law in a post-secularist context avoids this pitfall.

There is no easy starting point. The very question of what natural law is brings with it so many answers that we are tempted again to throw up our hands and slouch towards an easy dismissal of natural law language as “mere” rhetoric. Contemporary debates in the philosophy of law treat natural law simply as the opposite of positive law. Philosophers committed to a positive law position hold that there is no necessary connection between law and morals; those committed to a natural law position hold that there is. In other words, natural law jurisprudence holds that our view of the law can be colored by our moral beliefs, our beliefs about right and wrong. To this one might respond: Isn’t the claim of natural law trivially true? Isn’t law obviously connected with our beliefs about right and wrong? Proponents of positive law would note that what matters, to judges and lawyers and citizens, is just that a law exists; it is a separate question altogether, a question for a separate, political process, to create *good* or *just* laws. That moral question is bracketed when we think about jurisprudence, claim positive law theorists say: a law is a law, with all that entails (for example, an obligation to obey). Not so, say natural law theorists: an unjust law is no law at all; citizens have no obligation to obey unjust laws. Note how natural law in this context is about neither of the topics with which it is most often associated in the popular imagination: religion or nature.

Stepping from contemporary philosophy of law to the historical tradition of religious and secular reflection on natural law, the meaning of natural law is rather different. In this tradition there is not just a generic moral domain that influences our view of the law, that is necessarily connected with what the law is. There is a specific, alternative law, a law that is in some sense “higher.” It is this higher law that colors our view of actually existing law, of worldly law. If worldly law is in conflict with this higher law, worldly law is no law at all. The crudest form of this higher law, the form that has a tendency to capture -- perhaps to titillate -- the public

imagination is a higher law derived from facts about nature, or human nature, or about what is right and wrong from God's perspective. A more sophisticated form of this higher law combines these: through human nature certain portions of God's law, the eternal law, can be known, and it is these (along with certain extra portions ascertained through revelation) that are to influence how we view worldly law. Human nature here is not some set of characteristics shared by all humans (it is not that they are featherless bipeds). Rather, it is a capacity that all humans share: a capacity to reason. It is through humans' capacity to reason that we are capable of ascertaining what the higher law is. Once again, natural law is quite different than its caricature's association with religion or nature. Now it is much more about reason: reason which is characteristic of human nature, and reason as the means by which a portion of God's law, the eternal law, can be known.

Yet these two senses of natural law do not seem to provide an especially helpful framework to approach what Martin Luther King, Jr., might mean by natural law. Certainly, he is appealing to a higher law, but never does King suggest that it is through some process of deep thought, of rational reflection, that this higher law is ascertained. Perhaps we should turn to another tradition of reflection on "higher law," a tradition particular to the United States. The first sentence of the U.S. Declaration of Independence refers to "the Laws of Nature and of Nature's God" to defend the "equal station" of the colonists and the English. There is a strand of political thought, and jurisprudence, which understands these words to place God's law at the heart of the law of the United States.³ The "higher" law against which actually existing law can be checked is two things at once: the Declaration of Independence and the law of God -- they are one and the same. In this tradition, labeled by Daniel Elazar the American Covenant Tradition, the Declaration of Independence provides the spirit of the law and the Constitution (with its

references to slavery, *inter alia*) provides the letter of the law; the letter must be interpreted in light of the spirit. As a consequence, rulings of the Supreme Court remain subject to critique, on this view, for the Supreme Court interprets the letter of the Constitution and often forgets the spirit animating that letter of the law, the God-given spirit.

King has been read as part of the American Covenant Tradition, as a political theorist who privileges the Declaration of Independence.⁴ On this reading, King's religious language, his talk of God's law, is not dismissed, but it is subsumed through its association with the higher law of the Declaration of Independence. It is not "mere" rhetoric, but it is rhetoric that locates King in a tradition of United States patriots, focusing on his aspiration to make a better nation rather than to make a holy nation -- whatever that might mean (Frederick Douglass's occasionally patriotic language has sealed him to a similar fate in the hands of recent interpreters). Yet is this not just another byproduct of secularist ideology, of the need to understand religious language through some other, non-religious framework?

During his first civil rights campaign, the Montgomery bus boycott, King would employ the language of natural law in a call for social justice. Through this campaign he would achieve international recognition; at the time it began, he was a 26 year old junior minister who had just finished his academic studies. Born in Atlanta to an earthy minister in 1929, King started his studies at the historically black Morehouse College when he was 15. He continued his studies at Crozer Theological Seminary and Boston University, where he wrote a dissertation titled "A Comparison of God in the Thinking of Paul Tillich and Henry Wiseman." During these years, King was exposed to, and sought out, a wide array of intellectual influences. He read Marx, Gandhi, and Thoreau. He was influenced by the socially engaged Christianity of Walter Rauschenbusch and Reinhold Niebuhr, as well as the lively debates between liberal and neo-

orthodox strands of Protestantism represented by Paul Tillich and Karl Barth, respectively. Of course, King also took courses in the history of Christian thought; his papers from this time show that he studied heresies and orthodoxies from the first centuries onwards. He wrestled with perennial theological questions, and he had a particular interest in understanding humanity's fallen condition.⁵

King read widely, and he was no one's disciple. His own views were decidedly eclectic, so much so that the distinctiveness of King's own theological voice has become a matter of scholarly debate (the discovery of widespread plagiarism in his dissertation made this question all the more troublesome).⁶ While some scholars have attempted to discern a system in King's thought -- to claim a place for him amongst U.S. twentieth century systematic theologians -- this effort seems to rest on a certain forgetfulness of King's vocation.⁷ He was first and foremost a preacher, and a persuader. He knew his audiences: what they believed, what would affect them, and what would move them, whether his audience was his theology school professors, his black congregants, or white liberal supporters.

The speeches and texts of King's career employ a whirlwind of references that authorize and position King and his political work. Reference to natural law is sometimes caught up in this whirlwind, one of many intellectual affiliations that come fast and furious. In his "Letter from Birmingham City Jail," King provides a textbook account of Aquinas's natural law theory: "How does one determine when a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law" (293).⁸ But then King quickly moves on, in the next sentence gesturing towards the Personalist theology King encountered at Boston University and

associating it with natural law theory. He writes, “Any law that uplifts human personality is just. Any law that degrades human personality is unjust” (293). A couple sentences later, King is on to another intellectual influence: “To use the words of Martin Buber, the great Jewish philosopher, segregation substitutes an ‘I-it’ relationship for the ‘I-thou’ relationship, and ends up relegating persons to the status of things. So segregation is not only politically, economically and sociologically unsound, but it is morally wrong and sinful” (293). And then, to conclude the paragraph, King is on to yet another profound influence: “Paul Tillich has said that sin is separation. Isn't segregation an existential expression of man's tragic separation, an expression of his awful estrangement, his terrible sinfulness?” (293-4).

In the face of such eclecticism, where King seems to be weaving together all the religious reflection that he can get his hands on into an incontrovertible brief against segregation, the dual temptations to dismiss each of King's references or to organize them into a logical system grow all the stronger. But King's famous “Letter” was written in 1963, and the circumstances of its composition (and its authorship) limit its helpfulness in understanding King's thought on natural law, beyond the reminder that the language of natural law remained an important part of King's vocabulary throughout his career as an organizer, agitator, and minister.⁹ Let us return to that first moment when King stepped into the spotlight, that first campaign in Montgomery, Alabama to improve the treatment of black people on the public buses. It was not King who chose the moment. But, soon after the respectable Rosa Parks was arrested for failing to give up her seat on a public bus to white passengers, topping off a pattern of ill treatment by the bus company, the African American ministers of Montgomery took the lead in organizing a response. As a new preacher in town, King stood apart from the divisions and grudges of other old time ministers who might have been chosen to lead the protest movement. And, of course, King could preach.

In his account of the Montgomery protest movement, King describes how he was used to spending many hours in preparation before his Sunday sermons; before his first speech to the nascent bus boycott movement, he had but a few minutes to prepare.¹⁰ He would speak the words that came to him, and he did so with tremendous success. “We will be guided by the highest principles of law and order,” he intoned (51). A wonderfully ambiguous statement, King was at once differentiating the boycott movement from vigilante whites and associating it with the Kingdom of God. The former task required special delicacy, as organizations such as White Citizens Councils and the Ku Klux Klan themselves claimed the moral high road. When the Supreme Court forced school integration, these organizations could appeal to a “higher” law, beyond the law of worldly Courts. The challenge of distancing the tactics of the civil rights movement from that of its staunchest opponents would dog King and other leaders, and would contribute to the evolution of natural law language that King employed. However, in 1955, in Montgomery, Alabama, King began by separating the just cause of the boycott organizers from the injustice advocated by their opponents, focusing on the means by which each side sought to implement its higher law. Even if each side was willing to set aside the law on the statute books in favor of a higher law, the bus boycotters -- or so King extolled -- would not employ any violence in doing so. The methods of the partisans of segregation “lead to violence and lawlessness,” kidnappings and lynch mobs. The methods of the boycotters, while not necessarily following the letter of the law, would be peaceful and would not undermine the rule of law in general.

The other associations conjured by King with his invocation of “the highest principles of law and order” were theological. He proceeded to assert, “[O]ur actions must be guided by the deepest principles of our Christian faith. Love must be our regulating ideal” (51). Whatever else,

the blacks of Montgomery must not hate their enemies. The “law and order” that King envisioned was the law and order characteristic of a world animated by love, and that world was accessible through Christian faith. Jesus Christ provided a model of perfect loving, the model that was to be imitated in the present, in the face of the bleak circumstances faced by the African American community of Montgomery. The boycott they were about to undertake did not have only a pragmatic purpose, to make the lives of a few people in one corner of the world better. It had a divine purpose, and that vision of a community with love as its regulating ideal was to animate (in a strong sense, more than motivate) the boycott movement throughout its duration. Indeed, King argues in retrospect, it would be impossible to explain the origins of the Montgomery bus boycott without attributing agency to the divine.

At that first meeting of the black protesters, the idea of the boycott was still inchoate. The grand ideals of faith and love did not immediately translate into a call for equality, or even an awareness that the higher law to which the protesters were committed might be in conflict with the law of the land. Three demands were put forward at that first meeting, and they were far from revolutionary. The protesters would end their boycott when they were assured of “courteous treatment”, when the bus company employed black bus drivers, and when “passengers were seated on a first-come, first-served basis -- Negroes seating from the back of the bus towards the front while whites seated from the front towards the back” (97). In other words, there was no initial demand for desegregation, just a demand for gentler segregation. Moreover, the boycotters at first argued that they were demanding nothing more than compliance with existing law; the bus drivers had been going beyond the law by not only segregating buses, but allowing whites to sit in seats that should have gone to blacks if segregationist law was implemented correctly.

However, these moderate demands soon grew into a demand for fully desegregated buses. The tension between the “highest principles of law and order” invoked by King and the actually existing laws, manipulated by the white-dominated city government to criminalize the boycott, became too great. Further, the boycotters learned the degree to which the meaning of the law of the land would be manipulated by its authorized interpreters in order to justify the status quo. In early negotiations to conclude the boycott, King and his associates presented their argument that the boycott’s demands required no change in the law. While one city official agreed with the boycotters’ interpretation of the law, another dissented, offering not a legal basis for his dissent but a political one. “If we granted the Negroes these demands,” the bus company’s attorney argued, “they would go about boasting of a victory that they had won over the white people” (100). From this the protesters discovered that injustice and law could be entangled much more thoroughly than they had imagined -- and the higher law to which they appealed seemed all the more distant. Those “highest principles” were not to be found in Montgomery, at least not until the intervention of the United States Supreme Court.

In the years following the Montgomery bus boycott, King appealed to a higher law, or to God’s law, in his political speeches and sermons. In one sermon, drawing on the thought of the modernist minister Harry Emerson Fosdick, King speaks of the obligation to love as different in kind from the obligation to obey worldly laws. It is “a higher law” that produces love, he argues, and so matters of love are outside the jurisdiction of worldly courts. Here King equivocates, noting the possibility of ending segregation “by the force of law,” even if it would be impossible for the federal courts to force southern whites to love blacks.¹¹ There is a tension in King’s remarks -- or perhaps a rhetorically forceful elision -- in that the strict division he ostensibly imagines between “higher law” and worldly law cannot hold. He imagines worldly law as

pragmatically useful, forcing integration of public institutions even if it does not end irrational fears and resentments. Such feelings as these are “dark and demonic responses” to the changing worldly law; such feelings would change when “the invisible, inner law which etches on their hearts the conviction that all men are brothers” takes effect (38). Yet it is just this disposition to love, alternately labeled by King here “higher law” and “inner law,” that is also “mankind’s most potent weapon for personal and social transformation” (38). So potent is this higher or inner law that it motivates the pragmatic use of worldly law in the interest of creating a more loving world. And so we are back to the conventional conceptual arrangement of natural law theory: a higher law against which the legitimacy of worldly laws can be judged. That higher law is determined by something that human beings share, the capacity to love (but note the distinctiveness of this position, as opposed to other natural law theories that focus on a shared human capacity to reason as the means to access that higher law -- a point that will be discussed more extensively below).

Elsewhere in his sermons, King abandons the pretense of confining “higher law” to the “inner” world of individuals. Writing of world history and the connection between struggles against colonialism and against segregation, King writes, “There is a law in the moral world -- silent, invisible imperative, akin to the laws in the physical world -- which reminds us that life will work only in a certain way. The Hitlers and the Mussolinis have their day, and for a period they may wield great power, spreading themselves like a green bay tree, but soon they are cut down like the grass and wither as the green herb” (110). While it seems sensible, at first, to distinguish this sort of “law in the moral world” from the “higher law” or “inner law” about which King elsewhere writes, King forces the distinction to be blurred. In the next paragraphs, he writes of segregation, now moribund, as a system that went against this same moral law; its fate

inevitable because of its injustice. The civil rights movement is “God working through history” - - necessarily so, because the laws of segregation were “not in harmony with the moral laws of the universe” and so God was acting in the world through the efforts of those who would oppose such an abomination (111). The connection between God’s agency and the moral law is tighter still: it is God, King preaches, who put in place those “absolute moral laws” in the first place. The “forces of evil” tempt us to disobey these laws; it is up to us to resist.

Where do King’s natural law ideas come from? The distinctiveness of his views is easy to overlook when we forget the degree to which natural law has been associated with Catholicism, and the more-than-arm’s length distance that many mid-century Protestant theologians kept from all things Catholic. Those theological sources with whom King is most often associated had little to say about natural law, and what they did say was often derogatory. Paul Ramsey, an influential Protestant ethicist, dismisses natural law together with the law codes of the Old Testament in a section of his *Basic Christian Ethics* entitled “What the Christian Does without a Code” (the answer, in short, is *love*).¹² Paul Tillich, a towering figure of mid-century U.S. theology and a subject of King’s dissertation, associated natural law theory with the Roman Catholic Church’s legalistic explication of the Ten Commandments and the Sermon on the Mount. While he affirms the values of equality and freedom he finds in natural law theory, Tillich argues that these concepts, which applied to the existing world, “become indefinite, changing, [and] relative,” with the result that “natural law theory cannot answer the questions of the contents of justice” (Tillich finds the answers to those questions in love, and power).¹³ Reinhold Niebuhr, a renowned public intellectual and theological proponent of “Christian realism,” pointedly writes of “the perils of moralism and self-righteousness in the rigidities of the natural law.”¹⁴

If not from the theological giants of his day, where was it that King picked up the idiom of natural law? It is tempting to speculate that haunting the caesura in the evidence is a vernacular African American idiom of God's law and a higher law. It is tempting to imagine that this is a vocabulary that King picked up, say, from the country preaching of his father, or from other black churches he visited as a child in Georgia. And it is tempting to build this idiom into a tradition, stretching to other civil rights activists, such as those students arrested in Lynchburg, Virginia who stated that their actions were in accordance with "a Higher Law than the law of governments"; to stretch this tradition forwards to Clarence Thomas who writes of picking up the idiom of higher law in his childhood in rural Georgia; and to stretch the tradition backwards, to Frederick Douglass, whose speech opposing the Dred Scott decision appeals to a heavenly court of justice higher than the Supreme Court.¹⁵ Even W. E. B. Du Bois, religious skeptic that he was, at one point describes his sociological studies of the black community as discerning the "natural law."¹⁶ But the tantalizing possibility that such a vernacular idiom exists must wait for future research to be confirmed or disputed.

However, there is archival evidence that suggests that King's natural law language was shaped by at least one specific, surprising individual, a correspondent who wrote to King in 1960.¹⁷ In November of that year, King participated in a televised debate about "The Nation's Future." His opponent, James Kilpatrick, associated law-abiding behavior with moral behavior, law-breaking behavior with chaos and riots. What civil rights activists were doing, Kilpatrick charged, was breaking the law, and breaking the law leads you down the slippery slope towards violent anarchy. King's too quick response was that an unjust law was no law at all, and should be resisted; Kilpatrick just as quickly pointed out that Southern whites resisting the integration of schools brought about by *Brown v. Board of Education* would readily agree with King. Indeed,

some southern whites were proclaiming loudly that integration should be resisted by any means necessary. In the debate, King appeared hesitant and came off as unconvincing (the debate format, limiting the usefulness of King's oratorical gifts, certainly did not help). John H. Herriford, a political science student at the University of Minnesota, watched the debate on NBC and sent King a letter suggesting possible criteria King might use to distinguish just laws from unjust laws, and so to make his argument more compelling. King responded gratefully and requested additional clarification and suggestions. He incorporated Herriford's ideas into his future presentations of natural law theory as a justification for the civil rights movement. Among the ideas that Herriford suggested was the criterion that an unjust law be "tyrannous," and the celebrated phrase "difference made legal."

In a November 1961 address to an interracial audience, the seemingly *ad hoc* manner in which King made use of natural law is brought together and distilled -- and secularized. King begins by asserting that an unjust law is one "which does not square with the moral law of the universe."¹⁸ He then imagines a skeptic who is suspicious of "these abstract things" that King is talking about, or suspicious that God has a law at all. King responds by explaining that a law is unjust when it "is a code that the majority inflicts on the minority that is not binding on itself. So that this becomes difference made legal" (49). Further, the minority does not craft this alternative law; it is *inflicted* on the minority. The civil disobedience of the civil rights movement does not lead to anarchy because it affirms that some laws, most laws, are perfectly legitimate and must be followed, just so long as they are not tyrannous, imposed by the majority on the minority. King employs the secular idiom that Herriford suggests with this interracial audience in a way that allows King to hold on to the "higher law" language to which he is committed but also allows him to translate it for a broader audience by focusing on one specific, purely rational

means of accessing that higher law (indeed, King embraces the language of rationality here, describing “just law” as “saneness made legal”, 49).

King’s natural law language congealed, and took on added importance, for another reason as well. In the mid-century Cold War atmosphere, natural law provided a way for King to differentiate his civil rights work from Communism. Describing his own intellectual development, King recalls reading *Das Kapital* and “The Communist Manifesto” while an undergraduate student at Morehouse College, during the Christmas holiday.¹⁹ After several paragraphs of objections to Communist ideology, and a description of Communism as “basically evil,” King finally describes Communism as having “laid hold of certain truths which are essential parts of the Christian view of things.” Communism, King suggests, should pose a challenge to every Christian. It is a challenge that can be met by appeal to natural law: “for the Communist there is no divine government, no absolute moral order, there are no fixed, immutable principles; consequently almost anything -- force, violence, murder, lying -- is a justifiable means to the ‘millennial’ end.” In other words, what Communism is lacking is commitment to a higher law. Even if the *telos* of the Communist is something quite near the beloved community of the Christian, the Communist will strive to reach that *telos* by any means, will break any law, will overturn all laws. The Christian, in contrast, is subject to “fixed, immutable principles” by which she must live even in the pre-millennial world. (The distinction is not quite so clear-cut. The laws that civil rights protesters disobeyed were not necessarily the unjust ones: King at Birmingham was in jail for violating a permit law).

While King’s natural law language changed over time, and depending on which sort of audience he was speaking to, it never vanished. In his final book, *Where Do We Go From Here?* published in 1967, King brings together the topics for which he is best known, love and justice,

on the one hand, and natural law, on the other. Dramatically, King suggests that even more troublesome than the white supremacists of the Ku Klux Klan is the “white liberal who is more devoted to ‘order’ than to justice, who prefers tranquility to equality.”²⁰ If the crux of natural law for King is an opposition between law and justice, here it seems as though “order” is a proxy for law, and the great shortcoming of the white liberal is that he refuses to acknowledge natural law. In other words, the white liberal knows only worldly law, shutting himself off to higher law, to God’s law. King no longer writes of justice as defined merely by the absence of tyrannous law, by the absence of “difference made legal.” Instead, King writes, “Justice at its best is love correcting everything that stands against love” (38). The higher law is the law of love. It is not a law at all in the sense that it does not inflict punishments; it corrects through love. Worldly laws that stand against this higher law are to be corrected in this very way: through love. This is the story of the civil rights movement from King’s perspective: unjust worldly laws being disobeyed not out of malice or hate or violence but out of love. And, if we are to allow for God’s agency in history, as King would have us do, the disobedience of civil rights movement protesters clearly shows God’s workings in the world -- because *God is love*.

In *Where Do We Go From Here?* King seems to offer an alternative account of how social justice could be achieved in the United States, an account that focuses on the much more worldly-sounding concept of empathy instead of love or justice. King writes, “Empathy is fellow feeling for the person in need -- his pain, agony and burdens. I doubt if the problems of our teeming ghettos will have a great chance to be solved until the white majority, through genuine empathy, comes to feel the ache and anguish of the Negroes’ daily suffering” (107). Where King earlier in his life, and earlier in this text, spoke of such changes as achievable only through a conversion of individuals’ “inner law” to the “law of love,” here it seems as though the

transformation can take place in this much less mysterious manner, simply through empathy.

Perhaps there is a way to close this apparent gap, to read King's discussion of empathy together with his discussion of love, and together with his discussion of law. In this passage, perhaps we can read King as suggesting that empathy is a way through which higher law can be recognized.

Through empathy, which any human being -- even a white liberal! -- can partake in, an individual can be converted to the law of love.

A fundamental, though easily misunderstood, tenet of natural law theory is that higher law is "self-evident." This does not mean that the higher law is obvious, nor does it mean that the higher law is constructed from ethical intuitions. Rather, the higher law is self-evident if it is perceived rightly, but perceiving it rightly can take a good deal of work, and continuing investigation. The dominant group of contemporary natural law theorists, most prominently John Finnis and Robert George, consider reason to be the means by which self-evident precepts are perceived. Indeed, George has taken an emphasis on reason (characteristic of human "nature") to be the definitive feature of the natural law tradition from Cicero to the medievals to Locke to Jefferson... to King.²¹ The inclusion of King in this tradition is perplexing, as King never writes about access to higher law (or God's law) through reason. King writes about access to higher law through empathy, and through love. With the recent surge of interest in affect, restoring affect to full partnership with reason as components of human nature, perhaps King's view of natural law offers a way of re-imagining the natural law tradition itself.²²

Such a grand undertaking is well beyond the scope of this chapter. Let us return to Montgomery, to that first meeting to discuss the bus boycott. In his unscripted speech to the packed church, King followed his appeal to "the highest principles of law and order" with a call to be guided by love as a "regulating ideal." In between, he told his listeners, "Our method will

be that of persuasion, not coercion. We will only say to the people, 'Let your conscience be your guide'."²³ The phrase at first seems trite, but perhaps it grows profound when its juxtaposition with love and law is taken seriously. King was extolling his audience not to *think* but to *feel* -- to feel the love of God, and to feel love for those who would mistreat them. It is through this feeling of love that they could access the "highest principles of law." And this feeling of love would be contagious: that their position was just would be evident to everyone allowing themselves to feel rightly, to love, to empathize. This is what would stir in the conscience of those they sought to persuade, near and far: right feeling, no longer clouded by the impurities sedimented by years of segregation. And it was this right feeling that King himself transmitted so effectively, so powerfully, to those in the church that evening, and to many others, near and far. Perhaps the example of King suggests that the ancient division between rhetoricians and philosophers must be transformed. A rhetorician is said to persuade that an arbitrary position is correct, and one technique of persuasion is arousing the emotions of his listeners. A philosopher is said to reason, arguing logically to a conclusion that is good and true. Might it be that what King does is to arouse the emotions of his listeners in such a way that the result is not some arbitrary position but what is necessarily good and true? If the higher law, the law within, may be accessed through affect, might it also be contagious -- the empathizing, loving soul spontaneously becoming silver-tongued, radiating the goodness, the truth, and the beauty of his conscience?

No doubt this line of questioning pushes much too far. But the direction that it pushes is one that becomes possible when the assumptions of secularist ideology are set aside, when we take seriously religious language, and religious ideas, and religious practice. In this direction may be other resources for reflection on human rights that refuse the comforts of secularism, so

central to the self-identity of the West. Also in this direction, when human rights and natural law have ended their forced estrangement, we may find human rights to be more than an empty signifier -- we may find a tradition which is a fount of critical inquiry inextricably linked with movements for social justice.²⁴

What of the politically conservative heritage of the natural law tradition, what of Clarence Thomas's uncomfortable association with Martin Luther King? Do they not drink from the same fount? One response would be to associate Thomas with the tradition of natural law inquiry limiting access to natural law to the mechanism of practical reason, distancing him from a vernacular African American natural law tradition that accesses natural law through affect. This is not a satisfactory response because, independent of Thomas's own jurisprudential persuasion, it is clear that affect is not pure, that affect is no guarantor of access to a natural law that furthers a conventional social justice agenda. Indeed, it could not be: the promise of natural law is that its normative consequences are unknown; it is a process of reflection that can and does take a critical stance towards the taken-for-granted politics of the day. And, as an engine for such reflection, there can be as many pathologies of affect as there can be pathologies of reason. Just as the mainstream natural law tradition commends reflection on reason, the natural law tradition of which King is a part must commend reflection on affect, or, as Michel Henry has termed it, auto-affection -- affect not tainted by the conventions of the day but given, to return to King's wonderfully uncomfortable language, from God.²⁵

Notes

Thanks to Owais Khan and José Manuel Barreto for helpful comments on this text.

¹ For a criticism of secularist ideology and gestures towards an alternative, see Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003); Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, NJ: Princeton University Press, 2000).

² Robert P. George, *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis* (Wilmington, DE: ISI Books, 2001), Chapter 9.

³ Daniel Judah Elazar, *Covenant & Constitutionalism: The Great Frontier and the Matrix of Federal Democracy* (New Brunswick, NJ: Transaction Publishers, 1998).

⁴ Barbara Allen, “Martin Luther King’s Civil Disobedience and the American Covenant Tradition,” *Publius* 30:4 (Fall 2000), 71-113.

⁵ *The Papers of Martin Luther King, Jr.* Edited by Clayborne Carson, Ralph Luker, and Penny A. Russell (Berkeley: University of California Press, 1992-); For a recent assessment of King’s theological influences, see Richard Wayne Wills, *Martin Luther King Jr. and the Image of God* (Oxford: Oxford University Press, 2009).

⁶ Martin Luther King, Jr., Papers Project, “The Student Papers of Martin Luther King, Jr.: A Summary Statement on Research,” *The Journal of American History* 78:1 (June 1991), pp. 23-31.

⁷ In contrast to Wills, *op cit.*, Timothy Jackson begins with the premise that King is no systematic theologian. Jackson, “Martin Luther King, Jr. (1929-1968)” in *The Teachings of*

Modern Christianity on Law, Politics, & Human Nature, Vol. 1. Edited by John Witte, Jr., and Frank S. Alexander (New York: Columbia University Press, 2006), pp. 439-464.

⁸ In *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* Edited by James M. Washington (San Francisco: HaperSanFrancisco, 1986), pp. 289-302.

⁹ See S. Jonathan Bass, *Blessed Are the Peacemakers: Martin Luther King, Jr., Eight White Religious Leaders, and the "Letter from Birmingham Jail"* (Baton Rouge, LA: Louisiana State University Press, 2001).

¹⁰ Martin Luther King, Jr., *Stride towards Freedom: The Montgomery Story* (Boston: Beacon Press, 2010).

¹¹ Martin Luther King, Jr., *Strength to Love* (Philadelphia: Fortress Press, 1981), p. 37.

¹² Paul Ramsey, *Basic Christian Ethics* (New York: Charles Scribner's Sons, 1950).

¹³ Paul Tillich, *Love, Power, and Justice: Ontological Analyses and Ethical Applications* (London: Oxford University Press, 1954), 82.

¹⁴ Reinhold Niebuhr, *The Nature and Destiny of Man: A Christian Interpretation*, Vol. 1 (Louisville, KY: Westminster John Knox Press, 1996 [1941]), 221.

¹⁵ *Religion, Rhetoric, and the Civil Rights Movement*, Edited by Davis W. Houck and David E. Dixon (Waco, TX: Baylor University Press, 2006), 426; Clarence Thomas, *My Grandfather's Son: A Memoir* (New York: Harper, 2007); Frederick Douglass, "Speech on the Dred Scott Decision" in *African-American Social and Political Thought, 1850-1920*. Edited by Howard Brotz (New Brunswick, NJ: Transaction Publishers, 1992), pp. 247-262.

¹⁶ Cited in Adolph L. Reed, *W. E. B. Du Bois and American Political Thought: Fabianism and the Color Line* (Oxford: Oxford University Press, 1999), p. 201n6; cf. Dwight Hopkins, “W. E. B. Du Bois on God and Jesus” in *The Souls of W. E. B. Du Bois: New Essays and Reflections*. Edited by Edward J. Blum and Jason R. Young (Macon, GA: Mercer University Press, 2009), pp. 18-40.

¹⁷ This paragraph draws on Allen, “Martin Luther King’s Civil Disobedience,” *op cit.*, and on archival research at the Dr. Martin Luther King, Jr. Archive housed in the Howard Gotlieb Archival Research Center at Boston University.

¹⁸ King, “Love, Law, and Civil Disobedience,” *Testament of Hope, op cit.*, p. 49

¹⁹ King, *Stride towards Freedom*, 92-95.

²⁰ Martin Luther King, Jr., *Where Do We Go from Here: Chaos or Community?* (Boston: Beacon Press, 2010), 93.

²¹ George, *Clash of Orthodoxies*.

²² A recent example in political theory is Sharon R. Krause, *Civil Passions: Moral Sentiment and Democratic Deliberation* (Princeton, NJ: Princeton University Press, 2008), but the work of, for example, Eve Sedgwick, Martha Nussbaum, and Simon Blackburn are also relevant. For an interesting attempt to link human rights and affect, see José Manuel Barreto, “Ethics of Emotions as Ethics of Human Rights: A Jurisprudence of Sympathy in Adorno, Horkheimer and Rorty,” *Law and Critique* 17 (2006), 73-106.

²³ King, *Stride Towards Freedom*, 62.

²⁴ Cf. Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart Publishing, 2000).

²⁵ This, as it happens, is a language to which Henry would assent. See Michel Henry, *I am the Truth: Toward a Philosophy of Christianity*. Trans. Susan Emanuel (Stanford, CA: Stanford University Press, 2003), which offers rich resources for reflection on affect, religion, ethics, and politics.