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ARTICLE

LESSONS FROM THEODICY: THE PROBLEM OF EVIL AND THE LIMITS OF GOVERNMENTAL POWER

David E. Gilbert[†]

Why is there any misery at all in the world? Not by chance, surely. From some cause then. Is it from the intention of the Deity? But he is perfectly benevolent. Is it contrary to his intention? But he is almighty. Nothing can shake the solidity of this reasoning, so short, so clear, so decisive, except we assert that these subjects exceed all human capacity, and that our common measures of truth and falsehood are not applicable to them. . . .

David Hume, *Dialogues Concerning Natural Religion*¹

I. INTRODUCTION

Although I teach law, I am fascinated by the philosophy of religion. And I am fascinated, in particular, by the Problem of Evil, which asserts that the following propositions cannot be reconciled:²

[†] A version of this article was presented on May 31, 2010 at a symposium entitled “The Monotheistic Religions and the Human Liberties.” The symposium was held in Constantza, Romania and was sponsored by The Centre for Religious and Juridical-Canonical Study and Research of the Three Monotheistic Religions (Mosaic, Christian and Islamic) of Ovidius University of Constantza. I understand that this article has been published in *DIONYSIANA*, the Centre’s academic review, and I wish to thank the Centre for its invitation to speak at the symposium, for its generous hospitality, and for its permission to publish this article in the United States. I also wish to thank David Beck for his help in formulating my arguments and F. Phillip Manns for his help in refining them. I am honored to be a member of a university faculty that includes such men. Finally, I wish to thank the editors and staff of the Liberty University Law Review for their enthusiasm for the article and for their careful editorial work. I will always be honored to say that they were once my students. Any remaining errors—whether of thought or expression—are mine and mine alone.

1. DAVID HUME, *DIALOGUES CONCERNING NATURAL RELIGION WITH THE POSTHUMOUS ESSAYS, “OF THE MORTALITY OF THE SOUL” AND “OF SUICIDE,” AND FROM AN ENQUIRY CONCERNING HUMAN UNDERSTANDING, “OF MIRACLES”* 66 (Richard H. Popkin ed., Hackett Publishing Co. 2d ed. 1988) (1779) (first publication date is for *DIALOGUES CONCERNING NATURAL RELIGION*).

2. This is referred to as the logical Problem of Evil. There is also an evidential Problem of Evil that stems from the claim that, given the existence of evil, it is *improbable*

God is omnipotent;
 God is omniscient;³
 God is perfectly good; and
 Evil exists.

My fascination with this topic has much to do with the fact that I am a Christian. Yet that is not the whole of the matter. My fascination also stems from the fact that the Problem of Evil deals with ultimate questions—“ultimate” in the sense that they address the absolute limits of certain concepts. What does it mean, for example, to say that God is “omnipotent”? Does this mean He can “make a four-sided triangle”⁴ or “a stone too heavy for [H]imself to lift”⁵? And what does it mean to say that God is “omniscient”? Does He know the color of a number? Does He know today what I will freely choose to do tomorrow? If He does, are my actions, therefore, somehow predetermined?

There is a perhaps less theoretical side to the Problem of Evil. That is the aspect of the Problem of Evil that addresses the nature of good and evil. What does it mean for a thing or event or person to “*be* evil”? What does it mean for a person to “*do* good”? These questions are hardly academic. Indeed, the answers we give—whether explicitly or implicitly—show up in the way we relate to one another and in the way we organize our societies.

Theistic philosophers have been wrestling with these questions for centuries—and by necessity. It is *their* view of God that is challenged by the Problem of Evil. And, though some have been willing to suggest that evil is a figment of our imagination,⁶ many have focused their efforts on

that the theistic God exists. *See, e.g.*, MARILYN McCORD ADAMS & ROBERT MERRIHEW ADAMS, *Introduction* to THE PROBLEM OF EVIL 16 (Marilyn McCord Adams & Robert Merrihew Adams eds., 1990).

3. Omniscience may be considered a trait comprehended by the term “omnipotence.” I include it explicitly, however, because it frequently appears in formulations of the problem of evil. *See, e.g.*, ADAMS, *supra* note 2, at 2; ALVIN C. PLANTINGA, *GOD, FREEDOM, AND EVIL* 21 (Wm. B. Eerdmans Publishing Co. 1977) (1974).

4. JOHN HICK, *EVIL AND THE GOD OF LOVE* 265 (Harper & Row, Publishers rev. ed. 1978).

5. RICHARD SWINBURNE, *THE COHERENCE OF THEISM* 157 (Clarendon Press rev. ed. 1993).

6. *See* J.L. MACKIE, *Evil and Omnipotence* 64 *MIND* 200-12 (1955), *reprinted in* THE PROBLEM OF EVIL 25-37 (Marilyn McCord Adams & Robert Merrihew Adams eds., 1990) at 26-27. Mackie writes:

Some have said that evil is an illusion, perhaps because they held that the whole world of temporal, changing things is an illusion, and that what we call evil belongs only to this world, or perhaps because they held that although

explaining the reasons that could have motivated (or in fact did motivate) a loving, all-knowing, and all-powerful God to create a world with as much evil in it as ours clearly contains.

From my point of view, the reasons they have come up with are fascinating and instructive—and not merely for the insights they suggest regarding the character of God and His purposes for our lives. I contend that the reasons they give suggest answers to questions we ought to be asking about the proper role of government in our societies. For example, in my own country many appear to assume that, if there is a problem, government must offer a solution. The mere existence of an evil, regardless of its source or location, seems to function as a sufficient condition for government action. Indeed it is impolite to suggest otherwise.

I think this view of government is mistaken and destructive. On the contrary, I contend the following:

1. That government *cannot* eliminate all evil;
2. That government *should not seek* to eliminate *all* evil;
3. That government must, nevertheless, seek to eliminate *some* evil; and
4. That systems of law founded on theism are *best* equipped to resolve the practical tension between points (1) and (2), on the one hand, and point (3) on the other.

To explain and support these positions, I intend to draw on the Problem of Evil itself, the Judeo-Christian tradition, and on several prominent responses to the Problem of Evil, namely Alvin Plantinga's "Free Will Defense," John Hick's "Soul-Making Theodicy," and the eschatological theodicy suggested by Roderick Chisholm's concept of "defeat." Although these are not the only thinkers whose work I will discuss, their arguments provide the primary structure for my arguments.

Before I go on, however, I should distinguish between two kinds of evil: moral evil and natural evil. To borrow Alvin Plantinga's definitions: moral evil "is evil that results from free human activity; natural evil is any other kind of evil."⁷ In this paper, I intend to address the connections I see

temporal things *are* much as we see them, those that we call evil are not really evil. Some have said that what we call evil is merely the privation of good, that evil in a positive sense, evil that would really be opposed to good, does not exist. Many have agreed with Pope that disorder is harmony not understood, and that partial evil is universal good.

Id. at 26.

7. PLANTINGA, *supra* note 3, at 30.

between the Problem of Evil and the proper limits of governmental power. Accordingly, I plan to focus my remarks on moral evil, which is the category of evil that government is best equipped to address. There will be times, however, when I must refer to or address natural evil. In these cases, I will endeavor to be clear that I am discussing natural evil, not moral evil. In all other cases, however, you may assume that when I refer to “evil” I mean to refer to “moral evil.”

II. GOVERNMENT *CANNOT* ELIMINATE ALL EVIL

Government cannot eliminate all evil, because government lacks—and cannot acquire—sufficient knowledge, power, or goodness to achieve this end. This is because the elimination of evil requires a level of knowledge, power, and goodness approaching the omniscience, omnipotence, and perfect goodness that theists attribute to God. That government does not—and cannot hope to—meet these conditions should be obvious, but I think an awareness of this fact is sadly absent from conversations about public policy—at least in my own country. Therefore I think it is worthwhile for us to remind ourselves of just what is required for us to achieve the utopia our leaders purport to offer us when they ask for our vote.

As I noted before, the Problem of Evil deals with ultimate questions. And it purports, among other things, to demand an answer to why there is any evil at all, given that God exists and is said to be all-knowing, all-powerful, and perfectly good. The Problem of Evil is no problem at all, however, if God lacks one of these characteristics.⁸ Perfection—or something approaching perfection—with respect to each of these traits is a necessary condition for the elimination of all evil. As J.L. Mackie has noted:

If you are prepared to say that God is not wholly good, or not quite omnipotent, or that evil does not exist, or that good is not opposed to the kind of evil that exists, or that there are limits to what an omnipotent thing can do, then the problem of evil will not arise for you.⁹

If God is aware of some problems but not others, how can I fault him for not addressing my bout with cancer? Perhaps it simply has not come to His attention. If He can address or prevent some problems but not others, how

8. MACKIE, *supra* note 6, at 25 (“The problem of evil . . . is a problem only for someone who believes that there is a God who is both omnipotent and wholly good.”).

9. *Id.* at 26.

can I fault Him for not addressing or preventing my skinned knee? Perhaps clumsy people are simply beyond His help. And, again, if He is upright regarding some matters, and evil regarding others, how can I fault Him if my life or my corner of the world is less than perfect? Perhaps He delights in looking out for my neighbor but cares nothing for me. It is not enough, therefore, for God to know about *most* evils, to be able to address or prevent *most* problems, or to be good with respect to *most* matters. If there is to be no evil, God must know about every evil and be able to address it, and He must be good enough, in every instance, to choose to do so.

Atheologians, however, regard omniscience, omnipotence, and perfect goodness, taken together, as forming a *sufficient* condition for the elimination of all evil. That is, if God can do anything, knows everything, and is perfectly good, He *must*, they argue, eliminate all evil. The fact that He has not, they claim, only proves that He must not exist or that, if He does exist, He is not the God theists portray Him to be. As Hume wrote, speaking in the character of Philo:

Is he willing to prevent evil, but not able? [T]hen is he impotent.
Is he able, but not willing? [T]hen is he malevolent. Is he both
able and willing? [W]hence then is evil?¹⁰

The theist's only out, Philo claims, is to "assert that these subjects [i.e., "infinite power, infinite wisdom, and infinite goodness"] exceed all human capacity, and that our common measures of truth and falsehood are not applicable to them[.]"¹¹

Yet a thing may be a *necessary* cause without being a *sufficient* cause. Flour, butter, and sugar may be essentials if I am planning to make cookies, but the mere fact that I have them hardly suggests that I have cookies baking in my oven. Other things are required: mixing and measuring, to name a few. Similarly, a theist who agrees that omnipotence, omniscience, and perfect goodness (or levels of competence approaching these) are *necessary* conditions for the suppression of all evil, need not agree that they constitute *sufficient* conditions for this end. As Mackie readily concedes:

[T]he contradiction [alleged by the Problem of Evil] does not arise immediately; to show it we need some additional premises, or perhaps some quasi-logical rules connecting the terms "good," "evil," and "omnipotent." These additional principles are that good is opposed to evil, in such a way that a good thing always

10. HUME, *supra* note 1, at 63.

11. *Id.* at 66.

eliminates evil as far as it can, and that there are no limits to what an omnipotent thing can do.¹²

A theist, therefore, can argue that omniscience, omnipotence, and perfect goodness are not sufficient conditions for the elimination of all evil if he can identify one circumstance—or perhaps many—in which a “good thing” would not “eliminate . . . evil as far as it can” or if he can demonstrate that there “are [some] limits to what an omnipotent thing can do.”

Alvin Plantinga, in his famous “Free Will Defense,” argues that it is plausible that both circumstances exist. First, Plantinga contends, “God, though omnipotent, could not have actualized just any possible world He pleased.”¹³ He writes:

It is, of course, up to God whether or not to create Maurice and also up to God whether or not to make him [i.e., Maurice] free with respect to the action of taking oatmeal But if He creates Maurice and creates him free with respect to this action, then whether or not he actually performs the action is up to Maurice—not God.¹⁴

Thus, according to Plantinga, once God has determined to make free creatures, there will be certain things that are no longer be up to Him—whether Maurice eats oatmeal or sausages, for example—as long God has left it up to Maurice to make this decision. But what possible reason—or rather what *good* reason—could God possibly have for relinquishing His sovereignty in this area? Plantinga points to the good that is realized when free creatures freely choose to do right. He writes:

God can create free creatures, but He can't *cause* or *determine* them to do only what is right. For if He does so, then they aren't significantly free after all; they do not do what is right *freely*. . . . The fact that free creatures sometimes go wrong . . . counts neither against God's omnipotence nor against His goodness; for He could have forestalled the occurrence of moral evil only by removing the possibility of moral good.¹⁵

12. MACKIE, *supra* note 6, at 26. I have reconfigured Mackie's punctuation, which follows British conventions, to conform it American punctuation conventions. I have done so elsewhere and with other sources as necessary.

13. PLANTINGA, *supra* note 3, at 34. Plantinga refers to the contrary notion as “Leibnitz' Lapse.” *Id.* at 44.

14. *Id.*

15. *Id.* at 30.

John Hick makes a related point in *Evil and the God of Love*. He contends that the world in which we live supplies conditions necessary for the development of virtue. He writes:

If we then ask what sort of environment is needed for man as a morally and spiritually immature creature to grow towards the full stature of his humanity, we quickly see that it could not be a pain-free paradise. A world without problems, difficulties, perils, and hardships would be morally static. For moral and spiritual growth comes through response to challenges; and in a paradise there would be no challenges.¹⁶

Thus, both Plantinga and Hick argue that something of great value would be lost if the world were constituted otherwise. If their assessments are correct—a matter I will later consider—then it seems incorrect to say that omniscience, omnipotence, and perfect goodness are *sufficient* (sufficient in the sense of demanding) causes for the elimination of evil, however *necessary* they (or their close approximates) may be to that project.

Some may say, to bring the matter around to government, that government need not know everything, have all power, or be perfectly good in order to eliminate all evil—assuming the elimination of evil is its proper end. It need not, for example, know the precise number of hydrogen atoms in the sun. It need not have the ability to reduce the number of those atoms by three. Knowledge of or power with respect to such things has nothing to do with the suppression of evil. And perhaps, one could say that with respect to some things it would be sufficient for government to be merely not bad as opposed to positively good.¹⁷ That neither the U.S. government nor its people are currently disposed to invade Canada is surely not a bad thing—though it is hardly a *good* thing either, however *beneficial* the absence of hostility may be to all concerned. The U.S. government—and its people—might have concluded that Canada is simply too cold in the winter. But these things should not lead us to conclude that anything less than knowledge approaching omniscience, and power approaching omnipotence,

16. HICK, *supra* note 4, at 374.

17. Cf. RODERICK M. CHISHOLM, *The Defeat of Good and Evil*, 42 PROC. AM. PHIL. ASS'N 21-38 (1968-1969), reprinted in THE PROBLEM OF EVIL 53-68 (Marilyn McCord Adams & Robert Merrihew Adams eds., 1990) at 55-57. Chisholm would term such circumstances “neutral states of affairs.” Query, however, whether a neutral state of affairs, indeed many neutral states of affairs, could not be said to characterize even a perfect being. Cf. *id.* at 67.

and goodness *very nearly* approaching perfect goodness, would be sufficient for government to eliminate all evil.

Consider, for example, the considerations that go into protecting the public from toxic chemicals. I am referring here to what I regard as a moral evil—the release of these chemicals into the environment *by* humans, whether intentionally or otherwise. To address this evil, it is not enough for government to have statutory or regulatory power to impose limits on how certain chemicals are used or to what extent they are released into the environment. It is not even sufficient for government and all concerned to have agreed upon what level of protection ought to be extended to the public—let us assume that all aspire to a “safe” environment. Government must know something that is surprisingly difficult to determine: the point at which exposure to a given chemical passes from “safe” to “unsafe.” Lead, for example, has been poisoning us for centuries, yet we are still learning about the dangers it poses to humans. In the early 1970s, experts thought that lead poisoning (as determined by the concentration of lead in a person’s blood) began at forty micrograms per deciliter.¹⁸ The number was later lowered to thirty micrograms per deciliter, then twenty-five micrograms per deciliter, and now stands at ten micrograms per deciliter.¹⁹ But even this number is not set in stone. According to the *New England Journal of Medicine* “there may be no threshold for the adverse consequences of lead exposure[.]”²⁰ Keep in mind that lead is a well-known chemical. The U.S. government’s “TSCA [i.e., Toxic Substances Control Act] Inventory contains more than 82,000 chemicals that have been in commerce at some point since 1979.”²¹ We are only beginning to understand the hazards presented by many of these chemicals.²²

18. See ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 305 fig. 3.13 (6th ed. 2009).

19. *Id.* at 305 fig. 3.13 and 556.

20. RICHARD L. CANFIELD ET AL., *Intellectual Impairment in Children with Blood Lead Concentrations below 10 µg per Deciliter*, 348 NEW ENG. J. MED. 1517, 1525 (2003) (internal citations omitted)

21. RICHARD A. DENISON, ENVIRONMENTAL DEFENSE, HIGH HOPES, LOW MARKS: A FINAL REPORT CARD ON THE HIGH PRODUCTION VOLUME CHEMICAL CHALLENGE 10 (2007), available at http://www.edf.org/documents/6653_HighHopesLowMarks.pdf (last visited June 23, 2011) (critiquing the U.S. Environmental Protection Agency’s program to gather basic toxicological information on chemicals that industry uses in large quantities).

22. See *id.* at 10. (“Hazard data being collected under the Challenge are limited to a subset of the SIDS, developed under the auspices of the OECD. The SIDS data are generally acknowledged to be insufficient to provide the basis for a full hazard assessment, let alone a risk assessment, for a chemical. It relies primarily on testing of acute or subchronic toxicity, for example, and its ecological endpoints only include toxicity to aquatic organisms.”)

Setting the right standard, however, would seem simple for a government blessed with omniscience. The *right* level of exposure would be simply the one that is safe. And if we were omniscient we would surely know where to draw the line.

Perhaps, but then again, perhaps not. “Safe” is a loaded term.²³ Surprisingly enough, “safe” can mean many things. To some it might mean “risk free.”²⁴ To others it might mean “presents no significant risk of harm.”²⁵ To others it might mean “the level of risk I associate with ‘safe’ activities”—like playing bridge or riding a bike.²⁶ An omniscient—or functionally omniscient—regulator can know the precise level of risk associated with a given exposure, but she cannot tell us what a “safe” level of exposure is—at least not without making a normative judgment about how much risk a person ought to be required to bear.

And normative judgments depend on what is possible. A truly omnipotent (or functionally omnipotent) government could arrange circumstances such that only benign chemicals were used by industry and such that the use of these chemicals would have no impact on industrial output or standards of living. The environment would be “as pure as the driven snow”—purer, even, than the driven snow is at present—and yet we would all have abundant food, shelter, clothing, and whatever else is necessary to lead a fulfilling life.

Not so, however, for less-than-omnipotent governments. They must make choices, and those choices would be hard even if they were blessed with perfect knowledge. Although environmental regulation is not always a zero sum game—some regulations indeed have proved economically

23. See, e.g., *Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 642 (1980) (“By empowering the Secretary to promulgate standards that are ‘reasonably necessary or appropriate to provide safe or healthful employment and places of employment,’ the Act implies that, before promulgating any standard, the Secretary must make a finding that the workplaces in question are not safe. But ‘safe’ is not the equivalent of ‘risk-free.’ There are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider these activities ‘unsafe.’ Similarly, a workplace can hardly be considered ‘unsafe’ unless it threatens the workers with a significant risk of harm.”).

24. See, e.g., *id.* (rejecting this understanding of “safe”).

25. See, e.g., *id.* (“Therefore, before he can promulgate *any* permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices.”).

26. See, e.g., *id.*

beneficial²⁷—it usually comes at a cost in terms of reduced productivity, increased capital investment, and higher prices for goods. These higher costs may be fair;²⁸ they may even be right. But if the lines are drawn in the “wrong” place—however “wrong” is understood—the lines themselves will be a source of evil, if only the evil that results when limited resources are applied to suboptimal—dare I say wasteful—ends.

Consider also what would be required for government to eliminate the evil of crime. To do this, it seems we would need to begin by discovering every crime that is committed. That, however, is a bigger job than it might seem. According to the U.S. Department of Justice, in 2007 there were 5,371,190 “victimizations” in the United States involving personal crimes and 17,508,530 victimizations involving property crimes.²⁹ Yet only forty-seven percent of personal crimes were reported to the police; only slightly more than thirty-seven percent (37.2%) of property crimes were reported to the police.³⁰ These victimization numbers—weighted estimates based on the results of interviews of 41,000 households and 73,650 individuals³¹—are almost certainly low. The National Crime Information Center’s records show that 105,229 persons were missing on December 31, 2007.³² At least

27. *See, e.g.*, Occupational Exposure to Cotton Dust, 50 Fed. Reg. 51,120 (Dec. 13, 1985) (codified at 29 C.F.R. pt. 1910) (final rule by Occupational Safety and Health Administration noting that compliance with a permissible exposure limit for cotton dust had made industry more productive).

28. Fair, for example, in the sense that they reduce externalities.

29. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE (NCJ 227669), CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2007 STATISTICAL TABLES: NATIONAL CRIME VICTIMIZATION SURVEY 96 tbl. 91 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cvus07.pdf>. (last visited May 18, 2010). “Victimization” is defined as “[a] crime as it affects one individual person or household. For personal crimes, the number of victimizations is equal to the number of victims involved. The number of victimizations may be greater than the number of incidents because more than one person may be victimized during an incident. Each crime against a household is assumed to involve a single victim, the affected household.” *Id.* at 132. “Personal crimes” are defined as “[r]ape, sexual assault, personal robbery, assault, purse snatching and pocket picking . . . [and] includes both attempted and completed crimes.” *Id.* at 130. “Property crimes” are defined as “[p]roperty crimes including burglary, motor vehicle theft, or theft . . . [and] includes both attempted and completed crimes.” *Id.*

30. *Id.* at 96 tbl. 91.

31. *Id.* at 119-27 (describing methodology).

32. *NCIC Missing Person and Unidentified Person Statistics for 2007*, NATIONAL CRIME INFORMATION CENTER, FEDERAL BUREAU OF INVESTIGATION, NCIC MISSING PERSON AND UNIDENTIFIED PERSON STATISTICS FOR 2007, available at <http://www.fbi.gov/hq/cjis/missingpersons.htm>. (last visited on June 23, 2011).

some of them, no doubt, were missing *because* they were victims of a crime. I doubt many of *them* were surveyed.³³

It is not enough, however, to know that a crime has happened. In order to properly mete out punishment, government needs to know the precise circumstances of the crime. And this is an instance where omniscience would surely come in handy. For if government sends the wrong person to jail, *government becomes* a source of evil.

What would be necessary for government to achieve functional omniscience of this sort? I suppose it could begin by posting workable video cameras on every light post of every city and town. Cameras may have played a role in apprehending the person suspected of planting a car bomb in Times Square.³⁴ There were eighty-two cameras watching the vicinity of the crime,³⁵ though “watching” is probably too generous a term. Strictly speaking, cameras only record; they cannot “watch.” That requires a person. And, given what the Times Square footage has revealed,³⁶ I am not sure that a person, even paying close attention, would have noticed anything amiss. Perhaps there just were not enough cameras.³⁷

But the streets of cities and towns are hardly the *only* places crimes happen. Crimes also happen behind closed doors. Perhaps, then, government could resort to planting cameras in every room of every home, apartment, or office building. A school district in Pennsylvania was recently accused of attempting something like this, only on a much more modest scale. The school district allegedly activated cameras on students’

33. And perhaps we should remember that not every evil deed is punishable as a crime.

34. See, e.g., WILLIAM K. RASHBAUM & MICHAEL WILSON, *Car in Bomb Case Changed Owners in Past 3 Weeks*, N.Y. TIMES, May 4, 2010, at A22 (discussing relevant video footage).

35. *Id.* (“The police continued sifting through footage from 82 city cameras mounted from 34th Street to 51st Street between Avenue of the Americas and Eighth Avenue and those from untold number [sic] of business and tourist cameras.”)

36. See *id.* (describing a “man [who] was seen walking away from the area where the pathfinder was parked” and who “looked over his shoulder at least twice and pulled off a shirt” and another man who was recorded “running north on Broadway at the time the fire broke out on the Pathfinder . . .”).

37. TIM MINTON, *Saturday Scare Delivers Call for More Cameras: Technology Also Key to Mining Evidence*, NBC N.Y., May 4, 2010, <http://www.nbcnewyork.com/news/local-beat/Saturday-Scare-Delivers-Call-For-More-Cameras-92723589.html> (last visited on May 18, 2010) (“Apparently 80 is not enough. . . . Police Commissioner Raymond W. Kelly says there should be a recorded view of every street and sidewalk from Central Park down to 34th Street.”).

computers that allowed the district to photograph students in their homes.³⁸ This activity—which led to a law suit and an F.B.I investigation³⁹—has been stopped.⁴⁰ U.S. law is presently opposed to governmental omniscience.⁴¹ This would need to change, however, if we meant to get truly serious about eliminating *all* crime.

And of course, it would hardly be sufficient to have cameras indoors only. Crimes also occur out of doors in remote areas. And it is hardly enough to see what is happening—photos and even video footage can be misleading. To get it right—in every case—government would surely need an audio recording.

Then again, it would hardly seem sufficient for government to merely punish crime. If the task is *eliminating* crime, government must be granted the ability to predict crimes and thereby prevent them before they occur. Philosophers refer to the ability to know in advance what free individuals will freely choose to do as “middle knowledge.”⁴² Some philosophers are not sure, however, that even *God* possesses this knowledge,⁴³ and if we could somehow invest government with such knowledge, we would need to be quite sure that it with is knowledge of what a person *will* do, inexorably, as opposed to knowledge of what a person is merely *likely* to do. As Robert Adams has noted, “We have a well entrenched belief that under many counterfactual conditions many a person *might* have acted out of character,

38. See GREGG KEIZER, *Federal Judge Orders Pa. Schools to Stop Laptop Spying*, COMPUTER WORLD, February 23, 2010, http://www.computerworld.com/s/article/9160878/Federal_judge_orders_Pa_schools_to_stop_laptop_spying (last visited May 6, 2010).

39. *See id.*

40. *See id.*; see also BALLARD SPAHR, LLP, REPORT OF INDEPENDENT INVESTIGATION: REGARDING REMOTE MONITORING OF STUDENT LAPTOP COMPUTERS BY THE LOWER MERION SCHOOL DISTRICT (2010), http://www.lmsd.org/documents/news/100503_ballard_sphahr_report.pdf (last visited May 6, 2010). Although the program led to the acquisition of 30,564 *photographs*, the district appears to have been more interested in recovering lost or stolen laptops than it was in spying on its students—at least according to the law firm hired to investigate the matter. *See id.* at 2-3.

41. The Fourth Amendment, for starters, gets in the way: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons to be seized.” U.S. CONST. amend. IV.

42. *See, e.g.*, ROBERT MERRIHEW ADAMS, *Middle Knowledge and the Problem of Evil*, 14AM. PHIL. Q. 109-17 (1977), reprinted in THE PROBLEM OF EVIL 110-25 (Marilyn McCord Adams & Robert Merrihew Adams eds., 1990) at 110-11.

43. *See id.* at 124-25.

although he probably would not have.”⁴⁴ Here again, if government gets it wrong, *it risks becoming* a source of great evil.⁴⁵

And, of course, even perfect knowledge of what each one of us *will do* on a particular occasion is hardly enough. Government would also need the heroic ability to intervene, in every instance, in every place, the moment before every crime is committed. To intervene *too* early would be to perpetrate a wrong.

Perhaps, on the other hand, government could change its people, making them into law-abiding people who always freely choose to do right. Mackie has asked,

[I]f God has made men such that in their free choices they sometimes prefer what is good and sometimes what is evil, why could he not have made men such that they always freely choose the good?⁴⁶

Plantinga has argued, for reasons I will take up later, that this option was perhaps unavailable to God when He set out to make free persons. But, setting this aside, what sorts of powers would be necessary for government to make us into people who “always freely choose the good”? In our world, government functions always, and *only*, through force. Even the money government purports to give away must first be acquired by force. (If you doubt this, try refusing to pay your taxes!) What applications of force could achieve this end?

Perhaps government could compel moral education. I doubt this would work, however. In my country, government already compels education in math and reading (among other things). The results are not encouraging. One study of U.S. students found that “27% of eighth-graders could not correctly shade 1/3 of a rectangle and 45% could not solve a word problem

44. *Id.* at 117 (emphasis added).

45. For an interesting exploration of what governmental middle knowledge—or its close approximation—might look like, see *MINORITY REPORT* (20th Century Fox, et al. 2002). Information about this film is available at THE INTERNET MOVIE DATABASE <http://www.imdb.com/title/tt0181689> (last visited June 25, 2010).

46. MACKIE, *supra* note 6, at 33.

that required dividing fractions[.]”⁴⁷ A 2009 study of U.S. fourth graders revealed that only “33 percent [were reading] at or above *Proficient*”⁴⁸

These numbers are certainly subject to improvement—and students in other nations already achieve at higher levels⁴⁹—but the standard, remember, is perfection, and we are nowhere close to *that* level of achievement. And let us also remember that reading and math, *comparatively speaking*, are easy skills to teach. How likely is any program of education, however well constructed, to produce graduates who always freely choose the right?⁵⁰

Perhaps in the end, government would have to resort to the extraordinary measure of simply compelling right conduct. But how could that be done? It would be too expensive to assign a police officer to each one of us. And who would police the police officers assigned to police *us*?⁵¹ Perhaps government could simply install a chip in each of our brains, and a set of electrodes in each of our spines, that together would produce warm and pleasant feelings each time we did something right and a nasty shock every time we did something wrong.⁵² Perhaps, in time, we would *all* feel

47. NAT'L MATHEMATICS ADVISORY PANEL, U.S. DEP'T OF EDUC., FOUNDATIONS FOR SUCCESS: THE FINAL REPORT OF THE NATIONAL MATHEMATICS ADVISORY PANEL 3 (2008), <http://www2.ed.gov/about/bdscomm/list/Mathpanel/report/final-report.pdf> (last visited May 6, 2010) (citing a 2004 report of the U.S. Department of Education).

48. NAT'L CENTER FOR EDUC. STAT., U.S. DEP'T OF EDUC., THE NATION'S REPORT CARD: READING 2009: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS AT GRADES 4 AND 8 (NCES 2010-458) 8 (2010), http://nationsreportcard.gov/reading_2009/reading_2009_report/ (last visited May 18, 2010).

49. *See, e.g.*, NAT'L CENTER FOR EDUC. STAT., U.S. DEP'T OF EDUC., HIGHLIGHTS FROM TIMSS 2007: MATHEMATICS AND SCIENCE ACHIEVEMENT OF U.S. FOURTH AND EIGHTH-GRADE STUDENTS IN AN INTERNATIONAL CONTEXT (NCES 2009-1) 6 (2009), <http://nces.ed.gov/pubs2009/2009001.pdf> (last visited May 18, 2010) (“At grade four, the average U.S. mathematics score was higher than those in 23 of the 35 other countries, lower than those in 8 countries (all 8 were in Asia or Europe), and not measurably different from the average scores in the remaining 4 countries. At grade eight, the average U.S. mathematics score was higher than those in 37 of the 47 other countries, lower than those in 5 countries (all of them located in Asia), and not measurably different from the average scores in the other 5 countries.”).

50. *See* FREDERICK BASTIAT, *THE LAW* 25 (Cosimo Classics 2006) (1850) (“You say: ‘Here are persons who are lacking in morality or religion,’ and you turn to the law. But law is force. And need I point out what a violent and futile effort it is to use force in the matters of morality and religion?”).

51. As Plato and Virgil famously asked, who will watch the watchmen?

52. This might require us to reduce right and wrong to a set of principles that could be expressed in computer code. This may not be possible. *See generally* JONATHAN DANCY, *ETHICS WITHOUT PRINCIPLES* (2006).

strongly inclined toward helping old ladies across the street, and we would *all* develop a steadfast abhorrence for cruelty and overeating. But if government resorted to these measures, would we be *good*? I think not, for reasons I will elaborate later.

An issue I have avoided so far is whether government, however little or much knowledge or power we entrust to it, can eliminate all evil without being, itself, perfectly good. As we have seen, the degree of knowledge and the level of power required for the suppression of all evil is quite extraordinary. If we could construct a government that was sufficiently knowledgeable and sufficiently powerful to eliminate all evil, could we trust it to do so if any public servant—from the lowliest dog catcher to the most powerful executive officer, judge, or senator—were anything less than perfectly good? Again, I think not. And I think this is the most telling reason why government is incapable of eliminating all evil.

Someone might protest, perhaps, that, if only we could construct the *right* government—one that knows enough to recognize and punish every evil and one that is powerful enough to do so, and one that, through appropriate measures, *could change* the way people think and live—*then, over time* we could, *surely we could*, eliminate all evil. But who, I ask, is good enough to create such a system? Who could be trusted, trusted to that degree, with the fate of mankind? Only someone outside the system—someone who would not first require reformation before he could reform. As N.T. Wright has observed, “the line between good and evil runs not between ‘us’ and ‘them’ but through every individual and every society.”⁵³ Only God could fit the bill.

You may think I have belabored the obvious. I hope so. I hope it is perfectly obvious to you that government cannot eliminate every evil. I have labored, however, over this unremarkable proposition, because I fear that those of us who take it seriously are a very small minority—at least in the United States. The public official most likely to be booed and most likely to be chastised by the press is the official who has the *audacity* to suggest that government cannot solve the crisis of the day—or who fails to solve it within a news cycle.

I also think it is striking how neatly the Problem of Evil, with its emphasis on knowledge, power, and goodness, frames the debates we have about how government should respond to problems. When disaster or human wickedness strikes, how does government respond? It demands more *knowledge*—more cameras in public places, more authority to intercept conversations, more spies. It demands more *power*—new and

53. N.T. WRIGHT, *EVIL AND THE JUSTICE OF GOD* 43 (2006).

tougher laws, more policemen, more days of school, more programs, more accountability. And, if government appears somehow remotely responsible, we (or our leaders) demand that government be made *better*—and so we hold hearings, pass reforms, or gear up for the next election. Having banished the theistic God from our minds, we seem nevertheless determined to construct a god of our own—omniscient, omnipotent, and perfectly good—in our own image.

Thus, I think we would do well to remember just what is necessary if we are determined to eliminate all evil—or to conquer, truly conquer, even the crisis of the day. Nothing short of functional omniscience, functional omnipotence, and very-near-perfect goodness will do. If we keep in mind the limits of governmental power, we are less likely to build our lives on, or surrender our liberties for, what will never be. And, perhaps more to the point, if Plantinga and Hick are right about the value of freedom and the value of moral growth, we may find that government has very good reasons to allow some evil to exist.

III. GOVERNMENT *SHOULD NOT SEEK* TO ELIMINATE *ALL* EVIL.

The fact that government cannot, in fact, suppress all evil, you may say, is hardly a reason not to try. I will never play tennis like Roger Federer, but why should that keep me from trying? The answer, it seems, depends on what we mean by “trying.” If I play as often as my schedule and responsibilities permit and devote my energies, when I am playing, to improving my skill, no one can fault me. I may even be excused for reading about tennis on my vacation. If, however, I quit my job, neglect my children, and spend every waking hour on the tennis court, few would call me anything but a fool. I simply haven’t the talent. So some “goals”—apparently good goals, even—are proper goals only if we do not *truly* pursue them.

Now it is certainly proper for Roger Federer—and any tennis player with the requisite talent—to aspire to world class excellence. For Federer—and his rivals—the drive to be the world’s best is perfectly appropriate. But is it possible that there are some good goals that *no one* should truly pursue? The elimination of all evils, or even the perfect suppression of *any one* evil, may be such a goal.

As I noted before, the Problem of Evil deals with ultimate questions. Why is there evil—any evil at all—in the world, given that God, who is said to be all-knowing, all-powerful, and perfectly good, exists. Atheists have assumed that omniscience, omnipotence, and perfect goodness are sufficient causes for the elimination of evil. But necessary conditions are

not the same thing as sufficient conditions. There may be things that even an omnipotent being cannot do, and even a perfectly good being can have a morally sufficient reason for choosing not to suppress every evil.

Alvin Plantinga, a theist whose name is synonymous with the “free will defense,”⁵⁴ has argued that

A world containing creatures who are significantly free (and freely perform more good than evil actions) is more valuable, all else being equal, than a world containing no free creatures at all. Now God can create free creatures, but He can't *cause* or *determine* them to do only what is right. For if He does so, then they aren't significantly free after all; they do not do what is right *freely*. To create creatures capable of *moral good*, therefore, He must create creatures capable of moral evil; and He can't give these creatures freedom to perform evil and at the same time prevent them from doing so. . . . [T]his is the source of moral evil. The fact that free creatures sometimes go wrong, however, counts neither against God's omnipotence nor against His goodness; for He could have forestalled the occurrence of moral evil only by removing the possibility of moral good.⁵⁵

Note the extraordinary role that human freedom plays in this argument and the basis for its value. Plantinga is claiming that the good that comes from free choices is good enough to *justify* the creation of an entire world where moral evil exists. This is because, according to Plantinga:

1. Moral evil—or at least its possibility—is the price of moral good;
2. No one, not even God, can avoid paying this price; and
3. A world with free creatures who sometimes choose to do evil—but who more often choose to do good—is more valuable than a world with no evil at all.

I will take up each point in its turn.

54. Plantinga draws a distinction between a “defense,” which suggests “at most what God's reason *might possibly be*” for permitting evil, and a “theodicy,” which purports “to tell us what God's reason for permitting evil *really is*.” PLANTINGA, *supra* note 3, at 28. The significance of this distinction will become clear.

55. *Id.*

A. *Moral Evil—or At Least Its Possibility—Is the Price of Moral Good*

Plantinga is neither the first, nor the only person, to argue that freedom to do good requires a corresponding freedom to do evil. Augustine wrote that:

It is sufficient for our question, why free will should have been given to man, to know that without it man cannot live rightly. . . . [I]f man did not have free choice of will, how could there exist the good according to which it is just to condemn evildoers and reward those who act rightly? What was not done by will would be neither evil doing nor right action. Both punishment and reward would be unjust if man did not have free will. Moreover, there needs be justice both in punishment and in reward, since justice is one of the goods that are from God. Therefore, God must needs [sic] have given free will to man.⁵⁶

John Hick, describing the traditional free will defense, has written:

The second phase of the argument claims that there is a necessary connection between personality and moral freedom such that the idea of the creation of personal beings who are not free to choose wrongly as well as rightly is self-contradictory and therefore does not fall within the scope of the divine omnipotence. If man is to be a being capable of entering into personal relationship with his Maker, and not a mere puppet, he must be endowed with the uncontrollable gift of freedom. For freedom, including moral freedom, is an essential element in what we know as personal as distinct from non-personal life. In order to be a person man must be free to choose right and wrong. He must be a morally responsible agent with a real power of moral choice.⁵⁷

Hick concludes that this argument is “clearly sound” and that it draws no objections from those inclined to reject the free will defense.⁵⁸

This thinking is not confined to Christian theists. Rabbi Harold Kushner has argued:

56. AUGUSTINE, ON FREE CHOICE OF THE WILL bk. II, ch. 1, 36 (Anna Benjamin & L.H. Hackstaff trans., Bobbs-Merrill 1964) *quoted in* JOHN S. FEINBERG, THE MANY FACES OF EVIL: THEOLOGICAL SYSTEMS AND THE PROBLEMS OF EVIL 69 (rev. and expanded ed. 2004).

57. HICK, *supra* note 4, at 266.

58. *Id.*

In order to let us be free, in order to let us be human, God has to leave us free to choose to do right or to do wrong. If we are not free to choose evil, then we are not free to *choose* good either. Like the animals, we can only be convenient or inconvenient, obedient or disobedient. We can no longer be moral, which means we can no longer be human.⁵⁹

Rabbi Kushner concedes that neither he nor anyone else can say why God chose to bring such persons into being. He is certain, however, that “He did, and the world has seen a lot of nobility and a lot of cruelty ever since.”⁶⁰

B. No One, Not Even God, Can Avoid Paying This Price

Now we come to the more controversial aspects of the free will defense. Perhaps being good requires making choices, but does that mean that God must play *no role* in the choices we make? If I am inclined to slap people when I get too tired, could not God simply arrange things such that I always go to bed early and always get a good night’s sleep? There would be no slapping then. If hunger inclines me to say unkind things, could He not arrange the world such that I always have a full stomach? On such terms, I might always be civil. And in each case, you could say that my decision to refrain from slapping or to speak only kind words was *my choice*.

Plantinga is not persuaded. “One might as well claim,” he writes, “that being in jail does not really limit one’s freedom on the grounds that if one were *not* in jail, he’d be free to come and go as he pleased.”⁶¹ Plantinga has a more robust notion of freedom in mind. According to him:

If a person is free with respect to a given action, then he is free to perform that action and free to refrain from performing it; no antecedent conditions and/or causal laws determine that he will perform the action, or that he won’t. It is within his power, at the time in question, to take or perform the action and within his power to refrain from it.⁶²

59. HAROLD S. KUSHNER, *WHEN BAD THINGS HAPPEN TO GOOD PEOPLE* 80 (Avon Books 1983) (emphasis original).

60. *Id.*

61. PLANTINGA, *supra* note 3, at 32. Plantinga is responding to what I assume is a similar objection offered by Anthony Flew. *See id.* at 31.

62. *Id.* at 29.

And according to Plantinga, a person is not “*significantly free*” unless the choice he is free to make is “*morally significant . . . [i.e.,] if it would be wrong for him to perform the action but right to refrain or vice versa.*”⁶³ Thus, on these terms, a person who is gentle and civil only because he is well-fed and well-rested, may make many *morally significant* choices during the course of the day, but he is never *significantly free* with respect to these choices. And, I might add, such a person little deserves our respect—though we might have high regard for his cook!

J.L. Mackie has offered a more challenging objection:

[I]f God has made men such that in their free choices they sometimes prefer what is good and what is evil, why could he not have made men such that they always freely choose the good? If there is no logical impossibility in a man’s freely choosing the good on one, or on several occasions, there cannot be a logical impossibility in his freely choosing the good on every occasion. God was not, then, faced with a choice between making innocent automata and making beings who, in acting freely, would sometimes go wrong: there was open to him the obviously better possibility of making beings who would act freely but always go right.⁶⁴

This argument depends, however, on an assumption that God’s omnipotence means that He can do anything He pleases. Plantinga thinks this assumption is false. Indeed, he claims that “what is really characteristic [of] and central to the Free Will Defense is the claim that God, though omnipotent, *could not* have actualized just any possible world He pleased.”⁶⁵

To explain this claim, Plantinga introduces two characters: Paul and Maurice. Paul must decide whether to sell an aardvark.⁶⁶ Maurice, whom you have met, must decide whether to eat oatmeal.⁶⁷ Plantinga claims that

63. *Id.* at 30.

64. MACKIE, *supra* note 6, at 33.

65. PLANTINGA, *supra* note 3, at 34 (emphasis added). Note the word “actualized.” Plantinga draws a distinction between “creating” and “actualizing.” According to Plantinga, God does not create states of affairs (e.g., there being ants), He actualizes them; He does not actualize things (e.g., ants), He creates them. Plantinga also draws a distinction between states of affairs that “exist” and states of affairs that “obtain.” *See id.* at 38-39. These distinctions, though important, are not central to my analysis.

66. *See id.* at 40-42.

67. *See id.* at 42-44.

God *can determine* whether Paul sells his aardvark and whether Maurice eats oatmeal. God has ways, after all, of bringing such things about. What He cannot do, however, is determine that Paul *freely* sells his aardvark for a given price or that Maurice *freely* chooses to eat oatmeal. If these choices are truly up to Paul and Maurice, they cannot be up to God. So, Plantinga concludes, “there are any number of possible worlds such that it is partly up to Paul [or Maurice] whether God can create them.”⁶⁸

This is hardly the end of the matter, however. For Paul may be free to decide whether to sell his aardvark, and Maurice may be free to choose (or reject) oatmeal, but neither has any choice about whether he will exist. That is up to God, and since Plantinga believes that God knows in advance what each will freely choose to do,⁶⁹ Plantinga is not off the hook yet. If God knows what Paul and Maurice will freely choose to do and yet He chooses still to create them, is He not to blame for the choices they make?

To address this objection, Plantinga introduces another character, a corrupt politician by the name of Curley Smith.⁷⁰ Curley is offered a bribe—and he takes it—but things could have been otherwise. Since this decision was up to Curley, he could have asked for more or have simply refused. And again, since God knows in advance what Curley will do, it would seem perfectly reasonable to blame Him for Curley’s actions.

Plantinga is not so sure, however. Yes, it is possible to imagine a world where Curley freely refuses all bribes and refrains from any other sins. But is it not *also possible*, Plantinga asks, that in any world where Curley exists and is significantly free, there is at least one morally significant action—some sin—that Curley will always freely choose to commit?⁷¹ In other words, perhaps Curley is the sort of person who, regardless of what sort of world he is placed in, will always mess up. Plantinga calls this “transworld depravity.”⁷²

And Curley may not be the only one afflicted with transworld depravity. Perhaps we all have it, Plantinga suggests.⁷³ And perhaps we are not the only ones. He writes:

[I]t is possible that every creaturely essence—every essence including the property of being created by God—suffers from

68. *Id.* at 42.

69. *See id.*

70. *See id.* at 45-47.

71. *See id.* at 47.

72. *Id.* at 48.

73. *See id.*

transworld depravity. But now suppose this is true. Now God can create a world containing moral good only by creating significantly free persons. And, since every person is the instantiation of an essence, He can create significantly free persons only by instantiating some essences. . . . Under these conditions God could have created a world containing no moral evil only by creating one without significantly free persons.⁷⁴

Thus Plantinga is saying—and note this construction—that *it is at least possible that* every person God has created, or will create, or *ever could create* “suffers from transworld depravity.” If this is so, then the existence of some moral evil truly is the price of moral good. And not even God can avoid paying it.

C. *A World with Free Creatures Who Sometimes Choose to Do Evil—But Who More Often Choose to Do Good—Is More Valuable Than a World with No Evil At All*

Perhaps, then, moral evil is the price of moral good. And perhaps this price is unavoidable. But are significantly free creatures worth the trouble? Plantinga says, “Yes”—as long as they “freely perform more good than evil actions”⁷⁵ Thus, the key question, according to Plantinga, is not whether “God could have created a world containing *less* moral evil than the actual world contains.”⁷⁶ Clearly He could have by leaving out creatures like us. The question we ought to be asking, according to Plantinga, is whether “it [was] within God’s power to create a world that contained a better mixture of moral good and evil than Kronos [i.e. the world we actually live in]” Here, again, Plantinga answers, “maybe not.” Perhaps the only other available essences would have made *at least as great* a mess of this world as we have made.⁷⁷

As Plantinga makes clear, he is writing a “defense,” not a “theodicy.”⁷⁸ He, thus, feels free to speculate about “possibilities,” because he is only trying to rebut the charge of inconsistency. His “aim is not to say what God’s reason *is*, but at most what God’s reason *might possibly be*.”⁷⁹ You

74. *Id.* at 53.

75. *Id.* at 30.

76. *Id.* at 55.

77. *Id.* at 55-57. This is a *grossly* over-simplified statement of Plantinga’s response to this question, but an extended treatment is unnecessary.

78. *Id.* at 28.

79. *Id.*

should not, therefore, wonder about his intellectual gifts (or your own) if you find his notion of “transworld depravity”—whether applied to individuals, the human race, or even essences—implausible.

However speculative some of his arguments may be, note that every one of them owes its life, so to speak, to two key assumptions. The first assumption is that free choices are valuable—indeed, vastly more valuable even than merely *right actions*. The second assumption is that a world where people freely choose the right more often than they choose the wrong—even where they choose the wrong far too often—is more valuable than a world where people never choose the right or the wrong because they have no choice at all. If “the claim that it is *possible* that God could not have created a universe containing moral good . . . without creating one that also contained moral evil” is the “*heart of the Free Will Defense*[,]”⁸⁰ these assumptions are surely its *lifeblood*. Drained of their strength, Plantinga’s arguments would persuade no one. In fact, however, Plantinga’s argument is considered a formidable one—William Rowe, for example, a “friendly atheist,”⁸¹ has referred to it as “fairly compelling.”⁸²

For my part, I think Plantinga’s assumptions are correct—or that they at least approach very close to the truth. Hick and Kushner are right to suggest that our status as persons,⁸³ and our very humanity,⁸⁴ would be lost if our freedom to make morally significant choices were taken away. After all, even Adam and Eve were given *one* command to obey—and the freedom to break it.⁸⁵

But I will go one step further. At some vastly reduced level, even a *dog* is significantly free—at least in one sense. Although a dog cannot choose his master, he can choose how he feels about him. This is why we value dogs.

Augustine wrote:

80. *Id.* at 31 (emphasis added).

81. WILLIAM L. ROWE, *The Problem of Evil and Some Varieties of Atheism*, 16 AM. PHIL. Q. 335-41 (1979), reprinted in *THE PROBLEM OF EVIL* 126-37, 126 (Marilyn McCord Adams & Robert Merrihew Adams eds., 1990).

82. *Id.* at 126 n.1.

83. HICK, *supra* note 4, at 266.

84. KUSHNER, *supra* note 59, at 80.

85. *See Genesis* 2:15-17 (NASB):

Then the LORD God took the man and put him into the garden of Eden to cultivate it and keep it. The LORD God commanded the man, saying, “From any tree of the garden you may eat freely; but from the tree of the knowledge of good and evil you shall not eat, for in the day that you eat from it you will surely die.”

Such is the generosity of God's goodness that He has not refrained from creating even that creature which He foreknew would not only sin, but remain in the will to sin. As a runaway horse is better than a stone which does not run away because it lacks self-movement and sense perception, so the creature is more excellent which sins by free will than that which does not sin only because it has no free will.⁸⁶

We do not value the horse *because* it runs away, the dog *because* it bites (unless it bites a burglar!), or the human *because* he sins. We value the horse because, when it has been properly trained, it can use its strength to work for us and its intelligence to work *with* us. We value dogs because, if we treat them kindly, they will gladly give their lives for us and shower us with affection. Their capacity for affection is what makes them valuable, even if those faculties sometimes come at the cost of chewed slippers or messes on the floor.

We value humans most of all—and our spouses and children in particular—but this is not because we think they are “safer” or “tamer” than dogs or horses. Indeed the people we love the most have the greatest capacity to wound us, and they often do wound us. Yet the love they *freely* give is worth the pain they sometimes inflict. This is because love cannot be forced. It must be free. Love that is not freely given is not given at all. Love ultimately is the source and the essence of the good that freedom makes possible.

Hick makes a similar point. Although he accepts the value of significantly-free choices,⁸⁷ he agrees that God could have made us such that we would always *freely* choose to do right. After all, Christ was tempted “in every respect . . . as we are, yet without sinning.”⁸⁸ But Hick writes:

God can without contradiction be conceived to have so constituted men that they could be guaranteed always freely to act rightly in relation to one another. But He cannot without contradiction be conceived to have so constituted men that they

86. AUGUSTINE, THE PROBLEM OF FREE CHOICE (388), *reprinted in* 22 ANCIENT CHRISTIAN WRITERS bk. 3, 15 (The Newman Press 1955).

87. *See* HICK, *supra* note 4, at 266.

88. *Id.* at 267 (quoting *Hebrews* 4:15). Perhaps this is explained by the fact that Christ was not *created*. However, to offer this distinction, one must, it seems, concede that there is something an omnipotent being cannot do—i.e., create beings who always freely choose the right.

could be guaranteed freely to respond to Himself in authentic faith and love and worship. The contradiction involved here would be a contradiction between the idea of A loving and devoting him/herself to B, and of B valuing this love as a genuine and free response to himself whilst knowing that he has so constructed or manipulated A's mind as to produce it.⁸⁹

Hick's point: if our love was the good God was seeking, not even He could have it without granting us the freedom to reject Him.

Plantinga's arguments solve some theological problems but perhaps only at the expense of creating others. The notion that moral evil—or rather its possibility—is necessary for moral good seems at odds with Christian eschatology. John's description of the New Jerusalem suggests that it will contain no sinners.⁹⁰ Does this mean there will be no moral good? Will God's "bond-servants . . . serve Him"⁹¹ because they are not free? The answer, it seems to me, must be that there will be no moral evil, because God's servants will freely choose the good.⁹² If that is the case, Mackie's question remains: Why not now? Why not make everyone, now, such that he freely chooses the good?

A similar objection could be offered to Hick's soul-making argument.⁹³ He writes: "[A] world without problems, difficulties, perils, and hardships would be morally static. For moral and spiritual growth comes through response to challenges; and in a paradise there would be no challenges."⁹⁴ But this, too, seems at odds with the Christian hope of a New Jerusalem where "God Himself will be among them, and . . . [where] there will no longer be any mourning, or crying, or pain . . ."⁹⁵ "If love is at its strongest and deepest amidst trials and difficulties, must there not be trials and

89. *Id.* at 275.

90. *See Revelation 22:14-15* (NASB)

Blessed are those who wash their robes, so that they may have the right to the tree of life, and may enter by the gates into the city. Outside are the dogs and the sorcerers and the immoral persons and the murderers and the idolators, and everyone who loves and practices lying.

91. *Revelation 22:3c* (NASB).

92. Note, however, that John says, "they will see His face, and His name will be on their foreheads." *Revelation 22:4* (NASB). It would take considerable temerity to disobey God under such circumstances! Note: The New American Standard Bible uses italics to indicate supplied words. Here and elsewhere I have not italicized these words.

93. *See supra* note 16 and accompanying text.

94. HICK, *supra* note 4, at 374.

95. *Revelation 21:3d-4*.

difficulties in heaven?”⁹⁶ Hick suggests several responses,⁹⁷ including the following:

As the essence of all sin is selfishness, so its opposite is a negating of the self-regarding ego. Growth in this “self-naughting,” or liberation from the ego, shows itself in the growth of that love for others which is the essence of morality. . . . [I]n this world of tension and conflict, unselfish *agape* expresses itself as a range of moral virtues. But the central spiritual state of the transcendence of egoity can continue beyond its expression in these different virtues.⁹⁸

This must contain something of the truth, for God, who is love,⁹⁹ did not become somehow more loving when He created the earth and mankind.

These theological problems need not be solved, however, before we can apply Plantinga’s and Hick’s insights to government. In this context, for example, we need not speculate about “transworld depravity.” We know for a fact that we are all afflicted with “this-world depravity”—that is, we possess the characteristic of being such that there is *at least* one morally significant decision that, if it is left up to us, we will get wrong between the time we are born and the time we die. The Psalmist is more blunt: “There is no one who does good, not even one.”¹⁰⁰

So government has on its hands a bunch of sinners. As I noted before, government cannot remake us into something better. It simply lacks the power—nothing short of omnipotence would be sufficient—and it could not be trusted with that sort of power if it were available. The Psalmist is pretty clear after all: *no one* is good.¹⁰¹

Since we cannot be remade—and government cannot know in advance what sins we will commit—its options are limited.¹⁰² One option, however, is to do the best job it can of punishing us after we have stepped out of line. This action, it must be hoped, will tend to deter criminals or take them out of circulation—and, naturally, if some “rehabilitation” occurs—so much the better. Another option is to take over the moral responsibilities we neglect.

96. HICK, *supra* note 4, at 351.

97. *See id.* at 351-52.

98. *Id.* at 382-83.

99. *1 John* 4:8 (NASB) (“The one who does not love does not know God, for God is love.”).

100. *Psalms* 14:3b (NASB).

101. *Id.*

102. *See supra* notes 42-44 and accompanying text.

For example, government could “take up a collection,”¹⁰³ and then distribute the funds to the poor, the sick, and the otherwise needy. Both approaches seem necessary if government is stamp out as much evil as is humanly possible.

To the extent government succeeds by deterring, disabling, or reforming criminals, it will have reduced the existence of evil. Certainly this is to be desired. As Plantinga observed, a world with significantly free creatures is a good world as long as they “freely perform more good than evil actions”¹⁰⁴ Perhaps by suppressing evil actions, government can keep the sum totals of good and evil actions in the proper balance. If Augustine, Plantinga, Hick, and Kushner are right, will not something of great value be lost—or at least diminished—as government approaches the limits of its power to suppress evil? If punishment becomes a near certainty for every crime or misdeed—whether speaking an unkind word or robbing a bank—people *will* commit fewer crimes. The prudent will refrain, and the imprudent will be restrained. In a functional sense, their freedom to do wrong will be substantially extinguished.

Is this a bad thing? I am not so sure. Frankly, I struggle to understand how the loss of *this* freedom—freedom to do wrong—is to be lamented. If we could separate the freedom to do wrong from the freedom to do good, it seems we would be wise to do so. But can we separate the freedom to do wrong from the freedom to do good? The point of the free will defense is that we cannot. To have the one, we must have the other.

Whether this is so, it seems to me, depends on the sort of evil we have in mind. For example, one evil deed I have been known to commit is telling my wife I will leave work at a particular time and then failing to do so. This makes me a liar. There is no nicer way to state the truth. I may have excuses—they may even be good ones—but in each case I have failed to live up to my word. Now I am certain that, if the government were to fine me or send me to jail every time I did this, in time I would get the message. I might even get the message very swiftly, but would it make me a better man? In one sense, yes, I would be a person who, in fact, keeps his word. In another sense, no, I would be a person who keeps his word, but only because I value my money or my freedom. In the most important sense—the sense that really matters to my wife—I would still be selfish and a liar if given the chance. By forcing me to do right against my wishes, the government would have denied me the opportunity to *choose* to do right for

103. The U.S. government “passes the hat” on April 15th of each year. State and local governments collect at other times of the year.

104. PLANTINGA, *supra* note 3, at 30.

the right reasons: because I love my wife, and because I wish to be *the sort of person* who keeps his word.

I think there are many evils like this, evils whose elimination *by force* would deprive the world of much good. If I am right, then, it seems there are at least some evils—moral evils—that government should not attempt to suppress. To do so would be to deprive the world of much good—or at least the potential for much good. On the other hand, I think there are some evils that lack this property—at least in any useful sense. These are the sorts of evils—murders, robberies, and the like—that government exists to suppress.

I mentioned before that government could address some evils by taking upon itself our moral responsibility to care for our neighbors. It could take up a collection, I said, and distribute the proceeds. This was euphemism, of course, because no one needs the government to take up a collection. Even beggars have the resources for this, and children have the knack for it. When the government passes the hat, no one has a choice about whether to contribute or even how much. It is “pay up or else.” If you or I took up a “collection” on these terms, we would be charged with robbery.

Government enjoys an extraordinary power to take our money by force, and there are legitimate reasons for this power. For example, we all benefit from the protection government provides and the roads it builds. In some instances we can cover these costs with tolls and user fees, so that the people who benefit the most bear the greatest share of the cost. Nevertheless, there are many government services whose costs simply must be borne by the whole. I may never have to sue someone to vindicate my rights, but the fact that a judge is there, ready to protect me, serves as a strong deterrent to those who would defraud me. This is reason enough for me to have to contribute to the judge’s salary. If I have the ability to pay and I refuse to pay my fair share, after due notice and an opportunity to protest, I am a thief. The evil of theft falls within the class of evils that government may safely suppress.

The taxes that concern us, however, are those the government collects for what would usually be considered charitable purposes. When government steps into the charitable arena, government is clearly taking on natural evils. I take it, for example, that when government sets out to provide health care to the poor, it is primarily addressing the natural evils of illness and physical infirmity. There is a sense, however, in which government is also addressing a moral evil. If each of us has a moral responsibility to look out for our neighbors, then government is also addressing the moral evil that represents our failure to discharge this responsibility.

Now it is certainly right for mankind to wrestle with natural evil. According to Hick, “this is what we are here for!”¹⁰⁵ “[M]oral and spiritual growth[,]” he writes, “*occur* through overcoming evil”¹⁰⁶ Indeed, according to Hick, God’s desire for such growth explains the kind of world we live in:

It . . . does not seem to me that there is a viable possibility of a “soul-making” world from which we exclude all risk of severe hardship and injury, with desperate and even suicidal misery as the extreme point of the one continuum, and death as the extreme point of the other. The world, as a person-making environment, does not have to include the *particular* perils that it contains, but it does have to contain some particular perils and challenges which are real and which inevitably have, to us, an arbitrary and sometimes threatening character which is beyond our control.¹⁰⁷

Nevertheless, what may be appropriate—and even obligatory—for mankind can be dangerous and destructive for government. If we, too, desire to foster moral and spiritual growth, we must keep government out of the business of charity.

As I have noted before, government *only operates by force*. This cannot be emphasized enough. As Bastiat observed, “*law is force*.”¹⁰⁸ Government has nothing to give that it does not first take from someone else. Bastiat writes:

[T]he law is not a breast that fills itself with milk. Nor are the lacteal veins of the law supplied with milk from a source outside the society. Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been forced to send it in.¹⁰⁹

This is true regardless of whether the government borrows from others or simply prints the money it gives away. It cannot put off paying forever,¹¹⁰ and printing money is simply a tax in disguise. As Henry Hazlitt has written:

105. HICK, *supra* note 4, at 376.

106. *Id.* (emphasis added).

107. *Id.* at 378-79; *see also id.* at 374.

108. BASTIAT, *supra* note 50, at 25 (emphasis added).

109. *Id.* at 24.

110. *See* HENRY HAZLITT, *ECONOMICS IN ONE LESSON* 175 (1979).

[T]he country as a whole cannot get anything without paying for it. Inflation itself is a form of taxation. It is perhaps the worst possible form, which usually bears hardest on those least able to pay. . . . It is a tax not only on every individual's expenditures, but on his savings account and life insurance. It is, in fact, a flat capital levy, without exceptions, in which the poor man pays as high a percentage as the rich man.¹¹¹

We must not forget this point: when government sets out to do charitable work, it does so, not with its own money—it has none—but with the money of its citizens. As I noted before, no one needs government to take up a collection. We are all capable of that. What government brings to the table is force, and the evil it really seeks to address is not natural evil—it has no inherent capacity for this—but the moral evil that exists when men and women freely choose *not to discharge* their moral responsibility to care for others. As a *moral* evil, this seems to be exactly the sort of evil government exists to suppress. The question, however, is whether government can safely suppress it without suppressing moral good.

I think our answer must be, “No.” The moral evil government would suppress here is a *failure to do good*—a failure to love, and a failure to give. Love cannot be compelled. Gifts cannot be compelled. This is analytic.

Consider the case of relief for the poor. Assume that someone in my community needs food. If I observe this person in need and pass on—assuming I have the means to give—you might say that I am “wicked.” But we must be very clear, however, about the nature of my wickedness. It is not the wickedness of actively causing an evil state of affairs, because I did not cause his hunger. My wickedness is an omission—a failure to be good. This explains why we praise those who *do* give their time or money to help others. They have done something *good, not merely beneficial*. By the same token, we do not praise those who refrain from embezzlement or arson. They have done something right, but that was only in accord with their

111. *Id.* at 176. Andrew Bernstein makes a similar point: “Inflation is a form of stealth taxation. It is a covert governmental means of increasing its spending capacity without engaging in the politically unpopular act of overtly raising taxes. It is a surreptitious levy imposed on citizens in their role as consumer, not as taxpayer.” ANDREW BERNSTEIN, CAPITALISM UNBOUND: THE INCONTESTABLE MORAL CASE FOR INDIVIDUAL RIGHTS 117 (2010).

duty. Ultimately, we all have a duty to love our neighbors as ourselves,¹¹² and God will judge us if we fail in this duty, but love is a positive virtue. Love may restrain us from acting in an unloving manner, but the failure to be *unloving*, is not the same thing as *loving*.

Back to my neighbor—assume that government intervenes. Let us also assume, contrary to fact, that my government is remarkably efficient. It commands a social worker to take ten dollars from me and give it to my poor neighbor. There, the man is fed. The government has done its duty: it has compelled me to do mine. But have I *really* done my duty? I think not. I have not loved my neighbor because the choice about whether to give was not mine. The government chose for me. My only choice was whether to surrender my money or suffer the consequences.

Who could avoid feeling some resentment toward the government and the person “I helped”? As Andrew Bernstein has written:

*An individual will not feel love or affection toward one for whom he must sacrifice. He will experience only frustration, resentment, and bitterness. For example, if parents demand a child give up [a] career choice for one favored by the family, the child’s accession does not enhance but undermines his family intimacy. The sacrifice leads ineluctably to less affection for the parents—not more.*¹¹³

You may object that the social worker acted with good motives. The legislator, too, who commanded the transfer, probably acted with the best intentions. But is there any altruism here, any love? How do we know for sure? Giving away others’ money seems about as costly and noble as confessing others’ sins.¹¹⁴

112. *Leviticus* 19:18 (NASB) (“You shall not take vengeance, nor bear any grudge against the sons of your people, but you shall love your neighbor as yourself; I am the LORD.”).

113. BERNSTIEN, *supra* note 110, at 89.

114. See C.S. LEWIS, *Dangers of National Repentance*, in *GOD IN THE DOCK: ESSAYS ON THEOLOGY AND ETHICS* 189-192 (Walter Hooper, ed., 1970). Lewis writes:

A group of such young penitents will say, ‘Let us repent our national sins’; what they mean is, ‘Let us attribute to our neighbor (even our Christian neighbor) in the Cabinet, whenever we disagree with him, every abominable motive that Satan can suggest to our fancy.’

Such an escape from personal repentance into that tempting region
Where passions have the privilege to work
And never hear the sound of their own names,
would be welcome to the moral cowardice of anyone.

Theism's critics understand very well the power of force—or even the prospect of reward—to undermine ethical behavior. Patrick Grim, for example, has argued the following:

For many religions, action in this life is rewarded or punished in the next life. But action for reward or punishment is not genuinely ethical action. Far from grounding ethical action, this form of religious belief would seem to make it difficult for a believer to act ethically. Does this show that ethics and religion are incompatible? Not every religion has a heaven or hell. A religious believer might do the right thing simply because it is the right thing. But the tension remains: If one is a believer in heaven and hell, how can one be certain that reward is not one's motivation?¹¹⁵

Louise Antony developed a similar view of things when she was wrestling with whether to abandon the Catholicism of her youth.¹¹⁶ She writes:

But now, grown up and in the throes of my religious crisis, I was struck by a perverse insight: that the perfect contrition that had eluded me hitherto might finally be achieved *if I became an atheist*. If I didn't *believe* in God, then fear of eternal damnation could hardly be a reason for me to repent anything. If I, as a nonbeliever, felt contrite for having done something wrong, it could *only* be because it *was wrong*. If I ceased to fear God's judgment, then the only possible reason I could ever have for doing good would be *goodness* itself. Much emboldened, I took my reasoning a step further: Maybe atheism was the *only* way to achieve perfect contrition, the only psychologically possible way for us fallible, selfish human beings to put aside concern for ourselves in confronting our misdeeds.¹¹⁷

Id. at 190 (quoting WORDSWORTH, *THE PRELUDE*, bk. XI, l. 230 (1850)).

115. PATRICK GRIM, *Thoughts on Religion and Values*, in *THE GREAT COURSES: PHILOSOPHY & INTELLECTUAL HISTORY: QUESTIONS OF VALUE*, pt. 1 (The Teaching Company, 2005).

116. See LOUISE ANTONY, *Atheism as Perfect Piety*, in *IS GOODNESS WITHOUT GOD GOOD ENOUGH?* 67, 67-69 (Robert K. Garcia & Nathan L. King, eds., 2009).

117. *Id.* at 69. Donald C. Hubin offers a related argument about the possibility for genuine theistic belief to render truly-sacrificial altruism impossible. See DONALD C. HUBIN, *Empty and Ultimately Meaningless Gestures?*, in *IS GOODNESS WITHOUT GOD GOOD ENOUGH?* 133-150 (Robert K. Garcia & Nathan L. King, eds., 2009).

It seems to me, however, that theists have a good response to this argument. As John Hick has written:

In creating finite persons to love and be loved by Him God must endow them with a certain relative autonomy over against Himself. . . . God must set man at a distance from Himself, from which he can then voluntarily come to God. . . . The kind of distance between God and man that would make room for a degree of human autonomy is epistemic distance. In other words, the reality and presence of God must not be borne in upon men in the coercive way in which their natural environment forces itself upon their attention. The world must be to man, to some extent at least, *etsi deus non daretur*, “as if there were no God.”¹¹⁸

If Hick is right, God’s apparent absence is what makes it possible for us to freely choose Him—or reject Him. Worship is thus not simply an act of obedience; it is also an act of faith. If we have a hard time achieving perfect contrition, perhaps our hearts are not right, but at least we have faith, without which “it is impossible to please Him.”¹¹⁹ After all, who can love what he does not know? Though God promises rewards for obeying Him, and punishment for disobeying Him, these, too, are set at a distance from us. If I may judge of my own experience, the trouble lies not in taking God’s promises too seriously, but in having any regard for them at all. All of which makes it possible for Christ to say, “*If you love me, you will keep my commandments.*”¹²⁰

This option—creating or maintaining epistemic distance—is hardly available to a government that wishes to suppress all evil. It must make its presence felt. The likelihood of punishment must approach near certainty—or the punishment threatened must be very severe—if government is to have any hope at all of deterring *all* would be criminals. Again, criminals must know what they have coming to them, and they must have no hope of avoiding it. Of these two, certainty that punishment will be meted out may be the most important.¹²¹

118. HICK, *supra* note 4, at 281.

119. *Hebrews* 11:6a (NASB).

120. *John* 14:15 (NASB) (emphasis added).

121. See JOSHUA DRESSLER, *CASES AND MATERIALS ON CRIMINAL LAW* 35 (4th ed. 2007) (citing RAYMOND PATERNOSTER, *The Deterrent Effect of the Perceived Certainty and Severity of Punishment*, 42 *JUSTICE Q.* 173 (1987)). Dressler writes:

Thus “epistemic distance” is the last thing a government should strive for if it wishes to deter evil. Yet it is this very “epistemic proximity” that strains our ability to do good or to even know with any certainty that we *are* doing good.

We should be clear, however. As Grim notes, the threat of punishment does not *necessarily* rule out the *possibility* of some right conduct. People “might [still] do the right thing simply because it is the right thing.”¹²² This is certainly true. I suspect—and hope—that most people refrain from murder because it is wrong, not simply because it is illegal. Nevertheless, I think Hick’s concept of epistemic distance is helpful here. When the threat of punishment seems remote, if only in time, it is quite easy to say, “I did it because it was right.” I may wonder in the back of my mind whether that was really so, but at least it seems plausible. I may even have a very good sense of my motivations, because I may have had to struggle with my decision to do the right thing.

The notion that “I did it because it was right” seems a much harder sell—to myself and others—when the consequences of doing wrong are swift and sure. I may still have a choice about what I do, but the greater the prospect of punishment, the smaller and less significant my choice becomes and the greater the chance that someone else’s choice will have replaced mine.

This is the peril that government faces when it sets out to suppress all evil. The more its presence is felt, the less freedom citizens have to do or be good. Indeed, if the theologians are right, the price for no evil may be a world with no good. This strikes me as a terrible price to pay. If God was not willing to pay this price, why should we?

IV. GOVERNMENT MUST, NEVERTHELESS, SEEK TO ELIMINATE *SOME* EVIL

I now come to what is almost certainly my least controversial point, which is that government has a responsibility to suppress *some* evil. Perhaps only anarchists would quibble with this one. Nevertheless, I want to be clear, given my earlier remarks, that theists are not opposed to law and

Regarding the general deterrent value of punishment, research indicates that the benefit of punishment depends on various factors, including: the nature of the offense; the type of offender involved; the perceived risk of detection, arrest, and conviction; and the nature and severity of the penalties threatened or imposed. In general, however, an increase in the detection, arrest and conviction rate is of greater deterrent consequence than an increase in the severity of the penalty upon conviction.

Id.

122. GRIM, *supra* note 114, at 23.

order. The Scriptures are clear that government exists to punish and deter evil.¹²³ They are also clear that God is deeply troubled when government fails to discharge this duty.¹²⁴

This view is quite consistent with the free will defense. Plantinga says that significantly free creatures are worth the trouble *as long as* they “freely perform more good than evil actions”¹²⁵ This condition—more good choices than bad choices—seems to have been violated in the era immediately before the Flood. According to Genesis, “the Lord saw that the wickedness of man was great on the earth, and that *every intent of the thoughts of his heart was only evil continually.*”¹²⁶

It should not come as surprise that one of God’s first statements to mankind after the Flood was about government: “[F]rom every man’s brother I will require the life of man. ‘Whoever sheds man’s blood, by man his blood shall be shed, for in the image of God He made man.’”¹²⁷ God resolved not to destroy the earth again in this manner,¹²⁸ but this was not because man’s propensity for evil had changed. The Lord observed after the Flood that “the intent of man’s heart is evil from his youth[.]”¹²⁹ If mankind were going to continue on the earth, it would have to police itself—at least to a degree. The violence and corruption that characterized the era before the Flood¹³⁰ would have to be suppressed.

123. See, e.g., *1 Peter* 2:13-14 (NASB) (“Submit yourselves for the Lord’s sake to every human institution, whether to a king as the one in authority, or to governors as sent by him for the punishment of evildoers and the praise of those who do right.”).

124. See, e.g., *Jeremiah* 22:3-5 (NASB)

Thus says the LORD, Do justice and righteousness, and deliver the one who has been robbed from the power of his oppressor. Also do not mistreat or do violence to the stranger, the orphan, or the widow; and do not shed innocent blood in this place. For if you men will indeed perform this thing, then kings will enter the gates of this house But if you will not obey these words, I swear by Myself, declares the LORD, “that this house will become a desolation.”

(internal quotations omitted).

125. PLANTINGA, *supra* note 3, at 30.

126. *Genesis* 6:5-7 (NASB) (emphasis added).

127. *Genesis* 9:5b-6 (NASB).

128. See *Genesis* 8:21d (NASB) (“I will never again destroy every living thing, as I have done.”); *Genesis* 9:11 (NASB) (“I establish my covenant with you; and all flesh shall never again be cut off by the water of the flood, neither shall there again be a flood to destroy the earth.”).

129. *Genesis* 8:21c (NASB).

130. See *Genesis* 6:11-12 (NASB) (“Now the earth was corrupt in the sight of God, and the earth was filled with violence. God looked on the earth, and behold, it was corrupt; for

I need not belabor *this* point, however. Government must suppress some moral evils. As I have noted, only anarchists are likely to disagree.

V. SYSTEMS OF LAW FOUNDED ON THEISM ARE *BEST* EQUIPPED TO RESOLVE THE PRACTICAL TENSION BETWEEN POINTS (1) AND (2), ON THE ONE HAND, AND POINT (3) ON THE OTHER.

I have argued that government cannot eliminate all evil. It is simply impossible. I have also argued that government would be unwise to attempt to eliminate all evil—whether moral or natural. To do so would be to endanger, and possibly destroy, moral good. Yet government has a responsibility to suppress *some* moral evil. The question, it seems, is where to draw the line—and this is no easy question to answer. Reasonable minds will differ, but I want to contend—perhaps most controversially—that systems of law founded on theism are best equipped to draw the line in the right place.

It seems to me that theists—in general—enjoy at least one advantage that atheists—in general—do not: theists tend to believe that our time on earth is more of a beginning than an end, and that God will have the last word in matters of good and evil. Thus the things we do and experience in this life are not to be evaluated in isolation, but rather as parts of a whole that extends beyond this life.

Roderick Chisholm writes:

What if the evils of the world were defeated by some wider state of affairs that is *absolutely good* in the sense we have defined—what if the evils of the world were defeated by a certain state of affairs *q* such that *q* is good and such that any possible state of affairs entailing *q* is better than any possible state of affairs not entailing *q*? Epicurus said that if God is able but unwilling to *prevent* evil, then he is malevolent. But if the evil in the world is defeated and contained in a larger whole that is absolutely good, one should rather say that, if God had been able but unwilling to *create* such evil, then he would have been malevolent. . . .

. . . .

all flesh had corrupted their way upon the earth.”) “Corruption” appears to refer to moral turpitude in general, not just official corruption.

. . . It is clear, I think, that this is the sort of thing that has been intended by the great theodicians in the history of western thought.¹³¹

Chisholm's use of the term "defeat" is significant. What he has in mind is the possibility for something evil to increase the value of the whole of which it is a part. He writes:

The unpleasant experience of fear, we may suppose, is a state of affairs that is intrinsically bad. But such experience is necessarily involved in the exercise of courage. And the exercise of courage, we may further suppose, is a virtuous activity that is intrinsically good. We need not pause to consider what else it is that goes with fear to make up courage. For the point of the present example is that the larger whole—the exercise of courage—is *better* intrinsically because of the badness of the part that is bad. . . .

. . . .
 . . . [W]hen evil is *balanced off* in a larger whole, we may, when considering the whole, regret or resent the presence of the evil there. But if these examples [*inter alia*, repentance and courage] are acceptable, then one should say, "Thank goodness for the badness of the part that is bad!"¹³²

We find a similar line of thought in Paul's epistle to the Romans where Paul writes:

The Spirit Himself testifies with our spirit that we are children of God, and if children, heirs also, heirs of God and fellow heirs with Christ, *if indeed we suffer with Him* so that we may also be glorified with Him. For I consider that the sufferings of this present time *are not worthy to be compared with* the glory that is to be revealed to us.¹³³

Consider also this passage from Paul's second epistle to the Corinthians:

[M]omentary, *light affliction* is producing for us an *eternal weight of glory far beyond all comparison*, while we look not at the things which are seen, but at the things which are not seen;

131. CHISHOLM, *supra* note 17, at 67-68 ("q" italicized for clarity).

132. *Id.* at 60.

133. *Romans* 8:16-18 (NASB) (emphasis added).

for the things which are seen are temporal, but the things which are not seen are eternal.¹³⁴

Because Christian theists see the relevant whole as larger than this life, we understand that we do not *need* to punish *every* wrongdoer or conquer *every* natural evil. We are right to contend with evil, but the world was not created for us to succeed in these endeavors. It was created for us to grow *through* these endeavors.¹³⁵ We are able, thus, to find meaning in the evils we experience, and in our efforts to overcome them, even when those efforts are not wholly successful. We *look forward* to a time when God will make “all things new[,]”¹³⁶ and a time when God will judge the wicked “according to their deeds.”¹³⁷ Any justice we do on earth is merely provisional, *for now*. The God who is omniscient, omnipotent, and perfectly-good—as these characteristics are properly understood—will someday do justice and bring about good to a degree we can never hope to approximate. This is not, of course, an excuse for negligence on our part. We will be accountable to God for our acts and omissions¹³⁸—which is good reason to tread carefully.

I am not suggesting here that theists have always gotten things right. Colonial Americans were a theistic lot, and they sometimes strayed across the line between punishing evil and compelling virtue. As Lawrence Friedman writes:

The colonial laws punishing gaming, idleness, drunkenness, lying, and disobedient children are famous. A New Hampshire law of 1693—of a common type—punished those who “on the Lords day” were found to “doe any unnecessary Servall Labour, Travell, Sports,” or to frequent taverns, or “Idly Stragle abroad.”¹³⁹

Some of these crimes seem to punish a lack of good—a want of piety or temperance, for example—as much as they punish positive evil. If there is a middle ground between temperance and drunkenness, or piety and impiety,

134. *2 Corinthians* 4:17-18 (NASB) (emphasis added). Paul’s reference to “*light afflictions*” should not be understood as an attempt to diminish this world’s evil. Paul knew how dangerous and painful life could be. *See, e.g., 2 Corinthians* 11:23-27 (NASB).

135. *See* HICK, *supra* note 4, at 374.

136. *Revelation* 21:5b (NASB).

137. *Revelation* 20:12d (NASB).

138. *See* *Matthew* 25:41-46 (NASB).

139. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 72 (2d ed. 1985) (quoting *LAWS OF NEW HAMPSHIRE, PROVINCE PERIOD, 1679-1702*, 564 (1904)).

its boundaries are surely vague. When theists try and get it wrong—when they attempt to compel the good—eventually their theology should bring them around to the truth: that justice, in the end, is not up to them and that, if God prizes their freedom, perhaps they, too, should prize the freedom of others.

It seems to me that this perspective is not available to non-theists—at least to those whose worldview does not allow for life beyond the grave. The whole they inhabit is necessarily much smaller. If the lives we have are the *only* lives we will *ever* have, then it seems that the job of addressing natural and moral evils is much more urgent. Evils that are not “defeated” in this life will never be defeated. Thus, we may not have the *luxury* of moral good. Perhaps we cannot *afford* freedom. Again, wrong that is not righted now *will never be made right*.

The impulse to right every wrong while there is time is a noble one, but it is impossible for a government that lacks the proper resources. If government is aware of some problems but not others, how can I fault it for not responding to the burglary at my house? Perhaps it simply does not know what is happening. If it can respond to or prevent some problems but not others, how can I fault it for not sending the police when I call? Perhaps the officers were tied up on the other side of town. Again, if government agents are upright regarding some matters, and evil regarding others, how can I fault government if I run into a crooked cop now and again? It is not enough, therefore, for government to know about *most* evils, to be able to address or prevent *most* problems, or to be good with respect to *most* matters. If there is to be no evil, it must know about every evil and be able to address it, and its agents must be good enough, in every instance, to choose to do so.

Thus it seems—from the non-theist’s perspective—that government must be made omniscient. It must be made omnipotent. It must be made perfectly-good. If there is no God, we must *make* one, but I cannot conceive of a way to accomplish this. And I think to attempt this is to court disaster.