

4-20-2009

## Theology and the Higher Law

Yitzchok Adlerstein

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>



Part of the [Jurisprudence Commons](#), and the [Religion Law Commons](#)

---

### Recommended Citation

Yitzchok Adlerstein *Theology and the Higher Law*, 36 Pepp. L. Rev. 5 (2009)

Available at: <http://digitalcommons.pepperdine.edu/plr/vol36/iss5/12>

This Symposium is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [Kevin.Miller3@pepperdine.edu](mailto:Kevin.Miller3@pepperdine.edu).

# Theology and the Higher Law

Yitzchok Adlerstein\*

I could never have done radio without a boost from an atheist, and some help from the old priest-rabbi-and-a-minister routine. My very first radio broadcast included those very same clergypeople as the panel on KABC's "Religion on the Line" program, which ran for two hours, commercial free, on Sunday nights.

The evening of my debut, the show's host decided to add a fourth participant, representing Atheists Anonymous. I was not able to contribute too much that evening because the moderator, the host, wanted to go for the atheist's jugular himself, and hardly allowed the rest of us an opportunity to speak. I returned to the program a few months later and was greatly surprised to learn that the same atheist had also been invited back. Having overcome my neophyte jitters, I was much more confident and assured, and chomping at the bit to score a few points. Without waiting for the opening bell, I took advantage of the brief moment where we were all allowed to introduce ourselves and add a few words. I said, "I am so happy to see my colleague from a previous show, the gentleman from Atheists Anonymous who has proven one of the traditional thirteen principles of the Jewish faith." Listeners could not tell of course, but daggers were flying from his eyes. The host took the bait and asked me to explain myself. I explained that according to the formulation of Maimonides, one of the thirteen principles of faith is the future resurrection of the dead.<sup>1</sup> Since we had so thoroughly demolished the atheist in his last appearance, his coming back proved that people could rise from the dead. The atheist was not pleased by this little sidebar, and it served to keep him off-balance for the rest of the broadcast, which of course had been my exact intent.

---

\* Rabbi Adlerstein holds the Sydney M. Irmis Adjunct Chair in Jewish Law and Ethics at Loyola Law School. He serves as the Director of Interfaith Affairs for the Simon Wiesenthal Center. This paper is an edited version of an oral presentation delivered at the Higher Law Symposium at Pepperdine Law School, February 21–22, 2008.

1. In 1168, Maimonides formulated the thirteen principles of faith in his Commentary on the Mishnah, introduction to the tenth chapter of tractate Sanhedrin. *See generally* MAIMONIDES' COMMENTARY ON THE MISHNAH: TRACTATE SANHEDRIN (Fred Rosner trans., Sepher-Hermon Press 1981).

I do hope that my reappearance at this symposium was both more auspicious and more successful than that of our hapless atheist. I especially wish to thank Professor Cochran for his general graciousness and for having included me in these wonderful programs. My goal in these brief remarks will be to show why, from the standpoint of Jewish tradition, any atheistic approach to a Higher Law is dead on arrival, and most certainly will not be resurrected.

We previously heard from both Professors O'Donovan.<sup>2</sup> Once upon a time in the country that the O'Donovans now call home, the universe made sense. The earth was at its center, physically and morally. Everything revolved around it, traveling in perfectly circular orbits. This made perfect sense, because circles were perfect figures, and this was quite obviously the only reasonable way in which God would have chosen to create a world. Everyone knew that. They happened to be wrong, but that did not matter. What they knew, or thought they knew, made sense. Within those celestial spheres resided many a priori truths, and they too made sense. In such a world, moral law—at least to many—was innate, inevitable, and ultimately knowable.

This has all changed. The twentieth century would leave us with a view of the behavior of the basic building blocks of our world that is entirely counterintuitive and, at times, even bizarre, at least to anyone other than a mathematical physicist. We find ourselves in a universe in which matter and energy spontaneously morph into each other, in which the old notion of force has become a reshaping of space itself, in which objects upon closest examination seem to be nothing more than vast voids, populated only by interacting waves of energy which create the illusion of solid existence.

But let's not blame it all on twentieth century physics. The triumph of science hundreds of years earlier upended for man all possibility of "givens" and "knowns." They would not exist anymore. Men used to live in a universe where truth was intuitive, immediate, and knowable. In the wake of the Enlightenment, we doubt whether we know anything or whether anything is knowable at all. John Donne, in lines not soon to be set to music by the Backstreet Boys, had this to say about the impact of Copernicus and Man's discovery that the universe did not revolve around him:

And new Philosophy calls all in doubt,  
The element of fire is quite put out;

...

---

2. Professors Oliver O'Donovan and Joan Lockwood O'Donovan participated in a panel discussion entitled "Theology and the Higher Law" at the Higher Law Symposium. See generally Joan Lockwood O'Donovan, *Law and Redemption: Political Judgment and the Church's Proclamation*, 36 PEPP. L. REV. 573 (2009).

'Tis all in pieces, all coherence gone;  
All just Supply, and all Relation;  
Prince, Subject, Father, son are things forgot<sup>3</sup>

I do hope that you will forgive me for attempting in this short piece, to cashier much of the depth and elegance that was presented by some speakers in the Higher Law Symposium. I do not mean to be simplistic, but to suggest an alternative that Jewish tradition has embraced with good result.

Paul Tillich, the eminent Protestant theologian, may have put it most succinctly. According to a colleague of mine who witnessed the event, Tillich during his Harvard years threw out a challenge to a class. "Who planted the seeds of the Holocaust?" A few students offered possibilities, but he dismissed them all. Finally Tillich related that he believed the culprit was Immanuel Kant for developing a system of ethics without needing to invoke God.<sup>4</sup> Tillich argued that substituting human reason for Divine authority left wiggle room for all kinds of discussions as to what constituted murder and what was justifiable. In the course of time, an entire society would be taught—by appealing to reason—that it was cruel to allow the infirm to live, inefficient to allow the mentally deficient to reproduce, an impediment to the future of civilization to allow inferior, non-Aryans to dilute the gene pool, and that a Jew was no more human than a dog. Extending Ivan's argument in *The Brothers Karamazov* just a tad, if there is no need for God in the formulation of an ethical system, all things are possible.<sup>5</sup>

As heard from previous presenters in the symposium, all sorts of objections have been thrown at higher law—and certainly natural law—systems over the centuries. Closer to our day, some thinkers have attempted to resurrect a higher or natural law reborn in a modern spirit. I wish them

3. JOHN DONNE, *An Anatomy of the World: Wherein, by Occasion of the Untimely Death of Mistris Elizabeth Drury, the Frailty and the Decay of the Whole World is Represented*, in AN ANATOMY OF THE WORLD ll. 205–06, 213–15 (N.J. Endicott ed., 2008) (1611), available at <http://rpo.library.utoronto.ca/poem/643.html>.

4. See generally IMMANUEL KANT, *CRITIQUE OF PURE REASON* (J.M.D. Meiklejohn trans., 1878) (1781); see also Rebecca Redwood French, *From Yoder to Yoda: Models of Traditional, Modern, and Postmodern Religion in U.S. Constitutional Law*, 41 ARIZ. L. REV. 49, 74 n.145 (1999) (discussing Robert Bellah's evolutionary model of religion and the work of Immanuel Kant as the basis of "the modern disenchantment with the traditional metaphysical basis of all religions and a regrounding of religion 'in the structure of ethical life rather than in a metaphysics claiming cognitive adequacy'").

5. See, e.g., Timothy L. Fort, *The First Man and the Company Man: The Common Good, Transcendence, and Mediating Institutions*, 36 AM. BUS. L.J. 391, 414 (1999) ("In *The Brothers Karamazov*, Dostoevsky proposes that if there is no God, then nothing can be immoral.").

luck, but it is going to be an uphill battle. The problem was put cogently in John J. DiIulio, Jr.'s foreword to a book by Robert P. George,<sup>6</sup> one of the new writers of modern synthesis in the natural law, commenting on Pope John Paul II's encyclical *Fides et Ratio*. He wrote, "Voltaire himself . . . might have been a bit surprised had he known that at the end of the twentieth century, having confidently relegated Faith to intellectual limbo, his latest disciples would count among their 'contested' concepts Truth, leaving the enlightened leader of the Roman Catholic Church to defend Reason."<sup>7</sup> When both truth and reason are in battle, where can we possibly find a higher law?

Traditional Jewish sources have much to say about higher law systems. The strongest of them, I believe, are quite certain that the usable ones can only be found in religious faith. Absent that faith, our present view of reason as tentative and elastic precludes any workable higher law system of more than academic interest.

The single most important, and in my mind, telling Jewish source on natural law is in the *Mishneh Torah*, the legal code of Maimonides, by the great Talmudist, rational philosopher and court physician of the twelfth century.<sup>8</sup> At the end of the eight chapters of the Laws of Kings, he talks about what is often referred to as the Noahide Code.

If Jews ever toyed with the idea of claiming an exclusive to the Kingdom of Heaven, they would have had to rewrite too many early sources. Judaism always preached that everyone had a shot at it, that Heaven was an equal-opportunity houser. It taught that Jews were expected to obey 613 commandments, but everyone else would do nicely with seven. Those seven not only safeguarded society from criminal and moral offense, but described the laws through which any human being received his or her share in the eternal reward of Heaven. In effect, there is a code within the code of Jewish law. This Noahide Code, named in honor of the progenitor of all of mankind after the primordial Flood, establishes the legal norms for non-Jews in accordance with the dictates of a God Who cares about all human beings.<sup>9</sup>

Maimonides adds a strong qualifier, however. Individuals who follow the Noahide laws merit their portion in the "World to Come" simply by observing them, regardless of how they understand their provenance. The proper way to observe them, however, is to believe that they are binding

---

6. John J. DiIulio, Jr., *Foreword* to ROBERT P. GEORGE, *THE CLASH OF ORTHODOXIES: LAW, RELIGION, AND MORALITY IN CRISIS* (2001).

7. *Id.* at x.

8. The *Mishneh Torah*, a code of Jewish religious laws, compiled by Maimonides, is a series of 14 books. See generally ISADORE TWERSKY, *INTRODUCTION TO THE CODE OF MAIMONIDES (MISHNEH TORAH)* (Yale Judaica Series 1982).

9. See Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813, 889 (1993) ("[T]he Noahide Code is the legal code given by God to all humanity before the revelation at Sinai.").

because they were God-given, through a revelation to all of mankind at Mount Sinai. One who so believes is reckoned among the righteous of the nations of the Earth, and among their wise people.

Regarding those who adhere to the demands of the Noahide Code, following the dictates of their own conscience without reference to a commanding Authority, Maimonides is not so kind. Such a person is not from the righteous of the nations of the world and not even from their wise people.

I suspect that there were other speakers in this symposium who may disagree with what I just said, basing themselves on a variant text of the Maimonides passage. I am going to stand by the majority of texts—and indeed the oldest known texts. I must emphasize that Maimonides is not just a voice among many. He figures among the greatest medieval philosophers, and certainly the Jewish philosopher whose influence knows no peer. Maimonides writes that a person who follows the Noahide laws because his heart and mind tell him that they reflect compelling moral principles is neither righteous nor particularly wise.<sup>10</sup> Maimonides is decidedly underwhelmed by the thinking of someone who not only believes in the existence of a universal higher law, but even can point to its specific demands, or Kantian categorical imperatives. Maimonides insists not only on a law overseen by a Divine authority, but that it be sourced in a specific episode of revelation of a Divine Will to Man.

Moses Mendelssohn, considered by some to be the father of the Jewish enlightenment in the eighteenth century, was the ultimate Renaissance man.<sup>11</sup> Reason was solidly situated atop a pantheon of values. God's purpose in revelation was to enlighten us to a rationally-perceptible Truth, which could be discovered through our own reason if we had enough time. To Mendelssohn, it was self-evident that a person who would latch on to the same eternal truths without the need for revelation should be considered wise indeed.<sup>12</sup> Such a person did not require any additional prodding from

10. See Michael J. Broyde, *The Foundations of Law: A Jewish Law View of World Law*, 54 EMORY L.J. 79, 85 (2005); Ruti Teitel, *A Critique of Religion as Politics in the Public Sphere*, 78 CORNELL L. REV. 747, 821 (1993).

11. Maimon Schwarzschild, *Religion and Public Debate in a Liberal Society: Always Oil and Water or Sometimes More Like Rum and Coca-Cola?*, 30 SAN DIEGO L. REV. 903, 910 (1993) (“[T]he key figure in the Jewish Enlightenment was Moses Mendelssohn, a professing Jew, whose admirers associated him with the other great “Moses” figures of Jewish religious history, the Biblical Moses and Moses Maimonides.”).

12. See Steven B. Smith, *Spinoza's State: Leo Strauss's Critique of Spinoza*, 25 CARDOZO L. REV. 741, 749 (2003) (“Mendelssohn was the greatest exponent of a ‘moderate Enlightenment’ that attempted to construct a Judaism amenable to philosophy, a rational Judaism, a ‘religion of reason

God to uncover what God Himself cherished as Truth. Why would Maimonides not even consider such a person wise?

Mendelssohn turned to one of the greatest rabbis of the generation, Rabbi Yaakov Emden. He sent a letter which has been preserved in the sixteenth volume of the *Gessamelte Schriften*, asking Rabbi Emden if Maimonides' position was one of his own manufacture, in which case he, Mendelssohn, might respectfully disagree, or whether it was firmly based on Talmudic precedent.<sup>13</sup>

Rabbi Emden found sources in the Talmud that supported Maimonides—which is what rabbis are supposed to do to when faced with any question. He then went significantly further, offering his own understanding of why both the Talmud and Maimonides were correct. Essentially, Rabbi Emden argued that there is no wisdom in any humanly arrived-at moral system, because there is some counterargument for every moral argument that can ever be made!<sup>14</sup> In the end, there is no a priori reason to accept one argument over another. Any argument that human beings come up with is ultimately questionable.<sup>15</sup>

I accept this reading of Maimonides, and believe that the strongest Jewish position about higher law is that we need God for moral law in its whole and for each and every of its details. Without the authority of God, and without the revelation of God, we can join in intriguing conferences, but we will come up with very little persuasive influence over others.

Hugo Grotius argued that the Bible pointed to a natural law;<sup>16</sup> John Selden saw that law in the Noahide Code.<sup>17</sup> Even setting aside the approach of Maimonides, I have my doubts. On the one hand, it is certainly true that the Noahide Code contains elements that seem to belong in a short list of moral desiderata: do not murder, do not steal. They seem fairly intuitive to many people.

I'm not so certain that the argument survives scrutiny. Consider the stricture against murder: an accused attempts to acquit himself of a murder

---

from the sources of Judaism.”).

13. See Yitzchok Adlerstein, *R. Akiva Eiger, Mendelssohn, and the Shema*, Aug. 2, 2007, <http://www.cross-currents.com/archives/2007/08/02/r-akiva-eiger-mendelssohn-and-the-shema/>.

14. See generally MOSES MENDELSSOHN, 16 GESSAMELTE SCHRIFTEN JUBILÄUMSAUSGABE (Fritz Bamberger ed., Stuttgart-Bad Cannstatt: Frommann-Holzboog 1972).

15. If this were indeed Maimonides's intention, I find it incredibly prescient that 800 years ago Maimonides managed to adumbrate the cynicism of modern man. Without the benefit of Voltaire, heliocentrism, and quantum mechanics, Maimonides too recognized that everything can be doubted.

16. See generally HUGO GROTIUS, ON THE TRUTH OF THE CHRISTIAN RELIGION (DE VERITATE RELIGIONIS CHRISTIANAE) (1627).

17. See Rav B. Horowitz, *How Can We Achieve Universal Peace?*, JEWISH STUDIES MAG., <http://www.public-action.com/911/suit/noahide-un/index.html> (last visited Feb. 26, 2009) (“Hugo Grotius and John Selden describe the Nochaide Code as the source of the International Law which they are credited with founding.”)

rap by questioning the application of the charges against him. “Me? Convict me? Murder? That wasn’t murder! That was my mother-in-law! Can’t think of more justifiable homicide than that! I think I did society a favor.”

Society, of course, rejects reading certain classes of people out of legal protection against murder, so we would not take his claim very seriously. On second thought, how true is this? Do we not stand today on the cusp of making certain exceptions to a previously assumed inviolability of the sanctity of life—and often in fact move beyond the cusp to implementation? Consider the various scenarios in which pulling the plug or taking even more vigorous means of putting people “out of their misery,” or assuring them that the rest of their life will not have to be lived without “quality of life,” has turned for some people into a *mitzvah*—a commandment rather than a moral offense. Consider those kindly people at the BBC who refuse to ever use the word “terrorist,” because of that great argument that one man’s terrorist is another’s freedom fighter, at least until 7/7 when magically a new clarity and definition emerged.<sup>18</sup> Overnight, the people who blew up the buses in London became terrorists. My point is that there seems to be some difficulty among good people even in defining things like the parameters of murder. Many of us can recognize the broad outlines of a moral argument, but agreement flounders upon the all-important fine print.

I’m not even going to begin to talk about the abortion issue and its attendant moral ambiguity. Let us try something simpler, like a right that is fairly well agreed upon in the modern civilized world—the right to enjoy individual property without interference by others. This right is implicit in laws against theft, another one of the more obvious laws that we might all consider to be part of a natural law system. But is it really? When does private property ownership become immoral? When do we start listening to Peter Singer at Princeton who will tell us that any kind of consumption beyond what we need—and who knows what we really need—becomes

---

18. See *Trouble with the T-word?*, BBC, July 13, 2005, available at [http://news.bbc.co.uk/news/watch/ifs/hi/newsid\\_4680000/newsid\\_4680100/4680125.stm](http://news.bbc.co.uk/news/watch/ifs/hi/newsid_4680000/newsid_4680100/4680125.stm) (discussing criticism of the BBC for using the word “terrorists” to describe the perpetrators of the London bombings and the BBC’s response to the criticism); see also BBC, *Editorial Guidelines: Terrorism, Use of Language When Reporting*, BBC, [http://www.bbc.co.uk/guidelines/editorialguidelines/advice/terrorism/language/our\\_approach.shtml](http://www.bbc.co.uk/guidelines/editorialguidelines/advice/terrorism/language/our_approach.shtml) (last visited Feb. 17, 2009) (“The Guidelines do not ban the use of the word. However, we do ask that careful thought is given to its use by a BBC voice. There are ways of conveying the full horror and human consequences of acts of terror without using the word ‘terrorist’ to describe the perpetrators. And there are a number of important editorial factors that must be considered before its use to describe individuals or a given group can be justified.”).



immoral?<sup>19</sup> Peter Singer himself lives the model. There are conflicting reports as to whether he gives 25% of his income, which is no small accomplishment, or whether it is all of his excess income that he gives away to combat world hunger.<sup>20</sup>

The same Peter Singer, though, can evince a little more confusion when it comes to murder. He is a champion of the view that until a child is a few days old, he or she does not yet possess qualities of personhood.<sup>21</sup> We should have the right to sort of dispatch him if he can be predicted to become too much of a drain on societal resources, since he is not quite ready to be considered human. Sacrificing two adult baboons—both possessed of more “personhood,” since they have real memories and more independence—to save the life of the neonate is questionable.

Singer is a supporter of an intriguing contemporary figure, Zell Kravinsky.<sup>22</sup> Kravinsky lives in Philadelphia, made about \$45 million, and gave almost all of it away.<sup>23</sup> He believes in giving away more than money. He tried to give away a kidney, attempting to offer it to any hospital that would earmark it for an African-American recipient, knowing that for a variety of reasons, African-American males were disadvantaged as potential transplant recipients, albeit mostly for medical reasons.<sup>24</sup>

His wife was appalled.<sup>25</sup> People come equipped with only two kidneys. What if one of his own would fail? What if one of his children would need a transplant some day? The hospitals he first approached refused his offer—he had a medical complication.<sup>26</sup> He found one hospital which agreed and went through with the procedure without informing his wife.<sup>27</sup> She almost divorced him.<sup>28</sup> He justified the donation, similar to Peter Singer, by arguing that the odds of anything going awry were 1 in 4,000, even

---

19. See generally Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFF. 229 (1972).

20. Peter Singer, *FAQ*, <http://www.princeton.edu/~psinger/faq.html> (last visited Feb. 17, 2009). But cf. PETER SINGER, *PRACTICAL ETHICS* 246 (Cambridge University Press 2d ed. 1993) (stating that people earning average or above average incomes should contribute at least ten percent of their earnings to the impoverished).

21. SINGER, *supra* note 20, at 171–72, 182.

22. Peter Singer, *What Should a Billionaire Give—and What Should You?*, N.Y. TIMES MAG., Dec. 17, 2006, at 4, available at [http://www.nytimes.com/2006/12/17/magazine/17charity.t.html?\\_r=1&pagewanted=4&ref=magazine](http://www.nytimes.com/2006/12/17/magazine/17charity.t.html?_r=1&pagewanted=4&ref=magazine).

23. *Id.*

24. Stephanie Strom, *Giving of Yourself, Literally, to People You've Never Met*, N.Y. TIMES, July 27, 2003, at WK3 (stating that Kravinsky tried to earmark it knowing that it is harder for African-Americans to receive kidneys from their family members).

25. Jason Fagone, *What if Zell Kravinsky Isn't Crazy?*, PHILA. MAG., Dec. 2003, available at <http://www.phillymag.com/issues/index.html?year=2003&month=12>.

26. See Ian Parker, *The Gift: Zell Kravinsky Gave Away Millions. But Somehow It Wasn't Enough*, THE NEW YORKER, Aug. 2, 2004, at 54 (stating that Kravinsky suffered from depression).

27. *Id.*

28. *Id.*

considering his complication.<sup>29</sup> He reasoned that he would only be justified in not donating the kidney if his life would be more important than that of 4,000 people.<sup>30</sup> Such an argument, he said, is obscene.<sup>31</sup>

What I fail to understand is why we should stop at the 4,000 figure. Why should Zell Kravinsky not check into a hospital today and offer both kidneys, his liver, and his heart, thereby saving four people? Is it not obscene to argue that one's life is worth more than that of four people?<sup>32</sup>

Where does one draw the line? For traditional Jews who turn to the Talmud for guidance, the line shows up in sharp relief. The Talmud rules that one cannot kill someone else to save one's own life, because no one can say that his own blood "is redder than that of another."<sup>33</sup> On the other hand, the Tosafists, a medieval group of Talmudic scholars, demonstrate that it can be concluded from the very same passage that when the issue is not whether one can actively kill another, but whether one can passively contribute to the death of another by failing to intervene, the decision is the polar opposite.<sup>34</sup> Barring any evidence that the blood of the other(s) is redder than his own (and no such evidence can exist), there can be no obligation to cede one's own life.

The fleshing out of the concept is complex and nuanced, but on the simplest level, the Talmud employs an often used distinction between activity and passivity in limiting responsibility. It works as part of a larger conceptual system, largely because those who turn to the Talmud expect to find in it God's instructions, not human conjecture.

29. Singer, *supra* note 22, at 4.

30. Parker, *supra* note 26, at 54.

31. *Id.*

32. Indeed, Kravinsky considered this idea extensively:

Several times, Kravinsky talked of giving away his other kidney and living on dialysis, and then he would upbraid himself for hesitating. "If I didn't have kids, and I saw a child who was dying for want of a kidney, I would offer mine," he said. He sometimes imagined a full-body donation. "My organs could save several people if I gave my whole body away," he told me. "But I don't think I can do that to my family. Or, at least, I can't endure the humiliation. I've thought about it: my kids would be under a cloud, everybody would pillory me as a showboat or a suicide. I know it's a thing I ought to do; other lives are equal to my own, and I could save at least three or four. I have fantasized about it. I've dreamed about it. But I don't have the nerve." He said that "before it happened I'd have to endure the screams and yells from my family. Then I would be committed." He laughed. "My wife and my sister are psychiatrists."

*Id.*

33. See BABYLONIAN TALMUD, SANHEDRIN 74A ("How do you know that your blood is redder than that of another?").

34. See TOSAFOT, SANHEDRIN 74B, s.v. *ve-ha*.

Essentially, you need God to spell out the difference between competing models for what may appear to be many people to be convincing moral arguments. For others, you need that authority in order to interest them in moral reactions altogether. Otherwise, you will find them unwilling to listen to reason or truth altogether. Something may be reasonable, and may be true, but today, I couldn't care less about moral niceties. Without a deeply felt responsiveness to the Will of a Creator, I may just as soon tune out entirely.

The argument that the seven Noahide laws are part of a natural law system leaves me puzzled. If I were God, I might well have omitted some of the seven. Is a prohibition against eating meat taken from a live animal, which finds its way on to the list of the seven, all that basic and intuitive? Most people assume that it has something to do with cruelty. I wonder if Michael Vick would concur with assigning so much importance to the treatment of animals. I suspect that the Noahide Code deliberately included elements that demand obedience to the Divine Will, even when Reason does not cheer from the sidelines.

I will conclude by reworking a statement that really said it all. It comes from a classic essay in *Spy Magazine* of 1990. Many of you have probably seen it. It's called *Is There a Santa Claus?—A Physicist View*.<sup>35</sup> It's worthwhile reading, but I'll give you the short version. The author computes how many visits Santa is duty-bound to make to service all the waiting children—or at least Christian children—of our planet.<sup>36</sup> It computes to 822.6 visits per second.<sup>37</sup> The payload of the sleigh, even assuming very, very small gifts, amounts to 321,300 tons, not counting a somewhat overweight Santa.<sup>38</sup> To pull it you need 214,000 reindeer.<sup>39</sup> That tonnage traveling at 650 miles per second creates a certain amount of air resistance upon reentry.<sup>40</sup> When translated into thermal energy, it equals 14.3 quintillion joules of energy per second, absorbed by each of his reindeer.<sup>41</sup> Thus, when Santa and his reindeer approach their next destination, their entire team will be vaporized within 4.26 thousandths of a second.<sup>42</sup> Santa, subjected to centrifugal forces 17,500.06 times greater than gravity, “would be pinned to the back of his sleigh by 4,315,015 pounds of

---

35. Richard Waller, *Is there a Santa Claus?—a Physicist View*, SPY MAG., Jan., 1990, available at <http://www.keegan.org/jeff/humor/santa.html>.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

force.”<sup>43</sup> The bottom line is, “[i]f Santa ever DID deliver presents on Christmas Eve, he’s dead now.”<sup>44</sup>

We can apply the same thinking to higher law without God. If there ever was an atheistic morality, it’s irrelevant now.

---

43. *Id.*

44. *Id.*

