THE LANGUAGE OF RIGHTS AND CONCEPTUAL HISTORY

Oliver O'Donovan

ABSTRACT

The *historical* problem about the origins of the language of rights derives its importance from the *conceptual* problem: of "two fundamentally different ways of thinking about justice," which is basic? Is justice unitary or plural? This in turn opens up a problem about the moral status of human nature. A narrative of the origins of "rights" is an account of how and when a plural concept of justice comes to the fore, and will be based on the occurrence of definite speech-forms—the occurrence of the plural noun in the sense of "legal properties." The history of this development is currently held to begin with the twelfth-century canonists. Later significant thresholds may be found in the fourteenth, sixteenth, and eighteenth centuries. Wolterstorff's attempt to find the implicit recognition of rights in the Scriptures depends very heavily on what he takes to be implied rather than on what is stated, and at best can establish a *pre-history* of rights-language.

KEY WORDS: *conceptual history*, *justice*, *modernity*, *moral ontology*, *multiple rights*, *singular rights*

THE ANCIENT WISDOM of Greek myth forewarns us that if we fail to invite the goddess Strife to our feast, she comes uninvited, and relieved of the obligations of hospitality, casts the apple of discord in our midst. Nicholas Wolterstorff has not omitted to issue the invitation in due form, constructing much of his book, *Justice: Rights and Wrongs*, around a public challenge to certain opponents of the language, conceptuality, and philosophy of rights. Those he names from this camp are a varied and distinguished company, headed by Plato, who is reinforced by turns with Paul Ramsey, Stanley Hauerwas, Alasdair MacIntyre, and Joan Lockwood O'Donovan. To be named among this company is flattering, but to be summoned to enter the lists on their behalves is daunting. What is required of an adversary in this position, I take it, is to pick up the gauntlet with a certain lusty combativeness, while observing the courtly rules of a hospitable tournament; the author's own highly personal style of pugnacious courtesy sets an outstanding example, which I will do my best to emulate. Let me state at the beginning, however, that in

JRE 37.2:193–207. © 2009 Journal of Religious Ethics, Inc.

my view what unites Wolterstorff with his critics is of much greater significance than what divides them.

The first essential is to declare the quarrel, which has three heads. There is a *political* problem with the language of rights, which is its apparent serviceability to the subversion of working orders of law and justice. The late-modern struggle between revolutionary rights and conservative sociality was begun in the last decade of the eighteenth century. Burke's critique of abstract human rights as formalistic impositions corresponding to no living social ties continues to give shape to one side in the struggle. The other side is shaped by the suspicion that Natural Law, if not fundamentally reconceived in terms of the individual, will be an instrument for the self-seeking interest of the statesman. Individual human rights *set apart from* social right are destructive of society, say the critics. That is just what they need to be, say the defenders, if they are to reform society rather than merely preserve it. But they cannot, the critics complain, drive a *rooted* social reform, which has to be *self*-reform within some determinate political community. If need be, political communities can be replaced by new ones, say the defenders. That this summary of the problem is no exaggerated fantasy can be learned from perusal of some judgments of the European Court of Human Rights: such judgments rehearse the facts of the case, report the state of national law on the matter, politely acknowledge the proper interests of the state in formulating it, and then declare it all quite irrelevant, since the Court is interested only in the *rights* involved—thus leaving the national government to make what sense it can of the resulting confusion.[1]

There is, in the second place, a *conceptual* problem with the language of rights: it appears to be in conflict with the language of right. In *Justice: Rights and Wrongs*, Wolterstorff posits "two fundamentally different ways of thinking about justice" (2008, 13), justice as inherent rights and justice as right order (11). As when Edward Gibbon, venting his scorn upon Christianity, famously let on to believe that the Christological controversies of the fourth century turned on a single letter (the iota that distinguished *homoousios* from *homoiousios*) (Gibbon 1779/1972, §123), so in this case the issue comes down to a single letter, the final "s" that forms the plural noun (in French and English, at least). Is the concept of right a *unitary* or a *multiple* one? If multiple, in what respects is it multiple? And how can its multiplicity comport with a conception of order, which demands *a* resolution of each controversy, *a* right thing to be done? In bringing the point down to the use

[1] Since the justice of this characterization has aroused some skepticism in legal company, let me simply refer the reader to the judgment *B. AND L. v. The United Kingdom*, delivered at Strasbourg on September 13, 2005.

of the singular and the plural like this, we do not, of course, mean that the advocates of one conception use *only* the plural noun, their opponents *only* the singular noun. The question is simply which is ontologically basic. As Wolterstorff very lucidly declares, "the debate at bottom is over the deep structure of the moral universe: what accounts for what?" (2008, 35). Either "rights" are "foundational to human community" (5), so that "justice is ultimately grounded on inherent rights," or "right is foundational, and rights derive from it" (4).

We need to notice, however, that there is more than one kind of multiplicity that may be signalled by the plural noun, "rights." Specific rights may be many, as specific duties are many, which is simply to say that our duty may comprise a number of different performances to which there are different claimants. We may have a duty to our family, a duty to our employer, a duty to the state; in the same way, we may have a right to life, a right to liberty and a right to the pursuit of happiness. However, this *specific* multiplicity can never be more than a heuristic or prima facie multiplicity. A given individual's rights are plural in this way because they represent *claims* that have to be balanced out in concrete deliberation. It would be the crassest rights-fundamentalism to insist that one was being deprived of a right if one could not exercise all of these various specific rights all the time. When the plural form of the noun "right" is used to distinguish species of right in this fashion, there is no very great problem about it. The multiple rights that provoke dispute are multiple in a different way: they are multiple because they are grounded in a *multiplicity of rights-bearers*. Radically multiple rights arise from, and reflect, the radical ontological distinctness and multiplicity of human persons. The intellectual problem, then, is whether the distinctness and multiplicity of human persons is sufficient to ground the social and moral phenomenon we call *obligation* or *duty*. For rights in this sense are persons, construed as imposing obligations upon us.

So much for the political problem and the conceptual problem. There is a third problem with the language of rights, a *historical* problem: the use of the word in the plural *is not found in the ancient world*. (I will qualify that bald claim shortly.) There is, therefore, a historical process to be investigated, which is how the plural use came into existence, and there is a special interest in this process because of the other two problems which the language of rights presents. It has seemed to some that the evolution of multiple rights (which is a shorthand, we must note, for the *concept* and *terminology* of multiple rights; these "multiple rights" are not new practical principles but a new language to describe existing practical principles) promises to afford us an unparalleled window through which to view the emergence of modernity as a

civilizational totality. Is that promise a deceptive one, or can it be fulfilled?

Wolterstorff complains that opponents of rights-language, the advocates of unitary right, depend almost entirely on a historical narrative of the origin of multiple rights (2008, 11) rather than on systematic arguments. He is not, however, prepared to dismiss the relevance of the historical narrative, but attempts to meet it by constructing a counter-narrative, which extends over something like half of his book. Much of the discussion I will pursue is primarily about the historical problem—whether a historical narrative that traces the origin of multiple rights to the Middle Ages is soundly based. Of course, the seriousness of this question, its worthiness to occupy our minds and heat our blood, depends on how it impacts the conceptual problem and the political problem. We can, then, express the total question, comprised of the three questions put together, in the following way: does the evolution of a plural-rights concept indicate, in fact, a civilizational mutation in the practical outworking of which we are still caught up, which has as its end the overthrowing of our traditional conceptions and practices of justice-as-right?

The narrative of the origins of multiple rights is one of a family of modernity-origin narratives. It arises within the broader question, why and in what respects is our existence as humans differently experienced in modernity from how it seems to have been experienced in antiquity? Such quasi-historical questions have not been popular within the analytic disciplines of Anglophone philosophy, but under the influence of nineteenth-century philosophers of history, have had a considerable influence on the continent of Europe and been vigorously pursued in the eclectic halls of North America. Robert Spaemann (1994) has claimed that any philosophy undertaken today must take the form of a reflection on modernity.

Earlier essays on the question of modernity did not focus on concepts of right. The first account known to me that took a special interest in that theme was that of Leo Strauss, in his famous book of 1953, *Natural Right and History*. He found the genesis of modernity especially evidenced in Hobbes's *Leviathan*, where all natural right is traced back to the individual right to survive. This neatly associated the concept of multiple rights with that indeterminate but useful episode to which modernity can always be traced, the Enlightenment. But Strauss's seventeenth-century-focused account was soon upstaged. He himself began to take more interest in the influence of the late fifteenth century, and especially in Machiavelli. A decade or so later, a theory propounded by the French legal historian, Michel Villey, located the shift in the concept of right within the fourteenth century, synchronous with the scholastic development of nominalism and

voluntarism, which itself conveniently coincided with the dispute between the radical Franciscans and the papacy over the status of absolute property. More recently again, the medieval historian Brian Tierney has promoted a twelfth-century thesis, deriving multiple rights from the medieval revival of jurisprudence—"the great age of creative jurisprudence" as he calls it—and especially from the canon lawyers, whose interest lay in the economic organization of corporations (1997). Tierney's, the most historically robust example of this kind of narrative, is based on precise studies of word use, and is, incidentally, philosophically disinterested, since Tierney shares none of the substantive agenda of the modernity critics.

It is worth clarifying precisely what such a narrative can and cannot show. It can show that a distinct way of conceptualizing and referring to certain justice questions arose through certain medieval property relationships within the corporate world of cathedral chapters and monastic houses, and, later, city guilds. It shows, or assumes shown, that this conceptuality did not arise prior to that period. The case depends, therefore, on an *absence* of certain distinct forms of speech or patterns of words in early medieval and antique writing. Yet, it cannot rule out any kind of *anticipation* of such distinct forms or patterns. To prove the absence of a pattern and to distinguish its occurrence from a mere anticipation of it throughout a literary period of some two thousand years in two or three major languages is, needless to say, a pretty rough business.

So we must be content with a fairly crass summary of what has emerged and failed to emerge from various trawls of antique literature that have gone in search of rights there, Wolterstorff's included. But first a routine, though important, health warning: the scholar who would dabble in these matters cannot learn too soon the dreadful truth of the Italian proverb, *traduttore traditore*, "the translator is a traitor." Phantom "rights" spring up liberally across pages translated from Hebrew, Greek, and Latin, corresponding to no plural noun in the original. The unwary may be led by the translators of the Revised Standard Version Bible to discover "rights" in Proverbs 31:8–9 and Jeremiah 5:28, where the Hebrew noun in both cases is a singular. Antiquity could represent a given legal relation with a singular noun (Latin *ius*, Greek *dikaion*), qualified by a possessive: it could refer to "my right," "your right" or "Caesar's right." Ulpian's famous definition of justice as *suum ius cuique tribuere*, "to give each his right," is a paradigm for this usage. Antiquity could also make the noun "right" the object of the verb "to have." However, Wolterstorff is entirely right to stress that antiquity by no means always took the word "right" to represent a *good*. "To give each his right" may include cutting off his head, if he has deserved it. "Your right" is simply what is coming to

you. Antiquity did not standardly use the noun “right” in the plural—this goes, I believe, for Hebrew and Greek as well as for Latin—except with the objective meaning, “laws” or “legal acts,” as ubiquitously in Psalm 119: “Teach me thy statutes!” Rights in the plural (*iura, mishp*^{e}*tîm, dikaiômata*) are laid down, taught, respected, but not possessed by individual persons. This means that antiquity had no separate “language of rights”; these expressions, when they arise, belong within the ordinary language of doing justice. The innovation of the twelfth century, then, with its concern for specific legal contexts related to specific social forms, is precisely the development of a distinct language to gain a special focus on certain terms of property tenure. To forge this language it had to put into regular currency the plural noun, not in the sense of “laws” but in the sense of “legal faculties.”

This creates some difficulty for an attempt, such as Wolterstorff’s, to trace the language of rights to biblical and patristic influence. The way he frames his claim is as follows: “Already the Church Fathers assumed the existence of natural rights, though without explicitly conceptualizing them as such. . . . Inherent natural rights were assumed and recognized by the writers of the Hebrew and Christian Scriptures” (2008, 65). He attempts to document this claim with a survey of how the Bible and the Fathers talk about justice. What he needs to come up with is a substantive element in the biblical doctrine of justice that *invites* expression with the aid of the plural noun, so that we, with the advantage of conceptual tools devised later and for purposes that may be irrelevant, find them uncontrovertibly apt for expressing the biblical message. To put it another way, it must show that there are *ontological presuppositions* in what the Bible and the Fathers assert about justice, however little evident to them at the time, that individuals are right-bearers prior to their communal existence.

This shows to what extent such a case must rest on the compelling force of implication. If he is to argue convincingly from the biblical and patristic discussion of right to the prior existence of multiple rights, Wolterstorff’s interpretation of the ancient texts must be more than defensible; it must be irresistible, showing that only with the assumption of multiple rights can we account for what was in the biblical or patristic author’s mind. Let us take an example on which he lays some emphasis, John Chrysostom’s assertion that the rich ipso facto steal from the poor (60). Wolterstorff infers from this that the poor have *prior property rights* over the material goods that the rich have come to possess as their own in law. If that inference can be made cogent, we must concede Wolterstorff’s point. It cannot be made cogent, however, since Chrysostom’s theory of property, held in common with other fourth-century Christian writers, was that *all private property*

whatever was theft. The rich do not steal from the poor by infringing their property rights; they steal from them by instituting such a thing as property right. (Individual property right, that is, for Chrysostom, like other Church fathers, thought that corporate ownership, as exercised by the church itself, was acceptable.) The poor have no individual rights to *property*; they share a unitary common right to the *use of the world's resources*.

Hunting for other elements in the narrative that are held to have the same kind of implication, I have been able to identify just two, one with some certainty, the other less so, but both are of some significance. In the first place, Wolterstorff appears to believe that the idea of someone's being *wronged*, an idea constantly found in the Bible, carries the necessary implication that the victim had prior rights. This belief I find wholly mysterious, and even more so when, in a later section (2008, 295–310), "wronging" is explained as "under-respect" without reference to rights at all. There can be no doubt in anyone's mind that persons are wronged. The question is whether wronging persons *consists in* so treating them as to deny a specific right that they possess. The concept of "wronging" (the verb) is more naturally explained as flowing from the concept of "a wrong" (the noun), which is an offence against the moral order governing relations among God's creatures.

There is a second point of purchase from which Wolterstorff apparently hopes to infer the implicit notion of multiple rights in the Bible, and that is the biblical depiction of divine judgment as the overturning of established orders of power. Here one could imagine an argument similar to that about Chrysostom on theft: judgment by revolution can only make sense on the supposition of prior rights denied by the oppressors. To this argument Wolterstorff adds a strong emphasis on the impartiality of God, the force of which is that God does not indulge in revolution just for the hell of it, but only to rectify a situation crying out for redress. Here, according to Wolterstorff, my own views become involved in a rather curious way (68–75), since he takes issue with my account of justice-as-judgment, urging upon me an order of "primary" justice to which God's judgments must conform. Thus he ends up paradoxically pleading for a just-order concept against one of its supposedly unbending advocates! But this is a diversion. The question to be kept in view is whether the biblical concept of revolutionary judgment demands multiple rights, or whether it can sensibly be invoked in a context of unitary right. I have no doubt that it can make sense, and better sense, in a context of unitary right. An order of power is morally deformed, a just order of power is to be restored: that is all one needs to say to explain the notion.

I will not go further into Wolterstorff's fascinating historical excursion at this point, but cut to the bottom line. Where does it leave him?

Not with a counter-narrative, after all, but with a supplementary, possibly complementary, *pre-history* of rights language. Sometimes it is explicitly said that the narrative shows the development of the soil on which the theory of rights would grow. In his own suggestive phrase, it is an "archaeology of the recognition of rights" (109). "Recognition of rights," or "recognition of 'rights'"? Does this archaeologist unearth the earliest acknowledgments that a traveler should not be robbed and killed on a lonely road, that a poor widow should not be refused means of sustaining life, that a servant should not be treated as a disposable chattel, and so on? Or can he discover anticipations of the thought that *what is wrong* with these things is that they infringe personal and pre-social rights which the traveler, the widow, the servant had attached to them in the womb? An opponent need hardly balk, of course, at the thought that multiple rights needed Christian soil on which to grow. The same, after all, is frequently said of Marxism, and it is bound to be true of any Christian heresy. An honor culture will not quickly develop a concern for that "decentered" justice, which the command to love the neighbor as oneself requires. An honor culture will conceive the right in terms of what one owes oneself, rather than what one owes another. This, however, leaves open the question whether the emergence of multiple rights out of interpersonal right was a "true" or "false" development (to use John Henry Newman's famous terms), whether, that is, it carries forward and reinforces the idea of God's justice as impartially sovereign, or whether it turns round upon it and destroys it.

To return to the point from which we took off, the thesis that multiple rights emerged as a distinct concept in twelfth-century corporation-law as developed by the canonists: how much assistance does that thesis lend to a grand narrative tracing the unfolding of rights from a germ in biblical literature to a flowering in modern times? Not very much, in truth. For the opponent of multiple rights, on the other hand, the twelfth-century threshold has a great deal of interest, simply because it demonstrates an element of historical contingency about the language of multiple rights. Furthermore, the discovery that multiple rights language originated in the attempt to formulate conceptions of *property* invites the conclusion that the proprietary overtones continued to affect the way that it was used as it became more highly generalized.

For even if the *invention* of rights language was the work of the twelfth-century canonists, its *generalization* took much longer. In the process of extending and expanding its influence, we may still identify later thresholds. I believe that the fourteenth-century account has merit, especially when tied into the Franciscan controversy, which saw a considerable expansion of the use of this language. Here again the

issue is property. The Franciscans, advocating a nonproprietary use of goods, wanted to say that when a friar ate a meal placed before him by a donor, he never owned anything. The language that came handy was, that he had no *right*. The classic definition of a right as a legal *facultas*, constantly alluded to in subsequent discussions, derives from the fifteenth-century theologian, Jean Gerson: "a proximate faculty or power which belongs to some subject as prescribed by primary justice" (text in O'Donovan and O'Donovan 1999, 527). Two points about it are worth noticing. First, Gerson understands the essential difference between a right and "justice" to be that a right belongs to a particular subject—hence the phrase "subjective rights" commonly used to characterise the concept. Second, however, Gerson still thinks of a "right" in this sense as derived from what he calls "primary justice." Subjective rights are a subdivision of justice, and have not yet made the totalitarian claims to colonize and reorganize the whole sphere. Indeed, this famous definition occurs in the *thirteenth and last* chapter of his work, "On Church Power and the Origin of Law and Right," in which preceding chapters were devoted to the "primary" concepts of power, law and justice, from which the special concept of a right had to be derived.

When and how, then, did the colonization of justice by the language of rights begin? Rights language was deeply entrenched by the eighteenth century, and the thesis that a step along the road took place in the seventeenth, connected with the overthrowing of scholastic method, has something to be said for it. Richard Tuck has reverted to it, attributing the change especially to Hugo Grotius and his successors (Tuck 1999). For myself, I am not persuaded, neat as the theory of an Enlightenment innovation is, and that is for two correlative reasons which I have aired at some length elsewhere (O'Donovan & O'Donovan 2004, 167–206) and will simply summarize here. The first is that Grotius never used the term "rights" (*iura*) in the plural, except in quoting other authors or in speaking, in the classical manner, of legal acts. (Once again, the reader of English translations would never guess the true state of affairs, but that is part of the wider mystery surrounding the reception of Grotius in intellectual history, a topic on which a riveting *exposé* of academic vices could be written, and one day may be.) The other reason is that the plural term "rights" occurs frequently in some of Grotius's most interesting predecessors, the thinkers often referred to as the "second scholastic" or the "Salamanca school." And there, as I believe I have shown, the driving force is an attempt to correct the doctrine of general justice in St. Thomas, bringing it back into line with Aristotle from whom Thomas had departed, and to incorporate alongside it a notion of "right" as a form of "dominion," in other words,

property. In this conclusion I am not far, I think, from the findings of Annabel Brett (1997). The late scholastic theoretical model, rejected by Grotius, gained ground nevertheless, and made a decisive landfall on English philosophical soil through that perpetual dealer in scholastic contraband, Thomas Hobbes.

All this conceptual history, however, might have amounted to no more than a paleological deposit, a set of historical antecedents to a newly forged and flexible language of right, which was capable of flipping over at convenience from unitary to multiple expressions. It is the kind of language which some of the more well-meaning theorists of our time actually believe that we have, or could adopt at will, a language in which "right" and "rights" are mutually convertible. We may even *have* had such a language in the past. By the middle of the eighteenth century, it could possibly be claimed, "rights" and "justice" were synonymous, the proprietary focus of the one and the juridical focus of the other having been left behind. However, what put paid to the possibilities of such linguistic convergence was the use of rights language in the revolutionary era to gain a critical advantage over existing systems of justice, and that precisely in the interests of a newly powerful proprietary class. Our contemporary quarrels over rights language are no more than a rerun of the vigorous conceptual battles between human rights and social justice that sprang from that attempt two hundred years ago. Whether they were ever left behind in the meantime, submerged in the questions raised by socialism, is an interesting point for historians. However, their recurrence was fated for us by the decision of sixty years ago to base post-war reconstruction, self-consciously critical of positive justice, on a *Universal Declaration of Human Rights*. The logical necessity of our present discussions springs from that moment of resolute new beginning.

At the root of the disagreement over the language of rights is a question of moral ontology. Multiple rights express a plural ontology of difference, the difference between each right-bearer and every other, instead of a unitary ontology of human likeness. *Suum cuique*, to each his own, is their formula for justice, not *similia similibus*, like treatment for like cases. This has the effect of setting what is due to each above every idea of moral order. The classical doctrine repeated by Augustine, *ius de fonte iustitiae manat*, "right flows from the source of rightness" (*City of God* XIX.21), is turned on its head to become what we find in Wolterstorff: "justice is ultimately grounded on inherent rights" (2008, 4). In saying this, we bring to light the underlying affinity between the rights project and the modern tradition prevailing in the liberal West since the seventeenth century (which is that of grounding political community in the wills of the individuals who

compose it). On the ground floor of multiple rights is the ontological assertion that each human being is irreducibly *one*, not interchangeable with any other. We come into the world not as sons and daughters of Adam and Eve, brothers and sisters under the skin, but like Walt Whitman's "ships sailing the seas, each with its special flag or ship-signal" (1855/1955, 220).

Some will regard the clash of ontologies with the same scorn that Gibbon lavished on the trinitarian disputes of the fourth century. Moral ontologies may vary, they will say, and moral conceptualities may vary with them, but since concepts must save appearances in the end, it can make little practical difference. Multiple-rights language and unitary-right language will both give some account of the moral demands that must be heard. If Wolterstorff thinks that our duty not to kill our enemy derives from his right to life, while O'Donovan thinks that his right to life derives from the wrongness of killing him, what difference does it make? In response to this, at any rate, Wolterstorff and O'Donovan stand shoulder to shoulder. We both think that a lot depends on moral ontology. It shapes the way we conceive moral questions; how we conceive of moral questions shapes the way we describe practical problems; how we describe practical problems shapes the way we deliberate to resolve them. Certainly, those who have ontological disagreements may see eye to eye on a range of practical questions, but there is no guarantee they will always do so. The moment will come when their different readings of the world cash out in different practical determinations.

How, then, is a contest of ontologies decided? They must compete on the ground of *descriptive efficiency*. A given conceptuality needs to highlight economically but clearly all the features of a justice situation that matter most. Descriptive efficiency includes, but is not exhausted by, the Ockhamist principle of not multiplying entities, something that a language of multiple rights is very much inclined to do. As an example, consider an event to which Wolterstorff refers several times, the disastrous release of cyanide fumes from the Union Carbide plant in Bhopal, Madhyar Pradesh, in December 1984. If we try to render an account of this as a moral event exclusively in terms of individual rights, we have to consider at least 575,000 of them, that is to say, the rights of the 15,000 victims who died and of the 560,000 who were injured. That is not to mention the many lesser individual rights infringed in various ways and the rights of interested collectives like the city of Bhopal and the nation of India. It is much simpler, at least, to say that one great and consequential wrong was done. The principle of economy, however, is not the sole principle in play. It is qualified by a more important principle, which is that all appearances must be saved, and that is not a simple matter. Saving appearances is the

outcome of several functions: how well a given conceptual structure represents a moral judgment we find pressing and urgent; how many steps it takes to render a train of thought which we frame intuitively; how securely it differentiates between justified and unjustified claims; how profligate it is in generating shadow entities with no experience to correspond to them; and so on. A given description, in other words, must correspond *both* to the simplicity *and* to the complexity of our moral intuitions.

The language of rights, however, was promoted precisely to challenge our moral intuitions, intending to educate us out of them. The immediate grounds for the late-modern recovery of the revolutionary project, founding justice relations independently of moral order, may have been many, but overall it reveals a despair of how prevailing doctrines (Christianity among them, but also its sickly child Democracy) could ever summon up the intellectual and moral coherence to found a civilization free of brutality. The ebbing sea of faith no longer affording an encompassing meaning, the philosophical and theological quest, hitherto the highest undertaking of mankind, came to seem, in Matthew Arnold's famous phrase, as though "ignorant armies clash by night." And so we turn in despair to other individuals, and sigh, "Ah, love, let us be true to one another!" Despair was certainly in the air in the post-war period that produced the *Universal Declaration of Human Rights*, a despair born of the collapse of the Treaty of Versailles and the puny democratic political constructions it tried to put in place.

The question of despair and confidence is, for the theologian, the most important question to be raised by this whole theme. The issue at stake in the fourth-century trinitarian disputes, which so excited Gibbon's scorn, was the status of creation-order. (It was not Christology, as such; that debate was to come later.) How confident could we be that the Word in whom and through whom the foundations of the world were laid expressed the Absolute, the nature of God himself, wholly and unambiguously? Must there not be a mental reservation about the very idea that a world we experience with such ambiguity has the stamp of God's being impressed upon it? Must we not frankly admit that its coherence is partial, that it does not encompass everything we may have to discern or decide? *Quis tanta deus veris statuit bella duobus?* asked Boethius: "What God, then, set the contradictions up?" (*Consolations of Philosophy* V, iii). No God did so, was his answer, only our defective understandings. Creation was wholly coherent, its logic all encompassing and all reconciling. That is how Christians have always spoken, but the modern world is not minded to accept the claim, and what clearer sign of its rejection could there be than a resolution to found social relations anew,

outside the realm of morality and metaphysics, on a purely juridical basis?

In conclusion, a note of appreciation and of puzzlement. Reality grounds morality for Nicholas Wolterstorff. He is no willful moral positivist, imposing the good by fiat; nor is he an inarticulate moral intuitionist, gesturing in a direction nobody can follow with the eye. That is the essential point from which to take the discussion of his project forward. There are moments at which he may remind us of Levinas, as when we read that "the normative bond is in the form of the other" (Wolterstorff 2008, 4), yet he lacks the steely-eyed determination of the advocates of difference to "withdraw the human face," as Jean-Yves Lacoste puts it, "from the ordinary operations of experience and knowledge . . . placing ethics within the element of immediacy" (Lacoste 1993, 352). He is incapable—and I say this with the most positive appreciation—of doing violence of this kind to created reality. For him, as for those he has named as his opponents, the objective foundations of morality in the order of reality are important, but that is precisely what makes his interpretation of justice so puzzling. For to this tract within the sum of moral knowledge he has accorded a separate foundation. Morality, he assures us, is not confined to the language of rights; "we have obligations to things that do not have rights" (Wolterstorff 2008, 382), but justice is based on rights, and justice is based *only* on rights, and rights embody foundational difference, the difference between each right-bearer and all others. How does an account of justice, grounded in individual rights, fit into a wider account of moral duty and moral relationships? For a work not without Aristotelian lights in its hair, one Aristotelian category has gone missing from *Justice: Rights and Wrongs*, that of *general justice*. "General justice," opposed to "special," sometimes called "particular" justice, refers to something modern English speakers hardly think of as "justice" at all, but, if they retain a traditional moral vocabulary, "righteousness." General justice is the virtue of fulfilling the requirements of all the other virtues, and so is the link that ties justice into the doctrine of the virtues. What kind of link can Wolterstorff forge in its place, which is to say, how can he convince us that justice, as he conceives it, is a virtuous practice for human beings to pursue?

On the ground floor of his rights doctrine is the underived assertion that each human being is an individual of irreplaceable worth, not interchangeable with any other. "No human being has a price. Each is priceless" (Wolterstorff 2008, 308). Rights are founded on human worth, and "if God loves, in the mode of attachment, each and every human being equally and permanently, then natural human rights inhere in the worth bestowed on human beings by that love" (360). May

this human worth, which serves as a foundation for individual rights, actually belong to a general account of human nature? Is it a merely contingent truth that God's worth-conferring love is conferred on *each* member of the human species, or is the love of God to "one and all" connected, after all, with the fact that "one and all" are members *of the human race*? Wolterstorff believes in human nature. Can human nature actually impose its form on justice conceived as rights? These are the interpretative questions by which I have found myself baffled, and to which I hope that further discussion of *Justice: Rights and Wrongs* will elicit an answer.

REFERENCES

Augustine
1972 *City of God*. Edited by David Knowles, Translated by Henry Bettenson. New York: Penguin Classics.

B. AND L. v. The United Kingdom
2005 European Court of Human Rights. http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=36536/02&sessionid=17895552&skin=hudoc-en

Boethius, Ancius
1969 *The Consolation of Philosophy*, 523–24. Translated by Victor Watts. New York and London: Penguin Books.

Brett, Annabel
1997 *Liberty, Right and Nature*. Cambridge: Cambridge University Press.

Gerson, Jean
1999 "Jean Gerson." *See* O'Donovan and O'Donovan 1999, 517–30.

Gibbon, Edward
1972 *History of Christianity*. 1779. New York: Arno Press.

Lacoste, Jean-Yves
1993 "Etre Vivre Exister. Note sur le commencement de l'homme." *Révue de Metaphysique et Morale* 98: 347–66.

O'Donovan, Joan Lockwood, and Oliver O'Donovan
1999 *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100–1625*. Grand Rapids, Mich.: Wm. B. Eerdmans Publishing Company.
2004 *Bonds of Imperfection: Christian Politics, Past and Present*. Grand Rapids, Mich.: Wm. B. Eerdmans Publishing Company.

Spaemann, Robert
1994 *Philosophische Essays*. Stuttgart: Reclam.

Strauss, Leo
1953 *Natural Right and History*. Chicago: University of Chicago Press.

Tierney, Brian
1997 *The Idea of Natural Rights*. Atlanta, Ga.: Scholars Press.

Tuck, Richard
1999 *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. Oxford: Oxford University Press.

Whitman, Walt
1955 *Leaves of Grass*. 1855. New York: Signet Classics.

Wolterstorff, Nicholas
2008 *Justice: Rights and Wrongs*. Princeton, N.J.: Princeton University Press.