

JUSTICE AS INHERENT RIGHTS: A RESPONSE TO MY COMMENTATORS

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ABSTRACT

The critical comments by my fellow symposiasts on my book, *Justice: Rights and Wrongs*, have provided me with the opportunity to clarify parts of my argument and to correct some misunderstandings; they have also helped me see more clearly than I did before the import of some parts of my argument. In his comments, Paul Weithman points out features of the right order conception of justice that I had not noticed. They have also prodded me to clarify in what way rights are trumps; and both his comments and Bernstein's have prodded me to clarify certain aspects of the theistic account of human rights that I offered. Attridge's comments lead me to see that I was perhaps over-zealous in emphasizing the objective aspects of the semantic range of *dikaiosunê* as used in the New Testament and downplaying the subjective aspects. And O'Donovan's comments have provided me with the opportunity to make clear that my account of rights is not an immunities account that presupposes nominalism, and to emphasize the ways in which it is not an asocial individualistic account.

KEY WORDS: *dikaiosune*, *human rights*, *human worth*, *individualism*, *inherent rights conception of justice*, *natural rights*, *right order conception of justice*, *rights*

LET ME BEGIN BY thanking my distinguished commentators for the care with which they have read and reflected on my book and for the complimentary comments they make about it. I am honored. My interlocutors are all friends of mine; I am on a first-name basis with all of them. But I will follow academic protocol and refer to them by their family names. Let me also give special thanks to Paul Weithman for organizing the symposium that led to the inclusion of the essays in this Focus Issue of the *Journal of Religious Ethics*.

In his Introduction to this Focus Issue, Weithman correctly points out that one of my aims in *Justice: Rights and Wrongs* was to bring the philosophical and theological traditions into dialogue with each other on the matters at hand. Not only does he do a superb job of communicating a sense of the overall structure of my argument, he also makes an important contribution to the discussion by highlighting an

implication of my line of thought that I allowed to remain in the background. Before I take note of that contribution, however, let me call attention to a point of misinterpretation in what is otherwise a very accurate and perceptive summary.

Fundamental to my way of thinking about rights is distinguishing between *the rights that human beings have* and *human rights*. Human rights, as I understand them, are rights that beings have just by virtue of being human beings; all human beings have them, no animals have them. I hold that such rights are but a small subset of the rights that human beings have; indeed, I argue that, strictly speaking, there are not very many rights that are truly human rights. My aim in the book was not just to give an account of human rights, not even just of the rights that human beings have, but of rights in general. I hold that social institutions have rights, as do animals. I made the judgment that if first I gave a general account of rights, and only then, way at the end, discussed human rights, readers would see that my account of human rights was only a special application of the general account.

From responses that I have received to the book, I am forced to conclude that I was an abject failure in this regard. Some readers interpret me as holding that the only rights human beings have are human rights. Some interpret me as aiming only to give an account of human rights. Others assume that I intend my account of human rights to hold for the rights of human beings in general. Even so astute a reader as Weithman blurs the distinction between the rights of human beings and human rights, and thus, also blurs the difference between my account of rights in general and the specificities of my account of human rights. Three paragraphs into his Introduction, he says that in order to appraise my theory, “we will have to see what kind of worth human beings have, how they come to have it, whether all and only human beings have worth of that kind, and how that worth grounds rights” (2009b, 180). Then, two sentences later, he says that on my account, “Human beings have worth because they are loved by the God of the Hebrew and Christian Scriptures” (180). But I hold that human beings have worth not just because they are one and all loved equally by God but on account of a wide variety of differential accomplishments, characteristics, relationships, and so forth—it is that diversity of worth that grounds a diversity of rights. The student who wrote an A-grade paper for me has a particular worth and thus has rights that the student who wrote a D-grade paper does not have. A few pages later, Weithman says that, on my view, “rights are founded on a value that is conferred by God” (184). I hold that that is true for human rights but not for the rights that human beings have in general.

Now for Weithman’s very helpful highlighting of an implication of my account that I myself did not explicitly draw. For many years, I had

been reflecting on certain puzzling and intractable disputes about justice before it dawned on me that, in the Western tradition, there are two fundamentally different ways of thinking about justice; it took me several more years to locate the fundamental point of dispute between these two ways of thinking. Eventually, I concluded that, on what I called the *right order conception*, all rights have been conferred on those who have them by agreements, standards, or laws—be those laws divine or human. On what I called the *inherent rights conception*, though some of the rights that entities possess have obviously been conferred on them, some are possessed by those entities just because those entities have a certain worth. The right is inherent in the worth. The right order conception holds that no matter what the worth of an entity, the entity has no rights just on account of that worth. There has to be some agreement, standard, or law conferring the rights, and, in good measure, the conferral will take no account of worth.

Now suppose it is natural rights that we are talking about; and suppose it is the view of the right order theorist that what does the conferring is what Joan Lockwood O'Donovan calls a "matrix of objective obligation." That is not how Plato thought of what did the conferring; his realm of Forms is not a matrix of obligation. However, since the entrance of Judaism and Christianity into the Western intellectual tradition, this has probably been the dominant way of thinking of it. A matrix of objective obligation determines the right order for society.

On this way of thinking of the determinant of right order, natural rights accrue to people in the following way. There is a matrix of objective obligation that holds for the members of a certain society; perhaps some elements of the matrix hold for the members of all societies. This matrix of objective obligation specifies the right or obligatory thing for a person of a certain sort to do in a situation of a certain sort: a person of sort P ought to perform an instance of act-type A when in circumstances of sort C. So if I am a member of a society for which the matrix of objective obligation holds, and if I am of sort P in a circumstance of sort C, I am then obligated to perform an instance of act-type A. I *have* that obligation. It is *attached* to me; it is one of my "subjective" obligations. Suppose it is the obligation to treat you in a certain way. Then you have the correlative right against me to my treating you that way. You possess that right, it is attached to you; it is one of your "subjective" rights. This is how we get from a matrix of objective natural right or obligation to natural subjective rights, the rights that people possess.

The feature of this picture that I emphasized is the *conferral*, the feature of the picture that Weithman highlights, is that if a right is to be conferred on me, then I must be a member of the society for which the matrix of obligation holds. Only if I am a member of that society

does any conferral of rights to me actually take place. On this view, the natural rights of members of society are, as Weithman helpfully puts it, *membership-derivative*. On my theory, they are not membership-derivative; if this individual has such-and-such a worth, then he has such-and-such rights.

Weithman speculates that it is this feature of all versions of the justice as inherent rights conception that leads those who embrace the opposite conception to view the justice as inherent rights conception as individualistic. In my book, I describe rights as normative *social* relationships. The charge is that I can say all I want about the sociality of rights; nonetheless, it remains the case that membership in some society to which the norm for right order applies simply does not have the fundamental significance that it does for the justice as right order view.

Weithman goes on to observe that a common version of the justice as inherent rights conception—not my version—is that rights are, at bottom, immunities against infringements on licit forms of self-determination. Rights exist to confer such immunities. Now suppose a right order theorist thinks of persons as, in Weithman’s words, “naturally oriented toward the common good of the groups to which they naturally belong” (2009b, 185). What will strike such a theorist about the immunity theorists is that they are “conceiving of human beings as if they have no *telos*, but have instead a fundamental interest in fixing their ends for themselves” (185). They will see this as either an illegitimate abstraction from our human condition of sharing a *telos* for the common good or, worse yet, as an implicit denial of that condition.

In short, one can see why right order theorists accuse their opponents of treating human beings as asocial entities. In my book, I protest this way of characterizing the justice as right order conception; nowhere in my account of rights do I treat human beings as asocial beings. Fair enough, says Weithman. But if the right order theorist has her eye not on my version of the justice as inherent rights conception, but on a rights-as-immunities version of the conception, then one cannot dismiss the a-sociality criticism as entirely misguided. It is not precisely formulated, and it may be mistaken. It remains to be discussed whether there is in fact a shared human *telos* toward the common good, but the criticism is not entirely misguided. These are excellent points. Weithman here does a better job than I managed to do of illuminating why the right order theorist charges that the justice as inherent rights conception is individualistic.

As Weithman notes in his Introduction, my discussion has both a narrative component and a systematic component. Attridge focuses exclusively on one aspect of the narrative component; so let me begin with some comments on his paper. O’Donovan speaks to both the

narrative and the systematic components; let me consider his comments next. Then, I will move on to the papers of Bernstein and Weithman, both of whom focus mostly on the systematic component.

My discussion of the New Testament was a component of my counter-narrative to the common narrative, this latter being the narrative which says that the idea of natural rights was born of fourteenth-century nominalism or of eighteenth-century individualism. I think of natural rights along traditional lines, namely, as rights not conferred by human social practices, laws, or speech. I also hold that the recognition of natural rights, more specifically, of *inherent* natural rights, is implicit in the Old Testament/Hebrew Bible and in the New Testament.

Let me make a parenthetical comment, here. In a long footnote, Bernstein objects to my definition of “natural rights” on the ground that, on this definition, a lot more thinkers turn out to be committed to natural rights than one would have thought, including some who explicitly rail against natural rights. Bernstein does not take the next step of offering what he regards as a better definition of the term “natural rights.” But to his point about the implications of my definition, I say, “So be it.” I find that a close reading of the texts in political theory reveals that a good many writers who profess to believe that there are no natural rights nonetheless tacitly commit themselves to such rights.

Now, let me get back to the point. I found that before I could even get to uncovering the implicit understanding of justice in the New Testament, I had to deal with the claim that justice has been supplanted in the New Testament by love or perhaps by love and righteousness in combination. Hence, one of my aims in my discussion of the New Testament was to defend the view that justice has not been supplanted. I am gratified to have Attridge say that “the New Testament is, without a doubt, concerned for justice,” and that “the concern for what might loosely be called ‘social justice’ in John [the Baptist’s] preaching runs through the Gospel” of Luke (210).

The issue as to whether justice has been supplanted in the New Testament is, in part, based on how we translate the *dik*-stem words that occur so frequently there: *dikaios*, *dikaïosunê*, and so forth. Attridge discusses this issue in his characteristically balanced, informed, and nuanced way, concluding that my pushing “the Gospel materials away from a consideration of ‘virtue’ toward a concern for objective ‘rights and wrongs’” may be pushing too hard, playing down “an important dimension of the Gospel witness” (211). In a footnote, he concedes, however, that I may have put my “finger on a larger issue of translation,” namely, the “tendency in many translations of the New Testament from the Reformation onward to favor renderings of Greek

that highlight the interior and affective dimensions of the possible semantic range of a word and ignore the objective, behavioral dimensions" (211, n. 4). Attridge further agrees with my point that context, not word-studies, will have to settle the issue of how to translate a specific passage.

I concede that I may have pushed too hard in the direction Attridge identifies—though let me say that it is by no means my view that all occurrences of *dik*-stem words in the New Testament should be translated with "justice" or grammatical variants thereon; nor is it my view that acting justly exhausts what it is to be *dikaios*.

Attridge says that "like the famous call to be 'holy' in Leviticus 19, the Gospel of Luke presents a vision of justice rooted first and foremost in a relationship to God. To be *dikaios*, formally defined, is to respond to the divine will" (217). I think that the first of these sentences is definitely true, and that the second may well be true. However, as I argue in my book, to understand what Scripture says about justice one cannot understand "acting justly" as synonymous with "doing what God wills." With a prior concept of justice in mind, the writers hold that God enjoins us to pursue *that*, to pursue justice. So though it may be true that, in general, the *dikaios* person is the one who does what God wills, there are passages in which what is quite clearly meant is that the *dikaios* person is the one who, quite specifically, struggles for *dikaiosunê*, that is, for justice. I take Attridge to agree with this.

In his conclusion, Attridge says that "To observe and defend human rights is certainly compatible with the program that Luke sketches, but that program has a decidedly different focus and a different way of organizing the moral universe" (218). These are, indeed, distinctly different, albeit compatible, programs. I wanted to argue for more than mere compatibility, however. I wanted to argue that rendering to each his due is part of what the divine will calls for, and that, sometimes at least, this rendering to each of what is due him is what the term "*dikaiosunê*" is used to refer to. Rendering to God what is due God is part of what the divine will calls for.

The other thing I wanted to garner from my discussion of the New Testament is that there is, in these writings, an implicit recognition of inherent natural rights and of those rights as grounded in worth. That has to be the case for God's right to our worship and obedience. Naturally, I was pleased to find Attridge agreeing with me on these points as well.

Let me comment first on what O'Donovan sees as the systematic point dividing us and then move on to some comments about our competing narratives. Before I do either of these, however, let me note that rather often O'Donovan speaks of my view as if it were an immunities theory of a certain sort, using "immunities theory" here to

refer to the sort of view that Weithman called attention to. In one place, O'Donovan speaks of me as holding "that individuals are right-bearers prior to their communal existence" (198); in another place he talks as if I hold that there are "personal and pre-social rights which the traveller, the widow, the servant, [have] attached to them in the womb" (200); and in yet another passage he speaks of my view of justice as having a "proprietary focus" (202).

My theory is not an immunities theory of any sort. I do not believe that individuals are right-bearers prior to their communal existence. Not only are there no individuals prior to their communal existence, I cannot even imagine such an individual. Though I hold that human beings still in the womb have rights, I do not identify the rights of widows, travelers, or servants with those rights. Moreover, I do not believe that rights are confined either to rights of property or to rights of self-determination. If the use of rights-language has what O'Donovan in one place calls "propriety overtones," then I will do all I can to eliminate those overtones.

At several places in his discussion, O'Donovan describes the contrast between his view and mine with the terms "unitary right" and "multiple rights." He believes in unitary right; I believe in multiple rights. That is to suggest that O'Donovan does not believe that there are multiple rights. Not only is that an exceedingly implausible view for the right order theorist to hold—one who believes that there is a matrix of objective obligation—but from other writings of O'Donovan's, I know that it is not in fact his view. O'Donovan remarks about his contrast between unitary right and multiple rights that "in bringing the point down to the use 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" (195). Exactly.

What does O'Donovan take to be the ontological issue that divides the right order theorist from the inherent rights theorist? He says that "radically multiple rights arise from, and reflect, the radical ontological distinctness and multiplicity of human persons" (195). In another passage he says, somewhat more expansively, that

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. . . . On the ground floor of multiple rights is the ontological assertion that each human being is first and foremost an irreducible 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" [203].

The ontology that O'Donovan here attributes to what he calls the "multiple rights theory" is not my ontology. I do not accept what he calls "the radical ontological distinctness and multiplicity of human beings." I am not now, and never have been, a nominalist. My earliest philosophical publication, *On Universals* (1970), was a defense of universals against the nominalist denial; I have repeated and elaborated my defense on a good number of later occasions. If this indicates a deep contradiction between my theory of justice and my ontological convictions, a contradiction that O'Donovan has discerned but to which I have been and remain oblivious, O'Donovan has certainly not shown this to be the case.

I hold that we human beings are all sons and daughters of Adam and Eve, brothers and sisters under the skin. I hold that we all share human nature. I hold that God loves in a special way each and every being who possesses that nature—loves not just the genus *human being* but loves each and every human being—and that this bestows on us a shared worth. Furthermore, as I indicated earlier, I find it impossible even to imagine a human being not formed by membership in some social group. I do indeed hold that no human being is interchangeable with any other, but this in no way conflicts with the other things I have just now affirmed. I would be surprised if O'Donovan did not hold this as well.

If what O'Donovan takes to be the ontological issue between us is not in fact the ontological issue, what is it, then? I hold that by virtue of a variety of characteristics, accomplishments, and relationships, human beings have worth; the worth supervenes on the characteristics, accomplishments, and relationships. I hold that some forms of worth accrue to us just by virtue of being human beings, so that we all share that same worth. I also hold that different human beings have different forms of worth—on account of different accomplishments, and the like. I furthermore hold that there are ways of treating human beings that do not befit their worth. I hold that if one treats them in a way that would only befit someone of lesser worth—if one treats them with under-respect—one has then wronged them. Last, I hold that to wrong them is to deprive them of that to which they have a right. This is my ontology of justice.

It is clear that O'Donovan disagrees with something in this line of thought, but what that is remains obscure to me. He says, in one place, that he finds "wholly mysterious" my claim that if someone is wronged by being treated a certain way, then that person had a "prior right" not to be treated that way (199). So perhaps this is the point at which he would call a halt to my line of argument; perhaps he does not agree that for a human being to be wronged (by being treated a certain way) is for her to be deprived of her right not to be so treated. Or perhaps

he holds that to treat a human being as I ought not to treat her, to do the wrong thing with respect to her, is not to *wrong her*. Nothing in her moral condition has been altered by what I did. Rather than wronging her, I committed “an offence against the moral order governing relations among God’s creatures” (199). If this is his view, then I, at least, do not see how he can explain forgiveness; since forgiveness seems to me, and to most writers, as something that one can only do when one has been wronged.

Now for a few comments on our contrasting views concerning the narrative. O’Donovan makes the interesting observation that with the publication in 1953 of Leo Strauss’s *Natural Right and History*, the emergence of the idea of multiple rights was seen by some to hold the promise of affording us “an unparalleled window through which to view the emergence of modernity as a civilizational totality” (196). He then asks, “Is that promise a deceptive one, or can it be fulfilled?” (196).

I hold that it is deceptive. Brian Tierney has shown beyond the shadow of a doubt that the terminology of natural rights was common parlance among the canon lawyers of the twelfth century (1997). O’Donovan talks as if the rights recognized by the canon lawyers were exclusively property rights; he says that the new language was devised to “gain a special focus on certain terms of property-tenure” (198). However, recent publications by Charles Reid, a student of Tierney, show that that is far from the case. To cite just three from among hundreds of examples—the canon lawyers talked of the rights of children with respect to their parents, of the rights of parents with respect to their children, and of the conjugal rights of spouses (Reid 2004). In addition, later, in the controversies swirling around the Franciscans, there was much talk about natural rights of *use*—not of property, but of use.

Now for my argument that, though the terminology of natural rights was at best episodically employed before the twelfth century, such rights were being taken for granted long before the terminology was created. In *Justice*, I cite a passage from John Chrysostom in which John says that the extra shoes in the closet of the wealthy person “belong” to the poor person who has no shoes. John uses strong language: for the wealthy person not to share his shoes is “theft.” (2008, 60–61.) I hold that in speaking thus, John was taking for granted what you and I would express by saying that the poor have a right to those extra shoes.

O’Donovan holds that this cannot be what John meant, since John held that all private property whatsoever is theft. I have two responses. First, John does not say that the wealthy must share because nothing belongs to anybody. He says that they must share because the extra shoes belong to the poor who have none. Second, I

did not commit myself on whether John thought the poor had *property* rights or *use* rights to those extra shoes; I do not think it is clear one way or the other from the passage I quoted. O'Donovan holds that it would have been Chrysostom's view that the poor "share a unitary common right to the use of the world's resources" (199). That is enough for my argument. If John recognized that everybody has a (natural) right to the use of the world's resources, then John recognized that there are natural rights.

Why, going back behind the patristics, do I hold that the existence of inherent natural rights is taken for granted in Hebrew and Christian Scripture? It is not because the biblical writers assume that people can be wronged. It is open to the right order theorist to hold that people can be wronged; that is what I would hold if I were a right order theorist. It is also not because of "the biblical depiction of divine judgment as the overturning of established orders of power" (199). Liberation and resistance movements over the past century have usually, if not always, employed the language of rights; other language is available, however. The centerpiece of my argument was that I see no other way of understanding what the biblical writers say and assume about God.

"Ascribe to the Lord the glory due his name," says the Psalmist (96:8), thereby giving expression to a theme running throughout the Psalms and throughout Scripture generally. Actions on our part are due God; the Psalmist immediately cites worship as one of them. If these actions are due God, then, by the principle of correlatives, God has a right to them. Moreover, it is a natural right, not a right conferred by human practice, legislation, or the like. The Scriptures take for granted that God has natural rights.

Why are things due God? O'Donovan speaks at one point of "the moral order governing relations among God's creatures." Suppose we drop the words "relations among" and speak simply of "the moral order governing God's creatures." Someone might propose that worship, obedience, and the like are due God because this is part of the moral order that God has laid down for God's creatures. I hold it to be true that God has laid down a moral order to God's creatures. But whenever someone issues a command to another, the question can be raised: by what right, if any, does He issue this command? A command imposes an obligation only if the one commanding has a right to issue that command to that person. (I develop this point in detail in chapter 12 of my book.) So what gives God the right to issue commands to us?

Some may find this question impiously speculative; it is clear from the Pentateuch that ancient Israel found it anything but speculative. For them it was an existential question: by what right does Jahweh, rather than some other god, command their obedience? The answer

given is always: because of what God is and because of what God has done. In short, because of God's worth—*inestimable worth*. The right is inherent in the worth.

The biblical writers also hold that human beings have worth—*great worth*. So once one takes for granted that God has rights inherent in God's worth, then the counterpart assumption for human beings is right there in front of one. It is for these reasons, all too briefly summarized here, that I hold that the recognition, though not the conceptualization, of inherent natural rights is to be traced back to the Hebrew and Christian scriptures.

Bernstein and Weithman both comment rather extensively on my account of human rights; so let me begin my comments with what they say about that. Before I do so, however, let me say something about Bernstein's complaint that I never address the question of what rights exist, nor, worse yet, do I give much guidance in how to go about addressing that question. "This is a serious failure," he says.

Bernstein is correct in his characterization of my discussion. But I do not see that it constitutes ground for complaint. Suppose that one's project is to explain what is it to have a right to something, and, in that way, to give an account of rights. In order to get going on this project, one must have in mind an array of examples, ranging from those that are clearly examples of rights, through those that one is not sure about, to those that are clearly not examples of rights. One then tries to develop an account that fits the examples and, beyond that, illuminates why they are examples. The account one arrives at may lead one to reassess some of the examples, but in the absence of examples, there is nothing to measure one's theory against. Since my aim was to give an account of rights, along the way I cited lots of examples, sometimes as counterexamples to other accounts, sometimes so as to be sure that my own account was coming out right.

The project that Bernstein thinks I should have engaged in is a different project; it is the project of taking the concept of a right and considering how it applies in one or another problematic case. I think it appropriate to expect of an account of rights that it offer some assistance in this project; it would be surprising if insight into the nature of rights did not illuminate at least some of the problematic cases. This, however, is a different project. And by the way, it is relevant to note that accounts of the nature of moral obligation usually do not tell us much about what obligations we have.

Now for what Bernstein says about my account of those very special rights that are human rights. I argue that no secular account of human rights has been successful, and I give reasons for expecting that none ever will be. I do not doubt that it is possible to give a satisfactory secular account of the rights shared by all those human beings capable

of functioning as persons—it is those human beings who are not so capable that create the problem.

Now, imagine someone who holds the following beliefs: he believes that there is a mode of love that bestows value on the one loved; he believes that God exists and loves each and every human being equally and permanently with that mode of love; and he believes that all human beings, no matter how impaired they may be, share a nature (*human nature*), and that their possession of this nature is a factor in why God loves them. What I argued in my book is that a person who holds these beliefs thereby has an account of why all human beings have the worth that they must have if there are to be human rights; the rights inhere in this shared worth.

I happen to be such a person; I hold these beliefs. I am not exotic in this regard. Most mainline Christians hold these beliefs, as do many Jews and Muslims. However, in *Justice*, I did not argue for the truth of the two theological premises; my argument was rather that those who hold these beliefs do have an account of human rights. Other philosophers have argued for the truth of these beliefs—notably, in the contemporary world, Richard Swinburne. But I have not. Of course, if one believes that there are human rights, then the fact that the theistic explanation is not merely the best explanation one can offer, but the only explanation, is an argument for the truth of those suppositions.

In a section of my book titled “What Has Not Been Argued,” I described my theistic account as “hypothetical.” (Bernstein is correct to surmise that the section is present in the published version because of criticisms that he lodged against an earlier version. In that version, I had not made it sufficiently clear that I was not arguing for the truth of the theistic premises of the account but only that the premises provide an adequate account of human rights; I regret not saying in a footnote that the section is there because of Bernstein!) The problem with the extant secular accounts, by contrast, is that even if their premises are true, the proffered accounts are not successful as accounts of human rights.

This clarification does not satisfy Bernstein. He still thinks I should do what he calls “justify” the premises of the theistic account. He does not hold this view because he thinks that a philosopher is not entitled to assert anything in his philosophical writings without having justified his acceptance of the proposition in question; neither of us accepts that epistemology of philosophy. Neither, I think, does he hold the more limited view that a philosopher is not entitled to affirm any *theistic convictions* in his philosophical writings without having justified his holding of them. It is, rather, two particularities of my discussion that he thinks place the obligation on me.

Bernstein observes that lots of my fellow Christians do not accept the second premise, “that God loves each and every human being equally and permanently” (235). That disagreement places an obligation on me, says Bernstein. Second, Bernstein observes that I appeal to Hebrew and Christian Scripture at various points in my discussion. But Scripture, especially Hebrew Scripture, is a very mixed bag when it comes to what it says about the scope of God’s love. So I help myself to Scripture when it suits my purposes and ignore it when it does not—and that will not do. I should either forget about Scripture entirely, or get down into the hermeneutical trenches and show how I would deal with the passages that conflict, or appear to conflict, with my views about God’s love.

My response to the first point is that I too believe that the fact that many of my fellow Christians disagree with me on this point places on me a certain obligation. I do not agree, however, that it is the obligation to justify my views. Rather, I think it is the obligation to look with an open mind at the reasons offered by those with whom I disagree to see if they are cogent. I have done that and have not found them cogent.

As to the second point, I think it would be a *good* thing if I tried my hand at this sometime, but I do not see that my saying what I do in the book *requires* that I do that. If I had gone about picking and choosing in the way Bernstein suggests I do, it would be required of me. But I did not do that. My exploration of Scripture was a component in my archeology of the recognition of inherent natural rights. I argued that justice has not been supplanted by love and righteousness in the New Testament, and I argued that the writers of both Old and New Testaments were taking for granted the existence of inherent natural rights. I took note of the fact that the writers of Scripture often declare that God is just, but I had nothing to say about the fact that the actions other writers ascribe to God often seem unjust, nor did I have anything to say about the scope that the writers attribute to God’s love. It was the implicit concept of justice that I was after. Taking that concept and using it to judge whether the deeds of God and men reported in Scripture are just or unjust is a different project, as is the project of interpreting Scripture with respect to the scope of God’s love. These are fine projects; anyone who engages in the former will confront the fact that while writers of Scripture often praise God as just, other writers attribute actions to God that appear patently unjust. These projects are not my projects, and I fail to see why they ought to have been my projects.

One of the premises in my account of human rights is that there is a mode of love that bestows worth on the object of the love. Whereas I did not undertake to defend the other premises, I did undertake to

defend this one. Both Bernstein and Weithman raise questions about the claim and my defense of it. Weithman develops the critique somewhat more fully than Bernstein does; let me now turn to his comments.

I identify various kinds of love, one of them being love as attachment. Our love for persons and things often takes the form of being attached to them, bonded with them. One is attached to one's house, one's spouse, one's children, one's books. I observed that our attachments to persons and things do not, in general, track our judgments as to the relative excellence of those persons and things; one may find oneself attached to the rather mangy cat that showed up one day on one's doorstep. I also argued that love as attachment bestows a worth on things that they do not have otherwise. I would toss this rather dumpy stuffed animal into the trash bin were it not for the fact that Nathan is attached to it; his attachment gives to it a worth that other stuffed animals just like it do not have. I then claimed that, in the account of human rights that the theistic account offers, it has to be God's attachment-love for each and every human being that is involved. Weithman and Bernstein both challenge this claim: if God loves each and every human being equally and permanently in the mode of attachment, then this provides an account of the worth in which human rights inhere.

We agree that Nathan's beloved stuffed animal has a worth that it did not have before Nathan loved it, a worth not intrinsic to it but bestowed on it by Nathan's love. It is the worth of being loved by Nathan. So suppose I toss Nathan's animal into the trash along with a number of others of the same sort. We also agree that I have then wronged Nathan—treated him, lover of this animal, with less than due respect. The question Bernstein and Weithman raise is whether I have also failed to pay due respect to the animal.

The relevance of the question is obvious. Suppose that God loves this Alzheimer's patient in the mode of attachment. Though she no longer has the worth that accrues to those human beings who are capable of functioning as persons, she still has the worth of being loved by God. Now suppose that I wantonly kill her. It is clear that I have wronged God, but have I wronged *her*? If not, then it is mistaken to describe the theistic account as an account of *human* rights; it is an account of *God's rights with respect to human beings*. Of course, if God does have the right with respect to human beings that they not be wantonly killed, even if they have sunk into dementia, that is a powerful reason for not wantonly killing them. Nonetheless, the conclusion to be drawn from the entire discussion would be that the theistic account is no more successful in giving an account of *human* rights than are the various secular accounts.

Weithman assumes, without question, that though Nathan is under-respected when his beloved animal is trashed, the animal itself is not. I do not see this. Suppose that stuffed animals were all like Weithman's velveteen rabbit, aware of what is going on with other stuffed animals and capable of expressing their feelings. Suppose further that they all admire Nathan. Then, so I suggest, they would believe that Nathan, by singling out this animal for his affection, has honored this animal, and they would be jealous of this animal on that account. They would wish that they had the honor of being loved by Nathan. Bestowed honor is a form of worth. If a university honors someone by giving her an honorary doctorate, then having that honor is one of the estimable things about her. In short, I continue to believe that the theistic account I offered is an account of *human* rights, and not just of *God's rights with respect to human beings*. We human beings have the honor among God's creatures of being loved by God in the mode of attachment.

There is much in the remainder of Weithman's rich and acute comments that I would like to talk about; I will have to confine myself to discussing just two points at which he challenges what I have to say and to some comments on the immunities-account of rights to which he is himself inclined.

Weithman suggests that "rights do not trump all contrary considerations, or always rob competing goods of their reason-giving force. They trump some kinds of reasons but not all, and we may violate rights for some reasons but not others" (2009a, 250).

First, I must present a clarification of my position. When I say things like "rights trump all contrary considerations," what I mean is that if you have a *prima facie* right against me to the good of my treating you a certain way, and nobody has a *prima facie* right to any of the life-goods that I could bring about by not treating you that way, then I am to treat you that way. The situation is altered if someone or other does have a *prima facie* right to some of the goods that I could bring about by not treating you that way. If that is the case, then I have to weigh up the various *prima facie* rights. On the way of thinking about the situation that I advocate in the book, I do not, in that case, ask where lies the lesser wrong and the greater right, thus assuming that in cases of conflict, one is always fated to do something wrong; instead, I ask where lies the *ultima facie* right. (This is my answer to O'Donovan's claim that I am committed to radically multiple *conflicting* rights.) If mere life-goods, and no *prima facie* rights, are involved in not treating you as you have a *prima facie* right to be treated, then I would treat you with under-respect if I did not accord you that treatment. It may well be the case, however, that if there are other *prima facie* rights involved, then I would not

be treating you with under-respect were I to deprive you of the good of treating you in the way in question; I would be treating someone else with under-respect, thereby wronging them, were I not to do that. When Weithman in his Introduction characterizes my position as “a right is supposed to preempt competing considerations” (2009b, 190), I want to jump in with the qualification, “provided those competing considerations are all life-goods to which no one has a right.”

I consider the suggestion that having a right to some good does not give to that good a trumping force over all other considerations but only “boosts” its worth in the calculus of goods (Wolterstorff 2008, 305–9). Let me not rehearse that argument here, but instead consider a counter-example that Weithman offers to my claim that rights have trumping force. (I have fleshed out the example just a bit). Suppose that Paul has promised to meet me for lunch at noon. Having made this promise, he has an obligation to meet me at noon, and I have a right to his doing so. However, on the way to our rendezvous, a hedge fund manager who knows about my fondness for Rembrandt, as does Paul, says to Paul that he would like to buy and give to me one of my favorite Rembrandt paintings. To do so he needs some assistance from Paul, however. This will entail that Paul arrives about an hour late for our lunch. If the purchase is not made right now, it can probably never again be made.

Weithman takes my theory as implying that he should decline the offer out of hand; my right to Paul’s keeping his promise trumps all contrary considerations. That is not my view, however. Let us approach the issue from the obligation end rather than the rights end. In reflecting on whether or not to be prompt for our appointment, I think Paul should ask himself whether, if he had not made the promise to me, he would have had an obligation to assist in the purchase of the painting, or whether this would be no more than a very nice thing for him to do. My view is that, given my deep love of Rembrandt’s paintings, he has an obligation to cooperate in the purchase. If so, then Paul’s situation is that he is presented with conflicting *prima facie* obligations and hence with conflicting *prima facie* rights. The question for him to resolve is where lies the *ultima facie* right (and obligation).

I know how I would answer that question. I think he ought to assist in purchasing the painting and arrive late for our lunch; I think I have a right to his assisting the stranger in purchasing the painting. I would feel crushed if he brushed off the offer, arrived on time, and then told me how virtuous he had been. I would say, “Paul, how could you? You know how much I love Rembrandt. You did not take my passion seriously. You brushed it aside for the minor good of not keeping me waiting. You have wronged me.”

A second point on which Weithman challenges what I say is the following. Consider a piano competition whose rules state that, in awarding prizes, the judges are to take no other factors into consideration than the quality of the performance. I hold that, in this situation, if the judges allowed themselves to be swayed by greater good considerations and did not give first prize to the person who, in their judgment, performed best, they would be wronging that person.

I go on to ask why they would be wronging the person. The rules of the competition specify that performing best trumps all other consideration in awarding the prize. Why does not following the rules *wrong* the best performer? Why is not following the rules the end of the matter? Think of what the rule-violating judges did along the following lines: the judges weighed up the good of following the rules against the good of departing from the rules in a certain way, and they decided that greater good overall would be achieved by doing the latter. How does *wronging* the best performer get into the picture? Given my view as to the connection between being morally wronged and having a moral right to something, that amounts to asking how rights get into the picture.

The answer I proposed is that the performers enter the competition *trusting* that the judges will make their decisions according to the rules; if they had not believed that the judges would follow the rules, they would not have bothered entering the competition. In not following the rules, the judges broke that trust. To break someone's trust is to wrong him or her.

Weithman offers some ingenious examples showing that, though this reply works for some cases, it does not work for all. Suppose that someone known to be a scoundrel manages to get installed into public office. People do not trust him; nonetheless, if he violates the laws, he wrongs them. Weithman suggests that though he does not violate the trust of the public in breaking the laws (since they never trusted him in the first place), he nonetheless breaks "the public trust." That's why his violation of the law constitutes wronging those affected by the violation.

I find this a very helpful suggestion. I suggest that a similar analysis applies to Weithman's other cases, those in which one's fellow citizens wrong one by violating the law, even though they do not violate one's trust, since one never trusted them to obey the law in the first place. The public trust that underlies life in an ordered society is a trust that extends not just from citizens to officials but from citizens to citizens and from officials to citizens. The existence of the public trust is compatible with each official not trusting certain officials and citizens to live up to the public trust, as well as with each citizen not trusting

certain officials and citizens to live up to it—though if not trusting officials and citizens to live up to the public trust becomes widespread, the public trust is destroyed and anarchy ensues. The fact that violating the laws constitutes breaking the public trust explains why breaking the laws has the import of wronging those affected thereby. To the best of my knowledge, no philosopher has yet succeeded in giving an illuminating account of this concept of *the public trust*. (Perhaps it was this idea of the public trust that John Locke was reaching for when he talked about a *compact* among the subjects and officials of a political order.)

Weithman indicates that (in spite of my best efforts!) he is still attracted to an immunities account of inherent human rights rather than to my respect-for-worth account. He says that “the acts which constitute rights-violations” are wrong because “acts of that kind generally impede the victims’ ability to act on interests human beings typically have” (258).

Why do I not accept such an account? There are many reasons. If by an “interest” of a person one means something that the person desires, which is what Weithman seems to mean by it, then I think a clear-eyed acknowledgement of our human condition requires that we admit that many of the things human beings typically desire are bad, but if they are bad, nobody has a right to them. Further, not every diminution of a person’s well-being, by impeding his pursuit of something good, amounts to wronging him. Last, there are ways of wronging someone that in no way impede her ability to act on her interests; many cases of wrongful deception are of that sort. Each of these points is developed in my book.

In closing, let me once again thank my commentators for the honor they have paid me. If I have neglected what one or another thought was his most cogent point of critique, I ask forgiveness. It was not to avoid a bullet that I judged would be fatal if I did not dodge it.

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