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## Christian understandings of human rights: a lecture at Swansea University



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**PEOPLE** David McIlroy

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### 20th March 2013, Swansea University

#### Overview

Thank you very much for the invitation to come to speak to you tonight. My topic is "Christian understandings of human rights". Perhaps some of the recent cases have given you the impression that Christians do not understand human rights. If that is where you are coming from then I hope to show you tonight that what Christians don't understand is their own history, that secularists don't understand human rights, and that the link between Christianity and human rights must be recognised on both sides as a matter of urgency.

#### 1. Christianity contributed significantly to the development of human rights

As this is a public lecture I will take the opportunity to be provocative. Here's my first provocation: Christians are, in large part, responsible for the invention of human rights.

##### 1.1. The ideas of natural law and of natural justice

If we go back to the ancient world, to the great civilisations of Babylon and Egypt, there is little sign of any ideas filling the conceptual space which is occupied by our contemporary notion of human rights. What we find instead is rulers claiming that their rule was just in the most direct way possible: they claimed that they were gods, or the sons of the gods. They claimed the right to subordinate the interests of their subjects entirely to the needs of the state, which often equated to their own personal whims. Their claims were reinforced and embroidered by a caste of priests.

It has been persuasively argued by Costas Douzinas, Professor at Birkbeck College in the University of London, that the Greek philosophers developed the idea of natural law in order to challenge the rulers' claim that their rule was just.<sup>[1]</sup> The priests invoked the gods; the philosophers appealed to the universe. They found in nature the basis for arguing that certain laws

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and actions by rulers were unjust because they contradicted the natural law.

Elsewhere in the Mediterranean, Israel-Judah developed a tradition which also challenged rulers' claims that their rule was just. But unlike Greece, this tradition arose from within its religion. The religion of Israel-Judah claimed that its god was the creator of the whole world. It claimed that this god had directly revealed to Moses the Ten Commandments which formed the centrepiece of Israel-Judah's laws. Israel-Judah's laws as recorded in the Pentateuch (the five books of the Law) were, *ex hypothesi*, just. It might have been expected that these beliefs would have resulted, as elsewhere, in an authoritarian society in which the king, as God's anointed ruler, was the infallible mouthpiece of divine justice. Instead, the Pentateuch became the focus for subversion. Priests and kings appealed to divinely authorized rule and claimed to be dispensing divine justice. Prophets responded by appealing to the Pentateuch against the king. The king was authorized by God to uphold God's law. When the king's actions contradicted God's law they were *ultra vires*, outlawed. Even the great kings Saul, David and Solomon could be denounced for their unjust actions.

Even more subversive moves were made when Israel-Judah had been conquered by the dominant powers of the region. The later prophets insisted that God's standards of justice applied to the new rulers of Palestine, be they Egyptian, Babylonian, Medo-Persian, Seleucid or Roman. In this way, basic standards of God's justice were declared to be universally applicable, to be, in effect, natural law with a divine origin.

These two streams: Greek natural law theory and Jewish prophetic criticism of rulers come together in the thought of the great Christian thinker, Augustine of Hippo. Augustine was confronted with the Roman Empire which had, for centuries, justified its conquests as bringing the *Pax Romana* and the justice of Roman law to the barbarians. The Empire proclaimed that its rule and its rules delivered divinely authorized peace and justice. The change in official religion from paganism to Christianity had not changed the claims, only the identity of the god who underwrote them. In his epic work, *The City of God*, Augustine of Hippo flatly denied that the rule of both the pagan and the Christian emperors was worthy of the name "justice".

This combination of Greek natural law theory and the Bible's account of God's justice dominated mediaeval thinking. The idea of natural law was given its classical expression by Thomas Aquinas in a single question of his uncompleted multi-volume *Summa Theologiae*. Law students still read Aquinas's idea of natural law today (or at least the more diligent amongst them might do). But they read it as students who have been told that natural law theory is conservative and reactionary, used to defend the power of rulers by creating a presumption that it is moral to obey the law.

Alasdair MacIntyre has recently invited us to get behind centuries of layers of interpretation of and against Aquinas to ask about Aquinas's own agenda: regardless of how his theory has been used subsequently, why did Aquinas himself invoke natural law? MacIntyre argued that in the fragmented, feudal society of thirteenth century Europe, Aquinas's theory of natural law was written to address the problems raised by the rival and conflicting secular and religious jurisdictions in Italy and France. In particular, it was a sophisticated, if somewhat disguised, challenge to the quasi-infallibility which the French Saint-King Louis IX, following the example of the Holy Roman Emperor

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Frederick II, claimed for his justice and his administration. The access of each individual citizen to the natural law meant that each citizen was always under a duty to decide for himself or herself whether a law should be obeyed or not. The point of Aquinas's natural law theory was precisely to ensure that no human authority was placed beyond appeal and beyond question.

Natural law theory, in its pagan Greek, Christian Roman and Christian mediaeval forms turns out to be a sort of human rights theory: a theory that there is an objective moral order of right and wrong which determines how human beings ought to be treated and that governments should be held accountable when they violate that objective moral order.

## 1.2.The first freedom: freedom of religion

Christianity's second contribution to the development of human rights occurs in much darker circumstances. Europe fought itself to a standstill in the Wars of Religion which occurred in the two centuries after Luther's 95 theses kick-started the Reformation. Eventually secular rulers realised that far from it being necessary for a nation's peace that all of its citizens should be obliged to follow outwardly a particular version of Christianity, it was better for a nation if citizens were given liberty to worship the Christian God in the way they thought best. The first human right to be established was the right to freedom of religion and freedom of conscience.

The German Reformed theologian Professor Jürgen Moltmann argues that human rights have a Christian origin because "Human rights and personal liberties, freedom of religion, freedom of belief and of conscience, democratic forms of government and liberal views of life: all these things grew up together with Protestantism".<sup>[2]</sup> John Witte Jr in *The Reformation of Rights* traces the expanding understanding of human rights in Calvinist thought. The Catholic thinkers, Vitoria and de las Casas sought, on the basis of natural law, to defend the rights of the native South Americans against the worst excesses of the Conquistadors.

A key turning point in the development from natural law to human rights comes with John Locke. Locke is a pivotal philosopher, both a precursor to the Enlightenment but also someone who wrote a book called *The Reasonableness of Christianity*. In far more respects that our secular society would like to admit, Locke relies on Christian sources to establish aspects of the modern view of who human beings are and how they deserve to be treated.

Nonetheless, with Locke there is a significant development. Up until Locke, arguments about how Christians should treat one another were couched, both by Catholics and Protestants, mainly in terms of the natural law and natural justice. Locke's theory is not a theory of natural law and natural justice. Locke's theory is a theory of natural rights. One of the most important of those natural rights, for Locke, was the right to freedom of religion: the right to decide for oneself who God is and what God requires of you.<sup>[3]</sup>

Locke's theory of natural rights was built around the idea of property, which, for him, meant "that property which men have in their persons as well as goods".<sup>[4]</sup> What Locke gave us was not human rights in its modern form, but rather a theory of natural rights "which served the interests of a property-owning male elite bound to the state by the social contract".<sup>[5]</sup> This is a theory of human rights for rich men. But is a theory which seeks to use rights to limit

the power of government. Locke's ideas undoubtedly inspired the American Revolution and influenced the framers of the U.S. Declaration of Independence.

Americans recognise that freedom of religion is the first freedom. It is the freedom which is established in the First Amendment to the U.S. Constitution. It is the first individual right which was recognised historically. It is still today key to the freedoms which all of us enjoy because the right to freedom of religion is also the right to be free to be an atheist, the right not to have to attend church. As Professor Roger Trigg said in a debate last month, if you look around the world, those countries which do not have freedom of religion tend to have very few of the other freedoms we treasure either.

### 1.3. Human rights against God

What I have traced so far is how pagan philosophy and Christian theology intertwined in the theory of natural law and how that theory was transformed by Locke and later Enlightenment philosophers into the idea of natural rights.

The first time we see human rights asserted against God is in the French Revolution. The *Declaration des Droits de l'Homme* came complete with the slogan *ni Dieu, ni maitre*. The rights of man were asserted by the French Revolution as a self-standing creed, which had no need of God. From this source flows into modern human rights theory the idea of human rights as some kind of free-standing, self-supporting system of beliefs and values, as Jean-Marc Berthoud put it, a religion without God. This idea of human rights persists today. When the Human Rights Act 1998 was adopted in the UK, Francesca Klug published an influential book entitled *Values for a Godless Age*. Because we no longer believe in God, or because we no longer take our belief in God seriously, human rights act, like Alain de Botton's 10 'commandments' for atheists, as a substitute for a religious source of values and morality.

### 1.4. The development of human rights after the Second World War

Finally, human rights philosophy is a reaction to fascism and to Nazism. In the aftermath of World War II therefore, Churchill and others felt that it was necessary to establish a code of minimum standards which as many states in Europe as possible could be persuaded to sign up to, in order to guarantee that the horrors of Auschwitz would never happen again.

Human rights were founded on a twin foundation: the secular idea of human rights and the Christian and philosophical idea of the natural law. Christians were central players in the development of human rights after the Second World War, most notably the French Catholic personalist philosopher, Jacques Maritain, and the Lebanese Greek Orthodox philosopher and diplomat, Charles Malik. Documents like the U.N. Declaration of Human Rights set out an account of what is due to human beings, based on the objective characteristics of human nature which everyone could agree had been so egregiously violated by the Nazis and their fascist allies. Professor Julian Rivers of the University of Bristol has recently suggested that: The 'Christian natural law tradition arguably reached its fulfilment in the Universal Declaration of Human Rights and the mid-twentieth century human rights movement more generally.'<sup>[6]</sup> Vatican II affirmed the importance of the rights of conscience in its 'Declaration on Religious Liberty' *Dignitatis Humanae*. The Catholic philosopher John Finnis described the modern language of rights as 'a supple

and potentially precise instrument for sorting out and expressing the demands of justice'.<sup>[7]</sup> More recently, Catholic writers such as Roger Ruston have argued that human rights find their basis in the fact that human beings are created in the image of God.<sup>[8]</sup>

By changing its name from natural law to human rights, and by leaving unexamined its metaphysical commitments about who human beings are and why they deserve what human rights theory ascribes to them, the idea of natural law which Christianity kept alive throughout the Middle Ages has won the day, has gained universal acceptance, and has actually become the law in many parts of the world.

## 2. Christian concerns about human rights

In view of the sweeping claims I have just made about the important contributions Christianity has made to the development of human rights theory, what I am about to say may strike you as more than a little odd. Indeed, it strikes some Christians, such as Jean Porter, Professor of Theology at the University of Notre Dame, as more than a little odd. She suggests, "it would be strange indeed if Christians, on theological grounds, were to attempt to dissuade our fellow citizens from making use of what we regard as fundamentally Christian concepts!"<sup>[9]</sup>

Nonetheless, there are Christians today who raise significant concerns about the compatibility of human rights theory and Christian theology. As well as those Christians who object to some of the outcomes of some of the human rights cases which are brought today, there are those who are concerned that the dominant, almost monopolistic use of the language of rights as a way of debating moral questions, is distorting and damaging our relationships with one another and is in danger of destroying our societies.

This is not so much an argument about whether or not you should be against torture (obviously you should) or in favour of property (again, the answer seems fairly clear). The question is whether the language of human rights is or is not a helpful way of thinking about those entitlements.

### 2.1. Rights as things which belong to me

What do we mean when we talk about rights? What feelings and mental pictures does the idea of rights evoke? In 1955, the greatest legal philosopher of the twentieth century, H.L.A. Hart (and I say that with all due deference to the recently deceased Ronald Dworkin), wrote an essay which addressed the question: are there any natural rights? In that essay, Hart says this about the concept of rights: 'Rights are typically conceived of as *possessed* or *owned by* or *belonging to* individuals and these expressions reflect the conception of moral rules as not only prescribing conduct but as forming a kind of moral property of individuals to which they are as individuals entitled; only when rules are conceived in this way can we speak of *rights* and *wrongs* as well as right and wrong actions.'<sup>[10]</sup>

Rights, according to H.L.A. Hart, are usually thought about as "things which belong to people". This is a vision of rights which Joan Lockwood O'Donovan denounces as "possessive individualism". She argues that "the possession of [natural] rights [by individuals] is always proprietorship: all natural rights originate in property right, so that to reject property right is to reject natural or fundamental rights as such. Indeed, the whole panoply of modern rights

(including what are called "claim-rights") has sprung historically from the attribution to humankind of two radical proprietary rights: firstly, an original or natural proprietary right over the non-human goods of creation, and secondarily, the person's natural right to dispose of his own acts (i.e. his right of freedom), which came to be explicitly construed as a form of proprietorship. From these radical proprietary rights has evolved the proprietary subject who seeks to dominate his moral and natural environments not only by protecting what he already possesses against any and every other possessor, but by demanding what he does not yet possess as an entitlement (i.e. a claim-right) that is entailed in his original proprietorship."<sup>[11]</sup>

What Lockwood O'Donovan is saying is that human rights are always conceived of as rights of ownership, ownership over things in creation, and ownership of one's own acts (i.e. the right to freedom). You may have already detected, from the end of the quotation I read, why Joan Lockwood O'Donovan has been getting her knickers in a twist.

The result of thinking of rights as "things which belong to me" is that people come to see themselves as individuals, with the right to be free from pressure from other people, externally imposed obligations, and natural limitations.

This leads, Lockwood O'Donovan claims, to rights being asserted as demands, as claims by individuals, to the detriment of wider society. The logical conclusion, she argues, is that rights will be claimed to everything which can be the object of human desire and possession. What gets squeezed out in the clamour for more and more rights are the shared goods of community.

Furthermore, the task of government is distorted if we think about justice in terms of rights alone or primarily in terms of rights. A subjectivist concept of rights panders to the pursuit of individual self-interest, leading to a constant escalation of competing claims, expectations and demands. Far from providing a commonly agreed moral framework for the resolution of such claims, attempting to construct a legal system on the basis of subjective individual rights only increases conflict and undermines the ability of government to render just judgment or promote the common good.

If rights in the plural are all there are, then our moral dilemmas are more difficult to resolve. If I have the right to play my music in the summer with the window open and you have the right to sunbathe in your garden in peace, how can that conflict be resolved?

Is there an absolute right not to be tortured? Even if you are the terrorist who knows the combination that will de-activate the bomb you have planted which is going to explode and kill thousands of people in the next hour? It is not enough to specify a right to life, we have to consider the circumstances in which such a right properly trumps all other considerations. Is it properly applicable on the battlefield?

Lockwood O'Donovan goes so far as to claim that we can achieve justice without needing to use the concept of rights at all. She says: "Justice is constructed not from the rights of individuals but from a matrix established by "God's right ... of divine, natural, and human laws or objective obligations that constitute the ordering justice of the political community."<sup>[12]</sup> Whereas human rights theory presents us with the question: how am I to respond to the rights-claims of others?, Lockwood O'Donovan argues that Christianity presents us with the question is: how does God want me to love my neighbour?

Joan Lockwood O'Donovan's husband, Professor Oliver O'Donovan, takes a more nuanced position. He recognises that rights have their place in the courtroom. But, he stresses, that such rights are just one of the things to which judges and governments must pay due regard. Alongside rights, rulers trying to render just judgments must also take into account those shared moral obligations, notably the common good, which make up the bonds of community which government must protect. Political wisdom, in general, is the skill of rightly adjudicating among the competing and legitimate demands constantly made upon government. To do this requires knowing who is the source of a legitimate demand (they may not have the loudest or the clearest voice) and whether and why that demand is in fact legitimate (some are spurious or even mischievous).

For Joan Lockwood O'Donovan and for Oliver O'Donovan, human rights theory raises issues about the shape of the moral universe. Is right and wrong just or primarily about acting in ways which do not violate other people's rights?, or is there a sense in which the competing claims and rights, duties, freedoms, privileges and responsibilities that we have can be understood as forming part of a coherent whole? In short, is the moral universe just made up of competing *rights* or is there an overarching idea of *right* within which all the other moral questions fit.

## 2.2. Rights and the Good

Modern human rights theory is a theory of the right, without a corresponding theory of the good. You could argue that one of the attractions of Islam is that it offers a comprehensive theory of the good, whereas the liberal West merely offers the somewhat anaemic alternative that what is good is that everyone should be able to pursue their own personal vision of what is good.

David Bentley Hart contends that modernity, as a period of thought, is characterised by the idea that the ultimate good is freedom of choice.<sup>[13]</sup>

That you make a free choice is more important than what you choose. Taken to its ultimate extreme, argues Hart, there is no value at all other than choice. 'Freedom – conceived as the perfect, unconstrained spontaneity of individual will – is its own justification, its own highest standard, its own unquestionable truth.'<sup>[14]</sup> To criticise another's choices is therefore to challenge the ultimate value in our civilisation, it is to commit the ultimate wrongs of being intolerant and judgmental. But if there is no value other than choice; there is also no such thing as the truth. What is true, what is good, what is beautiful are no longer things which exist objectively, out there or in reality. All that there are the things that are true for me, the things that I think will be good for me, and the things that I regard as beautiful. This means that human rights theory operates within a culture which is consumerist: maximum choice of goods and services is paramount, because choice is the only absolute value which our culture recognises.

The combination of an absolute commitment to individual choice with a moral theory conceived of solely or primarily in terms of rights restricts our ability to have intelligent and intelligible discussions about justice. Professor Michael Sandel, whose brilliant Harvard lectures on justice were televised and shown on BBC4, makes the point in his book *Justice* that we cannot avoid talking about the good:

Justice is inescapably judgmental. Whether we're arguing about financial

bailouts ... surrogate motherhood or same-sex marriage, affirmative action or ... CEO pay ... questions of justice are bound up with competing notions of honour and virtue, pride and recognition. Justice is not only about the right way to distribute things. It is also about the right way to value things.<sup>[15]</sup>

We cannot, says Sandel, work out how to regulate banking unless we work out what the good of banking is. We cannot discuss same-sex marriage sensibly unless we debate amongst ourselves what the goods of marriage are.

### 3. Christian foundations for human rights

#### 3.1. Shalom: the Judaeo-Christian Concept of the Good

Christianity has inherited from the Hebrew Bible a very clear concept of the good although it is one that I suspect many people, both Christian and non-Christian are not aware of. The Bible's idea of the good is the idea of *shalom*. *Shalom* is a state of wholeness and harmony within a community which exists when all the relationships within that community are good. It is a good which is promoted by acts of justice and mercy, love and compassion. It is a good which is about each person being able to participate fully in the community not a good in which each person is able to express themselves individually regardless of the cost to the community.

The Judaeo-Christian concept of *shalom* is founded in the idea that all members of the human species, both male and female, have been created by God in the image of God. The Judaeo-Christian concept of *shalom* is one in which each person is able to enjoy the gifts which God has given them: gifts of life, dignity, liberty, and a capacity for meaningful relationships and rewarding work. These gifts can be found in the first chapters of the book of Genesis.<sup>[16]</sup> Christianity sees these gifts as the result of the goodness of God. We do not have the right to these things on a self-evident basis. We do not have the right to these things irrespective of whether this world evolved as a matter of chance or whether it was created by God. In respecting the rights which other people have to these God-given goods, we do right by everyone, including God.

#### 3.2. Human rights, human dignity and human identity

Christians who are in favour of human rights understand them as a means of obeying the two great commandments which Jesus identified as the keys to the Jewish law: the commands to love the Lord your God with all your heart and to love your neighbour as yourself.<sup>[17]</sup> They understand all human beings to have the right to be treated with dignity and respect because all human beings have been created "in the image of God" (Gen. 1:26).<sup>[18]</sup> The book of Proverbs bases an argument that judges must dispense justice impartially on the assertion that rich and poor alike have an equal right to expect it because "The Lord is the Maker of them all." (Proverbs 22:2; 29:13). It also condemns oppression or mockery of the poor, because it amounts to contempt for their divine Maker (Proverbs 14:31; 17:5). The Bible presents a clear picture of human beings as having worth because they have been created by God and because they are loved by God.

Professor Nicholas Wolterstorff has recently argued that human beings have rights because God has rights. His argument runs like this: because God is God, God has the right to be worshipped and obeyed by human beings. Because God is good, human beings created by God have worth. From those premises, he draws the following conclusion: "Once one has said that God has



worth, that that worth grounds God's right to worship and obedience, and that human beings likewise have worth, it proves impossible not to continue in this line of thought and hold that human beings have rights on account of their worth."<sup>[19]</sup>

### 3.3. Human beings as agents and patients, as wrongdoers and victims

Wolterstorff argues that there are two fundamental dimensions to the moral order: (1) how we act as an agent and (2) what is done to us as a recipient/patient. We are both moral agents who do things and moral patients who have things done to them. What we do has moral significance, and what is done to us has moral significance, and these are not identical. When a moral agent acts in certain morally inappropriate ways they are guilty but they also do wrong to the moral patient. Wolterstorff argues that to do full justice to the moral patients, the victims, to recognise the wrong which has to be done to them, to acknowledge their full worth as human beings, we have to acknowledge that they have rights which have been violated.

Rights talk therefore brings the victims into the centre of the moral picture. We are not only sinners, we are also sinned against. The Lord's Prayer, in its traditional version, itself recognises this, when it says "Forgive our trespasses, as we forgive those who trespass against us." Failing to recognise this dimension of the moral order risks treating people as objects rather than subjects and this is injustice, or at the very least, quickly leads to injustice.

Wolterstorff finds the idea of *inherent* rights in the Bible's description of forgiveness. He reasons as follows: (1) God forgives us; (2) if God forgives us, God must have been wronged; (3) if God has been wronged, God must have been deprived of that to which God has a *right*; (4) that right was not conferred on God but is inherent; (5) Jesus taught His human disciples to forgive one another just as God has forgiven them; (6) human beings therefore have inherent rights which can be breached.

So within contemporary Western Christianity we find intellectual giants, Nicholas Wolterstorff on one side and the O'Donovans on the other side, squaring off against one another about whether human rights are derived from or antagonistic to the deepest insights of the Christian faith about human beings and their relationship to one another. The argument between Wolterstorff and the O'Donovans is about whether the idea of possessive individualism is an inevitable corollary of the idea of moral rights or whether it represents a contemporary misunderstanding, a sort of infection which has become grafted on to the idea of rights.

Lockwood O'Donovan rejects talk of rights because she rejects the notion that rights are things which belong to me. Wolterstorff says, by contrast, that it is important to continue to talk about rights because doing so is a powerful means of ensuring that we do not forget the victims. Wolterstorff goes on to give an account of rights in which rights are not things, rights are not personal possessions, and rights are not individualistic.

### 3.4. Rights are not things

According to Wolterstorff, rights are not things at all, but rather a form of "normative social relationships: sociality is built into the essence of rights. A right is [always] a right *with regard to* someone".<sup>[20]</sup> Rights describe a particular aspect of the relationship between two people, a situation in which A

owes a duty to B and B has a right against A. Wolterstorff describes the normative social relationships which rights are as a "normative bond between oneself and the other. ... This normative bond is in the form of the other bearing a legitimate claim on me as to how I treat her, a legitimate claim to my doing certain things to her and refraining from doing other things."<sup>[21]</sup> Wolterstorff also restricts the scope of rights by arguing that one's rights are limited to a particular subset of goods, the goods of being treated with appropriate respect and in accordance with our worth. Possessive individualism is, Wolterstorff argues, not intrinsic to rights but a distortion.

### 3.5. Rights are not personal possessions

Lockwood O'Donovan accuses contemporary rights-talk of being inevitably *possessive*, of leading inexorably to the conception of rights as things belonging to the rights-holder. The phrase "My rights" carries with it the idea that rights are some sort of thing which belongs to me. Wolterstorff denies that rights are possessions. For him, rights are not an answer to the question: what ought each of us to get?, but rather to the question: how ought each of us to be treated?

### 3.6. Rights are not individualistic

Human rights seem to go hand in hand with an individualistic worldview, in which each person is entitled to claim as much from the community for themselves as their rights will allow, and in which relationships with other people can be picked up and discarded at will. Human rights are used today to make individualistic claims in the name of 'Me First'. It is 'my rights' that matter, never mind the cost to the community of satisfying them. It is 'my rights' that matter, never mind the fact that I have obligations to others.

Wolterstorff denies that an emphasis on rights is inevitably individualistic. Readers who get no further than his book *Justice: Rights and Wrongs* are unlikely to be persuaded by his defence on this book as in that book he talks almost exclusively about rights in terms of the rights of individuals. However, in his latest book, *The Mighty and the Almighty*, the last chapter gives an extensive account of how groups, organisations and social institutions have rights which governments ought to respect.<sup>[22]</sup>

The strength of Wolterstorff's approach to rights is that it is relational. For him, rights are not defined in the abstract but in relation to other people. The fact of our relationships with one another gives rise to, or better still, carries with it a network of rights and obligations which we owe to one another.

## 4. The Challenge of Christianity to Secular Accounts of Human Rights

I have suggested so far that Christianity made a significant contribution to the intellectual forces which led to the development of human rights theory but that some Christian thinkers today have serious concerns about the contemporary conception of rights which sees them as possessions and thinks of them in individualistic terms. I have then presented the Christian defence of rights which Nicholas Wolterstorff offers which describes rights as a form of normative social relationship. It seems, therefore, that some Christians reject the idea of human rights entirely whilst others agree with the name 'rights' but want to re-define its content to make it more compatible with the claims of community.

I want now to issue another one of the provocations which I indicated would

pepper this lecture. Not only does Wolterstorff say that the idea of human rights is compatible with Christianity, he goes on to say that the idea of human rights finds its only, or its best defence, in the existence of the Christian God.

#### 4.1.If there is no God, then where do human rights come from?

The first question which Christian theology addresses to secular defenders of human rights is this: if there is no God, then where do human rights come from?

There is an account out there which runs something like this: atheists tend to be decent people who treat others well whereas religious people tend to be fanatics who treat others appallingly. Given the millions murdered by the atheist regimes of Adolf Hitler, the communist USSR and Pol Pot in Vietnam, that argument should appear obviously specious. The body count does not stack up well for the atheists. It looks as if at least some atheists in positions of power in the twentieth century gladly accepted the truth of Dostoyevsky's dictum: "Without God, ... everything is permitted".[\[23\]](#)

A fundamental problem for atheists who wish to give an account of human rights is to explain how human rights come to be if there is no God. Natural law purports to look at what nature is in order to derive principles for how human beings ought to treat one another. If nature is not the creation of a God who has loving purposes for human beings but is instead a collection of purposeless matter, anti-matter and dark matter, then you cannot derive any principles for how human beings ought to treat one another from how nature is.

The point was made most bluntly by the atheist rationalist philosopher, Jeremy Bentham, who developed the philosophy known as utilitarianism. For Bentham, the idea of rights was nonsense and the idea of natural rights was nonsense on stilts. For Bentham, nature is such a complicated phenomenon that what you find in nature depends entirely on what spectacles you were wearing when looking at it. Bentham assumes that the only thing that counts is pleasure and pain, although the only basis he can have for assuming that even pleasure and pain matter is because everyone agrees that they want to enjoy as much pleasure as possible and to avoid as much pain as possible. Bentham therefore proposed that the right thing to do is whatever achieves the greatest happiness of the greatest number. Following utilitarianism, it is possible to massacre your Jewish, Roma, and or homosexual minority population, provided that, on some imaginary scale of human suffering compared with human satisfaction, the happiness of the majority at seeing the Jews massacred outweighs the suffering of the Jews, Roma, or gays at being exterminated in death camps. Utilitarianism was coupled with John Austin's version of legal positivism: the view that the law is nothing more or less than what the government (the sovereign) says it is. The combination of those two philosophical ideas means that provided Hitler is the sovereign and provided most people are happy for him to do it, there is no reason why he should not go around murdering Jews, gypsies and homosexuals in their millions.

The same problem arises today in relation to human rights. If there is no God, how can we account for their existence? Secular Jew and American civil liberties lawyer, Alan M. Dershowitz, admits that if there is no God, all we can say about human rights is that "*we just know*" they are there.[\[24\]](#) Catholic writer Michael J. Perry counters that if there is no God there is no basis for

human rights.<sup>[25]</sup> He points out that the "we" Dershowitz posits does not exist, it is a fiction, nothing more than a label for "people who think like us".

I think that Perry is correct on this point: the rights-sceptic's challenge to secular human rights is a successful one. Human rights cannot be established simply on the basis of an anthropology; they depend upon a theology. They depend on the belief in God, and in a particular kind of God, the Christian one. Wolterstorff would agree.

#### **4.2. Human rights need God to be objective**

Whilst advocates of human rights, whether Christian, secular or secularist, all recognise that the application of human rights has to be regulated by governmental authorities, the reason we invoke human rights is in order to limit the power of government. We want, therefore, to be able to say that human rights are logically prior to their recognition or enforcement by government. But if human rights aren't given to us by the law, where do they come from?

If you believe in God, you have the problem of identifying what rights people enjoy simply by virtue of being human beings created by a loving God. If you don't believe in God, you face a whole host of additional problems. A believer is justified in holding that there is an objective moral order of right and wrong and that God will hold you accountable if you transgress against that objective moral order. The nature of the objective moral order and its existence are proclaimed by God.

If there is no God, then the nature of the objective moral order and its existence must be proclaimed by someone else, but who? They could be proclaimed by the people, but this would not make them effective. In order for them to be effective, they must therefore be proclaimed by the state but the problem is that the whole reason we need human rights in the first place is to protect us against the state.<sup>[26]</sup> Asking the state to declare and to define human rights is a bit like asking wolves to declare the rights of reindeer.

One way to avoid that problem might be to say that human rights are indeed 'natural', but then to offer as thin an account as possible of the anthropology which underpins them. This is the attraction of the value of choice as the grounding for human rights. If it is fundamental to human nature that human beings are and want to be creatures who choose, then perhaps we can construct an entire edifice of human rights by working outwards from the supreme value of choice.

This gives us a radically different vision of human rights from one which is grounded in natural law or natural rights. An account of human rights grounded in natural law or natural rights understands human rights as a claim that 'a higher, objective law takes precedence over what seems expedient to a particular government at a particular time'.<sup>[27]</sup> An account of human rights based on the supreme value of choice is merely a jumble of subjectivist claims. We simply find ourselves shouting at one another in a crowded society, demanding that our preferences, our choices, should receive the greatest possible legal protection and the largest available financial hand-outs. The rhetoric of human rights is then, in truth, nothing more than the contemporary language in which to make Nietzschean demands in terms of the will-to-power. Put bluntly, unless human rights are grounded in a vision of the

objective moral order, they amount to nothing more than self-interested claims that my choices should be given priority; they are attempts at power-grabs.<sup>[28]</sup>

#### 4.3. Human rights need God to be relational

Atheism offers some startling examples of where a commitment to human rights, seen as things which belong to me rather than normative social relations, can lead you. The Scottish sceptic and atheist philosopher David Hume held that individuals' property rights were absolute, even in the face of desperate human need such as starvation.

One does not need to resort to such a *reduction ad absurdum* in order to acknowledge that human rights conceived of as things which belong to me leads to consequences which are unsustainable. Post-menopausal women and others who cannot conceive naturally cannot have an unlimited right to artificial means of creating human life simply because there comes a point at which society cannot afford it. There is not an inexhaustible supply for money to pay for cosmetic surgery for those who want bigger or smaller breasts. Nor, sadly, can we posit a universal human rights to perfect eyesight even though an entitlement to free laser eye surgery might be something many people would value greatly.

#### 4.4. Human rights need God to be balanced by a sense of our responsibilities

The strength of human rights theory is that, whereas Nazism and Stalinism treated people as disposable instruments of the regime's will, it emphasises the importance of individuals. The corresponding temptation for human rights theory is its misuse to assert individual choice and immunity from critique over vast areas of life.

The French Catholic philosopher Jacques Maritain said: "If each of the human rights were by its nature absolutely unconditional and exclusive of any limitation, like a divine attribute, obviously any conflict between them would be irreconcilable. But who does not know in reality that these rights, being human, are like everything human, subject to conditioning and limitation, at least ... as far as their exercise is concerned? That the various rights ascribed to the human being limit each other, particularly that the economic and social rights, the rights of man as a person involved in the life of the community, cannot be given room in human history without restricting, to some extent, the freedoms and rights of man as individual person, is only normal."<sup>[29]</sup>

Writing in 1978, the Soviet dissident and survivor of the gulag, Aleksandr Solzhenitsyn said "The defence of individual rights has reached such extremes as to make society as a whole defenceless. It is time to defend, not so much human rights, as human obligations."<sup>[30]</sup>

However much Christians can endorse the idea of human rights, Judaeo-Christian ethics gives priority to responsibilities. There are a number of arguments which can be made, based on how Christianity and Judaism understand God to have dealt with humanity through a series of promises, of commitments, of covenants. It is only on the basis of those promises and covenants that humanity has any "rights" in any sense against God. The point is made simply enough by the fact that God gave Moses at Mount Sinai not the Declaration of the Rights of the Israelites but the Ten Commandments, a list of the people of Israel's obligations.

#### **4.5.If there is no God, then can we really say that human beings fall into a special category and all enjoy special rights called human rights?**

The most promising secular explanations for human rights are those advanced by the brilliant academic minds of Amartya Sen and Martha Nussbaum. They account for human rights on the basis of human capabilities: a term which covers both the things human beings can do and the things human beings can be. Because human beings display important capabilities, like the capacity to reason and the capacity to love, they have a worth which should be respected.

There remains a difficulty, for capability theorists, in showing why human rights apply to all humans and only to humans. Accounts of human beings in terms of rationality, agency or capacities, tend to exclude some members of the human species who, perhaps because they have an extremely low intelligence, or because they are in a coma, or have Alzheimer's Disease, fall outside that definition. Not all members of the human species have all the capabilities on Nussbaum's list. Do we then have to say that such people have no rights, strictly speaking? Conversely, attempts to explain why such people have rights cannot easily exclude apes, dolphins, cats, trees, and so on.

An account of human rights in terms of capabilities seems to be at odds with our fundamental commitment to the idea of equality. Article 1 of the U.N. Declaration of Human Rights solemnly proclaims that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." But how do we know that all human beings are born equal? After all, there are manifold ways in which human beings clearly are not equal. We all have a different set of abilities and deficiencies, of talents and limitations. For what reason should we "act towards one another in a spirit of brotherhood"?

It seems "natural" to us to regard all human beings as in some fundamental sense equal. We hold firmly to the assumption of fundamental human equality, that there is a given worth which attaches only to members of the human species and to all members of that species. Aristotle, argued, however that slavery was natural because some people's natural abilities were so limited that the best use for them was as "living tools" for others. Although Plato disagreed with Aristotle on this point, his theory of right order saw each person as having a particular role to fulfil and had no space for the idea of all human beings as each having rights.

One of our deepest moral commitments in the West today is to the idea of equality. If I dared to suggest to you that someone was not equal in dignity and in worth because of their sex, or their religion, or the colour of their skin, or their sexual orientation, or because of their class or caste, or because they were disabled, you would be deeply offended and rightly so.

Yet there have been human beings who, for many centuries, believed that there were important differences in dignity and worth between people on the basis of one or more of those characteristics and such attitudes are far from extinct today in some parts of the world. Indian society, for example, is dominated by caste, according to which the social class into which one is born determines the respect in which one is held and the opportunities one has. Why on earth, then, do we prize human equality so deeply and yet other civilizations reject it as a value?

In terms of human rights theory the claim that all human beings are created equal can be traced back to the American Declaration of Independence (which despite its declaration that it is self-evident that all men are created equal, nevertheless co-existed for nearly 90 years with the practice of racist slavery in the South) and beyond that to the views of John Locke. But, as I have already indicated and as Professor Jeremy Waldron has convincingly argued, Locke's views about human equality depend on his belief in the Christian God.<sup>[31]</sup>

What is it within Western culture which has given us the belief that all human beings are fundamentally equal? Where does that come from? I've just finished reading *Britain BC* by the pre-historic archaeologist Francis Pryor. In that book Pryor compares the pagan practice of burying people with grave goods and the Christian practice of burying people with nothing. The pagan practice demonstrates a belief that people's status on earth continues into the realm of the ancestors. The Christian practice affirms a belief that everyone, rich or poor, faces God at the Last Judgment on a basis of fundamental equality and poverty.

This belief is written into the very heart of the Christian story. At Christmastime, we celebrate the extraordinary story of God born as a baby, not in a palace but into poverty in a nation under foreign occupation, forced as a child to flee his homeland as a refugee, a displaced person, then returning home and working as a manual worker, living a travelling lifestyle as a homeless preacher, making a point in his ministry of associating with women, even prostitutes, half-castes and foreigners, suffering a criminal's death by being executed naked. In the Christian story God affirms the fundamental equality of all human beings in the most dramatic way possible. Jesus, the God-man, identifies with all the categories of people that we are apt to see as somehow less worthy.

It is Christianity which has given the West its sense of the importance of the fundamental equality of all human beings and we forget this at our peril. Our very sense that each individual matters comes from Christianity, and specifically from its teaching, that Christ, who was in very nature God, became a human being, and identified with the refugee, the homeless, the worker, the criminal, and the slave in his birth, life, ministry and death.<sup>[32]</sup> Human rights theory cannot stand on its own because on its own it is just 'a fragile fiction'.<sup>[33]</sup> Without the Christian belief in the dignity of each individual human being, categories of people are vulnerable to being regarded as sub-human and therefore less worthy of protection: whether the severely disabled, those with dementia, those of the wrong religion, race, sex or caste.

The greatest challenge that a Christian account of human rights presents to secular human rights theorists is this: is it possible to sustain the conviction that all human beings are fundamentally equal, and therefore the rights of all must be protected, if we forget that our central conviction on this point is one which was given to us by the example of Jesus Christ himself?

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[1] Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart, 2002), 37-44.

[2] Moltmann, *God for a Secular Society: The Public Relevance of Theology* (Gutersloh: Christian Kaiser, 1997) tr. Margaret Kohl (London: SCM, 1999), 91.

[3] Locke's toleration famously did not extend to atheists, because Locke thought that promises made by an atheist could not be trusted since, unless those who believe in God, an atheist has no reason to keep their promise if they think no human being is looking.

[4] Locke, 'The Second Treatise of Government', paragraph 173.

[5] Tina Beattie, "A fulfilment that is recognisable and yet unknown", p.2.

[6] Julian Rivers, 'Is English law Christian?', in N.Spencer ed., *Religion and Law* (London: Theos, 2012), 147.

[7] Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon, 1980), 210.

[8] Roger Ruston, *Human Rights and the Image of God* (SCM, 2004).

[9] Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids: Eerdmans, 2005), 371.

[10] Hart, 'Are There Any Natural Rights?', (1955) 64 *Philosophical Review* 182.

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