

HUMAN RIGHTS THEORY: FIT FOR PURPOSE, FUNDAMENTALLY FLAWED OR REFORMABLE?*

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Abstract: For all the achievements of the human rights movement, persistent questions remain about the theoretical basis for human rights. Human rights theory attempts to solve three problems: the problem of religious disagreement, the problem of how to identify common values and the problem of holding governments to account. Joan Lockwood O'Donovan argues that the ability of human rights theory to address those problems effectively is undermined by the predominant concept of rights. This concept of rights as 'things which belong to individuals' gives rise to or reinforces trends towards individualism, possessiveness and litigiousness. Nicholas Wolterstorff offers a reformed account which understands human rights as a form of normative social relation. This essay contends that, in addition, responsibilities need to be given priority over rights and that there needs to be renewed deliberation about the common good in order to overcome the problems which human rights theory seeks to confront.

Introduction

Since the aftermath of the Second World War, human rights theory has provided the language which is used in the West to condemn atrocities around the world. The twentieth century saw many such atrocities: committed by Turks against Armenians during the First World War, by Nazis against Jews and others during the Second World War, by Serbs against Muslims during the break-up of Yugoslavia, or by Hutus against Tutsis in Rwanda. They continue to be perpetrated in countries like Syria today. A common theme in such crimes against humanity is that the perpetrators do not regard the victims as human beings of equal worth to themselves.

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There is no doubt that such situations demand a response. The agonising question of whether that response should be military is beyond the scope of this essay. Its focus is, instead, on the language and theory of human rights. Does human rights theory, as it has developed over the last three-quarters of century, remain a helpful way of thinking about the crisis in Syria and other far less pressing issues elsewhere in the world and here in the UK? Are there persistent difficulties with human rights theory?, and if so, do they reveal that human rights theory is fundamentally flawed or merely that it is need of reform?

This essay explores the problems to which human rights theory has been developed as a response, examines the critique of human rights theory by Joan Lockwood O'Donovan, before suggesting how human rights theory might be reformed and supplemented by other moral concepts such as responsibilities and the idea of the common good.

Human Rights as a Solution

Human Rights as a Solution to Religious Disagreement

Historically, religious differences were one of the main factors which could lead human beings to regard one another as less than fully human. If you are convinced that your enemy is going to be punished eternally in hell, one possible response is to conclude that you are doing him a favour if you force him to recant or that you are doing God a favour by hastening your enemy's arrival in the afterlife and therefore preventing your enemy from infecting others with his false beliefs.

In the Middle Ages, it was at the edges of Europe where Islam and Christianity clashed or in Southern France where the Cathars rejected the Catholic faith that religious differences could be the cause of inhumanity. However, once Luther's 95 theses kick-started the Reformation, the question of religious difference became a live one across Europe as a whole.

Europe fought itself to a standstill in the Wars of Religion. 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 the political stability

of 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.

Today Americans are far more aware of this than Europeans. Americans recognise that freedom of religion is the first freedom. Freedom of religion 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. Even today, those countries which do not have freedom of religion tend not to have effective protection of the other human rights either.

In origin, however, the defence of religious freedom was one which was made in religious, specifically in Protestant Christian, terms. John Locke's arguments in *A Letter Concerning Toleration* all depend on contentious theological claims.¹ So too his defence of equality² and his assertion of natural rights against government³ are increasingly recognised as being founded on Locke's readings of the Bible. John Gray expresses the consensus view that Locke 'believed rights were grounded in our duties to God'.⁴ Although it was designed to address an age of widespread religious disagreement, Locke's conception of natural rights was theocentric, in that Locke sought to identify the rights which human beings have been given by God.

What is more, John Gray accepts that the binding force of any universal human rights is difficult to establish if there is no God. He writes:

human rights originated in monotheism – the belief that there's only one God, who creates a single moral law for all human

¹ D.H. McIlroy, 'Locke and Rawls on Religious Toleration and Public Reason', (2013) *Oxford Journal of Law and Religion*, pp. 1-24.

² Jeremy Waldron, *God, Locke and Equality: Christian Foundations in Locke's Political Thought* (Cambridge: Cambridge UP, 2002).

³ Michael Freeman, 'The Problem of Secularism in Human Rights Theory', (2004) 26 *Human Rights Quarterly* 375-400 at pp. 387-389, contra Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell UP, 1989), p. 89.

⁴ John Gray, 'Two cheers for human rights', <http://www.bbc.co.uk/news/magazine-25505393>, accessed 2 July 2014.

beings. And there's a sense in which human rights still depend on some sort of religious commitment. For unless these rights are grounded in something beyond the human world, they can only be a human invention.

The problem with the idea of rights as a human invention is that if rights are just a human invention, although we need rights to protect ourselves against the state, we also only have rights if they are created or enforced by the state. This leads Gray to conclude that 'Where the state is weak or collapsed, as in many parts of the world today, human rights simply don't exist.'

Writing in the Netherlands slightly earlier than Locke, Hugo Grotius had, either wittingly or unwittingly, laid the foundations for an alternative approach to the relationship between God and human rights. Grotius is usually credited with being the founding father of modern international law. Like Locke he wrote in a context in which theological disputes were implicated in political and armed conflict. In the Netherlands, there were fierce theological disputes between Catholics and Protestants, and amongst Protestants themselves between Arminians and Calvinists.

Grotius presents his law of war and peace on two bases. He spells out why the God of Christianity requires the followers of Jesus Christ to behave humanely towards their enemies. But he goes on to say that even if God did not exist, the same duty would still apply to those engaged in warfare with one another. In other words, Grotius says, even if you do not accept my theological arguments, there are sound philosophical reasons for coming to the same conclusion. Human beings have a natural right to be treated humanely, even when our disagreements are so severe that we are at war with one another. Whereas Locke had difficulty in conceiving that atheists could have sufficient reasons to act consistently in accordance with morality, Grotius thought that our recognition of our common humanity was in and of itself sufficient to place limits on the ways we treat one another even when we are at war.

Human Rights as a Solution to identifying Common Values without reference to God

During the Wars of Religion, the ostensible problem was disagreement

about who God was and what God required of us (though obviously there was a whole load of power politics behind the Wars).⁵ When the dust settled, and the majority of France's Protestant population had emigrated to Canada, Britain, South Africa or elsewhere, the Catholic Church reasserted its control over French life. During the eighteenth century, together with the aristocracy and the monarchy, it came to be seen as one of the forces oppressing the populace.

When the French Revolution erupted, its *Declaration des Droits de l'Homme* came complete with the slogan *ni Dieu, ni maître*. The rights of man were asserted by the French Revolution as a self-standing creed, which had no need of God. If human rights were initially posited as a solution to disagreements about who God was, they were now offered as a means of arriving at common value without reference to God at all.

The French Revolution therefore gave rise to a vision 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.⁶ 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*. In a society which no longer believes in God, or which no longer takes its belief in God seriously, human rights act, like Alain de Botton's 10 'commandments' for atheists,⁷ as a substitute for a religious source of values and morality.

Human Rights as a Solution to holding Governments to account

Although the American and French Revolutions were only 6 years apart, they had very different characters. The American Revolution was heavily influenced by the experience of the English Civil War and by the philosophy of John Locke which had set out the philosophical underpinning for the settlement of the Glorious Revolution of 1688.

Locke defeated the idea of the divine right of kings with the idea of the

⁵ William T. Cavanaugh, "A fire strong enough to consume this house:" The wars of religion and the rise of the State' (1995) 11 *Modern Theology*, pp. 397-420.

⁶ J-M. Berthoud, *Une Religion Sans Dieu: Les Droits de l'Homme contre l'Evangile* (Paris: Editions l'Age de l'Homme, 1993).

⁷ See A. de Botton, *Religion for Atheists: A Non-Believer's Guide to the Uses of Religion* (Ontario: McClelland & Stewart, 2013).

natural rights of men. 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'.⁸ Locke's theory was not human rights in its modern form, but rather an account of natural rights 'which served the interests of a property-owning male elite bound to the state by the social contract'.⁹ Notwithstanding Locke's appeal to divinely created equality, he generated a theory of human rights for rich men. Nonetheless, Locke's concept of natural rights sought to use rights to limit the power of government. The key problem for Locke was tyranny and natural rights were its solvent.

In nineteenth century Europe the problem of 'them and us' reared its head again. Pogroms in Russia and Ukraine led to an influx of Jewish refugees into Vienna.¹⁰ The mind of an aspiring young artist, Adolf Hitler, was poisoned by a combination of experiences, and when he rose to power and became the Führer of Germany, the elimination of those who were sub-human, because they were Jewish, gypsy or homosexual, was a key part of his political programme. Had Hitler succeeded in the Second World War, the next part of the plan was to enslave, sterilise and ultimately eliminate a further 60 million Slavs.

When the death camps were discovered and the concentration camps were liberated, the victorious Allied powers faced the question of how to ensure that these evils were never perpetrated again. 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.

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. Given that

⁸ Locke, *The Second Treatise of Government*, para. 173.

⁹ Tina Beattie, "'A fulfilment that is recognisable and yet unknown": Christian teleology and the end of Human Rights', unpublished paper given to the Society for the Study of Theology (April 2008), p.2.

¹⁰ Vienna's Jewish population rose from 2,000 in 1860 to 175,300 in 1910: Brigitte Hamann, *Hitler's Vienna: A Portrait of the Tyrant as a Young Man* (Tauris Parke, 2010), p. 326.

bloody history, how could anyone think that human rights were anything other than good?

Human Rights as a Problem

Although modern human rights theory is not identical to Locke's theory of natural rights, it is clearly descended from it. The two theories share the concept of "rights", and modern human rights theory inherits from Locke the association between "rights" and "property".

This association is made plain in an article written by H.L.A. Hart, the greatest legal philosopher of the twentieth century in 1955 in 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.¹¹

Rights, according to H.L.A. Hart, are usually thought about as 'things which belong to people'. If this is our concept of rights in general, it will necessarily be how we view human rights in particular. Joan Lockwood O'Donovan denounces this vision of rights because of its 'possessive individualism'.¹² If we conceive 'our rights' in this way, we come to think of ourselves as autonomous, unencumbered individuals whose primary self-expression is through the exertion of power over things which belong to us, and this results in a litigious and conflict-riven society. Each of those three criticisms will now be explored in turn.

The Problem of Individualism in Human Rights

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

¹¹ Hart, 'Are There Any Natural Rights?' (1955) 64 *Philosophical Review* p. 182.

¹² Joan Lockwood O'Donovan, 'The Concept of Rights in Christian Moral Discourse' in M. Cromartie ed. *A Preserving Grace: Protestants, Catholics and Natural Law* (Grand Rapids: Eerdmans, 1997), pp. 143-156

from pressure from other people, externally imposed obligations, and natural limitations. Instead of understanding our life's significance and meaning in terms of our relationships with others, we are encouraged to validate ourselves by asserting our independence from others. We use our rights to force others to make room for our whims and our will.

Michael Ignatieff argues that the problem is compounded by the claim of human rights to be 'the core case of all morality'.¹³ If we see human rights as more fundamental than the other moral commitments or values which we hold, we will present our moral case for anything we want in terms of human rights. The result is what Ignatieff has called 'rights inflation', which is 'the tendency to define anything desirable as a right'.¹⁴

Lockwood O'Donovan sees human rights theory therefore leading to rights being asserted as demands, as claims by individuals, to the detriment of wider society. Like Ignatieff she sees the logical conclusion of this trend as being that rights will be claimed to everything which can be the object of human desire and possession. The individualism inherent in our conception of rights makes them a runaway train without any brakes. What gets squeezed out in the clamour for more and more rights are the shared goods of community.

The Problem of Possessiveness in Human Rights

The second aspect of Lockwood O'Donovan's criticism of our conception of rights is that the basic idea behind rights is the idea of property. Lockwood O'Donovan argues 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). This was certainly central to Locke's theory of natural rights. Locke defined property as 'that property which men have in their persons as well as goods'.¹⁵ We think of rights as things which belong to us, and therefore our rights are, like our possessions and our bodies, seen as pieces of property over which we have an absolute right of ownership.

¹³ Costas Douzinas in Douzinas and Gearty eds., *The Cambridge Companion to Human Rights Law* (Cambridge: CUP, 2012), p. 60.

¹⁴ M. Ignatieff, *Human Rights as Politics and Idolatry* (Englewood Cliffs, NJ: Princeton University Press, 2001), p. 90.

¹⁵ Locke, *The Second Treatise of Government* para. 173.

At the extreme, this could lead to an argument that, while it may be charitable to feed the beggar standing at one's gate, there is no moral *duty* to do so because one's *absolute right* to one's property is paramount. One does not need to resort to such a *reductio ad absurdum* in order to acknowledge that human rights conceived of as things which belong to me leads to consequences which are unsustainable. There have to be limits to what we do with our bodies and with the things we own. Our rights cannot be absolute but must be balanced against the needs and interests of others.

Writing as long ago as 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.'¹⁶

The Problem of Litigiousness in Human Rights

As Michael Ignatieff and Joan Lockwood O'Donovan have shown, the possessive individualist concept of rights panders to the pursuit of individual self-interest, leading to a constant escalation of competing claims, expectations and demands. This tendency is compounded when human rights are treated as the strongest moral claims that we can make or as the central case of morality. The multiplication of rights claims by individuals undermines the ability of human rights theory to resolve the problems of religious disagreement, of arriving at common values, and of holding governments to account which it seeks to address.

The possessive individualist concept of rights is incompatible with the ways in which the Christian, Jewish and Muslim faiths understand human beings and their obligations. The possessive individualist concept of rights may give us a common language with which to argue our corner but it turns out not to give us a set of common values at all. The possessive individualist concept of rights is in danger of presenting governments with an overwhelming set of mutually inconsistent demands without any criteria for adjudicating between them.

These consequences of the possessive individualist concept of rights lead to litigiousness, the juridification and escalation of disputes and disagreements. Far from providing a commonly agreed moral

¹⁶ Solzhenitsyn, *A Warning to the West*, (New York: Hill & Wang, 1976), p. 64.

framework for the resolution of 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.

The language of human rights creates two potentially misleading impressions. One is that legal *rights* are the be-all-and-end-all. The other is that the only things that really matter are me and my rights on the one hand and the government as the dispenser of rights on the other.

If rights in the plural are the only fundamental moral concepts 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? How should the law deal with practising homosexuals who assert that they have the right to marry and religious believers who claim that their right to freedom of religion entitles them to continue to differentiate between married heterosexual relations and other sexual partnerships? What of the right of one woman to use her body for the purposes of pornography and prostitution versus the rights of other women not to be viewed as sex objects? How is the right of the immigrant to seek asylum or to move to the UK to seek a better life to be balanced against the right of those already living in the UK not to be faced with the problems of overcrowding and over-strain on social services and infrastructure?

If rights are the sole or primary basis on which to express our needs, desires and interests, 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 demands in terms of Nietzsche's will-to-power. Put bluntly, unless human rights are grounded in a vision of the objective moral order, putative rights amount to nothing more than self-interested claims that my choices should be given priority; they are attempts at power-grabs.¹⁷

¹⁷ My preferred account of the objective moral order would be Judaeo-Christian, though with Aristotelian influences mediated via Thomas Aquinas. Other accounts of the objective moral order are available.

This acquisitive possessiveness is compounded by the individualism in our conception of rights. If other people in society are my rivals, social institutions exist to fulfil my needs. When they fail to do so, the solution is to appeal to the government and to the courts to vindicate my rights. Instead of finding our place in society through our membership of a network of social institutions such as the family, the workplace, the trade union, the Scouts, the church, the political party, the bowling club, the Rotary club etc., such institutions are treated as existing solely to fulfil our own ambitions. And when our expectations are disappointed, we sue.

Re-thinking Human Rights

This essay has explored the way in which human rights theory attempts to address important questions about the nature of the society in which we want to live. It pursues the laudable goals of establishing and sustaining societies in which government is held to account, in which people who believe in God and people who do not can find common ground, and in which no-one is treated as sub-human because of their ethnicity, gender, religious beliefs or any other characteristic. However, in its current form, human rights theory is built around a concept of rights which is deeply problematic and which threatens to reduce social interactions to series of conflicts between individuals making acquisitive claims which the law then has to determine.

So, should the concept of rights be jettisoned, or is it possible to re-think the idea of rights in a way which addresses the problems that have been identified?

Thinking about Rights as Relational

The Christian philosopher Nicholas Wolterstorff has sought to re-think the concept of rights in his book *Justice: Rights and Wrongs*. 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. Human beings 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. This is easily illustrated by what happens on the roads. Sometimes people drive really badly and, by the grace of God,

no-one gets seriously hurt. There is lots of guilt but not much harm. At other times, people make a momentary mistake and someone dies; there is not much guilt but there is irreparable harm.

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. 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.

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'.¹⁸ 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.

So, for example, I am under a duty to feed, clothe and educate my son and my son therefore has a right *as against me* to be fed, clothed and educated. 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.'¹⁹ 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.

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?

Wolterstorff denies that using the language of rights makes us individualists. His approach to rights is that it is relational. For him,

¹⁸ Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton, NJ: Princeton UP, 2008), p. 4.

¹⁹ Wolterstorff, *Justice: Rights and Wrongs*, p. 4.

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.

Thinking about Responsibilities as well as Rights

In popular thought, rights tend to be conceived of as absolute. This cannot be the case. In practice rights have to be balanced against one another and against other interests and claims. 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.²⁰

Wolterstorff addresses this issue by adopting Hohfeld's correlativity principle which asserts that rights and responsibilities are corollaries of one another, like the two sides of the same coin.²¹ I am doubtful whether the correlativity principle is sound but discussing that question in full is beyond the scope of this paper.

Whether or not rights and responsibilities are two sides of the coin, it seems to me that there are important reasons for giving priority to responsibilities rather than to rights. There are both theological and anthropological arguments for doing so.

Turning first to the theological argument, while there is a dispute amongst scholars about the extent to which the concept of rights is to

²⁰ Maritain, *Man and the State* (London: Phoenix Books, 1966), p. 106.

²¹ Wolterstorff, *Justice: Rights and Wrongs*, pp. 250-61.

²² Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Straus and Giroux, 2010), p. 261

be found in the Bible and in the writings of early and mediaeval scholars, there can be no doubt that Judaeo-Christian ethics gives priority to responsibilities rather than rights. 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. When Jesus formulated the Golden Rule, he stated it is as: 'Do to others as you would have them do to you' (Luke 6:31). Jesus' formulation of the Golden Rule is a proactive standard. It is not that we do to others as they have done to us, but rather that we do to others as we would wish them to do to us. Our responsibilities are placed before our rights.

The anthropological argument is that, because of the limited altruism which human beings generally display, it is responsibilities rather than rights which need to be taught and emphasised. It comes naturally to most people to insist upon their rights. What most of us need to learn, in order to contribute usefully to society, to our communities, to our families and in our places of work, is our responsibilities. Yet, the former Chief Rabbi, Jonathan Sacks, has argued that there have been several generations, since the 1960s, brought up believing that responsibility is, at best, optional and most probably boring. Commenting on the August Riots of 2011 in the Wall Street Journal, he wrote:

[The rioters] are the victims of the tsunami of wishful thinking that washed across the West saying that you can have sex without the responsibility of marriage, children without the responsibility of parenthood, social order without the responsibility of citizenship, liberty without the responsibility of morality and self-esteem without the responsibility of work and earned achievement.

Our moral conceptions therefore need to be re-ordered. It is not that we have rights and the correlative of our rights is that others have responsibilities towards us. It is that we have responsibilities towards others and those responsibilities (usually or invariably depending on whether or not Hohfeld's correlativity principle is sound) entail rights.

Thinking about what is Good

Prioritising responsibilities over rights addresses the vices of

individualism and possessiveness which prevent our concept of rights from adequately resolving the issues which it seeks to address. But what about the third problem with our concept of rights: the culture of litigiousness which it produces? That litigiousness is the consequence of the way in which rights are often invoked without a corresponding theory of the good.

Michael Sandel, in his book *Justice: What's the right thing to do?*, brilliantly pinpointed the impasse into which such an approach leads.

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.²²

Sandel's point is simply this: when we are talking about justice we cannot avoid talking about the good. 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. We cannot adopt planning laws without determining how to balance the aesthetic goods of having beautiful buildings and preserving the character of rural England against the functional good of building enough houses, cheaply and quickly enough for people to live in.

One of the consequences of the diversion of philosophical and moral discourse away from substantive discussion of 'thick' accounts of the good is a general ignorance of the Judeo-Christian account of the good as anything more than a vague and undeveloped notion of the common good. Behind and undergirding the Christian political idea of the common good is the biblical 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.

A society committed to the idea of *shalom* would have strong social

institutions which would nurture its citizens and enable them to flourish. There would be extensive networks of relationships, carrying with them commonly understood responsibilities of justice and care. Individual needs would be understood to be relative, and to be met through negotiation and compromise rather than confrontation.

Conclusions

This essay has sought to argue that the ability of human rights theory to address successfully the problems of religious disagreement, of identifying common values and of holding governments to account have been vitiated by the possessive, individualist, antagonistic concept of rights.

However, not only does the wholesale abandonment of human rights theory in favour of some alternative language of discussing morality in the public square seem unrealistic, Nicholas Wolterstorff offers a way of reforming human rights theory which does not throw the baby of using rights to protect against harm out with the bathwater of possessive individualism.

We need means of holding government to account, of living together in conditions where there are a mixture of common values and areas where we agree to disagree, and perhaps above all, we need to hold firmly to the view that all human beings, regardless of age, race, sex, religion, disability, or sexual orientation are to be treated with dignity and respect. The language of human rights is going to be part of the way in which those goals are articulated, but the concept of rights needs to be reformed. Those who defend and advocate for human rights need to get away from thinking of rights as 'things which belong to me' and to learn to think instead primarily in terms of responsibilities rather than rights, of rights as normative social relations, and to be prepared to discuss and debate once again the question of the common good.