

Nicholas Wolterstorff

Justice: Rights and Wrongs.

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This is a singular contribution to contemporary debates concerning justice and human rights. Wolterstorff (emeritus professor of philosophical theology at Yale University) presents a robust, theistically-grounded conception of justice as respect for the inherent rights of individuals. A right is a claim to ‘a good of some sort—more specifically, a good in one’s life or history’ (23). Since the goods of our lives and histories are inextricably intertwined with others’ goods, Wolterstorff contends that rights are not individualist, but ‘normative social relationships’ (261) and as such, must be situated within a theory of human flourishing. In short, this is not Rawlsian abstract theory—in fact, in the ‘Introduction’, he offers a brief apology for not interacting with Rawls at all!

In order to get that project off the ground, however, Wolterstorff first takes on the critics of a rights-based approach to justice. Through several chapters of narrative (Part 1) and narrative blended with theory (Part 2), he develops an alternative archaeology of the notion of rights, arguing that rights-based discourse is neither a child of the Enlightenment nor entangled in possessive individualism. Rather, the notion of inherent rights has deep foundations in the moral vision of the Judeo-Christian Scriptures. That moral vision is unique amongst Western moral theories and, most controversially, best sustains an unwavering respect for human rights—better, that is, than any of the secular alternatives. This latter argument is the apex of Part 3, which consists of a purely theoretical treatment of the nature of those ‘*claim-rights* ... that make up *primary* justice’ (241, emphasis in original). He defends a moral conception of justice based on Ulpian’s notion of giving each one their due, that we may rightly claim against others. As such, he does not treat retributive justice, nor legal or political rights more generally.

Part 1 entitled ‘The Archaeology of Rights’ clears the ground for Wolterstorff’s own position. He critiques Alasdair MacIntyre, Stanley Hauerwas and Oliver O’Donovan who, among many others, offer a historicizing critique of rights. It is a common claim today that the very notion of a right was foreign to our culture before the Enlightenment (or perhaps late-Medieval nominalism). The prevalence of rights-talk is a symptom—and perhaps cause—of possessive individualism and the decay of tradition and community. Instead, the critic avers, we should embrace an alternative conception of justice: what Wolterstorff calls justice as ‘right order’ (26ff.). On this account, ‘what makes the right social order a *just* social order is identical with that which makes *the right* social order’ (28). Like Plato and Aristotle, right order theorists emphasize our *obligations* to right order, not to the rights of others. Any rights we have derive from and are conferred by a just social order, not ‘inherent within’ or ‘natural’ to the individual. The so-called ‘natural rights’ discovered by Locke, Hobbes and Rousseau are rather ‘socially conferred’ (33), constructs of the modernist mythology of the solitary, pre-social

individual and his/her rights.

Wolterstorff contests this narrative on several fronts. First, if the right order theorist will, plausibly, concede that there are some natural obligations, by the ‘principle of correlatives’ (34) they should also affirm the existence of natural *rights*. My obligation to tell you the truth confers upon you the correlative right to have the truth from me (or at least not a lie). More importantly, Wolterstorff rejects wholesale the historicizing critique of rights. Drawing on recent historical research, he persuasively argues (in Chapter 2) that neither the Enlightenment nor the nominalism of Ockham were the origin of the notion of inherent individual rights. Furthermore, quoting from sermons of St. John Chrysostom, he shows that such language can plausibly be detected centuries earlier in the church fathers. Chapters 3 through 5 reach further back to reconstruct the biblical roots of the notion of individual rights. In particular, individual, inherent ‘human worth’ has strong support in the biblical doctrine of the image of God (94f.). Human worth is the real foundation for proscriptions against murder and the like in the Ten Commandments, not a divine law abstracted from such considerations. On the whole, Part 1 mounts a lucid and compelling counter-critique against the critics of rights. The historicist thesis (if not full-blown critique) is by now a near orthodoxy in the guild, but Wolterstorff’s argument should compel all parties to reconsider.

Part 2 is a mix of narrative and theory. A right is always to some good in one’s life or history. Hence, Wolterstorff seeks the concept of the good best suited to a notion of inherent individual rights amongst three conceptions of the good life. First, the experientially satisfying life is what he attributes to contemporary utilitarians. Here he goes too quickly. Most utilitarians would probably not agree that their standards of utility (welfare, well-being) all reduce to a subjective human experience of such goods. But that is how Wolterstorff takes them. As a result, he rejects the experientially satisfying account because ‘many of the life-goods to which one has a right make no contribution whatsoever to how experientially satisfying one’s life is. They fall outside the net’ (147). Second (what gets the bulk of Chapters 7-9), eudaimonism—the ‘happy life’, the life lived well—cannot work, either. It construes a well-lived life in terms of the activities that are constitutive or conditions of well-being, whether one’s life goes well or not (176ff.). However, a right is directed not toward a specific activity but toward a specific good, and such goods may (or may not) be constitutive or conditions of a good life. For instance, Wolterstorff claims we have a right to a paycheck from our employers or even to a stroll in the park. Neither of these derive from nor subserve activities directed at a good life, but both are clearly rights. Furthermore, eudaimonism also fails to acknowledge that perhaps I ought to promote your welfare for its own sake, contrary to my living well. In this way, ‘rights de-center the agent’ (178). Thus, eudaimonism does not allow that another’s rights claims may hold an unconditional priority over my life projects, such that I *always* have to take them into account in order to live well.

The third theory of the good life now emerges. The flourishing life is one ‘that is both lived well and goes well’ (145). He explores how Augustine came to abandon eudaimonistic ethics for what, in keeping with the Christian Scriptures, can be called an ‘eirenéist conception’ (225f., from *eirené*, the Greek word for ‘peace’). Eirenéism holds

that (a) certain things in life are naturally good, (b) we have a basic right to enjoy them, and (c) we also have a right to others actually not interfering in our enjoyment of them. So the full enjoyment of that right is *also* constitutive of a good life. These three levels of goods are what an eirenéist conception of the good life supports through the mechanism of rights.

With great subtlety and rigor, the purely theoretical account of Part 3 shows how rights are correlated with duties, but how the converse does not necessarily hold (Chapter 11). It rejects the claim that rights are grounded in duties (Chapter 12) but rather in respect for worth (Chapter 13); and it then progressively lays that ground work within a Christian theistic framework (Chapters 14-16). There are several key moves in its argument. First, Wolterstorff insists that natural rights and human rights are not identical. Natural rights can attach, naturally, to individuals of a certain status, e.g., kings or parents, whereas human rights belong to all members of the species *homo sapiens*. These are natural human rights, belonging to human beings as such. Furthermore, whatever confers worth upon human beings must encompass all the life- and history-goods to which we genuinely have a right. In one way or another, all secular attempts at grounding human rights come up short of this latter standard. For instance, Kant's 'capacity approach' grounds rights in rational agency. However, what about those who (come to) lack rational agency, e.g., children with severe birth defects, or Alzheimer's patients? Wolterstorff's intuitions suggest that such individuals still have human worth and human rights. On his Christian theistic grounding (Chapter 16) he argues, then, that the image of God in humans (*imago dei*) alone is insufficient to ground human worth, because some who possess the image may, due to incapacity, also deficiently reflect that image. Rather, it is the love of God for all humans equally that gives human worth unconditional regard, and human rights their most solid grounding. Ultimately, this implies what Wolterstorff calls the '*Ur-principle*': 'a fundamental principle of action: one should never treat persons or human being as if they had less worth than they do have' (370). Its Kantian ring belies a theistic foundation with a wider application.

Justice: Rights and Wrongs is magisterial in scope, incisive and inventive in its argument. Wolterstorff stakes out a novel position in contemporary debates with an undeniable analytical rigor. Non-Christians may not be persuaded by his faith commitments. Nevertheless, Wolterstorff's philosophical arguments in their defense stand on their own two feet and genuinely break new ground in the field. Indeed, this text merits and should attract a very wide readership.

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