I

Can We Have Human Rights without God?

They fashioned a tomb for thee, O holy and high one –

The Cretans, always liars, evil beasts, idle bellies!

But thou art not dead: thou livest and abidest forever,

For in thee we live and move and have our being.¹

This verse from the sixth century before Christ, penned by the Greek poet Epimenides and preserved in a medieval Syriac commentary on Acts, pronounces scathingly on the Cretan heresy that Zeus was mortal. We, who live in an age when the Cretan heresy has been revived, are chided by our own poets and prophets – Nietzsche, for example, or very differently, Solzhenitsyn – for failing to reckon with the implications of that heresy.

The implications that concern us here are the implications for human rights and freedoms. If God is dead – or at all events if metaphysics is dead, and first philosophy along with it; if theology of any description has been banished from the sphere of public reason, where matters such as rights and freedoms are negotiated – then a number of very serious questions must be asked.

If we no longer think of ourselves as living and moving and having our being in God, in what do we live and move and have our being? In some play of inexorable cosmic forces? To say that would be to revive the old pagan concept of fate, and with it the ancient gods in all their arbitrary unjustice.

Do we exist, rather, in a play of merely political forces? – that is, in some humanly constructed cosmos that may or may not manage to insulate itself from these grim and capricious gods? But what governs politics? Can the merely political offer any guarantee of clearly conceived rights and freedoms that will triumph over the fickleness of the human will, in whose image the old gods were conceived, and restrain for long the human propensity to evil?
Or do we live and move and have our being in ourselves alone? But then my right may be your wrong, my freedom your bondage. Who will negotiate between us, and to what higher principles will they appeal in this negotiation? Moreover, I too am fickle and unreliable, as are you. There is no solid ground here either for anything resembling inviolable rights and freedoms.

In 1990, as Eastern Europe emerged from its incarceration within the Soviet empire – an empire that had trampled into the dust the rights and freedoms of millions – the Polish poet, Czesław Miłosz, remarked on the enthusiasm with which so many appealed anew to the language of rights and freedoms: “What is surprising in the present moment,” he said, “as the Cold War order collapses, are those beautiful and deeply moving words pronounced with veneration in Prague and Warsaw, words which pertain to the old repertory of honesty, the rights of man, and the dignity of the person.” He had in mind, no doubt, the inspiring preamble to the *Universal Declaration of Human Rights*:

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

> Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ... 

> Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person ...

But Miłosz poignantly and somewhat wistfully added: “I wonder at this phenomenon because, maybe, underneath there is an abyss. After all, those ideas have had their foundation in religion, and I
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am not over-optimistic as to the survival of religion in a scientific-technological civilization. In Eastern Europe, notions that seemed buried forever by communism, like the value of the individual, have resurfaced. But how long can they stay afloat if the bottom is taken out?"2

In other words: Can we have human rights without God? Can we have human dignity – the dignity presupposed by rights talk – without God?

BASING RIGHTS TALK IN EMPATHY

Generally speaking, we are Cretans in practice rather than by profession.3 So when we fashion tombs for God we tend to call them by other names – perhaps the Canadian Museum for Human Rights, or something like that. But does a tomb for God, by whatever name, require a tomb for human rights also? Is that what it necessarily becomes? Or can we have human rights without God?

Some seem to think so. Ten years after Miłosz’s remarks, in a 50th-anniversary reflection on the Universal Declaration, Michael Ignatieff (he who later aspired to be Canada’s prime minister before returning in defeat to Harvard) asserted that “it is not clear why human rights need the idea of the sacred at all.”4 Ignatieff noted that in the drafting of the Declaration “a cloak of silence” was cast over the question of God: “The Brazilian delegation proposed that Article One include the proposition that men are ‘created in the image and likeness of God,’ and ‘endowed with reason and conscience.’ Communist and non-Communist delegations joined in rejecting these totemic references on the grounds that they would detract from the Declaration’s universal appeal.” This debate is very much alive today, though some have shifted sides. (One wonders whether the Brazilians, for example, would now stand with the communists.) Ignatieff even speaks of “a philosophical crisis: a sense that the silences in the Universal Declaration need to be confronted.”

The crisis, he suggests, is generated in part by people worried about the bottom falling out, to use Miłosz’s expression. “In a world of resurgent religious conviction,” says Ignatieff, the secularism of the Declaration’s premises “is ever more open to doubt.” The doubters, on his reading, are bothered by a suspicion that human rights, conceived in a non-theological fashion, “are just another form of arrogant make-believe, putting Man on a pedestal when he should be down in the mud where he deserves to be. If human rights exist
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to define and uphold limits to the abuse of human beings, then their underlying philosophy, religiously inclined thinkers imply, ought to define man as a beast in need of restraint. Instead human rights make Man the measure of all things, and from a religious point of view this is a form of idolatry.”

The clear implication here – and we shall return to it – is that the very people who think that human rights discourse must ultimately be theological are people with a very low view of human dignity, not a high view. But why, he asks, “do we need an idea of God in order to believe that human beings should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will? These intuitions derive from our own experience of pain and our capacity to imagine the pain of others. Believing that men are sacred does not necessarily strengthen these injunctions. The reverse is often true: acts of torture or persecution are frequently justified as serving some sacred purpose. Indeed the strength of a purely secular ethics is its insistence that there are no sacred purposes which can ever justify the inhuman use of human beings.”

On Ignatieff’s own view, a secular defence of human rights can be mounted simply by appealing to “the idea of moral reciprocity: that we cannot conceive of any circumstances in which we or anyone we know would wish to be abused in mind or body.” This seems a sort of photo-negative, as it were, of the claim that all men want to be happy, though as a negative it lacks life. Ignatieff tries to inject some moral colour into it: “Being capable of such empathy we all possess a conscience, and because we do, we wish to be free to make up our own minds and express our own justifications for our views. The fact that there are many humans who remain indifferent to the pain of others does not imply they cannot imagine it or prove that they do not possess a conscience, only that this conscience is free to do both good and evil. Such natural facts about human beings provide the grounds for an entitlement to protection from physical and mental abuse and to the right to freedom of thought and speech.”

Ignatieff admits that such a “minimalist anthropology will necessarily leave religious thinkers unsatisfied.” He also recognizes that many of the latter regard secular humanism as unable to command universal assent; hence “a lot of effort has been expended” to reinterpret the Declaration as something derived from the world’s religions – “as the summing up of the accumulated moral wisdom of the
“This religious syncretism is innocuous as historical or inspirational rhetoric,” he allows, but as a matter of fact “only Western culture turned widely shared propositions about human dignity and equality into a working doctrine of rights.”

Ignatieff does not follow up on this last point, unfortunately, or ask where these presuppositions came from. For “the really interesting new development” that catches his eye “is how the moral unanimity of the West itself is beginning to fracture.” What is needed, then, is indeed something minimalist – “not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me.” Human rights can then be seen “not as the universal credo of a global society, not [as] a secular religion, but [as] something much more limited and yet just as valuable: the common ground on which our arguments [about how to treat each other] can begin.”

In *Human Rights as Politics and Idolatry* Ignatieff goes on to argue that the lack of a global moral culture, and of any consensus on the foundations of human rights, combined with the irresolvable tensions between various rights claims, means that we cannot establish any non-controversial set of universal rights. We must therefore not act as if we could. That would indeed amount to an idolatry of human rights – an idolatry rooted in the dogma of the sacredness of human life – that in practice would serve to support cultural and even military imperialism. Rather, in the spirit of reciprocity, we ought simply to do our best to support human flourishing and the empowerment of individuals in their local contexts to lead the lives they wish, but that means balancing the rights of citizens with the rights of states, which provide a necessary bulwark against chaos. Human rights is not above politics; indeed it is nothing but politics.

**TAKING RIGHT AND WRONG OUT OF RIGHTS**

I think Ignatieff is right that the silence of the Universal Declaration must be confronted and give way to honest debate about the theological and anthropological presuppositions of human rights claims. I think he is right also to warn against a human rights idolatry. There are several difficulties, however, in what he has said here.

First, an historical difficulty: The Declaration does not rest on secularist presuppositions. Its silence about God was a silence imposed by communist veto. But the document did not arise either
from a communist world view or from some other secularist world view. It arose chiefly from a Christian world view, with prominent Catholic and Protestant components. Though Ignatieff is correct in saying that the push for human rights was a mainly Western phenomenon, and that it did not come about as a kind of natural or spontaneous synthesis of the accumulated wisdom of the world’s religions, he is wrong to suggest that the cloak over the God question covers up a foundation lacking theological cornerstones or theistic impulses. Shall we say the same thing about its silence with respect to nature – that it covers up a lack of commitment to what is natural? But the truth is that, once “God” was vetoed by the communist bloc, the use of “nature” was deliberately restricted for fear that it would be deployed in a pantheistic or atheistic fashion. Only in article 16, where the theistic side thought it absolutely indispensable in order to defend the family from the state, does “nature” make an appearance.

Second, a logical difficulty, or rather several of them: Ignatieff rejects the charge that secularist human rights doctrines are idolatrous in making man the measure of all things. He counters by calling idolatrous any approach to human rights that is grounded in the dogma of the sanctity of life, and indeed by relativizing human rights to more pragmatic considerations. At the same time, he contends that religious thinkers who hold this dogma actually despise humans as creatures of mud who need human rights doctrines to restrain their natural nastiness. Apparently their view of man is at once too high and too low. But what is Ignatieff’s alternative? His preferred ground for human rights lies in an ethics of reciprocity; in short, it lies in the so-called golden rule. Not the golden rule of Jesus, mind you, for “do unto others as you would have them do unto you” is an escalation, even a transformation, of what otherwise passes in human wisdom for the golden rule. Ignatieff seems, rather, to adopt the Confucian form of the rule, despite the irony that this is the very epitome of that kind of wisdom that he dismisses as religious syncretism. “That which you hate to be done to you, do not do to another,” pretty nicely summarizes what he is proffering. This, of course, shorn of particular religious imperatives, is simply good counsel, based on enlightened self-interest and perhaps, but only perhaps, on what Ignatieff refers to as empathy. At all events, there is nothing in it of rights. The tradition of the Magna Carta Libertatum, or the Declaration of Independence, or even of the (godless) Déclaration des droits
de l’Homme et du citoyen, and the (not entirely godless) Canadian Charter of Rights and Freedoms can find no terra firma here. Is all that idolatry, then? Shall we dispense with it all? No. Ignatieff is in favour of using constitutional instruments. But on what grounds shall we retain them? What authority shall we accord them? And what does account for this tradition, this very Western tradition, if neither theology nor general religious wisdom?

Ignatieff’s argument is not only muddled but self-defeating. By reducing the future foundations for human rights to “not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me,” he takes the right and wrong out of rights, and the justice or duty also. What is he left with? A very questionable assumption about the universality of human sentiments – the very thing he is at pains to deny when he gets to treating cultural differences – and a still more questionable assumption about the general efficacy of the counsel contained in the golden rule. Moreover, he avoids the question as to who qualifies as a proper object of empathy, and why. It has recently been argued, for example, not only by Peter Singer but by the likes of Giubilini and Minerva, that infants and young children do not necessarily qualify. Indeed, where empathy is lacking they have no rights at all and may be put to death. 9 And why not? Empathy cannot be commanded and may not be felt; nor must it be acted upon, if there is nothing sacred about human life. Human rights is politics, and no more than politics.

Third, then, an anthropological difficulty that is also, we may say, a soteriological difficulty: not only is Ignatieff’s “minimalist anthropology” unable to ground rights talk at all, but it also cannot explain man to himself in any way that really matters. Ignatieff tries to throw his own cloak over this by complaining that traditional rights talk, building as it does on theological claims about the sanctity of human life, really regards man as no better than an unruly beast. The truth, of course – as he must know – is that the high view of man, as a creature having distinct rights lacking to the beasts, and the low view of man, as a creature prone to evil, are mediated by the doctrine of the fall and the hope of human salvation. This Judeo-Christian anthropology does indeed provide a basis for asserting and defending human rights, because it gives a consistent account both of human dignity and of the indignities that humans inflict on one another. Ignatieff’s reliance on the politics of empathy seems
impoverished and powerless by comparison. If conscience is simply a derivative of the capacity for empathy, what do “good” and “evil” mean anyway? And how are we to translate the capacity to imagine someone’s pain, or expressions of empathy and failures of empathy, into social norms, binding laws, crime and punishment?

The problem with his minimalist anthropology is that it doesn’t achieve what it is meant to: a lowest common denominator by reference to which human behaviour can be regulated. In isolating the capacity for empathy from other dimensions of the human being and of the moral universe (if there is one), it leaves empathy without any real moral force. It may well be true “that we cannot conceive of any circumstances in which we or anyone we know would wish to be abused in mind or body” (if we are not sado-masochists, that is, though of course some people are). But that begs the question of what constitutes abuse, and of what personal wishes have to do with it when other people, particularly those foreign to us, are in view, and when other factors, which may seem quite compelling, are in play. Though he makes some stabs at treating this problem, his minimalist anthropology seems hopelessly naive. It lacks any sound analysis of human beings and of human behaviour, as well as any motivating soteriology other than a general desire to ameliorate the human condition.

This impression is confirmed when one turns to Ignatieff’s Massey lectures in The Rights Revolution. There he takes up, in the context of the sexual revolution of the sixties, the deep conflict – much deeper, he says, than prior generations imagined – “between being faithful to others and being faithful to ourselves.” This very recent rights revolution – is it continuous or discontinuous with what came before it? – Ignatieff characterizes as an attempt to see that self-giving or self-sacrifice do not override self-fulfillment. Of course, he is not going to consider any theological reconciliation of these concepts. His advice, frankly, is typical of the irresponsible generation to which he and I belong: Be true to yourself, while doing your best to recognize that your neighbours and kin are best off being true to themselves also. This doesn’t even rise to the (Confucian) golden rule. At bottom it is just the old Romantic trope, canonized by J.S. Mill, about spontaneous self-fulfillment. Not “the truth shall make you free,” as Jesus said, but rather, “freedom will make you true.”

It is not just religious thinkers who find all this unsatisfying. As Conor Gearty, a professor of law at the London School of Economics,
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puts it: “The holy grail of human rights is a universal theory ... [a] set of foundations that explains why it is right as well as morally pleasing to promote human rights across the world.” According to Gearty, “advances in evolutionary biology and the neurological sciences” hold out hope that the grail can be found. The “recent addiction to uncertainty as the only possible truth” is fading, he says, “a victim of our intuition that good and evil have a meaning beyond our mere agreement to use these words in a certain way.” Perhaps “a universal theory of human rights, rooted in truth, is emerging into view”? I am equally skeptical of Gearty’s optimism, however, for the view of the human being to which he refers is itself highly reductionist, and its approach to good and evil likewise. If we want something more satisfying than the sort of thing Ignatieff proffers, we need to turn, not to evolutionary biology, but to the theological and anthropological presuppositions that gave birth to robust rights claims.

What were those presuppositions and what has happened to them?

I N V E R T I N G R I G H T S T A L K

The origins of the concept of human rights can be traced back to natural law claims found in Aristotle or Cicero, for example, and the assertion of a moral order inherent in man and operative among the nations is one of its main prerequisites. Particular rights are as ancient as contracts and treaties, of course – as ancient as civilization. What we are talking about is universal rights, rights that inhere in man as such, including slaves, women, children, non-citizens, and people with whom we share nothing but our common humanity. The concept of rights in this sense begins to develop in earnest only with the advent of Christianity. There is a reason for that. Christianity, in obedience to Jesus, announced a universal evangel. At a stroke (delivered by the Jerusalem Council) it rendered race, class, and sex irrelevant at the most fundamental level. As St Paul put it, “There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus.” The development of the doctrine of the incarnation fortified this. Jesus was said (at the Council of Chalcedon) to be “at once complete in Godhead and complete in manhood, truly God and truly man, consisting also of a reasonable soul and body; of one substance with the Father as regards his Godhead, and at the same time of one substance with us
as regards his manhood; like us in all respects, apart from sin.”  
This teaching levelled all humanity, qua humanity, as called to participation in God through Christ. It also fixed our attention on the very fact of our common humanity.

Of course the implications had to be worked out over time. Christianity did not see this fact as simply abolishing all existing social order – for example, as making slavery inconceivable. But it changed the way slavery was conceived, began a movement to change the way it was practised, rendered it almost non-existent in its own sphere of influence, fought hard but successful battles to recognize the humanity of those threatened by slavery in far-flung places, and ultimately achieved its delegitimisation even as a concept – though it could not, of course, bring about on a universal scale an end to enslavement.

This was a messy process, naturally. So were parallel developments, such as those oriented to the protection of property-owning subjects against sovereigns, or to the rights of citizens as such (something to which the Reformation and the Enlightenment contributed substantially), which produced a new synthesis of Christian and Hellenic precedents that could be directed against abuses by prelates as well as by princes, by states as well as by corporations or other private interests.  
Messier yet – indeed, covered in blood – was the Déclaration des droits de l’homme et du citoyen of 1789, which represents the first attempt to produce a human rights document in which no appeal to God can be discerned, even if there remain definite traces of nature, reason, and natural law. But the Déclaration was something of an aberration. The American Declaration of Independence had already embraced the spirit of the new synthesis without the reactionary atheism or neo-paganism of the French Revolution, and captured it in a famously succinct expression: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

The spirit of the latter Declaration was still operative in Martin Luther King Jr’s letter from a Birmingham jail, though it had taken two centuries to reach this particular point of fulfillment. It is noteworthy that King quotes Aquinas in support of what he calls “God-given civil rights” over inhumane positive law. “A just law,” writes King, “is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law.”
That same spirit, and indeed the Holy Spirit, was operative also in *Dignitatis humanae*, which appeared two years later, in 1965, insisting (in the face of revolutionary and counter-revolutionary denials) on a reckoning with the dignity of man, and especially that “the highest of man’s rights and duties – to live a religious life with freedom in society – must be respected” as the cornerstone of a just civil order. The conciliar fathers, of course, had no trouble saying what the Universal Declaration was unable to say about the origin of human dignity; here the communists had no veto! Nor did they fail to point out that Jesus Christ had shown the path to life, liberty, and happiness. The eudaemonic vocation of man, on which the Greek and Latin and Christian philosophers all agreed – though Christians understood it very differently, in light of the two great commandments and the hope of the resurrection of the dead – was not indefinable or unattainable, as some modern thinkers alleged.

But the aberrant spirit of the French Revolution also lived on, combining with the socialist and communist movements to produce a new kind of rights revolution in the mid-nineteenth century, by which inalienable rights – rights inherent in the person, not able to be given away or taken away with justice – began to morph into entitlement rights: rights to receive this or that from another, and especially from the government. This was not all bad, and the Church tried early on to shape it for the good, through Leo XIII’s *Rerum novarum* (1891) and the subsequent encyclical tradition, while safeguarding the more fundamental freedoms to which we have already alluded. However, the notion of rights as entitlements, rather than as basic liberties, quickly became detached from any substantive notion of human dignity. It was annexed and deployed instead by proponents of the sexual revolution, on the one hand, and by the state – the nanny or “saviour state,” as I call it – on the other. This led to a tremendous inflation of pseudo-rights at the expense of human obligations, and to a corresponding increase in the power of the state over the ordinary citizen, including that “great and pernicious error,” against which Leo warned, by which that power extends even into “a man’s own house” – indeed, into God’s house too, that is, into places of worship and into the organs and instruments of the church. Witness the recent and notorious Health and Human Services mandate south of the border.

All of this has meant the breakdown of one kind of rights under pressure of another, leaving society defenceless, as Solzhenitsyn pointed out, against those who in fact do great harm to society and
to basic human freedoms. As for anyone who dares, however modestly, to emulate Martin Luther King, they are likely to be rebuked by the magistrate, as was Mary Wagner in Ontario not long ago, by Mr Justice S. Ford Clements, who purportedly observed to that indomitable pro-life counsellor: “You appear to be governed by a higher moral order than the laws of our country.” The price for that was another three months in jail.

As John Paul II foresaw, and in Evangelium vitae forewarned: “With tragic consequences, a long historical process is reaching a turning-point. The process which once led to discovering the idea of ‘human rights’ – rights inherent in every person and prior to any Constitution and State legislation – is today marked by a surprising contradiction. Precisely in an age when the inviolable rights of the person are solemnly proclaimed and the value of life is publicly affirmed, the very right to life is being denied or trampled upon, especially at the more significant moments of existence: the moment of birth and the moment of death.”

The eclipse of the sense of God, he contends, necessarily results in an eclipse of the sense of man as well, whose proper dignity is no longer seen or understood or promoted. Rights talk is then turned upside down and backwards. It becomes a cover for the destruction of human life rather than for its protection.

IS RIGHTS TALK NECESSARY?

In light of these developments, some are asking a more radical question than “Can we have human rights without God?” They are asking, rather: Do we really want or need rights talk at all? Is rights language the right language for asserting human dignity or for making laws that respect human dignity? Or have we been misled by it? As Tom Campbell puts it, “There is nothing inevitable about the current dominance of rights in political discourse.”

Joan Lockwood O’Donovan, for one, wants us to reconsider our allegiance to this discourse. She offers a very critical account of how modern rights language arose. She suggests that a Pelagian or legalist turn in Western Christendom associated with the development of the penitentials, together with a proprietary notion of the self that sprang from the controversy between the Franciscans and the papacy over the idea of absolute poverty, combined with Hobbesian individualism (and with political principles, traceable to Marsilius of
Padua, that minimize the role of natural and divine law) to generate our modern subjectivist rights culture. That culture more or less reduces justice to rights, viewed as claims or entitlements belonging to persons and deriving from their self-ownership. Thus it atomizes the common good and effectively destroys the Western cultural tradition. While the notion of human rights is widely accepted by Christians as “adequately expressing the moral attributes of a theologically conceived humanity,” its true history, she claims, casts doubt on this adequacy.26

O’Donovan questions the propriety of rights language, then, and argues that Christians should distance themselves from it. What is required instead is the language of created order, of goodness and grace, of obligation and obedience – the language of right and wrong rather than of human rights. “The liberal-democratic rights culture of today,” she insists, has been propped up by what remains of these older notions, but because of its inherently impossible attempt “to combine radical spiritual and moral individualism with political and social egalitarianism [it] is in danger of collapsing into legal and political incoherence.” The concept of human rights needs to go on the back burner, so to say, while the original recipe for our civilization is recovered. “If liberal democratic polities are to retain any semblance of legal coherence, they will have to ensure that the concept of rights is a secondary language of justice, subordinate to and continuous with that of law, in the sense of objective right and duty, as expressing a community of political judgement.”27

Yale’s Nicholas Wolterstorff, however, takes a very different line in his book, Justice: Rights and Wrongs. Wolterstorff does not think rights talk “inherently individualistic and possessive,” but traces it back to notions about natural rights developed by the canon lawyers of the twelfth century and, even further, to the scriptures themselves.28 He thinks that biblical religion opened up a space in the Western tradition for human rights, and that a grasp of human rights – grounded in the two great commandments and in the knowledge of human dignity that flows from revelation of the particular love of God for each and every human being – corrects and transcends our prior understanding of morality. Rights talk has a perfective function that Christians should respect and pursue, even if a good many secularists (for reasons quite different from Joan O’Donovan’s) are also questioning the grounding and viability of rights talk.
This intramural argument is far from finished. Oliver O’Donovan has offered a rejoinder questioning, among other things, Wolterstorff’s reading of the scriptures, in which the former finds much support for the idea of right and none for rights, subjectively understood. The point O’Donovan presses is that we do indeed have here “two fundamentally different ways of thinking about justice,” one unitary, represented by the language of right (\textit{ius}), and one plural, represented by the language of rights (\textit{iura}). He quotes Wolterstorff against himself: “As Wolterstorff very lucidly declares, ‘the debate at bottom is over the deep structure of the moral universe: what accounts for what?’ Either ‘rights’ are ‘foundational to human community’, so that ‘justice is ultimately grounded on inherent rights,’ or ‘right is foundational, and rights derive from it.’” 29

Oliver O’Donovan draws a bright red line between these competing structures, between which he thinks we must choose. For “at the root of the disagreement over the language of rights is a question of moral ontology.” The problem of the one and the many reasserts itself in the moral sphere: “Multiple rights express a plural ontology of difference, the difference between each right-bearer and every other, instead of a unitary ontology of human likeness. \textit{Suum cuique}, to each his own, is [its] formula for justice, not \textit{similia similibus}, like treatment for like cases. This has the effect of setting what is due to each above every idea of moral order. The classical doctrine repeated by Augustine, \textit{ius de fonte iustitiae manat}, ‘right flows from the source of rightness’ (City of God XIX.21), is turned on its head to become what we find in Wolterstorff: ‘justice is ultimately grounded on inherent rights.’” 30

The recurrence of this debate today, O’Donovan claims, “was fated for us by the decision of sixty years ago to base post-war reconstruction, self-consciously critical of positive justice, on a Universal Declaration of Human Rights. The logical necessity of our present discussions springs from that moment of resolute new beginning,” in which justice is refounded “independently of moral order.” And this refounding “reveals a despair of how prevailing doctrines (Christianity among them, but also its sickly child Democracy) could ever summon up the intellectual and moral coherence to found a civilization free of brutality.” 31

On this side of the argument, then, one would not say, as Wolterstorff does, that in the absence of God we cannot have human rights. One would say, rather, that a false emphasis on human rights
is what we get when God has gone missing, and human nature with
him.32 We ought to start from right, as a function of the divine order
in creation, and derive rights from right, rather than seeing rights as
themselves foundational to human being and deriving our sense of
justice from our attention to rights.

The argument is not merely academic, I hasten to add. We can
illustrate its practical impact by reference to abortion. Those who
are against abortion often speak of the fetus’s right to life, while
those in favour of abortion deny that right or say that it is trumped
by the mother’s right to control her own body and anything in her
body. But does a fetus really have such a right, and is that the basis
of the wrongness of killing a fetus? Or is it wrong to kill a fetus – or
an infant, for that matter, or an adult – simply because it is always
wrong to take innocent human life? Theologically put, is it wrong
because God, rather than man or woman, has jurisdiction over the
fetus and its future? Likewise, does the mother have the right she is
claiming, with or without consideration of a fetus, or is what is right
or wrong for the mother or indeed the father to do, whether in the
sexual relations that lead to pregnancy or in actions that may follow
afterwards, determined rather by divine design, by the human voca-
tion, by a moral order independent of the mother or father and
recognizable by natural and/or divine law? If we take the “inherent
rights” alternative, we risk either an over- or an under-determined
claim, leaving ourselves open to a potentially irresolvable conflict
of rights.33

Or take marriage as an example, and the controversy over same-
sex marriage. If we start from the dignity of the individual qua indi-
vidual, what prevents us from allowing the individual himself to tell
us in what his own dignity lies? Who else can tell us? So, if he feels
diminished by his exclusion from the honour attached to the insti-
tution of marriage – not because he cannot marry, of course, but
because he has chosen a same-sex partnership as the path to his self-
fulfillment – he may demand that marriage be redefined to include
same-sex partnerships. And we will grant his wish, because if we do
not grant it we will be in denial of his dignity, and of the priority of
exalting dignity as the very condition of doing justice.

These illustrations may serve to reinforce Oliver O’Donovan’s
point that rights discourse tempts us to prescind from the task of
addressing human nature and creaturely order, and of seeking justice
in conformity with that order. That is the act of despair that he wants
us to avoid. But the question remains as to whether we can somehow find rights at the centre of that order, working outward from it in pursuit of justice, or whether we can find our way to rights discourse only subsequently and secondarily, starting from some other point. Wolterstorff thinks the first option viable. He moves from divine love, as the font of human worth or dignity, to a doctrine of natural rights – rights to certain goods, especially respect from other human beings, which rights are not bestowed by others but are inherent in human beings as the objects of God’s love – to a more general theory of justice based on rights. O’Donovan is skeptical. He prefers to work from God as the source of creaturely order to a doctrine of right that embraces both natural and divine law – via thankful participation in the created order – to a general theory of justice and, derivatively, to rights as legitimate claims arising from appropriate structures of authority and agreement among human beings.

Both sides agree, of course, that no non-theological account of natural human rights (such as Ignatieff’s) can hope to be successful. Yet Wolterstorff finds fault with O’Donovan because he thinks that O’Donovan has bought into a false narrative that associates rights with possessive individualism, failing to see that the inspiration for rights talk actually comes from the Bible. O’Donovan, for his part, is sticking with that narrative: “The language of rights ... was promoted precisely to challenge our moral intuitions, intending to educate us out of them ... Creation was wholly coherent, its logic all encompassing and all reconciling. That is how Christians have always spoken, but the modern world is not minded to accept the claim, and what clearer sign of its rejection could there be than a resolution to found social relations anew, outside the realm of morality and metaphysics, on a purely juridical basis?”

O’Donovan finds fault with Wolterstorff, not because the latter grounds rights in human worth and human worth in God, but because he does so in a way that isolates rather than connects human beings. “If God loves, in the mode of attachment, each and every human being equally and permanently, then natural human rights inhere in the worth bestowed on human beings by that love,” Wolterstorff claims. But this, so to say, is too Kierkegaardian for O’Donovan’s liking. It is one thing to insist that the individual be seen in his individuality before God; it is another to order human affairs wisely and justly. For that we need a sense of what is right and wrong in human relations, and this horizontal plane of justice
cannot be derived directly or immediately from the vertical plane of each person’s relation to God. O’Donovan worries that Wolterstorff thinks it can; that here, also, there is a form of despair with respect to the mandate to live justly, covered up by taking flight into the clouds – the glory-lined shekinah clouds – of individual dignity and individual rights.

THE MEDIATION OF RIGHT AND RIGHTS

This debate “over the deep structure of the moral universe,” however fascinating, is somewhat puzzling to a Catholic. For the modern Leonine tradition of Catholic social thought suggests a both/and rather than an either/or approach. Certainly that tradition “notes with alarm the fragmentation of the human rights project since 1948” and recognizes (in Russell Hittinger’s words) the grave problem “of liberty unseated from nature.” It reckons with “a human rights movement that has gone awry, multiplying and changing the content of rights to such an extent that only an apophatic universal remains” – that is, a “negative anthropology” that does not allow us to say what man is, or how his dignity is grounded, prior to his self-determination. Here it is very much on the same page as the O’Donovans. The Leonine tradition does not put human rights at the very centre of its thinking about justice. It knows that rights talk is not the proper starting point for anthropology, politics, justice, or law. At the dawn of the twentieth century – and a grim dawn it proved to be – Leo admonished his fellow bishops thus: “The world has heard enough of the so-called ‘rights of man.’ Let it hear something of the rights of God!”

On the other hand, Catholic social thought has not recommended giving up rights talk altogether as a bad business, as if it were inherently individualistic or irredeemably subjective. An individual and subjective element there may well be, if (as John Paul II has said) “the person is a good towards which the only proper and adequate attitude is love.” Yet the love of God for human persons does endow these persons with rights simply by placing on their fellows a moral imperative of respect. To this extent the Catholic social tradition is on the same page with Wolterstorff. It has embraced the language of rights in a creative and indeed redemptive fashion, contributing to the formation of key articles of the Universal Declaration, for example – especially article 16 on marriage, which it expanded into
the Charter of the Rights of the Family published by the Holy See in 1983 – as well as providing vigorous defences of various corporate and personal rights in a stream of papal encyclicals and other documents from Leo to Francis. No tradition and no institution, its flaws and failings notwithstanding, has done more to defend the weak and the vulnerable from the crushing grip of the violent and the strong, and the Church has not been reluctant to use the language of rights to that end.41

In Leo’s Jesus Christ the Redeemer we find a prescription for the only possible mediation between these two positions. That they need mediation, that the difficulty is not an imaginary one or a category mistake of some kind, I think we must grant. An approach from the side of the one and an approach from the side of the many will always need mediation. And the mediation here must be real and concrete, not merely notional. Where do the one and the many meet, where do right and rights meet, where for that matter do justice and love meet, if not in Jesus Christ? The worth and the righteousness of God, like the rights of God, are grounded in God himself. But the worth and righteousness of man, and the rights of man, are grounded, neither in the race (that is, in human nature) nor in individual members thereof, but in this particular man, the man who is also God. To him “we must both feel and render with our whole hearts gratitude,” says Leo, for in him we see, and from him we learn, the truth about ourselves as God has established it. This is the truth that makes us free.42

It is because of the mediator that we can confidently say that “the person is a good towards which the only proper and adequate attitude is love.” It is because of the mediator that we can say that the person is a person by virtue of participation, at some level, in the love of the Father for the Son. The worth that attaches to their personhood, if inherent, is inherent in no other way. To ignore this is to ensure that the debate over the deep structure of the moral universe will find no resolution; that a pluralist ontology of difference and a unitary ontology of likeness will not cohere. Indeed, that we will not be able to offer to the likes of Ignatieff what we desire to offer, namely, a way of overcoming the impasse “between being faithful to others and being faithful to ourselves;” or to utilitarians such as Peter Singer (who once boasted that only he and John Paul really understood what was at stake in the abortion issue) a proper answer to their narrowing of personhood to a capacity for holding preferences and making plans.43
Can We Have Human Rights without God?

If considerations of justice must begin with created order and with human nature, with what is right in the objective sense, while consideration of rights begins with persons and the dignity of persons, these are not mutually exclusive proceedings when both are trinitarian and incarnational. Rather, each is cross-referenced to the other. Just as any consideration of God requires attention to the dialectic of being, which is indivisible, and of persons, who are distinct – indeed, just as the very meaning of “being” and of “person,” where God is concerned, can be given only within this dialectic and not prior to it – so also the meaning of human nature and of human dignity can be given only dialectically. Hence we need not ask whether the deepest reason for the runaway subjectivism of the modern human rights tradition is that it evades the question of nature, or whether the deepest reason is that it has been made to rest on a concept of the dignity of the person to which the notions of gift and givenness are foreign. These two factors are equally to blame. If we really mean to preserve the idea of human rights from its impending failure we must restore both concepts, nature and gift, to a central place in our discourse.

This, however, cannot be done without reaffirming the Christian insight that humans have a eucharistic vocation. *Vere dignum et iustus est* – “it is truly right and just, our duty and our salvation, always and everywhere to give you thanks, Father most holy, through your beloved Son, Jesus Christ.” Our proper starting point is just this thankful reckoning with the rightful claim of God on each and all of us.

To illustrate by putting the point in practical terms, if it is wrong to kill a human fetus, it is wrong because this interrupts the vocation of that fetus to praise God and enjoy him forever, a vocation given it by God himself in and with the gift of existence, a vocation we may not override for purposes of our own without offending against the rights of God. Note that on such a view we must be as critical of Singer’s own dignity criterion (the ability to plan) as of the criterion he rejects (possession of human DNA); both root human dignity in something possessed by the other and recognized by me, but neither accounts for the eucharistic relation to God.

**Indicium libertatis**

It is from this point that a proper theory of justice, as of rights, can be constructed. Here the notion of what is right, what is fitting, what
is worthy, what is just, is not grounded in claims that we have or
make on one another, even in view of God’s love for us. Nor is it
grounded in a natural order that operates by law alone. Rather, it is
grounded in the meeting of divine rights and of human liberty, expe-
rienced corporately and ecclesially by participation in Christ. The
Eucharist, in all its concreteness, is what Irenaeus called the indicium
libertatis, the sign of liberty, in which we discover authentic freedom
through the genuine subjection to God that love makes possible.49
The Eucharist embodies the dialectic with which we ought to work,
and with which we may work – in the work of the people, the lit-
urgy – whether we grasp it intellectually or not.

O’Donovan comes close to a eucharistic way of seeing things, I
think, when he states that “morality is man’s participation in the cre-
ated order” and then adds: “Christian morality is his glad response
to the deed of God which has restored, proved and fulfilled that
order, making man free to conform to it.”50 The complaint will be
made, of course, that with such language we are speaking only to
Christians; that the very concreteness of our starting point, the sec-
tarian nature of our proposal, cuts us off from the world at large and
so from any moral or human rights discourse capable of gaining a
hearing outside the church.51 Two things may be said in reply.

First, it is no less true in this sphere than in any other that con-
creteness is an advantage. No proposal that fails to be concrete can
supply human rights discourse with the necessary resources with
which to sustain itself. Moreover, it is an established fact, however
disputable the particulars of this or that genealogy, that the discourse
in question owes its origin and its life-blood to Christianity; in
Ignatief’s rather vague expression, “only Western culture turned
widely shared propositions about human dignity and equality into a
working doctrine of rights.” It is a fact, to be more precise, that the
appearance of Jesus Christ had among its chief civilizational conse-
quences the renewal or even the creation of specific rights and duties,
and a frame of reference in which to understand them.52 And it is
also a fact that the God-question can no longer be evaded. As
Solzhenitsyn insisted in his 1983 Templeton address, “all attempts to
find a way out of the plight of today’s world are fruitless unless we
redirect our consciousness, in repentance, to the Creator of all: without
this, no exit will be illumined, and we shall seek it in vain.”53

Second, it should not be missed that Christian morality, so con-
ceived, is not something discontinuous with a more general morality.
Rather, it is a penetration to the very heart of morality. Not everyone knows that thanks to God can and may be given through Jesus Christ, or that it cannot be given adequately, as the church believes, except through Jesus Christ. But everyone knows, or ought to know, that thanks is indeed to be given. For he who denies that, denies that the order on which justice and rights and other features of morality are founded is a given order, a good order, an order for which respect is obligatory. He thus becomes amoral, or at all events ceases to be morally coherent. Man’s participation in the created order goes wrong from the moment he ceases to give thanks.  

In the present climate there is nothing more important to say. The human rights we get when we do not say this are either twisted beyond recognition (like the “right” to marry a same-sex partner or to choose death for one’s baby or to commit medically assisted suicide) or else rendered ephemeral and altogether insecure (like the right, say, to freedom of conscience or of religion). The truth of the matter is that we cannot have human rights that are rightly or justly ordered without acknowledging God and rendering thanks to God. And this fact is just what Jesus Christ confronts us with.  

“It may be clearly seen,” warned Leo at the beginning of the last century, “what consequences are to be expected from that false pride which, rejecting our Saviour’s Kingship, places man at the summit of all things and declares that human nature must rule supreme.” These consequences, grimly rehearsed by Solzhenitsyn at the end of the century, are the demise of human nature and the destruction of human beings; indeed, of whole human societies. For the supreme rule of man, in defiant abstraction from Christ, “can neither be attained nor even defined.” The true rule, the rule of Jesus Christ, “derives its form and its power from Divine Love: a holy and orderly charity is both its foundation and its crown. Its necessary consequences are the strict fulfilment of duty, respect of mutual rights, the estimation of the things of heaven above those of earth, the preference of the love of God to all things. But this supremacy of man, which openly rejects Christ, or at least ignores Him, is entirely founded upon selfishness, knowing neither charity nor self-devotion.”

Leo, however, concluded more hopefully – as perhaps we yet may do? – that “it is rather ignorance than ill-will which keeps multitudes away from Jesus Christ.” And so he advised: “The first step, then, is to substitute knowledge for ignorance, so that He may no longer be despised or rejected because He is unknown. We conjure all
Christians throughout the world to strive all they can to know their Redeemer as He really is.”

Those who heed Leo’s advice, even at this late hour, will be like Epimenides, reminding the Cretans that God is very much alive when they foolishly supposed him to be dead. They will also be like Paul on Mars Hill, proclaiming even to the Athenians something they know they ought to acknowledge, something they at least gesture toward, yet do not properly know: namely, what justice is and what rights are, when they appear together, in their truth, under the aegis of Love.