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Review: Justice: Rights and Wrongs, Nicholas Wolterstorff

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Review: *Justice: Rights and Wrongs*

Jeffery Nicholas

Nicholas Wolterstorff, *Justice: Rights and Wrongs* Princeton: Princeton University Press, 2008, xiv+400 pages. Cloth $49.96, paper $25.95.

Nicholas Wolterstorff tackles the issue of rights from a philosophical and theological perspective in *Justice: Rights and Wrongs*. Wolterstorff divides his book into three parts: The Archaeology of Rights, Fusion of Narrative with Theory: The Goods to Which We have Rights, and Theory: Having a Right to a Good. He rightly takes issue with the standard defense of rights in the literature. In addition, he proposes an intriguing defense of rights stemming from the Judaeo-Christian tradition. The arguments in this book should prove fruitful for those working on rights theory.

Rights are "normative social relationships; sociality is built into the essence of rights" (4). They represent claims against someone else, either to treat the other in a way that does not demean her or in a way that enhances her well-being. They are correctly described, according to Wolterstorff, as trumps. The concept of rights is important because they focus, not on the wrongdoer, but on the wronged, which remains an important theme throughout Wolterstorff's argument. Natural rights are "inherent to those who have them … they have them on account of the worth of beings of their sort" (10-11). One has rights, not to all goods, but to those goods of one's life or history that are due her. Being deprived of a right entails "an alteration in her moral condition" (25).

The idea of justice as right order opposes rights talk, for what grounds justice in society is the right ordering of society. Right order theorists say a society is just when the society's order adheres to a standard for rightly ordering the society. They believe in natural right but not in natural rights for human beings. The essential distinction is that right-order theorists believe rights are given by social agreement, while inherent rights theorists believe that some rights are inherent in the worth of human beings, which worth, importantly, "need not be essential or intrinsic to the person who has" the worth (36).

For Wolterstorff, the power of the right-order theory lies completely in the narrative they give about the origins of rights. Thus, he spends a significant portion of his book articulating a counter-narrative. Whereas right order theorists believe that rights-language arose from the nominalism in William of Okham, Wolterstorff contends that rights language found expression in the Roman jurists, the Church Fathers, and in the Jewish Scriptures. The question of rights language in the Jewish Scriptures hinges on the notion of "*mishpat*." Using Oliver O'Donavan as a foil, Wolterstorff contends that *mishpat* refers to primary justice, which includes the rights of the poor to be relieved of their suffering. Further, when the Jewish Scriptures speak of God forgiving someone, Wolterstorff interprets this to mean that human beings wronged God, and being wronged signifies the violation of a right.

Wolterstorff further argues that justice as rights are found in the New Testament, because the apostles are instructed to forgive others. Jesus told the Pharisees that they must invite, not only the poor, but the crippled, the lame, and the blind to supper. Yet, these marginalized people were, according to Jewish tradition, unclean, and their presence sullied one. Jesus also becomes a victim of injustice. Both of these aspects of the New Testament point to a rights claim the marginalized have to be included. Moreover, the New Testament testifies that human beings have worth that could ground the rights he finds there.

After laying out his counter-narrative of the tradition of rights language, Wolterstorff seeks to discover what it is to which human beings have rights. One has rights to the goods that are "certain states of affairs within one's life and history" (143). What identifies these goods? Wolterstorff rejects eudaimonism as a ground for them. Collapsing the Peripatetic and the Stoic traditions into one, Wolterstorff examines the Stoic understanding of eudaimonism, and then explains why Augustine came to reject this eudaimonism. Augustine agrees with the stoics that happiness requires tranquility, or a life free of negative emotions. For Augustine, however, this tranquility comes from placing our lives into the hands of that which cannot fail us – God. Wolterstorff carefully lays out the notion of love in Augustine. He cautions, however, that Augustine believes that we must love the physical and mental well-being of our families and friends. This love may be frustrated in this life, but it will find relief and fulfillment in the next. This love, further, must be grounded in our love of God.

On this understanding of love, Wolterstorff argues that love of the other and rights are incompatible with eudaimonism. Eudaimonism, in short, is agent-oriented, and leaves no room for loving the other for the other's sake or because of the worth of the other. Rather, on a eudaimonist account, love of the other is possible only if it benefits the agent's well-being. Further, the eudaimonist has no room for compassion in his system. Well-being on Wolterstorff's interpretation is "constituted in good measure by the action and restraints from actions of others. It is in their hands. Well-being is intrinsically social in a way that it is not for the eudaimonist" (226).

What, then, is the nature of rights – those granted by society and those inherent to human beings? Much of this discussion seeks to deny that rights are based on correlative duties or obligations. For Wolterstorff, subjective obligations are, in fact, grounded on subjective rights. He examines and rejects three theories of grounding rights: the divine command theory, the human dignity approach, and Gewirth's capacities approach. The divine command theory leads to a fatal circularity. Both the dignity approach and the capacities approach fail because they cannot include all human beings as having rights – some will either lack for some time or lack a certain amount of whatever it is that makes one worthy of rights.

In contrast, Wolterstorff argues creatively, rights are grounded in the worth human beings have as objects of God's love. God loves us, not because of some capacity we have and outside of any dignity we might have. Rather, He loves us, and that love imposes a worth on human beings that is neither essential nor intrinsic. Only this love can ground, for Wolterstorff, our claims to inherent human rights.

Wolterstorff's greatest contribution to the debate is his articulation of the current state of rights theory. He rightly points out the two different ways of grounding rights – capacities and human dignity. He also points out what those involved in applied ethics have realized for some time – no articulation of human rights captures all human beings and only human beings. Those on the margins – the infants, Alzheimer's victims, the mentally handicapped – fail to satisfy the conditions necessary to justify rights, yet we want to assert that, because they are human beings, they have rights. Second, Wolterstorff illuminates a counter-narrative to the dominant narrative of the origin of rights. While this counter-narrative has been making the rounds for some time now, Wolterstorff makes the unique move of grounding rights in the Jewish and Christian scriptures. His argument, that the scriptures testify that the poor and the marginalized have rights to be treated with dignity, proves promising.

Overall, however, I found Wolterstorff's arguments unconvincing. First, I disagreed with almost every example that Wolterstorff marshaled that in his discussion. Several times he relied on the example that a person has a right to be treated nicely by the store clerk. I'm sorry, but, while I wish to be treated nicely by the store clerk and while I certainly try to treat the clerk nicely, I see no reason to claim that I have some right against him to treat me nicely. All of his examples seemed questionable to me on similar grounds.

Moreover, his argument that rights can be found in the Jewish scriptures and that rights are, in the final analysis, grounded on God's love of human beings leave large holes that the current book does not fill. First, I might agree, as I said above, that Wolterstorff makes a convincing case for the appearance of rights-language in the Jewish Scriptures. Yet, the appearance of these rights need not testify to inherent or natural human rights. Rather, it seems to me that one could more convincingly argue that these rights are grounded in God's original covenant with human beings. Thus, such rights as we might find for the defense of the poor and the widow are those granted by a social agreement – the agreement between God and His chosen people. Second, to ground rights in God's love of human beings as inherent but not essential or intrinsic to me, appears to accept voluntarism without accepting the consequences. Consider that Augustine argues that one's being good does not force God to send one to heaven. Such force would impinge on God's will. To place rights on God's voluntary love of human beings both seems to ignore this problem (for it would imply that one who is good has a right to be sent to heaven) and to be susceptible to the charge that God could change his mind. I do not question that God loves us, and in fact, I think it important to emphasize over and over that God loves each and every human person from Solomon and Mother Theresa to Hitler. Yet, a polemic does not an argument make, and to ground human rights on something like God's love neither shows they are "inherent" or that we in fact have them.

Finally, Wolterstorff problematically assigns more weight and text to the defense of corporate and group rights than he does to non-human animal rights. This differential weight is, to me, a clear sign that the theory is off. Wolterstorff's analysis needs to pay more attention to the non-human world of animals (which is surprising since he cites Alasdair MacIntyre's *Dependent Rational Animals* several times). God loves all of his creation, not just human beings. Wolterstorff's discussion of this point does not address the unequal weight that corporations seem to have over non-human animals.

Despite my qualms with Wolterstorff's argument, I think that he has highlighted some problems with rights-language and the grounds of rights. Those concerned with Catholic Social thought as well as those outside the Catholic tradition, would do well to pay attention, both to Wolterstorff's criticism of the traditional justification of rights and to his attempt to theologically ground rights.