

The Problem of Human Rights

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This article explores the problems associated with the understanding and use of human rights and asks whether and how our ideas of human rights should be theologically reconsidered.

Many of the atrocities of the twentieth century were perpetrated by people who believed that their victims were not human beings, or at least not human beings who mattered. The theory of human rights seeks to combat such thinking, by establishing the rights of all human beings on a universal basis. Despite that laudable foundation, it has become a commonplace that human rights have gone too far. Why has this happened? Are human rights still part of the solution to injustice or have they become part of the problem?

1. What good are human rights?

1.1 *Human rights as a solution to religious disagreement*

Modern rights theory has its origins in the writings of John Locke and Hugo Grotius, both of whom argued that God had given human beings rights which ought to be respected even if we disagreed fundamentally with their religious beliefs. The first human right to be established was the right to freedom of religion and freedom of conscience, which is reflected in its place in the U.S. Constitution.

1.2 *Human rights as a solution to identifying common values without reference to God*

Human rights theory took a different turn in the French Revolution. Its *Declaration of the Rights of Man* asserted that there was 'neither God nor master', but proposed human rights as a shared moral foundation for society instead. Human rights theory was no longer a way of overcoming the consequences of religious disagreements, it was now a means of arriving at common value without reference to God.

1.3 *Human rights as a solution to holding governments to account*

What Locke's vision of human rights and the *Declaration of the Rights of Man* had in common was the idea that human rights limit the power of governments. It was this feature of human rights theory which was so appealing to the authors of the *U.N. Declaration of Human Rights* and the *European Convention on Human Rights* as they sought to rebuild civilisation following the Second World War.

2. Human rights as a problem

The aims which human rights theory seeks to pursue are laudable ones: we need a way of living together which prevents religious disagreement turning bloody, which enables us to identify common values, and which provides protection against the tyranny which governments are capable of.

The problem is the concept of what a right is that lies at the heart of human rights theory. H. L. A. Hart, the greatest legal philosopher of the twentieth century, said 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.¹

Joan Lockwood O'Donovan denounces this vision of rights because of its 'possessive individualism'.² 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.

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

2.2 *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. Property was central to Locke's theory of natural rights.³ 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. We therefore think that our rights give us ownership over things in creation, and ownership of our own acts (i.e. the right to freedom).

The idea of human rights as individual possessions 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'.⁴

2.3 *The problem of litigiousness in human rights*

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 gives us a problem because the possessive individualist concept of rights turns out to be 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 a society a common language with which to argue our corner but it turns out not to create 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 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.

If rights in the plural are all there are, then our moral dilemmas are more difficult to resolve. If I have the 'right' to play my music in the summer with the window open and you have the 'right' to sunbathe in your garden in peace, how can that conflict be resolved? 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. Put bluntly, unless human rights are related to some idea of the good, they amount to nothing more than self-interested claims that my choices should be given priority.

The individualism and possessiveness in our conception of rights combine to create the view that other people in society are my rivals and 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., we treat such institutions as existing solely to fulfil our own ambitions. And when our expectations are disappointed, we sue.

3. Re-thinking human rights

If, despite the laudable aims of human rights theory, its concept of rights gives rise to the problems of individualism, possessiveness and litigiousness, should we jettison the concept of rights, or is it possible to re-think it in a way which addresses these problems?

3.1 *Thinking about rights as relational*

Christian philosopher Nicholas Wolterstorff argues that we are both moral agents who do things and moral 'patients' who have things done to them. What we do has moral significance, and what is done to us has moral significance, and these are not identical. Bad driving sometimes does not result in a serious accident. There is a lot 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 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'.⁵ 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 *against me* to be fed, clothed and educated. 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.

Wolterstorff denies that rights are possessions. Possessive individualism is, Wolterstorff argues, not intrinsic to rights but a distortion. 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 relational: 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.

3.2 *Thinking about responsibilities as well as rights*

We have already seen the problems with the tendency to think of rights as absolute. In practice rights have to be balanced against one another and against other interests and claims. Jacques Maritain said: 'rights, being human, are like everything human, subject to conditioning and limitation, at least ... as far as their exercise is concerned?'⁶

Wolterstorff addresses this issue by insisting that we must see rights and responsibilities as two sides of the same coin. However, an adequate re-thinking of the concept of rights requires us to give priority to responsibilities. 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. In Jesus' formulation of the Golden Rule He made it a proactive standard. It is not that we do unto others as they have done to us, but rather that we do unto others as we would wish them to do to us. Our responsibilities are placed before our rights.

It comes naturally to most people to insist upon their rights. What most of us need to learn better, in order to contribute usefully to society, to our communities, to our families and in our places of work, is our responsibilities. Jonathan Sacks has argued that since the 1960s, generations have been brought up believing that responsibility is, at best, optional. Commenting on the August Riots of 2011, 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'.

We need to re-order our moral conceptions. 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 entail rights.

3.3 Thinking about what is 'good'

The litigiousness which rights generate in our culture is not just caused by the individualism and possessiveness of the prevailing concept of rights, it is also a consequence of the way in which rights are invoked without a corresponding theory of the good. Michael Sandel has identified the impasses created when we try to think about justice without discussing what is good: 'Justice is inescapably judgmental. Whether we're arguing about financial bailouts ... surrogate motherhood or same-sex marriage, affirmative action or ... CEO pay ... questions of justice are bound up with competing notions of honour and virtue, pride and recognition. Justice is not only about the right way to distribute things. It is also about the right way to value things'.⁷

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.

The Judeo-Christian concept of the good is summed up in the idea of *shalom*. *Shalom* is a state of wholeness and harmony within a community which exists when all the relationships within that community are good. It is a good which is promoted by acts of justice and mercy, love and compassion. It is a good which is about each person being able to participate fully in the community, not a good in which each person is able to express themselves individually regardless of the cost to the community. Our social relations would be much healthier if we consciously sought to promote *shalom*, if we began with our responsibilities and recognised that others have rights to enable them to participate in community and because of our relations towards them.

4. Conclusion

Human rights theory seeks to address urgent questions: about how we live together despite religious disagreements, how we identify common values, and how we hold governments to account. However, the dominant concept of rights as 'things which belong to me' has led to ideas of rights which are individualistic and possessive and has engendered a litigious culture in which the goods of community are under threat from selfish claims. We need therefore to re-think our concept of rights, to get away from thinking of rights as 'things which belong to me', to learn to think 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.

For further reading:

John Gray, 'Two cheers for human rights', 27 December 2013, <http://www.bbc.co.uk/news/magazine-25505393>

John Milbank, 'Human Dignity, not Rights: Breaking up Modernity's Unhappy Marriage', 4 March 2014, <http://www.abc.net.au/religion/articles/2014/03/04/3956588.htm>

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¹ H. L. A. Hart, 'Are There Any Natural Rights?', *Philosophical Review* 64 (1955), 182.

² Joan Lockwood O'Donovan, 'The Concept of Rights in Christian Moral Discourse', in M. Cromartie ed., *A Preserving Grace: Protestants, Catholics and Natural Law* (Eerdmans, 1997), 143-156.

³ J. Locke, *Second Treatise of Government*, paragraph 173.

⁴ A. Solzhenitsyn, *A Warning to the West* (Hill & Wang, 1976), 64.

⁵ N. Wolterstorff, *Justice: Rights and Wrongs* (Princeton University Press, 2008), 4.

⁶ J. Maritain, *Man and the State* (Phoenix Books, 1966), 106.

⁷ M. Sandel, *Justice: What's the Right Thing to Do?* (Farrar, Straus and Giroux, 2010), 261.