

COPYRIGHT NOTICE:

**Nicholas Wolterstorff: Justice:Rights and Wrongs**

is published by Princeton University Press and copyrighted, © 2008, by Princeton University Press. All rights reserved. No part of this book may be reproduced in any form by any electronic or mechanical means (including photocopying, recording, or information storage and retrieval) without permission in writing from the publisher, except for reading and browsing via the World Wide Web. Users are not permitted to mount this file on any network servers.

Follow links for Class Use and other Permissions. For more information send email to: [permissions@pupress.princeton.edu](mailto:permissions@pupress.princeton.edu)

## INTRODUCTION

---

### WHY HOSTILITY TO JUSTICE AND RIGHTS?

Justice and rights are the most contested part of our moral vocabulary, contested not only, or even mainly, by philosophers, but within society generally. To publish a discourse on justice as rights is to plunge into a hornet's nest of controversy.

Few people oppose talk about responsibility and obligation—therapists who believe that guilt feelings are a bad thing, philosophers who see no acceptable way of accounting for obligation, that is about it. Lots of people pay little attention to their own obligations; few declare themselves opposed to talk about obligations. So too with virtue and love. Though many care little about either, few express opposition to talk about them.

Justice and rights are different. Opposition to rights-talk is common. Some of those opposed are also opposed to talking about justice; they connect the two, rights and justice. Others want to pull them apart. Justice is fine; it is talk about rights that is bad.

Why this hostility? Let us take a brief survey, starting with justice. Large swaths of American Christians believe that in the New Testament love supplanted justice—except for retributive justice. Jesus did not teach, in the second of the two commandments, that we are to treat people justly; he taught that we are to love our neighbors as ourselves. In the now-classic book, *Agape and Eros*, published in the early 1930s, Anders Nygren worked out the idea in detail. After interpreting the love ascribed to God in the New Testament, and enjoined on us with regard to our fellows, as the love of pure impartial benevolence, he declared that what we learn from Jesus' words and deeds is that where such "spontaneous love and generosity are found, the order of justice is obsolete and invalidated."<sup>1</sup>

This attack on justice, coming as it does from within my own religious community, is not one that I can ignore; most secular academics would be inclined to ignore it. I think that is a mistake on their part. Americans continue to be a religious people, dominantly Christian; we must expect consequences for our culture and society as a whole if many among us

<sup>1</sup> Translated by Philip S. Watson (London: SPCK, 1953), p. 90.

believe that justice is outmoded. And in any case, similar things are being said by secularists, albeit for different reasons.

In her essay, “The Need for More than Justice,”<sup>2</sup> Annette Baier argues that though justice may still have a place, it has to be supplemented with virtues less cold and calculating. “Care,” she says, “is the new buzz-word, . . . a felt concern for the good of others and for community with them. The ‘cold jealous virtue of justice’ (Hume) is found to be too cold, and it is ‘warmer’ more communitarian virtues and social ideals that are being called in to supplement it.”

Baier explains that the ethics of care is a challenge “to the individualism of the Western tradition, to the fairly entrenched belief in the possibility and desirability of each person pursuing his own good in his own way, constrained only by a minimal formal common good, namely, a working legal apparatus that enforces contracts and protects individuals from undue interference by others” (52). One of the problems with the ethics of justice, she says, is that the rules of justice, at least as understood in a liberal sense, “do little to protect the young or the dying or the starving or any of the relatively powerless against neglect, or to ensure an education that will form persons to be *capable* of conforming to an ethics of care and responsibility” (55).

Others on the contemporary scene are opposed not so much to talk about justice as to talk about rights. The opposition is for a variety of reasons. Some oppose rights-talk because they find so many rights-claims silly that they think it best to purge our vocabulary of all such talk. I agree with the diagnosis but not with the prescribed cure; many rights-claims are silly. The U.N. Declaration on Human Rights declares, in Article 24, that everybody has a right to periodic vacations with pay. Many people do not work for pay. Some, such as children and the handicapped, do not work at all; others work, but not for pay—farmers, housewives, and the like. So how could everybody have a right to a periodic vacation with pay? Claims like this give rights a bad name.<sup>3</sup>

Others are opposed to rights-talk for political reasons. All the great social protest movements of the twentieth century in the West employed

<sup>2</sup> In Virginia Held, ed., *Justice and Care: Essential Readings in Feminist Ethics* (Boulder, Colo.; Westview Press, 1995), p. 48. I thank Eleonore Stump for calling this essay to my attention.

<sup>3</sup> The most balanced and reflective discussion of the abuse of rights-talk in the American political arena that I know of is *Rights Talk: The Impoverishment of Political Discourse*, by Mary Ann Glendon (New York: Free Press, 1991). Explaining her approach, Glendon says, “The critique of the American rights dialect presented here rejects the radical attack on the very notion of rights that is sometimes heard on both ends of the political spectrum. It is not an assault on specific rights or on the idea of rights in general, but a plea for reevaluation of certain thoughtless, habitual ways of thinking and speaking about rights” (15).

the language of rights. They employed other language as well; but the language of rights was prominent in their vocabulary because, in general, it proved the most powerful. I have in mind the movements of protest against the position assigned in society to children, to women, to Jews, to African-Americans, to homosexuals; I also have in mind the protests against the Afrikaner regime in South Africa and against the Communist regimes in Hungary and Poland. It was these movements that made common coinage of such phrases as “children’s rights,” “women’s rights,” “civil rights,” “human rights,” and so forth.

One way to defend disagreement with one or another of these social protest movements is to insist that members of the group in question do not have the rights being claimed for them. Children do not have a right to be kept out of the labor force until they are of age, women do not have a right to vote, Jews do not have a right to be treated equally in the academy, South African “blacks” and “coloreds” do not have a right to equal treatment, and so forth. But often defenders of the status quo find the whole discourse of rights menacing; so they try to change the terms of debate. Instead of talking about rights, let us talk about responsibilities, about the social bonds of friendship and loyalty, about what is necessary for a well-ordered society.

Others, again, are opposed to rights-talk for social reasons. They charge that rights-talk expresses and encourages one of the most pervasive and malignant diseases of modern society: possessive individualism. In using such talk one places oneself at the center of the moral universe, focusing on one’s own entitlements to the neglect of one’s obligations to others and the cultivation of those other-directed virtues that are indispensable to the flourishing of our lives together. The prevalence of rights-talk obscures from us our responsibilities to each other and to our communities, obscures from us the singular importance of love, care, friendship, and the like. It demotes the giving self and promotes the grasping self, demotes the humble self and promotes the haughty self. It both encourages and is encouraged by the possessive atomism of the capitalist economy and the liberal polity. It invites us to think of ourselves as sovereign individuals.

Rights-talk is said to be for the purpose of *me* claiming *my possessions*, *you* claiming *your possessions*, *him* claiming *his possessions*. That is what it is for: claiming one’s possessions, giving vent to one’s possessiveness, each against the other. Possessive individualists are not abusing an innocent language by wresting it to their own evil purposes. They are using it as it was meant to be used. Rights-talk is inherently individualistic and possessive. The theologian Stanley Hauerwas put it like this in one of his essays:

The language of rights tends toward individualistic accounts of society and underwrites a view of human relations as exchanges rather than cooperative endeavors. Contemporary political theory has tended to concentrate on the language of rights, not because we have a vision of the good community, but because we do not. As a result, we have tried to underwrite the view that a good society is one where everyone is to be left alone rather than one that tries to secure the kind of cooperation that gives one a sense of contributing to a worthy human enterprise.<sup>4</sup>

And then there are the objections coming from philosophers and others among the intelligentsia. Talk about rights is nonsense, said Jeremy Bentham; and talk about natural rights is nonsense upon stilts. The way to respond to this charge is obvious: develop an account of rights that makes sense.

#### PRELIMINARY DESCRIPTION OF RIGHTS

I have already indicated the position that I will occupy and defend against this fusillade of objections. I will defend the importance of justice and the importance of rights, in the context of defending the thesis that justice is ultimately grounded on inherent rights. At the heart of my defense will be an attempt to change how we think about rights.

Rights are normative social relationships; sociality is built into the essence of rights. A right is a right *with regard to* someone. In the limiting case, that “someone” is oneself; one is other to oneself. Usually, the other is somebody else than oneself. Rights are toward the other, with regard to the other. Rights are normative bonds between oneself and the other. And for the most part, those normative bonds of oneself to the other are not generated by any exercise of will on one’s part. The bond is there already, antecedent to one’s will, binding oneself and the other together. The other comes into my presence already standing in this normative bond to me.

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. If I fail to do the former things, I violate the bond; if I do not refrain from doing the latter things, I also violate the bond. I do not break the normative bond; that still holds. She continues to have that legitimate claim on me as to how I treat her.

<sup>4</sup> “On the Right to be Tribal,” *Christian Scholar’s Review* 16, no. 3 (March 1987): 238–39.

























