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Disciplinary Brief

DOING JUSTICE TO THE PAST: HISTORIES OF RIGHTS, MEMORIES OF INJUSTICE

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Humans are storytelling animals, and our debates about justice involve debates about history. As Nicholas Wolterstorff observes in his theology brief, 'Justice and Rights', there are rival accounts of the genealogy of human rights. This is high stakes history, and hence we find philosophers, theologians and political theorists joining historians to argue over the past. Alongside this academic debate over the intellectual history of rights, we are witnessing public 'History Wars' over past injustice, especially racial injustice. Once again, this is a contest that divides Christians as well as the larger public. While many look back with nostalgia from our godless age to a Christian past, others point out that the Christian past was marred by slavery, segregation and racial discrimination.

My own historical research touches on these issues, so I want to offer a Christian reflection on how we remember the past. [1] I will focus on the stories we tell about the history of justice and injustice, beginning with the genealogy of rights discourse, and then turning to how we remember (or forget) historic injustice.

Reconstructing the Genealogy of Rights

The intellectual history of natural human rights offers a case study in why the past still matters. Both critics and champions of rights discourse fight for control of historical terrain. Each constructs an historical narrative to explain what's right or wrong with rights. As Wolterstorff observes, it has been commonplace to trace ideas of universal human rights to the secular Enlightenment encapsulated in the French Revolution's 'Declaration of the Rights of Man and of the Citizen' (1789). For the historian Jonathan Israel, ardent advocate of a secular humanism, human rights were a core component of the radical Enlightenment and thus of 'intellectual modernity'. [2] Ever since 1789, many conservative Christian thinkers have been inclined to agree, but they cite the Enlightenment and revolutionary origins of 'the rights of man' to delegitimise rights talk, decrying it as an individualist revolt against moral order, a rupture with the Christian past. A different story is told by the political theorist Samuel Moyn, who sees human rights discourse as a twentieth-century phenomenon with dubious ideological origins on 'the [post-

war] Christian right, not the secular left', and as complicit with the neo-liberalism of recent times. [3] These accounts – whether sympathetic or critical - suggest that human rights discourse is a relatively recent development.

Against such modernist genealogies, and in line with a growing number of scholars, Wolterstorff maintains that the idea of natural (or non-conferred) rights has a long and distinguished pedigree in the Western tradition, going back beyond early modernity into medieval and even patristic thought. [4] Not everyone who takes the long view on natural rights is an enthusiast for the concept; in a thorough recent survey, Nigel Biggar reviews medieval and early modern arguments for subjective natural rights and finds them wanting. [5] By contrast, Wolterstorff argues that there is a coherent concept of non-conferred rights grounded in the dignity of the rights-bearer. He denies that this concept is a by-product of possessive individualism, or of liberalism and capitalism. And he contends that the recognition of rights is important: 'It's no accident that all the great social justice movements of the twentieth century, struggling against one or another form of systemic injustice, employed the language of rights'. I would concur with this point and take it further. The language of natural rights has mattered to Christian social justice activists for a very long time, as three case studies from Anglo-American history suggest.

The Leveller Movement and the Rights of Citizens.

The Levellers wrote during the English Civil Wars of the 1640s, decades before the 'early Enlightenment' of Spinoza, Locke and Bayle (who in any case were themselves steeped in the Hebrew and Christian Scriptures). Yet the intellectual historian, David Wootton, has argued that the Levellers were the first movement to argue for 'a written constitution in order to protect the rights of citizens against the state. The first with a modern conception of which rights should be inalienable: the right to silence … and to legal representation; the right to freedom of conscience and freedom of debate; the right to equality before the law and freedom of trade; the right to vote and, when faced with tyranny, to revolution. The Levellers are thus not merely the first modern democrats, but the first to seek to construct a liberal state'. [6]

If this makes the Levellers sound thoroughly modern, their sources were often antiquated and eclectic: Greco-Roman texts, the Bible, the tradition of natural law theory, and ideas of Anglo-Saxon liberty. When it came to individual natural rights, their reasoning was theological. John Lilburne argued that because God had created man 'after His own image', enduing him with 'a rational soul': 'every particular and individual man and woman that ever breathed in the world since' was 'by nature all equal and alike in power, dignity, authority and majesty'. Natural rights were grounded in human dignity which derived from the *imago Dei*. By invoking rights, the Levellers sought to defend the weak against the mighty. The Levellers saw defence of the marginalised as a biblical imperative. In their writings, the Bible was read as history from below, viewed from the vantage point of the vulnerable. [7]

The Tolerationist Movement and the Right to Religious Liberty.

The Levellers drew much of their support from religious minorities like the Baptists, and there was one

right above all that they sought to protect: the right to freedom of conscience and worship. Nowadays, we think of this as a global norm, embodied in the UN Declaration of Human Rights (1948): 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.' Yet this is a right under threat in many parts of the world, and it was rarely respected in post-Reformation Europe. If we trace how the idea of 'rights of conscience' emerged, we find that it developed from within the Christian tradition. Robert Wilken has argued that we can see it in Church Fathers like Tertullian, who sought to defend the early Christians against persecution by arguing that it was 'a privilege inherent in human nature that every person should be able to worship according to his own convictions'. [8] But when an explicit articulation of subjective natural rights emerged in later medieval thought, no one argued for a right to religious freedom. Nor did this happen among Catholics or mainstream Protestants in the sixteenth century. [9] Instead, it was pioneered by persecuted religious minorities on the fringes of seventeenth-century Christendom before making its way from the margins to the centre, thanks in part to thinkers like Locke and Bayle. In the eighteenth century, the century of the Enlightenment, the principle of inalienable rights of conscience went mainstream. [10]

The proponents of religious liberty reached for natural rights language to assert the dignity of personal conscience and the limits of state power. They made their case on theistic grounds. The rights of the individual were based on duties to God. Because the individual was duty-bound to worship God according to his own conscience, he could not transfer (or alienate) power over conscience to the magistrate. The kind of worship that was acceptable to God was free and un-coerced. Thus, the individual's natural duty to God generated a natural right to liberty of conscience. [11] The radical Protestant provenance of this theory of religious liberty has generated suspicion among various critics, from conservative Roman Catholics to postcolonial theorists. For the most part, however, it has 'far more often been a weapon of the weak than a technology for the powerful'. [12]

Abolitionism as a Human Rights Movement.

Our final example is antislavery activism. An organised abolitionist movement only emerged in the later eighteenth century, so one can understand why it is sometimes seen as a product of the Enlightenment. The importance of Enlightenment thought cannot be denied, but in much of Protestant Europe, Enlightenment occurred within the churches, not merely beyond or against them. Moreover, historians have always recognised that abolitionism had religious roots, especially among Quakers like Anthony Benezet, devout Anglicans like Granville Sharp and Thomas Clarkson, and black evangelicals like Olaudah Equiano and Ottobah Cugoano. We find these early abolitionists speaking of a natural right to freedom before the 'Declaration of the Rights of Man'. For Equiano, slave traders (whether African or European) were 'destroyers of human rights', 'invaders of human rights'. [13] The slave trade was a violation of the natural right to liberty and thus a defiance of the law of God and nature. Abolitionism, in the words of the Anglican poet Hannah More, was a campaign to see 'human rights restored'. [14] It is not surprising that

abolitionism is often regarded as the first international human movement. [15]

In the 1790s, rights language was tarnished by association with the Jacobins and Tom Paine, and partly for that reason it was a marginal feature in the writings of Wilberforce and other establishment abolitionists. What *was* central to them was a doctrine of human dignity: slavery was unjust because it degraded persons. Wilberforce had a strong sense of the 'claims' and 'privileges' owed to the human person as 'a rational and immortal being' with 'moral dignity': not just food, clothing, lodging and medical care, but also 'personal independence' and the power to pursue one's chosen occupation or habits of life. [16] In the writings of African American abolitionists like Frederick Douglass, this assertion of the 'claims' of currently enslaved persons to liberty was couched, emphatically, in the language of what Wolterstorff calls 'non-conferred' rights: 'natural rights', 'inalienable rights', 'the rights of man', 'human rights'. Douglass thought of these as 'God-given rights'. He also asserted women's rights on the basis of their natural equality with men: he was one of the male delegates to attend the Woman's Rights Convention at Seneca Falls in 1848, the seminal event of American feminism. [17]

***Religious Roots of Human Rights*.**

Why does this slice of intellectual history matter? It matters because both Christians and secularists are prone to forget the religious roots of human rights. Both underestimate the extent to which Christianity continued to shape Western intellectual culture during the Enlightenment and into the nineteenth and twentieth centuries. Non-Western critics are often more alert to the Christian ancestry of human rights, though they tend to tie it too closely to Western imperialism. [18] In reality, Christian activists had long spoken the language of human rights to protect the weak from the strong. While believers could be found among the critics of these movements, it is hard to deny that the reformers were fired by a Christian moral imagination. [19] Understanding this history might make secular citizens more aware of their debts to Christianity; it might also nudge Christians away from the temptation to be too dismissive towards liberal democracy. There are reasons to be sceptical of contemporary rights talk, which has proliferated in ways that would have startled earlier generations. Yet we should guard against an overreaction. Christians often feel like strangers in the modern world, but it is a world that believers (for better or worse) did much to create.

Remembering Historic Injustice

If debates about the genealogy of rights engage public intellectuals, disputes about historic injustice are now front-page news. [20]

How we remember past evils has become one of the most hotly contested battlegrounds in our current culture wars.

Black Lives Matter and the History of Racial Injustice.

In the wake of the Black Lives Matter movement, Britain and the United States have been confronting uncomfortable questions about historical memory. Statues of slave traders, imperialists and Confederates have been flash points. The *New York Times* provoked a backlash when it published the '1619 Report', asserting that 1619 (when the first enslaved Africans were landed in British North America) was 'the country's true birth date, the moment that its defining contradictions first came into the world'. In response, President Trump's 1776 Commission issued a counterblast: 'The 1776 Report'. 'Team 1619' urged Americans to lament the past; 'Team 1776' told them to celebrate it. On this too, we find Christians – even Christian academics – in rival camps. Trump's 1776 Commission initially included two senior Christian historians – Wilfred McClay and Allen Guelzo – while other Christian scholars have been highly critical of the new drive for 'patriotic' history. [21]

Biblical Narrative and Self-Critique.

In a recent paper on 'Difficult Histories', I have argued that Christian memory ought to be shaped by biblical narrative. [22] Israel's Scripture is undoubtedly patriotic, yet as the former Chief Rabbi, the late Jonathan Sacks, observed: 'The Hebrew Bible is the supreme example of that rarest of phenomena, a national literature of self-criticism. Other ancient civilisations recorded their victories. The Israelites recorded their failures'. [23] Biblical narrative contrasts with the celebratory stories we prefer to tell about our national, imperial or ecclesial pasts. Biblical history is frequently dark, confronting the worst episodes in Israel's past; chauvinistic histories typically sidestep our collective moral failings. Biblical history is written from the margins, by a people exiled or colonised; national and imperial histories are written by the winners. Biblical history contains searing self-critique; we often prefer a more soothing account of the past. Biblical history is concerned with justice and oppression; Western histories have often ignored the victims, and even celebrated the perpetrators. The current reckoning with that past is overdue.

At the same time, biblical memory challenges our tendency to count ourselves among the righteous, whether as chauvinists or censors. The biblical writers had a powerful sense of the pervasiveness of human corruption. Israel and Judah can seem just as flawed as the mighty empires which oppress them. Justice must be pursued, including retributive and reparative justice, but throwing the first stone is a dangerous business. 'For in the same way you judge others', says Jesus, 'you will be judged'. [24] Everyone needs redemption.

A Third Way for Authentic Christian Memory.

An authentically Christian memory, shaped by biblical narrative, suggests a third way beyond our 'History Wars'. In remembering the past, we should avoid reducing it to its worst features; equally, we should not turn a blind eye to the worst of the past. Christian scholars have a role to play in the cultivation of a less selective memory. Since we acknowledge our own need for forgiveness, we do not set ourselves up as self-

righteous censors passing judgment on lesser mortals or past generations. Yet we do have a duty to counteract historical amnesia and the historical nostalgia that celebrates past triumphs but overlooks historic injustice.

The novelist Marilynne Robinson, whose own thought and writing is infused with a Christian sensibility, has wise words to say about how we view the past:

> I have read too much history to have any impulse to idealize the past. Great pity and very great respect are owed to all those generations who lived and died before us, not least because they, through war and plague and famine, conferred a precious heritage on us of art, language, music and thought. And they conferred as well a tremendous burden of festering hostilities, vicious inequalities, and outright crimes that we have had no great success in understanding or meliorating, that we have in fact compounded. [25]

Robinson exemplifies the bittersweet quality of Christian memory and of biblical narrative. We owe past generations ‘great pity’ and ‘very great respect’ but also moral critique. There is much in the past that is worthy of retrieval and conservation (including a tradition of Christian human rights activism), but there is much to deplore (including centuries of Christian complicity with racial slavery and segregation). Yet we ought to approach our ancestors in chastened mood, with a sharp sense of our own shortcomings. In that way, we might (as we say) ‘do justice’ to the past. And we might be better equipped, in the words of the prophet Micah, ‘to act justly and to love mercy and to walk humbly with our God’.

End Notes

[1] See my book *Exodus and Liberation: Deliverance Politics from John Calvin to Martin Luther King Jr.* (New York: OUP, 2014), which explores the importance of the Exodus story within Anglophone political culture, from Protestant Reformers and Puritan revolutionaries to abolitionists and Civil Rights leaders.

[2] See Israel's mammoth multi-volume history of the Enlightenment beginning with *Radical Enlightenment* (Oxford: OUP, 2001).

[3] Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015); Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Belknap Press, 2019).

[4] See Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (London: Allen Lane, 2014); Dan Edelstein, *On the Spirit of Rights* (Chicago: University of Chicago Press, 2019).

[5] Nigel Biggar, *What's Wrong with Rights* (Oxford: OUP, 2020).

[6] David Wootton, 'The Levellers', in John Dunn, ed., *Democracy: The Unfinished Journey* (Oxford: Oxford University Press, 1992), p. 71

[7] See my brief article: 'State Democracy and Church democracy: The Levellers and the Bible': State_democracy_and_church_democracy.pdf (biblesociety.org.uk)

[8] Robert Louis Wilken, *Liberty in the Things of God: The Christian Origins of Religious Freedom* (New Haven: Yale University Press, 2019).

[9] See Brian Tierney, 'Religious Rights: A Historical Perspective', in Noel B. Reynolds and W. Cole Durham, eds, *Religious Liberty in Western Thought* (Emory University, 1996), 29-57. This essay, by a leading historian of medieval rights theory, explores how the notion of individual natural rights was eventually fused with the idea of liberty of conscience.

[10] John Coffey, 'How Religious Freedom became a Natural Right', in Marietta van der Tol et al, eds, *From Toleration to Religious Freedom: Cross-Disciplinary Perspectives* (Oxford: Peter Lang, 2021), 23-56. This essay traces how the language of rights was applied to religious liberty in early modern English political thought and then considers the claims made by postcolonial critics of religious liberty.

[11] See Rainer Forst, *Toleration in Conflict, Past and Present*, trans. Ciaran Cronin (Cambridge: CUP, 2013), esp. ch. 4.

[12] Daniel Philpott and Timothy Samuel Shah, 'In Defense of Religious Freedom: New Critics of a Beleaquered Human Right', *Journal of Law and Religion*, 31 (2016), 380-95 (quotation on 388).

[13] *The Interesting Narrative of Olaudah Equiano* (1789).

[14] Hannah More, *Slavery: A Poem* (1788).

[15] See Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (New York: OUP, 2012).

[16] William Wilberforce, *An Appeal to the Religion, Justice and Humanity of the Inhabitants of the British Empire in Behalf of the Negro Slaves in the West Indies* (1823), 45-46.

[17] This is a theme of the Pulitzer-Prize winning biography by David Blight, *Frederick Douglass: Prophet of Freedom* (New York: Simon & Schuster, 2018).

[18] See for example, Saba Mahmood and Peter Danchin, 'Politics of Religious Freedom: Contested Genealogies', *The South Atlantic Quarterly*, 113 (2014); and Joseph Massad, *Islam in Liberalism* (Chicago: University of Chicago Press, 2015).

[19] The case has been made with forceful eloquence in Tom Holland's bestselling book *Dominion: How the Christian Revolution Remade the World* (London: Little, Brown, 2019). The UK subtitle omits the Christian element: 'The Making of the Western Mind'. See also John Witte and Frank Alexander, eds, *Christianity and Human Rights* (Cambridge: CUP, 2010); Timothy Shah and Allen Hertzke, eds, *Christianity and Freedom*, 2 vols (Cambridge: CUP, 2016).

[20] As I write, 'The History Wars' are the cover story of the latest issue of *Time* magazine (5/12 July 2021), with an article by Olivia Waxman on 'The Politics of Teaching America's Past'.

[21] See the exchange between Abram Van Engen and Os Guinness: Dangerous Christian Nationalism? A conversation between Abram Van Engen and Os Guinness | Kristin Du Mez (patheos.com)

[22] John Coffey, 'Difficult Histories: Christian Memory and Historic Injustice', *Cambridge Papers*, 29:4 (2020): Difficult histories: Christian memory and historic injustice (jubilee-centre.org)

[23] Jonathan Sacks, *Not in God's Name: Confronting Religious Violence*, (London: Hodder & Stoughton, 2015), p. 52.

[24] Matthew 7:2.

[25] Marilynne Robinson, *What are we Doing Here? Essays* (London: Virago, 2018), 38.

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