Global Faculty Initiative

The Faculty Initiative

seeks to promote the integration

of Christian faith and academic disciplines

by bringing theologians into conversation with scholars

across the spectrum of faculties

in research universities

worldwide.

www.globalfacultyinitiative.net

Theology Brief Postscript

JUSTICE

Nicholas Wolterstorff

Noah Porter Professor Emeritus of Philosophical Theology at Yale University
Senior Research Fellow in the Institute for Advanced Studies in Culture, University of Virginia
Honorary Professor of Australian Catholic University

I found the twenty-six Disciplinary Briefs in response to my Theology Brief, “Justice and Rights,” perceptive, inspiring, and gratifying – and sometimes surprising. What I found perceptive and inspiring was the amazing variety of ways in which these scholars employ considerations of justice in their work. What I found gratifying was the fact that so many of them found my analysis helpful, and that several of them expanded on what, in my essay, were just brief remarks. (The excellent discussion of restorative justice by Chris Marshall is a good example of this last point.)

As for what I found surprising, let me mention just two things. I was surprised – amazed, actually – by the wide range of justice issues highlighted by Allan Bell in his essay, “Linguistic Justice.” Before reading his essay, when thinking about justice and speech I would immediately focus my thoughts on the legal right to free speech; I doubt that I was peculiar in that regard. I now realize what a blinkered view of the matter that was. Bell’s essay opened my eyes to the presence of justice and injustice in who is allowed to speak, and when and where, and what they are allowed to say, to the presence of justice and injustice in which language a group is allowed to use, to the presence of justice and injustice in whose accent is deemed estimable and whose is deemed inferior – and so forth, on and on.

Another thing that surprised me was a comment by Christopher Hays in his essay, “The Obligations of Justice for Colombia’s Displaced Persons.” After noting that “rights language is pervasive” in Colombia, Hays writes: “The emphasis on rights has fostered a great deal of passivity.” He explains that “government is seen as the primary. . . restorer of violated rights” – in spite of the fact that the government of Colombia is incapable of doing so – and that individuals exercise little agency in the matter. Hays’ comment jolted me into realizing that, before reading his essay, I had rather thoughtlessly assumed that a group’s recognition that its rights are being violated is a spur to action – as it was, for example, in the American civil rights movement. I now see that it might instead motivate the opposite response, passivity. “It’s not up to us to correct the situation; we’ll just put up with it.“ The passivity might or might not be accompanied by a sense of grievance, or by sly sullen resistance.

In this essay I propose responding to a number of the questions raised and points made in the responses to my theology brief, mainly to the extended responses, but also to some of the earlier brief responses. I propose doing six things. First, correcting something I said in my theology brief about the origins in antiquity of our way of thinking about justice. Second, addressing the question, posed by a couple of respondents, whether there is a distinct biblical concept of justice. Third, addressing concerns about my single-minded focus on justice, to the ignoring of other components of the moral and good life. Fourth, addressing the uneasiness about rights-talk felt by some respondents. Fifth, responding to questions of several respondents about rights by amplifying what I said about the nature of rights and the relation of rights to duties. And finally, calling attention to a recent publication on the history of the idea of natural rights.

A Correction

In my Theology Brief I wrote the following:

> Coming down to us from antiquity are two fundamentally different accounts of what justice is. One comes from Aristotle who. . . explained justice as equity (fairness) in the distribution of benefits and/or burdens. The other comes from the Roman jurist Ulpian. Referring to the virtue of being just, Ulpian says that justice is a steady and enduring will to render to each his or her *jus*.

The standard translations of *jus* are “right” or “due.” In my brief, what followed the passage just quoted were reasons for preferring Ulpian’s account to Aristotle’s.

I now think that what I said was incorrect. Antiquity did not bequeath to us two distinct accounts of what justice is. Aristotle, in his discussion of justice in the *Nicomachean Ethics,* does not say what justice *is*; he does not say what *constitutes* justice. What he does, instead, is offer a general characterization of those situations in which justice is present: justice is present, he says, when benefits and/or burdens (goods and/or harms) are distributed equitably. That general characterization is compatible with Ulpian’s account of what justice *is*. One might hold that, in general, what persons have a right to is that they be treated equitably in the distribution of benefits and/or burdens.

In interpreting, as I now do, the relation between what Aristotle and Ulpian said about justice, I am following in the footsteps of Thomas Aquinas. Aquinas was, of course, profoundly influenced in his thought by Aristotle. Given that fact, and given that Aristotle nowhere says or suggests that justice consists of being rendered what is one’s right or due, one wonders whether, perhaps, the Ulpian account of justice is missing in Aquinas. It is not. Aquinas remarks that “justice denotes a kind of equality” (*S. Th.* II-II 57, 1; see also II-II 58, 2 and 59, 2). But it’s clear that he did not regard that as an explanation of what justice is. For when he asks, in *S. Th.* II-I, 58, 1, “what is justice,” how “justice is fittingly defined,” his answer is that justice is “rendering to each his right. . . . A man is said to be just because he respects the rights [*jura*] of others.” Aquinas goes on to say that justice can also be defined as rendering to each “ what is his” or

"what is due to him" (*S. Th.* II-II 58, 11).

Shortly after Justinian became ruler of the Byzantine Empire in 527 C.E., he ordered the preparation of three compilations of Roman law: the *Codex*, which collected the legal pronouncements of the Roman emperors, the *Institutes*, a beginning student's handbook, and the *Digest*, which culled and organized everything of value from earlier Roman law. The *Digest* opened with Ulpian's definition of "justice."

The *Digest* was the largest of the three texts, and proved to be by far the most influential. Its influence on the subsequent legal tradition of Christendom was enormous; it became its fundamental legal text. In offering Ulpian's explanation of what justice is, Aquinas was reflecting the influence of Justinian's *Digest.*

I know of no writers who explicitly contest Ulpian's account of justice in terms of rendering to one's fellows their right or due. Some of those who write about justice pay no attention to the connection between justice and rights. Some argue that there are no natural rights, only conferred rights – that is, rights conferred on us by some action, such as a promise performed by an individual, or a legislative act performed by an authority. [1] And some hold that thought and talk about rights is so seriously abused in the modern world that we should forego such thought and talk. But to the best of my knowledge, no one explicitly contests Ulpian's thought that justice – in contrast, say, to benevolence – consists of rendering to each their right, what they have a right to, what is due them, what would wrong them if they were denied it.

A parenthetical note: it's unfortunate that English does not enable us to translate Ulpian's maxim with a pair of nouns like the Latin pair *justitia* and *jus*; we have to translate *jus* with terms that have no linguistic relation to the term "justice," such as "right" and "due." The closest we can come in English to the linguistic pairing available in Latin is this: "justice is rendering to each what is justly theirs."

The biblical understanding of justice

In my Theology Brief, after an all-too-brief presentation of what the biblical writers say about justice, I wrote this:

> The biblical writers do not explain what justice is; they assume we know what they are talking about when they speak of justice. They do not offer a "theory" of justice. For an explanation of what justice is, a theory, we have to turn to philosophers.

I then launched into my discussion of Aristotle and Ulpian.

Some respondents found this transition problematic. When I said that the biblical writers do not offer a theory of justice, I had, in the back of my mind, an observation by the Old Testament scholar, Walter Brueggemann, that the dominant overarching character of "Israel's speech about God is that of testimony" (*Theology of the Old Testament,* 119). Testimony is obviously different from theory.

None of the respondents argued, to the contrary, that the biblical writers do offer a theory of justice. But

the passage gave some the impression of suggesting that, for the purpose of understanding justice, we can leave Scripture behind and turn to philosophers. They found this suggestion problematic – rightly so. One respondent wondered "whether there is not a distinctly biblical concept of justice."

I don't think there is a distinct *concept* of justice in Scripture – not, at least, if one understands the term "concept" as philosophers understand it, namely, as the sort of thing one would find in a dictionary's definition of the term. But there is a distinct *understanding* of justice in Scripture, a distinct *way of thinking about* justice. So let me now flesh out that understanding beyond the little I said in the brief, identifying what I see as salient features of the biblical understanding of justice. There are other understandings of justice that share some of the features of the biblical understanding; but when we put all the features of the biblical understanding together, the result is highly distinctive.

1. Fundamental to the biblical understanding of justice is the declaration that God is just and loves justice, and enjoins human beings to imitate God in doing and seeking justice. [2]

"I the Lord love justice," writes the prophet Isaiah (61:8). And in a well-known passage the prophet Micah writes:

> The Lord has told you, O mortal, what is good,
> and what does the Lord require of you
> but to do justice, and to love kindness,
> and to walk humbly with your God (6:8).

Plato's *Republic* is an extended dialogue on justice; Aristotle's *Nicomachean Ethics* includes an extended discourse on justice. In neither of these is there any mention of divinity; the accounts offered are purely secular. The biblical understanding of justice is an intrinsically theological understanding. God is up-front-center.

2. Equally fundamental to the biblical understanding of justice is that love for one's neighbor requires treating them justly and that one is to treat them justly out of love.

As Osam Temple notes in his response, "there can be justice without love. . . . You can do justice not out of conviction but out of fear of the law and punishment." On the biblical understanding of justice, doing justice is both required by love and to be an exercise of love.

The English word "love" denotes a rather wide variety of different phenomena (see Chapter One of my *United in Love*). The love of neighbor that Jesus enjoins on us – *agapê* –consists of seeking the good of the neighbor. Being treated justly is, obviously, a good in one's life. Though agapic love of neighbor often goes beyond doing what justice requires, it never falls short of doing what justice requires. It never perpetrates injustice.

In my Theology Brief I noted that, in his influential 1930s publication *Agape and Eros*, the Swedish Lutheran bishop Anders Nygren argued that the love-command of Jesus supplants and supersedes the injunction of the Hebrew prophets to act justly. In chapters four and five of my *Justice: Rights and Wrongs,* I argued at some length against this supersessionist interpretation of the relation between the two testaments. The testaments are united in teaching that love incorporates acting justly and that we are to act justly out of love.

It is not only theologians and biblical scholars who have pitted love and justice against each other. In the intellectual culture of the West there is a long tradition of doing so. The tradition continues. In her response to the theology brief, Eleonore Stump notes that "In the view of some [contemporary] feminist philosophers, . . . ethics based on justice needs to be supplemented or even supplanted by an 'ethics of care'." I hold that caring about someone necessarily includes treating them justly, and doing what one can to see that others do so as well.

3. Another distinctive feature of how justice figures in the Hebrew Bible/Old Testament is that, over and over, the writers connect justice with what they call, in Hebrew, *shalom* (for example, Isaiah 12: 16-17).

Shalom, often rendered as "peace" in English translations, is better translated as "well-being" or "flourishing." Shalom consists of flourishing in all dimensions of one's existence: in one's relation to God, to one's fellow human beings, to the natural world, to human artifacts, to oneself. The thought of the writers was that insofar as one is a victim of injustice, one is not fully flourishing – even if, for some reason, one is content with one's condition. Though true and full shalom goes beyond what justice requires – a just community might suffer from famine caused by drought, and thus not experience shalom – justice is a condition of shalom. Justice is, as it were, the ground floor of shalom.

4. In the biblical understanding of justice, justice is an intrinsic component of what the New Testament writers call *the kingdom of God.*

Luke writes that shortly after Jesus began speaking in public, he attended the synagogue in Nazareth on a Sabbath and was invited to read Scripture and comment on what he read. He was handed the scroll of the prophet Isaiah, unrolled it, and read the following:

> The Spirit of the Lord is upon me,
> because he has anointed me to bring good news to the poor.
> He has sent me to proclaim release to the captives
> and recovery of sight to the blind,
> to let the oppressed go free,
> to proclaim the year of the Lord.

Luke reports that Jesus then rolled up the scroll, gave it back to the attendant, and sat down. "The eyes of all were fixed on him," writes Luke, expecting him to offer some commentary on what he had read. Jesus

then said, “Today this scripture has been fulfilled in your hearing.”

What Luke reported Jesus as reading was an adaptation of the opening verses of Isaiah 61, a passage that is a close parallel of a passage a few chapters earlier in which the prophet spoke explicitly of God’s call for justice:

> Is this not the fast that I choose,
> to loose the bonds of injustice,
> to undo the thongs of the yoke,
> to let the oppressed go free
> and to break every yoke? (58:6-7)

The import of Jesus’s declaration, “Today this scripture has been fulfilled in your hearing,” is unmistakable. Jesus identified himself as the one anointed by the Spirit of the Lord to proclaim the coming of justice in the year of the Lord’s favor (the Year of Jubilee).

In Matthew’s gospel, Jesus has already been teaching and healing for some time when the gospel writer intrudes himself into the narrative to offer his interpretation of Jesus’ identity – the same interpretation as that which Jesus himself offered in the synagogue. Jesus is “to fulfill what had been spoken through the prophet Isaiah,” namely,

> I will put my Spirit upon him,
> and he will proclaim justice [*krisis*] to the Gentiles…
> He will not break a bruised reed
> Or quench a smoldering wick
> Until he brings justice [*krisis*] to victory. (12:17-20)

5. When the biblical writers speak of justice and injustice, it is almost always social (systemic) justice and injustice that they have in mind

That is, justice and injustice in the laws and social practices of Israel. When condemning injustice, they seldom mention individual wrongdoers. The prophet Micah is typical:

> The official and the judge ask for a bribe,
> and the powerful dictate what they desire;
> thus they pervert justice. (7:1)

6. No mention of names: A striking feature of what the biblical writers say about social justice and injustice in Israel is their emphasis on the condition of the widows, the orphans, the sojourners, and the impoverished – call them *the quartet of the vulnerable*.

So striking is this that one is compelled to ask “Why? What does it mean?”

A number of South American theologians, writing in the 60s and 70s of the last century, suggested that the emphasis on the quartet of the vulnerable has theological significance; it is, they said, an indication of what they called “God’s preferential option for the poor.”

This suggestion did not sit well with a good many North American Christians: “Doesn’t God love everybody alike, rich as well as poor?” The answer, surely, is yes; God loves all those who bear God’s image, rich and poor alike. But why then is it the case, as it clearly is in the biblical testimony, that God has a preferential option for the poor – or more precisely, for the vulnerable?

Nowhere in Plato’s long dialogue about justice in the *Republic* does he make reference to the vulnerable in Athens. The reason he does not is that he is articulating principles of justice for an ideal society. [3] The biblical writers held out the hope for a messianic age; that is the form the ideal society took for them. But when they speak about justice, their eye is seldom on justice in the messianic age; almost always it is on justice and injustice in this present, far-from-ideal, age. They represent God as working to redeem humankind, and the cosmos in general, from fallenness, and as calling us to share in this cause.

Those who seek the undoing of social injustice must set priorities. No doubt the wealthy and the powerful in Israel were sometimes victims of injustice, as they are in our present-day society – victims of *episodes* of injustice. The injustice experienced by the widows, the orphans, the sojourners, and the impoverished in ancient Israel was not *episodes* of injustice but *the daily condition* of injustice. It’s because the biblical God is a redeeming God that there is, in God, a preferential option for the vulnerable – an option that we are to imitate.

The vulnerable today include many more than the biblical quartet – prisoners, for example. In his response, Terry Halliday forcefully reminds us that they also include refugees and asylum seekers. I write these words two weeks after Russia invaded Ukraine. Today’s edition of the *New York Times* reports that already more than 2 million Ukrainians have fled as refugees to neighboring countries.

7. In the biblical understanding of justice, securing justice in society is central to the God-given task of government.

The opening verses of Psalm 72 present a picture of the good king.

> Give the king your justice, O God,
> and your doing right to the king’s son.
> May he judge your people rightly,
> and your poor with justice….
> May he defend the cause of the poor of the people,
> give deliverance to the needy and crush the oppressor. [4]

In the thirteenth chapter of his letter to the Romans, Paul repeats this understanding of the task of government, though less expansively: “the governing authority. . . is God’s servant for your good. . . . It is

the servant of God to execute wrath on the wrongdoer."

In his book *Republican Theology: The Civil Religion of American Evangelicals,* Benjamin T. Lynerd shows, with impressive documentation, that over the past century the dominant view among American evangelicals concerning the task of government was that its main task is to secure individual liberty. In the writings that he quotes, there is rarely any mention of justice. This is a sharp departure from the biblical understanding. Securing justice does often require securing individual liberty; but they are not the same. Liberty without justice is freedom for the lions and eagles of the world to seek their prey.

8. In the biblical understanding of justice, to worship God is to render to God what is due God – to render to God what justice requires.

The psalmist says:

> Ascribe to the Lord, O families of peoples,
> ascribe to the Lord glory and honor.
> Ascribe to the Lord the glory due his name. (96:7-8)

And in another passage:

> Praise is due to you, O God in Zion,
> and to you shall vows be performed. (65:1)

This theme is echoed in many Christian liturgies. To cite just one example: in The Holy Eucharist: Rite One of the Episcopal Church, the Great Thanksgiving begins with the following words, spoken by the celebrant:

> It is very meet, right, and our bounden duty, that we should at all times, and in all places,
> give thanks unto Thee, O Lord, holy Father, almighty everlasting God. [5]

As I mentioned at the beginning of this section, some of the features salient in the biblical understanding of justice can also be found in other understandings of justice. But nowhere else is there anything like the complete biblical understanding. It is unique.

Justice in context

Several scholars expressed uneasiness with the Theology Brief's almost exclusive focus on justice; they heard in it a *justice-is-everything* tone. They argued that justice is but one component in a good and moral life, an indispensable component, indeed, but not the whole, and that it is important to locate it within that larger context. (See especially the responses by Nicholas Aroney and Patrick Parkinson.)

These respondents are correct in noting that, apart from a short discussion of the relation between justice and love, the brief did not place justice within the context of the good and moral life generally; they are also correct in claiming that not doing so runs the danger of encouraging a myopic concern with justice. So

let me now make some remarks on the relation of justice to other components of the good and moral life.

Ulpian's formula, from which I took my lead, was a definition of the virtue *justitia: justitia* is a steady and enduring will to render to each their *jus.* In my brief I focused my attention not on that virtue but on the action which the virtue actualizes. I asked, what constitutes *rendering to each their jus*? What constitutes *acting justly*? The action has explanatory priority over the virtue: to explain what the virtue is, one has to know what the action is.

The virtue is obviously important, however. If there were not, in the members of society, the virtue of a "steady and enduring will" to treat each other justly, just action would be, at best, a haphazard and fortuitous thing.

The English term "justice," unlike the Latin *jusititia,* does not name a virtue. It's the term "being just" that names the virtue. For justice to prevail in society, the virtue of *being just* must prevail.

The virtue of being just cannot be exercised all by itself, however; it requires the exercise of a range of other virtues. It requires, above all, a certain kind of humility, a humility which takes the form of decentering, of being attentive to the dignity, the praiseworthiness, of the other person. Typically such decentering requires a willingness to listen to the other person, to listen to their story. Being just also requires the virtues of empathy and anger: empathy with victims of injustice, anger at the perpetrators. And very often it requires the virtue of having overcome prejudices of various sorts: prejudice against members of another race, against members of another religion, against members of another political party, against speakers of another language, against persons who are obese, on and on.

Not only does exercising the virtue of being just require the exercise of many other virtues. Sometimes just action *consists of* exercising some other virtue. For example, sometimes treating the other person justly requires telling them the truth; the person who is not in the habit of truth-telling will often act unjustly. Sometimes treating the other person justly does not just *require* listening to them but *consists of* listening to them.

And sometimes the exercise of some other virtue, or the pursuit of some other value, requires exercising the virtue of being just. Friendship is a good example of the point. Though friendship, obviously, does not consist of treating each other justly it certainly doing so.

The example of friendship suggests a general point. Not only is it important to note the intricate intertwinement of being just and acting justly with other virtues and values. Acting justly and being treated justly are but two of the innumerable multiplicity of things that are of value in our human existence: a home of one's own, surroundings in which one can take aesthetic delight, awe before the unfathomable intricacy and immensity of God's creation, gratitude. The list has no end.

Uneasiness with thought and talk about rights

Some of the respondents expressed uneasiness with the prominence of rights in my discussion. In my brief I observed that uneasiness with, and hostility toward, rights-talk are widespread, and I addressed what I saw as the root of this uneasiness or hostility. This is part of what I wrote:

> This hostility has many roots, the most common being, so it appears to me, the conviction that rights-talk is made to order for expressing one of the most pervasive and malignant diseases of modern society, namely, the mentality of possessive individualism. It's made to order, so it is said, for an "entitlement society," such as ours in which individuals place themselves at the center of the moral universe, focusing on their own entitlements to the neglect of the cultivation of those virtues that are indispensable for the flourishing of our lives together. . . . The theologian Joan Lockwood O'Donovan puts the point crisply: "the modern liberal concept of rights belongs to the socially atomistic and disintegrative philosophy of possessive individualism."

I went on to argue that the preoccupation of the possessive individualist with claiming his own rights is an abuse of rights-talk. When I am in the presence of another, not only do I have rights *vis-à-vis* the other person; she has rights *vis-a-vis* me. All components of our moral vocabulary are subject to abuse. When confronted with such abuse, one does not argue for eliminating that component of our moral vocabulary; one does what one can to combat the abuse.

I now think that this response, though not mistaken, is not entirely adequate. It appears to me that not all of those who feel uneasy with, or hostile to, rights-talk, have their eye on the malign influence of the "philosophy of possessive individualism." They do not all have their eye on the abuse of rights-talk by possessive individualists. Rather, so it appears to me, a good many of them, when thinking of rights, think primarily of *claiming rights*; and they are convinced that claiming rights – whether the claim is made by oneself or another person – is incompatible with, and intrinsically inferior morally to, the "being-for-the-other" (Karl Barth's words) which Jesus enjoined in his second love-command – and also incompatible with, and morally inferior to, attending to one's responsibilities toward the other.

Part of my response to this analysis is similar to my response to the previous analysis: just as it is a mistake to focus just on the abuse of rights-talk by possessive individualists, so also it is a mistake, when thinking of rights, to think primarily of *claiming* rights. Rights are not only to be *claimed,* they are also to be *acknowledged*. Rights-talk is not only for claiming rights but also for acknowledging rights.

Let me take the argument a step further. Jesus' second love-command was not "Love your neighbor." It was "Love your neighbor as yourself" (quoting Leviticus 19:18). It was, to adapt Barth, "Be for the other as you are for yourself." The command implies the moral propriety of well-ordered self-regard – the moral propriety of well-ordered self-love. Speaking up for one's own rights, claiming them, out of well-ordered self-regard, is not intrinsically inferior morally to acknowledging the rights of others.

It’s true that to forego claiming certain of one’s rights, to forego speaking up for them, is sometimes the right thing to do. But the person who thinks she has no right to claim her own rights – worse yet, the person who thinks she has no rights – is morally defective in a deep and profound way, perhaps through no fault of her own. She fails to recognize that she too has dignity, that she too has worth that calls to be honored. In my brief I remarked that all the great social justice movements of the twentieth century employed the language of rights. In doing so, the members of those movements were giving voice to their recognition that they too had dignity.

Of course, it remains the case that not all rights-claims are true; a good many are false. But the same is the case for duty-claims; many of those too are false. The husband who tells his abused wife that she has a duty to submit is speaking falsehood.

Amplifying what was said concerning the nature of rights and their relation to duties

Responding to some questions raised about rights requires that I expand on what I said in the brief about the nature of rights and the relation of rights to duties.

A number of scholars noted that rights sometimes conflict, and asked what we are to make of that. Some writers on these matters have suggested that this is a reason for rejecting the very idea of rights; the idea, they say, is incoherent.

Obligations conflict in the same way that rights conflict. In Plato’s *Republic*, Socrates offers the example of someone who has promised to return in due time a weapon that he borrowed from a friend. The friend, in the meantime, has gone mad and is likely to use the weapon to harm himself or others. The borrower has an obligation to keep his promise; but he also has an obligation not to put a dangerous weapon in the hands of someone who is likely to use it to harm someone. Conflicting obligations.

The standard way in which philosophers deal with such conflicts is by distinguishing between *prima facie* duties and all-things-considered duties – the latter typically called *ultima facie* or *pro tanto* duties. Prima facie duties do, indeed, often conflict. But it is the view of most philosophers that all-things-considered duties do not conflict. If one considers just the promise the person made to return the weapon to his friend, he ought to do that; that is his prima facie duty. If one considers just putting a dangerous weapon in the hands of someone who has lost his sanity, he ought not to do that; that is his prima facie duty. Two conflicting prima facie duties or obligations. But if one asks what he ought to do *all things considered*, it seems clear that all-things-considered he ought to prevent his friend from harming himself or others by not keeping his promise to return the weapon. That is his ultima facie obligation. No conflict.

Along the same lines, we should distinguish *prima facie* rights from *ultima facie* (*pro tanto*) rights. If we consider just the promise made, the friend has a prima face right to the borrower keeping his promise by returning the weapon. If we consider just putting a dangerous weapon in the hands of someone who has

gone insane, the friend has a prima facie right to the borrower not putting a dangerous weapon in his hands. Two conflicting prima facie rights. But all things considered, surely the friend has a right to the borrower breaking his promise and not putting a dangerous weapon in his hands. That is his ultima facie right. No conflict.

From these observations about the nature of rights let's move on to some points about the relation of rights to duties. In my brief, I affirmed a principle of correlation between rights and duties (obligations). Here is how I stated the principle: if you have a right to my treating you a certain way, then I have an obligation to treat you that way, and conversely.

This way of stating the principle fails to take account of third-party duties and rights. Rather than its being my duty to treat you a certain way, it may be my duty to you to treat Malchus a certain way. Correspondingly, rather than your having a right to my treating you a certain way, you may have a right to my treating Malchus a certain way. Taking account of third-party duties and rights, the way to state the principle of correlatives is this: If I have a duty to you to treat X a certain way, then you have a right to my treating X that way, and conversely.

An objection one sometimes hears to the existence of so-called *benefit rights* is that often it is impossible to specify a party responsible for honoring the right. Suppose, for example, that in a well-to-do modern society everybody has a right to adequate health care. If so, who is responsible for honoring that right? The question appears to have no answer. The principle of correlatives appears not to hold. Permission rights are different. If I have a right to assemble with others for religious worship, then *everybody* has a duty to permit me to assemble.

Here, too, thinking about duties helps us to get clear about rights. Immanuel Kant introduced the idea of what he called *imperfect* duties. An imperfect duty is a duty to treat *someone or other* a certain way without there being anyone such that it is one's duty to treat *them* that way. Many duties of charity are like that. I may have a duty to extend a certain kind of charity to *someone or other* without there being anyone such that it is my duty to extend that charity to *them.* I am free to choose.

I suggest that we think of rights along the same lines. Just as there are imperfect duties, so too there are imperfect rights: the right to be treated a certain way by *someone or other* without there being anyone such that one has the right to be treated that way by *them*. Again, charity offers familiar examples. The beggar has a right to someone or other alleviating his need; if no one did, he would be wronged. But there may be no one such that he has the right to *that* person alleviating his need. The right to adequate health care is like that – a genuine right, albeit an imperfect right.

Return to the principle of correlatives between duties and rights. With that principle in mind, a natural question to ask concerning my analysis of justice – and a question some respondents did ask – is this: if duties and rights really are correlated in the way indicated, why not work out an account of justice in terms of duties rather than in terms of rights?

Let's make sure that we understand the proposal. In my Theology Brief, I devoted considerable space to considering why the recognition of rights is important – what would be lost if we never thought or talked in terms of rights. I argued that a number of things of great importance would be lost. The proposal we are now considering is not that we eliminate thinking and speaking about rights. The proposal is rather that we understand justice in terms of duties rather than in terms of rights.

It's a question I have never previously considered, and I don't feel entirely satisfied with my answer. I think it is the influence on me, and on most other writers in the West, of Ulpian's formula, transmitted to us by way of Justinian's *Digest.* Ulpian did not explain *justitia* as the steady and enduring will to treat others as *one ought* to treat them. He explained *justitia* as the steady and enduring will to treat others as *they* have *a right* to be treated. *Justitia* is explained not in terms of *an agent's obligations* but in terms of *a recipient's rights.* The Latin pair, *justitia* and *jus,* made this formula compelling.

We have all followed in Ulpian's footsteps, connecting justice to rights rather than to obligations, doing so in spite of the principle of correlatives. I don't know what a theory of justice developed in terms of duties rather than rights would look like. Perhaps not much different. Possibly quite different.

A recent publication on the history of the idea of natural rights

An important, recently published, book directly relevant to our discussion is *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition,* by the legal historian John Witte. [6] In my brief I wrote that it is commonly said, by secular and Christian writers alike, that "the idea of natural rights was devised by the secular individualist philosophers of the Enlightenment, and that it continues to carry the DNA of its origins." Secular writers who tell this story about origins typically praise the idea on account of its origins; Christian writers who tell the story invariably condemn the idea for the same reason. I went on to note that "the medieval intellectual historian, Brian Tierney, showed decisively in his 1997 publication, *The Idea of Natural Rights,* that this historical clam is mistaken. He shows that the canon lawyers of the 12th century were explicitly employing the idea of natural rights."

I predict that *The Blessings of Liberty* will prove to be the decisive treatment of the matter. Based on a lifetime of scholarship, Witte goes far beyond Tierney's focus on the medieval period to tell the story of human rights and religious freedom from their earliest appearance in the Western legal tradition up to the present. [7] Summarizing his treatment of the early modern period, Witte writes, "early modern Protestant theologians and jurists on both sides of the Atlantic expounded complex theories of natural law and natural rights" (76). And summarizing his opening discussion of Roman and medieval jurisprudence he writes, "For Western jurists and judges, rights-talk was a common way to define and defend the law's protection, support, limitations, and entitlements of persons and groups in society as well as the proper relationships between political and other authorities and their respective subjects. For Western lawyers, subjective rights were not a modern invention. . . . Lawyers since classical Roman and medieval times used rights ideas and terms. . . " (72). *The Blessings of Liberty* should put to rest once and for all the claim that

the idea of natural rights was an invention of the secular philosophers of the Enlightenment.

In Conclusion

In my 2019 publication, *Religion in the University*, [8] I defend the thesis, against a number of objections, that religious voices have a place in the modern university. The argument remains purely abstract, of course, if it turns out that religious people have nothing significant to say on matters relevant to the academy, or if they remain silent because they feel insecure or intimidated. The project of the Global Faculty Initiative is to encourage and enhance the Christian voice on topics that are, or should be, of concern to the academy. Among those topics is justice, both within the academy and outside.

The Theology Brief on justice that I wrote for the GFI evoked responses that were, as I wrote in the opening sentence of this essay, “perceptive, inspiring, gratifying – and in some cases surprising.” I have learned from them about the many ways in which Christian scholars are already thinking and speaking about justice, and seeking to act justly. Responding to their probing questions has been a gratifying experience.

End Notes

[1] Those who argue that there are no natural rights typically do not think of them as non-conferred rights – which I judge is how we ought to think of them. They think of them, for example, as rights that we would have in a Lockean state of nature. They then argue that there can be no such thing as a state of nature.

[2] In his response titled “The Justice of God,” Brendan Case very perceptively analyses some puzzles concerning the justice of God.
The Hebrew Bible/ Old Testament book of Joshua is often cited as a prime example of the injustice of Israel’s God. In my essay “Reading Joshua” I argued that when the genre of Joshua is rightly understood, the book is not a (purported) record of God’s instructing Israel to engage in the genocide of the Palestinians. (The essay is published in M. Bergmann, M.J. Murray, and M.C. Rea (eds.) *The Moral Character of the God of Abraham* [Oxford U. Press, 2011].)

[3] The highly influential book of the contemporary political philosopher John Rawls, *A Theory of Justice,* is also a theory of justice for an ideal society.

[4] Where I have “doing right” and “rightly,” the NRSV has “righteousness.” The prayer is not that the king and his son have the character trait of righteousness but that they do the right thing.

[5] Many additional examples can be found in the Eucharistic prayers collected by Lucien Deiss in *The Springtime of the Liturgy* and in those collected by Jasper and Cuming in *Prayers of the Eucharist: Early and Reformed.*

[6] Cambridge: Cambridge University Press, 2022.

[7] What Witte calls “human rights” are what I have been calling “natural rights.”

[8] New Haven: Yale University Press.

For more information

www.globalfacultyinitiative.net