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Theology Brief

JUSTICE AND RIGHTS

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How may Christian academics engage justice and rights in their scholarship and the academy? God's love of justice recurs repeatedly in the Old Testament and it is integral to the teaching of Jesus and the Apostles. Consistent with this teaching, I distinguish between *first order justice*, where agents, individuals and institutions, act justly in their ordinary affairs; and *second order justice,* which concerns the laws, sanctions and systems that secure first-order justice. I focus on first-order justice as structurally basic. First order justice is best understood as each person or institution rendering to the other what is their right or what is due to them. A right is a morally legitimate claim to something, an entitlement. There are *conferred* rights, such as those attached to a position or a promise or by law or social practice; and *non-conferred* rights grounded in the excellence (goodness, worth, dignity, praise-worthiness) of the rights-bearer, such as natural rights and human rights. I show why the recognition of rights-talk is important and how it has an intrinsic connection with duties and obligations. First-order justice should play a pervasive role in the university. On the one hand, since the university is an intensively interactive institution, it is imperative to be alert to justice and injustice, including racism and sexism, in the fine texture of teaching, research, academic administration and collegial interactions. Justice pertains also to relations of scholars and the university with funding agencies, governments, social institutions and publics. On the other hand, considerations of justice belong in the subject matter of most disciplines, in scholarly agendas, methods and theory. I conclude with questions every scholar might ask about the salience of justice and rights for their own research and scholarship and for the character of the academic institutions in which we serve.

My project in this essay is to bring to light the role of justice for the academy and the importance of being alert to that role. In order to do that, it will be necessary first to discuss the nature and importance of

justice as such. [1]

Justice is fundamental in Christian Scripture. Over and over, dozens of times, the writers of the Old Testament declare God's love of justice. "I the Lord love justice" (61:8), writes the prophet Isaiah. And over and over the writers set forth God's injunction to Israel to join God in loving justice. 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, to love kindness,
> and to walk humbly with your God. (6:8)

An important point to note about what the Old Testament writers say about justice and injustice in ancient Israel is that almost always it is social (systemic) justice that they urge and social injustice that that they condemn – that is, justice and injustice in the laws and social practices of Israel. When condemning injustice, they seldom name names of individual wrongdoers. Another important point to note about justice in the Old Testament is that, over and over, the writers connect justice with shalom. 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 oneself. Insofar as one is a victim of injustice, one is obviously not flourishing in that respect. Justice is thus intrinsic to shalom. However, one might be justly treated by all and yet not be flourishing; one might be seriously ill, or the victim of widespread famine. Justice is, as it were, the ground floor of shalom

The claim has rather often been made by Christian theologians and ethicists that, though justice is indeed prominent in the Old Testament, in the New Testament, justice has been superseded by love. Jesus, it is noted, issued a love-command; he did not issue a justice-command. The classic statement of this position is the 1930s publication, *Agape and Eros,* by the Swedish Lutheran bishop Anders Nygren. What this position implies, of course, is a dispensationalist understanding of God's work in history.

I hold that this is a serious misreading of the New Testament. Let's look at just two of the many relevant New Testament passages. In the Gospel of Luke we read 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 had read. He was given the scroll of the prophet Isaiah, unrolled it, and, on Luke's narration, 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's favor.

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 comment on what he had read. Jesus then said, “Today this scripture has been fulfilled in your hearing.”

What Luke reports Jesus as reading is an adaptation of the opening verses of Isaiah 61, which read as follows:

> The Spirit of the Lord God is upon me,
> because the Lord has anointed me;
> he has sent me to bring good news to the oppressed,
> to bind up the brokenhearted,
> to proclaim liberty to the captives,
> and release to the prisoners;
> to proclaim the year of the Lord’s favor,
> and the day of vengeance of our God.

The passage is a close parallel of a passage in an earlier chapter in which the prophet spoke explicitly of God’s demand for justice:

> Is not this 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? (Isaiah 58:6-7).

The import of Jesus’ declaration, “Today this scripture has been fulfilled in your hearing,” is unmistakable: Jesus identified himself as the one anointed by God to proclaim to the poor, the captives, the oppressed, the good news of the inauguration in his person of “the year of the Lord’s favor” (the Year of Jubilee), when justice will reign.

In Matthew’s gospel, Jesus has already been teaching and healing for some time when the writer intrudes himself into the story he has been telling 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. (Matthew12:17-20)

Why the de-justicizing interpretation of the New Testament

Why is it that, in spite of the passages I have quoted, and a good many others that could be cited as well, it is rather often claimed that justice has been superseded in the New Testament by love? Let me offer a few suggestions.

In many writers, perhaps most, what accounts for their supersessionist interpretation is primarily their understanding of the meaning of "love" (*agapê)* in the New Testament. Agape is understood as gratuitous benevolence: seeking the good of the other person out of sheer benevolence, rather than because justice (or anything else) requires it. This was Nygren's interpretation of New Testament *agapê,* as it was that of the American theologian Reinhold Niebuhr throughout his career. [2]

Intrinsic to this way of thinking of *agapê* is the claim, or assumption, that justice and agapic love are incompatible: if one acts out of agapic love, one does not act as one does because justice requires it; and conversely: if one acts as one does because justice requires it, one does not act out of agapic love.

Is this interpretation of *agapê* in the New Testament correct? Might it not be the case that some actions are instances of both agapic love and acting justly? I hold that that is indeed the case. The matter deserves a lengthy discussion; here let me introduce just one consideration.

All three synoptic gospels report the episode in which Jesus cited the two love commands (Matthew 22: 34-40, Mark 12: 28-34, Luke 10: 25-37). In Matthew's account of the episode, the Pharisees learned that the Sadducees had been unsuccessful in their attempt to trap Jesus, so they decided to see what they could do.

> One of them, a lawyer, asked him a question to test him: 'Teacher, which commandment in the law is the greatest?'

Jesus replied:

> "You shall love the Lord your God with all your heart, and with all your soul, and with all your mind." This is the greatest and first commandment. And a second is like it: "You shall love your neighbor as yourself." On these two commandments hang all the law and the prophets.

Matthew reports no response on the part of the lawyer or his Pharisee colleagues. Jesus got it right!

The first love command is to be found in Deuteronomy 6:5; the second, in Leviticus 19:18. Nothing in the context in which the commands occur in the gospels helps us in determining the meaning of *agapê.* Perhaps the context in which they occur in the Torah does help. The second love command is the one relevant to our purposes here.

In Leviticus, the command to love one's neighbor as oneself concludes a long list of specific injunctions to

Israel as to how it is to live. Jesus and his interlocutors did not regard the love-command as just one among others on that long list. It is “the greatest.” And not just the greatest. Its function in the Leviticus passage is to sum up the preceding injunctions: “In short, love your neighbor as yourself.”

For our purposes, what’s important to note is that, among the long list of injunctions summed up by the command to love one’s neighbor as oneself, are injunctions to act justly: “You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great; with justice you shall judge your neighbor” (19:15).

The conclusion is inescapable: acting justly is not incompatible with acting out of agapic love; it’s an example of such love. Love and justice must be understood in such a way that love incorporates justice. Later I will suggest how to understand justice so as to fit this requirement. As for how love should be understood: I suggest that love should be understood not as gratuitous benevolence that pays no attention to what justice requires but as *care* – not care *for* but care *about.* When I care about you, I seek to promote your good, including the good of your being treated by myself and others as justice requires. Agapic love, understood as care, incorporates acting justly. Its comprehensive goal is shalom.

A matter of translation

The adjective *dikaios* and the noun *dikaiosunê* occur hundreds of times in the Greek text of the New Testament. When those same words occur in the classical Greek writers – Plato, Aristotle, etc. – they are almost always translated into English as “just” and “justice” respectively. When they occur in commonly used English translations of the Bible, they are almost always translated as “righteous” and “righteousness.”

I take it as obvious that, in present-day idiomatic English, “righteousness” is not a synonym of “justice,” nor is “righteous” a synonym of “just.” “Righteousness” denotes a certain trait of personal character. In everyday speech we don’t often, nowadays, describe a person as *righteous*; when we do, what we suggest is that the person in question is scrupulously concerned with his or her personal rectitude. Justice, by contrast, is an inter-personal normative state of affairs, specifically, the state of affairs that obtains when people treat each other justly. And a just person is one who habitually treats his or her fellows justly.

When we look at the contexts within which the terms *dikaios* and *dikaiosunê* occur in the Greek New Testament, we have to conclude that the reference is seldom to the interior character trait of righteousness. Almost always there is a reference or allusion to action – sometimes, to *just action,* sometimes, less precisely, to *right action*. Let’s look at just two occurrences of the terms, out of hundreds, and judge, in the light of their context, how they are best translated; one doesn’t have to know Greek to do this. [3] I will use the NRSV translation.

In the Beatitudes as reported in Matthew we read, “Blessed are those who hunger and thirst for righteousness, for they will be filled” (5:6). The Greek word translated as “righteousness” is, again,

dikaiosunê. This translation strikes me as strange. Does one hunger and thirst for a certain character trait? *Striving* for righteousness, for personal rectitude, that makes sense. But *hungering and thirsting for it*? One wants to say: "Don't just hunger and thirst for rectitude; act uprightly." By contrast: whether justice is present in society is mostly out of one's control; it depends on what others are doing. That's why one hungers and thirsts for justice. Jesus is blessing those who hunger and thirst for justice in society.

In Romans 1:17, Paul states the main theme of the letter that follows: The gospel "is the power of God for salvation to everyone who has faith, to the Jew first and also to the Greek. For in it the *dikaiosunê* of God is revealed through faith for faith; as it is written, 'The one who is *dikaios* will live by faith'." In most commonly used translations, *dikaiosunê* is translated as "righteousness" and *dikaios* as righteous. But when we read the letter that follows, what we learn is that God offers justification impartially to Jews and Greeks alike. "God shows no partiality" (2:11). To distribute a benefit impartially is to act justly. The main theme of Romans is not about God righteousness – whatever that might be – but about God's justice. [4]

Two types of justice

In one of the Psalms we read:

> Happy are those who observe justice,
> who act rightly at all times (106:3)

In the law code delivered by Moses to Israel, and recorded in the Old Testament book of Deuteronomy, we find this passage:

> You shall appoint judges and officials throughout your tribes, in all your towns that the Lord your God is giving you, and they shall render just decisions for the people. You must not distort justice, you must not show partiality; and you must not accept bribes, for a bribe blinds the eyes of the wise and subverts the cause of those who are in the right. Justice, and only justice, you shall pursue. (16:18-20)

Moses is clearly referring to a fundamentally different type of justice from that to which the Psalmist is referring. The Psalmist is referring to justice in how we treat others in our ordinary affairs – justice in how people "conduct their affairs." "Happy are those who observe justice…at all times." Moses, by contrast, is referring to justice in judicial proceedings – the type of justice that becomes relevant when someone has not "conduct[ed] their affairs with justice." [5]

That there are these two fundamentally different types of justice was noted already by Aristotle. The traditional terms for them are "distributive justice" and "retributive justice.' I think neither term is satisfactory. Let me here explain here why I think the term "distributive justice" is not satisfactory; a bit later I will explain why the term "retributive justice" is not.

Aristotle held that justice of both types consists of the equitable (fair) distribution of benefits and/or

burdens; injustice, of an inequitable distribution. As one would expect, what constitutes equity of distribution has been the subject of extended discussions among philosophers. Aristotle's idea, in the words of the contemporary American political philosopher Joel Feinberg, was that "justice requires that relevantly similar cases be treated similarly, and relevantly dissimilar cases be treated dissimilarly in direct proportion to the relevant differences between them." [6] I have elsewhere argued that there is no one thing, neither equity nor anything else, that accounts for what makes distributions in general just. Distributions are just (and unjust) for a variety of different reasons.

Be that as it may, the reason I hold that the term "distributive justice" should be rejected for that type of justice which consists of agents acting justly in their ordinary affairs is that, though such justice is often to be located in how benefits and/or burdens are distributed, that is not always the case. Rape is a profound violation of justice, a profound wrong. But what fundamentally makes it wrong is not that benefits and burdens have been mal-distributed -- though they have been. What makes it wrong is that the victim has been violated, treated with indignity. Another example: suppose the government secretly invades my privacy without warrant. It has violated justice, wronged me. But there has been no distribution of benefits or burdens, and hence no *mal*-distribution.

I propose calling the type of justice that consists of agents acting justly in their ordinary affairs, *first-order* justice: universities treating their support staff justly, teachers and students treating each other justly, banks treating justly people of color who are seeking loans, etc. Justice in the distribution of benefits and/or burdens is one among other forms of first-order justice.

First-order justice includes both systemic justice and "one off" cases of just action. And the term "agents," in the formula for first-order justice that I offered above, must be understood as including not only individuals but also social entities such as institutions, organizations, groups, and the like. There is justice and injustice in the relation between banks and corporations, between a coal-burning plant and an asthmatic child in the area, between a Syrian refugee and an affluent European country, between health providers and patients, between states at the center of geopolitics and tiny Pacific island states – on and on. It's because social entities can act unjustly and be treated unjustly that they can sue and be sued. [7]

When there has been a violation of first-order justice, there are just and unjust ways of responding to that violation; I shall call just ways of responding, *second-order justice*. Punishment is a common form of second-order justice; but there are many other forms as well, such as fines, restitution, censure, banishment, reprimands, pardons, and forgiveness. A type of second-order justice that has become popular in the last fifty years or so is so-called *restorative justice*, this typically including the wrongdoer acknowledging that he did wrong and apologizing, the victim or their representative offering forgiveness in response to the apology, and restitution by the wrongdoer when that is possible

It is my impression that many people, when they hear the word "justice," think primarily, if not exclusively, of second-order justice; they think of police, court proceedings, punishment, prisons, and the like. Second-order justice is obviously of fundamental importance – not only for its own sake but also because, given

our human proclivity for wrongdoing, first-order justice cannot flourish without the support of a just and effective system of second-order justice. A just and effective legal system will institute both a system of laws and sanctions aimed at securing first-order justice among individuals and social entities, including justice in how the state treats its citizens, and a system of laws and procedures aimed at securing a just exercise by the state of second-order justice.

Though first-order and second-order justice are intertwined, first-order justice is structurally basic in that, if there were no such things as first-order justice and injustice, there would be no such things as second-order justice and injustice. Given this structural connection between the two types of justice, only if one understands first-order justice can one understand second-order justice. For that reason, I will focus my attention, in what follows, on first-order justice. Much of what I say will apply, however, to second-order justice as well.

Lest my single-minded focus on justice in this essay leave readers with the wrong impression, let me emphasize that loving God above all and one's neighbor as oneself are fundamental; justice is a component of neighbor-love, not an alternative. Furthermore, not only is justice never the only virtue exercised (or not exercised) in our interactions; acting justly *requires* the exercise of other virtues. To name just a few: it requires attentiveness to the worth and dignity of others, it requires empathy with the condition of others, it requires humility.

What is justice?

The biblical writers do not explain what justice is; they assume we understand 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. [8] Christians will, of course, require of a philosophical theory of justice that it be, among other things, compatible with what the biblical writers say about justice – and more than compatible, that it illuminate what they say.

Coming down to us from antiquity are two fundamentally different accounts of what justice is. One comes from Aristotle who, as we saw, explained justice as equity (fairness) in the distribution of benefits and/or burdens. [9] The other comes from the Roman jurist Ulpian (ca. 170-223 CE). Referring to the virtue of being just, Ulpian says that justice (*iustitia*) is a steady and enduring will to render to each his or her *ius* (*suum ius cuique tribuere*).

How should we translate Ulpian's term *ius* into present-day English? A common translation is "right": justice is rendering to each their right. An alternative translation would be "due": justice is rendering to each what is their due. Ulpian's thought is that the virtue of justice (being just) is a steady and enduring will to render to each what is their right, their due. Justice understood as a state of affairs in society consists, correspondingly, of each individual or social entity rendering to each what they have a right to, what is due them.

I have already indicated why Aristotle's account will not do. Not all instances of first-order justice are cases of an equitable distribution of benefits and/or burdens, nor are all instances of injustice cases of an inequitable distribution of benefits and/or burdens. Ulpian seems to me to have gotten it right. All instances of first-order justice are cases of an agent rendering to another what is their right or due; all instances of first-order injustice are cases of an agent not rendering to another their right or due.

But what are rights, and what accounts for agents having the rights they do have? The answer to this question is a subject of deep controversy among philosophers. To the best of my knowledge, all parties agree that a right is a morally legitimate claim to something; rights are entitlements. And as to what accounts for agents having the rights they do have, all parties agree that individuals possess certain rights because of some official position that the person occupies, that individuals and social entities possess other rights because of some speech act directed toward them, such as a promise, and that individuals and social entities possess yet other rights because they have been conferred, by law or social practice, on all individuals or social entities of a certain standing. My right to a monthly Social Security check from the U.S government is an example of this last sort. Rights of this last sort have traditionally been called *positive* rights; rights of the other two sorts have no common name. Let me call rights of all three sorts, *conferred* rights.

However, by no means are all rights conferred. We have some of our rights just by virtue of being the sort of creature that we are – a person needing food, clothes, respect, and so forth—and standing in the sort of relations in which we do stand. So what accounts for the fact that one has a *non-conferred* right to some ways of being treated that would be a good in one's life whereas, to other such ways, one does not have a right? This, in my judgment, is the most difficult and controversial question that a theory of rights has to face.

Begin with the fact that what one has a right to is always a good in one's life, a life-good, never a life-evil. A life-good to which one has a right is, or implies, a way of being treated. That is not always evident on the face of things. My purchase of a ticket gives me the right to a seat on the plane; and that, obviously, is not a way of being treated! However, what's implied by my right to a seat on the plane is that I have a right to the airline officials *permitting* me to take a seat on the plane; and that is a way of being treated. The right to free exercise of one's religion is, similarly, the right to be *permitted* to exercise one's religion freely; it is a *freedom* right, of which there are many others as well: the right to freedom of speech, for example, the right to assemble, to vote, to start a business.

Though that to which one has a right always is, or implies, some life-good of being treated a certain way, the converse is not the case: there are many ways of being treated that would be a good in one's life to which one does not have a right.

A view on the matter that is currently prominent in the literature is that such rights are all either conditions for the enjoyment of, or specifications of, our fundamental non-conferred right to autonomy – that is, our fundamental non-conferred right to form for ourselves a plan of life and to enact that plan. [10] Popular

though this theory is, it has to be rejected. One problem confronting the theory is explaining what that purported non-conferred right to autonomy amounts to. Clearly nobody has the right to do whatever he or she sees fit; so what, then, is that purported right to autonomy? I judge that no autonomy theorist has succeeded in answering this question. But we don't have to read around in the discussions surrounding the nature of autonomy to see that the theory won't do. I trust that everybody reading this essay will agree that to torture imprisoned criminals as a way of punishing them is to wrong them; they have a non-conferred right not to be punished by torture. To employ torture as a method of punishment is to treat them unjustly. But what makes it wrong is not that their autonomy is thereby impaired; their autonomy is already impaired; they are locked up. What's wrong about torturing them, I suggest, is that their dignity as human beings is violated

And in general, it's my view, shared by many and explicit in the UN rights documents, that non-conferred rights are grounded in the excellence (goodness, worth, dignity, praise-worthiness) of the rights-bearer. I have a right to the life-good of being treated a certain way ju8st in case, were I not treated that way, I would be treated in a way that does not befit my worth, my dignity, my praiseworthiness. The philosopher Jean Hampton put it well: A person wrongs another, treats them as they have a right not to be treated, "if and only if (while acting as a responsible agent) she treat him in a way that is objectively…demeaning, that is disrespectful of [that person's] worth." [11]

Two fundamental facts about human beings is that we all have excellence in certain respects and to certain degrees, and that there are ways of treating us that show due respect for some excellence that we possess, and other ways of treating us that do not show due respect. Non-conferred rights are what respect for excellence requires. For example: if an election official rejects my ballot for the irrelevant reason that my signature did not include my middle name whereas my driver's license does, I am not being treated with due respect for my being a duly registered adult citizen of the state of Michigan.

The praiseworthiness that grounds the right to the gold medal of the person who has won the race is an acquired praiseworthiness. But not all rights-grounding excellences are acquired. Some we have on account of some property we naturally possess, such as bearing the image of God, being capable of speech (which grounds one's right to freedom of speech), and being religious (which grounds one's right to free exercise of one's religion). The rights grounded by such excellences have traditionally been called *natural* rights. An important sub-set of natural rights are *human* rights – rights that one has just by virtue of being a human person or human being. [12] An example of an excellence that grounds a natural right that is not a human right is *having exceptional mathematical ability.* This sort of praiseworthiness is not acquired; the right of such a person to due respect for his mathematical ability is, accordingly, a natural right. But it's not a right he has just by virtue of being a human. It's a right he has by virtue of being a particular sort of human; so it's not a human right. Two excellences of human persons that ground genuinely human rights are the capacity to interpret oneself and the reality in which one finds oneself, including interpreting it religiously, and the capacity to perform an action for the reason that one judges it to be good or obligatory (the Kantian tradition singled out this excellence). [13]

Why the recognition of rights is important

It would be a mistake to move on without taking note of the fact that there is hostility in many quarters nowadays to talk about rights, including Christian quarters. 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 their obligations toward others and to the neglect of the cultivation of those virtues that are indispensable for the flourishing of our lives together. It both encourages, and is encouraged by, the possessive individualism of the capitalist economy and the liberal polity. The theologian Joan Lockwood O'Donovan puts the point crisply: "the modern liberal concept of right belongs to the socially atomistic and disintegrative philosophy of possessive individualism." [14] To the best of my knowledge, all those who espouse this critique of rights-thought and rights-talk claim, in support of their interpretation of rights, that the idea of natural rights was devised by the secular individualist philosophers of the Enlightenment. The medieval intellectual historian, Brian Tierney, showed decisively in his 1997 publication, *The Idea of Natural Rights,* that this historical claim is mistaken. He shows that the canon lawyers of the 12th century were explicitly employing the idea. It was from the seedbed of medieval Christendom that the concept of natural rights emerged, not from the 18th century Enlightenment. [15]

No doubt rights-talk is often employed in exactly the way the critic charges. But being employed in this way is not intrinsic to rights-talk; it's an abuse. Every component of our moral vocabulary is subject to abuse. The correct response to the abuse of some moral concept is not to toss out that concept – we would have no moral vocabulary left -- but to do what one can to correct the abuse.

When you and I interact with each other, our normative situation is symmetrical: I have a morally legitimate claim, a right, to being treated in certain ways by you, and you have a morally legitimate claim, a right, to being treated in certain ways by me. One of the respondents to the preview for this essay made this point nicely by saying that we are called to be not only *claimants* for justice but *agents* of justice. The possessive individualist employs the language of rights to focus on the former to the neglect of the latter. It's the mentality of possessive individualism that is the culprit in such cases, not the language of rights. And let's recall a point made earlier: not only do individuals have rights; social entities such as institutions, organizations, and communities also have rights. My bank can wrong me, but I can also wrong my bank.

Here is perhaps a good place to note that there is an intrinsic connection between rights and duties (obligations): if you have a right to my treating you a certain way, then I have an obligation to treat you that way; and conversely. Given this correlation, it turns out that justice, on the Ulpian conception, consists equally in agents honoring the rights of others and in agents honoring their duties to others.

But if rights and duties are correlative in that way, and if rights-talk is often abused in the way indicated, why not eliminate rights-talk from our moral vocabulary and make do with talk about duties, obligations,

and responsibilities?

Certain things of great importance would be lost if we eliminated rights-talk from our moral vocabulary. The moral order has two dimensions, distinct but intimately connected: the *agent-dimension*, the dimension of what we do, where the language of duty, obligation, responsibility, guilt, etc. are for bringing to speech this dimension of the moral order; and the *patient-dimension*, the dimension of how we are done unto, where the language of rights, of what is due one, of being wronged, is for bringing to speech this dimension of the moral order. In some situations, it's important to bring to speech the agent-dimension by speaking of responsibilities; in other situations, it's important to bring to speech the patient-dimension by speaking of rights.

Consider the abused wife. With the language of duty, guilt, etc., she can bring to light the agent-dimension of the situation, the moral significance of what her husband is doing. He is failing in his responsibilities to her, his duties; he is guilty. But she cannot bring to light the patient-dimension of the situation, the moral significance of how she is being done unto. For that, she needs the language of rights: she is being wronged, her rights are being violated, she is not being rendered what is due her.

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: women's rights, labor rights, civil rights, on and on. It was their use of such language that enabled the members of those movements to bring to speech the moral condition of those who were being systemically wronged.

There is something else of great importance that would be lost if we eliminated rights-talk from our moral vocabulary. A feature of rights that I have thus far not taken note of is what is sometimes called their *trumping* force, sometimes, their *peremptory* force. The idea is this: if you have a right to my treating you a certain way, then, no matter how many good things I might bring about by not treating you that way, I am morally required to treat you that way.

The best way to see that rights do indeed have this trumping force is to recall the connection, noted above, between rights and duties. If you have a right to my treating you a certain way, then I have an obligation to treat you that way. But if I have an obligation to treat you that way, then I am morally required to treat you that way, *period,* no matter how many good things I might bring about by not treating you that way. Nothing trumps obligation!

The twentieth century was rife with authoritarian regimes pursuing policies that they claimed to be for the greater good over the long haul: Hitler, Stalin, Pol Pot, the Afrikaners. If we do not have available to us the language of rights to call attention to the fact that, no matter how much good such policies might bring about, they are nonetheless morally unacceptable because they are trampling on the rights of people, we have no way of putting the brakes on such (self-perceived) benevolence. The point is relevant at the micro-level as well. All too often, benevolence is extended in such a way as to violate the dignity of the recipient; it humiliates. We need the recognition and language of rights for putting a brake on paternalistic benevolence.

The question has also been raised: can living creatures other than human beings have rights – animals and plants? When discussing the nature of non-conferred first-order rights I said, with my eye on human beings, that a right one has is always to a way of being treated that would be a good in one's life – a life-good. [16] Animals and plants have lives, and there are goods in their lives -- states and happenings in their lives that contribute to their flourishing in their own distinct way, including ways of being treated by human beings that would be goods in their lives.

At least some of these goods are good in that they contribute to the good of a human being: *instrumental* goods. Perhaps one thing good about your dog is that it provides you with companionship; that's an instrumental good. But are animals *intrinsically* praiseworthy in certain respects, not just instrumentally? My own conviction is that they are. In the opening chapter of the book of *Genesis* we read that at the end of the sixth day of creation, before the creation of human beings on the seventh day, God stood back, contemplated what had been created, and "saw that it was good." [17] Aldo Leopold's *A Sand Country Almanac* [18] is a treasure trove of extraordinarily perceptive celebrations of the praiseworthiness of the wild plants and animals in his surroundings. The question that needs deep reflection, so it seems to me, is not whether animals and plants are intrinsically praiseworthy in certain ways and to certain degrees, but what form due respect for their excellence should take.

Justice in the academy

It is time that we turned our attention to the role of justice in and by and for the academy, and to the importance of being alert to that role. My discussion will be little more than suggestive. My aim is to point to the pervasive role of justice in the academy and to the pervasive presence of injustice.

As an Institution

First-order justice pertains to how agents engage each other, how they interact. Teaching is an inherently interactive activity: teachers and students interacting with each other. Scholarship is inherently interactive: scholars interacting with other scholars in their discipline. Academic administration is inherently interactive: administrators interacting with faculty, students, and staff. Laboratory research is interactive. In all these interactions, we are called to act justly -- and to seek the wellbeing of our fellows and institutions in ways that go beyond what justice requires.

The present-day American academy, for instance, is pervaded by instrumentalist appraisals, that is, appraisals in terms of one or another form of success and failure. What proportion of those who graduate from the college with a pre-med degree are getting into medical school? What proportion of those who graduate from the university with a Ph.D. in English are getting tenure-track positions within a year? How many citations have there been over the past year of publications by members of the philosophy department? Etc. The academy is an arena of success and failure. But it's also an arena of justice and injustice. And it is at least as important to appraise academic life in terms of justice and injustice, in terms

of doing right and being wronged, as it is in terms of success and failure.

In making such appraisals, it's imperative that we not only be alert to the racism, sexism, and sexual abuse that pervade the academy but also to justice and injustice in the fine texture of our interactions. Anyone who has participated in the academy for any length of time has heard about, or witnessed, teachers giving unfair tests, teachers humiliating students to whom they have taken a dislike, senior scholars blackmailing young scholars whom they perceive as potential competitors, faculty badmouthing administrators, administrators being rude and heartless to staff. All such actions, and others like them, are instances of injustice, instances of someone being wronged. Those who have heard the biblical call for justice will themselves refrain from all such actions and will seek to halt the injustices they witness.

Justice pertains not only to interactions within the academy but to interactions of academic institutions, and their faculty and staff, with individuals and social entities outside the academy – scholars interacting with fund-granting entities and publishers, professors functioning as consultants or as public intellectuals, universities interacting with other universities and with state legislatures, policymakers and international organizations, universities interacting with sports associations – the list goes on and on.

Consider research funding and agenda-setting. One of the respondents to the prospectus for this essay wrote, "Research priorities are skewed.....Most studies on global health inequality consider unequal health care and socio-economic conditions but neglect inequality in the production of health knowledge....Conditions common to developed countries garnered more clinical research than those common to less developed countries. Many of the health needs in less developed countries do not attract attention among developed country researchers, who produce the vast majority of global health knowledge."

On Scholarly Frontiers

The relevance to the academy of considerations of justice is not limited, however, to how academic institutions and their members treat each other and how they engage with individuals and social entities outside the academy. In many disciplines and areas of inquiry, considerations of justice belong within the subject-matter of the discipline and a scholar's area of inquiry. This is obvious for those that deal directly with interactions among human beings and social entities, such as economics, political theory, business and management, sociology and social work, health care, gender studies. I say, "This is obvious." Apparently it is not obvious to everyone. In the work of a good many scholars in these disciplines, utilitarian considerations of power, efficiency, cost, preference, etc., are so pervasive that justice is never brought into the picture.

Those who have heard the biblical call for justice will see it as their responsibility to do what they can to resist such reductionism. Those whose specialty is public health will go beyond considerations of cost and efficiency to ask what justice in health care calls for – attending especially to justice for "the little ones." Those whose field is economics will not be content, when appraising the economic health of a society, with

determining its GNP but will ask whether that GNP is justly distributed among members of the society. Those who work in the field of education will explore what it is to teach justly, and will ask whether access to quality education is justly distributed within a school district, a city, a county, a state; they too will attend especially to the fate of “the little ones.” Those who work in political theory and international relations will ask what a just refugee and immigration policy would look like.

History is both similar to, and different from, the disciplines mentioned above: similar in that it deals directly with interactions among individuals and social entities, different in that it does not make policy suggestions. Historians who have heard the biblical call for justice will not write hagiographical Great Men histories in which the flaws of the “great man” are airbrushed away and the fate of “the little people” ignored. They will show human history for what it is: a mixture of the noble and the ignoble, of the just and the unjust. And they will narrate not only the accomplishments of the elite and powerful but also the lives of the ordinary people.

A bit of reflection will make clear that considerations of justice are also relevant in disciplines and areas of inquiry that do not deal directly with interactions among human beings and social entities. Architecture, for example. The focus of architecture is on buildings and the space among buildings. But it is human beings interacting with other human beings who design buildings and spaces, deciding, in doing so, for what use and by whom they will be designed and where they will be located. Considerations of justice pervade the practice of architectural design.

Once buildings have been built, they shape the lives of those who inhabit those buildings and the lives of those who must cope with them. Considerations of justice are relevant at these points as well. Red-lining, zoning, gentrification, and government housing projects, are just four of many examples that could be given of building practices that raise profound issues of justice and injustice. [19]

Engineering and environmental studies raise issues of justice and injustice similar to those raised by architecture. But I must move on. Consider those disciplines and areas of inquiry that deal with arts other than architecture: music, drama, literature, visual art. That considerations of justice are relevant here is even less evident that it was in the case of architecture. But again, a bit of reflection shows that they are.

Gender and colonialist studies of literature have shown, in recent years, that the worlds projected by literary works – how characters are portrayed, how society is pictured, etc. – raise profound issues of justice: gender justice, racial justice, class justice, economic justice, religious justice. Traditional aesthetics, with its exclusive focus on the aesthetic properties of works of art, ignores such issues.

Add to this that works of art are not just “out there” somewhere. They are made, performed, displayed, and engaged by human beings; and the ways in which they are made, performed, displayed, and engaged perforce raise issues of justice and injustice. Is it just, for example, that only the relatively well-to-do can attend performances of the local symphony, the local opera, and the local choral society? Does injustice lurk behind the fact that so few of the composers who people the canon of Western classical music are women and so few, people of color?

Let me formulate the principle toward which we have been moving: considerations of justice are relevant to the subject-matter of any discipline or area of inquiry that deals, in whole or in part, either directly or indirectly, with the interactions of human beings and social entities. And that covers most of the disciplines and areas of study in our colleges and universities. It does not cover theoretical natural science as such; but it does cover how physics, chemistry, biology, computer science, etc., are developed, supported, taught, and applied. Neither does it cover mathematics as such; but it does cover how mathematics is developed, supported, taught, and applied.

When one looks closely at what scholars study and professors teach, one discerns that, outside mathematics and the natural sciences, they all deal, in part at least, directly or indirectly, with interactions among human beings and social entities. Considerations of justice are relevant to all such interactions.

I wrote the initial draft of this section of my essay on the very same day, July 30, 2020, that the final written words of John Lewis, great American civil rights activist and congressman, appeared in *The New York Times* (p. A23). His brief essay included the following words: “I heard the voice of Martin Luther King Jr. on an old radio….He said it is not enough to say it will get better by and by. He said each of us has a moral obligation to stand up, speak up and speak out. When you see something that is not right, you must say something. You must do something.” King was referring to civil society. His words are as applicable to the academy as they are to civil society.

The Scholarly Pursuit of Justice

In this essay I have posed many questions that I could not address on this occasion. I have had to skip lightly over the verdant terrain of justice and its role in the academy. Much more could be said. Let me conclude with questions that every scholar might ask that bring the theology and ethics of justice and rights into the fullness of the academy and scholarship.

Research and Scholarship

Is there any aspect of my current research, writing or academic performance where the question, “Is it just?”, has salience? (e.g., in my scholarly agenda or method or theory I bring to bear on it)

To what extent does my discipline in general, and my research topic in particular, incorporate interactions between people and/ or groups?

- What are the rights of the parties to those interactions (being studied? Doing the studying?)
- What might be the main sources of injustice in those interactions?
- What rules and institutions are in place to implement justice, in the sense of redressing wrongs, or even better preventing those wrongs occurring? Are they adequate to deliver justice?
- How far are the interactions mediated through (academic?) institutions, and what powers do those institutions have over persons? What ensures that they act justly?

Are there just or unjust ways that my scholarly products may be applied or utilized?

Academic institutions

To whom does the scholar in my field owe a duty or obligation? Within the academy and beyond the academy?

Do my academic practices, or do academic practices in my discipline, give all persons their due, affirming and cultivating their excellence (e.g., in acknowledgements, attributions and citations, authorship, mentorship, collegial support, teaching and training)?

In my experience, how just are the core institutions of the academy: recruitment of students and faculty, academic governance, scholarly publishing, academic societies, academic award-giving, academic promotion?

In the interactional spaces of my scholarly field, where is there manifest injustice, i.e., a failure to express love through giving others their due, or enhancing the quality of their “life-worlds?”

Agencies funding research must establish priorities on topics, research institutions, qualifications of researchers, etc. Are you personally cognizant of what you judge to be injustices in the setting of such priorities?

Further reading

Emil Brunner, *Justice and the Social Order* (New York: Harper & Brothers, 1945), for a classic example of a theological account of justice.

John Finnis, *Natural Law and Human Rights* (Oxford: Oxford University Press, 1980), for an attempt to ground human rights in natural law.

Lenn E. Goodman, *Love Thy Neighbor as Thyself* (Oxford: Oxford University Press, 2008), for a discussion from a Jewish perspective of justice in the OT and the command to love one's neighbor as oneself.

James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), for an attempt to explain human rights as conditions and/or specifications of the fundamental right to autonomy.

Timothy Keller, *Generous Justice* (New York: Penguin Books, 2013), for an excellent discussion of all the relevant New Testament passages on justice.

Reinhold Niebuhr, *An Interpretation of Christian Ethics* (New York: Harper & Brothers, 1935), for Niebuhr's development of the position that justice is for situations of conflict and love for situations of harmony.

Anders Nygren, *Agape and Eros*, tr. Philip S. Watson (London: SPCK, 1953), for Nygren's contrast between pagan *eros* and Christian *agape*, and for his influential contention that justice is superseded in the New Testament by *agape.*

Joan Lockwood O'Donovan:

> "The Concept of Rights in Christian Moral Discourse" in Michael Cromartie, ed., *Protestants, Catholics, and Natural Law* (Grand Rapids: Wm. B. Eerdmans Publishing Co., 1997).
> "Natural Law and Perfect Community: Contributions of Christian Platonism to Political Theory," in *Modern Theology* 14, No. 1 (January 1998).

In these essays, O'Donovan argues that the idea of rights that are not conferred is intrinsically expressive of possessive individualism.

Oliver O'Donovan, *Desire of the Nations* (Cambridge: Cambridge University Press, 1996), discusses justice in the Old Testament, contending that it is almost always judicial proceedings that the writers have in view.

Oliver O'Donovan, *The Ways of Judgement* (Grand Rapids: Wm. B. Eerdmans Publ. Co., 2005), for a theological discussion of justice very different from Emil Brunner.

John Rawls, *A Theory of Justice,* rev. ed. (Cambridge: Harvard University Press, 1999), is Rawls' hugely influential attempt to explain justice as equity in the distribution of benefits and/or burdens.

Tierney, Brian, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150-1625* (Atlanta: Scholars Press, 1997) for a detailed defense of the claim that the idea of natural rights can be traced back to the writings of the canon lawyers of the 12th century.

Tuck Richard, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), tells the story of appeals to natural rights in the late Middle Ages and the early Renaissance.

John Witte, *The Reformation of Rights* (Cambridge: Cambridge University Press, 2007), shows in rich detail that the idea of natural rights was employed extensively by the second-generation Reformers and their successors.

Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton U Press, 2008), for a detailed treatment of many questions raised in the Theology Brief, including:

> Chapter 2 on the contest of narratives between those who claim that the idea of natural rights has its origins in 18th C Enlightenment thought and those who claim that it has its origins in the canon lawyers of the 12th century.
> Chapter 5 on translation.
> Part II, “Theory: Having a Right to a Good,” on alternative accounts of non-conferred rights.

Nicholas Wolterstorff, *Justice in Love* (Grand Rapids: Wm. B. Eerdmans Publ. Co., 2011), for a detailed discussion of the relation between justice and love.

Nicholas Wolterstorff, essays in *Hearing the Call,* edited by Mark R. Gornik and Gregory Thompson (Grand Rapids: Wm. B. Eerdmans Publ. Co., 2011):

> “The Moral Significance of Poverty,” on the rights of the poor (pp. 287-296)
> “Has the Cloak Become an Iron Cage: Love, Justice, and Economic Activity,” on justice in the operation of business in the modern world (pp. 372-394).
> “Justice, Not Charity: Social Work Through the Eyes of Faith,” on the role of justice in social work (pp. 395-410).

Nicholas Wolterstorff, *Journey toward Justice* (Grand Rapids: Baker Academic, 2013), on issues of New Testament translation (chapters 14-16) and the NT case against retribution.

Nicholas Wolterstorff, “Why There Is a Natural Right to Religious Freedom,” in Timothy Samuel Shah and Jack Friedman (eds), *Homo Religiosus? Exploring the Roots of Religion and Religious Freedom in Human Experience* (Cambridge: Cambridge University Press, 2018), pp. 195-229, on the right to freedom of religion.

End Notes

[1] A brief preview of this essay attracted around fifty responses from scholars in the Faculty Initiative Convening Panel and Collaborating Network. I thank them for the extraordinarily rich body of suggestions that they offered for topics to be discussed in the essay itself.

[2] I discuss Nygren and Niebuhr extensively in Part One of my *Justice in Love* (Grand Rapids: Wm. B. Eerdmans Publ. Co., 2011).

[3] I discuss this issue of translation extensively in Chapter Five of my *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008) and in chapters 14 through 16 of my *Journey toward Justice* (Grand Rapids: Baker Academic, 2013).

[4] The New Testament scholar, N.T. Wright, in his recently published translation of the New Testament, renders the passage as follows: “The good news [is] God’s power, bringing salvation for everyone who believes – to the Jew first, and also, equally, to the Greek. This is because God’s covenant justice is unveiled in it from faithfulness to faithfulness. As it says in the Bible, ‘the just shall live by faith’.”

[5] Oliver O’Donovan, in *The Desire of the Nations*, contends that “justice” (*mishpat*) in the Old Testament refers almost exclusively to justice in judicial proceedings, and that even when, on rare occasions, it does not refer to justice in judicial proceedings, “it has still not lost touch with the context of litigation.” I engage O’Donovan’s claim on pp. 68-75 of my *Justice: Rights and Wrongs.*

[6] Quoted on p. 209 of my *Justice in Love.* In *Theory of Justice,* John Rawls develops a very different understanding of equity (fairness) from Aristotle’s.

[7] The fact that both individuals and social entities can act and be treated justly and unjustly generates four possibilities: justice and injustice in how social entities treat other social entities, in how social entities treat individuals, in how individuals treat social entities, and in how individuals treat individuals.

[8] Someone might suggest that theologians also offer theories of justice. I think not; what they offer is, rather, a systematic account of how justice fits into God’s “economy.”

[9] This is how John Rawls understands justice, in his much-discussed *Theory of Justice.*

[10] A good example of this line of thought is James Griffin, *Human Rights* (Oxford: Oxford University Press, 2008).

[11] Quoted on p. 296 of my *Justice: Rights and Wrongs.*

[12] By the term “human person” I mean a human being capable of functioning as a person. Tiny infants, those in a coma, those sunk deep into dementia, are human beings but not human persons.

[13] In “Grounding the Rights We Have as Human Persons,” in *Understanding Liberal Democracy* (Oxford: Oxford University Press, 2012), I discuss at length the various excellences of human beings that ground human rights.

[14] *Justice: Rights and Wrongs*, p.51. The theological ethicist Oliver O’Donovan shares this view of rights. I discuss their view of rights in Part I of my *Justice: Rights and Wrongs*, titled “The Archeology of Rights.”

[15] I discuss what I call this “contest of narratives” in Chapter Two of my *Justice: Rights and Wrongs.*

[16] A question that naturally arises here is whether social entities have lives. Literally speaking, they do not. But they can flourish, and there can be enhancements and diminutions in their flourishing, and

that makes it possible for them to have rights.

[17] A full discussion of what Scripture tells us about the intrinsic praiseworthiness of animals and plants would take note of the repeated declaration that God’s glory is revealed in creation.

[18] New York: Ballantine Books, 1970.

[19] The Inner City Christian Federation in Grand Rapids, Michigan, is an excellent example of a private non-profit organization that consistently employs considerations of justice in its renovation and construction of inner-city housing.

For more information

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