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WHY JUSTICE AND RIGHTS MATTER

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A prominent component within the moral culture of our society as a whole is our employment of the language of justice, rights, and being wronged – call it the *justice and rights* component. A good many people employ this component only sparingly; some are determined never to employ it. But if we look at our moral culture in its totality, we see that this is one of its prominent components.¹

It is by no means the whole. In addition to the justice and rights component there is our employment of the language of duty, obligation, responsibility, and guilt—call it the *obligation* component; there is our employment of the language of love, care, charity, benevolence, etc. – call it the *benevolence* component; and there is our employment of the language of virtue – call it the *virtue* component. These various components are inter-related in many ways. Nonetheless they are sufficiently distinct that we can imagine one component being absent while the others remain.

So imagine the justice and rights component disappearing. None of us would any longer think and talk in terms of justice, rights, and being wronged. We would still think and talk in terms of love, charity, and benevolence; we would still think and talk in terms of duty, responsibility, and obligation; we would still think and talk in terms of virtue. But the idea of justice would have disappeared from our minds and the word “justice” and all its grammatical variants from our moral vocabulary. Likewise the ideas of *having a right* and of *being wronged* would have disappeared from our minds and the terms “having a right” and “being wronged,” along with all their synonyms, from our moral vocabulary. Would that matter? Would anything important have been lost? If so, what? That is the question I wish to address in this talk.

Opposition to rights talk

The question is not of mere academic interest. There are a good many voices on the contemporary scene urging that what I have invited you to imagine should in fact take place – namely, the elimination of the justice and rights component of our moral culture. From a number of quarters one

¹ I will interweave references to the conceptuality of justice, rights, being wronged, etc., and references to the language of justice, rights, being wronged, etc. The two are of course not the same. But I will mark the distinction only when it matters.

hears it said, “Get rid of justice-talk.” From a good many more quarters one hears it said, “Get rid of rights-talk.”

I know of no case in which the objectors ask what would be lost if we followed their advice. Their tacit assumption seems to be that nothing of any importance would be lost. But an argument for getting rid of talk about justice and rights that would be decisive if nothing of importance would be lost may be far from decisive if something of great importance would be lost.

For some objections to talk about justice and rights it’s not relevant to consider what would be lost if we took the advice of the objector. Wide swaths of American Christians are hostile to talk about justice because they believe that love has supplanted justice in the New Testament. They note that Jesus did not teach, in the second of the two great commandments, that we are to treat our neighbors justly; he taught that we are to love our neighbors. In his now-classic book, *Agape and Eros*, published in the early 1930’s, the Swedish Lutheran bishop, Anders Nygren, worked out this idea of love supplanting justice in great detail. After interpreting the love that Jesus ascribed to God and enjoined on us with regard to our fellows as the love of purely gratuitous benevolence, Nygren declared that what we learn from Jesus’ words and deeds is that where such “spontaneous love and generosity are found, the order of justice is obsolete and invalidated” (90).

Obviously it’s not relevant for Christians to weigh up the importance of justice-talk over against the claimed evils of such talk in deciding whether to accept Nygren’s conclusion that they should eliminate such talk. What’s relevant instead is to consider whether Nygren’s exegetical argument is sound. This is not the occasion to do that.²

Let me mention the most commonly lodged objections to talk about justice and rights for which it is relevant and important to consider what would be lost. In her essay, “The Need for More than Justice,”³ Annette Baier argues that though justice may still have some place in our moral framework, justice is cold and calculating and should for the most part be replaced by other warmer virtues. “Care,” she says, “is the new buzz-word, . . . a felt concern for the good of others and for community with them. The ‘cold jealous virtue of justice’ (Hume) is found to be too cold, and it is ‘warmer’ more communitarian virtues and social ideals that are being called in to supplement it” (55).

Others oppose rights-talk because of the common use of such talk to make inflated demands on us. I have a brother-in-law who spent his career working for the U.S. Center for Disease Control. He wants nothing to do with rights-talk, and he is very clear on why that is. Over the years he found himself repeatedly confronted by members of international health

² I have done that in my *Justice in Love* (Grand Rapids: Eerdmans Publishing Co., 2011).

³ In Virginia Held, ed., *Justice and Care: Essential Readings in Feminist Ethics* (Boulder, CO: Westview Press, 1995), 48. I thank Eleonore Stump for calling this essay to my attention.

organizations couching their favorite ideals in the language of rights: people living in the tropics have a right to the eradication of malaria, people living in Africa have a right to the elimination of river blindness, and so forth. So far as he could see, the reason they couched their favorite ideals in the language of rights was to suggest that pursuit of the ideal was mandatory, not optional, and to make those realists who judged the ideal to be unattainable feel guilty. He resented such manipulation, and wound up hostile to all talk about rights. Get rid of it.

Yet another objection to rights-talk comes from those who oppose it because it is so often accompanied by what a philosopher friend of mine calls “rights absolutism.” What he has in mind is the all-too-common practice of declaring that some person or group has a certain right, and then refusing to discuss the matter further, brooking no disagreement, treating the claim as absolute, infallible, never allowing for the possibility that the claim might be mistaken

A fourth objection to rights-talk may be the most common of all: it’s said that such talk is made to order for expressing one of the most pervasive and malignant diseases of modern society, namely, the mentality of possessive individualism. The speaker places himself at the center of the moral universe, focusing on his own entitlements to the neglect of his obligations to others and to the neglect of those other-directed virtues that are indispensable to the flourishing of our lives together. The theologian Stanley Hauerwas put the point as follows in one of his essays:

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

A question we will have to consider is whether these objections point to something inherent in rights talk or whether they point to avoidable abuses of rights-talk. Obviously they carry a great deal more weight if they point to something inherent in rights talk than if they point to avoidable abuses. Only with an understanding of justice and rights can we answer that question – and the other question that is the main topic of this talk, does justice matter.

⁴ “On the Right to be Tribal,” *Christian Scholar’s Review* XVI (1987): 238-9.

Understanding justice and rights

There is no consensus on how justice and rights should be understood. I will present my own understanding without, on this occasion, defending it against other understandings.⁵ It is primary justice that I will be talking about, not criminal justice. Criminal justice becomes relevant when there has been a breakdown in primary justice. Much of what I have to say pertains to criminal justice as well as primary justice, but primary justice is my topic.

Among the most famous and influential explanations of justice is that of the ancient Roman jurist, Ulpian: justice, said Ulpian, consists of rendering to each what is his or her *right* – or to use a different translation of Ulpian’s Latin word *iuris*, justice consists of rendering to each what is *due* him or her. I follow Ulpian in this understanding of justice. Justice is present in society insofar as people enjoy what they have a right to.

By itself this doesn’t tell us much, however; now we have to know what a right is. As I understand rights, that to which one has a right is always some way of being treated by one’s fellows that would be a good in one’s life.⁶ I have a right to the life-good of the U.S. government sending me monthly a Social Security check. You have a right to the life-good of my not insulting you. And so forth.

Instead of saying that one has a right to the life-good of being treated a certain way, we could say that one has a *morally legitimate claim* to the life-good of being treated that way. Same idea, different words. Yet another way of saying the same thing is that that way of being treated is *due* one. However one expresses the idea, sociality belongs to the essence of rights. Rights are social relationships. It takes two or more to have a right.

Social relationships come in many different kinds, however. So what kind of social relationship is having a right to the life-good of being treated a certain way?

Having a right to the life-good of being treated a certain way is a *normative* social relationship. But normative social relationships also come in different kinds. So what kind of normative social relationship is a right to being treated a certain way?

Begin by noticing that though a right is always to the life-good of being treated a certain way, the converse is by no means true. There are many ways of being treated that would be a good in one’s life that one does not have a right to. Though it would be a good thing in one’s life if one were treated that way, one does not have a legitimate claim to being treated that way. For example, I think it would be a great good in my life were I to be given a Rembrandt painting to hang on my living room wall, along with a

⁵ I develop and defend this understanding in great detail in my *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008).

⁶ For our purposes here we can safely ignore the limiting case, of a right against oneself.

paid security force to stand guard. But I don't have a *right* to that life-good, a *morally legitimate claim* to it.

The great challenge facing anyone who wants to develop a theory of rights is to explain the difference. Why do we have a right to some ways of being treated that would be a good in our lives and not to other ways of being treated that would be a good in our lives? What accounts for the difference?

The most common view nowadays among political philosophers, law professors, etc., is that rights are grounded in personal autonomy. Personal autonomy is the great intrinsic good; rights are expressions of, and conditions for, autonomy.⁷

It seems to me clear that this suggestion does not work. Suppose that I invade your privacy for prurient reasons and never do anything with what I learn other than savor it by myself. You have been wronged by me. But in no way whatsoever have I impaired your autonomy. Another example of the point is that Alzheimer's patients have rights even though they have no autonomy at all – the right, for example, not to be shot and have their corpses tossed into a dumpster for waste management to haul away.

My own view is that rights are grounded in the worth, the value, the dignity, of human beings. We are all praiseworthy in various respects and for various reasons. We all have worth on account of some achievement on our part, some capacity that we have, some property that we possess, some relationship in which we stand, and so forth. A prominent component in the Christian theological tradition is that we all have dignity on account of bearing the image of God and being someone with whom God desires to be a friend.

Bearing in mind that we all have worth of many sorts and for many reasons, notice next that there are ways of treating a person that befit her worth in some respect and ways of treating her that do not befit her worth in that respect -- ways of treating her that would only befit someone who did not have that worth, ways that treat her with under-respect or disrespect, ways of treating her that demean her. For me to insult you is to demean you.

Now I can say what I take rights to be. Rights are what respect for worth requires. You have a right to the life-good of being treated a certain way by your fellows if their not treating you that way would amount to their treating you with under-respect. If torturing you is incompatible with treating you as befits your worth, then you have a right not to be tortured.

Thus rights represent the interweaving of ways of being treated that enhance our flourishing with ways of being treated that pay due respect to our worth or dignity. If you are a student in a course that I am teaching and

⁷ The most recent extended development of this view is that by James Griffin in *On Human Rights* (Oxford: Oxford University Press, 2008).

you have acquired the worth of being someone who did topnotch work for the course, then you have a right to the life-good of my giving you a grade that befits the worth of your achievement, namely, an A. If I do not give you an A, I do not treat you as befits your worth. And thereby I wrong you, deprive you of your right to an A as befits the worth you have acquired.

The recognition of rights thus requires two kinds of recognition; it requires recognition of those ways of being treated that would contribute to the worth of a human being's life, and it requires recognition of the worth or dignity of the human being himself or herself.

One additional point should be made. Just as the shadow side of duty is guilt, so the shadow side of a right is being wronged. Having a right to the good of being treated a certain way means that one is *wronged* if one is not treated that way.

The relation of rights and duties

Suppose that this way of understanding justice, rights, and being wronged is correct. The question before us then is whether anything important would be lost if we ceased to think and talk in terms of justice, rights, and being wronged. Would anything important be lost if the justice-and-rights component of our moral culture fell into disuse?

Now and then one finds it said that nothing of importance would be lost provided the obligation component remained. If the obligation component remained, then everything that we presently think and say in terms of justice, rights, and being wronged, could be thought and said in terms of duty, responsibility, obligation, and guilt. Instead of saying that I did not treat you as you had a right to be treated, we would say that I did not treat you as I was obligated to treat you. Same fact, different words. These two ways of speaking might have somewhat different rhetorical flavors. But they would pick out and express the same normative relation.

The thought behind this view goes as follows. Rights and obligations are connected by what I call the *Principle of Correlatives*. Whoever Ruth and Mike may be, the Principle of Correlatives says that Ruth has a right to Mike's doing X if and only if Mike has an obligation toward Ruth to do X. Ruth has a right to Mike's ceasing to insult her just in case Mike has an obligation toward Ruth to stop insulting here. It's this Principle of Correlatives that makes it seem plausible to some writers that whatever facts can be picked out and expressed in the language of justice, rights, and being wronged, can equally well be picked out and expressed in the language of duty, responsibility, obligation, and guilt.

The following analogy may help. Suppose that Ruth's house is south of Mike's. It makes no difference whether one uses the sentence "Ruth's house is south of Mike's" to describe the spatial relation of their houses or the sentence "Mike's house is north of Ruth's." Same fact, different words. Should the words "to the south of" disappear from our vocabulary, that

would make no difference whatsoever to our ability to pick out and express the fact about the spatial relationship of the houses, provided that the words “to the north of” remained.

Talk about rights and talk about duties are related like that, so it is said. The disappearance of rights-talk and justice-talk would make no difference to our ability to pick out and express the facts about our normative social relationships provided duties-talk remained. So too, the disappearance of talk about wrongs would make no difference provided talk about guilt remained.

As we shall see shortly, the language of justice, rights, and being wronged does not pick out and express the same facts as those picked out and expressed by the language of duty, responsibility, obligation, and guilt. The relation between *my having a right* and *your having a duty* is not like the relation between *being south of* and *being north of*; it's like the relation between a triangle's *being equiangular* and its *being equilateral*. A triangle is equiangular if and only if it is equilateral, necessarily so; nonetheless, these are different facts.

The Principle of Correlatives is a synthetic necessary truth, not an analytic necessary truth. Those who deny the principle, as some do, are not thereby affirming a contradiction – a necessary falsehood, yes, but not a formal contradiction. This point is perhaps most clear when we view the situation from the “shadow” side. My being guilty of not treating you as I ought to treat you is not the same fact as your being wronged by me.

Rights as a brake on unjust benevolence and paternalism

So once again, what would be lost if the justice-and-rights component of our moral culture fell into disuse? Those who hold that rights are grounded in autonomy will of course have a different answer to this question from the one I offer.

I think two things of great importance would be lost. Let me introduce my explanation of one of these by describing the episode in which it first became clear to me that something of great importance would be lost if we could no longer use the language of justice and rights. In September 1975 I attended a conference at the University of Potchefstroom in South Africa. Potchefstroom is a small city located about an hour from Johannesburg; in 1975 the university was very much an Afrikaner institution. In addition to the South African scholars present at the conference, white, colored, and black (to use the terminology of the time), there were scholars from other parts of Africa, a sizable contingent from the Netherlands, and a few of us from North America.

The highlight of the first day and a half of the conference was angry exchanges between the Dutch and the Afrikaners. Recall that 1975 was well before the revolution in South Africa. The Dutch were very well informed about South Africa and very angry about apartheid. So even though the

conference was not about apartheid, the Dutch seized every opening they could find to vent their anger at the Afrikaners. The Afrikaners, in turn, seized every opening they could find to vent their anger at the Dutch for being so judgmental. After a day and a half of this angry back and forth, neither party had anything new to say to the other.

It was at that point that the so-called blacks and coloreds from South Africa began to speak up, more in tones of hurt than of anger – or so it seemed to me. They spoke of the indignities daily heaped upon them and of the fundamental injustice of the whole system of apartheid. They cried out for justice.

The response of the Afrikaners to this cry for justice took me aback. I expected them either to contest the claim of the blacks and coloreds that they were being treated unjustly or in some way to excuse their treatment of them. Instead they insisted that justice was not a relevant category. Benevolence was the relevant category. And when it came to benevolence, the Afrikaners were a benevolent people. Those present at the conference told stories of the benevolent way in which Afrikaners treated the blacks living in their backyards, passing on to them clothes that their own children had outgrown, giving gifts to the children at Christmas, etc. And they insisted that the whole system of apartheid was motivated by benevolence. They pointed out that South Africa contained some ten or eleven distinct nationalities; the system of apartheid was aimed at encouraging each nation to find its own cultural identity and to flourish in its own way. This required that these nations be separated from each other – hence apartness, apartheid. They went on to say that they and their fellow Afrikaners were deeply hurt by the fact that the blacks and coloreds seldom expressed any gratitude to the Afrikaners for their generosity, neither for their acts of individual generosity nor for their political generosity.⁸

What I saw, before my eyes, was benevolence being used as an instrument of oppression. It was the first time I saw clearly why justice matters. The concept of justice enables us to put a brake on paternalistic benevolence. There's a lot of paternalistic benevolence in the world, not all of it, but much of it, profoundly unjust.

It's on account of a feature of rights that I have not yet called attention to that justice has this "braking import." In the literature on rights one finds this feature referred to as the "trumping force" or the "peremptory force" of rights. What's meant is that if you have a right to the life-good of being treated a certain way, then, no matter how many good things I may bring about in the lives of various people by not treating you that way, I ought to treat you that way.

⁸ I should add that the attitude I here attribute to "the Afrikaners" was typical of Afrikaners in general in 1975, and was not dissented from by any of the Afrikaners present at the conference. It was not universally shared, however; there were courageous dissenters. I got to know a good many of them in the days and years after the conference.

Return to the example of a student who has done top-notch work in a course I am teaching and who accordingly has a right to an A. Now add that he is rather cocky and full of himself, and that I judge that a B minus might induce some desirable character reformation. So I give him a B minus and highlight the flaws in his work; professors who have taught for some years can find flaws in even the best student philosophy papers. To treat the student thus would be to wrong him; he has a right to an A. And so it just follows that I ought to give him an A. If I think he needs some character reformation, I will have to find some other way of inducing the reformation, a way that does not wrong him.

The twentieth century was filled with political regimes that believed it was acceptable to treat some people like animals if doing so would bring about some great good for the others. If we cannot appeal to the rights of human beings, if we cannot argue that to treat human beings in such a way is to wrong them and is hence off the table, we have no way to stop this “calculus of goods” way of thinking, no way to put a brake on this utilitarian mentality.

Let’s grant for the sake of the argument that the segregated society that the Afrikaners envisioned, in which each nationality would find its own separate identity, would have been a good thing. I do not think it would have been a good thing; but for the sake of the argument, let’s grant that it would have been. The massive injustice perpetrated on the so-called blacks and coloreds meant that achieving that ideal by apartheid was wrong, impermissible. The benevolent impulses of the Afrikaner did not excuse the injustice; the injustice trumped the benevolence. By virtue of their trumping force, rights are a brake on paternalistic benevolence.

Two dimensions of the moral order

Now for the other thing of importance that would be lost if we no longer had available to us the language of rights and wrongs. Recall my declaration, when I was explaining what a right is, that a right is to the life-good of being treated a certain way. And now notice that I used the passive voice: *being* treated a certain way. I submit that the moral order has two fundamental dimensions: the agent-dimension and the patient-dimension, the actor-dimension and the recipient dimension. On the one hand, there is the moral significance of what we do; on the other hand, there is the moral significance of how we are done unto. On the one hand, there is the moral significance of how we treat others; on the other hand, there is the moral significance of how we are treated *by* others. In thinking about the moral order, the philosophical tradition has focused almost all of its attention on the agent-dimension. In doing so it has, in my judgment, given us a seriously incomplete picture of the moral order as a whole.

The language of rights, and its companion language of being wronged, are for bringing to speech the recipient-dimension of the moral order, the

dimension of how we are done unto. Consider an abused spouse, and suppose that the only language available to her is the agent-language of love, duty, and the like. With such language she can call attention to the moral condition of her abusive husband: he is acting unlovingly, he is guilty of not doing his duty, etc. What she cannot do is call attention to *her own* moral condition. Rights-talk enables her to call attention to *her* moral condition: she has been *wronged*. It would be a great loss if she did not have available to her the language for calling attention to the moral significance of how she has been done unto, the language for calling attention to the fact that she has been wronged. The reason rights-language has almost invariably been the preferred language for social protest movements is that such language enables the oppressed to call attention to their moral condition.

Let's get at this same two-dimension idea from a different angle. In the case just imagined, we noted the difference between the abused spouse having only the language of the agent-dimension available for describing the morality of the situation versus also having available to her the language of the patient-dimension. Now imagine that you are reflecting not on how you have been done unto but on how you yourself should treat some person or group of persons. What's the difference between thinking of the situation only in terms of your duties and your generosity, and thinking of it also in terms of the rights of those others? What's the difference between thinking of the situation only in terms of the agent-dimension, and thinking of it also in terms of the patient-dimension? Suppose I am a college professor. What's the difference between my thinking of the classroom situation wholly in terms of *my* responsibilities and *my* generosity, versus thinking of it also in terms of the rights of the students?

I do not find it easy to put the difference into words; but let me try. The second orientation requires that I be open to the worth of the students in a way that the first does not. It requires a de-centering on my part. I am no longer in moral control of the situation. I am, as it were, a moral listener, open to recognizing your worth and to the claims that such recognition places upon me.

The problem with the Afrikaners was that they were so full of their own goodness and virtue that they never opened themselves up to recognizing the worth and dignity of the so-called blacks and coloreds, never opened themselves up to the question of whether they were demeaning them. They resisted moral de-centering, resisted becoming moral listeners. They wanted to be in charge. They wanted their self-perceived generosity to be received with gratitude. And of course they insisted that the so-called blacks and coloreds be on good behavior or the generosity would not be forthcoming. That's how it is with generosity. Generosity can be conditioned. The requirement that I treat you with due respect for your worth has no conditions, none at all.

Returning to the charges against justice-talk and rights-talk

I observed at the beginning of this talk that the air is full of voices urging that we eliminate from our moral culture all talk of justice and rights. I observed that what the objectors do not do is consider what would be lost if their advice were heeded. With the insight we have gained into the nature of justice and into the importance of talk about justice and rights, let us return to the objections and consider how forceful they now look. As I mentioned earlier, an objection that would be quite forceful if we thought that nothing of importance would be lost might lose most or all of its force if something of importance would be lost.

Talk about justice is cold and calculating, said Annette Baier; for that reason it should mostly be replaced by talk about warmer virtues. In response, I concede that talk about justice sometimes is cold and calculating. But it was anything but cold and calculating when employed by those so-called blacks and coloreds in South Africa; theirs was a passionate cry for justice. And so it often is. It would be a deep mistake to diminish the place of justice in our moral culture just because it is sometimes cold and calculating.

Another objection I mentioned was the all too common inflation of rights-talk. Ideals are couched in the language of rights so as to make those ideals seem obligatory and to make those realists who are skeptical about the attainability of the ideals feel guilty. In response, I concede that rights-talk often is inflated in just this way. But our discussion of the nature of rights makes it clear that this objection does not point to something intrinsic to the idea of rights but points instead to a serious mistake in the understanding of rights. From the fact that something would be a good in the lives of people it does not follow that they have a right to it. To couch ideals in the language of rights is to abuse rights talk.

Another charge against rights-talk that I mentioned is that such talk is often accompanied by rights-absolutism: a rights claim is made and no disagreement is brooked. In response, I concede that rights claims often are treated in this way. But this objection likewise points to an abuse of rights talk rather than to something inherent in the idea of rights. Our judgments about rights are fallible; they are often mistaken. It behooves us to listen with open mind to those who offer serious reasons for holding that we are mistaken in some rights-claim that we have made. We abuse rights-talk when we refuse to hear objections to our claim that so-and-so has such-and-such a right. But in this case too, the abuse is not a sufficient reason for tossing out the language; too much of importance would be lost. It's a reason for doing what we can to cure such abuse.

The final charge against rights-talk that I mentioned is that such talk is regularly used, so it is said, to express the malign attitude of possessive individualism. But if a right is what I have said it is, a normative social relationship grounded in one's worth or dignity and consisting of a

legitimate claim to the life-good of being treated a certain way, then it's clear that this objection likewise points to an abuse of rights talks rather than to something inherent in rights. There's a normative social bond between me and the other whereby the other bears legitimate claims on me as to how I treat her and whereby I bear legitimate claims on her as to how she treats me. The situation is symmetrical. The language of rights is for bringing this reality to speech. The person whose mentality is that of possessive individualism will talk much about how he is entitled to be treated by others and will ignore or downplay how they are entitled to be treated by him; but to use the language thus is to abuse it.

A good many writers would challenge this last claim just made, that to use rights-talk in the way just described is to abuse it. Possessive individualists are not abusing rights-talk, so these writers say; they are using it as it was meant to be used. Rights-talk carries possessive individualism in its DNA.⁹

Those who hold this view take for granted that the correct interpretation of rights is the autonomy interpretation, according to which the function of rights is to protect our autonomy, rather than the dignity interpretation that I have proposed. They then support their claim that possessive individualism belongs to the DNA of rights-talk by employing what has been, for some time now, the standard narrative concerning the origin of the idea of rights -- or more precisely, concerning the origin of the idea of *natural* rights.

The narrative holds that the idea of natural rights was invented by the individualistic political thinkers of the secular Enlightenment, Hobbes and Locke in particular. A variant on this narrative is that though Hobbes and Locke employed the idea of natural rights, they did not originate it; it first made its appearance some centuries earlier when the nominalist William of Ockham introduced and employed the idea early in the fourteenth century in the course of defending his fellow Franciscans against attacks from the pope. Leo Strauss, Alasdair MacIntyre, Stanley Hauerwas and a host of others tell the former story; Michel Villey, Oliver O'Donovan and Joan O'Donovan, along with a few others, tell the latter story.¹⁰ Either way, the claim is that the idea of natural rights originated within individualistic frames of thought and has no use outside such frameworks.

My reply to this narrative depends on the labors of others. As the result of recent work by some legal historians of the medieval period, especially Brian Tierney, and by some legal historians of the Reformation period, notably John Witte, we now know that both of these narratives concerning the origin of the idea of natural rights are demonstrably false. Witte, in his

⁹ See, for example, Stanley Hauerwas in the essay mentioned earlier. I should add that it may be that Hauerwas no longer holds these views.

¹⁰ For the references, see chapters 1 and 2 of my *Justice: Rights and Wrongs*.

book *The Reformation of Rights*,¹¹ shows that the idea of natural rights was in common use well before Hobbes and Locke by writers in various branches of the early Protestant Reformation, especially the Reformed (Calvinist) branch. And Tierney, in his book, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150-1625*,¹² shows that in the mid-twelfth century, thus two centuries before Ockham, canon lawyers were employing the concept of natural rights in their comments on Gratian's *Decretum* and in their discussion of ecclesiastical legal issues of the day. I assume that nobody would accuse either the Reformation theologians of the sixteenth and seventeenth centuries or the canon lawyers of the twelfth century of being possessive individualists in their mentality.

The idea of natural rights was not devised by the political philosophers of the Enlightenment; it originated in the seedbed of Christendom. It does not carry possessive individualism in its DNA. It's an abuse of rights-talk to employ it in the service of possessive individualism. The other comes into my presence as a creature of worth; I likewise come into her presence as a creature of worth. On account of her worth, she has legitimate claims on me as to how I treat her; on account of my worth, I have legitimate claims on her as to how she treats me. If I fail to treat her as she has a right to be treated, she has been wronged by me; if she fails to treat me as I have a right to be treated, I have been wronged by her. The situation is entirely symmetrical.

Abuses of the language of justice and rights – and the abuses are many -- are not reasons for discarding the language but reasons for opposing the abuses.¹³ The language of justice and rights provide us with the resources we need to put a brake on paternalistic benevolence and with the resources we need to bring to speech the recipient or patient dimension of the moral order. In both cases they do that because rights are what respect for dignity requires. Justice matters because our dignity as human beings matters.

¹¹ Cambridge: Cambridge University Press, 2007.

¹² Atlanta: Scholars Press, 1997.

¹³ The fullest, most balanced, and reflective discussion of the abuses of rights-talk in the American political arena that I know of is Mary Ann Glendon's *The Impoverishment of Political Discourse* (New York: The Free Press, 1991). Explaining her approach, Glendon says that "The critique of the American rights dialect presented here rejects the radical attack on the very notion of rights that is sometimes heard on both ends of the political spectrum. It is not an assault on specific rights or on the idea of rights in general, but a plea for reevaluation of certain thoughtless, habitual ways of thinking and speaking about rights" (15).