the removal of altar rails also considers the theology of sacred space and kneeling to receive Communion.[17] The concept of mission is inherently theological. It concerns what we preach as the gospel and therefore raises important questions about the consistency of our church buildings with that gospel.

Will Adam's analysis of the case law applying the *Bishopsgate* questions suggests that a more pastorally ordered approach has not 'opened the floodgates for unfettered and inappropriate re-ordering of listed buildings'.[18] There is no reason to think that a more theological approach to understandings of mission in faculty applications would do so either. Encouraging petitioners for faculties to recognise the theological and missiological issues at the heart of their re-ordering, rather than limiting arguments about mission to mechanistic number-crunching, may also challenge the cynicism prevalent in some circles about the faculty jurisdiction.

doi:10.1017/S0956618X12000051

God, the Bible and Human Rights

Nicholas Coulton
Dean Emeritus of Newcastle

The spat at the 2011 Conservative Party conference between the Home Secretary and the Lord Chancellor showed how contentious human rights legislation remains. Although Theresa May portrayed the claimant as having won the Article 8 right to remain in Britain because of his relationship with his cat, the judge had simply accepted the cat as one piece of evidence that the claimant had a genuine family life with his partner.[1] The Home Secretary's principal point was that the right to respect for private and family life under section 8.1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) should be read in conjunction with section 8.2, which adds that such rights should not be overridden except where it is

> necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention

17 *Re All Saints, Sanderstead* (2012) 14 Ecc LJ 141. See George, 'The ecclesiastical common law', pp 29–30, 38.
18 W Adam, 'Changing approaches to the *Bishopsgate* questions', (2003) 7 Ecc LJ 215–221.
1 Asylum and Immigration Tribunal, Appeal no IA/14578/2008, determination by Senior Immigration Judge Gleeson. See also D Green in *New Statesman*, 4 October 2011 and J Rozenberg in *The Guardian*, 6 October 2011.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

> of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[2]

Politicians seek such illustrations to support a demand for a British Bill of Rights, partly pursuing a wider search for areas in which Britain might regain some sovereignty from Europe. Resentment focuses on section 2 of the Human Rights Act 1998, requiring 'A court or tribunal determining a question which has arisen in connection with a Convention right [to] take into account any … judgment, decision, declaration or advisory opinion of the European Court of Human Rights'. It is often forgotten that substantive parts of the ECHR were penned by British jurists, led by Sir David Maxwell-Fyfe, in the late 1940s with systematic violations of human rights still fresh in people's minds. Creating a British Bill would suggest that rights are not universal but are in the gift of governments.

Human rights issues (abortion, wearing crucifixes – or veils – at work, opposition to homosexuality) have led to debate about whether England remains a Christian country, but in a previous issue of this *Journal* Professor Roger Trigg stated that what must be faced is not that empirical question but the question of principle as to whether it *should be* a Christian country.[3] He argued that ideals such as *liberté, égalité, fraternité* and corresponding ideals in England had Christian roots, and that the pursuit of neutrality rests on assumptions that religion is subjective rather than objective. Trigg noted recent cases in which judges have felt able to distance the common law from any religious, or indeed specifically Christian, basis.[4]

The European courts themselves have struggled with such issues. The Grand Chamber, reversing the Court's Second Section in *Lautsi*,[5] sought space for a 'margin of appreciation' to give states some discretion in allowing religious symbols. Article 9 is framed to protect both those of religious and those of non-religious belief[6] but the case law has swung forward and back. The Grand Chamber's decision has itself attracted criticism that the Court failed adequately to protect the very principles of secularism, pluralism and neutrality that, in other contexts, it had held to be paramount requirements in the area of religion.[7] In his Corbishley Lecture, Professor Joseph Weiler observed that

2 Politics.co.uk, 'Theresa May speech in full', <http://www.politics.co.uk/comment-analysis/2011/10/04/theresa-may-speech-in-full>, accessed 26 January 2012.
3 R Trigg, 'Religion in the public forum', (2011) 13 Ecc LJ 274–286.
4 *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880 at para 21; *R (Johns) v Derby City Council* [2011] EWHC 375 (Admin) at para 36.
5 *Lautsi v Italy* [2011] ECtHR 30814/06.
6 N Bratza, 'The "precious asset": freedom of religion under the European Convention on Human Rights', (2012) 14 Ecc LJ pp 256–271.
7 Ibid, p 269. See also P Ronchi, 'Crucifixes, margin of appreciation and consensus: the Grand Chamber ruling in *Lautsi v Italy*', (2011) 13 Ecc LJ 287–297.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

> We are not just posing state power against a fundamental individual right, we are positing a fundamental collective right, the right of the nation to define its identity, against the very important and noble right of the individual to fundamental individual liberties which are protected by fundamental rights. It's a different game … the very image of Church and State or Church and Nation where we have the Nation on the one hand and the Church on the other hand, is misleading, it's an American–French notion, because in so many other states and nations, the very definition and identity of the nation includes within it religious symbology, religious iconography etc.[8]

Does this lack of consensus among the European and other states mean that no underlying human right can be found?

WHAT FORM OF SECULAR STATE?

There are unexamined assumptions about the nature of a secular state. Plainly England is not a secular society, but in its search for equality the state is increasingly secularist. The judges in *R (Johns) v Derby City Council* preface their remarks 'with the obvious point that we live in this country in a democratic and pluralist society, in a secular state not a theocracy'.[9] Professor Trigg notes that these are not the only alternatives: there are various forms of theocracy and of secular state.[10]

Jeremy Bentham's utilitarian ideal, 'the greatest happiness for the greatest number', does not rule out deeper ethical questions. British shyness about intellectual philosophy (unlike the French) and attraction to sentiment has led to excessive individualism. What is good is what satisfies me; what is best is what I want, what I like. When we speak of 'rights', we think it means 'fulfilling my desires'. But one person's freedom often collides with another's. How are these to be determined? Are there basic principles that we can apply and by which a state can be called to account? Do human rights set an external standard to which all religion must conform? And how should we arbitrate when different voices from within a religion claim alternative understandings of that religion's ethics?

In the famous debate in the 1960s between the philosopher Henry Hart and the law lord Patrick Devlin, Hart argued that it was not for the law to enforce morality, while Devlin argued that the law has morality built into it.[11] But Hart also recognised that a shared morality with some universal values was basic to

8 J Weiler, 'State, faith and nation: the European conundrum', 33rd Corbishley Lecture, 14 September 2011, available at <http://www.wpct.org/lectures.htm>, accessed 1 February 2012.
9 *R (Johns)* v Derby County Council, at para 36.
10 Trigg, 'Religion in the public forum', p 282.
11 H Hart, *Law, Liberty and Morality* (London, 1963); P Devlin, *The Enforcement of Morals* (London, 1965).

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

any society and Devlin's argument left room for some change in morality. Morality trumps law and cannot simply be shifted by legislation, because it sees itself as based on timeless truth; legislation, however, may seek to reflect a public shift to what is seen as a deeper perception of timeless truth than had previously been understood. Here there may well be, and presently is, a clash between some adherents of religion and the state's response to public morality.

The Universal Declaration of Human Rights (UDHR) has received two main criticisms. One is that the rights are too 'individualistic' and indeed not 'universal' but culturally 'Western'. Take, for instance, Article 24: 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.' That is beyond a dream for people across the world, struggling to stay alive; and what of those who do not work for pay – children, housewives perhaps, some handicapped people, farmers with livestock to attend to daily? How can a right to periodic holidays rank beside more urgent claims?

Another criticism is that human rights have become so all-encompassing that they become vague and unenforceable. Although the 1948 Declaration was followed by the two 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the early emphasis was on civil and political rights as rights that all nations should observe, but awareness grew that, in a world rich in resources and human knowledge, everyone should be guaranteed the basics for sustaining life. So in 1993 the Vienna World Conference affirmed the indivisibility of all rights.

President Franklin Roosevelt had heralded this in his four essential (indivisible) human freedoms: freedom of speech and expression, freedom of everyone to worship God in their own way, freedom from want and freedom from fear. Political debate about hate speech shows that we must often balance one freedom against another – freedom of expression balanced against freedom from fear of hate being whipped up, which is not the same as freedom from honest criticism, which all religions need – but these conflicts always call for discernment, for courteous dialogue, for listening to one another, a recognition that no position can be absolute and that we all have much to learn. Where rights conflict, how do we work out where the balance lies?

My concern for human rights grew in 2000 with Iranian asylum seekers worshipping in Newcastle Cathedral. In 2010 the last of my eight Iranian friends finally overcame the culture of disbelief and got permission to stay, after 13 years of living here with his life in suspense. Since 2008 the Government has had an Independent Inspector to undertake regular reviews of the UK Border Agency (UKBA).[12] Meeting the Churches' Refugee Network, he told of his continuing concerns about UKBA's failure to understand the human, human rights

12 The Independent Chief Inspector's reports may be read at <http://icinspector.independent.gov.uk>, accessed 26 January 2012.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

and humane issues about families in detention, and the frequent arresting of families from their homes between 6.30 and 7.00 am, often with no interpreter to explain to parents and children what is happening.

Iain Duncan-Smith introduced a report in 2008 by saying: 'When asylum seekers arrive in the UK, they are too often met by a bureaucracy that fails to assess their claims fairly: more than 20% of refusals are overturned on appeal.' He continued: 'The evidence gathered for this report shows that the welcome offered today falls far short of our traditional standards.'[13] The figures and facts differ little today, and although asylum seekers are officially exempted from the Legal Aid reforms on the basis of their vulnerability, restrictions on Legal Aid more generally will still affect them, not least as immigration lawyers drop out of business.

ONLY A SECULAR NOTION?

Apart from the criticisms of human rights legislation as too individualistic and Western, or too vague and unenforceable, some theologians claim that human rights is a secular notion, with no basis in Christian doctrine; they contend that the scriptures place more emphasis on responsibilities and duties than on rights, and that human rights risk becoming a substitute religion or ideology. Professor Oliver O'Donovan put this dramatically: 'Modernity is the child of Christianity and at the same time … it has left its father's house and followed the way of the prodigal.'[14] O'Donovan claims that the United States First Amendment shifted the nation from salvation history based on Christ to more general 'divine providence' unfolding in historical development.[15] The First Amendment prohibits Congress from establishing a national religion or preferring one religion over another, non-religion over religion, or religion over non-religion. Though religion is so circumscribed in the United States, it plays a huge role in politics, whereas in nominally Christian Britain politicians are wary of 'doing God'.

Two things should be said here. First, the United States' Declaration of Independence of 1776 included a specific religious reference: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.' When God created 'all men equal', God should have made clear that this included black slaves and native Americans.

13 I Duncan Smith, 'Preface', in *Asylum Matters: restoring trust in the UK Asylum System, a report by the Asylum and Destitution Working Group, for the Centre for Social Justice* (London, 2008), p 4.
14 O O'Donovan, *The Desire of the Nations: rediscovering the roots of political theology* (Cambridge, 1996), p 275.
15 Ibid, p 246.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

Second, Roman Catholic lawyers, schooled in the teachings of Aquinas, played a significant part in drafting the UDHR, as did leading figures in the World Council of Churches. That Declaration begins by affirming that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. The drafters sought input from many traditions – philosophical, political and religious – from all over the world to gain wide respect for human rights. When non-Western nations challenge that universal legitimacy as supposedly incompatible with their cultures, religions or value systems, they should be asked whether the poor and marginalized in their countries support their challenge.

Jefferson and some of the other authors of the United States' Declaration of Independence were Deists rather than Christians. Though they followed John Locke's Christian urging that genuine religious faith must be freely chosen, not forced, their inspiration lay also in such documents as the sixteenth-century *Twelve Articles of the Black Forest*, the German peasants' demands, including requirements for simple preaching of the gospel so that they could come to God by true belief; that since Christ has redeemed the shepherd as well as the highest in the land, all should be free, not held as villeins; and that since God in creation gave man power over animals, birds and fish, the simple man must have the right to catch game, fowls and fish. Britain followed in 1689: the English Bill of Rights and the Scottish Claim of Right each made illegal a range of oppressive government actions, and individuals gained natural rights against the state. This fed into the French Revolution Declaration of 1789 with its three striking ideals of liberty, equality and, as Richard Harries prefers, 'human community' or the social nature of human life.[16]

How do these origins of human rights legislation square with basic beliefs about God, and with the teachings of Christianity and other faiths? The late Lord Bingham considered that human rights inevitably conflict with established religions, because those who believe that their religion has

> an exclusive perception of the truth and offers an exclusive path to salvation also tend to believe, naturally enough, both that they should resist any attempt to weaken or challenge that faith and also that they should convert others to it.[17]

Lord Bingham quotes Colonel Rainborough's pithy declaration after the Civil War, 'that really I think that the poorest he that is in England has a life to live

16 R Harries, *Faith in Politics: rediscovering the Christian roots of our political values* (London, 2010), p 83.
17 Lord Bingham of Cornhill, 'Endowed by their Creator?', (2005) 7 Ecc LJ 181.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

as the greatest he'[18] and suggests that the most potent spur to recognition of human rights has been found in war, rebellion and political turmoil, though he goes on to say that, while human rights are not the direct product of religious belief, they are consonant with it.

Nicholas Sagovsky, until recently a Canon of Westminster, goes further, claiming that the notion of human rights arose 'in opposition to the public practice of Christianity, against oppressive notions of divine order and "divine justice"'.[19] Thomas Jefferson probably thought this, though much of the legal and social discourse of human rights is grounded in the Bible and links particularly to the ethical teachings of Jesus.

The Hebrew scriptures are notably concerned with both human justice and with the justice of God, though the account in scripture is not without its difficulties and indeed its own evident injustice. The sweep of stories, from the creation itself, through the covenants with Abraham and Moses, the rescue from Egypt, the Promised Land, the monarchies and their division, to the exile and the return, all tell the story of God's just dealings with the world and the people God has brought into being. The people are to obey God's law; they are to provide justly and generously for the poor and the marginalised within the land that God has entrusted to them; and they will never maintain a sufficient standard of justice unless their hearts are firmly fixed on God. These, however, are standards of mercy and compassion for the strong to observe, not rights on which the weak may base a claim.

What the scriptures challenge explicitly, most evidently in Job and Ecclesiastes, is the idea that God is just. Life is not fair; all is vanity under the sun: 'the race is not to the swift, nor the battle to the strong, nor bread to the wise, nor riches to the intelligent, nor favour to those who are skilled; but time and chance happen to them all'. The Ecclesiastes chapter and verse reference for that happens to be 9:11. The prophets respond to Ecclesiastes by calling for justice and generosity, a justice beyond fairness. The Gospels add to this by insisting that God values each of us, even each hair on our head, prizing us more than sparrows or lilies of the field.

Challenges to the idea of the just God do not end with Ecclesiastes and Job. Our modern concerns raise a host of questions, most to do with the relationship between justice and power. Is the underlying message of the scriptures about men exercising power over women, or rich over poor, or conquerors over the conquered? How just is this justice of God? Sagovsky's book *Christian Tradition and the Practice of Justice* explores this in greater depth.[20]

18 Colonel Rainborough, 'The Putney debates: the debate on the franchise (1647)', in D Wootton (ed), *Divine Right and Democracy: an anthology of political writing in Stuart England* (Harmondsworth, 1986), p 286.

19 N Sagovsky, 'Human rights, divine justice and the Churches', in M Hill (ed), *Religious Liberty and Human Rights* (Cardiff, 2002), p 46.

20 N Sagovsky, *Christian Tradition and the Practice of Justice* (London, 2008).

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

THE CHRISTIAN FOUNDATION OF JUSTICE

Many psalms celebrate the justice of God, often as the very foundation of God's created world. For instance, Psalm 19 brings together two separate poems: the section describing the cosmos, 'the heavens declare the glory of God', is followed by a section declaring that 'the law of the Lord is an undefiled law . . . the judgements of the Lord are true, and righteous altogether'.

Leviticus tells how, on Mount Sinai, Israel is told to respect, revere and love the glory of God, 'to be holy as I am holy' (Leviticus 19:2) and, in the same chapter, how to respect and give dignity and life to other human beings, including treating resident aliens as though native-born 'and to love them as yourself – for you yourselves were once aliens in Egypt' (Leviticus 19:34). Because God has brought Israel out from slavery in Egypt, gratitude should make the Land of Israel a land of utter justice. 'Justice, and only justice, shall you pursue', commands Deuteronomy 16:18, and especially for those who have least power – the widow, the orphan and the resident alien.

One modern stumbling-block has been precisely that idea of election – that God has specially chosen one nation and not others, even if they have been called for service. From this has sprung a wider attack on monotheism as such. The novelist Philip Pullman put it like this: 'Every single religion that has a monotheistic god ends up by persecuting other people and killing them because they don't accept him. Wherever you look in history, you find that. It's still going on.'[21] At about the same time Chief Rabbi Jonathan Sacks began an article, 'Since September 11, many reflective people have wondered whether there is something not just about fundamentalism but about religion itself, specifically monotheism, that gives rise to violence in the name of God.'[22]

Lord Sacks said that this is an important claim, which we must face honestly. So Walter Moberly, in an essay headed 'Is election bad for you?',[23] looked at the way in which Israel's keynote text, the Shema ('Hear, O Israel: The Lord our God is one Lord; and you shall love the Lord your God with all your heart, and with all your soul, and with all your might' (Deuteronomy 6:4–5)) is quickly followed by the command to go into the land and clear out the seven nations living there. Moberly questions whether the Hebrew word *herem* is correctly translated 'destroy'; he suggests that 600 years later, when Deuteronomy was written, with quite different political power blocs around the exile in Babylon, the word *herem* was probably used metaphorically for unswerving allegiance to God, in a similar way to Jesus' stark command 'if your right eye causes you to sin, tear it out and throw it away' (Matthew 5:29).

21 P Pullman, interview with H Spanner, *Third Way*, April 2002.
22 J Sacks, 'Credo', *The Times*, 20 April 2002.
23 R Moberly, 'Is election bad for you?', in J Middlemas, D Clines and E Holt (eds), *The Centre and the Periphery: a European tribute to Walter Brueggemann* (Sheffield, 2010), pp 95–111.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

That, as Moberly recognises, still does not overcome the harshness of the text for those accustomed to interfaith dialogue and multiculturalism, but he sets it within the context of Israel's frequent slippage towards 'other gods'. The book of Ezra, from that time of the Babylonian exile, says nothing about destroying other nations when it commands Israel to recover its holiness by ceasing intermarriage, and Moberly suggests that the accounts of conquest are metaphorical. He finds 'woodenness' in the literal interpretations taken by the militarist tendencies in Israel, who use the stories to justify pre-emptive strikes or hard-hitting responses today, and similar woodenness from secularists on the Dawkins bandwagon, who seize the stories to show that biblical belief in God is corrosive and corrupting. As John Stuart Mill pointed out, where the majority hold their belief with passionate intensity, there is little room for tolerance.[24]

Attempting to deal with those problem stories still leaves the question of whether the very idea of election contradicts the claim that God's love for His creation is universal and indivisible. Is it favouritism? Walter Brueggemann says, 'one can make the case that the long, brutal history of anti-Semitism in Western culture is the venomous attempt to eradicate that claim of particularity upon which the Bible stands or falls'.[25] And David Clines remarks: 'If you adopt the point of view of the Egyptians or Canaanites, God is not experienced as a saving God, and the only words you will hear addressed to you are words of reproach and threat.'[26]

Moberly finds several reasons to prefer Jesus' words 'From everyone to whom much has been given, much will be required' (Luke 12:48). He sees divine favour and divine expectation linked in two prime passages: in Amos 3:2, 'you only have I known of all the families of the earth; therefore I will punish you for all your iniquities'; and in God's charge to Abraham that he is chosen in order that he and his descendants may keep God's way in righteousness and justice, not only for their own benefit but that all the nations of the earth shall bless themselves by him (Genesis 18:17–19).

'Much is expected of those to whom much is given' reflects the unequal distribution of much of human life – intelligence, beauty, strength, accidents of birth, our parenting, our DNA, particularities of time and place and circumstance, living under national regimes of peace or of tyranny, in fertile lands or barren tracts. Even the early chapters of Genesis do not shrink from ascribing such imbalances to God: Jane Williams has pointed out that it is dismayingly unclear why God chooses Abel's offering rather than Cain's[27] (though perhaps the Fall has blurred our sight of divine purpose); nevertheless, despite his

24 JS Mill, *On Liberty* (Harmondsworth, 1986), p 67.
25 W Brueggemann, 'Election' in *Reverberations of Faith: a theological handbook of Old Testament themes*, (Louisville KY, 2002), pp 61–64.
26 D Clines, *The Bible and the Modern World* (new edition, Sheffield, 2005).
27 J Williams, Bible Reading Fellowship *Guidelines* (September 2010), p 34.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

murder of Abel, Cain and his children – with their tremendous creativity as pioneer city-builders and nomadic herders, as the first musicians and metalworkers – are still part of the human story as Genesis tells it. Though Cain may think himself cut off from the main stream of life, God has put a mark of protection upon him (Genesis 4:15). What does it say about our tendency to twist the message that the phrase 'the mark of Cain' has come to signify someone cursed, when the Bible sees it as a symbol of God's compassionate protection, even for someone whose jealous anger has led him to murder his brother?

Looked at as Moberly suggests, the notion of election becomes not a symptom of God's unfair favouritism but a means, a channel by which God intends his favour to embrace all peoples. 'Much is expected of those to whom much is given' then binds more closely the human rights that we believe we are given (as our birthright) to the moral expectation of our responsibilities.

THE BASIS OF UNIVERSAL RIGHTS

That now brings us, however, to the question of that birthright. What is the basis of these rights we think we have? Although ideas of rights and liberty have existed for much of human history, can they be described as 'human rights' in our modern sense? Pre-modern cultures certainly spoke of 'rights'. The ancient Greeks were hugely concerned about justice and right behaviour, because they believed that beneath the world's apparent variety lay simplicity, that the universe itself was based on reason and that, not through their senses but through their reasoning minds, could they reach inner reality. Plato believed that individuals must be part of a society committed to the common good, not for their own self-interest but for serving the one universal Good, common to them all.

Plato's rule-of-thumb definition – 'that it is just to render to every man his due' – has lasted more than 2,000 years.[28] His definition was picked up by Aristotle; it is central to Roman law; it is the centrepiece of Thomas Aquinas' discussion of justice. Richard Harries tells us a bit about the influential work of John Rawls in the last century, who defined justice as fairness, giving people equal respect irrespective of their social position.[29] However, Rawls' thinking requires a political community to implement human rights; so when we seek across-the-globe justice, rights with universal value, upon what authority do they stand?

The understanding of what each person's due actually is has differed over the centuries. We no longer think that there are different dues of deference

28 Plato, *Republic*, Book 1.
29 Harries, *Faith in Politics*, pp 16–17, 65–66, 85–86, 127; J Rawls, *A Theory of Justice* (revised edition, Oxford, 1999) and *Political Liberalism* (New York, 1993).

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

according to your social position. We have a more egalitarian idea of what it is to be a human being, but recent political bandwagons have opened wide debate about what is really fair: is hospital treatment to be even-handed between apparently 'innocent' sufferers and those who bring illness upon themselves through cigarettes, alcohol or other lifestyle choices? Are there to be equal benefits between those who work hard for a living and those reckoned to be work-shy? Do we treat the undeserving poor and the undeserving rich equally? Should your expectation of life vary with your postcode? The list could go on. Fairness must lie somewhere along those lines of 'Much is expected of those to whom much is given', not in demand but in developing a culture of enlightened generosity, echoing perhaps the gratuitous generosity of God.

Matthew Parris has written about a wide resentment in what he calls the majority middle classes that those who do not try get too great a share of national resources and those who try get less than they deserve. He says that

> Fairness depends on our idea of deserving . . . Both sides . . . with utter sincerity insist that they have [weighed] one opposing claim against another in the scales, and [chosen] the claim with the greater weight . . . How much weight you accord is a moral question, whose answer depends entirely on your own values. And values differ.[30]

Values do differ, but are there absolute values, values that spring ultimately from God, requirements of fairness that come from God and that, for those who believe in God, not only transcend our own self-interest, our upbringing and political preference but have overriding importance for society, whether it believes in God or not? Are there human rights with universal weight? Are there moral claims requiring absolute obedience?

The Spanish Inquisition, Stalinist Russia, Hitler's Germany and Communist China have all shown the dangers of Plato's belief that societies might unite around their own shared understanding and practice of the Good. Aristotle, more practically, sought a middle way to help us be more human, distinguishing distributive justice – basically fairness, when people receive their right proportion – from corrective justice, when a judge must interpose to restore a balance that has been upset, perhaps by crime. But for both Plato and Aristotle justice barely goes beyond the rights and freedom of citizens; for non-citizens, slavery was a natural condition.

Augustine claimed we owe primary allegiance to the City of God, the divine society. Amid the chaos of Rome sacked by the Goths, he believed that peace on earth could only come through justice, and that we must trust in God,

30 M Parris in *The Times*, 23 October 2010.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

whose justice was often greater, more hidden and more mysterious than fallible humans could understand, for can we ever be sure that in the long run we are doing right? By obedient trusting in God's grace we become part of that infinite justice.

Thomas Aquinas based his *Summa Theologica* on the belief that the whole creation reflects the wonderful rational and logical nature of the creative God. To do justice is not only to act correctly towards another person but also to participate in God's just giving to, and dealing with, God's creatures, God seeking to give each their due. There is a rational design for right living and happiness, could we but see it. We are not simply to follow what has been read off from nature in ages past; the conclusions our forebears have come to are not inevitably the truth for us today. God has given us human minds, not to imitate nature but to work out what is right, what is now God's will, for our own and the common good.[31] Discussing Plato's four cardinal virtues – prudence, justice, courage and moderation – Aquinas spends most time on justice. With practical reason, or prudence, we work out natural law – and over time refashion where law falls short of justice. Obedience to the law may take courage, as may efforts to reform it. Law should be enforced, but with moderation, with humility and with mercy, for both those who judge and those who are judged are under the final and all-wise judgement of God.

Both Augustine and Aquinas built on the ancient philosophers but drew on Hebrew and Christian scriptures to set those early ideas of justice within the personal action of the God who brings justice about. For Augustine, He is the God who makes us sinners just, so that justice may come in His fallen world; for Aquinas, He is the God who enables us to acquire the habit of distributive justice, 'the lasting and constant will to render to each their due'.[32]

In major work on human rights, Oliver and Joan Lockwood O'Donovan argue that obligations, not rights, lie at the centre of the moral universe, and that emphasis on each person's natural rights has led us into possessive individualism. They claim that thinkers from the fifteenth to the eighteenth century lost confidence in what God has revealed as true by divine authority, and instead built on Greek and Roman theories. They detect a clash between Revelation and Reason.[33] Islam similarly sees sharia law as something revealed, not

31 Harries entitles a chapter 'Does God believe in human rights?', arguing that St Paul's contention about God the divine potter making what shapes he likes is not the final word. He comments that 'we are not lumps of clay; we are clay that has been breathed into to give us minds and spirits; like Job, we can insist on answering back' (Harries, *Faith in Politics*, p 100). He says that only tyrants kill those who answer back; the God and Father of Jesus Christ is not like that.

32 Thomas Aquinas, *Summa Theologica*, 2a2ae, q 58, a 1.

33 J Lockwood O'Donovan, 'The concept of rights in Christian moral discourse', in M Cromartie (ed), *A Preserving Grace: Protestants, Catholics and natural law* (Grand Rapids, MI, 1997) and 'Natural law and perfect community: contributions of Christian Platonism to political theory', (1998) 14 *Modern Theology* 20.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

something to be changed by reason. Studying the scriptures' concept of justice, Oliver O'Donovan examines the Hebrew word *mishpat*,[34] usually translated as 'justice' in English bibles and often paired with the Hebrew word *tsedeqa*, which is generally translated as 'righteousness'. Other commentators suggest that *tsedeqa* is better translated as 'doing right', which puts the focus more on others than ourselves, and that the pairing of *mishpat* with *tsedeqa* is better translated as one phrase, *correct justice*, or *true justice*.

Oliver O'Donovan's view of *mishpat* as judgment, judicial performance, an activity carried out, not justice as a state of affairs being brought into being, has been scrutinised by Nicholas Wolterstorff, who accepts that the writers of the Hebrew scriptures often meant juridical functions by the word *mishpat*, as we speak of 'halls of justice' or 'the justice system'. He agrees that Amos' cry for 'justice to be set up in the gate' was raised because the juridical system had collapsed or was badly malfunctioning. However, Wolterstorff thinks that O'Donovan's limiting of the word *mishpat* to that juridical sense of 'rectifying justice' denies the existence of a more primary form of justice; it makes no sense to think of judges rendering justice between individuals unless some public and primary sense of what justice really is pre-exists. The ever-rolling stream of justice for which Amos calls is not only the justice handed out by judges but that wider sense of justice to be held by each and every Israelite, and that so often in the scriptures is connected to the needs of widows, orphans, resident aliens and the poor – justice indeed going beyond what judges might decide.[35]

Wolterstorff builds on Luke's Gospel and Acts, stressing Jesus as the bringer of justice to the downtrodden, and the Jesus who Himself falls victim to injustice, falsely accused, wrongly flogged, crucified as a matter of political expediency. He therefore takes issue with the O'Donovans and others who believe that scripture shows a right order with obligations, not inherent rights, at the heart of what really is. Instead, Wolterstorff believes that inherent natural human rights were implicit in the Hebrew and Christian scriptures and in the work of the Church Fathers. In the fourth century, John Chrysostom preached lengthy sermons on the parable of Lazarus and the rich man, teaching from scripture that the failure to share one's own goods is theft and swindle and defraudation, and that the poor man's shipwreck of poverty is not to be judged by us, his need being his sole recommendation of worthiness to receive our mercy and be freed from his misfortune.[36] Chrysostom sets out no requirements of virtue or of just deserving, only that of the man's needs. He does not even speak of a duty of charity, but only the obligation to respond with

34 O O'Donovan, *Desire of the Nations*, p 39.
35 N Wolterstorff, *Justice: rights and wrongs* (Oxford, 2008), pp 68–75.
36 John Chrysostom, *On Wealth and Poverty*, trans C Roth (Crestwood, NY, 1984), pp 49–55.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

mercy to the poor man's natural right to share in good. In the same century, Ambrose of Milan wrote: 'Not from your own do you bestow upon the poor man, but you make return from what is his.'[37] Again, in that century, Basil of Caesarea wrote plainly:

> That bread which you keep, belongs to the hungry; that coat which you preserve in your wardrobe, to the naked; those shoes which are rotting in your possession, to the shoeless; that gold which you have hidden in the ground, to the needy. Wherefore, as often as you were able to help others, and refused, so often did you do them wrong.[38]

Wolterstorff's claim is that Christian tradition centres around the victim – what he calls the 'patient perspective' – not around the moral person seeking to fulfil the obligations that go with living a good life. It is not about us; it is about them. For him, rights are not about people being entitled to things; rather they are about treating human beings with correct respect. Nor does he think that respect is anything to do with people's rational capacities, or their abilities. His view is straightforwardly that what gives people human worth is simply that we are loved by God; that God loves every creature who bears God's image, made in God's likeness; and this alone gives people the worth in which their natural human rights inhere. Wolterstorff recognises that his claim entails a leap of faith. It takes faith to believe that God loves every person, that every person is in God's image, but if that is our belief then natural human rights must be inherent in it.

Finally, works by Nicholas Sagovsky and Rowan Williams show why this belief is appropriate. Sagovsky draws three strands from Rawls' concern for fairness and then adds a further strand.[39] The first strand is the priority of individual liberty, which he sees as liberty for human flourishing, for us to achieve our potential, not simply enjoying multiple choices; the second strand is the need for a system of law with public approval, able to moderate and arbitrate when people's individual liberties conflict; the third strand is the imperative of meeting needs, both for basic physical functioning (what Seebohm Rowntree called 'primary poverty'[40]) but also, for Sagovsky, our need to be able to lead fulfilled lives in right relationship to God, to other human beings and with the earth's resources. It is these human needs (what we need in order to flourish), rather than human rights as such, that require social justice. Respect for individual freedom is itself an important value for society, overridden only with very

37 C Avila, *Ownership: early Christian teaching* (Maryknoll, NY, 1983), p 50.
38 Ibid, p 66.
39 Sagovsky, *Christian Tradition*.
40 S Rowntree, *Poverty: a study of town life* (London, 1901), p 86.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

good cause, not just by the tyranny of the majority.[41] Thus a state's utilitarian arguments for torture are overridden by human rights, as should have been Tony Blair's statement about the rights of terrorists that 'the demands of the majority of the law-abiding community have to take precedence'.[42]

BEING HUMAN

The strand that Sagovsky adds to Rawls' three strands is that of responsible action, our personal need for doing justice, sometimes at great personal cost. Justice is 'something to die for.' Sometimes it involves standing against law, and Sagovsky examines Dietrich Bonhoeffer's willingness to take 'responsible action' by plotting Hitler's death after considerable careful thought as to whether it was the fitting and right response that he should make.

Concluding with a study of the Christian Eucharist, Sagovsky argues that the Eucharist is itself a dynamic for justice, a 'restless memorial' established in the hope of God's justice coming to the world, committing us to act. He says that

> participation in the Eucharist can never be a withdrawal from the struggle for justice, but is always a dynamic making for a new anger and dissatisfaction with injustice and a new commitment to realizing the hope of justice – or fragments of justice – in this world.[43]

In Bonhoeffer's words:

> Man is appointed to the concrete and therefore limited responsibility which knows the world as being created, loved, condemned and reconciled by God and which acts within the world in accordance with this knowledge. The 'world' is thus the *sphere of concrete responsibility* which is given us in and through Jesus Christ.[44]

Bonhoeffer believed that this responsibility comes from being conformed to the image of Christ, becoming Christ-like, through membership of the Church, reading of the scriptures, meditation and committed action. As Michael Ramsey wonderfully said, 'God is Christ-like, and in him is nothing un-Christlike at all.'[45] Sagovsky sees the Holy Spirit working in the Eucharist to free our human wills into that Christlikeness that will bring about God's justice, a Christlikeness into which Jesus brings those who pray, as he taught, 'Thy Kingdom come'.

41 Harries, *Faith in Politics*, p 89.
42 Ibid, p 105.
43 Sagovsky, *Christian Tradition*, p xviii.
44 D Bonhoeffer, *Ethics*, trans N Horton Smith (London, 1964), p 298, emphasis in original.
45 M Ramsey, *God, Christ and the World* (London, 1969), p 41.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

In a lecture at the London School of Economics, Archbishop Rowan Williams carved out remarkable new ground as a religious base for human rights: that is, for claiming that human rights are more than merely something we assert, that they have real foundation, springing from what makes us what we are.[46] Williams wrestled first with Christianity's long struggle over slavery: how to reconcile the institution of slavery – widespread in the Roman Empire, and later, and hugely increased today – with the new relationship as fellow-Christians when slaves became baptised? As some New Testament epistles make plain, the baptised slave is no longer just the property of his or her master, but master, mistress and slave together belong to Jesus Christ and are answerable to him. So, for instance, marriage between a slave and a free person was recognised by the Church. Thomas Aquinas made an explicit distinction that the slave had a duty to obey in matters external to the body but that, in such things as the body's need for food or the begetting of children, the slave was bound to obey no-one but God. The principle is that the human body is not an item of property; the idea of ownership is inappropriate.

Where Aquinas becomes particularly important, and where Williams develops his strong argument, is in Aquinas' refusal to separate 'soul' and 'body'. They belong together as the organ of meaning. Without the body the soul cannot communicate. To protect the body, to love the body, is to secure human discourse. To deny communication is to dehumanise. And central to this is the liberty of sexual communication, sexual expression – which is why sexual abuse is a prime example of someone's body being made an instrument of someone else's expression. The archbishop then reflects that to be human is both to communicate and to receive communication, and that this is true even of the most inarticulate: infants, or people with mental disability, are still people, still have faces. Human rights belong not to the person who can demonstrate capacity or rationality but to any organism that is recognisable as a human body; at any stage of its organic development it carries the image of God, the God who communicates and receives communication, the God expressed as Word, whether in speaking the Creation into being (God said, 'Let there be Light') or in Christian thinking (the God seen as Word (*logos*) in Jesus Christ), and, again in Christian thinking, the God who in Trinity has the relationship of communication at the heart of Being, drawing us into that divine and eternal relationship between Father, Son and Holy Spirit.

If we seek to know what is the dignity and worth of human beings, what gives us all our rights, it is that each of us in our infinite variety reflects the image of God, and that each of us, however inarticulate, Christian or not, has something to say, something to contribute, to communicate, in that divine conversation,

46 R Williams, 'Religious faith and human rights', 1 May 2008, <http://www.archbishopofcanterbury.org/articles.php/1161/archbishop-religious-faith-and-human-rights>, accessed 26 January 2012.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press

something in which God does delight. So human rights are not to do with our being forced into a single mould; they are ultimately to do with our difference, with our having our own thing to say as we draw closer to the heart of Creation. We are valued because God wants to hear us speak and because the world needs us to do so. As Lord Harries concludes, 'A good society is one in which we take all voices and the needs they represent into account . . . [including] the marginalized voices from outside our borders.'[47]

doi:10.1017/S0956618X12000063

47 Harries, *Faith in Politics*, p 128.

https://doi.org/10.1017/S0956618X12000063 Published online by Cambridge University Press