

In *Justice: rights and wrongs* (Princeton University Press, 2008) Nicholas Wolterstorff argues extensively for a conception of justice as rights, in difference with the prevailing theory of justice as right order, with significant import for political freedom.

Justice as right order is the view set out in Plato's *Republic* and also in many contemporary theories of justice. On this view, "Justice is present in society, on the right-order way of thinking, insofar as the society measures up to whatever is the standard for the rightly ordered society" (30.) A societal right order will generally be grounded in either obligation incurred by social contract or by natural law; Wolterstorff argues that contemporary theory takes the course of natural law (29-33,) including, perhaps surprisingly, that of Rawls (15-17.)

In justice as right order, a person has rights based on those rights being conferred on beings of a certain sort, and the person being a being of that sort. That however is not sufficient for a person to have those rights; something necessarily *confers* those rights for them to obtain. Rights are conferred "by human agreement, by human speech acts, by human legislation, by some socially transcendent standard that takes the form of divine legislation, by some socially transcendent standard that takes the form of objective obligations that exist apart from divine legislation, or whatever" (35-36.)

Justice as inherent rights, argues Wolterstorff, accepts that many rights are socially and legally conferred, while holding that there are other rights that inhere in the worth of a person being the sort of entity she is (36.) On this view, no social action is required, nor is a matrix of natural, objective obligations, for those rights to obtain: "there does not have to be *something* else that *confers* those rights on entities of this sort" (36, emphasis in the original.)

Rights and obligations as he understands them are correlative: "if, on account of your worth, you have a subjective right against me to my treating you a certain way, then I have the correlative subjective obligation toward you to treat you that way (36.) On his view, obligations are grounded in rights, and not vice versa.

In Wolterstorff's argument, in difference with how most probably view rights, rights are not about rights by an agent to act in a certain way or the right to possess or use certain objective goods; rather, rights are relational, and one stands as a moral patient in relation to a right. "[O]ne's claim-rights are one's rights to persons treating and refraining from treating one in certain ways" (138;) stated in general form, "*X has a right against Y to Y's doing (or refraining from doing) Z*" (222, emphasis in the original.) Objective goods are involved in rights in the following way: "Rights are *normative relationships that incorporate life-goods*" (222, emphasis in the original.) This will be an important consideration in considering political liberty.

After extensively developing his arguments about worth-grounded rights, he concludes that "one should never treat persons or human beings as if they had less worth than they do have; one should never treat them with under-respect, never demean them" (370.) He is careful to distinguish that the obligation of "should" in this principle is that of full-cognition, objective obligation, not culpability obligation (that is, a legal sort of blameworthiness that holds even when one is ignorant of the relevant facts of worth (371.)

He then takes up the idea of obligation: what grounds the obligation of the "should" in this

principle? His conclusion is that “the requiredness constitutive of obligation is what respect for worth requires” (371;) that is, obligation is incurred by the respect demanded for something based on its inherent worth, apart from anything else instituting or conferring such obligation. The import of this may be more clear from a footnote, in which he states that he conclusion differs from G.E.M. Anscombe’s conclusion that “the concept of obligation is intrinsically connected with the idea of someone issuing legislation” (371.) He calls his account of obligation the “respect” account, in contrast with the “social requirement” account, of which Anscombe’s is one example (373.)

The social requirement account of obligation requires that obligations are generated by some action by someone, such as valid commands; crucially, these are not “*moral* obligations, but *pre-moral linguistic* obligations” (373, emphasis in the original;) only when the commands and the commander fit the requirements for issuing such commands do they become moral obligations. That is, social requirement claims an *ex nihilo* creation of moral obligation where none existed previously.

In contrast, Wolterstorff’s respect account of obligation is grounded in what he calls “*standing* moral rights and *standing* moral obligations” (373, emphasis in the original.) On this view, commands can only generate obligations by appeal to pre-existing, or “standing,” moral rights and obligations; thus on this view a command is redundant that requires an obligation already required by the respect demanded by the inherent worth of something.

Standing moral rights and obligations create moral obligations that exist independently of human action establishing or conferring them. If Wolterstorff’s argument for standing moral rights and obligations obtains, then moral obligations exist independently of anything establishing or creating those obligations, as given in theories of justice as right order. This, in my view, has profound impact on how we view political liberty, which I will develop in part II.

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