CHAPTER 9

Human rights, human dignity and the scope of responsibility

Who is my neighbour? (St Luke)

The recurring theme of this book has been the question of whether liberal democratic societies have or need to have a secure moral foundation and, if they do, the role that Christian social and political reflection could or should contribute to the articulation of this moral base. We have also seen reasons deployed by communitarian thinkers such as Richard Rorty and Michael Walzer for thinking that the search for a universal rational philosophical basis for politics is misconceived. In their view, societies are based upon common self-understandings and a lively sense of their own ethos, not upon some abstract universal principles. At the same time, narrative theologians have argued that, if liberal society is conceived as being based upon some set of general philosophical principles, then theology cannot contribute anything to the formulation and defence of such principles. To do so would be to abstract from the narrative of Christianity and use its insights in a way that detaches them from the story, and to make what is a distinctively Christian moral perspective an exemplar of some more general moral and political position. In this sense, the narrative theologian is opposed to an 'accommodationist'[1] strategy of using Christian moral resources, as it were, at the service of a moral position which can be reached and accepted by others on purely secular or humanist grounds.[2] At the heart of the narrative position on these issues is the idea, indebted to

[1] Hauerwas, *The Peaceable Kingdom* pp. 59–60.
[2] Ibid. p. 59.

Wittgenstein, that one cannot separate off the grounds for a belief, and the ways in which such beliefs are acquired and taught, from the characterisation of the nature of the beliefs themselves. So, it is claimed, it is false to think that a set of beliefs can exist and mean the same thing to all those who assent to those beliefs, while being held on quite different grounds by different groups of believers and embedded in the different narratives. We shall return to this discussion shortly, but in this chapter I want to consider in some detail a particularly good and salient example of the accommodationist strategy, namely, the role of the idea of human rights.

A rights-based argument is one way in which one could respond to the claim that liberal democratic societies lack a moral foundation. It is claimed that the reason why such societies might be thought to lack a moral foundation is that they are marked by moral subjectivism in which each individual is regarded as the ultimate legitimate source of his or her own values. In parallel to this runs the argument about the instrumental nature of reason: that reason cannot prescribe ends; it can only prescribe means to ends which are, in their turn, subjectively chosen. Given this, there is clearly a deep problem about how to theorise the legitimacy of a society with this diversity and with this limitation on reason. There are two ways typical of modernity in which attempts have been made both to recognise the limits of reason and to accept value diversity as a consequence of our inability to justify moral cognitivism. These two approaches are, on the one hand, theories of rights and, on the other, utilitarianism. I shall concentrate on rights in this chapter, before moving later to an examination of the role of utilitarianism as a way of addressing the problem of social and political morality in the context of moral diversity.

It might be thought paradoxical to argue that theories of rights could help to fill the legitimation deficit of liberal societies, since a theory of rights surely has to have some kind of moral foundation, and yet precisely the problem with liberalism, according to its critics, is that we cannot have a cognitive moral theory (morality is seen as a matter of subjective preference) and we do not have a non-instrumental view of reason

(reason cannot establish moral truths). Yet, frequently, theories of rights have been introduced as attempts to provide a basic moral framework to regulate the relationships between members of liberal societies who differ profoundly about morality. This strategy involves 'putting the right before the good', in Rawls' felicitous phrase. We disagree about the good, and we cannot accept that an authoritative view of the good can be established. Nevertheless, it is argued, it may be possible to reason about the right, that is to say about the framework of rights, which is appropriate and legitimate to regulate the relationships of those who differ fundamentally about the good. This, for example, is the position taken by the American philosopher Alan Gewirth, and is certainly one of the most subtle justifications of rights that recognises the fact of moral diversity and pluralism.[3] At the same time, the whole rights-based strategy has been criticised by Alasdair MacIntyre, who, as we have seen, is a major inspiration to narrative theology, when he argues:

> The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason we possess for asserting there are no witches and the best reason we possess for asserting that there are no unicorns: every attempt to give good reasons for thinking that there *are* such rights has failed.[4]

Given the salience and popularity of the idea of rights, not just within particular societies, but also in international politics, it is therefore very important to consider in detail whether it is possible to devise a moral strategy for the justification of a rights-centred approach to politics.

Gewirth gives us a very useful conceptual structure which any fully worked out theory of rights has to fit: A has a right to Φ against B in virtue of Z. That is to say, we have to identify the agent(A) who is the bearer of rights, what it is about the agent(Z) in virtue of which he/she is the bearer of rights, also the person or persons(B) against whom the right is held and the nature of the right asserted(Φ).[5]

[3] A. Gewirth, *Reason and Morality* University of Chicago Press, 1978.
[4] MacIntyre, *After Virtue* p. 69.
[5] A. Gewirth, *Human Rights* University of Chicago Press, 1982.

So we shall begin with the agent, the person who is the bearer of rights. Given that the rights tradition in moral theory has had quite deep roots in natural-law theory, although it is by no means confined to that, it is understandable that a good deal of thinking about human rights has been rooted in an account of human nature and of how an understanding of that nature can support conceptions of rights. I have already discussed the ways in which natural-law theory gets into difficulties about the relationship between nature and the moral principles the moral order is supposed to support, and I do not want to repeat these. I shall, however, concentrate on one or two particular issues of special relevance to human rights. One of the most basic of these is a claim about the role of human nature in supporting claims about rights. It might be argued that, because human beings have certain capacities such as consciousness, the capacity for deliberation and choice, then these capacities give them a kind of dignity and worth which deserves respect, and that this respect should be institutionalised in terms of rights. The Catholic political philosopher Jacques Maritain provides a good example of this approach:

> there is a human nature and this human nature is the same in all men . . . and possessed of a nature, constituted in a given and determinate fashion, man obviously possesses ends which correspond to his natural constitution and which are the same for all – as all pianos, for instance, whatever their type and in whatever spot they may be, have as their end the production of certain attuned sounds. If they do not produce these sounds, they must be attuned or discarded as worthless . . . since man has intelligence and can determine his ends, it is up to him to put himself in tune with the ends necessarily demanded by his nature.[6]

Such a conception of human nature is used by Maritain to justify a natural-law based theory of rights. There is, however, a very great deal that is morally and logically controversial about this.

The first is that his argument requires that *essence* precedes *existence*: the view that human nature has a fixed essence which

[6] J. Maritain, *The Rights of Man and Natural Law* trans. D. C. Anson, Ignatius Press, San Francisco, 1986, pp. 140–1.

particular human beings then realise. This view has, however, been severely criticised, first of all by the existentialists – particularly Heidegger and Sartre, whose *Existentialism and Humanism* is a vigorous critique of this view that there is a human essence which 'precedes that historic existence which we confront in experience'. In Sartre's view, the argument that essence precedes existence has to depend upon the existence of God as creator. If a piano (Maritain's example) or a paper knife (Sartre's example) has an essence, then it is because each is created according to a preconceived plan:

> Thus the paper-knife is at the same time an article preconceivable in a certain manner and one which, on the other hand, serves a definite purpose, if one cannot suppose that a man would procure a paper knife without knowing what it was for. Let us say then of the paper knife that its essence – that is to say the sum of the formulae and qualities which made its production and its definition possible – precedes its existence.[7]

However, this relationship, between essences and the fact that something has been created for something which gives the notion of essences its sense, has now broken down in the case of God and man:

> Atheistic existentialism of which I am a representative declares with greater consistency that if God does not exist, there is at least one being whose existence comes before its essence, a being which exists before it can be defined by any conception of it. That being is man or as Heidegger has it, the human reality (Dasein).[8]

So, Maritain's idea that man has an essence which can underpin a notion of natural law and natural right depends upon the idea of God as a creator and, thus, the remit of this argument runs only within the religious communities which take not only this view of God, but also that God creates man with a substantive essence, a view which is, in its turn, criticised by existentialist theologians. If ideas about rights are supposed to provide a firm foundation for both domestic and international politics in a situation of great moral diversity, any such strategy will be undermined by rooting a doctrine of rights in a

[7] J. P. Sartre, *L'Existentialisme est un humanisme* Les Editions Nagel, Paris, 1963, pp. 18–19.
[8] Ibid. p. 21.

view about the human essence and what this requires, since claims about the nature of that essence will be very dubious and controversial.

The second point about the argument from human nature is closely connected and has to do with the 'fact/value' distinction. Even if it was possible to determine the nature of the human essence, it would be logically illegitimate to deduce from statements about this essence any conclusion about the nature of the rights supposedly required by the possession of this essence. Either statements about human purposes and human flourishing are straightforwardly factual, and if so cannot in logic imply normative conclusions, or they are already statements containing normative elements and, if so, they will be logically unsupported since it is not possible to provide a cognitive basis to such normative conceptions. Reason cannot ground norms and norms cannot be read off nature – so either way there cannot be a cognitive theory of rights. As Margaret MacDonald says:

> nature provides no standards or ideals. All that exists, exists at the same level, or is of the same logical type . . . standards are determined by human choice, not set by nature independently of them. Natural events cannot tell us what we ought to do until we have made certain decisions . . . natural events themselves have no value and human beings as natural existents have no value either, whether on account of possessing intelligence or having two feet.[9]

Norms cannot be deduced from facts. Normative judgements are rooted in personal decisions and preferences. Reason is purely instrumental to devising the efficient means to ends.

These two sorts of consideration, therefore, pose major question marks at the side of theories of rights which have wanted to base the moral justification of rights on ontological claims about the nature of the person, and it is worth remarking at this point that there seems to be a prima-facie case for thinking that Christian approaches to theories of right will be likely to be involved in making such ontological claims[10] and, in this sense,

[9] M. MacDonald, 'Natural Rights' in *Philosophy, Politics and Society* Series I, ed. P. Laslett, Blackwell, Oxford, 1956, p. 45.
[10] See K. Cronin, *Rights and Christian Ethics* Cambridge University Press, 1992, p. 253.

these structures are important. Within Christian thought it might be possible to link a normative conception of human nature with a conception of rights. This would avoid the fact/value problem, since both the concept of human nature and the rights derived from it will be normatively toned. The problem is that, if, for the Christian, rights are rooted in a specifically Christian narrative and understanding, then part of the alleged usefulness of rights as a way of providing a framework for a liberal democratic order will have been diminished if this foundation is and can only be found in one specific normative tradition. I want to return to this question shortly, but before that, I want to explore a bit more fully the question of whether or not the idea of basing rights on some conception of human nature and human flourishing has been exhausted.

In the passage quoted from MacDonald's seminal essay on 'Natural Rights', she argues that 'Human beings as natural existents have no value . . . whether on account of possessing intelligence or having two feet'.[11] No empirical human quality can on its own justify claims to rights. These empirical features have to be put into a normative framework to relate to other normative concepts such as rights, but these normative perspectives, in turn, will depend upon choice or decision, not reason.

This argument is however, too rapid, because it seems to me that there are empirical characteristics of human beings which are more morally relevant than others, and that this is so without having to claim that these features are relevant because they already contain normative elements. Take, for example, MacDonald's own deeply felt views about the nature of morality. She argues that value utterances are more like records of *decisions* than propositions: 'To assert that "Freedom is better than slavery" or "All men are of equal worth" is not to state a fact but to choose a side.' It announces: *This is where I stand.*[12] So moral judgements are non-cognitive. At the same time, reason plays an instrumental role which she regards as more akin to, say, defending a judgement such that Keats is a better poet than

[11] MacDonald, 'Natural Rights' p. 45. [12] Ibid. p. 49.

Crabbe or defending an account of events in a court. We *defend* decisions by utilising reason, but we do not *prove* the basis of our decisions. So, one way of putting these points together is to say that morality is a matter of choice, but the choice in question is not sheer arbitrary choice like tossing a coin, but a choice which involves a degree of deliberation, but which, at the same time, is quite unlike scientific deliberation.

Now, given MacDonald's views about the nature of morality, it does seem that some features of human activity and 'nature' could be argued to be more morally important than others. The capacities for choice and deliberation are in this respect, therefore, surely more important than having two feet. They are morally relevant in the sense of being necessary conditions of moral action (as characterised by MacDonald) in a way that having two feet are not.

So, it could be argued that we should not give up the idea of an ontological basis of rights too quickly, because it might seem that there are some human capacities which are morally relevant in ways in which others are not.

However, to be relevant for a rights-based theory such an account of human capacity would have to be not only morally relevant but universal, if it has to do the job of grounding a theory of human rights. In this sense, *human* rights, that is to say rights which we bear in respect of our specific human capacities, rather than as a member of this nation rather than that, or this culture rather than that, would be tracking some rational universal features of human nature – those fundamental moral capacities which would be the basis of a universal moral framework.

This is a tall order, and one which is rather counter-cultural in a post-modern intellectual context, but it is still worth exploring a bit further to see whether it can be achieved or whether this whole project is, as MacIntyre argues, like trying to prove the existence of unicorns and witches. Let us take the example of Alan Gewirth, the philosopher discussed by MacIntyre in his argument against rights, whose *Reason and Morality* is probably the most sophisticated and subtle defence of a metaphysical theory of human rights. Gewirth recognises the fact of

moral diversity and the fact that, as human beings we have radically different goals and purposes to pursue, and to that extent his argument is at least implicitly critical of a thinker like Maritain who, as we have seen, argues that there is only a single set of rational human goals in the same way that there is only one purpose for a piano. Gewirth, however, focuses on the fact of moral agency – that human beings with diverse aims and purposes nevertheless have to be able to act as moral agents in order to affirm and follow this diversity of ends. Given that we are moral agents, what are the necessary or generic conditions of agency, that is to say: are there necessary conditions of moral agency – conditions that relate to moral agency in a way that having two feet, to use MacDonald's example, do not? Gewirth argues that there are, in fact, two necessary conditions of agency: *freedom* and *well-being* and that, as necessary conditions of agency, these form the basis of claims to rights. His argument is complex and his own schematic characterisation of it runs as follows:

> every agent implicitly makes evaluative judgements about the goodness of his purposes and hence about the necessary goodness of the freedom and well-being that are the necessary conditions of his acting to achieve his purposes. Second, because of this necessary goodness, every agent implicitly makes a deontic judgement in which he claims that he has rights to freedom and well-being. Third, every agent must claim these rights for the sufficient reason that he is a prospective agent who has purposes he wants to fulfil, so that he must logically accept the generalisation that all prospective agents have rights to freedom and well being.[13]

This argument thus links two parts of the formula for rights: A has a right to Φ against B in virtue of Z in that it specifies the agent and in virtue of what it is about the agent in terms of which or in virtue of which he/she is a bearer of rights.

On the basis of his argument about the generic condition of agency (which could also be transposed into a theory about basic needs), Gewirth is then able to elaborate a complex structure of rights which specifies in quite a lot of detail what is

[13] Gewirth, *Reason and Morality* p. 48.

required both negatively (not to be coerced, assaulted, interfered with) and positively (education, health and social security) to secure the generic goods of agency.

At the moment, however, I am concentrating on the argumentative strategy rather than its detail. It does aim to show that, despite first-order moral diversity, we should not abandon the idea that there can be a universal and rational basis for human rights which is not undercut by arguments about the diversity of human goods and, indeed, the narrative patterns within which such goods may have a home for particular moral agents – Christians for example. So his argument is that there is a structure of moral agency which transcends particular moral narratives and which will enable us to construct a meta-theory grounding universal rights in the nature of this agency, which recognises that individual agents may, of course, pursue their moral goods from within particular narrative communities. If such an argument were to go through, then, of course, it would be a way of reconciling the universal and the particular, the foundational and the narrative: the structure of agency and its generic goods would be constant; the particular forms of moral agency could be narrative specific.

This would, however, be far too bland a way of reconciling a cognitive theory of rights and a narrative or tradition-based view of morality with its emphasis upon virtues specific to moral traditions rather than universal rules. We need to follow in some detail the argument as to why this bland reconciliation may not work, since it will shed a good deal of light upon what might be construed as a narrative theologian's critique of rights and the political strategies which follow from this. I want to look at the argument in what is, chronologically, the reverse order. Gewirth's *Reason and Morality* was published in 1978. Its argumentative strategy was subjected to a vigorous critique by MacIntyres's *After Virtue* in 1981 with a rejoinder by Gewirth in 1985 in 'Rights and Virtues' in the *Review of Metaphysics*. Gewirth defines morality in terms of universals which are rationally compelling, rooted as they are in the necessary conditions of agency; MacIntyre, in contrast, sees morality in terms of virtues which, in turn, are related to practices and

traditions which are local and particular. These perspectives cannot be easily reconciled.

Consider Gewirth's 1985 criticism of MacIntyre's virtue ethics first of all. MacIntyre relates virtues to practices in such a way that a virtue is something the exercise of which will tend to 'enable us to achieve those goods which are internal to practices'.[14] Practices are, of course, always in the process of change and development, and with that change a development in the internal conception of virtue. An account of human virtue is *not* rooted in some kind of antecedent idea of human flourishing derived from a general /universal theory of human nature such as Aristotle's metaphysical biology, or in Maritain or Demant – as we have seen.[15] However, MacIntyre recognises that it is not possible to restrict the definition of virtues to the internal relations of given practices because, of course, some practices may involve virtues which cannot be regarded as being morally good: 'That the virtues need initially to be defined and explained with reference to a practice thus in no way entails approval of all practices in all circumstances.'[16] So what are the resources for the criticism of practices to which the virtues are internal?[17] It might be thought that this would be the point at which MacIntyre's argument for a basis on which practices could be subject to criticism might need the kind of objective moral universalism of which Gewirth's argument is an example. MacIntyre, however, argues that it is possible to develop different moral resources for a critique of practices and their internal virtues. To provide the moral resources, he considers two supplementary arguments which he believes rescue the practice-based argument from relativism without committing him to some kind of abstract universalism. First of all, he develops the idea that the virtues in particular practices have to be seen in the context of 'the good of a whole human life' – so that a virtue relating to a particular practice may become grotesque if taken as characteristic of life as a whole.[18] This idea of the good of a whole human life, however, should not be taken as implying

[14] MacIntyre, *After Virtue* pp. 193–4. [15] Ibid. pp. 196–7.
[16] Ibid. p. 200. [17] Ibid. [18] Ibid. p. 275.

some sort of universal moral teleology of the sort to which he objects, because he relates this idea to that of tradition in his chapter 'Virtues, Unity of life and the Concept of a Tradition' and in the 'Postscript' to the second edition of the book in which he refers to a good for human beings the conception of which can only be elaborated and possessed within an ongoing social tradition. Such traditions accumulate experiences and resources to give a sense specific to that tradition of what is the good of a whole life. Life within a tradition makes answers to these sorts of questions rich and determinate at any particular point (although not permanently, since traditions change). So MacIntyre wants to secure the idea of a *telos* of a whole human life which will allow a moral critique of practices and their internal virtues while avoiding universalist foundationalism by referring to the issue of teleology to particular moral traditions which then provide the resources for the critique of practices.

This is a clear alternative to the rights-based strategy of Gewirth, who argues that it is possible to give an objective and universal answer to the sorts of questions that MacIntyre raises but, in Gewirth's view, fails to answer properly. Why does he take this view?

Gewirth produces a critique of the three stages of MacIntyre's argument: at the level of practices; the good of the whole life; and tradition. In terms of practices he, in fact, follows MacIntyre's own lead here, by arguing that a practice like torture can be related to the achievement of some internal good – so what would be the grounds for arguing that it is not morally virtuous? The answer then lies in the second stage of the good of a whole life – MacIntyre's argument would be that the idea of integrity would militate against the elevation of the sort of 'virtues' to do with the practice contributing to the good of a whole life. However, as Gewirth argues, this still leaves the question of the moral critique of this practice indeterminate, since Hitler or Stalin could be regarded as authentic and sincere in their quest for a good human life. So a move has to be made to the third stage, to a moral tradition within which the notion of a good human life has a determinate sense and would allow for the critique of practices. For Gewirth, however, this

appeal to a moral tradition rooted in specific communities will not produce anything morally determinate:

> But which community? Aristotle's perfect community required the enslavement of farmers and mechanics; the Nazi community required the murder of Jews and others; the contemporary Afrikaner community requires the subjugation, economic and personal as well as political of millions of blacks. For all his endorsement of a morality of laws, MacIntyre's specification of their 'point and purpose' together with his unclear evaluation of moral universalism, leaves available such violations of basic rights.[19]

He concludes by arguing that MacIntyre's strategy is no substitute for the more traditional view that derives the content of the 'virtues from moral rules about rights and duties'.

So, here is the nub of the issue at stake between universalism over rights compared with a virtue-based ethics which links virtue with tradition, practice and narrative which, as we have seen, has also been endorsed by narrative theologians. It also bears upon MacIntyre's own vigorous critique of Gewirth's argument about the necessary conditions of action in *After Virtue*, in which he argues that the link seen by Gewirth between the necessary goods of agency and rights is defective. He argues that the argument is defective since the idea of a right is *internal* to a moral and social practice, it is not something philosophically foundational that can ground the practice:

> But the objection that Gewirth has to meet is precisely that these forms of human behaviour which presuppose notions of some ground to entitlement, such as the notion of a right, always have a highly specific and socially local character, and the existence of particular types of social constitution or practice is a necessary condition for the claim to the possession of a right being an intelligible type of human performance . . . lacking any social form, the making of a claim to a right would be like presenting a cheque for payment in a social order that lacked the institution of money.[20]

[19] A. Gewirth, 'Rights and Virtues' *Review of Metaphysics* 30 (Nov. 1985), pp. 758–9. For further discussion of Gewirth see R. Plant, *Modern Political Thought* Blackwell, Oxford, 1991, ch. 7; E. Regis, *Gewirth's Ethical Rationalism* University of Chicago Press, 1984; for Gewirth and MacIntyre see R. Hittinger, 'Natural Law and Virtue: Theories at Cross Purposes' in *Natural Law Theory: Contemporary Essays* ed. R. P. George, Clarendon Press, Oxford, 1992.

[20] MacIntyre, *After Virtue* p. 67.

I want to leave this argument for the moment, before returning to it later in the chapter, with some concluding remarks which will situate this issue more fully into the narrative theology debate. However, before moving on, it is worth remarking that it would be perfectly possible to avoid the general metaphysical claim about the grounds of rights that Gewirth wants to make, and treat rights as products of a particular moral tradition and the creations of particular political communities which have found it good to order the communities in this way. The problem with such an approach is that the idea of *human rights*, that is, rights held by human beings as such, then seems to go by the board in favour of rights created in particular communities.

I want now to move away from the metaphysical discussion about the grounds of rights to look at some other aspects of the formula for rights, namely, the nature of the right asserted and against whom it is asserted. There has been a long-running dispute amongst philosophers and political theorists about the nature of a right, whether it should be understood negatively or positively. A negative right would be a right to be free from coercion, interference, power, intimidation and so forth. In some respects, it could be seen as defining the requirements of the kind of negative liberty at which we looked in a previous chapter. A positive right would be a right to a resource of some sort: health care, education and social security for example. Civil and political rights could be cast in terms of negative rights, a right not be impeded or coerced when voting, or when owning property, or going about one's lawful business. A good example to point the contrast would be the right to work. On the negative view of rights, a right to work would be a right not to be impeded when going to work (by pickets for example), on the positive view, a right to work would mean a right to a job. Another example would be the right to life. On the negative interpretation, the right to life is a right not to be killed, on the positive view, it would be a right to the means to life, to health care, food, shelter etc. As I have said, philosophers have differed sharply over whether or not social, economic and welfare rights can properly be regarded as rights. For some, this is a logical or

conceptual issue, for others, it is more empirical. One of the major theological writers about rights, Jürgen Moltmann, is nicely ambiguous on this point:

> The fourth plenary meeting of the World Council of Churches in Uppsala in 1968 recognised that 'in the modern world wide community the rights of the individual are unavoidably tied to the fight for a better living standard for the socially disadvantaged of many nations. Human rights cannot be secured in a world of gross inequality and social conflicts.' Then came to the fore the knowledge that there are economic, social and cultural human rights about which the history of freedom in Western Europe has little to say. The International Covenants of 1968 also place the 'economic and social rights in the primary position and the Civil and political agents' only in the second place. Indeed in what other way shall a human being actualise his or her individual freedom rights if he or she does not find the economic and social possibilities for doing so
>
> . . .
>
> The right to life and the means which make continued living possible stand in the forefront. The St Plöten Report, therefore, just like the Roman Synod of Bishops places the right to life, nourishment and to work at the beginning of the catalogue of human rights.[21]

This argument could be construed in one of two ways. It could be seen as an argument to the effect that as a matter of fact civil and political rights cannot be exercised or enjoyed against a background of economic and material deprivation. So, for example, Henry Shue argues: 'No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life'.[22] This way of putting the point is consistent with the view that only civil and political rights as negative rights are genuine rights, and that a concern with economic and social circumstances may require a change in social policy so that citizens can enjoy their proper rights without at all conceding the argument that these social policies should themselves be seen in terms of rights.

The other way of looking at it, however, has been to argue

[21] J. Moltmann, *On Human Dignity: Political Theology and Ethics* SCM Press, London, 1986, pp. 5–6.

[22] H. Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* Princeton University Press, 1980, p. 24.

that social/economic and welfare rights are, in fact, genuine rights alongside civil and political rights, a point of view which is most consistent with the overall thrust of Moltmann's points quoted earlier. Many political philosophers have, however, regarded allowing such rights as a logical error. We need to look at the argument in some detail, since social and economic rights are frequently involved in direct pronouncements on public policy and yet there is little or no realisation that the ascription of such rights is, in fact, highly controversial.

The critical case against the idea of social rights turns on three claims: about the nature of liberty; about the nature of obligation and responsibility; and about the nature of ability.

As I said earlier, one way of thinking about negative and positive rights, the former rights to be free from coercion, the latter rights to resources, is to see these different rights as defining the sort of protection these two accounts of rights require. In the view of the critic of positive rights to welfare, this conception of rights trades upon a false positive conception of liberty. I wrote at some length about liberty in the earlier chapter on social justice, so it will be necessary to rehearse the points at issue here reasonably briefly. The critic argues as follows: if rights protect liberty, then there are no positive rights since positive liberty is a false conception. Freedom is the absence of coercion, not the possession of resources. To assume that freedom and possession of resources go together is to assimilate freedom and ability, but this is false, since no one is able to do all that he is free to do. I am *free* to do the indefinitely large number of things that I am not prevented from doing, but I am *able* to do only a proportion of these things. So freedom and ability are different concepts, and yet positive rights trade upon this false association of freedom and ability.

Secondly it is argued that, even if freedom and ability were to be conceptually linked, we could not, in fact, agree in a pluralistic society on what kinds of abilities were central to freedom and therefore what sorts of abilities should issue in rights.

So it is argued that the claim that there are genuine social and economic rights depends upon a faulty account of liberty.

For reasons given in chapter 8, it is difficult to accept this argument. First of all, freedom and ability cannot be separated in the way desired by the critic. If we ask the question in relation to negative liberty: why is negative liberty or being free from coercion valuable to me? The answer to this question must surely be that, if I am free from coercion, then I shall be able to live a life shaped by my own purposes or projects. But this links the worth of liberty with the idea of what I am able to do with liberty. If this is so, then the categorical difference between freedom and ability is not so wide.

Secondly, it is arguable that a generalisable ability to do X is a necessary condition for determining whether A is free or unfree to do X. It is only because people in general are able to sign cheques that we are able to determine that A is free to do so. If the general ability to do X is a necessary consideration of determining whether someone is free or unfree to do it, then freedom and ability cannot be categorically different.

Finally, in the argument due to Charles Taylor which was considered earlier: if negative liberty is a correct characterisation of freedom as the absence of coercion, then the question of whether society A is more free than society B then depends upon a quantitative judgement, namely, whether society B contains more or fewer coercive rules than A. This detaches the question from the moral question of whether what people in society A are able to do is more important than those in society B, and yet this is critical to the judgement, since society B may have fewer coercive rules because it is a much more simple society. So, although people are able to do more important and valuable things in society A, B might be regarded as more free, because as a simpler society it has few rules.

The final point is about moral diversity and the identification of these abilities which positive rights theorists argue lie at the basis of positive rights. This issue takes us straight back to the issues raised in the earlier debate about Alan Gewirth's arguments. The pluralist/communitarian and, indeed, the narrative theology view will argue that the diversity of moral traditions both within and between societies makes it impossible to identify outside of tradition and narrative context those forms

of ability which are fundamental; whereas the cognitivist such as Gerwith argues that it is crucial that we should be able to do this in a rational, universal and foundational way, and that the abilities in question are those to do with freedom and well-being which are the necessary goods of agency.

So it is very unclear that the argument from the nature and legitimacy of negative liberty is enough to block the case for social and economic rights as rights.

This does not, however, exhaust the argument, since the critic will also take the view that the idea of positive rights to resources has irrational consequences for the nature of obligation. The basis of this argument is the Kantian distinction between perfect and imperfect duties. Perfect duties are duties which it is always possible to perform and which are clear and categorical, none of which conditions apply to imperfect duties. In the view of the critic of positive rights, negative rights correlate to perfect duties just because the obligations required by negative rights are duties of abstinence and forbearance. The right to life on this view is the right not to be killed, and the correlative duty is not to kill; the right to privacy is the right to be free from interference, and the correlative duty is not to interfere and so on. Since the duties relating to these rights are basically to abstain from action, such duties are always capable of being performed since they are costless and not subject to scarcity. The obligations are perfect: they are categorical in that we do not have to exercise discretion as to when we shall exercise the obligations, since there is no constraint of scarcity. Since such obligations are acts of omission, we are always clear about what they are. We know exactly what is the obligation not kill, there is no ambiguity or unclarity about it.

It is also possible to argue quite coherently that the obligations in respect of human rights are held by all other persons. Since the duty is one of forbearance, it makes sense to say that every other person has a duty to forbear from interfering with the negative rights of all other persons. So mutual leaving alone is a perfectly possible set of rights and obligations to ascribe to all people everywhere. Since the obligations are costless and

negative, the idea of a set of universal perfect duties and related rights makes perfect sense.

The situation is, however, quite different with positive rights, in the critic's view. First of all, since positive rights are rights to resources such as health care or education, the corresponding duties cannot be clear and categorical. We know what the negative duty of not killing means in respect of the right to life; if, however, the right to life is construed as a right to the means to life, then that duty seems unclear and open ended. Does it, for example, imply the provision of all the resources necessary to keep someone alive? If not, where and on what basis do we arrive at a stopping place? We shall have to develop principles of rationing for such resources, and this then means that neither the right not the duties are categorical.

Secondly, in the case of positive rights, it is not clear who bears the obligation and *thus the responsibility when it is not discharged.* In the case of negative rights, it makes sense to say that all can bear the obligation and the responsibility, since they imply costless duties of forbearance, but, since positive rights, by definition, involve costs, it is not possible to believe that these rights could be allocated equally to all individuals.

There are some complex issues here. Even if we were to argue in the context of domestic politics, the obligation to meet the costs of the social rights of citizens becomes transmuted into the obligation to pay the taxes to meet these costs, this does not meet the case claiming social and economic rights as human rights, as Moltmann clearly does. If we say, again with Moltmann, that social and economic rights are human rights, that is applying to all people everywhere on the basis of their dignity as persons, then the critic will argue that all other people have a correlative duty (subject to the 'I ought implies I can't' principle) to meet these social-rights-based obligations. In the view of the critic, this extends human moral responsibility in a wholly irrational way. It does make sense to talk about universal obligations in respect of negative rights for the reasons I have given, but it does not make sense in regard to positive rights. I would become morally responsible for all the costs of social and economic rights which I am currently not meeting. I become

responsible for all the bad consequences for anonymous other people in respect of the obligations I am not discharging in respect of their positive rights.

There are some rather deep theological as well as philosophical issues here which relate to sins of omission and, because of the theological salience of these points, it is worth dwelling on them for a while. In the Anglican context in the General Confession for Evening Prayer, we are enjoined to confess the fact that 'we have left undone those things we ought to have done'. However, for this to make sense we have to have some general conception of what we ought to have done. There are at any single moment an infinitely large number of actions we are currently not doing. Which of these activities ought we to have done? What are the consequences of our not doing them, and what is the degree of our responsibility here?

If Christian ethics is allied to doctrines about human rights and in particular social and economic rights, then, in the view of the critic, the ethic and the responsibility ascribed in the Prayer Book becomes totally irrational. We shall always have an indefinitely large number of duties to an indefinitely large set of anonymous others to whom we owe such duties. The contrast here with the negative rights theories was made by Trammel:

> It is an empirical fact that in most cases it is possible for a person not to inflict serious physical injury on another person. It is also an empirical fact that in no case is it possible to aid everyone who needs help. The positive duty to love one's neighbour or help those in need sets a maximum ethic which never lets us rest except to gather strength to resume the battle. But it is a rare case when we must really exert ourselves to keep from killing a person.[23]

Essentially, the idea at stake here is that our common humanity and our common recognition of human dignity require us to respect rights and to bear the obligations that follow from those rights. Some of the obligations in respect of negative rights are perfect and costless, others are imperfect and costly, but we still bear responsibility when we could discharge such a positive

[23] R. Trammel 'Saving Life and Taking Life' in *Killing and Letting Die* ed. B. Steinbeck Prentice Hall, New York, 1980, p. 168.

obligation and fail to do so. If all of this follows from the idea of human dignity in relation to rights, and if one believes, with Moltmann, that for a Christian this sense of the dignity of man comes from humanity's relationship with God, then it follows that these obligations are part of the Christian ethic[24] part of Christian responsibility and thus of sin.

However, in the view of the critic of social rights, all of this is quite irrational because there are no such rights, partly for the reasons given and partly for the fact of scarcity to which we shall come shortly. For the critic, positive duties can arise only out of explicit or quasi contractual relationships. The duties of a doctor to the patient, or of parent to child, are understood on a quasi or implicit contract base: if I am promised in a contract the sum of £100, then I have a right to receive that resource as part of the contract. It follows from this that positive obligations are internal to contractual relations. A sense of common humanity, or for that matter a sense of citizenship, are not rich enough or explicit enough to ground positive obligations – although they can ground the perfect obligations that generally follow from negative rights and negative freedom. In respect of positive rights, however, we need a much more specialised moral framework, since positive obligations have to be discretionary because of scarcity, and this moral framework is provided, for the critic, by contract. A failure to honour a contract is a breach of obligation and thus a 'sin' in relation to a clearly prescribed duty. Failure to respond to the obligations set out by a spurious set of social rights is not however a moral failing or a sin on this view.

Before we move to an evaluation of the force of this argument which is very important but largely ignored by those who wish to link Christian ethics to human rights and thus to link ideas about duty and sin to such rights as providing the framework for what we ought to do (which is necessary condition for identifying sins of omission), I want to look at the final point of the critique to do with scarcity since this has entered the argument in relation to the issue of the imperfect and discre-

[24] Moltmann, *On Human Dignity* p. 11.

tionary nature of the obligations to do with the critique of positive rights. The argument here has been admirably focussed by Charles Fried:

> A positive right is a claim to something – a share of a material good or to some particular good like the attention of a lawyer, or a doctor, or perhaps to a result like health or enlightenment – while a negative right is a right that something not be done to one, that some particular imposition be withheld. Positive rights are always asserted to scarce goods and consequently scarcity implies a limit to the claim. Negative rights, however, the right not to be interfered with in forbidden ways do not appear to have such natural, such inevitable limitations. If I am let alone, the commodity I obtain does not appear of its nature to be a scarce or limited one. How can one run out of not harming each other, not lying to each other, leaving each other alone?[25]

From these points about scarcity, Fried draws the conclusion that there is a categorical difference between negative and positive rights:

> It is logically possible to treat negative rights as categorical entities. It is logically possible to respect any number of negative rights without necessarily landing in an impossible or contradictory situation . . . Positive rights, by contrast, cannot as a logical manner be treated as categorical entities because of the scarcity limitation.[26]

So, fundamentally, scarcity accounts for the basic differences between the two sorts of 'rights' and the discretionary nature of positive obligations.

This set of arguments is important and needs to be taken very seriously, partly because they are important in political theory, but also, as I have said, if Christian ethics is aligned with a rights-based approach, then it is important to get clear from that perspective exactly what the commitments of a rights-based argument might be thought to be.

I want to begin with the most recent point about scarcity, since it underpins much of the rest of the argument. It would be absurd to deny the fundamental importance of the issue of scarcity, but we have to be very careful before we assume that it draws a sharp distinction between negative and positive rights,

[25] C. Fried, *Right and Wrong*, Harvard University Press, Cambridge, Mass., 1978, p. 113.
[26] Ibid.

because it could be plausibly argued that, if the issue of scarcity undermines the categorical nature of positive rights, it does so equally in respect of negative rights too. Scarcity no doubt exists as a constraint on positive rights; but it also exists in respect of negative rights, but here it is scarcity in respect not of resources but of virtuous motivation. Respecting negative rights entails abstaining from action which would infringe such rights and, as such, it entails the absence of coercion, violence, assault, interference etc. There is, of course, as Christians with a sense of the idea of the fallenness of human nature would be the first to acknowledge, a shortage of such forms of forbearance. Given that people do coerce, interfere, assault etc., then the protection of negative rights implies costs, for example of police forces and courts, and thus the possibility of scarcity. At this stage of the argument, therefore, it might appear that scarcity is a constraint as much upon negative rights as positive ones. The negative rights theorist, though, has a response to this. The claim is that the costs associated with the idea of negative rights are contingent. That is to say, the issue of scarcity is not logically implicated in the nature of the right; it is, rather, a matter of enforcing the right that leads to scarcity; whereas a positive right to a resource builds the issue of scarcity directly into the nature of the right.

There are, however, two interrelated problems with this response. First of all it is possible to argue, as Fried does, in response to this sort of objection that it is possible to preserve the categorical nature of a negative right by denying that the issue of protection or enforcement has anything to do with the matter at all: 'The fact that I have a right to freedom of speech against the government does not also mean that I have a right that the government protect any exercise of that right' (pp. 110–11). The reason why Fried takes this draconian step is because, as he recognises, a right to the protection of a negative right would be a right to the resources of the community and, as such, would be a positive right. This is, however, a very high price to pay for preserving the idea of a negative right. It is not clear what the point would be in specifying a set of negative rights which did not include enforceability conditions. Fried

wants to make the conditions of enforceability a purely contingent matter, not logically connected to the nature of negative rights, but we have to ask what then would be the point of such a list of rights?

There is, however, a second and much stronger way of making the point, and that is logically to tie the idea of a right to its enforceability conditions. There is a good case for this. We have all sorts of preferences, interests, needs, desires and claims, only some of which are considered to be grounds of rights. We single out those claims and interests which we believe should give rise to enforceable obligations on others and call them rights. If the idea of enforceability is what makes a right a right, then in what sense is it possible to treat the conditions of enforcement as a contingent feature of rights? If this is so, then all rights, negative or positive, will run up against scarcity because of the costs entailed by enforceability conditions. Thus, if the negative-rights theorist believes that scarcity destroys the categorical nature of rights, then it is not clear why it does not do the same for negative rights too.

It seems to me that the solution here is not to be too abstract and categorical about rights, and to bring them more fully into relationship with political processes, particularly democratic ones. Issues of scarcity are part of the stuff of politics and in the same way as we can reach acceptable judgements in society through democratic discussion about the level of resources which should be committed to protect civic and political rights (the negative rights in the critic's view) so, through the same process, we can arrive at a rough and revisable consensus about the resources necessary for positive rights such as health care, education and so forth. This will make both sets of rights more or less as much or as little categorical as one another.

I now want to turn to the final aspects of this dispute, namely, the argument that positive obligation can arise only out of contract and therefore that a failure to aid is only an injustice if it is a failure in a duty that was required in contract. Again, this is an area, it seems to me, where theological approaches to human rights issues have not been as alert to the complexities and controversies as they ought to have been. The critic's view

is straightforward: positive rights to resources and aid can arise only out of contract and I only have an obligation to provide resources and aid if I have been party to such a contract and hence I can only commit an injustice in relation to positive duties within this contractual relationship. A culpable failure to do what I ought to have done is specified by a contractual or quasi-contractual relationship. Contract, therefore, provides the moral framework for positive obligation. I want to explore some of the problematic issues here before moving on to some more general observations on contract and covenant as the basis for a Christian view of ethics which will take us back to some of the issues mentioned at the end of the chapter on prophecy.

The problem with the contractual approach to obligation is that of harm. If I fail to act in a positive manner to your needs, this will cause you harm. You need X which I have, I withhold X and you are harmed. The negative-rights theorist will argue that the fact that you have a need for X which I recognise does not create an obligation on me to provide X, that obligation can arise out of contract alone: *contra* Simone Weil, needs do *not* create obligations. It is only if they are set in a contractual context that they do. However, this leads to a rather paradoxical, or at least , morally controversial result. Imagine that you have this need to which I do not respond because I do not have a contract with you. You are harmed by my lack of response but I have committed no injustice. On the other hand, another person, B, equally withholds X from you and you are badly harmed again, but he/she has committed an injustice because he/she was part of a contractual relationship. Now, leaving aside contract, it is a matter of empirical observation that you have been similarly harmed by our equal failure to act. Or, to put the point another way, our sequential failures to act each time caused the harm in question. If we assume for the moment that moral responsibility follows from the ascription of causal responsibility, and the causal circumstances are the same in each case, then in what sense does contract come into it? Contracts are a set of marks on a paper (on one view) and they cannot make any difference to causal responsibility and should not make any difference to moral responsibility.

This is one way of making a criticism of the contract view, but there are others too. The critique we have been considering is very severely physicalist, that is to say, it is not concerned with the framework of rules within which responsibility for obligations is assigned. It concentrates instead upon causal circumstances. In doing so, it can encourage the increase in proliferating responsibilities if it can be shown that my failure to act could have prevented some harm possibly to some anonymous other person.

Another way of looking at the issue is not to reject the idea that obligations have to be assigned by rules, but to argue that the rules of explicit contract are far too constraining. In fact, on this view, the appropriate rules and obligations are specified by rights and obligations to which rights give rise. So the issue between the negative- and positive-rights theorists is not whether obligations arise out of rules, but how extensive the rules are: the narrow rules of contract or the wider set of rules specified in a framework of both positive and negative rights.

Later, I want to explore the relationships between these issues about rules and contracts and Christian ideas about covenant and contract. Before moving on to these theories, however, I want to look at the critique of the human rights approach, developed by narrative theologians, which takes up in a theological context some of the theories that were discussed earlier in the debate between Gewirth and MacIntyre. In most respects, these disputes mirror ones we have already encountered in the earlier discussion of natural law, but it will be useful to refocus them on issues to do with rights.

The first point to be made by the narrative theologian is that a theory of human rights cannot provide the moral basis of principle for society just because it is so abstract. Ideas like human dignity or even the generic conditions of agency are 'bleached' conceptions, they are abstracted from the nature of persons as those persons exist in communities shaped by traditions and held together by narrative. Stanley Hauerwas describes the position thus by criticising a more general moral strategy of which a theory of rights would be a part:

contemporary discussions of morality which neglect or, at any rate, make virtue secondary are attempts to develop ethical theory not founded on such a moral community. Morally and politically, we act as though we were members of no community, share no goods and have no common history. Thus, the challenge is to provide a theory of how moral objectivity can be achieved in such a society. By providing an impersonal interpretation of 'moral rationality' in which the emotions and history of the agent are relegated to the 'private', recent moral theory has tried to show how moral argument (and even agreement) is possible between people who otherwise share nothing in common. Thus, it is thought, 'morality' can be grounded in human nature, only now 'nature' is limited to 'rationality', abstracted from any community's history.[27]

Hauerwas acknowledges the importance of this project – indeed, he regards it as an extraordinarily important project 'to secure societal co-operation between moral strangers'. Nevertheless, it is a project which he argues must be resisted because it fails to account for the actual nature of our moral agency, as we saw in chapter 5, and makes differences morally irrelevant, whereas, for Hauerwas, they are crucial.

In any case, it is morally rather inert. It depends, as Hauerwas says, upon abstraction, whereas the sources of thick moral agency lie in narrative and their accompanying traditions. The 'social generalities', as he calls them in *The Peaceable Kingdom*, will not be morally motivating, since there is no place outside history where we can find a secure place to anchor our moral convictions. To take his own example, what was wrong with apartheid was not that it offended against some universal account of human nature and human rights, but because one could not be a Christian at the Lord's Table and treat other people like that. The source of the moral concern is to be found within the particular community, with its narrative which provides the sources of moral concern and for moral agency, not in Gewirthian a priori reasons for action. A similar view is taken, for example, by Richard Rorty, in respect of the concern we should show in the USA to the deprivation of urban blacks. It is not that their human rights or human dignity conceived in an abstract rational way is being infringed, but rather that, in a

[27] Hauerwas, *A Community of Character* p. 120.

society with a sense of the 'American Dream',[28] the possibility of participating in that dream is being denied to others.

It is for reasons of this sort that Hauerwas and other narrative theologians are very unwilling to share in the accommodationist strategy for social ethics that a theory of rights is supposed to provide. Recall Gerwirth's strategy as an exemplar of this strategy: we have to accept the fact of moral pluralism, that people disagree fundamentally about the good, but it is possible to put the right before the good, to determine a set of rights which people can be regarded as possessing while disagreeing about substantive morality. While this is, for Hauerwas, a project which should not lightly be dismissed, it is equally one in which the Christian should not be involved, just because it distorts the nature of morality and requires Christians to regard the moral dimension of their beliefs as an exemplification of something else, namely, a theory of human rights and human dignity which can be characterised and accepted by others on quite other grounds. This, however, raises the deep question which we looked at earlier, namely, whether it can make sense to say that A and B believe in X (which is supposed to have constant content) even though the grounds for believing in it are incommensurable: for example, Christian and humanist accounts of the notion of human dignity.

It is worth remembering that these issues have led to distinctions being drawn in Roman Catholic moral theology between a Faith Ethic (*Glaubensethik*) and an autonomous morality on which all might agree. The former stresses Christian ethical distinctiveness and accepts the point just made that there is an internal relationship or epistemological dependence between typical Christian moral positions and other aspects of the Faith. It is not the case that there are moral principles which can be supported from different epistemological perspectives, but rather that 'some moral positions held by Christians cannot be critically . . . arrived at or supported without the framework of faith'.[29] This, of course, is rather parallel to the point of the

[28] Rorty, *Contingency, Irony and Solidarity.*

[29] V. MacNamara, *Faith and Ethics* Gill and Macmillan, Dublin, 1985, p. 96.

narrative theologian, and the position could be supported by a Wittgensteinian view of meaning as taken into theology by a thinker such as Lindbeck.

The autonomist position would be part of what Hauerwas calls the 'accommodationist strategy'. There are moral principles which have a meaning that is independent of the different epistemological perspectives of those who assent to the principles. The role, for example, of Christian belief in respect, say, of principles about human rights is to provide motivation for acting on the principles but not for characterising their meaning. Such an approach in the work of Cronin 'is in line with traditional "natural-law" theory which insists upon a common grasp of moral truth by all people independently of divine revelation.'

Related to this is the possibility of arguing rationally with other humans, believers and non-believers alike, regarding the requirements of the moral imperative.[30] Again we see the features of this divide in Christian moral, social and political thought which we shall seek to evaluate in the final chapter.

I now want to go back to issues about covenant and contract in relation to rights because they can be seen to be linked to some of the issues at stake between what might be called narrative and natural theologians on the issues to do with rights. As we have seen, rights have to be seen in the context of sets of rules, and the complexity we encountered was to do with how extensive these rules should be, with critics of positive rights, for example, arguing that such rights could arise only from within a contractual relationship. Given that the biblical tradition and Christian theology has had a lot to say about the nature of covenant, what, if any, light could covenant conceptions shed on issues to do with rights?[31] Again, it is difficult to escape from the fact that such models get enmeshed in exactly the same sort of considerations that we have just been looking at: that is to say, between *Glaubensethik* and autonomist ethics or

[30] See Cronin, *Rights and Christian Ethics* p. 236; O. O'Donovan *Resurrection and Moral Order: An Outline of Evangelical Ethics* Apollo, Leicester, 1994, p. 20.

[31] J. Allen, *Law and Conflict: A Covenantal Model of Christian Ethics*, Abingdon Press, Nashville, 1984, p. 45.

narrative and universalist ethics. The thinker sympathetic to the 'natural' approach might have to use the covenantal language of the Old Testament as a way of providing part of the moral case for thinking about rights in relationship to God's covenant. He/she will want to stress the universalism of the covenantal relationship that God's covenant, properly understood, was being with humanity not just with the people of Israel. We saw some of these issues arising in relation to the prophetic tradition in the second chapter with Barton, for example, stressing the extent to which Isaiah and Amos could be seen as being at least implicitly universalist in their ethical perspective. Such views could also be supported by reflection on the story of Noah, for example when Allen claims that all of humanity is to be understood as one covenant community. Indeed, Cronin argues that the covenant relationship is the best resource, at least within the Christian tradition, for thinking about the idea of human dignity rather than seeing that dignity as rooted 'in our special endowment as rational animals'.[32] On this view, therefore, the covenantal relationship is universal and, in so far as moral principles such as rights and duties can be drawn from this relationship, they are universal.

As we saw, however, the covenantal relationship and the interpretation of this by the prophets was regarded by Michael Walzer, in a morally particularistic way, as defining the relationships of a particular community, and such a view would no doubt be endorsed by both the narrative theologian and the *Glaubens ethik* thinkers. Thus, on this view, invoking the notion of covenant within the Christian tradition will not help at this stage of the argument to resolve the problem about the nature of rights, since the implications of the idea of the covenant, too, are linked to fundamental disputes about the distinctive and narrative nature of Christian ethics.

Finally, we should consider the question of the general relationship between rights-based conceptions and the whole of morality. It is frequently argued that a rights-based morality will

[32] Cronin, *Rights and Christian Ethics* p. 216.

reinforce a proprietorial and self-regarding conception of the person and that it will, in fact, displace the notion of virtue in both general and specific virtues like charity, benevolence and altruism in particular. At this stage, I shall not address the questions directly – since they will become important in the next chapter on the individual and community in a liberal society – but, in concluding the argument about rights, it is worth 'flagging up' the issue to some extent.

In the view of the critic, the idea of a rights-based morality, even if it is confined to the political sphere, embodies too attenuated a conception of the person, and one which will, over time, transform the public realm into one that is dominated more and more by private conceptions, and thus to construe the common good as a nexus of rights is a fundamental error, particularly from a Christian point of view, since it is central to Christian ethics, so it is argued, to endorse a very different conception of both the nature of the person and the public realm. The best modern protagonist in this view of rights is Joan Lockwood O'Donovan. In her essay 'Subsidiarity and Political Authority', she argues that the idea of rights and individual autonomy which yields theories of rights is not compatible with the ways in which we either do or ought to conceive certain sorts of goods, both private and public, and that, in conceiving these in a rights-based way, we are fundamentally undermining a proper understanding of these goods:

> The public realm suffers from moral monism, being enslaved to one universally acclaimed good, that of individual self-determination. The public hegemony of this good is both disclosed and maintained in the public hegemony of the language of individual rights. Increasingly, in liberal democratic polities, all communal and institutional aims, aspirations, and claims must be articulated in the individualist language in order to be heard. But this language is unsuited to express the purposes and structural laws of diverse communities. It is equally unsuited to express the goods and law of marriage – personal communion and sexual fidelity, or the bonds and duties of family life – parental care and filial obedience, or the purpose and normative structure of economic activity – production to fill material needs and stewardship of natural resources, or of education – the communication of truth under conditions of openness and sincerity . . . their various norms cannot be comprehended by the language of moral individualism.[33]

Her argument is that such human practices not only cannot be understood in terms of rights and autonomy, but also they can only be understood if they are regarded as embodying: 'transcendentally given and permanently binding constraints on human action; that they have purposes and structures which are not entirely subject to historical and cultural arbitrariness, are not manipulated by the will of individuals and groups'.[34] This truth, which obviously mirrors the sorts of claims made by Demant in his argument about natural order which we considered in chapter 6, is, she argues, denied by what she calls the civil religion of individual rights. Such a civil religion will, in fact, transform the nature of central human institutions and practices and, far from being neutral between conceptions of the good and favourable to pluralism, such an approach transforms society to its own form of moral monism – namely, individual autonomy.

To take a specific example which relates to a point made in chapter 7, an emphasis upon individualism and rights is as likely as the market to transform an ethic of public service into one of private right and, in this respect, far from the civil religion of individual rights articulating a common good it, in fact, transforms a common good into a private one:

> On the basis of their ever more explicit contractual relations with the state, as formalised in bills and charters of rights, citizens have growing incentives to demand legal redress of the failures of Government and public agencies to furnish the expected goods and services. Such political contractualism spells the most extreme reduction of public law and the common good it enforces to private law and private good.[35]

On this view, it is impossible to keep a boundary between spheres of life which should be protected from individualism and subjectivism, and the progressive transformation of public

[33] J. L. O'Donovan, 'Subsidiarity and Political Authority in Theological Perspective' in *Studies in Christian Ethics*, 6/1, (1998), pp. 29–30.

[34] Ibid. p. 32.

[35] J. L. O'Donovan, 'Historical Prolegomenon to a Theological Review of Human Rights' *Studies in Christian Ethics*, 4/2, (1996), p. 63.

goods into private ones, other than by some accepted view of their relation to a sense of the transcendent. In the same way as Pannenberg, as we saw earlier, believed that belief in God was basic to the idea of truth, so in this argument a recognition of the transcendent is a necessary condition of a correct understanding of the appropriate moral nature of different spheres of human life. It is, however, clear from this argument that the givenness or embeddedness of practices or spheres, as Walzer, for example, argues, is not sufficient to prevent their transformation by what are seen as the corrosive acids of individualism. In the next chapter, therefore, we need to turn to an examination of the relationship between individual and community in liberal thought.