

René Girard and the History of Rights Language

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ABSTRACT: Rights language is an important aspect of contemporary American politics and cultural discussion. It is also very puzzling, for there is so little consensus concerning what rights language means. When advocates of widely differing, and perhaps opposing, social policies invoke rights language and believe that it decisively supports their cause, both the importance and the puzzling nature of rights are brought to the forefront of our consciousness. The abortion debate is a particularly clear example of this. I will refer to it from time to time below, even though this essay is not focused on abortion *per se*. I will outline some of the competing philosophical schools of thought on rights, with attention to their historical roots. I will then propose an approach to rights language that I find to be implied in the writings of French author René Girard, an approach that differs in significant ways from the various schools of thought. Girard's reflections will lead to a reconsideration of a key figure in the history of political thought, John Locke. I will argue that Locke's approach to rights fits well with Girard's historical narrative. I seek to establish that the current disarray in the use of rights language could be reduced if more attention were paid to Girard's suggestion that the purpose of rights language is to build a linguistic hedge around human beings to prevent them from being victimized.

1. The Philosophy of Rights Is Not Commonly Reflected on by Americans

Rights language is used by many Americans, but apparently without a significant level of philosophical reflection beforehand. For example, I have taught a course on abortion for the Texas Christian University Master of Liberal Arts program. I asked the students to answer this question: "Where do rights come from?" The answers that they provided present a glimpse of the confused state of rights language within American culture in general. Some examples of the student comments:

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The Declaration gives us three basic rights, the right to life, liberty, and the pursuit of happiness. Does the law restrict or promote rights? We do not have a right to murder or steal; but we do have a right to learn and work. What defines a right? Wikipedia defines a right as a legal, social, or ethical principle of freedom or entitlement. Does a woman have the right to take away those rights of the unborn? They did not ask to be conceived, nor did they ask to be aborted. I think that a right is more defined in terms of an individual's morality, based upon their beliefs, wants and opinions on what is termed "right." They will make their own justification for the right of the action regardless of the legal structure, social standard or ethical theory in place. The same reason thieves will continue to steal and women will continue to have abortions, it is their right, an entitlement that they will choose to do with what they may.

I believe everybody has the right to do whatever they want as long as they do not hurt anyone else. As Americans, we consider our Constitution to set the framework of our legal rights. These legal rights, however, do not always align with the morals and values of other people. I am not religious but consider the Ten Commandments to be a basic moral code which most people live by, whether they are religious or not.

My immediate answer to the question "Where do rights come from?" would be the government. I guess that the rights that I have as an American citizen were granted to me by our Founding Fathers. All through history it was accepted that rights were granted by those in power to those being ruled. That is why our Founding Fathers came up with the American Declaration of Independence. The Declaration of Independence states: "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." In the Declaration of Independence the term "Creator" is used which to me means God. It would then be naive to assume that our rights only come from those granted by the Declaration of Independence. It seems to me that rights evolve from human thought and, much as we would like to think otherwise, are granted. Our rights differ from one culture or society to another and while we would like to think that some of them are inalienable, they are subject to being diminished under a host of circumstances.

When I talk about rights, I always preface the conversation with my belief that rights only exist when a second party is willing to respect the rights of the other party. Given that, I think rights are extended to a person by a respective society's tolerances. I think this idea stems from the social contract theory proposed by Rousseau.

I believe that certain rights are God given and are universal. One of these rights being the right to life. Within the laws of the United States people have the right to life, liberty, and the pursuit of happiness. Human rights is a hotly debated subject, and when put into the context of a fetus's right to life, it becomes even more controversial. My belief is that every human being (or potential human being) has the inherent right to life. This right is grounded into the foundations of society worldwide. Regardless of personal religion, everyone in every culture has some idea of what is acceptable and

there is nowhere on earth where killing another person without reason is acceptable. Therefore, rights come from God and from the laws of individual countries.

I could on for many more pages with such quotations, but I will stop there. It is clear that the responses to the basic question “Where do rights come from?” are confused and incoherent. The above quotations come from graduate students, not high school or college students. Would graduate students in philosophy and political science be able to provide somewhat more articulate comments? Maybe, maybe not. The general picture painted here is bleak. Americans in general use rights language without being well informed when they do so. They have not been led to think carefully about rights language in their previous education.

2. Rights Theories among Intellectuals

When we turn to consider the writings of philosophers, political scientists, theologians, and so forth, their ideas about rights are more carefully and thoughtfully articulated, but there is clearly no consensus among them regarding the meaning of the word “rights.” I present now a survey of the main approaches that are advocated by various schools of thought.

Enlightenment “Individual Autonomy” Views

William Edmundson’s *An Introduction to Rights* provides a summary of an approach to thinking about rights that seems to be the most common in modern, liberal societies.¹ As rights language is commonly used within political liberalism, individuals are the possessors of rights. Governments function well when they allow individuals the maximum amount of liberty to live their lives as they see fit. Individuals are viewed as legitimately autonomous, and governments or social bodies such as religions are regarded as acting tyrannically if they limit the liberty of individuals. In this view, liberty is not an absolute, for one is not free to harm others or to limit their liberty. The Golden Rule is important.

Edmundson outlines two main variations on this approach to rights, the Interest Theory and the Choice Theory. For the Interest (or Benefit) Theory,

¹ William Edmundson, *An Introduction to Rights* (New York NY: Cambridge Univ, Press, 2004).

rights serve to foster the interests of the rights holder. An implication of this is that “only beings capable of having interests are candidate rights-holders.”² Edmundson notes that by itself this is somewhat vague. There is plenty of room for debate about what sorts of entities could be construed as having interests: animals, fetuses, social groups, inanimate objects, and so forth. But it is clear that the most common use of rights language in this line of thought would be in regard to self-aware human beings. The Choice (or Will) Theory of rights is slightly different. In this view, “[n]othing counts as a right unless it has an assignable right-holder, and no one counts as a right-holder unless she holds the option of enforcing or waiving the duty correlative to the right.”³ The function and purpose of rights language is very clearly to promote individual autonomy. Edmundson says that this view of rights is the one most commonly at work in the practices of legal officials in the developed Western world. One consequence of this view is that infants and mentally incompetent adults cannot be rights-holders. This can be “finessed” by introducing the notion of protecting rights for these human beings through proxies.⁴

It should be noted that this approach to thinking about rights is not religious in the sense that it does not point to God as the source of rights. It is also not historical in that it does not rely upon a particular historical narrative regarding the development of rights language as a key component of its justification. Rather, the typical form of argument in defense of this view of rights consists of assertions that, it is hoped, will be met with understanding and agreement in the audience that is hearing or reading the assertions. For example: “The legal conventions tell us that the law recognizes a right in X against Y only where Y has a duty to X, and X may decide whether or not to hold Y to the duty.”⁵ Imagine page after page of argumentation such as this, and you can grasp that this concept of rights is not religious or historical. But to say that this approach is not historical does not mean that it does not have a history. Edmundson, for example, begins his book with references to late medieval discussions of rights, Hugo Grotius, Thomas Hobbes, Samuel Pufendorf, John Locke, Immanuel Kant, and the American and French Revolutions. But in his discussion of Wesley Hohfeld and of contemporary

² Edmundson, p. 121.

³ Edmundson, p. 122.

⁴ Edmundson, pp. 124-25.

⁵ Edmundson, p. 123.

debates about the Interest and Choice theories, the historical narrative drops out of sight and becomes irrelevant. It is as if the history of the invention of rights language were like a ladder that is tossed away once one has used it to climb up to a higher level.

Alberto Giubilini and Francesca Minerva

The Choice Theory's approach to rights is illustrated very powerfully and succinctly in an article by Alberto Giubilini and Francesca Minerva entitled "After-birth Abortion: Why Should the Baby Live?"⁶ The authors argue that both fetuses and newborn infants are "potential persons" (not "actual persons") because they lack sufficient neurological development to be aware of themselves and to possess aims in life that would be unfulfilled if they were to be killed: "If the death of a [severely handicapped] newborn is not wrongful to her on the grounds that she cannot have formed any aim that she is prevented from accomplishing, then it should also be permissible to practice an after-birth abortion on a healthy newborn too, given that she has not formed any aim yet."

For authors who subscribe to the Choice Theory of rights, only "actual persons" are subjective bearers of a right to life, and it is clear that very individualistic assumptions are at work. An individual has a right to life, as an individual, if that individual is sufficiently developed to have aims as an individual. The authors show no awareness of or interest in the notion that rights language is inherently social or communal. This leads the authors into a conundrum that they do not seem to recognize. In order for persons to be bearers of the right to life they need to have been nurtured and cared for by other human beings until they have reached a stage of neurological development sufficient for them to have "aims." The right to life has thus been given to them by the community that raised them; a right is a *gift*. But the basis of the authors' argument seems to be that a right is an *achievement*, and if the individual has not made this achievement, then they can be killed. The authors wisely do not provide any recommendations on the method of killing that should be used in after-birth abortions, such as smothering with a pillow or lethal injection, perhaps because the morally problematic (outrageous?) nature of their thesis would be difficult to obscure at that point. They also do not

⁶ Alberto Giubilini and Francesca Minerva, "After-birth Abortion: Why Should the Baby Live?" in *Journal of Medical Ethics* 38 (2012). <http://jme.bmj.com/content/early/2012/03/01/medethics-2011-100411.full>.

specify at what point in time killing the infant would become unacceptable, presumably because it has developed too much. Perhaps the reason for not specifying this point is that the arbitrariness of their thesis would be difficult to obscure. Their argument can be summarized as: “potential persons” do not possess the *right* to life; “actual persons” do possess the *right* to kill “potential persons” if they want to carry out those killings. The authors do not reveal, at least to this reader, the slightest glimmer of awareness that their understanding of the word “right” might need to be explained and defended at some length. If the community is the gift-giver, then what does it say about the community as a moral body if it as a matter of “normal” behavior is killing vulnerable human beings?

This notion of rights as a gift from the older generation to the younger is not original with Giubilini and Minerva. Judith Jarvis Thomson’s famous essay “A Defense of Abortion” includes this passage:

If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, *they have given it rights* [emphasis added], and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it.⁷

It is interesting to note that both essays agree that the older generation gives rights to the younger, but they seem to disagree about the morality of infanticide. Giubilini and Minerva explicitly argue that difficulty in providing for a child *is* an acceptable reason for killing a newborn.

The avoidance-of-harm principle is central to modern political liberalism: people should be free to live as they please as long as they don’t harm others. The essay by Giubilini and Minerva highlights a key weakness of this common phrase. Who gets to define what constitutes an “other”? At first glance, it looks as though the liberty of the individual can possibly be constrained by the prohibition of harm. But if individuals can define the “other” in any way they want to, then it turns out that there is no constraint after all. The Nazis drove a large truck through that loophole, or perhaps I should say, they drove many trains through it.

⁷ Judith Jarvis Thomson, “A Defense of Abortion” in *The Ethics of Abortion: Pro-Life vs. Pro-Choice*, 3rd ed., edited by Robert M. Baird and Stuart E. Rosenbaum (Amherst NY: Prometheus Books, 2001), pp. 241-56 at p. 254.

The use of rights language by Giubilini and Minerva makes no reference to God as the transcendent source of rights, in the way that we find this done in the American Declaration of Independence. It seems clear that their worldview, which is shared by many in contemporary Western culture, is “secular,” but in an ambiguous sense. Because there is no transcendent (vertical) source of rights, the assumption is that human beings are the source of rights in the sense that they can choose whether or not to give birth to and raise another human being who will be a bearer of rights. The traditional idea that “we are all God’s children” has been replaced by “we are all gods.” We human beings are now the locus of sovereignty, the controllers of life and death.⁸

Traditional “Natural Rights” Views

I present this position after the autonomy view because, even though its roots go back further into history, there is a sense in which the recent defenses of “natural rights” are reactions against the position that was just summarized.

John Finnis presents a vision of natural rights in his large scale work *Natural Law and Natural Rights*. He argues that for Aquinas *jus* (right) meant a situation of fairness in interpersonal relations. But when we move forward in history to Suarez, Grotius, and Hobbes, we have “crossed a watershed” and made the transition to a new view in which the primary meaning of *jus* is as something a person possesses and that grants them liberty of action. The focus is now on the freedom of the individual rather than on the health or sickness of the social situation.⁹ The debate between the “choice theory” of rights and the “interest theory” is thus seen as a squabble among those who have crossed that watershed into modern individualism.

Kenneth Schmitz’s essay “The Ontology of Rights” provides a good example of the traditional natural rights approach.¹⁰ Drawing primarily on Aquinas and arguing from a traditionalist Catholic stance, Schmitz advocates

⁸ For a helpful historical narrative elucidating this point, see Jean Bethke Elshtain, *Sovereignty: God, State, and Self* (New York: Basic Books, 2008).

⁹ John Finnis, *Natural Law and Natural Rights* (Oxford UK: Oxford Univ. Press, 1980), pp. 206-08.

¹⁰ Kenneth Schmitz, “The Ontology of Rights” in *Rethinking Rights: Historical, Political, and Philosophical Perspectives*, ed. Bruce P. Frohnen and Kenneth L. Grasso (Columbia MO: Univ. of Missouri Press, 2009), pp. 132-52.

what he sees as an alternative to the false extremes of “arbitrary individualism and oppressive collectivism.”¹¹ From his perspective, reflection on the “texture of being” leads to the idea that rights are not *possessions* of human beings but rather a network of *right relations* between them. This network of relations actually extends beyond humanity to incorporate the natural and supernatural realms as well, so that one could speak of right relations between humans and animals and between humans and God. Rights language is also understood as implying obligations and reciprocity. Schmitz argues that it is more helpful to speak of the person as a member of a community than of the individual as a member of a collective. The person, from this perspective, is understood as a complex entity made up of body, soul (*psyche*), and spirit, existing in a network of relations with other persons and non-personal entities. This passage sums up his view well:

The inculcation and observance of these values [patience, fraternity, justice] among the citizenry of a society requires an appropriate balance between individual interests and the common good, a balance not easily attained or maintained, yet engrained in the optimum condition for both person and community. I would describe these values and the principles that seek to realize them as shelters of humanity in the city of being – houses built out of the “bricks and mortar” that have been provided by the very texture of being, in the ways it offers itself to us. Yet these houses do not build themselves; rather, they are in a special way our preeminent human task, the task of integrating the many facets of our complex being – our persons and our societies – fashioned from received “lumber” into well-built homes where the past can be remembered, the present lived, and the future cared for. It is the task of human synthesis.¹²

The vision that Schmitz presents is comprehensive and complex but not likely to be persuasive to people whose thinking is strongly framed by individualistic assumptions. They would presumably view Schmitz as having a nostalgic longing for the Middle Ages.

Hadley Arkes is another representative of the traditional “natural rights” view. His book *Natural Rights and the Right to Choose* presupposes a vision of reality similar to that which Schmitz and Finnis presented and uses that perspective as a platform to criticize the pro-choice position on abortion and the style of rights language that it usually employs.¹³ As is common among pro-

¹¹ Schmitz, p. 134.

¹² Schmitz, p. 145.

¹³ Hadley Arkes, *Natural Rights and the Right to Choose* (New York NY:

life advocates, Arkes likes to draw parallels between the abortion debate today and the debate over slavery in the nineteenth century. He claims that just as black slaves were denied personhood before the law in the *Dred Scott* decision, so also are unborn children denied personhood before the law in *Roe v. Wade*. Arkes contends that both of these denials are rooted in a rejection of the basic insight of the Declaration of Independence 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.” This sentence, for Arkes, expresses a sound understanding of natural rights: rights have a transcendent source; they are woven into the fabric of nature; that fabric can be discerned through reason. This understanding pushes toward greater inclusion of human beings within the community of those protected by the law against the whims of those who wield power. This inclusion brings in all people regardless of skin color or age since conception. Arkes maintains that to assert abortion as a “right” is parallel to asserting slave-owning as a “right.” But the logic of those positions, as he interprets and critiques them, leads to a deconstruction of the concept of rights itself, so that “they cannot give an account any longer of why other human beings have a claim to be the bearers of ‘rights’ in any strict sense. They cannot vindicate their own rights, and for that reason, they are not in a position any longer to vindicate the rights of others.”¹⁴

A Postmodern “Social Constructivist” View

I consider now an essay by Mary Poovey entitled “The Abortion Question and the Death of Man.”¹⁵ Poovey aligns herself with the social constructivist philosophical school associated with Jacques Derrida, Michel Foucault, and Judith Butler. This perspective tends to view the concepts of “individual rights” and “autonomy” as naïve illusions because there is no isolated “individual” that pre-exists society. There is no “essence” or “core” of the individual that is not created by social and institutional forces. The dominant rhetoric of the pro-choice movement has relied on these naïve illusions. This reliance generates the question that Poovey seeks to address in her essay: How could pro-choice

Cambridge Univ. Press, 2002).

¹⁴ Arkes, pp. 172-73.

¹⁵ Mary Poovey, “The Abortion Question and the Death of Man” in *Feminists Theorize the Political*, ed, Judith Butler and Joan W. Scott (New York NY: Routledge, 1992), pp. 239-56.

thinking proceed if claims about individual rights were to be abandoned? She states: "I confess that I'm not sure that the discourse of rights could – or even should – be jettisoned completely at this moment. Given the political capital this discourse has accrued in the history of the United States, perhaps it should simply be reworked...."¹⁶ A statement such as this reveals a way of thinking for which the language of the Declaration of Independence and the Bill of Rights is naïve and old-fashioned. Rights are passé, and rights language could only be employed as a tool that is used (cynically?) to achieve certain political ends.

Poovey makes comments on the *Roe* and *Webster* decisions that are very interesting because they reveal a critique of their legal reasoning from the *left*, whereas we more commonly hear critiques from the *right*. She describes *Roe* as a confused decision that is filled with "rhetorical equivocations" and "torturous" and "paradoxical" logic.¹⁷ She asserts that the *Webster* decision "was not so much a decision as a series of deferrals and refusals to decide." Further, she notes: "In cutting through *Roe*'s skein of fine distinctions, the authors of *Webster* implicitly acknowledged the anomalous, non-unitary nature of these entities [the pregnant woman and the 'potential human'] and therefore implicitly exposed the fact that the Constitution's language of individualized rights is not adequate to cover all of the guises in which so-called persons appear."¹⁸ Poovey is arguing, in other words, that the language of individual rights, which was formulated in earlier centuries by white men who had political power and who were seeking to consolidate that power, was based on what she calls a "metaphysics of substance" that presumed that individuals have an inner "core" that precedes all social relationships. The inadequacy and falsity of this philosophical worldview is to blame for the torturous logic in which we are now entangled if we seek to apply that worldview to the problem of abortion. Poovey continues: "unless the relationship between biological embodiment and sociolegal personhood can be worked out there is no obvious reason to grant personhood to an infant upon birth, since a neonate is no more capable of independent life than is the fetus. Pregnancy, abortion, and the fierce debates that have materialized around the latter make it clear that these issues need to be aired. Indeed, the crisis of legitimacy that now torments the legal community may well result from the profession's continued reluctance to

¹⁶ "The Abortion Question and the Death of Man," 254.

¹⁷ "The Abortion Question and the Death of Man," pp. 245-46.

¹⁸ "The Abortion Question and the Death of Man," pp. 247-48.

subject these problems to a public discussion.”¹⁹

Poovey is attacking the common ways in which her fellow pro-choice advocates have relied on the language of individualistic rights to make their case. Doing so has entailed the use of false philosophical concepts formulated by men to advance the cause of women’s liberation. She points out that this entails that the exact same language of rights can and will be used by those on the other side:

The *Webster* decision has begun to reveal why the metaphysics of substance constitutes an inadequate basis for all the arguments thus far advanced for the right to legal abortions. Most obviously, *Webster* has disclosed the fact that the central terms abortion advocates have tried to defend are susceptible to appropriation and reactionary redeployment by abortion opponents. In the mouths of antiabortionists, “choice,” “privacy,” and “rights” invert effortlessly into their opposites, precisely because, regardless of who uses them, these terms belong to a single set of metaphysical assumptions.²⁰

Poovey’s message seeks to undermine the common use of rights language in what Edmundson calls the Choice Theory of rights, but it is not made clear in her brief essay what alternative vocabulary would replace rights language.

We have seen in our brief overview of modern liberal rights theories, natural rights theories, and a post-modern deconstruction of both of those options that the topic of rights language is a site of major philosophical controversy. It is safe to say that in such a situation, merely repeating rights language over and over again does not clarify anything. We need to go back to the drawing board and re-assess what rights language is and what it accomplishes.

2. An Alternative View Derived from René Girard

French philosopher René Girard is not usually considered to be a rights theorist, but his thought can be interpreted in such a way that he becomes one. More specifically, he is an epistemologist of rights who gives an account of how we have come to know, or believe, that they exist. Before I explain that point, however, I need to present an overview of his psychological theory.

In the typical summary of Girard’s thought, the starting point is mimetic

¹⁹ “The Abortion Question and the Death of Man,” p. 249.

²⁰ “The Abortion Question and the Death of Man,” p. 249.

desire. I think, however, that there is a deeper starting point: lack. Girard argues that once basic biological needs such as hunger are satisfied, human beings enter into a state of great uncertainty about what they should desire. They have a sense of lack, of internal deficiency, and they begin to look around at other human beings to see what they desire.²¹ People begin to copy and to imitate others, believing that those others, by possessing certain things or by having a certain status, are enjoying a greater fullness of being. Not wanting to be inferior, people imitate the desires of others and thus become rivals of those others to possess those things that others are desiring. This pattern of behavior is seen very clearly in small children when they struggle over a toy even when many other equivalent toys are present in a room. Among adults, the pattern is the same, though it is usually more subtle (or not so subtle, as in the recent case of the Chinese teenager who sold his kidney to acquire an iPad). Because mimetic desire leads to rivalry, it is a formula for turning society into a war of all against all. A meltdown into chaotic social disintegration is avoided through the “scapegoat mechanism,” a phrase that Girard borrowed from Kenneth Burke. By channeling violent impulses toward a helpless victim, a society avoids general chaos and creates a sense of cultural cohesion and “peace.”

This is just a thumbnail sketch of Girard’s basic understanding of human psychology. He developed it over hundreds of pages of commentary on European novelists and on vast swaths of anthropological literature.²² The arbitrariness of the process of scapegoating indicates a social situation in which the concept of rights has not yet been invented. If individuals had “rights,” they could not be turned into scapegoats. The very fact that we today talk about rights has been made possible by the fact that we have experienced an “exodus” from the primitive milieu of unconscious mimetic desire and scapegoating. But how did that exodus happen?

Girard claims that the “modern” world we inhabit is not the fruit of leaving the Bible behind; it is the fruit of the Bible. He argues that the exodus from the scapegoat mechanism began with certain key passages in the Bible.

The scapegoat mechanism works by facilitating the blaming of victims.

²¹ René Girard, *Violence and the Sacred* (Baltimore MD: The Johns Hopkins Univ. Press, 1977), pp. 145-46.

²² See René Girard, *Deceit, Desire, and the Novel: Self and Other in Literary Structure* (Baltimore MD: The Johns Hopkins Univ. Press, 1965) and *The Scapegoat* (Baltimore MD: The Johns Hopkins Univ. Press, 1986).

Those who are killed as scapegoats are labeled as evildoers, witches, deviants, traitors, and so forth. When they are killed, it is believed that they are receiving just retribution for their evil character. But this is a form of false consciousness. The violent crowd is imposing this taint of evil onto the one whom it is killing. This false consciousness is exposed as false when stories are told that reveal that the victim is innocent and that the violent crowd is being unjust by committing an act of scapegoating. Girard notes that this unveiling of the scapegoat mechanism is the key thread that runs through the Bible.

The story of Cain and Abel, for example, conveys the message that the violent one killed his brother unjustly, out of envy (another word for mimetic desire). Cain is described as the “builder of the first city” in Genesis 4:17. He is the founder of human civilization, and from that point forward there is a Cainite culture, a violent culture. The story of Joseph and his brothers amplifies this theme, for Joseph is cast out of the family by his envious brothers. He later forgives them, which points to divine transcendence of human violence. Girard also wrote a book about the character of Job in which he argues that Job’s “friends” are representatives of a society that is trying to label him as an evildoer.²³ Many Psalms are written from the point of view of an innocent victim surrounded by an accusatory mob. The Suffering Servant figure in the book of Isaiah is another example of a character portrayed as unjustly receiving the verbal abuse and violence of a crowd. That the Christian tradition sees the Suffering Servant as a prefigurement of Christ makes perfect sense, from Girard’s point of view, because Christ is the ultimate scapegoat. He is clearly portrayed in the gospels as the innocent one who is falsely accused and killed through the collusion of a violent mob and the Roman authorities. The mythology or ideology that is generated by the scapegoat mechanism must always portray the victim as guilty, as evil. The central thread of the Bible turns that idea upside down. The victim is innocent; the violent crowd is guilty.

Girard maintains that the central theme of the Bible, which we have just summarized, has functioned as an engine of cultural change, slowly but surely, over many centuries. While the scapegoat mechanism remained hegemonic, as seen in phenomena such as the Crusades, the Inquisition, anti-semitic pogroms, and so forth, the power of the biblical text has been at work as a kind of yeast gradually working in Western culture to undermine scapegoating and to give

²³ René Girard, *Job, the Victim of His People* (Stanford CA: Stanford Univ. Press, 1987).

birth to a new type of culture in which violence is condemned instead of defended. The modern world is thus broadly characterized by what Girard calls “*le souci de victimes*,” concern for victims. Because the stories in the Bible, and especially the immensely powerful story of Christ, have shaped our consciousness at such a deep level, it is now the case that when people lobby for a certain type of social change, they do so by claiming that a certain form of victimage must be denounced and left behind. That basic pattern is seen in Marxist thought, which stresses how workers are victimized by rich business owners, in feminism, which stresses the imperative for women to be freed from historical patterns of male oppression, in the Civil Rights Movement and the anti-apartheid movement, which stressed racial oppression, and so forth. The argument about abortion today is engaged through competing narratives of victimization. Either women are being victimized or unborn children are being victimized. One side holds up a photograph of a woman lying dead in a pool of her own blood in a hotel room as a result of a botched illegal abortion; the other side holds up a photograph of a bloody aborted baby. As Girard says, “the victims most interesting to us are always those who allow us to condemn our neighbors. And our neighbors do the same.”²⁴

It is clear from the unfolding logic of Girard’s argument that the use of rights language in modern Western culture is a particularly salient aspect of what he has described as “concern for victims.” Rights language has as its goal the building up of a linguistic hedge or wall that is trying to protect people from being victimized. In Girard’s words: “The essential thing in what goes now as human rights is an indirect acknowledgment of the fact that every individual or every group of individuals can become the ‘scapegoat’ of their own community. Placing emphasis on human rights amounts to a formerly unthinkable effort to control uncontrollable processes of mimetic snowballing.”²⁵

Support for Girard’s general thesis about the historical roots of rights language is found in Nicholas Wolterstorff’s book *Justice: Rights and Wrongs*. Without mentioning Girard or showing any trace of having read him, Wolterstorff argues that the roots of Western notions of rights are found in the Bible. He refers specifically to the passages that speak of the requirements of

²⁴ René Girard, *I See Satan Fall Like Lightning* (Maryknoll NY: Orbis Books, 2001), p. 164.

²⁵ *I See Satan Fall Like Lightning*, 168.

social justice, namely, that there must be special concern to protect the weak and vulnerable: “widows, orphans, resident aliens, and the poor.”²⁶ This concern for marginalized human beings (who are prime candidates for scapegoating, according to Girard)²⁷ is the origin of the Western notion that *all* people should be recognized as having certain basic rights that cannot be ignored or trampled on by the powerful.

This notion that the Judeo-Christian tradition is the source of rights language and concern for victims is also confirmed, in an inverted way, by Friedrich Nietzsche.²⁸ He argued that the Enlightenment thinkers who claimed that they had rejected religious faith were speaking falsely as long as they held fast to notions of universal human rights. Concern to protect the vulnerable is a “slave morality” that expresses the *ressentiment* of the weak against the strong. This Judeo-Christian idea is rejected by Nietzsche, and he sees the momentum of that idea carrying over into Enlightenment thought, which proclaimed the universal rights of human beings. Girard recognizes very clearly that Nietzsche is the most prominent opponent of the historical narrative that Girard is advancing.²⁹ Nietzsche poses the either/or of concern for victims or the will to power in the starkest possible way in *On the Genealogy of Morality* and other works: “The ‘salvation’ of the human race (I mean, from ‘the Masters’) is well on course; everything is being made appreciably Jewish, Christian or plebian (never mind the words!). The passage of this poison through the whole body of mankind seems unstoppable.”³⁰

In my view, Girard is not a *theorist* of rights but an *epistemologist* of rights. His account of human psychology and his narrative of Western history provide an explanation of how we have come to “know” that rights language is giving voice to important truths of human experience. Given the deep and subtle influence of the Bible on our consciousness, we are sensitized to the

²⁶ Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton NJ: Princeton Univ. Press, 2008), p. 75.

²⁷ See Girard’s chapter “Stereotypes of Persecution” in *The Scapegoat*.

²⁸ Friedrich W. Nietzsche, *On the Genealogy of Morality*, ed. and trans., Keith Ansell-Pearson and Carol Diethe (New York NY: Cambridge Univ. Press, 1994).

²⁹ See Girard’s comments on Nietzsche in *I See Satan Fall Like Lightning*, p. 172, and other places scattered throughout the book. See also Girard’s “Nietzsche versus the Crucified” in *Modern Language Notes* 99 (1984): 816-35, reprinted in *The Girard Reader*, ed. James G. Williams (New York NY: Crossroad, 1996).

³⁰ Nietzsche, *On the Genealogy of Morality*, p. 21.

many ways that we can mistreat each other as human beings. Our rights language is an aspirational practice that is always prodding us to stop the mistreatment. Girard provides very little in terms of ethical advice, but he does point out the irony involved when people misuse rights language by claiming victimhood status as a pretext for turning other people into victims. A classic example of that is Stalinism. In between primitive unreflective scapegoating and the highly sensitized consciousness of a peace activist who has read Girard, there is a middle state where people have been somewhat sensitized to victimage through the vague cultural influence of the Bible but have not developed enough personal maturity to avoid misusing that awareness to create new victims. We could call that being “semi-converted” away from violence.

3. Testing the Girardian View: John Locke’s Use of Rights Language

Our comments on Girard have employed a high-level fly-over of Western history. We need to come down to the ground to see if his thesis can be fleshed out more carefully. Girard maintains that modern rights language is a belated effect of ideas first articulated in the Bible. Can that thesis be sustained as an interpretation of an early modern rights theorist such as John Locke? It seems that the answer to that question is ambiguous, for Locke can be interpreted in very different ways.

Lockean Interpretation A (in tune with Girard)

It is fairly common in academic circles to describe the basic differences between the political philosophies of Thomas Hobbes and John Locke in a manner such as the following. For Hobbes, human beings are at root egoistic and aggressive. This dark vision of human psychology suggests that in the “state of nature” there will be a war of all against all. A government is needed to prevent generalized chaos and violence. If the state is very powerful and tyrannical, that is preferable to unchecked violence. For Locke, on the other hand, the basic vision of human nature is not so dark. Human beings are rational and sociable, and through their reason they can recognize the “laws of nature” that mandate the protection of life, health, liberty, and property. Each person can act to protect the rights to life, health, liberty, and property, but it is better if this is handled by society acting corporately rather than by individuals acting alone. The best sort of government is limited in its powers, not tyrannical, and it will rationally carry out the three main functions of

government: legislation, unbiased judging, and effective enforcement of laws.

I suggest that the contrast between Hobbes and Locke is a rough parallel between the two types of social order envisioned by René Girard. Girard argues that a basic either/or can be seen in human history: the primitive scapegoating structure of society that seeks to prevent a war of all against all, and the alternative mode of structuring society, which is the product of the Bible's influence on human culture. For Hobbes, the state functions as a *katéchon* (a Greek term meaning a restraining power).³¹ Human beings are always likely to kill each other unless they are restrained in their violence by a powerful state. The state functions to manage and control human violence. In Locke, the more positive vision of human nature is an expression of how the world should operate in the wake of the Ten Commandments and the redeeming work of Christ. In this world, individuals are of great value and dignity. They can no longer be arbitrarily killed to satisfy the psychological needs of a mob. They have "rights" that must be acknowledged and protected. All human beings have these rights *naturally*. This is the way Locke expresses himself at the outset of the *Second Treatise*:

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order, and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such *Subordination* among us, that may Authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of Creatures are for ours.³²

Notice the clear theological grounding of this statement, and the emphasis on the equality of human beings, which was a very challenging aspect of Locke's message in a society that was very hierarchical. Locke was asserting the notion that a society that claimed to be Christian while rigidly subordinating some human beings to others was failing to grasp and live according to the Bible's message. In the very next paragraph, Locke continues to argue that the concept of "rights" has the goal of preventing human violence, or punishing it after the

³¹ See Wolfgang Palaver, "Hobbes and the *Katéchon*: The Secularization of Sacrificial Christianity," *Contagion* 2 (1995): 57-74.

³² John Locke, *Two Treatises of Government*, ed. Peter Laslett (New York NY: Cambridge Univ. Press, 1991), *Second Treatise* §6.

fact:

And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and *Preservation of Mankind*, the *Execution* of the Law of Nature is in that State, put into every Mans hands, whereby every one has right to punish the transgressors of that Law to such a Degree, as may hinder its Violation.³³

Rights language in Locke functions to protect people from having harm done to them. This is the primary vector within which Thomas Jefferson and the other founding fathers drew upon Locke. The harm being inflicted on the colonists by the crown had become intolerable, triggering their assertion of their rights.

Jeremy Waldron's book *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* supports the notion that the theological foundation of Locke's political philosophy is not accidental or extrinsic. It is at the heart of his message. To remove that heart and treat Locke's argument in a purely "secular" manner is like expecting a human body to go on living after its heart has been surgically replaced with a cell phone. Waldron argues that the key theme of human equality in Locke is drawn directly from the Christian belief that all human beings are created by God in God's image. After claiming that "we have in Locke's mature corpus as well-worked-out a theory of basic equality as there is in the canon of political philosophy," he says that over years of study he came to the conclusion that "Lockean equality is not fit to be taught as a secular doctrine; it is a conception of equality that makes no sense except in the light of a particular account of the relation between man and God."³⁴ This statement expresses his agreement with John Dunn that the *Second Treatise* is saturated with Christian assumptions and with Alasdair MacIntyre's comments to the same effect. Dunn makes this point, however, to treat Locke's political thought as a historical curiosity (because Dunn prefers secular political philosophy), while MacIntyre makes this point to align Locke with the Christian thought forms that he prefers.³⁵

³³ Locke, §7.

³⁴ Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge UK: Cambridge Univ. Press, 2002), pp. 6, 82.

³⁵ See Waldron, *God, Locke, and Equality*, 12-13, and 44, referring to Dunn's *The Political Thought of John Locke* and to MacIntyre's *Whose Justice? Which*

Lockean Interpretation B (supporting modern individualism)

Locke's thought can, and often is, interpreted differently than I have just outlined. An example of this is found in an article by David L. Schindler, who is a traditional natural rights theorist, similar to those referred to above, such as Finnis and Arkes.³⁶ Schindler interprets Locke as being the architect of the modern, individualistic mode of thinking about rights that Schindler opposes. Schindler argues that Locke defines the person primarily in terms of the rationality of adults, who are rights bearers because they are capable of reasoning. The liberty of such rights-bearers must be protected by the political order. Human beings must be allowed an "unfettered capacity to choose" how they will live and exercise their power, so long as they respect and do not harm others. The individual is in control of his or her own personhood and possessions and enjoys a freedom that is not "conditioned by anything beyond the self." Schindler quotes and comments on certain passages in Locke's writings to support these assertions and to produce this summary:

My rightful claim on the other is first one of immunity from coercion by the other; my duty with respect to the other is to refrain from coercion in his regard; and, in case of competition between myself and others, my right to immunity and the other's duty to respect my immunity take priority over the other's right to immunity and my duty to respect his immunity. Fourth, we must keep in mind that, in all of the above, the subject of rights for Locke, properly speaking, is the autonomous adult individual of whom we can say that he is fully able to dispose of his own possessions and person, and who is thus independent.³⁷

Schindler draws the conclusion from this outline that the modern view that places a woman in competition with her fetus and gives her the ability to abort it is a logical extension of Locke's philosophy.

I have no doubt that this reading of Locke is plausible to Schindler, who critiques it from a pro-life point of view, and that it is plausible to pro-choice advocates who see Locke as supporting their position. The pro-choice writings of Judith Jarvis Thomson, Michael Tooley, and David Boonin are generally Lockean in their background assumptions about what rights are and who

Rationality?

³⁶ David L. Schindler, "The Repressive Logic of Liberal Rights," *Communio* 38 (Winter 2011): 523-47.

³⁷ Schindler, p. 527.

should be considered rights bearers. But I remain unsettled by Jeremy Waldron's case that this manner of secularizing and individualizing Locke's message is a mistaken interpretation. If we could bring Locke forward to our time in a time machine and have him read the literature of the abortion debate and then give his view, that would clear up the ambiguity. There is one passage in Locke's writings where he explicitly mentions abortion: "When it shall be made out that men ignorant of words, or untaught by the laws and customs of their country, know that it is part of the worship of God, not to kill another man; not to know more women than one; not to procure abortion; not to expose their children; not to take from another what is his, though we want it ourselves...."³⁸ This does not work as a "prooftext," however, because it can be seen as simply reflecting the common opinion of Locke's day. One can still argue plausibly that there are principles in Locke's philosophy that lead naturally in a pro-choice direction and that Locke himself might allow his thinking to move in that direction if he were exposed to all of the arguments of our day.

My overall judgment is that Locke's political philosophy is ambiguous. It can plausibly be placed within the tradition of Christian thinking on natural law, which is in tune with Girard's historical narrative regarding the development of rights language as serving to protect victims. But there are also ideas in Locke that have functioned historically to feed into that form of Enlightenment thought that has culminated in rationalistic individualism.

4. Further Historical Reflections on Rights Language

Turning our attention to Alasdair MacIntyre for a few moments will further enhance our historical perspective. Consider, for example, this key passage in his *After Virtue*:

There is no expression in any ancient or medieval language correctly translated by our expression "a right" until near the close of the middle ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century. From this it does not of course follow that there are no natural or human rights;

³⁸ *Essay Concerning Human Understanding*, Bk. 1, ch. 3, §19. This passage, and the general topic of Locke and abortion, is treated in Eric Manchester's essay: "Locke on Bodily Rights and the Immorality of Abortion: A Neglected Liberal Perspective," available from: <http://www.uflf.org/vol16/manchester06.pdf>, accessed May 30, 2012.

it only follows that no one could have known that there were. And this at least raises certain questions. But we do not need to be distracted into answering them, for the truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns.³⁹

Why MacIntyre chose to say “before about 1400” is not made clear. That date is inaccurate in the wake of Brian Tierney’s *The Idea of Natural Rights*, which describes the emergence of rights language in the writings of the Decretists in the late 1100s. But that does not get to the heart of MacIntyre’s apparent mistake in philosophical judgment. He is assuming that because a certain vocabulary was not present in an earlier time periods, the social reality to which the vocabulary is pointing was (and is) non-existent. He cannot, in other words, grasp the idea that rights language emerged very slowly out of themes in the Bible (expressed in Hebrew and Greek), such as protection of widows and the unveiling of the scapegoat mechanism. MacIntyre’s overall message is a polemic against modern moral philosophy, which he claims has become fragmented, incoherent, and unable to build any solid foundations for itself. He seems to accept the idea, popular in contemporary academic circles, that rights language is a relatively modern invention, created by Enlightenment philosophers who were seeking to rebuild the modern world on non-religious premises. Since those philosophers are the targets of his polemic, he attacks their core vocabulary by claiming that rights are like unicorns. But this polemic blinds him to the reality that his own hero, Aquinas, uses rights language just as many other medieval thinkers did, and that this use can be understood as a creative evolution of the tradition-based moral thinking that MacIntyre seeks to recover.

Brian Tierney’s work is much more helpful along these lines than MacIntyre’s. Tierney makes a very thorough case that rights language as an aspect of Western thought originated with the Decretists in the 1150-1250 time period as they sought to clarify certain questions regarding legal ownership of property:

By around 1200 many canonists were coming to realize that the old language of *ius naturale* could be used to define both a faculty or force of the human person and a “neutral sphere of personal choice,” “a zone of human autonomy.” But they did not,

³⁹ Alasdair C. MacIntyre, *After Virtue: A Study in Moral Theory*, 2nd ed. (Notre Dame IN: Univ. of Notre Dame Press, 1984), p. 69.

like some modern critics of rights theories, expect such language to justify a moral universe in which each individual would ruthlessly pursue his own advantage. Like most of the classical rights theorists down to Locke and Wolff they envisaged a sphere of natural rights bounded by a natural moral law. The first natural rights theories were not based on an apotheosis of simple greed or self-serving egotism; rather they derived from a view of individual human persons as free, endowed with reason, capable of moral discernment, and from a consideration of ties of justice and charity that bound individuals to one another.⁴⁰

In this work Tierney corrects what he sees as two errors of historical interpretation. One error presumes that rights language originated in the seventeenth and eighteenth centuries, with what we now call the Enlightenment (Grotius, Locke, Kant, Rousseau, and so forth). The other error points to William of Ockham and late medieval nominalism as the source of rights language. Tierney thoroughly debunks both of these ideas. His overall message, as I read it, provides support for the thesis that I am advancing in this paper, viz., that rights language in Western history emerged slowly but surely out of biblical and theological sources of reflection on morality and political order.

The American Revolution placed rights language in the center of political consciousness, but the intellectual leaders of that day did not have the fine-grained historical perception that Tierney articulates. The Declaration of Independence says that it is a “self-evident” truth that people are “endowed by their Creator” with rights. Aside from the obvious naiveté with regard to self-evidence, this formulation seems to be too easily vertical. It points upward to God as the source of rights rather than looking backward through time to see rights language as an emergent practice. This can possibly be explained with reference to the Protestant thought-world of the American founding fathers, even those who called themselves Deists. The Reformation stressed the point that there is no need for the historical Catholic Church as a mediator between God and humanity; human beings can have a direct relation with God and God can directly endow them with rights. The notion that rights language began to emerge in the late medieval period and was birthed into the world by the Catholic Church did not fit comfortably with this Protestant view of reality.⁴¹

⁴⁰ Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Grand Rapids MI: Eerdmans, 2001), p. 77.

⁴¹ I’m tempted to describe this as a “virgin birth” in the sense that rights language

It is not an idea that would have occurred to those who viewed the Middle Ages as a time of darkness, violence, and oppression.

In hindsight, Thomas Jefferson's language regarding the divine source of rights appears to many people today to be an expression of the inertia of traditional religious ideas, but an inertia that dissipated later in history, so that today many people think that Jefferson was correct to speak of rights but incorrect to presume that they have a transcendent origin. One can read thousands of pages of pro-choice literature, for example, and come across many references to rights, but none of those references will speak of rights as having their origin in God. Instead, rights are assumed now to be a human invention that create a society within which individuals can express their autonomous will.

The French Revolution was partly inspired by the American. The French also spoke boldly about "*les droits de l'homme*," the rights of man. But in the wake of this universal concept, the deputies of the National Assembly began to ask questions that apparently had not been thought through beforehand. If we speak of rights in this way, does it mean that they must be extended equally to Catholics *and* Protestants? What about Jews? What about blacks? What about slaves in French colonies? What about women? The unfolding logic of rights language pushed in directions that made many people uncomfortable; society was changing too fast. This story is told very effectively in Lynn Hunt's book *Inventing Human Rights*. She describes the "inner logic" of rights that pushed toward equality and inclusion for expanding circles of human beings.⁴² But this uncomfortable result spurred a counter-attack from those who saw the leveling and equalizing of society as a great threat to be fended off.⁴³ In America, of course, the inner logic of rights language was inspiring the Abolitionists and enraging the defenders of slavery. The defenders thus felt a need to develop a racist pseudo-science that supposedly proved that blacks are "naturally" inferior to whites. In Europe, a parallel development of thought was seen in authors such as Houston Chamberlain, the British-born lover of Germany. His 1899 work, *Foundations of the Nineteenth Century*, written in

can be seen as having a divine origin that is not traceable to any particular human being as its "father."

⁴² Lynn Hunt, *Inventing Human Rights: A History* (New York NY: W.W. Norton & Co., 2007), pp. 150 ff.

⁴³ Hunt, *Inventing Human Rights*, 186 ff.

German and later translated into English, argued that white Aryans are superior to all other “races” of human beings. His virulent anti-Semitism and racism was directly influential on Adolf Hitler and his Nazi ideology. Chamberlain died in 1927, after having been visited on his deathbed by Hitler and Joseph Goebbels, who praised him profusely for being the architect of their way of thinking. Rights language, in sum, has had the paradoxical effect of making some aspects and episodes of modern culture *more* inclusive, and other aspects and episodes *less* inclusive (when people rebel against the implications of rights language). Those who are opposed to the more inclusive logic of rights language can of course use rights language themselves, but it will be tailored to their vision of reality. Because rights language has developed so much prestige in the modern world, it has become a requirement to speak in that way.

Conclusion

I have argued that the use of rights language in our contemporary context is in disarray. Citizens in general use rights language, but without having reflected on it philosophically. Intellectuals also use rights language, with a higher level of thoughtfulness, but the vast differences between the various moral and political visions of the intellectuals means that rights language is simply another site of controversy. In itself, rights language does not settle anything; it is used as a rhetorical weapon against opponents. There are also critics from the right, such as MacIntyre, and critics from the left, such as Poovey, who debunk rights language entirely as philosophically inept.

Into this fray I have inserted the voice of René Girard, who is not a theorist of rights but a cultural commentator and historian whose ideas are intriguing. Girard argues that the roots of rights language as a linguistic practice are found in the slow and subtle influence of the Bible on Western ways of thinking and acting. His perspective on history suggests that the concept of rights was birthed into the Western world through the medieval Catholic Church’s canonization and preservation of the Bible, which allowed the ideas it contains to work their way into Western history as a moral yeast. This birthing turned out historically to enable Christianity’s criticism of itself. As the Bible’s unveiling of scapegoating made an impact on thinking, the moral wrongness of burning heretics at the stake, or engaging in witch-hunts, or viewing the indigenous inhabitants of the western hemisphere or of Africa as lesser life forms than white Europeans gradually became clear. The language of rights that slowly emerged out of the scholastic debates of the late Middle

Ages, out of the Reformation era, and out of the Enlightenment era had as its goal the building of a linguistic hedge around human beings to protect them from arbitrary victimization that is motivated by the various forms of violent self-righteousness and self-delusion to which human beings are prone.

My central contention is that the disarray of rights language today is a result of a lack of consensus on how Western history ought to be interpreted. The hope for introducing some order into the use of rights language is found in the possibility of developing consensus on how the narrative of Western history should be told. Lacking that, the use of rights language in public debates is well-nigh useless. Rights language could be made useful again if it took into account Girard's perspective on how that language arose.