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Dooyeweerd's Empirical Theory of Rights

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MUCH POLITICAL DISCUSSION in the English-speaking world is discussion about rights. Contemporary issues such as abortion, torture, the status of women, political freedom, court procedure, racism, and the treatment of aboriginal peoples are spoken of predominantly in terms of rights and human rights. The same preoccupation is common in the academy. Within liberal political thought, particularly its contractarian variety, theories of rights are commonly used to explain the source of the state's power, to define the task of the state, and to demarcate the limits of the state's proper jurisdiction. Liberal political theory is, to a large degree, a theory of rights. Typically, these rights are conceived of as invariant and universal—as, for example, in the United Nations' *Universal Declaration of Human Rights*.

Herman Dooyeweerd included reflections on rights as part of his theories of legal, political, and general social matters. These theories treated the state as an individual social structure, the jural mode of reality, law-subject relations, and subject-object relations. Within these appeared his theory of rights which he put forward as an empirical theory about concrete human affairs.

Dooyeweerd's theory speaks to basic matters about which politicians and theorists have found little agreement—matters like what rights are, what particular rights are, what the source of rights is, or how we should deal with conflicts between rights. His theory is relevant to the pressing matter of conflicts between rights which appear to be a fact of life. The Catholic philosopher Jacques Maritain, who, among other accomplishments, was chairman of the committee which drafted the UN *Declaration*, once wrote:

> If each of the human rights were by its nature absolutely unconditional and exclusive of any limitation, like a divine attribute, ob-

> viously any conflict between them would be irreconcilable. But who does not know in reality that these rights, being human, are like everything human, subject to conditioning and limitation, at least, as we have seen, as far as their exercise is concerned? That the various rights ascribed to the human being limit each other, particularly that the economic and social rights, the rights of man as a person involved in the life of the community, cannot be given room in human history without restricting, to some extent, the freedoms and rights of man as individual person, is only normal.[1]

Almost every conference about liberalism refers to a crisis, a crisis in practice and theory. This crisis has profound repercussions for human rights, for most current rights theories have their origin in liberal theory and derive their intellectual support from it. It is certainly true that Marxists and other socialists place great stress on human rights. But in doing so, they seem only to have co-opted certain aspects of liberal theory and have not provided their *own* independent rationale for believing that humans do have rights.[2]

Most Christian discussions fare little better. Certainly there are developed theories of human rights in the Catholic natural law tradition of political theory, especially the work of Jacques Maritain. In most other Christian traditions, however, thinkers usually take the *content* of rights for granted and concentrate on showing why Christians should *support* such assumed rights.[3] The usual justification for asserting that humans have rights is the fact that we are created in the image of God, that, as God's children, we must be treated with respect and guaranteed freedom and responsibility. While all this may be true—and I think it is true—an assertion about *each* person cannot answer the *political* questions of how to deal with the interrelations of many people who are all *imago Dei* and who have possibly conflicting aims and purposes. In facing such political questions, Christians have taken the content of secular human rights theories as givens. Insofar as Christians do so, they too partake of the current crisis of liberal theory.

A particular feature of liberal rights theories is their individualism. Only individual persons, not churches or associations or tribes or cultures, are thought to have rights.[4] Because these rights pertain only to what they call the "individual," itself a highly abstract way of thinking about persons and societies, there is an extreme abstraction in talking about rights. Liberal rights theories, such as those of John Rawls or Robert Nozick, postulate hypothetical agreements between denatured individuals in dubious and ahistorical circumstances.[5] Their discussions of what rights do exist, or should exist, take place in a world divorced from the conflicting claims of

states, classes, religions, churches, cultures, associations, armies, races—in short, the world in which actual human rights have developed and must in the future be formed.

One recent work in rights theory which departs from this abstract model is Michael Walzer's *Spheres of Justice*. Walzer tries to look at the different types of norms which should govern proper development of rights in different "spheres" of society—the political, the economic, the familial, and so forth.[6] Interestingly enough, his language and style of argument are redolent of Dooyeweerd and, more particularly, of Dooyeweerd's spiritual forefather, Abraham Kuyper. Despite these similarities, Walzer appears unaware of the idea of "spheres of justice" (i.e., sphere sovereignty) that Kuyper developed a century ago.

In the context of all this, it is worthwhile to consider Dooyeweerd's theory of rights and to explore what contribution his theory might have to offer in the ongoing discussion of political theory.

The Intellectual Debate and the Requirements of a Rights Theory

Dooyeweerd's discussion of rights was shaped by detailed arguments with the dominant figures in jurisprudence in his day. These figures were principally the most brilliant representatives of the major streams in German legal theory, such as Otto Gierke (1841-1921), Rudolph von Jhering (1818-91), Georg Jellinek (1851-1911), Rudolph Stammler (1856-1938), and Friedrich Carl von Savigny (1779-1861), as well as the Austrian founder of the positivist "pure theory of law," Hans Kelsen (1881-1973).[7] Dooyeweerd's thinking about rights belonged to the field in which he had specialized—philosophy of law—and his discussion treated what were then the major points of jurisprudential controversy in both Christian and secular circles. Along with these discussions with theorists, Dooyeweerd maintained a continual undercurrent, occasionally surfacing as outright polemic, against all authoritarian forms of government, particularly fascism and national socialism which were developing even as he wrote. In addition, he considered particular problems in Dutch constitutional and civil law his particular areas of expertise.

Dooyeweerd made several criticisms of the contemporary schools of thought about law, whether neo-Hegelian, neo-Kantian, positivist, or the Historical School. The first criticism was that none of these schools had any real place in their theories for structures other than

the state as formers of law. These schools located all lawmaking competence or sovereignty ultimately within the state; they saw the state as the only true source of law. Of course they recognized that other bodies in society—such as churches, families, or professional associations—had regulations and made rules and even, as in the case of churches and unions, had courts, procedures of adjudication, and penalties in their own internal affairs. But they did not consider these non-state activities as real exercises of sovereignty, as genuine lawmaking. They treated them only as nonbinding rules, or as derivations from the authority of the state, or as arrangements allowed to exist only on the sufferance of the state. In the latter case they held that the state, thought of as the sole authentic lawmaker, is able legitimately and systematically to override or regulate the internal affairs of those other bodies, to "step in" when it saw fit. Hence, they treated the affairs of a church or of a family as ultimately subject only to the lawmaking power of the state. They considered the state to be sovereign over all human activities and thereby recognized no limits which might prevent the state from becoming totalitarian. In answer to all such theories, Dooyeweerd proposed a theory of many spheres of law throughout society, many different institutions and associations with their own particular sovereignties (sphere sovereignty). He insisted that the internal laws and lawmaking powers of all such non-state associations are not derived from or delegated by the state.[8] Dooyeweerd conceived of these different social structures, while immensely variable and plastic, as not arbitrary and not merely reflective of human will or circumstance. Such structures reflect God's structuring of the creation and, on that basis, they have their own authority and sovereignty and do not exist on the sufferance of the state. Dooyeweerd felt that unless lawmaking power is seen as plural, any sense of a genuinely pluralist society would be lost.

Dooyeweerd acknowledged that members of the Historical School held views similar to his own, thinkers such as von Savigny and, at the turn of the century, Otto Gierke. In their monumental historical studies, these theorists developed their own pluralist views of law and emphasized the autonomy and the importance of diverse associations in society. Indeed it is clear that much of Dooyeweerd's own theory of sphere sovereignty is based on the historical research of men like Gierke. However, Dooyeweerd found that even the Historical School was weak in its view of the juridical autonomy of associations. He complained that their view was historicist and formal: historicist in the sense that they see these associations as merely being historically formed, without seeing that they reflect something deeper

about the necessary structure of societies themselves; formal in the sense that they relate lawmaking power only to particular group wills and the formal articles of the association in question, but again without any deeper means of either grounding or criticizing such formal lawmaking power (*NC* 2:399 and 3:667f., 688). In short, the Historical School was aware of and described plural sources of law, but it did not penetrate this historical development in a critical way. Hence, Dooyeweerd maintained that, in the last analysis, even the Historical School portrayed the state as the final lawmaker which establishes the parameters in which others, in a subsidiary way, can establish laws within their own sphere.

Associated with this criticism of state-centered law was Dooyeweerd's criticism of the notion of subsidiarity which was common in Catholic natural law theories. The basic idea of subsidiarity is that nothing should be done by a higher social unit, such as the state, which can be done by a lower unit, such as the business enterprise or family. The intent of such subsidiarity is to promote social diversity and freedom and to prevent centralization in one dominant institution, such as the church or state. These are intentions with which Dooyeweerd sympathized strongly. However, Dooyeweerd found this view too relative and formal also. He thought it tended to see society as a *whole* and all things within it as *parts* whose aim is to serve the whole. Ultimately the state still sets the direction for the whole social order; this would leave the church, according to Catholic views, as the only body that can place limits on the state (*NC* 3:220-22).

A second general criticism that Dooyeweerd made of all the contemporary schools was that they grouped all non-state law together as "customary law." He believed that such a conception does not do justice to the actual nature and diversity of types of law—for example, canon law is hardly purely customary—and it does not escape the apparently insoluble problem of how custom per se can be an authoritative source of law (*NC* 3:666). The consequence of this general categorization of non-state law as customary law is that, once again, the state remains the only valid source of positive law. This is particularly the case in legal positivism. Dooyeweerd pointed out that in positivism the "political dogma of the 'will of the legislator' as the sole source of validity of law, of the State as the possessor of a juridically unlimited competence . . . is *simply taken for granted*" (*NC* 3:666; italics mine). He maintained that this view is simply an ungrounded and unjustified assertion which is at odds with history and experience.

Dooyeweerd's final general criticism of the schools of thought in his day concerned problems which arose when they treated rights (and law) as expressions of human personal will (*NC* 2:396). What the problems were depended on how the schools handled the matter of will. First, if will is taken to be the consent of the people as expressed in a social contract due to which the state and individual rights appear, then rights originate outside of and prior to the political order. Politics is thus regarded as subject to prepolitical rights and positive law is downgraded. Historically, however, it is clear that rights develop as the political order itself develops and positive law exercises a considerable role in determining rights. Dooyeweerd certainly wanted positive law to be subject to conditions beyond itself, and he wanted rights to be shaped according to fundamental norms rather than merely by the will of the state itself. But he insisted that the guides for good and just laws, and so of rights, should not be sought in some hypothetical prepolitical conditions but in an examination of politics itself. According to Dooyeweerd, rights should be shaped according to the state's jural norm which today we may call the norm of public justice, and that jural norm could not be deduced from a set of rights supposedly existing prior to any politics. He pointed out how, in the eighteenth century, the tensions between a supposed prepolitical contract and the positive role accorded to the state surfaced in the general will theory of Jean-Jacques Rousseau (1712-78) and in the virtual anarchism of the young Johann Gottlieb Fichte (1762-1814) (*NC* 2:395).[9] Secondly, if human will is understood in a psychological way, then the conclusion follows that those who cannot will politically (e.g., babies, sleeping people, the mentally incompetent) do not have rights (*NC* 2:400).[10] Thirdly, if both individual rights and positive legislation (the "will of the legislator") are based on will, then rights and lawmaking power merge. The power to make law becomes simply another right. This creates further problems of accounting for any human being (the legislator) "naturally" to have power over other humans beings (those legislated for) and of maintaining any sense of the rights of other persons when asserting the will of the legislator. Hence Kelsen and Léon Duguit considered theories of "subjective right" pejoratively as "metaphysical" (*NC* 2:399). For them the only real existent was the power, and hence the right, of the state to make laws and compel adherence to them. All other rights derived from and existed at the discretion of the legal sovereign. Dooyeweerd concluded that whenever the distinction between lawmaking competence (the authority to determine who has what right to what) and subjective right (to have a right to something) is

abandoned, then any sense of subjective right will be lost (*NC* 2:398-400).[11] This also meant that for Dooyeweerd the question of the source of the state's authority and the question of rights should be quite distinct.

In the light of these debates, Dooyeweerd began his systematic elaboration of a theory of rights with six principal requirements in mind. First, he wished to provide a theory that preserved human life free from oppression by a totalitarian or authoritarian state. Second, he wanted a theory that dealt not with timeless abstractions, such as "the individual," but with concrete people and organizations in their complex interrelations in modern societies. Third, he wished to have a theory that safeguarded the genuinely *political* character of the state by recognizing the state as the actual former of right rather than as merely the acknowledger of supposedly invariant, prepolitical rights. Fourth, he wanted a theory that pertained not just to general legal freedom but to *all* forms of legal attribution of right, including the minutiae of court determination. Fifth, he wanted a theory that clearly distinguished between the subjective rights of persons and the authority of legislators to make laws governing rights. Finally, he wanted a theory that reflected a basic ontology and sought grounding in the constitution of reality, and not a theory that exhibited the hollowness of positivistic schools of law, nor the relativism of Historical Schools of law, nor the fragility of liberal human rights understood as conventional agreements. The fundamental ground for such a theory is the world understood as God's creation which in its very nature shows its subjection to God's law.

Dooyeweerd employed the term "rights" in two very different, although related, ways. First, he used the term fairly loosely, in keeping with the common meaning that rights has in the modern European languages. In this sense rights are what places limits on the state's action and demarcates those areas in which people ought to be able to act without legal constraint. In other words, rights as "sphere sovereignty." Secondly, he used the term precisely as a particular item in his systematic philosophy of law. In this sense, rights are positive legal attributions that A has a right to B. We will consider both of these uses of "rights," beginning with the looser sense of rights as sphere sovereignty, the term he inherited directly from Kuyper.

Rights as Sphere Sovereignty

In his most popularly written work, *Roots of Western Culture*, Dooyeweerd discussed the relation of might and right and, in particular, tried to show that an excessive expansion of power by the state

is always "avenged" in history by other cultural spheres such as industry, the churches, or family life. These other spheres will eventually rearticulate their own inner life and nature and push back the incursions of the state. In connection with this phenomenon he wrote that "the differentiated life spheres of disclosed culture possess an *original right* [to existence] of their own." He then restated the point in different terms: "Juridically . . . the life spheres are sovereign in their own sphere." Further: "To phrase it negatively, the life spheres do not derive their right to develop according to their own inner nature from the state. A state law which [clearly] violates the juridical sphere sovereignty of nonstate spheres cannot be viewed as [binding] *law*. . . ." Dooyeweerd concluded, "Only in [cooperation] with each life sphere's *juridical* sphere sovereignty, as divine [order for justice], can one legitimately speak—with reference to the aspect of the development of culture—of a world-historical *right* belonging to the differentiated spheres based on a recognition of their respective spheres of power" (*Roots*, 89).[12] Later in the same work Dooyeweerd referred to "the rights of the private, nonstate *communities* in society" (*Roots*, 186).

Given the nature of *Roots* as a nontechnical work, it would be hermeneutically unwise to interpret these texts too precisely—indeed a very precise reading would actually show contradictions in terminology. However, it is clear that Dooyeweerd used "rights" as an expression equivalent to what he called "sphere sovereignty." If something is sovereign in its own sphere, then it has a right to develop in its own way. What other people discuss as rights, Dooyeweerd discussed, more broadly, as juridical sphere sovereignty.[13]

"Sphere sovereignty" is one of the key terms in Dooyeweerd's sociology. Given this fact it is surprising that in his magnum opus, *A New Critique of Theoretical Thought*, he said comparatively little about it, and what he did say is usually not found in the specific context of societal theory. The core of the idea of sphere sovereignty in the *New Critique* is the mutual irreducibility of the various modal aspects—the juridical, the pistic (faith), the biotic, and so on. "Sphere sovereignty" captures the positive side of the notion of mutual irreducibility by indicating that each aspect is "sovereign in its own orbit," each exercises its own proper authority (*NC* 1:102). Each aspect is distinct in its character from the others and cannot be ignored or treated as if it were another aspect, without producing antinomies, contradictions, or dialectic tensions (*NC* 1:105-6, 168-71). In the course of history, the modal aspects come to characterize different kinds of social relationships and organizations—the juridical

pertains to governments, the pistic to churches, the economic to industry, and so on. Because no aspect can be treated as a subset of another, no organization qualified by one aspect can claim authority over others in their own peculiar activity—states cannot rule over churches, or banks over families. Similarly no structure or organization, not even the state, can be the "all-embracing totality" of humankind (*NC* 3:169).

This modal diversity expresses God's law for the cosmos, so that sphere sovereignty implies that each of the different societal spheres *ought* to have its own peculiar task and area of competence. One sphere *should not* try to control another. However, as an expression of God's law, it also means far more than this. Sphere sovereignty is not just a moral imperative, but it is to some extent also a statement about *how things actually are*—it reveals the structure of the cosmos and of society (*NC* 3:173). Dooyeweerd's point is not so much that, for example, the state *should not* invade the proper area of competence of the person, the family, the church, or science; it is rather that the state *cannot* do so and get away with it for long (*NC* 3:685ff.). The fact that the state should not is shown by the fact that it cannot without negative repercussions.

Of course Dooyeweerd acknowledged that the state can, in the short term, enforce a particular church doctrine, or suppress literature, or pursue economics by bureaucracy. His point is that, in the longer term, such an effort will not work. He wrote:

> Of course, the State can temporarily prohibit the formation of private associations. But it cannot arbitrarily change the internal structural principles of the societal relationships. . . . A civil judge's sentence can do no more than pronounce the *civil* unlawfulness [of an association] . . . , and sentence it . . . .
>
> But *within its original sphere of competence* an organized community can never be compelled to accept a civil judge's decision . . . . (*NC* 3:685)

In such an instance the non-state community may have to pay damages, but—even if it wished it—it cannot alter its own inner nature and competence. For example, the state could try to dictate doctrines to a church and fine a church for not upholding such doctrines. However, it could never force the church actually to *believe* such views. Similarly, one could pass laws requiring love in a family, but there is no way actually to enforce such laws. State laws cannot produce belief or love where there is none.

In these two examples we are referring to instances where the state cannot, in the nature of things, finally dictate the internal life of

churches and families. In some other spheres the state might assert more factual control, but still the internal structure of these other spheres would tend to resist such control. Neither the church nor the state can assure a particular scientific orthodoxy as, for example, in the case of Stalin and Lysenko's biology or in the Catholic prohibition of Galileo. Dooyeweerd maintained:

> Only when science, art, and commerce follow their own law of life freely does cultural love flourish, while without a moral zeal for fulfilling a historical task a culture shrivels up and withers away. If science and art are bound to a totalitarian state or church, they soon lose their inner authenticity. No longer inspired by love for their cultural task, the scientists and artists become instruments in the hands of a tyrannical regime which denies them their own right to cultural life. (*Roots*, 89-90)

This is why culture "avenges" itself in history. The structure of the creation, expressed in sphere sovereignty, reasserts itself in the face of misguided human efforts. This is a fundamental aspect of the ontic nature of things—"the factual temporal duration of a thing as an individual and identical whole is dependent on the preservation of its structure of individuality" (*NC* 3:79).

It must be stressed that this sphere sovereignty only applies to the "original competence" of the sphere, that which is related to its particular modal qualification. It does not relate to anything that any particular community or organization might happen to do. The state *can* forbid an economic enterprise from raising a private army; it can stop a church from cheating on taxes or defying fire regulations. In these instances what is controlled is not the internal structure of another sphere, but the actions of these other spheres *outside* their own field of competence.

Similarly, while the state must always respect the internal competence and sovereignty of non-state institutions, it must also, at the same time, follow its own calling, its own typical modal qualification. Dooyeweerd understood this to be jural in character and subject to what we today may call the norm of justice, entailing the regulation of the external relations of societal entities in a just way. Hence, while the state cannot enforce love in a family, it can still require parents to support their children financially, for the child's life is not swallowed up in its relations to its parents and thus it also has an independent claim (a right) to the protection of the state. The state can also legislate against abuse of one's spouse. Similarly, the state can set minimum conditions for wage agreements between corporations and unions. In all these instances the claims of more than one sphere are at

issue; hence, the state has the task of regulating these interrelationships in a just way. So we can see that while Dooyeweerd would be in favor, for example, of economic (stewardly) decision making free from state direction, such economic sovereignty would be a far cry from many of the current calls for "free enterprise." For Dooyeweerd the enterprise must be free to make stewardly decisions, but not free to produce simply anything or arrange any contract that it might happen to want. Enterprises must be free to follow their calling, not free to do just anything which might generate an internal profit. Similarly, the state always has a responsibility for the relation between the enterprise and other societal entities, such as unions, or consumers, or neighbors.

It is because of sphere sovereignty that Dooyeweerd emphasized that the state is not the only source of valid law. Indeed, in its most precise sense, societal sphere sovereignty refers to the fact that each sphere responds to and makes its own laws (*Roots*, 89-90). Sphere sovereignty refers to a diversity of spheres of law; it shows that state law, public law, is only one type of law. There are many lawmaking bodies, many sovereignties throughout society. For Dooyeweerd the state is not the only sovereign institution; it is sovereign merely within its sphere, as other institutions and associations are sovereign in theirs.

It is in terms of this scheme of sphere sovereignty that Dooyeweerd discussed the idea of the "rights of man," now usually called "human rights." For Dooyeweerd human rights are one set of rights; they refer to those matters in which the person is sovereign, matters of personal responsibility and authority. As such, human rights stand alongside the rights of the church, the family, the state, and so forth.

Because of his stress on sphere sovereignty and on historical societal differentiation, Dooyeweerd gave high praise to the development of the idea of the "rights of man" during the French Revolution of 1789. Dooyeweerd was highly critical of the Revolution; nevertheless, he believed that its assertion of human rights expressed the true idea of civil law, the legal freedom and equality of each individual. This development was "entirely in line with the process of differentiation . . . founded in the divine order for human history." Such rights presupposed "the realization of freedom and equality in a specifically *juridical* sense" (*Roots*, 162). Dooyeweerd maintained that even the Enlightenment, against which he directed much of his critique, "pleaded [ultimately] . . . for the establishment of the individual rights of man, which [are] the foundation of today's civil

law" (*Roots*, 107). He added, "Only with this process of differentiation, room is created for the recognition of the ***rights of man as such***, independent of a person's membership in particular communities like kinship bonds, nation, family, or church" (*Roots*, 186).

We may summarize Dooyeweerd's view of rights as sphere sovereignty by saying that he proposed that each activity and organization is typified by some aspect of the creation and is to be free to develop internally in its own way without interference in its qualifying character from any other institutions or organizations, including the state. Each sphere has a right of existence demonstrated by its unique and ineradicable character. Within this overall scheme of rights are "human rights," the rights of personal human freedom and action which are to be secured for each person regardless of nationality, race, family, or church. Dooyeweerd's view covers much of the same ground as contemporary human rights theories. It specifies areas of human freedom, and it gives limits to the power of the state. Its principal differences from contemporary human rights views are that it gives rights to more than "individuals," does not define the purpose of the state in terms of rights, and does not try to deal with the question of the origin of the state's authority. Also, it is only one part of Dooyeweerd's overall theory of rights.

Rights as Juridical Subject-Object Relations

We will now consider Dooyeweerd's more precise and technical use of the term "right." In his general treatment of subject-object relations he discussed the theory of "subjective right," a term more common in continental jurisprudence than it is in the English-speaking world. All we need to say for the moment is that it refers to the fact that certain subjects, usually persons, have a right to something. Dooyeweerd complained that the "theory of subjective right still suffers from the lack of . . . proper analysis." The result is that "the theoretical concept of subjective right is extremely uncertain and indeterminate" (*NC* 2:392). Dooyeweerd ascribed this to "the lack of a genuine modal analysis of the juridical subject-object relation" (*NC* 2:395). In fact, it is his repeated refrain that a basic problem of rights theory is the failure to understand subject-object relations (*NC* 3:398, 400, 402, 404, 413). He maintained that one adverse consequence is that rights are not treated properly as ***relations between*** two things, but rather are attributed almost solely to the possession of certain qualities (such as will, reason, or conscience) by the subject. Dooyeweerd argued that such a subjective understanding cannot bear the burden of juridical weight assigned to it; in par-

ticular, he maintained that ascribing rights to the qualities of individual persons does not really give any *political* guidance—for politics must deal with the rights of *many, interrelated* persons.[14] Given this relation of rights and subject-object relations, we must pay some attention to what Dooyeweerd meant by a subject-object relation.

This aspect of Dooyeweerd's theory is complex (*NC* 2:366ff., 3:148ff.). For Dooyeweerd, subjectivity refers to much more than human functioning. All things function as subjects in all aspects up to and including their qualifying function (this we shall call subject^{b}).[15] In later aspects they always function only as objects. Hence, an animal can function as a subject^{b} in, for example, physical and psychic ways, but it cannot be a juridical subject^{b}. The state is a juridical subject^{b}, but it can only be a pistical object. The family can function juridically as a subject^{b}, and so forth. Humans function as subjects^{b} in all aspects and, in this sense, can never be objects. For Dooyeweerd, a subject^{b}-object relation is any relation between two things where, at the particular modal level in question, one entity functions as a subject^{b} and the other functions as an object. More precisely:

> An object in a modal functional sense is always an object to a modal subject$^{[b]}$-function coordinated with it within the same law-sphere. The modal subject$^{[b]}$-function, insofar as it is the transcendental correlate of the modal object, can no more be objectified in the *same modal aspect* than it is possible for the modal object-function to be a subject$^{[b]}$ within *the same modal sphere*. The modal subject$^{[b]}$ is the *active* pole on the subject$^{[b]}$-side of the modal aspect, whereas the modal object is the *passive*, merely objective pole. (*NC* 2:370)[16]

Dooyeweerd has another, more basic meaning of "subject" which we must understand if we are to understand his theory of rights (this we shall call subject^{a}).[17] Dooyeweerd used the term "subject" when he talked about law-subject relations (*NC* 1:108ff., 2:366ff.). The law is God's law, God's Word, the divine law-order, which has made and which upholds the creation and gives it its form. All existing things exist in relation to, in response to, God's law. Dooyeweerd referred to all the things which are under the law as subjects in this fundamental sense: they are *subject to* law. Hence, a law-subject^{a} relation is a relation between God's law and something in creation which is subject to, which responds to, is called by, that law.

It is important to stress that this meaning of subject^{a} is entirely different from the meaning of subject^{b}-object relations. In Dooye-

weerd's view there are subject[b]-object relations on the subject[a] side of reality which are correlated with laws for that relation (*NC* 2:366). There is a law for subjects[b] and objects and for the relations between them, and, in relation to this law, both subjects[b] and objects are subjects[a]. In terms of the distinction between law-subject[a] and subject[b]-object relations, Dooyeweerd emphasized that objectivity should not be confused with "universally valid law conformity" (as, for example, in the expression "objective facts"). Nor should subjectivity[b] be confused with freedom, arbitrariness, or serendipity (as in the expression "purely subjective judgment"). For Dooyeweerd, questions of freedom and conformity to law are entirely separate from questions of subjectivity[b] and objectivity. Both subjectivity[b] and objectivity contain elements of freedom in that the law only determines their structure *in general*. Both contain elements of law conformity in that neither can exist apart from the (general) structuring given by God's law. Because both exist on the subject[a] side they are never exhaustively determined by that law, but always contain the element of a particular form of *human response to* the law. In juridical affairs this means that both juridical subjectivity[b] and objectivity and the relation between them are always governed by God's law and, at the same time, are always expressions of human response, creativity, and positivization.[18]

This leads us directly to rights. Dooyeweerd outlined the nature of juridical subjectivity[b] and objectivity in this way:

> A juridical object can only be found in the juridical object-side of concrete reality. It can never be identical with the full reality of a thing, nor with an object of sensory perception. . . . The juridical object can only be conceived in the modal meaning of retribution. It is nothing but a modal function, and this function is determined by the modal structure of the juridical subject[b]-object relation. (*NC* 2:405)

This means that, in the strictest sense, there is no such thing as a juridical object; there is only the juridical-object side of something which is being acted upon by a juridical subject. "Juridical object" is only a shorthand expression for this object side. For example, the burning down of a house has, by itself, no particular juridical meaning; it is not a juridical object. It will only have such a juridical meaning if the house, and its burning down, stands in a particular subject[b]-object relation with a juridical subject, such as if I own it or you have a mortgage upon it. Only within such a relation does the burning down become an "objective juridical fact." A "juridical object in a truly modal juridical sense" is "related to the subjective power of

disposal and enjoyment of the subjectively entitled person" (*NC* 2:405).

It is in relation to this subjective[b] power that we can talk about subjective[b] right. When we speak of a right, we mean that someone is entitled to some particular feature of something. A "right" refers to such a juridical subject[b]-object relation. For example, when we say that I have a right to the exclusive use of my toothbrush, the "right" is a relation between the juridical subject[b] (me) and the juridical object (the toothbrush). "Subjective[b] right" refers to the subject[b] side of the relation—"my" right to the toothbrush. This has several consequences. First, it means that, for Dooyeweerd, rights should never be treated as if they pertained only to subjects[b] because rights always refer to *relations* (*NC* 2:405). A right, in this sense, is never something which inheres in me or in anyone else. Since my relation to the toothbrush does not depend on some innate characteristic that I have, such a right cannot be deduced or demonstrated solely from examining my nature. Rights exist in political settings and cannot be understood only as characteristics of particular persons. Secondly, it means that rights (in the sense Dooyeweerd means here) should never be considered as the source of legal norms. Legal norms are discovered on the law side of reality, and such norms reveal how rights should properly be developed. Consequently, rights are always subject[a] to norms, and they are not themselves the source of norms. One result of this is that while Dooyeweerd believed that a just state will always zealously safeguard rights, he did not believe that we should try to derive the authority and limits of, nor the goals for, the state from such rights.

Dooyeweerd continually pointed out the problems which arise if juridical subject[b]-object relations are neglected. He maintained that without such subject[b]-object relations the concept of "right," particularly of "subjective[b] right," is usually treated as if it were only an aspect of human subjectivity. Hence, Roman jurists, although "recognizing the subject[b]-object relation in subjective[b] rights," nevertheless "tried to approximate the latter one-sidedly from the subjective[b] angle." The subject they chose, for none other seemed available, was the individual person. Hence, the Roman jurists "conceived of subjective[b] right as essentially an individualistic subjective volitive power . . ." (*NC* 2:392). This in turn meant that they had great difficulty in accounting for the juridical rights of corporations which, of course, were not persons. They sought to remedy this defect by means of a legal fiction in which the individuals were combined "*in thought*" into a unity. This tendency toward legal fictions ("let's

pretend") continues to this day in the treatment of corporations as legal persons and shows that a neglect of subject^{b}-object relations produced great difficulties in dealing with empirical reality. Another problem was that, partially through lack of attention to the object and partially through the unified focus on the subject, the Romans thought of all legal objects as *corporeal* things, isolated singularities. Hence, as Gierke pointed out, a thing, a legal object, "could not be the object of various subjective rights at the same time" (*NC* 2:393). A right embraced all of a thing so there could never be more than one right to a thing. All rights were total rights of property. There could never be more than one legitimate legal claim to any corporeal object. Such a rigidity in law was a great barrier to any complex societal development: one could never have mortgage or different rights of use in such a system (*NC* 2:392-94).

The Roman neglect of subject^{b}-object relations also meant that, since they focused almost exclusively on the individual person as the source of rights, it was *individual will* that determined the actual content of the right. Rights tended to become an expression of human will and to reach as far as that will reached. The same view continues in the modern age, with an attendant difficulty in limiting rights or in defending them against the will of another. If will is the source of rights, then it is also the limit on rights; hence, much of modern English-speaking rights theory is an attempt to show how people can be bound by their own will.

The object side of the juridical subject^{b}-object relation tended to disappear from view in seventeenth-century, humanistic natural law theory as well. Rights were tied to their subject^{b} side, and this side was in turn identified with human freedom. Rights were thought to be an expression of human freedom. Human beings were thought to have natural rights which were antecedent to the political order, and the political order was understood as an outcome of and as focused upon those rights. This view led (and still leads) to a dialectic as the freedoms and the wills of different human beings conflicted with one another. If right is an expression of will, then rights conflict whenever human wills conflict. According to Dooyeweerd, the dialectic has a *freedom* pole which tends to anarchy because there is no deeper ground than human will which could legitimately restrict a person's freedom and will. It has a *nature* pole where all human action is controlled because it is always an object of the freedom and the wills of others. Dooyeweerd maintained there was such an identification of right with freedom and will power in the thought of Thomas Hobbes, Johann Gottlieb Fichte, Immanuel Kant, G. W. F. Hegel, and many others (*NC* 2:395-96).

The identification of right and subjectivity^{b} led to further contrary consequences. Lack of attention to the nature of the legal object led to a lack of distinction between *jura in personam* and *jura in re* (legal power over persons and legal power over things). The two relations were treated merely as different examples of the one phenomenon. *Jus in personam* was treated merely as a right, a "volitive control over a person in consequence of a particular personal legal relation" (*NC* 2:398). As the legislator in making laws exercises such a *jus in personam*, then juridical, lawmaking competence is treated as a type of right similar to other rights. Law is treated as the expression of the will of the legislator, and since that law controls the expression of other rights, then the right to legislate eventually becomes the only real right and all other aspects of subjective^{b} right recede. Hence, positivist jurisprudence as, for example, in Kelsen treats subjective^{b} right as merely a metaphysical residue of natural law (*NC* 2:399). Rights become merely the expression of the state's will. Ultimately, there can only be procedural, and not substantive, grounds for restricting the range of the state's lawmaking and law-enforcing power.

In contrast with positivist views, Dooyeweerd made a sharp distinction between legal competence (normative lawmaking power) and subjective^{b} right. Legal competence implies the power of making laws over people. But since people can never be objects, they can never be juridical objects, that is, the object of rights. For example: you can never, normatively, own a person. Since relations between persons are always subject^{b}-subject^{b} relations, lawmaking power must be distinct from rights. The competences of the government, or of a person voting, or of people performing private legal acts are different from and must not be confused with rights (*NC* 2:402, 410). Dooyeweerd related such lawmaking competence to the law side of the juridical sphere: it always relates to God's law; it is never, unlike rights, something which can be determined by humanly made law itself. He believed that only by thus separating legal competence and subjective^{b} right can either of them be consistently maintained. Only in this way can lawmaking competence be protected from control by private will. And only in this way can subjective^{b} rights be understood as genuinely juridically formed and not as prepolitical, ahistorical boundaries on political acts.

In keeping with his depiction of rights as juridical subject^{b}-object relations, Dooyeweerd thought that only certain types of things can be juridical objects and therefore objects of a right. For example, one can only have a right to something which has a *pre*juridical qualifying function. Thus, pistically and ethically qualified things can never

be the object of rights. One can never have a juridical right to the faithful love of one's spouse. A church can never have a juridical right to the believing commitment of its members. These realities are illustrated by the fact that such relations cannot actually be enforced by public law. What one *can* have rights to are the prejuridical foundations of such relations. So the law can require financial support of a spouse or can require church members to adhere to property contracts with the church.

Dooyeweerd had two other qualifications as to what can be the object of (i.e., the object side of) a right. One qualification is tied to the proximity of the juridical and economic modal aspects. Dooyeweerd maintained that only things which have an economic object function can be the object of rights—that is, only things which are "relatively scarce goods serviceable to human needs and therefore capable of frugal [i.e., economic] administration." If something is not scarce one cannot have a relation of right to it. Hence, "neither the free air, nor natural organic functions like breathing or sleeping can, as such, be objects of subjective[b] rights" (*NC* 2:407).

The other qualification is tied to the historical analogy in the modal structure of the juridical subject[b]-object relation: "Things which in the present state of human culture are not controllable by cultural activity cannot function as juridical objects of human rights" (*NC* 2:407). In other words, you cannot have a right to go to Mars in 1985 for there is no way to make such a right feasible. Things we cannot control or shape cannot be the object side of rights.

In the light of his categories—law and subject[a], subject[b] and object—Dooyeweerd outlined the relation of the law side (God's law for human law), positive law, and rights. He first described the law side:

> The modal meaning of the juridical aspect on its law-side is: the unity (the order) in the multiplicity of retributive norms positivized from super-arbitrary principles and having a particular, signified meaning, area and term of validity.
>
> [T]hese norms . . . regulate the balance in a multiplicity of interpersonal and group-interests according to grounds and effects, in the coherence of permissive and prohibitive (or injunctive) functions by means of a harmonizing process preventing from any excess, in the meaning-nucleus of retribution.

He then went on to describe the subject[a] side:

> The modal meaning of the juridical aspect on its subject[a]-side is: the multiplicity of the factual retributive subject[b]-object relations [e.g., rights] imputable to the subjective will of subjects qualified to act, or *per repraesentationem* to those not so

> qualified. These subject[b]-object relations [e.g., rights] are bound to a place and a time, in the correlation of the communal and the interpersonal rights and duties of their subjects. (*NC* 2:406)

Hence, we may describe a right, on the law side, as the just (i.e., retributive) interest of the entitled subject^b and, on the subject^a side, as a legal claim (*NC* 2:407). This is, broadly, Dooyeweerd's more precise theory of rights.

Summary and Assessment

We have outlined two ways in which Dooyeweerd spoke of rights. One way is of rights as sphere sovereignty. The other is a precise theory of subjective^b rights as the positivized just (i.e., retributive) interests of entitled subjects^b in a juridical subject^b-object relation. When we take these two views together, then this picture emerges: a variety of entities within society (such as the person, the family, the church, economic institutions, science, and the arts) may be said to have rights in the sense that they have their own spheres of authority and competence. These spheres should not be invaded by the state and, indeed, in the long term, they factually *cannot* be invaded by the state for they will always follow their own internal laws, positively or negatively. In this sense rights provide the limits on state power and jurisdiction.

The state, aware of the areas of competence and right of these spheres and according to its guiding jural norm, specifies in positive law juridical subject^b-object relations between these entities. These subject^b-object relations are rights. In this legal relation the subject^b may be said to have a subjective^b right to the object. Hence, the state may be said to have the task of establishing particular rights according to the jural norm which we may call the norm of justice.

Perhaps the most obvious weakness of Dooyeweerd's view of rights is its sheer logical complexity. It requires both familiarity with his system and a great deal of detective work to find out what he is talking about. This may be true of any philosophical system. It may also reflect the fact that the prevailing contemporary jurisprudence depends upon thought patterns which are very different from Dooyeweerd's; what is merely different often appears difficult. It is hard to relate Dooyeweerd's thought to current jurisprudence and political theory, and this may yet relegate his theory to historical backwater. The idea of sphere sovereignty creates special problems because it is often extremely difficult to distinguish the boundaries of spheres of authority in concrete situations. Partly for this reason Dooyeweerd has sometimes been misread as a theorist of "laissez-

faire" or of the "limited state" in the liberal sense when he is certainly neither.

In addition, as noted in an earlier essay,[19] we should recall in this context that while the "spheres" in Dooyeweerd's sphere sovereignty are intended to express a fundamental ontic and created order and to represent products of a universal historical process of differentiation, nevertheless they bear a close resemblance to the institutional patterns of modern liberal Western societies, especially Dutch society. We would do well, then, to question the degree to which Dooyeweerd's sociology and the particular features of sphere sovereignty and "rights" attendant to it reflect a twentieth-century, Western European mindset rather than biblical religion.

However, there are many strengths in Dooyeweerd's theory. His conception of sphere sovereignty breaks away from the individualism which undercuts human rights conceptions in liberal capitalist countries.[20] For Dooyeweerd, the rights of persons must always be related in a just way to the rights of communities, associations, and institutions. Similarly, his thought breaks away from collectivist views of rights, as in fascism or communism, which have a great deal of difficulty in allowing freedom to activities and institutions other than those defined as socially desirable by central political authorities. In place of both these schemes, he offered a view of freedom and diversity which claims to be empirically grounded in the nature of societies, history, and human action.

The principal virtue of Dooyeweerd's technical view of rights is its ability to distinguish rights, justice, and legal competence. Most current rights theories in liberal thought are types of natural rights theories which hold that rights are prepolitical. In these theories the state does not make rights but only *recognizes* them. The task of the state is defined in terms of rights. This has the result of binding and freezing political action. Since, according to these views, rights exist prior to justice and the content of justice is given by rights, there is no appeal beyond them. Hence, a situation which appears intuitively to be unjust will be held to be beyond the competence of the state to rectify it. Justice becomes bound by these prejuridical rights, and if the rights are centered on the individual person, then the resultant rights theory looks more like an exercise in geometry than in jurisprudence.[21] Such liberal natural rights views also make historical nonsense for there is no evidence of anything we can properly call rights existing prior to political institutionalization. All we know about the history of rights is that rights appear and are extended as the state and stable legal relations appear and are extended. While it

is true that social contract theorists usually claim that the contract is an ontic substructure of the state rather than its historical beginning, yet their view must still be criticized as one which is divorced from the empirical realities of state formation and growth. A view which is at odds with what we know of the development of rights is not well vindicated by being called ontological rather than historical.

Further, such natural rights theories hold rights to be the *basis* of political authority. Governments are thought to have power because they are the recipients of natural rights transferred from individuals in a social contract. Hence, lawmaking competence and rights are conflated. Such views have great difficulty in accounting for how, on the basis of a presumed initial equality of rights, one person could have rights over another. They also, as with Rousseau, end up with rights in a dialectic tension—either justifying total authority for the state to protect rights or else denying all authority to the state lest it invade rights. They have great difficulty in providing specifically *political* norms for *relations* between things.

Against such views, Dooyeweerd's conception makes rights depend on actual political, juridical activity, intrinsic to empirical political realities. Rights as subject^{b}-object relations are subject to actual government decision and so can be historically sensitive: they are specified for particular times and places. Rights develop according to political, juridical norms, not according to something prepolitical. Nor, in spite of this emphasis on political formation, did Dooyeweerd conceive of rights as arbitrary and due simply to political discretion (as in legal positivism). Rights are not solely the creatures of the lawmaker's will for, according to Dooyeweerd, *rights themselves do not supply the norms* in terms of which they are positivized. The specification of rights in positive law is subject to the fundamental norm of justice and the principle of sphere sovereignty. Rights are imputed via a just regulation of a multiplicity of juridical subject^{b}-object relations.

In sum, Dooyeweerd's view allows for rights of persons as well as communities, institutions, associations, and relationships, takes into account the historical formation of rights, grounds rights in the development of political authority, refuses to make justice subordinate to rights, and places rights formation in the context of normativity. Due to his sensitivity to the necessity of enforcing rights, as indicated particularly by his modal analysis and his emphasis upon the objects of rights being both scarce and technically controllable, Dooyeweerd brought a realistic element to his system. This is an important element in the modern age if we consider, for example, the

UN *Universal Declaration of Human Rights* which speaks of the "right . . . to found a family" (article 16) and of the right "to a social and international order in which the rights and freedoms . . . can be fully realized" (article 28). Neither of these seem capable of political guarantee.

Finally, Dooyeweerd tried to found his view of rights in an ontology wherein rights are understood as an expression of the way things fundamentally are. This provides a solidity which contrasts markedly with most current Western views of rights, views which tend to see rights as conventions having, in the last analysis, only a pragmatic value.[22] With such solidity, Dooyeweerd's theory provides direction to theorizing about rights. Despite its complexity, his treatment of rights is illuminating, powerful, and cogent: it deserves the attention of political and legal theorists, whether Christian or otherwise.

Notes to Chapter 5

1. Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), 106.

2. Cf. Jürgen Habermas, *Theory and Praxis* (Boston: Beacon, 1973) 113ff.; Otto Kirchheimer, "The *Rechtstaat* as Magic Wall," in *The Critical Spirit*, ed. K. H. Wolff and Barrington Moore, Jr. (Boston: Beacon, 1967), 287-312.

3. See, for example, Allen O. Miller, ed., *A Christian Declaration of Human Rights* (Grand Rapids: Eerdmans, 1977) and *Theological Perspective on Human Rights* (Geneva: Lutheran World Federation, 1977); also Arlene Swidler, ed., "Human Rights in Religious Traditions," *Journal of Ecumenical Studies*, no. 3, 19 (1982).

4. The major exception to these individualist trends is the assertion that "nations" or "peoples" have the "right to self-determination." This is a hazy conception and one at odds with most other conceptions of rights.

5. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

6. Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983). Another different form of argument is Friedrich A. von Hayek's work, for example, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960). Hayek argues from the nature of law and justice. However, he shares the individualist assumption of the other writers to whom I have referred.

7. Dooyeweerd extensively discussed these as well as other major figures in legal philosophy in his *Encyclopaedie der rechtswetenschap* (Amsterdam: Free University of Amsterdam, Student Edition, 1946-68). He also discussed the

major Italian legal philosopher Giorgio Del Vecchio as well as legal neo-Kantianism in his "Del Vecchio's Idealistic Philosophy Viewed in the Light of a Transcendental Critique of Philosophical Thought," *Phil. Ref.* 22 (1957): 1-20, 101-24. A very compact summary of Dooyeweerd's legal thought is given in chapter 15 of Hendrik J. van Eikema Hommes's *Major Trends in the History of Legal Philosophy* (Amsterdam: North-Holland, 1979).

8. Dooyeweerd discussed the matter of sovereignty more directly in his address on the seventieth anniversary of the Free University in 1950, *De strijd om het souvereiniteitsbegrip in de moderne rechts- en staatsleer* (Amsterdam: H. J. Paris, 1950).

9. See Paul Marshall, *Human Rights Theories in Christian Perspective* (Toronto: Institute for Christian Studies, 1983) for a discussion of this point.

10. This point might sound fanciful, but it is not. A similar argument is made by George Grant in his discussion of *Roe* v. *Wade*, the 1973 U.S. Supreme Court decision on abortion. See George Grant, *English-Speaking Justice* (Sackville, N. B.: Mount Allison University Press, 1974), 14ff., 89f.

11. See also Marshall, *Human Rights Theories* (cited in note 9 above) on the dialectic of rights and will.

12. Following the advice of Hendrik Hart, I have made some changes in the English translation of Dooyeweerd's *Roots of Western Culture*, so the quotations in the text of this paper differ slightly from the published text.

13. Ideas akin to Dooyeweerd's conception of sphere sovereignty are not common in recent political theory. I have already mentioned Michael Walzer's *Spheres of Justice* (see note 6 above) which touches on similar concerns, although Walzer appears to be as unaware of Dooyeweerd's work as he is of Kuyper's. The current political science discussion of "consociationalism" is also an attempt to grapple with some of these questions. See, for example, Kenneth MacRae's presidential address to the Canadian Political Science Association, "The Plural Society and the Western Political Tradition," *Canadian Journal of Political Science* 12 (1979): 675-88. The influence of Calvinism on the development of the idea of sphere sovereignty is traced in Gordon J. Spykman, "Sphere Sovereignty in Calvin and the Calvinist Tradition," in *Exploring the Heritage of John Calvin*, ed. David Holwerda (Grand Rapids: Baker, 1976), 163-208. For more on sphere sovereignty see the earlier essays in this volume by Albert M. Wolters, Calvin G. Seerveld, and C. T. McIntire.

14. As against, for example, Jacques Maritain who writes, "All these rights spring . . . from supertemporal values naturally contained in the human person." See Jacques Maritain, "The Natural Law and Human Rights," in *Christianity and Culture*, ed. John S. Murphy (Baltimore: Helicon, 1960), 39-48.

15. Subject^{b} always means subject in relation to object. Subject^{b} corresponds with what Hendrik Hart designates as subject$_2$. See Hendrik Hart, *Understanding Our World: An Integral Ontology* (Washington, D.C.: University Press of America, 1984), 455.

16. For the sake of clarity, I have added the raised [a] and [b] to quotations from Dooyeweerd involving the word "subject."

17. Subject[a] always means subject in relation to law of the divine law-order. Subject[a] corresponds with Hart's $subject_1$. See Hart, *Understanding Our World* (cited in note 15 above), 455.

18. While emphasizing the fact that rights are always determinate subject[b]-object relations, Dooyeweerd still referred to "subjective[b] rights." This may at first appear to be a contradiction, but it is actually a form of "shorthand" that Dooyeweerd used when referring to what he called a "modal entity." When a particular entity functions as an object in a particular subject[b]-object relation, Dooyeweerd referred to it as a modal object entity. For example, he referred to an arrowhead as a "cultural object." In this instance it would be more precise for Dooyeweerd to refer to a *modal object function*, rather than an entity as such; however, he did employ the term "entity." He did the same thing for subject[b] functions of particular entities as modal subjects[b] and the concept of "subjective[b] right" is one of these. It refers to a juridical subject[b] function of a particular entity. Marinus Dirk Stafleu's *Time and Again* (Toronto: Wedge, 1980) contains a good discussion of modal subjects[b] and objects.

19. See McIntire's essay on Dooyeweerd's philosophy of history.

20. On this see Paul Marshall and Ed Vanderkloet, *Foundations of Human Rights* (Toronto: Christian Labour Association of Canada, 1981). See also Vernon Van Dyke, "Human Rights and the Rights of Groups," *American Journal of Political Science* 18 (1974): 725-41 and "Collective Entities and Moral Rights: Problems in Liberal-Democratic Thought," *Journal of Politics* 44 (1982): 21-40.

21. Indeed, in his *Theory of Justice*, perhaps still the most discussed book on rights in North America, John Rawls argues "for a kind of moral geometry" (121; see note 5 above). See also Grant, *English-Speaking Justice* (cited in note 10 above), on Rawls.

22. Here I have in mind such works as the ones by Rawls (see note 5 above), Nozick (see note 5 above), and Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978). A similar criticism is made by Alasdair MacIntyre in *After Virtue* (South Bend: University of Notre Dame Press, 1981), 63-69.