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Between Word and Spirit: A Methodological Consideration of Human Rights Genealogies

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Abstract

In *English Public Theology*, Joan O'Donovan retrieves a robust account of the public foundation undergirding the English Reformation's rich scriptural tradition. From this vantage point, O'Donovan unfurls both a sweeping diagnosis and a scathing critique of the modern liberal natural rights tradition. However, what remains unclear is to what extent O'Donovan's historical narration succeeds, especially in contrast to alternative historical accounts that trace a central role for inherent human rights within the broader Christian scriptural tradition. This article poses two questions. First, how should these competing histories be evaluated? Second, must a theological account of rights solely rest upon scriptural grounds? I argue that theological interpretations of human rights history need not capitulate to rational or historical reductions, or even a certain Christological reduction wherein the value of rights-talk is made to hinge on either its secular or scriptural genealogy. This article begins with a methodological consideration of O'Donovan's 'Christological' interpretation of church tradition. Then, as a counterexample, I will examine Wolterstorff's intentionally 'loose' coordination between his philosophical and scriptural grounds for inherent rights. Lastly, I will suggest that Hans Joas's affirmative genealogy of human rights provides a helpful methodological supplement to Wolterstorff's scriptural reasoning.

Keywords

Joan Lockwood O'Donovan, Nicholas Wolterstorff, human rights, Scripture, Christology, pneumatology

Theological Genealogy and Method

In her book, *English Public Theology*, Joan Lockwood O'Donovan masterfully retrieves a robust account of the 'public' foundation that undergirds the English Reformation's rich scriptural tradition. From this theologically inflected historical vantage point, O'Donovan

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unfurls both a sweeping diagnosis and a scathing critique of the individualistic, juridical, and anthropocentric features of a modern liberal natural rights tradition that seems to cripple moral agency more than it does to enable. In what follows I will explore O'Donovan's appraisal of rights-talk through two alternative approaches that arise from considerably different theological and historical contexts than the English Reformation tradition. Given the inherently universal and global scope of the liberal natural rights tradition, even if, as O'Donovan has so aptly pointed out, it only ever attains aspirational status, the task of bringing together across confessional lines three varying approaches to human rights discourse can helpfully illuminate the ways in which such universality takes on concrete meaning across differing locales.[1] This is not to merely make a generic appeal to the diversity of contextuality, but to point out that these contrasting accounts of the natural rights tradition hinge on the method of one's theological genealogy of human rights.

If it is not explicitly clear that O'Donovan provides a theological genealogy of human rights in her study on *English Public Theology*, reference should be made to the opening section of the Introduction where she explains that this 'analysis and assessment of Western rights is from a theological perspective heavily indebted to the public theology of the English Reformation. Deepening engagement with this theology over two decades has provided a systematic framework for my present critique of the evolving Western conceptuality of rights'.[2] As such, O'Donovan attempts at all points to frame her evaluation of the history and legacy of the natural rights tradition within a certain theological conception of history, or what she more precisely calls the theological recollection of church tradition.[3] Embedded in this very task is a certain preconception of history, tradition, and their telos.[4] History and theology then are so intertwined such that to speak of one is to speak of another; modulations made at the historical plane inform the theological and vice versa. Here lies the 'epistemological advantage' O'Donovan finds in English Reformation public theology with its robustly historical theological nature.[5] Given 'the high degree of institutional and scholarly consensus concerning the historical foundation of the Anglican tradition', to retrieve such a historical tradition so centrally marked by its 'public' or legal features then is also to place under scrutiny the theological deficiency and subsequent incoherence of Western natural rights.[6] To be sure, this is a theological genealogy that retains a priority upon the theological as a sophisticated form of historical theology, in that the very framework for the mutually-informing dynamic between the historical and the theological comes from the fact that O'Donovan begins with the public theology at the heart of the English Reformation tradition.

1. Joan Lockwood O'Donovan, *English Public Theology: A Reformation Response to the Crisis of Natural Rights*, T&T Clark Enquiries in Theological Ethics (London: T&T Clark, 2023), 85–103.
2. O'Donovan, *English Public Theology*, 1.
3. O'Donovan, *English Public Theology*, 2–4.
4. Cf. O'Donovan's early engagement with George Grant: Joan O'Donovan, *George Grant and the Twilight of Justice* (Toronto: University of Toronto Press, 1984).
5. O'Donovan, *English Public Theology*, 4.
6. O'Donovan, *English Public Theology*, 4.

This is all the more evident when this theological genealogy is situated as the 'more modest task' within a broader hermeneutic of the scriptural tradition.[7] In this way, it is grounded first upon the 'supremely authoritative status of the written tradition of the canonical Scriptures as an independent, objective measure of the hermeneutical fidelity of subsequent church traditions, so that assessment of this fidelity takes the form of continually testing a tradition's interpretative judgments by the textual testimony of Scripture', and second, 'the Scriptural revelation of Christ's church as a historical and an eschatological community'.[8] By so grounding this task of theological recollection, its modesty lies not in its apologetic or critical scope but in its methodological one. That is to say, the theological justification for an *English Public Theology* supplied here on the grounds of Scripture and the church together form a nuanced account of both the binding nature of the church's historical traditions and its contingent dynamics within its eschatological reality. Within this broad account of theological method, O'Donovan's *English Public Theology* sits within it as one concrete locale among others across the universal horizon or tradition of Scripture.

If this is indeed the underlying account of theological method O'Donovan has in mind, it is certainly intended to be a broad one, for the varying traditions across the scriptural horizon embody a wide hermeneutical range rooted in particular differences in their respective modes of theological method.[9] The key point is that to a significant degree contrasting accounts of the natural rights tradition amount to contrasting methodological accounts of scriptural interpretation. O'Donovan takes care to acknowledge that the way in which one comes to understand the biblical witness and its coordination with their particular ecclesial tradition 'depends, in some part, on understandings within their tradition of the task and modes of scriptural interpretation and the dynamic of epistemological authority involved'.[10] To a significant extent then, it seems that many of the competing accounts of natural rights currently on offer can be reframed within the fact that both the historical and eschatological nature of the Church and its traditions simultaneously condition and are conditioned by contrasting methods of theological reflection. Therefore, the goal of this paper is to investigate a single theme, that is, theological method, especially in regards to its implications for one's genealogy of human rights. The three figures that make up this roundtable discussion are first, of course, Joan Lockwood O'Donovan representing the public theology of the English Reformation; second, a familiar interlocutor with O'Donovan, is Nicholas Wolterstorff standing within the stream of Dutch Neo-Calvinist political thought; and third is the German sociologist, Hans Joas, who brings something of a post-Vatican II Catholic voice to the discussion. Now, to ground this trajectory textually, the focus of this discussion largely revolves around O'Donovan's treatment of Scripture in chapter 7 of her study on *English Public Theology*. Wolterstorff's *Justice* and Joas's *The Sacredness of the Person* then will serve as helpful foils to her theological method, as I see it.

7. O'Donovan, *English Public Theology*, 2.
8. O'Donovan, *English Public Theology*, 3.
9. O'Donovan recognizes their shared inheritance. My discussion will explore possible points of tension within this inheritance.
10. O'Donovan, *English Public Theology*, 3.

This theme on method arises from a basic question. To bring this into view, it should first be recognized that O'Donovan has done a great service in masterfully retrieving a robust account of the public foundation that undergirds the English Reformation's rich scriptural tradition. Here, the starting point is just as important as the endpoint, since it is because of her rigorous commitment to and engagement with the heritage of the Reformation that O'Donovan is able to provide such a prescient diagnosis and critique of a modern liberal natural rights tradition that seems to cripple moral agency more than it does to enable. However, what remains up for debate is to what extent O'Donovan's historical narration succeeds, especially in contrast to alternative historical accounts, such as Wolterstorff's, which traces a central role for inherent natural human rights within the broader Christian scriptural tradition, or with Joas, who argues that the history of human rights cannot be merely confined to an account of legal history, or even the history of ideas, but must also attend to the underlying social forces that gave rise to the values of universal human rights.

To put it briefly, this article poses two related questions. First, how should these competing histories be evaluated theologically? And second, to what extent does a theological account of rights need to rest upon scriptural grounds for it to remain properly theological? In response, I argue that theological interpretations of human rights history need not capitulate to rational or historical reductions, or even a certain Christological reduction wherein the value of rights-talk is made to hinge on either its secular or scriptural genealogy. Towards this end, I will begin with a methodological consideration of what I call O'Donovan's 'Christocentric' interpretation of church tradition. Then, as a counterexample, I will turn to Wolterstorff's 'loose' coordination between his philosophical and scriptural grounds for inherent natural human rights. Lastly, I will propose Hans Joas's affirmative genealogy of human rights as a helpful supplement to Wolterstorff's scriptural reasoning, as well as a needed corrective to binary accounts of the entangled histories between Christianity and human rights.

Christocentrism in the English Reformation Tradition

Returning to the Introduction of *English Public Theology*, O'Donovan begins by laying out the two historical inquiries that form her study. The first is a defense of the theoretical and practical resources in the much-too neglected tradition of public theology rooted in the English Reformation. The second is a tracing of the fundamental problems of Western natural rights theory from its early forms to its current one. Here, O'Donovan rightly recognizes the need of a theological justification for bridging these two inquiries. The justification she offers is that while English reformed theology undoubtedly centers itself on, as she says, 'the theological task beginning and ending in faithful, informed, and disciplined reflection on the authoritative scriptural witness to the Word of God spoken in Christ', within this there exists the previously mentioned 'more modest' task of interpreting the scriptural witness to the wider community of the church.[11]

11. O'Donovan, *English Public Theology*, 2.

In regards to the first task, O'Donovan provides a needed and worthwhile attempt to re-center the Reformation tradition within the Church of England. The query of this paper has to do with the second task, and more specifically, with the theological justification provided for it. To be clear, the concern is not with the rigorous appeal to a scriptural basis in the critique of modern society; in fact, this is something Wolterstorff would no doubt very much admire about O'Donovan's program. Rather, the concern has to do with the precise way in which Scripture coordinates, or frames, said critique. My response has both a descriptive and constructive dimension. With the former, I hope to help illuminate the theological stakes at play in O'Donovan's critique of rights language, and with the latter, by turning to Wolterstorff and Joas, I would like to explore how decisions made at this dogmatic plane serve as a crucial hinge for where these varying Christian accounts of human rights end up.

Turning to the aforementioned chapter 7, where O'Donovan discusses the 'Scriptural Communication of God's Word of Salvation', this chapter forms a key axis of O'Donovan's constructive proposal for a theological alternative to the vices of the liberal natural rights tradition. Having laid out in the previous two chapters the English Reformation's soteriological prioritization and its attending 'trinitarian anthropology', as we might call it, which opposes late modernity's 'technological anthropology', chapter 7's treatment of Scripture as the 'supremely authoritative and sufficient, human and divine communal tradition', then forms a bridge into the concrete ecclesiological application of the constructive proposal developed in the remaining chapters.[12]

The key point of this is that Scripture, as understood by O'Donovan, forms not just 'a', but 'the' communal tradition through which God's word of salvation is communicated. In other words, Scripture is the epistemological principle of faith, and thus, the very basis of O'Donovan's distinctively theological interpretation of church tradition that underlies the constructive as well as the critical edge of her proposal. What most interests me here is that for O'Donovan, Scripture, as just mentioned, *is* communal tradition. As such, the scriptural tradition bears a 'formal resemblance' with all other 'community-creating and sustaining traditions', yet, the Scriptures are not just a particular manifestation of another 'merely human tradition'.[13] Instead, in Tudor public theology, it is 'the community of communities'.[14] This is because the sufficiency and authority of Scripture lies in the fact that, for the English reformers, the scriptural tradition is simultaneously human and divine, historical and eschatological, concrete and universal.

Of course, this does not elide the need for careful criticism of the interpretive tradition as it is passed down through the church. But following the old Reformational principle of the analogy of faith, this is to be done within the matrix of Scripture itself; as it is said, Scripture interprets Scripture. On the one hand, this calls the theologian to embrace her own humanity by accepting the particular tradition they inherit within the church and faithfully testing its witness against the testimony of Scripture. While on the other hand, she must also be sensitive to the so-called 'eschatological remainder' of tradition

12. O'Donovan, *English Public Theology*, 12.
13. O'Donovan, *English Public Theology*, 190.
14. O'Donovan, *English Public Theology*, 191.

itself, that on its own, in the fallen state of human existence, tradition is not self-sustainable.[15] This is why O'Donovan can say in the Introduction, 'Tradition per se is not the concrete universal, the local matrix within which universality is given. Only the tradition of Scripture through which the trinitarian God is concretely revealed in history is that matrix, and only this tradition can demonstrate the falsely universalist claims of moral and political traditions'.[16]

What seems to be the pivotal claim is that the political implication of this account of Scripture is it shows that tradition in general is a fundamental facet of our historical creatureliness, yet tradition itself cannot be unmoored from a transcendent ground of truth, goodness, beauty.[17] The task of public theology then remains constant, irrespective of the specific challenges one might face in their present moment; it is the task of re-ordering tradition—humanity—to its proper end. This is a task that requires a deep and discerning commitment to tradition's capacity to be a 'carrier of universality', for the task is never as simple as dismantling and disposing of tradition.[18]

We have now come to the apex of O'Donovan's scriptural argument. For it is the liberal natural rights 'tradition' that threatens, with its empty promise of universality, to spell the dissolution of any concrete sense of the universal in perpetuating a radical atomization of the self. Thus, under the guise of liberation, the moral agency of the modern self becomes bound up by none other than the rope of its own untethered 'freedom'. As Augustine already saw, the self becomes once again, *homo incurvatus in se*.[19]

What is so noteworthy about O'Donovan's critique is that it does not exclusively begin with a political diagnosis of the modern liberal natural rights tradition, but that the very concept of 'tradition' from which this critique proceeds is already formed by a rich vision of the 'Scriptural tradition [as] the universal matrix and measure of the truth, goodness, beauty, and freedom imparted by every other human tradition'.[20] This is what I call O'Donovan's 'Christocentric' interpretation of church tradition, and really of tradition in general. It is Christocentric because of its strong emphasis on the 'priority of God's saving word in Christ over the scriptural medium of human knowledge'.[21] And as is the tendency with most Christocentric theologies, this Christological emphasis is triangulated within a correspondingly strong ecclesiology.

For example, elsewhere, O'Donovan summarizes the Cranmerian theology of the English Reformation as trinitarian, theocentric, Christocentric, ecclesiological, and

15. To borrow a phrase from Graham Ward, *The Politics of Discipleship: Becoming Postmaterial Citizens* (Grand Rapids, MI: Baker Academic, 2009), 167–80.
16. O'Donovan, *English Public Theology*, 4.
17. O'Donovan, *English Public Theology*, 191–92.
18. O'Donovan, *English Public Theology*, 191.
19. Anders Nygren, *Agape and Eros*, trans. Philip S. Watson (New York: Harper & Row, 1969), 485n3.
20. O'Donovan, *English Public Theology*, 191.
21. O'Donovan, *English Public Theology*, 179.

dialectical in its conception of public proclamation and judgment.[22] What is of particular note is the specific attention given to the two pivotally adjacent Christocentric and ecclesiological facets of Cranmerian theology, for it is upon these two facets that the trinitarian and theocentric dimensions are coordinated with the church's dialectical enactment of proclamation and judgment. Put simply, the Christocentric and ecclesiological core of Cranmerian theology are brought together in such a way as to conjoin the theological convictions of the Reformation to its uniquely concrete and public expression in the English Reformation tradition. It could perhaps then be said that underlying this is a larger claim not only of the basic moral and political nature of theology's Augustinian inheritance, but also subsequently of the inherent public nature of the Reformation traditions that flow forth from its scriptural horizon.[23] Thus, an important implication of O'Donovan's claim that the 'public theology of the English Reformation is the historical foundation of constitutional law throughout all the royal dominions', is that the strong trinitarian, theocentric, and ultimately Christocentric features of the English Reformation tradition must be read alongside its strong ecclesiological institutionalization within the British political and legal tradition.[24]

A prime instance of this can be seen with the overarching concern for demarcating the role and realm of the Holy Spirit, a concern that has as much to do with the English Reformation's systematic coherence as it does to its public foundation.[25] To place this into focus, on the one hand, the Christocentric basis of Cranmerian theology's theocentric and trinitarian structure carries within it the contours of a clear designation of the Spirit's activity distinct from that of the human individual. As O'Donovan explains, 'The English and continental reformers present the act of faith as originating not within sinful human subjectivity, but within the divine subjectivity of the Holy Spirit, who, as the spirit of the risen and ascended Christ, incorporates believers into Christ's resurrection life and makes available to them the eschatological freedom promised to his faithful members'.[26] It is because of Cranmerian theology's Christocentric basis that the freedom of Christ's Spirit is firmly indexed not so much to the human subjectivity as it is to the objective divine law.[27] This is a crucial dogmatic hinge insofar as its designation of the Spirit's role as the divine subjectivity affixes it within a strong ecclesiological account of objective right and law, a designation that already assumes that the realm of the Spirit entails a high degree of institutionalization.[28] Of course, O'Donovan recognizes that the Reformation in general exacted a turn against the specific forms of the Spirit's scholastic institutionalization, yet, notice should be taken that for the magisterial reformers this

22. Joan Lockwood O'Donovan, 'Modernity: Understanding Law and Constitutionalism in Modernity; The Critical Contribution of English Reformation Public Theology', in *Christianity and Constitutionalism*, ed. Nicholas Aroney and Ian Leigh (Oxford: Oxford University Press, 2022), 164–67.
23. O'Donovan, *English Public Theology*, 3.
24. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 150.
25. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 165.
26. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 165.
27. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 165.
28. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 165–66.

never meant a turn against the church's institutions themselves but simply the conviction that reforms in the 'spiritual' realm entailed attending ecclesiological reforms.[29]

It is precisely from this point that O'Donovan details the corresponding ecclesiological facet of Cranmerian theology. Following its Christocentric basis, the function of Cranmerian ecclesiology is likewise understood by its designation of the Spirit, such that 'it is through the church's regular practices of communication or "proclamation", the core of which is her common worship, that the Spirit generates, nourishes, strengthens, and purifies faith, hope, and love, renewing human freedom'.[30] The church's authoritative proclamation of the freedom of the Spirit then serves as the condition of intelligibility for the sphere of political judgments by so ordering the work of the Spirit to a prioritization of the doxological confines of the church. In other words, the Spirit works first and foremost in the community of the Church and then only secondarily in society's political and legal practices. Ultimately, such a triangulation between the Christocentric and ecclesiological facets of the English Reformation tradition forms a robustly ordered structure purposed for the clear designation of the Spirit's sanctifying work in the (re)constitution of humanity's moral agency. With the inner activity of the Spirit so determined by this Christocentric ecclesiology, it appears that all moral reflection must necessarily begin with the doxological recollection and response to the witness of Scripture.

Yet, here, there seems to be two distinct claims of varying scope, for it is one thing to claim that any understanding of the Spirit's activity must be in all cases indexed to Scripture's witness, and a significantly different thing to suggest that the 'inner rule by the Spirit' is only ever properly arrived at through the 'outer rule in scripture'.[31] In regards to the latter, could it not be that the Spirit's renewal of moral agency at times be understood as occurring from without the confines of the Church? Undeniably, O'Donovan has thoroughly demonstrated that the English Reformation tradition provides a serious alternative to the language of subjective proprietary rights; one certainly must contend with such a rigorous theological genealogy of moral agency. However, given the indeterminacy over the bounds of the Spirit within the Christocentrism of Cranmerian theology, it still remains to be seen whether this English public theology, with all its antagonism towards rights language, can be read in a way consonant with other rival theological genealogies of the natural rights tradition. In dogmatic terms, the implication is that at play in these genealogical debates is the issue of the Spirit and its relation to Scripture, so that the moral and political responses to the challenges prompted by the crisis of modern liberal rights need also be understood as hinging upon particular theological commitments. It bears mentioning that this issue of the Spirit's relation to Scripture raises the same methodological query about the theological genealogy of rights as does the earlier mentioned distinction O'Donovan draws in bracketing her 'more modest' task dedicated to a single historical tradition from the broader task of moral and political theology to engage with Scripture's longer tradition. In

29. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 167–69.
30. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 165.
31. O'Donovan, 'Understanding Law and Constitutionalism in Modernity', 165.

both cases, the crux of the query is with the limits of any one historical interpretive tradition before the universal horizon of Scripture. Only now, with the case of the former a crucial dogmatic hinge in this methodological query has been pinpointed.

However, might such a Christological interpretation of tradition place undue weight upon its ecclesiological triangulation of the inherited scriptural tradition itself? In other words, with this scriptural account of tradition, what room is left for the possibility of transcendent interventions into tradition itself? What would happen to one's theological genealogy of rights if O'Donovan's appeal to the English Reformation's Christocentrism was exchanged for a more pneumatocentric ordering of Scripture to the work of the Spirit? My conviction is that such a shift would carry with it substantial implications for the extent to which the critical edge of one's theological genealogy of rights is carried forth. Before anything more can be said about a possible pneumatocentric alternative to O'Donovan's Christocentric theological genealogy, attention must first be given to this paper's second interlocutor.

Scripture, Experience, and the Spirit

Care must be taken here, since there are a whole host of issues that can be opened up by bringing Wolterstorff into this conversation with O'Donovan, much of which has already received plenty of discussion in the past.[32] My focus is just to sketch out the explanatory role Scripture seems to play for Wolterstorff, and to look at it in contrast to what we've seen with O'Donovan. One particular place where this contrast becomes visible is with the relationship between Part I and Part III of the *Justice* book, with the former providing a scriptural genealogy of human rights and the latter being the theoretical argument Wolterstoff joins to it.

While the details of Wolterstorff's 'conceptual history' have already been well scrutinized, what I would like to turn attention to is a specific critique of it that was articulated by Stanley Hauerwas.[33] For Hauerwas, his basic concern is that Wolterstorff, from the beginning, already appears to have separated the narratival from the theoretical. Here, he especially makes a note to quote Wolterstorff as saying, at the beginning of Part III, 'We now leave narrative behind and attend exclusively to theory'.[34] The potentially problematic implication of such a separation is that it assumes theory can stand alone apart from narrative, history, or tradition. This then begs the question of why inherent human rights even need to be grounded in Scripture if they can be established on philosophical grounds after all.

What this means for Wolterstorff's overall argument, is that it looks like his philosophical account of justice is not actually dependent on his scriptural genealogy of human

32. Cf. Oliver O'Donovan, 'The Language of Rights and Conceptual History', *The Journal of Religious Ethics* 37, no. 2 (June 2009); Nigel Biggar, 'Nicholas Wolterstorff, *Justice: Rights and Wrongs*', *Studies in Christian Ethics* 23, no. 2 (April 2010).

33. Stanley Hauerwas, 'Rights Language and the Justice of God', *ABC News*, November 1, 2012, https://www.abc.net.au/religion/rights-language-and-the-justice-of-god/10100204.

34. Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008), 241.

rights. As Wolterstorff himself puts it, 'The [Old Testament] writers are "giving their testimony", as we say, not offering apologetic arguments or developing theory'.[35] Although the disjunction between Part I and Part III is likely not as dramatic as Hauerwas makes it out to be, the question does remain as to how integral Wolterstorff's scriptural genealogy is to his philosophical justification of inherent human rights.

In fact, towards the end of the book, Wolterstorff connects his scriptural genealogy to an overarching narrative that culminates with the Universal Declaration of Human Rights, whereby the scriptural development, and the broader political development, are discerned as having converged at this point in history. So that from 1948 onwards, it seems like, Scripture, in a way, can effectively be taken up anew as a supplementary source for grounding this long-developing moral vision that was finally made concrete.[36] Hauerwas, of course, thinks Wolterstorff has got the issue backwards in some sense, because he ends up coordinating Scripture to politics, rather than the other way around as we have seen modeled by O'Donovan.

My sense is that part of this dynamic can be explained by Wolterstorff's own account of revelation, specifically his distinction between divine speech and divine revelation that he makes fifteen years before *Justice* in *Divine Discourse*.[37] A thorough delineation of the thread that runs from *Divine Discourse* to *Justice* cannot be sufficiently provided here. Nonetheless, when it comes to the explanatory role of Scripture, what seems evident is that Wolterstorff's scriptural argument for inherent rights in *Justice* should be understood as a practice of the kind of authorial-discourse interpretation laid out in *Divine Discourse*. The relevance of this is that given Wolterstorff's notion of Scripture's double agency discourse, wherein the illocutionary act of the human author with that of the divine author are set in dialectical relation, the order of interpretation, of the outer rule of Scripture and the inner rule of the Spirit, is reframed with a much greater degree of interpretive nuance than O'Donovan's stratification of Scripture within the English Reformation tradition.[38]

Wolterstorff himself is well aware of this, for it is one of the principal convictions that drives his critique of what he terms performance interpretation. In brief, the distinction Wolterstorff draws between his account of authorial-discourse interpretation and performance interpretation is that in the case of the former, whether it be with authorial or presentational discourse, the goal of discourse interpretation is to discern if one's interpretation is true.[39] Whereas with the latter, the truthfulness of one's interpretation is not fixed to the matter of what the discourser actually said; instead, as when a conductor interprets a musical score, the 'truthfulness' of one's interpretation is judged by its value within a pre-existing interpretive community or tradition.[40] This, of course, does not mean that authorial-discourse interpretation floats above any sense of history or tradition.

35. Wolterstorff, *Justice*, 67.
36. Wolterstorff, *Justice*, 311–13.
37. Nicholas Wolterstorff, *Divine Discourse: Philosophical Reflections on the Claim that God Speaks* (Cambridge: Cambridge University Press, 1995), 19–36.
38. Wolterstorff, *Divine Discourse*, 202–22.
39. Wolterstorff, *Divine Discourse*, 180–82.
40. Instead of 'truthfulness' Wolterstorff uses the term 'realization'. Wolterstorff, *Divine Discourse*, 175–79.

The difference lies in the place of tradition within the interpretive task. To return to the example of the musician as a performance interpreter, even in the case of a performance that wildly departs from the score's established tradition, it still remains the case that such an interpretation of the score is understood and judged within the parameters of the score's established tradition.[41]

When applied to textual interpretation Wolterstorff, keeping with the question of biblical interpretation, looks to Hans Frei's narrative theology as an instance of performance interpretation. It would, of course, be a drastic oversimplification to place O'Donovan's Cranmerian triangulation of the scriptural tradition in the same camp as Frei's expansive account of the 'literal reading' tradition across the Western church.[42] While much could be learned from a critical conversation with Wolterstorff, Frei, and O'Donovan on their respective conceptions of the nexus between Scripture, history, and politics, the relevant point to draw from Wolterstorff's critique of Frei's so-called performance interpretation is that his concern over tradition's hermeneutic priority likewise sets his argument for authorial-discourse interpretation at odds with O'Donovan's prioritization of the English Reformation tradition. The implicit concern is that when Scripture is so tied to tradition there is a risk of failing to hear what it is God has said or is saying.[43] This is why Wolterstorff emphasizes that 'we must be careful, though, not to exclude the possibility that God would speak to us not only by way of authoring the text of Scripture but by way of our interpreting it, be our interpretation within a tradition, or original to the point of bizarre'.[44] In short, Wolterstorff seems to want a stronger account of the possibility for scriptural interpretation, as both human and divine discourse, to intervene within a given tradition.

But putting this aside, I think the more significant aspect here that helps to explain Wolterstorff's 'loose' coordination between his philosophical and scriptural grounds for inherent rights are actually his separate experiences in South Africa and with Palestinians.[45] Throughout his career, Wolterstoff has often highlighted how formative it was for him to listen to and grapple with the difficult stories from those who have been wronged in history. He writes, 'As I noted, right order theorists can, in principle, join inherent right theorists in holding that there are natural rights. The nub of the difference does not lie there. It lies in what one takes to be the deep structure of the moral order. Right order theories of primary justice are, as it were, top-down theories; inherent rights theories are bottom-up theories'.[46] Another way to put this in the context of the present

41. Wolterstorff, *Divine Discourse*, 176.
42. Wolterstorff, *Divine Discourse*, 179.
43. Wolterstorff, *Divine Discourse*, 182.
44. Wolterstorff, *Divine Discourse*, 182.
45. Wolterstorff, *Justice*, vii–ix. Also cf. Nicholas Wolterstorff, *Journey Toward Justice: Personal Encounters in the Global South*, Turning South (Grand Rapids, MI: Baker Academic, 2013), 1–34.
46. Wolterstorff, *Journey Toward Justice*, 32–33; cf. 29–32 for Wolterstorff's explication of the qualified conception of natural rights maintained by right order theorists like Joan and Oliver O'Donovan. The principle by which right order theorists can admit a certain conception of natural rights lies with their exclusive recognition of positive rights, understood as those

discussion of Scripture, is that when Wolterstorff talks about the 'deep structure of the moral order' alongside his experiences of coming face to face with deep forms of injustice, he seems to suggest that when we consider the scriptural tradition we have to allow space for the extraordinary possibility of a kind of existential intervention into our hermeneutic. This is what I take his language of a 'bottom-up' theory of rights to mean. This helps to further explain how he reads the Universal Declaration of Human Rights, and why he is then able to say what he says about Scripture being a grounding resource of sorts for it. In a strange way then, contrary to Hauerwas, perhaps Wolterstorff's 'loose' coordination between his philosophical and scriptural grounds is actually meant to be a feature, rather than a defect.

Certainly, Wolterstorff is aware of the potential worries that come with what I have here characterized as his 'loose' coordination between his philosophical and scriptural 'grounds', or what he identifies in *Divine Discourse* as the tension between our personal convictions and discourse interpretation.[47] This he calls the wax-nose anxiety wherein our interpretation of God's speech is conflated with our own convictions.[48] Wolterstorff is frank in admitting that with his double hermeneutic 'there is no way to avoid employing our convictions as to what is true and loving *in* the process of interpreting for divine discourse—no way to circumvent doing that which evokes the wax-nose anxiety'.[49] The best one can do is to take certain precautions towards minimizing the risks of interpreting wrongly. Once again, rather than being a defect produced from Wolterstorff's hermeneutical method, this anxiety is taken, perhaps not so much as a positive feature, but as a fundamental aspect of divine discourse with finite and sinful creatures. According to Wolterstorff, even with Frei's narratival bounding of textual interpretation, there the wax-nose anxiety still remains since interpretive traditions are not self-enclosed entities. The very tradition of the Church's established interpretation of Scripture that Frei appealed to is itself only intelligible as having arisen from prior 'pre-biblical' conceptions about what counts as true and loving. Caution must be given to this designation of these convictions as 'pre-biblical', especially considering that Wolterstorff himself does not make use of such a term.[50] All that is intended here is to convey Wolterstorff's conviction of the necessary consideration of the convictions and experiences that we must prayerfully bring with us in our humble attempts at interpreting divine discourse.[51] In this sense, for these convictions and experiences to be 'pre-biblical' is not to be 'a-biblical', as Wolterstorff highlights, 'The most important point remains: one minimizes the risk that Scripture is becoming a wax nose in one's hands by coming to know God better. … A hermeneutics of divine discourse requires supplementation with discussions of other ways of knowing God, and of ways of knowing God

'rights that are conferred on us by legislation or social practice, or generated in us by a speech act such as promising' (Wolterstorff, *Journey Toward Justice*, 30–31).

47. Wolterstorff, *Divine Discourse*, 226–27.
48. Wolterstorff, *Divine Discourse*, 226.
49. Wolterstorff, *Divine Discourse*, 236.
50. Wolterstorff, *Divine Discourse*, 229–36.
51. Wolterstorff, *Divine Discourse*, 236.

better'.[52] This inevitably always entails a degree of risk, then again that is the case with every mode of discourse. In the end, the wonder is that even divine discourse is a human act, for just as it was yesterday, today, and tomorrow it is God who speaks to us today.

To draw this conversation back to the above proposal of a possible pneumatocentric alternative to O'Donovan's Christocentric ordering of Scripture, there is here reason to find in Wolterstorff's loose coordination between his philosophical and scriptural grounds an opening towards such an alternative. For one thing, it is not wholly insignificant that Wolterstorff concludes his response to the wax-nose anxiety with an appeal to the work of the Holy Spirit in the interpretation of Scripture: 'A leisurely approach to the text, the cultivation of a quiet receptiveness which allows the Holy Spirit to speak in a man's heart as it will, patient reflection upon every detail of expression; these had long been the features of the "holy reading" (*lectio divina*) of monastic life. At its best it led to a sharp and lively perception of the text and its meaning'.[53] Given Wolterstorff's own Reformed instincts, especially in light of his defense of the 'pre-biblical' or experiential dimension of scriptural interpretation just given, it is not entirely surprising to find mention of the Spirit at this juncture. Wolterstorff does not proceed to provide a theological account of the Spirit's work in relation to the interpretation of Scripture, yet, if one were to read this section of *Divine Discourse* in dogmatic terms it seems as if the (re)ordering of Scripture away from a Christocentric ecclesiological tradition towards the realm of double agency discourse would require a renewed account of the Spirit. For now, suffice it to say that, in this case, Wolterstorff's notion of double agency discourse seems to present the possible beginnings of a refashioned conception of the relation between the Spirit's inner rule and Scripture's outer rule.

More can be said here, but such a task falls beyond the scope of both Wolterstorff's project and the aim of this paper, for *Divine Discourse* does not seek to offer a theology of scriptural interpretation per se, but rather a philosophical reflection on the conditions of divine discourse.[54] However, this does not mean such a reflection is a-theological. In fact, in *Justice*, Wolterstorff details his 'Anselmian' understanding of the philosophical task, whereby, as he elsewhere explains, 'Those of us who engage philosophical issues have no choice but to do so from whatever standpoint we find ourselves occupying. There is, for us, no God's-eye point of view; we articulate how things look from where we stand'.[55] In more technical terms Wolterstorff calls this methodological standpoint a 'dialogical pluralism', which he considers to be a basic assumption undergirding contemporary analytic philosophy in light of the chastened status of foundationalism. The basic idea is that more often today, the working assumption within the analytic tradition is that the task of philosophy begins from one's everyday life and the convictions or beliefs that arise from there. The aim of philosophical reflection then is not to drill down through one's everyday convictions until the bedrock of rationally grounded certainties are arrived at; rather it is

52. Wolterstorff, *Divine Discourse*, 239.
53. G.R. Evans, *The Language and Logic of the Bible: The Earlier Middle Ages* (Cambridge: Cambridge University Press, 1984), 13, quoted in Wolterstorff, *Divine Discourse*, 239.
54. Wolterstorff, *Divine Discourse*, 1.
55. Wolterstorff, *Journey Toward Justice*, 20.

to work from one's convictions towards a defensible account of such convictions that other philosophers could possibly find agreement with.[56] As a methodological standpoint, this dialogical pluralism need not necessarily be understood as a theological principle. Yet, for Wolterstorff, the path by which analytic philosophy has arrived at such a standpoint owes much to the influence of the Reformed epistemology movement of which he himself was a part.[57]

From this standpoint Wolterstorff's Anselmian description of his philosophical work is not exclusive to him, but can in fact be construed as part of a larger Anselmian revolution within the analytic tradition itself. Thus, when, in response to the wax-nose anxiety, a characteristically Anselmian appeal is made to the fact that 'only with awe and apprehension, sometimes even fear and trembling, and only after prayer and fasting, is it appropriate to interpret a text so as to discern what God said and is saying thereby', this should be taken not as a theological incursion into Wolterstorff's philosophical method but actually a feature of it.[58] Here, my suggestion is that such an Anselmian inspired dialogical pluralism amounts to something of a philosophical analogue to the aforementioned pneumatocentric alternative. Whereas for O'Donovan, the Christocentrism of the English Reformation tradition establishes a clear designation of the Spirit's inner (re)constitution of moral agency within the ecclesiological recollection and response to Scripture, Wolterstorff's dialogical pluralism appears to allow more space for a possible conception of the Spirit's work, at least as a form of divine discourse, beyond the doxological confines of the church.

Towards a Pneumatological Alternative

This suggestion is perhaps better illustrated with Wolterstorff's articulation of his hermeneutical task in *Justice*, whereby 'these writers speak a great deal about what is just and unjust … What they do not do is step up to the meta-level and talk about how to think about justice. They do not articulate a conception of justice. We ourselves have to extract the underlying pattern of their thought from their testimony'.[59] In regards to the question of inherent natural rights, the role of scriptural reasoning is to attempt to (re)construct a biblical basis for the underlying conception of justice that Wolterstorff thinks is at work in the scriptural witness. Notice that such a procedure does not exclusively begin within the scriptural text; rather, it is concurrently motivated by a certain intuition that there is throughout the unity of the Bible a discernible conception of justice as inherent natural human rights. Without a doubt, Wolterstorff would want to claim that such an intuition is firmly rooted in the Scriptures themselves, but, as he has professed, they are also due in part to the everyday encounters of the injustice of our world.

56. Wolterstorff, *Justice*, xi–xii.
57. Wolterstorff, *Justice*, x–xi.
58. Wolterstorff, *Divine Discourse*, 236.
59. Wolterstorff, *Justice*, 67.

This helps to explain why although Wolterstoff's defense of rights-talk is a Christian theistic one, nevertheless it is an account of justice that need not necessarily imply an exclusive historical claim to the Christian tradition. At its root, Wolterstorff's scriptural grounding of inherent natural human rights is a theistic account, so it is conceivable that 'the resources of other religions can be employed as well, those of Judaism, obviously, perhaps those of Islam. But it seems unlikely that any secular attempt at grounding will be successful'.[60] This draws us back to the motivating question of this paper: what does such a 'pneumatological' approach to a theological genealogy of human rights entail for Wolterstorff's particular account of the natural rights tradition? With this broader scriptural framework, Wolterstorff is able to set forth an account of the natural rights tradition that appropriates its best insights on the one hand, while on the other hand is still able to bring into critical view its excesses or deficiencies. In some respects, this allows for a greater embrace of historical complexity and the sometimes spontaneous reality of progress. In this way, Wolterstorff seems to wisely reframe the debate over the status of the Universal Declaration of Human Rights towards a more sober reflection upon the historical experiences that brought forth the need for such an articulation of rights: 'The general recognition of such rights remained an exceedingly slow and halting process, however, until, quite surprisingly, it burst forth after the horrors of World War II in the UN Declaration. That same moral vision of Scripture in which inherent natural human rights first gained recognition can now be used as a resource for articulating a grounding of such rights'.[61] Whether intentional or not, such a theological genealogy of human rights seems to provide something akin to Hans Joas's notion of an affirmative genealogy.

I now close more briefly by turning directly to Joas, this paper's third interlocutor, who can helpfully clarify and develop some of the themes explored in this ongoing discussion of Wolterstorff and O'Donovan.[62] Aside from the fact that both Joas and Wolterstorff provide alternative, positive genealogies of human rights, they also both give a considerable amount of conceptual weight to the effects of historical experiences of extreme

60. Wolterstorff, *Justice*, 361.
61. Wolterstorff, *Justice*, 361.
62. To my knowledge Dirk J. Smit is the first to have brought together a comparison of Wolterstorff and Joas. Cf. Dirk J. Smit, 'On Theological Promise', *Stellenbosch Theological Journal* 9, no. 1 (2023): 8n13; '"No Polycarps among us"? Questions for Reformed Political Theology Today', *Studies in Christian Ethics* 28, no. 2 (2015): 198–99. Smit has helpfully highlighted that Wolterstorff and Joas have each staked out alternative genealogies of human rights in which 'both of them argue that the contemporary respect for the sacredness of the person is historically rooted in negative experiences of suffering and being wronged' (Smit, 'On Theological Promise', 8n13). Building on Smit's suggestive reading of Wolterstorff and Joas as resources for Reformed Political Theology, this article's reflection on theological method can be understood as an attempt to locate a dogmatic undercurrent within their respective genealogies. In more exact terms, the aim here is to have provided the contours of an underlying pneumatological political theology through which Wolterstorff and Joas could be marshalled into even closer proximity as dual representatives for a new approach to the task of theological genealogy.

suffering. Joas however, does this at a more systematic level by attempting to construct a social theory that takes seriously the role of cultural trauma within processes of value formation. The task then of what Joas calls an 'affirmative genealogy', is not to historicize away one's inherited traditions, but rather the opposite, to 'affirm' one's historical moment and its call upon us to realize once again the historically conditioned ideals we inherit. This is not to say that universal claims of validity cannot be made; it is to say that in making such claims, one must 'consistently take account of the necessary situatedness of these claims' emergence, espousal, and recognition'.[63]

It is perhaps helpful to explain what Joas means by this in reference to his telling of the Universal Declaration of Human Rights as the historical product of a process of agreement across a plurality of moral, philosophical, and religious traditions.[64] By agreement, Joas does not mean that the UDHR established a consensus; rather it marked a newfound sense of shared plausibility derived from a concerted effort towards communication across a wide range of value traditions.[65] In a move not entirely different from Wolterstorff's speech-act theory, Joas's project in *The Sacredness of the Person* is to provide a theoretical account of the logic behind this process of communication, but by taking up a historical-sociological approach. Joas does so by drawing from Talcott Parsons's concept of value generalization, wherein, 'again, it is evident that the result of successful communication about values is both more and less than the result of rational discourse: though we do not reach total consensus, we can achieve the dynamic, mutual modification of our own traditions as well as finding stimuli for their renewal'.[66] When it comes to the question of rights, part of the task then for moral and political theology is to work from inside one's given historical tradition towards the pragmatic goal of agreement with others within competing traditions. To be clear, success in this case would not simply be an arbitrary decision of tolerance, but the mutual appropriation and transformation from within of one's own tradition that eschews either triumphalism or resentment.[67]

There is still work to be done to explore the constructive possibilities of Joas's method of affirmative genealogy, especially in regards to the points of proximity and tension between the respective approaches to a genealogy of human rights represented by Joas and Wolterstorff. Nevertheless, for now, all that can be prompted from this cursory juxtaposition of the two is the question of whether Wolterstorff's own scriptural genealogy of rights could be read as representing something similar to Joas's proposal for an affirmative genealogy? If so, given their shared turn to experience in their approach to the matter of rights, might there be rich resources here for constructing a pneumatological supplement, if not even an alternative, to O'Donovan's Christocentric theological genealogy? Are there beginnings here of a more precise vision of what it might mean for God to

63. Hans Joas, *The Sacredness of the Person: A New Genealogy of Human Rights*, trans. Alex Skinner (Washington, DC: Georgetown University Press, 2013), 128.
64. Joas, *The Sacredness of the Person*, 174.
65. Joas, *The Sacredness of the Person*, 174–75.
66. Joas, *The Sacredness of the Person*, 181.
67. Joas, *The Sacredness of the Person*, 143, 181.

speak again today, even amid and within institutions and traditions that have been drained of their spirit?[68]

In this light, the tradition of natural rights seems to appear not merely as a historical or philosophical entity that must be judged as right or wrong, good or bad. Instead, it is also an affective reality or what Wolterstorff calls a 'subculture' that we have all been made to share, a reality rooted in contingent experiences, and as such, subject to change, whether for better or for worse.[69] Yet, as O'Donovan has so persuasively demonstrated, the modest task of public theology remains ever constant, irrespective of the specific challenges one might face in their present moment. In this task, the moral and political theologian always remains hopeful. To this end, perhaps it is fitting to conclude with a word from none other than Jürgen Moltmann, who passed only a week before this seminar:

> The task of Christian theology is not one of trying to present again what thousands of experts, lawyers, legislators, and diplomats in the United Nations have already accomplished. But neither can Christian theology allow itself to dispense with the discussion of and the struggle for the realization of human rights. … The specific task of Christian theology in these matters is grounding fundamental human rights in God's right to—that is, his claim upon—human beings, their human dignity, their fellowship, their rule over the earth, and their future. It is the duty of the Christian faith beyond human rights and duties to stand for the dignity of human beings in their life with God and for God.[70]

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68. Joas, *The Sacredness of the Person*, 140.
69. Wolterstorff, *Justice*, 386–93.
70. Jürgen Moltmann, 'Christian Faith and Human Rights', in *On Human Dignity: Political Theology and Ethics*, trans. M. Douglas Meeks (Philadelphia: Fortress Press, 2007), 33.