

**CAN HUMAN RIGHTS SURVIVE SECULARIZATION?**  
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Nicholas Wolterstorff

Every society has a characteristic moral culture, by which I mean a characteristic set of concepts for thinking about moral issues and a characteristic way of applying those concepts. For almost a millennium now, a characteristic and distinctive feature of our moral culture in the West has been our employment of the idea of natural human rights. The most dramatic employment of this idea has been in the human rights movement of the past fifty years. Not far behind was its employment, in the eighteenth century, in articulating the foundations of liberal democracy. But these are only two among many highlights. The crusades in the last century for women's rights, for children's rights, for the rights of labor, for the right of Jews to full participation in the American academy – all of these employed the idea of human rights.

I want to talk with you today about this distinctive part of our moral culture, the idea of human rights. The focus of my talk is going to be on the inter-relationships and interactions between Christianity and human rights. What do human rights and Christianity have to do with each other? What have they had to do with each other in the past?

**I**

I wish I could take for granted that we all share an understanding of rights in general and of human rights in particular. But I can't. There's been so much confusion on this score that I will have to begin our reflections by explaining how I understand them. Of course you may want to contest my understanding. I will have to be brief; all the points I will be making are developed at length in my recently published, *Justice: Rights and Wrongs*.

I understand a right to be a normative social relationship. It takes at least two to make a right. I furthermore hold that a right is always a right to a good of some kind – nobody has a right to a broken leg, except in the odd case in which having one’s leg broken would serve some good. More specifically, I hold that a right is always a right to the good of being treated a certain way by others. The good of their treating one a certain way may be the good of their bestowing on one some benefit; all of us, for example, have a right to the benefit of protection by the police department. Alternatively, the good of their treating one a certain way may be the good of their allowing one the freedom to act in some way – the good, for example, of allowing me the freedom to stroll unmolested on the Washington Mall should I so choose.

But there are all kinds of good ways of being treated that we don’t have a right to. I would very much enjoy being given the opportunity to sleep in the Lincoln bedroom in the White House; but I don’t have a right to that good. One has a right to a good when one has a morally legitimate claim to it, when that good is due one. Or to put it from the dark side: one has a right to some good when being deprived of that good would wrong one. I have a right against you to your giving me the freedom to stroll unmolested on the Washington Mall when, should you deprive me of that right, you would wrong me. Enjoying one’s rights and being wronged are opposites – just as doing one’s duty and being guilty are opposites.

Let me pull together what we have so far. You come into my presence bearing morally legitimate claims on me as to how I treat you; should I not treat you that way, I would wrong you. So too, I come into your presence bearing morally legitimate claims on you as to how you treat me. Should you not treat me that way, you would wrong me. The situation is symmetrical: you have rights against me as to how I treat you, I have rights against you as to how you treat me.

I said that you come into my presence bearing morally legitimate claims on me as to how I treat you and I come into your presence bearing morally legitimate claims on you as to how you treat me. To this should be added that rights are also created, or generated, when we are in the presence of each other. If you issue a legitimate request to me, then you have a right to my responding to that request.

Now we come to the really difficult and controversial part. What accounts for rights? What accounts for the fact that some of the good ways of being treated by others I have a right to, and some I do not have a right to? What accounts for the fact that I don't have a right to the good of sleeping in the Lincoln bedroom whereas I do have a right to the good of being free to walk unmolested on the Washington Mall?

I think the answer to this question lies in the fact that human beings have worth, and that certain ways of treating a human being do not befit his or her worth; they only befit a creature of less worth than this one. If a student has written a first-rate paper in a course of mine, then if I make derogatory comments about the paper and give it a C minus, perhaps because I don't like the student, I would not be treating him as befits his worth as the writer of a first-rate paper. I would be demeaning him, treating him with under-respect. I hold that rights are grounded in these two facts, the fact that human beings have worth and the fact that a way of treating a human being may not befit his or her worth.

Here, then, is how I think of the relation of rights to worth: you have a right against me to my treating you a certain way when, should I not treat you that way, I would not be treating you in a way that befits your worth. I would be treating you with under-respect, demeaning you. Put it like this: rights are what respect for worth requires.

And now, finally, for *human* rights. One has a *human* right to some good when the only worth you need so as to have a legitimate claim to that good is the worth you possess on account of being a human being. If a student thinks he has a right to an A in my course, it won't be sufficient for him to say, "Look, I'm a human being." He will have to base his case on the worth he has acquired by his achievement in the course. Thus having a right to an A in my course is not a human right. By contrast, the only worth you need so as to have a right not to be tortured is the worth you have on account of being a human being. No achievements are necessary. So that's a human right.

Two final explanatory points. Some of our rights are conferred on us by some action of human beings – the passing of a law, the issuing of a request, etc. I have a right to a monthly Social Security check from the U.S. government on account of the U.S. Social Security legislation. But there are other rights we have that have not been conferred on us by the action of any human being. These last have traditionally been called, *natural* rights. My right not to be tortured is a natural right; I would have that right even if there had never been any legislation against torture. When we talk about human rights, it is *natural* human rights that we have in mind.

Last, I think of justice as constituted of rights. Our social relationships are *just* insofar as we are treated by each other as we have a right to be treated. They are *unjust* insofar as we are not so treated, insofar as we are wronged.

I daresay that some of you have found these distinctions and explanations quite dizzying; others may have found them quite inadequate. Either way, let's move on.

### III

What I have learned, from years of talking to various audiences about justice and rights, is that a good many of my fellow Christians don't like the idea of rights; they like even less the idea of natural human rights. I have noticed that some of those who say they don't like the idea of rights nonetheless freely employ the concept when it comes to so-called family values; they emphatically affirm the right of the unborn to life, they emphatically affirm parental rights, etc. I have no explanation for this curious contradiction; I simply note it.

When I ask those of my fellow Christians who say they don't like rights-talk why they have this aversion, they offer a variety of reasons. Some say they don't like rights talk because they find it being used to try to make people feel guilty about the fact that one and another social ideal is not being achieved: everybody has a right to a well-paying job in which they find fulfillment, people in Africa have a right to the abolition of river-blindness, and so forth. Others indicate that they don't like rights-talk because they discern behind it a hidden agenda hostile to the family: a gay rights agenda, a child rights agenda, and so forth. Yet others indicate that they like neither rights-talk nor justice-talk because, in their view, love has supplanted justice in the New Testament.

Let me observe, parenthetically, that people in whom the Reformed tradition remains alive will not be attracted to this last reason; they may be attracted to the other reasons I mentioned, but not to this one. The person in whom the Reformed tradition remains alive does not think of the New Testament as supplanting the Old; in particular, she does not think of the gospel of love in the New Testament as supplanting the law of justice in the Old Testament. A person in whom the Reformed tradition remains alive thinks of the New Testament as *fulfilling* the Old, not as supplanting it; the justice-orientation of the Old Testament is not supplanted in the New Testament but fulfilled.

End of parenthesis. I briefly mentioned three reasons that my fellow Christians have cited for their opposition to rights-talk. On this occasion I don't propose saying anything more about those reasons – though as you will guess, I do have things to say about them, and will be happy to say them in the question period. I want instead to focus on a fourth reason; it's my impression that this fourth reason is the most influential.

It is commonly said that rights-talk expresses and encourages one of the most pervasive and malignant diseases of modern society, namely, possessive individualism. In using rights-talk, one places oneself at the center of the moral universe, focusing on one's own entitlements to the neglect of one's obligations to others and the cultivation of those other-directed virtues that are indispensable to the flourishing of our lives together. The prevalence of rights-talk, so it is said, obscures from us our responsibilities to each other and to our communities, obscures from us the singular importance of love, care, friendship, and the like. It demotes the giving self and promotes the grasping self, demotes the humble self and promotes the haughty self. It both encourages and is encouraged by the possessive atomism of the capitalist economy and of the liberal polity. It invites us to think of ourselves as sovereign individuals.

Rights-talk is said to be for the purpose of *me* claiming *my entitlements*, for *you* claiming *your entitlements*, for *him* claiming *his entitlements*. That what it's for: claiming one's own entitlements, one's own possessions, giving vent to one's possessiveness, each against the other. Possessive individualists are not abusing the innocent language of rights by wresting it to their own malign purposes. They are using it as it was meant to be used. Rights-talk is inherently individualistic and possessive.

This condemnation of rights talk is often accompanied by a narrative concerning the origin of the idea of natural rights; my guess is that almost all of you have heard this narrative.

The idea of natural rights, so it is commonly said, arose out of the individualistic political thought of the Enlightenment – the word “secular” usually prefacing the word “Enlightenment,” *secular Enlightenment*. A variant on this narrative is that though the political philosophers of the secular Enlightenment certainly employed the idea of natural rights, they did not originate it; it first made its appearance some centuries earlier when the nominalist William of Ockham introduced and employed the idea early in the fourteenth century in the course of defending his fellow Franciscans against attacks from the pope.

Either way, the claim is that the idea of natural rights originated within individualistic frames of thought and has no use outside such frameworks. It carries individualism in its DNA. It must on that account be rejected. Possessive individualism and the Christian gospel do not mix.

#### IV

My reply has a systematic prong and a historical prong. Let me briefly present the systematic prong of my response, and then spend more time on the historical.

I described rights as normative social relationships: a right is a right to the good of being treated a certain way. And I said that they are symmetrical, in the sense that you have rights against me to my treating you a certain way and I have rights against you to your treating me a certain way. But if this is what rights are, why would anybody think that the language of rights is for expressing possessive individualism – that the language of rights is for each of us claiming our own entitlements, our own possessions?

I think what accounts for it is a confusion. It’s one thing for me to *have* a certain right against you; it is quite another thing for me to *engage in the activity of claiming or insisting on* that right. When the possessive individualist gets hold of rights-language, he uses it to engage in

the activity of claiming his own rights while ignoring ours. But that doesn't change the fact that we each have rights against the other. In using the language as he does, the possessive individualist abuses it. When rightly used, the language of rights is for each of us giving voice to the ways in which we can be wronged and are wronged. All moral language can be abused; all moral language is in fact abused. We have all been witness to the abuse of obligation-language. When some part of moral language is abused, you don't toss it out; you try to redeem it from its misuse. If we tossed out some part of our moral culture whenever it was abused, we wouldn't have any moral culture left.

Now for the historical part of my response. As the result of recent work by some legal historians of the medieval period, especially Brian Tierney and Charles Reid, and by some legal historians of the Reformation period, especially John Witte, we now know that the common narrative concerning the origin of the idea of natural rights is plainly false. Witte has shown that the idea of natural rights was in common use among writers in various branches of the Protestant Reformation especially the Reformed; the claim that the idea originated with the supposedly secular Enlightenment political thinkers is plainly false. And Tierney and Reid have shown that the canon lawyers of the twelfth century were self-consciously employing the idea of natural human rights; the claim that the idea originated with Ockham in the fourteenth century is also plainly false. I trust that no one will claim that the twelfth century canon lawyers were infected with possessive individualism, or that the Reformers were.

I think the evidence points to the conclusion that the twelfth century lawyers were the first to articulate and self-consciously employ the concept of natural human rights. But now let's take a next step. It's quite possible for someone to *recognize* what you and I would *conceptualize* as natural human rights without himself conceptualizing it that way, without



himself formulating and employing the concept. We don't conceptualize everything that we recognize. So when one is told that the twelfth century canon lawyers were the first to conceptualize natural human rights, the natural question to ask is whether there are indications that such rights were nonetheless recognized before the twelfth century.

I think there are such indications. A considerable amount of the work of the twelfth century canon lawyers consisted of commenting on passages from the Church Fathers.; and in some of the Church Fathers there is unmistakably a recognition of natural human rights. This comes out especially in what the Church Fathers have to say about the status of the poor. Let me quote a passage from a sermon of the great preacher of the Orthodox Church, John Chrysostomos. John preached the sermon in January of 388 or 389, in the city of Antioch. The passage occurs in the second of seven sermons that John preached on the New Testament parable of Lazarus and the rich man. The passage I will quote is rather long; but it's so powerful that I think we should have the whole thing.

“This also is theft, not to share one's possessions.” Perhaps this statement seems surprising to you, but do not be surprised. I shall bring you testimony from the divine Scriptures, saying that not only the theft of others' goods but also the failure to share one's own goods is theft and swindle and defraudation. What is this testimony? Accusing the Jews by the prophet, God says, “The earth has brought forth her increase, and you have not brought forth your tithes; but the theft of the poor is in your houses.” Since you have not given the accustomed offerings, He says, you have stolen the goods of the poor. He says this to show the rich that they hold the goods of the poor even if they have inherited them from their fathers or no matter how they have gathered their wealth. And elsewhere the Scripture says, “Deprive not the poor of his living.” To deprive is to take what belongs to another, for it is called deprivation when we take and keep what belongs to others. . . . Just as an official in the imperial treasury, if he neglects to distribute where he is ordered, but spends instead for his own indolence, pays the penalty and is put to death, so also the rich man is a kind of steward of the money which is owed for distribution to the poor. He is directed to distribute it to his fellow servants who are in want. So if he spends more on himself than his need requires, he will pay the harshest penalty hereafter. For his own goods are not his own, but belong to his fellow servants. Therefore let us use our goods sparingly, as belonging to others. . . .

The poor man has but one plea, his want and his standing in need; do not require anything else from him; but even if he is the most wicked of all men and is at a loss for

his necessary sustenance, let us free him from hunger. . . . The almsgiver is a harbor for those in necessity; a harbor receives all who have encountered shipwreck; and frees them from danger; whether they are bad or good or whatever they are who are in danger, it escorts them into its own shelter. So you likewise, when you see on earth the man who encountered the shipwreck of poverty, do not judge him, do not seek an account of his life, but free him from his misfortune. . . .

Need alone is this poor man's worthiness; if anyone at all ever comes to us with this recommendation, let us not meddle any further. We do not provide for the manners but for the man. We show mercy on him not because of his virtue but because of his misfortune. . . . I beg you remember this without fail, that not to share our own wealth with the poor is theft from the poor and deprivation of their means of life; we do not possess our own wealth but theirs.

Over and over, with rich and varied language, John sounds the same theme: means of sustenance *belong to* the poor. They do not belong to the poor on account of some accomplishment on their part; they belong to them on account of their need. They do not belong to them on account of the laws or practices of Antioch; they belong to them because they are human beings. They do not belong to them on account of their virtue; need alone is the poor man's worthiness.

I see no other way to interpret what John is doing with his powerful rhetoric than reminding his audience, rich and poor alike, of the *rights* of the poor – that is, their *natural human* rights. Failure of the wealthy to share with the poor is *theft* on the part of the rich; they are in possession of what *belongs* to the poor. The poor are *wronged* because they do not have what is theirs by natural right.

John's audience would have included the well-to-do; his words would have reminded them of their obligations. He says that the wealthy must "show mercy." But John does not ground the obligation of the wealthy to the poor in their duties of charity; he does not say that failure of the wealthy to share is a failure of charity on their part. He grounds the obligation of the wealthy to "show mercy" in the misfortune of the poor man. The poor are the victims of theft, swindle, and fraud. They are wronged.

Chrysostom was not idiosyncratic in the world of Christian antiquity in speaking thus about the poor. “Not from your own do you bestow upon the poor man, but you make return from what is his,” said Ambrose of Milan.<sup>i</sup> And here is Basil of Caesarea:

That bread which you keep, belongs to the hungry; that coat which you preserve in your wardrobe, to the naked; those shoes which are rotting in your possession, to the shoeless; that gold which you have hidden in the ground, to the needy. Wherefore, as often as you were able to help others, and refused, so often did you do them wrong.

## V

In speaking of the plight of the impoverished in terms of justice, Chrysostom, Ambrose, and Basil were not engaging in a feat of great moral imagination. The theme of justice is dominant in the Old Testament. And over and over when the theme is sounded, the plight of the widows, the orphans, the aliens, and the impoverished is highlighted. The Church Fathers were simply echoing what they heard in Scripture.

Or were they? In connecting the plight of the poor with justice they were certainly echoing Scripture. But in their recognition of rights were they perhaps going beyond Scripture?

I think not. Start with the fact that running throughout Scripture is the idea of rendering to God the praise and obedience that are due God. Given the account of rights that I spelled out earlier, this is just the idea of rendering to God the praise and obedience that God has a right to. “Ascribe to the Lord the glory due his name,” says the Psalmist (96:8). Need I add that it is God’s worth that gives God a right to our praise and obedience.

But of course we do not always render to God the praise and obedience that is due God; our failure to do so wrongs God. I would say that it is especially in their attribution of forgiveness to God that the biblical writers recognize that God has been wronged, deprived of what God has a right to. For notice that I can forgive you only if you have wronged me – and

only for the wrong you have done me. I cannot just scatter forgiveness hither and yon. It is commonly observed that forgiveness is a matter of mercy, not of justice; and that is certainly true. What is not so commonly observed is the point just made: that I can forgive you only if you have deprived me of what I had a right to and I recognize that you have. In attributing forgiveness to God, the writers of Scripture recognized that God has rights.

That leaves open the possibility that they recognized God's rights but not our rights; indeed, it leaves open the possibility that they thought we have no rights. Or to put it in other words, it leaves open the possibility that they thought of justice for God in terms of rights, but thought of justice among us in some other way. Though I have not up to this point mentioned it, there are a good many Christian thinkers who oppose the idea of thinking of justice in terms of rights.

This suggestion won't do. Here's one reason. Suppose I am right, that the ascription of forgiveness to God by the biblical writers implies their recognition of the fact that God has been wronged by us; then Jesus' injunction to us to forgive implies Jesus' recognition that we are wronged by each other. Jesus tells us that we are to forgive those who wrong us.

A second reason the suggestion won't do is that just as the biblical writers ascribe worth to God, so also they ascribe worth to us. We are created in the image of God; on account of being so created, our place in the cosmic hierarchy, says the Psalmist, is just a bit below the angels. On occasion, the biblical writers explicitly connect our worth with how we are to be treated. In a wellknown passage in Genesis 9:6 we read, "Whoever sheds the blood of a human, by a human shall that person's blood be shed; for in his own image God made humankind." And in his gospel, Matthew reports Jesus as justifying his healing on the Sabbath with these words: "Suppose one of you has only one sheep and it falls into a pit on the Sabbath; will you not lay

hold of it and lift it out? How much more valuable is a human being than a sheep?” (Matt. 12:11)

Let me summarize my counter-narrative concerning the origin of the idea of natural rights. I hold that the recognition of natural human rights has its origins neither in seventeenth century political individualism nor in fourteenth century nominalism, but in the Hebrew and Christian Scriptures. The biblical writers did not explicitly conceptualize natural rights; explicit conceptualization had to await the canon lawyers of the twelfth century. They did, however, *recognize* what you and I call “natural rights.” They assumed that, on account of God’s worth, God has a natural right to our praise and obedience. They held that we human beings have violated that natural right of God; we have wronged God. They speak of God as angry on that account. But they go on to say that God is a forgiving God; God forgives those who have wronged him.

I would say that the recognition in Scripture of *God’s* natural rights is somewhat more definite than is the recognition of the natural rights of human beings. But the latter recognition is unmistakably there. Jesus says that we are to forgive those who wrong us just as God forgives those who wrong God; that presupposes that we can be wronged, deprived of what we have a right to. And Jesus says that God treats us as he does because we are of worth. To this can be added Chrysostom’s observation that Scripture says, “deprive not the poor of his living,” and that to deprive someone of something is to take from them what belongs to them – what they have a right to.

The recognition of natural human rights goes from Scripture into the Church Fathers; and then in the twelfth century such rights are at last explicitly conceptualized in the writings of the twelfth century canon lawyers.

An obvious question to ask at this point is whether the idea of natural human rights can also be traced back to the writings of the philosophers of pagan antiquity. Though I cannot argue the point here, I hold it cannot be, the core reason being that the ancient philosophers worked only with the idea of the worth of human lives; the worth of human beings themselves played no role in their thought.

## VI

My analysis of rights, coupled with the counter-narrative I have presented, answers the charge that the idea of natural rights is inextricable from an ethos of possessive individualism. But the narrative raises an unsettling question of its own. Suppose it is the fate of modernized societies to become more and more secular. Suppose, in particular, that the religious convictions that gave birth to our idea of natural human rights are destined to erode and be replaced by a variety of secular perspectives. What must we then expect to happen to the idea of natural human rights? What must we expect, given our human propensity to tribalism?

I have argued that natural human rights are grounded in the inherent worth, the dignity, of each and every human being. Christianity locates the basis of that worth in the fact that each of us bears God's image and is redemptively loved by God; that's what gives each and every one of us the worth that grounds human rights. In principle it would be possible for the secularist to acknowledge that dignity and find an alternative basis for it, a non-theistic basis. In principle it would be possible for the originating theistic basis of human rights to deteriorate and be replaced by a secular basis.

There have been a good many attempts to find a secular basis for the worth we human beings have that accounts for natural rights. In my judgment they all fail. For most of them, it's not at all difficult to see why they fail. Most of them hold that human worth supervenes on

certain *capacities* that we human beings have, the most common view being that the capacities in question are our capacities for rational agency.

I have no problem in agreeing that having the capacities for rational agency gives a creature great worth. My problem is that only some human beings have those capacities. Infants don't yet have them; Alzheimer's patients no longer have them; those who are born with severe mental impairment never have them.

One way of responding to this problem would be to identify some capacity that every human being does have. But if we keep in mind Alzheimer's patients, it's clear that this will have to be an exceedingly elementary capacity; and then it turns out that some of the higher animals have the capacity in question. I think there is no way of solving this problem -- no way of grounding the dignity that accounts for human rights in capacities that we have. Secular attempts at grounding don't work.

I trust you now see an overarching irony in my discussion. I began by taking note of the distaste of many Christians for the idea of human rights. It now appears that only theism can give a basis for human rights.

In response to the claim that secularism cannot provide a basis for human rights, Richard Rorty and others have argued that, now that a human rights culture is in place, human worth doesn't need any grounding; maybe it needed it to get going, but no longer. All that's necessary now is that we cultivate sympathy for all human beings.

I am dubious. If a man believes that there is something about the woman in his clutches that makes her unworthy of better treatment, hearing her voice and seeing her face is unlikely to evoke any sympathy in him whatsoever. He is more likely to take pleasure in hearing her scream, or be enraged by the fact that she isn't taking what she's got coming to her. The

affective side of the self cannot, all by itself, expand or even sustain human rights culture. Conviction must also be engaged.

It's not hard, not hard at all, to come to see some of one's fellow human beings as having little if any worth. All one has to do is focus on their flaws. And flaws there will be; the misanthrope has lots to go on. It is also not hard, not hard at all, to manipulate the public into seeing some among one's fellow human beings as having little if any worth; all one has to do is demean them, make them seem loathsome, by bringing their real or invented flaws into the light of public exposure and then to call them lice, cockroaches, animals, scum, filth, dirt.

Our Judaic and Christian heritage neither denies nor overlooks the flaws of humankind; some strands in the heritage appear even to revel in them – witness some elements in the Reformed tradition. But in the face of all the empirical evidence, Judaism and Christianity nonetheless declare that all of us have great and equal worth: the worth of being created in the image of God and of being loved redemptively by God. If this theological framework erodes, I think we must expect that our moral subculture of rights will also eventually erode, and that we will slide back into tribalism.

One more thing. Suppose someone does eventually succeed in finding some basis for the dignity of all human beings that the secularist can affirm; I don't expect that to happen, but suppose it does happen. I think it dubious that that framework could ever have the power over imagination and action that the theological framework has. It is one thing to treat with under-respect someone whose worth is grounded in certain natural features or capacities. It is quite a different thing to treat God with under-respect. To wrong God is to wrong someone of vastly greater worth than that of any human being. And if we are indeed God's creatures and the



objects of God's love, then to wrong one of us is simultaneously to wrong God. I am reminded of what John Calvin said in his comments on Genesis 9:6:

Men are indeed unworthy of God's care, if respect be had only to themselves. But since they bear the image of God engraven on them, God deems himself violated in their person. Thus, although they have nothing of their own by which they obtain the favor of God, God looks upon his own gifts in them, and is thereby excited to love and to care for them. This doctrine. . . is to be carefully observed, that no one can be injurious to his brother without wounding God himself. Were this doctrine deeply fixed in our minds, we should be much more reluctant than we are to inflict injuries.

Can human rights survive secularization? I fear that they cannot. Our moral subculture of rights is as frail as it is remarkable. If modernization does indeed produce secularization, I fear that our recognition of human rights will prove to have been a brief shining moment in the odyssey of human beings on earth.

As for myself, I do not fear. Not only is the modern world obviously not becoming secularized. I believe that God has planted the recognition of himself so deeply in the human heart that the knowledge and worship of God will never disappear from the face of the earth.

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<sup>i</sup> Charles Avila, *Ownership: Early Christian Teaching* (Maryknoll, NY, Orbis Books; 1983), p. 50.