

John McKay

A New Principled Approach to Human Rights

For law to be law it must be constant. For law to be just it must change. This tension runs through the heart of law. In Sophocles' *Antigone* there is a tension between the constancy of the law of the gods, and the changeability of the rule of (a) man. Though the tradition of natural law is hardly invoked any more it remains clearly manifest in our conceptions of human rights. My argument in this paper is that we live with two incommensurable conceptions (or histories) of human rights. By one account an ancient tradition carries on to today. By the other account a human rights era is inaugurated in the twentieth century. But the theoretical history of human rights in the twentieth century is the history of an attempt to have a primary law, a fixed law, grounded in malleable law. On such shifting ground human rights law is foundering. This paper examines the ungrounding of human rights law in the twentieth century and suggests an old (and new) solution.