Evaluation of "Estoppel and Liberty"

This is a clever and, for the most part, meticulously developed essay. I think that a number of steps in the argument would be clearer and, perhaps, the whole argument would be shorter, if the author were more fully explicit about what the core of the argument is. I take it that the core argument is: If John acts coercively, he claims (through his action) to have a right to act coercively; If he claims to have this right to act coercively, he cannot deny this right to others; Thus, if others respond by acting coercively toward John, he cannot complain; Indeed, he must acknowledge their right to do so.

The fundamental structure of the argument is that which Alan Gewirth has labored so long to perfect (cf., his Reason and Morality). It is closer yet to Roger Pilon's version of Gewirth in which Pilon insists that what is claimed by one's action (and the only thing that is coherently claimed by it) is one's right to freedom and, thus, one must in consistency acknowledge others' like right to freedom. The three crucial elements are: (1) the general idea that a claim is made (asserted?) in the course of action (so the houseowner "says" something by waving at the painter which is inconsistent with his later invoking the lack of a contract; (2) the more specific idea that a right to freedom is claimed (Pilon) or a right to coerce is claimed (this author); and (3) the idea that the claim made binds one to recognize a reciprocal right in others.

I believe this paper would be improved if its author had a sense of the Gewirth/Pilon project. He should look at Pilon's "Ordering Rights Consistently" in the Summer 1979 issue of the Georgia Law Review. (That issue also contains an essay by Gewirth which, relatively concisely, states his position.) I think the author should read through this material and then redraft the paper, not to prove his acquaintance with Gewirth/Pilon, but with the added sense of common argumentative strategies.

There are a couple of smaller points that need correction. (a) The argument in the second paragraph of part II unnecessarily deals with whether Mark can believe A and not-\-A. (Of course, he can believe A and non-A, e.g., he can believe that the spoon is on the table and that the fork is on the table!) Mark does not make statements about his beliefs. He doesn't state that he believes A, that he believes not-\-A. He (purportedly) states A and (purportedly) states not-\-A. His problem is that "A and not-\-A" cannot be true -- not that he cannot believe it. (b) The importation of "consent" on p.3 and p.4. is implausible and, fortunately, unnecessary. If John is committed to allowing that others may act coercively against him, then that's all that is needed to vindicate his imprisonment. It is not necessary to say that he cannot (be
heard to) not-consent. Furthermore, even if he could not not-consent, it would not follow that he does consent.

Here is a larger problem which goes back to the basic strategy. It can be dealt with only by successfully arguing that what is necessarily claimed in action is one's right to freedom or one's right to coerce. WHY DESCRIBE ACTIONS IN TERMS OF WHETHER THEY ARE COERCIVE OR NON-COERCIVE rather than in terms of some other pair of properties, e.g., socially beneficial or socially non-beneficial? Suppose the complaint about Susan is that her career as a pornographer is socially non-beneficial and the State further claims that its action of suppressing her career is beneficial. The State's action is coercive. But its not qua coercive that it engages in it. The State (or its defender) says that the State claims the right to act in socially beneficial ways and, as a matter of consistency, it recognizes everyone's right to act in socially beneficial ways. But, given the premises, neither Susan's career actions, nor her resistance to their suppression, are socially beneficial. So the State has no consistency problem in suppressing both. We are imagining that a given action (the State's suppression of Susan) is both coercive and socially beneficial. And the question is, why say that, in the course of this action, the State lays claim to a right to coerce which it must reciprocally recognize in others rather than say that, in the course of this action, the State lays claim to a right to do what is socially beneficial which it must reciprocally recognize in others?

I would like to see the author grapple with this last issue especially. I think he will be better able to do so if he looks at Gewirth/Pilon who raise the question, what is essentially/necessarily claimed in the course of action? I would anticipate that at that point the paper would be a strong candidate for publication.