

V. A RECONSIDERATION OF NATURAL RIGHTS THEORY

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WHAT distinguishes natural rights theory among theories of human rights is the sort of argument it presents. Of those philosophers who have recently dealt with human rights, only a few—most prominently, Robert Nozick¹—have invoked natural rights theory. Alan Gewirth, A. I. Melden, and Ronald Dworkin, for example,² discuss human rights or individual rights without reference to natural rights. The problem with these is that the firm ground needed for the idea of human rights isn't likely to be secured without the basis promised by natural rights theory. For example, resting human rights on the ordinary moral discourse or the moral intuitions of one's community will not provide them with universal significance. And the somewhat more rigorous approach of analyzing the concept of human action, undertaken by Gewirth, fails to provide the substantive arguments needed to undercut various behaviorist accounts of human conduct, thus leaving the resulting human rights position vulnerable to serious objections.

Of course, natural human rights theory has its own problems. As Samuel Scheffler puts it,

Given the metaphysical associations of the tradition, [natural rights] philosophers must explain what they mean by assigning rights to people. They must, further, say something about the source of these rights, and they must deal with a variety of epistemic questions.³

All of this, and more, would have to be achieved before detailing the rights that human beings are supposed to have—that is, the normative content and implications of individuals' natural rights.

My plan here is to outline a theory of natural rights—one that, I argue, supports a libertarian political position. The idea is that the rights

human beings have in virtue of being human—i.e., in virtue of their nature—are, as Gregory Vlastos among others would put it, freedom rights.⁴ The rights to life, liberty, and property are rights to action.⁵ These rights are social norms in accordance with which no one has the authority to interfere with another's choice to live, the actions taken to effect that choice, and the productive and creative undertakings that are the concomitants of such life-supporting actions.⁶

Translating these rights into concrete social policy, the following examples will highlight the libertarian natural rights position: The right to life implies that, e.g., even if someone chooses to live his or her life unpatriotically (by not enlisting to fight one's country's wars) or frivolously (e.g., by pursuing trivial tasks), no one may interfere. The right to liberty implies that, e.g., one's conduct within the sphere of one's own life—even, say, taking unreasonable risks or reading pornographic novels—may not be obstructed by others. And concerning the right to property, e.g., regardless of how badly it is thought that someone uses his or her valued items, e.g., a typewriter (which is used, say, to print antisocial tracts), no one is permitted to confiscate them. Putting the issues a bit more generally, taking another's life, as in slavery or military conscription; interfering with another's conduct, as by a vice squad or bureau of health and safety; and confiscating someone's possessions, as is done via the eminent domain statutes or land preservation policies, are all unjustified by virtue of the natural human rights every individual in a community possesses according to libertarian natural rights theory.

Although my illustrations should make clear the substantive normative position I aim to defend, I

This is the egoistic ethical content of the framework underlying natural rights theory.¹³ But this egoism is not, contrary to some commentators, a form of Hobbesian, or Stirnerite, solipsistic egoism. Such a view rests on a nominalist conception of human existence, whereby individuals are not capable of being shown to fit within a certain classificatory scheme, or in more traditional terms, have no human nature, or essence. The egoism underlying natural rights theory is intimately tied to the fact that each individual seeking his success in life is a *human* individual, not some isolated "atom."¹⁴

The normative foundation of natural rights thus incorporates a theory of objective values—i.e., a conception of the good as objectively real—and a hypothetically imperative morality at a very basic level—i.e., only given the choice to live does the code of ethics required for life apply and apply consistently. This last is a result of the particular nature of the choosing living being involved here, namely, of man's being a rational animal. For such a being, the choice to live is implicitly a choice to live rationally, consistently. Accordingly, the prime egoistic virtue is that of rational thought (and action). The value that is the end of human conduct—living fully as a human being—requires that one chooses rationally, that one conduct oneself in accordance with the highest possible standards applicable in one's particular, individual human situation. Let me emphasize this: both one's humanity and one's individuality are essential factors for purposes of answering the question: "How should I, a human being, conduct myself?"

What does this tell us about how we should live with other human beings? It tells us that good human communities are those that are conducive to living good human lives, morally good lives by all those who are members of a community. Such a community makes it possible that individuals aspire to a morally excellent life. And it is at this stage of the inquiry that one is able to identify natural rights, the principles of community life that are, in virtue of the nature of human beings, properly adhered to by everyone in a community.

Rights are principles of interaction that can arise from special, contractual, or natural relations. Children have *special rights* vis-à-vis their parents, because of the choice of the latter to bring into life a human child. Traders who shake hands to seal a deal enjoy *moral rights* to having this deal fulfilled. Parties to a contract have a legal right to have the terms of their partnership upheld by the enforcement agent of the legal system. And human beings who join or voluntarily remain in the community of one another have *natural rights*, namely, to have their moral nature respected and the implications of having a moral nature observed.

In virtue of human nature—i.e., everyone's being a rational animal—a human community requires that its members abide by certain principles. The rights to (1) life, (2) liberty, and (3) property constitute the most basic of these principles for erecting a system of law and guiding subsequent legal and political developments of a good human community. (1) Because it is one's basic nature to be able to choose to live, one's life is no other individual's domain or sphere of authority—unless this is consented to or unless one has refused to heed this principle vis-à-vis others, in which case others are entitled to respond appropriately.¹⁵ (2) Because the choice to live requires actions to carry out that choice, it is impermissible for others to subvert one's liberty to make this choice and effect it. To do so would be to negate the individual's essential humanity, dictating his behavior instead of respecting him as the author of that behavior who must take full responsibility for it. (3) Because the choice to live involves creative and productive behavior for purpose of living prosperously and contributing to the development and welfare of various projects and individuals one values, engaging in unimpeded creative and productive activities (in one's sphere or in the company of others who have *chosen* to do the same) and making use of the results may not be interfered with by other human beings.

The resulting political system is what is by now understood as the libertarian community, in which politics is limited to the task of maintaining justice

other anti-essentialists or (in Aristotelian terminology) anti-naturalists, identifies this prospect with "the Aristotelian dream of fixed natures pursuing common ends."²² But it is a prejudice to maintain that a definition of some concept must be fixed forever. What it must be is the rationally conclusive statement of what warrants our maintaining distinctions within a scheme of categorization by virtue of our most up-to-date understanding of reality. In other words, the requirement is that natures be *contextually* fixed, not timelessly fixed. Natural rights theory does not depend on the view that the nature of man, for example, consists of some timeless, intrinsic essence found *in everyone*—i.e., a metaphysical view of natures. Instead, it is sufficient to be able to defend an epistemological view of natures, whereby what human nature is may be demonstrated from what we now know about reality, i.e., by a rational integration and differentiation of the evidence of reality we are aware of.²³ Without going into this controversy at great length, there is now ample work within contemporary philosophy that makes this phase of the position here being outlined more than just plausible.²⁴

Golding's second requirement, which depends on a theory of human awareness or consciousness that accounts for our making successful and justified judgments concerning the hard cases of integration and differentiation, faces serious challenge from the sorts of considerations raised by Thomas S. Kuhn²⁵ and Paul Feyerabend.²⁶ Both support a skeptical position about the possibility of objective identification, roughly by relativizing the frameworks upon which such identification is supposed to depend. Any given entity, event, or relationship may be understood as this or that, depending upon one's point of view.

Briefly, a natural rights theory might escape these sorts of objections either by undermining their coherence or by constructing an alternative comprehensive framework. The former task requires showing that any intelligible discourse, including Kuhn's and Feyerabend's, presupposes the possibility and occasional actuality of objective identification, even of hard cases.²⁷ The positive

case requires the development of a philosophical system grounded in rationally undeniable axioms to be appealed to as the court of last resort about specialized claims in science, morality, and politics.²⁸ Here again, there is evidence that philosophical work adequate to both tasks is on hand.²⁹ My own view is that a neo-Aristotelian metaphysics can secure what Kuhn and Feyerabend believe cannot be secured. More particularly, I would argue that a nonreductionist conception of reality supports a theoretical framework that in turn supports the view that human beings can activate their minds so as to understand nature, including the hard cases presented, as we encounter it. Mistakes are not precluded, but they are not decisive for settling the question whether we, human beings, can accomplish, in this case, what Golding requires we must. That we can at times make identifications that fit within conflicting frameworks would imply only that our frameworks are inadequately developed or that we have failed to pay adequate heed to the case (perhaps through negligence or because of unfavorable circumstances or haste surrounding the task). While in any particular case it can be difficult to know whether some being growing in the womb is a human individual or merely the natural antecedent or potential of such an entity, the *possibility* of making a correct identification is not thereby precluded. Since within the framework I am advancing, identification need never involve timeless truth, the task before us could be met along lines spelled out, e.g., by J. L. Austin.³⁰

A final point about Golding's second requirement is that human beings would have to be free, that is, in possession of a free will. For knowledge, even in nonnormative cases, presupposes the distinction between being correct and being wrong, and if everyone *had to* make the identification he makes, and *had to* make the determinations he makes or whether the identifications were correct, ad infinitum, there would be no possibility of unbiased, objective, independent knowledge.³¹

Here is a metaphysical issue that, as Scheffler so well perceives, directly pertains to the success or

choice to live one's life. So although the moral code or the ethical imperative leading to the ethical egoism and natural rights specified above is hypothetical, it rests on such a basic choice that the alternative is the rejection of life itself.

The point might be conceived along the following lines. If an individual chooses to become a physician, this requires that he or she make a rather robust commitment, inasmuch as the profession involved is quite comprehensive. Once the commitment to become a doctor has been made, the various detailed requirements of professional competence, even excellence, flow from it naturally. It makes no sense, then, to say, "Sure, I want to be a physician, but why should I be reading all these medical journals and examining my patients carefully?" Similarly, it makes no sense to say, "Sure I have chosen to live [my human life], but why should I abide by the ethics of human life?" The "is/ought" problem appears to be challenged with an alternative when the matter is conceived in this manner. Life introduces the category of objective value; in our case this means *human* life and our choice to live this life, given our nature as rational animals, commits us to a course of ethical conduct—as if we had taken not a Hippocratic but a human-life oath.

The epistemological framework within which the "is/ought" problem has been prominent does not, however, allow for the solution sketched here. By its lights, the determination of the objective value of life (and thus human life) is not possible. The reason for this is metaphysical. An empiricist epistemology precludes the possibility of demonstrating the stability of any values. As is clear from the Moorean open-question argument, within the empiricist tradition—to which Moore definitely belonged³⁴—establishing the truth of some claim must mean that it is not (any longer) meaningful to ask whether or not that claim is true. As Kai Nielsen phrases the issue, for any putative relations that "ought" might name (say, X), "could we not ask whether X ought to have that relation?... Since this always remains an open question, does this not indicate that 'ought' is not a name for that relation?"³⁵

At this stage we need to return to some points

introduced in connection with Golding's first requirement. The mere possibility of imagining that some actual fact might be different from what it is, need not pose a challenge to our confidence in that fact being the case. If human life is indeed of ultimate value to each human being, the mere fact that we might imagine that it is not of ultimate value (or that something else is) is inadequate to disturb the conclusion that it is (provided that a sound argument is available to show this.)³⁶ As to the source of our tolerance for such questions, why we do regard them as meaningful, various explanations might suffice.³⁷

While brief, the discussion above indicates that the kind of problems facing natural rights theorists and pinpointed by Scheffler can be confronted and may well be manageable. While the natural rights approach is clearly not independent of other philosophical branches besides moral theory,³⁸ in the light of widespread concern about the adequacy of alternative normative frameworks, the position should receive more respect and scrutiny than thus far evident. My discussion here would not be complete, even within present limits, unless I devoted some space to a consideration of a few of the problems of the normative features of natural rights, problems that are now possible to confront in terms of the metaethical considerations dealt with above.

III. THE CHARACTER OF NATURAL RIGHTS

Even before Nozick's work revived the concern of the philosophical community for natural rights, various questions had been put to natural rights theorists. The more pressing among them have to do with whether human rights are universal, inalienable, and absolute. Does every human being have the human rights in question? Can anyone give these rights up or be deprived of them? And are there not some circumstances when these rights must be overruled, when it is proper to act or establish laws or policies that violate these rights? I have dealt with these questions at some length,³⁹ so I will only hint at why human rights are universal, inalienable, and absolute.

The claim that they are universal follows from

save my stray cat I must trespass over my neighbor's property, I have indeed trespassed, and a court in a just legal system will so rule, although I might well be forgiven. In greater emergencies, as when one needs to trespass to save children in a burning home, what is necessary is very close attention to the precise structure of natural rights—i.e., the logical or rational ranking of rights. What is crucial is that within the context for which human rights considerations have first relevance, namely, as constitutional provisions of a just legal order, the absolute status of the basic natural human rights each person has may not be abandoned. For it is these rights that provide the standards of justice for the various features of the system. As I have indicated elsewhere, it is conceptually impossible to challenge the status of these rights by reference to considerations of social justice or the public good, for instance, since such justice is achieved first and foremost when members of a human community do not violate the rights that each member possesses by virtue of his or her humanity. Not that such adherence to human rights is sufficient for the achievement of a good human community; but it is necessary. What then is crucial for purposes of making provision for a good human community is that its principles of justice not be sacrificed systematically, i.e., that the basic principles of the legal system remain as human nature requires them to be. This does not mean that all of its valid laws must accord with these basic principles, only that any discord be capable of remedy within the system, any abuse or corruption be open to internal correction.⁴⁴ That is what is being stressed in regarding human rights absolute, not susceptible to systematic subordination.

IV. CONCLUSION

The libertarian natural rights position is stronger than has been supposed. My task here has been to indicate my own reasons for supposing

this. Such concerns as Samuel Scheffler's are understandable, given the scarcity of metaethical naturalist work in contemporary philosophy. But, as I have tried to make clear here, the foundations of a robust natural rights political theory with libertarian normative content is available. In answer to Scheffler, I have noted that the possession of natural rights means that in virtue of what human beings are and their vulnerability to injurious evil in one another's company, no one is authorized to breach certain principles of conduct, so that the moral nature of everyone be given adequate respect and protection (via the administration of a legal system based on these principles). The source of these rights has been shown to be the fact that human beings are moral agents whose choice to live and to participate in social life requires the adherence to certain principles implicit in what they have chosen, in their commitment to life in society. And I have indicated how the natural rights approach to answering the question of politics can meet various challenges posed by various critics, including those pertaining to the possibility of defining the concept "human being" (i.e., the existence of human nature), the possibility of differentiating human from nonhuman beings, the treatment of borderline cases, and the handling of the "is/ought" problem. I have also indicated why it is justified to consider the human rights supported by natural rights theory universal, unalienable, and absolute.

It might be asked why all this labor in support of what many consider a hopeless political viewpoint. Aside from the obvious response—that this among all those available is the position with the best chance for being right (which would require a comparative analysis not provided here)—there is also the point so aptly put by de Tocqueville:

There is nothing which, generally speaking, elevates and sustains the human spirit more than the idea of rights. There is something great and virile in the idea of right which removes from any request its suppliant character, and places the one who claims it on the same level as the one who grants it.^{45 46}

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23. *Human Rights and Liberties*, pp. 241-45.
24. E.g., Barry Stroud, "Wittgenstein and Logical Necessity," *Wittgenstein*, ed. George Pitcher (Garden City, New York, 1969), pp. 477-96; Milton Fisk, *Nature and Necessity* (Bloomington, 1973); Ayn Rand, *Introduction to Objectivist Epistemology* (New York, 1979); Robert Hollinger, "In Defense of Essentialism," *The Personalist*, vol. 52 (1976), pp. 327-44, and my "Essentialism sans Inner Natures," *Philosophy of the Social Sciences*, vol. 10 (1980), pp. 195-200.
25. Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (Chicago, 1970).
26. Paul Feyerabend, *Science in a Free Society* (London, 1978).
27. See my "Kuhn's Impossibility Proof and the Moral Element in Scientific Explanations," *Theory and Decision*, vol. 5 (1974), pp. 355-74.
28. See my "On the Possibility of Objectivity and Moral Determinants in Scientific Change," *Determinants and Controls of Scientific Development*, ed. K. Knorr et al. (Dordrecht, Holland, 1975), pp. 75-111.
29. See Roger Trigg, *Reason and Commitment* (Cambridge, England, 1973) and *Reality at Risk* (Totowa, New Jersey, 1980).
30. John L. Austin, *Philosophical Papers* (Oxford, 1961), pp. 44-84. This is the well-known paper, "Other Minds," wherein Austin discusses the revisable character of ideas. See also Barry Stroud, "Wittgenstein." I have developed and defended this view in my "Education and the Philosophy of Knowledge," *Educational Theory*, vol. 20 (1970), pp. 253-68.
31. I elaborate this idea in *The Pseudo-Science of B. F. Skinner* (New Rochelle, New York, 1975), but the argument is by no means original with me.
32. For more, see Joseph M. Boyle, Jr., et al, *Free Choice* (Notre Dame, Indiana, 1976).
33. This conception of human morality makes ample allowance for a plurality of human excellences. For a thorough discussion of such plurality, see Norton, *Personal Destinies*.
34. For a demonstration of this disputed point, see John O. Nelson, s.v. Moore, George Edward, *The Encyclopedia of Philosophy*, ed. by P. Edwards (New York, 1966).
35. Kai Nielsen, "The Myth of Natural Law," *Law and Philosophy*, ed. by Sidney Hook (New York, 1964), p. 124.
36. Here, what is important to consider is that a sound argument is not identical to an argument the conclusion of which is shown to be formally necessary and timelessly certain.
37. E.g., someone's ignorance makes it possible, as does philosophical contentiousness or the need to engage in persuasion.
38. Cf. John Rawls, "The Independence of Moral Theory," *Proceedings and Addresses of the American Philosophical Association*, vol. 47 (Newark, Delaware, American Philosophical Association, 1975), pp. 5-22. See my "A Note on Independence," *Philosophical Studies*, vol. 30 (1976), pp. 419-21.
39. "Human Rights: Some Points of Clarification," *Journal of Critical Analysis*, vol. 5 (1973), pp. 30-39, and "Prima Facie versus Natural (Human) Rights," *The Journal of Value Inquiry*, vol. 10 (1976), pp. 119-131. Also see note 43. below.
40. Metaphysics is an exception because its basic propositions would have to be truths about everything, past, present, future, and possible. See my "C. S. Pierce and Absolute Truth," *Transactions of the C. S. Pierce Society*, vol. 16 (1980), pp. 153-61.
41. Here is an instance of the application of the contextuality of definitions and the inferences we may draw from them.
42. H. L. A. Hart, "Are There Any Natural Rights?" *Human Rights*, p. 61n.
43. Sidney Hook, *Pragmatism and the Tragic Sense of Life* (New York, 1975), Chapter 5, "Absolutism and Human Rights," pp. 79-98. James S. Fishkin, in *Tyranny and Legitimacy* (Baltimore, 1979), attacks Nozick for defending absolute rights. Fishkin thinks it *impossible* for Nozick to morally evaluate public policy. Although from a *political* or *legal* context libertarians evaluate public policy on this basis—i.e., "Is it rights protecting and preserving or not?"—based on a sound ethics other considerations can be brought to bear on what human beings, including governments, do within the constraint of rights preservation. A similar point is raised by A. K. Sen, "A Positive Concept of Negative Freedom," *Proceedings of the Fifth Wittgenstein Conference* (forthcoming). He imagines *A* knowing that *B* will be raped by *C* unless someone (*A*) violates *D*'s property rights. *A*'s efforts to solicit police action fail. What should *A* do? By my account, if *A* knows but cannot show that *B* will be raped unless *D*'s property rights are violated—so the police, with its unique authority, can take preventive measure even when these would otherwise constitute property rights violation—*A* faces an emergency case. *A* should, under such circumstances, *disregard D*'s rights. These cases do not, however, warrant *institutionalizing* exceptions to a legal system of rights.

am more concerned here with the distinctive argument for the rights in question, natural rights theory itself. Whatever elaborations and qualifications pertain to the human rights which I claim exist,⁷ and whatever objections need to be met, these have to be approached by first considering just the sort of issues spelled out by Scheffler. To that end, I will sketch the main normative features of the argument for human rights, then go on to address several challenges put to the position in regard to the elements focused on by Scheffler.

I. THE MORAL BASIS OF HUMAN RIGHTS

As Locke already recognized, natural human rights must be based on fundamental normative considerations—in Locke's case, the law of nature that governs the state of nature.⁸ Putting it somewhat differently, natural rights political theory is addressed to questions that arise only after a previous question has been answered, one pertaining to ethics. "How should I, a human being, conduct myself?" is the primary normative question, and "How should we, human beings, conduct ourselves in one another's company?" depends for its answer on having the former question answered correctly.

The first question may be dismissed as artificial—we never conduct ourselves in isolation from others. Moreover, contemporary moral philosophy is biased toward conceiving of ethics as a system of social edicts.⁹ Nevertheless, for the natural rights theory I will outline, the first step consists of providing an answer to the question of personal ethics, a question each of us asks alone, ultimately. And, just as numerous critics of natural rights have maintained, the personal ethics underlying natural rights is a form of egoism.¹⁰ But before attending to this, let me make clear the way morality itself is conceptualized in the present framework.

Morality is the field of inquiry within which we consider how and what human beings should choose and do in their lives simply as human beings (although specialized branches, such as professional ethics, examine more particular forms of

conduct). The field is On the other hand, 1 theory covers a large cluding any form of might be either good tween). The nature logically prior to mo (value) theories since than any *type* of good

Life, in the present basis of values. Wi growth aimed at a po dent in any living, the or bad does not appear be good *for* or bad *for* approaches to value 1 naturalist framework values in objective rea life meets this logical

Morality, in turn, p values whenever choic it is possible to seek v the best of our knowl world behaves in res guided by instincts, d born prompters,¹¹ hu exclusively moved by do. They are able and to choose whether the do. Crucially, the pur is itself a matter of choice that is implicit tion—can be carried teresting to note that, the values of freed phenomenon of purpos rationally entitled to the implicit valuation entity engaged in such

So, once one choo carrying on in life v sound, others unsound of the entity; others former, given the initi conducting oneself pr so or act self-destruct

in accordance with the standards specified by natural rights theory. Various provisions implicit within the theory and considerations of human nature and society will inform the requisite institutions, general and particular, for purposes of making such a society functionally efficient. In different places and times, with different circumstances dominant, the very same natural rights theory may require different emphasis placed on such political measures as national defense, criminal justice, civil liberties, representation, participation, and so forth. But these are details. What is central is that the theory rests on a consideration of human nature in terms of which all (not crucially incapacitated) individuals are rational animals whose ultimate good is served by respecting their capacity to choose to think and live rationally.

II. THE UNDERPINNINGS OF NATURAL RIGHTS THEORY

Let me for the time being not consider the numerous controversies surrounding the normative features of natural rights.¹⁶ Instead, I want to consider some of the issues to be faced by any philosopher with respect to the underpinnings of a moral and political position. With respect to natural rights theory in particular, Scheffler put the point well. The challenge he issued needs to be met and has been detailed by Martin Golding in the following terms:

For someone to ask me to concede something to him as a human right is implicitly to ask whether I admit the notion of a human community at large, which transcends the various special communities of which I am a member; whether I admit him as a member of this larger community; and whether I admit a conception of a good life for this community. Without these admissions on my part I will not allow the pertinence of his claiming; once I make these admissions I must allow the pertinence of his claiming.¹⁷

Asking for "the notion of a human community at large" that "transcends the various special communities of which I am a member," points to the need for criteria that extend beyond the sexual, national, regional, ethnic, temporal, and related

considerations variously applicable to anyone. It is what makes someone part of the human community as such that Golding's request calls to mind, although the term "community" might lead one to believe otherwise.¹⁸ At any rate, various prominent objections to natural rights theory have focused on the role and soundness of the concept of human nature within this position. Margaret Macdonald, for example, tells us: "There is no definition of 'man'. There is a more or less vague set of properties which characterize in varying degrees and proportions those creatures which are called 'human'."¹⁹ Accordingly, she continues, "natural rights' are the conditions of a good society. But what those conditions are is not given by nature or mystically bound up with the essence of man and his inevitable goal, but is determined by human decisions."²⁰

Golding's second requirement raises a basic problem of epistemology that has clear relevance to natural rights theory—namely, that of hard, or borderline, cases. For example, the familiar problem of whether a human fetus is a human being, or whether some animals with various apparently rational modes of behavior might have to be considered human (at least with respect to the possession of human rights), or again whether some person whose brain has stopped functioning is still to be regarded a human being—all these hinge, in part, on whether it is possible for us to admit a particular entity as a member of the human community.

Finally, the quest for a conception of a good life for this community at large—i.e., for human beings as such—invites all the well-known concerns about whether a correct account of moral values can be given: whether there is an objective standard of the human good, how the "is/ought" problem is solved, what exactly is the human good. Concerning this last task, Golding seems to accept the view implicit in Locke, Nozick, and other natural rights theorists, namely, that the idea of human rights must rest on a moral theory.

Can the concept "man" or "human being" be defined—i.e., can human nature be known?²¹ Macdonald, e.g., denies this because she, as most

failure of natural rights theory. Yet, it is difficult to imagine *any* normative theory that could escape having to develop a case for freedom of the will, so it will not be necessary to enter that difficult discussion here.³² One point must, however, be kept in mind. Natural rights theory depends on a defense of freedom of the human will that locates that freedom in man's capacity to initiate his thinking, or conscious processes. In the moral position underlying natural rights, it is thus the failure to engage in the quest for understanding that is the fundamental failure in human life; and it is the achievement of understanding, at whatever level one is capable of and regarding whatever situation with which one is confronted, that is the basic achievement for a human being.³³ This is a point that not only bears on Golding's second requirement but provides the link between all of his requirements, leading us now to a consideration of the third and most important one.

It is "a conception of the good life for this [larger community]" that Golding claims we need, and I take him to mean that a good life for man as such is at stake here. Various special communities—nations, students, women, etc.—might all have a conception of the good life applied to them, but Golding and natural rights theorists are interested in what is good for man qua man and what this implies concerning the political systems in which human beings should live. As principles for ordering life in society, natural human rights must be consistent with basic ethical principles lest they be irrelevant or destructive for purposes of living properly among other human beings. So Golding's third requirement must be met so as to develop a sound theory of human rights.

But at this stage it would be necessary merely to repeat what I have presented earlier. The ethical egoism that underlies natural rights theory identifies the morally good life for man, the conception of the good life for members of the community of human beings. What is left for us given the focus here is to consider some of the challenges that face any attempt to defend the soundness of the conclusions of an ethical inquiry. The history of philosophy is replete with obstacles to answering Golding's third request, and a major one has

been the "is/ought" problem. Let me sketch what I take to be an up-to-date adequate approach to this problem, although in view of its numerous facets I cannot hope here to develop the solution itself in full.

The "is/ought" problem is one of ontology and epistemology: Is there a type of existence correctly captured by the category of "should" or "ought" judgment? And can such judgments be shown to be true? Within the empirical tradition, the answer has tended to be in the negative for both questions. For in empiricist terms a judgment must be able to be shown true (of some fact) by reference to sensory evidence, but it seems clear that no "should" or "ought" judgment is about a state of affairs that can be the object of sensory experience unless it is merely instrumental or hypothetical. In latter cases, judgments are true depending on the effectiveness of the course of conduct in achieving the specified end or just in case some (empirically meaningful) end is chosen. Unless some ends are in fact objectively valuable—indeed, unless some ultimate end is objectively valuable—"should" or "ought" judgments can only be relative to particular ends or purposes or interests and are clearly unfit as sound, universally applicable ethical or political judgments.

Is there a way to meet the problem? Earlier, in outlining the basis for ethical egoism/natural rights, I noted that the value of life is fundamental in view of the issues to which the existence of life gives rise—e.g., is some living being developing well, satisfactorily, inadequately, etc.? In the case of human beings, it is human life that fills this important role, for every individual human being. (It is in the case of one's own life that one has the possibility of being an agent of development; in terms of "ought implies can," this indicates already the sphere of moral authority for every person.)

But beyond the issue of fundamental values—the *summum bonum*—there is still a question whether anyone should choose that value. This question has been voiced in recent moral philosophy as whether one should be moral. The present position does rest the issue of morality on choice, but on a very basic choice, namely, the

the view espoused here, namely, that human rights are based on the nature of human beings, a nature each one of us possesses. Yet what of the possibility that this nature will change? The natural rights account sketched above does not preclude this. In this account, human nature is not conceived of as timelessly fixed. But if so, what is the sense of universality claimed of human rights?

The answer here is that, as with all judgments (outside of metaphysics⁴⁰), the judgment that some norms are universally applicable to human conduct within human community life must be understood as a contextually warranted judgment. It is true. But this is not an unchangeable truth. It pertains to what we are entitled to conclude on the matters as of our present understanding.

Aside from the problem of the temporal extension of the claims of human rights, what about the problem of borderline cases? Do senile persons, e.g., or those with severe mental dysfunctions have the human rights in quest? They do; but because of demonstrable departure from the basic case, conduct vis-à-vis such individuals may at times disregard considerations of human rights. Human rights apply strictly wherever they *can* apply, but in some cases of human beings they cannot apply. A right means observing boundaries so that within those boundaries individual authority may be exercised. But in cases where it is demonstrably impossible to exercise such authority, no bounds are being breached. Nevertheless, since the closest category to which such individuals belong is humanity, the burden of demonstrating the exceptional nature of their case is on those who would take actions that would ordinarily qualify as violating human rights. Accordingly, in the case of any being correctly identified as a human being, the right to life, liberty, and property (as well as derivative rights) may not be violated but may, on such occasions where demonstrable anomaly exists, be disregarded.⁴¹

Concerning the inalienability of human rights, since anyone with such rights possesses them in virtue of being human, and since this possession is not like the possession of such articles as one's car or gloves but rather like the possession of one's birth date or particular history (*my* birthday, *my*

past), they cannot be given up or taken away. They may, and unfortunately often do, go unrespected or unrecognized. The case that may call these remarks into question concerns the possibility of selling oneself into slavery. Morally speaking, such a prospect is impossible. If a sale is a transaction involving considerations between two parties, both parties must remain such after the transaction. One can become a lifelong servant or employee or follower, but voluntary slavery is a contradiction in terms. If the slaveholder refuses to acknowledge that the slave is a free agent who, for example, might call for a reinterpretation of a labor contract, then the voluntariness of the relationship is absent and the proper moral category applicable to it would be compelling or coercing another into slavery, thereby violating his or her rights to life and liberty.

Nor is the administration of punishment an instance of the alienation of human rights. Strictly, though admittedly oddly put, the justly punished person has freely chosen the conditions that may be in store for him, since his actions had this as one of their possible and in this case morally appropriate consequences.

As to the absolute character of human rights, this must be considered in the light of the status of these rights as principles of social life, as constitutional provisions of a just human community. There are circumstances in which social or community existence is impossible. As Hart notes, "natural rights are only of importance 'where peace is possible' (Locke)."⁴² Again, ought implies can. Contrary to Gregory Vlastos—who along with many others argued for the view that only *prima facie* rights (not natural rights) may be shown to exist because it is always possible to override human rights—either one has, e.g., the right to life or one does not. And in those extreme circumstances where not everyone *can* have his or her rights respected, the situation is not one wherein human rights have any relevance or existence.

In cases such as mentioned by Sidney Hook, where in view of special emergencies the rights of someone may require a violation,⁴³ what applies is the possibility of judicial discretion. If in order to

NOTES

1. Robert Nozick, *Anarchy, State, and Utopia* (New York, 1974). We may assume this in view of Nozick's explicit reliance on Lockean individual rights, which are indeed natural rights.
2. Alan Gewirth, *Reason and Morality* (Chicago, 1978); A. I. Melden, *Rights and Persons* (Berkeley and Los Angeles, 1977); Ronald Dworkin, *Taking Rights Seriously* (Cambridge, 1977). For more on this see my "Some Recent Work in Human Rights Theory," *American Philosophical Quarterly*, vol. 17 (1980), pp. 103-15.
3. Samuel Scheffler, "Natural Rights, Equality and the Minimal State," *Canadian Journal of Philosophy*, vol. 6 (1976), p. 62.
4. Gregory Vlastos, "Justice and Equality," in *Human Rights*, ed. by A. I. Melden (Belmont, California, 1970), p. 94.
5. For a clear statement of this account see Ayn Rand, "Value and Rights," *Readings in Introductory Philosophical Analysis*, ed. by John Hospers (Englewood Cliffs, New Jersey, 1968), pp. 364-85. Throughout this discussion I draw on several points made in this paper.
6. For more on this see my "Nozick and Rand on Property Rights," *The Personalist*, vol. 58 (1977), pp. 192-95.
7. Contrary to worries expressed, e.g., by Henry Aiken, "Rights, Human and Otherwise," *The Monist*, vol. 52 (1968), p. 519, no great complications need be associated with the sense of existence claimed for such rights. If in claiming such rights the principles specified are true, then the rights exist. See my "Are There Any Human Rights?" *The Personalist*, vol. 59 (1978), pp. 165-70.
8. John Locke, *Of Civil Government, Second Treatise*, #6.
9. This point is developed in W. D. Falk, "Morality, Self, and Others," *Morality and the Language of Conduct*, ed. by Hector-Neri Castaneda and George Nakhnikian (Detroit, 1963), pp. 25-67.
10. See, e.g., Karl Marx, *Selected Writings*, ed. David McLellan (Oxford, 1977), p. 53, and Leo Strauss, *Natural Right and History* (Chicago, 1953), pp. 226-27. The correspondence between ethical egoists and natural rights theorists is considerable today, as suggested by a comparison of my "Recent Work in Ethical Egoism," *American Philosophical Quarterly*, vol. 16 (1979), pp. 1-15, and "Some Recent Work in Human Rights Theory."
11. It might be thought that this has been shown to be false at some minimal level, via recent experiments with, e.g., chimpanzees. See however, Herbert S. Terrace, *NIM: A Chimpanzee Who Learned Sign Language* (New York, 1979). Still some borderline cases are of no serious significance in the present argument.
12. The argument for this point is Ayn Rand's. For a summary of her ideas, see my "Recent Work in Ethical Egoism."
13. For a detailed discussion of the connection between impersonal ethical egoism and natural rights, see Eric Mack, "Egoism and Rights," *The Personalist*, vol. 54 (1973), pp. 5-33, and "Egoism and Rights Revisited," *The Personalist*, vol. 57 (1977), pp. 282-88.
14. I believe that the eudaimonistic individualism of David L. Norton, *Personalist Destinies, A Philosophy of Ethical Individualism* (Princeton, 1976), develops this point best. See also my *Human Rights and Human Liberties* (Chicago, 1975), pp. 85-87.
15. Machan, *Human Rights and Human Liberties*, p. 116.
16. I have attended to several of these points elsewhere. See my "Law, Justice and Natural Rights," *Western Ontario Law Review*, vol. 14 (1975), pp. 119-30; "Considerations of the Libertarian Alternative," *Harvard Journal of Law and Public Policy*, vol. 2 (1979), pp. 103-24; "Human Dignity and the Law," *DePaul Law Review*, vol. 24 (1977), pp. 807-32; *Human Rights and Human Liberties*; "Some considerations of the Common Good," *Journal of Human Relations*, vol. 18 (1970), pp. 979-94; "Human Rights, Feudalism, and Political Change," in A. Rosenbaum, ed. *The Philosophy of Human Rights* (Westport, Connecticut, 1980); and "Against Nonlibertarian Natural Rights," *Journal of Libertarian Studies*, vol. 2 (1978), pp. 233-38.
17. Martin P. Golding, "Towards a Theory of Human Rights," *The Monist*, vol. 52 (1968), p. 549.
18. Some might interpret Golding to be using "community" in the sense of "society," whereas I am focusing on "human" and taking him to require a sound classificatory schema. I treat this point by reference to the way it fits the program a natural rights theorist must fulfill.
19. Margaret Macdonald, "Natural Rights," *Philosophy, Politics and Society*, ed. Peter Laslett (Oxford, 1967), p. 44.
20. *Ibid.*, p. 48.
21. I understand here by a correct definition a true statement of the nature of something, one rationally justified.
22. "Natural Rights," p. 44.

44. I have developed this point in my "Reflections on Lawlessness" (unpublished). See also Bruce Goldberg, "Natural Law: Some Considerations," *Modern Age*, vol. 10 (1966), pp. 269-77.
45. A. de Tocqueville and G. de Beaumont, *Tocqueville and Beaumont on Social Reform*, ed. S. Drescher (New York, 1968).
46. I wish to thank J. R. Lucas, Randall R. Dipert, Martin P. Golding, Ed Regis, Jr., and Bill Puka for their helpful suggestions, and Marty Zupan for her editorial assistance, during the preparation of this paper. I want to thank the Earhart and Reason Foundations for the support they gave me as I worked on this and other projects. (For a full development of the theory of value invoked here, see D. Den Uyl and D. Rasmussen, "Nozick on the Radian Argument," *The Personalist*, vol. 59 [April 1978], pp. 184-205.)