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All queries should be directed to:

The Editor-in-Chief

Center for Applied Ethics and Philosophy

Graduate School of Letters

Hokkaido University

N10 W7, Kita-ku

Sapporo 060-0810

Japan

caep@let.hokudai.ac.jp

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Editorial Note

The Journal of Applied Ethics and Philosophy is an interdisciplinary periodical covering diverse areas of applied ethics. It is the official journal of the Center for Applied Ethics and Philosophy (CAEP), Hokkaido University. The aim of the *Journal of Applied Ethics and Philosophy* is to contribute to a better understanding of ethical issues by promoting research into various areas of applied ethics and philosophy, and by providing researchers, scholars and students with a forum for dialogue and discussion on ethical issues raised in contemporary society.

The journal welcomes papers from scholars and disciplines traditionally and newly associated with the study of applied ethics and philosophy, as well as papers from those in related disciplines or fields of inquiry.

Shunzo Majima
Editor-in-Chief

Debts and Duties of Patients Who Benefit from Medical Research with Reference to Arthroplasty

David Edward Rose

Newcastle University

Abstract

The following article concerns the ethics of the treatment of cadavers and the duty that some agents may have with respect to the furtherance of knowledge via medical research. According to the argument which follows, a patient who benefits from medical treatment has an imperfect (or general) duty to contribute to the furtherance of medical knowledge and, in the specific case of treatment, a perfect (or defined) duty to allow one's body to be the object of research which will contribute to that technique or intervention. The intention is to open a discussion which may lead to various applications of consent and recognitions of related duties being applied to the acceptance of joint replacements and, eventually, other interventions. The decision to begin with arthroplasty is due to the felt need to improve joint replacement prostheses which currently stands at more or less 150,000 interventions a year and 30 to 40,000 revisions per year. With an ageing population, the frequency of such interventions will only increase. Research on cadavers is required in both successful and failed replacements in order to improve the technology of artificial joints to achieve the non-controversial medical goals of alleviating suffering and restoring function to a patient. At present the objects of research are mostly the failed joints which are then revised and not the successful joints leading to a skewed data set for the improvement of such joints. The argument, though, may have wider appeal.

Key words: patient duties, medical research ethics, Kant, arthroplasty

Introduction

Patients who undergo prosthetic replacements and revisions benefit directly from embodied knowledge, practice and technology which has been improved by medical research. There is an urgent need to improve joint replacement prostheses which currently stand at approximately 150,000 hip and knee joint replacements and 20-30,000 revisions annually in the UK. (Ollivere, Wimhurst, Clark, & Donell, 2012) The incidence of such continues to rise inexorably consequent upon higher functional demand and an older population and

is predicted to increase by 40% (in the USA) in the next thirty years. (Birrell, Johnell, & Silman, 1999) Research on cadavers is required in both successful and failed replacements in order to improve the technology of artificial joints to achieve the non-controversial medical goals of alleviating suffering and restoring function to a patient. At present, the objects of research are mostly the failed joints which are then revised and not the successful joints leading to a skewed data set. A patient who benefits from medical treatment has a broad duty to contribute to the future research and, in the specific case of joint replacement, a defined duty to allow one's body to be the object of research. The duty can be met by consenting to research on his or her body after death.

1 I would like to acknowledge the contribution of Professor David Deehan, the members of the philosophy unit at Newcastle University and the anonymous referees in improving this paper.

The Use of Cadavers

The difficulty of engaging in medical research on cadavers is constituted by the central tenet of all human societies that the dead are moral objects deserving of respect. There are, to which one shall presently turn, obvious cases where such respect can be overridden by other factors or moral commitments. The respect afforded to the body in virtue of being a dead person is negotiable, but reasons have to be offered to justify the taking of body parts or the use of the cadaver as an object which, all things being equal, generally constitutes a violation of this respect.

Obviously religious reasons to respect the dead are the most immediate, but these are no longer homogeneous in a plural society and cultural attitudes are susceptible to change. However, there are also good moral reasons for affording respect to cadavers beyond the traditional cultural attitudes of a society and, if an argument for the broader use of cadavers in medical research is to be mounted, it must appeal to the more robust and universal reasons which appeal to all agents, no matter their religious, traditional or background values.² The reasons for affording respect to cadavers is grounded in the moral relationship of care and respect between human beings -- the body is (or represents), in life, identity and, after death, the body remains the focus of care and value -- and so one can offer good legal reasons for respecting human cadavers. One's expressed wishes prior to death are to be executed by those in whom one has placed trust and these persons protect the cadaver from arbitrary interference by the state or powerful institutions. (Barilan, 2006)

Of course, there are obvious cases where the executor of the cadaver's will may be overruled by institutions: the need for forensic autopsy in the case of suspected crime, for example. Skegg seems to suggest that there are resources in New Zealand law for the use of cadavers in broad, meliorist practices. (Skegg, 2001) Yet, such a move would be controversial undermining trust in institutions as the Alder Hey case did in the UK. (Davies, 2007) Such an undemocratic and problematic move is just not necessary in arthroplasty because Skegg's argument generally concerns infant cadavers who are

unable to give consent whereas here we are dealing with the patients offering consent and ensuring that their will is respected by relatives in charge of the disposal of the body. Individual consent alleviates the problem of trust in large institutions on the part of the public. If an argument for the broader use of cadavers in medical research is to be mounted, it must appeal to the more robust, universal reasons which appeal to all agents, no matter their religious, traditional or background values so that consent to participation in research can be procured.

More significantly, there are obvious medical instances when the violation of the cadaver's integrity is morally justified to most reasonable sections of society.³ The paradigmatic instance when the violation of the cadaver's integrity can be morally justified to most reasonable sections of society is to donate an organ to save a life. (Diethelm, 1990; Thomsma, 1992) If the donor (or the family) were to be asked to explain the reasons for consenting, one would assume the most immediate response would be an appeal to consequential welfarism: when we take an organ from a cadaver to donate to another, there are "significant life enhancements" that can be measured and are observable. The act of donation in this case results in measurably greater welfare for the recipient than the distress caused to those who are aware of the violation of the physical integrity of the cadaver. The value of the cadaver is weighed against the value of very much improving another person's life. Welfarism is not the only justification (or even the best), but the process of engaging the practical reasoning of the patient and his or her family in order to procure their consent to the future intervention is most immediately expressed in terms of welfarism. It is important to note here that I am not proposing that organ donation is only justified by an appeal to welfarism. Whether one is Kantian and believe the right to physical integrity to be inalienable or Hegelian and see it as a constructed institution, consent is a required condition for intervention (it transforms a violation into a legitimate action). The claim is more concerned with how the practical reasoning of the patient and his or her family would in most probability be convinced and hence how we can rationally and legitimately elicit consent. The argument offered is a tool for medical practitioners to elicit (or, more strongly, assume) consent from reasonable patients by engaging with their rational motivational sets.

2 Legislation and policy will of course take into account individual preferences, arbitrary choices and comprehensive backgrounds (whether religious or not) in order to build an overlapping consensus agreement on the treatment and use of cadavers. Here the aim is merely to show that moral reasons can be given to a rational agent that justify the idea of a debt to medical research that can be fulfilled by a duty. The consent required by the duty will also include an opt-out clause as discussed below.

3 Agents whose moral commitments are driven by deeper (usually) religious reasons are not "reasonable" in the sense required here. Such agents will be tolerated and respected by most communities and their liberty to live by their beliefs will not be violated in a liberal society. The minimum requirement to respect such liberty is the presence of an opt-out clause in the tacit consent agreement proposed below.

The Use of Cadavers in Medical Research

Here, though, the argument for the use of cadavers is for the purposes of furthering medical knowledge and improving technology, so the recipient of a prosthetic joint should agree that, after his or her death that an investigation into the joint and his or her body can be carried out to improve both technology and practice for future recipients. It is not possible to use a consequential welfarist argument such that all agents ought to leave their bodies to medical research. It might be empirically true (although it would have to be proved!) that if all bodies became the property of the medical profession at the point of death, more and better research could be carried out that would increase medical knowledge and, therefore, benefit present and future generations. It is not obvious to the particular individual that his or her personal action would result in significant life enhancements, even if he or she were able to admit that consequent general blanket research may well do so. For those consenting to the use of theirs or other bodies, the moral value of the cadaver is not so easily negated in this case because the positive consequences are not immediate, can very easily fail, or the research could just be a waste of time or be abused by the institution.⁴ Trust that the moral action contrary to one's immediate wishes is worthwhile requires either robust trust in the institution or evidence of "making a difference." Colloquially, one donates an organ to save a particular life, not to further some abstract, vaguely defined goal and the evidence of making just such a difference generates the trust required. It is easier to procure rational consent for organ donation than participation in medical research (even if more costly to the individual) due to this appeal to "making a difference" and its force as an element in one's subjective motivational set.

In order to procure consent from arthroplastic patients to use their cadavers, one cannot appeal to the welfarist considerations of furthering medical knowledge or improving technology. It is contentious whether such blanket research would result in significant life enhancements as the value of medical research is based on a general promise of an increase in welfare, rather than an observable outcome, and such a promise is a too weak a justification to overcome the moral commitment to respect cadavers. Moreover, such a general moral commitment to medical research politically rests on

4 One knows it would be a good to donate to a children's charity in general, but this would not be as binding as helping the particular, distressed child we encounter, due to the force of appeal to our subjective motivational set. One immediately understands the impact of one's possible actions.

trust for large institutions, private organizations and government that is obstructed by the shadow of a "slippery slope." The simple objection asks what else such a welfarist approach could feasibly justify. Moral principles such as the intrinsic value of human life and respect for the dead in a secular liberal society serve as very good moral boundaries for the protection of the integrity of individuals against the abuse of power by large institutions and governments. Such boundaries need to be respected in order for trust in large institutions to be maintained. The possibility of asking for consent to investigate the cadavers of joint replacement patients after their deaths requires a simple moral argument that would seek the agreement of rational agents such that they acknowledge it is a duty which can override the social and moral commitment to respecting the integrity of bodies.

So, in order to consider the possibility of asking for consent to investigate the cadavers of joint replacement patients after their deaths, a simple moral argument needs to be generated that would seek the agreement of rational agents such that they believe it is a duty which can override the social and moral commitment to respecting the integrity of bodies. Consent of the patient overcomes social and religious attitudes (which may forbid the violations of cadavers) as well as maintaining trust in large institutions.

Viable consent here takes two forms. The ideal situation is that patient when receiving a replacement joint gives consent for research after death (required consent) and this is reinforced by familial consent both at the time and after death. Such consent would present the strongest case when considering legal and policy issues of such a request. Such consent can be explicit (a signed document) or it can be tacit, as long as the patient (and family) are informed at the time of the original operation that by agreeing to the operation they agree to research on the cadaver. Presumed consent is not viable simply because we live in a plural society and so the assumption that the patient in receiving the replacement commits to undergoing research after death does not respect the liberty of the individual to do what they wish with their own bodies. There must be, if not a written agreement to commit to medical research, an option for the patient to opt-out which is made explicitly at the time. So, either the patient on receipt of the joint agrees explicitly (in writing) that they are prepared for their body to be an object of research or they are made aware that they must explicitly express that their body must not be used for research after their death.⁵

5 The present paper does not explicitly argue which form of consent should be the norm and, one feels, it would depend on the actual practices of organ and blood donor of the particular country where the policy is enacted. My

The Argument

The sorts of moral reasons needed to motivate an individual to donate their body to research can be neither welfarist (a consequential benefit to another person or persons) nor can it, when one considers publicly funded health systems, be based on legalistic arguments about state ownership of replacement parts. The former argument, as has been said above, suffers from the “slippery slope” worry and fails to respect persons as moral agents. The latter argument could at best justify the recovery of the body part, but no further violation of the cadaver for the benefit of research which is the overarching aim of such interventions.⁶ The types of moral reasons that need to be offered to a patient in receipt of a replacement joint are Kantian in flavour and make reference to the debts and subsequent duties of the patient.

Kantianism, as a deontological theory, concerns the type of intentions agents act upon. (Kant, 2012)⁷ Actions are either morally forbidden (lying), morally required (keeping one’s promises) or simply amoral and permissible (playing football in the park). The taxonomy of action is due to the intentions that bring them about. In this case one is seeking reasons that require the recipient of medical intervention to commit to the goals of medical research. The second point to make is that Kantianism as a moral theory is committed to the rational agent and hence an intrinsic respect of the person and, one feels, by extension the physical integrity of the body. Respect for the body is kept central to the argument and not sidelined or negated as it is in the welfarist argument. Third, the respect for the agent as a rational being means that the reasons offered make an appeal to his or her rationality and hence, if applicable, form the basis of a consensual agreement such that, if one acknowledges the validity of the reason, the agent could deny his or her duty to medical research only at the cost of his or her own rationality (which is permissible so long as it does not directly harm others).

One possible interpretative objection to the reliance on Kant may be his insistence that the use of body material (teeth) is not permissible for the moral agent in the second part of his *Metaphysics of Morals*. (Kant, 1996: 177) In response, it is worth noting that Kant

personal feeling is that legally the former is more robust, but that practically the latter is preferable, but an argument is required to justify these intuitions. Such an argument, due to the exact focus of the present piece, is not here forthcoming for which I apologize.

6 In a longer article, I would have given better explanations of these rather dismissive stances.

7 See Korsgaard (1996), O’Neill (1990) and Wood (1990).

has no problem with vivisection because the animals are not autonomous nor amputation to serve the ends of self-preservation. One would assume that Kant would agree a corpse is not autonomous and hence the sorts of mutilation “of oneself” are of one’s rational being embodied in a body, not one’s corpse. If Kant does not then there are religious echoes corrupting the purity of his assertions and he needs to argue for these.

Morally forbidden actions are those motivated by reasons which involve the agent using other persons as tools for his or her purposes and are identified when a reason for action, if applicable to all agents at all times and in all places, involves a contradiction. To discern such contradictions, the agent must not act on reasons which violate the categorical imperative: “I ought never to proceed except in such a way *that I could also will that my maxim should become a universal law.*” (Kant, 2012: 4:402) Kant distinguishes between two types of contradiction: a contradiction in conception (whereby your reason for action cannot be thought of as a universal law without contradiction) and a contradiction in will (whereby your reason for action can be thought of as a universal law, but not imposed as a universal law without making one’s purpose unattainable). These two contradictions are set as tests for the agent: articulate your reason for action as a universal law covering general behaviour (as a *maxim*) and see whether it is coherent. If it fails the first test, it fails the second. If one, for example, makes a false promise in order to get out of trouble or to alleviate hardship, the agent is aware of what promising involves but acting contrary to the meaning of his utterance when he says “I promise to pay back my debt” because he knows he will not be able to do so. In essence, he is promising with his fingers crossed behind his back and thus not promising at all. And his action will only succeed if he makes himself an exception to the rule of promising: everyone ought to keep promises except me in this situation, thus it cannot be a universal law because for him to achieve what he wants there has to be at least one exception (him). Such contradictions in the meaning of actions, as such, lead to specific, perfect duties such as “Don’t break promises” and “Don’t commit suicide”, for example. (Kant, 2012: 4:422-423)

It is possible, though, that some maxims do not exhibit a conceptual contradiction, but are still ruled out by the demands of morality. The argument which one finds in Kant which is most appropriate to the current discussion is the broad duty to help others. An agent here could very well will the maxim not to help others at all and there is nothing forbidden in such action. Kant discusses an agent:

... who is prospering while he sees that others have to struggle with great hardships (whom he

could just as well help), thinks: what's it to me? May everyone be as happy as heaven wills, or as he can make himself, I shall take nothing away from him, not even envy him; I just do not feel like contributing anything to his well-being, or his assistance in need! (Kant, 2012: 4:421)

However, if such an agent imagines what such a world would be like where no one helped others, he would quickly realize that he would be unable to take for granted his own well-being, as Kant continues:

For a will resolved upon this [course of action] would conflict with itself, as many cases can yet come to pass in which one needs the love and compassion of others, and in which, by such a law of nature sprung from his own will, he would rob himself of all hope of the assistance he wishes for himself. (Kant, 2012: 4:423)

And so, the agent expects others to help him but not to help them in return and such a project of action treats others in such a way as to make oneself a special case (like the promising example above). Such an agent knows that his future happiness is not a gift from Heaven, but due to the cooperation and beneficence of others. People depend on other people and to deny helping others in a general way, is to not fulfil one's moral duty.

In the case of medical research, the knowledge which is produced, transmitted, and utilized by the medical tradition is a benefit to agents. At some point in our lives, we will all benefit from such knowledge and expertise. The agent who states that he will not help others but expects to be helped is well aware that his welfare depends on treating others as tools and his own life as a special exception. If one is to benefit from medical research, then one ought to contribute to medical research; otherwise one is in the same position of the agent who does not will to help others. If all agents denied to contribute to medical research and knowledge, then there would be no medical knowledge from which to benefit.

In most cases, the duty to contribute to medical research is an imperfect one: there is no strict course of action prescribed (as in the case of "Don't break promises" which is pretty unequivocal). One can contribute to medical research through donations, volunteering, choosing a career in the medical profession, perhaps even paying one's taxes. As long as one admits there is an imperfect duty for all agents to contribute to the furtherance of medical knowledge and techniques, then the agent recognizes it is rational for him or her to act according to such a duty.

And this is where we make a second step in the

argument. For a patient in general, there is a broad, imperfect duty to contribute to medical research. We all, as recipients of the benefit of medical knowledge, have such a duty. Harris seeks to offer a general duty to contribute to scientific research by rejecting those moral reasons which seek to deny it. (Harris, 2005) The current argument seeks to offer a moral reason to contribute, but does not fall foul of the objection that Harris is only able to offer a general requirement with no specific action entailed. (Shapshay & Pimple, 2007) In the specific case of arthroplasty, there seems to be a very specific way in which such a moral contribution can be made. Of course, a particular patient or relatives of a particular patient may recognize the moral debt but argue to fulfil it in another way: through becoming a medical professional, donating a large amount of money, agreeing to volunteer and so on. However, there is some aesthetic symmetry to the agreement to participate in research which overcomes the indeterminate nature of imperfect duties. It also appeals to the practical reason of the individual to generate his or her consent in a way that requiring an indeterminate action does not and it more likely to be met with agreement. The receipt of the artificial joint is to benefit from a specific piece of knowledge, technology and expertise. One receives the benefits of medical knowledge and expertise and therefore has a debt to contribute to its furtherance. It is based on a rational obligation. Yet, if one denies a debt there is an obvious contradiction. I will benefit from medical research because it prolongs my life, restores function or alleviates suffering, but I do so without contributing to medical research. If everyone, though, who benefits from medical research refuses to contribute to medical research, then there will be no medical research and my purpose would be frustrated. Here I have benefitted from a particular piece of technology which my body is now in an ideal position to improve for future recipients, just as other agents have improved it for me at this time. I have the obligation, on acceptance of this embodied knowledge, to allow tests to be carried out on the joint during my lifetime and beyond which could reasonably contribute to the improvement in techniques, knowledge and technology. Although, the requirement may seem quite radical implying that anyone who has had specific medical treatment should allow tests related to that specific treatment to be carried out during their lifetime, it would require in most cases no more than what patients actually do: allow a medical profession to monitor the effectiveness of a treatment and ensure that the cure is permanent. To not pay this debt by fulfilling my duty is to make of myself a special case.

If the agent refuses to consent to contribute to medical research, the agents' wants and needs are still satisfied but at the cost of using others as tools for his own purposes and making himself an exception to a rule

from which he benefits. Making oneself a special case demands justification. If we all sit in a traffic jam on the motorway, we realize that there is an obligation to leave the hard shoulder free. Such action, although not in our individual and private interest (we would reach home much more quickly if we merely drove down the hard shoulder past all the queueing cars), is rational because we know that the hard shoulder is required for emergency situations. Should one of us use the hard shoulder no damage would be done, but if we all used it, it would quickly become just another queue of traffic. And, if in that case we wished to benefit because we found ourselves in trouble, we could not. Our action here rationally involves the recognition that if everyone acted similarly, we would have to take the responsibility of frustrating our own aims and motives (to be a possible recipient of emergency assistance).

Of course, if we see a car zooming down the hard shoulder, we demand justification. Is it a police car or an ambulance? Is the passenger pregnant and about to give birth? There are cases to make oneself a special exception and so with the case of consent to donate one's body to specific research; for example, if one has strong religious beliefs.⁸ However, the onus is perhaps on such agents to contribute to medical research but in an alternative way. Given, though, that there will be quite acceptable cases where the donation of the cadaver to research will be vetoed by the particular agent, consent cannot in this case be presumed, it must be avowed consent whether that be explicit or tacit (with a fully explained opt-out clause).

The advantages of this approach are myriad. The onus is now on the patient to explain why he or she will not contribute to medical research rather than the doctor to persuade the patient to contribute. Significantly, by framing the obligation as a moral duty, the patient has a present motivation all things being equal to consent to contribute because it appeals to his or her rationality: just as, one ought to wear a seatbelt to protect oneself from harm in the event of a crash, one ought to contribute to medical research to restore function or alleviate suffering in the event of having to benefit from medical knowledge. Moreover, the "one" who is to contribute is a universal agent and so the reason applies equally to the patient and their immediate family.

As long as one admits there is an imperfect duty for all agents to contribute to the furtherance of medical knowledge and techniques, then the agent recognizes it is rational for him or her to act according to such

a duty. The duty to contribute to medical research is an imperfect one: there is no strict course of action prescribed. One may argue that one can contribute through donations, volunteering, choosing a career in the medical profession, perhaps even paying one's taxes. The requirement of broad duties, given its non-specificity, runs two risks: (1), it is too demanding and does not even require consent; and, (2), it is too weak and is easily fulfilled by tax contributions.

(1) Evans puts forward the argument that patients who benefit from medical expertise have an obligation to allow their treatment to form part of systematic research and that such participation does not require consent. (Evans, 2004) But, he has in mind small obligations and harms such as attending clinics and having blood tests. The non-voluntarist nature of his obligation is mildly problematic in such cases, but most policy makers would balk at the demand for patients to undergo serious harms, to take untested drugs and to undergo invasive procedures. (Perna, 2006) Politically, it would be unreasonable to expect agents with comprehensive commitments concerning the value of their bodies, the use of certain chemicals, the spiritual cleanliness of certain animal derivatives, to be expected without consent to participate in research that may contradict such beliefs. Evans does not agree with this and he uses the example of the Maori who perceive "large body sizes" as admirable being urged to comply with patient duties to not be obese. (Evans, 2007) One wonders whether the example of a Muslim being urged to comply with tests which uses material derived from pigs would be as simple and why there is a difference, if there is one. Consent, in a plural, liberal democracy, remains the required legitimization of the patients' contribution to medical research

(2) Certain patients already donate their bodies to both research and teaching and many more make them available for donation in the case of transplantation, but these are supererogatory actions. Normal agents fulfil their duty through the payment of tax. Putting aside the problem of private health care, the argument is a non-starter anyway. The general undercurrent of the discussion in these pages, though, concerns the very relationship between those, including patients, who cooperate in the National Health Service specifically and health systems in general. There is a required sea change in both the patients' expectations, medical practitioners' ability to communicate and governmental policy concerning the very nature or ontology of health organizations. The current paper lays the foundation for the patients' realization of their ability and requirement to contribute, the doctors' and nurses' ability to communicate what would be the right thing to do and also the government's needs to think again about the nature of the Health Service. The real problem seems to

⁸ Personally, I feel any religious system which allows one to receive the replacement but not contribute to research has an awful lot of explaining to do. Jehovah's Witnesses, for example, are not required to give blood because they do not wish to receive a transfusion.

reside in the belief that as one pays tax, one has a “right” to healthcare; that is, the metaphysical error of regarding the NHS as its title suggest as a “service.” One pays tax to fund the traffic system of roads and therefore has a “right” to use, but the payment of tax does not exhaust one’s duties: there are still the duties of respecting others, helping others and obeying the regulations. It is unreasonable, for example, to claim that the payment of one’s taxes permits one to use the hard shoulder because one has paid for it. The traffic system is not a “service” but a cooperation which we -- as a community -- see as rational and fund through taxation. The amount one pays in tax is never equivalent to the service you actually receive, if one were to pursue such an argument, one perhaps ought to consider the economics of post-privatization utilities.

Once we have the ball rolling, though, one could reasonably ask why the duty to cooperate does not include other areas of research: people with hereditary lung diseases would have a duty to participate in lung research, children would have a duty to participate in paediatric research and elderly people with cognitive deficits would have a duty to participate in Alzheimer and dementia research. And this is where we make a second step in the argument. For a patient in general, there is a broad, imperfect duty to contribute to medical research and this can be satisfied in a number of ways. We all, as recipients of the benefit of medical knowledge, have such a duty. However, in the specific case of arthroplasty, there seems to be a very specific way in which such a moral contribution can be made. The receipt of the artificial joint is to benefit from a specific piece of knowledge, technology and expertise and the patient is in a very explicable position to improve this defined practice. The doctor then can show the causal connection quite easily in this case thus maintaining trust in the institution. In the other examples, the execution of one’s duty is (presently) ill-defined because one is researching the ailment or property of the patient (which one did not receive through treatment) but the treatment through the technology and knowledge.⁹

9 The adverb “presently” here carries much weight. In the case of lung disease, for example, once a particular and specific piece of technology (pharmaceutical, transplant, artificial part for example) has been used, then the same argument can be applied. What the paragraph is at pains to stress is that being a child (or old) is not grounds for participation in paediatric (or geriatric) research beyond the normal monitoring and measuring which occurs when one visits for a health check or is cared for.

Conclusion

In a nutshell, the reason why recipients of joint replacements have a moral duty to donate their bodies to further medical research is about duties and debts. One receives the benefits of medical knowledge and expertise and therefore has a debt to contribute to its furtherance. It is based on a rational obligation. If everyone who benefits from medical research refuses to contribute to medical research, then there will be no medical research and the wants of the patient would be frustrated, or if one agent benefits but refuses to contribute, his or her wants are satisfied at the cost of using others as mere tools and making himself or herself an exception to a rule from which he or she benefits. The first part supplies a motivation to contribute, the second a moral justification to contribute to medical knowledge. The duty then, on receipt of medical research, is to contribute to medical research, in some specific cases this will involve an agreed, strict duty.

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Author Meets Critics:

Michael Boylan's *Natural Human Rights: A Theory*

Introduction

The following essays represent two author meets critics sections on Michael Boylan's book *Natural Human Rights: A Theory* (New York and Cambridge: Cambridge University Press, 2014). The first Author meets Critics session was at the 2014 American Philosophical Meeting in Philadelphia. Robert Paul Churchill and Tina Botts were the critics. The second Author meets Critics session was at the 2015 Association of Practical and Professional Ethics meeting in Costa Mesa, California. Alan Tomhave, Julie Kirsch, and Gabriel Palmer-Fernandez were the critics.

This book has garnered international attention including two seminars at Oxford (2014 and 2016) and an international conference in Kaunas, Lithuania in October, 2016.

A Libertarian Reading of Boylan's *Natural Human Rights: A Theory*

Alan Tomhave

Youngstown State University

Introduction

In *Natural Human Rights: A Theory*, Michael Boylan offers an agency justification for natural human rights that is independent of agents actually claiming rights. Boylan argues as well that a universal conception of natural human rights is consistent with both the western philosophical tradition and the philosophical tradition of China (where China serves as a stand in for a very different approach to moral theorizing). While Boylan's narrative is compelling, there is a flaw in his view that presents problems of both theoretical and practical import.

In what follows I shall first offer a reconstruction of Boylan's argument. I will then argue that his view can be seen through a Libertarian lens. Boylan's list of human rights, at its core, includes a list of positive rights, that is, rights which require others to take actions to satisfy those rights. Libertarianism is well known for denying the existence of non-voluntary positive duties. Such duties—non-voluntary positive duties—would be entailed by Boylan's view (corresponding to the positive rights in Boylan's theory). Thus, if his view allows for a libertarian reading, then it fails to achieve his intended outcome. Further, this is a way of viewing his theory that impacts the practical resolution of conflicts, at least with regard to the method of resolution that Boylan suggests following his theory. Let us turn to Boylan's approach.

Boylan's Human Rights

Boylan's argument is based on three prongs. The prongs, in order of presentation by Boylan, are: an obligation to be a "sincere and authentic" agent, a series of worldviews locating the agent in the broader community, and a theory of embedded goods necessary for agency. In my reconstruction of Boylan's argument I am going to move in reverse order. In doing so, I hope to more clearly show the connection between the three prongs.

The Table of Embeddedness

One of the difficulties with any view of human rights is the simple question of what rights are included. The next simple question is how to deal with conflicts between rights. Boylan presents a Table of Embeddedness as a hierarchical ordering of goods that are most central to the needs of agency and proceeds to goods that are less central. His justification for the goods included seems appropriate, "Everything on my table is driven by what it means to be able to execute voluntary action." (Boylan, 2014, p184) Goods that are more embedded are more central to the needs of agency than those that are less embedded. Given the hierarchical nature, the more central goods take priority over less central goods. Thus, Boylan addresses the two basic questions just mentioned. The rights included are those necessary for executing voluntary action; and, conflicts are resolved by determining which right is more central to the goal of being able to execute voluntary action. I will here only offer his "Level One" Basic Goods. These are the "Most Deeply Embedded" goods and contain the following: "Food and Clean Water, Clothing, Shelter, Protection from Unwanted Bodily Harm (including basic health care and adequate sanitation)." (Boylan, 2014, p 186) These goods are the "most deeply embedded" because they are "That which is absolutely necessary for Human Action." (Boylan, 2014, p 186)¹

The offered account of human rights is an account based on human agency. The argument for what goods are to be included as rights, as we have just seen, is that these are necessary for human agency. I have no objection to the claim that the goods listed on the Table of Embeddedness are necessary for human agency. As an empirical claim, this is certainly correct. However, it is also true that these goods maybe necessary for human agency without my having an obligation to provide them for others. For Boylan to be able to conclude that a moral obligation exists to provide these "level-one" goods, further argumentation is needed. This argument comes

¹ For the complete list, see Boylan's Table of Embeddedness, Table 6.3, 186.

in the form of a schema created by several worldviews, along with an argument for the moral status of basic goods. Let us therefore turn to this next step.

The Worldview Imperatives

Boylan presents a series of worldview imperatives which serve to orient the individual within the community. He begins with the Personal Worldview Imperative and then expands to the broader community. Let us begin with his Personal Worldview Imperative. The Personal Worldview Imperative is as follows:

All people must develop a single comprehensive and internally coherent worldview that is good and that we strive to act out in our daily lives. (Boylan, 2014, p 166)

Boylan holds that this imperative has four parts. It must be complete, coherent, connected to a theory of the good, and practical. By complete, Boylan means that it is capable of handling all cases, based on the worldview's recommendations. By coherent, Boylan means not only free of formal contradiction, but also of inductive contradictions (what Boylan calls "sure-loss contracts"). The example that Boylan offers of inductive incoherence is a person desiring to be a good husband and family man, while also engaging in an extramarital affair. (Boylan, 2014, p168/9) Though this is not a formal contradiction, there is a conflict where each of these actions rules out the possibility of the other (that is, one cannot be a good family man and engage in extramarital affairs). The fourth requirement is practicality, by which Boylan means simply that the demands of the worldview must be attainable, in an aspirational, non-utopian, sense.

The third part of the personal worldview imperative requires more discussion. The third part is that the personal worldview imperative requires a connection to a theory of the good, with the most prominent requirement being a view of ethics. Let us consider Boylan's own words here. He writes: "The Personal Worldview Imperative enjoins that we consider and adopt an ethical theory. It does not give us direction, as such, about which theory to choose except that the chosen theory must not violate any of the other three conditions (completeness, coherence, and practicability). What is demanded is that we connect to a theory of ethics and use it to guide our actions." (Boylan, 2014, p169) The Personal Worldview Imperative requires that we reflectively select a view of ethics that does not violate the other three characteristics of the personal worldview imperative. Below I shall argue that this opens Boylan to a Libertarian read of his view of human rights. Libertarianism is a rights based theory that does not allow non-voluntary positive duties. This leads to conclusions that Boylan's theory seeks to avoid.

Beyond the Personal Worldview Imperative, we are given additional worldview imperatives, including numerous community worldview imperatives. The most central of these community worldview imperatives is the Shared-Community Worldview Imperative:

Each agent must contribute to a common body of knowledge that supports the creation of a shared community worldview (that is itself complete, coherent, and good) through which social institutions and their resulting policies might flourish within the constraints of the essential core commonly held values (ethics, aesthetics, and religion). (Boylan, 2014, p172)

Boylan highlights five aspects of this worldview that, when present in a community, operate in a way that protects human rights. The first is agent contribution, by which Boylan means that individual agents contribute to the community, not simply leaving community running to others. Second, is a common body of knowledge regarding what one "culturally accepts to be good, true, and beautiful about the world," (Boylan, 2014, p172) while accepting the non-moral character of much of the diversity that may exist in a community. Third, the Shared-Community Worldview must share the characteristics of completeness, coherence, and connection to a theory of the good as described in the personal worldview imperative. Fourth, that we create social institutions as dictated by the worldview imperative. Finally, that we accept diversity in the community regarding ethics, aesthetics, and religion. It should be clear that this worldview imperative—in particular the first and fourth aspects—involves many duties that require positive action by agents. Thus, a libertarian reading of Boylan's view will prevent this imperative from being realized, at least as a moral requirement. I will return to this issue below.

Beyond the two worldview imperatives already described, Boylan holds that three other worldview imperatives exist: an Extended-Community Worldview Imperative, an Eco-Community Worldview Imperative, and an Extended Eco-Community Worldview Imperative. Each of these additional worldview imperatives requires that agents become educated about other aspects of the wider community in which they exist and essentially extend the personal worldview and the shared-community worldview to other areas where interactions with people may occur. The worldview imperatives taken together serve to remind people that they exist within a context and that the context brings with it certain requirements. Boylan sums them up as follows:

All of these worldview stances – the contiguous and extended human community and the extended

natural community – focus upon people viewing themselves with a context. The underlying understanding is that we must accommodate and fit into our communities. We should not look at those people and living organisms outside our proximate geographical situations as being ripe for our personal domination. Rather, we should work within these contexts to build up institutions that are responsive to community needs and the flourishing of the community. (Boylan, 2014, p181)

Boylan then points out that this is a schema of human rights that arises from both human and natural communities. It is the schema set out by these worldviews that set the stage for predicating human rights to all people. Boylan seeks a justification of human rights that is based on human agency, but one that is restricted by actual empirical facts. The fact is, we exist in communities, and we need to have a way of situating ourselves within those communities, at various levels.

The community worldview imperatives are not the end of placing people in a context. Boylan also offers his argument for The Moral Status of Basic Goods.² Boylan's argument claims that we all desire what is necessary for action, and seek to protect such necessities. The conclusion of this argument states the following, "Everyone has at least a moral right to the basic goods of agency and others in the society have a duty to provide those goods to all." (Boylan, 2014, p182) The only question that remains is what these basic goods turn out to be. As we have already seen, his answer for what those basic goods are is the Table of Embeddedness, discussed above. All people desire these rights and desire that they be protected. Boylan's argument for the moral status of these basic goods concludes that we then have an obligation to provide these rights to others. Let us now turn to the final prong of Boylan's view.

Boylan's Personhood Account

The start of Boylan's view of human rights, and our third prong, is based on a concern of personhood. Boylan joins with James Griffin in being interested in persons being "rounded individual[s]." (Boylan, 2014, p163) Boylan describes his personhood account as beginning:

... with various criteria that the sincere and authentic agent ought to employ in a self-reflective effort toward personal renewal and development. By *sincerity* I mean someone who puts forth an individual commitment toward using his highest capacities to examine the questions

raised concerning his understanding of facts and a commitment to the values in his life via the personal worldview imperative. By authenticity I mean a person who engages in her sincere quest via a reliable process that she has consciously and reflectively chosen via the rational and emotional good will. (Boylan, 2014, p163)

It is unclear how exactly we are to take this issue of "rounded individuals." It certainly seems like there are some who have no interest in sincere and authentic self-reflection. Boylan points out that there are natural phases of one's life where this self-reflection will occur. I tend to be in agreement with him on the empirical question of whether or not such reflection happens at certain times of our lives. However, there is a need for self-reflection in the way that Boylan describes that I am not sure occurs in early stages of one's life. Boylan offers the following as examples of natural stages where reflection occurs: moving away to college, divorce, etc.. However, these times do not seem to me always to lead to "sincere and authentic" self-reflection.³ Boylan seems to intend this as a personal duty that we owe to ourselves. We have an obligation to engage in self-reflection in order to live fully actualized lives. This duty to engage in sincere and authentic reflection is what leads to an agent beginning to engage with the community context in which she exists. This engagement takes place through the various worldview imperatives discussed above.

At this point, we have all the pieces of Boylan's argument. Let us sum up how they work together. The Table of Embeddedness provides a lexical ordering of priority for a list of human rights, based on which are most necessary for human agency. The personal and community worldviews provide a community context for actions and interactions with the communities in which we are located. The argument for the Moral Status of Basic Goods tells us that, on pain of contradiction, we must predicate whatever rights we have to all other people. Finally, we have an obligation to be "sincere and authentic" whole persons. This means we will engage in sincere and authentic self-reflection, which ensures that the worldview schema will be actualized. Moreover, there are natural places in our lives where this self-reflection will take place. All three prongs are necessary and together are, according to Boylan, jointly sufficient to ground a theory of natural human rights based on human agency.

While I find Boylan's view compelling, I will now argue that his view is consistent with a person's adoption

2 I will not discuss this entire argument here. It is, however, worth looking at in more detail. See his Argument 6.3, Boylan, 2014, p182.

3 Indeed, I am sure that many of us could point to examples where a recently divorced person does not engage in this reflection, simply blaming the other party for the problems leading to the divorce.

of Libertarianism as a moral view. Doing so would cause Boylan's argument to be significantly less robust than he takes it to be.

A Libertarian Spin

At one point Boylan points out that Alan Gewirth's view of human rights is subject to a libertarian read. Gewirth ignores the "community dynamic" (Boylan, 2014, p161), focusing on an individual subjective approach. This means that the basic goods that should form the core human rights are determined by the individual agents. This individual nature would prevent these basic goods from serving as human rights. Boylan tries to avoid this by grounding his view on universal concerns for human action. As we saw above, on Boylan's view the worldview imperatives serve to ground us in the communities of which we are a part, and the basic goods are those which are necessary for any human agency. Thus, Boylan avoids the problem he says makes Gewirth so attractive to Libertarians. However, his view is also open in a way that could make it adoptable by a libertarian.

The Libertarian objection that I would like to raise begins with the Personal Worldview Imperative, with strong implications regarding the human rights for which Boylan argues. It then extends to the Shared Community Worldview Imperative. I would like again to draw attention to one of the requirements for satisfying the personal worldview imperative. Recall that there is a requirement to consider one's own ethical position. Specifically, the personal worldview imperative requires that we "consider and adopt an ethical theory. It does not give us direction, as such, to which theory to choose except that the chosen theory must not violate any of the other three conditions (completeness, coherence, and practicability)." (Boylan, 2014, p169) The problem with going this route is that it builds in the very subjectivity that Boylan points out in Gewirth. It builds in the individual at the core of the schema that justifies human rights in a way that prevents some of the Most Deeply Embedded Goods from being moral requirements in the way Boylan desires.

Consider the Libertarian moral view. A libertarian will typically hold that there are no non-voluntary positive duties to assist others. All (non-voluntary) duties are understood as negative, which can be satisfied by refraining from action. This will mean that Boylan's requirement that human rights include a positive right to food is not a view that will be shared by someone who approaches the question with a libertarian starting point in their personal worldview. There are numerous libertarians who respond specifically on the issue of feeding others. Consider Jan Narveson, who writes, "Is

it *unjust* to let others starve to death? ... if someone is starving, we may pity him or we may be indifferent, but the question so far as our *obligations* are concerned is this: how did he *get* that way? If it was not the result of my previous activities, then I have no obligation to him and may help him out or not, as I choose."⁴ (Narveson, 1999, p146-148) There are others as well. Peter Vallentyne recognizes this potentially counter-intuitive implication for libertarianism, writing, "A second objection to full self-ownership concerns *the obligation to help the needy*... It [full self-ownership] does, however, hold that in general agents have no enforceable non-contractual obligation to provide personal services to others – even when the others are desperately needy and the cost of helping is small (e.g., lifting an unconscious person out of the water)." (Vallentyne, 2000, p4) Further, libertarianism is consistent with rights being natural. Consider Michael Otsuka who, when commenting on the Nazis and the Khmer Rouge, writes, "Whether or not they violated any laws, the rights and duties they violated were natural ones ..." (Otsuka, 2003, p4) We could find numerous other sources for the idea that there are no non-voluntary positive duties in Libertarianism. It should be noted that these libertarian theorists do not think that this means that we may not help, should we decide to, simply that there is not moral obligation to do so.⁵

Notice the example offered by Vallentyne, that there is no obligation to even pull an unconscious person from the water. Surely, such an obligation would fit in with Boylan's most embedded goods (possibly as healthcare).

Let us be maximally clear here. The problem is that the justification for the moral obligation to provide the level-one most basic goods is grounded in the ethical view adopted in the personal worldview. If the ethical view accepts non-voluntary positive duties, of the sort found on the Table of Embeddedness, then there is no problem. However, if the adopted view does not allow for non-voluntary positive duties, a view like Libertarianism, then the level-one basic goods Boylan takes to be a result of his view are not human rights in the sense that Boylan wants them to be. We would have no duty to provide food, let alone healthcare.⁶ This

4 Emphasis his. This actually comes in a chapter specifically about the libertarian approach to feeding the hungry.

5 I should also point out that I am using the terms moral duties and duties of justice interchangeably here. Vallentyne in particular holds libertarianism to be a complete moral theory, which extends to theories of justice. It should be clear that some may hold the libertarian view as both a moral view and a view of justice.

6 I should specify as well that this conclusion would hold for either variety of libertarianism, left or right. Of the authors mentioned above, Jan Narveson is a right libertarian, while Peter Vallentyne is a left libertarian.

does not mean they are not rights. It simply means that they are negative rights and so the agent adopting this view will engage in no contradiction by not providing these goods for others. The only way to block this dilemma would be to argue that Libertarianism is either incomplete, incoherent, or not practical. This does not seem a promising option.

It seems that Boylan is not unaware of this read. After his argument for the moral status of basic goods, Boylan offers the following query, “*what are these so-called basic goods of agency?*” (Boylan, 2014, p184) While admitting that there are numerous ways one could respond to this question—with his own answer being the Table of Embeddedness—he offers the possibility of views based on a master good, where one such master good is liberty. Such a view is consistent with a libertarian read of his theory. In fact, this is exactly the position that would be taken by a libertarian. It is at this point he introduces the Table of Embeddedness with the argument offered above. However, as noted above, it seems that the ethical view adopted in the Personal Worldview Imperative is what really drives the train here. Boylan is faced with a dilemma. Either we are free to adopt whatever ethical view we find most compelling (assuming it is consistent, comprehensive, and practical), or we are not. If we are so free, as Boylan claims in the discussion of the Personal Worldview Imperative, then we are free to adopt the Libertarian view and reject the positive duties found in the Table of Embeddedness. If we are not so free, then Boylan has built in an ethical assumption that leads to his conclusion and so seems to be begging the question.

Let us now consider again the Shared Community Worldview Imperative discussed above. In particular, I want to focus on the first and fourth aspects of that imperative. The first requires agent contribution to the running of the community. The fourth requires that we create social institutions that would be dictated by the Personal Worldview Imperative. The Libertarian would, of course, object to both of these requirements. Both of these requirements would be an imposition of a non-voluntary positive duty. On the Libertarian view, the only way to ground such a duty to contribute in these ways to the community would be through voluntary consent.

There is a well-known argument by Robert Nozick to help illustrate this position in Libertarianism. In *Anarchy, State, and Utopia*, Nozick offers the following argument against the Principle of Fairness:

Suppose some of the people in your neighborhood (there are 364 other adults) have found a public address system and decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them, On his assigned

day (one can easily switch days) a person is to run the public address system, play records over it, give news bulletins, tell amusing stories he has heard, and so on. After 138 days on which each person has done his part, your day arrives. Are you obligated to take your turn? You *have* benefited from it, occasionally opening your window to listen, enjoying some music or chuckling at someone's funny story. The other people *have* put themselves out. But must you answer the call when it is your turn to do so? As it stands, surely not. (Nozick, 1974, p93)

Thus, the Libertarian objects to obligations to contribute to the running of the community or to institutions, even when the agent in question benefits from these activities undertaken by others, unless such obligations are voluntary. It could be objected that the example in this argument does not deal with a moral right, but on the Libertarian view all positive duties require consent to ground the duty. The duty to run the PA system is no different in this regard than the duty to provide food for others.⁷

Again Boylan's theory runs afoul of the possible Libertarian reading. In the first case the individual selection of a moral view prevents the implication of the most basic goods necessary for human agency as positive rights. Here we see that two of the aspects of the Shared Community Worldview Imperative are blocked as requirements, again, unless they are voluntary. Let us now turn to a potential practical worry over Boylan's view.

Practical Implications

In Chapter Seven, part 4, Boylan describes a method for making progress on difficult issues and advancing human rights through discussion based on worldviews. Progress is found through overlap in worldviews. When we engage in discussions we can find areas of dissonance that require revision of worldviews.

While I have no doubt that in a great many cases

⁷ It is worth noting that this specific example from Nozick has been criticized for not actually being about the Principle of Fairness, but about our intuitions regarding property. For more on this issue, see Michael Davis's "Nozick's Argument FOR the Legitimacy of the Welfare State," *Ethics* 97 (April 1987): 576-594. Nevertheless, it serves the point well here. Even if the real example turns out to not target the Principle of Fairness, Nozick takes it do so and is using the example to further show that the only positive duties we have—in this case to operate the PA system for a day—are those to which we voluntarily consent.

this technique would work, and indeed, historically has worked, I think that the primacy of the personal worldview imperative at the core of the worldview schema interferes with the effectiveness of this technique. There will be some personal worldview imperative results that are incommensurable with one another. In such cases, though each person or group will find their own view consistent, comprehensive, and practical, they will find the views of others to be severely flawed. A good example of this can be seen in contemporary political discourse in the United States. The personal worldview imperatives of our political leaders and prominent party organizers are so different that they do not allow a dialectical engagement at all, let alone progress. While this example might fall into Boylan's description of a sliver group on whom we should not base our moral theorizing, it does seem to be the cause of a rather large disturbance in dialogue. However, even if it is true that the current political situation in the United States is due to slivers of society, political leaders are in positions of power that shape the debates that take place. While there are times in history where these diverse views did not prevent progress through dialogue, the fact that there are times when this is a problem is sufficient to show that this approach is not always practical.

Boylan might respond to this worry that his view just requires dissonance in one's personal worldview based on contact with other views. This need not be dialogue (except in the broadest possible sense). In fact, he uses the example of Dr. King as an example of creating dissonance in others by those others viewing protesters being attacked by white police, while non-violently singing Christian hymns. White police are respected, as is anyone peacefully singing Christian Hymns. The dissonance created eventually leads to more acceptance of Dr. King's goals. However, this process depends on overlap in the personal worldviews that not only exists, but is recognized by the different groups. It is not clear that the recognition of overlap exists in many cases of conflict that currently exist in the United States (e.g., the gun control debate, or abortion, or even global warming). This makes the practical application of Boylan's theory much weaker than he takes it to be.

In Conclusion

I have argued that the core of Boylan's view is subject to a libertarian understanding. If correct, then Boylan's goal of grounding certain human rights, those that result in positive duties, is undermined. This undermining extends also to any obligation to contribute to the running of society or to help create social institutions. Moreover, potentially stark differences in ethical views serve to

interfere with the dialogue that is to serve as the method for making progress on human rights and other important issues.

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Boylan's Agency Justification for Natural Human Rights and Group Rights

Tina Fernandes Botts

California State University

Natural Human Rights: A Theory is Michael Boylan's argument in favor of his particular brand of agency justification for natural human rights.¹ At the heart of Boylan's theory is his claim that human rights should be focused on enabling people to carry out purposive action in the world. Part of Boylan's theory is that groups cannot be in possession of human rights. The primary reason this is the case, for Boylan, is that only individuals (and not groups) can carry out purposive action in the world; that is, only individuals, and not groups, have the kind of agency that triggers human rights. The heart of Boylan's rationale for why groups do not have the kind of agency that triggers human rights is that they are not "primary substances," in the Aristotelian sense. For Boylan, only individuals, and not groups, are Aristotelian "primary substances," which means that only individuals, and not groups, are capable of purposive action. To demonstrate, through practical application, the usefulness of his theory, including his claim that group-based human rights are not possible, Boylan examines three policy questions: political speech, "war rape," and LGBTQ rights.

My goal in this comment is twofold: first, to demonstrate that there is room in Boylan's agency justification for natural human rights for group rights that are also human rights,² and second, to show that Boylan's theory would be improved by including group-based human rights within the realm of natural human rights. To accomplish this goal, first I will explain the theoretical context Boylan provides for his claim that group-based rights are not human rights; after which I will highlight a key flaw I see in Boylan's theory. Specifically, I will show that Boylan unjustifiably relies on the idea that groups are not "primary substances," in the Aristotelian sense. After that, I will provide the key components of Boylan's treatment of the policy question of "war rape,"

and then discuss how examining this policy question through a lens that accepts group-based rights as natural human rights results in a more responsible treatment of the policy question than Boylan provides. I will then close with some concluding reflections.

Boylan's Theory

"Homo Sapiens" Boylan's agency-based justification for natural human rights is rooted in what it means to be a human being, including what the good life looks like for such an entity. In virtue of being "Homo Sapiens," for Boylan, all people have an equal claim to be able to commit purposive action, and all humans have certain concomitant natural rights. Boylan's theory, then, equates being human with a certain kind of agency that he thinks provides a firm grounding for human rights.

The "Table of Embeddedness" Boylan's theory also contains what he calls "the table of embeddedness."³ Like Martha Nussbaum's table of central capabilities, Boylan's table of embeddedness is intended as a schematic depicting a hierarchy of goods key to human rights.⁴ Whereas Nussbaum's list is organized around human "capability," Boylan's list is organized around the idea that the "most basic goods" are those that are "necessary for human action."⁵ Although the central idea behind both lists is the same (connecting human rights to social goods and, ultimately, to human agency), the lists are derived differently. While Nussbaum's list is generated through consensus, Boylan's list is generated through what Boylan sees as a direct correlation between his list and what it means to be a human being. Most centrally, Boylan thinks of his list as *objectively derived*, and Nussbaum's list as *subjectively derived*.

"Ontological Commitments" The components of Boylan's theory most central to this comment, however, are the "ontological commitments" Boylan says are integral to, and ground, his theory. In summary,

1 Boylan (2014).

2 I will use the phrases "group rights that are also human rights" and "group-based human rights" interchangeably in this comment.

3 Boylan (2014): 186.

4 See Nussbaum (2000): 78-80 and Boylan (2014): 155.

5 Boylan (2014): 185.

Boylan articulates “ontological commitments” to (1) metaphysical naturalism, at least as regards human rights, (2) moral realism, oddly based on human consensus, and (3) an epistemological intuitionism, that allows him to connect the two. Together, he calls these “realistic moral naturalism.”

“Primary Substances” Part of Boylan’s theory is that only individuals, and not groups, possess human rights. For Boylan, this additional ontological commitment is rooted in Aristotle’s conception of “primary substance.” For Boylan, individuals (and not groups of individuals) are the “primary substances in the world.”⁶ “Collections,” on the other hand, according to Boylan, are just “assortments of primary substances” and are not primary substances themselves.⁷ A community, then, for Boylan, is “nothing but the members who make up the community....”⁸ and can never be in possession of human rights. A community is not a primary substance, according to Boylan, because it is dependent upon individuals for its existence. “It has no existence on its own,” Boylan writes (Boylan 2014, 204).

This reference to Aristotelian primary substances is meant to convey a kind of ontological primacy for individuals. Boylan writes, “[O]nly individual people fundamentally are defined as desiring to execute purposive action in order to fulfill their vision of what is good. Communities do not act in a proper sense.”⁹ A bit later, Boylan writes, “Because of these ontological differences, one cannot talk accurately about denying human rights to African slaves, for example.”¹⁰

Critique of Boylan’s Theory

Aristotle’s “Primary Substance” As mentioned above, Boylan’s view that groups cannot be in possession of (natural) human rights is rooted in his view that they are not “primary substances” in the Aristotelian sense. Boylan’s take on what an Aristotelian “primary substance” is, however, not without challenge in the relevant scholarship.

Aristotle gets into the specifics of what he calls *primary* substances in the central books of the *Metaphysics*; and these books contain some of the most dense and the most difficult paragraphs in Aristotle’s known work. “It is not merely that the detail of [Aristotle’s] arguments are often uncertain,” writes one scholar. “[T]he general drift of his thought, the general thesis or theses towards which he was tending, the

overall metaphysical position which he was inclined to accept – these things themselves are subject to scholarly dispute.”¹¹

Aristotle’s full account of what a *primary* substance is, is conceptually preceded by his account of what a substance more generally is. Some scholars think there are at least three questions contained in the question of what Aristotle means by a substance.¹² First, what does it mean to *call something* a substance? Second, what must things “look like” in order to be “ontologically primary” in the requisite way? Third, what sorts of items turn out to possess these qualifications?¹³ Regarding the second question (“what must things ‘look like’”), Barnes says Aristotle is pulled in opposite directions. On the one hand, a substance must be an “individual” item, but on the other hand a substance must be “definable.”¹⁴ Regarding Aristotle’s requirement that a substance is “individual,” Aristotle says a substance is “one in number,” or “one item which can be identified and distinguished from other items.”¹⁵ By way of explanation, he says substances are “separable,” which Barnes says means, or should mean, that their existence can be explained without invoking the existence of anything else.¹⁶ At first blush, this seems a simple enough idea, however, it is not altogether clear how we are to identify anything at all that can be explained without invoking the existence of anything else.¹⁷

At a certain point, Aristotle begins to use “primary substance” (instead of just “substance”) language: “For primary substances are those substances which are peculiar to an individual and which do not hold of anything else; but universals are common, since we call universal that which is of such a nature as to hold of more items than one.”¹⁸ For Aristotle, then, universals exist, it’s just that their existence is derivative.¹⁹ Forms also exist for Aristotle, although their existence, too, is derivative. For Aristotle, a substance is a composite entity whose component parts are matter (stuff) and form (shape).²⁰

Getting back to the third question, what sorts of things count as substances, for Aristotle? The

6 Boylan (2014): 203.

7 Boylan (2014): 203.

8 Boylan (2014): 204.

9 Boylan (2014): 205.

10 Boylan (2014): 205.

11 Barnes (1995): 90.

12 Barnes (1995): 90.

13 Barnes writes, “Does it emerge that Anaxagorean stuffs, or Platonic Forms, or Democritean atoms are substances and the primary items in the universe? Or do all these early answers turn out to be mistaken, leaving room for a brave new Aristotelian world?” Barnes (1995): 90.

14 Barnes (1995): 90-91.

15 Barnes (1995): 91.

16 Barnes (1995): 92.

17 Barnes (1995): 92.

18 Barnes (1995): 96.

19 Barnes (1995): 97.

20 Barnes (1995): 97.

answer is “ordinary middle-sized physical objects,” most paradigmatically “natural” objects like “horses, hydrangeas, goats, and geraniums.”²¹ On the question of why these sorts of objects are more “basic” than, say, *parts of* middle-sized physical objects or even atoms, Aristotle has something very odd to say indeed: He says that physical parts of a body are *less basic* than the body itself: “[A] finger is defined by reference to the whole body – a finger is such-and-such a part of a man. Hence the parts which are of the nature of matter and into which, as its matter, a thing is divided, are posterior to it.”²² “Parts are essentially parts *of wholes*; fingers are essentially fingers *of bodies*. In order to explain what it is to be a finger we must make reference to bodies; and for there to be fingers is precisely for bodies to be such-and-such a condition. Fingers are not fundamental.”²³ Why “wholes” (which are composed of “parts”) are substances, but not collectives (which are also composed of parts in the form of members) is unclear.

At least from this preliminary sketch of what Aristotle meant by “substance,” then, and how he differentiated it from “primary substance” and on what basis, it seems that the jury is out on just exactly what Aristotle meant by “primary substance.” It is not at all clear that Boylan’s position that groups of persons cannot be Aristotelian “primary substances,” is necessarily the case.

Agency However, even if Boylan’s take on what Aristotle meant by “primary substance” is accurate; that is, even if, for Aristotle, groups of persons cannot be “primary substances” such that they are incapable of purposeful action *on that ground*, there may be other ways to ground group agency such that groups can be said to be capable of the kind of purposive action contemplated by Boylan’s theory. Anna Moltchanova has argued, for example, that groups can have moral agency, that is, they can be moral agents in their own right with rights and responsibilities.²⁴ Focusing on rights to collective goods claimed by groups against non-members, Moltchanova makes a distinction between what she calls “primary” and “derivative” collective (group) moral rights. “Derivative” group rights are held individually, only capable of being exercised by a member of a group, and the interest of no single member is sufficient to justify imposing duties on others. “Primary” group rights (or “collective rights”), by contrast, are those that belong to collectives as such. According to Moltchanova, for the purpose of classifying rights, we ought to stipulate that *collective agency is present in any group that shares a common set of beliefs*

about membership and an understanding of the goals of the agent in relation to non-members, as well as the relevant collective interests. Anthony Appiah and Adina Preda both take a similar approach to collective rights.²⁵

Ontological Interdependence A way of thinking about group agency that steps a bit further afield of Boylan’s account, but is nonetheless a powerful argument in favor of thinking about group agency as on par with individual agency, is an account that is grounded in the ontological interdependence of the individual and the groups to which the individual belongs. For Victor Segesvary, for example, the individual human being and the groups to which the human being belongs are “*ontologically interdependent*” (emphasis in original).²⁶ The human being and the social groups to which the human being belongs are “two parts of the same universe, correlated to each other, in constant functional interaction”²⁷ Segesvary’s conception of human nature (or to put it in Boylan’s language, “what it means to be a Homo Sapien”) is very different from Boylan’s. For Segesvary, what is especially unique about human beings is their capacity to create “coherent and consistent worldviews,”²⁸ to distance themselves from their environment, to engage in “transcendence.”²⁹ Segesvary writes, “community and individual are entirely interlocked.”³⁰ In other words, so-called individuals are part of what is known as “the lifeworld” or directly experienced social reality. For Segesvary, drawing on Rousseau, when human beings entered into the social contract, “[i]t was forgotten that the substitution of *societas* to the medieval *universitas* completely left out of the view that the human community was conceptually and biologically prior to the society founded by so-called autonomous individuals.”³¹ This ontological interdependence between the individual and society “clearly means that the life and destiny of the individual and community are inextricably intertwined.”³² Segesvary elaborates, “...[T]he community is not only the sum of the individuals who constitute it; it is *more* because its institutions, mental and symbolic orders and traditional values represent the accumulated experiences and cultural treasures of past generations.”³³ In other words, communities can be understood to have an ontology that is more than the individuals that comprise them.

25 Appiah (2011), Preda (2012).

26 Segesvary (1994): 93.

27 Segesvary (2000): 55.

28 Segesvary (2000): 72.

29 Segesvary (2000): 72.

30 Segesvary (2000): 72.

31 Segesvary (2000): 94; Rousseau (1978).

32 Segesvary (1994): 93.

33 Emphasis added, Segesvary (1994): 93.

21 Barnes (1995): 98.

22 Barnes (1995): 99.

23 Barnes (1995): 99.

24 Moltchanova (2009).

Group Rights and Group Identity Many scholars ground group rights in group identity. For them, certain experiences of individual group members may be so related that a kind of reification or solidarity is generated by these experiences that forms the basis of legally cognizable group rights.³⁴ This subjectivity-based argument in favor of group rights grants group rights to members when the people in the group understand themselves as bound together as members of a group.³⁵ The key is a strong sense of intra-group solidarity. While the fact of understanding themselves as a group is subjective, on this view, the shared understanding is nonetheless based on objective factors such as a common history or social condition, or shared interests.³⁶ While the link between group identity and group rights may be easily made, however, the questions relevant to this comment are whether group rights thus defined rise to the level of *human rights*; if so, whether group rights thus defined rise to the level of *natural* human rights; and if so, whether group rights thus defined are compatible with Michael Boylan's agency justification for natural human rights. The work of James Nickel may be able to provide the necessary links. Nickel has argued that group identity and agency are closely related.³⁷

Group Rights and Oppression Perhaps the most convincing case for group rights as natural human rights grounds group-based human rights in oppression.³⁸ Peter Jones argues, for example, that a right is a group right if it is a right held by a group rather than by its members severally.³⁹ He calls this the "collective conception" of group rights. Following Joseph Raz, Jones accepts an "interest theory" of (group) rights, according to which an entity (individual or group) has a right if it has an *interest* that provides sufficient reason for holding another or others to be under a *duty*. On this Razian view of rights, rights and duties are not merely correlative, but rights actually *ground* duties.⁴⁰ Although interest-based and not directly linked to agency, a theory of group rights grounded in oppression may well work with Boylan's theory. For Boylan, rights claims are particularly salient, for example, where there is a clear specification of what he calls the "against whom."⁴¹ Where the entity having a duty in virtue of the right is identifiable, in other words, a (human) right can be said to exist. Clearly, minority group rights based on a history of legalized oppression (e.g., slavery, Jim Crow laws, laws implementing

the subjection of women, laws denying the LGBTQ community the fundamental right to marriage, etc.) have an identifiable "against whom" in the form of, say, federal or state governments.

Boylan's Analysis of "War Rape"

For Boylan, the policy issue of "war rape" is a human rights issue rooted in what he calls the "level-one basic good" of "protection from unwarranted bodily harm."⁴² He describes the history of "war rape" and its contributing factors. Among the contributing factors, for Boylan, are "the perception males have of women's position in the world," that is, "[w]omen are objectified and seen as set on earth for men to dominate."⁴³ This perception, for Boylan, is shared by "a very high number of males whose personal worldview accepts rape as a valid option for them – so long as they can get away with it."⁴⁴

The picture Boylan paints of "war rape" is one in which males at large have a proclivity for raping women at large, absent societal constraints against the practice.⁴⁵ "This is true in war and peace," he says.⁴⁶ He cites statistics in support of this claim. For example, "One study of college males in the United States claims that 35 percent of all college-aged men would rape their classmates if there were no consequences (such as jail time)."⁴⁷ In war time, particularly when "rebel insurgents" are involved, the consequences are not there; hence, "war rape" runs rampant.

Boylan's account of "war rape" also includes a description of the various forms that sexual violence can take in times of war, what "planned strategic rape" is in wartime, and the common fate of rape victims (they are frequently scorned, lose social status and are often exiled). Boylan also adds a list of common traits of "the male war rapist" (e.g., a mind-set of hyper-sexuality that expresses itself in exaggerated, hyper-masculine, swaggering behavior, upbringing in a family where violence is prevalent, youth), and the environmental conditions that contribute to war rape (e.g., "us versus them" mentality).⁴⁸

Without providing an obvious connection between the depiction of "war rape" as mass sexual violence against women in times of war and his conclusion that "war

34 See, e.g., May (1987).

35 Galenkamp (1998); Segesvary (1995).

36 May (1987).

37 Nickel (1997).

38 See, e.g., Cudd (2006).

39 Jones (1999).

40 Jones (2000): 356, Raz (1986).

41 Boylan (2014): 29.

42 Boylan (2014): 225.

43 Boylan (2014): 226.

44 Boylan (2014): 226.

45 This is known as the "biological" understanding or account of the phenomenon of rape.

46 Boylan (2014): 226.

47 Boylan (2014): 226.

48 Boylan (2014): 229.

rape” is an individual human rights violation, Boylan then proclaims, “Obviously, rape is wrong. It deprives individuals of a level-one basic good: protection from unwarranted bodily harm.”⁴⁹

Boylan concludes that the way to address the problem is “full gender integration of the military around the world.”⁵⁰ For Boylan, the way to end “war rape” is to “[achieve] parity in fighting forces between males and females.”⁵¹ Boylan explains, “This is because (a) women are biologically more empathetic than males –especially to those of their same sex; and (b) women do not fit the profile of the aggressive young male.”⁵²

In summary, for Boylan, despite the overwhelming evidence that he himself cites that rape in times of war happens overwhelmingly to women qua women (and is perpetrated by men against women), for Boylan *individuals*, and not women, possess a natural human right not to be raped in time of war. Moreover, for Boylan, the way to enforce this right is to create full gender integration of the military around the world. The idea seems to be that if women worked alongside of men during times of war, men would stop raping women en masse during armed conflict.

This solution, for Boylan, addresses the public policy question of “war rape” without committing what, for Boylan, would be the error of rooting the solution to the problem in theoretically unsupportable group-based human rights.

“War Rape” and Group-Based Human Rights

The main purpose of the following critique of Boylan’s analysis of the policy issue of “war rape” is to demonstrate that the problem of “war rape” is more responsibly solved by pointing out that the natural human right at issue is group-based, and in the form of the right *of women* not to be sexually violated by men. I also hope to show in the process that the (natural) human right at issue in policy issues where the rights of members of marginalized, oppressed, and subjugated groups are involved, is group-based.

The root of the problem with Boylan’s analysis is that it is insufficiently attendant to the fact that “war rape” is, by Boylan’s own admission, primarily experienced by women. More specifically, “war rape” most often happens to women *qua women*. “War rape” is an act of power and control, in which the female victim is humiliated, degraded, and left with feelings of shame,

guilt, and anger. In other words, the human rights violation is not “bodily harm” but degradation, and the kind of degradation in which women are the primary victims.

The shared understanding among women, an intersubjective experience, of being the primary targets of “war rape” *in virtue of their status as women* is arguably the glue that holds them together as the kind of group that has rights *as a collective* and not just as a group of individuals. This commonly shared understanding, in other words, arguably makes women normatively bound together *vis-à-vis* the topic of rape. But, more important for Boylan’s agency-based justification for human rights, women *as a group* may very well have the kind of irreducible moral status (they may constitute a “primary substance”) that Boylan’s agency-based theory requires. The right not to victims of “war rape,” in other words, could be the kind of right that belongs to the collective as such, following Moltchanova, and not to the individual members of the collective severally.⁵³ This irreducible moral status could be based on group experiences that may be so related that purposive action *as a group* becomes possible in virtue of the kind of solidarity that is generated by these experiences.⁵⁴ The idea here is that the group possesses both responsibilities and moral rights that cannot be reduced to the rights of individual members of the group. It is *womankind* that is the target of “war rape,” in other words, not individual women; and so it is *womankind* that has a natural human right not to be raped in times of war.

Thus, if Boylan’s accounts of what rape is, and what the human rights violation at stake in “war rape” is, are both off base, then his solution to the problem of “war rape” is likely also off base. If rape is not a crime against individuals, but (primarily) a crime against womankind, and if “war rape” is not the denial of the “level-one basic good” of “protection from unwarranted bodily harm” but the denial of women’s human right not to be sexually violated, then remedies should be focused on specifically protecting women (rather than “individuals” at large) from being sexually violated.

It seems unclear whether “full gender integration of the military around the world” would address the problem of “war rape.” On the one hand, feminist scholars have made the argument that since rape is an abuse of power, eradicating power imbalances between men and women would help eliminate rape.⁵⁵ On the other hand, if, as Boylan would have us believe, rape is *biologically* and not *socially* motivated, changing the social environment may have little or no effect on

49 Boylan (2014): 231.

50 Boylan (2014): 231.

51 Boylan (2014): 232.

52 Boylan (2014): 232.

53 Moltchanova (2009).

54 See May (1987).

55 See, e.g., Whaley (2001).

the problem. If rape is biologically motivated, another body of research suggests that the way to stop rape is to provide severe penalties for the crime, for example.⁵⁶

However, empirical research on “war rape” suggest that it is not biologically but socially motivated.⁵⁷ On this view, rape in times of war is not motivated by irresistible biological urges (combined with opportunity) but by misogyny.⁵⁸ “Under this theory, men in patriarchal societies are conditioned to distrust, despise, and dominate women.” Warrior rapists “vent their contempt for women...while enforcing and perpetuating patriarchal gender arrangements from which all men benefit.”⁵⁹ If this account of “war rape” is the more accurate view, then it seems that successful remedies should be directed more toward the *proactive elimination of misogyny* rather than the mere inclusion of women in the military ranks.

Concluding Reflections

So far, I have demonstrated that there is theoretical room for group-based natural human rights in Boylan’s agency justification for natural human rights, and that the policy question of “war rape” may be more responsibly addressed through thinking about the problem of “war rape” in terms of group-based rights than individual natural human rights.

What is left to complete the case for group-based natural human rights in the Boylanian sense, I think, is to address the question *what the utility is* in identifying certain kinds of group-based rights as specifically *human* rights. This is the focus of these concluding reflections.

The metaphysical (and ultimately moral) stakes of answering this question are high. However we come out on the question of whether group-rights can also be human rights, the real question is whether the “human” in “human rights” includes merely those aspects of “Homo Sapiens” that are shared across gender, race, sexual orientation, ability status, socioeconomic status, and other marginalized, oppressed, and subjugated identity markers (as Boylan would argue), or whether “human” also includes those particularized aspects of human existence that provide complexity, variation, nuance and richness to human flourishing.

One thing to think about in this regard may be whether what we’re really getting at when we label some aspect of human existence “human” (or “universal” or the like) is “worth our time and consideration.” As the term “human” works in the world, and in Boylan’s

theory in particular, all “human” may mean is “what is valuable to me and people like me.” This higher status for that which is human is posited against what is important to “special interest groups,” which is code for “not important or worthy of our time and consideration.”

Taking a look at Boylan’s Table of Imbeddedness, what is interesting is that Boylan thinks his list is “universal” and necessary for purposive action. Contained in the list, however, are value judgments masquerading as “universal” or “natural” truths about what “purposive” means and even why “purposiveness” is central to what it means to be a human being in the first place. Similarly, Boylan writes as if his ontological commitments are not just voluntary commitments but necessary, “natural” truths to which everyone (if thinking rightly) should commit. In particular, Boylan writes as if rooting things in a concept originated by Aristotle (*any* concept originated by Aristotle, but, in this case, the concept of “primary substance”) sufficiently grounds the concept so as to add a level of objectivity and universality that makes it beyond challenge.

Nonetheless, Boylan’s intentions seem good. Particularly since two of the three policy issues offered up for analysis pertain to the concerns of members of marginalized, oppressed, and subjugated groups (women, the LGBT community). Based on these choices, it is arguably clear that Boylan shares the concerns of those who support group-based human rights, or at least a concern for the *members* of the groups. But, to add sophistication and accountability to his concern, he should arguably consider the issues in terms more tailored to the experiences of oppression of the members of the marginalized groups themselves.

In closing, I think Boylan’s instincts are right that *whatever (natural) human rights are*, they should be sufficiently tied to *what it means to be a human being* so as to make them widely applicable to the largest number of persons possible. I just think that Boylan’s account of the basis for the agency required for his theory, as well as his conception of what it means to be a human being are both underdeveloped and problematically mired in Enlightenment thinking.

However, if Boylan were to include within his conception of natural human rights group-based rights of groups with (1) a solid group identity, (2) a decision-making process that gives voice to the will of the collective, and (3) a clear identification of the “against whom” Boylan thinks is required for the assertion of a right, his agency-based theory of natural human rights otherwise works well.

56 See, e.g., Shields and Shields (1983).

57 See Barstow (2000), Sajor (1998), and Stiglmeier (1994).

58 Gottschall (2004).

59 Gottschall (2004): 130.

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Human Rights: Natural or Cultural?

Gabriel Palmer-Fernández

Youngstown State University

Shall we conceive of human rights as natural or cultural? I shall answer that they are products of a global culture that gradually emerged in response to a history of violence and horrors. I agree with Michael Boylan that there are certain goods essential for human action to which we have a moral right; but I disagree on how we should describe them. I will contend that human rights are historical products, much like cultural artefacts, and while there may be some overlapping of moral and human rights, they are different kinds of things. The commentary divides into four sections. In the first, I provide a brief sketch of what I will call the Boylan Project; in the second, slightly longer section I consider a historical and then a conceptual point; in the third section I suggest expanding the Boylan Project to include some empirical dimensions; and in the final section I raise the question whether how we describe human rights makes any difference.

The Boylan Project, 2004-2014

Boylan's *Natural Human Rights* is the most recent installment on a project that he began to release with the publication of his 2004 book *A Just Society*.¹ In the latter, he introduces three ideas that comprise the core of the project – first, that all people by nature desire to act (the agency view); second, that action has preconditions or goods that are essential to it (the basic goods view); and third, that everyone has a moral right to the most basic goods of agency (the justice view). In that first installment, *A Just Society*, the justice view is tethered to a world of borders and states and gives priority in the distribution of basic goods to compatriots over worse off distant strangers. A few years later in 2009, in a volume titled *Morality and Justice: Reading Boylan's A Just Society*,² several of us queried why Boylan would restrict the distribution of basic goods to national boundaries:

can he really reconcile the universality of basic goods with a conception of justice fixed to arbitrary national borders? Boylan had anticipated the query, and the project was already taking a broader, cosmopolitan perspective.

The second installment of the Boylan Project came in 2011, *Morality and Global Justice*, and at its core is a cosmopolitan perspective. In Chapter 6, he writes:

The argument for the moral status of basic goods ... seems not to be oriented toward membership in any given state. There is no mention of particular national citizenship in any of its premises. This would suggest that the rights-claim is against all people on the earth subject to their ability to contribute.³

By 2011 the Boylan Project consisted of four fundamental ideas – the three already mentioned (i.e., the agency view, basic goods, and justice⁴) and now a fourth one, a cosmopolitan perspective. Also in this same 2011 book, Boylan introduced an idea that is now fully elaborated in the present volume, *Natural Human Rights*. In the former, the agency view “amounts to something close to human nature” and the most basic goods essential for agency (e.g., food, shelter...) are biological conditions that “apply to any organism that is a member of *Homo sapiens*.”⁵ Finally, in the most recent book the agency view becomes a fully elaborated natural realism, adding a fifth idea to the Boylan Project. He writes:

I take natural law in the ethical/political/legal realm to invoke the existence of a justification for ethics, politics, and the law that is logically separate from and more authoritative than human constructions. This is the essence of the realist, naturalist position that this author endorses.⁶

1 Michael Boylan, *A Just Society* (Lanham, MD: Rowman & Littlefield, 2004).

2 John-Stewart Gordon, ed., *Morality and Justice: Reading Boylan's A Just Society* (Lanham: Rowman & Littlefield, 2009).

3 Michael Boylan, *Morality and Global Justice: Justifications and Applications* (Boulder, CO: Westview Press, 2011), 73

4 Here justice is pluralist but with very strong egalitarian tones. See Boylan, *Morality*, 78.

5 Boylan, *Morality*, 52, 53.

6 Boylan, *Natural Human Rights: A Theory* (Cambridge:

The Tradition of Natural Law & the Doctrine of Human Rights

In the present volume, Boylan connects the agency view he introduced in 2004 with the ancient theory of natural law, specifically in Chapter 2, “A Short History of Human Rights in the West.” The following remarks focus on that chapter.

The expression “natural law” is a translation of the Roman and then Scholastic *ius naturale*, and the relevance of that Latin expression to contemporary rights theory rests in the ambiguity or complications of the word *ius*, which can be, and has been, rendered as law or right, giving us the English-language “natural law” and “natural right.” Boylan will agree that both translations hold that there is an order to human life independent of our wanting and doing that is objectively true and discoverable. In this regard the moral universe is of the same kind as the physical universe. Ulpian long ago expressed this view when he said, “Natural law is what nature has taught all animals.”⁷ Boylan’s rendition of natural law agrees with this long tradition.

But he wants to go beyond the tradition in at least two important ways: (i) by introducing a subjective order (a faculty or powers of persons, a claim-right) that is (ii) independent of human invention. The first would make the theory a modern one, and the second would avoid the well-rehearsed criticism of Western imperialism.

The Roman and Scholastic meaning of *ius*, however, has little of the doctrine of subjective natural rights or claim-rights as, say, the right to subsistence and any of the other basic goods essential for agency that Boylan has been advocating at least since his 2004 book, *A Just Society*. It is thus difficult to ascertain whether the new subjective doctrine is compatible with the old objective one, or when the transition from one to the other occurred, rendering the objective order of natural law compatible with the doctrine of subjective natural rights. There is a lively scholarly discussion on the matter of a transition from the old to the new doctrine in which the sixteenth century Spanish Dominican Francisco Victoria figures prominently. Some have it that Victoria was content with the objective sense of *ius*,⁸ while others argue that in his commentary on Aquinas’ theology of restitution Victoria developed a theory of subjective rights, which some considered an act of “treason.”⁹

Cambridge University Press, 2014), 36.

7 Quoted in Aquinas, *Summa Theologicae*, I,II, 57.1

8 See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).

9 See Brian Tierney, *The Idea of Natural Right: Studies on Natural Rights, Natural Law, and Church Law* (Grand

Whether there is a subjective order of natural rights in the traditional doctrine of natural law is not a settled matter. But this is a historical, not yet a conceptual point.

I turn to the second point, namely, that by natural law Boylan means an order that is “logically separate from and more authoritative than human construction.”¹⁰ This is a crucial point for him: it provides a rational foundation for rights and avoids the charges of relativism and imperialism. But does it square with the tradition? Consider the following passage from Aquinas:

Something can be said to be according to the *ius naturale* in two ways. One, if nature inclines us to it: such as not to harm another human being. The other, if nature does not prescribe the opposite: so that we can say a man is naked under the *ius naturale*, since he received no clothes from nature but invented them himself ... for the advantage of human life.¹¹

By this account, the *ius naturale* is not “separate from human inventions,” static, ahistorical; it includes both biological and cultural facts that are objectively true, discoverable, and protean, and as such avoid the potential charges of relativism and imperialism. On this account, human rights are cultural phenomena that are “essential components of our worldview”¹² and constitute an “international human rights regime.”¹³

The origin of this “worldview” or “regime” lies in a history of violence, cruelty, and horrors: forced labor, chattel slavery, genocide, refugee crises, mass population transfers, and continues today in child

Rapids, MI: Wm. Eerdmans Publishing, 2001), Chapter 11, “Aristotle and the American Indians.”

10 Boylan, *Natural Human Rights*, 36.

11 Thomas Aquinas, *Summa Theologicae*, I-II, 94.5.

12 Eduardo Rabossi, “La Teoría de los Derechos Humanos Naturalizada,” *Revista del Centro de Estudios Constitucionales*, No. 5 (January-March) 1990: 159. Richard Rorty follows Rabossi in his well-known 1993 Oxford-Amnesty International lecture, “Human Rights, Rationality, and Sentimentality.” There Rorty argues that the transcendental grounding of human rights is “outmoded and irrelevant,” belonging to a distant intellectual world that sought to identify some special and ahistorical feature of human beings on the basis of which a series of important questions, particularly the question “Why should I care about distant strangers?” would be intelligently answered. In lieu of Kantian rationality, Rabossi-Rorty propose a conception of political culture in which human rights are respected as the bare minimum of a planetary morality that over the past two centuries has gradually been adopted by the community of nations.

13 Seyla Benhabib, *Another Cosmopolitanism* (Oxford: Oxford University press, 2006), 27.

slavery, sex trafficking, torture, and more refugee crises. Most histories of human rights look to the French Revolutionary “Declaration of the Rights of Man and Citizen.” But we get a glimpse of the underlying motive, of an earlier frame of a new normative order, in a remarkable event that took place in the island of Hispaniola, in what is now the Dominican Republic, during the first period of globalization. On the Sunday before Christmas 1511, a Spanish Dominican priest named Antonio de Montesinos delivered a sermon before a congregation of *encomenderos*, Spanish “holders” of indigenous people whose labor they were legally entitled to exploit in exchange for care of their spiritual welfare, and who, as Anthony Padgen notes, “resented the [Spanish] crown’s refusal to allow them simply to enslave [them] and appropriate their lands.” Montesinos, Padgen writes,

launched “with pugnacious and terrible words” into an attack on the conscience of the Spaniards, which he likened to a “sterile desert.” They were words ... that made the Spaniards’ flesh creep as if they already stood before divine judgment. Montesinos thundered at them, demanding to know with what right they treated “these innocent people” – the Indians – “with such cruelty and tyranny,” by what authority had they “made such detestable wars against peoples who were living pacifically and gently on their own lands.” Montesinos’ ringing questions culminated in three, which were to become the rallying cry of the struggle against colonial rulers of one kind or another in the Spanish-speaking world and far beyond. “Are these not men?” he asked. “Do they not have rational souls? Are you not obligated to love them as yourselves?”¹⁴

It was Bartolomé de Las Casas, himself an *encomendero*, who recorded this remarkable event. Later he would publish several works in defense of the indigenous peoples of the Americas, the most famous of which is *A Short Account of the Destruction of the Indies*, a monument to human rights, we would call it today, chronicling the atrocities committed by Spanish settlers against native peoples – exploitation, mutilation, torture, rape, and murder. The effect upon native populations was almost total devastation. In Mexico alone the population would drop from 25.5 million in 1518 when Cortez arrived to about 700,000 in 1623, a 97% drop in little more than a century.¹⁵ In Cuba and the

Antilles, the Taino population dropped from about eight million in 1491 to about three million just six years later in 1496. Then needing laborers and lacking indigenous people, the Spanish brought the slave. Building blocks of the New World: genocide and slavery. Bartolomé de Las Casas writes:

[In the island of Hispaniola, the Spaniards] forced their way into native settlements, slaughtering everyone they found there, including small children, old men, pregnant women, and even women who had just given birth. They hacked them to pieces, slicing their bellies open with their swords as though they were so many sheep herded into a pen.... They grabbed suckling infants by the feet, and ripping them from their mother’s breast, dashed them headlong against the rocks.... They spared no one.¹⁶

Reports of atrocities such as this stirred up an intellectual firestorm in Europe. Las Casas’ *A Short Account* became, Padgen notes, “a best seller in a number of European languages,”¹⁷ and its influence may be observed in liberal and radical thinkers well into the present, for example, in Montesquieu and de Tocqueville, Simón Bolívar, and Marxist-informed liberation theology in Latin America today.

Within that world we cannot say that the human rights of Amerindians were violated by the cruelty of Spanish imperial colonialism - murderous and evil that it was - for the concept of human rights was a still inchoate doctrine, it was not yet a fact of the world (“*un hecho-del-mundo*”¹⁸). What we see instead is a humanitarian impulse arising out of a basic sympathy for the suffering of others, even distant strangers. It is the same impulse in response to similar atrocities that we find in the 1787 Committee for the Abolition of the Slave Trade, and in more recent documents like the 1948 Genocide Convention, all signaling the spread of a new morality grounded in a doctrine of human rights that takes precedence over material interest or state sovereignty, a movement or progression that today expands over a globalized planet.

An important part of the argument in *Natural Human Rights* is the claim that philosophical attitudes both in the East and West show an important likeness in their efforts to articulate an objective standard for human conduct, and look upon the person as a being that is “naturally ordered.”¹⁹ The argument for natural human rights

14 Anthony Padgen, *Peoples and Empires* (NY: Modern Library, 2003), 66.

15 Charles C. Mann, *1491: New Revelations of the Americas Before Columbus*, 2nd Edition (NY: Vintage, 2011), 147.

16 Bartolomé de Las Casas, *A Short Account of the Destruction of the Indies*, trans. Nigel Griffin (NY: Penguin, 2004), 15.

17 Padgen, *Peoples*, 68.

18 Rabossi, “La Teoria,” 161.

19 Boylan, *Natural Human Rights*, 80.

should then go a long way to establishing a universal, cosmopolitan morality consisting at least of basic goods essential for human action. But it is not clear to me that to establish a cosmopolitan morality and to avoid the charge of imperialism we need to adopt a “foundationalist posture.”²⁰ We can have morality without metaphysics. As historical beings we can and do invent contrivances, artefacts for “the advantage of human life” - clothes that protect us from inclement weather and human rights to secure and promote those goods Boylan correctly identifies as essential for human action.

Our culture of human rights is not to be found in the medieval Schoolmen or even in the tradition of natural law, but in a tradition of documents like the Treaty of Berlin (1878), giving special rights and granting protection to some minority groups under the Ottoman Empire, and especially in the 1948 Universal Declaration of Human Rights. The creation of this culture has all to do with gruesome events in recent history – persecutions, mass killings, genocide – and the attempt by an evolving planetary community to protect individuals against the violence of states. The pressing need at this time is to further that culture of human right. What are its essential institutions? What will promote it? What will improve us morally and socially?

Expanding the Boylan Project

I began these remarks by identifying five core ideas as the Boylan Project. In this section, I want to suggest a possible expansion of the Project.

In his 2004 book, *A Just Society*, Boylan presents the basic goods essential for action in the form of a Table of Embeddedness, a “nested hierarchy of goods” ranging from the most deeply embedded that are “absolutely necessary for human action (Food, Clothing, Shelter, Protection from unwarranted bodily harm)” to those that are “remotely related to effective action” (luxury goods that though they may be pleasant to have one can live without, say, a vacation in Cuba).²¹ The Table of Embeddedness and particularly the basic goods have a strong likeness to other approaches that aim to identify what people may claim as a human right – e.g., those of Alan Gewirth, James Griffin, Amartya Sen, and Martha Nussbaum. Sen and Nussbaum are particularly interesting as they tie the concept of right or opportunities to realities on the ground and are thereby able to compare and rank their realization. This important empirical dimension in Sen’s and Nussbaum’s work is absent from Boylan’s account.

So I wish to suggest what I will call the Boylan

Empirical Project that should focus on the following question: What is the actual level of satisfaction in the world today of the full range of the basic goods in the Table of Embeddedness? If we can fill in the details, two important things might follow: first, we might come to know whether we are moving towards or away from justice; and second, whether the Table of Embeddedness provides better knowledge than its competitors to determine the moral status of the world.

A few brief remarks on the latter point. For some time, the standard measurement in development economics has been GDP per capita, and often development practitioners assumed that as GDP per capita increases in a society the wellbeing of all its members is positively affected. Not true. We have become increasingly aware that a single measure cannot reflect the distribution of wealth and income or capture the complexity of human wellbeing. Today, the capabilities approach associated with Sen and Nussbaum carries great promise and is widely employed. Boylan has noted some striking similarities between the capabilities approach and his Table of Embeddedness. So comparing what they are able to measure, and when they overlap what the measurements tell us about the world, can help us determine whether one is preferable to the other because it provides us information useful for moving towards a better world. Boylan’s approach has a feature that might make an important difference: it distinguishes between the most basic necessities and what contributes to but is not essential for effective action (e.g., luxuries).

Whether Boylan’s approach turns out to be preferable, an important question remains: What is to be done about those whose rights are deprived? There’s a powerful body of empirical literature claiming that attempts to aid the poor of the world have failed terribly and are doomed to do so – think of *The White Man’s Burden*, *The Road to Hell*, *Lords of Poverty*, among other works. So it is with caution that we should read the following:

We all must do as much as possible to satisfy these valid claims first before all others ... The claim is against all *Homo sapiens* living on earth. This is what it means to ascribe rights that are viewed as natural human rights ... Because of the argument for the moral status of basic goods, a strong duty is incurred by everyone on earth to all others to provide level-one basic goods ... Those souls around the world who are dying every minute of the day have a right to minimum nutrition, protection, lodging, sanitation, and health care. By setting the argument at the species level, the ensuing duty is against everyone else on earth.²²

20 Rabossi, “La Teoria,” 160.

21 Boylan, *A Just Society*, 53-54.

22 Boylan, *Natural Human Rights*, 193-194.

In her recent book, *Distant Strangers: Ethics, Psychology, and Global Poverty*,²³ Judith Lichtenberg provides a sobering response to the question, “What is to be done about global poverty?” Incorporating insights of social psychology she gives us reason to think that what is possible is less than or different from what is desirable, and suggests scaling back our expectations. Even if all of us have a duty to the poor of the earth, as Boylan maintains, we need to know whether giving will aid or harm the poor, and if aid does turn out to benefit the poor of the world, then we need to know how much one is morally required to give. Boylan’s new book, however, is silent on these two points.

A Concluding Observation

What difference, if any, would it make to the human rights activists on the ground? Which view – the natural or cultural – would likely be more persuasive? Briefly, two reasons the human rights activist is likely to be persuaded more by the cultural than the natural view on human rights. First, it is far from clear that developments in moral theory and knowledge have much, if any, effect on moral progress. We should then look to other places for an account of how our moral sentiments might expand beyond the interests of tribe and nation, and make life much better for all. Rorty’s suggestion of “sentimental education” is quite compatible with Boylan’s work on fictive narrative and the effectiveness of literature as a form of moral education.²⁴ And second, in a world of uncertainties and disagreements the most we can reasonably say is that, at least for now, the global community has expressed its agreement on human rights in a Universal Declaration that seeks to protect individuals and their communities from the violence and horrors of the past, and to declare a hope that we shall never again commit such evils.

23 Judith Lichtenberg, *Distant Strangers: Ethics, Psychology, and Global Poverty* (Cambridge: Cambridge University Press, 2014).

24 Boylan et al., “Using Fictive Narrative to Teach Ethics/Philosophy,” *Teaching Ethics*, 12.1 (Fall 2011): 61-94.

Freedom of Speech in an Age of Computer Hacktivism

Julie E. Kirsch

D'Youville College

Introduction

In his recent book, *Natural Human Rights: A Theory*, Michael Boylan defends a theory of natural human rights built upon an agency-based approach to ethics that he has developed over much of his career. Unlike other agency accounts, Boylan's own presents us with a hierarchy of goods that is captured by his 'table of embeddedness'. According to Boylan, we must always prioritize more-embedded to less-embedded goods. The good that I would like to focus upon in this essay is the level-two basic good of freedom of speech. I am particularly interested in how Boylan would deal with cases in which there is a tension between level-one basic goods, such as protection from unwanted bodily harm, and the level-two basic good of freedom of speech. Given Boylan's interpretation of the table of embeddedness, it might seem that the latter should always give way to the former. But familiarity with Boylan's political and ethical outlook as a whole leads me to think that this initial reading of his theory is probably not the best one. In what follows, I will put forward a strategy for thinking about difficult freedom of speech cases that is in keeping with Boylan's ethical framework. I will show that we can accept Boylan's theory of natural human rights even if we deny that threats to national security always justify violations of freedom of speech.

In exploring this issue, I will focus upon whistleblowing and the recent revelations by Edward Snowden. I want to focus upon this case because it has captured the attention of the international community and has prompted most people to take a stance on the debate. It also exemplifies the apparent conflict between freedom of speech and basic goods that is of interest to me in this essay. I will first (§2) consider whether or not whistleblowing is a legally recognized form of freedom of speech, and then (§3), working within Boylan's conceptual framework, consider whether or not it *ought* to be.

Is Whistle-Blowing a Legally Recognized Form Of Free Speech?

Edward Snowden leaked classified documents to the *Guardian* and *Washington Post* that exposed the National Security Agency's (or the NSA's) top-secret surveillance program directed at innocent Americans. Snowden revealed that the government had been collecting metadata associated with innocent Americans and using it to construct 'patterns of life,' or detailed pictures of targets and those associated with them (Dance and Macaskill). The NSA tapped directly into nine Internet firms (including Facebook, Google, and Microsoft) and had direct access to Verizon's phone records ("Edward Snowden: Leaks"). After the publication of these documents, the United States government charged Snowden with "espionage, theft, and conversion of government property" ("US Files Criminal Charges").

As I write this essay, Snowden resides in Russia where he has been granted temporary political asylum (Myers and Kramer). Snowden's revelations have sparked an intense debate on whistleblowing, freedom of speech, and national security. Supporters of Snowden take him to be a national hero who has revealed an immoral and illegal espionage campaign against innocent Americans. According to John Cassidy (of the *New Yorker*), Snowden has "performed a great public service that more than outweighs any breach of trust he may have committed" (Cassidy). But critics regard Snowden as a traitor who has betrayed the United States and put its national interests and citizens at risk. Jeffrey Toobin (also of the *New Yorker*) has described Snowden as a "grandiose narcissist who deserves to be in prison" (Toobin).

One of the questions that this debate raises is whether or not whistle-blowing is a form of freedom of speech. Now this general question may be interpreted in more than one way: (A) We can ask whether or not whistleblowing by an NSA employee is a legally protected form of speech in the United States. But we can also ask (B) whether whistleblowing by an NSA employee *ought* to be a legally protected form of speech in the United States. We must not conflate these questions when formulating any kind of judgment about the Snowden case and others like it. In this section, I take up the first

question (A).

There is some disagreement about how we should answer question (A). But the consensus seems to be that there is no legal protection for whistleblowers in the United States who, like Snowden, are intelligence workers. The Whistleblower Protection Act provides government employees with protection from management retaliation. However, the Supreme Court has ruled that this protection does not apply to intelligence workers who are privy to sensitive and confidential information about the United States. There is a different act, the Intelligence Community Whistleblower Protection Act (of 1998), that does apply to intelligence workers, but its effectiveness has been broadly challenged. An intelligence worker who is concerned about a policy or injustice would file a report that stays within the intelligence community. The act would not provide the worker with legal protection and would ask that the worker ignore the policy or injustice if the intelligence community decided against the worker (German). No further action outside the intelligence community can be taken.

Some supporters of Snowden, including Wikileaks lawyer, Michael Ratner, have claimed that Snowden should be granted political asylum under the Refugee Convention. Ratner claims that the United States itself grants political asylum to whistleblowers from other countries. As he sees it, the United States is making an exception for itself and thereby violating international standards:

[U]nder the U.S. statute, under the Refugee Convention, under what has been recognized by countries all over the world, whistleblowing is a form of free speech, a form of political opinion that is protected by the Refugee Convention. It's very clear it is. The United States has itself recognized the right to be protected as whistleblower. When they get people from other countries who come into the United States after exposing corruption or criminality in China or some countries in Africa, the U.S. immigration and U.S. courts have recognized that ("Is Whistleblowing Free Speech?").

Ratner supports Snowden's efforts and believes that—as a whistleblower—he should be granted political asylum under international law.

As we can see, there are different ways of interpreting the legal protection that ought to be offered to Snowden in light of his revelations. It will be interesting to see how this case unfolds in the years to come in light of recent national security threats to the United States. But, regardless of how the case is decided, it is important that we also think about how it *ought* to be decided. In the

event that Snowden is not protected under US law, we can ask (B) whether or not he ought to be. Is the current law unjust? In Section §3, we will use Boylan's table of embeddedness in trying to answer this question.

Ought Whistle-Blowing be a Legally Recognized Form of Free Speech?

The table of embeddedness is a theoretical construct that Boylan has developed to help us understand and prioritize natural human rights. It provides us with a kind of ranking system of goods that are necessary for human action. In Boylan's view, some goods are more basic or 'embedded' than others:

Everything on my table is driven by what it means to be able to execute voluntary action. I see this as a gradated process following from the most minimal levels of purposive action to more fully realized circumstances. I call these gradations "embeddedness." Some good is more embedded than another if it is more proximate to the most minimal conditions for human agency – that is, every human's right according to the argument for the moral status of basic goods. (185)

The basic insight here is that not all goods are equally important for action. Thus, when making decisions of public policy, we must prioritize more-embedded goods over less-embedded goods.

The most embedded goods, level-one basic goods (those which are "absolutely necessary for human action") must be prioritized above all others. After all, as Boylan puts it, "If we are dead we cannot act. If we are dead we cannot move toward our vision of the good" (185). It follows from this that the level-one basic good of 'protection from unwanted bodily harm,' or bodily integrity, trumps the level-two basic good of 'basic human liberties,' where this includes freedom of speech.

The NSA has defended its mass surveillance program by appealing to a system of values that resembles what we find in Boylan's table of embeddedness. The NSA has in effect argued that considerations of national security (protection from unwanted bodily harm) trump considerations of individual liberty. According to the NSA, in today's world of global terrorism, we must be willing to accept some limitations upon our individual liberties; it is implausible to think that the NSA can do its job and keep us safe while keeping our civil liberties completely intact. And, for similar reasons, it argues that we must prohibit intelligence workers from leaking information about our national security strategies to the public. The worry is that our enemies will be in an

enhanced position to overcome our national security strategies if they have detailed information about them. But is this right? Should we be prepared to abandon our civil liberties whenever a threat to national security arises? This argument seems too simple and permissive; in its current form, it provides the government with a *carte blanche* for civil liberties violations.

One of the challenges that we face when thinking about this problem concerns our inability to foresee the future and evaluate threats to national security. It would be all too easy for a government to justify the broad surveillance of its citizens by claiming that such a program is necessary for reasons of national security. And this government could, for the same reasons, forbid intelligence workers from divulging this information to the public. After all, a government could always claim that an intelligence worker would put innocent lives at risk by exposing a campaign of mass surveillance. All countries have their enemies and face serious threats to national security. If bodily integrity trumps basic liberties, then it would seem that governments are always justified in implementing mass surveillance campaigns and punishing intelligence workers who leak them to the public. But this can't be right.

In responding to this worry, some critics might challenge Boylan's prioritizing of basic goods over basic liberties. To this end, it might be argued that Boylan should revise the table of embeddedness and prioritize basic liberties. Marcus Düwell has expressed this concern and argues that some human rights are in fact level-one basic goods (74). If such a revision were in order, then we would have grounds for risking unwanted bodily harm for the sake of freedom of speech. A second strategy, and the one defended here, does not ask us to revise the table of embeddedness and prioritization of protection from unwanted bodily harm; rather, it assumes the table of embeddedness but asks us to consider and evaluate a variety of considerations before deciding whether or not any particular civil liberties breach is in order. In applying this strategy to the case of Snowden, it will be helpful to take a closer look at the kind of threat that prompted the NSA to implement its program of mass surveillance.

The events that transpired on September 11, 2001 irrevocably changed the way that most of us view the world. Among other things, they made it clear that groups of individuals, not just states, can act together in highly organized and unanticipated ways to cause vast death and destruction. It is nearly certain that there will be other acts of terrorism perpetrated in the United States and around the world in years to come. The NSA has appealed to this new wave of national security threats when attempting to justify its system of mass surveillance. President Obama has also argued that some restrictions upon our civil liberties are in order in lieu of

the new national security threats that our country faces. During his speech on the NSA's surveillance program, he offers an argument of this kind:

The horror of September 11th brought all these issues to the fore. Across the political spectrum, Americans recognized that we had to adapt to a world in which a bomb could be built in a basement, and our electric grid could be shut down by operators an ocean away. We were shaken by the signs we had missed leading up to the attacks -- how the hijackers had made phone calls to known extremists and traveled to suspicious places. So we demanded that our intelligence community improve its capabilities, and that law enforcement change practices to focus more on preventing attacks before they happen than prosecuting terrorists after an attack. ("Speech on NSA").

According to President Obama, the intelligence community can only keep us safe by enhancing its capabilities, where this involves monitoring trackable forms of communication at home and abroad. Without these capabilities, the intelligence community cannot preempt future attacks and function effectively in today's world. The NSA has similarly argued that preventing future terrorist attacks is like trying to find the needle in a haystack. In order to find the needle, you need to have access to the whole haystack. Without this information, the NSA cannot do its job and keep Americans safe (Dance and Macaskill).

Not everyone finds this line of justification convincing. Critics of the mass surveillance program have urged that -- even if such measures are in order -- they should be discussed openly and not ushered in without our consent. Indeed, supporters of Snowden applaud his revelations, in part, because of the light that he hoped to shed upon the government's covert operations. But the NSA would argue that we cannot reasonably expect complete transparency regarding its programs. Complete transparency would render its programs ineffective by enabling potential targets to evade them. As Candice Delmas observes, "The government asks the public to trust it when it comes to delineating [the scope of state secrecy], on the grounds that an open debate about what should and should not be kept hidden from the public would itself endanger national security (90). When it comes to national security, a certain level of secrecy is necessary for the effectiveness of the policies themselves.

There is, then, a case to be made in support of the NSA's surveillance program and the secrecy surrounding it. But, before we can fully assess it, we need to consider the potential harms to which the program might give rise. Critics of the program fear that its consequences

could be catastrophic. Peter Ludlow, who has written in support of Snowden, fears that such a program may pave the way to the kind of dystopian future envisioned by George Orwell (“Systematic Evil”). He argues that the fear ignited by 9/11 has prompted us to trade hard won freedoms for the illusion of national security (“Fears”). We should be weary of so willingly abandoning these freedoms because doing so could in the long-run lead to disastrous consequences, including the abandonment of core democratic principles:

Whatever their motivation, by using fear to induce the rollback of individual rights, politicians, judges and lawmakers are working against the hard-won democratic principles and ideals that we and other democracies have defended for almost 250 years. They are manipulating our fears to undo centuries of democratic reform. And it doesn’t matter if the empowered leader is called a king or a prime minister or a president; the end result is that fear has been used to place us back under the yoke of Hobbes’s sovereign and Machiavelli’s prince.

As Ludlow warns, when we abandon our hard-won democratic principles, we empower the government and thereby make ourselves vulnerable to potential abuse. We should not allow the government, or its agencies, to manipulate us into doing this on the basis of fear. A related worry concerns the legitimacy and effectiveness of a government that eagerly violates its citizens’ basic liberties. Arguably, governments that infringe upon the basic liberties of their citizens often fail them in other respects as well. As Boylan has pointed out (in conversation), China is notorious for both (A) violating the civil liberties of its citizens, and (B) failing to provide them with level one basic goods. If this is right, then we have may increase our vulnerability to failures of level one basic goods when we allow the government to violate our basic liberties.

In evaluating the NSA’s mass surveillance program, it is important that we consider possible alternatives. After all, we would have a difficult time demonstrating the need for such a system if a less extreme but equally effective alternative were available. To this end, it is sometimes argued that a system of mass surveillance is unnecessary, or at least not worth the great sacrifice to our personal liberties. While there are bound to be some national security threats that slip through the cracks, the government can use (and has used) more limited forms of espionage to gather information about possible enemies and impending attacks. On this view, a system of mass surveillance is simply unnecessary. It is difficult to evaluate this claim without having access to classified information about the government’s track record at preventing attacks before and after the

Patriot Act. As we might expect, the NSA has insisted that the new surveillance strategies are necessary and could have prevented 9/11 (Dance and Macaskill). But detractors have argued that we could have prevented 9/11 even without the enhanced surveillance capabilities that are now available to the NSA. We do not need more surveillance, the argument runs; rather, we need to make better use of the information that we gather and share in response to this surveillance. There is even less agreement about how many *other* terrorist attacks the government has prevented by utilizing the bulk collection of US metadata (Dance and Macaskill).

Let us now return to Boylan’s theory of human rights and the table of embeddedness.

As we have seen, Boylan believes that level-one basic goods, such as protection from unwanted bodily harm, trump civil liberties, such as freedom of speech. But it does not follow from this that any purported threat to our physical well being or national security justifies a violation of our civil liberties. As I have tried to show, we cannot evaluate the legitimacy of a civil liberties breach without considering a host of important considerations, including the likelihood that the threat will be actualized, the long-term consequences of the civil liberties breach, and whether or not there are alternative ways of handling the threat. The basic insight of Boylan’s table of embeddedness is that not all goods are of equal importance to action; some are more basic than others. It is undeniable that, as he has pointed out, we cannot act at all if we are dead. Nevertheless, we must exercise caution when translating this insight into action or policy. It follows from this that we can accept Boylan’s theory of human rights without condemning Edward Snowden for leaking confidential information regarding the NSA’s mass surveillance program.

The more general moral of the story is that the table of embeddedness does not provide us with a simple and straightforward solution to all of the difficult policy decisions that we might face. But this is at it should be. Boylan’s theory of natural human rights leaves us with space to intervene as moral agents and policy makers. While it is true that more-embedded goods trump less-embedded goods, the path to the more-embedded goods is not as obvious as it might *prima facie* seem. In some cases, abandoning the less-embedded good will cause us to fare worse relative to the more-embedded good in the long run.

Conclusion

Protection against unwanted bodily harm is an especially challenging good to think about because we know that governments appeal to it all of the time while trying to usher in new policies, some of which involve

violations of our basic liberties. By accepting this kind of justification at face value, we may be allowing a government to centralize its power and chip away at democratic ideals—and also, in the long run, make the government less effective (because less well supervised). Fortunately, we can support Boylan's hierarchy of goods while maintaining a healthy skepticism about a government's efforts to interfere the basic liberties of its citizens. An initial reading of Boylan's theory of human rights may seem to entail that considerations of national security always justify violations of basic liberties. But, if I am correct, this initial reading is not the best one. We cannot fully assess a policy that curtails basic liberties without considering its immediate and long-term consequences. A policy that seeks to protect us in the immediate future may do much damage in the long run.

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Salvaging a Naturalistic Account of Human Rights?

A Critical Commentary on Michael Boylan's *Natural Human Rights*

Robert Paul Churchill

George Washington University

Michael Boylan's book, *Natural Human Rights*, is a welcome and challenging attempt to vindicate a natural, or realist, justification of human rights.¹ Boylan wants to defend a realist theory of natural human rights against anti-realist orientations, a long-standing objective of Boylan's and featured in a number of his books going back to *Basic Ethics*.² "Natural" in Boylan's title connotes ontologically real features of human life, and although as I shall argue, there is some difficulty in determining exactly how human rights are grounded as "natural," at bottom human beings are agents who act to attain objectives and fulfill ends; moreover rights claims are claims for goods necessary for or proximate "to the possibility of human agency."³ This means that for Boylan, human rights do not rest on some mysterious essence of "personhood" or some unknowable "endowment of a "Creator"; rather, the reality of human rights should be subject to empirical verification by the social and human sciences. Thus, if Boylan's arguments are correct, then perhaps we can leave behind age-old debates about justifying human rights and focus more on making real progress with respect to the related, more serious *motivational* difficulties of respecting human rights, and *distributive justice*, that is, with how goods associated with agency should be parsed out.⁴

The antirealist human rights position Boylan opposes is variously dubbed contractarianism, agreement theories, or the "political conception" of human rights.⁵ John Rawls, Joseph Raz, and Charles Beitz, are among

its prominent defenders, all of whom Boylan critiques.⁶ (Allen Buchanan's *The Heart of Human Rights*, 2013) although also in this tradition was not available at the time.⁷) On the other, naturalistic side with Boylan, are the interest approach of James Griffin, the capabilities approaches of Martha Nussbaum and Amartya Sen, and the human agency approaches of Alan Gewirth and myself.⁸ Naturalist agree that a basic difficulty with the contractarians, or political conception, if pushed too far threatens to undermine all of the central tenants of a human rights, economically put as follows: "they are (a) moral rights that (b) all human beings possess (c) at all times and in all places (d) simply in virtue of being human and (e) the corresponding duty bearers are all able people in appropriate circumstances."⁹ Thus I want to be clear that I side with Boylan in embracing naturalism; moreover, while I do not agree with every aspect of Boylan's criticism of his fellow naturalists, I too believe a moral agency approach to justifying human rights must be taken.

Boylan's *Natural Human Rights* is a book of many different parts. It contains discussions of the way human

1 Michael Boylan, *Natural Human Rights: A Theory* (New York: Cambridge University Press, 2014).

2 Michael Boylan, *Basic Ethics*, 2nd Edition (Upper Saddle River, NJ: Prentice-Hall, 2009).

3 Boylan, *Natural Human Rights*, 194

4 *Ibid.*

5 For discussion of the general differences between the contractarian and naturalistic approaches to human rights see Rowan Cruft, S. Matthew Liao, and Massimo Renzo, "The Philosophical Foundations of Human Rights: An Overview" in Rowan Cruft, S. Matthew Liao, and Massimo Renzo (eds.) *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), 1-41.

6 John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2001); Joseph Raz, "Human Rights without Foundations" in Samantha Besson and John Tasioulas (eds.) *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), 321-38; Joseph Raz, "Human Rights in the Emerging World Order," *Transnational Legal Theory*, 1 (2010): 31-47; Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009).

7 Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013).

8 James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2009); Martha Nussbaum; *Creating Capabilities: the Human Development Approach* (Cambridge, MA: Harvard University Press, 2011); Amartya Sen, "Elements of a Theory of Human Rights," in *Philosophy and Public Affairs*, 32 (2004): 315-56; Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996); Robert Paul Churchill, *Human Rights and Global Diversity* (Upper Saddle River, NJ: Prentice-Hall, 2006).

9 Rowan Cruft, S. Matthew Liao, and Massimo Renzo, *op cit.*, 4.

rights have been conceptualized in the West and in China, Boylan's own critique of a number of prominent rights theories, and a number of applications of human rights norms (war rape, political speech, and LGBT rights), in addition to Boylan's own positive argument for his own theoretical position. Also, in making his case for naturalistic human rights, Boylan relies extensively on two contributions to political theory he made in earlier writings, namely, his "worldviews imperatives" and his account of the "embeddedness" of goods necessary for human life.¹⁰ Underscored by impressive scholarship and contextualized by pieces of philosophical fiction (Boylan's overture, adagio, and scherzo), this is a heady mix, and I shall not attempt to comment on its overall success.

My concerns here will be limited primarily to a section of fifty pages in which Boylan presents his own agency theory as a justification for human rights.¹¹ My concerns are primarily with the adequacy of Boylan's justification of human rights, and in my comments I will distinguish between a lesser worry I will call the *nominalist critique*, I will present first, and then, a more serious concern that I will call the *personhood, or ontological*, concern.

The nominalist critique is not a problem specific to Boylan's theory; in fact, my complaint is that he succumbs to a confusion that is common in naturalistic attempts to justify human rights. The confusion involves mistaking a justification for human rights with a demonstration of their universality. While not unique, this error is a serious obstacle to making any naturalistic account of human rights persuasive to human rights skeptics. By contrast, my *personhood, or ontological*, concern is directed at unique features of Boylan's theory, namely, the way he ties together his agency justification with his innovative worldviews approach and his account of the basic goods for moral agency.

Boylan claims that human rights are "grounded in a scientifically based understanding of human nature as a nested set of goods that can make human action possible"¹² This is a difficult thought insofar we do not ordinarily think of human beings as "nested sets of goods," since "goods" are ordinarily the aims of our actions even when they pertain to the development of our own personal capacities and skills. I leave this point aside for now, however, for even if this odd way of talking about being persons were to be accepted, Boylan does not provide an adequate account of human rights as natural. Thus the major "take away" from this paper is that Boylan's worldview imperatives, and related notions

of the "embeddedness" of goods, helpful as they may be for thinking about ethics and distributive justice, do not offer an adequate basis for a naturalistic justification of human rights.

Turning to the first concern, namely the confusion of the justification of human rights with their universality, I turn to Boylan's argument 6.3, which Boylan calls "The Moral Status of Basic Goods."¹³ Boylan believes this argument secures his conclusion, namely that "Everyone has at least a moral right to the basic goods of agency and others in the society have a duty to provide those goods to all."¹⁴ It is important to understand that this last assertion is the conclusion of a complex argument in which Boylan logically ties basic goods and our status as moral agents to his conclusion that human beings have an equal moral right to these goods.

Boylan's argument 6.3 involves 14 distinct steps, but for present purposes an overview will suffice. Thus the gist of Boylan's argument is that all human beings are purposive moral agents insofar as we seek to fulfill our goals and objectives; thus all human beings seek to protect what enables them to act, namely, the basic goods without possession of which we could not be moral agents. On Boylan's view, a human right is thus a justified claim on others for provision of, or noninterference with, basic goods necessary for agency. Basic goods are "preconditions of action" and "*Homo sapiens* (as a species) will logically possess them as a claim."¹⁵ (183).

Three times in the course of his argument Boylan relies on the principle of universalizability. This principle, familiar to philosophers, requires that "upon pain of contradiction" one concede that what is true for an individual, a group, or a class, must be true for all relevantly similar persons everywhere. Now, the major difficulty with arguments that rely on the principle of universalizability is that they alone do not prove that human rights are universal, that is, that all human beings equally possess human rights. They cannot do so unless we have independent grounds for believing that human rights *exist* in the first place. In itself universalizability simply constrains the way we can logically think and consistently talk. Consequently, we must first have a justification of human rights and this justification must do two things: first, it must show that human rights are the sorts of things that all possible persons can possess, and second, that in fact, certain persons do possess these rights, or at least, claim it is true that they possess human rights and demand correlative protections for them. Then, and only then, is the principle of universalizability helpful in establishing the universality of these human rights.

10 See especially Michael Boylan, *A Just Society* (Lanham, MD: Rowman and Littlefield, 2004).

11 *Natural Human Rights*, 163-213.

12 Op cit., 202.

13 Op cit., 182.

14 Ibid.

15 Op cit., 183.

Ever since Plato's scripting of Socrates's response to Thrasymachus and Glaucon in *The Republic*, ethicists have been on notice that the question 'Why should we be moral?' cannot be adequately answered without first demonstrating that being ethical is in the interlocutor's interests, as a human being.¹⁶ It is very much to Boylan's credit that he recognizes this necessity for human rights theorists as well, and adopts a realistic and naturalistic approach to human rights. Thus I find it discouraging that in his first major and formal argument in his section 6.3, "The View of Michael Boylan," he relegates so much of the heavy lifting in his argument for human rights as basic goods to the logical principle of universalizability. Notoriously, as we all know, the most critical problem with rights theory is not at all about understanding how to use language or logic correctly, rather, as Plato understood for ethics, it is about the *will* and *motivation* of skeptics and potential skeptics.

While this is not the proper place to make the case, it can be noted that an adequate justification of human rights requires completing two argumentative steps: first, showing that the skeptic does rely on and claim protection for at least some of his or her human rights; and showing secondly, that acting on one's human rights requires recognition that other persons, as moral agents, must possess human rights. Only when such a basic justification has been given, does it make sense to argue for what necessarily follows, namely, that human rights are universal.

Boylan is well aware of the need to close the gap between knowing why we have human rights and what human rights require of us, on one hand, and being adequately *motivated* to respond to others' justifiable rights claims, on the other. Much in his book is dedicated to proper moral motivation, including his discussion of the affective good will, and especially his well-known and innovative "worldview theory," his discussion of moral desert, and his account of the way we ought to confront novel normative theories (Table 7.1), for instance. There is much to admire in Boylan's efforts. However, at present I wish to focus on another difficulty with overreliance on the principle of universalizability. In this second aspect of the nominalist criticism, my concern is that, because Boylan relies so extensively on the principle of universalizability, his argument offers human rights theory, at best, a rather weak defense against anti-realist criticisms. Recall that Boylan wants strenuously to resist the anti-realist notion that human rights are the products of conventions or agreements. Yet, because the principle of universalizability depends on the requirements of logic and discourse, Boylan himself seems to come uncomfortably close to a

nominalist position. Granted, that in keeping with his general Aristotelian approach, Boylan must assume some realism relating to logic, perhaps as grounded in necessary cognitive processes. Yet Boylan does endorse Wittgenstein's conception of "a form of life" as "mirroring" his own notion of the "personal worldview" and as providing, in part, "the conditions of meaning and intelligibility to emerge."¹⁷ This is important, for even if fundamental logical principles can be shown to be ontologically real and not merely conventional, these principles cannot emerge and have their expected effect in discourse about human rights except insofar as certain facts about human experience, thought, and linguistic usage precede and elicit them. In other words, even if logic is not itself culturally dependent, the logical inference from what I, or you, or she needs for effective agency, to the universal quantification in conceding the "generic predication," or universal applicability, of the basic goods of agency, is parasitic on our ability to use and understand the discourse and logic of human rights, including such features of the discourse as our appreciation of the ways in which particular agents are similar to and different from others.

The upshot of the nominalist criticism is thus that, even if Boylan takes a realist position on logic, it is not clear that Boylan *entirely* avoids the dilemma he charges the political conception of human rights, or all agreement theories, as committing. Boylan puts this dilemma as follows: "(a) human rights are supposed to provide reasons for action to members of every culture to which human rights apply, and yet (b) human rights as an international doctrine cannot be seen as actually shared among the world's main political/moral cultures; thus, it is not an object of agreement."¹⁸ The difficulty for the political conception is that reasons for action—part (a)—presumably provide justification for international human rights doctrines—part (b), but like a snake devouring its own tail, according to the political conception, the "good reasons" of part (a) just are consequences of international doctrines governments agree to accept.

The most common agreement-theorists' response to this criticism is to assert that international laws and treaties are themselves sufficient to endow human rights norms expressed by these documents with prescriptive moral force.¹⁹ But this just compounds the initial difficulty with a positivistic confusion of law with morality. One obvious advantage of a realist and naturalistic conception of human rights is that an ontological grounding provides human rights norms with

16 Plato, *The Republic*, Books I-IV, trans. by Catalin Partenie (New York: Simon & Brown, 2011).

17 Boylan, *Natural Human Rights*, 139.

18 Op cit., 122.

19 Charles Beitz's "two-level model" is an interesting effort to make this defense in *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 106-21.

the objective, pre-emptory, and obligatory moral ‘force’ and, as ontologically grounded, renders them immune from constantly renegotiated agreements. In addition, ethical realism enables human rights norms to have a special place in our deliberations about what agents ought and ought not to do; in effect, such norms should override not just prudential and utilitarian calculations, but also should serve as the basis for criticizing uses of power, or force (as in Just War Theory), and the morality of law itself, including international treaties.

Because Boylan seeks to ground his realist account of rights on humans as moral agents and on basic goods—important naturalistic elements—his position is hardly as perilous as that of the agreement theorists. The position of the contractarians Boylan criticizes has difficulty avoiding circularity. Boylan’s own position is not as perilous for two reasons. First, whereas the contractarians make a factual claim about human rights arising *sui generis* in universal agreements, Boylan does not; rather, Boylan makes recognition of equal claims on basic goods dependent on a kind of global understanding, and hence, global agreement about the logic and discourse of human rights. Second, whereas the agreement theorists make their claims about human rights, in Argument 6.3 Boylan makes the case for the moral status of basic goods rather than human rights. Basic goods are what some theorists have called the “objects” of human rights, that is, the goods, interests, actions, and freedoms, that respect for and protection of human rights makes available.

However, by overburdening universalizability, Boylan sets for himself a difficulty analogous to that of the agreement theorists. As a consequence of arguments such as 6.3 we can concede that humans (generally) have the cognitive and linguistic capabilities for sharing an understanding that “everyone has at least a moral right to the basic goods of agency ...”²⁰ but this still leaves us holding the bag, so to speak. Even if we agree that as humans we have ends and objectives, and must act to fulfill our objectives, and furthermore that basic goods are necessary for agency, how do human rights come in? That is, given that we want to defend our entitlements to basic goods, what makes human rights the appropriate way of providing this justification? There is a sense, therefore, in which human rights, in contrast to basic goods, remain elusive, if not mysterious.

In turning to my personhood critique, note that usually when philosophers speak of “personhood” they have in mind a certain cluster of features and functions such as sentience, consciousness, reasoning, the capacity for communication, self-awareness, and the ability to understand when one is being harmed. Therefore, one might think that a *naturalistic* justification of human rights would be non-instrumental, that is, it would

demonstrate that we have human rights as a matter of our basic status as human persons. Non-instrumentalist views contrast with instrumentalist approaches, namely, those that seek the value of human rights in how they promote or protect further human values such as needs, interests, capabilities, or agency. There is no logical inconsistency between the two approaches, however, and one interesting feature of Boylan’s position is that, while Boylan embraces the instrumentalist view, he attempts to construct a vision of “personhood” that also provides him with a non-instrumentalist position. Thus Boylan need not be troubled by the conundrum involved in specifying exactly the necessary and sufficient characteristics of human beings (or persons) that will show that all and only human beings (or persons) possess human rights in *virtue* of their nature as human beings (persons). Although, this conundrum has long bedeviled naturalists, Boylan seeks to avoid it by offering a unique and *developmental* account of personhood.

Boylan’s own approach to human nature and personhood is developmental because it is aspirational and Aristotelian. Moreover Boylan’s justification of natural rights is unique because of his reliance on worldview theory, beginning with the personal worldview imperative (henceforth PWI), his argument for the basic goods of agency, and his table of embeddedness. Here I cannot do credit to the inventiveness of Boylan’s theory; however, it is necessary to unpack just a bit of it to reveal why it is Aristotelian and why, although unique, it falls short of providing an adequate grounding for human rights.

There are a number of worldview imperatives, but the most basic is that “All people must develop a single comprehensive and internally consistent worldview that is good and that we strive to act out in our daily lives.”²¹ The worldview is extremely complex; what it requires is “completeness, coherence, connection to a theory of the good, and practicality.” Completeness itself requires a “good will” that is rational in one’s willingness to increase one’s understanding of the world and exercise choice, but a part or aspect of which is the “affective or emotional good will.”²² Also, whatever we adopt as the content for our worldviews, we are enjoined to be sincere, and authentic in forming and revising our worldviews.²³ These are, Boylan tells us “first-order meta-ethical principles” and “presented as fundamental requirements for all *Homo sapiens*.”²⁴ Again, in speaking of the worldview imperatives, Boylan tells us “these exercises are not optional. We are enjoined to enter into this sort of reflection to be sincere and authentic

20 Op cit., 182.

21 Op cit., 166.

22 Op cit., 166-7.

23 Op cit., 163.

24 *Ibid.*

people living on earth.”²⁵ In addition, Boylan assures us “it is in our power to create our ethical selves. The personal worldview imperative thus *grounds my theory of personhood*.”²⁶

Being, or rather *becoming* a human person is thus to be understood, on Boylan’s theory, by an Aristotelian-like process of actualization, or development from mere potentiality to actuality. A true human being is one who has or is fulfilling her human nature, because she is able to act to achieve what she takes to be good.²⁷ No wonder, then, that Boylan begins Argument 6.3: The Moral Status of Basic Goods with “1. All people, by nature, desire to be good – Fundamental Assertion.”²⁸

The obverse of this last claim is that someone who is not able to fulfill herself, because she lacks the basic goods necessary for agency, is not a fully formed, or completed human being. This is a rather odd way of thinking about persons. Certainly, if we lack the most basic goods for agency imaginable, that is, the requisites for life itself, we cannot exist. Otherwise, however, it seems that there are two logically very different questions. One is whether some beings are humans or persons, and the other is the question whether their human rights are protected. It is odd to consider a poor person eking out a living on \$2 a day in India or Haiti, or a slave, as somehow less than a person, or even less than a fully realized person. No doubt, such an individual is not *flourishing*, but does this make her less of a person?

Let us grant for the sake of argument that we are ethically obligated to follow the worldview imperatives as Boylan describes them. Let us set aside as well issues about ethical realism or Boylan’s assertion, that some factual claims have embedded normative implications. Nevertheless, even granting all of this, I am at a loss as to why Boylan believes he has closed the gap between what is ethically ideal, i.e. persons who are wholly ethical and optimally flourishing, and our ontological status as beings evolved to be *Homo sapiens*. We can be enjoined *ethically* to be sincere and authentic people, but what sense can it make to talk about our *being* as somehow ontologically enjoined? Again, Boylan may be right that [at least some of us] have it in our power to shape ourselves into moral agents. Yet, a large part of the point of talking about human rights is that one’s personhood does not depend on flourishing, or on success in becoming a moral agent of one kind or another. Rather, shouldn’t the naturalist claim that human persons possess such values as dignity and inherent worth *independently* of their accomplishments in achieving the good, flourishing life, or living morally?

Boylan’s account of our wanting to be good is not “a factual assessment of what it means to be human,”²⁹ as he asserts, but rather, an aspirational account of how, on his view, we ought to live, and thus be: if we are to live sincerely and authentically, then we will want to be good. Thus, rather than ground human rights on what all human beings possess in common, Boylan’s account requires the novel but highly counter-intuitive conclusion that an individual who refuses to accept the PWI or who fails to fulfill its requirements lacks personhood in the sense in which being a person is necessary for the possession of human rights. Yet, even the war rapists, the katerist dictator, and the homophobe, all of who blatantly disrespect or violate human rights, are themselves persons who possess human rights. In fact, it doesn’t even make sense to speak of being enjoined to engage in the soul-searching reflection the PWI requires unless we are already recognized as persons capable of this undertaking.

As Rowan Cruft notes, human rights have the characteristic of *recognition-independence*.³⁰ Human beings hold human rights even in societies in which no one, not even rights-holders themselves, recognizes them.³¹ Many people whose human rights are recognized and respected fail to live good lives due, for example, to blighted personal relations, major illness, or thwarted ambitions. So respect for a person’s human rights cannot be sufficient for that person to have a good life. Likewise, respect for a person’s human rights cannot be necessary for that person to have a good life, either. For those like the persons mentioned just above—the homophobe, dictator, and rapist—fail to live the good life, on Boylan’s account, although their human rights might be fully respected.

There is of course a relationship between a person’s human rights and their living a good life; but the grounding relationship goes in the other direction. A good life is defined in part by possessing certain cognitive and ethical capacities for living well, and also as having one’s human rights respected. However, the prerequisites for living a good life, as Boylan understands it, cannot *ground* human rights for then human rights cannot be recognition-independent.

So what has gone wrong? The project Boylan sets himself requires that he show how his theory about the existence of human beings depends on certain ethical, epistemological, and meta-ethical claims. Perhaps it is the case that Boylan slides back and forth between the ethical and ontological ‘realms’ because he accepts

25 Op cit., 166.

26 Op cit., 170, emphasis added.

27 Op cit., 183.

28 Op cit., 182.

29 Op cit., 183.

30 Rowan Cruft, “From a Good Life to Human Rights” in Cruft, Liao, and Renzo (eds.) *Philosophical Foundations of Human Rights*, 100-16, 101.

31 Cruft, op cit., 108.

what he calls “epistemological intuitionism”³² but that goes undefended in *Natural Human Rights*. Boylan concurs with G. E. Moore that ‘good’ is a non-natural object, and adds that ‘object’ refers to far more than physical objects and their attributes. Included in the category of ‘object’ are also, for Boylan, “once-removed theories about their interaction (natural science) as well as the second-removed foundational principles to exist in the first place”³³ ... but not just these, but also various “non-natural, real objects” lying in a “non-natural epistemological realm.”³⁴ So, perhaps Boylan can employ his epistemological realism to show how his ethical and meta-ethical claims entail a justification of human rights. If so, however, then this project remains to be completed.

I think it more likely that the problem arose from Boylan’s highly commendable efforts to live according to the strictures of his own ethical worldview imperative. Boylan set out to develop a theory of human rights that would be consistent with critical contents in his worldview, including his commitments to ethical realism, worldview theory, and a theory of justice dictating the distribution of primary goods on the basis of their proximity for moral agency. Consequently, I think Boylan moves “backwards” from his efforts to identify the ethical and social/political conditions for a good life to his theory of human rights. The upshot is that Boylan offers a theory that is stronger, in my view, in terms of human rights *contents* (goals, and objects) than their *grounds*. In other words, the nettlesome questions Boylan best answers are, ‘What are we entitled as human rights-holders to do or to have?’ and ‘How can we resolve conflicts between human rights-claims?’

My view is speculative, of course, but it may explain why, after discussing worldviews in the development of his positive doctrine Boylan turns so quickly to his argument 6.3 for the moral status of basic goods.³⁵ Not only does this argument link what is presumably undeniable about human beings—namely our status as purposive agents—with what is necessary for our agency, it also directs us towards answering questions about controversies over the contents of human rights. The Table of Embeddedness (Table 6.3), as well as Boylan’s distinction between basic goods and secondary goods, as well as different “levels” of primary goods and secondary goods (based on how “embedded” a good is) are intended to provide guidelines for answering the two questions I pose above.

Boylan’s table is sure to be highly controversial, once one gets beyond basic goods at level one. One major

reason is because some commentators will disagree about the relative ranking or “embeddedness,” of certain goods for successful agency; for example, are basic mathematical skills really more embedded than basic societal respect, as Boylan says? A second reason is that Boylan identifies goods as necessary, in his view, to be effective agents in the particular society or country in which one lives, such as computer literacy in the United States, and some familiarity with the culture and history in which one lives—goods that many theorists would not regard as the ends or objects of universal human rights.

In addition, practicalities concerning the relative importance of goods, and the arbitration of competing claims for them, will be settled by appeal to Boylan’s worldview theory, and especially his global, or “extended community worldview imperative.”³⁶ Now, whether or not one is attracted to Boylan’s notion that one must maintain a sincere, authentic and consistent worldview, Boylan’s approach is highly innovative and deserves careful attention. Even here, however, serious controversy lurks, and I’d like to conclude this article by briefly indicating why.

Boylan cites with approval Tim Scanlon’s point that the good is not dependent upon preference, even rational preference, but rather on the reasons that make what we prefer, or desire worthwhile.³⁷ (Boylan makes this point in the context of his criticism of theories of human rights grounded on “interest” or “well-being.”) Yet if being worthwhile must be based on reasons about moral principles that are distinct from our subjective preferences, and personal interests, then why does Boylan say that “Fundamental interpersonal ‘oughts’ are expressed via our highest value systems: morality, aesthetics, and religion?” (This is an assertion made as step 7 in Boylan’s argument for the moral status of basic goods.)³⁸

This is inserted as an undefended assumption—presumably thought to be self-evident—and one that is absolutely necessary for the validity of Boylan’s argument. Aesthetic and religious value systems are included in premise 7, because, as we know, persons not uncommonly sacrifice moral principles to pursue their aesthetic or religious values. The French painter Paul Gauguin abandoned his family to pursue his art in the South Pacific and he is arguably an example of someone who placed aesthetic values ahead of morality. Yet is there now some equivocation over the term “fundamental values”? Certainly Gauguin’s art was perhaps what gave meaning to his life, and was of fundamental value

32 Boylan, *Natural Human Rights*, 202.

33 Op cit., 201.

34 Op cit., 202.

35 Op cit., 186.

36 Op cit., 174-6.

37 Boylan, *Natural Human Rights*, 141, referring to T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), 108-29.

38 Op cit., 182.

to him in that sense, but this is not what Boylan needs “fundamental value” to mean. In ethical reasoning, we regard an action, or a distribution, and so forth, as more justified than others because superior reasons can be offered for it or, at least, it is sensible to argue based on reasoning. The same is not always true of aesthetic experience, however, where much is a matter of taste, or of religious faith. Why then include aesthetic and religious values at all? The primary reason, as far as I can tell, has to do with Boylan’s recognition of the many worldviews that accept aesthetic and religious values as reasonable grounds for action, and his eagerness to include them. By doing so, however, Boylan invites what might be intractable disagreements over what respect for human rights requires.

Consider a conservative Islamist, for example, who sincerely believes that morality itself is defined by his religion, namely, the *Qur’an* as the word of God, the *hadith*, or teachings of the Prophet and his closet disciples, and the tradition of Sharia law (or alternatively, the Sunna and Fiqh). This conservative Muslim believes, as many Muslims do, that all human rights are received from God.³⁹ It is not surprising therefore that he goes on to point out that only those provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ought to be accepted that are in conformity with Islamic religious laws and principles. As we know, however, the point of CEDAW was to require recognition of certain freedoms and goods as required by women’s human rights, notwithstanding religious objections to the contrary.

The upshot of this example is that as soon as one accepts, as Boylan does, that values other than moral values can be counted as “fundamental” for the purposes of determining what human rights norms do and do not require, then we allow for the possibility that the most weighty, but fundamental non-moral values will distort what we owe to rights-holders and what is admitted to the list of embedded goods. Consider that a conservative mullah might proceed by making what he regards as proper modifications to Boylan’s premises 4 and 8—two assertions—and then rewording the conclusion accordingly. That is, the mullah changes premise 4, to read “People value what, according to Islam, is natural to them.” Premise 8 becomes then: “All people must agree, upon pain of logical contradiction, that what Islam prescribes as natural and desirable for them individually is natural and desirable for everyone collectively and individually.” The amended conclusion then reads:

39 Ann Elizabeth Mayer, “Religious Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women,” in Courtney W. Howland (ed.) *Religious Fundamentalism and the Human Rights of Women* (New York: Palgrave, 2001), 105-16.

“Everyone has at least a moral right to what Islam recognizes as the basic goods of agency and others in the society have a duty to promote those goods to all.”

How is Boylan to respond to the conservative mullah? Undoubtedly he would seek to engage the mullah by asking him to reflect about and reconsider his worldviews. Since the mullah’s personal worldview is arguably complete (Islam supplies an answer for all problems of life), coherent (given that he finds no incoherence in his religion or between his religion and his other beliefs), and attached to a theory of the good, it is likely that Boylan would politely challenge the mullah to develop a more appropriate *extended community worldview* by asking the mullah to contrast his views of the “natural” roles of women against the realization that women in other socio-cultural contexts are regarded as agents on equal terms with men and are allowed to seek their fulfillment as fully-fledged agents. This supposedly would proceed through the dialectical process Boylan describes in detail, that is, by finding some overlap in the contrary worldviews, experiencing initial dissonance, but then, hopefully, through modification in the direction of the mullah’s adopting a broader and more inclusive extended community worldview.⁴⁰

Why should Boylan entertain the hope that the conservative mullah will be swayed? Boylan does not consider in his section on applications hard cases involving conflicts among fundamental values, and in any case, I believe the exercise is just as likely to result in the stage called “dissonance and rejection,” with a hardening of the mullah’s views. The reason for Boylan’s hope, I submit, has to do with his ethical intuitionism, and what Boylan calls, oddly enough, various “ontological touchstones” that supposedly arise when we reflect sincerely and authentically about our worldviews.⁴¹ Other readers may come away with different views of the outcome of dialectical interaction with the hypothetical mullah. My own view is that premise 7 must be reformulated so that the ethical requirements human rights impose cannot be undermined by aesthetic, religious or other purportedly “fundamental” values.

In conclusion, in this paper I have called attention to two weaknesses in Michael Boylan’s central argument for natural human rights in *Natural Human Rights*. One criticism, the nominalist critique, suggests that, because of its dependence on the principle of universalizability, Boylan may have grounded his theory on the discourse of human rights and its underlying logic, and not in contrast to the anti-realists, on ontological bedrock. What I have called the personhood critique points to a very

40 See Boylan, *Natural Human Rights*, 206-13 and especially Table 7.1: The Way We Confront Novel Normative Theories.

41 Op cit., 210.

different weakness. This second criticism suggests that Boylan's argument does not present a real *grounding* for human rights capable of satisfying the condition of recognition-independence. This is, I believe, because of an admirable, but ill-fated effort to substitute an account of what we might be like at our best for an account of the too often sorry creatures we are. Thus, rather than justifying human rights, Boylan gives us a complex theory of the goals and objects we ought to have in virtue of our status as human rights-holders, as well as a theory of the way these objects, or primary and secondary goods, ought to be ranked (by embeddedness) and distributed. These very noteworthy contributions will surely spur much debate about how to think about human rights norms in social and political contexts.

Natural Human Rights: A Reply to my Colleagues

Michael Boylan

Marymount University

I want to begin by thanking my colleagues, Alan Tomhave, Tina Botts, Gabriel Palmer-Fernandez, Julie Kirsch, and Robert Paul Churchill for their thoughtful responses to my book *Natural Human Rights: A Theory*. It will be my pleasure to continue the dialogue one further step by making some brief responses to some of the questions and challenges that they have raised. I will try to order these replies so that they are thematically similar (the order they appear in this edition of the *Journal of Applied Ethics and Philosophy*).

Alan Tomhave. I will begin with Alan Tomhave's essay. I have chosen to examine Dr. Tomhave's comments first because he offers a good overview of many parts of my argument for human rights set out in my 2014 book, *Natural Human Rights: A Theory*. The general strategy for Tomhave's essay is to first show an inconsistency between my account of human rights and that of a libertarian. Then, secondly to show that my justifications do not adequately protect me from objections that they might make. If this were the case, then this would indeed weaken my presentation.

The bi-furcated concerns of Tomhave are addressed in three parts. I will mention all three in the order presented by Tomhave, but I will concentrate upon the third part of the argument: that the Personal Worldview Imperative permits one to adopt a libertarian ethic.

First, then is the presentation of the Table of Embeddedness which presents my take on the goods that are necessary to permit purposive agency.¹ There are two

¹ Here is the Table of Embeddedness as presented in Boylan (2014).

The Table of Embeddedness

BASIC GOODS

Level One: *Most Deeply Embedded* (That which is absolutely necessary for Human Action): Food and Clean Water, Clothing, Shelter, Protection from Unwarranted Bodily Harm (including basic health care and adequate sanitation).

Level Two: *Deeply Embedded* (That which is necessary for effective basic action within any given society)

- Literacy in the language of the country
- Basic mathematical skills
- Other fundamental skills necessary to be an effective

principal divisions (basic and secondary) and the basic division has two interior levels while the secondary has three interior levels. I use the concept of *embeddedness* to refer to this hierarchic structure. What is closest to the essential nature of action, is most embedded: food, clean water, sanitation, clothing, shelter, and protection from

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- agent in that country, e.g., in the United States some computer literacy is necessary
 - Some familiarity with the culture and history of the country in which one lives.
 - The assurance that those you interact with are not lying to promote their own interests.
 - The assurance that those you interact with will recognize your human dignity (as per above) and not exploit you as a means only.
 - Basic human liberties such as those listed in the U.S. Bill of Rights and the United Nations Universal Declaration of Human Rights

SECONDARY GOODS

Level One: *Life Enhancing*, Medium to High-Medium on Embeddedness

- Basic Societal Respect
- Equal Opportunity to Compete for the Prudential Goods of Society
- Ability to pursue a life plan according to the Personal Worldview Imperative
- Ability to participate equally as an agent in the Shared Community Worldview Imperative

Level Two: *Useful*, Medium to low Medium Embeddedness

- Ability to utilize one's real and portable property in the manner she chooses
- Ability to gain from and exploit the consequences of one's labor regardless of starting point
- Ability to pursue goods that are generally owned by most citizens, e.g., in the United States today a telephone, television, and automobile would fit into this class.

Level Three: *Luxurious*, Low Embeddedness

- Ability to pursue goods that are pleasant even though they are far removed from action and from the expectations of most citizens within a given country, e.g., in the United States today a European Vacation would fit into this class
- Ability to exert one's will so that she might extract a disproportionate share of society's resources for her own use.

unwarranted bodily harm (including basic healthcare). Without these goods we would either die or become so biologically incapacitated that purposive agency would be impossible. Now it is clear that one way to think about the relation of these goods to agency would be from a position of psychological egoism—what the agent perceives to be good for himself. However, that is not the approach I take.

Instead, I link the goods in the Table of Embeddedness with an argument I call *The Moral Status of Basic Goods*.² This argument gives meaning to the arrangement in the Table of Embeddedness. This argument works together with the table because it gives specification to the goods discussed concerning purposive agency. The argument is not centered upon any particular individual's claim, but instead is grounded in the generic structure of the possibility of human action. This is set out as the fundamental characteristic of human nature. It is *what we are*. Because of this, for one to demonstrate that to understand these conditions entails an acceptance that *we or any other human agent* has a legitimate right claim to possess at least level-one basic goods and the others on a principle of ought-implies-can.

This Argument for the Moral Status of Basic Goods,

2 *The Moral Status of Basic Good*

1. All people, by nature, desire to be good—Fundamental Assertion
2. In order to become good, one must be able to act—Fact
3. All people, by nature, desire to act—1, 2
4. People value what is natural to them—Assertion
5. What people value they wish to protect—Assertion
6. All people wish to protect their ability to act—3-5
7. Fundamental interpersonal “oughts” are expressed via our highest value systems: morality, aesthetics, and religion—Assertion
8. All people must agree, upon pain of logical contradiction, that what is natural and desirable to them individually is natural and desirable to everyone collectively and individually—Assertion
9. Everyone must seek personal protection for her own ability to act via morality, aesthetics, and religion—6, 7
10. Everyone, upon pain of logical contradiction, must admit that all other humans will seek personal protection of his or her ability to act via morality, aesthetics, and religion—8, 9
11. All people must agree, upon pain of logical contradiction, that since the attribution of the basic goods of agency are predicated generally, that it is inconsistent to assert idiosyncratic preference—Fact
12. Goods that are claimed through generic predication apply equally to each agent and everyone has a stake in their protection—10, 11
13. Rights and duties are correlative—Assertion
14. Everyone has at least a moral right to the basic goods of agency and others in the society have a duty to provide those goods to all—12, 13

by itself, justifies positive duties. In the deepest sense of the presentation, the heavy lifting is already over at this point and the existence of positive duties has been established.

A stronger argument by Tomhave is his analysis of the Personal Worldview Imperative and how it might permit one to be a libertarian. *Here is the alleged problem*: there are four parts to the Personal Worldview Imperative (PWI): completeness, coherence, connection to a theory of the good, and being actionable (i.e., not utopian but at least aspirational). In the third of these “being connected to a theory of the good” if the agent were to choose libertarianism, then the positive rights and duties—which are fundamental to the operation of the Table of Embeddedness—would be lost and the operation of my theory would face a fatal blow.

Here is my reply: I will contend that there are two avenues that will disallow the libertarian interpretation of my theory of natural human rights: (a) a further examination of the PWI, and (b) my argument for the moral status of basic goods.

Let us begin with a more complete view of the PWI. The PWI acts as a 1st order meta-ethical theory. It details the preconditions necessary for the establishment and acceptance of some normative ethical theory. These normative ethical theory candidates that fail this test cannot be brought forward as an acceptable ethical theory as outlined in the third portion of this imperative.

It will be my contention that libertarianism fails at least two parts of the PWI. Let's briefly examine these. First is *completeness*. I argue that completeness can only be met by adopting both a rational and an emotional good will. The rational goodwill is best described by theories that are formulated upon a principle of action or the structure of the mind that sets out universal conditions that rest upon the principle of non-contradiction (my own argument on the Moral Status of Basic Goods is an example). Another example more familiar to most is Kant's argument for the first form of the categorical imperative (where perfect duties are generated).

For our purposes let us look at Kant's characterization of imperfect duties which ground positive duties. These duties are “imperfect” because the contradiction arises out of reason's being situated in nature (as opposed to perfect duties that generate the contradiction from a consideration of the mind in a practical context). So, for example, if one were sitting on a dock by the bay and there was a cry for help from a man who was drowning twenty feet away and you could save that man by simply throwing him the life ring that is three feet away. Kant argues that one has a duty to rescue that individual because one could not will himself to be in such a situation and that another not throw him the life ring (since this in no way puts himself in danger). To will “not to be helped” under these circumstances would

contradict the natural principle of survival. Thus there is a positive duty to rescue. This would follow from the rational good will which is one legitimate interpretation of developing the rational goodwill. On this ground alone libertarianism would not be permitted under the PWI's criterion of *completeness* via the rational goodwill.

Then there is the affective goodwill. Let's review how this works. First, we recognize that other people exist with their own perspective. We begin with sympathy. I define sympathy as the emotional connection between two individuals. Now some people can never get to a point of sympathy because they are not able to fully realize that other people exist in the world different from themselves (lack of empathy). This realization and the rational ability to see and understand another person's perspective is empathy.

Sympathy can be level or un-level. In un-level sympathy one person looks down on another who is in pain or need and feels sorry for them. The reaction is paternalistic. In level sympathy one sees the other as an equal and connects emotionally to the equal. It is this author's conjecture that level sympathy leads to a care response (a positive duty to rescue). The combination of level-sympathy leading to care is what I have termed philosophical love. Philosophical love demands a positive duty. Once again the PWI rejects the libertarian tenet of negative duties only.

On both sides of the completeness component of the PWI (rational goodwill and emotive goodwill) positive duties emerge so that libertarianism cannot be an option in the ethical theory facet of the PWI.

Next there is the coherence portion of the PWI. Dr. Tomhave was correct to note that I highlight two ways that a person can be incoherent: deductively and inductively. In this context the inductive coherence is cogent. Taking our previous example of the life preserver, a person who accepted his position of being an agent in the natural world and yet rejected being helped himself were he to be in the position of needing help would be embracing two contradictory life-strategies that would result in a sure-loss contract. The sure-loss contract is a violation of inductive incoherence. The libertarian will be in just this position as shown above and thus fail in the second category of the PWI. Therefore, once again libertarianism could not be an acceptable ethical normative theory as the third component of the PWI.

Two of the four criteria of the PWI reject libertarianism as an acceptable moral theory and thus it could not be accepted as an acceptable moral theory as per the third part of the PWI.

The last part of Tomhave's argument does not address libertarianism as such, but examines the last part of the PWI (*that we strive to act out in our daily lives*). I have interpreted this in several ways: utopian (impossible) v.

aspirational (difficult, though possible) and that we try to live out our values (don't be a hypocrite). Tomhave mentions my argument on how we accept novel normative theories. He suggests that in America today our political system for discourse seems broken and thus the last part of the PWI may be rendered impossible.

My response is to agree that at the writing of this essay there seems to be little civility in American political discourse. The *overlap and modification* that the Reverend Dr. Martin Luther King was able to achieve seems to be a distant memory. However, I don't think we have moved to the utopian (impossibility) for ever having political discourse again. If this were the case, then democracy would be over in America. I hope and believe that this is not descriptively the case—that discourse is still in the aspirational phase (a normative duty).

Tina Fernandes Botts. It is interesting to pair Dr. Alan Tomhave's essay with Dr. Tina Botts's essay. In the first case my critic characterizes my position as being too group-oriented against an individual-situated libertarian position. My response was to examine in more detail my Argument for the Moral Status of Basic Goods and a detailed account of parts of my Personal Worldview Imperative. Both of these represent an aspect of my theory that recognizes the individual.

Now, Dr. Botts takes issue with the individual-orientation of my theory and claims I need to represent the group to a greater extent. I think that it is of some interest that I can be construed as being too group oriented from an individualistic-styled critic and too individualistic from a group-styled critic.

This is not surprising to me. In Boylan (2004: 130-132—especially figure 6.2) I set out a continuum in which extreme liberalism (individual as primary) is on one pole and extreme communitarianism (group as primary) is on the other. I characterize my theory as being mid-point between the two. My reply here should indicate how I try to incorporate community perspectives—though not as strongly as a full-fledged communitarian might.

Botts spends some time on my claim that Aristotle views the individual as primary substance, and that there is a different relation between body parts and the phenotype than between various phenotypes within the species (*eidos*) or genus (*genos*). My full arguments on these are rather lengthy and concentrate not upon the *Metaphysics* but the *Categories* and the *Parts of Animals* and *Generation of Animals*.³

To begin this I would call attention to my community worldview imperatives: shared community worldview

3 On the *Categories*, see Boylan 2015: pp. 51, 71 and on the biology see Boylan 1983: 50-58; 181-218.

imperative, extended community worldview imperative, eco-community worldview imperative, and extended eco-community worldview imperative. In Boylan (2004) I began with the first: “Each agent must contribute to a common body of knowledge that supports the creation of a shared-community worldview (that is itself complete, coherent, and good) through which social institutions and their resulting policies might flourish within the constraints of the essential core commonly held values (ethics, aesthetics, and religion).” There are four parts to this: 1. *Agent contribution*, 2. *The common body of knowledge*, 3. *That the resulting worldview must be consistent with the PWI, meaning that it is complete, coherent, and connected to a theory of ethics (the good)*, 4. *That parts 1-3 are used to construct social institutions and their resulting policies*. This shared community worldview imperative shows that I recognize that any account of justice, cosmopolitanism, and human rights needs this as part of the model by which we structure the human experience. In subsequent books (Boylan, 2011 and 2014-a) I have added the eco-community and the extended versions of both (to ensure a cosmopolitan perspective). We are social creatures and any complete account must recognize this.

What exactly is a community worldview? The answer to this weighs heavily on the common body of knowledge (which are the agreed upon facts and values within one of these communities). The social communities can be micro (500 or less), macro (501 or more) and be extended to the far ends of the earth. We can belong to many communities: philosophers, poets, novelists, aging males or females, religious groups, racial communities, etc.

The principal difference between my position and that of Botts is that I see the communities as only existing in virtue of their being populated by individuals (which are, for me, the real substratum). Now why would I want to situate things like this? Essentially, it is because of the issue of *aitia* or culpable blame. When Peter French (1984) wrote about the corporation as an individual he was establishing a new understanding of the corporate veil, but also relieving directors and officers of personal culpability. This raised a debate (see Boylan 2014-b). The *Citizens United v. FTC*, U.S. Supreme Court 2010 case rests upon a similar principle and is also very controversial because making group identity as primary (under the U.S. law this means as an individual), then extended rights of privacy (here understood as secrets) are afforded.

What I believe that Botts wants most is *group identity*. One can provide group identity via my shared community worldview without making the group the primary entity. As I have suggested, various group identities go into each of us forming our own personal worldview. However, for my position it is important that

the primary identity be the individual. When one takes group identity to be primary over individual identity, then I believe this to be the origin of racism (Boylan, 2004: 245-246) and works against my theory of deserts (Boylan, 2014: 187-192).⁴

I do not doubt that respecting rape, some perpetrators *do* commit their actions against *women in general* even as they victimize a particular individual. However, my position is that these rapists were wrong to do so. They commit a category mistake. It goes back to the question of *aitia* understood in the broadest sense (cf. Hart and Honoré, 1967). When a rape occurs, a particular person, X brutalizes another person Y. There is an individual criminal and an individual victim. However, we may want to do group sociological studies to gain insights into patterns of individual behaviors. This is fine. It has nothing to do with which is ontologically prior.

One of the central problems about making the community prior (extreme communitarianism) is that the community always comes first and supervenes over the individual. In chapter 3 of Boylan 2014-a I present a brief history of natural human rights in China (to be compared to chapter 2 where I highlight Europe). Up to the 16th century or so, the paths are very similar. They are both at the communitarian pole. Then in Europe a second complementary perspective began to emerge but not in China. This is partially responsible for some of the so-called *imperialism debates* between the West and East over human rights. But when the community dominates the discussion, it is particularly hard on minorities because they only have the option of signing on and blending in or being crushed. This is another practical reason I try to balance my position between these two poles.

Dr. Botts’s essay is certainly full of arguments, many of which I have not space to address. However, it is my hope that by clarifying my position on the shared community worldview imperative and the underlying reasons why I try to straddle the middle between extreme individualism and extreme communitarianism that some of the confusion about my positions may have been clarified. I am grateful for the interplay between these first two essays.

Gabriel Palmer-Fernandez. In the next essay Dr. Gabriel Palmer-Fernandez situates my current book within the context of my work on this area over the past

4 In the real world myself and Dr. Richard Grant have used this application of desert theory as individually focused to open up more residency opportunities in the Academy of Orthopedics for African Americans and women—viewed as individuals and breaking free of some group requirements that were blind to the “road travelled” by these deserving physicians.

decade. I note in appreciation that Dr. Palmer-Fernandez has read my books and a number of my essays during this time period and has made many useful suggestions to me as I have developed my thinking. His essay here is no exception.

Palmer-Fernandez directs his attention to the social and political situations that occasion first the study of human rights, and second to its monitoring so that these claims might be satisfied and the world become better off because of it. This amounts to moving from theory to practice. I think that this is a very important segue. So often philosophers write a theoretical text and stop there. But this is not enough. It would be like a person escaping from Plato's cave and instead of going back, sending them a Tweet that things are real great on this vacation—*wish you were here!*

However, the practical application can be difficult. When I was a senior visiting fellow at the Center for American Progress (2007-2009) I found that most of the policy makers (members of Congress and their staff) were not very interested in high falutin' theories on justice and human rights. They were power brokers who wanted to play *Let's Make a Deal*—the problem was I didn't have any chips. But there is a middle way: a practical perspective that might be interesting to those who are philosophers and those who like to toy with philosophy, but have a day job. So let's start at the beginning.

In the first case, how is it that we begin to think about human rights at all? I think Palmer-Fernandez is correct in his conjecture that it arises out of horrific actions by states or armies against populations. Beginning with Achilles' base treatment of the dead Hector (*Iliad* XXII, 367-404) to Thucydides' account of the civil war at Corcyra and the atrocities committed (III, 69-85), the shameful action (*eischron*) has had the effect of drawing attention so that some response might be made. The actions in the Dominican Republic and the genocides committed against the indigenous people of the Americas (cited by Palmer-Fernandez) are also examples of this. They bring comment by some observers and historians that something terribly wrong has occurred—something shameful that must not be allowed to re-occur.

In our own era, the Holocaust had a lot to do with the creation of the Universal Declaration of Human Rights. However, there are certainly other instances—such as the exploitation and extensive killing of various populations by Stalin, Mao, Pol Pot, et al. that had no clear document of common resolve in response. So sometimes tragedy begets a step towards remedy and sometimes it doesn't.

So how should we think about this? I would suggest a distinction made by Aristotle in *The Parts of Animals* (639b 23-640a 9). In that discussion Aristotle distinguishes between understanding something as it comes-to-be (genetic order) and in its logical structure

(logical order). In the case of building a house, for example, the architect has the logical order set out in the blueprints. For observers of the worksite, they will only get gradual glimpses of the developing house as it comes-to-be. But their experience is more empirical and as such will carry a certain emotive strength that is not contained in the blueprints alone.

I have written about my agreement with Aristotle's assessment here in the context of philosophy of science (Boylan, 1983, ch.1; Boylan 2015, ch. 3). However, in this essay I want to apply this same principle to describe the connection between the theoretical, first-order metaethics of social and political philosophy (my project) and the empirical witness of events of horror (testimonies of life in social and political contexts). I believe that both are important.

My project aspires to be the theoretical grounding that I believe must underlie the social/political project in which I have been engaged over the past decade dealing with justice, cosmopolitanism, the proper structuring of various senses of community, and the place of human rights. I think such a first-order metaethics is important so that the events of horror that drive politicians to construct theories might be seen within a structural context. Without the context, events may be misinterpreted by popular fears and xenophobia.⁵

As mentioned in the first section, my Personal Worldview Imperative promotes *sympathy* as the key ingredient of the emotional goodwill that is necessary for gaining a complete worldview. The examples of violence cited by Palmer-Fernandez will move us to action because of sympathy. The reason for this is that level-sympathy leads to *care* which is an action response. When confronted with human rights abuses, action is critical. Platitudes alone will not be sufficient. Palmer-Fernandez and I are in agreement here.⁶

The second question follows from the ending of the first: how can we monitor progress in human rights and how does the Table of Embeddedness match up with capability theory in this regard. Since I have already agreed that practical implementation is essential, this is an appropriate follow-up question. In Boylan (2014-

5 I believe that Europe, the Middle East, and the United States are in just such gut-level reactionary state right now in response to the international refugee crisis. In democracies, people are voting their poorly articulated fears and in authoritarian regimes local violence is the response.

6 This is also supported by the fourth part of the PWI that calls for action that is at most aspirational. I might note for curious readers that I have engaged myself in several wide-ranging projects in the healthcare field. This further demonstrates my agreement with Palmer-Fernandez on the necessity of recognizing the second half of Aristotle's analysis.

a) I set out the essential agreement between these two approaches as that they both operationalize what people have a right to possess. This is an advance upon *interest* theory and those who propound well-being. This is because interest and well-being are sufficiently vague and thus, by definition, not amenable to this sort of assessment.

The capability folk can talk about *how many* capabilities have been realized over a given time once a measurement device is agreed upon. But because they are not in a hierarchical ordering I believe that many false positives can result. For example “play,” “affiliation,” and “life” are all on par. What if there is an increase in *play* and *affiliation* and a decrease in *life*? Two out of three sounds pretty good, but I would say that *life* is so much more important that it dwarfs the other two. For this reason, I think that a hierarchical ordering best presents a framework for assessment. We begin at the top and work our way downward. If one wanted to create a macro model, then we could give numerical weight to all the government-intervention levels of the Table: Basic Goods levels one and two and Secondary Goods level one. This could create a single number (Agency Goods Attained, AGA) that could be used to evaluate progress or regress over time. It might also allow for international comparisons and standards.

Harkening back to my justice book (2004) we might also be able to compare GDP and AGA so that wealthier countries and poorer ones might be assessed alongside each other to measure public support for these essential goods of agency (weighted by their place on the table—most embedded gets the most weight, etc.).

This strikes me as an interesting project. It was beyond the scope of my presentation in my 2014 book, but it makes sense to me and would make my theory much more practical for policy makers or at least the target group set out above. Since I’ve recently been engaged in a statistical modeling endeavor I might take up this suggestion for a future continuation of my project. Thank you Gabriel for another good suggestion!

Julie E. Kirsch. As was the case for the first two essays, it is also the case that essays #3 and #4 are thematically linked. In each that they seek to move me away from a strictly theoretical presentation to one that has more real possibility for application.

The alleged problem that Dr. Kirsch has set out is that “protection from unwarranted bodily harm” is a level-one basic good on the Table of Embeddedness and basic liberties—such as privacy—are level-two basic goods. Protecting privacy by whistleblowing would also fall under a level-two basic good. Since level-one basic goods trump level-two basic goods, it would seem as if there is no room for whistleblowers like Edward Snowden. The NSA and other government agencies

could act with impunity in surveillance of private citizens since the NSA claims they are protecting the public safety.

This is indeed an apparent difficulty. This is because most observers believe that the NSA surveillance program that began under George W. Bush and the Patriot Act after the terrorist attacks of 9-11-2001 has overreached. These policies seem to have continued under Barack Obama. Therefore, it seems like an instance of the less embedded good needing to trump the more embedded. If this *is* the case, then it would be a problem for my theory.

Here is my reply: I have two avenues of response. First, what does *protection* from unwarranted bodily harm mean? And second, how should pure cases of priority on the Table of Embeddedness be solved?

First is the issue of *protection* from unwarranted bodily harm. In order to get a handle on this we have to distinguish between various threat levels. There are at least four:

1. Existing attack. A is attacking B at this moment. There can be no doubt about B’s being harmed.⁷
2. Clear and present danger: there is verifiable empirical evidence to show a very high likelihood that A will attack B immanently.
3. Probable Cause: there is verifiable empirical evidence to show more than a 50% likelihood that A will attack B in the near future.
4. Intuitive suspicion: there are suspicious signs that from the vantage point of the investigator suggest possible irregular activity that might result in A attacking *someone*—possibly B along a foreseeable event horizon.⁸

Figure One: Grounds of Threatening Action

I assume that Kirsch would agree to suspending liberties under *ceteris paribus* conditions for 1-3. One can get an ordinary search warrant under the criteria of 1-3. It is #4 that needs examination. “Suspicious signs that point to irregular activity” is rather broad and ambiguous. The probability that a crime will be committed (such as a terrorist act)⁹ is small. Thus, if an investigator were overly zealous, he might deny someone her privacy rights for no good reason—where “good” indicates a proper threshold of statistical likelihood. This would

7 Though there may be a question on whether the attack is *unwarranted*. If B started the fight, A may be acting in self-defense. Or if B was attacking C, then A is acting in third-party defense (also permitted). These same caveats apply to the other three categories.

8 I have intentionally used American legal terms that possess technical applications.

9 I consider most acts of non-governmental terrorism as criminal acts.

result in a harm to the individual without a justifiable counterbalancing belief that “bodily harm” was about to occur.

I have written about this before as an issue of risk assessment.¹⁰ But what is the proper floor? New drugs for the FDA must prove the null set no more than 5%. That is probably too high. Dick Cheney said that at 1% risk of terrorism that he would take military action (Suskind, 2006). That is certainly too low. Though I have not worked out the precise number to my satisfaction, I would put the number at above 50% (#3 in Figure One).

Thus, if Kirsch wants standards for NSA surveillance, this is my suggestion. Whenever these standards are breached, whistleblowers should be applauded and not treated as traitors.¹¹

Second, a more abstract deliberation is whether the goods of individual liberty should be placed as level-one basic goods as Kirsch raised in conjecture from the writings of Marcus Düwell on my Table of Embeddedness.¹² This is a matter of some controversy. The way I would suggest for a solution is to ask: how proximate are basic liberties to the ability to commit purposive action? This question follows from my argument “The Moral Status of Basic Goods.” Since all the basic goods at level-one connect to the ability to commit purposive action at a biological level—the absence of which will cause scientifically measurable physical harm or death—it is my contention that they are more essential to action’s possibility than free speech, privacy, etc. These liberties *are* important. That is why I classify them as basic goods, level-two. But the lack of these liberties does not cause the same kind of physical harm or death that biological conditions impose. This is why they are not as embedded. Thus, I am still comfortable with my relative classification of protection from unwarranted bodily harm and basic liberties.

But there are various ways to cause harm. Harm from a terrorist attack is certainly a biological harm. But so might be the results of living in a police state. When one can never be certain of privacy, psychological trauma may also occur (which is why research ethics in human subject studies demand patient privacy).¹³ If

it can be shown that the NSA was often working at level 4 (Figure One), and if real physical harm results and that physical harm is a level-one basic good, the liberty violation becomes vehicle toward bodily harm. In that instance we would have a case of one level-one basic good (protecting the public safety) v. another (over-the-top surveillance that leads to psychological trauma). The only adjudication in this event would be to return to risk assessment and Figure One to be sure that we are not sacrificing basic liberties to privacy for no epistemologically justifiable reason. I believe that this will be an escalating problem in the years to come as technology allows businesses and governments to make every space a public space. This is certainly not acceptable.

Therefore, I welcome Dr. Kirsch’s searching exploration of privacy and its protection through whistleblowing. It is a contemporary issue of keen import and will continue to be so. However, I do not think that the initial dilemma envisioned at the beginning of this reply has resulted. Instead, a more detailed consideration of the epistemological grounds for criminal investigation along with the recognition of excessive privacy violation as a potential psychological bodily harm allow me to meet Kirsch’s concerns without altering my basic structure in the Table of Embeddedness

Robert Paul Churchill. Dr. Robert Paul Churchill’s essay takes us in a new direction. His essay addresses two principal issues: (a) the nominalism critique, and (b) the personhood critique. Like the other essays there are theoretical aspects and practical aspects to these issues. Before beginning it is important to bring up the intended structure of my account in Chapter 6: 1st order metaethics that grounds a normative ethics account.

Now when one discusses *metaethics* most contemporary readers think about 2nd order metaethics which is essentially a project in the philosophy of language that examines how linguistic entities interrelate. These include various linguistic contexts such as: self-referential statements, meta-language, and emotive claims. Various sub-arguments emerge such as the Frege-Geach Problem, et al.¹⁴

1st order metaethics is concerned with a different area of analysis. In this case we are examining what theoretical preconditions are necessary in order to structure a normative ethical system. This would also include social/political philosophy under which human rights is properly situated. These 1st order logical units in my presentation include: (a) personal worldview theory; (b) community worldview theory; (c) human nature grounded in action theory; (d) understanding

10 “Safety and Public Health: Evaluating Acceptable Risk” in Teays and Gordon (2014):356-369.

11 It should also be noted that Edward Snowden went through the files that he had appropriated and held back those files that he felt would present a clear and present danger to others. Here, he used the standard of bodily harm or identity theft to others. This information was not leaked.

12 Marcus Düwell, “On the Possibility of a Hierarchy of Moral Goods” in John-Stewart Gordon (2009): 71-80.

13 Sometimes this harm is termed “privacy paranoia.” It has recently been a hot topic in the popular press. See: BBC News “Internet Privacy: Genuine Concerns or Paranoia?” <http://www.bbc.com/news/business-17369659> (last accessed

March 1, 2014).

14 I discuss some of these in Boylan (2009): ch. 9.

the components that allow purposive human action to occur; (e) the relationship of (c) and (d) seen in the context of a claims right; and (f) the correlative nature of claims rights and social/political duties. This is the basic structure of what needs to be answered in order to construct a normative theory about human rights (1st order metaethics).

Dr. Churchill is correct in noting that I move from this metaethical position to create a theory of distributive justice, which, I apply both nationally and internationally. Since distributive justice is all about allocation of goods and services within a social/political arena according to a fair formula, and since I characterize human rights as being about the possession of various goods (by degrees necessary for agency—which I call *embeddedness*), it is a logical move to ground human rights on the same criteria that we use to ground distributive justice.

The essence of Churchill's nominalism objection is that he suggests that I (among other naturalists) mistake "justification for human rights with a demonstration of their universality." Here he turns to my argument on "The Moral Status of Basic Goods" (mentioned earlier in the notes). This argument seeks to demonstrate *universality* in its conclusion, yet the argument depends upon *certain agreement* about the proper role of logic as well as some conjectures on the nature of humans as aspiring purposive actors. These appeals to agreement are then matched with my criticisms of contractarian justifications for human rights *just because* they rely ultimately upon agreement.

This apparent contradiction (of supporting and excoriating *agreement* in different contexts) can be explained by the distinction set out above between 1st order metaethics and normative ethics. My use of: (1) deductive logic as an adequate device to express truth, (2) aspiring agency as the definition of humanity, (3) that the basic goods of agency (whatever they are)¹⁵ characterize the graduated presuppositions that will allow this to happen (and that this relation is generic¹⁶ at the species level), and (4) that rights and duties are correlative—all are presuppositions to which some may disagree.

15 I have always been open to someone showing that some other good should be inserted at a certain level of the Table of Embeddedness. This is a point relevant to the implementation of the normative theory. The metaethical point is that *something* must fit into these various levels according to the organizing principle of that level: biology at Basic Goods—level one; education and fundamental liberties at Basic Goods—level two; and social goods of fairness and integration at Secondary Goods—level one. What these might be as actual goods is open for discussion.

16 Because these relations are set at the generic (species) level, they are *recognition independent*. This is in contrast to other authors (like Richard Brandt and Alan Gewirth) who focused upon the claims of particular potential claimants.

I accept that. There is no way around accepting some principles of social epistemology and its expression via logic. I do not aspire to creating all *ex nihilo* as Descartes unfortunately claimed to do.¹⁷ Instead, I should be viewed in this construction process at the metaethical level more like a Roderick Chisholm foundationalist who readily admits that there are fundamental assumptions and rules of inference that have to be accepted even at the most basic level.¹⁸

Thus, there is a distinction between the use of consent at the metaethical level about foundational principles and consent at the level of creating a normative theory concerning the content of a moral theory (determined by intuition). The former does not impinge universality while the latter *does*.

Secondly, I try to escape nominalism not only via the personal worldview imperative (that Churchill acknowledges) but by my use of short fiction in my presentation and structuring the entirety as a musical symphony. The full import of this will be seen in my forthcoming work on the logic of fictive narrative presentations that also incorporate probability theory and abductive logic to create another stream of plausibility to controversial claims.¹⁹ These work together so that the argument for The Moral Status of Basic Goods is not merely an empty logical exercise.

Of course, Churchill may also have meant that I have successively proven *universality* but not *human rights*. However, this is not as strong a claim as the one I've just addressed. I do discuss various contemporary understandings of linguistic usage concerning human rights as well as historical usages in the West and in China. What we see from these accounts is that human rights refer to claims for certain goods and liberties. My account satisfies these conditions. What I do further is offer what Churchill and I both agree is the strongest *type* of justification in an agency account.

The second part of Churchill's essay concerns his personhood critique. In Boylan (2014-a) I emphasize that along with James Griffin I uniquely offer a personhood account in my human rights theory, which, sets my depiction of human rights apart. There are two particular differences between what I believe I am doing in this regard and how Churchill reads me. They both revolve around various understandings of instrumentality. First, let me say that the Personal Worldview Imperative

17 This, of course, was too ambitious and led to the infamous "Cartesian Circle."

18 For readers who want to flesh this out a bit see first the section on epistemology that I co-wrote with Chisholm in Boylan (1993) and part two of Boylan (2008).

19 This work, *Fictive Narrative Philosophy: How Fiction can act as Philosophy*, is still under construction but should come out around 2018.

is not a threshold identifier for personhood. The four components of that theory (set out earlier) are prescriptive commands on how to be the best possible person. This is *indeed* an Aristotelian approach.

If one were to search for my threshold identifier for personhood it would be the initial premises of the argument for The Moral Status of Basic Goods. This could be summed up as *humans are organisms that seek and have the capacity of aspirational purposive agency*. This is what we are on the earth. The *capacity* part could include various anthropological criteria such as language use (employing the grammar and syntax criteria), advance tool use, and so forth. The *aspirational* part can include the ability to envision short and long term goals and a desire to execute them because the agent thinks that they are at least good for *them*. On the roll-out level at actual practice, this is indeed instrumental for various particular satisfactions (like a hypothetical imperative). But at the metaethical level it is instrumental in a different way: it causally sets out the conditions concerning which goods are necessary in order to allow *anyone* to act in this way. It is not about individual outcomes but about the structure of the whole.

Second, there is no connection to my personhood account and leading a happy life. This is where I depart from Aristotle. In Books One and Ten of the *Nicomachean Ethics* Aristotle claims that when one follows his normative ethical prescriptions that she will maximize her chance to flourish (be *eudaimon*).²⁰

I make no such claim. What I am after is allowing people to carry out their purposes, and in doing so, realize their human nature. They may make bad choices that hurt them. But that is the consequence of their choices. In my Personal Worldview Imperative, I try to minimize these downfalls—at least from the ethical perspective. And if one put that front and center in her life, then the odds are in your favor for leading a life one can be proud of. But this says nothing about prudential outcomes that affect material affluence (these are the Secondary Goods—levels two and three which are beyond social/political policy).

I do agree that my various references to: ethics, aesthetics, and religion may cause some to worry. Let's look at these in order. Ethics is rather straightforward. It concerns the science of the right and wrong in human life (Boylan 2009: 3). There are various ways to get there, but following my prescriptions in (Boylan 2009) these follow the ethical realist orientation and are consistent with the Personal Worldview Imperative (PWI) and the Shared Community Worldview Imperative (SCWI).

The next is aesthetics. Here I am thinking along Platonic lines of *to kalon*. Plato understood this relationship between the Good, the True and the Beautiful as three ways of looking at the same thing (Boylan 2008). If we view religion here under these constructs at the metaethical level, then when operationalized to the realm of action *any action by a cleric of any religion on earth must abide by the dictates of the metaethical: the PWI and the SCWI*.²¹

This will defeat counter examples of clerics of any particular religion who put forth unethical commands upon their followers.

Thus, I believe that I have met the thrust of Dr. Churchill's objections. They were keen observations that allow us to think more deeply about the core chapter 6 in my book and I am grateful for his queries.

Closing Comments: These five essays have set forth searching comments on how my book *Natural Human Rights: A Theory* puts forth its claims. First, we had two essays (Tomhave and Botts) that explored my work critically from different directions: as if it emphasized the group perspective too much and then as if it emphasized the individual perspective too much. I hope my comments on my middle approach were helpful.

Then we had two essays exploring the praxis of my exposition. Palmer-Fernandez suggested that I emphasize that human rights concerns are *recognized* when series abuses take place. Because of this, he suggests that I create an evaluation metric so that progress or lack of progress can be monitored. Kirsch suggested that I examine possible cases of more complicated interactions between levels on the Table of Embeddedness—especially concerning whistleblowing in governmental data mining.

Finally, in Churchill's essay concerns whether my Argument for the Moral Status of Basic goods falls prey to nominalism and whether my depiction of personhood performs as I intend. I hope that my clarification on the various levels of my presentation can alleviate these concerns.

I hope readers of this special edition will appreciate the lively debate as it extends one approach to human rights—always a timely topic in this violent and unpredictable world.

20 Of course, there is the issue of *luck* for which no one can properly plan. It may not *destroy* you, but high-level flourishing (*makarios*, blessedness) is out the window, *EN* 1100b 23-1101a 20.

21 This puts me against the arguments of Soren Kierkegaard in *Fear and Trembling*, for example, who extolled the teleological suspension of the ethical. See: Howard V. Hong, 1983: 75-77.

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Notes to Contributors

1. All submitted papers are subject to anonymous peer-review, and will be evaluated on the basis of their originality, quality of scholarship and contribution to advancing the understanding of applied ethics.
2. Papers should not exceed 8,000 words including references.
3. Papers must be accompanied by an abstract of 150-300 words.
4. Submission should be made through e-mail to caep@let.hokudai.ac.jp
5. In-text references should be cited in standard author-date form: (Walzer 1977; Kutz 2004), including specific page numbers after a direct quotation, (Walzer 1977, 23-6).
6. A complete alphabetical list of references cited should be included at the end of the article in the following style:

Walzer, M. (1977), *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York: Basic Book.

Kutz, C. (2004), 'Chapter 14: Responsibility', in J. Coleman and S. Shapiro (eds.), *Jurisprudence and Philosophy of Law*, Oxford, UK: Oxford University Press, 548-87.

Cohen, G.A. (1989), 'On the Currency of Egalitarian Justice', *Ethics*, 99 (4): 906-44.
7. Accepted papers will appear in both web-based electronic and printed formats.
8. The editorial board reserves the right to make a final decision for publication.