

## **Justice, Self and Natural Rights**

[From *Morality & Social Justice: Alternative Views*]

The intellectual arena is alive with arguments and controversies concerning a perennial moral and political problem, much more fundamental than whether one or another practice in our society is just or right. They concern whether there exist basic standards for human personal and community life as such. Perhaps no such standards exist. In that case do various communities, cultures, regions of the globe or other groupings of people decide on such matters, with no objective standard to rely upon in the last analysis?

Developments in Eastern Europe and the former Soviet Union, in South Africa, Nicaragua, Chile, China and other parts of the geopolitical sphere have thrust this question into virtually any thinking person's life. Can we judge the South Africans by objective standards or only ones by which we happen to institutions in North America or in Western Europe? Can we say that the Chinese or the South African government ought, in fact, to submit to democratic processes or is that just a wish we happen to have that others simply do not share and have no reason to take seriously unless they wish to? Can we say with conviction and confidence that, for example, a more individualist system of economic organization is more suitable to human community life than a collective command system? Or is it all really quite relative and indeterminate how human a community should be constituted?

My plan here is to defend the position in political philosophy that the right to liberty or negative freedom is the proper standard of justice in human community life. It will also be argued that a good or just human community is such that in such a community moral virtue not only accidentally possible but is necessarily enhanced. Furthermore, it will be shown that this conception of political justice rests on an objective and at a basic level universalizable foundation. That foundation is naturalism, including naturalistic ethics and rights theory.

My task here will be somewhat laborious, since so much about the position I wish to lay out is in dispute in our time. The first task will be to examine some metaethical and metapolitical challenges a naturalist approach faces in our time. Next a case for a sound (objectively valid) idea of human nature will be advanced, one showing that human life is teleological and normative -- it is goal-directed and involves moral responsibilities. From this it will be maintained that given the moral nature of human beings, political justice must be grounded in the effort to establish, maintain and preserve what our moral nature requires in a social-political-legal context. In the end some critical objections to this position will be taken up.

### Current Philosophy and Naturalism

Before developing the case for the natural rights classical liberal position on justice, some metaethical and political problems that stand in the way of such a task are worth noting. During the last two and a half decades a lively discussion has ensued about natural law ethics. In the mid-20th century most prominent philosophy departments espoused some variety of noncognitivism. When one mentioned natural or human rights, one was quickly directed to read Margaret Macdonald's famous emotivist essay, "Natural Rights," . This was essentially an application of A. J. Ayer's logical positivism to political morality.

The philosophical climate has undergone some changes since. By now there does not exist a comparably firm orthodoxy in metaethics or metapolitics. Yet, even today the more prestigious philosophers and departments tend to look with disdain toward naturalist ethics and politics. What's more, the naturalist politics that we associate -- albeit somewhat problematically -- with John Locke has come under fire from several classical liberal and conservative political theorists from whom one might expect support.

Locke's natural rights theory has also been deprecated recently by some admirers of Plato's political thinking. . These thinkers essentially lump John Locke's political views with those of Thomas Hobbes, at least at the basic philosophical level. A more recent line

of criticism of the natural rights classical liberal stance is deeply skeptical and broader based. It would avoid Platonism even more than natural law classical liberals or libertarians for the very reason that it finds fault with naturalism as such.

The criticism of naturalism advanced from some of these positions thinkers will be taken up later. Let us see, for now, the position they believe justifies their disdain for naturalism.

Judging by some of its champions, the criticism finds the idea of human nature without foundation. Some of these points are owed to the philosophical orientation of Karl Popper. Just as do positivist, such as Macdonald, as well as most Existentialist critics of the Platonic-Aristotelian tradition, these critics reject the concept of "the nature of X" if it is supposed to involve anything that is not purely conventional. Accordingly, human nature is not objective but nominal and even historically or culturally relative and conditioned.

There is another recently revived doctrine antithetical to naturalism. This is political intuitionism, combined with the claim that one is able to reach substantive moral and political conclusions without any reliance on work in other branches of philosophy. This thesis, of "the independence of moral theory", has had considerable influence. One need but read the major journals of ethics and political theory, where papers often begin with a claim about our "considered moral judgments" and proceed from such intuitive beginnings to reach various moral and public policy conclusions.

In advancing a naturalist foundation for political justice, it would be imprudent to avoid confronting the metapolitical positions sketched above. A kind of Kuhnian result in evidence from the widespread promulgation of these views. Most prominent ethicists and political theorists share the attitude captured. This is made evident, in a slightly different but not entirely unrelated context, by Russell Hardin, when he notes that "Anyone who tries to defend an unvarnished right of contract for any two parties to do whatever they want to do under any circumstances will be met with vacant stares from most moral and political theorists today."

Naturalists in the classical liberal school aim at uncovering some objective ground that would enable us "defend an unvarnished right"

to life, liberty and property -- including, derivatively, freedom of contract (though not of the type caricatured by Hardin). Thus, not facing up to the challenges placed before naturalism by these various prominent theorists, will render it impossible to make convincing advances. The paradigm of noncognitivist, anti-naturalist metaethics and metapolitics needs to be shown to be inadequate before the naturalist position can even gain a hearing. That will be my first task in this essay.

## Naturalism

Why is there so much skepticism about the idea of "the nature of X"? The doubtfulness is similar to that which motivates deconstructionists in contemporary literary criticism. We can go all the way back to Heraclitus and, especially, his pupil Cratylus to locate the lineage of this school of thought.

The skeptic's persuasiveness can be understood, given one version of naturalism that has bona fide historical roots. This is a troublesome doctrine. It could justifiably lead classical liberals and British conservatives -- i.e., those who are weary of leviathan for various reason (especially in the United States of America and in the United Kingdom) -- to fear dogmatism and authoritarianism.

The naturalism in question, linked to the Platonic natural law tradition, posits the existence of transcendent, permanent or timeless, and perfect natures for every being. Yet, with this Platonic idea of what the nature of something must be, we are stymied from the start. If to know "the nature of X is a, b, and c," would also requiring knowing that the proposition is a timeless truth, a temporal human being could not affirm this. Forever there would have to be doubt about any proposition affirming that kind of truth.

Therein lies one of there major objections to naturalism. I argue, later, that the Platonist conception of what "the nature of X" must mean is not the best way to understand what "the nature of X" must mean. There is a neo-Aristotelian approach -- which may be called, following Ayn Rand, contextualism -- that has a far better prospect.

## Human Nature

If there is an objective moral foundation of the classical liberal system of polity, its earliest (albeit still halting and by no means fully consistent) expression is to be found in the natural rights theory of John Locke. Contrary opinion exists, of course -- some claim that Thomas Hobbes is the actual grandfather of this polity. But it is widely admitted, at least, that if this republic rests on a normative political framework, it is that which we inherited from the political works of John Locke. Such other thinkers as Thomas Hobbes or Adam Smith either did not advance a sufficiently normative theory or did not exert sufficient (early) influence. Locke, as other thinkers, borrowed from others (e.g., the Levellers). But he put together the most coherent position favoring the idea that each human individual is politically sovereign, in possession of basic rights that is the proper task of government to secure.

I stress the normativity of the Lockean legacy because it is in Locke that we find such ideas defended as that every person ought to respect every other person's equality, freedom and independence and that each individual human being should have a sphere of personal authority accorded to him. The rights Locke claims everyone possesses are political norms, not, as in the case of Hobbes, innately prompted strategies for survival. Locke not only held -- though he did not prove -- that such social-political norms were binding on all persons in a human community. He also believed that these norms were themselves based on more basic edicts of personal conduct, namely, "the law of Nature." Individuals are free, in the sense that they, in adulthood, are able to bring it about on their own to follow these laws. They ought to do the former: "The state of Nature has a law of Nature to govern it, which obliges everyone, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions" (Chapter II, Sec. 6, Second Treatise on Civil Government).

Now the Lockean view has come under attack from both the Right and the Left. The Right sees basic rights as mere individualist artifacts, invented in defiance of the much more reliable streams of tradition and custom that grow, through trial and error, over the

centuries, to become the most dependable devices for social living. The Left takes these rights to be (to use Marx's phrase) "insipid illusions," beliefs produced so as to legitimize certain historically inevitable impulses of human beings at a given time period. They are mere rationalizations, not genuine philosophical-moral foundations.

The most severe damage to the doctrine of natural rights has arisen from the philosophical system that has given rise to the scientism found mostly in the social sciences. This view denies that a normative outlook on human community life even makes sense. It is empiricist and skeptical. It mostly yields conservative conclusions about politics since, in the absence of convincing guidelines for public policy, the best guide is the past -- including class structures, coercive laws, and other edicts based on tradition and custom.

I will try to cast the Lockean perspective in a contemporary light, without losing any of its crucial features and power. I will spell out, in several paragraphs, what the natural rights perspective is. This will make it possible to judge whether it is warranted to dismiss it as many philosophers and social scientists do. The last section of this essay will focus on some objections, ones advanced recently by utilitarians, skeptics, and historicists.

### Natural Rights in Outline

What is a natural rights theory? It is an answer to a question that arises in connection with human community life; namely, "How, in the most general terms, should we (human beings) live with each other?" In particular, this answer rests on an investigation of human nature. The community in question embraces people who are unrelated -- i.e., may not stand to each other as kith' and kin', friends, colleagues, etc. Among family members, friends, colleagues, and so forth, special, narrower ethical principles could probably handle the problems a theory of natural rights aims to handle among human beings unknown to each other. But the situation of large human communities, with strangers as members, is familiar enough, so it isn't difficult to imagine why our question would arise. How should we interact with human beings as such, never mind other ties?

Now this question has been answered in very different ways, for very different reasons. I won't canvass all. It is probable that most people have some familiarity with them.

For example, one answer has been to model human community life on some such life in heaven -- the city of God. Another has been to advise the community to ensure the equality of all of its members (at least in terms of crucial goods and services), or to purify the race, or to service God, or to help the forces of history. These have all been defended, in elaborate treatises, as answers to the question addressed by natural rights theory, namely, "How should we live as a community?"

Numerous questions that arise in the various areas of human inquiry have a bearing on the study of politics. This shouldn't really be surprising. Politics concerns the basic principles of human community life. The issue is certainly complicated by all sorts of factors about human beings, their relationships, environment, health, sustenance, goals and purposes, etc. Political theory subsumes virtually all other fields of inquiry.

Here is the natural rights approach to answering our question: First we need to grasp some points about reality and our knowledge of it. Then we need to learn how we would best understand what is meant by such judgments as "We should act so and so," "He should not act so and so," "This is good," or "This is evil." The reason is that in politics we are, after all, concerned with how we should or should not act, what institutions we should support, and so forth. So we need to consider how to answer such questions. Next we need to explore the application of the ideas of should and should not to human conduct and human institutions. This will involve considering what it is to be a human being, human nature. We need to investigate personal and social moral life -- the realm of ethics or natural law, and whether it is even possible to speak of what individuals morally should do in their own lives and toward their fellows. We need, next, to consider public or political conduct, mainly the conduct that would be appropriate, first of all, toward other people as such, as a bare minimum, within a social political context.

By following this naturalist approach, we will come to the topic of basic human rights theory, our main concern.

### Some Basic Philosophical Issues

First, existence cannot be inherently confusing -- we may be confused about it but it must make sense once closely studied. If this is denied, then all bets are off, not just in human affairs and the studies of them but in all realms of inquiry, including the denial itself. The words we speak, even as we affirm or deny anything, will lack clear and unambiguous identity and the meanings of our concepts will be indeterminate. This will include whatever we ourselves might wish those meanings to be as a matter of our intentions. For example, as we state that by "rights" we only means social devices invented by us, we will have to admit that these devices may or may not be what we want them to be. If reality is itself something in a total flux, all the way to its most basic structure, our statement that this is so cannot be depended upon. It will mean nothing firm or stable. And, not insignificantly, in the realm of ethics and politics that will tend to imply that the powerful -- by virtue of their power and not the clarity and truth of some ideas that justify some conduct -- must rule and no check on them, based on what is really right and wrong, is possible. So, insofar as we admit that we can make sense of even the minimum of our lives, we affirm that reality hangs together in a reasonably orderly fashion, at least at the most basic level.

Moreover, we can know the facts above well enough, also. We can also know a lot more than that, if only we work hard to find things out. Knowing reality as it is is not impossible, as some people have claimed, provided we do not have an impossible ideals as a conception of what is meant by doing so. From what we have already learned we can infer that we can learn about reality. The task is one of finding out about it, through extensive and hard work.

Among other areas of reality of the greatest interest to us is human nature itself, that is, what we are as human beings, quite apart from our individual identity, our special origins, sex, race, professional competence, etc. These can be crucial in some contexts, but for now

what concerns us is human nature. The reason for this concern is that we are interested in how human beings should conduct themselves toward each other qua human beings, and that cannot be answered without knowledge of what human beings are simply as human beings. Once we have got a glimpse at human nature, as it were, we can then ask how considerations of "should" apply in the case of human beings as such. And that provides us with the basic material needed to determine the norms of interpersonal conduct, that is, the norms of political life.

The point about the general integrity of reality is complicated but perhaps a clue or so would suffice so that it can be understood without much difficulty. Everything that exists abides by some very minimal principles, namely, those that pertain to existence itself. That is, just for being something, anything at all, whatever exists abides by certain principles, namely, the principles of existence -- the necessary conditions for something being at all, whatever it is then identified to be. Those principles are, as might be suspected, very general in character, since they apply to everything, past, present, future, and even the possible. (The very possibility of the existence of something involves these basic principles.) And because of this generality, these principles have to be extremely broad in scope but limited in content, in what they imply. This is because granted that all existence, necessarily, exists, there is a great deal of variety in all of what does exist. The most basic principle of existence is that what exists must be something specific, something definite. A chair must be a chair, a table a table, a dog a dog, a person a person, an act of justice an act of justice. This sounds terribly broad, even "empty", but that is because the point bears on everything whatever, so it cannot include very much in the way of variations. Things are what they are, and this is true about everything. Contrary to what may appear to be true; however, there is quite a lot embedded in this point. The main thing embedded in it is that no contradictory situations can exist in reality - - that is, it cannot be the case that something both is a table and is not a table. Perhaps a quick example will show how deeply we all require this point in our understanding of reality. Thus, when in a court of law some testimony is subjected to cross-examination, if the

testimony is shown to contain contradictions -- e.g., someone is found saying both that he was in New York on June 4, 1988, and that he was not in New York on June 4, 1988 -- then we have found something terribly wrong with the testimony. The same would be the case if he said that he had a hat on yesterday afternoon and that he did not have a hat on at that time. Or that he is married to Susie as well as that he is not married to Susie. This is all wrong because such things simply cannot be.

Now this and some related considerations about reality inform us of the absolute requirement of keeping our understanding of reality consistent. There is a lot else we need, but this minimum requirement is entirely indispensable. Everything else about our way of dealing with reality requires that this central point be adhered to. That is why, for instance, if a theory, say of natural rights, contains a contradiction, it cannot be considered even possibly right, let alone true. The same is clear of any scientific theory, a legal contract, or a plan of action. Reality does not tolerate -- i.e., embody -- contradictions, i.e., facts that are of one kind and not that kind all at once in the same fashion.

From the above remarks very little follows except for a few points already hinted at. Knowledge may not involve contradictions or inconsistencies. This general point about knowledge follows the general point about existence, because knowledge is our correct awareness or identification of existence, whatever else it is. The way we obtain knowledge differs from one sort of cases to others -- e.g., in history the records left to us, involving trusting others a great deal, give us knowledge; in biology experimentation with members of the same species of living beings, and our awareness of differences and similarities in the behavior of these members and their various parts, will provide us with knowledge; in sociology the careful observation of how groups of people behave and the interpretation of this observation by reference to our knowledge can be found in each case of knowledge, some in only a limited case, depending on what it is we study. This is important because sometimes it is thought that unless the knowledge in one field of inquiry abides by the standards

of knowledge in all others, it is impossible that we have knowledge in the former.

That is why some people think that we can have knowledge only in the physical sciences, because they believe that knowledge must always and exclusively rest on our awareness of physical properties and attributes. Here is why empiricism is so popular -- because knowledge that is guided by the dictates of the empirical sciences is taken to be the only kind of knowledge.

But then we would rule out at the start any knowledge of whatever lacks strictly physical properties. And that would be a prejudice. Such prejudice is encouraged by theories of knowledge that require that all cases of knowledge be exactly like all others. There is no justification for this, even though it is a widespread view. (The same effects our problem with beauty or moral goodness -- a theory demands that all things beautiful or morally good be identical, and we cannot confirm this, so it is concluded that beauty or moral goodness is purely relative, even subjective.) Yet just as there can be trees, equally healthy, that are very different yet still trees, so there can be knowledge, equally sound, yet different and still knowledge.

A few other, more special, points need to be made about knowledge. First, to know something is to have correctly concluded on the basis of the relevant evidence that something is the case (even if this means only that something is probably so and so, or that something is possibly so and so). Second, the evidence involved is something we may obtain by various means at our disposal -- e.g., simply looking; looking and touching; looking, touching, and hearing; looking, touching, hearing, and comparing to something else, and so forth and so on. The minds we have, and the sensory organs we have, working together by our direction, is how we obtain knowledge. And even if we don't get knowledge immediately but get only well supported beliefs, even good or educated guesses, it is by way of the mind in its highly complicated ways of operation with the senses, that we get this much.

Basically, when we attempt to obtain knowledge we aim for knowing what is what and how something becomes (or became, or will become) another thing; why this has occurred and not that; and

where things have occurred, etc., etc. In all our efforts we need to recall that contradictions are prohibited and that different kinds of evidence may have to be used to discover different facts about the world.

The above is extremely brief but necessary. From there we can take a very long jump to advance to something much closer to what interests us here, namely, politics. What we need to turn to is a consideration of the place of norms in existence. We are familiar enough with knowledge about facts concerning inanimate and animate existence -- rocks are hard, dogs often bark, penicillin can prevent disease, governments often wage war. These kinds of facts can be known without much debate about them, although very soon after we have come to admit that we know something along these lines, we find that other matters we might think we know are extremely controversial. But that is not what is at issue -- controversy is a social problem that anyone who wishes to tell others what he knows (claims to know) will encounter; but first we need to find out whether there is anything we know about controversial topics. Such a topic is the topic of norms, principles of human conduct. That Napoleon should have prepared his men better for the battle at Waterloo, or that Teddy Roosevelt should not have led the U.S. into war, or that President Bush should have fought against inflation by refusing to print more money, or that one should respect the wishes of one's spouse when we consider where to live -- all these are facts or alleged facts about which much controversy arises. Yet that is not the issue, but how we might come to know about these matters. The natural rights theory (which I find sound) answers this question by noting, first, that considerations of what one should or should not do pertain to considerations of what is good and evil. That which is good (and possible) for one to pursue is something one should pursue, and that which is evil (and possible) for one to pursue one should not pursue, to put the matter plainly. But this just shifts our problem.

How do we come to know what is good? Here we need to consider what "good" means. It means the fullest realization of some particular thing as an instance of its kind -- e.g., a good peach is a fully realized peach, or a peach that has most fully completed the

nature of being a peach. A good tennis game is a fully realized tennis game, or a tennis game that has fully reached the crux of a tennis game. The idea is not a very simple one, but whenever we appraise tomatoes, peaches, apples, chickens, parking lots, or whatever, we can learn whatever we should praise it or criticize it by reference to the fact that the thing (or activity or whatnot) in question has more or less fully reached its distinctive nature in the given case at hand. This tennis game is a good one if the players play by satisfying the central ingredients of tennis and whatever those ingredients imply for the particular game at hand. (The particular game at hand may require realizing the game somewhat differently from another particular game.) A good skiing slope or a good knife or a good source of light -- all these pertain to how fully some particular case realizes the essence of what it is in its own instance. We don't always talk of a good this or a good that, or a bad this or a bad that; but such expressions as "great," or "neat," or "swell," or "far out," or "fantastic," and numerous others (I no longer remember) make the same point for us, as do "lousy," "rotten," "poor," etc. When we consider what good is most generally, it has to do with whether something has realized its nature in the case at hand. The nature of something -- what it is that makes it the kind of thing it is -- e.g., a tennis game, a golf ball, or a Christmas tree -- is the place or category it occupies in the most rational way of classifying attributes, properties, and whatever else we perceive about existence. This process yields our knowledge of trees, chairs, furniture, balloons, time, days, weeks, months, space, field, meadow, galaxy, mind, memory, imagination, idea. There is nothing mysterious about the point that everything has a nature, since everything that exists is most successfully classified as one kind of thing or another, and it must be so classifiable for it to exist and for us to understand it and for it to be anything at all. (This follows from the previous discussion.) In the case of human beings, this all lead to the issue of the relationship between their action and being good. Being a good human being, like being a good anything, requires the fullest possible realization of human nature in the particular case of a given person. Thus we -- that is, some widely read or heard human beings, at least -- need to know

what human nature is so we can tell what it is to be good at being a human being. In other words, some clear enough idea of human nature is required for anyone to be able to judge, with reasonable success, what it is to be a good human being.

What then is a human being as such, that is, what is human nature? This is where the naturalism of natural rights theory comes into full focus. Natural rights theory can produce an understanding of the rights human beings have by reference to an understanding of human nature. That is why they are called natural rights -- rights someone has (or we are justified to ascribe to someone) by virtue of his or her human nature!

Human nature is the set of facts that are true of human beings just insofar as they are human beings, nothing else (e.g., not as students, mothers, Germans, and those 25 years old, or as animals, objects, geometrical figures, etc.). What is that set of facts?

Without repeating my earlier points, it includes that human beings are animals (with a biological nature and all of what that involves) and capable of rational thought (that is, having the capacity to think in terms of principles, to think at the level of general ideas or concepts and what these imply). The ancient idea that man is a rational animal is still sound, although some of it, and what exactly it implies, has had to be modified in the light of our greater understanding of some of the issues involved. Still, the crucial point is that human beings are by nature animals and capable of rationality. A good human being would, then, be one who, speaking very generally (with all the very important details left out deliberately, so this can apply to everyone), is biologically healthy and fully alert (except, of course, when continued alertness requires rest). As to what this implies about how we should conduct ourselves personally and in public, we come to this next.

The first normative area we are concerned with is personal ethics -- i.e., the code or laws of nature that pertains to how we should conduct ourselves. By nature we live a most fully human life by being rational. We thus achieve well being on all possible levels (which excludes any interference that we cannot control). But here is the rub. To the best of our knowledge the bulk of the animate world

behaves as guided automatically -- e.g., instincts, drives, reflexes, and so forth (given the environment surrounding it). Human beings, however, are not compelled by their inner drives, instincts, etc., to behave as they do. To put the matter plainly, they are able to choose between genuine alternatives. Maybe some animals can, too. Those cases are rare enough not to pose a problem here. Human beings may also have some instincts, but this too is negligible. The point is that people in maturity are able to choose what they will do. (In short, we are not discussing childhood, even adolescence, although a fuller discussion would have to consider those stages, as many other things.)

Now it is central that human beings enjoy the freedom that other animals lack just in the area of thinking. Human beings, unlike other animals, cope with reality mainly through the medium of ideas, theories, principles, concepts, etc. To live, even to the minimum degree of viability, a solitary adult needs to figure things out; and then can he take the actions his life requires for sustenance. An adult, of course, can choose to wither away, to die, not to live, in which case thinking is not required for him. But we are not concerned about those human beings who do not choose to live, thus have no interest in the principles of human conduct, of human action, of human living! The norms we are interested in have application for us because we haven't got innate drives, etc., to guide us in living; but if we will not live, then the norms are beside the point.

The first point, then, about basic moral norms is that they are required only for the living. But this is inseparable -- in the case of an investigation of the human good -- from the fact that our capacity for thought needs to be initiated or put into effect by us. If we don't put thinking into effect, we merely coast or float about -- usually on the opinions of others -- voluntarily at the disposal of others. In the morality underlying natural rights theory, living requires thought, rational observation, reflection, consideration, recollection, assessment, evaluation, comparison, etc. Without choosing this kind of activity we in fact also reject the requirements of human life, and to the extent that we fail to engage in rational thought, etc., we are

failing in the commitment we make when we choose to live, namely, to live as fully as is possible to us.

For a rational being to choose life is to choose a rational life, and one that isn't rational just now and then. This is a choice one can renege on, but to that extent one will be less than a good human being. Not living in accordance with one's nature is to fail to be good. The requirements for being good, then, include, first and foremost, the exercise of one's rational faculty, something that human beings must do by choice. It is now clear that goodness is being in full accord with one's nature. . That is the function or point of the concept, as it were. Thus, given our human nature, namely, being a rational animal, it is possible to understand what being a good human being is. It is to be in full accord with the requirement of rationality and biological health. It is clear from an understanding of human nature that one's capacity for rationality, one's distinctive humanity as it were, is kept in force by choice.

So the first moral responsibility of any human being who has chosen to live is to be mentally alert, to think rationally, and to act accordingly. This is a responsibility of each individual person. It is a matter of personal choice that one does what one should do, otherwise it makes no sense that one should do it. What one cannot help but do cannot be something one should do. Choice is of the essence of moral responsibility.

But this is not all there is to it. To live our lives according to our nature is the human good. Only individual human beings can make the act so as to achieve or neglect human moral good. Others cannot do it for them. All that can be done even for children is to provide them with good examples and shield them from gross errors.

Alongside the universal moral responsibility to live a human life rationally, there are endless diverse details. They are less crucial for now because they can vary. What will be rational for one person at one time need not be for another. Numerous general principles are pertinent outside the norm that we should think and act rationally. For example, it is generally rational to be honest, productive, generous, prudent, well integrated, and courageous. These are the virtues one will find articulated by most moralists, more or less

intact. What they differ on is what comes first and why. Suffice it to summarize that human life requires that a person live rationally because that is what living the life of a human being amounts to and that is to what a person commits himself when he chooses to live.

The natural rights theory outlined here is based on an ethical view in terms of which the morally good human life consists of a person living rationally. Success, excellence, or happiness (in the sense of full flourishing), as a human being, is best pursued by living in accordance with the requirements of one's nature as a rational animal.

What, if anything, does this tell us about human community life? That only a human community the fundamental organizing principles of which incorporate the basic facts of human morality can be said to accord with human nature, be conducive to human moral goodness and thus be characterized as just. Just communities are not those populated only by good human beings. That could come about by way of accident: people might accidentally gather together and all at once be at their best, regardless of the organizational characteristics -- constitution -- of their community. A good human community is such that it makes moral goodness more than accidentally possible, indeed, it enhances human goodness. This is where natural rights surface.

The just political community is what it is because it accurately reflects the requirements of human nature within the context of community life -- that is, it meets the requirements of morally sovereign individuals by means of respecting and protecting individual human rights to life, liberty and property. These rights are the standards of justice for the organization of a human community -- the criteria for how to establish, maintain and promote justice in community life.

That these negative rights can be the foundation of justice is disputed often on the grounds that justice requires greater activism, not merely protection from untoward acts. A just state or government would, accordingly, engage in certain promotional activities -- legislate appropriate conduct, further the good behavior of its citizens, repair past social wrongs, etc. How, then, could the administration of a system of basically negative rights -- i.e.,

protecting against murder, assault, robbery, fraud, embezzlement, kidnapping, and the adjudication of charges of the commission of such deeds -- count as the maintenance of justice?

If one appreciates, however, that adult human beings possess a moral nature, whereby it is crucial that they make decisions within their sphere of authority, circumscribed by their negative rights, then one can see why a just political and legal system would provide primarily protective rather than active or legislative policies. Given the naturalist basis of this idea of justice and given the idea of human nature that makes the best sense, it would appear evident that a just system must be engaged in securing peace and the respect of negative rights rather than promote certain ends or objectives, something only individual choices may facilitate.

Consider in contrast Rawls's conception of "justice as fairness." The central difference between the Lockean individual rights perspective and that offered by John Rawls is that for Rawls human beings are cast into situations from which they cannot extricate themselves of their own free will -- even their moral character is determined by luck. Accordingly, it is not possible to envision human beings as autonomous, sovereign and morally responsible and, therefore, in need of what Nozick has called "moral space." Rather all persons are in the same boat of having been cast into a situation quite apart from their choices or best alternatives. So as to remedy the unfairness that is experienced by them, justice is needed via the establishment of equality of circumstances. This involves the active promotion of certain states of affairs, ends or objectives, as the substance of justice.

The Rawlsian conception of human nature is unjustified -- it would be unable to explain the enormous advances human beings constantly make on their own lives, their successful creative accomplishments, even the philosophic and scientific innovations that characterize so much of human living. The kind of passivity ascribed by Rawls and his followers to all of us does not even square with how Rawlsian's behave, namely, as creative political partisans of the down trodden, the poor, and needy.

Instead of this passive conception, the institutions of a political community should be rest on the more accurate view that human beings are by nature creative, free agents, capable of self-direction in nearly any circumstance, except where political justice is not possible, e.g., in the midst of an earthquake or when they are crucially incapacitated. The range of their creativity may not be identical, but in normal circumstances each person has ample opportunity to initiate the effort to advance his or her own life, to become more able to cope and to succeed at the innumerable tasks that may provide fulfillment to human individuals.

Within the present framework, however, basic negative rights are the standards or principles of just human interaction that arise from nature. Of course, conduct in line with these standards can give rise to rights that arise from contract, promises and familial relations. A child has rights which parents or equivalent agents must respect, and parents, too, have rights children must respect.

Rights then are those principles which govern some of the basic relations between human beings, but their source may be varied. The most basic source of rights, however, is human nature which implies moral requirements for community life such that every person may be forced to abide by certain principles: It is everyone's natural rights to be respected for what one is, namely, a human being, capable of choosing to live, to think, and to act rationally, and to interact by respecting the rationality of all others.

The rights to life, liberty, and property state these points somewhat cryptically, meaning:

(1) Since it is one's basic nature to be able to choose to live, one's life (as the outcome of one's essential human choice) is something no one other than the agent is permitted to terminate or take (except once the person is refusing to respect the life of another and elicits self-defensive action that may kill);

(2) since the choice to live entails the commitment to think and act rationally, it is unjustifiable that others who have explicitly or implicitly joined a community would be authorized to subvert one's liberty to make this choice (it would be the negation of another's

humanity to subvert his choice between rational thought and action or irrational mental life and behavior) ;

(3) since rational choice should lead one to interact with others, who also will find it rational to associate with others, the association of individuals and the results of such association (e.g., cooperation, competition, trade, bequeathal, and so forth) may not be violated.

All told, then, the rights to life, liberty, and property -- not to be murdered, not to be assaulted or coerced, and not to be robbed or have one's property expropriated -- are natural rights. They emerge because we are human beings, we have the power of choice, as such, to live and to flourish, and we should do so in societies. The crucial point is that natural rights theory rests on the moral nature of human life, on the requirement of each person to choose life and flourishing for himself. The main complaint against this idea is that if another lives badly, neglects his life or suffers misfortune, help may be forced upon or demanded of him. But this is to destroy the human dignity of the person, however needy or earnest he or she might be. Nor may others force someone to engage in the sort of conduct often deemed to be honorable, namely, charitable conduct, since coerced charity is not charity but robbery. Those who urge such measures fail to observe the requirements of human nature. That failure only appears to be useful, helpful, necessary, moral, nice, unavoidable, etc. Once these matters are carefully considered, the alleged welfare-state is not really one that promotes welfare at all. It is impossible to be of value to human beings -- promote their overall welfare -- if one acts out of accord with human nature (except, perhaps, entirely accidentally).

Let me summarize my points. First, natural rights theory aims to address the central question of political life, namely, what norms should guide us in our basic relationship to other human beings? Natural rights theory aims to answer this basic question by consulting nature, specifically human nature. It adheres to certain fundamental points about reality and our knowledge of reality, and it has a certain view about what goodness is, namely, the flourishing of something in accordance with its nature. With respect to ethics or how we should morally conduct our lives, the question is what human nature amounts to and how it may be fully actualized in an individual human

being (which is to say, by an individual human being who possesses the capacity to realize this human nature consistently in his or her case). By choosing life-and-rationality, one conducts himself in a morally proper manner. A community is good -- a just human community -- if its principles are in accord with the moral requirements of human (personal and social) life. The libertarian political stance stresses the primary significance of human freedom or liberty ("negative freedom"), that is, the foremost significance of each person's right to liberty of conduct in the context of social or interpersonal conduct. Respecting the right -- and taking measures to resist its violation -- is warranted on the basis of the natural rights theory outlined in this discussion.

### Some Points of Criticism

At least an outline of the case for the natural rights classical liberal position has been spelled out so as to secure the soundness of the very idea of human nature. The case for the objectivity of the moral foundations of a natural rights theory with libertarian content has also been sketched in sufficient detail so that the position can be plainly considered. It is now possible to take a critical look at some of the objections raised against the naturalist -- i.e., natural law, natural rights -- stance of which the present position as a variant.

Let me turn first to a critic who combines two vital elements of contemporary conservatism, namely, a belief in the significance of tradition with a commitment to a utilitarian value theory. The former belief keeps such a critic close to some of the individualist features of the American polity since, after all, that polity has for more than two centuries embodied such features -- i.e., it has become traditional to embrace individualism in America. The latter is the view implicit in David Hume's anti-rationalist conservatism, whereby the values to be pursued by us find their overarching justification in their public utility. The only element of contemporary conservatism not directly present in this approach is religion. However, religion is presupposed within the traditionalist element, since by reference to tradition religion emerges as a vital feature of culture.

A conservative utilitarian criticism of the natural rights position involves the following points: It may be true that there are various necessary conditions that are required for human existence and flourishing or excellence. Yet it does not follow at all that from these (or from knowing these) it is possible to infer norms or virtues or principles of human conduct. (This is plainly a restatement of the is/ought gap thesis of David Hume and the subsequent empiricist/positivist movement in epistemology and metaethics.)

From this position it would seem both hopeless and undesirable to forge and sustain a free society or legal system by relying on natural laws or rights (whether in the Aristotelian/Thomistic or Kantian/Gewirth tradition). Assuming negative freedom is in most cases a good thing (i.e., it is good when human beings do not intrude on each other's lives and properties), there is reason to believe that within the framework of natural law or essentialist ethical and political thinking this good thing would be jeopardized. We are reminded of the historical fact that most thinkers who have supposed that we can derive "oughts" from the "is" of what human nature comes to have promulgated ethical and political views that have given scant respect to negative liberty. Plato, Hegel, and Marx, to name but three outstanding figures, have all advocated holistic or totalist moral-political systems. While that does not prove natural law or essentialist/naturalist views wrong, the critics would wish us to consider the matter as perhaps suggestive and warn those fond of negative freedom against the temptation to rely on anything like the naturalist tradition.

To put it more succinctly, conservative utilitarian critics of the natural law/natural rights position firmly cling to the Humean is/ought argument against the possibility of naturalist ethics and politics. So they claim that our better theoretical alternative is utilitarianism which does not insist on the full, uncompromising protection of negative rights and allows plenty of room for various paternalistic and welfare policies by governments of human communities.

Now every theory that is flawed needs in the end to be provided with a substitute that holds up. For merely lacking full adequacy --

completeness and consistency -- will not be fatal to a theory while no better one is available. Some critics of natural rights liberalism also defend -- as well as consider problems with -- the sort of ethical/political doctrine we may expect from a utilitarian or consequentialist approach. Here, following a prudent strategy of not denying the troublesome aspects of the view being favored, utilitarians pre-empt the sort of criticism of the positivist/utilitarian ethical/political stance which has lead John Rawls and Robert Nozick, among others, toward its rejection. This is that the position does not guarantee public policies that are in perfect accord with our moral intuitions. For example, one major criticism of utilitarianism is that the pursuit of the greatest happiness of the greatest number (or the general welfare or Pareto optimality) may lead to policies in law and politics which are on their face morally intolerable -- solving the population problem by means of random killing, giving important and widely admired people (VIPs) organs from the bodies of those no one cares about, etc. Utilitarianism, thus, makes possible the justification of what would normally be considered moral callousness. And it is extremely doubtful that any theory can hope to justify such callousness.

But it can be replied that these impressions are essentially unjustified because the position won't generate any more callousness when carefully understood than would other ethical positions. In short, a utilitarian critic of the natural rights stance can hold that the theory provides us with better results in our efforts to understand our moral problems in life than does the natural rights theory. The reason is mainly that the latter view is philosophically flawed while the former is no worse than the latter when it comes to handling difficult moral problems.

Another criticism important to address comes from out and out skeptics. The objection to the present thesis advanced by some such critics has three main parts. First, it claims that naturalism has been invalidated by contemporary empirical science. This is especially true as far the naturalist depends on some type of teleological thesis. Second, it finds fault with the attempt to develop a case for liberalism based on an ethics of individual flourishing, drawn from Aristotle.

One such critic tells us, for example, that "Writing in an age of mass democracy and wage-labour, Aristotle's latter-day liberal followers prescribe a life of bourgeois virtue -- of thrift, industry, prudence, and creative work. However one assesses these ideals, the salient point is that in each of them the content given to human flourishing is taken wholly from the conventional norms of the theorist's local culture. It is far from clear what is the claim on reason attributed to these ideals." He also maintains that "The attribution to Aristotle of a belief in the moral centrality of choice-making (made by Machan and others) is all the more incongruous in that the belief plainly presupposes an affirmation of the freedom of the will which Aristotle does not make."

Third and last, the skeptical critic is doubtful about applying the ideals of classical liberalism to different cultures, thus denying their universalizability, certainly implicit in natural (human) rights theories. The critic can claim, for example, that the individualism involved in the West's political legacy will probably not -- and certainly need not -- apply to a tribal culture. Therein, the critic can point out, individuals -- or, at least, their freely chosen goals, projects, tastes, desires, preferences, etc. -- are not regarded to be important. Individuals are important only as members of the group.

This is a point very similar to that made by certain historicist critics of the natural rights position. Their criticism of Western political thought centers on the alleged fallacy of seeking some stable, transhistorical foundation for political justice. They argue, implicitly, at least, that standards of justice, of goodness, etc., are going to have to be relative to given stages of human historical development.

The historicist objections of the natural rights tradition rest on the premise that the individualism implicit in the Lockean doctrine is false to the facts and is merely an invention of a certain historical period. This criticism, reminiscent of Marxist objections to bourgeois politics and law, contends that the self or ego is an invention, something intellectuals created so as to rationalize certain public institutions and policies. Based on what we have learned from the history of ideas, political history, and cultural anthropology, we

can see, the argument goes, that the idea of the individual self, the autonomous or sovereign person, is a modern contrivance, instead of a successful identification or true discovery of some fact about the human species.

Of course when fully elaborated, this criticism goes on to maintain that in fact human beings are by nature collective. It is maintained that the human individual is a part of a larger whole and thus the good life for the human being is never anything that is derivable from his or her nature as an independent, sovereign, morally equal being. Let me now take a look at these objections to natural rights.

### Against Utilitarian Criticism

There are two lines of argument that I will suggest against the utilitarian position. First, I will refute the objections to naturalism. Second, I will argue that the position itself requires something of a naturalist foundation to be coherent and complete. Since what I have presented earlier -- in my outline of the natural rights position -- should provide the grounding of the refutation of these two criticisms, I will be somewhat brief.

The is/ought gap troubles moral philosophy only if we accept a questionable, albeit prominent, theory of what it is both to be something and to know something, as well as the belief that a rational argument must be have a deductive form. Thus, first, the empiricism underlying this skepticism begs the question of what there can be -- to wit, it holds that only beings which are capable of being sensed can be ascertained to exist. This rules out any type of existence that could involve characteristics we associate with values and morality. Since the empiricist view is open to serious doubt and there is reason to believe that a more pluralistic ontology would be more sound -- based on common sense and its integration into a logically coherent order of existence -- the is/ought gap suggested by empiricism need not be accepted as binding on a serious effort to inquire into the issue of values. Furthermore, the deductivism assumes that the formation of valid concepts could only proceed by way of deducing ideas from other ideas that fully contain them already -- which basically denies any kind of growth of knowledge. So accepting the

sting of the is/ought argument cuts much too deep -- it undermines not just morality but all substantive (non-tautological) claims to knowledge.

There is, of course, an additional problem with the subjective utility or positivist approach to understanding justice. This is that leaves it entirely undecidable whether to embrace that theory. For, after all, whether a theory should be embraced is itself something of a normative question. The positivist -- in economics or in law, not to mention in ethics -- is, after all, advocating something. The positivist is addressing us with the proposal that what we ought to do is to embrace a theory about values and virtues that has it that values and virtues are all subjective, a matter of personal taste or preference. But then why would not the positivist's own theory come to anything more than something we ought to embrace if we like it but not if we do not?

As to the suggestion some make that the natural law (i.e., objective morality) position poses a threat to human ("negative") liberty, that is a justified concern only with an intrinsicist conception of values and moral goodness. This view has it that in and of themselves, by virtue of certain innate traits of characteristics or properties, some items in nature are good, and they command support from those capable of seeing their goodness. The stress is on an enforceable, obligatory command which may be acted on by anyone, including someone who understands the command as it bears on another and can coerce this other's adherence.

The crucial difference between this intrinsicist conception of goodness and the present naturalist view is that the former omits from consideration the relational element of choice involved between a human individual and the values appropriate for him or her to pursue. In other words, regardless of whether one chooses to act in certain ways, the mere behavior or movement furthering some goal can count as morally adequate in this intrinsicist framework, since that alone will satisfy the implication that the good should be pursued. Yet, of course, if "ought implies can," as it must, this intrinsicist view stumbles very badly. Having made someone behave so that this behavior promotes some goal has not succeeded in producing moral

value, since the latter is dependent on choosing the appropriate behavior, that is, on acting rightly. It is clear, of course, that here there appears only a somewhat cumbersome technical difference between some authoritarian conceptions of moral and political virtue and the libertarian position presented above. But sometimes a lot hinges on small differences.

At this point I must discuss ethical and political anomalies since some utilitarians believe that their defense of the anti-naturalist/positivist stance is helped a great deal by recalling them. They seem to think that these sorts of cases cannot be handled by the natural law/rights position, which would be a failing since they evidently occur and need to be handled by us. If a moral/political/legal framework cannot guide us in this task, that framework is seriously flawed.

There are peculiarities about anomalous cases. These may cast them in a different light from that which favors the utilitarian position. To begin with, each anomalous case involves an emergency. That is to say, it places people in unique circumstances that no ethical theory is able to render manageable. Typical are desert island or life boat examples so often raised in judging ethical theories. Ethical theories are general guidelines to human conduct. So if they cannot handle the desert island or life boat examples, they must fail as ethical theories. So, even though it is argued, for example along Kantian lines, that honesty is a duty, if there is an imaginable case where it is not, the theory that so maintains must fail. Prudence is a virtue but sometimes one ought, first, to practice the virtue of courage. Moderation is good policy but clearly not always. It is not possible to find any kind of specific behavior or conduct, outside of following the very general policy of being rational, that will always be the right one for the situation, especially when the situation is extraordinary.

One point to recall about natural rights is that they are supposed to guide the formation of law and government, not personal conduct. Natural rights are the application of ethics to public policy, so necessarily they apply only in circumstances where public life is possible. Some examples of the alleged inadequacy of natural rights theory as applied in practice presuppose that such rights are to guide

conduct at the individual, personal level. So these simply fail to appreciate the purpose of natural rights theory.

Libertarian natural rights theorists have taken their clue from John Locke who distinguished between situations "where peace is possible" as distinct from those where it is not. Rand, too, has addressed the issue of the relationship between circumstances in one's life that are exceptional and the moral position that is most suitable to human life in general. Are the principles or virtues that are to guide ordinary human conduct and relationships identical to those that might help with the bizarre? The same type of question may be asked of a scientific theory. In all of its realms, especially in that which is open to choice (as that involving human beings), nature can confront us with odd cases in which principles designed to treat normal circumstances do not smoothly apply.

But there is also the consideration that some anomalies illustrate that moral wrongs of the past produced the character of the case such that we seem to be faced with a dilemma. Thus one might be persuaded that someone's rights should be violated so as to correct a previous wrong -- as in affirmative action policies -- and thus accept the view that rights are not compossible. And even though libertarian natural rights theorists have actually addressed the class of such cases, many utilitarians, following Hardin's lead, have not found their work compelling enough to indicate how they have gone wrong.

The general thrust of the natural law/rights approach in handling anomalies may be summarized as follows: The purpose of ethics or moral systems is to provide for the guidance of human living, with political ethics and law to provide for the guidance of human life in the company of other human beings. To the extent that an ethical and/or political system helps achieve the purpose it naturally has -- i.e., the purpose assumed in asking the question that gives rise to it as one of the many competing answers -- it is a sound system. But even a sound system of ethics and/or politics can face difficulties, so the question is whether one or another faces them more successfully -- more comprehensively, with greater integrity, etc.

What of the relationship between the ethical system and the political one (the principles of which would form a constitution or set of common laws on which positive law would most appropriately be made to rest in human community aimed at justice)? Ethics is prior to politics -- how I should live is logically prior to how we should act together. So the relationship between ethics and politics is best seen in light of the fact that each person, as an adult, faces questions of living concerning oneself logically prior to facing questions of living with others who are strangers to oneself. (Of course, there are ethical questions pertaining to living with members of one's family, neighborhood, etc.; these are not political but social in the sense of pertaining to rather intimate or specialized yet close human interaction, not to the organizational principles of a large human community.) This is a matter of the ontology of the situation. That is, because one is the initiator of one's own behavior, in need of guiding one's conduct, one needs to have the answer to what one should do, how one should carry on per se before advancing to the problem of what one should do or how one should carry on vis-a-vis others. The ethical dimension of one's life has priority and the political is subsidiary to it, so when a conflict arises the ethical is decisive. (The political realm is nearly always subject to ethical or moral scrutiny, whereas political principles are not invoked in evaluating ethical principles.) For official representatives of the political dimension this may not be advisable to stress publicly, of course, and as far as their own conduct is concerned, given their personal loyalties, the priority issue may not arise at all. (The point is well played out in Melville's *Billy Budd*.) The natural law is prior. The natural rights each person has vis-a-vis others (who are strangers to one but are members of one's human community) may on occasion have to be disregarded in the face of the responsibilities of natural law. Anomalous cases seem to me all explainable in terms of the naturalist stance just sketched.

Of course, this sketch immediately calls to mind some elements of utilitarianism's consequentialist character. There is one major difference, however, between utilitarianism's and natural rights theory's teleological position. Utilitarianism is entirely uncommitted

to some definitive conception of the human purpose and, therefore, of the summum bonum. With the human good left essentially subjective, the question of moral right and political rights is also undecidable. The escape clause, namely, that what right and justice and the like come to is "stipulated along the lines of Ulpian's maxims, or along Roman or Common law lines" just cannot make clear sense, in utilitarianism's own theoretical terms, of the assertion, e.g., that there is "a right or even the moral duty to be unjust to individuals in certain circumstances."

The point here is not to deny that difficulties can arise in reconciling principles of morality and principles of politics and law. There is some reason to doubt that such difficulties must turn into moral dilemmas for all normative frameworks. I myself have made the case that there is no good reason to even re identify basic human rights as prima facie rights just so as to accommodate the alleged conflicts that can exist between different basic human rights. But wherever it is suspected that such difficulties face us, the proper course that would seem to me warranted would be to attend very carefully to the intricacies of the circumstances. (The positive law is itself indicative of this point, when we consider how it handles alleged wrong-doings in exceptional circumstances, such as those involving shipwrecks, famine, earthquakes, etc.) Such cases tend to beg for the fullest possible knowledge of all the factors, since only then can we learn if the persons involved made full use of their faculties so as to arrive at the most rational -- i.e., morally most suitable, given the nature of man as a rational being -- decision under the unusual circumstances. Sketching such cases won't suffice.

Some utilitarians give us the clue to the last criticism I wish to level at the positivist elements of the utilitarian stance. They inform us that "The legal never exhausts the moral" (p. 50). What we could learn from this is that the law is a narrower scope and might very well be aimed at guiding us through normal elements of our lives, with its very general and very few edicts, compared to morality which bears on every aspect of life under our volitional control.

Against Political Skepticism

Both of the central points advanced by the skeptic can be answered. First, Aristotle, as the representative of the objectivist and universalist stance in ethics and politics is the first to admit that not everything that is morally right and wrong is universalizable, even though fundamental virtues may be. And in my own position, as well as in the positions of those who share it, rationality is the central virtue -- just as in Aristotle, right reason fills that role. Other virtues are more contextual -- which is entirely consistent with Aristotle and with an Aristotelian approach to moral theory. Moreover, all the virtues spelled out by "latter day liberal followers" can be conceptually related to the original virtues spelled out by Aristotle. (Whatever is added, can be defended, as well, and this may simply show some learning in the field, not relativism at all.)

Second, Aristotle does address the issue of choice-making in his distinction between the intellectual and the moral virtues. The latter require choice -- which makes sense, since morality involves self-responsible conduct or neglect, something that could not be without the capacity for choice. Aristotle did have a doctrine of free will -- only it was not a major aspect of his moral theory. He located freedom of the will in the process of deliberation. As Jaeger notes, "Aristotle's notion of free will is the exact complement of the notion of most perfect deliberation in the *Epinomis*." And David Ross notes that "On the whole we must say that [Aristotle] shared the plain man's belief in free will but that he did not examine the problem very thoroughly, and did not express himself with perfect consistency."

In the main, most skeptics do not bother to investigate these issues at any greater length and thus it is not possible to argue with them. Suffice it to say that many of the skeptical claims advanced directly against natural rights theory are unsupported and some are evidently false.

We should add that, no doubt, a normative naturalist would have to invoke a teleological conception of human behavior -- where else would the standards of right and wrong, good or evil come from? If by nature human beings are not destined -- i.e., it would not be more healthy or suitable or fitting for them -- to be doing one thing rather than another, why insist that doing it is a good or right thing? The

only alternative would be a theistic doctrine, which of course also embraces some variety of teleology and would, thus, come under similar fire from some allegedly devastating empiricist thesis.

Only there is no such devastating empiricism around, no decisive blow against teleology, and it is no surprise that one of those skeptics who directly attacks natural rights theory did not even offer a footnote to indicate why naturalists ought to abandon their project. Given all the new philosophizing about metaphysics, epistemology, philosophy of mind, etc., one would have to be rather steeped in a discredited logical positivism to think that teleology can be dismissed so cavalierly and thus normative naturalism (i.e., natural law and rights ethics and politics) swept away with ease. Furthermore, anti-naturalists are also afraid of free will, once again because of their scientism -- thinking that somehow the belief in free will is anti-science, anti-empirical, anti-cool! Poppycock! No more so than many other doctrines and, by my lights, far less so than any other. Science is fully compatible with the free will idea. Empiricism in epistemology need not be taken as decisive about anything.

Finally, there is that old saw about how natural law and rights theory is a danger to political liberty. It is odd enough that people so wedded to scientism and determinism would worry about political liberty -- why not just say, *que sera, sera*? But then to claim that having some idea of human nature must endanger human liberty is really difficult to fathom.

Presumably, as Popper argued in *The Open Society and its Enemies* -- and as argue virtually all of his followers -- a stable idea of human nature authorizes us to force people to conform to the standards we may derive from this idea.

First of all, it is a curious position to take in philosophy or any other discipline that aims to learn the truth about the world that we shall avoid some theory if it has certain consequences we do not favor. That is precisely the ideological thinking so many believe liberals are guilty of. If learning about human nature does happen to justify coercion, so much the worse for liberty. That this seems unwarranted to me is not here the at issue. What matters is that

philosophers have to follow the argument, not evade those results they fear.

As another prospect, however, what if, as in the case of Locke and most natural law classical liberals, precisely the opposite is warranted by reference to what we learn is human nature? What if it turns out that human beings ought to live the sort of life that places them in the position of moral responsibility, thus precluding the forcible imposition of any but the most minimal standards (i.e., protection of their basic rights so that justice may prevail and self-governing virtue can flourish)?

Even if there were any problem with naturalism along these lines, certainly noncognitivism or skepticism cannot help -- if there is no reason for imposing standard A (which limits liberty because human nature so requires), surely there is no reason impose standard B (which protects liberty because human nature requires). Without standards nothing can be concluded, either for or against intrusive action, but the right standards may give aid and comfort to the champion of liberty -- which is just what I think is the case. (Some skeptics, e.g., Gray, seem to exemplify this point.)

Maybe what is wrong is that naturalism is a morally demanding position, after all, and many classical liberals just don't want to hear about that. Let us all be free, they want to cry out, but they don't much want to know about what to do with their liberty. Never mind that no one has the authority to make them do anything within the Lockean naturalist tradition. They don't even want to know about what they might be morally obligated to do as free agents. (The problem is that often those who claim to know what someone ought to do, jump quite illogically to the conclusion that they are justified in forcing another to do the right thing. But this is just wrong. What is also wrong, however, is the belief that being a free agent, sovereign or autonomous, means that the standards of right conduct are invented by one rather than derivable from an understanding of one's nature and who one is.)

The trouble with the skeptical defense of liberty is that it can boomerang right back at those with a preference for liberty -- if it is

no more than a preference. (This point is made very well in Renford Bambrough )

So all in all natural law theorists need not be taken aback all that much by dismissal they experience from Popperians and other skeptics. (Some of these, by the way, have stopped being great friends of political liberty. ) Once they have made the points I have hinted at here -- and added some of the nuances one needs with each new incarnation of the basic skeptical thesis -- it is time to move on to more constructive work. It should not have to be pointed out that the world could use a good deal of it now.

As we have seen, when skeptics claim that teleology is obsolete and that empiricism is the right theory of knowledge, they are off base. Such a position is untenable, not to mention odd for a skeptic to embrace.

It is worth adding that for a long time mechanistic materialism had been the reigning metaphysics. It was believed, at least by secular philosophers, that here lies the foundation for the solution to many human problems. Thomas Hobbes placed all his hopes on this view as did many others. Even Kant accepted that at least the phenomenal world -- what science is concerned with -- yields fully to the laws of mechanics. Only the mysterious noumenal world escapes it -- though we are left in the dark as to just how this is possible.

But mechanistic materialism is not even the favored ontology in physics. Any of the varieties of reductionism is certainly not self-evidently true. Arguably, also, a much more pluralistic metaphysics - - akin to what I outlined earlier -- makes much better sense of what we find around us as well as within us in reality.

This leads us to the following conclusions: if there are different kinds and types of beings -- substances -- that have a fundamentally irreducible nature, the explanation of how they behave could also be very different. Efficient causality -- the mode of the action of one thing upon another that is favored by reductive materialism and physicalism -- need by no means be the only form of causality. Teleological causation -- such as we invoke when we explain much of human (but a good deal of plant and animal) behavior -- cannot be ruled out.

It is a matter of discovery, not a fundamental metaphysical assumption, as skeptical critics of the natural rights position assume, whether we affirm the reality of one or another kind of causal interaction. And there is evidence enough pointing to self-determined behavior when human action is at issue not to dismiss this on the ground of some a priorist reductionism.

Similar points can be raised against the assumption that empiricism is the hands down winner in the competition between theories of knowledge. Clearly, the empiricist theory itself is not capable of being shown true by reference to the standards of truth and knowledge its adherents propound. Instead, a view of knowledge I sketched above makes better sense, namely, whereby what is known has a decisive impact on the standards of truth and knowledge about that kind or type of being. It is our task to see to it that we keep tracking what is known as we make our claims to knowing this or that, as well as we try to find out more about it. This again yields a pluralism, this time in the theory of knowledge -- there are some general criteria that all successful knowledge claims need to satisfy. But there are also criteria that are relative to the context of the different kind and type of thing known. Thus what will be known about musical harmony will be a case of knowledge for different reasons from what will be known about the war of 1812 or the number of consecutive 7s that may occur in the calculation of pi.

This pluralism and contextualism handles very well, I propose, the problems derived from the fact of cultural diversity, without requiring of us accepting cultural relativism. It makes the justifiable versus the unjustifiable diversions possible to identify, based on certain stable enough, transhistorical standards of good, right and just. The present natural rights approach would appear to manage that very well -- it may explain why the "human rights" approach has been so widely invoked in international criticisms of political and legal practices through the last several decades.

### Arguing with Historicism

The objections historicists make against natural rights have greater punch than those made by skeptics, who are usually hoisted on their

own petard. One of them states that "there is no expression in any ancient or medieval language correctly translated by our expression 'a right' until near the close of the middle ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century." This critic also construes individualism as basically wrong, referring to "that newly invented social institution, the individual."

Plainly put, the historicists contend that stable, transhistorical principles of political life cannot be identified. Both human nature and our understanding of the world change constantly; what we know is known from a given historical perspective. Human nature itself changes because we look at the world differently at different historical periods; our minds are influenced by when we use them and the resulting "knowledge" is, thus, conditioned, which does not yield stable principles of ethics, politics, economics or any other sphere of human concern.

Yet much of this is wrong on its face. The rest of it is subject to dispute on conceptual grounds..

There is evidence that the dominant language of human life in certain earlier periods of human history paid scant attention to the human self, to individuality, to the moral autonomy and political sovereignty of human beings. No doubt, Plato and even Aristotle considered human beings in their relation to other social wholes -- the family, tribe, city, class, race, etc. But what of this? Why should any such historical evidence be decisive in questions of ontology and, eventually, ethics and politics?

Conceptual development can be both gradual as well as uneven, radical, or dormant. If human beings possess the capacity to make choices, they may exercise it differently as they will, constrained by some factors but with plenty of elbowroom to work in. Also, in the domain of human knowledge many false starts, misunderstandings, prejudices, etc., are possible. To look to what in fact people believed throughout history is only one avenue of discovery as to what actually exists.

The claim that, since the dominant modes of belief had been different from some belief system being considered, the latter is flawed, simply won't settle the issue. In many sciences we find advances toward a more and more fully developed conception of some thing -- the solar system, the atom, the liver, the human mind, etc. To claim that since in the past there was little talk about a potentially infinite universe, that idea cannot be sound, would be quite out of order in astronomy or cosmology.

Similarly, it may be granted that in the past -- say prior to the 11th century -- extensive or even sufficient moral concern for individual human beings as such had been negligible (though by no means absent). Most philosophers focused on the place human beings occupy on the social landscape and what this implies as to their proper behavior vis-a-vis some supposedly greater body. (But let us not forget that this same talk is prevalent today -- e.g., in Marx' phrase "the organic whole [or body]" of humanity. )

Furthermore, a dialectical point needs also to be made against the historicist thesis. Such a thesis will backfire because it purports to be correct even while many disbelieve it. Most people who have written on these matters have thought that what they say is true, whether they have been right or wrong. They have not believed that what they believe is only true for some period of time, in some phase of human history, etc. And the historicist must implicitly propose that the thesis about the temporality of the idea of the human individual is universally valid -- that is, e.g., in 10000 years it should still be accepted as true that the idea of the human individual was only a temporary myth, not something true. But if this fails to be the dominant view, should it be dismissed for that reason alone? I doubt that historicists would be so giving.

The dominance of some position may be due to many factors, including the obvious one that those who advanced it may have found it convincing, may have benefited from advancing it, may be focused their gaze too narrowly, etc. The real issue is whether the view can hold its own against alternative positions. The task is for historicists and all others to get into the fray and argue it all out, not keep

invoking the authority of history or numbers in defense of some position.

Finally, the historicist position is to be false to the facts of its own promulgation. It is, after all, individual human beings who propound ideas, who criticize them, who stand apart from the rest with their doctrines and skepticism. This testifies to the individuality of the advocate, at least -- a human being who can act independently, who can think for himself or herself, and whose kind of individualistic life may therefore require certain socio-economic-political conditions for it to flourish. The natural rights position pays very close attention to just this scenario about human life.

### Naturalism, Some final Reflections

Perhaps the central thesis of this essay should once again be stated, this time as simply as possible. It is that, because of the kind of beings they are and numerous other facts about their lives, it is more just for human beings to live in freedom than even in the slightest condition of slavery. Or, even more bluntly, free men and women live more justly as human beings, than do slaves. It is this thesis that I have been defending.

Despite the simple truth of the above claim, it is also true that the naturalist normative framework may be difficult to identify and work out. No doubt many have tried to erect it and have failed -- though the mere lack of widespread acceptance of natural law/rights views is no proof of this. The main reason for much of the actual failure is not so much a matter of moral and political inadequacy but the flawed metaphysical and epistemological doctrines that have guided the enterprise of developing the naturalist position. If we had heeded Gilbert Harman's idea, that "We must take care not to adopt a very skeptical attitude nor become too lenient about what is to count as knowledge," especially in how we conceive of moral and political knowledge and what tests we expect claims to such knowledge and the underlying arguments to meet, the task of developing the naturalist position would probably have fared better.

A theory in any field of investigation is an answer to a question that human beings raise. Which theory is the best one may be

determined by which of the ones proposed answers the question best, which is itself determined by what we want from an answer. In political theory we want an answer that helps us guide our organized community affairs with the least degree of inherent conflict, the most comprehensive applicability to such community life, the facilitation of human living while in the company of others human beings to whom one is not intimately related.

Whether the present theory meets these criteria cannot be known without a comparative analysis. What may be valuable in this undertaking is entering a contending answer with a clearly important perspective, one that places the individual in the center of political affairs.

If we do not allow a fruitless idealism to stand in the way of identifying the best theory in this sphere of inquiry, we will recognize that nature is the best guide to how we need to cope with our human personal and community lives, a matter to which each of us pays heed quite naturally, after all.

#### ENDNOTES:

(1) It is arguable that exactly this problem was tackled by Socrates in his various discussions, namely, whether a firm standard of right judgment in matters of justice could be identified. See, Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953). See, also, Tibor R. Machan, *Human Rights and Human Liberties A Radical Reconsideration of the American Political Tradition* (Chicago: Nelson-Hall CO., Inc., 1975).

(2) The way the alternative is stated or expressed is often one of the points in hot dispute. Interestingly, many of those who would deny that there are objective standards in any of these areas are, nevertheless, insistent on describing the dispute in ways they alone deem appropriate!

(3) Although I will be dealing with the naturalist metaethics and meta-politics that I argue supports the classical liberal or libertarian polity of individual (negative) rights, it should be noted right off that there are philosophers who argue that naturalism does not support such a position.

The concept "objective" should here be understood to mean "capable of being demonstrated on the basis of evidence of existing (natural) beings, attributes, etc." It is a concept that need not be interpreted differently from how it is used in, say, instructions to a jury to be objective in their assessment of a case presented to them, i.e., consider only what is evident to them -- facts, valid inferences from them, etc. -- and not permit their wishes, desires, biases to undermine their judgment. Of course, what is at issue in the debate is whether such objectivity is possible to human beings. For more, see notes 19 and 20, below.

(4) In A. I. Melden, ed., *Human Rights* (Belmont, CA: Wadsworth Publishing Co., 1970). I discuss Macdonald at some length in my doctoral dissertation, *Human Rights: A Metaethical Inquiry* (University of Michigan Microfilms, 1972), as well as in my *Human Rights and Human Liberties* (Chicago: Nelson-Hall Company, 1975).

(5) *Op. cit.*, Strauss, *Natural Right and History*.

(6) The one major exception is Harry V. Jaffa, who finds much in Locke that is philosophically valuable. See his *How to Think About the American Revolution* (Durham, NC: Carolina Academic Press, 1978).

I should make it clear that while I treat Locke's political thinking as the precursor to the kind of classical liberal or libertarian position I defend, I do not mean to imply that Locke himself was a full blown, uncompromised libertarian. Clearly Locke was willing to take political steps against atheists and others, for reasons we do not now need to consider. When I invoke either Locke, Aristotle or anyone else in clarifying the position I want to develop here, it is mostly so as

to indicate some basic similarities of approach, thus making it simpler to understand the present position. One cannot always say everything pertinent, so these indices are very useful.

(7) Perhaps the most general attack on natural rights theory comes from Richard Rorty, e.g., in his *Objectivity, Relativism, and Truth* (Cambridge, England: Cambridge University Press, 1991), p. 31. Rorty is a pragmatist/historicist who denies any transhistorical knowledge, even in the natural sciences. That his historicist claims are themselves purported transhistorical claims about how human beings cope with their environment does not seem to phase him much, yet they would appear to involve him in a flat out contradiction. I present a case for what might be termed a minimalist foundationalism in Tibor R. Machan, "Evidence of Necessary Existence," *Objectivity*, Vol. 3 (Fall, 1992), p. 31-62.

(8) See, however, note 13, for a strange affinity between Strausseans and Rorty & Co.

(9) See, e.g., John Gray, *Liberalism* (University of Minnesota Press, 1986), and *Liberalisms* (Routledge, 1989). See, also, Larry Briskman, "Skinnerism and Pseudo-Science," *Philosophy of the Social Sciences*, Vol. 3 (Summer, 1981), and Norman Barry, *On Classical Liberalism and Libertarianism* (St. Martin's Press, 1989).

(10) John Gray has gone through several changes in his political orientation, yet he has throughout remained a Pyrrhonist in his epistemology. His most recent hero in political theory is Michael Oakeshott.

Some have observed that Gray has changed his mind on several occasions concerning the merits of liberalism and related doctrines. Yet what has remained entirely unchanged in his views is his Pyrrhonism or skepticism concerning not only morality but any kind of knowledge claim. Ever since I have known Gray, we have argued about the same issue, namely, whether human knowledge is possible at all. And, of course, when one denies that it is, one is

rather unconstrained about choosing political positions, since they can now be entirely a matter of one's alternating preferences.

Incidentally, the source of skepticism in Gray is not much different from what it is in other skeptics, namely, the misguided conception of what knowledge must be, namely, timeless certainty. What many take to be the limits of knowledge really amount to no more than the fact that knowledge isn't something else, namely, becoming what one knows. To complain that we know reality only as it appears to us or in its knowable aspect is to (a) attribute to reality features that have nothing to do with reality as such, namely, that it is known or knowable by us, and (b) confuse knowing reality with somehow acquiring it in toto into consciousness. See, for more on this, my *Individuals and Their Rights* (LaSalle, IL: Open Court Publishing Company, Inc., 1989).

(11) John Rawls, "The Independence of Moral Theory," *Proceeding and Addresses of the American Philosophical Association*, Vol. XLVII (Newark, DE: American Philosophical Association, 1975), pp. 5-22.

(12) Russell Hardin, "The Utilitarian Logic of Liberalism," *Ethics*, Vol. 97 (1986), p. 73-74.

(13) For a very informative discussion, see Stephen Cox, "Devices of Deconstruction," *Critical Review*, Vol. 3, (Winter, 1989), pp. 56-76. For the more constructive case supporting the foundationalist approach to moral and political theory, see some of the contributions to the special issue on this topic, "Rethinking Foundationalism," in *Reason Papers*, No. 16 (Fall, 1991). It bears noting that all the talk about post-modernism, as if these doctrines hadn't been thought of prior to our times, is more of a press agent publicity stunt than fidelity to fact -- so called post modern thinking is much better described as pre-ancient (pre-Socratic, pre-Aristotelian) thinking. Or rather, more or less developed versions of these ideas surrounding these issues have been around in every age, with more or less popularity.

(14) Some Strausseans seem to acknowledge the difficulty of establishing such foundations, yet insist on the need to look for them (at least implicitly -- e.g., Allan Bloom, *The Closing of the American Mind* (Simon & Schuster, 1987), who eschews a thorough discussion of absolute or fundamental realities, even as he severely lambastes those who have given up on it and embrace some variety of relativism.

There has always been some question about just how genuine this Straussean endorsement is, since Leo Strauss has claimed that for bona fide philosophers it is OK to deceive the ordinary folk and, also, that few so called philosophers are bona fide. See, for an interesting discussion, Carl Page, "The Truth About Lies in Plato's Republic," *Ancient Philosophy*, Vol. 11 (1991), pp. 1-33. Perhaps it is the search alone, and the fate of those who are committed to it, never mind what one finds, that Strausseans see as significant, but it would be too dangerous to admit this to all and sundry. Some of those who have studied with Strauss have openly endorsed nihilism -- e.g., Harry Newman. (See, for a good summary, Paul A. Basinski & Harry Newman, "Nihilism Challenged ... and Defended," *Claremont Review of Books* (Fall, 1985), pp. 26-28. Newman probably articulates openly the essential features of Rorty's thinking, as well, as he does those of all epistemological skeptics'.

(15) See, Ayn Rand, *Introduction to Objectivist Epistemology*, 2nd Edition (New York: New American Library, 1990).

(16) See, e.g., Frank M. Coleman, *Hobbes and America* (Toronto, Canada: University of Toronto Press, 1977). See, also, Edward Andrew, *Shylock's Rights* (Toronto, Canada: University of Toronto Press, 1988), for an elaborate and especially virulent denigration of the Lockean idea of individual rights. Leo Strauss and many of his students maintain that while Locke is to be credited with laying the foundations for the American polity, there is not any substantial philosophical difference between Locke and Hobbes. See, e.g., Walter Berns, *The First Amendment and the Future of*

American Democracy (New York: Basic Books, 1976). The basic argument of the Strausseans is that since Locke's basic philosophy (metaphysics, epistemology) fails to cohere with his allegedly natural law ethics and politics, the latter is largely a rhetorical device for justifying certain special political objectives. This, incidentally, resembles closely the Marxist view, whereby not a concern for truth but one of vested interest accounts for the "convictions" underlying the American polity. See C. B. Macpherson, *Possessive Individualism* (London: Oxford University Press, 1962). Cf., also, Andrew C. MacLaughlin, *The Foundations of American Constitutionalism* (Greenwich, CT: Fawcet Publications, 1961) and op. cit., Jaffa, *How to Think About the American Revolution*.

Whatever motivations we may attribute to Locke, the crucial question is whether his basic argument holds up. And if it is possible to find a philosophical groundwork that gives the Lockean portion credibility, the Lockean theory may be in good shape. After all, every level of an edifice need not be designed and built by the same engineers.

(17) I use these labels while aware of the controversies and fine distinctions stressed by those to whom they apply. Essentially, though, the Right supports spiritual welfarism or paternalism, urging government to act as soul crafters (see George Will, *Statecraft as Soulcraft* [New York: Simon and Schuster, 1983]), while the Left supports economic or material welfarism or paternalism, urging the state to guard us against our mismanaging of our households. The dispute is probably at the metaphysical level, namely, about which is more important, our souls or our bodies. The present position sees the person as an integrated, multifaceted entity with a most fundamental need for self-directedness. See, Tibor R. Machan, *Business Bashing, Why Commerce is Maligned* (forthcoming)

(18) Although I discuss the views in terms of their philosophical characterization, I will cite particular theorists so that we can get a clear statement of the criticism rather than having to produce a

statement that members of these schools could contend is a caricature. Those I will consider have addressed the natural rights position quite directly.

(19) I note this because it is contested in contemporary metaphysics (most prominently by, e.g., by Willard Van Orman Quine, who advocates ontological relativism or Richard Rorty, who simply denies that we can have bona fide knowledge of the nature of what exists -- i.e., of the foundation of knowledge). To claim, as some of these thinkers do, that all this proves is that for us reality must be consistent is to attempt something by their own thinking one cannot do, namely, gain an independent perspective of the relationship between reality and the human understanding. In other words, the very enterprise in which such thinkers are involved belies their own doctrine's soundness.

(20) Here, again, the view I am sketching is implicitly or explicitly contested by such philosophers as Richard Rorty and Paul Feyerabend. And their skepticism has direct bearing on whether the thesis I sketch below can be defended. Both seem to me, however, to be captivated by the mistaken notion that when we know X, we must be influencing X and this brings into question whether what we know is in fact X or X+our-impact-on-X. But knowing X is not influencing but grasping it, not attacking but embracing it, as it were. Part of the confusion arises from thinking that when we know X as it is, we somehow must have implanted into our knowing faculty the X itself, which of course does not happen -- what is there is not X as it is but our knowledge of X as it is. Knowing X is not the same as being X!

This should also allay worries about knowledge having always to be final, complete, closed. IN this connection it is still very instructive to read J. L. Austin, "Other Minds," in his *Philosophical Papers* (Oxford: Clarendon Books, 1961, and Barry Straud, "Wittgenstein and Logical Necessity," in George Pitcher, *Wittgenstein* (Garden City, NY: Anchor Books, 1969).

(21) Tibor R. Machan, "C. S. Peirce and Absolute Truth," *Transactions of the C. S. Peirce Society*, Vol. 16 (Spring 1980), pp. 153-61.

(22) This metaphysical position is not without its challengers and there is ample literature on the subject. Yet, all I want to point out is that a challenge is itself something and if one denies that the above holds universally, it is an open issue what the challenge itself must mean. Aristotle still had the best defense of the law of non-contradiction as a basic fact of reality, not just of our mode of apprehending it.

(23) Tibor R. Machan, "Epistemology and Moral Knowledge," *The Review of Metaphysics*, Vol. 36 (September 1982). I discuss in this paper the nature of natures -- i.e., what it is to be the nature of something. I carry further this discussion in *Individuals and Their Rights*.

(24) Here the naturalism of the present position emerges most distinctively. For more, see *op. cit.*, Machan, *Human Rights and Human Liberties* and Douglas B. Rasmussen, "Essentialism, Values and Rights," in T. R. Machan, ed., *The Libertarian Reader* (Totowa, N.J.: Rowman and Littlefield, 1982), pp. 37-52. See, also, *op. cit.*, Machan, *Individuals and Their Rights*.

(25) I develop at some length the case for this definition as I try to answer a challenge by M. P. Golding, advanced in his "Toward a Theory of Human Rights," *The Monist*, Vol. 52 (October 1968), p. 495, in, e.g., *Individuals and Their Rights*.

(26) The argument for this conception of free will advanced by Roger W. Sperry, in his more technical paper, "Changing Concepts of Consciousness and Free Will," *Perspectives in Biology and Medicine*, Vol. 9 (Autumn 1976), pp. 9-19. See, also, Tibor R. Machan, "Applied Ethics and Free Will, Some Consequences of

Independence," *The Journal of Applied Philosophy*, Vol. 10 (1993), pp. 59-72.

(27) The choosing in question may perhaps be characterized better by the term "initiating (of thought)." It is done, as it were, by willing -- the person's most basic act of paying heed or becoming alert or focused in life, something the person needs to sustain and maintain as an individual commitment. When this choice or initiation of the process of awareness is abnegated, even partially or temporarily -- except, of course, during required rest -- the commitment to living a good human life is faltering.

(28) *Op. cit.*, Machan, "Epistemology and Moral Knowledge."

(29) I am here drawing on the work of Ayn Rand, "The Objectivist Ethics," in *The Virtue of Selfishness: A New Concept of Egoism* (New York: Signet Books, 1964). See, for more, my "Reason, Individualism, and Capitalism: The Moral Vision of Ayn Rand," in D. Den Uyl and D. Rasmussen, eds., *The Philosophic Thought of Ayn Rand* (Urbana, IL: University of Illinois Press, 1983).

(30) Plato's conception of justice is broader than the justice that can characterize a political community. The just state for Plato is really the perfectly good human community, one in which everything goes right. For the difference between Plato's conception of justice and that which is considered here, see Hannah F. Pitkin, *Wittgenstein and Justice* (University of California Press, 1972), pp. 303ff. Consider, also, that in Plato's *Republic* what is at stake is not political justice as such but the nature of the just or morally, ethically good or excellent human being. Justice, in that context, is a more encompassing concept than in the context of political theory as an effort to conceptualize the best constituents of a large community or nation state.

(31) I develop in detail the argument for the obligatory nature of these rights for human individuals in the context of their community lives, in *Individuals and Their Rights*. Since I argue from the basis of classical egoism or individualism, it may be significant to appreciate just how one may establish the obligation to respect others' basic rights from such a moral foundation. Chapter 7, "Individualism and the Problem of Political Authority," concerns just this issue. See, also, Tibor R. Machan, "Reply to Critics of *Individuals and Their Rights*," *Reason Papers*, No. 17 (Fall 1992).

(32) John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 104. Rawls may, of course, reject this characterization of his position but it is very difficult to see how he can make any room for moral responsibility given his view that character itself is a function of luck, etc. See, for more on this point vis-a-vis Rawls, *op. cit.*, Machan, *Human Rights and Human Liberties*, p. 167-68. Consider the following: "The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is ... problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit." One may wonder whether Rawls is fully aware of the deterministic implications of this claim. He may as well embrace B. F. Skinner's doctrine in *Beyond Freedom and Dignity* (New York: Bantam Books, 1971), in which the ontological foundations of ethics are explicitly denied. Yet for Rawls it is problematic, to sweep aside free will entirely, for then how could he argue, as he evidently does, that human beings ought to act in accordance with his conception of justice as fairness. If we ought to be fair, it must be true that we have the choice to be fair or not to be fair. If whether we possess the character to be fair "depends upon fortunate family and social circumstances," then we either will be or will not be fair and there is nothing Rawls or anyone else can do about the matter, nor can anyone blame people for failing to be fair or for failing to support institutions of fairness throughout society. Does Rawls wish to embrace the view that whether one supports, say, affirmative action or opposes it is irrelevant to one's

more virtue? It would have to be, however, if our family and social circumstances made us supporters or opponents of such policies.

(33) Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 57. Nozick has since writing this book rejected his libertarian views - see his, *The Examined Life* (New York: Simon and Schuster, 1989), pp. 286-96, mainly on grounds that even if individuals require such moral space, as spelled out by means of their Lockean negative rights, they may be made to conform to certain public purposes we all need to share. "The libertarian position I once propounded now seems to me seriously inadequate, in part because it did not fully knit the humane considerations and joint cooperative activities it left room for more closely into its fabric."(pp. 288-7) Nozick thinks that such considerations and activities need to be given symbolic expression via certain government projects that give it meaning as such. The libertarian who shares the concern with such common goals and meanings will stress, however, that when these are instilled in the membership of the community by force, they lose their significance and, indeed, via such coercion will undermine the chances of their realization. Forced belief and practice is alienating and saps the society of its life blood.

(34) *Op. cit.*, Rawls, *A Theory of Justice*, pp. 101-102.

(35) Rawls subsequently published *Political Liberalism* (New York: Columbia University Press, 1993), in which, as Stephen Holmes points out in his review (*The New Republic*, October 11, 1993, p. 42), Rawls "unexpectedly combines this [The Theory of Justice's] argument [about social determinism] with its opposite. Alongside strong claims about unequal upbringing and the redistributions it implies, we now find the observation that people are 'responsible' for their character and desires, whatever disadvantages their social upbringing heaped upon them,, and that "those who surf all day off Malibu must find a way to support themselves and would not be entitled to public funds'."

I should at this point call attention to James Sterba's efforts to demonstrate that from a classical liberal or libertarian negative rights theory one can reach conclusions that would support the supportive welfare state. I address this position in my responses to Galston and Sterba at another place in this volume.

(36) Some, such as Heather Gert, in "Rights and Rights Violators: A New Approach to the Nature of Rights," *The Journal of Philosophy*, Vol. 90 (1990), pp. 688-694, have argued that rights are superfluous since all human wrongs can be reduced to injuring or harming people. As she puts it, "To say that I ought not to punch you because it would hurt you is sufficient -- there is no further need to invoke that alleged thing that is your right not to be punched or hurt. Clearly, much of what is to be taken into account is the harm caused by our actions and the significance we give to the harm"(p. 694).

Yet this is wrong -- rights violations often involve depriving people of choices and some of these choices, if they had not been made, would have resulted in greater injury to the person than what resulted from the rights violation itself. Concerning some other aspects of what it amounts to violating rights, see J. Roger Lee, "Choice and Harms," in M. Bruce Johnson and T. R. Machan, eds., *Rights and Regulation* (Cambridge, MA: Ballinger, 1983), pp. 157-173. Interestingly Gert does not consider any libertarian analysis of rights -- e.g., those by Eric Mack, Jan Narveson, Lee, or Rasmussen & Den Uyl. This is not surprising since most of her analysis focuses on what are called positive rights, such as "persons in underdeveloped countries" having "the right to even a minimal amount of food"(p. 693). But then her essay ought to have been entitled "Positive Rights and Positive Rights Violators."

(37) See, for more on this, Tibor R. Machan, "Between Parents and Children," *The Journal of Social Philosophy*, Vol. 23 (1992), pp. 16-22.

(38) For why implicit consent is a binding commitment to a principle of social life, see my *Individuals and Their Rights*, Chapter 7.

(39) This holds even for those few who may have no means available to them to further their lives via the protection of their right to negative liberty -- e.g., the utterly incapacitated poor -- since those who do have those capacities ought to strive to preserve the general, unexceptional conditions of human flourishing, meaning, they ought to maintain those rights that will help them to do so as human beings. (Incidentally, those thoroughly incapacitated are not usually the ones who violate negative rights since they are by definition unable to do such strenuous things. It is, thus, moot to argue that they have the authority to engage in such conduct. It is more important to consider why others, not so incapacitated, might have that authority instead of the responsibility to provide the remedies needed.)

(40) The welfare state now and then does help some people is not a counterexample here. Some people fall out of airplanes and live to write best selling books about it. Moreover, the good done via the welfare state is demonstrably costly to those who were taxed so as to produce it; and that much of this cost ought not to be born by them is not an implausible thesis. Yet, it is more likely that the welfare state supports those who manage it more successfully than those in whose behalf such managed is supposed to occur. See, John Gray, "Classical Liberalism, positional goods, and the politicization of poverty," in Adrian Ellis & Krishan Kumar, eds., *Dilemmas of Liberal Democracies* (London: Tavistock Publications, 1983). Gray notes, that studies have demonstrated that "The greatest net beneficiaries from the welfare state in Britain have been the professional middle classes, whose political pull and social skills have enabled them to create and then exploit a vast range of services largely sustained by tax subsidies derived from the poorer majority. The largest net losers from British welfarism, on the other hand, have been the working poor and then victims of

the artificial poverty trap created by the extremely high marginal tax rates to which they are subject"(p. 180).

(41) Ernest van den Haag, "Against Natural Rights," Policy Review, No. 23 (Winter 1983), pp. 143-75. Appendix 1 of Individuals and Their Rights is a direct response to van den Haag's arguments.

(42) This point, incidentally, is difficult to support philosophically without a natural law, natural rights underpinning. In other words, how do we tell, without reference to human nature, that freedom is a (non arbitrary) good thing for a human being living in a community?

(43) Renford Bambrough, in his Moral Skepticism and Moral Knowledge (Atlantic Highlands, NJ: Humanities Press, 1979), disposes of the alleged conceptual connection between essentialist or objectivist moral theories and authoritarianism.

It does not follow from the true premise, "[I know that] A ought to do X" that "Therefore, [I know that] someone ought to force A to do X." The further premise, "[I know that] "(For any A and for any X) If A ought to do X, someone ought to force A to do X," would have to be true, as well. While there may be some cases such that if A ought to do X, when someone, say B, knows this, someone, say B, ought to force A to do X -- e.g., if A ought to respect the rights of others, and B is the government established to protect rights -- it is certainly false that for all cases of "A ought to do X" this is so.

(44) Strictly, to determine whether they are intolerable would require establishing a superior competing theory; yet moral beliefs need not all rest on explicit moral theories -- there is a moral reality just as a physical, chemical, biological or legal reality known to most ordinary people and to violate those beliefs should not remain unexplained.

Ethical dilemmas may appear to occur once one takes a close look at a situation that pits two or more equally sensible moral

beliefs against one another. One way this might be resolved is to establish an ethical theory that succeeds in rationally ranking moral principles. A way of evading the problem is to claim that the world is simply too topsy-turvy for us to find an adequate theory to make sense of it (e.g., in the realm of ethics). An explanation of all this may involve the fact that no theory pertaining to dynamic matters such as human conduct could be final in its scope, so there will always be some areas yet to be integrated within a theory. Theories will at times need modification so as to accommodate this fact.

(45) There is a more serious problem with the utilitarian stance, identified by Kenneth Arrow, in *Social Choice and Individual Values* (New Haven: Yale University Press, 1962). The very ideas of rational choice and democracy (or liberty) combine to generate contradictory public policy. Furthermore, the idea of the greatest happiness of the greatest number is confused, based on the incommensurability of the two features to be quantified, namely, the universe of those who can be happy and happiness itself, so it would help to know just what exactly the value standard is that van den Haag is proposing. See, however, Chapter 2 in my *Private Rights, Public Illusions* (New Brunswick, NJ: Transactions Books, 1993), where I argue that no such problem faces a natural rights approach to social or public choice theory because it leaves a rationally delimited public scope wherein democracy is to function.

(46) *Op. cit.*, Liberalism.

(47) *Op. cit.*, Gray, Liberalisms, p. 258.

(48) *Ibid.*, p. 265 n26.

(49) Does this mean the individuals do not exist as individuals or are neglected as such? Presumably, for Gray's objection to go through, he would have to claim that a tribe is an individual or an organic whole, just as Karl Marx had claimed that "the human essence is the true collectivity of man" (in "On the Jewish Question")

most likely because he regarded humanity an "organic whole" (in Grundrisse).

(50) Alasdair MacIntyre, *After Virtue* (University of Notre Dame Press, 1981).

(51) In *Individuals and Their Rights* I defend a conception of the human individual that withstands most of the more plausible critical charges made against individuals -- e.g., that it relies on an anti-social, atomic conception of human life. See, also, *Capitalism and Individualism, Reframing the Argument for the Free Society* (New York: St. Martin's Press, 1990). For a more fundamentally focused discussion of individuality, as it arises in metaphysics (vis-a-vis whether the entities populating reality are or could be individuals), see Jorge J.E. Gracia, *Individuality* (Albany, NY: State University of New York Press, 1988). In relation to the claim that within an Aristotelian tradition -- including, especially, the politics that emerges from it -- it is worthwhile to note that Aristotle's metaphysics may be more individualistic than is widely believed. See, in this connection, Henry Teloh, "What Aristotle Should Have Said in *Metaphysics Z*," *The Southern Journal of Philosophy*, Vol. 20 (Summer 1982), pp. 241-55. See, also, Emerson Buchanan, *Aristotle's Theory of Being* (Cambridge, MA: Greek, Roman, and Byzantine Monographs, 1962), p. 2.

(52) *Op. cit.*, Machan, "Epistemology and Moral Knowledge." If radical or strict empiricism is correct, then knowledge of what ought to be done is of course impossible, since "good" and "ought to" are not radically (even though they could be common sensically) empirical concepts.

(53) For a discussion of the problems with the open question argument Moore advances against the naturalist metaethics, see, *op. cit.*, Machan, *Individuals and Their Rights*, p. 94.

(54) This development has, of course, occurred with the emergence of such views as those of Paul Feyerabend and Richard Rorty. There have always been intimations of it in the thinking of various relativist and historicist philosophers. See, Tibor R. Machan, "Some Reflections on Richard Rorty's Philosophy," *Metaphilosophy*, Vol. 24 (January/April 1993), pp. 123-135. See, also, *op. cit.*, Machan, "Evidence of Necessary Existence."

(55) The significance of this point may escape some but it should not, at least, not if one is interested in consistency. At a recent conference an advocate of legal positivism was arguing how unwise it is for justices of the Supreme Court as well as legal scholars to read the United States Constitution as if that document depended in the slightest on some notion of natural law. Professor Lino Graglia invoked David Hume's is/ought gap thesis and defended the positivist notion that all that justices ought to do is read the constitution literally, placing limits on majority rule only on very rare occasions -- such as in the unlikely event that some legislature enacted a law barring women from voting. In such a case, of course, the Constitution is, of course, quite explicit: no legislature may do such a thing.

Now from a positivist position there is no justification for this heartfelt advice. Graglia may feel strongly about this matter but by the tenets of Humean moral skepticism the fact, say, that the Constitution grants women the vote does not prove that justices ought to invalidate any law that prohibits the vote. From the "is" of what the Constitution asserts no ought could follow, according to Hume, as to what anyone ought to do. (As to how best to understand Hume on this context, I would defer to those who claim that he was opposing only the extreme rationalistic efforts to deduce moral oughts, not the more common ones of drawing moral inferences from our understanding of human affairs.)

If the response were that, well, it is inconsistent to be a justice of the U. S. Supreme Court and also refuse to uphold the provisions of that court, the answer is, so what? Why ought one to be consistent? It is just some people's preference, is it not?

Furthermore, neither does it hold, as many positivists maintain, that what ought to be honored in the law is what the people -- i.e., the majority of those of them who vote and their elected representatives -- want. So what if the people want A (the "is") and the justice honors not-A (the "ought")? No objection can be made against this by legal positivists.

On the score of consistency, incidentally, if the positivists admits that at least justice ought to be consistent in their decisions with the document they took an oath to uphold, it is then not much of a leap of logic for one to argue that they ought to be consistent with the implications of that document. For example, if the positivist accepts that the U. S. Constitution endorses nearly universal democracy, and if democracy presupposes certain societal provisions -- e.g., the right to privacy, private property, political participation, freedom of speech, freedom of association, equal treatment under the law, etc. -- the legal positivist would have to accept, also, that justices ought to reject all those laws that render democracy inoperable. Are the provisions listed above good candidates for what democracy -- and thus the U. S. Constitution -- requires? Well, democracy involves the uncoerced decision of a member of a community to select one of several alternatives to promote as a principle of community life. Without those provisions there is no such absence of coercion. If one has no right to privacy, private property, equal treatment under the law, etc., then democracy is impossible -- the voter lacks independence and will very possibly be threatened by any outcome of the selection process that does not favor the majority. The voter will be unable to retreat to his or her dominion to escape repercussions for voting against the majority. The voter may be treated differently from other voters if he or she is not part of the majority.

Thus, it appears, that even the most minimal normative content legal positivism accords to the process of law making and jurisprudence commits the positivist to nearly everything that natural rights theorists advocates. Most significantly, of course, the positivists has made it impossible for him or her to advocate any normative claim, including the claim that democratic decisions

ought to be honored by justices. There is simply, for the positivist, nothing to be said in favor of what justices ought to do that one could not, with equal validity from the positivist framework, deny that the justices ought to do. And such a theory must simply be declared hopelessly fruitless, unworkable, void and null.

(56) Op. cit., Rasmussen, "Essentialism, Values and Rights" and Douglas Den Uyl and Douglas Rasmussen, "Nozick on the Randian Argument," in Jeffrey Paul, ed. *Reading Nozick* (Totowa, N.J.: Rowman and Littlefield, 1981), pp. 232- 69. In my *Human Rights and Human Liberties*, I put the matter as follows: "There are no intrinsically beautiful or good or right things, only things that are good, right, or beautiful in relation to living entities for which things can be good, right, and beautiful in terms of purposes and goals" (p. 66).

(57) This is what's so unreal about the kinds of cases that analytic philosophers use to test ethical principles -- ones so ingeniously devised by, for example, Judith Jarvis Thomson. No theory of ethics -- indeed, no theory of any kind outside perhaps metaphysics -- should be held responsible for managing all imaginable cases.

Despite overdoing the testing of ethics by reference to such cases, some of those that are realistic should, in fact, be considered in the examination of an ethical system. When I suggest, for example, that courage might now and then conflict with prudence, I have in mind a case such as when a soldier must defend against an attack from the enemy but could easily imagine hiding, instead. The act of defense would involve courage, the act of hiding would involve prudence. One needs to consider the proper hierarchy of ethical principles in order to handle such a case. That is just what would be done in the study of military ethics.

(58) Quoted in H. L. A. Hart, "Are There Any Natural Rights?" in op. cit., Melden, ed., *Human Rights*, p. 61n. This appears to be a

paraphrase of Locke's point, advanced in his *Second Treaties of Government*, Book 2, Chapter 19, 211-48.

(59) This is part of the value of all the hoopla that has emerged from T. Kuhn's work in the philosophy of science. But see my "Kuhn's Impossibility Proof and the Moral Element in Scientific Explanations," *Theory and Decision*, Vol. 5 (December 1974), pp. 355- 74.

(60) For a detailed discussion of compossibility, see David L. Norton, *Personal Destinies, A Philosophy of Ethical Individualism* (Princeton: Princeton University Press, 1976).

(61) E.g., op. cit., Mack, "Egoism and Rights," and "Egoism and Rights Revisited," *The Personalist*, Vol. 57 (Autumn 1977), pp. 282-87. See also, op. cit., Machan, "Prima Facie versus Natural (Human) Rights."

(62) Op. cit., Van den Haag, p. 49.

(63) Ibid., p. 48.

(64) Earl Conee, "Against Moral Dilemmas," *Philosophical Review*, Vol. XCI (January 1982), pp. 87-97.

(65) See, again, my "Prima Facie versus Natural (Human) Rights."

(66) Here is a passage that illustrates Aristotle's view: "Virtue is concerned with feeling and actions; praise and blame are bestowed on voluntary ones, pardon (sometimes also pity) on involuntary ones. To define and distinguish the voluntary and the involuntary is, therefore, essential if one is enquiring into virtue -- and useful for legislators too, in connection with the assigning of honours and punishment." (*Nicomachean Ethics* III. 1, 1109b30)

(67) Werner Jaeger, *Aristotle* (Oxford University Press, 1934), p. 152.

(68) David Ross, *Aristotle* (Methuen & Co Ltd., 1964), p. 201.

(69) I have read a draft of a forthcoming paper by Gray in which some of these issues are explored in greater detail. We will have to wait until it appears before we can tell whether its case is telling, although it is difficult to see how Gray could avoid his problems without recanting at least those of his remarks that rest on his flawed textual analysis of Aristotle.

It is worth noting that Gray makes much of two points against classical liberalism, namely, its subjective individualism and its aspiration to universalism. On the first point, Gray characterizes individualism in a strictly subjectivist way and this is clear not necessary for classical liberalism. See, for example, my *Capitalism and Individualism*, as well as my *Individuals and Their Rights*, in which I develop what I have called classical individualism as a contrasting individualist position. See, also, *op. cit.*, Norton, *Personal Destinies*,

Concerning the nonuniversalizability of liberalism's principles, it is worth noting that while no doubt some implications of these principles may not be universally applicable -- ought, after all, implies can, and some societal circumstances make no room for certain possibilities -- the real issue is whether the basics are objective, not universal. Cultural diversity can be divided into the sensible contextually warranted and the morally and politically intolerable varieties. Without some sense of what is basically right, that distinction is impossible to make and we are left with having to accept the killing of wives in India for the sake of collecting a new dowry as simply a different cultural practice. Indeed, Gray's own effort to criticize cannot escape a certain measure of universalization. After all, should someone in a given culture advance the thesis of universalizability, Gray would argue against such an individual. So his own criticism of the alleged

cultural imperialism of classical liberalism cannot help but amounting to a kind of cultural imperialism. So what we are left with is the question, which of these trans-cultural systems of standards or criteria is the sound one. We lack the option of engaging in the discussion without any concern for that issue, as Gray seems to think we may proceed.

(70) Tibor R. Machan, *The Pseudo-Science of B. F. Skinner* (Arlington House, 1974). See, also, Roger W. Sperry, *Science and Moral Priority* (Columbia University Press, 1983).

(71) Princeton University Press, 1953.

(72) *Op. Cit.*, *Moral Skepticism and Moral Knowledge*.

(73) John Gray has recently identified himself with a rather forceful conservatism. See, for example, his review of Adam Seligman, *The Idea of Civil Society* (New York: The Free Press, 1992), in "Authority's Ghost," *The New York Times Book Review* (Sept. 13, 1992), p. 26.

(74) I explore this in greater detail in my *Individuals and Their Rights*. The main point is that our encounter with the universe clearly suggests a great variety of types and kinds of beings and while in some cases we may be mistaken in the belief that there exists a difference of type or kind while it merely appears to be so, in other cases it is not reasonable to expect the success of a reduction, say, from musical harmony to physical matter or process, from self-awareness to brain process, from literary excellence to chemical events.

(75) I have in mind, in particular, Roger W. Sperry's work, as outlined in *op. cit.*, *Science and Moral Priority*.

(76) "Transhistorical" is not the same as "transcendent." What transhistorical involves is the stability of certain standards of right

and wrong throughout the history of a distinctive species of agents who must, given the kind of beings they are, choose their conduct. Some fundamental choices are going to be sound for them anytime, anyplace, although many of the derivative decisions may differ due to historical variables. Thus, while it may turn out that certain virtues, such as thoughtfulness or right reason, will never be dispensable for a good human life, other moral alternatives, vis-a-vis parenting, citizenship, or familial loyalty, will vary from culture to culture or even more particularly.

(77) It may be instructive, and should be taken into consideration in the assessment of the respective views, that the natural rights theory of Locke gave impetus to the eventual emergence of such documents as the United Nations Universal Declaration of Human Rights, certainly a trans-cultural instrument of moral and political influence. While this may not be a document that fulfills its task flawlessly, it goes a good distance toward stressing the propriety of such an approach. It is difficult, indeed, how Gray's multiculturalism -- buttressed, at one point, with a reference to Paul Feyerabend's epistemological anarchism -- can make any sense of any kind of criticism, even that which he engages in, not to mention those involved in chiding the Soviet Union, South Africa, Chile, Iraq and other cultures for inhumanities.

(78) In the last analysis skepticism is so nihilistic that it robs the proponent of the position of any justification for saying anything at all, even critical. Why should we, from a skeptical perspective, accept any meaning of the words being spoken?

(79) *Op. cit.*, MacIntyre, *After Virtue*, p. 69. For whether the historicist position, e.g., of MacIntyre, is historically accurate about rights in particular, see Brian Tierney, "Origins of Natural Rights Language: Text and Contexts, 1150-1250," *History of Political Thought*, Vol. 10 (Winter 1989), pp. 615-646, and "Conciliarism, Corporatism, and Individualism: the Doctrine of Individual Rights in Gerson," *Christianesimo nella Storia*, Vol. 9 (1988), pp. 81-111.

(80) *Ibid.*, 228.

(81) Karl Marx, *Grundrisse* (New York: Harper & Row, 1972, abridged), p. 33. For how well developed this idea has become, often not even clearly linked with Marx, see Catherine A. Mackinnon, *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987). See, also, Alan Freeman and Elizabeth Mensch, "The Public-Private Distinction in American Law and Life," *Buffalo Law Review*, Vol. 36 (1987), pp. 237-257. It is instructive to note that if we are to understand philosophical arguments for natural rights along Marxist lines, such that they are designed, even if inadvertently, to serve some special or vested interests, this can cut deep enough to indict Marxism as well as other views that employ it. For example, arguably one likely consequence of implementing the anti-individualist, anti-individual rights position is to strengthen the power of the state or government over against the claims of citizens. In short, this position fosters state power. One might then hold, consistent with the Marxist analysis, that these arguments against individuals have as their ulterior motive nothing other than statism, the gaining of full or totalitarian legal power over human individuals. Yet the real question is not what motivates these views but whether they are right.

(82) Here the point earlier made vis-a-vis skepticism about universal principles holds against historicists, also. These self-reflexive arguments are not without their serious punch, using, as they do, the common logical rule of substitution to test various claims. For more on these kinds of issues, see *Reason Papers*, No. 17 (Fall 1991), "Rethinking Foundationalism." See, also, *op. cit.*, Machan, "Evidence of Necessary Existence."

(83) For an interesting history of ideas on the concept of the individual, see J.D.P. Boldton, *Glory, Jest & Riddle, A Study of the Growth of Individualism from Homer to Christianity* (New York: Barnes & Noble, 1973). But see, also, John O. Lyons, *The Invention*

of the Self (Carbondale, IL: Southern Illinois University Press, 1978).

(84) See my "Law, Justice and Natural Rights," *Western Ontario Law Review*, Vol. 14 (Fall 1975), pp. 119-30.

(85) Gilbert Harman, *Thought* (Princeton: Princeton University Press, 1973), p. 145.

(86) I wish to thank Mark Turiano for his advice on the preparation of this work, as well as James Sterba for his criticisms. I believe the paper has benefited considerably from discussing various features of it with James Chesher, Douglas J. Den Uyl, Gregory Johnson and Douglas B. Rasmussen.