

ON THE FOUNDATION OF NATURAL RIGHTS

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Can one provide a foundation for pre-legal, non-contractual rights? That is, are there any rights of the so-called natural variety and can their existence be demonstrated? The question is a particularly vexing one, for it involves the fact-value dichotomy, the alleged logical barrier to the derivation of normative principles. In this article I will argue that such a foundation can, indeed, be identified and explicated, and will attempt to provide a detailed account of what I consider to be the primary and more problematic aspect of that foundation and a somewhat schematic presentation of its secondary component.

I

Pre-legal, non-contractual rights are moral claims of a particular kind. They are non-conventionally derived claims, the sanction for which is the use of force. That is, they are claims for which the justificatory basis is neither in consent, authority, nor tradition, the status of which permits the exercise of physical coercion in order to exact compliance with their moral requirements. Because they imply coercive sanctions, rights constitute a unique class in the set of moral prescriptions. Consider the distinction between the moral injunction of a rights statement and that of other types of moral rules. I have a right to life which implies that I may forcibly oppose attempts to deprive me of it. Now consider the following moral prescription: "One ought to employ rational decision procedures whenever one considers some important matter affecting one's life." Hence, I ought to consider discursively not irrationally my choice of a career. That I *ought* to do so, however, does not imply that I must. It does not imply that I may be physically compelled to summon my powers of ratiocination and apply them to my vocation concerns. In contrast, my right to life implies not simply that others *ought* not to infringe it but, that

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others *must* not infringe it and may be forcibly prevented from doing so. Rights universally held, then, entail moral imperatives or duties for all moral agents, a more stringent category of moral rule than a simple prescriptive injunction like "one ought to be rational."

Being a constituent of that category of human discourse which prescribes behavior rather than simply describes the behavior of people, assertions of rights confront moral philosophers with the dilemmas attending the demonstration of all prescriptive principles. The principal dilemma is one long associated with the justification of normative statements: the dichotomy between facts and values. As this dichotomy has, since Hume, constituted the central impediment to advances in moral philosophy, it must be resolved by any political theory which aspires to the derivation of moral verities.

Given the formidable nature of this obstacle, much of my article will be devoted to devising its removal. To that end I will, first, set forth an account of the fact-value problem and suggest why it is that a variety of ingenious attempts to resolve it have failed. Next, I will propose a solution to the is-ought dichotomy which will hopefully establish the value of that upon which a major tradition in libertarian rights theory bases its political position. Finally, I will suggest how rights can be derived from that value. Before embarking upon this three-part project it will be useful to delineate the tradition within natural rights libertarian theory from which my own position emerges.

Libertarian theory maintains that each human being has exclusive rights to the use and disposition of both his physical person and those extrapersonal objects justly acquired by him. These rights confer a correlative duty of non-interference with their enjoyment upon all other individuals. The supposition underlying this conception of rights is that all individuals have property in themselves and by suitable means can acquire property in various external objects. These means generally consist in the appropriation of unowned objects by labor and the acquisition of owned objects by being voluntarily given title to them by their present owners. The problem for libertarian political theorists, then, has been to establish that human beings, indeed, have property in themselves and their justly acquired estates.

While a variety of arguments purporting to demonstrate the validity of the libertarian conception of rights have been historically proposed, two lines of paradigmatic argumentation can be discerned. The first, traceable in its nascent form to Locke,¹ has been resuscitated in non-theistic garb by Rothbard and Sadowsky² and appears to take as axiomatic the moral proposition "Each person has exclusive rights of ownership in himself." This, in turn, according to its proponents implies that objects modified by the efforts of one's person become by extension owned as well. If I own A (my person and its efforts) and use it to modify B (any extra personal object) which is unowned, the mixture of that which is owned with that which is not establishes, according to this argument, ownership rights in the latter.

There are difficulties that I find in this argument. First, it asserts rather than demonstrates that one ought to own one's person. But, perhaps, behind this assumption lies an unexpressed argument for it in the minds of its proponents. Perhaps they infer from the fact that human beings are able to volitionally control their bodies, that they morally have a right to exercise such control. And yet, from the mere fact that something does in fact regularly occur, volitional control of one's body for example, we cannot infer that it *ought* to occur. The regularity of earthquakes around the Pacific basin does not imply that they ought to take place. Furthermore, this sort of argument confuses political and metaphysical liberty. After all, the political right of bodily control is somewhat distinct from the metaphysical property of volitional control. For example, I may violate someone's political right of bodily control by assaulting them every time they attempt to use their physical person in a certain way. Yet I do not thereby impair their volitional capacity. That is, they are still able to unforcedly control their bodily movements through the exercise of their own mental faculties. Volitional and political freedom are in this way distinct. Hence, the implicit equation of the fact of volition with the prescription of political liberty in the above argument is erroneous.

There is a second difficulty which arises with respect to this "self-ownership" argument for libertarian rights and it has to do with the justification which this argument develops for the acquisition of rights in extrapersonal objects. Locke, who is the source of the "self-ownership" thesis maintains that by mixing one's labor with unowned resources one has "joined to it something that is his own" and thereby has made it his rightful property.³ Of this argument Robert Nozick has astutely commented:

Why does mixing one's labor with something make one the owner of it? Perhaps because one owns one's labor, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?⁴

The self-ownership argument, then, is defective both in its attempt to defend its initial principle, self-ownership, and in what is said to follow from that principle, rightful appropriation of that with which one has mixed one's labor.

However, there is another argument for rights attributable to Locke. It emerges as the major competitor to the "self-ownership" argument and has a good deal of *prima facie* plausibility. It is this argument that I shall attempt to strengthen and defend in this article. The moral principle upon which it rests is that for human beings life is a good. From this principle it follows that the means necessary for the realization of that good are themselves good. Self-ownership

and property acquisition and possession are two such means—hence, their instrumental goodness. These two instrumental goods are unusual in that they encumber all human beings with certain moral duties toward others. That is, each person has a duty toward his fellows to refrain from inhibiting their liberty generally, their acquisitive activities specifically, and their use of justly acquired objects. And this duty is derived from the legitimate claim of each person to what is required for life. Such a claim is appositely called a right in that it defines the moral boundaries of social intercourse for all human beings and so is legitimately claimed by each human being.

While the life argument was expounded from a theistic standpoint by Locke, its first systematic non-theistic statement (if we exclude Grotius) was presented by Herbert Spencer.

Animal life involves waste; waste must be met by repair; repair implies nutrition. Again, nutrition presupposes obtainment of food; food cannot be got without powers of prehension, and, usually, of locomotion; and that these powers may achieve their ends, there must be freedom to move about. If you shut up a mammal in a small place, or tie its limbs together, or take from it the food it has procured, you eventually, by persistence in one or other of these courses, cause its death. Passing a certain point, hindrance to the fulfillment of these requirements is fatal. And all this, which holds of the higher animals at large, of course holds of man.

If we adopt pessimism as a creed, and with it accept the implication that life in general being an evil should be put an end to, then there is no ethical warrant for these actions by which life is maintained: the whole question drops. But if we adopt either the optimist view or the meliorist view—if we say that life on the whole yields more pleasure than pain; or that it is the way to become such that it will yield more pleasure than pain; then these actions by which life is maintained are justified, and there results a warrant for the freedom to perform them. Those who hold that life is valuable hold, by implication, that men ought not to be prevented from carrying on life-sustaining activities. In other words, if it is said to be 'right' that they should carry them on, then, by permutation, we get the assertion that they 'have a right' to carry them on. Clearly the conception of 'natural rights' originates in recognition of the truth that if life is justifiable there must be a justification for the performance of acts essential to its preservation; and therefore, a justification for those liberties and claims which make such acts possible.⁹

Now, this argument of Spencer's can be analytically divided into two components. The first component deals with the issue of life's goodness, its worthiness as an object of human action. The second component purportedly deduces the instrumental values, including rights, required to further life. The principal focus of this article will be on the former as it is epistemologically prior to and therefore is presupposed by the latter.

II

As stated by Spencer, the "life" demonstration of rights takes the form of a hypothetical argument. *If*, Spencer contends, we consider life to be an evil, *then* there is no moral sanction for the actions and institutions required for the support of life. *If*, on the other hand, life is good, *then* the necessary conditions for its maintenance are good as well:

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Is life "good" or "justifiable"? On this question Spencer was silent. Others have not been.

The most famous of contemporary libertarian proponents of the "life" position is the novelist Ayn Rand. Rand purports to have produced an argument demonstrating that man's life is not only a moral value, but the highest moral value, the one which establishes the positive or negative value of all else. Joining Rand in her conclusion, but differing with her as to its basis is philosopher Eric Mack. Both of their attempted proofs of the ethical primacy of life bear close scrutiny by those interested in the foundations of natural rights, as both attempt to claim for rights a categorical status not supported by Spencer's argument.

Now, the claim of Rand and Mack to have demonstrated the normative value of life (and thereby to have implicitly provided a foundation for rights) has consequences beyond the ones obvious for political philosophy. In putatively providing such a demonstration, both purport to have resolved the dilemma posed for moral philosophy by David Hume. Hume, in a famous passage from his *Treatise of Human Nature*, alludes to the logical impediment to any possible deduction of moral principles from non-moral, i.e., factual statements.

In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible but is, however, of the last consequence. For as this *ought* our *ought not*, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as

authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention would subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.⁷

As conventionally understood, this passage asserts the impossibility of deducing a moral conclusion from non-moral premises. It suggests that a conclusion which states "what ought to be the case" cannot be deduced from a premise which merely states "what is the case," as the former substitutes for the copula "is," wholly different connective phrase, "ought to be," one not contained in the premise. But this is to violate a basic canon of logic which does not permit (with trivial exceptions) sentential elements to appear in a conclusion, that were not contained in the premises of an argument. Thus, from the premises "All human beings aspire to be happy" we cannot infer the conclusion "All human beings ought to aspire to be happy" without adding another premise to the effect that "All human beings ought to aspire to those things that they aspire to be." Without this additional premise there is no logical warrant for the transition from what men do in fact desire to what they ought to desire. But, such an additional normative premise is itself unproven, and, if we are to agree with Hume, cannot be deduced without the support of some further normative principle of greater generality. This further normative principle, then, would require demonstration, and so on to infinity. Hume's dilemma, then, apparently constitutes a significant obstacle to the possibility of acquiring moral certitude on any matter. Without its resolution the possibility of providing demonstrable foundations for human rights is nugatory. If Rand and/or Mack have succeeded in deducing from non-normative premises that life is the highest moral value for human beings they will have dispelled Hume's charge that moral philosophy cannot rest upon factual foundations. Furthermore, their conclusion can be conjoined to Spencer's deduction of the necessary conditions of life in order to yield, possibly, rights of a libertarian kind. The importance, then, to natural rights theory of establishing the moral primacy of human life cannot be overstated. It remains for us to consider the two arguments which purport to have done so.

Mack's argument⁸ is made in behalf of the following normative proposition:

The moral good with respect to each human being, is the successful performance, and the results of the successful performance of those actions that sustain his existence as a living thing.⁹

The argument consists of six parts which can be represented by the following conclusions:

- 1) Certain things or processes have natural functions.
- 2) The natural function of valuation in living entities is to preserve the life of the entity.
- 3) Hence, the process of valuation functions well if it succeeds in sustaining the life of the entity.
- 4) Valuation functioning well is good with respect to any entity, and so, life sustaining valuation is good with respect to any living entity.
- 5) If, the standard of valuation is *chosen* by a given entity then the resulting good or evil is a moral good or evil.
- 6) For man, the moral good, then, is valuation leading to the preservation of his life.

The implication of (6), then, is that every human being ought to guide his or her goal-directed actions by the standard, "that which is conducive to the preservation of a human." And so, Mack has produced an argument which moves from non-moral premises to moral conclusions. Is this argument a sound one?

There are two junctures at which the argument can be challenged. First, there is Mack's contention that some things have natural functions and that valuation is among the phenomena that has them. We will deal with this contention last. Second, there is the assertion that *if* valuation, V, has some objective function, F, and if valuation must be performed voluntarily, *then*, individuals ought to choose to use V in order to fulfill F. We will examine this second position closely as it represents the pivotal moment in the argument, the point at which an "is" becomes an "ought."

Now, on what grounds does Mack argue that if valuation has an objective function that function ought to be performed? He reasons as follows:

Th. IV. Goal-directed actions are performed well if they satisfy the requirement for, the need of, acting successfully in order to remain a living thing. The standard for goal-directed actions is the satisfaction of this need.

Th. V. The satisfaction of this need is good with respect to the acting organism. That is, the result of valuation functioning well with respect to any living entity is simply that which is good for that entity. This is obvious by the very meaning of the concept *valuation functioning well*.

Th. VI. Performing successfully the actions that sustain its life is that which is good with respect to any given organism.¹⁰

The crucial sentences in this segment of the argument are those which appear in Theorem V, for it is in this passage that Mack lays the foundation for his later normative claim that one *ought* to use valuation according to its natural function. That foundation consists in the assertion that the "satisfaction of this need is *good*" (emphasis

added) and this "is obvious by the very meaning of the concept valuation functioning well."¹¹ The argument, then, is that (1) if one must choose one's valuation, and (2) if one ought to choose the good, and (3) if the good is valuation performing its natural function (i.e., sustaining life), then (4) one ought to employ valuation so as to sustain life. But, if the good is that (for a volitional being) which one ought to choose, then the equation of "valuation functioning well or valuation performing its natural function" with "the good or that which one ought to choose" is a question begging one. For Mack argues that a volitional being ought to employ valuation's natural function because it is good, which is simply to say that a volitional being ought to employ valuation's natural function because he ought to employ the valuation's natural function, an obvious tautology.

Contrary to Mack's claims, it is not "obvious" that for any entity valuation functioning well *means* "that which is good for that entity."¹² That is, it is not obvious that because F is a natural function of process P, that P ought to be used to perform F. The latter normative prescription only follows from its factual antecedent if the former is combined with the moral assertion "one ought to employ any process, P, so as to enable it to perform its natural function, F." This unstated moral premise is necessary if Mack's argument is to be a valid one. But, of course, its explicit addition to the argument requires that its truth must be established first if it is to provide support for Mack's conclusion. Mack, then, has *not* devised a sound argument to support the moral goodness of life.

The other weakness of Mack's argument consists in his claim that there are manifest natural functions for some phenomena and that valuation is one of those phenomena which has such a function. Natural functions, according to Mack, can be

...determined by the requirement which accounts for the existence of that thing. The requirement accounts for the existence of something when the existence of that thing is *necessary* (emphasis added) to the satisfaction of the requirement.¹³

Now, to say that X is necessary for Y is simply to say that if Y is realized, then X *must* have been present for Y's realization. Hence, the presence of Y entails X. It is important to keep this in mind because Mack next goes on to argue that:

Prop. II With respect to each living thing, it is the fact that remaining in existence as a living thing (not merely as a collection of dead cells) requires the successful completion of numerous processes that explains the existence of valuation.¹⁴

But is valuation, "the process of pursuing and maintaining goals," a *necessary* condition of life? Does the presence of vegetable life imply the capacity to evaluate various potential ends by vegetation? Obviously

not. In fact, while it is difficult scientifically to identify precisely those constituents and processes that are the *sine qua non* of life, it is clear that a capacity to evaluate goals is not among them, otherwise such a capacity would be present in all forms of life. Hence, a natural life preserving function or goal for valuation cannot be established on Mack's criteria. And so, Mack is unsuccessful both in establishing that there are natural ends of choice making and in demonstrating that men ought to pursue them.

The novelist-philosopher whose ethics provided the inspiration for Mack's efforts in moral philosophy is Ayn Rand. Her ethical philosophy was developed prior to Mack's, but her argument for it lacks the clarity which distinguishes its successor.

Rand's ethics¹⁵ is an attempt to demonstrate that survival as a rational being is the highest moral value for persons and, therefore, that all other values ought to be instrumental to its achievement. Specifically she contends that for each human being his own life ought to be the goal of his actions, and that the means to be used in pursuit of that goal should be determined by the standard of "that which is required for the existence of man qua man, i.e., qua rational animal." As reason is the unique instrument available to human beings providing them with a productive capacity far greater than that of lower order animal species, rational productive action is the principal mode of conduct that ought to be employed by human beings in the pursuit of survival. Rational productive action requires rights to freedom and property, which are the political elements of Rand's libertarianism. Rand alleges that the argument that she makes for these normative conclusions bridges the chasm between facts and values. The order and statement of the steps in this argument are not without ambiguity and, therefore, we will propose two versions of Rand's demonstration, both of which seem faithful to her explication.

Both versions share the same starting point. Rand poses the question "What are *values*? Why does man need them?"¹⁶ A value, for Rand, is merely the purpose or goal of an action. Values metaphysically presuppose an entity capable of initiating action. An entity whose movements are strictly the result of mechanistic causation could not have values. Furthermore, goals are possible only where alternatives exist. By alternatives Rand seems to mean states of affairs which can make a difference to or affect an entity. Further, "there is only one fundamental alternative in the universe: existence or non-existence—and it pertains to a single class of entities: to living organisms."¹⁷ The meaning of "fundamental," here, is unclear and gives rise to the ambiguities in and varying interpretations of Rand's argument.

What Rand seems to be saying is that without life an entity could not be affected in any ultimate sense by the outcome of any of its actions. That is, for an immortal entity all outcomes will affect it equally since none of them will threaten its existence. Without

alternative outcomes to choose between, the entity could not be *motivated* to formulate goals, as their consequences are for him indistinguishable. As life, then, is a necessary condition of valuation, *i.e.*, the formulation and ordering of goals, it ought to be the object of all goal seeking activity for mortal entities. There is a passage which seems to support this interpretation:

...try to imagine an immortal indestructible robot, an entity which moves and acts, but which cannot be affected by anything, which cannot be damaged, injured or destroyed. Such an entity would not be able to have any values; it would have nothing to gain or lose; it could not regard anything as *for* or *against* it, as serving or threatening its welfare, as fulfilling or frustrating its interests. It could have no interests and no goals.¹⁸

Rand seems to be arguing here that life or mortality is a necessary condition of preference, that conscious entities *could not* form a preference for one state of affairs over another if they were not mortal. This apparently is because, if nothing could affect its own future existence an entity would necessarily be apathetic to all future states of affairs. But, this seems to imply that for mortal, volitional beings all preferences are formulated only in terms of their bearing upon one's moral existence, because it is only *possible* to formulate preferences with respect to such a standard. But this, as a factual statement, seems false—skydivers, racing car drivers, soldiers of fortune being a few notable exceptions. And if it were true, it would imply the presence of a mysterious psychological propensity towards survival that would render moral prescriptions superfluous. This, then, is the first version of Rand's argument, the version which inspired Mack. An abbreviated statement of it is as follows:

- 1) The mental activity of valuation (the formulation and ordering of preferences) is impossible without moral existence.
- 2) Therefore, one's own mortal existence ought to be the criterion of all valuation.

Clearly, the premise of this argument does not entail its conclusion. To make this a valid argument, the premise "All human beings ought to engage in valuation" would have to be added.

However, another interpretation of Rand's argument is supported by a passage from her essay, "Causality and Duty."

Life or death is man's only fundamental alternative. To live is his basic act of choice. If he chooses to live, a rational ethics will tell him what principles of action are required to implement his choice. If he does not choose to live, nature will take its course. Reality confronts man with a great many "musts," but all of them are conditional: "You must, if—" and the "if" stands for man's choice: "—if you want to

achieve a certain goal." You must eat if you want to survive. You must work, if you want to eat. You must think, if you want to work. You must look at reality if you want to think—if you want to know what to do—if you want to know what goals to choose—if you want to know how to achieve them.¹⁹

This "conditional" version of Rand's argument has a good deal to recommend it. In the first place, it seems to neatly circumvent Hume's critique. It is of the form, X is instrumentally necessary for the instantiation of Y, therefore if one wants Y then one ought to seek (in order to be consistent), X. The moral prescription to seek X is not categorical, but is conditioned upon one's desire for Y. Therefore, the importation of an additional unproven moral premise is unnecessary. If this is, indeed, Rand's argument, and several commentators have so interpreted her,²⁰ it represents a clearly distinguishable second demonstration of the life position. Moreover, it seems to have an advantage in addition to its effectiveness in answering Hume. While its prescription is not categorically and, therefore, apparently not universal in scope it is nearly so. That is, while it does not unconditionally instruct all human beings, whatever their situation and aspirations, to sustain life—the vast majority of persons would apparently be so instructed. The death aspiring minority will be continually eliminated and, so, will not intrude greatly upon the universal applicability of the doctrine.

To the extent that Rand embraces a conditional variant of her argument, it seems to be of the following mode: if one desires life, then one ought to seek its necessary conditions (not, if one has any desires then one ought to seek life and its necessary conditions). But, if this is Rand's argument, then its limited applicability does seem to entail problems. For, its moral mandate applies only to those who choose life. And if human rights are said to derive from the moral goodness of life, then only those human beings who desire life have rights, a conclusion that Rand and all libertarians would find abhorrent. For if rights are not universal, then may not the death aspiring minority have their property seized, their freedom of speech abridged, and their lives terminated by others. If rights derive from an aspiration for life, then the absence of the later would seem to signal the corresponding evanescence of the former.

While one crucial problem in the history of attempted justifications of ethical propositions, the is-ought problem, seems to have been dispelled by this conditional variant of Rand's argument, others emerge. The solution would seem to lie in the possibility of uncovering a conditional argument that possesses the universality of its categorical counterparts, so that life, while a conditional or instrumental moral value, is one that can be said to hold for all living human beings.

III

How is one to find such a conditional argument? Perhaps by first investigating what properties it must have in order to imply the requisite universality. If the consequent of such an argument is to be "...then, one ought to value life" and is to apply without exception to all human beings, the condition "if one _____s X," must be one which is fulfilled by all human beings. Clearly, then, some invariant element in human activity must be sought which requires life as its necessary means. Moreover, this element must be such that its presence would entail the normative consequent "...one ought to value life." For there are myriad constraints in the human condition the presence of which require life, but do not imply the moral obligation of sustaining life. All living human beings are capable of conceptualization, but this invariant aspect of being human does not imply that all persons *ought* to seek the necessary ontological conditions of rationality, unless conditions of those characteristics which are universal to the species." Clearly, the missing element in the antecedent portion of the argument must not require an additional moral premise of this kind. What sort of element will not require such a premise? One that is teleological in nature.

If the element in the antecedent portion of the argument is teleological, that is, if it is a purpose, or goal for which life is a necessary requirement, then if one seeks that goal it logically follows that one ought to seek its supportive conditions as well. Moreover, if the injunction to sustain life is to apply universally to human beings, the goal mentioned must be universally sought. While it is unlikely that there is any goal universally shared by humanity, goal-seeking itself is a universal element in the human condition and one that obviously requires the existence of the mortal agent. And this leads us to the following argument:

- 1) All values, i.e., goals presuppose the existence of a valuer which, therefore, is a necessary condition of having goals.
- 2) Human existence is a mortal, i.e., conditional state, which requires the successful completion of certain actions, the realization of certain goals.
- 3) If any human being chooses any goal, he also ought to value life as its most general necessary condition and to attempt by the requisite actions to sustain it.

If we can agree that all human action is necessarily teleological, then the universal possession of goals by human beings is thereby demonstrated. And this implies a certain universal prescription for the attainment of goals. That prescription will include the initiation and continuation of activity that will maintain the life of the actor.

IV

An argument which moves from the acknowledged existence of some state of affairs, X, to the conditions necessary for its existence, C, in order to demonstrate the previously unrecognized presence of such conditions is called a transcendental argument. If the universal instantiation of goal-seeking in human activity can be demonstrated, then, it may be possible by transcendental argumentation to define the conditions of goal-seeking which must be realized by all human beings if they are to fulfill their goals.

The construction of such an argument has been the project of the contemporary moral and political philosopher, Alan Gewirth.²¹ He has contended that all action, i.e., goal-seeking activity, has certain necessary conditions which enable that activity to take place. These he characterizes as freedom and basic well-being. As each agent implicitly views his goals positively (as good, in a non-moral sense), he must in logical consistency view the necessary conditions of their realization positively as well. This involves his claiming them as rights, according to Gewirth. But, the basis of this claim is one that applies equally to all other agents and, therefore, every agent must recognize the legitimacy of this claim when it is made by others. Hence, Gewirth concludes from certain facts concerning the generic properties of human action, that all actors have rights. Thus, he argues that all agents ought to refrain from interfering with the freedom and basic well-being of others.

There are obvious flaws in Gewirth's argument which we will identify. However, its significance as an advancement in ethical justification lies in its attempt to find in intrinsic qualities of all human action a basis for normative political principles. Unfortunately, because Gewirth does not argue for these principles conditionally his demonstration is acutely damaged. That is, he does *not* argue that *if* human beings have ends that they desire, *then* they ought to attempt to secure the conditions of their realization. Rather, he argues that human beings have goals which they implicitly *view* positively. This must lead them to the implicit *endorsement* of the fulfillment of the instrumental conditions of these goals and to *claim* these conditions as rights. Now, Gewirth does not provide a cogent reason for labeling these instrumental conditions of goal-seeking, rights, but in any case has only demonstrated that they must be *claimed* as rights not that they *are* rights. Had he argued that all human beings ought to seek the conditions of action because they universally seek the fruits of action, he could have successfully contended that he had derived a normative statement of universal scope. However, his attempted transformation of a perceived good (or positive attitude) into a categorical good is subject to the Humean criticism that a conditional argument could have averted.

V

Having examined the various flawed efforts to derive a universal nonnormative statement which will provide a ground for rights, and having identified the sources of those failures, we will try to reconstruct a valid argument (or at least the schema of such an argument) for natural rights. First of all, if it is acknowledged that human action, as distinguished from reflexive movement is goal-seeking in nature, it must also be granted that for any particular goal to be realized its conditions must be antecedently or contemporaneously realized. Now, these conditions will vary depending upon the substance of the particular goal sought. What will not vary, however, are those conditions which are required for the realization of *any* goal, whatever its content. For these are linked to those invariant properties of action which distinguish it from reflexive movement. Among these conditions are ones which can be obtained through action and others which cannot. The existence of space and time, for example, are necessary conditions of human action but not ones that may be realized through human action. Moreover, among those conditions which may be obtained through action are ones which presuppose the realization of other, more fundamental ones by the actor. Of all of those conditions necessary to the realization of human ends which may be obtained through human activity, the most fundamental is the existence of the actor. For although the realization of goals requires opportunity, location, mobility, etc., all of these, as well as countless others, require the existence of the actor in order to be realized. This condition is ontologically prior to the rest. A capacity for movement, for example, presupposes the existence of the mobile entity.

The existence of a human being is conditional, its life requires the successful completion of certain actions. Those include the consumption of food, medicine, and other sources of bodily nutrition and repair. But, the consumption of these, first, requires the production of the same. Such production consists in the transformation of non-human resources into consumable ones. But, this requires the opportunity to mix one's labor with such resources and to keep what one has transformed, both its consumable and capital portions. Other human beings can prevent one from completing these processes by murder, injury, coercive interference or theft. Therefore, these processes must be shielded from such obstruction.

All of these requirements of mortal existence are realizable through human action, and therefore, if it is the case that mortal existence ought to be sought by all human beings, it follows that these requirements of mortal existence ought to be sought as well. Should mortal existence be universally sought by human beings?

If human beings generally do things by preference, if their actions or even their inactions are necessarily selected by them so that either type is the outcome of some intention, then the following conditional argument must be true:

1. If human beings maintain preferences of any kind, then they ought to value life, as the fundamental, necessary instantiatable means to preference realization.
2. All human beings intermittently prefer some states of affairs to others.
3. Therefore, all human beings ought to value life.

This argument has the obvious advantage of neatly avoiding the invalid derivation of categorical moral principles from categorical statements of fact. For it maintains only that *if* one has preferences, then one ought to seek its requirements. And yet, the conditionality of the argument does not imply ethical relativism, as preference is an unavoidable feature of being a volitional entity, so that its conditions ought to be sought by *all* such entities, i.e., all human beings.

Does this argument establish the truth of its conclusion? It is clearly a valid argument. IF its soundness is to be called into question, then one must challenge the truth of either its major or minor premise. One can imagine the truth of the major premise being impugned in the following way. The major premise, it could be argued, has not itself been established. In order to establish it, one would have to deduce it from the following normative premise. "If one prefers something, then one ought to want (or value) its necessary conditions." Without such a further premise the consequent of the major premise of our argument—"one ought to value life..."—cannot be inferred from its status as a necessary condition of preference realization and from the intermittent presence of preferences. Moreover, it could be argued, such a further premise itself stands in need of demonstration as it is (a) not self-evident, and (b) a conditional statement the factual antecedent of which is said to imply its normative consequent, a manifest violation of Hume's injunction against the deduction of an "ought" from an "is."

To this criticism I make the following reply. The further premise "If one prefers something, then one ought to want (or value) its necessary conditions" is a self-evident rule of inference. To say one can consistently be indifferent or antagonistic toward the necessary means of satisfying one's preferences, is to say that one has either abandoned that preference or simply has no grasp of the meaning of the infinitive "to prefer." To hold a preference requires that *in order to be consistent one ought to prefer the necessary means of realizing it as well*. Hence, an obvious rule of consistency in any logic of preference is that "he who prefers X, ought to want Y if Y is a necessary condition of obtaining X and he is aware of this fact."²² Such a rule is a self-evident axiom of such a logic, I would maintain.

Now, preferences have necessary conditions which vary with their specific contents. However, any preference, whatever its contents, requires the existence of the agent in order to be realized. The agent's existence, therefore, is the necessary condition of all other necessary

conditions of realizing specific preferences. Its value is conditional only upon the presence of preference itself. If any entity has preferences, at any time, the instrumental value of its life follows. Therefore, the *value* of life follows from the *fact* of preference alone. It is a value not implied by some further value. In this way Hume's dilemma is resolved.

Thus, the logic of preference enables us to bridge the is-ought gap. The fact that preference as such implies the instrumental value of life allows the deduction of a universally applicable "ought." As all potential moral agents have preferences, as the ability to prefer is that which essentially characterizes a moral agent, life must be a value for every such agent, a universal value. For mortal beings, it is the fundamental necessary condition of preference realization, the necessary condition of all other necessary conditions. Hence, it is the value which imparts an ordinal ranking to all others by implication.

Now, it may be alleged that there is at least one type of preference that fails to presuppose life as a necessary condition for its realization. A suicidal aspiration, for example, might seem to contravene the life-as-a-necessary-condition-of-preference-realization thesis. But, obviously an agent *must* exist in order to realize his death. Hence, the death aspirant provides no counterexample to my thesis.

The factual premise that "All human beings intermittently prefer some states of affairs to others" I take to be a generally non-controversial proposition, logical and psychological behaviorists to the contrary notwithstanding. And so, given the validity of the argument and the truth of its premises, we can assert that its conclusion "All human beings ought to value life" is true.

The remaining question, then, is can rights of a libertarian kind be deduced from the universal value of life? I would contend that they can. However, a detailed argument which would deduce them from life's universal value is beyond the scope of an article, as it would require at least the space of a monograph for its explication. Therefore, we can only sketch the shape and substance of such an argument.

Life requires nutrition and repair for its maintenance. But these must be discovered and produced by human intelligence and action. Hence, the production of life's requirements implies the necessity of self-ownership, i.e., the ability to use one's physical capacities to engage in productive activities. Further, it presupposes both the opportunity to transform natural resources into such requirements and the ability to use and dispose of what is transformed. Thus, the production of life's requirements by human effort implies that the following conditions be realized.

- 1) The absolute control of each person over his physical self.

- 2) The ability to employ one's physical efforts in the transformation of unowned natural resources.
- 3) The ability to use and dispose of the transformed resources.

Since these conditions are all instrumental to the ultimate good, life, their realization is itself a good. But it is a good of a special kind, in that it is a good which can only be fulfilled by every individual with the forbearance of others. Such a good, then, represents a claim which each individual holds against other, a claim whose realization is necessary for the achievement of all other goods. Such a social claim, the moral legitimacy of which derives from its being a means to the attainment of any other good, we call a right. And the three conditions enumerated above summarize the rights of human beings. As they are logically derived from certain propositions about human nature, they may be appositely called *natural* rights.

It may be asked whether the moral claims embodied in these natural rights apply only to human beings, for it can be argued that animals are mortal, that higher species of animal life can form preferences and exhibit volitional behavior. I would deny that animal life as we currently understand it involves such rights, for the conceptual powers of even highest orders of animal life are clearly not acute enough to grasp arguments and, thereby, to learn of and be motivated by the justificatory grounds for moral injunction.²⁵

A major objection to rights which are derivative from the value of life, is that perhaps they are only exercisable when they are life-serving, interferences with them being sanctionable if their exercise is either (1) life threatening or (2) irrelevant to the support of life. This argument goes as follows. If rights are social conditions necessary for the extension of life, then their exercise may be restricted to those practices which contribute to the furtherance of life.

This criticism fails for two reasons. The first is epistemological. The argument assumes omniscience. That is, it supposes that someone is always able to know the motivation and ultimate consequences of any action, so that its outcome can be foreseen and prevented if it is not a life supporting one. But, there is not an omniscient human observer (indeed all human beings are potentially fallible), and therefore we can never be certain of either the intention behind or all of the outcomes of human actions. Hence, on epistemological grounds alone there is no justification for the circumscription of rights. Furthermore, *who* could do the circumscribing. Anyone permitted to do so has either, thereby, acquired a limited title to what has not been transferred to him voluntarily, and so becomes an exception to the rules of legitimate appropriation, implying his unproven moral superiority. Or the individual is using what does not belong to him, and so is a criminal interloper.

A possible objection to the doctrine that rights are universally held is the contention that if rights are justified by the egoistic injunction

to preserve one's life, this injunction may also be used to justify the violation of rights when, for example, the best means available to someone, A, to survive, at some point in time, includes the violation of someone else's, B's, alleged rights. That is, the same injunction justifies two opposed actions on the part of A and B. More concretely, if one has cancer and someone else has a drug enabling its cure with which he will not voluntarily part, why not, on good survivalist principle, steal it from him? That is, if X's self-interest requires the denial of Y's rights, in what sense can the ethics of self-interest be said to provide a basis for the politics of equal rights? The answer is clear: if Y's justly acquired property may be stolen from him, then X's may be stolen from him, thereby undermining the necessary conditions of the latter's own self-interest. Furthermore, the doctrine of survivalist egoism enjoins each to seek to survive, it does not enjoin success in that search, for such an injunction is not universally realizable. If, the world's greatest medical researcher, John Smith, contracts a disease for which there is no known cure, and the criterion of goodness is *successful* life preservation rather than *attempted* life preservation, his failure to produce a cure in time to save his own life would entail a moral deficiency on his part, a manifestly absurd imputation. Hence, each is counseled to seek the necessary conditions of survival and each has a right to the necessary social conditions rendering that search possible. Moreover, the attribution of the same rights to all human beings is made on the same basis for each human being: that each has preference; that each is mortal; that each must produce the means of supporting that mortality; that each must have access to the material of production; and, that these require a social condition of unhindered appropriation and property use. If each of these requirements is true of some entity in virtue of its characteristics, then it applies to all entities possessing like characteristics.²⁴ To deny it to entities sharing those characteristics would constitute a logical inconsistency.

CONCLUSION

Rights, then, are demonstrable moral requirements of human nature. Man's mortality, his ability to seek ends and rank them, and his capacity to form concepts and grasp arguments, combine to imply the value of his life and the consequent value of its necessary conditions. Among these conditions are the claims of forbearance which each person holds against his fellows, claims whose realization is necessary to enable him to secure the means of human survival. Such morally legitimate claims are the natural rights of humankind.

1. John Locke, *The Second Treatise of Government* (Indianapolis: Bobbs-Merrill, 1952), V, p.27.

2. Murray Rothbard, "Justice and Property Rights," *Property in a Humane Economy*, ed. Samuel L. Blumenfeld (LaSalle, Ill.: Open Court, 1974), pp. 106-108; and James A. Sadowsky, "Private Property and Collective Ownership," *ibid.*, p. 86.
3. Locke, *The Second Treatise*.
4. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 174-175.
5. Herbert Spencer, "The Great Political Superstition," *The Main Versus the State*, ed. Donald McCrae (Baltimore: Penguin, 1969), pp. 170-171.
6. *Ibid.*, 171.
7. David Hume, *A Treatise of Human Nature* (Oxford, 1888), pp. 269-270.
8. Eric Mack, "How to Derive Ethical Egoism," *The Personalist*, 52 (Autumn, 1971), pp. 735-743.
9. *Ibid.*, p. 737.
10. *Ibid.*, p. 763.
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. Ayn Rand, "The Objectivist Ethics," *The Virtue of Selfishness* (New York: The New American Library, 1964).
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*, p. 16.
19. Ayn Rand, "Causality and Duty," *The Objectivist*, 9 (July 1970), p. 4.
20. Douglas Den Uyl and Douglas Rasmussen, "Nozick on The Randian Argument," *The Personalist*, 59 (April 1978), p. 191; and George H. Smith, "Human Rights and Human Liberties," *Reason*, 8 (November 1976), p. 46.
21. Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978).
22. Max Black has made an analogous point in "The Gap Between 'Is' and 'Should'," *The Is-Ought Question*, ed. W. D. Hudson (New York: St. Martin's Press, 1969), pp. 106-107.
23. Ellen Paul, "The Time-Frame Theory of Political Legitimacy," *The Personalist*, 60 (April 1979), pp. 151-161.
24. Gewirth, *Reason and Morality*.