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

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Introduction

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

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

Boylan's Human Rights

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

The Table of Embeddedness

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

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

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

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

The Worldview Imperatives

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

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

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

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

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

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

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

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

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

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

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

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

Boylan's Personhood Account

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

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

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

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

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

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

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

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

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

A Libertarian Spin

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Practical Implications

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

While I have no doubt that in a great many cases

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

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

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

In Conclusion

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

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

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