



Title	Natural Human Rights : A Reply to my Colleagues
Author(s)	Boylan, Michael
Citation	Journal of Applied Ethics and Philosophy, 8, 41-50
Issue Date	2016
DOI	10.14943/jaep.8.41
Doc URL	http://hdl.handle.net/2115/63697
Type	bulletin (article)
File Information	JAEP8_41-50p.pdf



[Instructions for use](#)

Natural Human Rights: A Reply to my Colleagues

Michael Boylan

Marymount University

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

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

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

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

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

The Table of Embeddedness

BASIC GOODS

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

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

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

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

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

SECONDARY GOODS

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

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

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

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

Level Three: *Luxurious*, Low Embeddedness

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

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

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

This Argument for the Moral Status of Basic Goods,

2 *The Moral Status of Basic Good*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Figure One: Grounds of Threatening Action

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

March 1, 2014).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

References

- Boylan, Michael. 1983. *Method and Practice in Aristotle's Biology*. Lanham, MD and London: Rowman and Littlefield—UPA.
- . 1993. *Perspectives in Philosophy*. Fort Worth, TX: Harcourt, Brace, Jovanovich.
- . 2004. *A Just Society*. Lanham, MD and Oxford: Rowman and Littlefield.
- . 2008. *The Good, The True, and The Beautiful*. London: Bloomsbury.
- . 2009. *Basic Ethics*. 2nd ed. Upper Saddle River, N.J.: Prentice Hall.
- . 2011. *Morality and Global Justice*. 2011. Boulder, CO: Westview.
- . 2014-a. *Natural Human Rights: A Theory*. New York and Cambridge: Cambridge University Press.
- . Ed. 2014-b. *Business Ethics*. 2nd ed. Malden, MA and Oxford: Wiley-Blackwell.
- . 2015. *The Origins of Ancient Greek Science: Blood—A Philosophical Study*. London: Routledge.
- French, Peter. 1984. *Collective and Corporate Responsibility*. New York: Columbia University Press. [See the discussion of this in Michael Boylan, ed. 2014-b. *Business Ethics*. 2nd ed. Malden, MA: Wiley-Blackwell: chapter 3.]
- Gordon, John-Stewart, ed. 2009. *Morality and Justice: Reading Boylan's A Just Society*. New York: Lexington Press.
- Hart, H.L.A. and Honoré, A.M. 1967. *Causation in the Law*. Oxford: Clarendon Press.
- Homer, *Opera, vol 1 & 2 Iliad*, ed. David B. Munro and Thomas Allen. 1902. Oxford: Clarendon Press.
- Hong, Howard V. ed. 1983. *Soren Kierkegaard's Works*, vol. 6. Princeton, N.J.: Princeton University Press.
- Ron Suskind, 2006. *The One Percent Doctrine*. New York: Simon and Schuster.
- Teays, Wanda and John-Stewart Gordon, eds. 2014. *Global Bioethics*. Lanham, MD and New York: Rowman and Littlefield, 2014.
- Thucydides, *Historiae*, 2 vol. ed. Henricus Stuart Jones, 1900. Oxford: Clarendon Press.