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Salvaging a Naturalistic Account of Human Rights?

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

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

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

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

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

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

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

3 Boylan, *Natural Human Rights*, 194

4 *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 *Natural Human Rights*, 163-213.

12 Op cit., 202.

13 Op cit., 182.

14 Ibid.

15 Op cit., 183.

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

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

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

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

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

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

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

17 Boylan, *Natural Human Rights*, 139.

18 Op cit., 122.

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

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

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

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

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

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

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

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

20 Op cit., 182.

21 Op cit., 166.

22 Op cit., 166-7.

23 Op cit., 163.

24 *Ibid.*

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

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

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

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

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

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

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

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

25 Op cit., 166.

26 Op cit., 170, emphasis added.

27 Op cit., 183.

28 Op cit., 182.

29 Op cit., 183.

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

31 Cruft, op cit., 108.

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

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

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

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

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

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

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

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

32 Boylan, *Natural Human Rights*, 202.

33 Op cit., 201.

34 Op cit., 202.

35 Op cit., 186.

36 Op cit., 174-6.

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

38 Op cit., 182.

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

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

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

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

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

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

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

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

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

41 Op cit., 210.

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