

ESTOPPEL AND RIGHTS-TALK: WHY RIGHTS MUST EXIST AND WHAT THEY ARE

by N. Stephan Kinsella

November 1, 1992

maybe put this as a brief explan. or footnote for reasons why some summaries of the argument.

Just how complicated can a theory of rights be and still be true? If a theory of rights is a subset of a theory of morals, and if morals are supposed to be rules which can guide men's actions, is there a limit on the complexity of the systems before they simply cannot function as a guide to action? If a theory is too complicated, how could the bulk of humanity hope to validate it so that they feel comfortable following it?

Even if one were to come up with a theory which seemed valid in all ways, if it occupied several volumes of a treatise, and could not be grasped or understood in summary form, it would seem to be false for an external reason--that it could not hope to be a guide for action for most of humanity.

One would like, then, to be able to answer the questions, "Are there rights?" "How do you know there are rights" and "What rights exist?" in relatively short, clear, easily-understandable terms. Such a theory, if it exists, if there are rights, would have to comport with at least some human intuitions that have evolved with man over the course of his development, alongside the development of his moral center and his social life. If rights exist, it does not mean that they are *always* enforced. But it does mean that they are sometimes enforced, and that they are enforceable. Since part of their identity is that rights must be, by and large, respected in order for men's lives to prosper properly, then, to the extent man has survived all these eons (properly, at least), his rights have been respected to some extent. Thus mankind's character has evolved taking into account some belief in rights (whether or not they exist), and some of man's common intuitions should have taken them into account. Since men get along by relying somewhat on evolution-hardy intuitions, or at least on socially-workable ways of doing things, any true theory or rights consistent with man's nature must be consistent with the host of intuitions and/or social rules of interaction which have accompanied man's evolutionary history and which currently permeate his world-view.

And, on the bright side, any theory which actually is in compliance with man's common wisdom and practical, workable, pragmatic, everyday way of dealing with the world will have a greater chance of being accepted as true by most people.

This is not to say that man's common wisdom is consistent or validated, nor that something is true because it seems obvious to many people. It is a recognition of certain key facts: that a theory cannot be too complicated and still hope to be true (for how could it be validatable by enough people to ever be a guide to action?; a guide to action is certainly a practical affair, thus to consider workability in any moral code (including a theory of rights, which is a subset of a moral theory) is proper), or accepted by people, for that matter; that if mankind has survived, and if rights really are necessary to his survival, then some recognition of rights must have existed all along, and should have affected the course of human evolution and also affected his ways of doing things (social customs), "intuitions" and common wisdom ("an eye for an eye, a tooth for a tooth"), and even emotions (revulsion at killing people), and thus any true theory of rights would be expected to be consistent with these traits of man that must have arisen during his evolution.

No exploration of evolution is necessary in order to determine what rights exist, however, nor is heed given to people's intuitions other than as a constant reminder that any theory must be succinct, understandable, clear, and able to be implemented in practical reality--and also it is kept in mind in order to be able to embellish any argument for rights with examples that will help to convince a listener of the validity of the argument by making the implications and workings of the argument clearer to the listener, and also by appealing to intuitions that are surely there.

Thus the following case for rights will be summarized, as any proper and correct theory ought to be. Analogies and examples will be given to help give a better internal mental picture and feeling for the truths established by the theory, as well as to help show how the theory should be applied in practice. Any decent argument should always be summarized out of respect for busy readers, and also to help ensure that no flaws are buried away somewhere. And, additionally, part of my contention is, as explained above, that any true theory must be able to be short and sweet. Thus the argument is summarized to show that it is workable. For

philosophers and others with more concern for details, the unsummarized version comprises this paper.

* * *

The summary of the argument is this: "An eye for an eye, a tooth for a tooth," certainly a traditional, intuitive bit of common wisdom appealing to the common sensibilities of mankind if ever there was one. The logic, appeal and justice of such a view seems obvious to most men, and thus would satisfy that part of the requirements mentioned above. Now, as I will contend below, the only rights that exist are those in comport with the libertarian nonaggression principle; i.e., only negative rights exist. The idea, "eye for an eye", if applied consistently and rigorously, as shown below, would lead to the libertarian set of rights. Thus, it merely need be argued in simple form that, not only is "eye for an eye" correct, but also that, for the reasons it is correct, it is *very* correct, and should be applied strictly--which would leave no room for the host of victimless laws enacted today.

There are actually several more or less independent arguments that suffice to demonstrate the existence of rights--the rights-talk argument, my estoppel theory, to name a few (the others are economic arguments, natural law arguments, and Hoppe's related argument-based justification). Both the rights-talk and the estoppel argument can be summarized fairly succinctly. Estoppel is similar to "eye for an eye." The principle of estoppel, which should be accepted as obvious by many people, is that a person does not have a right to complain if he is treated the same way he has treated others. Applied consistently, this would mean that only laws against force are justifiable. A criminal who has used force can be put in jail because he has no right to complain about this forceful treatment of himself (he is "estopped" from so complaining); and the government is estopped from arguing in favor of its laws which imprison noncoercive defendants, because it could not deny the defendant's assertion that he has a right to escape from jail, since the government's use of force prevents it (would prevent it) from complaining about the defendant's (proposed) use of force to escape. It is easy to see that this theory is very much in harmony with the "eye for an eye" idea--how could someone complain about me plucking his eye out if he has done the same to me? He would be estopped from arguing that it violates his rights, since this is inconsistent with his action of plucking my eye out.

The rights-talk idea also appeals to common sense. The theory asks two questions: Do rights exist? and, if so, what are they? The first question is handled as follows. Either rights exist or they don't. If they do, then fine, they do. If any person objecting to my claim that rights exist also had to admit that they exist, this would be enough to prove that rights exist. And if any person arguing with me about this also had to admit that there was nothing really wrong with people acting *as if* there were rights, this would be just as good as him admitting that rights exist, for it gives me the same freedom as if there were rights (because rights are never guaranteed, in any case; the most they do is sanction my *enforcement* of my rights, which is what the rights-skeptic does when he fails to meaningfully object to my assertion of rights and my assertion of the propriety of my enforcing these rights). So: if a skeptic maintains that rights do not exist, then if I enforce my rights against B, the Skeptic S must either admit there is nothing wrong with my enforcing my (nonexistent) rights against B (in which case I have won recognition of my rights from the alleged Skeptic notwithstanding the fact that he claims that they do not exist); or he can claim I should not do so, which is tantamount to giving rights to B. In any case, some rights exist.

The second task of rights-talk, once it is shown that rights do and must exist, is to show which ones they are. But this follows fairly straightforwardly, once it is understood that, in showing that rights exist, one has had to delve deep enough into their nature that their nature is evident as well. And it is clear, by now, that the core concept of rights is enforceability; which leads to the appreciation of the prominence of force; which leads to an appreciation of the significance of the concept of initiatory and retaliatory force--and finally one realizes that only negative rights can exist; that positive rights contradict the nature of rights themselves, since they are inherently unenforceable without contradiction and conflict.

III. Applying Estoppel

The conduct of individuals can be divided into two types: coercive or aggressive (i.e., involving the *initiation* of force) and non-coercive or nonaggressive. This division is purely descriptive. It is unobjectionable, because it does not assume that aggression is invalid, immoral or unjustifiable; it only assumes that (at least some) action can be objectively classified as either aggressive or nonaggressive.

[If there is a third edition, or modification, of this, need to change this a little. A narrower classification of action, beyond the mere aggressive/nonaggressive classification, is possible and could be used to justify some sort of welfare-state etc., but only if the narrower classification was universalizable. For it would have to be some sort of condition on the concept of aggression, like "aggression by the state is proper if for a beneficial social purpose," etc. But this itself includes norms and is not merely descriptive so would have to be justified by a separate theory itself. If someone could think of another descriptive classification, e.g., "aggression by a state is permissible" (but this seems to fail the universalizability criterion); or "aggression by a democratically-elected state is okay" (but this again sneaks in a non-descriptive norm).

So the theory shown here, by my choice of the aggression division, would appear to be prima facie valid until someone can justify some sort of narrower descriptive criterion which is universalizable, and which also either contains no norms, or contains elsewhere-justified norms. } A

(See last two sentences of above footnote 6.)

Also, for footnote 6 here: Could explain that estoppel applies only to blatantly contradictory statements, not ones that are merely incorrect. The boundaries of "aggression" can be explored further, but only to the extent that they are objectively ascertainable (and how theoretical can it get before it's no longer obviously contradictory, not purely descriptive anymore?). So another reason the "socially beneficial" division won't work is \because\ the division isn't descriptive, it's not obvious what's being referred to, and thus statements about it aren't subject to immediate disqualification on the grounds of blatant inconsistency.

Could explore this: if basic "aggression" point has been justified by application of estoppel, would further \theoretical\ (i.e. non-obvious, and therefore non-estoppable) understanding of the boundaries of aggression be justified, since the core has already been? Or could further refinement of "aggression", as long as based on \objective\, purely descriptive criterion, still be applied to arguers, since an inconsistency is still present? (Is it?)

\$

Thus, whether John currently holds both views, or only one of them, he is still estopped from objecting to his imprisonment. This is why the requirement of simultaneity, which is part of the consistency rule, is satisfied even when a criminal is being punished for his *prior* actions.

[["even"!? Why, the only actions a criminal } \can\ be punished for are prior actions; he's not a criminal yet until after the crime, and you can't yet know it then, either. And this is also another reason for the legitimacy of holding a prior implicit belief to a criminal now. For to engage in talk

is already



about punishment etc. must take cognizance of this fact (that all punishment is after; that all crimes are prior). Indeed, imagine a criminal just-jailed. He can complain about being imprisoned \now\, but must also then say that the beginning of his imprisonment was wrong (he'd be estopped from denying the latter after admitting the former, if universalization were applied). Thus he implicitly admits the irrelevance of the passage of time. Further, if he objects to his imminent imprisonment in the future, he also is implicitly admitting the irrelevance of time (his arguments why it's wrong to punish him \now\ are assumed to be valid in the future too; so similarly translations to the past could be made).]]

Either he still maintains his previous view (that aggression is not wrong), which is inconsistent with his objection to being punished; or he has changed his mind, in which case he is denouncing his prior actions which is again inconsistent with an objection to being punished and which is also an admission that punishment is proper. Thus, he can be deemed to hold both his current view (that aggression is improper) and his prior view (that aggression is proper) simultaneously, for the result is the same: his objection to being punished will not be heard.

\$

When applying estoppel, then, the arguer's claims to be examined must be in a universalizable form. He cannot escape the application of estoppel by arbitrarily specializing his otherwise-inconsistent views with liberally-sprinkled "for me only's." Since he is engaged in arguing about norms, the norms asserted must be universalizable.

[[Could elaborate a little bit here on universalizability. Also, show why it applies to the state, in next section. Show why state needs to justify objectively, in the nature of things, why it's not a merely particularizable claim to say that it's okay for \it\ to initiate violence in certain cases, yet not for its subjects. I guess I already did this a little bit in footnote 6 (or comments to it); but could explain, specifically, why the state's claim to "special" status isn't universalizable. Because, I suppose, it's just a group of individuals, and they couldn't hope to convince me, e.g., that they're justified in harming me, \unless\ they objectively show that the nature of things implies this special status. But then this throws the ball in their court, and the onus is on them to prove it. And that's a theory that has never been justified. Moreover, it's a normative is-ought problem, which makes it unlikely to be justified, especially in the face of the non-normatively-developed (i.e. purely descriptive, objective) estoppel theory; or unlikely

to be justified by estoppel, anyway.

\$

After end of article: [[In a more elaborate version of this, I could also explain why, after being once punished for a crime, a former criminal could no longer be estopped from complaining about multiple punishment for the same crime.]]

Reason: can object now - can validly change mind. Can't now impute prior views to him - b/c tho' he condemns his prior action & admits propriety of punishment, he has been punished. Plus, proportionality arg; + irrelevance of passage of time.

Estoppel Articles

12-20-92

292
164
128

~~Person Papers No. 15, Summer '90.~~

- - T. Machan, ed. The Libertarian Alternative, (Chicago, Nelson-Hall Co. (1974), pp. 120-121, "Private Prop. & Collective O's"; James L. Sadowsky, SJ.
- ~~H. L. A. Hart~~
- - R. Dworkin, Taking Rights Seriously, (1977)
- - E. Kamenka & A. E. S. Tay, eds, Human Rights (1978), "Human Rts. - for Whom & for What?", Beun. pp. 59, 64.
- △ - Hart: Are there any Natural Rts.?, 64 Philosophical Review, 175, 183-188; 184 (1955)
- - W. N. Hohfeld, Fundamental Legal Conceptions As applied in Judicial Reasoning & other Essays (1919), 30, 38, 71 (Assoc. 23 Yale L.J. 16 (1913) F
- - J. Salmond, Jurisprudence 229-67 (10th ed. 1947). (From Bewick's Art in G. L. Ker, n. 1.) 5
- - J. Maritain, The Rts. of Man & Nat. Law, (1943) (n. 5, Bewick's).
- - H. L. A. Hart: The Concept of Law (1961).
- - O. D. Raphael, ed., 1967: "Human Rights; Real & Supposed," in Political Theory & the Rights of Man.



Get J. of L. & Ec. xv (Oct. '72)

p. 293-325

For Sitney Article.



Get issue of Chronicle \approx 1 month ago, about
various plans for Metro etc.

- Kelsen, General Theory
- Salmond, Jurisprudence.

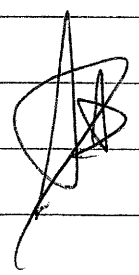
The Concept of Law, H.L.A. Hart
 Oxford, at the Clarendon Press
 University Press, Oxford
 © 1961

Copy pages: 6 - 10 = 13. ("obligation" = "law")
 "must, ought, should"

56

* "Obligation" - 79 - 81

Me: hypothetical nature of being obligated to do X (or duty...):
 If you ~~don't~~ don't do X, you will be wrong;
 it can't be said that you should do it (not even said
 by you). This is bedrock grounding of
 "rights/duties" - the undeniable fact of
 rights/should/goods --- values.



See p. 81, 8th line, "But..."
 p 82, 93, 2d sentence, "indeed" - saying that
 sanction implied in concept of rights !!
 83 ✓ - role of conduct - obligations - rights.
 p. 84 - last sentence
 p 86, 91, middle sent: "The diff..."
 p 87, 91 * - internal p.o.v. of rule = obligations.
 - to p. 88 (91, end *).

Estoppel ~~to~~ 1-1-93

Those who try to ~~to~~ justify rights generally already believe in them. ~~Does it not seem~~
~~unlikely~~ If a complex philosophical ~~of~~ argument is finally discovered which justifies rights, then either it is new, unique, original or not (intuitive, self-evident, obvious...). If it is new, then the previous belief of the arguer was merely faith/coincidence. Surely this is too unlikely.

~~Another~~ The more likely case is this: given that the ^{thinker} ~~researcher~~ believes in rights, and is searching for a justification — then, ~~if~~ if he is right (if there are rights), ~~he~~ he probably already believes in them because of whatever reasons justify them. I.e., he should look inward, & truly self-reflect, & ask himself why he believes in rights. If there are rights, he's likely to find the reasons already there. And if so, likely to be at least somewhat common-sense, intuitive, simple. I.e., something like a proof by contradiction — a realization that it would be nonsense to believe otherwise.

□ Hart - Art (positivism) Harv L.R. 598 (1958) / xxi

The right to enforce promises. But contradicts common notions. Well, this is possible - the prima facie tradition/custom/intuition can be overridden, or at least modified, w/ proof.

But understandable why maybe this mistake: can do almost same w/ a conditional (future) title -

• transfer: since no principled theoretical objection has historically existed to justify "intuitions,"

it's easy to see why some of its nature is understood.

Ratio essendi - sufficient condition?

ratio cognoscendi - necessary condition?

p. 171, 91 - Concept of Law: (p. 173, 91, middle)

Makes no sense to "legislate" morality,

~~the~~ [Me: (for Danesh): even God]

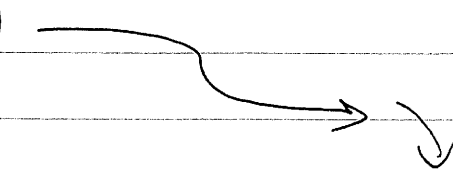
p. 188 - bottom of 1st incomplete ¶: Proposition

of life as a VALUE

Coloppel 2d lex: Reason why intent is nec.
element of a crime (rights violation).
B/c, if it's accidental, then how could
A ~~retaliate~~ retaliate? — accidentally!
No, I'd have to intentionally retaliate — but
that's too much, b/c A didn't ~~or~~ intentionally
do anything. Potential problem: arg. that,
if A accid. hurting B, B can't even defend
himself — b/c this would be too much → then
A could intentionally retaliate against B's
intentional action. BUT, solution: A could
only intentionally use force when B is accid.
hurting (or threatening) A, b/c that's the
situation in which B used intentional force.

- ★ "Rights": Narveson, G. Crit. Rev. #1, p 48
— see Raz, The Morality of Freedom (Oxford '86), p. 166.
(cited in n. 7, p. 80, of Narveson.)
Isaiah Berlin, "Two Concepts of Liberty" in Robert M. Stewart ed.,
Readings in Social & Polt. Philosophy (NY: Oxford U.P. 1984),
also in Berlin's Four Essays on Liberty (Ox, OUP '69).
Review of Reason & Morality, by Jan Narveson, Dialogue 19, #4,
(December: 1980): 651-74

(over)



Estoppel :

↳ Bruce Benson's The Enterprise of Law,
p. 350, notes 3 (Q)

↳ Lon L. Fuller, The Morality of Law

(New Haven: Yale Univ. Press, 1964), pp 23-24.

(Customary law emerges spontaneously as a consequence of cooperation induced by reciprocity, and reciprocity provides the basis for recognition of duty or obligation).

↳ See Hayek, Law, Legislation, Liberty, v.1, p. 59. (in N. 4, p. 350, Benson).

↳ See Hayek, public opinion, p. 350.

p. 351, n. 9 - see R. Epstein, "The Static Concept of Common Law," J. Legal Studies v. 9, (March '80), p. 255.

Estoppel : A Problem

The way I've defined rights, does it cover even animals' actions?

A has a right R against B to x .

$R = \text{A against B} \quad \text{A(B, x)}$

This means: it should (?) be within (?)

A's choice to choose whether to pursue x ?

- That (1) B should not use force against A to stop A's pursuit of x ; and

(2) If A uses force against B to ~~prevent~~ prevent B's force or threatened force, ... ?

Start off with:

→ Rights can be defined as <final definition>

How do we get this?

- Rights - Hohfeld's analysis: implies obligation. (use Litvinoff's "def. of something that is enforced by penalty...")

- Problems: - "obligation" is as undefined as "right" is (but: if we define obligation, we have also thereby defined rights).

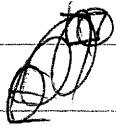
- Rothbard / _____ : ought...

- Me: Plon? Gewir? etc.

(over)

Estoffe 1-3-93

~~Letter to Denech/Sack/Bas about Multiple Men~~



Show how can reconcile (& deal w/)

EMERGENCY situations, "where peace is possible,"

and H.L.A. Hart's hope where you "should" violate
a right. Show that, punishment for its viol. is

at worst, death — yet that may be alternative

~~in~~ in lifeboat sit. And others could

recognize this, "justification" — not just a particularization.

(Maybe has to do w/ "aggression" as well, bc that's

something you choose. But choice radically constrained
in lifeboat situations.)

9 Feb. 1992

Idea - political theory - justifi. of rights:

There are 2 types of individuals:
those who agree that there are some individual rights, and those who do not. The latter may be dismissed: if the ~~the~~ former class were to unanimously agree on a set of rights, this would be enough for its legitimacy, as the effects on the non-righters of enforcing these rights would not be contrary to any claims of "rights" made by the non-righters. (In line with my "estoppel" argument - the NR's are estopped from complaining of any enforcement of rights (either of the righters alone, ~~or~~ or even rights of (some) NR's), so effectively consent to the actions taken ~~upon~~ which affect them (assuming consent vitiates a rights-violation claim according to the agreed-upon theory of rights).

Also in line with Tomasi's discussion of dismissal of "fantasies" in PRMC.)

Thus we can look for 2B things:

- (1) Common denominator among all rights theories; this wd. be unanimously accepted.
- (2) Common denominators among all rights theories where all theories are constrained by certain natural limits as reason, consistency, logic, common sense, etc.

Idea: 4.10.93

Is Levinoff's def. of 'oblig' is right —
law or moral command made effective
by the imposition of a sanction — then
which is better for "rights" — a "moral"
sanction (à la Rand — internal); or external
willingness to physically enforce rts?

Eslopped 4-15-93

Me: does about courts' necessity - Rand said
"need" in life disputes inevitable even
among honest men.

no: This is right, because objects
are only ones that exist. (2) Some are
objective, intersubjectively ascertainable -
but not all. So need peaceful dispute
~~every~~ for gray areas. But some
areas clearly not gray - ~~an~~ analogy
to self-defense OK, but not
pursuit etc. (a la Nozick b/c too dangerous,
send out confusing signals etc.). So no duty
to go to court for those.

5-27-93

~~Stoppel~~

Why: Very reason coercion/aggression
is abhorred is because of its

consequences. So: to retaliate:
kill a murderer. But what about
eg, ~~rape~~ or, say, putting a hole in
a rubber? Well, if we do "eye for eye,"
do Y X to Criminal, where X's consequences
(concrete)
are at least as great as those coerced
caused to Victim.



7-14-93 Estoppel Ldls

1 of —

① Property.

② Ldls of burden is uncertainty, unavailability
of "eye for eye" (e.g. jewel)

③ "Intent" — slid. scale between accid — negl. — gross —

② Can have hard Q's, such as if criminal — intent
— killed by one of 2 gunmen, not sure which
one

— Essential element of prob but b/c of acts
of crim. (so presume them, partly as
punishment thereof)

— Unavail. of perfectly reciprocal retaliation.

Eg: ~~and~~ wife raped: well, can't
very well rape guy back. So if perfect
retaliation just isn't available — Δ
has left you w/ no next but to
approx. the retaliation — fair to
shift burden onto him to prove
my improvised punishment is
not fair.

Eg, I propose & not merely to shove an object up
his ass ~~(P)~~ (this is inadequate because:

1. He's expecting it.

2. It's less offensive to do this to a loser than to
an innocent ~~per~~ woman

3. Not as bad b/c not same thing as removing
a woman's virginity (or similar);

(Expense)

2 of —

Q. 4. Certainty of catching him was not 1.0)
Therefore a "similar" response is inadequate
b/c the crim. got a surplus. So we need
to increase. How much? Diffic. Q. Maybe
impossible. But this is what another thing
 Δ forced on us — putting us in this pos'n. So let's
let π have large, res. range — or even wide-open
choice — and let Δ show why there's a limit.
But ~~if~~ if there's doubt, ~~and~~ side w/ π —
b/c otherwise there's a possibility of underpunishing.
~~Q.~~ Better to overpunish, because the fact that
there must be an imperfect punishment match is the
fault of the Δ , it flows directly from his act.

→

Why only intentional act (w/ spectrum)
~~or~~ you can retaliate for:

Because, the only way you can retaliate
is intentionally. So must have element of

7-21-93

Estoppel Index

N. B. Gordon on Objectivism

Taped Lecture: The Nature of God:

makes a few comments that forebode
Hoppe's proof that we can't know the
future, that we have free-will.

N.B. states that God has no choice if he
knows the future... (i... more?...)

Estoppel

10-10-93

Sowell, A. Coherence, p. 47 et pass. — citing Hayek —

→ Idea of superior knowledge
embedded in social customs that
survived Darwinian weeding.

⊙ Use along w/ idea showing that general
course of reasonableness is acceptable as a ~~starting~~
prima facie pos'n if otherwise don't know — &
some traditions can be called in as evidence
of morality this way etc.

10-29-93

Letter Op Grant FFW 3561.9

Estoppel: This is an operational ~~fact~~ theory of rts. We see them as right when we look at them from a perspective in line w/ the very reason we ~~are~~ have such a concept. @

Many facts are known but we not often discussal, because trivial ~~or~~ or boring or ~~is~~ not useful, such as the fact that But right ~~is~~ is a widely discussed concept. *

See, e.g., Mary Ann Glendon: Rights - Talk -

It is popular because it is used at crucial ~~moments~~ moments - to affect others' behavior. Typically, a right is asserted as a justification - a reason given to others to convince them of the legitimacy or propriety or rightness of a proposed action, to convince them to support or allow it. It is asserted as a justification to use force to attain something or to prevent someone from doing something. If the existence of rts - tantamount to their justification - can be found by ~~an~~ examining the nature of rights, perhaps we can profit by analyzing the nature of the situations for which rts are designed, and when rights are asserted.

This is - the moment of enforcement.

11-13-93

Estoppel idea:

→ Rights are only for civilized folks - it doesn't matter (to their existence) if a criminal won't ~~use~~ respect them.

If skeptic S says there are no R, this is enough for the rights-seeker. B/c I want a right means I wish to be able to legitimately enforce them. To do this there must be no legit. note - challenge to my enforcement. I can't wage such challenge, for to do so effectively grant rights (to the aggressor), contradicting himself.

20 May 92

The Existence of Rights - Proof by Contradiction.



Certain concepts are irreducible and undefinable. But we have knowledge of their meaning nonetheless because they are a priori. [See Hoppe's book for listing of a priori things; Man, Economic Man & State too.] "Reality," for example, means "existence," or "all that there is," ~~"all that"~~ But ultimately these synonymous expressions are not further reducible. The reason is because we are inside of reality, part of it, always presuming (and benefiting from) it ~~even~~ at all times - even during an attempt to define and reduce it. Even the concept of "definition", though we all know what it means, must remain forever undefinable, because ~~it is circular to define~~ a definition of "definition" is circular. ~~And~~ If someone asks you (or you ask yourself) what ~~is~~ a word's definition is, it is presumed ~~to be~~ by the questioner that all already know what it means to define something.

Nomative concepts are ~~exclusive~~ ^{as} exclusive. ~~Although~~ Although moral terms have many synonyms, ultimately it is a large circular tautology. Ask me what a rock is, and I can ultimately point to one and show you. But ask me what a

"should" is, and I point to an ought, to a must,
to a good, even, ~~go~~ till I'm finally back to
"should." "You should ~~do X~~ do X" is

~~equivalent~~ equivalent to saying that you ought to X,
you must X, it would be better ^{if you were to X,} if you were to X,
or, it would be a value if you were to X.

Ultimately, though, what, exactly, does it mean
to say that "you should ~~do~~ (or should not) do X"?
We all know what it means, yet it cannot be
reduced any further.

The reason is because, like "reality" and "definition,"
such normative concepts are also a priori. The
fact that we are alive shows that we
prefer life over non-life [Rothbard - Ethics - quote].

The fact that we act shows that, when we
choose ~~the~~ course (or end) A over B, - that
we prefer A over B. Of course this simply
means that we value life over non-life, and
we value some ends ~~or~~ or choices over
others. To value something is to hold that it
is good and right. To say that it is good that I do X is ^{to say that I} should do X.

Thus, because any living human is still
alive, ~~and~~ ~~and~~ acting & choosing, he is
preferring and valuing. It is an inescapable feature
of ~~life~~ life that we view it through
normative lenses - that we ~~must~~
all hold that there are certain "goods & shoulds."
~~Normative facts~~ The existence of normative
facts is thus "a priori fact."

A special variety of norm is a "right." It is sometimes called an entitlement, but is ultimately reducible only down to normative "should" language, which is itself irreducible, and incontestable.

A right has been nicely defined [Rothbard's quote, only in Ethics] as meaning: If A has a right to X, it is immoral for B to forcefully interfere with A's exercise of it. I.e., B should not so interfere. ~~Perhaps more useful for present purposes~~ ~~is as follows:~~ If A has a right to X, this means ~~that~~ ~~any~~ B should not ~~violate~~ ~~this~~ ~~right~~, ~~and~~ ~~for~~ ~~more~~, that if A uses force against B to protect this right, then it cannot be said that A should not do this.

One problem with this definition is that it does not quite capture the essence of what we mean by "rights." For though force is an essential element, it is not enough for it to be immoral for B to violate it. ~~For~~ ~~if~~ ~~we~~ ~~say~~ ~~that~~ ~~it~~ ~~is~~ ~~immoral~~ ~~to~~ ~~say~~ ~~what~~ ~~too~~ ~~much~~ ~~at~~ ~~the~~ ~~expense~~ ~~of~~ ~~visiting~~ ~~your~~ ~~friends~~, ~~we~~ ~~do~~ ~~not~~ ~~do~~ ~~it~~. The necessary & sufficient condition for A to have a right to X against any B is this: it is not immoral for A to use force against B to protect A's right to X. It is not enough to say that B's violation of X is immoral; for this, in itself, does not justify any enforcement of A's right, whereas the ability to enforce a right seems to be what makes the concept "rights" a special form of norm.

Let us use the following definition of rights,
then: A has a right to X ~~as~~ as against
any B iff it is not immoral for A to use
force against B to prevent B from violating
A's right to X.

Note that B's violation ~~is not~~ does not
need to be called immoral, though this is implied
in the concept.

Now, ~~by~~ two questions arise. Do any
rights exist? If so, which ones? By
the nature of ~~the~~ rights as defined above, it
can be shown that rights do exist, ~~and~~ and that
they are ~~all~~ all negative, libertarian rights.
In short, the one basic right is the right to
not be aggressed against. This is so because,
as will be shown below, of the normative way
humans must view the world, and because the
concept of force is an inherent ~~part~~ part of the
definition of rights. Also, the validity of
the following arguments does not depend upon
this definition of rights being equivalent to
others (though it is difficult to see ~~a~~ much
objection to this way of defining what it means
to say a right to X exists) — it only
depends upon this definition of rights
being coherent and intelligible.

If rights are understood as above,
there can be no question that rights exist.
This can be shown by the following question:

How could there not be rights? ~~Let us~~ Let us proceed, then, by an argument by contradiction. Let us assume there are no rights.

Suppose A claims a right (as against any B) to X. Now, one could argue against this assertion on many grounds, depending on its substance and on A's arguments for it. However, let us consider ~~the~~ the skeptic's (S) criticism:

"No, A, you do not have a right to X, for there are no rights." Suppose A attempts to use force against B, to enforce this ~~asserted~~ putative right. For S to say A has no right to X is to say it is immoral for A to enforce it against B (for, if it is not immoral, then it is A's right, by definition). Now, when S claims that A's enforcement is immoral, S runs into a problem. S cannot say that B's rights are being violated, by A's use of force against him, because, ~~according~~ according to S, no rights exist. Thus S is saying

that A's enforcement is immoral and yet that B's rights are not being violated. But what can this mean? Surely it is a weak criticism, ^{of A's claim to a} ^{putative right,} to merely call A's ~~enforcement~~ enforcement immoral, but not so immoral that B can ^{morally} ~~use~~ use retaliatory force (because this would imply B has some right).

So if A acts as if he has a right, the most S can do is weakly mutter that ~~this~~ this is "immoral," but he cannot advocate any forceful opposition to A's actions. Thus it is doubtful that S is really even objecting to the existence of a right: for he is, in fact,

advocating that A be allowed to continue going about his rights-enforcement business.

Further, for S's claims to not be ~~just~~ merely empty verbiage, he must be asserting the immorality of A's actions because of some reason. Yet the only distinguishing fact of the given situation to which S objects is the fact that A is using force against B. But here is where S is tripped. ~~S is saying that the use of~~ S must be claiming that any force — even retaliatory force (for this could be why A is using force ~~in~~ — in retaliation) — is immoral.

*
? Change def: A has a right to X as against any B if it is not true that A must not use force against B to ensure B doesn't violate the right.

In short, if S is only willing to say A "should not" use force against B, then this is merely advice to A which, even according to S, A ~~is~~ is, and should be, free to ignore. S can only truly object by saying that A must not so harm B — but this is equivalent to ~~just~~ claiming that B has a right.

→ ^{epistemic} A that a "should not" enforce it isn't accurate.
For we can be immoral within our rights.
We should forgive someone's debt to us if we are
in their moral debt; it would (sometimes) be
unreasonable to enforce a debt-right, e.g.

So must is part of it. But what
does must mean? That force can be used
to stop it. So, circular; but OK, since
still a priori (but, now do need to claim
that this is way people see "rights," (? No?)).

23 June '92. Outline of article - idea on
a priori of rights concept. (1)

- Why is it useful to write (or defend) a book justifying rights? - Bc we live normatively (developed/polit).
- How complicated can it be? Any limits? Practically?

Theoretically? Do practical limits have any relevance to theoretical ones? Yes - Kierkegaard's arg: a priori ideas informed from, intuition, ideas that arguing is a practical affair. And Rothbard's views. Et al., etc.

- What are morals, what for? Need because we're valuing creatures. "Good" is that which we aim for. Morals tell us how to act so as to achieve our good. As such, they concern means, but are also constrained by the nature of ends sought. They tell you what is good, so that it can be achieved.

So a moral code must be understandable, graspable, either by intuitive, or given etc. Possible an intuitive code could be given, e.g., 10 commandments - but by def., you want some good to be achieved.

So why wd. arb. code work? Not merely because it's a code. If it's survived evolutionarily, this may give evidence of its ~~own~~ (at least partial) correctness. But too many contradictory existing surviving codes to use only this criterion. In fact, a "traditional" isn't necessary or sufficient.

Given this (undeniably correct) approach, reason must be the judge.

For reason to work, though, must still be an application that any man could make. Else he couldn't live. It should have a core set of values, easily identifiable; possibility of refinement exists, which people could pursue to further enhance (the good in) their lives.

This core area, the essential, lowest common denominator essence, of morals nec. to at least some semblance of proper living, must include rights. For this term, by its def. (see later), is of fundamental importance. Rights are very much related to morals & norms: rights apply to areas of activity & things that are fundamentally important in the achievement of a good life (and thus of morality), else they wouldn't have such an urgent component to their application (definitionally speaking). Thus any core set of morals must take into account rights. And since the core set of morals must be available to all, usable by all - not just ^{professional} philosophers - it must be justified - and justifiable - in a sufficiently simple, direct, appealable way such that it ~~has~~ at best possibly has some sort of appeal to the common man.

To the extent such a man has common-sense skills & intuitive ability, it must mesh, at least

partially, & probably substantially, with such common ideas/methods (or at least one ~~or~~ area of those ideas, where there are contradictions).

An elaborate justification of a wholly new ethic is unlikely to be true even, for it could not, even in principle, ever hope to be an acceptable, workable code. If a theory is complex, it can only hope to be of use to the extent that it supplements, refines or explains a simpler set of already accepted & given ideas.

So we must look at the central reason why men use norms, & what this practically, ~~and~~ and theoretically entails.

The estopped theory has a chance at validity because: it is not too complex; further, it's just a more formal expression of a simple, workable & traditionally-accepted, and intuitively-appealing, ethos, to-wit: eye for an eye, tooth for a tooth.

So, let's try to sort out the normative constellation, of good, shoulds, & rights, & see what apriorisms, definitions, & practical & theoretical ramifications we come up with. (See 20 May '72 notes on p. 17.)

Synonymous normative expressions:

It is good for A to do X; A should ^{or ought} do X (because it would be better for him to do so); It is proper, or right, that good do X;

Value & preference are closely related: You value what you pursue; X is a value, it is valuable (to you) if you

mean
very imp. should
imperative, rights - force-related negat

purse it: X is more valuable (to you) than Y, if you prefer X to Y. But value/preference are subsidiary to good; because we can say X is a good value, or A should not prefer ~~to~~ or value X.

The undeniable value/preference is life. It is omnipresent, like existence, the universe, ~~as~~ time, ~~or~~ or reality, and cd. never say ~~of it~~ ~~that~~ ~~not~~ we should not value life: for the utterer is contradicting himself, by affirming life (i.e. living) while denying the propriety of valuing it; and also, is using "value" contradictorily. For, to value anything is to presuppose a valuing of ~~of~~ life. To say A should not value life is effectively equivalent to saying one should value death - which contradicts the context ~~of~~ of the purpose of valuing, & its concept. Further, to look for morals, & their justification, ~~is~~ presumes the basis of life, for morals help ~~of~~ me to lead a good life.

So life cannot help but be a value; and it cannot help being a good one, and indeed the basis of all other values.

Of all nouns, the indeed traditionally is a special category for nouns relating to force. More importantly, it is understandable, and, to extent its a priori; ~~or~~ ~~to~~ its very existence carries information, which analysis can ferret out. This category is rights.

First, let's discuss a sort of intermediate normative term: must. In one usage, it is ~~for~~ non-normative:

"You must do your home work if you wish to make an A." But this is a means-description, & not too relevant here.

It's also used as an emphatic or important type of should: "You must help out or else!" ("You really should help us out!") Or as a command: "You must come here." But this implies a consequence if compliance is not forthcoming, so is more like the means-description above.

Some^{wh}, though, seem to imply a certain sort of mandatory character: "You must not kill people" seems to carry qualitatively more weight than "you should not kill people." While "you should try to ~~be~~ be a friendly person" ~~is not~~ seems to be a permissible use of "should," "You must try to be a friendly person" does not. "You must not kill others" has certain mandatoryness about it, over & above the consequences of being punished by the law. However, "must" is not often used, in everyday ~~our~~ language, in such a mandatory manner. More frequently, we hear "rights-talk."

Now, rights are closely related to shoulds. If ^{we say that} I has a right to X, we mean that at least ^{that} other ^{that} should do X, or that I should be able to do X (i.e. that B should not interfere). We can't mean merely that I should do X - or we'd not need an extra concept. So it has to have something to do with \longrightarrow

Ought
implies
can.

interference with things A has a right to (sounds circular here). But, to do X, A must choose it, and to choose it, he must ~~be~~ be free - i.e., not prevented. But prevention occurs forcibly: B uses force to stop A from being able to do X. So, if A has a right to X, this implies: A should be able to do (or have or get) X; ~~and~~ B should not (forcibly) interfere w/ A's doing/getting/having X. Rights may mean more, but they mean at least this.

Does this imply anything about the propriety of using force against B to prevent his interference? If we say B should do X, this ~~is~~ only means that it is moral that B do X; it is good for him to do so. If he does not, this does not imply that A may use force - that A should use force, or that it is good for A to so use force, or even that A should be able (A has a right) to use force against B.

But in this special case, B should do Y (i.e., refrain); that is, B should not interfere with A's doing X, because A should be able to do X. If A should ~~be~~ be able to do X, logically he should be able to do that which the doing-of-X necessarily entails. For A to be able to do X, it is always true that ~~either~~ there ~~must~~ must be no interference by (any) B. But since, in reality, some Bs might choose to interfere, in this case it is logically true that either (1) A should be able to use force to ~~pre~~ counter

(2)

B's force; or (2) A should not. (Now, while it might not be immediately clear that, if A should be able to do X, A ~~can~~ may use force to defend this, it is clear where X itself is the use of force against B. If A should be able to use force against B; i.e. if it is moral for A to use such force... What must be true for there to be no interference w/ A's doing-of-X? B must not interfere—even if he chooses to. For B to not interfere even if he chooses to, force must be used against him. Thus it cannot be said that force should not be used ~~ago~~ (preventively) agst. B. Specifically, A may use force b/c sometimes only A & B are involved (i.e. immediate self-defense).

So we have: If A has a right to X, it is immoral for B to forcefully interfere; and, it is moral for A to use force against B to enforce the right.

But are there any rights? What wd. it mean for there to be no rights? To A's assertion of his right to X, skeptic S's rebuttal that there are no rights (& thus A is wrong) is surely incorrect, for it is ~~so~~ contradictory. For, for S to say that A has no right because there are no rights is to implicitly claim that B's rights are being violated.

S could say that, because no rights exist, A has no grounds for using force against B, and thus should not; and thus force should be used to prevent A's act. But this gives a right (by the above

definition) to B - for, we have: it is immoral for B to A to use force, & force may be used to prevent this.

So I can't object this way. No way, at most, say that it is immoral for A to act in manner X' (using force agt B to enforce X); that A should not do so. But the only grounds for saying force is ^{in this case} wrong is because it prevents actors from being able to exercise options that they should be able to exercise.

But, B should not be able to exercise the force-option, if it prevents A from doing X, which is given that he should be able to do. And I can't object that we can't find any X that A should be able to do - i.e., that there is no morality - for he contradicts himself, by his very act of objecting to A acting as if he had a right.

So: if ~~S~~ ^S admits ~~that~~ (1) there are some things A should be able to do (which can't be denied), then it follows that it is moral to secure the conditions for this - i.e., it is moral for A to use force against B; i.e. A has a right to X.

Since it cannot be denied that rights exist, ~~and~~ and in the form defined, what rights exist? We shall see that their necessary form ^{also} delimits their content. Since the battle of force is so linked up w/ the idea of r, we'll see that only negative rights are possible.

Book Ideas

SAT. 8 August 1992. In car from Callaway to Florida

(1)

- Discuss free will: Kelley's views. Sperry. Some Randian axioms. Hoppe-like apriorisms. My class.
5th free. Safety of voluntarism-is true assumption.
- Morality/Ethics: try derive it too ~~from~~ aprior, like "rights".
Or, at least, show it's only ~~one~~ morality consistent w/
Rights.
- Rights: sufficient, to ~~prove~~ prove existence, to show that
enforcement is legit. - ~~Do~~ don't need any more
"justification" for a person; b/c rights can be violated, so
their existence can't be dependent upon their motivational
force.

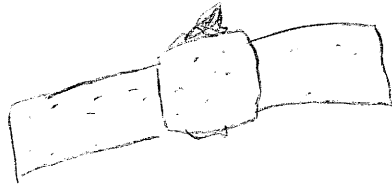
A practical theory

- "Unrealistic"ness of proposals - only so far as individuals refuse to be
wholly right-respecting. So is never ~~an~~ a valid arg, most
giving the arguer an excuse. ~~But~~ Eg, its significance is
only w.r.t. working w/ a system of justice; i.e. predictive value
only. We can say, "Given that most people refuse to be
right-respecting, X is an appropriate policy to follow." But never
can B agree w/you that because ~~the~~ the ideas are
impractical (because not enough people will accept them)
then he shouldn't accept them as true.

- Discuss blame, ~~for~~ free speech, etc. Analogy to ~~show~~ show
people guilty even tho' misunderstand. True polit. process:
common law crime - intent to do acts which are a crime (i.e.
murder), not intent to "murder."

Q

S



2

- Importance of education, propaganda.
- Analogy (impracticability, voluntary compliance): even today's sys. can't work w/o high degree of voluntary rights-respect. So not absurd to try to increase it.
 - Not to expect voluntary compliance. Given variety & continuum of nations (US v. Korea), who knows how far ch. extend end of spectrum?
- Market for justice (Friedman; Tushnet's; Benson; Smith (Atheism/Hand); Rothbard espec. (Ethics of L.)). (already know how far other end goes - eg Holocaust & USSR; an endeavor to stretch other end now.)
- Discuss impossibility of God being relevant to morality.
- Abortion argument. - pre-embryo babies have rights, to do q-mo-feture...
 - perhaps babies have rts - by Lomasky-like pigggy back, or normal "nat. rts." extension. wd. work better, maybe, w/ Koppes' arg.; but I'm only trying to show validity of some rights, and a skeleton or frame.
- On source of rights... sociability... value of reason & discourse, & even of many; and Lomasky-like altruism/value upon others.
 - What is source of ~~fact~~ fact that $1+1=2$? or of fact that you are inconsistent if argue that argumentation is impossible? Same situation. (Tie w/ God-source discussion.)
- Delineating of dissent theories - economics, utilitarian, emotive, and post-natural rights thinkers. ~~perhaps~~
- What about previous contrib? Completely wrong? No. T. Jefferson had it right one self-evident. Just takes some thought to explain why.

Hard to see why it's self-w. so people try to justify w/ other more complex theories. Not useless, but a little too complicated. Sort of like Beckmann/Ernst.

— "Eye for eye."; intuitive appeal; evolut.; self-evolv
Jesus: John 8/7: "He that is who sin among you, let him first cast a stone at her."

— Verbeke's discussion of categ. imper., p 402 Ethics (back over view of Gewirth): Categorical if hypothesis depends upon a necessary fact, like arguing & trying to justify a situation.

— Show how I have met objections (by MacIntyre, Verbeke, etc.) to Gewirth. Does it salvage Gewirth, Pilon, or neither?

— Even if I define "right" wrong, ok as long as I justify it, and it does what I want it to do (perceives a rights-fraction).

— An ought is an is. ~~???~~ (?...)

— Why do rights arise? — why are there "wrongs"? B/c when we consider the existence of different manifestations of ~~an~~ interactions & implications of, we see that it is absurd to conclude anything but the idea that force is, in certain situations, in some sense illegitimate. For to assume its legitimacy is unworkable & inconsistent; absurd.

(~~Why doesn't double jeopardy attach to civil trial (after a crim. one)? (B/c of lower burden of proof...?)~~)

— Even if I don't show a full ethics, that ed. be discussed later, w/in a proper gov'l context.

- "A right is a normative resource," p 1123, Flew's Sp. L. Rev. Article
- Even in A. Flew's good work, "what are rights," he never attempts to define a right (does he?)
- How complicated can a theory of rts. be & still be true? Maybe no limit. (or ethics)
- But self-evident, intuitive, simple ideas but, perhaps "truer."

After Virtue. Hum. Rts: Fact or Fancy. Anarchy, State & Utopia. Reason and Morality, Morals by Agreement, de Pursuit. For a New Liberty / The Ethics of Liberty. Persons, Rights & the Moral Community. Takings: Environmental Domain Priv. Prop. Liberty and Nature - Aristot. Defense of Lib. Order

Estoppel & Rights-talk: The Evidence for rights: is proof by contradiction.

Estoppel and Rights-talk: Estoppel, Reason and Cooperation: the source of rights. Estoppel & Rights-talk: the a priori argumentative connection. : toward a solid foundation for rights. Estoppel and a priori concepts: why rights must exist and what they are. Estoppel, Discourse, Cooperation and Rights-talk: A rock solid foundation for human liberty. Reviving Thomas Jefferson's "self-evident" rights. Estoppel and the inescapability of rights. Estoppel and Rights-talk: a bulletproof, a priori defense of rights.

- Letter to Koppa: notice avoid siding w/ is-right doctrine - so do you like ANL, Ethics of L. or not? but what about validity of past thinkers?
- universalizability: people who are allowed to... might not agree?
- Never defines right.
- then slightly over-ambitious remarks.

- And ask, "Why do I believe in it?" If based on a theory, is it full, or not? Not full, yet, etc all seem incomplete, at best. So, if not perfect theory, why believe in it?

A fruitful line of inquiry may be to look into this why. We may find a gold vein. If we find nothing, perhaps we should abandon an (apparently) groundless belief. Must be knack with oneself, etc. ~~to~~ further - what to believe - is being sought here - not a justification for right, but a justification to believe in right if they exist.

- Summary of P. van Inwagen, Gettier, (Lomax,?), Kripke, Habermas, Rorty, Ch. Murray, Rand, Nozick, Machan/Rommespacher, Den Uyl, etc.

~~Send Estopp. art. to CJS etc.~~

~~Why intellig. is imp: excuse for non-success, ~~etc~~ for being above experts for certainty, etc.)~~

~~Stationery~~

- Show that (poetically), can have right, even if there are none. Analogy: Barnett (?) in 9th grade.

Rights are often argued over, but seldom
are they adeq. defined. D.itzany says _____,
but this appears to be synonymous, & circular.

[Explain prob. w/ cit. & definitions.]

Hart, ~~Flew~~, Machin, Rasmussen, Rand, Locke, etc.

Flew, last. Then, offer my definition

~~Hypothetical~~
~~Skeptics~~
~~Answers.~~

- ~~Car inspect~~
- List
- find Patent article
- 'Ticket Me' to Ben

Estoppel:

Mention idea that ~~rights~~ rights-norms are hypothetical, where, "if you X, then it is true that you should respect rights," which is enough to prove that rights exist — indeed it is what it means for rights to exist — as long as X maintains ~~for~~ all ~~or~~ potential rights-violators. Which it does, since X is "wonder about morals; engage in discussion or interact with others; claim to have a right to not be punished etc.; etc."

Animals / rocks / trees / lightning / (babies? infants?) —
Reciprocity is embedded in any concept of rights — inescapably so. So whoever we discover ~~has~~ rights, say, R, where A is set of all entities, then (A-R) is set w/out rights.
⊗ Suppose a tree ~~has~~ no rights — then it can't violate yours, either. Which is, in a sense, why it doesn't have rights — bc no reciprocity is possible. Since ~~rights~~ a rights-violation is something you should not do, it must be intentional. Thus animals, lightning, & even felts — even small infants, perhaps — ~~don't~~ can't violate your rights and therefore (reciprocity) ~~can't~~ don't have them. (What about a sleeping person? When wake up, could punish \therefore rights. Some org. may apply to babies & even felts — when

they grow up (i.e. wake up), they could assert the J right (perhaps ... maybe @ aggressor not stopped from hurting a more baby; but, then, wouldn't this - perhaps apply to ~~sleeping~~ clapping = sleeper?), implying its did exist (stopped-analytic).

- Answer Skeptic's claims. - Answer inevitable criticisms
- Give lots of examples, either in sep. sections or sprinkled throughout.

it is as impossible to imagine an animal suddenly gaining sentience (& ~~then~~ then trying to punish an earlier hunter of himself) as a rock. Surely to break a rock could never be a re-vid, even if it magically (& unexpectedly!) was transformed into (thereby) would be

rock-man seeking vengeance upon its earlier sculptor. But it is expected & predictable that a baby (or even a foetus) will grow up & perhaps seek to vindicate itself (i.e. wrongful birth action).

NSK ESTOPPEL BOOK

TRANSCRIBED HANDWRITTEN NOTES

February 9, 1992

Idea — political theory — justification of rights:

There are two types of individuals: those who agree that there are some individual rights, and those who do not. The latter may be dismissed: if the former class were to unanimously agree on a set of rights, this would be enough for its legitimacy, as the effects on the non-righters of enforcing these rights would not be contrary to any claims of "rights" made by the non-righters. In line with my "estoppel" argument — the non-righters are stopped from complaining of any enforcement of rights (either of the righters alone or even rights of (some) non-righters), so effectively consent to the actions taken which affect them (assuming consent vitiates a rights-violation claim according to the agreed-upon theory of right. Also in line with Lomasky's discussion and dismissal of "fanatics" in *Persons, Rights, and the Moral Community*.)

Thus we can look for two things:

- (1) Common denominator among *all* rights theories; this would be unanimously accepted.
- (2) Common denominators among all rights theories where all theories are constrained by certain natural limits as reason, consistency, logical, common sense, etc.

May 20, 1992

The Existences of Rights — Proof by Contradiction

Certain concepts are irreducible and undefinable. But we have knowledge of their meaning nonetheless because they are a priori. (See Hoppe's book for listing of a priori thing; and Rothbard's *man, economic, and state*) "reality," for example, means "existence," or "all that there is".

But ultimately the synonymous expressions are not further reducible. The reason is because we are *inside* of reality, part of it, always presuming (and benefitting from) it at all times — even during an attempt to define and reduce it. Even the concept of "definition," though we all know what it means, must remain forever undefinable, because a *definition* of "definition" is circular.

If someone asks you (or you ask yourself) what a word's definition is, it is presumed by the questioner that all already know what it means to defend something.

Normative concepts are as illusive. Although moral terms have many synonyms, ultimately it is a large circular tautology. Ask me what a rock is, and I can ultimately point to one and show you. But ask me what a "should" is, and I point to an *art*, to must, to good, even, till I'm finally back to "should". "You *should* do X is equivalent to saying ought to do X, you must X, it would be *better*, good, or proper, if you were to X, *or*, it would be value if you were to X. Ultimately, though, what, exactly, does it *mean* to say that "you *should* (or should *not*) do X"? We all know what it means, yet it cannot be reduced any further.

The reason is because, like "reality" and "definition," such normative concepts are also a priori. The fact that we are alive show that we *prefer* life over non-life (see Rothbard's *ethics of liberty*). The fact that we act shows that, when we choose course (or end) A over B, that we *prefer* A over B. Of course this simply means that we *value* life over non-life, and we *value* some ends or choices over others. To value something is to hold that it is good and right. To say that it is *good* that I do X is to say that I *should* do X.

Thus, because any living human is still alive, acting and choosing, he is preferring and valuing. It is an escapable feature of life that we view it through normative lenses — that we all hold that there are certain "goods and shoulds." The existence of normative facts is thus an a priori fact. A special variety of norm is a "right." It is sometimes called an entitlement, but is ultimately reducible only down to normative "should" language, which is itself irreducible, and incontestable. A right has been nicely defined (Rothbard's, early in *ethics of liberty*) as meaning: If A has a right to X, it is *immoral* for B to forcefully interfere with A's exercise of it. i.e., B should not so interfere.

One problem with this definition is that it does not quite capture the essence of what we mean by "rights." Rothbard forces and essential element, it is not enough for it to be immoral for B to violate it. The necessary and sufficient condition for A to have a right to X against any B is this: It is *not immoral* for A to use force against B to protect A's right to X. It is not enough to say that B's violation of X is *immoral*; for this is, in itself, does not justify any enforcement of A's right, whereas the ability to enforce a right seems to be what makes the concept "right" a special form of norm.

Let us use the following definition of right: *A has a right to X as against any B if it is not immoral for A to use force against B to prevent B from violating A's right to X.*

Notice that B's *violation* does not need to be called immoral, though this is *implied* in the concept.

Now, two questions arise. *Do* any rights exist? If so, which ones? By the nature of rights as defined above, it can be shown that rights do exist, and that they are all negative, libertarian right. In short, the one basic right is the right to *not be _____ against*. This is so because, as will be shown below, of the normative way humans *must* view the world, and because the concept of *force* is an inherent part of the definition of rights. Also, the validity of the following arguments does *not* depend upon this definition of rights being equivalent to others (though it is difficult to see much objection to this way of defining what it *means* to say a right to X exists) — it only depends upon this definition of rights being coherent and intelligible.

If rights are understood as above, then there can be no question that rights exist. This can be shown by the following question: How could there *not* be rights? Let us proceed, then, by an argument by contradiction. Let us assume there are *no* rights.

Suppose A claims a right (as against any B) to X. Now, one could argue against this assertion on many grounds, depending on its substances and on A's arguments for it. However, let us consider the skeptic's criticism: "No, A, you do *not* have a right to X, for there *are* no rights." Suppose A attempts to use force against B, to enforce the putative right. For S to say A has no right to X is to say it *is* immoral for A to enforce it against B (for, if it is *not* immoral, then it *is* A's right by definition). Now, when S claims that A's enforcement is immoral, S runs into a problem. S cannot say that B's *rights* are being violated, by A's use of force against him, because, according to S, *no* rights exist. Thus S is saying that A's enforcement is *immoral and yet* that B's rights are not being violated. But what can this mean? Surely it is a weak criticism of A's claim to have a right, which merely call A's enforcement-action immoral, but not so immoral that B can morally use retaliatory force (because this would imply B has some rights).

So if A acts as if he has a right, the most S can do is weakly mutter that this is "immoral," but he cannot advocate any forceful opposition to A's actions. Thus it is doubtful that S is really even objecting to the existence of a right: for he *is*, in fact, advocating that A would be *allowed* to continue going about his rights-enforcement business.

Further, for S's claim to not be merely empty verbiage, he must be asserting the immorality of A's actions *because* of some reason. Yet the only distinguishing fact of the given situation to which S objects is the fact that A is using *force* against B. But here is where S is trapped. S must be claiming that *any* force — even retaliatory force (for this could be why A is using force — in retaliation) — is immoral.

Note: Possible change to definition: A has a right to X as against any B if it is not true that A *must not* use force against B to ensure B does not violate the right.

In short, if S is only willing to say A "should not" use force against B, then this is merely advise to A which, even according to S, A is, and *should be*, free to ignore. S can only truly object by saying that A *must* not so harm B — but this is equivalent to claiming that B has a right.

Cannot say that A "should not" enforce it is not accurate. [?? — SK]. For we *can* be immoral within our rights. We *should* forgive someone's debt to us if we are in their moral debt; it would (sometimes) be immoral to enforce a debt-right, e.g. ...

So, "must" is part of it. But what does "must" mean? That force can be used to stop it. So, this is circular; but this is okay, since still a priori (but, now *do* need to claim that this is the way people see "rights" (? no ?)).

June 23, 1992:

Outline of Article — Idea On A Priori Of Rights Concept

Why is it useful to write (or read) a book justifying rights? — Because we live normatively (develop further).

How complicated can it be? Or there any limits? Practically? Theoretically? Do practical limits have any relevance to theoretical ones? Yes — Hoppe's argument: A priori ideas are inferred from, among other things, the idea that arguing is a *practical* affair. In Rothbard's views and others, etc. What *are morals*, what are they for? We need morals *because* we are valuing creatures. "Good" is that which we aim for. Morals tell us how to act so as to achieve our good. As such, they concern means, but are also constrained by the *nature* of *ends* sought. They tell you what *is* good, so that it can be achieve.

So a moral code must be understandable, graspful. Either because intuitive, or given, etc. possibly an intuitive code could be given, for example the Ten Commandments — but by definition, you want *true* good to be achieve. So would an arbitrary code work? Not merely *because* it's a code. If its survived, evolutionarily, this may give evidence of its (at least partial) correctness. [NSK note: also see **pareo conservative and pareo libertarian and conservative thinking on this**]. But too many contradictory existing surviving codes exists to use only this criteria. In fact, "traditional" is not necessary or sufficient.

Given this (undeniably correct) approach, reason must be the judge.

For reason to work, though, there must still be an application that an average man could make. Otherwise he could not live. He should have a core set of values, easily identifiable; or the possibility of refinement exist, which people could pursue to further enhance (the good in) their lives.

The core area, the essential, lowest common denominator essence, of morals necessary to at least some semblances of proper living, must include *rights*. For this term, by its definition (see later) is of fundamental importance. *Rights* are very much related to morals and norms: rights apply to areas of activity and things that are fundamentally important in the achievement of a good life (and thus of morality), else they wouldn't have such an urgent component to their application (definitionally speaking). *Thus* any core set of morals must take into account *rights*. And since the core set of morals must be available to all, and usable by all — not just professional philosophers — it must be justified — *and justifiable* — in a sufficiently simply, direct, appealable way such that it is at least possible so that it at least possibly has some sort of appeal to the common man.

To the extent such a man has common-sense skills and intuitive ability, it *must* mesh, at least partially, and probably substantially, with such common ideas/methods (or at least one area of those ideas, where there are contradictions).

In *elaborate* justification of a wholly new ethics is unlikely to be *true*, ever, for it could not, even in principle, ever hope to be inexceptionable, *workable* code. If a theory is

complex, it can only hope to be of use to the extent that it supplements, refines or *explains* a simpler set of already-accepted and given ideas.

So we must look at the central reason *why* men use morals, and what this practically *and* theoretically entails.

The *estoppel theory* has a chance at validity because: it is not too complex a hero; further, its just a more formal expression of a simple, workable and traditionally-expected, and intuitively-appealing ethos, to-wit: *eye for an eye, tooth for a tooth*.

So, let us try to sort out the normative constellation, of good, shoulds, and rights, and see what apriorisms, definitions, and practical and theoretical ramifications we can come up with (see May 20, 1992 notes on this).

Synonymous normative expressions:

It is *good* for A to do X; A *should* (or ought) do X (because it would be *better* for him to do so); it is *proper*, or *right*, or good, that A do X.

Value and preference are closely related: *value* what you pursue; X *is* a value, it is *valuable* (to you) if you pursue: X is *more* valuable (to you) than Y if you *prefer* X to Y. But values/preference are subsidiary to *goods*; because we can say X is a *goods* value; or A should *not* prefer or value X.

The undeniable value/preference is life. It is omnipresent, like existence, the universe, time, or reality, and could never say one should *not* value life: for the utter is contradicting himself, by affirming life (i.e. living) while denying the propriety of valuing it; and also, is using "value" contradictorily. For, to value anything is to presuppose a valuing of life. To say A should not value life is effectively equivalent to saying one should value death — which contradicts the context of the *purpose* of valuing its concept. Further to look for morals in their justification, presumes the basis of life, for morals help one to lead a good *life*.

So life cannot help but be a value; and it cannot help being a *good* one, and to view the basis of all other value.

* * *

Of all norms, there indeed traditionally is a special category for norms relating to *force*. More importantly, it is *understandable*, and, to an extent it's a priori; it's very existence carries information, which analysis can be ferreted out. This category is a *rights*.

First, lets discuss a sort of *intermediate* normative term: *must*. In one usage, it is non-normative: "You must do your homework if you wish to make an A." But this is a *means* — description and not too relevant here.

It's also used as an *infacti* or important type of "should": "You *must* help out our cause!" ("You *really should* help us out.") Or the command: "You *must* come here." But this

implies the consequence if compliance is not forthcoming, so its more like the means-description above.

Some uses, though, seem to imply a certain sort of mandatory character: "You *must* not kill people" seems to carry qualitatively more weight than "You *should* not kill people." While "you should try to be a friendly person" seems to be a permissible use of "should." "You *must* try to be a friendly person" does not. "You must not kill others" as a certain mandatoryness about it, over and above the consequence of being punished by the law. However, "must" is not *often* used, in every day language. These won't work everyday. Everyday language, in such a mandatory manner. More frequently, we hear "rights that-talk."

Now, rights are closely related to shoulds. If we say that A has a right to X, we mean that at *least* either that A *should* do X or that A should be *able* to do X (i.e. that B *should not* interfere). We can't mean merely that A *should* do X — or we'd not need an extra concept. So it *have* to have something to do with *interferences* with things A has a right to (sound circular here).

But, to do X, A must choose it, and to choose it, he must be free — i.e., not preventative. *Prevention* occurs *forcibly*: B uses force to stop A from being able to do X. So if A has a right to X, this implies: A should be able to do (or have or get) X; or: B should not (forcibly) interfere with A's doing/getting/having X. Rights may mean *more*, but they mean at least this or implies can.

Does this imply anything about the propriety of using force against B to prevent his interference? If we say B *should* do X, this only means that it is moral that B do X; it is *good* for him to do so. If he does *not*, this does not imply that A may use force — that A *should* so use force, or that it is *good* for A to so use force, or even that A *should be able* (A has a right) to use force against B.

But in this special case, B *should* do Y (i.e., refrain); that is, B should not interfere with A's doing X, *because* A *should be able* to do X. If A should be able to do X, logically he should be able to do that which the doing-of-X necessarily entails. For A to *be able* to do X, it is always true that there must be no interference by (any) B. But since, in reality, some B's might choose to interfere, in this case it is logically true that *either* (1) A should be able to use force to counter B's force; or (2) A should *not*. (Now, while it may not be immediately clear that, if A should be able to do X, A may use force to defend this, it *is* clear where X *itself* is the use of force against B — if A should be able to use force against B; i.e. if it is moral for A use such force. What must be true for there to be no interference with A's doing-of-X? B must not interfere — even if he chooses to. For B to not interfere even if he chooses to, force must be used against him. Thus it cannot be said that force *should not* be used (preventively) against B. Specifically, A may use force because sometimes only A and B are involved (i.e. immediate self-defense).

So we have: If A has a right to X, *it is immoral for B to forcefully interfere; and, it is moral for A to use force against B to enforce the right.*

But *are* there any rights? What would it mean for there to be no rights? To A's assertion of his right to X, S's rebuttal that there are no right (and thus A is wrong) is surely incorrect, for it is contradictory, for S to say that A has no rights *because* there are no rights is to implicitly claim that B's rights are being violated.

S could say that, because no rights exist, A has no grounds for using force against B, and thus should not; and thus force should be used to prevent A's action. For this gives a right (by the above definition) to B — for, we have: it is *immoral* for A to use force, and force may be used to prevent this.

So S cannot object this way. He may, at most, say that it is *immoral* for A to act in manner X' (using force against B to enforce X); that A should not do so. But the only grounds for saying force is wrong in this case is because it prevents actors from being able to exercise options that they *should* be able to exercise. But, B *should not* be able to exercise the force-option, because it prevents A from doing X, which is given that he should be able to do and S can't object that we can't find in the X that A should be able to do — i.e., that there is no morality — or he contradicts himself, by his very act of objecting to A acting as if he had a right.

So: if S admits (1) there are somethings A should be able to do (which can't be denied), then it follows that it is moral to secure the conditions for this — i.e., it is moral for A to use force against B; i.e., A as a *right* to X.

Since it cannot be denied that rights exist, and in the form defined, — *what* rights exist? We shall see that their necessary form also delimits their contents since the battle of force is so linked up with the idea of rights, we'll see that only negative rights are possible.

August 8, 1992 (Saturday)

In Car from Callaway to Florida

Discuss free will: David Kelley's views. Sperry, some Rand axioms, Hoppe-like apriorisms. My ideas. Fifth force. Safety of volition-is-true assumption.

Morality/Ethics: Try to derive it too from a priori concept like "rights" or, at least, show it's the only morality consistent with rights.

Rights: It is sufficient to prove the existence of rights, to show that *enforcement* is legitimate — don't need any more "justification" for a person; because rights *can* be violated, so their existence can't be dependent upon their motivational force.

"Unrealistic" mess of proposal — only so far as individuals refuse to be wholly rights-respecting so it's never a valid argument giving the *arguor* an excuse. e.g., it's significance is only with respect to working out a system of justice; i.e., predicted value only. We *can* say "*given that* most people refuse to be rights-respecting, X is an appropriate

policy to follow." But never can be "*argued with you that because the ideas are impractical (because not enough people will accept them) then you shouldn't accept them as true.*

— Discuss *blame*, free speech, etc. Analogy to show people are guilty even though they misunderstand the true political process: common-law crime — intent to do acts which are a crime (i.e., murder), *not, intent to "murder"*.

Analogy (impracticability, volunteer compliance): Even today's system would not work without a high degree of voluntarily rights-respect. So it's not absurd to try to increase this. Nor to expect voluntary compliance. Given the variety and continuum of nations (U.S. v. Korea), who knows how far the end of the *spectrum* ? could be extended (we already know how far the other end of the spectrum can go — e.g., the holocaust and the USSR; so we should endeavor to stretch the other end of the spectrum now).

Market for Justice: Freedman, Tannehill's, Benson, Smith (atheism, Rand), Rothbard especially (*ethics of liberty*).

Abortion argument — to the extent babies have rights, so do 9 month old fetuses. Perhaps babies have rights — by Lomasky-like piggyback argument, by a normal "natural right" extension. This would work better, maybe, with Hoppe's argument; but I'm only trying to show the *validity* of *some* rights, and a skeleton or frame.

On the source of rights: Sociability ... *nature* of reason and discourse, and even *man*; in Lomasky-like altruisms/value upon others. What is the *source* of the fact that one plus one equals two? Or of the fact that you are inconsistent if you argue that argumentation is impossible? This is the same situation. (Tie-in with the God-can't-be-the-source-of-morality discussion.)

The feeling of diverse theories: Economics, intuition, a motive, and past natural rights thinkers.

What about previous contributions? Are they completely wrong? No. Thomas Jefferson had it right — rights *are* self-evident. It just take some thought to explain why. It is hard to see why it's the self-evident; so people try to justify it with other, more complex theories. This is not useless, but is a little too complicated. (Similar to Beckmann's criticism of Einstein.)

"Eye for an Eye": This has intuitive appeal, evolution idea by evolution; self-evident. Jesus: John 8/7: "He that is without sin among you, let him first cast the stone at her."

Veatch's discussion of the categorical imperative, page 402 ethics (book review of Gewirth): categorical *if* hypothetical depend upon a necessary fact, like arguing and trying to justify a situation.

Show how I have met objections (by MacIntyre, Veatch, etc.) to Gewirth. Does it *salvage*, Gewirth, Pilon, or Neider?

Even if I define "right" wrong, this is okay as long as I justify it, and it does what I want it to do (serve a right type and function).

An ought *is* an is.

Why do rights arise? Why are there "wrongs"? Because when we consider the existence of different manifestations of interactions and implications of we see that its absurd to conclude anything but the idea that force is, in certain situations, in some sense illegitimate. For to assume its legitimacy is unworkable and inconsistent; absurd.

Even if I don't show a full ethics, that could be discovered later within a proper governmental context.

"A right is a normative resource," p. 1123, Anthony Flew's Georgia Law Review Article.

But even in Anthony Flew's good article, "what are rights", he never attempts to *define* rights (does he?).

How complicated can a theory of rights (or ethics) be, and still be true? Maybe there is no limit. But self-evident, intuitive, simply ideas are the best, perhaps "truer."

Ask, "*why* do I believe in rights?" If based on a theory, is it full, or not? Not full, yet, because all theories seem incomplete, at best. So, if not a perfect theory, *why* believe in rights? A fruitful line of inquiry may be to look into this *why*.

We may find a gold vein. If we find nothing, perhaps we should abandon an (apparently) groundless belief. We must be *honest* that one must be *honest* with one self, because truth — *what* to believe — is being sought here — *not* a justification for rights, but a justification to *believe* in rights *if* they exist.

1992?

Mention the idea that right type of norms are *hypothetical*, where, "*if* you X then it is true that you *should* respect rights, "which is enough to prove that rights exist - indeed it is what it *means* for rights to exist - as long as X maintains for all potential rights - violators. Which it does, since X is "wonder about morals; engage in discussion, or interact with others; claim to have the right to not be punished etc.; etc."

Animals/retarded people/trees lightning/babies/infants -- a reciprocity is embedded in any concept of rights -- inescapably so. So whoever we discover has rights, say, are, where A is a set of all entities, then (A-R) is a set without rights. Suppose a tree has not rights -- then it can't violate yours, either. Which is, in a sense, *why* it does not have rights -- because no reciprocity is possible. Since a right type in violation is something you *should* not do, it must be *intentional*. Thus animals, lightning, and event fetuses -- even small infants, perhaps -- cannot violate your rights it *can't* violate your rights and therefore (because of

reciprocity) *don't have* them. (What about a sleeping person? When he wakes up, he could punish; therefore there is no problem with him having rights. There may be some arguments that babies and even fetuses have rights -- when they grow up (analogy to a grown person waking up), they *could* assert the right (*perhaps* . . . maybe the integressor is not estopped from hurting a mere baby; but, then, wouldn't this perhaps apply to slapping a sleeper?), implying that its *rights* did *exist* (using estoppel-analysis). It is as impossible to imagine an animal suddenly gaining sentience (and then trying to punish an earlier hunter of himself), as a rock. Surely to break a rock could never be a rights—violation, even if it magically (and *unexpectedly!*) was transformed into a (thereby-) wounded rock-man seeking vengeance upon its earlier sculptor. But it *is* expected and predictable that a baby (or even a fetus) *will* grow up and perhaps seek to vindicate itself (i.e., long pervert action in Louisiana).

Answer skeptics' claims — answer inevitable criticism.

Give lots of examples, either in separate section or sprinkle throughout.

1992?

Estoppel: A Problem

The way I have defined rights, does it cover even animals' actions?

A has a right R against B to X. $R = A(B, X)$.

X. (?) *This means:* It should (?) be within (?) A's choice to choose whether to pursue

That (1) B *should not* use force against A to stop A's pursuit of X;
and

(2) If a uses force against B to prevent B's force or threatened force, ... (?)

Start off with: *rights* can be defined as (definition). How do we get this?

Rights — Hohfeld's analysis: implied *obligation* (use *Litvinoff's* definition of something that is enforced by a penalty ...)

Problems: — "obligation" is as undefined as "right" is (but: *if* we define *obligation*, we have also thereby defined rights)

Rothbard/ : ought ...

Kinsella, Pilon, Gewirth.

Maybe it's one of those undefinable terms. Maybe it can be *clarified* with a recursive definition, as well, though.

Maybe we can solve the problem *if* we could never say that you *should not* enforce a right. Can we? Just because we have a right to *do X* doesn't mean we should ... but does it also imply that we have a "right" to *enforce X* (that doesn't mean we *should* ...)?

Well: a right to X means B *should not* interfere; B has an *obligation* to X not to interfere ... and the breach of this *means*: that A *may* enforce it by retaliating against B.

January 3, 1993

Show how we can reconcile (and deal with) *emergency* situations, "where peace is possible," and H. L. A. Hart's hypothetical where you "should" violate a right. Show that, punishment for a rights violation is at worst, death — if that may be the alternative in lifeboat situations. An others could recognize this, "justification" — not just a particularization (maybe this has to do with "aggression" as well, because that's something you *choose* but - choices are radically constraint in lifeboat situations.

April 10, 1993

If Litvinoff's definition of "obligation" is right — law or moral *command made effective* by the imposition of a *sanction* — then which is better for "rights" — a "moral" sanction (a la Rand — *internal*); or external willingness to physically *enforce* rights?

April 15, 1993

Idea about *courts'* necessity — Rand said "need" rights because disputes are inevitable *even* among honest men.

This is right, *because*: (1) property rights are the only ones that exist; (2) *some* rights are objective, intersubjectively ascertainable — but not all. So, we *need* ways to settle peaceful disputes for the *gray areas*. *But*, some areas *clearly* are not gray — make an analogy to self-defense being okay, but not pursuit, etc. (a la Nosis — because it's too dangerous, sends confusing signals to third parties, etc.). So, there is no duty to go to *court* for those.

May 22, 1993

The very *reason coercion/aggression* is abhorred is *because* of it's consequences. So: to retaliate: kill a murderer. But what about, e.g., *rape* or, say, putting a hole in a condom? Well, if we can't do "eye for an eye," do (coercive) X to criminal, where X's *consequences* or at least as great as those *coercions* cost to the victim.

July 14, 1993

1. **Property**

2. Idea of burden of uncertainties, unavailability of "eye for an eye" (e.g., rape) remedy. There can be hard questions such as if:

(a) Killed by one of two gunman; not sure which one;

(b) Essential element of proof is lost *because* of acts of the criminal (so we presume them, partly as punishment therefor);

(c) Unavailability of perfectly reciprocal retaliation. For example: rape victim: can't very well rape the rapist back. So perfect retaliation just is not *available* — the defendant has left you with no recourse but to *approximate* the retaliation — and it is then fair to shift the burden onto *him* to proof that my improvised punishment is *not* fair. For example, I purpose, not merely to sodomize him in retaliation; this is inadequate because:

(i) he is expecting it;

(ii) it's less *offensive* to do this to a loser than to an innocent women;

(iii) it is not as bad to sodomize a rapist as it is to remove a rape victim's virginity (or similar); and

(iv) The certainty and expense of catching a rapist is not 1.0.

Therefore a "similar" response is inadequate because the criminal gets a surplus. So we need to *increase* the "similar" response that would otherwise be due to a criminal under the "eye for an eye" idea. By how much? This is a difficult question, maybe *impossible* to answer. But, *this* is another thing that the defendant has forced on us — the very fact of *putting* us in this position. So, let's let the plaintiff have a large, reasonable range — or even wide-open choice — and then let the *defendant* show why there is a limit. This could very well be the proper job of a lawyer in a libertarian society.

But, if there's doubt as to the propriety of the amount of punish to be bestowed upon the criminal, we should side with the plaintiff/victim — because otherwise, there is a *possibility* of underpunishing the criminal. It is better to overpunish, *because* the fact that there must be an imperfect punishment match is the fault of the defendant/criminal; it flows directly from his act; he could prevent it by not raping people.

3. "Intent" — sliding scale idea between accidental ... negligence ... gross negligence ... criminal negligence ... intentional negligence.

* * *

Why is it that we can only punish criminals for only *intentionally acts* (within a spectrum)? Because, the only way you *can* retaliate is *intentionally*. So, because the idea of reciprocity inherent injustice and in the "eye for an eye" idea, since there is an element of intentionality in any retaliation, there must also necessarily be an element of intentionality in the crime which is to be punished.

July 31, 1993

Nathaniel Brandon on *Objectivism* tape lecture "The Nature of God" Brandon makes a few comments that foreshadow Hoppe's proof that we cannot know the future, that we have free will. Brandon states that God has no choice if he knows the future ...

August 16, 1993

It has been observed that even criminals would *prefer* a system under which certain rules of conduct are enforced. This is especially so when he is subject to punishment and objects thereto. — A and B and this preference can be seen to be manifest at what is — for us — a most opportune time, the moment when his *consent* (or lack thereof) matters.

October 10, 1993

Thomas Sowell, *a Conflict of Visions*, p. 47 *et passim* — citing Hayek: The idea of superior knowledge embedded in social customs that survive Darwinian winnowing. Use this idea along with the idea of showing that a general course of reasonableness is acceptable as a prima facie position if we otherwise don't know how to choose in a given situation or context; — and some traditions can be called in as *evidence* of morality this way etc. Also here may be important the idea of conservatives such as conservative thinkers and philosophers such as Edmond Burke, Russell Kirk, Thomas Flemming, Charles Murray, Thomas Sowell, Thomas Jefferson, James Madison *et al.*

October 24, 1993

Estoppel is an *operational* theory of rights. We see that there are rights when we look at them from a prospective in line with the very reason that we *have* such a concept.

Many facts are known but are not often discussed, because they are trivial or boring or not at all useful. But, rights is a widely discussed concept, (see for example Mary Ann Glendon, *Rights Talk*.)

The concepts of rights is popular because it is used at crucial moments in human lives — to affect others' behavior. Typically, a right is asserted as a *justification* — a reason given to others to convince them of the legitimacy or propriety or rightness of a proposed action; to convince them to support or allow it. It is asserted as a justification to use force to obtain something or to prevent someone from doing something. If the *existence* of rights — can amount to their *justification* — can be found by examining the *nature* of rights, perhaps we can profit by analyzing the nature of the situation for which rights are designed. And where rights are *asserted*.

This is — the moment of *enforcement*.

November 13, 1993

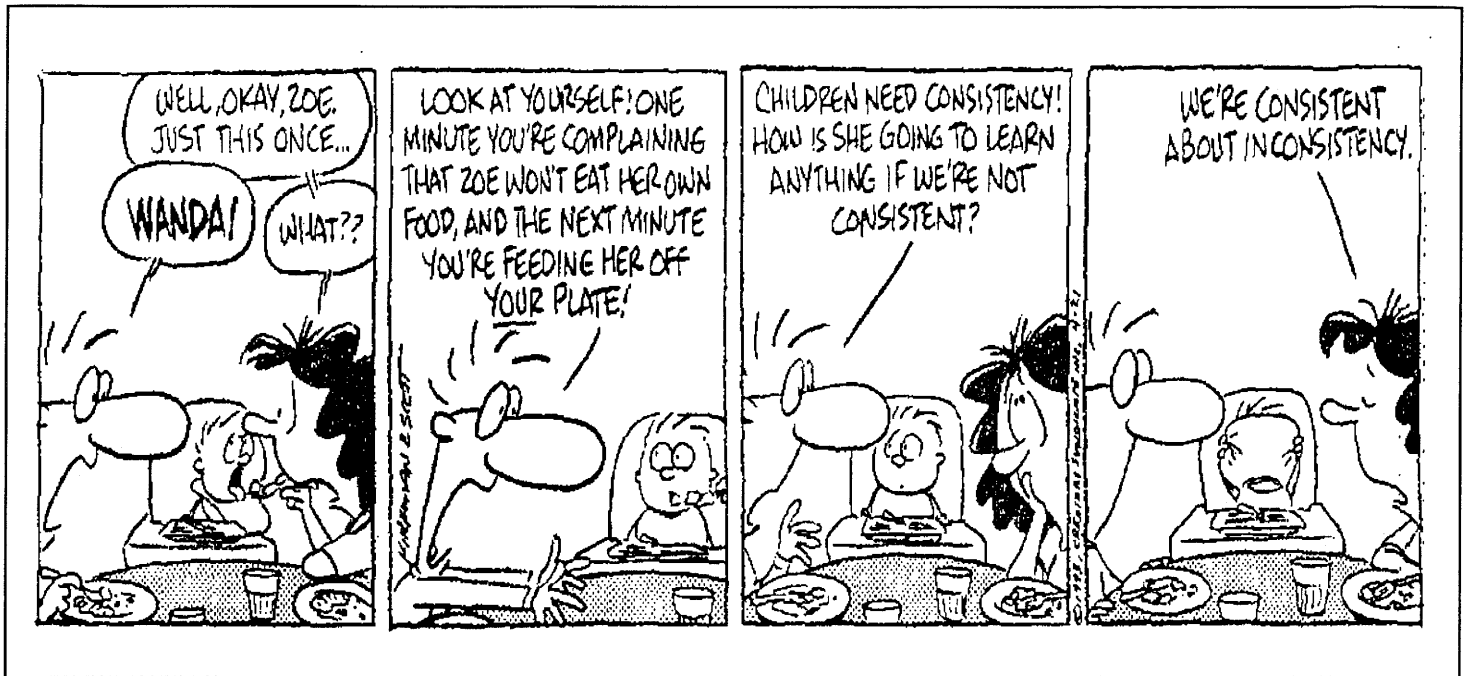
Rights are only *for* civilized folk — it does not *matter* (to the existence of rights) if a criminal won't respect them.

If a skeptic S says there *are no rights*, this is enough for the rights-seeker. Because — "I want a right" means I wish to be able to "*legitimately*" enforce them. To do this there must be no legitimate-challenge to my enforcement. S can't urge such a challenge, for to do so effective *grants* rights (to the aggressor), thereby contradicting himself.

December 12, 1993

Writers rarely attempt to *define* rights. This is understandable, since the concept is so fundamental, and so seemingly irreducible — or based on irreducible constituent concepts. Neither can anyone "define" reality/existence — or even, without tautology, define "definition."

But "rights" are not so fundamental and unanalyzable as "existence" is. So, although past thinkers are justified in taking the meaning of "rights" as a fairly unchallengeable, irreducible concept, still perhaps we can discern something about the nature of rights by looking more closely at the structure of the concept — by a little more meticulously picking apart the meaning, or at least the constituent concept, of rights.



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