

RESPONSE TO FOUR CRITICS

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I

Douglas B. Rasmussen

**“The Right to Project Pursuit
and the Human *Telos*”**

There are two strings to Professor Rasmussen’s bow. The first is the response of a sympathetic critic: sympathetic in endorsing rights protective of individuals’ project pursuit but critical of the strategy employed in *Persons, Rights, and the Moral Community* (hereafter *PR&MC*) to undergird them. The second string is affirmation of an Aristotelian human telos for which self-directedness is a necessary constituent and from which strong liberty rights fall out. There is much that I find attractive about Rasmussen’s approach, but I doubt that the road to rights is as smooth as he suggests. I begin by spelling out what I see as obstacles along the way. The argument of *PR&MC* was constructed as a deliberate attempt to evade those obstacles. I will

say a little about how it differs from Rasmussen's and then indicate why I believe that it does not jeopardize the rationale of rights in the way he suggests.

Rasmussen maintains that self-directedness or autonomy is imperative for human flourishing. In his paper, the two terms are presented as equivalent. I think this is a mistake, if not philosophically, then at least tactically. That, though, is a hobby-horse I shall ride on some other occasion. Here I strongly second his claim that self-directedness is not to be conceived simply as a necessary means to an end that lies outside of human activity, or even as one among several gems in the package of intrinsic human goods, but rather, as he nicely puts it, "the very form [Rasmussen, p.104]" of a flourishing human life.

From this he believes that rights to noninterference follow fairly straightforwardly. There are such rights because usurping the self-directedness of someone in order to steer that person to his proper end is necessarily self-defeating. Whatever the end is toward which another directs me, we know that it cannot be the end which is specifically *my* human good. It cannot be that because, insofar as I am rendered a patient rather than an agent, I fail to achieve the good of *activity* in accord with reason. Second-hand *eudaimonia* is no *eudaimonia* at all. Thus, a necessary precondition of human flourishing is the maintenance of a regime of studied noninterference.

I think this is right as far as it goes. The problem, as I see it, is that it does not go nearly far enough. Specifically, it doesn't explain why we should endorse rights that serve as *side constraints* rather than accede to an impersonal standard of value that directs us to maximize human self-directedness. It may seem that these are equivalent: to violate the moral space of someone is to thwart self-directedness and thus to fail both the side constraint and the maximization requirements. Unfortunately, that is not quite accurate. It is true, *ceteris paribus*, that to compel someone to "do something for his own good" is to impede self-directedness. However, as Nozick¹ and many others have observed, all else need not be equal. Suppose that by interfering with Emily I can prevent Edna from interfering in an equally grave manner with five different people. Or suppose that by interfering on this occasion with Walter I can render him capable of effective self-direction on many subsequent occasions. In each of these cases, the side constraint view forbids my interference but the maximization view commends it. Which is correct?

If you believe that there are non-derivative rights, that is, if

you believe that rights are not simply handy rules of thumb in the service of maximization, then you are committed to defending the side constraint view in preference to the maximization view. That is what I attempt in the book, and I assume that it is also Rasmussen's position. The problem is that his Aristotelian argument provides no obvious basis for taking that position. In fact, I am strongly inclined to believe that an unfortified Aristotelianism will give the nod to maximization. I shall subsequently offer circumstantial evidence to that effect.

What, from the perspective of Rasmussen's version of an Aristotelian *telos* is wrong with the exercise of paternalism? Well, for starters we can say this: a life of constant paternalism by one's "betters," perhaps by a coterie of Philosopher-Kings, would be intolerable for the readers of this journal. It is the life of a slave, and although Aristotle holds that there do exist natural slaves, they are hardly a model of human flourishing. That, though, is not the point. Rather, the question that must be addressed is this: what is wrong from the Aristotelian perspective with a little paternalism—or even with a great deal of paternalism—just so long as its long term product is more self-direction exercised by the individual in question? So far as I can see, nothing.

The best life, all else equal, is one of uninterrupted self-direction. That, indeed, is the sort of life an Aristotelian might characterize as "godly." However, the divine state is not ours to attain. The currency in which we reckon our successes is the coin of more and less. More self-direction is better than less. Therefore, paternalism is, in principle, entirely justified. I say "in principle" because, of course, we can present a long list of ways in which well-intended paternalistic intervention can go awry. We need merely borrow the list from J.S. Mill. I cannot recommend such borrowing because interest on the loan is reckoned in utiles. The problem is to find an approach that does not presuppose the consequentialist maximization we are trying to evade.

Similarly, a permission or even duty to sacrifice one person's self-directedness for the sake of salvaging several other people's self-directedness also seems to be entailed by this Aristotelian line. There is a response that will naturally suggest itself to an Aristotelian. It is to object on grounds of *justice* to a sacrifice of one for the many. In effect, that is to endorse an understanding of justice in which it figures as a side constraint, specifically a side constraint against trading off one person's good for other people's good. As an exponent of rights as side constraints, I am

very much in sympathy with this response. However, merely to cite justice as barring such tradeoffs is conspicuously to beg the question at hand. What is needed is a defense against an omnivorous maximization requirement. I do not see where such a defense can be found in the Aristotelian position put forward by Rasmussen.

Of course, it would be a different sort of violation of justice to hold Rasmussen responsible for not having done everything required for the development of a complete theory of basic rights in this essay. He will, I am sure, have more to say along such lines in his forthcoming book with Professor Den Uyl. I look forward to reading it. However, unless they supplement their Aristotelianism with foreign principles, I am pessimistic concerning their prospects. Previously I said that I would provide circumstantial evidence supporting such pessimism. I now proceed to do so.

One conspicuous proponent of an Aristotelian theory of the human *telos* is Aristotle. Indeed, there are some who would maintain that, in this respect, he occupies a privileged position. It might, therefore, be suggestive to glance at Aristotle's own characterization of the status of liberty to see how rigorous he takes the demand for unimpeded liberty to be. When we do, the result is not heartening to the would-be Aristotelian liberal. As Fred Miller observes:

Aristotle is a trimmer on the subject of liberty. He tends to regard it as only an external good and not as essential to the good life... "Freedom" was a catchword for Greek democrats, who, Aristotle says, defined it as "living as one wants"... Aristotle objects against this conception of freedom on the grounds that it is inimical to a life of moral virtue and leads to the violation of the rights of others.²

Rasmussen could object, and with cause, that he has not presented his views as the inerrant writ of Aristotle. Rather, he explicitly characterizes his theory as "Aristotelian or, if some prefer,...quasi-Aristotelian [Rasmussen, p.100]." Quite so. My hunch, however, is that if he is to steer his way clear of the sorts of difficulties I have identified, he will have to resign himself to being a good deal less Aristotelian and a good deal more quasi.

That may or may not be a problem for him; for me it is not. I believe that I possess non-Aristotelian resources adequate to meet his challenge: "How can some activity or project whose value is based on nothing more than a person's commitment to it, and which may in fact not promote the objective value of being a project pursuer, be made untouchable...? [Rasmussen, p.100]"

The short answer—and I must now keep it short—is that individuals have reason to adhere to a standard of mutual noninterference, and that this reason has (virtually) *nothing* to do with their judgment that other people's projects are objectively valuable, that their exercise of self-directedness is necessary to their attainment of the human good. Instead, it has (almost) *everything* to do with the fact that, from the perspective of individuated practical reason, one has reason to demand liberty to pursue the ends that one takes to be constitutive of a meaningful life for oneself. I say "takes" because whether one in fact has reckoned well or ill is irrelevant to the fact of one's commitment to those ends. They are simply the ends one has and, as such, they will present themselves as worth fighting to preserve. Because practical reason is essentially individuated across persons, your rational stake in seeing to it that I hew to what you believe to be the Good, the True, and the Beautiful is less than your stake in seeing to it that *you* are able to serve those ends. This is, admittedly, more Hobbes than Aristotle. It is not, I believe, coincidental that Hobbes is the father of liberal political theory and Aristotle, despite his many achievements, remains distant from liberalism.

As both Rasmussen and Mack note, I do concede in the final chapter of the book that a system of rights responsive to the claims of personal value ultimately rests on a presupposition of impersonal value. It does so, however, not in the way that a theorem rests on the axioms from which it is derived. We do not deduce our projects from an antecedently held theory of the good. However, to regard one's projects as legitimately directive for oneself, one necessarily takes them to be more than appetites, that is, more than an expression of the desires with which one happens to be blessed or burdened. Rather, one regards one's projects—and thus oneself—as controlled by a good which one has rightly apprehended. Project pursuit is to desirous craving as perception is to hallucination. Of course, individuals do sometimes confuse their fantasies with reality. The point, though, is that unless one takes what one experiences as a veridical representation of the way things are, one will not judge that the experience provides adequate grounds for belief. Similarly, unless one is convinced that what one values represents with tolerable accuracy what genuinely is valuable, one will not hold that these valuations provide adequate reason for action.

Suppose you knew that tomorrow when you awoke you would loathe that which you now prize, esteem that which you now scorn. However, you will be at least as capable tomorrow of

advancing that reversed set of ends as you are now with respect to your current ends. How pleased would you be with that prospect? Would you maintain that the worth of your life will be unimpaired? Or would you regard that prospect as the greatest of misfortunes that could befall you, one that renders worse than useless any success you might subsequently experience in your pursuit of those different projects? If the latter, then you, like me, believe that the value one assigns to one's projects is not foundationless but rather rests on a conception of impersonal value that those projects serve.

That is not, however, to accept Rasmussen's characterization of my account as depending on "the existence of ultimate value that is independent of human preferences or desires [Rasmussen, p.98]." I certainly do believe that value is not merely a function of the particular desires one happens to have: that is, one may desire that which is in fact disvaluable. Alas, people do it all the time. However, and here I quote the book, "I do not understand the sort of value that could subsist in a world without consciousness and desire [*PR&MC*, p.240]." I have no truck with what Eric Mack, following Nagel, refers to as 'agent-external value'. I now turn to his piece.

II

Eric Mack

"Against Agent-Neutral Value"

In setting himself squarely against recognition of agent-neutral value, Mack broaches one of the most important and most difficult topics in moral philosophy. It is not possible here to do more than begin to identify the crucial issues, let alone satisfactorily resolve them. In particular, I shall make no attempt to defend Nagel's views except insofar as they seem to be equivalent to something I have maintained. Nagel is quite capable of coming to his own defense, and, frankly, I am not altogether confident that I can satisfactorily carry off my own. This is an area in which my first thoughts routinely give way to second thoughts, and then to thirds. The best I can do is exhibit, in all their nakedness, the views to which I am currently drawn. I shall simultaneously indicate where I think that Mack might also be feeling a draft.

In *PR&MC* I deliberately avoided using the term 'agent-relative value' and its contrary, 'agent-neutral value'. I did so to evade ambiguity. An agent-relative value is, according to the usual

definition, that which is valuable for some particular agent. However, two distinct interpretations of that characterization come readily to mind. It may pick out that which the agent *takes* to be of value, such as my taking it to be of value that I receive rare lamb chops for dinner. Alternatively, it can be construed as that which is of value for someone, whether he takes it to be valuable for himself or not. In this second sense, my health or honor may be of agent-relative value for me although I am delighted to jeopardize my health by eating those cholesterol-laden lamb chops and think that "honor" is a sorry relic of antediluvian moral codes.³ Clearly, the two senses of 'agent-relative value' not only are different but may conflict: that to which I am wholeheartedly devoted may be very bad for me, and not just instrumentally. More confusing still, they can give birth to a third, hybrid sense of agent-relativity: *V* is a value of magnitude *M* for *P* if, in virtue of *P*'s commitment to *V*, *V* therefore is of value *M* for *P*, although, absent such commitment, *V* would either not be of value for *P* or else would be of only lesser value than *M* for *P*. I believe this to be an extremely important species of agent-relativity but will not argue for that position on this occasion.

As I said, because of the potential for ambiguity I refrained in *PR&MC* from characterizing value as "agent-relative" or "agent-neutral." Instead, I distinguished between "personal" and "impersonal" value, meaning by the former that value which is consequent upon an agent's commitments taking the particular form they do. That, though, is to fall into an ambiguity between the first and third senses of 'agent-relative'. What is worse, on several occasions, especially in the final chapter, I employed 'objective value' as a synonym for 'impersonal value'. However, agent-relativity in both the second and third senses are properly held to be "objective" in a non-deviant use of that slippery term. Mack, and also Christopher Morris, call me up on failing to make the necessary distinctions, and I am prepared to plead guilty. On some future occasion I would like to draw *many* such distinctions and try to work out their consequences, but this is not that occasion. Instead, I shall address just one of the issues Mack puts on the table: interpersonal transmission of rational motivation. Does, say, the fact of someone's awareness that I am in great pain thereby constitute a reason for him to do anything?

Mack admits that it may. My groaning may interrupt his enjoyment of Hollywood Squares. More centrally: "Because I am near to him and he is a person of normal sympathies, his sympathy extends to me and he is discomforted by my suffering [Mack,

pp.81].” The problem with this explanation is that it ducks all the important questions. The first of them is: how are we to understand the reference to *normal* sympathies? By ‘normal’ we can intend either mere statistical frequency or the satisfaction of some normative standard. For example, it is “normal” in the former sense to be discomfited by the sound of chalk scraping on a blackboard. However, the minority of individuals who don’t mind that sound are not deficient with regard to some norm (second sense) of perceptual acuity. Conversely, those whose vision is worse than 20-20 fail to satisfy a perceptual norm, although they may be a majority of the population. When Mack speaks of “normal sympathies,” which does he have in mind?

If it is the latter, ‘normal’ as connoting a norm, then he has essentially abdicated his position of opposition to agent-neutrality. I therefore interpret him as conceding only that most people, most of the time do not find themselves entirely indifferent to the circumstance of someone next them groaning in agony. That, though, raises the further question: what are we to make of this statistical regularity? Is it analogous to our wincing when the blackboard squeals, a more or less direct physiological product? Or is it better accounted for after the fashion of explaining the tendency of most people to arrive at an answer of “12” when they add 7 and 5 as their successfully following an arithmetic norm? Again, it seems that Mack must adopt the former approach.

That, though, is to place *himself* in a statistical minority. It is fair to say, I think, that most of us believe that our perception of the agony of someone else does not operate as a brute cause of whatever helping activities in which we may subsequently engage. Rather, if we elect to aid the sufferer, it is because we take his suffering as a *reason* to alleviate his distress. It is one of those things that—normatively—count as providing a potential basis for action. I say “potential” because, of course, there may be other reason-giving factors that override any tendency one has to extend relief. Most obviously, one may desire the pain killer for oneself or for one’s suffering friend. If one feels spiteful toward the sufferer, one may smash the vial containing the analgesic although it means that none is available to relieve one’s own distress. Note, though, that even in this case the awareness of someone’s pain does indeed provide a reason, albeit a malicious one, to act. The apprehension of another’s pain is not motivationally inert.

Many facts *are* motivationally inert. That today is Wednesday, or that Brenda is wearing designer jeans are two such facts. They

do not, in themselves, afford me reason to do anything. Of course, when coupled with other circumstances, they might. I may believe that Wednesdays are terribly unlucky or loathe designer jeans. If so, I could have reason to cower under my covers all day or throw an inkwell at Brenda. But then it is the special belief or loathing that carries the motivational weight. If you ask me why I am trembling under the bed sheets, and I answer, "It's Wednesday," it would be entirely proper for you to respond, "So?" However, if you asked me why I provided the suffering individual a dose of morphine, and I told you that it was because he was in excruciating pain, it would be remarkably obtuse of you not to understand me as having provided a *full* explanation of my action. If you are puzzled about why someone else's pain should count more for me than the initials on someone else's jeans, *one* of us has missed something important.

It is open to Mack to respond that the difference between these two cases represents nothing more than a difference in degree of statistical likelihood: many people are disposed to respond to others' suffering while very few are terrified by Wednesdays. That is why we don't need the background conditions spelled out to us in the former case but do in the other. I find this response distinctly unilluminating. It does not illumine because it declines to consider that there may be some further and more revealing fact behind the statistics. Specifically, it does not acknowledge that there may be a *reason*—and not merely a *cause*—to explain why we are disposed not to take another's pain as motivationally inert. Against Mack, I maintain that the best explanation we can give for this statistical regularity is that we recognize that the sufferer's pain is a misfortune for him, and that in virtue of our correctly apprehending its badness for him we thereby understand that we have (some) reason to disvalue the occurrence of the pain, and thus (some) reason to take action to alleviate it.

Admittedly, this is not a knock-down deductively valid argument. It is rather of the form of an inference to the best explanation. You may be unpersuaded, believing instead that a better explanation is that others' pain is to be accounted on the model of squealing chalk. I think that is wrong. More to the point, I suspect that such an account conflicts with other things that you believe, at least if *you* are among those possessed of "normal sympathies."

If squealing chalk drives you up the wall, then you would do well to *extinguish* the reaction. That portion of your life conducted in proximity to blackboards would be more pleasant, and at no epistemic loss to you. That is, extinction of the chalk response would

not render you oblivious to something that remains genuinely an evil. There is no "fact of the matter" concerning the badness of chalk squealing independent of the subjective tinge of your experience. Would it correspondingly be a pure gain to extinguish your sympathetic response to the pain of others? You would thereby avoid some emotional distress and would free up your busy schedule by removing pain-alleviation from your to-do list. Those are genuine benefits. Why, then, might you be disinclined to adopt the sympathy-extinction strategy?

I suggest that it is because you find that strategy permeated by irrationality. It would be akin to your deliberately refusing to read the newspaper in order to persist in the belief that the lotto ticket you bought yesterday has made you a millionaire today. That is irrational if what matters is not simply or primarily the state of your consciousness but the way things are in the world. Similarly, the extinction strategy is irrational because it would be to take a capacity for apprehending what is valuable and disvalue in the world as if it were only a spotlight on one's own psyche.

I have not argued that there exists agent-external value or that one is rationally obliged to adopt a stance of impartiality between one's own pains or projects and those of someone else. Rather, I advance only the much more modest claim that apprehension of the pains and projects of others is not to be classified as among the motivationally inert facts that continually assail us. One's recognition of reasons for others *is* recognition of reasons for oneself. They can, of course, be overridden by other reasons one has. In particular, the fact that some end is *mine* may afford me overwhelmingly good reason to pursue it rather than the conflicting end that commands your allegiance. Nonetheless, my capacity to respond to you as another project pursuer, and not simply as a very complicated mechanism that can affect me for good or ill, is consequent upon my taking what you have reason to do as thereby relevant to what I have reason to do. Importantly, the relevance is not simply instrumental in the way it is when one engages with a machine: e.g., the temperamental cash-dispensing device that dined on my plastic last week.

As Mack writes elsewhere, "Some difference in one's actions must be called for when one moves from the solipsistic conviction that the only real values in the universe are one's own (agent-relative) values to the equal existence of value-for-others. It would be bizarre for such an enormous shift in one's normative convictions to have no implications for one's views about how one should act."⁴ I fully concur. Mack proceeds to maintain, however, that the shift

has no implications for one's ends but only for the justifiability of deontic constraints governing how they may be pursued. I have at least as much difficulty making sense of deontic constraints entirely divorced from judgments of value as he does with making sense of agent-neutral values. I therefore redirect my incomprehension away from Mack toward Morris.

III

Christopher M. Moris

"Loren Lomasky's Derivation of Basic Rights"

Christopher Moris asks, "What constitutes respect for the rights of another? [Morris, p.88]" and then offers us a useful distinction between *intensional* and *extensional* respect for rights. He writes:

Suppose that Beatrice cares about Albert and so refrains *because* she so cares. Then Beatrice has respected Albert's right only *extensionally*. Suppose that she doesn't care about him, that she is indifferent or unconcerned about his interests; nonetheless she refrains from interfering with his liberty...*because* she believes that she is so obligated. Then Beatrice respects Albert's right both *extensionally* and *intensionally* [Morris, p.88].

I suspect that this does not quite succeed in stating the distinction that Moris intends. Suppose that Beatrice refrains from interfering with Albert because she solemnly promised Clarence, whom she admires and would hate to disappoint, that she will leave Albert alone. Beatrice's noninterference can then be explained as consequent upon her sense of obligation and therefore, on Moris's definition, is *intensional*. However, that would seem to be the *wrong* kind of obligation to establish the distinctively *moral* basis of respect for rights that Moris believes to be requisite. There are two respects in which he might claim that it is deficient. First, it mislocates the ground of the obligation by placing it in Beatrice's relation to Clarence rather than her standing *vis-à-vis* Arthur. And second, it leaves her compliance a matter of altruism, albeit with respect to Clarence, not Arthur, rather than the product of a

nonderivative sense of obligation.

A different way of making Morris's point then seems necessary. While I do not mean to foist on him some particular understanding of what that way should be, it is hard to escape the impression that he is adverting to a Kantian distinction between actions that are (merely) in *accord with duty* and those that are motivated from a *sense of duty*. Such an interpretation fits his subsequent suggestion that "one might claim that moral obligation requires intensional rather than merely extensional compliance," and his puzzlement as to "why Lomasky's agents would be interested in using the language of morals [Morris, p.91]." The point seems to be that an order of extensional rights compliance can—or, perhaps, *must*—do without any *specifically moral* sense of reasons for action. And this, of course, is reminiscent of Kant's classification as *pathological* of actions motivated by inclination. For Morris, as for Kant, love of self is a source of pathology, but so too is action predicated on one's taking an interest in the well-being of others. That is because "such agents 'respect rights' only insofar as doing so is the most efficient means to their (non-egoistic) ends. [Morris, p.91]"

The comparison with Kant not only helps us better understand the nature of the problem Morris is attempting to present but also gives us fair warning that it is one that stands at a critical divide in moral theory. It is a divide which, I suspect, may be of more difficult passage than any "Is-Ought" gulf. For what it presents—and this is more clear in Kant than in Morris—is a dilemma for practical reason. If one's motivations to cede moral space to others is understood as in any way a function of one's *concern* for those others, that is, if it involves my taking what is a value-for-them as thereby being a value-for-me, then there is nothing distinctively *moral* about one's response to them. Rather, one is, as Morris puts it, efficiently pursuing one's ends. Or, as Kant would put it, this is an instance of the exercise of practical reason, but not of *pure* practical reason. On the other hand, if the purity of one's practical reason is impeccable in the sense that the circumstance of one's valuing or disvaluing an outcome is studiously excluded from one's reason to act, the difficulty becomes to understand how such reason can be practical. What reason do I have not to encroach on the moral space of others if such restraint neither directly nor indirectly is a product of that which I find to be of personal value? Mack maintains that a rational being acknowledges purely deontic constraints on his conduct. His is, in at least this respect, a fairly straightforward Kantianism. Morris, would seem to have situated himself similarly, but since he does not explicitly draw such a conclusion, I shall not

proceed further with hypothetical Morris exegesis. Instead, I shall try to state how I prefer to confront the dilemma.

I am, as I stated earlier, pessimistic concerning the prospects of any account of rational motivation that does not ultimately rest on agents' considerations of value. Therefore, I am obliged to concede that whatever moral motivation is, it too is necessarily grounded on whatever it is that individuals have reason to acknowledge as valuable. Critics who hew to a Kantian line can then charge that this is to abandon what is distinctively moral about a certain subset of our motivations. Quite possibly they are correct; two centuries of post-Kantian philosophy may have rendered this a linguistic truth about how the term 'moral' functions in, at least, the idiolect of a certain segment of the academy. If so, I would respond: all the worse for morality. It may be a fit subject for noumenal egos but not for us lesser folk. I suspect that, in this respect, Rasmussen and Machan stand closer to my approach than they do to that of Mack and Morris.

That is not to maintain, of course, that one has reason not to invade the moral space of someone else if and only if one stands toward that person in a relationship of special affection or esteem. That would indeed be to cast ourselves back into the Hobbesian state of war, with only the slight difference that one is possessed of an ally or two instead of perpetually flying solo. Instead, a rationale for respecting rights can take this sort of turn: I have reason to value the maintenance of a regime of secure moral space for individuals, both so that I can pursue those projects that are of special concern to me, and also—these are not exclusive—so that I am able without severe loss to my own standing as a project pursuer to display empathetic concern with those individuals for whom I hold a motivationally fecund degree of such concern. Therefore—and, of course, I am omitting the crucial intermediate steps—I have reason to accede to an order in which individuals generally forbear in their relations with all other project pursuers, irrespective of the particular appreciation one has for them or their projects. This understanding of the basis of rights is firmly value-based, but it does not crudely suppose that one has reason to acknowledge rights for all and only those toward whom one is brimming with altruistic concern.

Morris asks what special role the account of agents as project pursuers plays in the derivation of basic rights in *PR&MC*. There are several respects in which it figures. First, project pursuit is pivotal in explaining why it is that individuals are not rationally obliged to acknowledge some one impersonal standard of value as

incumbent on all agents alike. Second, it explains why rights take the form of an acknowledgment of claims to moral space, and especially the form of rights to noninterference. I believe that these two strands are developed in *PR&MC* with adequate emphasis. His remarks have made it clear to me, however, that a third strand of the argument was not presented with equal clarity.⁵ I should like to take this opportunity to pursue the response that he suggests.

Project pursuers are not beings who, as it were, are born afresh each moment. They are not a collection of person time-slices, not what I have called "Indiscriminate Evaluators." Rather, their actions are shaped by a persistent pattern of directive values that constitute for them what will and will not be a possible source of motivation for them. When project pursuers acknowledge the demands of rights, they do not do so as would person time-slices. For time-slice sets, it is on each occasion of action an open question how they are to comport themselves. If they are instrumentally rational in the standard decision-theoretic sense⁶, they will calculate afresh on each occasion whether value-for-them is best served by respecting or obliterating the moral space of others.

For project pursuers, things will be different. If they have reason to acknowledge the existence of rights, that acknowledgment will serve as a *standing commitment*, a disposition brought to their various encounters with others. Their respect for rights on some particular occasion will be explained as the result of their being the sorts of people rationally disposed to forbear in relations with others, not vice versa. That is not, of course, to advance the ludicrous claim that such individuals will invariably display fidelity to the rights of others. We know better than that. What it does indicate, however, is that the problem of accounting for compliance looks far different when one is considering it as a problem posed specifically for project pursuers than when it is taken to be a nostrum for the reform of "intelligent devils."⁷

Will Morris allow that a theory of rights consequent on one's reasons to be generally disposed to respect the moral space of others, those reasons in turn resting on one's valued ends, deserves the honorific title of "moral theory?" I shall not hazard an answer on his behalf. I freely admit on my own behalf, however, that I aspire to no more than this.

At least that is the case with respect specifically to the theory of rights. I believe that, both within and outside of professional philosophy, we are bombarded with a sensory overload of apostrophes to rights. In large measure that is due to tacit acceptance of an imperialism of rights within which respect for rights is

taken to constitute virtually the whole of what has moral standing, or at least its most portentous feature. Against that, I wish to put forward an understanding of rights as doing no more than setting the boundaries of minimally adequate conduct toward others. Within those boundaries, much room remains. In particular, rights as such answer few of the most difficult and important questions concerning how one is to direct one's life. So I strongly sympathize with Morris's concern that the book presents at best a pallid conception of ethical life. I can only plead in self-defense that I have not attempted to survey the entire moral landscape, but only its outer perimeter. Tibor Machan complains, however, that the boundary markers have been sorely misplaced. It is to his criticism that I next turn.

IV

Tibor R. Machan

"Against Lomaskyan Welfare Rights"

Professor Machan believes that to accord to welfare rights any legitimacy, even if only that of a contingent claim to provision in a strictly limited range of cases, is to sin against the logic of rights. It does so in two respects:

1. To acknowledge the existence of welfare rights alongside of liberty rights is to land oneself in a contradiction. For example, one simultaneously acknowledges the liberty right of the physician to lead his life as he sees fit but also a conflicting welfare right on the part of the ill individual that medical services be extracted from the physician.
2. Rights are to be understood as "general political principles, not principles guiding bits of rare action [Machan, p.72]." Because conditions of desperation are rare, they are not properly a ground for rights.

I shall presently state why I believe that Machan is mistaken with regard to both of these claims. But first, in a spirit of conciliation, let me note one crucial respect in which Machan and I are thoroughly in accord. He and I agree that an individual whose existence as a project pursuer cannot be maintained without the provision of goods held by others may have overriding reason to act to acquire those goods, irrespective of the propriety of the claims other people have to possess those goods. This agreement is not

trivial. Both Machan and I will be opposed by those who maintain that liberty rights be upheld though the heavens may fall. Indeed, I suspect that such Kantian or Rothbardian absolutists will invoke Professor Ewing's dictum against Machan. They will contend that acceding to the violation of rights, no matter how urgent the need, is itself an egregious blow to integrity. How morally elevating, they will ask, is one's commitment to respecting rights if it can conveniently be forgone when the going gets rough? That, though, is their question, not mine: as noted above, I am moved by a spirit of conciliation.

Conciliation has its limits. In particular, contradictory propositions are not reconcilable. So if recognition of both liberty rights and welfare rights is inconsistent, one or the other must be surrendered. Machan's preference concerning which it should be is clear. It is also my preference: *if* one of them is to go, it is welfare rights. That is because claims to positive provision are contingent, coming into effect only in those circumstances in which individuals are unable to provide for themselves and in which private charitable provision is not forthcoming. In contrast, the right to noninterference is properly a claim that everyone can lodge against everyone else, irrespective of the particular nature of the projects one pursues and irrespective of their sympathies with those projects.

But is it the case that there is a logical incompatibility between the two? If so, it would be a surprising fact that this disability persistently eluded the gaze of those classical liberals intent to argue the primacy of liberty yet who nonetheless accorded to welfare claims a limited yet enforceable scope. From Locke to Kant to Mill, state-enforced aid to those in distress was taken to be consistent with, perhaps even requisite for, the maintenance of a liberal regime. Of course, it is possible that these philosophers all suffered from a blind spot. I do not mean to assail Machan with an argument from authority. Rather, I cite this tradition to suggest that the inconsistency indictment demands a fuller and more persuasive brief than Machan provides.

If there are welfare rights, they limit the rightful liberties we would otherwise enjoy. In particular, my property rights are not absolute, holding come what may. That, though, is far from the demonstration of a contradiction. It cannot be news to anyone that one person's liberties are limited by the *liberties* of others. It does not follow, of course, that liberty rights are inherently self-contradictory. Rather, what we cannot concede is that each person, in the pursuit of his ends, must be afforded an *unbounded liberty* of "doing any thing, which in his own judgment, and reason, he shall

conceive to be the aptest means thereunto.”⁸ Similarly, my rights to enjoyment of my property are limited by claims that others have against me to provide rectification for trespasses that I may have culpably or nonculpably committed. Machan does not tell us whether he acknowledges the legitimacy of claims to rectification. I suspect that he does, but even if that is not so, he will err if he maintains that liberty rights and rectificatory rights are inconsistent. They are not, and neither are liberty rights and welfare rights. Rather, the scope of one adjusts itself to the scope of the other.

Machan’s other objection is that putative welfare rights lack generality because they are concerned only with exceptional cases. As such, they lack political standing: “The police, the courts, the legislatures, etc., have no reason to grant welfare rights [Machan, p.72].”

Like Machan, I believe that it will rarely be the case in a free society that individuals will be constrained to steal in order to live. Rights to positive provision will then only rarely come into play. (At least that is so with regard to unimpaired adults. If we lend serious consideration to the status of children, those who are severely disabled, and others who could not qualify as heroes of an Ayn Rand saga, welfare rights may not seem so anomalous.) Were individuals in this society not hampered by restraints on their liberty of a sort that both Machan and I deplore, e.g., restrictive licensing, minimum wage laws, zoning, and so on, claims for state provision would, I estimate, be closer to 0% of GNP than 1%. For this reason, I find his reference to my “welfare statist conclusion” curious. Given the particulars of Machan’s objection, it is ironic: he rejects welfare claims not because they are vast and thus oppressive but because they are exceedingly rare and thus not properly accountable within the domain of politics.

I believe that there are several respects in which this objection is flawed. First, Machan errs in taking rarity to be contrary to generality. To the contrary, a provision that only occasionally comes into play can be entirely general. For example, individuals have the right to use deadly force in order to thwart murderous assault on their person. Only rarely is there call to exercise this right. Nonetheless, it is of general application and properly a matter for political recognition and endorsement. Provisions allowing the quarantine of highly infectious persons are even more apt in this context. They come into play only contingently and limit far more drastically than does nugatory taxation to fund “Lomaskyan welfare rights” an individual’s enjoyment of liberty and property.

Second, Machan’s characterization of rights as “general *political*

principles [Machan, p.72, emphasis added]" is unfortunate. The rights we enjoy are, in the first instance, held against other individuals, not against the state. They are not born in legislatures nor euthanized in courts. States are obliged to recognize the rights we have, not create them *ex nihilo*. We have those rights because we have reason to accord others the moral space within which they are able to pursue their projects, subject to receipt of like forbearance from them. Thus, the theory of basic rights is inextricably tied to the theory of individual practical rationality. The job of states, if one may put it that way, is to serve as instruments of the reasons that individuals antecedently possess, not to manufacture new reasons. Machan, however, maintains that a person may have overriding reason to requisition the property of others, that each of us may have reason to acknowledge that that individual is acting reasonably in so doing, but that it would be thoroughly improper, even an assault on integrity, to countenance affording political sanction to such claims *in extremis*. I simply fail to understand the conception of political justification that undergirds this position.

Third, Machan's recommended alternative is thoroughly mischievous. "When in one's personal life one is facing the exclusive choice of either to invite death or to steal, one ought to steal [Machan, p.73]," he tells us. One ought, that is, violate rights but never, not *ever*, concede the existence of a right to positive provision. Even setting aside what this says about the conception of rights as especially stringent moral demands, the costs attaching to this alternative are substantial. Burdens imposed by theft are highly localized. The unfortunate person who is selected as victim will bear all of it, those lucky or smart enough to be elsewhere none of it. It is, therefore, far more likely in Machan's approved world than in mine that the needs of some individuals will be translated into disaster for others. The weak and the guileless are most likely to be victimized but are least able to ensure their own survival should they be in the position of needing to steal in order to live. People possessed of special skills enabling them to relieve the distress of others are also conspicuously at risk. If Machan is genuinely concerned for the liberty of the unfortunate physician, he would do well to rethink his position.

Locke commends civil society as the appropriate remedy for the "inconveniencies of the state of nature." Machan, in contrast, would bring those inconveniencies to civil society. If each individual is to judge in his own case whether he has sufficient reason to violate the rights of others, some will be scrupulously impartial. But others will apply a magnifying glass to their own interests, seeing them

as disproportionately larger than the liabilities imposed on others. Even when they judge correctly that theft is requisite for them to live as project pursuers, they may be inclined to take a larger share than a disinterested adjudicator would allow. Potential targets will, in self defense, expend resources to protect themselves from assault, very possibly launching preemptive sorties of their own. That will, in turn, create further victims, thus escalating the spiral of rationally justifiable rights violations.

If I possess rational warrant to violate rights when I am in great distress, may I not similarly violate rights in the service of my family, my friends, or even on behalf of anonymous individuals for whom I happen to have some sympathy? That is what Robin Hood did. The Sheriff of Nottingham objected, but he, after all, was incurably statist. If lots of us emulate Robin Hood and violate lots of rights to help out some destitute person, we may provide far more than that person needs. In the process, considerable havoc may have ensued. It will be even worse if competing Robin Hoods have different ideas about who the proper victims and beneficiaries are. Someone could then alternately be stolen *from* and then stolen *for*. These scenarios incorporate more than one coordination problem, each largely solved through recognition of politically enforceable welfare rights. Machan, though, demurs. This is privatization with a vengeance!

The minimal state of classical liberalism claims for itself a monopoly over use of force to protect the rights of all citizens. More parsimonious is what Nozick calls the "ultraminimal state,"⁹ an agency that provides enforcement and protection only to fee-paying clients. Machan, however, situates himself to the far side of even the ultraminimal state. He bids state agencies to take their cue from the Donner Party trial and "not allow to linger in jail [Machan, p.73]" someone who violates the rights of others in order to bring himself up to a welfare threshold. Let us call this regime of rationally sanctioned and unpunished rights violations the "totally ultraminimal state," or TUMS for short. For attacks on integrity, Machan prescribes TUMS. TUMS promises fast relief from upsets due to loss of generality and the distress that contradiction brings. Unfortunately, it has pronounced side effects. These include severance of the theory of rights from its base in the theory of practical reason as well as normative disarray consequent on returning welfare provision to the state of nature. All in all, I judge TUMS to be a typical over-the-counter nostrum: overpriced and of dubious efficacy.

This paper derives from remarks presented at the meeting of the American Association for the Philosophic Study of Society, December 28, 1988. Changes from that text are primarily stylistic. I would like to thank the four presenters for useful stimuli to further thinking.

1. *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp.28-30.
2. "Aristotle and the Natural Rights Tradition," *Reason Papers* 13 (1988), p.178.
3. The ambiguity is first cousin to that which philosophers have found in expressions of the form "X is a reason for person P," and which they attempt to disambiguate via a distinction between one's *having a reason* and *there being a reason*.
4. In "Moral Individualism: Agent-Relativity and Deontic Restrictions," forthcoming in *Social Philosophy & Policy*.
5. This was brought home to me also by David Gauthier's *Morals By Agreement* (New York: Oxford University Press, 1986). Unfortunately, I did not see Gauthier's book until after mine had already gone to press. Although I see the approach of *Persons, Rights, and the Moral Community* being, in some crucial respects, fundamentally incompatible with that of *Morals By Agreement*, Gauthier's is a work from which no one who wishes to address himself to the theory of rights can fail to derive benefit.
6. I believe that rationality so conceived is incapable of doing all the work that properly can be required of a full theory of practical rationality. That is why I characterized Gauthier's account in the work to which Morris refers in his footnote 19 as "too straitened to explicate adequately what it is for someone to be a rational, moral person." Morris finds that characterization of Gauthier's theory ironic, presumably because he perceives project pursuit to be carrying negligible weight in my attempted derivation of rights. Although these remarks may remove some of that apprehension of irony, the discussion of what a non-straitened account of practical rationality (and morality) will incorporate must await another occasion.
7. The phrase is from Kant's "Perpetual Peace" in *Kant's Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970), p.112. In private conversation, David Gauthier has accepted a depiction of his project as being that of reforming such a race of intelligent devils. Despite Gauthier's formidable talents as evangelist, I have serious reservations concerning the feasibility of generating born-again devils. That, though, is Gauthier's project, not mine.
8. Thomas Hobbes, *Leviathan*, Chapter 14, "Of the First and Second Natural Laws, and of Contracts."
9. *Anarchy, State, and Utopia*, p.26.