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Ari Kohen
University of Nebraska–Lincoln,, akohen2@unl.edu

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The Possibility of Secular Human Rights: Alan Gewirth and the Principle of Generic Consistency

Ari Kohen

Abstract

This article explores Alan Gewirth's argument for a secular foundation for the idea of human rights as a possible response to Michael J. Perry's claim "that the idea of human rights is … ineliminably religious." I examine Gewirth's reasoning for constructing a theory, namely that existing theories are fundamentally flawed and leave the idea of human rights without a logically consistent foundation, before considering in detail his claims for the Principle of Generic Consistency (PGC). Having looked at his critique of numerous other theories, as well as at his own argument about human action grounding basic rights to freedom and well-being, I then offer a critique of Gewirth's PGC. Ultimately my conclusion is that Gewirth's theory relies too heavily on the notions, first, that we have a meta-desire not to contradict ourselves and, second, that we are unable to find persuasive justifications for our behavior that might allow us to avoid self-contradiction. If one is not troubled by charges of self-contradiction or, as is more often the case, one does not recognize that one's victim is as much a human being as oneself, Gewirth's theory will not seem particularly persuasive.

There is a well-known and often-quoted passage in Aleksandr Solzhenitsyn's *The Gulag Archipelago* in which the author makes a striking and controversial claim about his experience in the Soviet work camps. He says:

> If only it were all so simple! If only there were evil people somewhere insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart? … Confronted by the pit into which we are about to toss those who have done us harm, we halt, stricken dumb: it is after all only because of the way things worked out that they were the executioners and we weren't.[1]

Primo Levi, a survivor of the Nazi Holocaust, disagrees vehemently with Solzhenitsyn's claim. In *The Drowned and the Saved,* Levi says:

> I do not know, and it does not much interest me to know, whether in my depths there lurks a murderer, but I do know that I was a guiltless victim and I was not a murderer. I know that the murderers existed … and that to confuse them with their victims is a moral disease or an aesthetic affectation or a sinister sign of complicity; above all, it is a precious service rendered (intentionally or not) to the negators of truth.[2]

This debate between survivors of two of history's most brutal regimes has captured the imagination of a wide variety of human rights theorists. The passages, in whole or in part, appear in numerous books and can now be found on a wide variety of Internet websites; something about them strikes a chord with us and encourages us to enter into the debate. As Jonathan Glover points out, "One question about those who ran the Gulag or the Nazi genocide is about the rest of us too. Could *anyone* have done these things?"[3]

The haunting experience of the atrocities of the twentieth century has produced a greater understanding of humanity's dark side, through the works not only of Solzhenitsyn and Levi, but also Arthur Koestler, Milan Kundera, Elie Wiesel, and countless other authors' personal narratives and fictionalized accounts. An encounter with this body of literature—or, more powerfully, with the regimes themselves—directly informs much of contemporary rights theory, as philosophers, legal scholars, and politicians have attempted to come to terms with all that we have learned about ourselves and to keep our dark side in check. Glover is particularly clear on this point; he says, "If persuaded that an otherwise convincing ethical theory could justify the Nazi genocide, I should without hesitation give up the theory. In reconstructing ethics, revulsion against these things which people have done has a central place."[4] The century's most repressive regimes drew inspiration, however misguided, for their doctrines of racial purity and proletarian dictatorship from the foundations provided by the philosophy of Nietzsche and Marx. It is, then, to philosophy that we turn for an answer against the claim that rights necessarily serve the interests of one group at the expense of another (the weak against the strong, for Nietzsche, and vice versa for Marx). As Alan Gewirth notes, "In a century when the evils that man can do to man have reached unparalleled extremes of barbarism and tragedy, the philosophic concern with rational justification in ethics is more than a quest for certainty. It is also an attempt to make coherent sense of persons' deepest convictions about the principles that should govern the ways they treat one another."[5]

This paper will examine Alan Gewirth's argument for a secular foundation for the idea of human rights as a possible response to Michael J. Perry's claim "that the idea of human rights is indeed ineliminably religious, that a fundamental constituent of the idea, namely, *the conviction that every human being is sacred—that every human being is 'inviolable', has 'inherent dignity', is 'an end in himself', or the like*—is inescapably religious."[6] In the first section, I will examine Gewirth's reasoning for constructing a theory, namely that existing theories are fundamentally flawed and leave the idea of human rights without a logically consistent foundation. The second section will then consider Gewirth's own claims in detail. For the purposes of this paper, Gewirth's argument will be thought of as having two major components, though in his own text it is actually broken down into some fifteen parts.[7]

I will, of course, look carefully at each of these steps in his argument, but for the purposes of critique, it will help to think of each step as belonging to one of these two major components. The first of these is Gewirth's notion that

> every agent logically must hold or accept that he has rights to freedom and well-being as the necessary conditions of his action, as conditions that he must have; for if he denies that he has these rights, then he must accept that other persons may remove or interfere with his freedom and well-being, so that he may not have them; but this would contradict his belief that he must have them.[8]

And the second is that "the agent logically must accept that all other prospective purposive agents have the same rights to freedom and well-being as he claims for himself."[9] These components will be used to construct the frame of Gewirth's argument for the Principle of Generic Consistency (PGC), a theory of secular universal human rights. Having looked at his critique of numerous other theories, as well as at his own argument, the third section will offer a critique of Gewirth's PGC, ultimately concluding that the problem for Gewirth's theory is that it relies on the notions, first, that we have a meta-desire not to contradict ourselves and, second, that we are unable to find persuasive justifications for our behavior that might allow us to avoid self-contradiction. If one is not troubled by charges of self-contradiction or, as is more often the case, one does not recognize that one's victim is as much a human being as oneself, Gewirth's theory will not seem particularly persuasive.

The Case Against Previous Theories

If there could be only one thing said about Alan Gewirth, it should be that he is thorough. Thanks to his meticulous work, we are able to examine—in some detail—a number of secular theories that he feels are not able to successfully defend the idea of human rights against its critics. In sorting through these theories, which range from Thomas Jefferson to the Universal Declaration of Human Rights and H. L. A. Hart to John Rawls, Gewirth provides a comprehensive critique of those who have attempted his project before him. In order to be considered successful, Gewirth suggests, an argument for human rights must specify what a person has a right to; in addition, it must be universally applicable and must incorporate the principle of equality. He begins with the intuitionist argument made by Thomas Jefferson and again by Robert Nozick, a contemporary libertarian theorist: "Thus, Thomas Jefferson held it to be 'self-evident' that all humans equally have certain rights, and Robert Nozick has peremptorily asserted that 'individuals have rights.'"[10] For Gewirth, these sorts of claims fail immediately, for prudential as much as for theoretical reasons: "Such assertion is not, of course, an argument for the existence of human rights: it would not serve at all to convince the many persons throughout history who have had different intuitions

on this question. Hence, the answer fails to satisfy *the condition of providing an argument.*"[11] He turns, then, to a number of theorists who—in his view—provide reasoned argumentation for the logic of their positions and works to demonstrate the ways in which they do not satisfy his two necessary conditions.

Gewirth next quickly dispenses with what he calls the formal principle, namely that people have a right to be treated equally unless some reason can be determined for treating them unequally. He does so by pointing out, first, that the formal principle fails to specify what ought to count as a good reason for treating people unequally; "and, of course, very many differences, including intelligence, sex, religion, color, economic class, have been held to be thus relevant."[12] Further, he notes that the formal principle can result in both egalitarianism and inegalitarianism, which means that it "'fails to satisfy … *the condition of determinacy,* since it may serve to justify mutually opposed allocations of rights."[13]

Gewirth then turns to a consideration of Joel Feinberg's argument that rights arise from interests. The trouble with Feinberg's assertion—apart from what Gewirth calls "the murkiness of the concept of 'interests'"[14]—is that not every interest automatically necessitates a right to fulfill that interest. The criminal certainly has an interest in committing his crime, for example, but he does not thereby derive a right to do so. More than that, Gewirth asserts that animals, as well as humans, have interests, and humans have unequal interests; Feinberg's interest principle offers no justification for the idea that rights belong only to humans or that they belong to all human beings equally.[15]

An argument might easily be made that some people deserve more than others or have more of a right to fulfill their interests than do others. Nietzsche, for example, makes precisely this sort of argument. From Feinberg's argument, Gewirth turns to a similar theory of interests offered by William Frankena, who "held that humans 'are capable of enjoying a good life in a sense in which other animals are not [which] justifies the *prima facie* requirement that they be treated as equals.'"[16] The trouble, here, is that Frankena falls into the trap of the naturalistic fallacy, arguing that an "ought" can be derived from an "is." Human beings may, in fact, be able to enjoy a good life in the way that Frankena asserts; the recognition of this fact of human existence, however, does not require that humans be treated in a certain way.

Next, Gewirth turns to Susan Moller Okin and her strategy of defining "a human right as 'a claim to something (whether a freedom, a good, or a benefit) of crucial importance for human life.'"[17] The argument against Okin—and, indeed, against all definitional approaches—is that defining human rights as claims to important goods does not prove that these rights are actually necessary or that they ought to be fulfilled. In addition, it might be that other rights theorists (or anti-rights theorists) simply disagree with the definition that Okin puts forward or with the goods that she considers to be crucial.

The final three theories that Gewirth considers receive much greater detail in their explication and ultimate rejection. The first "is H. L. A. Hart's famous pre-

suppositional argument. He says: 'If there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free.'"[18] The first problem, clearly, involves the way in which Hart sets up his claim. Precisely because his argument begins with a presupposition about the existence of moral rights, someone might just as easily suggest that there are no moral rights at all. Hart has not demonstrated that there are moral rights; he has simply put forward an "if, then" sort of suggestion.

A second difficulty with Hart's argument is the same one that snared Feinberg, which is the unquestioned assumption of equality. As Gewirth points out,

> If special moral rights are to be used to show that there is an *equal* right of *all* men to be free, then such universal equality must be found in the special rights themselves. But Hart has not shown that all men equally derive rights from the transactions of promising, consenting, and imposing mutual restrictions. He presupposes, without any justificatory argument, the very egalitarianism he seeks to establish. A believer in basic human inequality, such as Nietzsche, would deny that all men are equal with regard to the special rights. Hence, Hart's argument does not establish the egalitarian universalism he upholds.[19]

Hart's argument, then, falls far short of satisfying the conditions necessary for justifying human rights.

Having demonstrated these shortcomings, Gewirth turns to the famous argument put forward by John Rawls in *A Theory of Justice*. Rawls, he notes, argues "that if the constitutional structure of a society were to be chosen by persons who are 'in an initial position of equality' and who choose from behind a 'veil of ignorance' of all their particular qualities, the principles of justice they would choose would provide that each person must have certain basic, equal rights."[20] A debate has been raging for more than thirty years about these key features of Rawls' theory, and Gewirth joins philosophers like Michael Sandel and Robert Nozick in the anti-Rawls camp. Ultimately, he argues that Rawls' premise is both a false and circular one. He agrees, first, with Nozick's critique of the concept of an original position, writing that "persons are not in fact equal in power and ability, nor are they ignorant of all their particular qualities. Hence, to assume that they are … and to base on this equality and ignorance one's ascription of equal rights, is to argue from a false premise."[21] He goes on to agree also with Sandel's critique, arguing that "the total ignorance of particulars that Rawls ascribes to his equal persons has no independent rational justification. Hence, no reason is given as to why actual rational persons, who know their particular characteristics, should accept the equality of rights that is based on their assumed ignorance."[22] Finally, Gewirth maintains that these problems with the idea of the original position highlight the circularity of Rawls' argument, as its ultimately egalitarian result can only be attained by building false conditions of equality into his original position.

Having dispensed with Rawls' theory of justice, equality, and rights, Gewirth turns to the argument put forward by the drafters of the Universal Declaration

of Human Rights. He argues that there are a number of problems with the assertion of human dignity upon which the Declaration bases its rights. The first problem, he notes, is that there is simply no way to assess empirically the claim that all men have inherent dignity. A second problem, to which he devotes considerably more time, "is that the two expressions, 'A has human rights' and 'A has inherent dignity' may seem to be equivalent, so that the latter simply reduplicates the former."[23] But, he continues, if "the two expressions are thus equivalent in meaning, the attribution of dignity adds nothing substantial to the attribution of rights, and someone who is doubtful about the latter attribution will be equally doubtful about the former."[24] On this point, I will state a simple disagreement with Gewirth, for he makes the same sort of argument for which he critiques Hart above. The claim that the expressions "A has human rights" and "A has inherent dignity" are equivalent in meaning is presented by Gewirth—not as being true but as seeming to be true. Further, he puts forward the presuppositional argument that *if* they are equivalent, *then* the idea of inherent dignity adds nothing to the claim of human rights. Nowhere, though, does Gewirth actually suggest that the two statements are, in fact, equivalent.

While I do not find Gewirth's appraisal of the Universal Declaration to be as compelling as his other critiques—a number of which are also a bit problematic—I remain impressed by and indebted to him for his examination of such a wide variety of contemporary secular theories of human rights. Having considered them all in some detail and found them lacking in one respect or another, it remains to Gewirth to construct his own argument for what I call a secular basis for the idea of human rights. Indeed, he goes to great lengths to outline what he sees as the most compelling affirmative answer "to the problem of whether some supreme moral principle can be rationally justified."[25] His answer, the Principle of Generic Consistency, is a fascinating attempt to ground the idea of human rights in what he refers to as the generic features of action, namely voluntariness and purposiveness (or, more simply, freedom and intentionality). The theory begins, Gewirth tells us, with a difficult question: "How, then, can it be shown that from such morally neutral premises there follow determinate, normatively moral conclusions about the necessary content of the supreme principle of morality?"[26]

Perry contends that "*there is something about each and every human being, simply as a human being, such that certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being*."[27] While Gewirth does not disagree with Perry on this point, his problem is that "it is not the case that humans are born having rights in the sense in which they are born having legs. At least, their having legs is empirically verifiable, but this is not the case with their having moral rights."[28] What is required, for Gewirth, is some manner in which we might verify that we have these rights and it is to that task that he turns.

The Principle of Generic Consistency

While it might not be immediately clear where our rights come from just from looking at us, Gewirth is confident that there is a distinctive feature of all human beings from which human rights stem. While Perry argues that it is our sacredness, our connection to God, that grounds our human rights, Gewirth would undoubtedly note that this theory runs into one of the problems he recognized with the Universal Declaration. That is, it is not possible to empirically assess Perry's claim; human sacredness is simply not observable. For Gewirth, an observable feature upon which we can ground the supreme moral principle is the distinctly human ability to plan and execute an action. Upon this bedrock he founds his theory of human rights, one which is thoroughly secular and can be critically assessed. In his own words, "because of its genetic features, action has what I shall call a 'normative structure,' in that evaluative and deontic judgments on the part of agents are logically implicit in all action; and when these judgments are subjected to certain rational requirements, a certain normative moral principle logically follows from them. To put it otherwise: any agent, simply by virtue of being an agent, must admit, on pain of self-contradiction, that he ought to act in certain determinate ways."[29]

From this beginning, Gewirth proceeds to lay out the logic of his theory. At the outset, I mentioned that this paper would treat Gewirth's argument as though it consisted of two main parts even though Gewirth himself puts forward some fifteen steps, each of which is carefully connected to its predecessor as well as its successor. In what follows, I will look at each of these steps before arguing for the importance of the two steps upon which my critique—in the next section—will be based. At the outset, Gewirth claims, as noted above, that every action is characterized by two generic features, voluntariness and purposiveness. He elaborates instructively on this point: "By an action's being voluntary or free I mean that its performance is under the agent's control in that he unforcedly chooses to act as he does, knowing the relevant proximate circumstances of his action. By an action's being purposive or intentional I mean that the agent acts for some end or purpose that constitutes his reason for acting; this purpose may consist in the action itself or in something to be achieved by the action."[30] There are, of course, a number of arguments against both of these genetic features of action, and Gewirth proceeds to tackle the most demanding of them in turn. With regard to the feature of voluntariness, he considers the problems of both direct and indirect compulsion, as well as of determinism. In the first two situations, Gewirth maintains that when one acts under compulsion, one cannot properly be said to have made a choice, and so voluntary action precludes forced choice. His argument against determinism is that "Choices may indeed be extensively affected by previous psychological conditioning. But such conditioning may take a variety of forms. Even when strong emotional factors are invoked, these and other conditioning influences need not be exhaustive determi-

nants of a person's choices; he may still reflectively consider various reasons for alternative actions and choose among them on the basis of such consideration. It is when a person controls his behavior by such unforced choices based on his own informed reasons that his action is fully voluntary."[31]

Having discussed voluntary action, he proceeds to purposiveness and the objection that one might act solely out of a sense of obligation, without trying to fulfill any desire or purpose of his own. Gewirth's response is that the idea of a desire implicit in the objection is not as robust as his own. He says, "It is important to remember that 'wanting' has not only an inclinational or hedonic sense, but also an intentional sense. In the inclinational sense, to want to do X is to take pleasure in doing X or to like doing X; but in the intentional sense, to want to do X is simply to intend to do X, to regard one's doing X as having some point or purpose even if one doesn't like doing it."[32] One might very well take pleasure in doing X, but for Gewirth's argument, the most important feature of purposive action is that one simply intend to do X. That said, Gewirth takes care to note that one ultimately engages in X because one feels positively about the end to which X is directed: "For even if he regards his action as morally indifferent or as not making any difference on some other specific criterion, by the very fact that he aims to do the action he has a pro-attitude toward doing it and hence a positive or favorable interest in doing it."[33]

In laying out these generic features of action, Gewirth has accomplished the first two steps in his argument for voluntary and purposive action as the foundation of human rights. In order to make sense of these two steps, as well as to see how they relate to the genetic features of action explicated above, Gewirth carefully describes his agent:

> When he performs an action, he can be described as saying or thinking:
>
> (1) "I do X for end or purpose E."
>
> Since E is something he unforcedly chooses to attain, he thinks E has sufficient value **to** merit his moving from quiescence to action in order to attain it. Hence, from his standpoint, (1) entails
>
> (2) "E is good."
>
> Note that (2) is here presented in quotation marks, as something said or thought by the agent A. The kind of goodness he here attributes to E need not be moral goodness; its criterion varies with whatever purpose E the agent may have in doing X. But what it shows already is that, in the context of action, the 'Fact-Value gap' is already bridged. For by the *very fact* of engaging in action, every agent must implicitly accept for himself a certain *value-judgment* about the value or goodness of the purposes for which he acts.[34]

With these two steps carefully explained, Gewirth moves forward with his argument. As we have seen, (1) and (2) are not presented as being free from contro-

versy; however, their articulation is far simpler than (3) through (12), which contain positive arguments and counterfactuals, and which I will fold into the first of what I consider the two main components of Gewirth's theory.

Having established that agent A always acts for a purpose that she regards as good, Gewirth makes the claim that, in order to do so, she must accept "(3) 'My freedom and well-being are necessary goods.'"[35] This follows, he argues, from (2) because "freedom and well-being are the necessary conditions of action and of successful action in general."[36] The reasoning behind this step in his argument is that every action is characterized, as we recall, by the generic features of voluntariness (or freedom) and purposiveness; when extended to include successful action rather than simply action-as-such, purposiveness "becomes a more extensive condition which I shall call *well-being*."[37]

He explains this move from the general condition of purposiveness to the more specific notion of well-being in a bit more detail as follows: "freedom and well-being are the most general and proximate necessary conditions of all his purpose-fulfilling actions, so that without his having these conditions, his engaging in purposive action would be futile or impossible."[38] If one is performing any action at all, in other words, one must have freedom and well-being. Put another way, "well-being consists in having the various substantive conditions and abilities, ranging from life and physical integrity to self-esteem and education, that are required if a person is to act either at all or with general chances of success in achieving the purposes for which he acts."[39] Therefore, he writes, "Every agent must regard these capabilities of action not only as goods but also, because they are required for all purposive action, as necessary goods."[40] And, as Gewirth tells us, (3) "may also be put as (4) 'I must have freedom and well-being,' where this 'must' is a practical-prescriptive requirement, expressed by the agent, as to his having the necessary conditions of his action."[41] From (3) and (4), he argues, comes "(5) 'I have rights to freedom and well-being,'"[42] which, for our purposes, is the most important step that Gewirth makes to this point.

It is this fifth step, where Gewirth introduces the idea of rights; this causes a good deal of controversy; it will, consequently, be examined in far greater detail in the third section. For the present, it will suffice to explain how Gewirth moves from (4) to (5), as well as how he proceeds from (5) onward to the rest of his argument. First, Gewirth argue, "Since the agent regards as necessary goods the freedom and well-being that constitute the generic features of his successful action, he logically must also hold that he has rights to these genetic features, and he implicitly makes a corresponding right-claim."[43] In claiming these rights to freedom and well-being, "The agent holds that other persons owe him at least noninterference with his freedom and well-being, not because of any specific transaction or agreement they have made with him, but on the basis of his own prudential criteria, because such noninterference is necessary to his being a purposive agent."[44]

Having put forward these rights and explained the correlative duty that arises from claiming them, Gewirth must demonstrate that an agent must make such a claim. This is demonstrated by examining what it would mean to deny (5). For if one were to deny (5), he maintains, one must also deny "(6) 'All other persons ought at least to refrain from removing or interfering with my freedom and well-being.'"[45] Of course, "By denying (6), he must accept (7) 'It is not the case that all other persons ought at least to refrain from removing or interfering with my freedom and well-being.'"[46] One ought not accept (7), clearly, because it necessitates acceptance of "(8) 'Other persons may (i.e., It is permissible that other persons) remove or interfere with my freedom and well-being.'"[47] Accepting (7) and (8) causes the greatest amount of trouble for any agent who sought to avoid claiming the rights laid out in (5). For in accepting (8), "he must accept (9) 'I may not (i.e., It is permissible that I not) have freedom and well-being.'"[48] The trouble is immediately obvious: it was previously established by Gewirth and accepted by the agent in (4) that freedom and well-being were necessary goods for agency in general. To be an agent at all, one must have the goods of freedom and well-being; therefore, one cannot accept that there may be a time when one may not have those goods. It is necessary, then, that others refrain from interfering with one's freedom and well-being.[49] As Gewirth explains, "Since every agent must accept (4), he must reject (9). And since (9) follows from the denial of (5), 'I have rights to freedom and well-being,' every agent must also reject that denial. Hence, every agent logically must accept (5) 'I have rights to freedom and well-being.'"[50] In this manner, then, Gewirth successfully puts forward the first major component of his theory of human rights, namely the idea that all agents have rights.

The hard-won rights to freedom and well-being, however, are only what Gewirth calls generic rights, "in that they are rights to have the generic features of successful action characterize one's behavior."[51] In addition, he notes that these rights are prudential rather than moral, "in that the criterion consists for each agent in his own needs of agency in pursuit of his own purposes. Even though the right-claim is addressed to all other persons as a correlative 'ought'-judgment, still its justifying criterion for each agent consists in the necessary conditions of his own action."[52] At this point, then, our rights have been established, but they belong to no one but ourselves. In order to establish the rights to freedom and well-being as moral rights, Gewirth undertakes a number of additional steps and these form the second of the two main components of Gewirth's argument, namely that our rights are universal. As with the above argument for generic rights, I will simply outline Gewirth's argument for their universalizability in what immediately follows and will offer a critique in the next section of the paper.

In order to make our rights to freedom and well-being universal, Gewirth begins with a further demonstration of the importance of agency to any right-claim in order to highlight the reason behind the rights, as Perry would ar-

gue he must. For Perry, "The fundamental challenge to each and every human rights claim is a demand for reasons."[53] And Gewirth is in agreement on this point, noting that "Every right-claim or attribution of a right is made on behalf of some person or group under a certain description or for a certain reason that is held to justify the claim. … Without a reason, he would be making not a right-claim but only a peremptory demand akin to that voiced by a gunman."[54] With the need for such a reason in mind, Gewirth puts forward his argument for the universalizability of his generic rights. The structure of this point is relatively simple and Gewirth provides a clear explication: "Now whatever the description under which or the sufficient reason for which it is claimed that a person has some right, the claimant must admit, on pain of contradiction, that this fight also belongs to any other person to whom that description or sufficient reason applies. This necessity is an exemplification of the formal principle of universalizability in its moral application, which says that whatever is right for one person must be right for any similar person in similar circumstances."[55] In the structure of Gewirth's argument, this principle of universalizability occupies steps (10) through (13).

The first step, (10), serves as a reminder of the nine steps that brought us to this point and established our generic rights. With all of those steps completed, Gewirth argues, the agent "must accept (10) 'I have rights to freedom and well-being because I am a prospective purposive agent,' where this 'because' signifies a sufficient as well as a necessary justifying condition."[56] It is immediately obvious that our terms have changed a bit, as Gewirth has made the purposive agent into one who is also prospective. He has done so, he argues, because "the agent claims these rights not only in his present action with its particular purpose but in all his actions. To restrict to his present purpose, his reason for claiming the rights of freedom and well-being would be to overlook the fact that he regards these as goods in respect of all his actions and purposes, not only his present one. To be a prospective agent, then, is not necessarily to be an actual agent; it is rather to have desires or goals one wants or would want to fulfill through action."[57] In this way, the experience of agency has been expanded a great deal, for it is not necessary to actually engage in action or even to have excellent prospects for doing so in order to have rights to freedom and well-being. All that is necessary is "his occurrently or dispositionally looking ahead in some way to acting for purposes he regards as good."[58]

Having thus established the importance of adding this notion of prospecting, Gewirth then turns to demonstrating that being a prospective purposive agent (PPA) is both a necessary and sufficient reason for having rights to freedom and well-being, which he accomplishes through what he calls "the Argument from the Sufficiency of Agency (*ASA*)."[59] The argument goes as follows:

> Suppose some agent were to reject (10), and were to insist, instead, that the only reason he has the generic rights is that he has some more restrictive characteris-

> tic R. Examples, of R would include: being an American, being a professor, being an *Übermensch,* being male, being a capitalist or a proletarian, being white, being named "Wordsworth Donisthorpe," and so forth. Thus, the agent would be saying:
>
> (11) "I have rights to freedom and well-being *only* because I am R,"
>
> where "R" is something more restrictive than being a prospective purposive agent.
>
> Such an agent, however, would contradict himself. For he would then be in the position of saying that if he did *not* have R, he would *not* have the generic rights, so that he would have to accept
>
> (12) "I do not have the rights to freedom and well-being."
>
> But, we saw before that, as an agent, he *must* hold that he has rights to freedom and well-being. Hence, he must drop his view that R alone is the sufficient justifying condition of his having the generic rights, so that he must accept that simply being a prospective purposive agent is a sufficient as well as a necessary justifying condition of his having rights to freedom and well-being.[60]

If the agent accepts that he has rights to freedom and well-being for no other reason than because he is a prospective purposive agent—and, as we have just seen, he must—it follows that "the agent must also accept (13) 'All prospective purposive agents have rights to freedom and well-being.'"[61] With the acceptance of (13), Gewirth has succeeded in making our generic rights universal, as it "is a direct application of the principle of universalizability; and if the agent denies the generalization, then, as we have seen, he contradicts himself."[62]

It is also at this point that the generic rights change from merely prudential to moral ones. As Gewirth argues, "When the original agent now says that *all* prospective purposive agents have rights to freedom and well-being, he is logically committed to respecting and hence taking favorable account of the interests of all other persons with regard to their also having the necessary goods or conditions of action."[63] With that in mind, and "Since all other persons are actual or potential recipients of his action, every, agent is logically committed to accepting (14) 'I ought to act in accord with the generic rights of my recipients as well as of myself.'"[64]

Expressed somewhat differently, this statement can be rendered as (15), what Gewirth calls the Principle of Generic Consistency: "Act in accord with the generic rights of your recipients as well as of yourself."[65] In articulating the PGC, Gewirth, it seems, has succeeded in setting forth a secular foundation for the idea of human rights: human agency. Carefully taking us through these fifteen steps, he has demonstrated how the PGC is both rationally derived and how its acceptance is rationally required by every agent. The final section of this paper will explore my critique of the PGC and argue that Gewirth's foundation, while compelling, is ultimately inadequate when it comes to the task of grounding the idea of human rights.

A Critique of Generic Consistency

In the twenty-five years since *Reason and Morality* was first published, the Principle of Generic Consistency has undergone nearly as much and as careful scrutiny as has John Rawls' *A Theory of Justice.* Gewirth has done us a great service in responding to many of his critics himself and he has also received considerable assistance from Deryck Beyleveld, whose own work examines and refutes sixty-six well-crafted objections to the PGC. It should be noted that it is not my intention, here, to rehearse all of these critiques, primarily because Beyleveld has done a fine job of collecting ten years of this scholarship, but also because such a rehearsal does not serve the interests of this paper.[66] I will, instead, focus on making three interrelated arguments that highlight what I consider the inadequacy of the PGC as a secular foundation for the idea of human rights.

These arguments are by no means original and each has been examined in some detail by Gewirth and Beyleveld; however, I will argue that these important objections are not persuasively refuted, unlike the majority of the objections they consider. First, I will critique the notion that self-contradiction represents the most compelling argument against violating human rights; Gewirth's theory assumes both that all agents have the meta-desire to avoid contradiction and that contradiction is painful enough to prevent agents from violating human rights. Second, I will dispute Gewirth's argument about universalizability and contradiction by suggesting that an agent might accept the first part of Gewirth's theory about his own generic rights and reject without contradiction the second part about universalizing those rights. My final objection combines the first two, applying Michael Sandel's critique of Rawls' original position and veil of ignorance to Gewirth's PGC to argue that Gewirth's prospective purposive agents are too far removed from the real world in which human rights are actually in play.

To begin, then, let us consider the argument that engaging in a self-contradictory action would be impossibly problematic for any agent. It is important to note that the problem of contradiction seems simply to be implied, for nowhere does Gewirth actually make a case for why we may not engage quite comfortably in self-contradiction. In fact, in a footnote dealing with Millard Schumaker's multiple objections to the PGC, Beyleveld points out that quite the opposite is the case: "The error lies in Schumaker's reading of 'incurring the pain of self-contradiction.' We are to understand that Gewirth argues that PPAs will be motivated to be moral by the fact that to act immorally is to suffer some form of emotional distress. But to say that X does Y on 'pain of self-contradiction' is to say only that if X does Y, then X contradicts itself. It is not to say that if X does Y, then X contradicts itself *and that* this state of affairs causes X to suffer anguish."[67]

It seems, then, that self-contradiction is not necessarily painful for the agent. If it is not, we might wonder, what reason is there for avoiding it, particularly if

engaging in it could be in an agent's self-interest or if avoiding it turns out to be costly? The only answer that Gewirth seems to provide comes at the very beginning of his argument for the PGC, in the following statement about his rational agent: "It is to be noted that the criterion of 'rational' here is a minimal deductive one, involving consistency or the avoidance of self-contradiction in ascertaining or accepting what is logically involved in one's acting for purposes and in the associated concepts."[68] The assumption, here, is that all agents have a meta-desire for consistency upon which all of their rational decisions are built. And yet, it seems important to question whether we can assume that human beings are necessarily rational actors who behave as Gewirth outlines or, instead, a bundle of desires engaged in continual struggle, especially after looking at the psychoanalytic theory of Jacques Lacan.

Lacan's response to the sort of theory put forward by Gewirth would be, Malcolm Bowie notes, something to this effect: "How wrong we have all been until now, and how deluded; what a lesson we all need on the vanity of our wholeness-talk, our selfhood-talk and our integrity-talk."[69] Like Nietzsche before him, Lacan insists that desire is insatiable and will always go unfulfilled. Further, he argues that "the essential day-to-day facts about human beings are these: they address each other and affect each other by what they say; they say what they mean and what they don't mean simultaneously; whatever they get they always want more, or something different; and at any one moment they are consciously aware of only some of what they want."[70] Lacan's vision of humanity, we can safely say, is both more complex and enigmatic than the one envisioned by Gewirth. The PGC, as we have seen, seeks to provide both a prudential and a moral explanation for respecting human rights. Lacan would most likely respond that Gewirth's agent is neither completely aware of his preferences nor certain of the language he uses to express his rights to freedom and well-being. For Gewirth, an agent's choices are predicated on an evaluation and ordering of desires, the most important of which is the meta-desire for rational action. For Lacan, this concept of ordering is itself mistaken because human beings are fundamentally broken rather than the unified agents that Gewirth assumes; perhaps the best we can do, he suggests, is come to an understanding of death and live with it.[71] Ultimately, he is far less willing than Gewirth to take anything as given—save the fundamental disunity of the world on which he bases his theory.

While this Lacanian critique is an interesting one, it is not the strongest argument against Gewirth on the question of contradiction. Though it might be the case that people are unable to rationally order their preferences, as Lacan argues, or that some people do not have the sort of meta-desire for rational consistency that Gewirth assumes for the purposes of his theory, it certainly seems to be more often the case that people can and do. What Gewirth fails to consider properly, however, is the ability that people have to rationalize their actions in an effort to avoid the cognitive dissonance that comes with self-contradiction. He clearly rec-

ognizes the problem, pointing out that "some person may without inconsistency claim the right to inflict various harms on other persons on the ground that he possesses qualities that are had only by himself or by some group he favors."[72] By way of a response, as noted above, he puts forward the ASA: that being a PPA is both the necessary and sufficient justificatory reason for having the generic rights. This answer seems not to have placated Gewirth's detractors, nor has it gone far enough to suit me. Of course, Beyleveld deals with multiple versions of this objection in the fortieth through forty-fifth objections to the PGC. One such objection is that of Donald E. Geels, who "alleges that '[i]t is trivial to claim that whatever is right for one person must be right for any relevantly similar person in any relevantly similar circumstances,' because there is no determinate criterion of relevant similarity."[73]

This sounds remarkably similar to Gewirth's own objection to the formal principle, described above. As Beyleveld points out, however, Gewirth has quite clearly specified the criterion of relevant similarities: "a PPA must claim that it has the generic rights (according to the argument for the sufficiency of agency [ASA]) for the sufficient reason that it is a PPA. Because a PPA logically must claim the generic rights, it is the property of being a PPA that is logically required to be the criterion of relevant similarities."[74] More interesting, in my estimation, are arguments like the one made by N. Fotion, that "a 'fanatic' (read 'elitist') can grant itself rights on the grounds that it is a superior PPA, yet refuse to grant these rights to other PPAs, who are not superior PPAs, without contradiction."[75]

While Fotion has taken an important first step, namely recognizing that some PPAs will view themselves as somehow different or better than other PPAs, he has not truly challenged Gewirth's PGC. Summarizing Gewirth's own response to Fotion's argument, Beyleveld says:

> In effect, what Fotion fails to see is that agency, independent of the *content* of a PPA's particular occurrent purposes or its SPR ['Subjective viewpoint on practical reasonableness']for its purposes (represented here by the fanatic's principle), has a normative structure. Since this normative structure reflects judgments that a PPA must accept on pain of contradicting that it is a PPA independently of the *content* of its purposes (because these judgments are functions of the necessary conditions of its pursuit/achievement of any purposes), a PPA *might* reason from its SPR, but can only do so consistently with the assumption that it is a PPA *if* these reasonings are consistent with the judgments contained in the necessary normative structure of agency.[76]

Gewirth is correct in this refutation of the idea of a fanatic's special status as a PPA, as is Beyleveld. But Fotion's argument presents only part of the problem and, I believe, not its most difficult explication.

More challenging for Gewirth is the claim not that a PPA is in some way special and thereby deserving of rights, but instead that some other PPA is somehow damaged and thereby not worthy of them. Such an argument, however, seems

neither to have been made directly against Gewirth nor is it carefully considered by him or by Beyleveld. Gewirth seems to recognize the existence of this problem—indeed, he seems to put it forward himself—but fails really to grapple with it in any meaningful way. He says,

> To be P, that is, a prospective purposive agent, requires having the practical abilities the generic features of action: the abilities to control one's behavior by one's unforced choice, to have knowledge of relevant circumstances, and to reflect on one's purposes. These abilities are gradually developed in children, who will eventually have them in full; the abilities are had in varying impaired ways by mentally deficient persons; and they are largely lacking among animals. … Since the quality that determines whether one has the generic rights is that of being P, it follows from these variations in degree, according to the Principle of Proportionality, that although children, mentally deficient persons, and animals do not have the generic rights in the full-fledged way normal human adults have them, members of these groups approach having the generic rights in varying degrees, depending on the degree to which they have the requisite abilities.[77]

Of course, in reading these remarks, one must wonder whether it is acceptable to infringe upon the rights of those who fall within the categories Gewirth lays out. If one is like a child, then perhaps it is acceptable for society to take away one's rights to freedom and well-being. Surely that must be the case if one is like an animal for, as Gewirth says, "the lesser the abilities, the less one is able to fulfill one's purposes without endangering oneself and other persons."[78] There is something rather troubling about making these sorts of statements, but Gewirth seems not to see it. For him, it is sufficient to argue that one ought to have the generic rights to the degree to which one approaches being a PPA.

Beyleveld's response to this objection, unlike his many others, is surprisingly lacking and is confined to a footnote. By doing so, he seems to have made things worse for Gewirth, as he points out that five theorists have taken issue with the PGC on this important point but then offers no substantive rejoinder. He says,

> It seems to me that Gewirth's theory is essentially a theory of the rights of PPAs, and not a theory of human rights as such. … From this it follows that there are some human beings (those who are not even marginal agents) who do not have the generic rights, and that nonhuman beings might have the generic rights. … The question of the rights of "marginal agents" is, however, a more complex one. I do not discuss this, because I view its importance as being for the argument *from* the PGC, rather than the argument *to* the PGC, with which this book is solely concerned; so I shall not discuss any of the above claims in detail.[79]

Having sidestepped the issue entirely, he makes a few general points that deal with other issues raised by the objection and then offers some final words that are meant to provide consolation to the concerned: "A question might be raised about the extent to which the practical import of the PGC is narrowed by conative normality's

being a definitional requirement of being a PPA. The answer is, Not very much! Conative normality is, after all, something that is characteristic of most adult human beings. In practice, we are required to treat human beings as conatively normal (as PPAs) unless we have compelling evidence that they are not PPAs."[80]

The trouble with this response is pointed out by Richard Rorty, who offers the rejoinder, made by an agent who wants to infringe upon the rights of another, that philosophers like Gewirth "seem oblivious to blatantly obvious moral distinctions, distinctions any decent person would draw."[81] For Rorty, the problem cannot be solved by sitting down with a chalkboard and diagramming how the agent and his potential victim are both PPAs. It is, he argues, a problem that will not be solved by demonstrating that the agent violates his victim on pain of self-contradiction because, for this agent, the victim is not properly a PPA, despite looking and acting very much like one.

The old adage about looking, swimming, and quacking like a duck comes to mind here; no amount of quacking will convince the agent that his victim is, in fact, a duck. As Rorty points out,

> This rejoinder is not just a rhetorical device, nor is it in any way irrational. It is heartfelt. The *identity* of these people, the people whom we should like to convince to join our Eurocentric human rights culture, is bound up with their sense of who they are *not*. … What is crucial for their sense of who they are is that they are *not* an infidel, *not* a queer, *not* a woman, *not* an untouchable. … Since the days when the term "human being" was synonymous with "member of our tribe," we have always thought of human beings in terms of *paradigm* members of the species. We have contrasted *us,* the *real* humans, with rudimentary or perverted or deformed examples of humanity.[82]

There are, I believe, two problems for Gewirth's theory here. The first is that an agent can quite clearly sidestep rational inconsistency by believing that his victim is somehow less of an agent (and, in the case presented by Rorty, less of a human being) than he is himself. The agent, here, might recognize that his victim is a PPA, but other factors (being an infidel, a queer, a woman, or an untouchable) have far greater resonance and preclude her having the same rights as the agent. He might also recognize his victim as a potential PPA, but not one in the fullest sense of that term or one who has actually achieved that status; as Gewirth himself notes, "there are degrees of approach to being prospective purposive agents."[83]

It seems to me that the Nazis knew quite well that their Jewish victims could be PPAs in some sense; the Nuremberg Laws of 1935 confirm their awareness that Jews could plan and execute the same sorts of actions they could (voting and working, for example). The rights of the Jews could be restricted, however, because Jews were quite different from Germans; rather than PPAs in the fullest sense, they were, in the eyes of the Nazis, what Rorty calls "pseudohumans."[84] On this point, Rorty's point is both clear and compelling: "Resentful young Nazi toughs were quite aware that many Jews were clever and learned, but this only added to the pleasure they

took in beating such Jews. Nor does it do much good to get such people to read Kant and agree that one should not treat rational agents simply as means. For everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense—the sense in which rational agency is synonymous with membership in *our* moral community."[85] The second problem for the PGC pointed out by Rorty is that it is overly academic and insufficiently pragmatic. In other words, its fifteen steps might be logically compelling to those in a philosophy department, but not to those who are actually making these decisions on inclusion and exclusion." This is not," Rorty tells us, "because they are insufficiently rational. It is, typically, because they live in a world in which it would be just too risky— indeed, would often be insanely dangerous—to let one's sense of moral community stretch beyond one's family, clan, or tribe."[86] This second point leads to the final critique of Gewirth's argument for the PGC.

In reviewing Gewirth's argument to this point I have clearly been assisted by the very structure that he employs, for he is the consummate analytic philosopher. Each step he takes is clearly articulated and then defended against several possible criticisms. Further, there is, as we have seen throughout this paper, something exceedingly logical in the organization he employs and, more than that, in his theory itself. In what might be a bit of a surprising turn, then, I will argue that this logic ultimately serves as Gewirth's undoing. The problem, interestingly, is very similar to that which Gewirth himself notes of John Rawls' *A Theory of Justice,* and it is one he seems to anticipate. Indeed, he goes so far as to quote Friedrich Engels' critique of theories that take too abstract a view of humanity. As Engels argues in the *Anti-Dühring,*

> In order to establish the fundamental axiom that two people and their wills are absolutely equal to each other and that neither lords it over the other, we cannot use any couple of people at random. They must be two persons who are so thoroughly detached from all reality, from all national, economic, political, and religious relations which are found in the world, from all sex and personal differences, that nothing is left of either person beyond the mere idea: person—and then of course they are 'entirely equal.' They are therefore two complete phantoms conjured up.[87]

Gewirth recognizes that he must work through this objection and proposes that the way to do so is to offer an abstraction from our differences that does not completely ignore them and that is also "able to subject the differences or their alleged moral implications to moral evaluation."[88] He has done so, he believes, by offering "the standpoint of the agent,"[89] or what Beyleveld calls "the internal viewpoint of PPAs *as PPAs*."[90] Just because the ideas of agency and rights have been discussed in the abstract, Beyleveld argues, "does not mean that they are not of 'real' concern to real people."[91] This seems not to be a particularly compelling argument, in my estimation, nor is Beyleveld's second attempt.

In responding to Virginia Held's objection to the PGC—"If we require that in acting we are all so similar that we all claim the same thing, then Gewirth's

theory is a theory of the ideal agent rather than of real agents"[92]—Beyleveld attempts to show that Gewirth is speaking of real rather than ideal agents. According to Beyleveld,

> The only sense in which the generic features of agency are "abstract" is that they are universally and necessarily applicable to all PPAs *amid* their enormously varying particular occurrent purposes. In attending to the generic features, it is not assumed that PPAs are so similar that it will be in their particular occurrent interests for them all to make (wish to make) the same rights-claims. It is assumed only that PPAs, whatever their particular occurrent purposes, are PPAs (that they have purposes). It follows *logically* from *the fact that PPAs have purposes* that they must accept the PGC. It, therefore, follows logically, *for PPAs with varying particular occurrent purposes and characteristics,* that they must accept the PGC. For, whatever their particular occurrent characteristics, to deny the PGC is to deny that they have purposes, and this is to deny that they have *any* particular occurrent purposes (which, of course, includes the ones they have)."[93]

Despite his best efforts to demonstrate the way in which the PGC applies to real agents, Beyleveld has simply restated Gewirth's argument and, in my estimation, added additional jargon that seems to encourage rather than refute Held's objection.

The biggest difficulty with this defense—apart from the way it is worded, which lends credence to our belief that there is something not quite human about these PPAs—is that Beyleveld seems to have conflated characteristics and purposes. It is correct that a PPA must accept the PGC regardless of the nature of his purposes, for having any purposes at all entails that he is a PPA and being a PPA necessitates his acceptance of the PGC. However, it does not follow that he must accept the PGC regardless of the nature of his (or others') characteristics, for these characteristics might invalidate some aspect of the PGC. He might be, for example, one of the unfortunate marginal agents discussed above; alternately, he might be acting upon one of those marginal agents, in which case he need not worry about granting the generic rights that he claims for himself.

Beyleveld's response to this concern seems lackluster: "a PPA, regardless of its particular occurrent characteristics, is logically required to concentrate attention on the generic features as the basis of its rights-claims, and must restrict its *categorically binding* rights-claims to these features, because it is not logically required to attend to any other features."[94] Leaving aside the fact that Beyleveld refers to PPAs as neither "him" nor "her," but rather "it," at the same time that he is attempting to humanize them, the argument he makes here does not stand up to scrutiny. All he claims is that PPAs are required to base their rights-claims on the generic features of action (which everyone, except for marginal agents, must possess) because they are not required to base those claims on other features. This does not mean that a PPA cannot base his claim on characteristics other than the generic features of action; it simply means he must also include the generic features of action in his claim, as they—unlike the other characteristics—are necessarily connected with agency.

By and large, then, it seems that Gewirth has not gone a great distance toward refuting this critique nor has Beyleveld offered much assistance. In fact, Gewirth seems to recognize his shortcoming even as he attempts to offer his response to Engels: "Hence, while not entirely exempt from Engels's criticism, the present approach in terms of the generic features of action has an important justification. For it sets up a morally neutral starting point that does not accept persons' actual power relations and other differences as a moral datum."[95] This, though, seems to be the point of Engels' critique and of more recent critiques of analytical theories that attempt to abstract from the world in order to discuss it. Indeed, Michael Sandel's objections to Rawls' well-known ideas of the original position and veil of ignorance are equally apt in looking at the greatest weakness of Gewirth's theory. Although Sandel stands quite close to Rawls on the question of what a liberal society's principles of justice ought to be, he contends that Rawls' assumptions about the populace of that society provide a poor foundation for his principles.

The presuppositions that Sandel accuses Rawls of making are fourfold. First, the Rawlsian self is seen as one that possesses its assets. In other words, the self and its assets are separable from one another. One must wonder, though, what actually constitutes each individual human being if not all the things that make up those particular selves. Next, Rawls suggests that the self is prior to and independent of its ends; put another way, the self is seen as the selector of its ends. If each self chooses its own ends, there can be no ultimate conception of the good, and Rawlsian societies must not choose a particular conception of the good in order to avoid impinging on the many and various choices of the selves in these societies. Third, selves are perfectly indifferent to one another in the original position; they are radically and fully separate from one another. Finally, the Rawlsian self has nothing to reflect upon about itself. It cannot ask, "Who am I?" because it has no identity beyond being an abstract possessor and selector. The problem, for Sandel, is that human beings are not constituted in this way: "To imagine a person incapable of constitutive attachments … is not to conceive an ideally free and rational agent, but to imagine a person wholly without character, without moral depth."[96]

If these selves actually existed, Sandel asserts that they likely would not adopt the Rawlsian principles of justice. They are, after all, not bound by common identity, by sympathy, or by mutual agreement on a common good, so they would be more likely to choose the market-driven society that someone like Robert Nozick describes. As Sandel argues,

> We cannot regard ourselves as independent in this way without great cost to those loyalties and convictions whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular person we are—as members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic. Allegiances such as these are more than values I happen to have or aims I 'espouse at any given time.' They go beyond the obligations I voluntarily incur and the 'natural duties' I owe to human beings as such. They allow that to some

> I owe more than justice requires or even permits, not by reason of agreements I have made but instead in virtue of those more or less enduring attachments and commitments which taken together partly define the person I am."[97]

Sandel claims, then, that we must invoke a much richer notion of selfhood and a deep sense of community if we hope to achieve Rawls' conclusions. There exists, of course, a great deal of debate about the value of Sandel's critique, especially on the question of whether Rawls intended his original position to be an accurate description of the world around us. As mentioned in note twenty-one, it seems clear that Rawls is conducting a thought experiment and that the parties in the original position are not meant to constitute human beings who exist in society. Sandel, however, does not seem to take this into account at all in his critique of Rawls and, for that, his argument loses a great deal of its force. The same seems not to be true, I believe, of Gewirth's PGC, for while Gewirth is also engaged in a thought experiment, his has to do with establishing the generic rights and the relevant features of action, not with the construction of the PPAs themselves. Indeed, as noted above, both Gewirth and Beyleveld go to great lengths to establish that their PPAs are, in fact, real rather than ideal agents and that the problems that people face in the world are the problems faced by PPAs. In this way, I believe Sandel's critique to be more applicable to the PGC than it is to Rawls' conclusions.

Conclusion

In order to offer a truly compelling secular foundation for the idea of human rights, one must do more than Gewirth has done in demonstrating the logical necessity of accepting a principle that entails the universalization of the generic rights of freedom and well-being. As we have seen. Gewirth crafts an interesting argument for human rights in theory, but runs into considerable trouble when his theory is put into practice. As critics like Rorty and Sandel point out, there is something about the Principle of Generic Consistency that rings a bit hollow. For Rorty, the problem lies in Gewirth's failure to appreciate the fierce partiality that often drives human rights violations; it is a confusion to point out contradictions to those who either refuse to recognize them or are not terribly troubled by them. For Sandel, the PGC must fail for the same reason that Rawls' original position fails; there is simply no getting around the fact that human beings are more complex than abstract possessors of goods or prospective purposive agents. Any examination of human life that abstracts in these ways removes the discussion too far from the real world in which human rights are actually violated. These violations cannot be said to be the same thing as the simple removal of freedom and well-being from a PPA, for this sort of language is hopelessly sterile. Human rights violations happen, instead, to men like Aleksandr Solzhenitsyn and Primo Levi, who struggle desperately to survive and, if successful, carry the scars of their experiences with them

for the rest of their lives. This is a mistake of the highest order, one that insults the victims and survivors of some of humanity's most terrible tragedies. It is one that Gewirth and Beyleveld cannot possibly intend to make, but one that creeps up on them as the abstractions with which they deal multiply.

In abstracting away so many characteristics from human beings in order to create the prospective purposive agent, something has clearly been lost from Gewirth's account of the justification for human inviolability. It might be philosophically interesting to consider whether the generic features of action can logically provide a secular grounding for the idea of human rights, but what is at stake for Gewirth seems overly academic. Human rights, however, are not simply academic and their justification is far more than a philosophical puzzle; they are deadly serious, often a matter of life and death. For this reason, human rights cannot be considered in a vacuum, and any attempt at their justification must be firmly entrenched in the real world. While I have quibbled with the PGC on its own terms and argued that (15) does not necessarily follow from (1), and while I have noted that a great many other theorists have done likewise, my deepest critique is that the PGC's assumptions cause a great deal of trouble whether or not Gewirth's theory ultimately makes logical sense. As Rorty argues, Gewirth's theory removes the discussion of human rights from the realm of the actual and concentrates on the purely theoretical. In doing so, it calls to mind Arthur Koestler's point that "Statistics don't bleed; it is the detail which counts."[98] Neither, it seems to me, do PPAs. And the terrible reality is that human beings do, often at the hands of others.

This grim reality is not surprising to anyone, but it is not often expressed in the way that Samantha Power does, for example. In writing about the 1994 genocide in Rwanda, Power offers a quotation from a UN official on the ground during the worst of the violence:

> When we arrived, I looked at the school across the street, and there were children, I don't know how many, forty, sixty, eighty children stacked up outside who had all been chopped up with machetes. Some of their mothers had heard them screaming and had come running, and the militia had killed them, too. We got out of the vehicle and entered the church. There we found 150 people, dead mostly, though some were still groaning, who had been attacked the night before. … The Rwandan army had cleared out the area, the gendarmerie had rounded up all the Tutsi, and the militia had hacked them to death.[99]

This sort of thick description stands in marked contrast to the kind of language that Gewirth employs in his discussion of the PGC's applications. Consider the following example, one of the few in which Gewirth departs from talking about PPAs and assigns names:

> Suppose Ames physically assaults Blake, who defends himself by physically assaulting Ames. In a purely formal view, Ames and Blake are each disobeying

> the moral principle that requires persons to respect and not infringe one another's well-being. On the PGC's substantive view, however, these two infractions are not on a par as being both unjustified. Since Ames inflicted or acted to inflict basic harm on Blake. and hence intended to violate a generic right of Blake while acting in accord with his own generic rights, Ames's intention was inconsistent and his action morally wrong?[100]

Because they are not real and no attempt has been made to make them real for us, we do not—we cannot—become emotionally attached to Ames and Blake, and we do not care, therefore, what happens to either of them. Our eyes trip lightly over the words "physically assaults" in Gewirth's example in a way that they cannot move past the words "who had all been chopped up with machetes" in Power's.

We have no conception, of course, of what it would be like to die at the hands of a man wielding a machete or to wield that machete ourselves. By and large, we cannot even conceive of watching such a terrible spectacle. But we react to the idea of this crime in a far more immediate way than we do to the abstract physical assaults of Ames and Blake. The difference is two-fold for William F. Schulz, the executive director of Amnesty International USA. First, "I am stricken at heart because I have the imagination to know at least in proximate form what the experience, the pain, must have felt like. I am stricken at heart because on some level I identity with the victims; I know what it is to bleed."[101] Second, "when I heard of cases of cruelty, I responded with revulsion. … It is a revulsion grounded in part in recognition. Recognition not that I am capable of inflicting exactly that kind of pain, I trust, but recognition that the capacity to inflict suffering, like the capacity to feel compassion, is a familiar one."[102] Because we can imagine, at least in some small way, what it must have been like to be a victim in that situation, we recognize the importance of defending the idea of human rights around the world. And because we are all too familiar with the deepest and darkest part of ourselves, we can contribute to the conversation about how best to prevent violations of human rights. I have argued throughout this paper, for a variety of reasons, that men who butcher women and children like animals will not be dissuaded by Gewirth's argument that they are acting inconsistently. The claim that we are all rational agents simply cannot bear the weight of the idea of human rights. If we want to argue, as Gewirth does, that there are certain features or qualities about human beings that preclude their wanton destruction, they must be far more persuasive than the generic features of action, and they must be grounded in the world as it is rather than the world of theory.

Notes

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1. Aleksandr I. Solzhenitsyn, *The Gulag Archipelago 1918-1956: An Experiment in Literary. Investigation, Parts I-II,* trans. Thomas P. Whitney (New York: Harper & Row, 1974), 168.
2. Primo Levi, *The Drowned and the Saved,* trans. Raymond Rosenthal (London: Simon & Schuster, 1988), 169-170.
3. Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (New Haven: Yale University Press, 2001), 401.
4. *Ibid.,* 406.
5. Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1981), ix.
6. Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998), 13, citations omitted.
7. Alan Gewirth, "The Epistemology of Human Rights," *Social Philosophy & Policy* 1:2 (Spring 1984), 14–17.
8. *Ibid.,* 18.
9. *Ibid.*
10. Gewirth, "Epistemology," 5; citations omitted.
11. *Ibid.* While Gewirth is correct in arguing that it is insufficient to simply assert that individuals have rights and expect those rights to be respected, he is wrong to think that he has properly dismissed Nozick's claim. In fact, Nozick spends a good deal more time on the question of the origin of rights than Gewirth seems to recognize. While it is correct to say that Nozick does not provide a complete argument, closing instead with a lengthy series of questions, he certainly goes beyond peremptory assertion on this point. For Nozick's discussion of the source of our rights and his grappling with the question of how the meaning we give our lives might provide such an origin, see his *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 48–51.
12. Gewirth," Epistemology," 6.
13. *Ibid.*
14. *Ibid.*
15. This critique of Feinberg is one that should not be presented as free from difficulty, as Gewirth seems not to be engaging with Feinberg's core argument about rights in "The Nature and Value of Rights." Instead, he quotes from the next essay, "The Rights of Animals and Unborn Generations." While the latter deals with interests, the former contains a detailed discussion of the origin of rights that focuses on the importance of claiming them rather than their derivation from our having interests: "Having rights enables us to 'stand up like men,' to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed, respect for persons … may simply be respect for their rights, so that there cannot be the one without the other: and what is called 'human dignity' may simply be the recognizable capacity to assert claims. To respect a person then, or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims" (Joel Feinberg, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* [Princeton: Princeton University Press, 1980], 151).
16. Gewirth," Epistemology," 6; citation omitted.
17. *Ibid.,* 7; citation omitted.
18. *Ibid.,* 8; citation omitted.
19. *Ibid.,* 8–9.
20. *Ibid.,* 9; citation omitted. For Rawls' formulation of the original position and veil of ignorance, see his *A Theory of Justice* (Cambridge: The Belknap Press of Harvard University Press, 1971 [1999]), 15–19, 109–112, and 118–123.
21. Gewirth, "Epistemology," 9. The argument employed by Gewirth against Rawls is somewhat problematic for at least two reasons. The first is that Rawls, clearly, does not imagine the original position to be the truth about the world: it is, instead, a thought experiment that Rawls employs in an attempt to derive a version of justice that would be justifiable to all from very modest premises. The second problem for Gewirth is that, in all that follows, he does something very similar to Rawls in constructing his own argument about the generic rights of prospective purposive agents.
22. *Ibid.*
23. *Ibid.,* 10.
24. *Ibid.*

25. Gewirth, *Reason, 7.*
26. *Ibid.,* 25.
27. Perry, 13; citation omitted.
28. Gewirth, "Epistemology," 3.
29. Gewirth, *Reason,* 25-26.
30. *Ibid.,* 27.
31. *Ibid.,* 37. This argument against determinism might not pass muster with a particularly thoughtful philosopher like Daniel C. Dennett, who could argue that being the sort of person who can "reflectively consider various reasons for alternative actions and choose among them on the basis of such consideration" is itself determined by a host of factors over which one has no control. For a far more sophisticated presentation of Dennett's objection to the idea of unforced choice, see his *Freedom Evolves* (New York: Viking Penguin, 2003).
32. Gewirth, *Reason,* 39; citation omitted.
33. *Ibid.,* 40.
34. Gewirth, "Epistemology," 14–15.
35. *Ibid.,* 15.
36. *Ibid.*
37. *Ibid.*
38. Gewirth, *Reason,* 65.
39. Gewirth, "Epistemology," 15.
40. Gewirth, *Reason,* 59–60.
41. Gewirth," Epistemology," 15.
42. *Ibid.*
43. Gewirth, *Reason,* 63.
44. *Ibid.,* 66.
45. Gewirth, "Epistemology," 15.
46. *Ibid.*
47. *Ibid.,* 16.
48. *Ibid.*
49. This point raises the issue of criminal justice, as punishing a criminal obviously interferes with his freedom and well-being. On this point, Gewirth argues that punishment acts as a mechanism for restoring the equality of freedom and well-being that exists between agents: "If the agent inflicts a basic or other serious harm on some recipient, he violates this equality in a quite specific way, and the punishment prescribed by the criminal law is justified as a way of restoring the equality by redressing the previously disturbed balance" *(Reason,* 297). By way of example, he considers the case of A and B, and the problem that arises when A harms B: "A not only removes X units from B; he also adds a comparable number of units to his own stock of well-being. … The punishment prescribed by the criminal law, in accordance with the Principle of Proportionality, removes from A this additional satisfaction *(Ibid.).* This is, of course, quite different from the Kantian argument about punishment in *The Metaphysics of Morals,* namely that "Judicial punishment can never be merely a means of furthering some extraneous good for the criminal himself or for civil society, but must always be imposed on the criminal simply *because he has committed a crime.* For a human being can never be manipulated just as a means of realising someone else's intentions, and is not to be confused with the objects of the law of kind. He is protected against this by his inherent personality, although he may well be sentenced to forfeit his civil personality" (in Immanuel Kant, *Political Writings,* ed. Hans Reiss and trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1797 [1996]), 154–155).
50. Gewirth," Epistemology," 16.
51. Gewirth, *Reason,* 64.
52. Gewirth," Epistemology," 16.
53. Perry, *Idea,* 30-31.
51. Gewirth, *Reason,* 104.
55. *Ibid.,* 104–105.
56. Gewirth, "'Epistemology," 16.
57. Gewirth, *Reason,* 111-112.
58. Ibid., 112.

59. *Ibid.,* 110.
60. Gewirth, "Epistemology," 16–17.
61. *Ibid.,* 17.
62. Gewirth, *Reason,* 112.
63. Gewirth," Epistemology," 17.
64. *Ibid.*
65. *Ibid.* For a great deal more discussion of the PGC, including its derivation, its formal necessity, and a number of objections and responses, see Gewirth, *Reason,* 129–198. Some of these points will also be discussed in the third section of this paper. For a shorter restatement of the PGC, see Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996), 13–30; the remainder of that book concerns itself with applying the PGC to the idea of social solidarity or community, arguing that rights to freedom and well-being "are also positive, in that in certain circumstances they require active assistance whereby one helps other persons to have freedom and well-being" (31). Beyond Gewirth's own writings on the PGC, Deryck Beyleveld has undertaken two painstakingly detailed summaries of the PGC in *The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth's Argument to the Principle of Generic Consistency* (Chicago: University of Chicago Press, 1991). Beyleveld also examines more than sixty objections to Gewirth's argument (from the publication of Gewirth's *Reason and Morality* in 1978 to 1989, when Beyleveld prepared his own manuscript for publication) and I will turn to his exhaustive defense of the PGC in the third section of this paper.
66. In a series of footnotes to his introduction, Beyleveld provides a comprehensive list of the arguments to which he responds in his book and to which Gewirth has already responded (398–400). He also notes, "I cannot, of course, guarantee that I have located all items. … If I have overlooked items, then these are most likely to be reviews, comments in books, comments in articles that are not specifically on Gewirth, or articles in foreign languages. After February 1990, I did not attempt to locate further items" (400). Although Beyleveld's catalog of critiques is now fourteen years old, I have chosen not to conduct my own search for more recent arguments against the PGC because I am confident that those included in Beyleveld's book offer a complete picture of the problems theorists have identified with Gewirth's theory. A quick search reveals, for example, a 1992 article by Louis P. Pojman that includes a short critique of Gewirth, but it seems to me to have been dealt with by Gewirth himself as early as his first articulation of the theory in *Reason and Morality* and again by Beyleveld. In "Are Human Rights Based on Equal Human Worth?," *Philosophy and Phenomenological Research* 52:3 (September 1992), Pojman offers this critique: "I don't see why the PGC doesn't apply to animals as well as humans, thus making them equal recipients of our attention. Cats and rats implicitly act on the principles of needing freedom and well-being, even if they cannot articulate them or bring them consciously to mind" (616–617). Gewirth, though, tells us in his first explication of his theory why the PGC doesn't apply to animals: "it must be noted that not all entities that pursue or seem to pursue purposes are agents in the sense used here. Animals other than humans lack for the most part the ability to control their behavior by their unforced choice, to have knowledge of relevant circumstances beyond what is present to immediate awareness, and especially to reflect rationally on their purposes" *(Reason,* 120).
67. Beyleveld, 402.
68. Gewirth, *Reason,* 46.
69. Malcolm Bowie, *Lacan* (Cambridge: Harvard University Press, 1991), 10.
70. *Ibid.,* 15–16.
71. Lacan's attempt to offer a solution to his own nihilistic conclusion is based on the idea of self-knowledge, which he argues can be attained by acquiring a certain level of understanding of Lacanian theory, and submitting to psychoanalysis. Crucial to the notion of self-knowledge, however, is that its acquisition does not leave an agent with the same ends he had prior to its acquisition. In other words, what the agent thought he was aiming at turns out not at all to be what he truly had as an end. In this way, self-knowledge cannot be seen as a goal on the path to achieving one's ends. Rather than hoping to make better decisions or find out an ultimate end, Lacan seems only to suggest that arriving at the truth about ourselves will—in some way—help us to understand the various conflicts that arise in our lives. He does not even go so far as to put forward the idea that self-knowledge will necessarily help us in our effort not to run afoul of them. For more on this im-

portant point, see Jacques Lacan, *The Seminar of Jacques Lacan: Book VII, The Ethics of Psychoanalysis 1959-1960,* ed. Jacques-Alain Miller and trans. Dennis Porter (New York: W. W. Norton & Company, 1997), 291–301. See also, Bowie, 197–203.

72. *Gewirth, Reason,* 106.
73. Beyleveld, 243; citation omitted.
74. *Ibid.* For Gewirth's own very thorough account of the criterion of relevant similarities, see *Reason,* 104–128.
75. Beyleveld, 247.
76. *Ibid.,* 248.
77. Gewirth, *Reason,* 122.
78. *Ibid.*
79. Beyleveld, 447.
80. *Ibid.,* 448.
81. Richard Rorty, *Truth and Progress: Philosophical Papers, Volume 3* (Cambridge: Cambridge University Press, 1998), 178.
82. *Ibid.,* 178–179.
83. Gewirth, *Reason,* 122.
84. Rorty, 177; citation omitted.
85. *Ibid.*
86. *Ibid.,* 178.
87. Friedrich Engels, *Anti-Dühring: Herr Eugen Dühring's Revolution in Science* (New York: International Publishers, 1966), 108–109. Gewirth's quotation of Engels can be found in *Reason,* 127–128; another copy of the quotation and a defense of Gewirth on this point can be found in Beyleveld, 309–310.
88. Gewirth, *Reason,* 128.
89. *Ibid.*
90. Beyleveld, 310.
91. *Ibid.*
92. Virginia Held, "Reason and Economic Justice" in *Economic Justice: Private Rights and Public Responsibilities,* ed. Kenneth Kipnis and Diana T. Meyers (Totowa: Rowman and Allanheld, 1985), 38. The quotation can also be found in Beyleveld, 311.
93. Beyleveld, 314–315.
94. *Ibid,* 314.
95. Gewirth, *Reason,* 128.
96. Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982 [1998]), 179.
97. *Ibid.*
98. Arthur Koestler, *The Yogi and the Commissar: And Other Essays* (New York: The Macmillan Company: 1946), 91.
99. Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Perennial, 2003), 349. In addition to its frank discussion of Rwanda, Power's book looks closely at the genocidal campaigns carried out in the twentieth century in Turkey, Germany, Cambodia, Iraq, and Bosnia. Each chapter is well-stocked with stories about violence as gruesome as this one, as is the entirety of Philip Gourevitch's account of the Rwandan genocide, *We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda* (New York: Picador USA, 1998). It is possible, quite literally, to open Gourevitch's book to any page and find descriptions of violence the likes of which are unknown to Western readers and seem too horrible to be true. Power offers an interesting quotation to this effect in her discussion of Bosnia: "They were talking about women being put in rape camps. They were talking about all these killings—some they said they'd seen, others they'd only heard about. They talked about people being thrown off cliffs, men being held and tortured and starved in camps. … No matter how much I heard, I just found it hard to believe. I couldn't believe. In fact, I didn't believe" (270).
100. Gewirth, *Reason.* 213.
101. William E Schulz. *In Our Own Best Interest: How Defending Human Rights Benefits Us All* (Boston: Beacon Press, 2002), 23.
102. *Ibid.,* 25.