Bonum Est Quod Omnes Appetunt

D. Morgan Pierce

ABSTRACT

Human rights should be formulated according to a hierarchy of transcendent moral values derived from the concept of goodness. The relations of human rights can be ordered according to the formal relations of transcendent moral value. The formal relations of moral values should be unambiguous because of their common derivation from one principle, the "good". However, the logical problem of the self-predication of "the good" and the epistemological problems of establishing its features frustrate the attempt to put moral values in a unified hierarchical order. Consequently an attempt may be made to formulate human rights without reference to a transcendent concept of goodness.

An agnostic concept of human rights may employ a principle of personal liberty to provide a groundwork for the concept of human right. It will turn out that liberty by itself does not suffice to ground human right because human right entails universality. Since no human beings can be excluded from the entitlement of human rights, a concept of equality must be introduced to distribute personal liberty to all humans. The concept of equality should then generate moral relations between human beings without reference to the concept of transcendent goodness. However, conceptual problems involved in the concept of equality render it incapable of independently functioning as a foundation for human rights. In order to resolve the conceptual problems of equality, reference must be made to the concept of moral goodness. The agnostic foundation of rights is incoherent because it must ultimately presuppose the concept of transcendent value which it intended to abandon.
i. Contextual Incoherence of Human Rights

The view that a legal system which does not protect basic moral principles is not legitimate presumes that human rights have a foundation which is more primitive than the laws of a given society. Human rights are in a special sense absolute; they cannot be made to be valid or invalid by the laws of a given society, but a social order makes itself legitimate or illegitimate according to whether it subordinates its system of laws to those human rights. The theory of human rights supposes that there are moral principles which are logically prior to laws. Claims of human rights are not exhaustively defined by the laws because they can be referred beyond the laws to moral principles.

The extreme weakness of a human rights theory lies in the notion that human rights are absolute. If “absolute” cannot be defined through reference to the laws of a society, because it presents something as prior and independent of such laws, then it may lack any reference for its definition or justification. In this case “absolute” would be meaningless and a theory of human rights would be incoherent. There are two senses in which being absolute may render the theory of human rights incoherent. First, two human rights may easily come into conflict. Two persons may be exercising one and the same human right, and their separate claims to the same human right may entail a violation of the other person’s claim to that same right. As it is a human right that is in question, they would be equally entitled to the object of right because they are both unconditionally entitled to it. Furthermore, the basic human rights of two people may come into conflict when each person is making a claim to the object of a fundamentally different human right. Second, being absolute makes the notion of human rights incoherent because human rights would therefore be inalienable. Even if one individual is not obligated to yield his right in preference to another person, there may be prudential circumstances in which an individual together and equally with all individuals may have to relinquish his rights.

The absolute characteristic of the human rights theory at some point must yield to the consideration of the consequences of an action flowing from that right, even if a person’s human rights clearly entitle him to the benefit of
that right. If in some extraordinary situation it were necessary to murder a perfectly innocent person and thereby save the lives of a hundred thousand people, apparently it would not be objectionable to violate the individual’s human right to life. Either a theory of human rights disqualifies itself if it endorses disasters of infinite magnitude for the protection of a relatively small instance of a right, or, if it does concede the occasional necessity to violate instances of basic rights, then it cannot adequately account for this alteration of its position within the scope of the definition of human right as absolute. If, however, the absolute character of human rights is jettisoned, then two results immediately ensue. First, it appears to become logically incoherent to posit that human rights are logically prior to positive law. In such a case, if not the positive law, then what criterion of judgment authorizes under what circumstances basic rights may be suspended? If rights may be suspended in the face of disaster, then human rights theory would be covertly resting on a justification according to the consequences of each given instance, and thereby it would tacitly abandon the absolute basis of human rights theory.

Second, in so far as enforcing a basic right in one instance can always involve violating a right in some other instance, human right may not be regarded as an absolute, inviolable principle. In order to know when a right should be suspended in favor of another right or some other consideration, it is necessary to make a definition of some superordinate criterion for resolving such conflicts. If choices must be made to maximize overall human rights which will involve comparing the relative value of enforcing basic rights among different instances, then the element of the “absolute” involved in human rights must be in some underlying moral principle which is not infected by the conflict which appears in the sphere of human rights. A separate, case by case consideration of human right is necessary because one species of human right may conflict with attaining another type or another instance of human right in an overlapping context. In order to attain human rights it may be necessary to deeply intrude on the substantive benefits of the individual, and in various cases either the substantive benefits of the individual may be morally more valuable than human rights, or the practical cost of enforcing human rights may too detrimental in comparison with the moral value of human rights.
On this point the evaluation of human rights according to substantive benefit is inadequate. If we are to regard human rights as a "goal to be maximized", that is, as a final criterion to be applied to any computation of what act is justified by the principle of maximum material benefit, then it implies that human rights do not have an intrinsic value. If human rights are instrumentally valuable because they function to produce maximum benefit, then in itself human right cannot be enshrined as a final and intrinsic value. If, on the other hand, human right is intrinsically valuable, regardless of the material benefits that result from human right, then the relative benefits of favoring one instance of a basic right rather than another do not prima facie help to resolve a conflict of basic rights.

For the resolution of both conflicts it would be necessary to devise some hierarchical order of value amongst different human rights, and such a hierarchical ordering would of course imply that all human rights derive from only one fundamental principle. By this interpretation conflicts of rights can be resolved by "maximizing" them only if what it is which is "maximized" is homogeneous with what it is that each of the rights taken separately commonly intend; a moral principle can be suspended only by a moral principle of a higher power.

Etwas philosophisch verstehen, heisst: ein gegebenes Phaenomen auf die Instanz beziehen, der es inhaeriert. Das Letzte sollte immer ein Selbständiges, ein Unabhaengiges sein. Man erkannte den "Grund" an seiner Autarkie. "Denken" hiess: Ontologische Dependenzen verfolgen bis zu dem, das schlechthin nicht mehr in einem anderen ist, zu Gott. Letztendlich war nur das, was in keiner Weise in einem anderen war, sondern nur in sich.\(^{(1)}\)

The former thesis of maximum benefit allows the position that conflicts of human rights are real. The present thesis of a hierarchical ordering of values under a unitary principle can be coherent only if all conflicts of rights are illusory. If all rights intend only one thing ultimately, then the suspension of one right by another ultimately promotes what had been intended by the subordinate, suspended right. In the present state of things, where there is
no consensus on what the ultimate moral principle of human right is or how other rights are derived from it, any two rights which conflict may appear equally demanding of respect and there may be no way to clearly measure their respective values relative to the given concrete instance.

Underlying the problem of ethnically variant concepts of right and obligation is the fundamental problem of conflicting moral rights or duties. The intellectual intuition of a non-empirical transcendent Form makes it possible to rank diverse, ethnically variant concepts of morality in degree of truth according to how closely they can approximate transcendent Forms.\(^{(2)}\)

ii. The Principle of Transcendent Value

Human rights do not carry the patent meaning of creating greater security and prosperity; rights may be to the detriment of prosperity and yet hold. The conception that human rights are absolute entails reference to transcendent values. If human rights are absolute in the sense that the consequences of maintaining them, no matter how disproportionately unpleasant, can have no moral influence on stringently upholding them, then absolute human rights must preserve a value which is more important than the worst imaginable consequences.

A dichotomy of moral and prudential purposes establishes the immunity of human rights to empirical change. Ultimate moral principles are not ultimately justified by the benefit which they produce in terms of man's appetitive well-being. As an order of reasoning heterogenous to prudential motives, they are not modified by prudential considerations. Human rights, as absolute, are justified by orientation to a transcendent, supersensuous notion of "benefit". Indefeasibility renders rights immune to consequences and suggests that their validity cannot be demonstrated by reference to benefits in the immanent world. The value of an absolute human right cannot be defeated or vitiated by any detriment its observance could lead to in this world. This single element of the meaning of "absolute" may suffice to justify a rejection of the theory of absolute human rights.

The abandonment of the notion of transcendent values may not entail adop-
tion of another set of moral values; values as such may be repudiated as a heterogenous sort of entity, and rationality may commit itself to a system of pure prudential purposiveness.\(^2\) Rejecting all ultimate values as such does not mean that things would not have different values relative to each other; in fact it would be easier to discern the relative values of things to each other. The values of things would be more univocal because the values of all things would be exhaustively determined by their prudential rationality. The univocity of all values would make it quite simple to resolve conflicts of rights by comparing their relative benefits. Even all moral values would have clear relative values to each other because of the regulatory power of prudential rationality.

Rights however cannot be rationally demonstrated because as transcendent they participate in defining what moral and prudential deliberations may be used as principles of demonstration. If ultimate moral values are not demonstrated by reference to an idea of rationality because they in part constitute the ideal of rationality, then the relative values of all things may be equivocal. It then becomes conceivable that a thing may have a greater moral value than something else but nevertheless have a smaller prudential value. Whether or not it is meaningful to say that moral values “constitute” rationality depends on whether it is possible to conceive ultimate moral values as an indispensable and irreducible component of rationality, and, if not, whether it is possible to maintain a coherent concept of human rights.

An immanent as opposed to a transcendent explanation of the world does not entail commitment to any system of indefeasible values. Varieties of conflict of claim suggest that it is more rational to abandon a theory of rights and resolve claims according to the substantive benefits of each alternative. An immanent account of the world is able to recognize that conflicts of rights are ultimately real, not illusory, and to construct a device for deciding priorities. A transcendent account of the world implies that conflicts of rights are illusory, but insofar as it does not clearly apperceive the ultimate principle from which all rights derive it has no device for adjudicating apparent conflicts of rights. By definition human rights are supposed to be absolute, but in any case in which a human right is normally asserted it is used in a context where it is in conflict with another right that is “absolute”, or it is in conflict with another
person's reliance on one and the same "absolute" right, or it is in conflict with a right which is nominally less stringent but would practically produce much more harmful consequences if its observation is preferred to the nominally less stringent right. The question of choosing between basic rights for priority forces an underlying question, namely according to what ultimate reason the given rights are selected as basic rights rather than some other collection. A theory of human rights can be sustained only if there is a method which resolves such conflicts and maintains the internal consistency of the system of rights. The absolute interpretation of human rights requires some ultimate principle which implies the derivative validity of all human rights and which can consequently function to adjudicate the relative weight of the various rights when they come in conflict.

Supposing that a stringent interpretation of the absolute validity of human rights would morally allow too many inhumane consequences, the notion of absolute human rights might be salvaged if it is amalgamated with a consequentialist principle of human benefit. Thus human rights might be conceived to have absolute validity not because they would produce the greatest benefit, as a consequentialist theory would have it, but nevertheless the absolute validity of human rights would be limited by the proviso that their implementation would not produce disproportionate detriment. This compromise with the practical requirements of a system of rights seems to salvage human rights by removing the self-refuting absurdity that absolute human rights would otherwise imply.

However, there is no viable theoretical foundation for the amalgam itself. There is a semantic misconception in supposing that human rights may be considered to be absolute except for instances when the consequences of sustaining human rights are too detrimental.\(^4\) A conditional conception of human rights has a fundamentally different proof than an absolute interpretation, and importing a feature of the conditional interpretation to compensate for a logical inconsistency in the absolute interpretation would not salvage the absolute interpretation.

No principles internal to the proof of absolute human rights would logically support the adoption of the conditional feature. A new principle may be added to a philosophical theory under one of two possible conditions. It may be added
if the other principles of the theory may be shown to entail the new principle, with or without combination with extraneous propositions which are known to be true. Otherwise, a principle may be accommodated in a theory if it is so primitive that it cannot form logical relations of tautology or contradiction with the other principles of the theory. If a philosophical theory in order to avoid absurd consequences must adopt an alien principle which its own principles can neither entail nor accommodate, the theory is shown to be incoherent.

A theory of human rights cannot be internally coherent if the feature of being “absolute” is discarded because a “human right” which is not absolute is a contradiction in terms. Let us assume that under unusual circumstances an individual’s human right is to be abrogated. If in the conventional context there is nothing more basic than the given right, what other principle would be strong enough to nullify the right? The underlying consideration cannot be one of greater benefit, because human rights are not conceived to be legal artifacts, like civil rights; human rights, as axiomatic and extralegal, are conceived to set the definitions to what may be conceived as beneficial. Any results of action which do not conform to the definition given by human rights may not even be conceived as beneficial in the first place, let alone the thought that their benefit outweighs the observance of human rights. If, then, within a theory of human rights there is some consideration strong enough to nullify a person’s normal entitlement to a human right, then the consideration which nullifies this entitlement must be homogeneous with the nullified right; it must be a moral consideration.

“Moral” here indicates a transcendent ontological hierarchy which may be referred to instead of an indexing of long-term benefits in the immanent situation. An immanent scheme which does not allow “benefit” to be limited by a priori transcendent moral values nevertheless resembles the rigorous transcendent position in the respect that it also will occasionally permit harm to the rights-holder in order, paradoxically, to enforce his rights. The immanent scheme may also impose an apparently detrimental alternative on the individual either because the alternative is most beneficial to all rights-holders in general, although not to this particular rights-holder, or because the alternative is most beneficial to the individual rights-holder in the long-term,
although not in the short term. The transcendent theory of rights differs from the immanent theory because introducing either of these conditions for harming the right holder would produce a formal contradiction with the premises for a transcendent foundation of rights. A transcendent theory of rights cannot be limited by consideration of immanent benefits, regardless of whether or not those benefits are concealed. Reference to a transcendent principle sets an a priori definition to what may be counted as beneficial, and thereafter disregards any immanently given “benefit” which is not already contained in its transcendent definition of right. In cases where inflicting harm on an individual is allowed in order to observe human rights, the harm is not justified by any compensating benefit at all, not even in the long term. If a human right were suspended in the circumstance that its enforcement would cause greater harm to the right-holder, then the theory of human rights would be incoherent, because it would have to covertly import an extraneous sensory principle into its system in order to resolve the problem of conflict between absolute human rights. If, on the other hand, there is a principle which would in specific cases morally justify the suspension of an individual’s right, then we must presume that human beings have a higher-order right which is more absolute than the given right. If there is something which has the force to override a human right, then that principle must also have the character of being a human right, and be absolute, for otherwise the theory of human rights would be internally incoherent and ultimately depend on extraneous principles.

iii. Emancipation to Immanent Criteria of Rights

The structure of the justification of human rights is so different between a transcendent and an immanent interpretation that it is impossible to correct the apparent shortcomings of one interpretation by amalgamating elements of the other. It is fundamental in human rights theory that a person has human rights regardless of whether his culture has a conceptual awareness of such rights and regardless of whether his culture has created institutions to protect such rights. The transcendance of human rights therefore conflicts with the theory that the instance of a right can be adjusted according to its probable
benefit. A justification of human rights formulated in terms of the amount of benefit such rights would produce would be temporally relative to the conscious framework of the culture. A calculation on the instance of a right according to its probable and even long-term benefits presupposes the given culture’s popular conception of what would count as beneficial. The necessary conditions for discerning what is “beneficial” makes a conception of human rights based on immanent values logically incompatible with any transcendent theory which posits that ultimate values are an a priori component of rationality.

The thesis that moral values are an empirically unadulterated primitive component of rationality per se implies that the meaning of “benefit” which rights intend is deeply equivocal between an immanent and a transcendent context. Using the rational criteria of an immanent context, transcendent values are unjustifiable. The calculation of “benefit” based on immanent values presupposes that if there is no short-term benefit to a right, then the right must intend a hidden benefit which is visible in the long term. Second, if a right does not produce a visible benefit, in the long or the short term, then it does not sustain any value nor produce any benefit at all. If the right does not produce an immanent value or benefit, then the “right” is vacuous. There cannot be a right which is transcendent, in the sense that the value and the benefit it provides are never immanent and palpable. Under these conditions it is logically incoherent to limit a transcendent interpretation of human right with a consequentialist criterion based on immanent values, because the conception of human right would violate the stricture that its foundation must be prior to sensuous nature. Given the conditions of immanent benefit, if the right produced a benefit the value of which was invisible in the parameters of that given culture, then as such the claim would fail to be justified, and fail to be a right. Not only the ability to conceive what is a human right would be time-bound, but human right itself, being logically dependent on the conception of ultimate benefit, would change with the historical change in the concept of what is beneficial, and therefore be logically posterior to positive law. The axiom that human rights are transcendent means that people have certain rights even when their having rights is not immanently beneficial to the person or the community. Human rights are rights which ought to be protected even when it is highly
detrimental to the immanent welfare of people.

An agnostic formulation of human rights is able to give itself an appearance of ethical superiority by its claim to liberate value from traditional metaphysical positions. The universalism of human rights is secured only by an appeal to transcendent values. If the universalism of human right depended for its validity on the ability of a given society to conceptually recognize the values represented by a human right, then nothing could qualify as a human right because any given society is historically conditioned to view in limited perspectives. A right may be conceived to be universal only if its universal validity is independent of whether the society conceptually recognizes it or not. It is possible that a society, not having in its perspective a concept for the benefit that such a human right provides, may regard the institution of a human right as positively detrimental. The transcendance of a right uniquely implies that its moral validity does not depend on its being understood to be valid. A right may be conceived to impose obligation on people even when it is beyond their understanding.

Agnosticism can present itself as morally superior to the transcendent conception of human rights in so far as the agnostic repudiation of the transcendent element authorizes a given culture to use its own standards of rationality to determine what things are beneficial and to be protected by rights. It does not imply, as a transcendent interpretation does, that there may exist "rights" which are sensuously detrimental to all concerned in the long and the short term. However, in order to survive as an intellectual foundation for human rights, agnosticism cannot simply repudiate the apparently irrational metaphysical intransigence. It can corroborate itself only if it shows itself capable of adequately taking over some of the social functions that the metaphysical theory provides a foundation for, and accounting for those functions better. More specifically, an agnostic theory of human rights is not viable unless it can supplant the transcendent function of universality. Speaking on the most general level, an agnostic theory of human rights must be capable of replacing the old authority of transcendent principles with an authority incorporated in a concept of rationality which contains no reference to transcendent values.\(^{(5)}\)

An immanent interpretation of human rights can create a defense for its own
theory by demonstrating that a basis for human rights is meaningful only when the claims of human rights are reformulated in the framework of immanent benefit. An agnostic theory of rights can reasonably justify a right to a kind of action according to the degree that the action produces human well-being. Moral value is univocally defined by the amount of immanent benefit an act would produce.

A transcendent theory of human rights on the contrary denies that basic rights are always relative to the amount of benefit produced by their immanent consequences. If such things as rights are metaphysically founded, they typically entitle an individual to perform certain acts even when all other rational considerations conflict with the intent to perform that act. That the countervailing sensuous considerations do not nullify a right or duty to perform a given act is not because the benefit of enforcing the right outweighs the benefit of suspending it, but because the transcendent moral value of an action is incommensurable with its immanent value. Consider a case where a certain right is somehow intuitively sanctioned by its moral content, and where it correctly applies to an instance in which it would be overwhelmingly detrimental to all concerned if the intent of the right were fulfilled. A violation of the right would, in a specific instance, produce greater overall benefit than abiding by the right. A utilitarian reason may be used as a positive qualification to decide on an action in the case that the moral value of the action is positive or neutral, but where the moral value of the action is negative, no utility, no matter how great the degree of benefit the action may bring the community, can even be taken into consideration when deciding to perform or not perform the action.

If the purported "moral" value has exclusive priority over every version of sensual immanent value, however, there must be a third superordinate value which can rationally account for the priority of one principle over the other. If we make the assumption that a moral right to perform some action can come into conflict with an immanent claim to some other action, then exactly for the sake of what is morality valuable? If morality is not for maximum benefit and security- in which case utility could define what would count as moral- then what is it, besides benefit and security, that is valuable? Does morality turn out to be either vacuous or an oblique reference to utility, when we look for its
ultimate ground?\((6)\)

iv. Ens et Bonum Convertuntur

The convertibility of being and good, as the foundation for transcendent moral discourse, is rooted in Platonic-Christian asceticism. It is impossible to rationally justify ascetic ethical values if the principles of justification themselves contain presuppositions about rationality which make their scope narrower than the scope of rationality as presupposed by transcendent values. The demonstration that immanent-prudential criteria are too narrow to reveal the rationality of transcendent values will involve a conception that human nature cannot be exhaustively defined by sensuous elements. The presupposition that something can be morally "good" only if it ultimately, if not immediately, satisfies criteria of sensory pleasure and pain preempts the inquiry whether there can be any non sensuous instance of "good". If there can be ethical values which do not conduce to greater sensory pleasure, even indirectly, immanent-prudential criteria would present this attribution of "good" as meaningless.\((7)\) The pertinent transcendent values which would postulate that human well-being depends on something beyond the definitions of sensuous comfort and security are themselves incapable of rational demonstration because transcendent values would constitute the initial framework for what will count as rationality.\((8)\) If there are transcendent values, it is possible to conceive that a person causes himself to be unhappy even when his act produces the maximum material advantage for himself, and even under the condition that he believes that he is happier as a result of his act.

The possibility of transcendent morality is secured under the premise that the universe as a whole is good. If the fact of human suffering and tragedy is interpreted to be necessitated by some ultimate metaphysical principle, the universe acquires a very sinister appearance because man would be ultimately impotent to relieve the cosmic pain. If the universe is radically evil, the idea of morality is absurd because the attainment of an ultimate goodness which the striving of morality presupposes would be unconditionally impossible. The notion of striving to emerge from the human tragedy makes sense only if the
universe is radically good. Consequently the maintenance of a representation of moral value in human life presupposes an original identity between the physical and the moral order of the world, between being and goodness. To deny the inference that man is metaphysically necessitated to suffer endlessly and pointlessly, the given fact of human suffering must not be interpreted to be an essential manifestation of a cosmic principle of evil. The Platonic-Christian concept that evil is not a real substance, but a privation of some prior goodness, supports the thesis that man has free will in the sense that he can effect something to ultimately overcome the suffering of the human condition.\(^{(9)}\)

The Aristotelian-Augustinian thesis that all beings are good in so far as they exist lays the foundation a moral scheme of the world. There can be no things which are substantially evil because evil exists only as a privation of being.\(^{(10)}\) If something exists, ipso facto it has some degree of goodness. The thesis of the goodness of all things makes it possible to segregate moral norms from prudential norms because it implies that any thing whatever can be judged as to whether it is good in the way that it is. All things whatever are capable of being judged in terms of goodness and badness, since all things, in so far as they exist, have some degree of good, and in so far as they are ephemeral, are to some degree bad.\(^{(11)}\) The fact that all things that exist therefore have an incomplete goodness implies that they can be judged as to whether they exist as they ought to exist. The thesis that all things are good in so far as they exist lays the groundwork for the position that all things are susceptible of a moral, rather than just a utilitarian evaluation.

The identity of the normative and the physical order in the universe is rooted in the thesis of the identity of being and goodness. Normative values are themselves real, just as physical entities, and their real existence is bound up with the real existence of physical things. A thing is, only in so far as it is a “what”; if it has no distinct property so that one may say \textit{what} the thing is, then it would not exist. This Aristotelian explication of the relation between the components of matter and form in a substance implies that it is primarily the form, not the matter of a thing, which gives it being.

For those who adopt this point of view, then, it follows that matter
is substance. But this is impossible; for both separability and individuality are thought to belong chiefly to substance. And so form and the compound of form and matter would be thought to be substance, rather than matter. The substance compounded of both, i.e. of matter and shape, may be dismissed; for it is posterior and its nature is obvious. And matter also is in a sense manifest.\(^{(12)}\)

The ontological priority of form over matter in substance lays the groundwork for an ascetic interpretation of human rights. A thing is good, in so far as it is, by the criterion of how well the material realization of a thing exemplifies its universal form. If the human being, like any other thing, has being to the degree that he actualizes the form of “humanity”, human rights will be primarily appointed to protect man’s realization of his non-sensuous essence rather than the sensuous modifications primarily related to his material substrate as a human. Of course the fact that “essence”, when taken as a universal, is non-sensuous, does not entail that “essence” when taken as what is denoted in the individual substance, is also non-sensuous. However, the uniformity of essence in all individual embodiments implies that, if actualizing the essence is supremely valuable, man will have a distinct criterion of valuation that will often conflict with the criterion of value which he has as an appetitive, egoistic individual.

The radical distinction between the moral good and the egoistic good underwrites the conceptual coherence of metaphysical freedom and transcendent moral values which are ultimately unintelligible in the terms of immanent motives. If there is not a transcendent final good, moral and prudential good ultimately coalesce. Assuming the absence of a transcendent good, any suppositious moral reasons which man may have cannot find rational foundation in the world. There could not be any metaphysical human freedom because man would be confined to exclusively appetitive-egoistic motives for making valuations. The insuperable confinement of man to purely egoistic rationality would imply that the evil and suffering ineluctably derive from a cosmic principle, and cannot be alleviated by alterations in human rationality and behavior. If on the contrary the identity of being and good is interpreted to mean that
all things are good, tout simple, morality and metaphysical freedom would be equally impossible. The dictum that all things are good would deprive man of freedom in the dimension that there would then be no moral motivation for improving oneself or other things, since there could be no presence of evil or defect to motivate the will to improve. The idea of a highest good functions to motivate man to eliminate evil even when eliminating evil is not in conformity with his egoistic interests; evil must partially exist in order to rationally account for a non-reducible order of moral action. A dimension of human rationality and behavior which is unconditionally non-egoistic entails a distinction between immanent and transcendent or a present conflict between what is good for the ego and what is good for the cosmos.

The transcendent groundwork for human rights would accordingly have a strong ascetic element because the dictum "ens et bonum convertible" implies that some things which are very pernicious for the human individual in his egoistic setting may nevertheless be "per se good" because of the irreducible separation of moral and prudential values. Asceticism is fundamentally entailed because any simplistic, prima facie interpretation of ens et bonum convertible would make the concept of "good" meaningless. If a thing’s existing is enough to qualify it as good, then good would be vacuous because the predicate “good” would exclude nothing. Some distinction must therefore be made in the midst of all things that “are” in order to say meaningfully that some things are good. The distinction of a thing’s formal essence and its material embodiment supplies the criterion. If permanence is taken as the ultimate criterion for whether or not a thing “is”, then the objects of possible desire as they are defined by sensuous appetites are ephemeral, and have a degree of being and goodness only to the degree that they participate in their non-ephemeral component, the essence. Human rights may be formulated to regulate rationality and behavior on an orientation of sensuously given objects to their essences.

Ziel der Ueberlegung ist es, zu zeigen, dass Gott das schlechthin Gute ist und dass von ihm das "Sein selbst" aller Dinge ausgeht (ipsum esse omnium rerum ex esfluxit quod est primum bonum). Diese Er kenntnis stützt sich darauf, dass in jedem Geschöpf zu unterscheiden
ist zwischen dem konkreten Ding (id quod est) und seinem Wesen (esse). Das "Sein" eines Dings ist sein Bestimmtheit, also sein Wesen. Am Einzelding mischen sich verschiedene Bestimmtheiten; die Bestimmtheit selbst ist rein, unvermischt. Das Einzelding hat an Bestimmtheiten teil; die Bestimmtheit selbst hat an nichts teil. Dafuer kann Boethius auch sagen: Das, was ist (das Einzelding), hat am Sein teil; das Sein selbst hat an nichts teil. In jedem Einzelding ist es die "Form", die Wesensgestalt, die ihm Bestimmtheit gibt, durch die es am Sein teilhat. Die Materie ist das Moment in jedem Dinge, durch das sich die Bestimmungen unklar ueberlagern. Sie bewirkt, dass Zufaeliges vorkommt. Sie hindert das Ding, mit seiner Wesensform identisch zu sein.\(^{14}\)

"Ens et bonum convertuntur" remains meaningful by the qualification that a thing is good in so far as it is.\(^{15}\) A distinction is then made between a thing existing in the sense that it is encountered or sensually experienced and a thing existing in so far as it has being.\(^{16}\) When it is said that whatever is, is good, a "thing that is" cannot be interpreted to mean "thing which is sensually encountered".

And if the posterior and prior Entities are severed from each other, there will be no knowledge of the former, and the latter will not be Beings. (By "severed" I mean, if the Being of good does not belong to the good-itself, and "being good" does not belong to it). For there is knowledge of each thing only when we know its what-Is-Being. And the case is the same for other things as for the good; so that if the Being of good is not a good, neither is that of Being a Being, nor that of one a unit.\(^{17}\).

A thing that is said to exist means a thing which exemplifies some essence; a thing "is" only in the Aristotelian sense that it is an instance of some universal.

The form alone defines the thing, without being dependent on any-
thing else in the thing. The form, because of this primacy, expresses all
the Being in the singular thing, and expresses it as knowable and defi-
nite. The definition of the Form, therefore, expresses what the singular
thing is. Since this form is seen to be the same in all the singulars,
the definition is universal.\(^{(18)}\)

A thing, per hypothesis, which is sensually encountered, but does not instan-
tiate any universal, must be said not to exist.

A “part” may be a part either of the form (by the form I mean the
what-Is-Being), or the composite of the form and matter, or of the
matter itself. But only the parts of the form are parts of the formula,
and the formula is of the universal; for the Being of a circle is the
same as the circle, and the being of a soul is the same as the soul. But
when we come to the composite thing, e.g. this circle, i.e. one of the
singular circles, whether sensible or intelligible (I mean by intelligible
circles the mathematical, and by sensible circles those of bronze and
wood), -of these there is no definition, but they are known with the
aid of intuition or of sensation; and when they pass out of this actual
cognition, it is not clear whether they are or are not. But they are
always expressed and known by the universal formula. The matter of
itself is unknowable.\(^{(19)}\)

However, this involves a new conceptual defect. If it can be said that a
thing does not exist unless it exemplifies some universal, then the formulation
“whatever is, is good” becomes circular. If all things which are sensually en-
countered but which do not instantiate some norm are not considered to exist,
then the formula “whatever is, is good” automatically excludes any instance
that would function to falsify the formulation. But if the formulation is a stip-
ulated analytic definition which cannot be falsified by a counter example, then
the formulation is effectively meaningless. In order to sustain the meaningful-
ness of the formulation, there must be specific criteria for determining when
a given thing may be said to “exist” in the appropriate sense, and a demon-
stration must be possible for the conditions of that criterion. The conditions of the criterion must allow the logical possibility that a thing which exists is not good. Without such a demonstration of the conditions of the criterion, the formulation may be necessarily true, but also completely uninformative.

On the analogy that all desire is directed at some end, and relative to that desire the end is therefore something good, all natural entities have certain proclivities to develop into an end-point specified by their potentialities. Even physical entities may be spoken of as having a good towards which they are naturally oriented, and natural things exist to the degree that they actualize their potentialities and become the end-state towards which they are directed.

Intantum est autem perfectum unumquodque, inquantum est actu;
unde manifestum est quod intentum est aliquid bonum, inquantum est ens\(^{(20)}\)

Since the essential qualities of a thing are what give it being, in that it cannot exist as that thing unless the essential traits of that thing qua that thing are actualized, a natural thing has being to the degree that it is “good”, that is, actualizes its potentialities.\(^{(21)}\)

The Platonic “Idea of the Good” implies that every sensuously given thing may be judged for its degree of goodness according to how closely it approximates the realization of its specific form. Without such an idea of intrinsic, objective goodness the evaluations of good or bad could have only a purely subjective dimension according to the person’s use for a thing. The idea of the existence of “the moral good” which is not synonymous with serving the appetites or needs of some individual, implies that man has a degree of metaphysical freedom.

“omnis natura in quantum natura est, bona est.”\(^{(22)}\)

The moral freedom of man is ontologically preserved by virtue of the space between a thing as it is and its essential form; a moral mission is maintained on the balance that all things are good, but never perfectly good.
"Bonum est quod omnia appetunt"\(^{(23)}\)

The "bonum est quod omnes appetunt" is originally based on a teleological conception of nature which posits that all being is good and all goodness is being. Aristotle posits that all desire is directed towards goodness, leaving aside whether the goodness perceived is correctly perceived or not.

Every art and every inquiry, and similarly every action and choice, is thought to aim at some good; and for this reason the good has rightly been declared to be that at which all things aim. But a certain difference is found among ends; some are activities, others are products apart from the activities that produce them. Where there are ends apart from the actions, it is the nature of the products to be better than the activities.\(^{(24)}\)

Furthermore, if a thing is desired because it is a certain kind of thing, then it is desired to the degree that it is a perfection of that kind of thing; therefore, a thing is good to the degree that it realizes the instantiation of a form.\(^{(23)}\) Part of the essence of a thing is oriented towards distinguishing it from other things which also belong to that genus, so that that thing has being, qua that thing, to the degree that it has actualized the potential properties which distinguish it from other things in that genus and make it be properly as that thing. Therefore Aquinas posits that a thing is good to the degree that it has being.\(^{(26)}\)

v. Features of Human Right from Platonic-Christian Asceticism

The conceptual segregation between man's transcendent moral accountability and prudence is achieved by the teleological conception of the cosmos. All things, animate or inanimate, strive towards the good. For all natural things, the good is defined as the full actualization of itself according to its natural kind, so that every thing naturally avoids or corrects defects in its natural kind. A defect in itself as natural kind is equivalent to a deficiency in being. Therefore all things that strive towards goodness are striving towards being.
What is desired for its own sake is the complete actualization of that thing as its kind. Man may therefore strive for the good and correct defects in his being only by realizing his potentiality as a rational being. Preliminarily morality and prudence are not thereby distinguished, because rationality may be defined as acting in conformity with nature, so that a man who acts in a way that agrees with nature is rational. (27) The Aristotelian concept of virtue and vice is based on the conception that a person may develop habits which satisfy the conditions of nature or contradict the conditions of nature. Since egoistic appetites are naturally given, it initially appears that a man who strives from purely prudential principles to satisfy his appetites deviates neither from rationality nor goodness. However, the striving towards goodness cannot be merely acting in conformity with appetites; there must be a consciousness of what appetites lead to the ultimate good, and that requires a knowledge of the ultimate good itself. In the case of a rational being, the desire for what is desired for its own sake therefore includes a conception of its own nature and a concept of realizing all of one’s potentialities; that is, the object of ultimate desire necessarily includes the desirer’s concept of himself. Furthermore, since a rational being has in the concept of its ultimate goal a concept of itself, the imperative to act in accordance with nature becomes equivalent with the imperative to act in accordance with one’s own nature.

Et hoc modo distinguuntur specie habitus bonus et malus: nam habitus bonus dicitur qui disponit ad actum convenientem naturae agentis; habitus autem malus dicitur qui disponit ad actum non convenientem naturae. Sicut actus virtutum naturae humanae conveniunt, eo quod sunt secundum rationem: actus vero vitiorum, cum sint contra rationem, a natura humana discordant. (28)

Thus a theory of human rights based on transcendent reference presupposes essentialism, since the most specific moral criterion a person may use for moral judgments is the conception of his own nature. Whereas non-rational creatures have objects of desire, a rational being can act prudentially or morally to the exclusion of the other because the concept of oneself is a component in a
rational creature’s object of desire.

Sed contra est quod Augustinus dicit, in III De Libero Arbitrio: Quia vitium naturae adversatur, tantum additur malitiae vitiorum, quantum integritati naturarum minuitur. Sed diminutio integritatis naturae est nocumentum. Ergo tanto gravius est peccatum, quanto maius est nocumentum.\(^{(29)}\)

The logical possibility of mistaking the realization of one’s nature is created from the intentional relation a rational being has to his concept of himself as a component in his object of desire. Prudence and morality can separate into conflicting schemes of rationality because only morality is oriented on a non-egoistic notion of goodness. Evil is possible because one mistakenly conceives of a given object of desire as a means to the complete realization of one’s nature; the choice of objects of desire to this purpose can be mistaken. It is possible to misconceive one’s nature because objects of desire can be fully justified by immanent-prudential motives.

Dicit Augustinus, XIX de Civitate Dei, quod quidam ultimum hominis finem posuerunt in quatuor, scilicet in voluptate, in quiete, in primis naturae, et in virtute. Haec autem manifeste sunt plura. Ergo unus homo potest constituere ultimum finem suae volunatis in multis.\(^{(30)}\)

It must be carefully noted in this context that the essence “humanity” in virtue of which a human being may strive to realize goodness is non-sensuous. As a universal the essence humanity exists in many instances simultaneously, and is therefore not a material entity. In distinction from sensuously given appetites the representation of his nature motivates man to actualize a notion of goodness which is not narrowly defined by his immanently given sensuous appetites. Humans, because they are rational beings, are capable of perceiving that certain goals are “good” but not necessarily good for themselves. Humans can perceive objective goodness which is not defined from their natural appetites, and can therefore form desires for the “good” which is a non-natural
good; their rationality is capable of motivating them to have non-egoistic desires oriented on transcendent values.

Sic igitur dicendum est quod legem aeternam nullus potest cognoscere secundum quod in se ipsa est, nisi solum beati, qui Deum per essentiam vident. Sed omnis creatura rationalis ipsam cognoscit secundum aliquam eius irradiationem, vel maiorem vel minorem. Omnis enim cognitione veritatis est quaedam irradiation et participatio legis aeternae, quae est veritas incommutabilis, ut Augustinus dicit, in libro de Vera Religione. Veritatem autem omnes aliqualiter cognoscunt, ad minus quantum ad principia communia legis naturalis. In aliis vero quidam plus et quidam minus participant de cognitione veritatis; et secundum hoc etiam plus vel minus cognoscunt legem aeternam.\(^{31}\)

The ultimate goal of man's being is therefore non-sensuous in nature, and implies an ascetic dismissal of all sensuous benefits in the case that they conflict with the realization of human nature.

The extreme weakness of a transcendent theory of human rights based on essentialism is its intolerance. The transcendent account of human rights insulates morality from prudential reductive explanations by its categorical denial that human rights, whatever they may be, could be altered or nullified even when the observance of a right would be harmful and inhumane to the right holder himself. An immanent theory of rights is by contrast able to give a fully rational account for instances when a human right may have priority over prudential alternatives even when observing the right is more detrimental and it can justify the priority of rights by reduction to immanent values and benefits. An immanently based right may obtain this immunity and priority over possibilities for greater immediate benefit because of the logical distinctions between long-term and short-term benefit and between personal and communal benefit. Intolerance in the transcendent account of human rights does not justify the priority of rights over sensuous appetites in the same manner because the transcendent dispensation can maintain its conceptual integrity only under the condition that the moral value of a human right is never reducible
to immanent benefits. If the priority of a right over sensuous appetite is essentially justified only by the condition that the right-holder would benefit more in terms of sensuous appetite in the long term, then the deep distinction between moral and prudential rationality would collapse. Since in a transcendent theory human rights are founded upon essentialistic moral principles immune to utilitarian considerations, rights are impassive to historical conditions and empirical fluctuations of greater benefit.

An agnostic theory of human rights therefore does not succeed in replacing other essential features of transcendent human rights: their intransience and ahistoricity. Human rights can give a metaphysical foundation to positive law and conventional morality because of their reference to transcendent values. If positive law is ultimately founded in a transcendent moral order then the positive law of that society or historical period is relative and adjustable to an eternal transcendent standard. If there are no such things as transcendent values, that is, if all values are immanent, the positive law of a society or historical era is not relative, because it has no absolute standard for it to be relative to; it is without any ultimate moral justification. The human rights generated by such a positive legal system may indeed be rationally founded by immanent values, so long as long term benefits are also taken in consideration, but even the long-term immanent values are a factitious, unfounded part of that culture; nothing ultimately justifies why those immanent values should be acknowledged rather than others. Since neither the positive law nor the ultimate immanent values that it promotes have any ultimate metaphysical foundation, nothing furnishes stability for them nor inhibits change in what will be accounted as ultimately valuable.

A theory of human rights which can be rationally demonstrated on the basis of immanent values fails to provide stability for human rights, because the recognition of values to which human rights are attached are historical and unstable. A positive legal system cannot maintain consistency without an ascetic foundation. Sometimes a legal right will produce more detriment than benefit, since by definition a right as having priority is meant to protect claims exactly when other claims that it comes in conflict with may be more beneficial. A right which is revoked whenever the right is preponderantly inconvenient is
not a right at all; it does not satisfy its definition. A conflicting interest which nominally does not have a right may obtain greater benefit than the interest which nominally has the right would obtain. If the ultimate justification for instituting rights is immanent benefit, then the notion of positive legal right at least prima facie contradicts either its definition or its justification whenever it must be maintained in an instance where its observation is detrimental in light of the given immanent values. If right is justified by greatest sensuous benefit, then right enters into a paradoxical self-contradiction whenever it promotes the proper right-holder against a contender who would stand do produce more sensuous benefit from the suspension of the right-holder's priority. If by the definition of an agnostic human right every immanent value is factitious, no human right satisfies the criterion of stability.

If human rights are referred to transcendent values, they appear to become vacuous in so far as their fulfillment is not connected with any palpable immanent benefit. A transcendent theory of human rights can be shown to be valid only if the rights produce benefits which are not ultimately reducible to immanent values and which are nevertheless substantive.(32)

vi. The Evidential Ground of Rights in Teleology

The transcendent theory of human rights depends on whether it is at least logically possible to account for an ultimate distinction between morality and prudence. The notion of morality presupposes metaphysical freedom in a way that prudence does not. Moral agency is coherent only if it can have a causal role in behavior. Having a causal role in behavior in turn requires that moral agency have reasons for its causal act, for otherwise it would not be the so-called "moral agency" but its prior conditions, which would be causative. Therefore, if there is a deep distinction between a moral and a prudential order of things, it will depend on the nature of how a moral agent can have reasons.

It is needless to say that a person's acts can be morally good or bad only if he is ontologically free to choose from different possible actions, but no less necessary for a distinction between moral and prudential quality is the ontological freedom to choose from different reasons for selecting an action. If a
moral agent is unable to conceive any reason for his act, then the act lacks any moral quality because the act is brought about by pre-existing conditions rather than a presumptive personal agency. If, on the other hand, the moral agent does conceive a reason for his action, but is entirely incapable of conceiving alternative reasons that would induce a different act, then the agent just as equally lacks metaphysical freedom in spite of his conscious possession of a reason for his act, and the prior conditions of that reason rather than the reason itself would be causative. Even the capacity to conceive a plurality of reasons is not sufficient to underwrite freedom, however. The universe must have a metaphysical structure such that it accommodates to some reasons better than others. Even if an agent can conceive a plurality of reasons and freely act on the basis of one he has chosen, he is still not metaphysically free if any reason whatever can find nothing but an utterly inane connection to the world. A person all of whose reasons fail to authentically correspond with anything in the world is deprived of metaphysical freedom because of indeterminism. It is ultimately the ontological structure of the universe which establishes whether there can be such things as metaphysical freedom and moral order. Metaphysical freedom distinguishes itself from prudence only if the mind is capable of conceiving dichotomous series of reasons and has an ultimate capacity, first, to freely choose one of two exclusive reasons, and second, to discern that one of the two reasons is more authentic than the other.

The definition condition “bonum est quod omnes appetunt” can insulate a supreme moral principle of goodness from absorption into extraneous prudential or egoistic meanings, and sustain the thesis of man’s metaphysical freedom, only if the components of the definition condition can intend a standard of goodness which is not defined from sensuous appetite. If the parts of the definition are nominally related, such that whatever people happen to contingently desire is therefore per definitionem “the good”, then the definition of “good” is absorbed into a prudential scheme and morality is deprived of any independent, non-reducible ontological status. If all reasons for action semantically collapse into only one type of reason, then there cannot be moral intelligence because there is no ultimate freedom to choose between reasons and no meaning in attributing a moral quality to a reason or an action. If there is only one rational
reason for an action, then any deviation from standard behavior could result
only from insufficient logical attention to the relations of the circumstances,
but not a metaphysical freedom from the sensuous appetites which form the
prior condition of that reason.\textsuperscript{(33)}

The transcendent definition that "the good" is the final object of man's desire
can retain a semantically coherent moral quality only under the condition that
"the good" that people desire may be something different from the good that
people think they desire; regarding ultimate values people must be capable of
being mistaken about what they believe they desire.\textsuperscript{(34)} The logical coherence of
moral discourse entails that the mind is metaphysically free from determination
either from the consideration of immanent or transcendent reasons. However,
if there is no final good, there cannot be moral freedom either. If all conflicting
values are all indifferently of the same quality, there can be no rationality
in preferring one value to another, and a metaphysical freedom without any
final power of rationality would be as morally worthless as determinism. If two
ultimate moral values contradict each other, and there is no final ground to
discern that one value is prior to another, then the conflict of moral values
would not be illusory, but the notion of morality itself would be illusory. The
transcendent concept of moral values remains coherent only on the condition
that a final good can reduce all conflicts of moral value to illusion and determine
that one reason is uniquely correct when several reasons are in conflict. The
correct reason would have transcendent reference while the conflicting reasons
would be specious or immanent. The concept of a final good makes it at least
logically plausible that one can replace specious with authentic moral reasons
and reveal that rights which appear to be in conflict are not so in reality.\textsuperscript{(35)}

The identification of Being and Goodness forms the basis for the real exis-
tence of the final good. A thing may have a specific value for a person even
if he misconceives its value under the condition that it is logically possible to
consider whether a fundamental concept of a value is right or wrong. Metaphys-
ical freedom is secured if it is secured only if one has the logical capacity for
conceiving moral reasons for action. If the good has a real existence which may
be intellectually apprehended, it is meaningful to judge whether a fundamental
moral concept is misconceived, and hence choose a reason for action.
The concept of participation ultimately guarantees metaphysical moral freedom and the objectivity of the good. Regarding metaphysical freedom, attention is not focused on whether man can act spontaneously or arbitrarily, but whether some feature in the universe can furnish him with reasons. The identity of Being and Goodness implies not only that all things are to some degree good, but that the goodness of all things ultimately derives from one source, the final good. Things are good, and therefore existent, to the degree that they approximate their essences, but all essences exist by their orientation to the same final good. Man’s metaphysical freedom is thereby secured because the orientation of all things to the good provides reasons on an objective scale of values that is distinct from the immanent scale of his egoistic and utilitarian appetites. The identity of Being and Goodness is the essential foundation of the ultimate dichotomy between a moral and prudential order. Being must be conceived as “good” because without the assumption of a cosmic orientation to a final good, it would be nonsensical to believe that one moral scheme is superior to another.

So wie aus der Eins jede weitere Zahl hervorgeht und wie der Mittelpunkt alle Kreise aus sich entlässt, so entlässt das ueberseiende Gott auch “Wesen” oder “das Sein selbst”; dies bedeutet nach Dionysius: Gott ist die Fuelle der Ideen; er begruedet sie, indem er sie ursprünglich als seiend setzt. Genauer: Das erste Geschenk der Gutheit ist das Hervorbringen des Seins.\(36\)

From the ontological point of view it may be necessary for transcendent values to have real existence if the moral concept of “good” is to be meaningful, but the idea of a transcendent good may nevertheless be meaningless because of a contradiction internal to the epistemic conditions of man’s relation to “the good”.\(37\) Reason does not have the power to morally explain the supreme object of moral desire because the good which constitutes the object of desire is metaphysically prior to reason.\(38\) The transcendence of value makes moral discourse possible because it makes moral freedom ontologically possible, but in so far as transcendence of value renders “the good” unintelligible, moral
discourse becomes epistemically incoherent because there is no rational criterion for making the proper choice of immanent and transcendent reasons in an instance of moral judgement.

A transcendent theory of human rights founders on the need to account for how it is possible to say of the final good that it is good. If there is an ultimate transcendent principle of "goodness" which justifies why all derivative instances are good, the justification for the goodness of the several instances is incomplete because the principle of their justification cannot be demonstrated. It is logically impossible to explain why "the good in itself" is good, and why some other ultimate principle is not instead "good in itself" in the sense of implying that quite different derivative instances would be "good". A demonstration that the "good in itself" is good would entail reference to some substantiating proposition, and the very existence of a probative proposition would imply that the final good is not good in itself.

As a primitive term, the "good" cannot have a real definition. "Quod omnes appetunt" characterizes whatever would be a correct definition of bonum, but must substitute for that definition because no real equivalent for "bonum" can be conceived. Any description of "the good" cannot bear an implicative relation to "the good" in the sense that "the good" can be inferred modus tollens to be false if its description is false; any such logical relationship to a primitive concept like "the good" involves circular reasoning. To judge that "the good" is good by giving reasons, the reasons themselves have to be non-derivative from the concept of "the good", for otherwise the argument would be circular. If, on the other hand, one uses non-derivative reasons to make a valuation of the "ultimate good", and judges by this reasoning that what the ultimate concept of "the good" implies is immoral, then it is incoherent to say in the first place that "the good" is the highest good, because one is implicitly assuming that the premises of one's argument are from a more fundamental moral source. The possibility of moral discourse entails that the mind can be mistaken in what it believes to be good. The "good" must therefore have an objective existence in order that the mind's belief about what is good may stand in correspondence or non-correspondence with goodness. If there were a definition for "the good" it would therefore have to be a real definition, but as a primitive notion "the
good” is indefinable because any element used to justify goodness would borrow its meaning from the principle it attempts to justify.

If a knowledge of transcendent moral values cannot be demonstrated because the relevant premises would presuppose the truth of what they are intended to demonstrate, the truth values for concepts of ultimate moral values must rest on a non-deductive correspondence with transcendent moral value-entities. An ultimate moral concept would have an extra-linguistic correspondence to the transcendent moral value, and if it did not correspond, the concept would be false.\(^{(39)}\) Assuming that intellectual intuition were the only non-linguistic access to transcendent moral values, the inability to have intellectual intuition would negate the existence of its object, the transcendent moral values.

The thesis that “goodness” is not deducible implies that the mind can never know when it is correctly oriented toward the ultimate good. Reason may have the power to adapt itself to whatever is intuitively given as good and function to fabricate a justification for the concept of the good, but such a justification is never the motivation for adopting that concept of the good or for morally evaluating instances according to it. In so far as intuition does not depend on linguistic forms, no deductive form of argumentation, essentially dependent on linguistic forms, can draw an intuition into logical relations such as implication or contradiction. Reason may then devise the practical means for attaining the object of desire as positively valued by the transcendent good, but has no power to choose or criticize the good. All rational accounts of “the good” follow only as a consequence of the prepossession of the mind to orient itself on “the good”, but can have no causal role whatever in the mind’s assent to “the good”.\(^{(40)}\)

The voluntaristic account asserts the reality of objective value, but denies that there can be any rational intelligibility or justification to value, since all reasonings to account for value impotently ensue as rationalizations for value-positions which are predetermined. The agnostic theory is similar because it also denies the possibility for rational justification, but on account of the quite different premise that no such thing as a real objective value-entity exists. Voluntarism is radically different from agnosticism because it denies that goodness is whatever rationality appoints it to be; voluntarism preserves the transcendent objectivity of “goodness” and thereby sustains the possibility of morality.
On the other hand, since it denies any ability to intellectually grasp what goodness is, it makes morality incoherent because it makes the mind’s uncomprehending choice of a reason irrelevant to the moral value of the act.

Let us assume that the intellectual intuition of the transcendent good is immune to rational critique. The transcendence of “good” implies that when rationality can give a sound account for why “the good” is good, it is nevertheless not for these reasons that rights and obligations are founded on “the good”; when rationality produces sound reasons for denying the validity of “the good”, then such reasons can have no force for abandoning the idea of the good. Rationality is ultimately unable to test whether the conception of the good is correct. Fideism and authoritarianism therefore naturally characterize a transcendent conception of “the good”.

If What God commands is not right, then the fact of his commanding it is no moral reason for obedience, though it may in that case be dangerous to disobey. And if what God commands is right, even so it is not God’s commanding it that makes it right; on the contrary, God as a moral being would command only what was right apart from his commanding it. So God has no essential place in the foundations of morals.

Even assuming that the existence of transcendent values is ontologically secured, transcendent value would fail as a ground of rights if the epistemological foundation for transcendent values is inadequate. A completed intellectualistic account of transcendent value is self-defeating because any conclusive reason that proved the goodness of “good” would amount to substituting a real definition with a nominal definition of “good”. A nominal definition of “good” abolishes the ontological autonomy of morality, rendering it a disguised type of prudential reasoning. It becomes impossible to be “immoral” in its most primitive semantic level, because “good” will be stipulated to be whatever one wants it to be. A real definition of “goodness” is necessary in order to render it semantically possible to speak of being “immoral”. If however “the good” is utterly unintelligible, moral discourse also then becomes incoherent because it
is then impossible to choose or demonstrate any attribution at all to "goodness" or to judge in any concrete instance which reason for action is moral or immoral.

The ultimate crisis in the theory of transcendent value concerns the foundation for a moral imperative in a concrete instance where the consequent action would be manifestly destructive in every way except its transcendent dimension. In Scholastic terminology one may question whether man is morally obligated to obey God if God should command evil.\(^{(45)}\) The Stoic and Thomistic stance that nature or God prescribes only what is naturally good for man confuses the issue because it forms a basis for the theory that a man's interest is the first basis for right to something.\(^{(46)}\) If ultimate moral values are real and transcendent, then it would follow that man may be subject to rigorous moral laws even in instances where they are highly destructive according to any humane standards. If however it is possible to abridge a moral law when it is too rigorous, then, in scholastic terms, even God is subject to a moral law and it would be morally wrong to obey God if He commanded evil.\(^{(47)}\) In this case there could be no such thing as absolute moral value and the role of the mind would consist in positing value rather than discovering value.

By definition, there are many reasons of immanent value that would make it irrational to pursue an object dictated by a transcendent value; what is dictated by morality or a human right is often detrimental in regard to any imaginable immanent benefit. If the reason that the mind has for conforming to a transcendent value is that the mind can produce adequate reasons for adopting the value, then the goodness of the "good" is not transcendent. On the other hand, the mind would not have a rational ground to orient itself to the transcendent value if reasoning indicated that it was some other goal other than that indicated by the transcendent value which was truly good. What presumably requires the choice of a transcendent reason is its derivation from the transcendent "good". However, in so far as "the good" is ultimately unintelligible, no final justification can be given for choosing a reason which derives from a transcendent rather than an immanent value.

A transcendent theory of value can avoid developing into voluntarism only if the concept of "the good" may be conceived to be at least partially intelligible.
Transcendent values must therefore be conceived to have some real presence in the empirical world so that they may be at least partially capable of attribution to "the good" through rational argumentation. The Aristotelian conception of natural teleology provides a cognitive coherence for a transcendent theory of rights because it can replace a purported non-sensuous extralinguistic intuition of forms with a partially sensuous apprehension of transcendent values in nature. If transcendent values are somehow incorporated in nature, values become partially rational and arguable because they are immanently demonstrable. The teleological interpretation of nature sustains the coherency of moral discourse because it implies that things are invested with intrinsic value. There are things that have value for man not because he decides to invest them with value, and things have the same absolute value for man even when he does not recognize their value. Thus the possibility of metaphysical freedom to choose moral evaluations according to immanent or transcendent criteria is conceptually established. Only transcendent goals are intrinsically good. Consequently teleological goals are able to provide a foundation for defining rights and obligations because they ultimately define what a human desires. The transcendent definition of what a human desires is not contingent on what a person believes he desires.

The epistemological foundation of transcendent value in teleology posits that "the good" is ontologically real and somehow embedded in the physical universe, and that human rationality is a priori equipped to orient itself to the "good" as its ultimate moral value analogously as it can orient itself to understand the physical universe on the basis of an innate knowledge of logic. If all of nature can be conceived as several processes which have a final completion, then transcendent value as a foundation for human right can be discerned in the completion of natural process.

Thus something is infinite if, taking it quantity by quantity, we can always take something from outside. On the other hand, what has nothing outside it is complete and whole. For thus we define the whole-that from which nothing is wanting. What is true of each particular is true of the whole properly speaking- the whole is that of which nothing
is outside. On the other hand that from which something is absent and outside, however small that may be, is not “all”. Whole and complete are either quite identical or closely akin. Nothing is complete which has no end and the end is a limit.\(^{(48)}\)

The apparently heterogeneous ideas of physical existence and value, or being and goodness, can be conceived as ultimately identical if all natural events move towards a completion. Moral norms can be conceived to be embedded in nature because natural change can be conceived to be an autonomous process towards an end goal. The end goal, in the physical realm of existence, is therefore the “good” of the thing, and constitutes its transcendent value.

The non-tautologous meaning of “good” can be sustained because of a heteronomy of values. Whereas some values are transcendent in that they represent the completion of a goal for a type of natural entity, such transcendent values may come in conflict with immanent values, given from nature, which do not lead towards the completion of a process for a thing of that type.\(^{(49)}\) Since man has a natural existence, he also has a telos, or end goal, and his orientation towards this natural telos constitutes the moral norms for human beings.\(^{(50)}\) To understand a natural object is not to understand its causal mechanisms, but to understand the final goal that it should move towards; analogously, to understand what a human being’s moral qualifications, such as rights and duties, are, it is necessary to understand the goal in which a human’s development is fulfilled.\(^{(51)}\)

A deep distinction between moral and prudential reasoning, and hence the integrity of moral reasoning, entails that the world have a dichotomous ontological structure of appearance and reality, because one reason cannot have an objective rational priority over others unless it has an exceptional way of relating to the world. If all natural episodes were ultimately homogeneous, then all reasons for action would indifferently relate to the world in the same way, and the metaphysical capacity to select a reason would be vacuous and indeterministic. The validity of transcendent moral value entails that something in the composition of the world can isolate a preeminent reason. The partial perceptibility of transcendent values in a natural teleology provides a rationally
apprehensible ground for distinguishing the dual orders of morally positive reasons and morally void reasons for action. Any aspect of immanent nature which is sensuously present but which is not part of a progression towards a telos might nevertheless be misapprehended to have such a characteristic; such an aspect of nature would therefore constitute "appearance".

A conflict of ultimate values might be resolved by demonstrating which value has priority in the teleological process of nature. However, the teleological foundation for moral discourse may be incoherent. In the sense that teleological orientation is innate, a human being has an authentic, non-spurious desire because there exists a transcendent "good" which orients him to adopt that desire. If, however, it is impossible to give a cogent account for what can be meant by the existence of a transcendent entity, then desire or the preference for transcendent values cannot be explained teleologically in terms of "the good". In the absence of transcendent values, no event in nature can be merely spurious or apparent because there cannot be a concept of a "completed process" which might be used as an ideal standard to evaluate an isolated natural event. The intellectual intuition of transcendent forms makes moral autonomy possible; it is misconceived to suppose that an independent natural teleology, without reference to transcendent forms, could support moral discourse.

Without the supposition of transcendent values, immanent teleology in nature collapses. The conception that nature is composed of patterns which satisfy a value in some terminal point presupposes that the completion of a natural pattern is more valuable than the incompletion of a natural pattern. Without the concept of a transcendent Form which can be used for a comparative standard, no state of nature can be conceived as "complete" or "incomplete"; the concept of patterns in nature becomes merely the result of a conventional belief without any ultimate ontological foundation. Whatever happens in nature is worthless, in the sense that no natural event any longer receives a value by virtue of its position with respect to completion of some natural pattern.

Nature without participation in a transcendent ontology makes the notion of real value a conceptual illusion. No ontological explanation could be given for the existence of evil or painful events, although a purely phenomenalistic explanation could be given for them. Likewise, it could be phenomenalistic-
cally explained why a given culture has evolved a specific concept of a natural pattern, but as a concept created from convention rather than transcendent knowledge such a concept of nature could not function to indicate ultimate values. The teleological knowledge of nature, although incorporating an immanent component, therefore does not supersede the insurmountable problem of the intellectualistic account of transcendent forms; it postpones the problem. Knowledge of “the good” is a priori; it cannot be explained or refuted by immanent experience. Teleology sets the basic rules for what should be done in immanent experience, but itself presupposes transcendent principles; it does not provide a rational basis for critique of transcendent principles. The teleological knowledge of nature fails to overcome the same dilemma as intellectual intuition; the mind is rational in so far as it can know what the transcendent good is, but it is incapable of knowing why it is good. The teleological criteria of universality and ahistoricity for human right can be found in nature, but do not derive from nature.

Since the notion of natural teleology is logically posterior to the notion of transcendence, the objective reality of transcendent value cannot be demonstrated by reference to teleological patterns in nature. Conversely, if transcendent values are logically incoherent, it consequently becomes logically incoherent to interpret nature teleologically. Under the premise that transcendent values are ultimately unintelligible, it appears that the only way to salvage moral discourse is to introduce a set of moral standards which are intelligible through purely immanent perspectives. Moral discourse entails having reasons for moral choice, and it is incoherent to give as a reason for one’s choice a ground which is unintelligible. The agnostic adherence to immanent values thus achieves a moral superiority over a scheme of transcendent values because it restricts moral obligation to actions which are intelligibly good in terms of immanent values.

vii. The Evidential Ground of Rights in Immanent Values

When the concept of rationality is disengaged from moral intuition, then transcendent values can be criticized on the grounds of rationality, but then
solely on the basis of immanent values and benefits. An agnostic foundation of human rights thus achieves a complete intelligibility for moral evaluation by raising the ontological status of the sensory, immanent world and repudiating the ontological status of the transcendent. The transcendent good may be rationally explained through a phenomenological account of the concept's genesis, but such an account which illuminates the pathology of forming a conceptual illusion would of course discount the objective reality of transcendent or teleological causality. The concept of "the good" may for example be explained in terms of desire. Given the contingent fact that a person is causally determined to feel a certain desire, he is ipso facto causally determined to value the object of that desire as "good".\(^{(52)}\) The phenomenological account of the genesis of moral concepts does not refute the theory of transcendent moral entities, but it vitiates the theory because it gives an alternative account for the subjective conception of transcendent entities without the need for inferring to their objective existence. It furthermore accounts for a feature that the theory of the real existence of transcendent entities cannot account for: man's inability to disambiguate his intuitive relation to the final good.

The adoption of a belief in transcendent values appears inhumane because it implies that a person is not permitted to spontaneously choose what he would consider to be valuable and good for himself. An agnostic resolve to disqualify any transcendent values, in so far as they are as such not ultimately accountable in terms of immanent values and benefits, is intended to eliminate human suffering incurred for the sake of what are ultimately vacuous ideals. In so doing an agnostic conception of rights eliminates the contrast immanent-transcendent, and thereby is at risk of losing an essential condition for the meaningfulness of any moral discourse. Moral valuation, as required by a concept of human rights, presupposes that there is available a set of standards which can be appealed to in order to make a moral valuation of something.

viii. The Empirical Derivation of Value from Nature

The obscurity of the final knowledge of transcendent forms suggests that transcendent forms do not exist, and, a fortiori, that there is no intellectual
intuition. As a consequence the concept of mind forfeits one of its presumed powers, the innate a priori knowledge of values, and the concept of rationality is diminished to the ability to instrumentally implement the conditions for attaining those values. However, it is conceptually incoherent to suppose that the mind, liberated from reference to transcendent forms and unaided by any other sources, is therefore capable of creating its own values. Even if the mind is "free" to posit values, it still must have reasons for positing certain values rather than others, for otherwise positing values would not be different from a purely subject-less mind-independent accidental occurrence. So long as the concept of morality is not abandoned, the notion that the mind posits values instead of receiving them must comprise a concept of moral freedom.

The condition of moral freedom entails that the mind must after all have some power to evaluate goals, rather than merely the power to instrumentally arrange for them, and it entails that some entity must independently exist in complementarity to this power of the mind. To satisfy the condition of moral freedom reference to reasons is necessary. But if the mind has reasons to refer to for positing values, then the criterion for those reasons must be ontologically independent of the mind which uses it. If intellectual intuition is incapable of apprehending ultimate values simply because there is no complementary transcendent Form, then empirical Nature must exist in some complementary form as a source for rationality to posit moral truths. The repudiation of transcendent principles necessitates reliance on sense data as an ultimate object of knowledge.

Human rights must assume a radically different meaning if they are derived from nature rather than from transcendent values. Whereas an intellectualistic theory of transcendent values has metaphysical resources to reject sensory objects as inadequate for real knowledge, voluntaristic and agnostic theories must elevate the ontological value of matter and sensory experience simply in order to have something to replace the old metaphysical objects of knowledge with some other ultimate ground of reference. Moral discourse is sustained in the theory of transcendent Forms because ultimately the appearance-reality dichotomy as required by moral consciousness is embodied in the contrast between immanent and transcendent. The possibility of moral discourse without
intellectual reference to transcendent entities can be sustained only if a new appearance-reality dichotomy can be discerned within immanent nature, for otherwise the mind would have no reference-object to use as a criterion for creating values. The derivation of value judgements from sensuous experience rather than from intellectual reference to transcendent Forms incurs two conditions. It requires an account of how values can implicitly reside in the sensory world, and requires the existence of a real moral distinction between types of events within the immanent world.

In respect to human rights nature appears to be an intermediate recourse between a transcendent ontology and decisionism. A purely decisionistic conception of goodness entails that whatever man posits to be good is good, because there is no external criterion to decide that a thing which is supposed good is actually bad. The decisionistic stance is actually a repudiation of the concept of morality, because, if a moral value is established only by fiat, it destroys the axiomatic condition of morality, that a person must be capable of being mistaken about what is moral. By positing that a person can make anything whatever morally good just by personal fiat, decisionism implies nihilism. Some reference is needed in order to provide reasons for a moral decision.

Nature might be thought to produce a scheme of rights that would be more humane than that of a transcendent ontology, because its values are immanent, but evade the nihilism implicit in decisionism because it should produce a stable object of reference for justifying moral judgments. However, the assumption that nature can produce an object of reference analogous to transcendent Forms may be nothing more than a vestigial illusion carried over from the refuted proposition that a purely naturalistic world-view can sustain an immanent teleology. Teleology is incoherent without the supposition of transcendent forms. If, as a notion of morality requires, man’s thought of the whatness of goodness is contingently related to what goodness is, there must be some ground for goodness which is independent of what man happens to think goodness is.\(^{54}\)

The metaphysical formula that whatever is, is good is supposed to be universally true and necessary. Consequently it excludes a priori the possibility that something “bad” could come into existence and falsify the proposition.
Anything which is "bad" would fail to satisfy the criterion for "is", because the "existence" of a thing is determined not by its sensuous givenness but by its possession of a universal form. The identity of being and goodness, and hence, the inference that all things that are, are good, is therefore transcendent because no singular, empirically given instance can qualify to contradict the formulation. Under the terms of a purely metaphysical interpretation the dictum "ens et bonum convertuntur" becomes meaningless because the conditions of its truth preclude the possibility of falsity. Since the statement refers to what is transcendent, it cannot be falsified, but by the same token the assertion that a thing is "good" conveys nothing about it because there is no counterfactual possibility. Since no counterfactual possibility is given, nothing immanently given could be logically relevant for asserting the truth of the proposition, and so it becomes an analytic, stipulated definition.

Es findet sich aber in der Transzendentalphilosophie der Alten noch ein Hauptstück vor, welches reine Verstandesbegriffe enthält, die, ob sie nicht unter die Kategorien gezählt werden, dennoch, nach ihnen, als Begriffe a priori von Gegenständen gelten sollen, in welchem Falle sie aber die Zahl der Kategorien vermehren wuerden, welches nicht sein kann. Diese traegt der unter den Scholastikern so berufene Satz vor: quodlibet ens est unum, verum, bonum. Ob nun zwar der Gebrauch dieses Prinzips in Absicht auf die Folgerungen (die lauter tautologische Saetze gaben) sehr kuemmerlich ausfiel, so dass man es auch in neueren Zeiten beinahe nur ehrenhalber in der Metaphysik aufzustellen hat, so leer er auch zu sein scheint, immer eine Untersuchung seines Ursprungs, und berechtigt zur Vermutung, dass er in irgend einer Verstandesregel seinen Grund habe, der nur, wie es oft geschickt, falsch gedolmetscht worden.\(^{55}\)

The formulation of the identity of being and goodness entails an a priori position of value for reality, but seems to be a radically defective value judgement because it excludes a priori any possibility for falsifying the proposition. If the thesis of the identity of being and goodness is to be coherent, the criteria for
saying that a thing “is” and that it is “good” must be mutually non-implicative. Such a reconfiguration would make the formulation meaningful and save it from vacuity, because it would provide for a possibility for falsifying it.

Nature might be used to replace the theory of transcendent entities and give a concrete meaning to “ens et bonum convertuntur”. However, it would then be equally necessary to make a distinction within events that are “natural” just as it was necessary to make a distinction in the former situation between different types of things that “are”. The former ability to make broad distinctions between two different things that “are” was based on essentialism; things that are merely sensually encountered, but which do not exemplify some universal, may be said to “not exist”, while sensually existing things which exemplify a certain universal may be said to exist. In that context it was necessary to distinguish exactly what universals would count for determining that a thing truly existed.

When transcendent reference is abandoned, then the meaning of the “existence” of things becomes non-implicative in relation to saying that things are “good”, because with the eschewal of formal causality “is” cannot help but acquire the univocal meaning of “sensuously given”, and is no longer able to be equivocated with “possesses a universal form”. However, the term “good” may then become meaningless. If “good” is no longer meant to refer to a transcendent form which would be the criterion to distinguish good from bad, then “good” must acquire its meaning by reference to nature. If, however, “is” now has the univocal meaning of “sensuously given”, then all things which exist would be ipso facto natural. “Good” would therefore become meaningless through lost contrast. If “good” is whatever is natural, and whatever is sensuously given is “natural”, then the term “good” would be equally vacuous when it is interpreted to mean that whatever is natural is good. It would remain a logical impossibility for anything to be bad. Good can be meaningfully defined through natural reference only if there is a distinction within empirical nature which will designate some naturally given thing as good and other naturally given things as bad.

Nature may be expected to impede a purely nihilistic conception of virtue, but without a teleological order such a conceptual function becomes illusory.
The dispensability of natural teleology or, a fortiori, the dichotomy of immanent/transcendent, derives from the circumstance that values can have a non-illusory moral ontological status only if a distinction can be maintained between being and appearance. If an intelligible dichotomy between morally repugnant and salvific facts about the world could be maintained without reference to transcendent forms, then the reality of moral freedom would be possible; it appears initially however that nature per se, unmixed with transcendent reference, could not sustain the indiﬀerence in value between actual and possible and would consequently forfeit the component of metaphysical freedom essential to any notion of morality. Since events in nature contain things which are conventionally considered evil as well as things conventionally considered good, nature as the ultimate ground of morality would imply that conventional representations of good and evil are illusions which have no ontological foundation. Natural law cannot imply values, because without a theory of teleology natural law can depict only physicalistic patterns. If natural law is known by reason, then as an object of knowledge natural law suﬃces merely to achieve predictions of what natural events will occur, but not what value they have. If on the other hand nature provides a knowledge of values from intuition, then the intuition of values would be generically diﬀerent from sensory intuition, since sensory data do not contain a value component. But if the intuition of values in nature is achieved by a non-sensory intuition, then there is no reason for asserting that these values are a part of nature, or that this non-sensory intuition of values is anything diﬀerent from the Platonic conception it is intended to refute, the intellectual intuition of transcendent forms.\(^{(56)}\)

If whatever is not an artefact is ipso facto natural, the attribute “natural” per se, far from founding moral distinctions, would expunge every distinction of good and bad concerning things that occur naturally and imply a radically value-free ontology. The existence of a value implies that an unreal state of affairs sometimes has greater value than the actual state of affairs and should supplant it. Reference to nature per se and unmixed with transcendent reference would make the notion of value meaningless because actual existence in nature would justify every value and its contrary. Whatever has never existed in nature would be negatively valued because unnatural would then be equivalent
with unreal. However, values imply a moral choice between two possibilities, that is, two alternatives each of which sometimes exists in nature but which cannot coincide. Moral discourse entails giving reasons for value judgments which are indifferent to the distinction between real and unreal, although it excludes the possibility of giving reasons for things which are impossible. If nature as a moral foundation entails giving a positive valuation for all natural events which are real, then it fails to satisfy the disposition of good/bad to real/unreal and possible/impossible comprised in a notion of morality.

The possibility of metaphysical freedom to choose reasons entails the substitution of the immanent-transcendent dichotomy with a new dichotomy entirely within the immanent framework. Nature can be a foundation for moral values only if nature can be rehabilitated as an adequate criterion for goodness across real and unreal events. If nature can function as a criterion which is indifferent to the distinction of possible and actual, it can surmount conceptual incoherence by providing a ground to distinguish between good and evil actual events in nature. The dichotomy between what is “speciously natural” and what is “authentically natural” would be such a dichotomy between two sets of immanent motives. Such a distinction, if possible, would enable a person to proscribe certain natural events that would otherwise happen on the moral ground that they are unnatural.

However, the “authentically natural” and the “speciously natural” dichotomy cannot be underwritten by a theory of immanent teleology, because such an account would be circular. A naturalistic world view comprising the dichotomy within immanent nature becomes necessary because reference to anything transcendent has become incoherent. The concept of immanent teleology is however not an immanent concept; immanent teleology is incoherent without a concept of transcendent forms because of its requirement to conceptualize natural patterns as processes and identify some natural episode as the final goal of a process. It is question-begging to repudiate transcendent values in favor of immanent values and then distinguish authentic from specious natural events on the ground that only some events are correctly oriented to their natural purpose, for this smuggles in the tacit assumption that there is a natural teleological order. If, however, natural events cannot be dichotomized into specious
and authentic, the concept of a naturalistic morality cannot sustain the element of moral freedom. The original transcendent-immanent dichotomy cannot be replaced by a purely immanent dichotomy, and therefore a naturalistic notion of unconditional right and obligation must be abandoned.

ix. The Nominalistic Definition of Goodness

If a dichotomous order of rationality is a necessary condition for moral discourse, moral judgements must be generically separate and nondeducible from empirical judgements. Derivation of moral from empirical judgement would reinstate moral judgments with a means of demonstration, but ruin the condition of metaphysical freedom. The generic difference of moral and empirical judgement may however itself be an internal component of a transcendent conception of morality and prejudice any alternative conception to illogicality.

Platone, come sappiamo, negava invece alle sensazione e alla percezione sensibile valore di conoscenza, e riservava la qualifica di vera conoscenza alla dialettica e all’intelletto, capaci di cogliere il mondo delle Idee.\(^{(57)}\)

In the perspective of Platonic ontology the criterion of reality is changelessness. Empirical objects, because they are constantly in a state of change into something else, cannot be known, and must depend on something changeless for the partial degree of reality and knowability that remains to them. Only the non-empirical Ideas are real and knowable, because they do not change. This core of classical ontology necessitates the ultimate heterogeneity of moral and empirical judgements. Ultimate moral judgements which varied according to subjectivity or historical conditions would not qualify as genuine moral judgements. The position that the mind has a separate power to apprehend transcendent forms immunizes all *ultimate* moral judgments against mere relativity. If moral judgement is not ultimately a subsidiary ability deriving from a prior rationality that makes empirical judgments, then *ultimate* moral judgments will not vary according to empirical judgments and hence according to
variation in the empirical world. The immutability of the very ultimate moral judgments is secured if moral knowledge is an original component of rationality as such, for in this case moral knowledge would be primitive and independent. The position of transcendent moral knowledge is not for the same reason utterly estranged and irrelevant to the affairs of the world. Empirical judgments are relevant to moral judgment because they determine the applicability of a moral judgment to a concrete situation. Derivative moral judgments may be a function of variation in the empirical world. However, as moral judgments in themselves do not derive from empirical judgment, the absoluteness of moral values is not impugned.

The transcendent conception of human rights will appear to be morally inferior to an immanent conception because it is theoretically incapable of attributing rights to man as a particular individual; it limits the attribution of human rights to a person taken as a member of the species. Since the Platonic-Aristotelian world view regards particularistic empirical knowledge as a contradiction in terms, any rights that can be formulated must be limited to knowledge as the knowledge of universals. The conception that rights are universal and ahistorical derives from the preconception that authentic knowledge is essentialistic and universalistic. A transcendent formulation of rights must be limited to the conception of man as an essence. It cannot accommodate an individualistic conception of human rights because knowledge of man as an empirically given particular individual would be an instance of that contradiction in terms.

Any fully matured moral system tends to carry presuppositions about the meaning of "moral" that effectively preclude the logical possibility of any other theory of morality. It follows that no new moral theory can emulate the established one by doing better at carrying out the mission of morality as defined by the established theory. A new moral theory can emerge only at the cost of altering the very root meanings of "morality" itself, and, as it were, deliberately equivocating the word "morality" in order to abandon the former parameters of the word's meaning which it is preempted from satisfying. When the ontological status of the immanent world is raised, the premise that ultimate moral judgments are immune to empirical judgment must be discarded. The neces-
sity for discerning a dichotomy within immanent nature is inherited from the assumption that authentic moral judgments must be, ultimately, immune to empirical judgment. But such a dichotomy is impossible without the concept of immanent teleology, and since teleology without transcendence is incoherent, moral judgments cannot be immune to variation in empirical judgment. By the meaning of morality as presupposed by a transcendent ontology, therefore, it should be necessary to entirely abandon a moral interpretation of the world because moral judgments cannot have the element of immutability if there is no transcendent reference.

Once the ontological status of the immanent is raised, the empirical derivation of moral concepts destroys the immutability of ultimate moral values, the metaphysical freedom to choose reasons for one's action, and the dichotomous context of values. From the premises of a realist ontology of transcendent forms it would therefore be impossible to formulate a consistent moral theory because the three fundamental conditions are all unobtainable. The three conditions of immutability, freedom, and dichotomy are not prerequisite to formulating an immanent concept of morality under the condition that the objectivity of value is an illusion. Under the premise that a "final good" has no real existence, no ontological explanation is needed to account for the apparently contradictory fact that there are evil and painful events. Rejecting the major premise that value has objective reality, it is no longer necessary to bifurcate nature into a structure of appearance and reality in order to excuse the existence of evil in a supposedly good world. Whatever happens in nature, is worthless, has no value, simply because value itself is a conceptual illusion. All events in nature may be taken to be mere appearance, in the sense that a contrast is no longer needed with an authentic being in nature. In place of an ontological explanation of good and evil, an immanent theory of morality defends its position adequately simply by giving a phenomenalistic explanation for how such concepts as good and evil are developed, while at the same time implying that such concepts, though having an explanatory power of their own, have no ontological foundation.

If there is no real existence in transcendent forms, fundamental moral concepts which seem to refer to them nevertheless exist mentally. Only some
scheme of immanent, efficient causality remains to explain their mental existence. Only some scheme of immanent, efficient causality can explain the mental existence of concepts which have no real reference. Initially transcendent moral concepts appear to repulse phenomenalistic explanation and guarantee the real existence of the transcendent entities to which they refer, because the meanings of the most primitive moral concepts must be ontologically prior to causal explanation. Transcendent Forms may be said to have an existence more real than that of empirical objects because of the semantic feature that true and false things must be able to be said of a real existent. If it is not possible to say true and false things of empirical objects, because of their mutability, then transcendent forms have a more real existence because the true and false things that can be said of them are permanently so. At least in the case of the most primitive concepts, their features must be clearly known prior to the possibility of employing them for any causal explanation. Any concepts giving a causal explanation of the ascription of good or evil to an episode presuppose the understanding of good and evil. The concepts of good and evil in themselves cannot be causally accounted for without the presupposition that the causal episode combines two representations into an idea of evil or good. If however a concept is primitive, it cannot be causally explained because it is not a composition.

Such an argument for the transcendent reality of concepts prevails only under the condition that something cannot be a causal product if it is impossible to understand it as such. Thus, “evil” might be considered to be a primitive concept if it is impossible to give a causal explanation for the capacity to understand the meaning of such a concept. However, the ontological priority of a supposedly primitive concept such as evil is not entailed by failure to give a causal explanation for it, because causal relations can obtain without being conceptually recognized. The concept of “evil” may not be a primitive concept, although it may be impossible to give a causal account of it, because the causal relations which produce the notion of evil can operate without being conceptually recognized. The mere possession of a concept does not imply the existence of an object which correctly corresponds to it. The mind might be affected through empirical causality to form a concept to which nothing correctly
corresponds. There is no internal mark of a conceptual representation which indicates whether we possess it from causal affectation or from intellectual apprehension of its object.

A causal account may replace a transcendent account in explaining primitive moral concepts, but unlike a transcendent account it could not justify them. If concepts are nothing more than natural objects, i.e. as mental states modifications of natural objects, subject to physical causality, they could not convey any moral authority because they would not have their derivation from intellectual intuition. Primitive moral concepts might then be said to exist, but not to be true or false. Even primitive moral concepts, when explained as causal products within a natural framework, would turn out to be a sort of conceptual illusion, because the objects which their conceptual content purports to refer to would be seen to be nonexistent. Primitive moral concepts might be valued according to logical or empirical criteria such as their internal consistency, or how appropriately they organize the experience they are intended to categorize, but, paradoxically, primitive moral concepts could not be evaluated according to their moral value. Moral representations as contingent products of causal episodes would have no moral value because the elements of the causal scheme are morally neutral.

A successful demonstration of the empirical derivation of moral judgment compels abandonment of the assumption that any act or event has an intrinsic value. By intrinsic value it is meant that a certain thing has an objectively fixed real value for a person, and this value for him does not vary according whether the person is aware of its value for him or not. The dictum: “bonum est quod omnes appetunt”, without transcendent forms and without a quasi-naturalistic assumption of immanent teleology, would have to be interpreted in a purely nominalistic, decisionistic sense, to mean: a thing is good purely by the fact that it is desired. The fact of a person’s desiring something is definitionally equivalent with that thing’s being good. Rationality may be conceived to be capable of giving sufficient reasons for why the ultimate good is good, without incurring the logical inconsistency of proving its goodness with its derivative implications, only if this ability is interpreted to mean that the mind does not discover ultimate moral values in reality but rather invents them. This
would deprive "bonum" in "bonum est quod omnes appetunt" of all objective reference, because the formula could then be coherently interpreted only to mean that we will call with the name "good" whatever it is we happen to want. Nobody could be capable of being mistaken about "the good", if "good" is simply whatever a person spontaneously posits to be good. A thing's value is entirely relative to the contingent fact of a person's desiring it. Under the premise that the ability of a person to be mistaken about what is good is a necessary condition of moral discourse, the nominalistic interpretation of good completely breaks away from the classical conception of morality. Since without reference to a criterion of transcendent forms the definition of good becomes tautologous, the conceptual content of "good" cannot function to distinguish a person's desire as bad from a person's desire as good. There is no superordinate reason beyond the fact of someone's desiring something to designate a thing as good or bad. The judgment that a thing is good is indifferent to whether the person was empirically determined to feel the desire. It is enough that the desire is felt.

Eliminating reference to transcendent value saves the possibility of rights and obligations if transcendent reference would make these concepts incoherent, but, equivocally, the empirical derivation of moral judgments may prove that there is no such thing as morality. The tautological definition of "good" resulting from the empirical derivation of moral values implies that it is impossible for any individual to be mistaken about what is good or to desire anything other than what is good. But, since "good" has no independent definition, not all people desire the same thing when they desire the good, consequently every individual has an absolute right to what he desires, and every other individual has an unqualified right to what he desires, even when their rights are in direct contradiction. The denial of intrinsic and independent value to things makes it logically impossible to resolve any conflict of rights. Without intellectual intuition of transcendent Forms, it cannot be demonstrated that there is a hierarchy of values. If values do not have a transcendent hierarchical ordering, then there is no real harmony amongst values in contrast to the appearance of a conflict of values. The conflict of values can be demonstrated to be merely apparent only if there is only one unitary "good" from which all values derive and
have their goodness; then any intersection or conflict of values can be resolved according to priority by tracing the conflicting values back to the one good from which they both derive. The immediate conflict of rights is not a mere appearance if there is no ulterior reference by which hypothetically conflicting rights might be resolved. If there is no ground for resolving conflicts of rights, then the conflict of rights is real and ultimate.

Take any action allow'd to be vicious: Wilful murder, for instance. Examine it in all lights, and see if you can find that matter of fact, or real existence, which you call vice. In whichever way you take it, you find only certain passions, motives, volitions and thoughts. There is no other matter of fact in the case. The vice entirely escapes you, as long as you consider the object.\(^{(59)}\)

If conflicts of rights are therefore irresoluble, the idea of "right" is a conceptual illusion. Although claims might be organized according to priority and resolved according to a subspecies of prudential consideration, it becomes impossible to establish an objective morality.

Since reason alone can never produce any action, or give rise to volition, I infer, that the same faculty is as incapable of preventing volition, or of disputing the preference with any passion or emotion. This consequence is necessary. 'Tis impossible reason cou'd have the latter effect of preventing volition, but by giving an impulse in a contrary direction to our passion; and that impulse, had it operated alone, wou'd have been able to produce volition.... Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.\(^{(60)}\)

If the relativity of moral values cannot be discerned, doing any particular thing whatever can never be said to be better or worse than doing anything else.\(^{(61)}\) There cannot be a morality which is not illusory.

The interpretation that whatever a person wants is, ipso facto, necessarily
good, does not rule out meaningfulness for calling things good or bad nor the possibility of formulating an order of priorities. The nominalistic interpretation of "good" does necessarily rule out changing final goals on the ground that one is better than another, because it would be fatuous to judge that one is better or worse without having a criterion. Though rationality cannot choose goals, it still retains the instrumental role of devising the means for attaining the goal. Within this operation rationality may still distinguish acts and natural events as "good" or "evil" according to whether they are conducive to the final goal. However, the nominalistic conception of good provides only a purely phenomenalistic explanation for how such concepts are developed, and maintains that in final result such valuations are ontologically completely void. Since the end goal of desire is factitiously given, without any ontological foundation for why it should be an object of desire, and all isolated acts and events are merely instrumentally evaluated on their orientation to the object of desire, their values are as illusory as the value of the goal which assigns them that value. The phenomenalistic interpretation of moral concepts explains how moral values such as good and evil were causally developed, and even accounts for how moral representations may have real explanatory power in human behavior, but also demonstrates that moral representations lack ontological foundation and ultimate meaning.

x. The Moral Indifference of the Nominal Definition of Good

A change to an immanent conception of value may entail such a radical semantic alteration that not enough of the core meaning of "morality" remains to justifiably use the same word. Empirical derivation would not merely supplant reference to transcendent forms to substantiate moral concepts, but also eliminate transcendent reference in the origination of new moral representations. The formation of moral concepts would consist in acquiring all the factual descriptions relevant to one's interests and then determine which factual conditions would be most desirable. An ethical imperative can be derived simply by determining, in the light of the given factual conditions, what acts one would have to perform in order to bring about the factual conditions that
one would desire.\(^{(62)}\) The conflation of prudential and moral seems to preserve a foundation for moral values in the absence of transcendent reference because reference to empirical conditions gives a more clarified determination of priorities. Supposing that one of the essential missions of morality is to pacify people in violent conflict, the conversion of good to a nominal definition is justified if it can determine priorities better. On the other hand, the primacy of appetite resulting from the conflation of prudence and morality destroys so much of its core meaning that morality can signify nothing more than prudence in relation to others. If the original sense of morality hosted a deep distinction between appetitive and non sensual reasons, the word "moral" in its supersessive usage may designate as "moral" instances which would have been designated "immoral" by the previous usage of the word.

It may be impossible to discover any argument to evade the conflation of "moral" and "prudential" once transcendent reference has been eliminated. This is an embarrassment for Locke when he attempts to sustain an innate knowledge of moral principles within a framework which insists that all knowledge is derived from empirical sensation. After denying the possibility of intellectual intuition of transcendent forms, he cannot help but justify morality by reference to sensuous principles, although this in effect expunges exactly the distinction between morality and prudence that he wanted to achieve.

Good and evil... are nothing but pleasure or pain, or that which occasions or procures pleasure or pain to us. Morally good and evil, then, is only the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us from the will and power of the law maker.... This is the only true touchstone of moral rectitude; and by comparing them to this law, it is that men judge of the most considerable moral good or evil of their actions: that is, whether, as duties or sins, they are like to procure them happiness or misery from the hands of the ALMIGHTY.\(^{(63)}\)

Since there is no transcendent form which causes a moral concept to be constituted in one univocally correct way, there is no means to discover any necessary
connection between the components of a moral concept. We might find a genetic explanation for why different ideas of a moral concept were combined in a given way, and under what empirical conditions a moral concept might be caused to undergo new combinations of ideas, but this would in no way illuminate that a moral concept rightfully comprises a certain combination, or that a moral concept ought to undergo a new combination of ideas.

'Tis a common observation, that the mind has a great propensity to spread itself on external objects, and to conjoin with them any internal impressions, which they occasion, and which always make their appearance at the same time that these objects discover themselves to the senses... the same propensity is the reason, why we suppose necessity and power to lie in the objects we consider, not in our mind, that considers them; notwithstanding it is not possible for us to form the most distant idea of that quality, when it is not taken for the determination of the mind, to pass from the idea of an object to that of its usual attendant.\(^{64}\)

We might have certain interests, such as organization of society or adaptation to an environment, which impel us to contrive one certain moral concept rather than another, but since there is no transcendent form which can distinguish an authentic terminal desire from a false one, all moral concepts are ultimately arbitrary.

By eliminating the supersensual consideration in favor of the appetitive consideration it is possible to clearly deduce and verify what one "ought" to do, but since this new interpretation of "ought" can no longer have a terminal reference beyond the contingent fact of one's wanting something, the "ought" statement has no moral value in the logical realist sense of "ought".

Either one's motives for following the moral word of God are moral motives, or they are not. If they are, then one is already equipped with moral motivations, and the introduction of God adds nothing extra. But if they are not moral motives, then they will be motives of
such a kind that they cannot appropriately motivate morality at all; in particular, they are likely to be motives of prudence, a possibility most crudely portrayed by certain evangelists (whether of belief or disbelief) in terms of hellfire. But nothing motivated by prudential considerations can be genuinely moral actions; genuinely moral action must be motivated by the consideration that it is morally right and by no other consideration at all. So, taking this all together, we reach the conclusion that any appeal to God in this connection either adds nothing at all, or it adds the wrong sort of thing.\(^{65}\)

The ought statement would indeed be analyzed into factual statements, but the ought statement would be deprived of its moral force for a prudential one. What determines the value of the ethical imperative is a content in the imperative, but the content is appetitive instead of moral. What one ought to do is ultimately reducible to knowing what one wants to do, but there is no further distinction in grounding for whether what one wants to do is morally good or bad.

The empirical reduction of moral concepts to prudence appears to render impossible a theory of universal human rights. Moral concepts cannot evolve to a level at which the conception of a right could become universal unless the meaning of “good” is universal, for otherwise conflicting concepts of “good” or of derivative values could not be resolved by tracing their common derivation from one ultimate source. Explanation and justification by empirical derivation makes it therefore highly equivocal to speak of the improvement of moral concepts. A moral concept might be improved to reflect a higher level of civilization or greater sophistication in discerning distinctions between instances, but such alterations would not signify giving the concept a higher moral quality unless the definition of “moral” is prevaricated. Concepts might be superior or inferior according to some criterion such as utility, but from a moral perspective any ranking in quality between different moral ideas would be arbitrary. It would make no sense to speak of moral evolution because there would be no ultimate standard in respect to which one might be said to be better than another. There could be no assumption that one individual has a moral prior-
ity in right over another because of the superior quality of his moral concepts. The mutation of a moral concept over time may be explained in terms of some causal relation between the concept and culture, such as sociological concepts of adaptation, but the mutation of the concept could not imply an evolutionary development towards a more perfect moral knowledge of that concept.

As a consequence, positive law could not have its legitimation from fundamental moral values. Although positive law could be instituted to protect the given, established moral Weltanschauung of the culture, it could not thereby derive from any morality, because any conventional morality would itself lack final justification through the supposition of a transcendent moral reality. A positive law based on an ethnic morality would make moral values arbitrary, since its bias for the conventional morality is not ultimately motivated from a non-appetitive reason. Any conflict between one ethnic concept of morality and another is a contradiction between two arbitrary distinctions; since the moral concepts can’t be demonstrated to make exactly the same moral distinctions that the transcendent forms would make, the decision that one ethnic moral concept is correct and another is not is morally arbitrary.

Man kann sich zur Beschreibung der relevanten Fakten anstatt auf Gewohnheiten auf die in einer sozialen Gruppe tatsachlich akzeptierten Normen bezeichnen. Die Frage, ob eine Gruppe eine bestimmte Norm akzeptiert, unterscheidet sich in dem schon aufgezeigten Sinn von der Frage, ob diese Gruppe irgend jemandem gewohnheitsmaessig Gehorsam leistet, obschon sich die beiden Fragen darin gleichen, dass sie beide deskriptiver Natur sind, und obschon Austin vor Kelsen insofern den Vorzug verdient, als er sieht, dass in dem Urteil, jemand habe eine rechtliche Verpflichtung, eine Tatsachen-behauptung und keine “Gueltigkeitsannahme” vorausgesetzt wird.(66)

Valid moral norms might be thought to be derived without reference to a metaphysical ground if they are instead derived from a certain kind of empirical judgement.
xi. The Severance of Positive Law from Moral Orientation

The repudiation of metaphysically grounded rights in favor of an agnostic theory rests on a discovery that the meaning which specifies the transcendent sense of right derives from semantic illusions. To speak of an individual having a "right" which is metaphysically antecedent to positive law appears to lack an implied contrast needed to make its meaning substantive. If "having a right" does not alter the wider context, then "having a right" or "not having a right" would be indistinguishable determinations of the individual's world; one could not discern from any difference in his world whether he had a right or not. The specific characteristic distinguishing the metaphysical sense of having a right from the agnostic sense is that an individual's possessing a right does not entail that his culture has conceptually recognized the right or instituted it in a positive law. "Having a right" in the metaphysical sense is equivalent in another linguistic context to "ought to have a right"; its meaning does not entail that other people honor the individual's right or that legal sanctions will be used to deter people who would frustrate his right. Since the transcendent "benefits" or sanctions of having a right do not imply any intelligible difference in the immanent world from what it would be like not to have such a transcendent right, it is meaningless to say of a person that he has or does not have a right.\(^{(67)}\)

An agnostic theory of rights can give a solid foundation to the notion of rights, whereas a transcendent theory of human rights apparently cannot. An immanent theory of rights appears to be conclusively superior to a transcendent conception because it also demystifies the justification of rights. An immanent concept of a right can justify both the particular identification of and the institution of a right by reference to the content of the given right: its long or short term benefits. In so far as a transcendentally grounded right affirms the validity of the right despite how detrimental it may be in both the long and short term, it cannot be justified nor specified by the content of any state of affairs it may bring about; its value is ultimately transcendent. The concept of "human right" may be demystified regarding the conditions of meaning by explaining how certain features of human right might be realized through
derivation from positive law and by discounting remaining features which have no rational justification through reference to positive law.\(^{(68)}\)

The challenge revolves around whether a "human right" can have no further essential meaning than the individual's claim of obligation on others to do things which are beneficial to himself, or whether further implications from the meaning of "right" may be demonstrated which an immanent theory of rights cannot sustain. If the other components of right excepting obligation are oriented to a transcendent dimension which by definition is beyond public, empirical verification, an agnostic theory of right succeeds in eliminating semantic illusions. "Obligation" does not entail any transcendent implications, because the word may be used meaningfully only in contexts where disregarding one's obligation produces a substantial difference in the state of affairs. Obligation is therefore meaningful only in contexts where a positive law coerces a person to perform certain acts which are beneficial to the holder of the right, or punitively retaliates on the person who reneges on his obligation.\(^{(69)}\) A real meaning is thus given to "human right" but it discards the axiom that a human right is metaphysically prior to positive law. If rights can be semantically coherent only if they are defined in terms of legal relations, there can be no rights which conflict with the law; a person cannot have human rights where having a human right is a person's entitlement regardless of whether such a right is conceptually recognized or practically instituted in his society.\(^{(70)}\) Since the idea of rights which are metaphysically prior to positive law violates the semantic conditions for meaningfulness, all rights are internal to the given legal system. This conception of "right" is more persuasive because it does not depend for its validity on barely intelligible notions such as innate, a priori, axiomatic, or intuitive.\(^{(71)}\)

A replacement of a metaphysical theory of human rights can succeed only if the more modest immanent version of human rights can sustain the merits of the refuted theory. Even branding the basis of the former theory as "meaningless" does not settle the issue unless the immanent theory can provide a better service than its "meaningless" predecessor. The first component of this issue concerns the remaining part of the meaning of "right" which distinguishes it as a moral notion from prudential thinking. The transcendent theory rejects
reference to immanent consequences and therefore appears to be incapacitated because it loses a specific and concrete content for rights which might be used as a device for justification and institution of particular rights. On the other hand, the strict refusal of this content insulates human rights as a moral order from the prudential order of value. To have a right is, by definition, to be protected in performing an act which is not necessarily the most beneficial alternative. The presumptive opposition between morality and prudence already suggests that a "right" protects a person to perform an act which is not the most rational from the criteria of prudence. If the consequences of rights are used as a content for the justification of specific rights, then the semantic criterion which divides morality from prudence collapses, and morality is absorbed into a theory of prudence. Morality, as an independent source of value, becomes meaningless. If, then, one equates ultimate utility with morality, then the term "human right" seems to become inane.\(^{(72)}\)

xii. The Derivation of Human Rights from Volition

If reference to transcendent forms is abandoned in favor of empirical reference to nature, it must be demonstrated that a concept of human rights can be coherently formulated on the basis that all things are intrinsically worthless. It does not follow that all things are worthless. The traditional concept of rights and duties depends on an attempt to adjust values as one is conscious of them to be the same as the values as they are objectively given. If values are not objectively given, then a system of universal human rights is possible only if values as they are subjectively given can be organized without reference to an objective order.

The intrinsic value of a thing may be conceived to be from an independent source, and thus have value even when no one recognizes its value. A thing may also have extrinsic value in the sense that a person spontaneously posits value for it. The ontological and epistemological relations between intrinsic and extrinsic value are highly asymmetrical. Epistemologically, extrinsic value has primacy over intrinsic value because of the mind's veridical relation to extrinsic value; when the mind posits or spontaneously feels a degree of value for a
certain object, the mind cannot be mistaken about what it believes its value is. By contrast the intrinsic value of a thing is always epistemologically secondary in the sense that the mind can always be deceived about the degree of a thing’s intrinsic value or the equation between its extrinsic and intrinsic value. In the epistemological sense any object’s extrinsic value is independent of its intrinsic value, because its extrinsic value depends entirely on the consciousness which posits or spontaneously feels it, and has no direct derivation or dependence on the intrinsic value. Knowledge of intrinsic value is epistemologically dependent on extrinsic value, because any knowledge of a value presupposes a consciousness of a value. Ontologically, intrinsic value is prior in the sense that consciousness transcends the extrinsic value which it initially posits for a thing and attempts to adjust its spontaneous evaluation to be the same as the thing’s real intrinsic value. If the extrinsic value cannot correspond to the intrinsic value, then the knowledge of value is illusory. If there is no direct consciousness of intrinsic values, it becomes impossible to carry out the necessary comparison of intrinsic and extrinsic value. Nothing internal to the representation of value can indicate whether it correctly adequately to the intrinsic value of a thing because the mental existence of a value representation does not depend on its verisimilitude. Ontologically, however, intrinsic value is entirely independent of extrinsic value because intrinsic value does not vary with consciousness. Whereas extrinsic value depends on consciousness, intrinsic value has the support of its existence not in consciousness but in the objective order of things. Since extrinsic value is not ontologically dependent on intrinsic value, the intrinsic value does not prevent or limit the possibility of a severe misrepresentation of value in consciousness. The extrinsic value of a thing is therefore entirely independent of its intrinsic value; it may have great intrinsic value but no extrinsic value, or it may have great extrinsic value while having no intrinsic value. Concluding that there is no internally necessary relation between intrinsic and extrinsic value, the moral task of establishing human rights and obligations cannot be to calibrate a thing’s extrinsic value to its intrinsic value. The reality of transcendent forms enables the equation, but without intellectual intuition the extrinsic values cannot be adjusted according to the intrinsic values of things.
The agnostic interpretation of "bonum est quod omnes appetunt" makes impossible adequation to intrinsic values and implies a prima facie principle for radical social equality. Since the transcendent meaning of "bonum" is indeterminable and "bonum" loses all independent content, the dictum "bonum est quod omnes appetunt" becomes morally vacuous. It becomes impossible to judge that one individual's desire is bad and another's good, or that one man's desiring is morally perverse and another's desiring orthodox, because there is ultimately no standard for evaluating and ranking the objects of desire. "Bonum est quod omnes appetunt" can be meaningful only if it is interpreted nominally through the definition of "bonum" as meaning that a thing is extrinsically characterized by being desired by someone. Salvaging meaningfulness for the dictum under this new interpretation however must strictly prohibit a possible equivocation that is a likely legacy of the previous interpretation of the dictum: "bonum est quod omnes appetunt" can no longer imply that there is any moral value in a person's harboring some particular desire or another. The analytic interpretation of the dictum implies an utter and total leveling of all values. No individual may be thought as having a greater value than another human being by the fact that his desiring some object of value is superior to the desiring of another individual for the object of some other value.

Given the condition that Reason cannot discern valid teleological destinies, a stable system of rights must be established without foundation in an a priori hierarchy of values. The derivation of values from empirical judgments does not preclude an order of values, but the order of priority is necessarily unstable. An empirically derived value may protect a more vital necessity than another empirically derived value, and hence a priority of values may be presumed. However, even the most fundamental of empirically derived values is ultimately hypothetical. Even a right to life, which may be presupposed for any other right, derives only from a desire to live. Without transcendent forms, even the connection between the most fundamental desire and its embodiment as a value is purely contingent. Let us assume per hypothesis that one has an absolute right to act in certain ways if acting in any other way in the state of nature would result in death. The fear of death may then establish an order of priority for all other moral values by functioning to pick out those features
of nature which are significant in respect to the avoidance of death. Those features of nature thus selected can function as the object of reference for justifying rights and obligations. Nature may replace reference to transcendent forms for the origination and justification of rights and privileges. However rights and obligations derived in this manner from volition are not absolutely binding as would be transcendentally derived rights, because the characteristic of volition could constitute "laws" in this prescriptive moral sense only when one should choose to avoid death.(73) But the desire to avoid death is contingent. As an empirically conditioned entity, the desire to avoid death could vanish or be superseded by some other empirically conditioned desire. If such an empirically given desire should vanish, then all of the features of nature which supposedly gave an objective foundation to all other moral values become vacuous, because their entire moral importance was predicated on their relevance to the initial desire. All moral values which depend on those features of nature therefore suddenly lose their justification. If the original desire is contingently given, then volition cannot be a foundation for absolutely binding rights and obligations because there is no further sanction beyond the forfeiture of the object of that original desire. In so far as the original desire can recede, all of the moral values flowing from it lose their rationality. In this respect the agnostic position of natural values differs from the Stoic-Christian idea of the laws of Nature, for in the theistic version there is a non-contingent sanction beyond biological survival for submitting to natural laws. At least in the initial agnostic hypothesis the holders of desires have only equal entitlement regardless of the presumed order of priority in content of their desires.

Without transcendent reference to justify the value of personal desire, there is no objective way to determine whose desire should be the basis of an ethical imperative when various people desire conflicting things. Since the objects themselves have no supervenient intrinsic value in addition to the extrinsic value of being desired, no one's desire can be shown to have a greater value than that of another. The value of each individual's desire, even when in conflict, must be considered to be strictly equal in value with those of others. Since a basis for extrinsic values cannot be adjusted to the intrinsic value of things, a basis for human rights can be formed on the condition that extrinsic
values, completely orphaned from supposititious reference to intrinsic value, can be adjusted by reference to each other using the idea of a system of values as a criterion to replace the criterion of transcendent value. This raises the importance of the relation of rights and obligations to other people but demotes the importance of the ultimate goal of rights and obligations. The project to reduce moral judgments to empirical judgments and ought statements to factual statements entails that all personal desire has nothing but an extrinsic, nugatory value.

The desire which consequently becomes the content of the ethical imperative must therefore be based on what most individuals want. The collective nature of the ethical imperative obliges every individual to conform in creating certain factual conditions even when those conditions are not conducive to his own specifically personal desire. The idea of an ethical imperative acquires an apparently abstract character, since individuals will still find themselves obliged to conform to ethical imperatives that contradict the reasons that rationally justify what they personally desire. Nevertheless, the obligation of the individual to submit to an ethical imperative which does not reflect his desire is only apparently moral, because such an imperative is still ultimately prudential, egoistic, and based on appetitive preferences rather than on a supersensuous concept of man's duty in the universe.

A leading feature of this sort of theory is that it seeks to provide, in terms of the transcendental framework, something that man is for: if he understands properly his role in the basic scheme of things, he will see that there are some particular sorts of ends which are properly his and which he ought to realize. One archetypal form of such a view is the belief that man was created by a God who also has certain expectations of him. A central difficulty with this lies in the question of which properties of God are supposed to justify the claim that we ought to satisfy his expectations.(74)

The transcendent concept of value could supply two aspects to morality; it could imply that man's existence was oriented to some transcendent meaning,
and the more narrow aspect of justice, a concern for how one’s actions affect other people. Consequent to the dissipation of a transcedent conception, morality loses its orientation to the meaning of human life and retains a sense by concentrating solely on the remaining aspect, concern for how one’s actions affect others. Without the component of an “ultimate good”, however, it may become impossible to formulate what is meant in the second aspect of morality.

xiii. Monism and Moral Indifference

In the absence of intelligible transcedent values any morality and social order must be disengaged from assumptions about natural order. The legitimacy of a law cannot be justified by a priori reason, because there is no transcedent order that would confirm one person’s reasoning and repudiate another’s.\(^{75}\) The elimination of transcedent forms leads to a physical monism in which there is a foundation for only one order of reasons and no justification for deontic value. In a one dimensional context, the agnostic approach replaces the requisite logical space given by the immanent-transcedent dichotomy with a contrast of short-term and long-term benefit. Vice could have been deontically identified with making positive moral evaluations on the basis of an immanent value and virtue could have been identified with positive moral evaluations according to a transcedent value. Agnosticism can refurbish the requisite space for moral discourse by identifying vice with short-term benefits. The agnostic position then evaluates all moral instances, good and bad, according to immanent values and eliminates the necessity for reference to transcedent values.

The right to the pursuit of personal happiness is not at all an innocuous ideal; as a version of moral monism it tends to subvert every other received moral concept. It implies that the individual should be free to decide on his own destiny without interference from an external authority. This obliterates the metaphysical basis for society and government. The traditional concept of man’s ultimate mission on Earth, the love of God and the desire for knowledge, presupposes that the world can be accounted for by reference to transcedent Forms. Under a transcedent conception of life authority itself is conceived as something metaphysically limited; man submits to authority to observe norms, but only
until the time that man discovers the sufficient reasons from his own rational introspection for adopting those norms.\(^{(76)}\) There is a distinction between a real, intrinsic value which man does not have the rational power to grasp immediately, and the extrinsic value which a man immediately senses but which is spurious. Authority functions to suppress man's inclination towards the spurious desire until the time that man rationally grasps what has intrinsic value. Authority according to the Platonic-Augustinian tradition is limited to guiding the individual to find the transcendent truth by his own rational powers; authority precedes rational understanding, but cannot command what is not internally commanded from the individual's own rationality.\(^{(77)}\) Thus authority is metaphysically grounded in the fact that transcendent Forms are not easily known.\(^{(78)}\) If there were a perfect understanding of the transcendent Forms, there would be no authority. Authority is legitimate only when it is oriented to the ultimate happiness of the individual, and an individual having an adequate intellectual grasp of "the good" would be spontaneously motivated to do the same as what authority assigns him. The concept of the love of God preserves the universalism required by a concept of human rights, because it presupposes that human desires are in conflict only in the degree that persons are ignorant of the ultimate goal of their desire.

The transcendent interpretation of "the good" cannot equate the orientation to "the good" with personal happiness because of its foundation in Platonic-Aristotelian epistemology. Essential to Platonic metaphysics is the definition that the "real" is what is permanent. Universals but not particulars have the quality of reality by this thesis, and, as real, can be objects of knowledge. If the only authentic object of knowledge is the universal, then the teleological concept of good must rest on the concept of essence. A teleological theory of rights can conceive of the good of man only as a species, but since the knowledge of a universal cannot capture a knowledge of man as a particular individual, human rights conceived in this fashion cannot protect man expressly in his individuality. Since individuality is the material aspect of a substance and the Platonic-Aristotelian concept of knowledge can capture only the formal universal elements of a substance, man in his particular individuality cannot be an object of knowledge nor, a fortiori, human rights to which that knowl-
edge is prerequisite. The nominalistic version of human rights is in this respect indispensable to the purpose of regarding the individuality of man as a worthy object of human rights, because by repudiating transcendent reference it dignifies the epistemological status of particularistic empirical judgements.

The “pursuit of happiness” decisively disavows the transcendent concept of morality in that it justifies the derivation of moral concepts from empirical nature. The concept of the “pursuit of happiness” can maintain an analogous semantic distinction between moral and immoral either by a contrast between long term and short term benefit, or between personal and communal benefit. However, as a consequence of the repudiation of transcendent reference the goals of either “moral” or “immoral” behavior would be equally egoistic and prudential, because ultimately no other type of goal besides the sensuous is given. The conversion to monism renders the semantic possibility of deriving moral from empirical judgements.

The transcendent and immanent concepts of happiness differ logically between bringing happiness under the concept of good by *subsumption* and nominally defining “the good” by happiness. The principle that people can pursue happiness in the sense that the objects of desire may be subsumed under “the good” supposes that authentic objects of desire can be identified by reference to transcendent Forms. (79) This is part of the metaphysical basis for authority, because authority should guide the individual for so long as his understanding is still too imperfect to identify the authentic objects of desire. Under the agnostic repudiation of transcendent Forms the metaphysical ground for authority collapses. There can no longer be a metaphysical ground for authority because the intellect is denied the power to subsume objects of desire under “the good”. The legitimacy of authority ultimately depends on the ability to recognize that what authority enforces is exactly the same as what the individual spontaneously desires when he has an adequate intellectual understanding of what is authentically valuable. Without the intellectual apprehension of transcendent forms any ultimate agreement between authority and spontaneous desire cannot be anything but purely contingent.

The right to the pursuit of personal happiness is an immanent concept based on the nominal interpretation of the dictum “bonum est quod omnes appetunt.”
The immanent concept of happiness implies that whatever an individual wants is ipso facto good, and his right to pursue happiness consists in his right to pursue the objects of his desire. Once good and happiness are defined decisionistically, the right to a particularistic pursuit of the objects of desire implies that there can be no criterion for the objects of desire. Since the transcendent Forms which would segregate authentic and spurious objects of desire either cannot be known or do not exist, priority is ceded from the transcendent ontological certainty of the object to the immanent cognitive certainty of what one desires. The relation of desire to objects given immanently is characterized by apodictic certainty, whereas the capacity of the same objects to produce the happiness they promise is uncertain. The transcendent concept of happiness entails abandoning objects which have the cognitive certainty of being desired and seeking cognitively contingent objects which have the ontological certainty of producing happiness. So long as desire is defined transcendentally in terms of its “truth” in corresponding to mind-independent forms, rationality binds the individual’s desire to what is ontologically certain but obscure to the individual, while authority is legitimated by its mandate to improve the individual’s understanding. Once desire is not bound to transcendent goals, rationality instead binds desire to what is cognitively certain. Whether or not an immanent object is correctly oriented towards a transcendent goal may be unclear, but it is apodictically certain to the person whether or not he feels desire for that same immanently given object. Since the certainty of knowing what one feels desire for is never as great anywhere else as in the subject feeling the desire, authority loses its function of instructing the individual about what he “authentically” desires, because the loss of transcendent reference abrogates the distinction between authentic and spurious desire.

If desire is redefined by its orientation on immanent objects, the metaphysical foundation for authority is abolished because the subjective certainty of what is desired eliminates the appeal to mediation of authority in the pursuit of happiness. Theoretical knowledge is best secured if subjectively conceived concepts can be isomorphically correlated with transcendent forms which found the being of empirically given objects. If however empirical objects do not have fixed essences, the rationality of theoretical knowledge must consist in the on-
ologically less certain, but epistemologically more accessible, comparison of the theoretical picture to repeated observations. Personal freedom therefore obtains a priority over authority. If the ontologically most secure knowledge of happiness, deriving from a theoretical knowledge of man's essence, is impossible, then the mode of rationality operative in the knowledge and pursuit of happiness acquires an empirical method similar to that of theoretical knowledge. The subjective certainty of an individual's desire is more certain than a transcendent norm of desire only in the sense that the individual cannot be mistaken about feeling the desire; whether the desire leads to happiness is still extremely uncertain. But since there is by hypothesis no transcendent norm of desire, the individual cannot test the validity of his desire by comparison to a transcendent norm. The individual can ascertain the validity of his appetitive representations only by enacting them. That is, since there is no a priori method to discern which of one's subjective desires result in the happiness they intend, freedom attains a paramount value. The individual's only rational method for determining his desires consists in the freedom to carry out disparate desires and empirically observe which ones fulfilled their intention.

Somewhat paradoxically, raising the ontological value of the immanent and discrediting the transcendent ultimately prevents a coherent conception of human right in its modern form except through the endorsement of radically antinatural presuppositions. The conversion of rationality to an empirical method of discovery does not imply that the empirical method may be equated with rational derivation of desires from nature. Classical stoic philosophy bases moral universalism on the uniformity of nature\(^{81}\), whereas typical Enlightenment philosophers based moral relativism on the same exact ground, nature, only differing by emphasizing the diversity of nature.\(^{82}\)

Stoic and Enlightenment philosophy can point to exactly the same ground to infer contradictory conclusions because the shift to the ontological priority of the immanent brings about radical change in the meaning of freedom. In the Platonic-Stoic and Christian context human freedom is possible because of the transcendent aspect of nature. "Human right" can easily be formulated in terms of duty; a human being has a natural right so that he will be able to perform his natural duty. The transcendent aspect of nature entails that
teleological goals are a part of the natural order. A human being has freedom in the dual sense that he is able to distinguish the teleological-transcendent goals from the immanent ones, and that he has a duty to conform his actions to the transcendent goals. A human being would not be free either if he were incapable of discerning transcendent goals or if, recognizing them, he were incapable of conforming his behavior to them. A person's right consists in removal of all hindrances to recognizing and conforming behavior to those transcendent goals.

The transcendent aspect of nature supports the notions of moral universalism, freedom, and natural law as duty. When the transcendent aspect is repudiated, such a conception of freedom becomes incoherent. Morality interpreted as duty implies a contrast between the freedom to pursue transcendent objects of desire and the possible deterministic unfreedom of pursuing immanent objects of desire. If there is no transcendent order, nothing but immanent objects of desire can exist; freedom cannot be defined through contrast with another putative order of desire. Under a monistic-immanent context, authority is not metaphysically well founded to countermand an individual's immanent desire and coerce him, for his own happiness, to conform his behavior to a transcendent desire. Since transcendent desire no longer has a coherent meaning, "freedom" can only mean the ability of the individual to pursue the immanently given desire instead of the supposititious transcendent desire.\(^{(83)}\)

It would at first appear that under an immanent scheme of things reference to nature would be an even more reliable device for justification than under a transcendent scheme. It is paradoxically exactly because the relation between desire and the object of desire is more immediate in an immanent scheme of values that human rights and morality must be formulated in a radically anti-natural disposition. Granting first of all that especially under an immanent scheme nature exhaustively provides the satisfactions for all the needs of man, nature would first appear to be the uniform source of justification for all moral values and human rights. Under a transcendent conception of value nature could be conceived as uniform, as in fact the Stoics used nature to justify human rights. However, when desire is defined immanently according to the immediate object of desire, rights and obligations cannot appear the same
in any given natural environment. Since the immediate object of desire is empirically conditioned, what man desires will vary according to local variations in nature. If rights and obligations are constituted by immanent desire, they must also locally vary. Reference to nature might be salvaged by hypothesis that the ultimate human rights must vary superficially in conformity with the natural conditions of a locality, so that localities with manifestly different rights and obligations may achieve the same satisfaction in unison in a deep, unitary sense of nature underneath its local surface variations. Thus superficially different human rights are necessarily variegated in order to achieve substantial uniformity and universality across different natural environments.\(^{84}\)

Nature as a conceptual entity in human rights discourse is not salvaged by the supposition that there is a latent, uniform nature underlying all of its local manifestations. Let us take as an example the notion of self-preservation. It may be interpreted as a universal natural instinct which ultimately underlies all other values, no matter how varied and contradictory those values may be out of the context of their local environments. If there are transcendent values, then there are limiting criteria even for self-preservation. Self-preservation would not imply adherence to any desires that would be conducive to physical continuation, because in an essentialist perspective there are criteria even for what counts as self-preservation.\(^{85}\) If there are no fixed transcendent values, then the concept of essence collapses, and with it any concept of self-identity which is implicated in the notion of possessing an essence. Mere physical survival and derivative egoistic interests become the only standard for selecting a desire. In the case of almost any desire at all, having a desire becomes a tautologous expression for seeking self-preservation, because egoistic interests are mainly derivative from the instinct of self-preservation. There is no internal principle for discerning what desires are correct and which are not, because as egoistically motivated they are all the same, and there is no other superordinate concept such as essence to constitute a self-identity which could distinguish amongst the egoistic motivations according to a higher criterion. By having a desire, ipso facto, one has reason to pursue it.\(^{86}\) Under an immanent ontology, the concept of free will becomes vacuous. In a dualistic immanent-transcendent ontology, it is logically coherent to speak of feeling a desire, but lacking any
reason to pursue it; in a purely immanent ontology, feeling a desire and having a reason to pursue the desire are exhaustively synonymous.

The individual has freedom, that is, because his own apodictic certainty about the immanent object of the desire is purely the individual's; unlike the case of transcendent desire, the authority can never have greater certainty about what the individual immanently desires than the individual himself. Authority loses its legitimate role to guide the individual. The concept of freedom in the agnostic context changes morality from a prior duty to conform to natural law to a prior right to be uncoerced by authority.

However, such a construal of natural reference to interpret human rights on the basis of immanent desire ultimately requires the absolute rejection of nature and the realization that morality and human rights must be anti-natural. Local variations in nature do not upset the Stoic conception of the universality of human right because it is the transcendent aspect of nature, which does not locally vary, which underwrites the universality of human rights. When desire is conceived immanently, however, nature must be conceived to be what it is manifestly and locally, or the concept of nature becomes incoherent. The distinction between a variegated, manifest nature and a uniform, latent nature reintroduces the same metaphysical unintelligibility as the previously eschewed distinction between immanent and transcendent. It becomes problematic to know the real characteristics of the unitary, latent nature, if, differing from manifest nature, its characteristics are not cognitively accessible to empirical observation. Latent nature becomes a metaphysical entity, which, similarly to the transcendent "good", cannot be a touchstone for human rights or morality because it is impossible to correlate its characteristics with the features of human rights. The concept of nature which is allowed by a concept of immanent desire is, however, diversified and changeable. As universality is an essential element of human rights, nature must be rejected and something more universal in its place must be employed to found human rights.

xiv. The Emergent Priority of Positive Law

The existence of transcendent Forms makes the notion of morality possi-
ble because it founds a heteronomy of moral and morally neutral motivations. When the distinctions between natural-transcendental and the distinction of immanental and transcendent aspects in nature are eschewed, it becomes impossible to define happiness by subsuming certain types of desire under “the good”. Loss of reference to transcendent Forms effaces any sustainable distinction between moral and appetitive motivations. Once “the good” is not related to happiness by subsumption, but is nominally defined as happiness, what people desire is ipso facto good. Without transcendent values there can be no moral principle which can criticize the tendency of the appetite; the appetite is the moral principle in the sense that no ultimate and independent principle can place limitations on the claims of happiness.

The moral universalism of human rights cannot be derived from the uniformity of nature because of the moral and epistemological consequences of repudiating transcendence. Assuming the nonexistence of transcendent Forms, epistemological conditions necessitate a genetic explanation of moral concepts relative to climate and culture in place of a metaphysical justification of moral concepts. The shift in demonstration is not an arbitrary choice of style, but a metaphysical necessity. If transcendent forms do not exist to regulate concept-formation, the truth or validity of a concept cannot be demonstrated by indicating that reality really has the structures and classifications that concepts indicate. Without reference to transcendent forms, there is no adequate means to distinguish the essential from the accidental attributes of a thing. The essential and accidental attributes can be defined and distinguished only according to utility; the relative “truth” or “validity” of a concept can be demonstrated only by its usefulness for the given context. Since the validity of concepts is relative to their utility in given regions, concept formation is arbitrary and conventional rather than innately given from a transcendent source. We cannot derive the concept of human rights from the concept of the human being, for the same reason, that the concept of the human being is arbitrary. Like all other empirical objects, there is no manner of transcending the empirical object itself to discern what its necessary, non-contingent properties are, and since any ideas we have of man are contingently given by empirical observation, we cannot make any determinations of what qualities in man are permanent.
and what determinations are not.\textsuperscript{(91)} If we make such distinctions, they are arbitrarily determined not from the essential nature of man, but from considerations of utility.\textsuperscript{(92)} Consequently we cannot infer to what rights a human being might have, because we don’t have stable premises about what man is.

It is not immediately clear that it is logically coherent to conceive of a morality based on purely immanent principles, since any kind of moral limitation on human behavior must have a justificatory ground that is independent of the appetite it purports to limit. If, however, happiness is defined through the satisfaction of immanent desires and happiness is given as the unlimited purpose of life, then the creation of any norms would be derived from immanent appetite. To create an agnostic moral system it is necessary to demonstrate that moral concepts derived from immanent principles would not automatically justify any appetite, in which case the notion of morality would become vacuous. The unification of moral norms and appetites in a purely immanent scheme will either exhibit that norms and appetites are ultimately the same or that they are heteronomous. If norms and appetites are the same, then the concept of morality is demonstrated to be otiose. If they are heteronomous, it becomes necessary to account for how moral norms can be limitations on appetites, even though both are derived from the same source.

The antithesis between the value of personal self-determination and the universality of human rights is the moral location of a social contract theory of human rights. The absence of transcendent values implies that nothing is an ultimate ground to limit the individual’s appetitive self-determination. The pursuit of happiness should therefore entitle the individual to complete self-determination. A theory of human rights can obtain a basis for universality only if it \textit{repudiates} reference to nature as its ultimate justification. Since nature without the inclusion of a transcendent aspect would sooner imply particularism and amoralism, it is at least prima facie impossible to presume that a human right, taken as universal and absolute, can be made invariant with respect to different cultures by removing its foundation to one dimension away from any culture, namely nature.\textsuperscript{(93)} Paradoxically, the component of universality in human right that was previously conceived to be required by nature or a transcendent order can be maintained only by repudiating any natural
derivation of morality. Universal human rights must therefore be justified by something anti-natural or artificial. The social contract theory of human rights is an attempt to maintain complete personal self-determination as an ultimate value and to found on the value of self-determination the element which seems to directly contradict it, the universality of human rights.

An anti-natural foundation for human rights can be achieved decisionistically through the concept of consent. Assuming the paradox that the condition of universality in human rights can be sustained only if human rights are deliberately founded as a pure artefact is circular because it makes the concept of human right presuppose exactly the element which must be proved. Universality may be demonstrated to necessarily belong to the concept of human right because the concept would otherwise be incoherent. That however does not prove that human rights are universal. Without a demonstration of a notion of universality, it may instead follow that the contingently given concept of human right cannot coherently exist exactly because the human rights concept is not coherent without a concept of universality. Universality may be obtained for rights by stipulating that it shall be a necessary component of rights, but nevertheless the stipulation itself is contingent. If consent is the ultimate anti-natural foundation, human rights cannot be universal because their existence as rights is logically dependent on their conceptual recognition. It is not only important that human rights have a foundation in nature or a transcendent form, but is also crucially important that nature or the transcendent form make up the foundation of human rights and not something else. Universality hypothetically founded on nature supplies an ideal component to human rights; it implies that any given individual has human rights quite regardless of whether there are corresponding positive laws or even a conceptual consciousness in his culture of that right. Nature as the foundation of human rights disconnects the existence and truth of human rights from conceptual consciousness of those same rights. If the universality of human rights can be founded only artificially by a device such as consent, then human rights retain universality but lose their ideality. Without natural ideality it may ensue not only that rights might be unevenly implemented in the positive law of different cultures; the existence of the right even as a concept with the force of moral imperative does not
exist in cultures which do not recognize and consent to them. Rights which are based on no more ultimate ground than consent are directly coupled to conceptual consciousness of that right. If a right originates in artificial consent and consciousness of such an idea is a precondition to fiat by consent, then no right may exist prior to consciousness of the idea of it. Since the distribution of rights in a contract theory is based on consent, there is no reason to expect such a theory to sustain a ground for the universality of human rights.

We every day meet with persons who are in a situation different from us, and who could never converse with us were we to remain constantly in that position and point of view, which is peculiar to ourselves. The intercourse of sentiments, therefore, in society and conversation, makes us form some general unalterable standard, by which we may approve or disapprove of characters and manners.\(^{(94)}\)

Whereas consent is the originating ground for human rights in a social contract theory, consent itself does not have the moral quality of universality that it purportedly generates in human rights. If the foundation of law and morality is an artefact, an individual cannot meaningfully be said to have any obligation until after he has consented. Consent makes the ultimate ground for obligation. A person therefore never has any obligation to consent. A person cannot be normatively persuaded to consent because of the goodness of consenting, because by hypothesis it is impossible to find in nature or a transcendent order of things any rationally motivating norm to affirm the value of anything.\(^{(95)}\) Since the Enlightenment versions of the social contract theory are concerned with overcoming nature rather than with submitting to natural order, by hypothesis the individual cannot find reference to an ideal and objective norm that would persuade him of the goodness of one decisionistic placement of a value rather than another; all hypothetical normative motivations are replaced by appetitive motivations.\(^{(96)}\) Whereas it may be stipulated that human rights should be universal and inalienable, the grounds that people have for consent are unlikely to produce universal conformity. Each individual may have his own prudential or coercive motivations which force him to consent but since there
is no transcendent normative reason for the value of human rights which all
people may see in the same way, their consent to an idea of human rights will
be as unstable as the contingent prudential motivations of their consent.\(^\text{(97)}\)

xv. The Social Ontology of the Good

A transcendent theory of human rights specifies what values have absolute
priority and demonstrates their ranking. The social factor of what people in
general believe they want most or what they would prefer to hold as prior values
has no relevance in the determination of values. Liberal self-determination is
not an absolute value for so long as freedom derives its total value solely from
the capacity to orient oneself to transcendent values. It is solely the ultimate
truth of the transcendent form which can determine the ranking of values.

The transcendent theory of rights is debilitated when it cannot specify and
demonstrate the ranking of values. An agnostic theory of values is ascendant
on this issue not because it can solve the problem of ranking values better, but
because under the premise that all values are immanent the problem becomes
negligible. From a semantic perspective, popular dissent about the priority of
values is irrelevant because it is the transcendent truth which alone determines
the order of values. It is possible for the whole world to be wrong about a
transcendent value and yet that value may embody the truth. However, for
the agnostic theory of human rights, popular consent is a semantic component
of a value, because a value cannot exist independently of being conceptually
recognized. There cannot be a misrepresentation of the true order of values
because, without an independent transcendent order, there cannot be a con-
ceptual distinction between "the good" and what an individual believes that
"the good" is. The order of priorities is whatever the collectivity of individuals
would like them to be; there is no ulterior reference.

When transcendent orientation is repudiated, freedom then becomes the
primary value, but its magnitude greatly diminishes. Since the lack of tran-
scendent goals renders it impossible to determine why man has freedom and
what ultimate goal should be the aim of freedom, there is no independent
value which can demonstrably set limits to the aims of freedom and function
as a criterion for the ranking of other values. If "the good" is postulated to be whatever the individual thinks it is, then there is no ground to coerce upon the individual something which he does not desire, because it is impossible for "the good" to be different from what he believes it is. The individual acquires unrestricted self-determination because there is no transcendent criterion for evaluating the motivations of his freedom.

Self-determination as the primary absolute value entails that formal social equality replace transcendent truth as the ultimate criterion for rights. An agnostic theory of immanent values can ignore whether values are misconceived under the condition that it protect what individuals believe that the good is. The agnostic theory of rights does not have to judge on the intrinsic value of each person's interest under the condition that it give equal respect to the interest of each person. Without a transcendent order, the content of "bonum" becomes empty and the statement becomes analytic because there can be no distinction between what is "really good" and what people merely think to be good. Therefore the various interests and desires of people are indifferent in value. If, on the contrary, the agnostic theory did promote one person's desire more than that of others, then it would presuppose that this person's desire had more intrinsic value, and it would be obligated to justify attributing a higher degree of value to that particular person's desire. If it does not consider the interest of each person equally, then it has to justify its unequal ranking of different individual interests, and the immanent position would be forced to make self-refuting reference to intrinsic values.

The social equality implied by "omnes" in "bonum est quod omnes appetunt", needless to say entirely against the intent of the original formulation, functions in place of transcendent values to establish an order of priority amongst values. As a social-ontological criterion for "bonum", any act or desire will have a positive moral value in so far as it sustains formal social equality, and any act or desire which upsets equality among people will be bad. The agnostic theory of values cannot destroy the formal equality of all individuals based on the indifference of all personal values, but the pragmatic dimension of popular dissent therefore becomes a legitimate and paramount factor in the organization of values. Since value taken purely extrinsically cannot exist in-
dependently of being consciously recognized, there is a relevant distinction in value between what a few isolated individuals believe to be good and what all people believe to be good. Since no desire can have an intrinsically greater value than any other, "the good" simply becomes what the greatest number of people believes to be good, because there is no alternative means of evaluation to dispute it. An immanent theory of values can determine "the good" and the order of values by aggregating the desires of all people and selecting an order of values which satisfies the contingently given belief of the greatest number of people.

The fact that the desires of different individuals will come in conflict, however, forces an agnostic theory of rights to give an order of priority to suppositional values; if the theory ultimately has no device for preferring one pretense to another, the theory becomes inane. To evade the provisionally rejected position of absolute values and subsequently having to justify determining preferences by other means, the immanent theory aggregates the actual desires of people and chooses a policy which maximizes what all of the people consider to be their greatest good, ignoring the question of whether their perceptions are correct. The dictum re-emerges from moral meaninglessness because "omnes" provides a substantial dichotomy within a purely immanent context for judging that some acts are bad and some acts are good. The collective interest thus becomes a moral foundation for determining human rights. Interests which are representative of what all people want satisfy the criterion of "bonum" and therefore acquire the status of "right". Strictly equal and impartial attention to each individual interest implies that the aggregated value will be the value of the majority of individuals. Since the given interest of one individual cannot overrule a conflicting interest of another individual on the ground of some internal difference in the quality of the interest, it is impossible for the aggregated immanent value to be that of a minority. The formulation of the aggregate value can then function as an immanent moral criterion for resolving conflicts of interest by introducing an order of priority.

It is immediately obvious that such a criterion might permit moral outrages, such as sacrifice of individuals for the common benefit. A theory of rights based on immanent values may deeply harm the interests of isolated, deviant individu-
uals whose interests are not representative of the collective good. By hypothesis, however, no value is anything more than an empirically determined illusion; there is no independent ground for the absolute validity of any value. The immanent theory is limited to determine values by entirely formal considerations such as the quantity of people asserting a supposed value. Since an agnostic theory of rights is bound by its egalitarian commitment not to treat individual interests preferentially, it cannot immunize an individual interest from the priority of majority interest. Since there is no transcendent order to values, there is no other source of justification which can conflict with the collective concept of "the good".

There is no ultimate moral-theoretical grounding for this abrupt assertion of the primacy of social equality. It is in fact the utter lack of adequate moral reasoning which gives social equality paramount value. Since transcendent reference is ruled out the establishment of an order of values has no alternative but to reason its priorities according to the pragmatic dimension of a value. The primacy of social equality is determined by a purely value-neutral, pragmatic necessity for obtaining the element of consent in a social contract formulation of human rights. Social equality is not given its value by its moral content, but by the pragmatic necessities of a social contract. Under the hypothesis that there is no transcendent reference, it is not only impossible to verify which individual's desire has greater intrinsic value; the question is meaningless. An individual has a right to unlimited self-determination because there is no transcendent criterion for assessing whether a person uses his self-determination well. The theoretical incapacity to assign different values to individual self-determinations entails that the preferences of each person must be considered equally.\(^{98}\) Since there is no non-contingent reference for the ranking of desires, the most that one individual can accomplish vis-à-vis another is to concede that the other's interest has an equal value; there is no rational motivation for one person to concede that another person with his interests has greater value than himself.\(^{99}\) The egocentric nature of individual volition will effectively prevent harmonious agreement about the relative importance of one person's value to another's. Since the individual originates the fact of a value's being a value, an individual cannot obtain priority over another on the ground that he serves a
superior value. The very idea that what an individual wants to do has a moral value must be indispensably deduced from the fact that an individual wants to do it. Any preferential consideration of one type of individual’s interest over another’s would commit the theory of immanent values to justifying an ulterior intrinsic ranking of values.

What the collective desire happens to be is, by definition, “the good”. The collective good is not demonstrated to be good because of a correspondence it has to something called goodness. A collective violation of basic moral values becomes a nonsensical idea. The individual whose own interest is harmed because of the priority of collective interest cannot be said to have a prior moral right to his interest in spite of the countervailing collective interest, because the collective good is definitional. Since there is no ulterior standard of reference, an individual cannot be conceived to have any right that is morally justified by any source other than general interest. The agnostic theory does not condone and implement the preferences of the majority because the content of their preferences has preeminent moral value, but simply because of its liberal obligation to give equal consideration to the interests of each individual. By this reasoning there can be no ultimate moral values which transcend the structure of majority will.\(^{(100)}\)

xvi. Equality and Immanence

As a consequence of the attempt to maintain the objectivity of moral valuation while at the same time denying reference to either nature or a transcendent order, moral discourse can be semantically sound only within the framework of a social order. There can be neither moral valuation of a whole society from an external viewpoint nor a coherent moral valuation of an individual’s act if the judgement deviates from the basic values given in that individual’s society. The agnostic foundation of rights achieves autonomy only under the condition that it makes a complete abstention from any supposition that things have intrinsic value. However, a system of rights based exclusively on immanent values enters into a paradoxical self-reference which it cannot resolve without tacit assumption of a transcendent value.
The paradox materializes if it is necessary to determine the priority of immanent values and it is impossible to accomplish the order of priority under the condition that only premises based only on immanent values are admitted. If the objectivity of moral valuation is to be founded upon collective social interest, the individual acts "immorally" in this new sense if his actions do not reflect the collective interest. The attempt however to define on the most general level when an individual's act contravenes the ultimate moral values as defined by collective interest and when it does not produces paradox unless tacit reference is penultimately made of transcendent value.

The intrinsic moral value of the individual's act cannot constitute the criterion for judging when an individual's act defies the moral values of the collective interest, because, being void, it is indistinguishable from the intrinsic value of any other individual's act. In an immanent scheme, the value attached to an individual's self-determination is not linked to the intrinsic moral value of what the individual happens to do with his freedom. Positive law based on an immanent scheme of values cannot be derived from morality in the sense that it would be appointed to legislate and coerce moral values. If the positive law did inhibit an individual's behavior because of its moral content, then it would be making incoherent reference to transcendent values. The priority of the collective interest over an isolated individual interest would be logically inconsistent if the individual interest were abrogated on the ground that its content was intrinsically repulsive, because the majority interest obtains its priority only on the hypothesis that the intrinsic value of any act is unintelligible and therefore nugatory. The majority can retain its priority consistently with the grounds of its justification only if it honors the formal equality of the individual with every other individual. If the judgement were implicitly made that the individual's act is intrinsically less valuable than another's, then its derogation from the individual would negate his equality.

The judgment that an individual's act is "bad" because it is deviant from what the majority thinks is "good" is a coherent judgment in the immanent scheme only if the presupposition is maintained that what the majority believes to be "good" is intrinsically indifferent in value. An agnostic system of immanent values which attempts to sustain the objectivity of moral evaluation
by derivation from collective interest must guarantee to each individual an
equal amount of liberty even when his preference to use that liberty is gener-
ally considered to be less valuable than other possible preferences. Otherwise,
the condemnation of the individual’s act as “bad” would entail importing as-
sumptions about value which are external to a scheme of immanent value. The
content of an individual’s act cannot be the ground for judging that his act
is “bad” if it presupposes that the value of the act entails reference to tran-
cendent forms, because judgment on this basis would come into contradiction
with the agnostic presuppositions of collective interest.

Although collective interest forms the ultimate moral principle in an im-
manent scheme, the moral primacy of the collective interest over conflicting
individual interest cannot presuppose that the content of the collective inter-
est is more valuable than a deviant individual interest. The only condition
under which it would be logically consistent to denote an individual’s value as
“bad” and inhibit his commission of the corresponding act is not the intrinsic
value of the act, but its aspect of transgressing the rule of formal equality. The
equality of the interests of all individuals entails that the desires of a given
individual will be equally honored even when all other people consider his de-
sire to be vile. Under a consistent system of immanent values an individual
has unlimited freedom to enact all of his preferences except for the condition
that an individual, to use his freedom to enact his preference, thereby impairs
the equal freedom of others.\footnote{101} This conception of the limits of freedom is
compatible with an agnostic conception of values under the condition that the
intrinsic value of the individual’s act is conceived to have no logical connection
to the criterion of whether he impairs the freedom of others.

An agnostic theory of immanent values enters into a paradoxical self refer-
ence because of the presumptive distinction between the intrinsic moral value
of a desire and its potentiality to violate the freedom of others. The ability to
make a total abstention from judgment over the intrinsic moral value of the
content of an act and to judge over it only in the formal aspect of whether
it infringes the freedom of others depends on an ultimate distinction between
intrinsic moral value and freedom. The agnostic theory of values can remain
internally consistent only if the judgement that an individual’s behavior in-
fringes the freedom of others does not tacitly import judgments about the intrinsic moral value of the preferences of the individual or prevailing majority. If it should be impossible to define when an individual’s act infringes the freedom of another without premises about the relative moral values of the intention of one individual and another, the theory of immanent value would be incoherent.

Since there is no transcendent goal which can define the value of freedom by showing that for the sake of which freedom should be used, freedom per se becomes the ultimate value in itself. Because the concept of freedom is thus left undefined however, it produces incoherence in any context where it is introduced. Unless freedom can be defined in terms of what objects there can be for freedom, it will be impossible to define when a person’s act violates the freedom of another person. A definition of the violation of freedom entails knowing the relation between a person’s freedom and the object of his freedom and the conditions under which another person’s act disturbs that relation. If freedom is unlimited, then any object whatever may be construed to be the object of one’s freedom. In that case unlimited freedom would be nothing more than unlimited paralysis, because any object whatever, arbitrarily defined as the object of one’s own freedom, can be a ground for prohibiting another person’s use of his “unlimited” freedom. The concept of freedom would then collapse, because no act could be conceived as not potentially violating the freedom of another. A definition must be made of what kind of object may be taken as an object of freedom, so that a relatively unambiguous judgment may be made of what acts do, and what acts do not, infringe the freedom of others.

The concept of the object of freedom must be limited in order to define the relation of formal equality across people. By hypothesis the infringement of freedom cannot be defined by reference to a transcendent goal. If the legitimate object of freedom must be defined in order to define when an act constitutes a real infringement of freedom, then it must be determined by reference to what the object of freedom is for the majority of people. The agnostic determination of what counts as a substantive object of freedom does not maintain formal equality, because the choice cannot help but assert that the majority’s object of freedom has greater intrinsic value than the individual’s. Of course the col-
lective choice is substantially different from the individual choice in terms of number, but propounding such a ground is only begging the question. The question is, namely, why one value should be instituted because most people prefer it and why another value should be derogated because almost no one endorses it. The formal criterion of freedom and the internal moral content of a given act cannot be maintained distinctly apart, because a judgement on the superior intrinsic value of an object of freedom is used to define what will count as a violation of freedom. The notion of a formal criterion of freedom is ultimately not internally coherent with an agnostic theory of values, because the definition of freedom entails a judgment that the intrinsic moral value of one object of freedom is greater than that of another.

The agnostic theory fails to preserve its internal consistency for the reason that it cannot endorse any use of freedom which presupposes that the theory is true. An agnostic theory of rights can maintain internal consistency without appeal to transcendent values under the conditions that it does not make judgment on the intrinsic values of things and, consequently, attributes primacy to each individual's right to self determination. In order to forbear making intrinsic value judgments, any morally justified limitation on the individual's behavior must abstract from the intrinsic moral value of his act and consider exclusively whether his use of his liberty infringes on the liberty of others. The forbearance from making intrinsic value judgments and their attendant reference to transcendent forms depends on the condition that the quality of an act to have an intrinsic moral value and its quality to infringe the liberty of another person do not bear any mutual logical implications. It must be possible to forbid an individual the liberty to perform a certain act on the ground that it infringes on another person's entitlement to liberty without thereby making any implications on the intrinsic moral value of that act.

However, a criterion is needed for discerning when an act has the characteristic of infringing on another's liberty. Since there is by hypothesis no transcendent value, only the contingently given predominant value of the majority can be used as a criterion for whether an individual's act importantly or trivially infringes on another person's liberty in the sense that the other person is impeded from attaining a protected object of desire. Under these cir-
cumstances an intrinsic value judgment and a judgment on the infringement of liberty become mutually implicative because a value judgment must be used in order to define what constitutes an infringement of freedom.

The immanent theory of values therefore protects the liberty of the individual to use his freedom in a way that nullifies the immanent theory of values. If the agnostic theory limits an individual’s freedom on the supposedly value-neutral ground that his act would infringe the liberty of another, then it is indirectly endorsing some intrinsic value judgment which is presupposed for identifying what counts as an infringement of freedom. On the other hand, permitting the individual to enact his interests would imply that the individual has a greater value than others, because the prima facie ground for proscribing his behavior was that it would violate the balance of equality among people. If the agnostic theory treats individual preferences selectively rather than equally, it must justify the exceptional treatment by attributing a higher intrinsic value to one preference rather than another. In that case agnostic theory would violate its principle to forbear making intrinsic value judgments.

If in the interest of maintaining internal consistency agnostic theory does not import a judgment on the intrinsic value of an individual’s desire, it cannot coherently maintain a value-neutral principle of formal liberty as a criterion for determining what an individual may or may not do. If no intrinsic value judgments are made, then the individual’s right to unlimited self-determination would include the freedom to ruin every convention instituted for the equal distribution of liberty. Agnostic theory thus enters into paradox. It cannot limit the individual’s liberty without contradicting its own principle to forbear making intrinsic value-judgements. If it does not limit the individual’s acts agnostic theory contradicts the principle of its own justification, the equal distribution of personal liberty. The particular content of what the individual does with his freedom may ineluctably occupy the same logical level as the basic principles of the immanent theory which entitle the individual with that freedom.

The agnostic theory is paradoxical because it endorses the destruction of agnostic theory in order to supplement its internal consistency. There are unavoidable instances when agnostic theory must make a judgment on the intrin-
sic value of the individual's act because the theory can preserve itself only by inhibiting the behavior which contravenes it. If a certain value is to be used as an ultimate criterion for determining when an infringement of liberty is trivial or substantive, that value itself is not adequately demonstrated by appeal to the given fact that it is the value which most people would use their freedom for. Since by hypothesis no value whatever is justified by a transcendent form, the value of the individual and the value of the great majority are equally inane. One cannot simply posit that the value of the majority should be chosen as the criterion of liberty, for then the formal equality of all individuals would be violated. On the other hand, the criterion of equal liberty cannot be used as a criterion for limiting conduct independently of choosing some ultimate intrinsic value.

NOTES


(2) The allegory of the Sun and the Cave in the *Republic* epitomizes the view that moral beliefs are diverse because of ignorance of their transcendent reference (*Republic* 479d3-479e8), and all difference of moral opinion can be resolved ultimately by reference to the transcendent form of the good (*Republic* 508d4-509a5).

(3) In the Platonic Christian tradition, rationality involved not only deliberative rationality, but also commitment to transcendent moral values, because the concept of God entailed that God was not only the ultimate source of being, but identically was the ultimate source of moral values. To be a rational being was to innately possess a knowledge of ultimate values. The ultimate values were not things to be demonstrated, but principles which precede all rationality. cf. Kondylis, *Die Aufklärung im Rahmen des neuzzeitlichen Rationalismus*, p. 22.

(4) If, as Lyons suggests, human rights are not absolute in the sense that they only represent "thresholds" that may be overruled in specific cases, then there is at least a preliminary suggestion that our conception of rights as absolute is the consequence of a semantic misconception and, once we have corrected the term "human rights" to mean not "absolute rights" but "rights with the highest threshold", the argument for


(6) Consider Lyons, “Utility and Rights”, from *Ethics, Economics and the Law: NOMOS XXIV* eds. J. Roland Pennock and John W. Chapman, New York University Press, 1982, and *Theories of Rights*, ed. Jeremy Waldron, Oxford University Press 1985, p. 120: “One thing that complicates matters here is that Mary’s (i.e. a person’s) rights, to be morally defensible, must have some foundation in human interests, needs, or welfare and are limited in turn by similar considerations. For this reason, utilitarian considerations are, within limits, relevant to a final determination of what Mary and others may justifiably do, which is bounded by a decent regard for others’ welfare.”

(7) For example, Saint Augustine asserts that the punishment for doing wrong is simultaneous with doing wrong; punishment is not deferred. He admits in the same passage that a wrong-doer who is suffering the pain of doing wrong may not be in the least conscious of being unhappy, although he is unhappy. Cf. *de libero arbitrio*, III, 15.

(8) In the *Gorgias* (473a sq.) Plato asserts that the unhappiness in doing wrong does not result from the external repercussions that are inflicted on him, but from the harm to oneself that is internal to the act of doing an injustice. Augustine supplements this notion by asserting that since every man, in so far as he exists, is good, every man has a will to approach the ultimate good; he inflicts unhappiness on himself when he impedes this naturally given direction by doing something wrong. Cf. *de vera religione* 20.


(10) The Christian religion adopts the Aristotelian thesis that all beings are good because it excludes the Manichean thesis of radical evil. If “bad” is defined as a privation, then it is syncategorematic; it can exist only as a modification of something else, but it cannot exist itself as a substance. Bad defined as privation implies that something must first have being primarily as good before it can assume the attribute of “bad”; it becomes “bad” only by undergoing a loss of part of its goodness. Since badness has no substantial meaning, a thing which lost all of its goodness would cease to exist.

(11) The thesis that evil is a privation rules out the thesis of Manichaean dualism,
but it does not rule out the presence of evil in the world or the fact that certain things are bad. Material objects can be bad because they participate in being and goodness. Material things are however partially bad, because they are not pure being; as ephemeral existents they are not identical with being, because being qua being is eternal and immutable. The goodness of a thing is the degree to which it participates in being, which is perfectly good; all material objects are partially bad, because they are ephemeral, and they are ephemeral because they care created out of nothing. Cf. De Libero Arbitrio I, 12, 22–13, 28.

(13) cf. Flasch, Augustin, S. 114
(15) Thus the qualification “in quantum natura est” is important because it makes a deep distinction across all sensuously given things; only some sensuously given things are good and “have being”, according to whether a thing is a good realization of its proper form. The qualification in effect equates “being” with being an exemplification of a non-sensuous form rather than with sensuous givenness.
(16) The Platonic distinction in books five and six of The Republic propound that a thing can fail to exemplify its Form, and thus fail to be, because of its mixture in the material, sensory world. Assuming that all good things in the sensible world are temporary and contingent, nothing that is “good” by criteria of sensory pleasure and pain can fit the criterion of the absolutely good, because they are impermanent. All things may be evaluated to be morally good according to how closely they approximate the standards of their given essence. What is ultimately good, however, cannot be anything sensory because of their impermanence. The absolute good which is adequate to the human being is therefore something which transcends the senses because it must be something which is unchanging and which fully satisfies the human mind. The human mind can fail to find happiness and satisfaction only when it deviates from seeking this ultimate good in a transcendent object and tries to find full satisfaction and permanent stability in something which is sensory, such as power, wealth, fame, and sensory pleasure. cf. Flasch’s discussion of evil according to Augustine, Augustin, pp. 108–109.


(22) Augusinus, *De Libero Arbitrio*, I,2.


(29) Thus Aquinas quotes Augustine’s position that vice is evil to the degree that it detracts from the agent’s actualized nature. cf. Aquinas, *Summa Theologiae*, Prima Secundae, quaestio 73, articulus 8.

(30) cf. Aquinas *Summa Theologiae*, Prima Secundae, quaestio 1, articulus 5.


(32) Plato sets as a presupposition to morality that virtue is not an ability to acquire immanent goods (cf. *Meno* 78e3–79a2) and that virtue is indifferent to prudential motivations. Plato postulates that morality and prudence are radically distinct. The entire project of Plato’s *Republic* is to demonstrate that being just is desireable for its own sake even under the condition that being just achieves no immanent benefit. Refer to *Republic* 358b4–7. Cf. Terence Irwin, *Plato’s Moral Theory*, Clarendon Press, 1977, p. 240.

(33) The Socratic thesis that people do what is morally wrong only because of ignorance ultimately makes nonsense of an order of moral values prior and ontologically distinct from prudential values. A world view in which moral deviation can result only from ignorance would imply a consequence such as that in Origen, in which all individuals ultimately go to Heaven, implying that evil or moral wrong is ultimately illusory. Moral discourse is possible only when there is a dichotomy of two substantially separate orders of reasons, in which reasons from each order would be equally


(38) Intellectualism conceived that man's will was subordinate to his intellect, and that man chose what it was he wanted and freely directed his will towards the object of desire after intellectually grasping what it is that is good. However, such a relation to the reasons of moral discourse creates a terrible dilemma. Such a conception entails that “the good” per se has an objective existence which is invariant to man's subjective conceptions of it, but it would also entail that there could be no rational justification for the definition of “good” per se. If the “good” per se could be rationally explained, then the principle of the account would be the ultimate principle of value and not the good per se. If, on the other hand, the “good per se” is per definitionem the ultimate principle, then it is logically necessary for the concept of “good” to be unintelligible. If the “good” is the ultimate principle of value, then it is absolute, but it is also unintelligible. If “the good” can be explained and rationally justified, it is intelligible, but then it is not absolute, because the validity of “good” would contingently depend on the principle which justifies it. In the context of Scholastic terminology, if God ordains what is good because it is good, then God's omnipotence is limited; God is then seen to be in submission to the moral laws, instead of being
seen to be the creator of the original moral laws. God's omnipotence is then limited in the sense that he can ordain what is good for reasons independent to Himself. In turn it makes man's intellect sufficient to itself, for then man can determine what is good without the aid of God. If, on the other hand, man depends on "God" or, mutatis mutandis, "the good" in order to apprehend what is morally right, then "the good" would be unintelligible. "The good" would be unintelligible because whatever is thereby given as the good would not be subject to justification or critique by any other concepts of value. In Scholastic terms, God would be omnipotent if He creates what is good, but that would imply that the goodness of the ultimate good is ultimately arbitrary; God could create anything whatever to be good. Cf. Marilyn McCord Adams, Chapter 28, "Divine Omnipotence Analyzed", in William Ockham, volume II, pp. 1151-1231.

(39) cf. Ernst Tugendhat, Ti Kata Tinos.

(40) Voluntarism sustained the thesis of the omnipotence of God, for God's will could arbitrarily posit anything at all to be good or evil. But God's omnipotence was purchased at the price of severely limiting the powers of the human intellect, for it meant that there could be no ultimate intelligible grounds for discerning why what is good is not evil or why what is evil is not good; it rendered the moral universe ultimately unintelligible to the human intellect. On the other hand, it made the concept of good non-tautological, because it made goodness something ultimately independent of man's intellect. Cf. James Tully, "Locke on Liberty", in Conceptions of Liberty in Political Philosophy, eds. Zbigniew Pelczynski and John Gray, The Athlone Press, London, 1984, p. 67.

(41) cf. John Hick, "Theology and Verification", p. 68.

(42) In Scholastic terminology, the moral commandments of God are not valid for man because they are good, but because they come from God. God is not limited by moral principles because whatever command God makes is ipso facto what is good.

(43) If man desires what is good because it is good, and the goodness of "the good" does not depend on God's will, then apparently man would have a moral obligation to will "the good" even in the case that God ordained evil. What is good would not cease to be good if God did not ordain it; the ultimate reason then that man would will the good would not be God's will. This would then make man's finite intellect self-sufficient, since it would be capable of knowing the good without the aid of God. cf. Eleonore Stump and Norman Kretzman, "Being and Goodness", from Divine and Human Action: Essays in the Metaphysics of Theism, ed. Thomas


(47) cf. Bernard Williams, "God, Morality, and Prudence".


(49) The conflict of immanent and transcendent values may be semantically coherent according to the criterion of verifiability and yet be incapable of conclusive verification. All of the same empirical events may take place in a world which is teleologically structured and one which is not, so that nothing within empirical experience would verify which set of values is valid. cf. John Hick, "Theology and Verification", in Theology Today, #17 (1960), pp. 12–31; also in The Philosophy of Religion, ed. Basil Mitchell, Oxford University Press, 1971, p. 60: "The alleged future experience of this state cannot, of course, be appealed to as evidence for theism as a present interpretation of our experience; but it does suffice to render the choice between theism and atheism a real and not a merely empty or verbal choice. And although this does not affect the logic of the situation, it would be added that the alternative interpretations are more than theoretical, for they render different practical plans and policies appropriate now. The universe as envisaged by the theist, then, differs as a totality from the universe as envisaged by the atheist. This difference does not, however, from our present standpoint within the universe, involve a difference in the objective content of each or even any of its passing moments. The theist and atheist do not (or need not) entertain divergent expectations of the course of history viewed from within. But the theist does and the atheist does not expect that when history is completed it will be seen to have led to a particular end-state and to have fulfilled a specific purpose, namely that of creating "children of God".


(51) cf. Andrzej Rapaczinski, Nature and Politics: Liberalism in the Philosophies

(52) Hobbes repudiates the Aristotelian concept that desire is caused by good by mechanistically explaining the belief that something is good as a causal effect of feeling desire for it. Cf. Rapaczynski, op.cit., p. 31.


(54) cf. Tully, op.cit., p. 41: “Locke agrees with the voluntarists that God’s will is the source of obligation, but rejects the inference that the test of the validity of the natural law cannot be reason. He accepts the rationalist tenet that natural laws are discovered by reason, are wise and good by independent criteria, but he denies that this is the source of their binding force.”

(55) cf. Kant, Kritik der reinen Vernunft, B113.

(56) When Locke denies the possibility of innate ideas, then in effect he undermines his own theory that morality is based on natural law. If the natural law is not intuited, then it must be known by reason. But reason, in Locke’s philosophy, can only create ideas from sense impressions, and there is no sense impression for moral or axiologiocal ideas. The empirical derivation of concepts from sense-data contradicts the theory of Natural Law. Cf. Grant, op.cit., p. 24: “Locke’s critics either argue that by attacking the doctrine of innate ideas Locke has left only sense and reflection as the clearly inadequate means by which men might know the natural law, or argue that Locke relies on the concepts of “self-evidence” and “intuition,” which cannot be distinguished finally from the concept of “innateness.” Locke’s attack on innate ideas in the Essay is said to contradict his reliance on natural law in the Two Treatises.”


(58) cf. Thomas Hobbes, Leviathan, ch.6: “But whosoever is the object of any man’s appetite or desire, that is it which he for his part calleth good: and the object of his hate and aversion evil,...are ever used with relation to the person that useth them: there being nothing simply and absolutely so; nor any common rule of good and evil, to be taken from the nature of the objects themselves...”


(61) cf. David Miller, “Passion, Reason, and Morality”, in Hume’s Political


(66) cf. H.L.A. Hart, “Akzeptanz als Basis einer positiven Rechtsordnung”, aus Recht und Moral, hrsg. Norbert Hoerster, Reclam, Stuttgart, 1987, S. 53; in English as: “Legal and Moral Obligation” in Essays in Moral Philosophy, ed. A.I. Melden, University of Washington Press, Seattle, 1958, pp. 87–93. H.L.A. Hart hopes to elude the question of foundation by starting out from what is traditionally given and conventionally recognized. However, even this starting point is defective because it presupposes a vague sort of populism or democracy, but populism is an idea which is not always accepted in any historical era as self-evidently valid.


(68) Following Bentham’s discussion of rights, a right may be defined as an individual’s claim on the obligation of others to do specific things which are beneficial to himself.


(73) cf. Kavka, Hobbesian Moral and Political Theory, Princeton University
Press, 1986, p. 315: "...Hobbes defines the right of nature as "the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto. "No argument is ever offered for ascribing this natural right to us, and all other rights are derived, by Hobbes, from it. Hence, it functions as a normative postulate of Hobbes's moral theory."

(74) cf. Bernard Williams, "God, Morality, and Prudence", op.cit., p. 133.

(75) cf. Melzer, *The Natural Goodness of Man*, Chicago University Press, Chicago, 1990, p. 124: "Consequently, men themselves must create their own order and rules of morality by creating the coercive legislating power that nature and god cruelly fail to provide. Men can do so only by promising to obey this power whatever it commands, for, owing to the weakness of reason, men will never agree among themselves on what is right and wrong; they must renounce reason and submit to an arbitrary decision."


(77) cf. Augustine, *De Ordine* II, 9.

(78) The traditional concept of original sin supported the idea that man should be directed by the church as a higher authority. Instead of personal freedom and the pursuit of happiness being considered basic rights, it was held that man's life does not belong to himself, but to God, and it followed that man does not have a limited right to determining his own destiny or a right to suicide, because his life was ultimately the possession of God, not himself; cf. Aquinas, *Summa Theologicae*, Secunda Secundae, quaestio 64, articulus 5. Cf. J.B. Russell, *Dissent and Reform in the Early Middle Ages*, Berkeley, 1965.

(79) In the Platonic-Christian tradition Reason was succinctly conceived to consist in the apprehension of transcendent Forms and the correct subsumption of particulars under them. In trying to establish an agnostic basis for human rights, no reference may be made to transcendent forms. Reason may be defined as practical intelligence whose capacity consists in devising the means for the object of desire, but not in a rational evaluation of the desire in terms of transcendent values. Cf. Kurt Flasch, *Das Philosophische Denken im Mittelalter*, Reclam, Stuttgart, 1988, S. 93–95.

(80) cf. Kurt Flasch, *Augustine*, Stuttgart, Reclam, 1980, S. 108. The transcendent concept of happiness rests on the Platonic thesis that reality is the permanent. Man can find the real object of his happiness, therefore, only if that object is per-
manent. Consequently he must overcome his penchant to seek happiness in sensuous things because, as transient, they cannot fulfill the criterion of reality.


(82) Ironically, Montesquieu based moral relativism on exactly the same ground, only asserting that nature was everywhere different.

(83) cf. Hobbes, Leviathan, Penguin, 1985, Ch. 5, p. 128: "Will therefore is the last Appetite in Deliberating. And though we say in common Discourse, a man had a Will once to do a thing, that nevertheless he forebore to do; yet that is properly but an Inclination, or Appetite. For if the intervenient Appetites, make any action Voluntary; then by the same Reason all intervenient Aversions, should make the same action Involuntary; then by the same Reason all intervenient Aversions, should make the same action Involuntary; and so one and the same action, should be both Voluntary & Involuntary.

(84) Thus Montesquieu refers to the "Spirit of Laws" as exactly a variegated interpretation of uniform laws of nature to apply to different environments. Cf. L'Esprit des Lois, Livre 1, ch. 3; cf. Pangle, op.cit., p. 43.

(85) Thus Aristotle posits that man has an "essence" and, so far as the concept of self-preservation can be used, it must mean selecting desires which help to the realization of the essence. Other desires, which are not conducive to the realization of the essence, might be indeed genuinely felt desires, but would be spurious desires having no substantial value. Desires which are conducive to physical survival, but which are not conducive to the realization of one's essence, would also be per se spurious.

(86) Thus when Hobbes repudiates the Aristotelian theory of teleology, he accounts for the possession of desires as a result of empirical, efficient causality. A person has a "right" to pursue any desire he has in the sense that, since having the desire is deterministically given and there is no external criterion for valuing one desire rather
than another, there is no internal principle for an individual to select amongst his
desires or to suppress any of them. cf. Rapaczynski, op.cit., p. 38.

(87) The abolition of the transcendent order makes all desire immanent and par-
ticularistic, and eliminates natural desire as a metaphysical ground for moral uni-
versalism. Montesquieu's Spirit of the Laws directly contradicts the stoic premise
that nature is everywhere uniform, instead claiming that laws are justifiably different
because they conform to the differences of nature in certain localities. So whereas
Montesquieu derives law from nature, he draws a conclusion which would contradict
the stoic conclusion about universal human rights.

(88) cf. Irving M. Copi, "Essence and Accident", in Naming, Necessity, and Nat-

(89) Locke supposes that we create our concepts arbitrarily, according to the
utility that a concept has in a given region. Thus some cultures do not have the
concept of "ice" because such a concept is not needed, or a culture may have a concept
of patricide but no concept of "killing one's neighbor", although there is no greater
natural connection between "killing" and "father" than there is between "killing" and
"neighbor". cf. Locke, Essay III 6.13; Esssay III 5.6–7; Grant, op.cit. p. 18.

(90) cf. Grant, op.cit., p. 18.

(91) cf. Locke Essay IV.6.15: "Let the idea to which we give the name Man be,
as it commonly is, a body of the ordinary shape, with Sense, voluntary Motion, and
Reason join'd to it...we cannot with certainty affirm, That all men sleep by inter-
vals; That no Man can be nourished by Wood or Stones; That all Men will
be poisoned by Hemlock: because these Ideas have no connexion nor repugnancy
with this our nominal Essence of Man, with this abstract Idea that Name stands for.
We must in these and the like appeal to trial in particular Subjects, which can reach
but a little way. We must content our selves with Probability in the rest; but can
have no general Certainty, whilst our specifick Idea of Man, contains not that real
Constitution, which is the root, wherein all his inseparable Qualities are united, and
from whence they flow."

(92) cf. Copi, op.cit., p. 185

(93) The classical theories of social contract propounded by Hobbes, Locke, and
Rousseau all comprised a revolt against nature. Their theories of human right pro-
ound universality, but for that each theory ultimately repudiates a natural paradigm.
It is true that Locke does try to base the social contract on natural law, but of the three
major contract theorists his theory of social contract is the one that most evidently
deteriorates into self-contradiction.

(94) cf. David Hume, *An Enquiry Concerning Human Nature*. Thus Hume essentially demolishes the possibility for universal human rights when he denies that an “ought” statement can be derived from an “is” statement. Since the consent which generates rights cannot have any derivation from nature or the cosmological order, the scope of rights that may be obtained from consent is likely to be extremely limited. Thus Hume concludes that moral values must be traditional and regional, since they depend for their consent on a sentimental rather than rational foundation.


(96) The initial view that morality must consist in an overcoming of nature pre-dates Kant’s characterization of morality as the “kingdom of ends” and Schelling’s conception of morality in general as a “second nature.”

(97) It is highly significant that when the theorists of the classical contract theory account for the origin of the social contract, they are all careful to emphasize the moral indifference of nature and the morally neutral prudential motivations of the individuals who make the initial consent. Nature has no moral interests and the individuals form morality from non-moral motivations. Fear is given as a ground of consent, but no reason by reference to an ideal and objective norm is given.


(99) cf. Dworkin, “Rights as Trumps”, p. 154: “In any of its standard versions, utilitarianism can claim to provide a conception of how government treats people as equals, or, in any case, how government respects the fundamental requirement that it must treat people as equals. Utilitarianism claims that people are treated as equals when the preferences of each, weighted only for intensity, are balanced in the same scales, with no distinctions for persons or merit. The corrupt version of utilitarianism just described, which gives less weight to some persons than to others, or discounts some preferences because these are ignoble, forfeits that claim.”


(101) cf. Dworkin, “Rights as Trumps”, in *Theories of Rights*, p. 163.