

**MACINTYRE OR GEWIRTH?
VIRTUE, RIGHTS, AND THE PROBLEM OF MORAL INDETERMINACY**

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Within the history of Western ethics one finds the teleological approach exemplified by Aristotle's ethics of virtues, on one hand, and the deontological approach heralded by Kant's ethics of duty, rule-utilitarianism, and divine will/command conceptions of morality, on the other hand. It is usually assumed that these two approaches are incompatible and that one must follow either the *good* or the *right*.¹ In this paper I am concerned with what I believe is the most significant contemporary manifestation of the virtue-rights debate. Alasdair MacIntyre's work in virtue ethics is now well known. But what is rarely discussed, if at all, is MacIntyre's critique of Alan Gewirth's theory of morality as a theory of human rights.² This is puzzling since MacIntyre himself admits that Gewirth represents the most sophisticated attempt to lay the foundations of a theory of human rights in a systematic analysis of the rational basis of morality. If Gewirth fails to provide adequate grounds for rejecting the emotivist and subjectivist accounts of morality that MacIntyre finds so prevalent today, then MacIntyre feels he has strong evidence to conclude that other Kantian deontologists such as John Rawls, Alan Donegan, and Bernard Gert will not succeed either. The fact that MacIntyre singles out Gewirth among this eminent group of scholars would warrant the focus of this paper. But there is much more at stake in MacIntyre's critique of Gewirth than simply the question concerning a positive role for the virtues in moral and political life. Indeed, MacIntyre's critique raises the central and perennial question of how best to rationally justify moral theory. If MacIntyre is right and Gewirth wrong, then nothing less is at stake than the possibility of construing the difference between moral right and wrong as an objectively knowable and universalizable for all persons who claim to use

1. Paul Ricoeur ["The Teleological and Deontological Structures of Action: Aristotle and/or Kant." *Archivio di filosofia* 55 (1987), pp.205-217] suggests that a proper theory of action can assign the teleological and deontological approaches to moral philosophy to two different stages on the trajectory of *praxis*.

2. Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, Second Edition (Notre Dame, Ind.: University of Notre Dame Press, 1988, Hereafter, AV; Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978).

rational methods of reflection. If Gewirth is right and MacIntyre wrong, as I maintain, what is at stake is the problem of moral indeterminacy in virtue ethics and a rethinking of the role of human rights in contemporary moral theory. First, I identify why MacIntyre believes the Enlightenment project of justifying morality failed given its operative moral suppositions, and the implications for Gewirth's liberal rights theory. Second, I highlight the key elements of MacIntyre's critique of Gewirth. Third, I present Gewirth's rebuttal to MacIntyre based on the substantive aspects of his argument to the Principle of Generic Consistency and, fourth, the moral indeterminacy which plagues MacIntyre's virtue ethics. Finally, I ask what lessons we may learn from the MacIntyre-Gewirth debate and its possible implications for Christian ethics.

I. The Failure of the Enlightenment Project and the New Teleology

MacIntyre's central thesis is that the moral projects of Kierkegaard, Kant, and Hume failed. However different their respective philosophical accents on choice, reason, and passion, their projects had to fail because they inherited a moral scheme whose internal incoherence guaranteed failure from the outset. The inherited scheme entailed both a certain view of human nature and a set of moral principles, rules, and injunctions divorced from their earlier teleological context. The pre-Enlightenment moral scheme, essentially derived from Aristotle, turned on three hinges, i.e., a conception of "untutored" human nature, a conception of the precepts of rational ethics or of divine law, and a conception of "human-nature-as-it-could-be-if-it-realized-its-*telos*." ³ The third element dropped out of the moral horizon just prior to and during the Enlightenment period, and requires reference to the other two dimensions if its status and function are to be intelligible. In the classical scheme ethics is understood as a "science" which enables persons to move from raw nature to a nature realized in accordance with its essentially relational end. The precepts of rational ethics are constituted by various virtues and vices which correct, improve, and educate the subject about how to move from human potentiality to act. To ignore the role of the virtues and vices in the moral life is to land oneself in frustration, to miss the mark with respect to the good of rational happiness, a *telos* unique to the human species as such. Aquinas, Maimonides, and Ibn Roschd appropriated the classical scheme within their respective theistic frameworks, but did not essentially alter it. They brought teleology and deontology, virtue and law, together in a tensive synthesis. Thus, the theological virtues get added to the cardinal virtues, a doctrine of sin is added to the Aristotelean concept of error, and the human *telos* is transformed from the earthly city to the heavenly city and eternal life.

3.AV, 52-53.

Several historical developments eroded the classical and Medieval moral foundation. Both the secular rejection of Protestant and Catholic theology and the scientific and philosophical rejection of Aristotelianism eliminated the idea of "man-as-he-could-be-if-he-realized-his-*telos*." The Lutheran, Calvinist, and Jansenist Catholic theological supposition that the power of reason has been destroyed by original sin made man's true end unintelligible. Pascal is a key figure here because he made links between fallible reason in theology and seventeenth-century philosophy and science. Pascalian reason does not comprehend "essences" or the transition from potentiality to act as in the despised conceptual scheme of scholasticism. Pascal's anti-Aristotelian science set strict boundaries to calculative rationality. Reason can assess truths of fact and mathematical relations, but when it comes to practice it can only speak of means. Reason can neither discern ends nor refute scepticism. The central achievement of reason, according to Pascal, "is to recognize that our beliefs are ultimately founded on nature, custom and habit."⁴ By the eighteenth century, the essentially Protestant and Catholic Jansenist concept of reason of the sixteenth century became a completely secularized vision marked by the forceful rejection of divine law morality. The view of "man-as-he-could-be-if-he-realized-his-*telos*" is gone. Because the role of moral precepts in the classical scheme was to teach untutored human nature how to reach its *telos*, such precepts could not be derived from descriptive accounts of human nature once the teleological worldview was forgotten. Now there can be no move from "is to ought." Hume's naturalist fallacy became the great "epitaph" of the Enlightenment. Its tremors are still felt in modernity's myth of "bureaucratic expertise" with its false claim to value neutrality and the power to manipulate law-like generalizations. The Enlightenment moral scheme drove a wedge between is and ought, nature and morality, because it lost a functional concept of "man." Functional concepts entail a notion of good (or bad). Thus, Aristotle's *Nicomachean Ethics* can point out that the relationship between man and living well is analogous to the harpist playing the harp well.⁵ But "man" as a functional concept is older than Aristotle, and is rooted in various forms of social life, e.g., "man" as a family member, as a citizen, as a soldier, as a philosopher, or as a servant of God. "It is only when man is thought of as an individual prior to and apart from all roles that 'man' ceases to be a functional concept."⁶ Conversely, a notion of good entails an essential purpose or function. "The presupposition of this use of 'good' is that every type of item which it is appropriate to call good or bad-- including persons and actions-- has, as a matter of fact, some given specific purpose or function. To call something good therefore is also to make a factual statement.....But once the notion of essential human purposes or functions disappears from morality, it begins to appear implausible to treat moral judgments as factual statements."⁷

4. AV, 54.

5. Aristotle, *Nicomachean Ethics* (1095a 16).

6. AV,59.

7. AV, 59.

But this is not all. The radical transformation in moral outlook was actually celebrated as liberating the Enlightenment self from a theism whose outmoded hierarchical, politico-ecclesiastical structures were ideologically legitimated by the earlier teleological world order. The social and political consequences of this change in moral horizon were embedded in the French and American revolutions. It is precisely here, on the historical cusp of the rallying cries for revolutionary praxis, that MacIntyre situates the origin of the modern self, the liberal individual who speaks "unconstrained by the externalities of divine law, natural teleology or hierarchical authority."⁸ Morality would now have to find a new teleology and categorical status to fill the void left in the wake of modernity. It would run in a direct line from Bentham and Mill's utilitarianism, to Sidgwick and Moore's intuitionism, to American pragmatism-- "another *praeparatio evangelica* for emotivism"-- to present-day emotivism. Modern analytical philosophers, including Gewirth, essentially follow Kant in grounding the authority and objectivity of moral rules in reason. They are the modern representatives of categorical moral utterance. While the concept of "rights" was invented to serve one set of purposes and the concept of "utility" devised for another, both represent substitutes for the lost concepts of the older and more traditional morality.

II. Of Witches, Unicorns and Rights: MacIntyre's Critique of Gewirth

For MacIntyre, as we have seen, modern rights are the deontological husk of the earlier divine command morality, but now alien to modern metaphysics. Utility has become the new, yet entirely inadequate, moral teleology whose claims are incommensurable with rights claims. It is in the context of MacIntyre's argument as to why the Enlightenment project of justifying morality had to fail and modern philosophy's efforts to deal with that failure that we must situate his fourfold critique of Alan Gewirth.

First, MacIntyre attacks one aspect of Gewirth's overall argument for a supreme principle of morality, i.e., the Principle of Generic Consistency. MacIntyre notes that the following is the "key sentence" of Gewirth's book *Reason and Morality*: "Since the agent regards as necessary goods the freedom and well-being that constitute the generic features of his successful action, he logically must also hold that he has rights to these generic features, and he implicitly makes a corresponding rights-claim [sic]."⁹ The introduction of the concept of "right" in the second part of this sentence needs justification, according to MacIntyre. Gewirth is confusing claims about goods necessary for rational agency with claims to the possession of rights. The claim that I have a "right" to do or have some object x is different from the claim that I need, want, or will be benefitted by x. "From the first-- if it is the only relevant consideration-- it follows that others ought not to interfere with my attempts to do or have whatever it is, whether it is for my own

8. AV, 68.

9. MacIntyre, *After Virtue*, p.66, citing Gewirth, *Reason and Morality*, p.63. Note that MacIntyre misquotes the last word of Gewirth's sentence which should read "right-claim" and not "rights-claim."

good or not. From the second it does not. And it makes no difference what kind of good or benefit is at issue."¹⁰

Second, MacIntyre objects that right-claims cannot derive claims about goods necessary for rational agency. Claims to the possession of rights presuppose the existence of a socially established set of rules. "The existence of particular types of social institution or practice is a necessary condition for the notion of a claim to the possession of a right being an intelligible type of human performance."¹¹

10. AV, 67.

11. AV, 67.

Third, MacIntyre denies the universalism of rights on the grounds that rights claims have a highly specific and socially local character. Rights presuppose the existence of quite specific types of social institution. Where they lack such social form, he writes, "the making of a claim to a right would be like presenting a check for payment in a social order that lacked the institution of money." Thus Gewirth "has illicitly smuggled into his argument a conception which does not in any way belong, as it must do if his case is to succeed, to the minimal characterization of a rational agent."¹²

Fourth, as evidence for the nonuniversality of rights, MacIntyre notes that there is no expression in any ancient or medieval language that correctly translates the modern term "right" until near the close of the middle ages. "From this," he admits, "it does not follow that there are no natural or human rights, it only follows that no one could have known that there were." The truth appears plain to him: rights do not exist and belief in them is tantamount to a belief "in witches and in unicorns."¹³ What MacIntyre is doing here is drawing a parallel between the assertion that human rights exist with the assertion that witches and unicorns exist. But the reason for not believing in rights is, in MacIntyre's view, the same reason for not believing in witches and unicorns: Because "every attempt to give good reasons for believing that there *are* such rights has failed."¹⁴

III. Gewirth's Rebuttal to MacIntyre's *After Virtue*

12. AV, 66-67.

13. AV, 69.

14. AV, 69.

Gewirth has responded to MacIntyre's critique,¹⁵ although his rebuttal presupposes a good knowledge of the argument to the Principle of Generic Consistency as set forth in *Reason and Morality*. In his rebuttal, Gewirth takes offense at the way in which MacIntyre attempts to assimilate the ontological status of human rights to the ontological status of witches and unicorns. Even if it were the case that attempts to give good reasons for rights had failed in the past, this fact would not ground MacIntyre's assertion that there exists an equivalency between the ontological status of rights and the ontological status of witches and unicorns. Rights are "normative entities" precisely in a way that witches and unicorns are not. More to the point, Gewirth suggests "empirical correlates" for the existence of human rights. Here "existence" has a secondary meaning of social recognition and legal enforcement in a way that one cannot provide empirical correlates for the past or future existence of witches and unicorns. Thus, when we look at murderous or oppressive phenomena in Nazi Germany, the Soviet Union, Chile, or elsewhere, we are not seeing mere "fictions." These oppressions are empirical phenomenon that are undeniably violations of human rights. Similarly, where certain basic freedoms and phases of well-being are in fact protected, and regardless of race, religion, etc, then the referent is the empirical existence of human rights which are socially recognized and legally enforced.

15. Alan Gewirth, "Rights and Virtues," *The Review of Metaphysics* XXXVIII/4 (June 1985), pp.739-762..

But can't one rebut Gewirth on the grounds that his implicit criteria of "empirical correlates" could equally be used to prove the existence of the devil? Then the argument would be that the existence of tangible evil in human affairs is the empirical correlate of the devil's existence. This analogy does not hold, however, or at least it does not refute Gewirth's argument for the nonfictional status of human rights. Why? Because oppressive phenomena such as rape, murder, and torture, on one hand, or liberating fulfilment of the protection of human well-being, on the other hand, are not understood as "effects" of the existence of human rights in the same way that palpable evil is seen as an effect of the devil's work in the world. Instead, violations and fulfilment of human freedom and well-being are what is *meant*, respectively, by the social nonexistence and existence of such rights. Gewirth does not need, in other words, to rely on a causal hypothesis whose own existence cannot be empirically instantiated. Linking palpable evil to the work of the devil requires just such a causal hypothesis. And if one might further object that "the empirical phenomena of evil likewise constitutes what is *meant* by the existence of the devil," then there is still one very important difference. The concept of the devil cannot *itself* be empirically instantiated because it goes beyond available evidence.

Gewirth also rejects MacIntyre's blanket assertion that all attempts to give good reasons for believing in human rights have failed. MacIntyre has made an assertion without any extensive historical evidence to support it. Moreover, MacIntyre's discussion is limited to Gewirth's position or argument for human rights which MacIntyre treats only in part. Gewirth uses a *dialectically necessary method* to argue to his principle of generic consistency. His method is *dialectical* because it deduces conclusions from statements made or accepted by a "prospective purposive agent" (PPA) about how they view things. PPA's are those who act voluntarily for purposes that they have freely chosen--purposive agents-- as well as those who have the capacity to do so, which they have some disposition to exercise. The method is *necessary* in that statements made or accepted by every PPA logically derive from the generic features of purposive action. Gewirth contrasts his *dialectical* method with an assertoric method, and his *necessary* method with a contingent method in his book *Reason and Morality*:

"...it is one thing to say assertorically that X is good; it is another thing to say dialectically that X is good from the standpoint of some person, or that some person thinks or says 'X is good.' Where the assertoric statement is about X, the dialectical statement is about some person's judgement or statement about X. But whereas the dialectical method is relative to persons in this way, the dialectically necessary method propounds the contents of this relativity as necessary ones, since the statements it presents reflect judgements all agents necessarily make on the basis of what is necessarily involved in their actions....The basis of this necessity is found in one or another aspect of the generic features of action and hence in the rational analysis of the concept of action. Thus, although the dialectically necessary method proceeds from within the standpoint of the agent, it also undertakes to ascertain what is necessarily involved in this standpoint. The statements the method attributes to the agent are set forth as necessary ones in that they reflect what is conceptually necessary to being an agent who voluntarily or freely acts for purposes he wants to attain."¹⁶

16. Gewirth, *Reason and Morality*, 44.

Gewirth's method, particularly its "necessary" side, does indeed seek to achieve categoricalness for moral judgements. Every agent, by the fact that he or she engages in purposive acts, is logically committed to the acceptance of certain evaluative and deontic judgments and, ultimately, of a supreme moral principle that he calls the Principle of Generic Consistency: "*Act in accord with the generic rights of your recipients as well as of yourself.*"¹⁷ Gewirth's revised neo-Kantian categorical imperative, now reinterpreted along the lines of action theory, requires that each agent respect his or her recipients' necessary conditions of action.¹⁸ Like MacIntyre, Gewirth is concerned with the problem of moral emotivism and the interminable claims and counterclaims that arise in moral discourse. Gewirth also wants to bring this moral "dissensus" to a halt. He attempts to do so by recourse to facts and propositions that a PPA cannot reject because they are tied to the context of action itself. Gewirth has attempted to prove the normative structure of action in three broad steps:

"First, every agent implicitly makes evaluative judgments about the goodness of his purposes and hence about the necessary goodness of the freedom and well-being that are necessary conditions of his acting to achieve his purposes. Second, because of this necessary goodness, every agent implicitly makes a deontic judgment in which he claims that he has rights to freedom and well-being. Third, every agent must claim these rights for the sufficient reason that he is a prospective agent who has purposes he wants to fulfill, so that he logically must accept the generalization that all prospective purposive agents have rights to freedom and well-being."¹⁹

The general aim to which Gewirth aspires in these three argumentative steps is to show that the agent's pursuit of purposive action commits him or her to accept certain normative judgments on pain of self-contradiction. Purposive action depends on its having a certain normative structure. The PGC is derived logically, Gewirth argues, from judgements that are necessarily constitutive of the normative structure of action. The fuller structure of Gewirth's argument may be diagrammed in the following fashion:²⁰

STAGE I²¹

17. Gewirth, *Reason and Morality*, 135.

18. See Gewirth, *Reason and Morality*, 26-42, 48-63;

19. Gewirth, *Reason and Morality*, 48.

20. Here I am following Deryck Beyleveld, *The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth's Argument to the Principle of Generic Consistency* (Chicago: University of Chicago Press,)

21. See *Reason and Morality*, 22-63.

A PPA claims (by definition)

(1) I do (or intend to do) X voluntarily for some purpose E.

By virtue of making this claim, the PPA rationally must consider that (claim) in logical sequence

(2) E is good;

(3) My freedom and well-being are generically necessary conditions of my agency;

(4) My freedom and well-being are necessary goods.

STAGE II²²

By virtue of having to accept (4), the PPA must accept

(5) I (even if no one else) have a claim right (but not necessarily a moral one) to my freedom and well-being.²³

STAGE III²⁴

By virtue of having to accept (5) on the basis of (1), the PPA must accept

(9) Other PPAs (PPAOs) have a (moral) claim right to their freedom and well being.

22. See *Reason and Morality*, 63-103.

23. Gewirth speaks of "generic rights" as prudential rights, and not yet moral rights at Stage II, since in order to show that they are moral rights it has to be shown that each agent must admit that all other humans also have these rights.

24. See *Reason and Morality*, 104-198, esp. 104-128.

If this is the case, then every PPA rationally must claim, by virtue of claiming to be a PPA,

(13) Every PPA has a (moral) claim right to its freedom and well-being, which is a statement of the PGC [i.e., the Principle of Generic Consistency].

Now let us recall that MacIntyre's main objection to Gewirthian rights is that right-claims cannot be derived from claims about goods necessary for rational agency. This derivation is implied in Gewirth's move from (4) to (5) in the above steps of his overall argument. But Gewirth maintains that MacIntyre fails to understand what is logically at stake in the move from (4) to (5). Gewirth condenses his argument from Stage I to Stage II in his rebuttal of MacIntyre in the following:

"Since freedom and well-being are the necessary conditions of action and successful action in general, no agent can act to achieve any of his purposes without having these conditions. Hence, every agent has to accept (1) 'I must have freedom and well-being.' This 'must' is practical-prescriptive in that it signifies the agent's advocacy of his having what he needs in order to act. Now by virtue of accepting (1), he also has to accept (2) 'I have rights to freedom and well-being.' For if he denies (2), then, because of the correlativity of claim-rights and strict 'oughts,' he also has to deny (3) 'All other persons ought at least to refrain from removing or interfering with my freedom and well-being.' By denying (3), he has to accept (4) 'Other persons may (i.e., It is permissible that other persons) remove or interfere with my freedom and well-being.' And by accepting (4), he has to accept (5) 'I may not (i.e., It is permissible that I not) have freedom and well-being.' But (5) contradicts (1). Since every agent must accept (1), he must reject (5). And since (5) follows from the denial of (2), every agent must reject that denial, so that he must accept (2) 'I have rights to freedom and well-being.' I call them *generic rights*, because they are rights to the generic features of action and successful action in general."²⁵

MacIntyre focuses on what he thinks is the crucial difference between (1) and (2). The upshot of Gewirth's rebuttal to MacIntyre is that MacIntyre has not referred to the fuller steps (3), (4), and (5) in the above sequence of the argument. More precisely, MacIntyre overlooks the dialectically necessary character of Gewirth's argument. The argument must remain at the level of rational necessities. The "must" in (1) is not the same as someone saying that he or she *must* have a new car or chocolate cheesecake. Persons desire many particular things and even feel that they *must* have some of these. But there is a difference between a "must" that is concerned with objects that are dispensable and Gewirth's understanding of "must" in relation to objects that are necessary conditions of action. "The latter objects," Gewirth writes of freedom and well-being, "unlike the former, have an ineluctableness within the context of action that reflects the rational necessity to which, in keeping with the dialectically necessary method, the argument must be confined."²⁶

25. Gewirth, "Rights and Virtues," p.744.

26. Gewirth, "Rights and Virtues," 745; cf, RM 77-78, 81-82.

Now MacIntyre also objects that claims about the possession of rights, unlike rights-claims, presuppose the existence of a socially established set of rules that is historically contingent. Gewirth had raised this very objection against himself in *Reason and Morality*.²⁷ But he then goes on to argue that an agent's right-claim is logically *prior to* and independent of a community or an existing set of social rules except in a quite minimalist sense. Gewirth reverses MacIntyre's accepted relation between rights and institutions because right-claims are in some cases demands that certain social rules or institutions actually be established. Thus, when slaves revolted against their masters, or revolutionaries against oppressive regimes, the prior issue concerned rights to the necessary conditions of human agency itself. "These rights and the claims to them have a prior status because it is for their sake that the most important social rules should exist. Thus, from the agent's standpoint, a community will be legitimate only if it recognizes his rights. Hence, far from rights presupposing a community which recognizes them, the relation is rather that a legitimate community presupposes the claiming and respecting of rights."²⁸

Finally, Gewirth responds to MacIntyre's charge that right-claims are not "universal features" of the human condition and that without an expression for human rights "no one could have known" that such rights exist. Just because persons do not have some single expression such as human rights it does not follow for Gewirth that such rights do not normatively exist. As long as persons have a *concept* of human rights, it can be shown that they exist. Gewirth chides MacIntyre for failing to acknowledge the extensive distinctions that bear on the ways persons and groups have used the concept of rights. MacIntyre also fails to acknowledge the extensive historical evidence for a concept of rights in ancient Greece, Rome, the Middle Ages, and even in non-Western societies.²⁹ One gets the impression that Gewirth is saying to MacIntyre: please read *Reason and Morality* before making such wild assertions and blanket generalizations!

27. *Reason and Morality*, 72.

28. Gewirth, "Rights and Virtues," 747; *Reason and Morality*, 74-75.

29. *Reason and Morality*, 100-101; 372-73, notes 19-26.

Now up to this point in his rebuttal, Gewirth has addressed the explicit criticisms raised by MacIntyre. But Gewirth also notes an *implicit* supposition in MacIntyre's objection that every attempt to give good reasons for believing that there are rights has failed. MacIntyre's premise entails an argument from "incommensurability" or "mutual incompatibility" with three spheres of applicability. The first concerns disagreement between analytic moral philosophers such as Hare, Rawls, Donagan, and Gert. The second concerns the putative incommensurability between rights and appeals to utility. The third concerns basic controversies over justice which MacIntyre maintains "cannot be rationally resolved."³⁰ Let's look at Gewirth's response to these applications of "incommensurability."

First, even if there is disagreement between modern analytic philosophers such as Hare, Rawls, Donagan, and Gert, this does not prove that human rights cannot be given rational justification. Indeed, MacIntyre would not accept the parallel contention that just because there exists widespread disagreement among philosophers over the nature and content of the virtues this proves that rational justification of the virtues is not possible. MacIntyre overlooks what these authors agree to, namely, considerations of "consistency, impartiality, and mutuality of consideration" as vital components of moral rationality. MacIntyre thereby gives a misleading impression about their putative "incommensurability" because he emphasizes only their differences.³¹

30. AV, 227.

31. Gewirth, "Rights and Virtues," 749.

Second, with respect to the conflict between rights and utility as incommensurable, MacIntyre overlooks the extensive work that has been done on the subject. Gewirth alludes to his own work, and then makes two very important points. First, utilities do not have the same primary status as human rights. Why? Utilities “compromise objects of preference *indiscriminately* [my emphasis]. Hence, any attempt to *act* for the attainment of utilities must presuppose the objects of the human rights, while, on the other hand, many utilities do not have this indispensability for agents.” Second, Gewirth maintains that his principle of human rights has a rigorous rational justification in so far as any attempt to violate or deny the principle involves the agent in self-contradiction. In contrast, the principle of utility has no such rational justification. “Notorious fallacies are incurred by attempts to justify the principle through an appeal to each individual’s desire for his own happiness.” Along the same lines, Gewirth argues that his PGC has a better distributive element than utilitarianism. Whereas the PGC proceeds “by showing that each prospective agent logically must acknowledge that all other prospective agents have the same generic rights he claims for himself,” utilitarians may be willing to submerge individual rights by an appeal to utility maximization.³²

Third, Gewirth maintains that MacIntyre overlooks the fact that the argument between Rawls’s criterion of “need” and Nozick’s criterion of “entitlement” *can be* rationally resolved by an appeal to the criterion of “degrees of necessity for action”³³ which Gewirth derives from the PGC. This criterion entails that when two rights conflict with one another, that right takes precedence whose “object” is more needed for action. Thus rights not to be stolen from or lied to are overridden by the rights not to starve or be murdered if the latter rights can be fulfilled only by infringing the former.³⁴ In the debate between Rawls and Nozick over the conflict of basic rights and Nozickian property rights, Rawls is the winner. When basic needs of food, housing, and clothing cannot be filled, then Gewirth’s criterion of degrees of necessity for action makes taxation of others justifiable.³⁵

32. Gewirth, “Rights and Virtues,” 750.

33. See, *Reason and Morality*, 343-44, 346-49.

34. Alan Gewirth, *The Community of Rights* (Chicago & London: The University of Chicago Press, 1996), 45ff.

35. In *Reason and Morality*, Gewirth referred to degrees of “necessity” for action (343-44), but in *The Community of Rights* (44-54) he speaks of the criterion of degrees of “needfulness” for action. This was in response to Douglas Husak’s objection that necessity cannot admit of degrees (See Husak, “Why There Are No Human Rights,” *Social Theory and Practice* 10 [1984]:140, n.15). Gewirth’s position is similar to Rawls’s conception of a “lexicographical” arrangement of principles in a serial order (Rawls, *Theory of Justice*, 43) even though Rawls’s ordering is not derived from his two main principles in the way that the PGC is for Gewirth.

IV. The Problem of Moral Indeterminacy in MacIntyre's Virtue Ethics

Because MacIntyre rejects a morality of rights and duties in the name of a morality of virtues, Gewirth must also address MacIntyre's own positive doctrine of the virtues. This brings us to the crux of the virtue-rights debate. Gewirth rightly notes that MacIntyre has reversed the traditional conception of the relation between moral virtues and rules. He critiques MacIntyre's use of historical material for his positive conception of the virtues. The traditional priority is from moral rules to moral virtues so that to have a moral virtue is to be disposed or habituated to act in accordance with the direction of moral rules, or what St. Thomas would call *recta ratio*. Gewirth defines the moral virtues as "deep-seated traits of character whereby persons not only do what is morally right in the sense of obligatory but do it habitually, with knowledge that it is right and because it is right."³⁶ His ultimate criterion of this moral rightness is the PGC. MacIntyre, on the other hand, holds that the justification of rules and principles is radically problematic, and that the order of priority is from the virtues to the function and authority of rules. But what is the criterion for a quality's being a virtue? MacIntyre's doctrine is confronted by a crucial difficulty which Gewirth maintains besets any virtue ethics that does not base the virtues on moral rules for action, i.e., *moral indeterminacy*. "A quality, rule, or judgment is morally indeterminate," Gewirth writes, "when its content allows or provides outcomes which are mutually opposed to one another so far as concerns their moral status. Thus the content in question may be morally wrong as well as morally right." And when this is applied to the virtues, then "the criterion for a quality's being a virtue does not include the requirement that the virtue reflect or conform to moral rules, [and thus] there is no assurance that the alleged virtue will be morally right or valid."³⁷ In short, the question is whether the qualities that emerge as virtues in MacIntyre's account truly satisfy the fundamental condition of being a *moral* virtue, i.e., morally right or valid.

36. *Reason and Morality*, 332.

37. Gewirth, "Rights and Virtues," 752.

Gewirth argues that MacIntyre's core concept of the virtues, defined by his notions of a practice, the narrative order of life, and moral tradition-- fails to delineate the concept of a moral virtue. MacIntyre's notion of a "practice" is, of course, one of the most criticized aspects of his virtue theory. [EN] Like others, Gewirth points out that the activities of the KU Klux Klan and the Nazi Party would satisfy his vague notion of a practice, and do not meet the justificatory challenge of moral rightness. Second, even though MacIntyre rejects Aristotle's metaphysical biology and reinterprets it along the lines of a teleological proceduralism for "the good," he does not specify its contents. Gewirth can rightly ask why a Hitler or Stalin wouldn't fit MacIntyre's second stage. They both exhibited virtues of integrity and constancy in their "quest" for their *telos* or good. There is also the question of whether or not MacIntyre's conception of a tradition wouldn't permit us to speak of traditions of slavery, racism, religious obscurantism, the *ancien régime*, etc. To be sure, MacIntyre emphasizes the important role of "argument," but there remain unanswered questions about methods, contents, and outcomes. MacIntyre doesn't tell us what moral and intellectual criteria characterize his conception of argument. The moral indeterminacy implicit in these three aspects of MacIntyre's concept of the virtues is *explicit* in his concept of community. While MacIntyre admits that communities may hold immoral practices and institutions,³⁸ he never specifies the criterion by which the "moral limitations" of communities might be defined. If his criterion is the virtues as he has defined them, then MacIntyre's argument is circular. He simply cannot appeal to the virtues as providing an "independent" criterion for a moral critique of community. Indeed, MacIntyre cannot avoid here the sort of universalism that he finds so offensive in Kant and some modern analytical moral philosophies like Gewirth! Without providing some determinate content for "the good," MacIntyre's virtue ethics is as open to the charge of "formalism" as is Kant's. All three stages of MacIntyre's argument are infected with moral indeterminacy.

38. We should recall here that Aristotle's perfect community required the enslavement of farmers and mechanics. Aristotle, *Politics*, VII.9, 1329a26; 10,1330a26ff.

How might MacIntyre reply to Gewirth's charge of moral indeterminacy? First, MacIntyre distinguishes a morality of the virtues from the morality of law. It is the latter that prescribes and proscribes certain harmful actions. So it is in his morality of law that MacIntyre, *de facto*, sets forth his basic morality. Gewirth is quick to point out the inherent contradiction here. For what it shows is that "for all his emphasis on the virtues and all his decrying of a morality of rules," MacIntyre "makes the latter morally prior because it provides for the protection of persons' most basic rights. But this contradicts his earlier *rejection* of 'the modern view' according to which 'the justification of the virtues depends upon some prior justification of rules and principles' (AV 112)."³⁹ And insofar as MacIntyre grounds the absoluteness of legal requirements to the goals of the community, he incurs the same problem noted above. If MacIntyre says that his morality of law prohibits harms that would destroy the bonds of community, then Gewirth may rightly ask: "But which community?...the Nazi community required the murder of Jews and others; the contemporary Afrikaner community requires the subjugation, economic and personal as well as political, of millions of blacks."⁴⁰ Second, MacIntyre might reply that the virtue of justice can answer the problem of moral indeterminacy since it requires treating others in respect to their merit or desert. The crucial question for Gewirth is what constitutes merit or desert for MacIntyre. Justice must be more than the virtue of sharing in practices or the good or goods of the telos of a whole life. And if desert is tied to sharing in the human community, then what does MacIntyre mean by "human community"? Is it an egalitarian conception of community? Gewirth can conclude that just as MacIntyre "gives no clear answer to the substantive question of what are the goods which persons ought to pursue, so he also gives no clear answer to the distributive question of who should have these goods, and in what proportion they ought to be 'shared.'"⁴¹

V. Concluding Remarks

In this paper I have been concerned with what I believe is the most significant contemporary manifestation of the virtue-rights debate. I have tried to listen as carefully as possible to the positions of MacIntyre and Gewirth in the debate. What conclusions may now be drawn? Permit me three brief remarks.

39. Gewirth, "Rights and Virtues," 758.

40. Gewirth, "Rights and Virtues," 758-759.

41. Gewirth, "Rights and Virtues," 760

First, at a recent philosophy conference I asked Professor MacIntyre if he had ever responded to Gewirth's critique of his virtue ethics. He informed me that he had not done so in writing. He had only spoken to Gewirth verbally about the matter. The absence of a formal, published response by MacIntyre to Gewirth's critique is telling. MacIntyre has not responded because he *cannot* surmount the objections that Gewirth has posed to his virtue ethics. Gewirth has successfully reestablished the primacy of moral rules about rights and duties in relation to the content of the virtues. If we had more time, this point could be illustrated in relation to the moral philosophy of Thomas Aquinas and his derivation of the virtues from the principles of natural law, which is not to endorse, *tout court*, Aquinas's natural law theory as such. The irony of the present debate is that the very concept of human rights that MacIntyre derides as a "fiction" has become the very ground of the virtues in Gewirth's ethical theory. Whether MacIntyre's previous Marxism has influenced his critique of rights or not, it is certainly the case that had MacIntyre made human rights central to the virtues themselves, he could have avoided the moral indeterminacy that mars the ways in which he relates the virtues to the practices, the telos of human life, and his conceptions of moral traditions and communities.

Second, even if one acknowledges the importance of the virtues and the place for the morality of law in MacIntyre's virtue ethics, I think MacIntyre must still clarify what his professed "Augustinian Christianity" entails for his understanding of the Augustinian-Thomistic theological virtues in relation to the classical and Aristotelean virtues. What, indeed, has Jerusalem to do with Athens? This question is pressing in view of MacIntyre's self-professed appropriation of the Thomistic tradition. Moreover, in *Three Rival Versions of Moral Enquiry* MacIntyre writes that "on Aquinas's view the rights which are normative for human relationships are derived from and warranted only by divine law, apprehended by those without the resources afforded by God's self-revelation as the natural law. Law is primary, rights are secondary. But for Enlightenment and post-Enlightenment modernity, human rights provide a standard prior to all law."⁴² This statement, of course, begs the question of how MacIntyre understands the divine law and its relation to the virtues. I recently asked MacIntyre what role the theological virtues and divine law play, or ought to play, in his virtue ethics, especially given the way that the theological virtues complete and perfect the classical virtues for both Augustine and Aquinas. His response was: "I'm a philosopher, not a theologian!"

42. MacIntyre, *Three Rival Versions of Moral Enquiry*, 76.

Third, we must also ask some critical questions of Gewirth. Does his ethical rationalism completely avoid the very moral indeterminacy that he finds so problematic in MacIntyre's virtue ethics? I do not have in mind here the question of a determinate moral ground for Stage I of his argument to the PGC since most commentators are willing to accept its validity.⁴³ Rather, I want to ask: Can Gewirth provide moral determinacy with respect to the complex structure of rights and duties derived from the components of freedom and well-being? Gewirth argues that the PGC has an invariant content because it is derived from the generic features and necessary conditions of purposive action. The PGC provides for moral rules and determinate material contents that do not admit variability. The PGC's requirement that the agent act in accord with the generic rights (freedom and well-being) of his or her recipients is not contingent on what one happens to accept or variable self-interested desires or ideals. The PGC requires duties relating to freedom and well-being. Well-being is of three kinds-- basic, nonsubtractive, and additive. Basic well-being consists in having the essential preconditions of action such as life, physical integrity and mental equilibrium. Nonsubtractive well-being consists in having the general abilities and conditions needed for maintaining a person's level of purpose-fulfilment and capacity for action. Additive well-being and goods consist in the abilities and conditions necessary to improve one's level of goods and increase one's capacities and capabilities for action.⁴⁴ Now, according to Gewirth, the moral rights to these necessary goods of action are indeed determinate because of the invariance of their objects and, more generally, because they logically cannot involve the infringement of any person's rights except on the basis of the PGC's rational criteria for resolving the conflicts of rights.⁴⁵ If in certain circumstances the requirements of some moral rules justified by the PGC are overridden by the requirements of other rules this does not remove the categoricalness of the PGC or its derivative rules. In the following conflicts between alternatives justified by the PGC, Gewirth believes he has shown that and why the alternative listed first must give way to the second alternative:

43. Beyleveld, *The Dialectical Necessity of Morality*, 65.

44. Gewirth, *Reason and Morality*, 58-63; and *Community of Rights*, 278ff. where Gewirth discusses the three levels of the right to well-being in the context of economic democracy.

45. Gewirth, *Reason and Morality*, 338-54. Gewirth is concerned here with both the "extrasystemic" and "intrasystemic" consistency of the PGC. The extrasystemic dimension concerns the conflicting duties that arise for persons independent of the PGC. The intrasystemic dimension concerns the conflicts that arise within the whole system of the PGC itself. Gewirth asks: "Are the requirements and other provisions it justifies always compatible with one another, or may conflicting requirements be derived from it? And since at least apparent conflicts of moral duties or requirements are found in the moral sphere, is the PGC able to resolve them?" (338) My question concerns the "intrasystemic" consistency of the PGC.

“when the rule against killing human persons conflicts with the agent’s acting in accord with his own generic rights where he is threatened with being killed by someone else (4.6); when one person’s right to occurrent freedom conflicts with another person’s right to basic well-being (4.11); when a person’s right to occurrent freedom conflicts with his own right to basic well-being (4.20); when a person’s right to basic well-being conflicts potentially over the long run with his own right to dispositional freedom (4.21); when a person’s right to participate voluntarily or freely in transactions conflicts with his duty to obey procedurally justified social rules to which he has voluntarily or freely consented (5.5); when the rules against killing and restricting dispositional freedom of movement conflict with justified social rules requiring killing in war and punishment for crimes (4.6; 5.8); when social rules or arrangements of voluntary associations conflict with the right to well-being (5.6); when the right to occurrent freedom conflicts with the obligation to obey the criminal law (5.10); when the right to retain one’s property conflicts with laws of the supportive state providing taxation to prevent basic harms such as starvation and to promote public goods (5.13,14); when the results of the method of consent, which has a necessary-procedural justification, conflict in extreme cases with the effective implementation of policies relieving starvation and other basic harms, policies that have a dynamic-instrumental justification (5.15); and when these results conflict with other important rights so that civil disobedience is justified (5.16).⁴⁶

46. Gewirth, Reason and Morality, 341-342.

There are, of course, numerous material conflicts that are not identified in the above set. I have in mind conflicts of rights and duties related to the present information lifeworld. A positive right of access to electronic networks entails obligations on the part of governments or private corporations to fulfill the corresponding duty. This right of access incurs the difficulty that a positive right of access is inconsistent with liberty claims, or impracticable because of the overload of duties it entails, or because it fails various tests of universality. It is at least arguable that access to information and information technology is a condition of possibility of human dignity in the information age.”⁴⁷ Or a corporation’s claim-right to protection of intellectual property whether by copyright, trade secret, patent, trademark, export law, or encryption may conflict with claims to open access and privacy. Claims to freedom of speech are frequently in conflict with the government’s claim to responsibly censor obscene and pornographic material or hate-mongering speech on the Net, often in the interests of liberty or equality rights or given a notion of democracy that includes gender equality. Traditional approaches to freedom of speech assume that the legal system can stop illegal speech, but networked communications have directly impacted the ways in which we morally and legally balance speech and other rights. Governmental claims to a right of access to medical records for the sake of epidemiological research with a view to protecting the common good conflict with assertions of privacy. Critics of the use of biometric encryption claim that fingerscanning criminalizes welfare recipients, perpetuates the myth that economic problems are caused by the poor, and violates rights to privacy and freedom. Supporters assert that fingerscanning is less cumbersome than existing identification methods, helps to decrease welfare cheats from “double-dipping” and vendor fraud by professionals who provide government paid benefits to welfare recipients, and aids various government agencies in their institutional obligations.

47. Gregory J. Walters, “Canadian Information Highway Policy, the Right of Access to Information, and the Conditions of Human Action: Three Challenges to Moral Theology,” *Science et esprit*, XLIX/2 (1997), 193-229.

I give the above examples as posing a challenge to Gewirth's theory of human rights, and not as an argument for moral indeterminacy in his theory per se. Indeed, an application of Gewirth's ethical rationalism and human rights theory to the information lifeworld is a pressing challenge and much needed project. If we must choose between MacIntyre or Gewirth on the virtue-rights debate, I cast my lot with Gewirth and a theory of human rights grounded in the necessary conditions of action. The direct and indirect application of the PGC, now to the information age revolution, is pressing.

