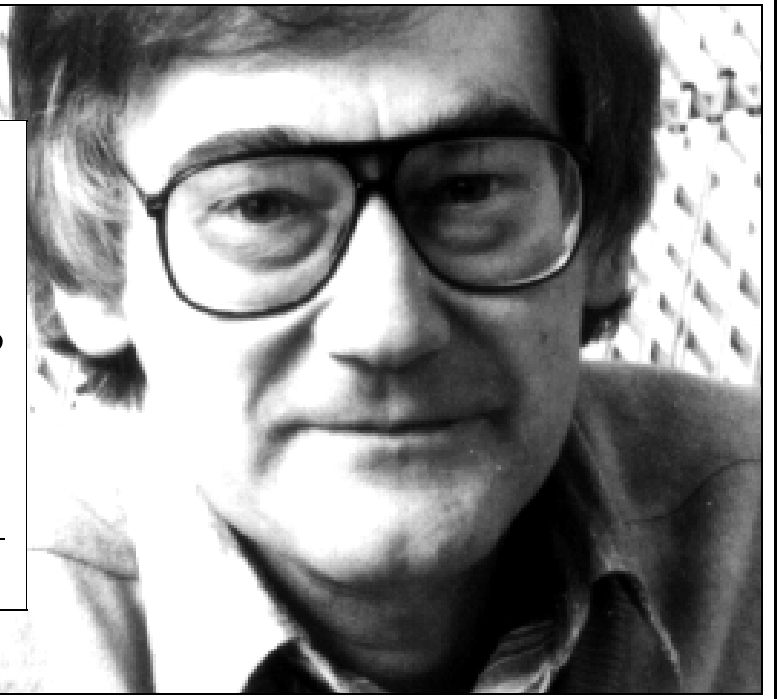




**DO RIGHTS  
ONLY COME  
INTO EXISTENCE  
WITH THE STATE?  
A RANDIAN CRITIQUE OF  
AN ALLEGEDLY  
RANDIAN POSITION**

**NICHOLAS DYKES**



I was recently informed by a prominent American Objectivist that, “Correctly or not, Objectivists apparently hold that rights come into existence simultaneously with the state ... they would not exist in a ‘state of nature’.”<sup>1</sup>

My instant reaction was, “Hey, *I’m* an Objectivist, but that’s not *my* position.” After few moments’ thought, I added, “It’s not Ayn Rand’s position either. It’s not even logical, and it sure ain’t historically accurate!”

Rand stated that “the source of rights is man’s nature”<sup>2</sup> and publicly upheld the political philosophy of the US Declaration of Independence: to wit, that men are endowed with inalienable rights, to secure which governments are instituted, deriving their just powers from the consent of the governed. Rand’s essay “The Nature of Government” endorses this view explicitly.<sup>3</sup>

Now, regardless of the validity of this time-honoured position, governments could hardly be instituted to protect rights if rights did not already exist. Therefore, on Rand’s own view, the notion that rights come into existence simultaneously with the state is illogical — to say the least.

I would agree that it is not clear from her essay just how much of Jefferson’s wording Rand actually accepted, but

she did quote him directly in affirming that government derived its authority from “the consent of the governed”.<sup>4</sup> Such a grant of authority can only imply one thing: that ‘the governed’ had the authority first. What authority? Rights. Indeed, Rand specifically stated that “the government as such has no rights except the rights *delegated* to it by the citizens ...”<sup>5</sup> All these points imply the pre-existence of rights and contradict the notion that rights come into being simultaneously with the state.

**“UNPROTECTED BY THE STATE ... THE POOR FELLOW WOULD HAVE NO RIGHTS”**

Leaving aside Rand’s Jeffersonian perspective, this new ‘Objectivist’ view makes even less sense when considered historically or anthropologically. There are numerous customary law societies on record, such as that of medieval Ireland;<sup>6</sup> and plenty still extant, such as the Kapauku of New Guinea;<sup>7</sup> in which individual rights, while perhaps not named as such, were or are clearly recognised and protected despite the absence of anything which could be called a state. Thus the view that rights come into existence with the state is not only illogical in Randian terms, it ignores a mass of evidence which directly contradicts it.

All that said, when I raised the issue with an anarchist friend, let us call him ‘M’, I was startled to find that he held a similar view; only in his opinion it was society rather than state which caused rights to come into existence. He actually quoted Leonard Peikoff to the effect that Robinson Crusoe alone on a desert island would have no rights.<sup>8</sup>

A second friend then informed me that there had been considerable and sometimes heated debate on the Internet about this issue, some postings going so far as to assert that if you came across a solitary Eskimo at the North Pole you could kill or rob him with impunity. Unprotected by a state, the postings apparently held, the poor fellow would have no rights. (Although, if this were the case, with his local knowledge and skill, I imagine the Eskimo would be more likely to put paid to you first. Deservedly so too, I



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**FOR LIFE, LIBERTY AND PROPERTY**

reckon, if you thought statelessness allowed you to commit murder).

### A SKETCH OF MY THINKING

I confess to being amazed by all this. I have a view of rights — derived, so I thought, from Ayn Rand — which differs in some respects from the various accounts I have read over the years, but the differences do not seem great and the whole matter has always appeared to me so uncontroversial that I looked upon my own contributions as obvious or commonplace. Herewith a quick sketch of my thinking.

There is no life apart from living beings. Life is integral. Indeed, life *is* the integrity of each living thing, its conatus and cohesive force. When life ends, that integrity ends with it.

Life is thus purely individual; it is individually procreated and individually sustained. That is the nature of life, the way things are.

In other words, life is about *selves*, about *self* generation and *self* preservation. Which means, that the point of each life is that life. Which in turn means that life is an end in itself. And without the primordial driving force of *self*-sustenance and *self*-replication, evolution would not, could not, have taken place — and there would be no life.

Man shares these basic characteristics of living entities to the full. His life is a fully integrated aspect of his being; it is individual from beginning to end; and it is an end in itself: each human being is, in himself or herself, the sole purpose for which he or she exists.

From the facts that life is individual and an end in itself, two things follow. First, life is lived for its own sake, for the sake of its possessor. From that we derive ethical egoism. Second, if life is an end in itself, it cannot be the end of anything else. And that is the source of individual rights.

Although clear enough, these points perhaps require a slightly more elaborate restatement: if life is an end in itself, the only correct course for each human being is to live his or her life for his or her own sake, what we call ethical egoism, or the pursuit of happiness. Similarly, if life is an end in itself, all human beings are entitled by that fact alone to live their lives *unimpeded*: i.e. entitled to pursue values (liberty); to acquire life's means (property); and to retaliate in kind should force be initiated against them (self-defense).<sup>9</sup>

While rights are more often than not referred to abstractly — for example as ‘compossible spheres’ or as ‘metanormative principles’ to use Den Uyl and Rasmussen’s phrase<sup>10</sup> — they are in fact deeply rooted in individual human beings, without whom they would not exist. It is not state or society which cause rights to exist, it is the individual.

### FREEDOM IS NOT SEPARATE OR EXTERNAL

Let us consider the matter more thoroughly. Just as life itself is totally integrated in man or woman, so are the various elements that combine to make up their nature: human beings are living *organisms*. Mind and body, for example, are distinguishable for purposes of analysis or discussion, as are emotion and thought, pleasure and pain,

etc, but all of these are aspects of individual humans and have no separate existence.

The functions of consciousness can similarly be separated out by abstraction — sensation, perception, concept formation, volition, desire, the subconscious, memory, etc — but none exist apart from conscious human beings.

The most important single aspect of human consciousness is volition, for without the capacity to will there could be no action and hence no human life. Similarly, the most important aspect of volition is freedom, for without freedom to focus, analyse, choose, act, etc, volition is not possible. Without freedom, there is no free will.

But freedom is not something separate or external to volition, it is integral: it is a moving, working part, as essential to volition as the heart is to the body or as oxygen is to brain functioning. Freedom is built into volition, it is not bolted on.<sup>11</sup>

Freedom is thus an integral aspect of man’s faculty of reason, i.e., an essential element of what makes him man. It is as deeply rooted in man’s being as life itself.

I see no significant difference between freedom viewed in this light — as an integral, essential and fundamental aspect of man’s distinguishing characteristic, reason — and freedom viewed as a social or political right.

It might be objected that I am resorting to what Ronald Merrill called “the classic meaning switch cheapo”;<sup>12</sup> that I am referring to the essence of reason as freedom, then quietly substituting the more usual meaning of freedom, political liberty.

I intend no such subterfuge. I maintain, rather, that the essence of reason — free will — and its socio-political counterpart — the *right* to freedom — are really the same thing, but seen from internal or external points of view. The two are separable for the sake of analysis, but the separation is a shift of perspective only: man observing or being observed, as subject or object, as individual or as social being. Freedom of will *is* freedom of action, and because each human being is an end in him-or-herself, each has a *right* to that freedom.

### “WITHOUT PROPERTY RIGHTS, NO OTHER RIGHTS ARE POSSIBLE”

Because property is external to man, not integral, it might seem difficult to treat the right to property in similar vein. I do not think so. Man is engaged in a continuous exchange with his environment. Every second of his life he must draw from it the means of his survival. He cannot be cut off from it even for a minute. In Galt’s Speech, Rand stated that rights are “conditions of existence required by man’s nature for his proper survival”.<sup>13</sup> She also said that “without property rights, no other rights are possible”.<sup>14</sup> And since oxygen is the first condition of his existence, it is man’s first form of property. Food, clothing and shelter follow, varying according to individual circumstances. I therefore maintain that, here too, the natural needs of man’s survival, and his *right* to pursue them, are really the same thing, differing only in the perspective from which one views them.

True, Rand said elsewhere that a right is “a moral principle defining and sanctioning a man’s freedom of action in a social context”.<sup>15</sup> This might appear to lend credence to

the view that rights only come into existence in a social setting, since a principle is general, not particular. But rights are only one of several principles in a code of ethics. Others are virtues such as rationality and productiveness, honesty and justice, all of which may or may not have a social dimension: it depends on context. E.g., I can cultivate my garden rationally and productively alone, yet honestly admit — being just to myself — that at my age I need some help.

### **A RIGHT IS AN INTEGRAL ASPECT OF A HUMAN BEING**

A code of morality is abstract. But the principles of morality are derived from the facts of man's life and are useless if they do not relate directly to the concrete nature of the physical being, man. The fact that a right can be abstracted to serve as a social principle should not be allowed to obscure or diminish the equally important fact that, like other moral principles, rights are rooted in, and drawn from, the actual physical nature of individual men and women, and from the essential physical conditions which make their lives possible. Only particulars exist.

No one can seriously dispute that man is a social animal, but he is first and foremost an individual, "entire unto himself". Pursuing life for himself, he is primarily unique, an entity complete in itself. When Frenchman Georges Brassens sang "*Non, je ne suis jamais seul, avec ma solitude*" there was more to his words than pretty paradox. The existence of others is as essential for happiness as it is for procreation. It also creates a myriad of opportunities denied to a solitary person. Yet the social dimension of human life must not be allowed to detract from its starting point, the primacy of the individual.

In sum, just as there can be no such thing as consciousness without a conscious being, neither can there be any such thing as a right without a being who possesses it. A right is an integral aspect of a human being in the same sense that motion is an integral aspect of a moving entity.

### **AN EXPLORER WOULD STILL HAVE RIGHTS EVEN IF HE NEVER SAW ANOTHER HUMAN**

Plainly, as already noted, rights can be considered abstractly, apart from the human beings who give rise to them, but they cannot be *divorced* from those beings. To borrow a phrase from Aristotle, a right is "distinct by definition but by nature inseparable".<sup>16</sup>

Thus it seems meaningless to me to say that rights only come into existence in the presence of other people, whether state or society. To borrow once more from Aristotle, he spoke of the possession of virtue as "compatible with being asleep";<sup>17</sup> and said of our senses, "we had them before we used them, and did not come to have them by using them."<sup>18</sup>

In other words, a talented pianist does not lose his or her talent in the absence of a piano; nor would an honest man lose his honesty if he chose to live in a hermit's cell; and a space explorer would still have rights even if he got lost and never saw another human being.

My *life* doesn't come into being when someone else enters the room. My *consciousness* doesn't cease functioning when there's nobody else around. My reason, my volition, my power to choose, my ability to act, all are mine

throughout my life, regardless of the presence of anybody or nobody.

It is true that rights, in their socio-political sense, are only *activated* in a social context, because only then are they honoured or potentially under threat. But to claim that they do not exist otherwise is to cut them off from their source and make them floating abstractions.

The notion reminds me of Berkeleyan subjectivism, *esse est percipi*, to be is to be perceived. Rights are alleged to be created only when two or more people meet. Facing each other, these folk then generate intangible buffers to keep themselves apart, like so many invisible garden fences. If they decide to about-face and head off alone into the blue, their rights simply vanish. On this theory, then, rights are as ephemeral as rainbows, mere tricks of light, insubstantial pageants that leave not a wrack behind.

### **CONCEDING THE PRIMACY OF THE STATE**

It also seems to me that this approach collectivises rights, making them dependent upon other people, particularly upon other people's wrongdoing. Further, in thus depriving rights of individuality, the approach deprives them of their essential nature, for all rights are individual rights.

Moreover, this conception of rights makes them appear as mere social conventions. As such, they would be very difficult to protect. If my rights are not inherent, not *mine*, I do not see how they can be righteously defended against superior might. As a cynical and laconic Canadian friend once riposted to a disquisition of mine on natural rights: "Garbage! Your rights are what you can *defend*."

The view that rights only materialise under government seems to me to be bordering on statism. It is certainly headed in that direction. For if rights only come into existence simultaneously with the state, in other words if rights partly depend upon government, then quite clearly one is half-way to conceding the statist's position — the primacy of the state.

It seems plain enough to me that this new 'Objectivist' view has arisen through espousal of 'limited government'. Unable to overcome the contradiction between an inalienable<sup>19</sup> individual right to liberty and coercive monopoly government, the proponents of the latter are attempting to outflank their anarchist opponents by claiming that since rights only emerge with the state, there is no contradiction.

It seems equally plain that advocates of limited government would be comfortable enough living with a quasi-statist position because they believe the state can be legitimate. But it does seem odd for 'Objectivists' to abandon so openly Rand's view that rights precede the state.

### **STATES INEVITABLY IGNORE RIGHTS**

Just as Bentham was led to reject rights as "nonsense on stilts" when he realized what an obstacle they were to his rationalist/statist designs, so I believe one can predict an eventual rejection of natural rights by those Objectivists who tie rights to the state. All states, no matter what their origins, have eventually assumed themselves to be both essential, and superior to the individual. Logic has thus led them — inevitably and invariably — to over-ride or ignore rights. The principle of force by which states operate dictates the outcome. There is no reason to suppose that an

Objectivist state would be any different. In fact, the demise of rights in Objectivism has already been presaged in the essays of Objectivist Murray Franck, whose rationalisation of taxation eviscerates the concept of property rights.<sup>20</sup>

Somewhat paradoxically, there *is* a sense in which rights were created by the state, but it is entirely negative: the full formulation of natural rights was due to the growth of state oppression. Indeed, the concept of rights might never have been clarified if customary law had not been crushed by state power and forcibly replaced by legislated, fiat law.

What philosophers such as Locke were looking for was a moral principle by which men could oppose the encroachment of the state (which had begun in England in the late Anglo-Saxon period and accelerated rapidly after the Norman conquest<sup>21</sup>). Lockean rights did hold back the statist onslaught somewhat, but the sword is always mightier than the pen when wielded first, and the threat to their existence which the concept of rights presented caused states to redouble their self-justifying efforts during the 18th and 19th centuries. Locke's bold defence eventually came to nought.

### A NEW DICHOTOMY?

Sooner or later, no doubt, someone will introduce the Objectivist shibboleth, intrinsicism, and say that my view of rights as integral is intrinsicist. Indeed, the correspondent who informed me of this new 'Objectivist' position, also advised me that, "Objectivists see Lockeanism as 'nice try' intrinsicism." Well, perhaps it is.<sup>22</sup> *But*, if rights cannot be integral without being intrinsicist, concepts such as 'life', 'consciousness', 'volition', 'reason', etc, must also be intrinsicist. They, too, refer to faculties and characteristics which are rooted in, integral to, and solely dependent upon actual living beings. Intrinsicism concerns *conceptual realism*; i.e., attempts by philosophers such as Plato, Hegel or Bergson to establish *existents* where there are only human *abstractions*. (E.g., the concept 'consciousness' is abstracted from observation of conscious beings but doesn't exist *apart* from those beings.) Is consciousness intrinsicist?

I think rather that it is those who maintain that rights come into existence with the state who may be intrinsicist. First, they appear to see state and/or society as entities, whereas both terms are merely collective *nouns* — like bureaucracy or herd — which refer to groups of individuals and have no actual existence apart from those individuals.

Second, they see rights as *distinct* from individuals. On their premise, rights are *principles and principles alone*, which operate only where there is 'a state', the latter, as already seen, being evidently a real entity. In sharp contrast, I assert that rights pertain only to individuals and that discussion of them apart from individuals is meaningless.

Objectivists pride themselves on the extent to which their philosophy overcomes traditional dichotomies. I fear that if they adopt the position that rights only come into existence with the state (or with society), Objectivists risk creating a new dichotomy of their own — between the individual and his rights.

I would like to conclude this discussion by quoting the famous 19th century British legal commentator A.V. Dicey, who said "the state is one's neighbours", thus putting

things in their proper perspective. For my own rights are the last things I would go looking for amongst the gallimaufry with whom I share this overcrowded island.

### I WANT TO KNOW WHAT'S RIGHT

Finally, I should point out that my friend M has bluntly dismissed my view of rights as "incoherent". Obviously, I disagree. I therefore thought I might seek the judgement of a wider group of peers. If my views are indeed erroneous I hope someone will explain to me why. I don't mind being proved wrong, I just want to know what's right. Rand's precept, "Judge, and be prepared to be judged" has long been my personal motto.

### NOTES

1. Private letter, 12 November 1997. The author does not wish to be named at present due to plans to write about the issue.
2. *The Virtue of Selfishness: A New Concept of Egoism*, New American Library, New York, 1967, p. 94.
3. *The Virtue of Selfishness*, p. 110.
4. *Ibid.*
5. *Ibid*, the italics are Rand's.
6. Murray N. Rothbard, *For a New Liberty*, Libertarian Review Foundation, New York, 1978, p. 231.
7. Bruce L. Benson, *The Enterprise of Law*, Pacific Research Institute for Public Policy, San Francisco, 1990, p. 15.
8. This is not accurate as far as I could see from a quick look at Peikoff's book. He wrote: "If a man lived on a desert island, there would be no question of defining his proper relationship to others. ... the issue of rights would be premature." But "premature" is a far cry from asserting that rights come into existence with the state. See Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand*, Dutton, New York, 1991, p. 351, and Ch. 10 *passim*.
9. Although these points were not made in quite this way by Ayn Rand, they seem clearly implied in "The Objectivist Ethics": "... every human being is an end in himself, not the means to the end or the welfare of others ... therefore ... man must live for his own sake, neither sacrificing himself to others nor sacrificing others to himself." (*The Virtue of Selfishness*, p. 27)
10. Douglas Den Uyl and Douglas Rasmussen, *Liberty and Nature*, Open Court, LaSalle, Illinois, 1991. See also their " 'Rights' as MetaNormative Principles" in *Liberty for a 21st Century*, Tibor Machan and Douglas Rasmussen eds., Rowman and Littlefield, Lanham, Maryland, 1995, p. 59ff.
11. Apologies to Zenith Corp, whose early Eighties advertisement I am paraphrasing.
12. Ronald E. Merrill, *The Ideas of Ayn Rand*, Open Court, LaSalle, Illinois, 1991, p. 117.
13. *For the New Intellectual*, New American Library, New York, 1961, p. 182. Thanks to Harry Binswanger's *Lexicon*, *loc cit*, for the reference.
14. *The Virtue of Selfishness*, p. 94.
15. *Ibid*, p. 93.
16. *Nicomachean Ethics*, Bk 1, Ch 13, 1102a 31.
17. *Ibid*, Bk 1, Ch 5, 1095b 32.
18. *Ibid*, Bk 2 Ch 1, 1103a 31. When Rand said "the source of rights is man's nature" (*The Virtue of Selfishness*, p. 94) it seems evident to me that she was not talking *solely* about the social context of rights.
19. Contrary to what some may think, the word 'inalienable' does not imply intrinsicism. It merely means "that which we may not take away, suspend, infringe, restrict or violate — not ever, not at any time, not for any purpose whatsoever." Ayn Rand, "Textbook of Americanism" in Harry Binswanger, *The Ayn Rand Lexicon*, Meridian, New York, 1986, p. 211.
20. "Taxation is Moral" by Murray I. Franck in *Full Context*, The Objectivist Club of Michigan, Troy, Michigan, Vol. 6, #10, June, 1994, and in subsequent issues.
21. Benson, *op cit*, chapter 3.
22. I question the accuracy of this. I haven't studied him recently, but Locke certainly did not strike *me* as a Platonist when I read the *Second Treatise*.