

# CHEATING THEMSELVES THROUGH PHILOSOPHY: A Demolition of “The Rights and Wrongs of Alan Dershowitz” in Claremont Review of Books (Fall, 2005)

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As a salvo in the debate over natural law versus revelation, the article “The Rights and Wrongs of Alan Dershowitz” by Hadley Arkes, published in the Fall 2005 issue of *Claremont Review of Books*[\[1\]](#), is a noteworthy contribution. It is noteworthy, however, because it does such a good job of destroying its own argument for natural law. And it does it so thoroughly, albeit unintentionally, that it would seem to make it difficult to take such arguments seriously henceforth.

There are two main parts to this article. The first, which takes up a bit more than half the length, is devoted to presenting and attempting to refute the position taken by Dershowitz in his book, and the remainder of the article is Arkes’ case for natural law.

According to Arkes, Dershowitz’s position is as follows:

*[There are no] moral principles that form the ground of our judgments. [Dershowitz] claims to find the standards of practical judgment in a mix of considerations he calls ‘utilitarian,’ but he emphatically denies that there are ‘moral truths’ that stand behind these judgments. He professes himself to be ‘(God forgive me) a moral relativist,’ and a ‘skeptic’ in moral matters. A moral skeptic denies that there are knowable truths. The relativist denies those truths from another angle by insisting that there are no objective truths, only standards that are ‘relative’ to persons and places. ‘Nevertheless,’ says Dershowitz, ‘I believe strongly in the concept of rights.’ A concept of ‘rights’—but with no supporting truths that can explain why they are rightful,*

*and why the rest of us should respect them.*

Arkes says that Dershowitz “denies insistently, stridently, the notion of a God who disclosed a scheme of moral truths”, holding instead that

*We are creatures of accidental forces who have no preordained destiny or purpose.*

Therefore, Dershowitz accepts only “‘positive law,’ the law that is posited, enacted, or set down in any place ... [which] simply reflects the opinions of right and wrong that prevail in any locale.” In this, Dershowitz is at least intellectually honest; if one believes in Darwinism, then there can be no absolute moral standards.

The trouble for Dershowitz is that he does indeed want to proclaim that some things (slavery, the Holocaust) are wrong, and here he ceases to be intellectually consistent, for he does not follow his beliefs to their logical conclusion, which is that if there is no standard of right, then there is no standard of wrong. Nevertheless, he wants to have one, appealing to some bizarre amalgam of utilitarianism and positive law, which Arkes rightly dismantles:

*But if we have no ground for identifying rights, we have no clearer ground for knowing “wrongs.” We could appeal to standards of utility, but only after we explain just who are the persons whose interests and injuries count. And if there are no grounds for insisting that all human beings count, then utility would seem to offer merely a formula for the Right of the Strong: those with the power to have their will accepted as law will decide just who, among us, have lives that count.*

Dershowitz cannot have it both ways. Either there is an absolute standard of right and wrong, such as is given in the Bible, or neither slavery nor the Holocaust can be deemed morally wrong. So Dershowitz’s attempt to proclaim that there are no absolute standards while maintaining that some things are wrong shows his position to be both fatuous and risible.

However, Arkes’ case for morality based on natural law is, in the end, no better. In fact, it is so clearly nonsensical that it would seem to cause insuperable

difficulties for any case for natural law. Let us, then, examine his case in the light of the very “reason” he claims to champion.

Arkes holds to “the notion of ‘natural rights’—that certain rights were grounded in the very nature of human beings, and those rights would remain the same in all places where that nature remained the same. They would hold even in exotic places, as long as human beings were still distinguishable from the subhuman and the superhuman.” Following Aquinas, Arkes claims that “the natural law we know through the reasoning that is accessible through the reason that is natural to human beings.” Right and wrong, he says, are “grounded in the laws of reason.”

We will mention in passing that these are naught but bald assertions by Arkes. There *are* actual laws of nature, such as gravity and entropy. They are demonstrable and objectively verifiable. They always do the same thing in the same way, which is what makes them “laws.” The “the notion of ‘natural rights’”, on the other hand, is precisely a “notion”, and nothing more: an idea that some people hold to, that is neither demonstrable nor objectively verifiable. We can’t help but notice this when Arkes attempts to buttress his position by appealing to “the Reverend Samuel Cooper”:

*One thinks here, for example, of the Reverend Samuel Cooper, speaking at the inauguration of the new Massachusetts constitution in 1780: “We want not, indeed, a special revelation from heaven to teach us that men are born equal and free; that no man has a natural claim of dominion over his neighbours ... These are the plain dictates of that reason and common sense with which the common parent of men has informed the human bosom.”*

Yet Cooper’s statement too is only a bald assertion, and it takes a special kind of illogic to believe that one bald assertion is strengthened, let alone proven, by another bald assertion.

But we need not spend much time on this, for it is when Arkes tries to demonstrate natural law on the basis of “reason” that the vacuity of the claims for natural law becomes evident. Arkes asserts that

*There may be no better example of natural-law reasoning than that fragment Lincoln wrote to himself, when he imagined himself engaged in a debate with the owner of black slaves.*

Please note, folks, that Arkes seems to think this is a wonderful “[example of natural-law reasoning](#)”; indeed, “[There may be no better example](#),” he says. This is as good as it gets, folks, so let’s see how good it really is. Here is Lincoln’s fragment:

*“You say A. is white, and B. is black. It is color, then: the lighter having the right to enslave the darker? Take care. By this rule, you are to be slave to the first man you meet, with a fairer skin than your own.*

*You do not mean color exactly? —You mean the whites are intellectually the superiors of the blacks, and therefore have the right to enslave them? Take care again. By this rule, you are to be slave to the first man you meet, with an intellect superior to your own.”*

Fascinating. Simply fascinating. Natural Law is supposed to deal with high-minded, transcendent, universal standards of morality, discerned by reason, yet what does Lincoln’s argument boil down to in this *ne plus ultra* “[example of natural-law reasoning](#)”? Self-interest. Plain, old, unvarnished self-interest: “You shouldn’t enslave people because, hey, then others might enslave you.”

Now, self-interest is *not* a high-minded or transcendent moral value. It is not even “[grounded in the very nature of human beings](#)” or based on “[human beings \[being\] distinguishable from the subhuman](#)”, nor is it “[a matter of grasping, with Aristotle, the distinctions that ran between humans and other animals.](#)” It is the application of the instinct of self preservation, which is shared equally by humans and rats and dung beetles. If there is any difference at all, it is only that humans are more imaginative and clever in assessing what lies in their own self-interest than are dung beetles.

Furthermore, even as an example of reasoning Lincoln’s fragment is bogus. Lincoln argues that it is wrong for A to enslave B because C might then enslave A:

*If (A enslaves B) then (C may enslave B)*

Now, this may or may not be true, but as far as morality goes it is useless, for the protasis, A enslaving B, is morally wrong (which is what Lincoln sought to show) *if and only if* the apodosis (C may enslave B) is wrong. So one must assume that slavery is wrong (i.e. that “C may enslave B” is wrong) in order to “prove” that

slavery is wrong (i.e. that “A enslaves B” is wrong). Far, then, from being a “**model of a principled argument**”, Lincoln’s argument is a “**model**” of the logical fallacy of *petition principii* (begging the question). A may not like to be enslaved by C, but that doesn’t prove that it is wrong; this argument of Lincoln’s is, as we have said, simply an appeal to self-interest; there is no “**natural law**” here at all. It is difficult to see how Arkes can misunderstand this so profoundly.

Furthermore, even as an example of reasoning on the basis of appeal to self-interest Lincoln’s fragment fails, for his opponent could answer thus:

*You say A. is white, and B. is black. It is color, then: the lighter having the right to enslave the darker? Take care. By this rule, you are to be slave to the first man you meet, with a fairer skin than your own.*

*You do not mean color exactly? —You mean the whites are intellectually the superiors of the blacks, and therefore have the right to enslave them? Take care again. By this rule, you are to be slave to the first man you meet, with an intellect superior to your own.*

*No, Mr. Lincoln, I do not enslave blacks on the basis of either colour or intellectual inferiority. I enslave them because I can. The stronger have been enslaving the weaker ever since society reached the point at which the labour produced by a slave exceeded the cost of his upkeep, which seems to me to be a reasonable thing to do.*

*You ask on what basis do I have this right, but I ask you why I should not consider it my right. On what basis do you say it’s wrong? We shall not accept that it is wrong by default. You are seeking to show me by reason that it is wrong, yet in fact you are only appealing to my self-interest, and I find that thoroughly unconvincing on two grounds. First, the certain benefits that accrue to me on the basis of keeping slaves exceeds in my estimation the possible cost of becoming a slave myself to one stronger, a possibility that I find most unlikely.*

*Second, and more important, Mr. Lincoln, if one stronger than I comes along to enslave me, he will not be deterred by the fact that I forewent my chance to enslave one weaker than I. More than likely, he will simply laugh at my foolishness in having done that. So, by following your path, I will have given up certain benefit for nothing at all.*

*This is what reason tells me, Mr. Lincoln. You have utterly failed to show on the basis of reason or a putative “natural law” that it is wrong for me to keep slaves. Your appeal to self-interest is a failure, Mr. Lincoln, a total failure.*

So Lincoln’s fragment, which is touted by Arkes as a “**model of a principled argument**”, is in reality a logically erroneous, crass appeal to self-interest - and it fails even as that. Bear in mind, folks, that Arkes himself told us that

*There may be no better example of natural-law reasoning than that fragment Lincoln wrote to himself.*

Here, at least, Arkes is correct, except for the “**may be**” part: bald assertions, logical errors, and unworkable appeals to self-interest - arguments for morality based on natural law apart from revelation truly *do not* get any better than this.

The reality then is that morality is indeed dependent upon revelation. Arkes takes Dershowitz to task for this view, chiding him for “**tak[ing] natural law to be bound up with claims of revelation.**” (It seems more correct to say that Dershowitz considers *morality*, rather than “**natural law**” to be “**bound up with claims of revelation**”, for as Arkes himself writes, Dershowitz “**emphatically denies that there are ‘moral truths’ ... for he denies insistently, stridently, the notion of a God who disclosed a scheme of moral truths ... Dershowitz flatly asserts that ‘there are no divine laws of morality, merely human laws claiming the authority of God.’**”)

It is actually funny that Arkes responds to this by writing:

*“[Dershowitz] takes natural law to be bound up with claims of revelation, detached from reason. That claim is not even true about theology, as the former Cardinal Ratzinger has explained, and it is certainly not true about natural law. As Thomas Aquinas famously remarked, the divine law we may know through revelation, but the natural law we know through the reasoning that is accessible through the reason that is natural to human beings. There may be no better example of natural-law reasoning than that fragment Lincoln wrote to himself, when he imagined himself engaged in a debate with the owner of black slaves.”*

Yes, folks, in trying to deny that morality is dependent on revelation, Arkes gives us bald assertions from Ratzinger and Aquinas, and then tries to show that what they are claiming is correct by means of the Lincoln fragment, the very example that we have just shown manifests plainly that what they are claiming is *incorrect*, and wildly so. So we cannot “reason” our way to morality; we need the word of God.

In the end, then, despite Arkes’ opposition to Dershowitz’s position, Arkes and Dershowitz are really two birds of a feather. While the former accepts the concept of revelation (as far as I know) and the latter denies it, both insist that revelation is not necessary to moral knowledge, and both want to be able to say that some things are wrong without resorting to the word of God. And both are left with nothing but bald assertions and logical errors. It is not surprising, for what they want to do cannot be done. There is no absolute morality without the word of God. There is only personal opinion and “might makes right.” Thus, both Arkes’ concept of natural law and Dershowitz’s atheistic skepticism are vacuous philosophical constructs, and we do well to remember the injunction in Colossians 2:8:

*Beware lest anyone cheat you through philosophy and empty deceit, according to the tradition of men, according to the basic principles of the world, and not according to Christ.*

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## **Endnotes**

[1] Arkes, Hadley. “The Rights and Wrongs of Alan Dershowitz.” Posted November 4, 2005, at <https://www.claremont.org/crb/article/the-rights-and-wrongs-of-alan-dershowitz/>