

Aristotelian Liberalism:
**Chapter 2: Eudaimonia and the Right to Liberty:
Rights as Metanormative Principles**

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Abstract

The paper is a dissertation chapter. It seeks to build on the work of Douglas Rasmussen and Douglas Den Uyl in developing an Aristotelian liberalism, which holds that the right to liberty is a *metanormative* principle necessary for protecting the possibility of self-direction, a necessary condition for all forms of *eudaimonia* (human well-being, flourishing, happiness). Contra Rasmussen and Den Uyl, however, it will be argued in this chapter and the next that rights are also a set of interpersonal moral principles the respecting of which is a necessary and constitutive part of human flourishing. The natural right to liberty is a normative safeguard for that feature common to all forms of human flourishing and necessary for moral agency as such: self-direction. For an action to count as virtuous, and therefore constitutive of a life of well-being, it needs be chosen not only because it is right and good but chosen freely and because we desire it. As rational, political, and social animals we ought to conduct our common affairs through public discourse, rational persuasion, and voluntary cooperation rather than through violence or the threat thereof. Liberty and respecting the equal liberty of others are thus essential and constitutive parts of one's own *eudaimonia*. Rights-violating behavior not only infringes on or destroys the moral agency of the recipient but also harms the well-being of the agent.

However much we love reconciliation, there are two principles that cannot be reconciled: liberty and coercion.

– Frederic Bastiat, *Economic Harmonies*

Simplicity and truth of character are not produced by the constraint of laws, nor by the authority of the state, and absolutely no one can be forced or legislated into a state of blessedness; the means required are faithful and brotherly admonition, sound education, and, above all, free use of the individual judgment.

– Benedict de Spinoza, *Tractatus Theologico-Politicus*

Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus human law prohibits murder, theft and such like.

– Aquinas, *Summa Theologica*, I-II, Question 96, Second Article

An Aristotelian liberalism promises to offer a radically different foundation for rights than has heretofore prevailed in the liberal tradition. This is because Aristotelian virtue ethics entails a radically different approach to the right and the good than do modern ethical theories. Modern ethical theories tend to focus on moral properties, on rules or consequences, on the moral recipient or patient¹ (be it an individual, society-as-a-whole or certain classes of it). In contrast to typically modern *demand-side* approaches to morality and rights, Aristotelian-liberal virtue ethics, like the virtue ethics of Aristotle, offers a *supply-side* approach: it focuses on the moral agent – his character and his actions. As Roderick Long explains: “According to a demand-side ethics, the way that A should treat B is determined primarily by facts about B, the *patient* of moral activity; but for a supply-side approach like Virtue Ethics, the way that A should treat B is determined primarily by facts about A, the *agent* of moral activity.”^{2,3} The central question of a

¹ ‘Patient’ is the commonly used term but I prefer ‘recipient’ as a more neutral term. The term ‘patient’ is a rather loaded one. The implication is that we are supposed to care for patients, for the sick, as doctors do, but not all of ethics is about caring for patients. Thanks to my advisor, Dr. Eubanks, for pointing out the implications of sickness.

² Long (1994/95). Online version: no page numbers available, but it is a short essay.

eudaimonistic virtue ethics is not “What consequences should I promote?” or “What rules should I follow?” but rather “What kind of person should I be?”⁴

Modern natural rights theories – from Locke (classical liberal) to Robert Nozick and Murray Rothbard (contemporary liberals or libertarians) – tend to be demand-side accounts of rights. They tend to focus on facts about the moral recipient in explaining their derivation, function and justification. On such an account, rights identify the freedoms men require in order to be able to take the actions they judge they must if they are to survive and even prosper, without infringing on other persons’ equal freedom to do likewise. Rights, if respected and protected, minimize that most anti-social form of conflict, violence, by prohibiting the threat or use of initiatory physical force. A society in which rights are respected and protected promotes long-range planning and mutual trust, enables complex commercial transactions and partnerships between relative strangers, and makes possible friendships that are truly deep and meaningful precisely because they are chosen. A truly free market society is not a zero-sum game, operating according to the laws of a Hobbesian jungle, in which people compete over shares of a fixed pie such that in order for some to win, others must lose. Rather, a truly free market society is a positive-sum game, really no game at all, in which individual achievements make the pie larger and richer.

³ Note that this is not an absolute distinction. A supply-side ethics is not based solely on the moral agent, nor is a demand-side ethics based solely on the moral recipient. It is a matter of emphasis and fundamentality.

⁴ This last also points to virtue ethics as an alternative to consequentialism and deontology. As Douglas Rasmussen and Douglas Den Uyl (2005: 266 n. 1) point out, “if...human flourishing is both the ultimate good (a way of being) and how one ought to conduct oneself (a type of activity), then a natural end or virtue ethics in general, and an individualistic perfectionism specifically, transcend the traditional deontological/consequentialist approach to how we determine moral obligations. Moral obligation is determined neither apart from a consideration of human flourishing nor as a mere means to it.”

Nozick adds an additional explanation, indeed, which is in his view the primary foundation of rights, viz., that rights are a recognition of the fact that we are all separate persons.

There are only individual people [and no social entity apart from them], different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up. (Intentionally?) To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. *He* does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him – least of all a state or government that claims his allegiance (as other individuals do not) and that therefore scrupulously must be *neutral* between its citizens.⁵

Thus, if I were to treat you as a mere means, rather than as an end-in-yourself, I would not be respecting you as a person. And we all need and deserve such respect. However, as Rasmussen and Den Uyl point out, a major flaw in Nozick's theory is that "the inviolability of the individual cannot be based on simply the ontological difference of individuals or the separateness of their lives."⁶

It is not that these accounts of rights are fundamentally wrong. Rather, they are very much right as far as they go. It is just that they are incomplete. These are accounts of rights that treat of the individual qua moral recipient, not qua moral agent. They deal with what is necessary to protect the conditions of human flourishing. From this position, an individual's rights qua moral recipient entail moral obligations in others, rather than the other way around, i.e., of an individual's moral obligations qua moral agent entailing that others have rights against him. These accounts fail to sufficiently link rights-respecting

⁵ Nozick (1974), p. 33. Emphasis in original.

⁶ Rasmussen and Den Uyl (2005), p. 209.

behavior to human flourishing and, in particular, to virtue. As we shall see in the sections that follow and in the subsequent chapter, even Douglas Rasmussen and Douglas Den Uyl, two prominent Aristotelian liberals seem to fall prey to this mistake.⁷ We turn now, however, to a discussion on the nature of human flourishing. The section that follows is heavily indebted to the work of Rasmussen and Den Uyl.

Human Flourishing

Douglas Rasmussen and Douglas Den Uyl argue that *eudaimonia* or human flourishing has six basic and interrelated features: it is 1) objective, 2) inclusive, 3) individualized, 4) agent-relative, 5) self-directed, and 6) social.⁸ Arguably, Aristotle's conception of *eudaimonia* incorporates all of these features. The differences in the neo-Aristotelian account herein described lie in the greater emphasis on the individualized nature of flourishing, the open-ended and potentially cosmopolitan nature of human sociality, and the greater recognition of the importance of liberty to human flourishing.

According to the Aristotelian-liberal account presented here, human flourishing is objective. Desire plays an important role in *eudaimonia* and virtue. However, flourishing is “an object of desire because it is desirable and choice-worthy, not simply because it is desired or chosen.”⁹ Flourishing as the ultimate good must be understood in a biocentric context. It is both a way of *living* and, because flourishing is more than mere survival, a *way of living*.¹⁰ As Philippa Foot points out: “The structure of the derivation is the same

⁷ Regarding Rasmussen and Den Uyl, see, for example, pages 81-82 of their (2005).

⁸ See, e.g., Rasmussen and Den Uyl (2005), pp. 127-152. The essential characteristic of man that best explains and makes possible these features is his faculty of reason.

⁹ Rasmussen and Den Uyl (2005), p. 127.

¹⁰ On this formulation, see Rasmussen and Den Uyl (2005), p. 128.

whether we derive an evaluation of the roots of a particular tree or the action of a particular human being. The meaning of the words 'good' and 'bad' is not different when used in features of plants on the one hand and humans on the other, but is rather the same applied, in judgments of natural goodness and defect, in the case of all living things.”¹¹

Flourishing is activity expressive and productive of the actualization of potentialities specific to the being's natural kind, including both its universal and its unique particular aspects. A human being is a rational animal, but he is also a rational animal with a particular set of physical and mental abilities and talents peculiar to himself as well as a unique social and historical context and his own personal choices. All of these are factors in an individual's own *eudaimonia*; more on this will be said in the discussion of the individualized nature of human flourishing, however.

Rasmussen and Den Uyl observe: “Ontologically considered, human flourishing is an activity, an actuality, and an end (or function) that is realized (or performed) through choice. Human flourishing is not the mere possession of needed goods and virtues.”¹² It is a self-directed activity: flourishing, and all of the goods and virtues that constitute it, exist as such only through a person's own efforts. Finally, in a teleological theory, flourishing, as the ultimate end, “is thus ultimately the standard by which human desires, wishes, and choices, are evaluated.”¹³

Human flourishing is an inclusive end, not a dominant or exclusive one. As Rasmussen and Den Uyl argue, human flourishing “is the ultimate end of human conduct, but it is not the only activity of inherent worth. It is not a 'dominant' end that reduces the

¹¹ Foot (2001), p. 47.

¹² Rasmussen and Den Uyl (2005), p. 129.

¹³ Ibid.

value of everything else to that of a mere means to it.”¹⁴ It is plural and complex, not monistic and simple. To quote J. L. Akrill, it is “the most final end and is never sought for the sake of anything else, because it includes all final ends.”¹⁵ Human flourishing is inclusive in that it consists of basic or, to use Rasmussen and Den Uyl's term, “generic” goods and virtues. Goods such as those listed by Aristotle in *Rhetoric* 1362b10-28: for example, justice, knowledge, friendship, health, wealth, and honor. Virtues such as justice, courage, temperance, and generosity. These goods and virtues are final ends and intrinsically valuable; and they are expressions or constitutive of flourishing as well as partial realizations of it.¹⁶ This is possible because flourishing is a “continuous process of living well,” not a future good received at the end of one's life or a good that, once achieved, is never lost;¹⁷ hence, in part, Aristotle's pointed addendum, “in a complete life.”¹⁸

Human flourishing is highly individualized. Aristotle recognized this to some extent as evidenced by his recognition of the importance of both the universal and the particular, in philosophy in general and in ethics and politics in particular. For Aristotle, the good is “that at which all things aim.”¹⁹ This is a universal conceptual truth. But he also recognized that the good is different for different things. The natural end of one species is different from that of another. The natural end or good for a particular profession or pursuit will be different from that of another.²⁰ Even at the individual level

¹⁴ Ibid.

¹⁵ Akrill (1980), p. 23.

¹⁶ Rasmussen and Den Uyl (2005), p. 130. Cf. Aristotle, *Nicomachean Ethics* (hereafter *NE*) I.7 1097b1-7.

¹⁷ Ibid., p. 131.

¹⁸ *NE* I.7 1098a17-20 and I.9 1100a4-6.

¹⁹ *NE* I.1 1094a3.

²⁰ *NE* I.7 1097a15-24.

Aristotle recognizes important differences from one person to another. One specific manifestation of this lies in his discussion of his doctrine of the mean as it pertains to virtue. Virtue is right action, the mean between the two extremes of excess and deficiency (vices), relative to us. The inclusion of ‘relative to us’ is key. Aristotle’s ethical theory is also sensitive to the particular contexts in which action takes place. Aristotle says of our emotions: it is a mark of excellence to feel them “at the right time, toward the right object, toward the right people, for the right reason, and in the right manner.” He then adds that this is true of actions as well.²¹ Virtue involves both right emotion and right action.²² On the other hand, Aristotle seems to endorse just one way of life as the best – depending on interpretations either the contemplative life or some combination of the contemplative life and the political life.

In Book I of his *De Officiis (On Duties)* the Roman orator and statesman Cicero made some observations that I interpret as intentionally elaborating upon the role of both the universal and the particular in Aristotle's ethical theory. For the purpose of illustration it is useful to reproduce them below. In the passages that follow, Cicero discusses the four *personae*, or roles, the requirements of which all men must fulfill in order to live the Good Life: universal human nature (i.e., reason) and the individual's inborn talents, social context, and personal choices.

Furthermore, one must understand that we have been dressed, as it were, by nature for two roles: one is common, arising from the fact that we all have a share in reason and in the superiority by which we surpass the brute creatures. Everything honourable and seemly is derived from this, and from it we discover a method of finding out our duty. The other, however, is that assigned specifically to individuals. For just as there are enormous

²¹ NE II 1106b15-24.

²² NE II 1106b36-1107a7.

bodily differences (for some, as we see, their strength is the speed that they can run, for others the might with which they wrestle; again, some have figures that are dignified, others that are graceful), similarly there are still greater differences in men's spirits. (I.108)

Each person should hold on to what is his as far as it is not vicious, but is peculiar to him, so that the seemliness that we are seeking might more easily be maintained. For we must act in such a way that we attempt nothing contrary to universal nature; but while conserving that, let us follow our own nature, so that even if other pursuits may be weightier and better, we should measure our own by the rule of our own nature. For it is appropriate neither to fight against nature nor to pursue anything that you cannot attain. Consequently, it becomes clearer what that seemliness is like, precisely because nothing is seemly 'against Minerva's will', as they say, that is, when your nature opposes and fights against it. (I.110)

If anything at all is seemly, nothing, surely is more so than an evenness both of one's whole life and of one's individual actions. You cannot preserve that if you copy someone else's nature and ignore your own. [...] (I.111)

To the two roles of which I spoke above, a third is added: this is imposed by some chance or circumstance. There is also a fourth, which we assume for ourselves by our own decision. Kingdoms, military powers, nobility, political honours, wealth and influence, as well as the opposites of these, are in the gift of chance and governed by circumstances. In addition, assuming a role that we want ourselves is something that proceeds from our own will; as a consequence, some people apply themselves to philosophy, others to civil law, and others again to oratory, while even in the case of the virtues, different men prefer to excel in different of them. (I.115)²³

These passages suggest that we must strike the right balance, the mean between excessive universalism and excessive pluralism. Cicero, unfortunately from the liberal point of view, means one's social context as imposing a wide range of obligations beyond the realm of personal choice, as long as they are not contrary to nature or beyond one's ability. Thus, the mere accident of birth into a noble family with a long lineage of public service imposes the obligation of maintaining and furthering the family's heritage and

²³ Cicero (1991), pp. 42-45.

position in society with one's own deeds. Thus, also, was a Roman obligated to serve the Roman Republic to the best of his ability so long as nothing he did or was called upon to do was contrary to nature. The crux of the issue, of course, lies in how one defines the relationship between personal choice and the particular social contexts into which we are born. Is it beyond the scope of personal choice to change one's social context? Also of fundamental importance is whether particular social contexts conflict with what is required by our universal human nature.

The scope of personal choice seems rather limited in the Roman context. We have as an example of the dominant role of social context Cicero's admonition to his son in *De Officiis*:

Anyone who is thinking about embarking upon an honourable life ought to do so [learn about duties from the Stoics], but perhaps no one more than you. For you carry this burden: many expect you to emulate my diligence, most my honours, and some, perhaps, even my renown. Besides, you have incurred a weighty responsibility from Athens and from Cratippus; since you went to them as if going to purchase arts of good quality, it would be most dishonourable to return empty-handed, thus disgracing the authority of both city and master. Therefore, strive with as much spirit and struggle with as much effort as you can (if learning is an effort, and not a pleasure) in order that you may succeed, and not, instead, allow yourself to seem to have let yourself down, even though we have provided everything for you. (III.6)²⁴

In this one passage we see the chain of unchosen obligations imposed on Cicero's son, i.e., an obligation to educate himself in such a way that he can follow in his father's footsteps and therefore an obligation to his teachers and even the city of Athens itself.

This is not to say that all of our obligations are chosen in a radically free, atomistic sense;

²⁴ Ibid., p. 103.

rather, it is merely to criticize Cicero and Aristotle for their inadequate recognition of the diversity of human flourishing and the value of flourishing diversity.

As Cicero's four *personae* imply, but as he and Aristotle arguably do not fully appreciate, human flourishing is highly

individualized and diverse. It depends on *who* as well as *what* one is. Abstractly considered, we can speak of human flourishing and of basic or generic goods and virtues that help to define it. Yet, this does not make human flourishing in reality either abstract or universal. Concretely speaking, no two cases of human flourishing are the same, and they are not interchangeable. . . . There are individuative as well as generic potentialities and this makes human fulfillment always something unique.²⁵

An examination of human nature cannot reveal the proper weighting, balance, or proportion of the generic goods and virtues for each individual. Indeed, these goods and virtues do not exist as such except as concrete goods and virtues *for* particular individuals as they achieve and enjoy them through their own efforts in specific contexts. Human beings are not mere loci in which these goods and virtues qua universals are instantiated. These generic goods and virtues are “generalized abstractions of common needs and capacities and not independent realities in their own right.”²⁶ Thus, human flourishing is not a one-size-fits-all standard, nor is its diversity limited to the level of particular communities, yet it is nevertheless the objective and ultimate standard of what is good and right on an individual level. “This account of human flourishing is, then, a version of moral pluralism. There are many *summa bona*, because each individual's flourishing is

²⁵ Rasmussen and Den Uyl (2005), p. 132. Emphasis in original.

²⁶ Ibid., p. 150.

the *summum bonum* for him- or herself and because there is no single *summum bonum* without unique form or apart from the lives of individual human beings.”²⁷

“Human flourishing is agent-relative; it is always and necessarily the good *for* some person or other.”²⁸ Agent-relative value is contrasted with its opposite: agent-neutral value, and the ethical impersonalism based on it. Rasmussen and Den Uyl say “that an ethical theory is impersonal when all ultimately morally salient values, reasons, and rankings are 'agent-neutral'; and they are agent-neutral when they do *not* involve as part of their description an essential reference to the person for whom the value or reason exists or the ranking is correct. One person can be substituted for any other.”²⁹ Agent-neutrality and ethical impersonalism are exceedingly common in modern ethical theories, particularly of Kantian and utilitarian varieties. Aristotelian-liberals, however, reject as wrongheaded the notion that particular and contingent facts such as individual, social and cultural differences are ethically irrelevant; quite the opposite, such factors are vitally important.

Rasmussen and Den Uyl observe that there are three possible confusions regarding agent-relativity: 1) Agent-neutrality is often confused with objectivity, and agent-relativity with subjectivity; but agent-relativity is compatible with objectivity due to the fact that the good in Aristotelian and neo-Aristotelian philosophy is objective because of “real potentialities, needs, and circumstances that characterize both what and who a person is” and not merely because it is desired.³⁰ 2) It might be thought that

²⁷ Ibid., p. 134. Emphasis in original.

²⁸ Ibid. Emphasis in original.

²⁹ Ibid., p. 135.

³⁰ Ibid., pp. 136-137.

because something is of value only to and for someone it must be of merely instrumental value, but this has already been shown not to be the case.³¹ 3) It might be thought that agent-relativity is merely a form of self-only-regarding egoism, but agent-relativity is not incompatible with other-regarding concern. Indeed, other-regarding concern in the form of the good of friendship and virtues such as justice and generosity are constitutive parts of human flourishing.

Finally, we come to the sixth feature of human flourishing identified by Rasmussen and Den Uyl. Human flourishing is self-directed. Self-direction is the exercise of rational agency. It is not full-blown autonomy and it is not the full exercise of intellectual and moral virtue, although it is a necessary constitutive element of these things. Human flourishing requires knowledge of its constituent goods and virtues and the practical wisdom necessary to choose the proper course of action in a given context. This depends on the individual agent to initiate and sustain over the course of his life the exercise of his rational capacities in order to achieve the intellectual insights and traits of character and to make the correct choices and the right actions that are necessary for his flourishing. This no one can do for him, for although the conclusions of thought “can be shared, the act of reasoning that is the exercise of self-direction cannot.”³² Self-direction is thus “the central necessary constituent or ingredient of human flourishing. It is that feature of human flourishing without which no other feature could be a constituent.”³³

Human flourishing is profoundly social. Rasmussen and Den Uyl identify four ways in which human beings are naturally social animals: 1) “Our maturation or

³¹ See the earlier discussion of human flourishing as an inclusive end.

³² Ibid., p. 140.

³³ Ibid.

flourishing requires a life with others.” 2) “[H]aving other-concern is crucial to our maturation.” 3) “Our origins are almost always social.” 4) And here Aristotelian liberals go beyond Aristotle: “Human sociality can, if need be, extend beyond the polis and be cosmopolitan. . . . [H]uman sociality is open-ended.”³⁴ This fourth point is particularly important because it marks a major difference between Aristotelian liberals and Aristotle, and, to an even greater extent, between Aristotelian liberals and communitarians. An Aristotelian liberal will recognize not only that in order to flourish one can only do so “in some community or other,” but also that “this does not mean that a given community's values will always be appropriate for an individual. Thus, one is not morally required simply to accept – indeed, one might be required to reject – the status quo. In such circumstances, one might need to [attempt to] refashion a community's values [by example and persuasion] or find a new community.”³⁵

Rasmussen and Den Uyl argue that “the open-ended character of human sociality discloses the need for a perspective that is wide-ranging enough to explain how the possible relationships among persons who *as yet* share no common values and are strangers to each other can, nonetheless, be ethically compossible.”³⁶ In this vein, one may look upon humanity as a whole insofar as its members do not engage in fundamentally anti-social behavior (i.e., the threat or use of initiatory physical force) as comprising a cosmopolis or Great Society within which are an uncountable number of different kinds and levels of overlapping communities: some of which we will belong to

³⁴ Ibid., pp. 141-142.

³⁵ Ibid., p. 142.

³⁶ Ibid., p. 143. Emphasis mine.

for life, some we will join, some we will leave, and all of which we will affect in often unintended ways to some degree with our dreams, choices, and actions.

Phronēsis (φρόνησις), the virtue of prudence or practical wisdom, is defined by Aristotle as “a state [of the soul] involving truth and reason concerned with action regarding things that are good and bad for a human being.”³⁷ It plays a central integrating role in human flourishing. This is so not only because there are many goods and virtues that constitute it and not only because there is no *a priori* weighting, ranking, or balancing of these goods and virtues but also because each person's flourishing is unique – given their unique talents, social context, interests, choices, and so forth.

It is fundamentally erroneous to assume that abstract ethical principles *alone* can determine the proper course of conduct for any particular individual. Such ethical rationalism fails to grasp that ethics is practical and concerned with particular and contingent facts – facts that abstract ethical principles cannot explicitly capture. Such facts are crucial to determining what ought to be done. Thus, contrary to much modern and contemporary ethics, not all morally proper conduct need be something everybody should do.³⁸

It might be thought, however, that this account of human flourishing is vitiated by serious underdetermination, meaning that the theory does not give us enough specific guidance and so is not useful for determining what ought to be done, and irresolvable conflicts between the goods that constitute it. Rasmussen and Den Uyl point out in anticipatory reply that underdetermination

is a flaw only if one assumes that the aim of moral theory is to dictate a set of specific and equally suited rules of conduct for every person regardless of his or her nexus.³⁹ But this is not necessary given that the human good

³⁷ *NE* VI.5 1140b4-6; Miller's (1995: 10) translation.

³⁸ *Ibid.*, p. 144. Emphasis in original.

³⁹ I.e., “the circumstances, talents, endowments, interests, beliefs, and histories that descriptively characterize [him or her as an] individual” (*Ibid.*, p. 133).

is neither abstract nor agent-neutral. Practical wisdom deals with the contingent and the particular and can provide guidance regarding substantial matters, if we do not confuse it with theoretical reason or its features.⁴⁰

Quite the contrary to being a flaw, this 'underdetermination' is actually a significant advantage “because it represents a theoretical openness to diversity.”⁴¹

Furthermore, not only does much of modern and contemporary ethics confuse agent-neutrality with objectivity. It also neglects the importance of the individual and of practical wisdom to morality and flourishing, and forgets that by its nature ethics is open-ended. It is thus no accident that so much of modern and contemporary ethical theory confuses ethics with law. “Law must be concerned with rules that are universal and necessary, because it is concerned with the question of establishing social conditions that must apply to everyone equally. Ethics, on the other hand, need not be so construed. Ethical principles need to be open to the particular and contingent circumstances of the lives of different individuals.”⁴²

Rasmussen and Den Uyl also have an anticipatory reply for the alleged problem of irresolvable conflict between a significant plurality of goods: “A plurality of inherent goods does not necessarily make them incompatible, if we do not confuse concrete with abstract considerations and if we recognize that it is by using practical wisdom, not rules, that potential conflicts are reconciled.”⁴³ Considered abstractly, there is no logical incompatibility between the various goods and virtues of which flourishing is constituted. “Concretely considered, keeping them from becoming incompatible by discovering their

⁴⁰ Ibid., p. 145.

⁴¹ Ibid., pp. 145-146.

⁴² Ibid., p. 146 n. 79.

⁴³ Ibid., p. 145.

proper weighting or balancing is an individual's central task. Yet, this is only an insuperable difficulty if we assume that the goods and virtues that compose human flourishing are equal among themselves and identical across individuals.”⁴⁴

“We need abstract [theoretical] knowledge of generic goods and virtues as well as practical wisdom's insight into the contingent and the particular” in order to live an ethical and hence a flourishing life.⁴⁵ The generic goods and virtues serve to delimit what counts as flourishing, but within this range what counts as a particular good or virtue for a given individual will depend not only upon his universal human nature but also on objective and particular value-laden facts about him such as his talents, his historical/social context, his personal choices, and the specific circumstances he finds himself in at the moment of action. “[P]ractical reason properly used, which is the virtue of practical wisdom, is the intelligent management of one's life so that all the necessary goods and virtues are coherently achieved, maintained, and enjoyed in a manner that is appropriate for the individual human being.”⁴⁶ The individual's task is not merely one of conflict avoidance, however, but also of integration: One must make the goods and virtues one's own, so to speak, “by an act of reason or insight, not by mere mechanical application of universal principles to concrete cases. It is not just that an individualistic perfectionism points to a wider variety of 'relevant differences' among agents. . . . *It is rather that agenthood itself is the 'relevant difference'.*”⁴⁷

⁴⁴ Ibid., p. 150.

⁴⁵ Ibid., p. 149.

⁴⁶ Ibid., p. 147. Emphasis removed.

⁴⁷ Ibid., p. 151. Emphasis in original.

We are now, finally, in a better position to examine with greater precision the Aristotelian-liberal conception of liberty. Here I will focus on the political dimension of autonomy (liberty). In chapter four I will discuss two other important dimensions of autonomy: social and personal. According to the traditional (classical) liberal conception, liberty consists of being free from aggression; more precisely, liberty is freedom from the threat or use of initiatory physical force. Although certain kinds of people are never at a loss for seeming justifications (new and old) for violating individual liberty, it is arguably almost universally and commonsensically understood that the act of coercing someone with the threat or use of physical force – such as by violence, murder, fraud and naked theft – imposes the aggressor's desires, interests, preferences, choices, actions, on the victim without his consent. To the extent that this occurs the victim exists not for his own sake but for another's: his desires, interests, preferences, choices, actions, are no longer truly his but are alien to him. More to the point, to the extent that this occurs his actions are not self-directed. A person being physically coerced by another is not able to make the choices and take the actions he judges necessary for the maintenance and furtherance of his life, i.e., for his survival and, more importantly, his flourishing. Also, as Nozick has pointed out, he who threatens or employs initiatory physical force against another rational being, for whatever reason, is not respecting his victim as a person.

In her essay, “Aristotle's Function Argument: A Defense,” Jennifer Whiting makes an apropos analogy to a malfunctioning heart controlled by a pacemaker:

A heart which, owing to some deficiency in its natural capacities, cannot beat on its own but is made to beat by means of a pacemaker is not a healthy heart. For *it*, the heart, is not strictly performing its function. Similarly, a man who, owing to some deficiency in his natural capacities, cannot manage his own life but is managed by means of another's

deliberating and ordering him is not *eudaimōn* – not even if he possesses the same goods and engages in the same first order activities as does a *eudaimōn* man. For *he*, the man, is not strictly speaking performing his function. . . . Aristotle's claim that *eudaimonia* is an activity of the soul in accordance with virtue shows that he thinks that *eudaimonia consists in* exercising rational agency.⁴⁸

Similarly, an otherwise normally functioning human being who is physically coerced is to that extent strictly speaking not performing his function; indeed, so much the worse compared to Whiting's example because he is otherwise healthy! Thus, from the standpoint of a supply-side ethical theory, it is not enough simply to possess the goods (and it is impossible to possess the virtues) one needs in life without self-directed action. To the extent that one's liberty is infringed, one is unable to flourish.

We understand the foregoing on a more intuitive or commonsensical level too. It is revealed in our reactions to Nozick's experience machine.⁴⁹ If we were given the chance to experience whatever kind of life we most desired simply by hooking up to a virtual reality machine – it being stipulated that the virtual reality life would take the place of the one we otherwise would have lived, i.e., we'd be hooked up until we died – would any of us choose to do so? Most of us understand that being hooked up to the hypothetical experience machine is not truly living. Most of us want and need to do and to be, in connection with actual reality, not merely to experience. A recent illustration of this in film is exemplified by the *Matrix* trilogy, in which the human race is enslaved as living batteries by intelligent robots, their minds trapped in a virtual reality, blissfully ignorant of their situation; of the individuals who discover the truth and escape, only one

⁴⁸ Whiting (1988), p. 43. Emphasis in original.

⁴⁹ Nozick (1974), pp. 42-45.

desires to return to a virtual life. This insight is equally applicable to real world scenarios as to hypothetical thought experiments.

The Right to Liberty as a Metanormative Ethical Principle (Rasmussen/Den Uyl)

Drawing on the foregoing analysis of human flourishing, it is possible to clarify further the nature and importance of liberty. On the most fundamental level it is self-direction that is compromised by the threat⁵⁰ or use of physical force. As we have seen, self-direction is *a* necessary and *the* central condition and constitutive element of flourishing. Whatever a desire, an interest, a preference, a choice, an action, an entire life that is directed by another may be called it is not good, virtuous or flourishing. It is the very nature of *eudaimonia* and virtue that they must be desired and freely chosen for the right reasons.⁵¹ The pursuit of *eudaimonia*, the practice of virtue, must be self-directed. Coercive interference, or the threat or use of physical force, compromises self-direction and therefore moral agency. An act of mine does not count as virtuous and therefore contributory toward my *eudaimonia* if you force it upon me, even if it otherwise would have been had I desired and freely chosen it for the right reasons.

Recall from the previous section, it was said that “the open-ended character of human sociality discloses the need for a perspective that is wide-ranging enough to explain how the possible relationships among persons who as yet share no common values and are strangers to each other can, nonetheless, be ethically compossible.”⁵² This alludes to what Rasmussen and Den Uyl call “liberalism’s problem,” i.e., “the problem of

⁵⁰ I have in mind primarily clear and present threats, whether spoken or implied.

⁵¹ *NE* II.4 (1105a18-1105b17) and III.1-5 (1109b30-1115a6).

⁵² Rasmussen and Den Uyl (2005), p. 143.

how to find an ethical basis for the overall political/legal structure of society.”⁵³ What is needed is an ordering principle for the structure of society that protects the possibility of human flourishing in all its forms. It follows that such a principle, when put into practice, will not hinder or prohibit some forms of flourishing, thereby privileging others; nor will it bias structurally the political/legal order in favor of one or more forms of flourishing. This follows from the fact that it is simply a principle that protects the *possibility* of all forms of human flourishing, nothing more. But does such a principle exist? Indeed, it does. That principle is the right to liberty.

The right to liberty proscribes legally the threat or use of *initiatory* physical force in all its forms. Recall that the single greatest and most basic encroachment on an individual’s self-direction is the threat or use of initiatory physical force and that self-direction is necessary and central to human flourishing. By banning legally the threat or use of initiatory physical force, the right to liberty, as the basis of a legal system, protects the possibility of self-direction and therefore the possibility of all forms of human flourishing. Rasmussen and Den Uyl point out that the “individual right to liberty allows each person a sphere of freedom – a ‘moral space’ or ‘moral territory’ – whereby self-directed activities can be exercised without being invaded by others. This translates into a principle of compossible *and* equal freedom for all.”⁵⁴ A society based on the right to liberty is one of complete and total liberty, for, to invoke the Spencer-Rothbard Law of

⁵³ Ibid., p. 1.

⁵⁴ Rasmussen and Den Uyl (2005), p. 90. Emphasis in original.

Total Liberty in summary, “if *every* man has freedom to do all that he wills, it follows from this very premise that *no man*’s freedom has been infringed or invaded.”^{55,56}

Rasmussen and Den Uyl call the right to liberty a *metanormative* principle, because “it is concerned with the creation, interpretation, and justification of a political/legal context in which the possibility of the pursuit of flourishing is secured.”⁵⁷

Rasmussen and Den Uyl identify several requirements for metanormativity. One of them has already been discussed, viz., that such a principle neither bias structurally the political/legal order in favor of one or more forms of flourishing, nor hinder or prohibit any form of human flourishing. Secondly, such a principle must be equally or universally applicable to all individuals and must therefore be centered on “that characteristic present in all forms of human flourishing (or its pursuit).” They argue that generic goods cannot serve as that characteristic because while “they are universal in the sense of helping to define human flourishing for all individuals, their particular form or weighting varies from individual to individual.” Finally, a “metanormative principle must apply to both

⁵⁵ Rothbard (2004), p. 1312. Emphasis in original. Herbert Spencer’s original formulation was his Law of Equal Freedom: “Every man has freedom to do all he wills, provided he infringes not the equal freedom of any other man” (Spencer 1897: 121). Murray Rothbard was correct, however, in pointing out that Spencer’s Law is redundant; the first proviso implies the second. “For if every man has freedom to do all that he wills, it follows from this very premise that no man’s freedom has been infringed or invaded. [...] The concept “equality” has no rightful place in the “Law of Equal Freedom,” being replaceable by the logical qualifier “every.” The “Law of Equal Freedom” could well be renamed “The Law of Total Freedom”” (Rothbard 2004: 1312). The phrase ‘The Spencer-Rothbard Law of Total Liberty’ is my coinage.

⁵⁶ It may be objected that liberty and equality are not compatible. While it is true that liberty precludes aggressive attempts to impose egalitarian values, thorough-going egalitarianism is contrary to nature and simply impossible to achieve by any means. But equality and liberty are not necessarily incompatible. Indeed, the argument here is that equality of liberty is an unknown ideal and liberty is a kind of equality. See Roderick Long, “Equality: The Unknown Ideal,” *Mises.org Daily Article* (October 16, 2001) and “Liberty: The Other Equality,” *The Freeman: Ideas on Liberty* Vol. 55, No. 8 (October 2005): 17-19. See, also, Locke’s equality of authority, which is only possible with total liberty; Locke (2003), Second Treatise II.4, 6 and 7, pp. 263-264.

⁵⁷ Rasmussen and Den Uyl (2005), p. 78.

the particular and general in the same way and in the same respect[.]”⁵⁸ As has already been shown, self-direction is the central and fundamental feature common to all forms of human flourishing. The right to liberty, since it protects the possibility of self-direction, does not bias the structure of the political/legal order in favor of or against any form of human flourishing. Rather, it secures the central, but not the only, necessary condition that makes human flourishing in all its forms possible.

While I think this account of the right to liberty as a metanormative principle that protects the possibility of all forms of human flourishing is essentially correct and certainly important, from the point of view of virtue ethics it is not the whole story or even the most important part, and certainly not the most fundamental part. David Gordon points out one deficiency of a primarily demand-side defense of rights, like Rasmussen and Den Uyl’s seems to be:⁵⁹ “[I]t does not follow from the fact that others must respect your rights, if you are to flourish, that you have an obligation to respect their rights. You may well have such an obligation, but more than an appeal to the conditions of your own flourishing is needed to show this.”⁶⁰ In other words, it is not enough to demonstrate that I must respect your rights in order for it to be possible for you to flourish. Arguing, as Rasmussen and Den Uyl do, that the right to liberty is necessary for protecting the possibility of *everyone’s* flourishing goes some distance in shoring up this deficiency. It

⁵⁸ Ibid., p. 84.

⁵⁹ This is rather ironic given that, from personal conversation with Roderick Long, to my knowledge Douglas Den Uyl (1993) is the originator of the supply-side/demand-side distinction and the observation that Aristotelian ethics is a supply-side ethics. David Kelley (2001) has also, much later and presumably familiar with Den Uyl’s argument, made the same distinction and claim about Rand’s theory of ethics.

⁶⁰ Gordon (2003), p. 2.

appeals to even unenlightened self-interest, provided the listener is not overly short-sighted and rash, but it still seems too consequentialist, not quite Aristotelian enough.

Actually, Rasmussen and Den Uyl's theory appears to contain both consequentialist and deontological elements. While an analytical philosopher might mine such elements out of a virtue-ethical theory, without being able to reduce virtue ethics to one or the other, Rasmussen and Den Uyl explicitly avoid grounding the moral obligation to respect rights in virtue. Ultimately, I think they see rights as being a sort of deontic constraint. However, rule-consequentialism and deontology are not really so very far apart. Roderick Long has argued that rule-consequentialism is praxeologically unstable and that it must collapse into either act-consequentialism or deontology. The rule-consequentialist either values the rules as ends-in-themselves, in which case he becomes a deontologist, or he values them as mere instrumental means to other ends that he holds, in which case he is committed to acting counter to the rules when the consequences dictate and his rule-consequentialism collapses into act-consequentialism.⁶¹

In somewhat consequentialist vein, Rasmussen and Den Uyl argue that rights-respecting behavior does not directly contribute to human flourishing:

Individual rights are a unique ethical concept that cannot be reduced to other ethical concepts; hence the basic character of individual rights cannot be grasped if ethics is understood in an equinormative manner, that is, if all ethical norms are understood as being of the same type or having the same function. Individual rights are an ethical concept different from those concepts generally found in normative ethics. They are not needed in order to know the nature of human flourishing or virtue, or our obligations to others, or even the requirements of justice. Nor are they more heavily weighted versions of these other norms. Rather, individual rights are

⁶¹ This is not the familiar psychological instability objection to indirect or rule-consequentialism. See section three of Roderick Long's Alabama Philosophical Society 2002 Presidential Address, "Why Does Justice Have Good Consequences?" for a more detailed explanation.

needed to solve a problem that is uniquely social, political, and legal [i.e., the problem of ethical compossibility].⁶²

It might seem paradoxical that they argue that rights are not concerned with the consequences of actions but “rather with setting the appropriate foundation for the taking of any action in the first place.”⁶³ But this statement would seem to be compatible with rejecting act-consequentialism in favor of rule-consequentialism. Rasmussen and Den

Uyl continue:

Individual rights are therefore not norms in the sense of guiding us toward the achievement of moral excellence or human flourishing. And contrary to appearances, they are not ordinary interpersonal normative principles either. Individual rights express a type of moral principle that must obtain if we are to reconcile our natural sociality with diverse forms of flourishing.⁶⁴

They conclude that “individual rights are politically primary” but are not “primary ethical principles.”⁶⁵ Rasmussen and Den Uyl further point out, and rightly so, that individual rights are a necessary but not sufficient condition for human flourishing: “The connection between individual rights and human flourishing is neither direct nor isomorphic.”⁶⁶

And finally, they do not seem to find anything especially morally noteworthy in rights-respecting behavior. They concede that “it can be said that one who respects the rights of others is a morally ‘better’ person than one who does not”; however, in a more deontological vein, “respecting metanormative rules is necessary for the moral game to be played, but it is not an instance of playing it well or even playing it much at all.”⁶⁷

⁶² Rasmussen and Den Uyl (2005), p. 78.

⁶³ Ibid., p. 91.

⁶⁴ Ibid., p. 91.

⁶⁵ Ibid., p. 92.

⁶⁶ Ibid., p. 268.

⁶⁷ Ibid., p. 288.

Strangely enough, Rasmussen and Den Uyl explicitly consider rights to be nonconsequentialistic.⁶⁸ And yet they give us no nonconsequentialistic reason for respecting them. Our obligation to respect rights seems to be derived only from the need “to reconcile our natural sociality with diverse forms of flourishing,”⁶⁹ in other words, from our “shared need to act in a peaceful and orderly social/political context.”⁷⁰ It is telling that in the beginning of the sentence from which the second quote is cited they put the word ‘obligations’ in scare quotes. Additionally, they have made it clear that they do not see rights-respecting behavior as being demanded by the virtue of justice, or any other virtue. For them, rights-respecting behavior is not a constitutive part of human flourishing. Rather, rights-respecting behavior appears to be merely (though still importantly) necessary but not sufficient for one’s actions to count as moral in a social context. This last might seem to allow them to avoid the charge of consequentialism, but they offer no reasons for this to be the case. It does not automatically follow from our natural sociality sans virtue or our shared need for a peaceful and orderly society that rights-respecting behavior is necessary but not sufficient for one’s actions to be considered moral in a social context. What is it about human flourishing that makes it so? They do not tell us.

Moreover, their claim that respecting the rights of others is necessary but not sufficient in order to count as acting morally in a social context seems to contradict their other claim that rights do not guide us toward flourishing, for surely principles that show us what does not count as moral in a social context serve to point the way in a general

⁶⁸ Ibid., p. 266 and 266 n. 1.

⁶⁹ Ibid., p. 91.

⁷⁰ Ibid., p. 289.

manner by delimiting our range of legitimate actions.⁷¹ Furthermore, if rights do serve as normative guides, if only in this less specific way, then perhaps rights are more than just *metanormative* principles; but more on this later. Another worry arises: if respecting the rights of others is only necessary for the moral game to be played, is violating the rights of others immoral? Or, as seems more likely on this view, just amoral or nonmoral? Rasmussen and Den Uyl would presumably answer that it is immoral. They do, after all, say that it can be said that a person who respects the rights of others is a morally ‘better’ person (note the scare quotes again) than one who does not. But what does this ‘better’ mean and why could it be said that he is morally ‘better’? They do not tell us.

Thus, respecting the rights of others seems to be of instrumental value only.⁷² We respect the rights of others merely in order to live in a society in which we can reasonably expect others to respect ours.⁷³ If this is so, however, it does not seem a very compelling reason to respect everyone’s rights or to respect the rights of others all the time. Why should I not violate your liberty for my own benefit, or the benefit of others, if I think I have a reasonable chance of getting away with it (with or without doing irreparable harm to societal order)? Moreover, Rasmussen and Den Uyl’s account seems to beg the question against so-called forms of flourishing that allow as sometimes necessary, or even encourage, the threat or use of initiatory physical force. They cannot rule them out on the basis that they violate the requirements for metanormativity, for this begs the question that a society based on such a principle is desirable in the first place. Why

⁷¹ I say this despite their response to a similar objection (pp. 286-288) for a reason that is hinted at in the following sentence and will be made explicit later.

⁷² Ibid., pp. 90 and 91.

⁷³ See, also, *ibid.*, p. 287. “[O]ur reasons for acting within a legitimate political/legal order are based upon the stake we each have in there being such a legitimate order, rather than the stake we have in following principles that exhibit moral perfectibility or flourishing.”

should we as individuals want to allow other forms of human flourishing? Why should we want a society which allows all forms of human flourishing? Why should we think that anyone, much less everyone, has a right to pursue their own flourishing as they see fit? Indeed, what if we do not consider someone's preferred way of life to be a form of human flourishing at all?

The answer to these problems lies in a deeper analysis of human flourishing and, in particular, human sociality. Recall that for Rasmussen and Den Uyl the basis of rights is self-direction. Their account of rights is based on "an analysis of the nature of human flourishing," which, "before ever addressing questions about what one should reason about or how one should conduct oneself," "reveals a need for the exercise of reason or the need to be self-directed."⁷⁴ This is certainly true and an important consideration in determining what virtue requires of us but, as David Gordon has pointed out, it is not enough to get us to a moral obligation to respect the rights of others. And an analysis of human flourishing at this level does not yet get us full (neo-)Aristotelian sociality. To get us there a more comprehensive analysis of human flourishing is required, one that will delve into what we should reason about and how we should conduct ourselves, into the full range of the things required for the flourishing of a rational animal, in other words, into the primary goods and virtues. But Rasmussen and Den Uyl have already ruled out any of the primary goods and virtues as a basis or source for rights.

Perhaps Rasmussen and Den Uyl would argue, although they do not do so explicitly, that the basis and justification for rights (self-direction and the ethical compossibility of diverse forms of human flourishing) and the source of our obligation to

⁷⁴ Ibid., p. 88.

respect the rights of others are two distinct issues, that rights are metanormative but that there is a normative obligation to respect them due to other requirements of human flourishing and sociality. However, Rasmussen and Den Uyl have not provided us with a virtue ethical argument for this. That such a move appears necessary also suggests that rights may be more than just metanormative principles. Finally, the foregoing considerations suggest that we need an account of rights as interpersonal ethical principles the respecting of which is partly constitutive of all forms of flourishing worthy of the name. It is to this end that I turn in the next chapter, wherein I argue that rights are both metanormative and interpersonal ethical principles and that the obligation to respect them is grounded in the requirements of human flourishing, in particular the virtue of justice.

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