

Symposium:

Liberty and Nature: An Aristotelian Defense of Liberal Order by Douglas B. Rasmussen and Douglas J. Den Uyl

ARISTOTELIAN ETHICS AND
NATURAL RIGHTS: A CRITIQUE

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The Aristotelian defense of liberal order presented by Rasmussen and Den Uyl in their book *Liberty and Nature (LN)* resonates with me.¹ Important issues are discussed in an impressively clear way, and I am sympathetic to many of their conclusions. *LN* is the sort of book I enjoy reading; whenever I thought I had a knock-down, drag-out criticism, I found that it wasn't long before the authors took it up and made a response to it. Some questions do remain in my mind, however, and if I focus on them here it should not be thought that I do not appreciate their impressive contribution to the literature. In the brief space allotted me I want to consider the heart of the book, the derivation of natural rights from Aristotelian ethics, and a few other issues that spin off from it. Inevitably, some space will have to be devoted to exposition.

As *LN* points out, the orthodox understanding of Aristotle (and my understanding, too) sees his position as incompatible with a Lockean natural rights doctrine and the liberal (or libertarian) conception of the political order that Rasmussen and Den Uyl support. There is, of course, no explicit rejection of natural rights in Aristotle, nor could there be, since, as I believe, the idea of natural or moral rights had not yet crystallized. The authors nevertheless offer an interpretation of Aristotle's ethical theory that, it is claimed, not only removes the incompatibility but also allows for a derivation of natural rights from it. I shall try to get a handle on the topic by starting with their response to one of Alan Gewirth's criticisms of

Aristotle, though it will be impossible to take up all the details of Rasmussen and Den Uyl's excellent discussion of Aristotle's ethics and metaphysics.

Very briefly stated, Gewirth argues that Aristotle's notion of human nature is too indefinite to serve as a basis for ethics. And because it is too indefinite, it is insufficient. In one sense of the term "natural," anything human beings might do or become is natural to man, and reason alone is inadequate to determine what comports with human nature and what is incompatible with it, and consequently what comports with and what is incompatible with the human good. In essence, this sort of criticism has been raised against self-realization theorists from Aristotle to the British Idealists and John Dewey.

Now Rasmussen and Den Uyl agree that the good cannot be straightforwardly read off from human nature, but as good Aristotelians they of course must reject the proposition that any particular behavior of a person with a rational nature is just as natural as any other, or that the actualization of just any human potentiality is a constituent of flourishing. The trouble with Gewirth, they say, is that he understands "nature" in Aristotle without natural teleology, a subject they discuss in detail. Human nature can be known, if not fully known. Reason is not merely reasoning, but intelligence; man's final end is to live intelligently. On the other hand, Rasmussen and Den Uyl also maintain that the indefiniteness of the concept of human nature is in fact a virtue, for it allows eudaimonia to consist of a plurality of ends; the good life is always a good life *for* some individual, and there is no single form that it necessarily takes. Different mixtures are possible, and much will depend on individual capacity and circumstance. Most importantly, human nature is sufficient for determining the minimum boundaries governing social interaction, i.e., for drawing the basic topography of human interaction in terms of Lockean, negative rights.

A few other steps, however, are necessary for the derivation of natural rights, and the authors' next step is one that begins to mark their departure from Aristotle, I think. Rasmussen and Den Uyl convincingly argue that rational choice and decision are necessary for flourishing, and they demonstrate Aristotle's agreement with that proposition. They then argue that rational choice must always be autonomous choice, and further that coerced action has no moral value. In this way they arrive at their second step, the primacy of autonomy or self-direction, a step that smoothly fits the individualistic outlook that characterizes their project and their pluralistic conception of human flourishing. But what they have not done, as far as I can tell, is to provide any way of distinguishing between desire and right desire, a distinction that is essential to an Aristotelian approach.

In fact, Rasmussen and Den Uyl's account of value only exacerbates the difficulties of making the distinction. They argue, quite correctly in my opinion, that valuing is an activity that is natural to man, but they seem to

be going too far in claiming that the moral good consists in deliberate choice. Perhaps it would make no sense to speak of moral goodness unless deliberate choice were a genuine possibility; but it cannot be maintained that the object of such choices is ipso facto morally good. And of course, Rasmussen and Den Uyl do not want to say that it is. But it is precisely here that it is essential to provide a way of distinguishing desire and right desire. To make that distinction in terms of the needs of intelligent living, as is suggested in the book, is insufficient, given the authors' account of valuation and their value pluralism. It is hard to see how they could rule out, as Aristotle rules out, the life of wealth-seeking or honor-seeking as representing genuine flourishing.

Although the authors' preferred view of the good life, with its reference to friendship and the virtues, draws on Aristotle, the root of *LN*'s departure from him is that he has a much more substantial and concrete picture of the good life than any that Rasmussen and Den Uyl's pluralism can allow them to present. Aristotle's description clearly is not a value-neutral conception that he just reads off from human nature. This assertion can, I think, be demonstrated by appeal to the text and also by examination of Aristotle's discussion of contemplation as the highest form of the good life. (Incidentally, I don't recall any discussion of the contemplative —life—the life of the college professor?—in *LN*.) What Rasmussen and Den Uyl have is a minimalist Aristotle.

Why is this issue important? After all, the authors are free to adapt Aristotle to their own purposes and to depart from him when necessary to their argument. It is important, however, because it shows that autonomy could assume different dimensions, and have different moral weights, depending on the concrete pictures of human flourishing that are given. Though it could remain true that each individual must achieve the good life for himself, since there is no good that is not a good for someone and effort is required to obtain it, the value of the autonomous exercise of choice could depend on the total picture comprised of all the constituent ends whose pursuit it mandates.

Rasmussen and Den Uyl do admit that possession of autonomy does not guarantee that one will live a good life (*LN*, 73). But they also hold that “a world in which human beings are self-directed but fail to do the morally proper thing is better than a world in which human beings are prevented from being self-directed but whose actions conform to what would be right *if* they had chosen those actions for themselves” (*LN*, 95; emphasis in original). There are, however, many other possible combinations; these two are not the only alternatives. We just don't know how autonomy stacks up until we see it in a variety of possible concrete pictures of eudaimonia. (If we can't tell whether a man has been happy until he is dead, maybe we can't tell what happiness is until the alternatives are laid out.) To say this is not to engage in possible-world ethics: there are loads

of such pictures in the philosophical literature and in the varied lives that people lead. (In my first semester of high school geometry, I learned that parallel lines never meet. In the second semester, I was told that geometries are possible in which parallel lines meet at infinity. I couldn't form an image of that circumstance, but I had to concede that all sorts of unimaginable things could happen way out there at infinity, including the meeting of parallel lines. The point I am making here is not dependent on unimaginations.) While Rasmussen and Den Uyl do convincingly demonstrate that autonomy or self-directedness is a basic value, I am not persuaded that it is entitled to the centrality that they accord it. Disrespect for autonomy is not intended, of course, but I shall later suggest that Rasmussen and Den Uyl do not respect it enough.

None of these cranky remarks, however, are sufficient to refute the existence of natural rights, which I don't think could be done anyway. The question is, what, if anything, justifies us in according a natural right to someone—what justifies speaking of our social-moral relations in terms of natural rights? Showing the existence or nonexistence of natural rights is not like discovering the existence or nonexistence (which is always much harder to show) of unicorns or black holes (cf. *LN*, 88). Without stopping now to quibble over Rasmussen and Den Uyl's characterization of natural rights, I move on to their argument for them. In this connection Rasmussen and Den Uyl refer to a 1984 piece by me, "The Primacy of Welfare Rights."²

One of the subjects I have been interested in for a while, many aspects of which are taken up in *LN*, is the significance of rights language: What gap did it fill in moral discourse? What role is distinctive to it? In what sphere of social relations is its use most appropriate? What troubles can it get us into? Do we really need rights language? As to the issue of justification, I have imagined myself in the position of someone from whom somebody is claiming something as a matter of a right (be it a thing, an action, or a forbearance). Why should I concede his claim? It has seemed to me that there are two questions I would ask: Is the claimed object an element in that individual's personal good? And is it a genuine good, something that I recognize to be a genuine good, not merely a good in a value-neutral sense, i.e., as something that happens to be valued? There also are other questions, but these are enough for now. The important point is that having recognized the object, his personal good, as a genuine good, I have a reason for providing it, even if it is not an element in my personal good. His end has become my end, so to speak, and I have made the first move in recognizing it as a right of the claimant. And it does not seem to matter whether the object of the claim is "negative," that is, a claim to an act of forbearance on my part, or "positive." Now in all of this I have not been concerned with natural rights specifically but rather with moral rights generally.

LN more or less takes off from my discussion, but Rasmussen and Den Uyl are concerned with natural rights. So they ask, what is that genuine or objective good that can be the foundation of natural rights? The answer is not far to find. Since nothing can be a natural right for one person, without also being a natural right for everyone (as used to be said, this is analytic to the concept of a natural right), the good in question must be a universal good, though one that is never separate from an individual's own good, as if it were some Platonic form. And, in line with their earlier treatment, that good is self-directedness or autonomy. So there is a natural right of self-direction, and it is a negative right, a right to noninterference; it stakes out one's legitimate moral territory. The concept of natural rights functions as a meta-normative principle in setting limits to state power in the construction of a political order.

My reaction to the authors' by now obvious move should also be obvious. I am not convinced that autonomy is an unqualified good; its moral weight can vary from individual to individual, and its value must be gauged within the context of a life-picture. Self-directedness as such may be something we admire, even in a villain. But its moral value is dependent on the kind of life in which it is embedded.

Go back to my imaginings a few paragraphs ago. Will I concede to someone his right to noninterference, as long as he isn't intruding on someone else's moral territory? Of course, in a general and abstract way I account self-directedness as a genuine good, but it might not be one in the context; or it might be one that has a diminished status in the context, when balanced against his other genuine interests. So while I might concede his claim out of expediency or some other consideration, I would not necessarily concede it as a matter of rights. But don't *I* claim a right to autonomy? And can I make this claim without being willing to grant the selfsame right to others? The answer is that I do not claim such a right for myself in an unrestricted way, but only in context. I realize, of course, that others are not so minded.

It is pretty clear that no one has a claim-right to flourishing, to the human good, as such; after all, no one can *give* you eudaimonia. But self-direction or autonomy is a special sort of ingredient of flourishing which it makes sense to speak of as a right. It is, as Rasmussen and Den Uyl say, a negative right. However, just where authors of a very different bent would now move to argue for certain limited positive rights to the minimum conditions of flourishing, the sorts of things that can be provided, Rasmussen and Den Uyl decline the invitation. In distinguishing between the good life and the indispensable conditions for possessing it, the authors again draw upon Aristotle. "For there is a distinction," says Aristotle, "between health and the things that are indispensable conditions of health . . . also to live finely is not the same as the things without which living finely is impossible" (*Eudemian Ethics*, 1214b12-17). This is an important distinction, but

I don't think it has the significance that Rasmussen and Den Uyl give it. Aristotle is worried about the error that many of us commit when we confuse the two and take a condition for the real thing: because wealth is a condition of the good life, or because pleasure is its natural accompaniment, we take wealth or pleasure as our prime end and devote ourselves to its pursuit. Rasmussen and Den Uyl seem to be worried by something else, a sort of theory-driven worry.

They are worried about rights to the minimum conditions of flourishing because these entail positive or welfare rights. And their worries are real. For once we allow for positive or welfare rights, we are in trouble. It is difficult, and perhaps impossible, to work out a consistent system of positive rights, especially one that does not involve intruding on individual autonomy. Negative rights, on the other hand, are a *compossible* system of rights. Nevertheless, it seems to me that pretty much the same moral considerations that justify recognizing a right of self-direction also justify these minimum positive rights. If this means that our common morality is logically incoherent, so be it. Why should we expect otherwise? Isaiah Berlin's brand of value pluralism, which acknowledges irreducible conflicts of values, seems a plausible position. But perhaps one needn't go that far, if the method of reflective equilibrium is of any help.

Finally, I would like to suggest that Rasmussen and Den Uyl are not as sufficiently respectful of autonomy as they sound. For they do not seem to recognize any rights to conditions that make for fair opportunities for self-directedness. These would be positive rights, basically rights to assistance of some kind, a leg up perhaps. I am not arguing for the anti-liberal notion of equality of condition or result, or for the problematic notion of positive freedom. But it does seem to me that some people are in a better position to exercise self-direction than others, which is a situation from which we have much to learn.

It may be granted that people who lack the material conditions of a fair opportunity for self-directedness often can go farther than they in fact do go toward achieving a good life for themselves, insofar as eudaimonia involves the moral virtues. After all, even if they cannot attain and exercise the virtues of magnificence (*megaloprepeia*) and magnanimity or high-mindedness (*megalopsychia*), there are many other virtues for them to attain and exercise. For some such individuals, frugality will be a crucial virtue to have, and their lives will be all the better for it. But having a cheery disposition, assuming it to be a virtue, may be much harder to achieve. So while many people who live under miserable material conditions may, and should, do better for themselves, their life often will not be able to approach anything that would be recognized as one of flourishing. Aristotle, I think, regarded the promotion of the material conditions of well-being as a function of the statesman. But he does not recognize a natural right to such conditions any more than he would recognize a college professor's

natural right to the leisure necessary for the contemplative life. Aristotle, however, did not have the concept of a natural right; but Rasmussen and Den Uyl do. And I suggest that they should take the possibility of rights to minimum material conditions of a fair opportunity for self-directedness more seriously.

In any event, I doubt that it really is the case that one has a fair opportunity for self-directedness merely if one's moral territory, however that is to be staked out (and I am not clear on how), is not intruded upon, as important as that usually is. The conditions of moral agency may be more complex than the absence of external coercion alone.

Because of space limitations, in these comments I have chosen to focus on what seems to me the central theme of *LN*. There are many other interesting topics that warrant discussion: the treatment of the right of property, natural rights as a meta-normative principle, and the wonderful discussion of friendship. *LN* is one of the most stimulating books on ethics and political philosophy that I have read in many years.

1. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle: Open Court, 1991).
2. Martin P. Golding, "The Primacy of Welfare Rights," *Social Philosophy & Policy*, vol. 1, no. 2 (Spring 1984), pp. 119-36.