

## Review Essay

Tara Smith, *Moral Rights and Political Freedom*, (Rowman and Littlefield, 1995)

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Imagine that you are a rational egoist trying to persuade other rational egoists to accept a conception of individual rights that proscribes initiatory coercion and justifies a "libertarian" political regime. Assume for argument's sake that these rational egoists know their present economic condition, and have a "thick" Aristotelian conception of the good. What sorts of arguments would you make to them? In particular, how would you persuade the least well-off egoist to accept your theory, especially if she were inclined to associate her self-interest with a State-guaranteed right to sustenance, welfare, or regulatory protection? Paradoxical as it may seem, is it possible to persuade someone to accept a minimal or libertarian State on *self-interested* grounds?<sup>1</sup>

Though she doesn't put the issue this way, such questions set the agenda for Tara Smith's *Moral Rights and Political Freedom* (hereafter *MRPF*), an Ayn Rand-inspired attempt to marry an Aristotelian theory of value to a classical liberal theory of individual rights. Arguably, Rand's polemical and often hastily-argued writings present a promising sketch of such a theory. Unfortunately, as I shall argue, *MRPF* does not deliver on this promise. In section I below, I discuss Smith's justification of rights, and argue that her Aristotelian ethical commitments underdetermine her argument for a general right to freedom. In section II, I criticize Smith's theory of (political) freedom and suggest that its inadequacies stem from an oversimplified understanding of "positive freedom."

### I. Individual Rights and Human Flourishing

Moral rights, Smith argues, are the rights that persons possess qua persons (16). But what exactly are these rights? How is the concept of "rights" to be defined? Smith aptly notes that methodological confusion prevails on this issue in contemporary Anglo-American political philosophy. One can read the premier work on rights in this tradition - the major writings of Dworkin, Feinberg, Gewirth, Meyers, Nozick, Rawls, Raz, Thomson, and Waldron - without encountering anything like a univocal definition of the concept of rights by genus and differentia.<sup>2</sup> What discussion there is about definition trades on loose metaphors about "claims," "side-constraints," and "trumps," which are at best attempts to identify the *genus* of rights. But very few authors, whether advocates or critics of rights, have gone further than this.

By contrast, Smith insists on the need for a definition by genus and differentia. Unfortunately, however, she ends up giving us two of them. On p.18, she offers the following definition: "Rights are individuals' moral claims to freedom of action." Later on, rights become "authoritative claims that individuals are entitled to in virtue of the particular moral principle governing freedom of action in social contexts" (26-27). I prefer the first to the second of these definitions on grammatical grounds, but the second includes material not mentioned in the first, so as a working definition, I propose the following as

best capturing Smith's intent: "Rights are authoritative individual entitlements to freedom of action in a social context, justified in terms of some overriding moral principle."

This definition of rights, like any other, provokes controversial questions and therefore needs a justification. Among the questions that might conceivably be asked are: What justifies the emphasis on the rights of *individuals*, as opposed to the rights of social groups, or for that matter, of future generations or sentient creatures? Finally, why should we be exclusively concerned from individuals' rights to *freedom of action*, as opposed to, say, their right to need-satisfaction or equality of opportunity? Smith's answers to all three of these questions proceeds from a commitment to a teleological theory of value based on an Aristotelian conception of human flourishing. Though Smith does not argue directly for this theory of value in the book, her thesis depends heavily on it. The broad outlines of the Aristotelian view will doubtless be familiar to readers of *Reason Papers*, but a recapitulation should help focus our attention on those aspects of the view that are relevant to Smith's argument.

A teleological theory of value must both explain goal-directed action and generate moral norms that are "objective" in the sense of having truth-values that correspond to some inquiry - and practice-independent reality.<sup>3</sup> Arguably, an Aristotelian theory of flourishing meets both of these criteria in an impressive way. First, "flourishing," as it is conceived in the Aristotelian tradition, explains goal-directed action because it provides the ultimate goal or terminus of intentional action. It is a descriptive truth about action on this view that we pursue goals *because* we believe the objects of our pursuits to be good: *omne appetitum appetitur sub specie boni*, as the Scholastic axiom goes. So our judgments of value provide the best explanation of *why* we do what we do. Further, it is a (complicated) truth about the semantics of "goodness" that for any x belonging to a natural kind K, x's flourishing as a K just *is* the good for x, whether x realizes it or not. So it turns out to be a descriptive truth about human beings that flourishing as a human is one's ultimate goal, which one either brings about or fails to bring about, depending on the state of one's character.

Second, flourishing generates objective norms because we can convert these descriptive truths into a prescriptive truth by means of the hypothetical imperative: if we are rationally obliged to seek the necessary and available means to our goals, and flourishing is our overriding goal, then we are obliged to seek the necessary and available means to our own flourishing in a way that overrides our *other* goals and desires. Since the requirements of our flourishing is set by our membership in the natural kind HUMAN, and claims about natural kinds take truth-values, claims about flourishing take truth-values. Finally, since virtue is among the means to flourishing, claims about flourishing are *moral* truths.

This very compressed account of objective value answers our first two questions. Since moral norms on this view are fixed by membership in a natural kind, there are few if any norms that apply *across* natural kinds. Hence claims about value are species-relative, and moral claims are anthropocentric - i.e. based on human nature. Further, since "flourishing" is individuated by organisms, items can only be valuable *to* particular organisms, not "intrinsically" or "agent-neutrally" valuable out of relation to their needs.

Applied to the human case, this entails that moral norms are rooted in an agent-relative theory of value, a fact which explains both the individualistic emphasis of rights and their normative authority. To be justified teleologically, a norm has to be shown to be conducive to some valuable *goal*. On the Aristotelian view, what is valuable is valuable *to* particular agents *for the sake* of their flourishing by standards defined by their membership in the natural kind HUMAN. So rights are individualistic because they are to be justified in terms of an agent-relative theory of value, and they are authoritative because that theory of value has a desire- and inquiry- independent basis in human nature.

What about our third question? What is the connection between flourishing and *freedom*? According to Smith, we need freedom of action because flourishing requires "productive effort" on the part of each agent, productivity requires "reasoned action", and this "reasoned action" requires "freedom of action." This "freedom of action" is violated by "physical force," and rights are defensive norms that protect freedom from force through the rule of law. Smith elaborates on this in what she calls a "straightforward" argument:

1. Human life requires productive effort.
2. Productive effort requires reasoned action.
3. Reasoned action is individual and self-authored.
4. Reasoned action requires freedom.
5. Thus if we seek a society in which individuals are to have a chance to maintain their lives, we must recognize individual rights to freedom.

As we'll see, this argument is much less "straightforward" than Smith suggests. For one thing, it is unclear what *kind* of argument it is supposed to be. What is the intended relation between the premises and the conclusion? The argument looks as if it were set up as a deductive proof, but I don't see how the premises entail the conclusion. At most, what 1.-4. prove is that human life requires a form of freedom which is individual and self-authored. That's perfectly true, but cursory attention to what Smith means by "rights" suggests that quite a lot is packed into this innocuous-looking claim. Smith seems to think that we need quite *a lot* of freedom of a very distinctive sort, and that this freedom can only be secured in fairly controversial ways. Unfortunately, very little of what makes Smith's argument controversial finds its way into her "straightforward" statement of her argument.

Smith thinks that rights protect freedom of action and justify a stringent ban on initiating force or coercion. That suggests that 4. is doing a lot of work in the above argument. In fact, to get from 4. to 5. Smith needs at least two intermediate premises of the following sort:

- 4.\* Freedom requires protection by means of a contextually absolute prohibition on initiatory coercion that, among other things, overrides a right to sustenance and all forms of paternalistic legislation, and without which, society would be led to anarchy or tyranny.
- 4.\*\* Anarchy to tyranny would undermine the conditions of social life.

Unfortunately, nothing in our explication of "flourishing" indicates why we should believe the truth of 4\*. Neither does anything in Smith's very brief and somewhat crude analyses of the concepts of "reasoned action" and "productivity." So it stands, we are being asked to believe that the violation of 4\* would entail social catastrophe. Perhaps it would, but on the face of it, it is a little hard to see how government funding for Aid to Families with Dependent Children or public libraries will lead to anarchy, tyranny, and the dissolution of society. Suffice it to say that Smith does little to make such claims plausible.

We should remind ourselves that the burden of Smith's argument is *egoistic*. So she must prove to the satisfaction of egoists - including the least well-off egoist - that they do not ever *need* to resort to initiatory coercion (whether directly or through the State) to achieve their flourishing. This is not an easy burden to discharge, at least if we assume that the deliverances of practical reason are consistent, and that there are no conflicts of interests among rational agents qua rational. How would one justify a State without guaranteed assistance to an (egoistic) orphan? How would one justify a State without a right of sustenance to an egoist with a debilitating physical condition? How would one persuade a victim of racial or sexual discrimination to forego laws against discrimination on grounds of self-interest? Every one of these agents, it would seem, has an objective interest in maintaining an order that can permissibly initiate force to secure the conditions of their sustenance or flourishing. It follows that every one of them has reason to reject an absolute ban on initiatory coercion by means of an argument like the following:<sup>4</sup>

- (i) An egoistic agent has reason to do x insofar as x contributes to that agent's flourishing.
- (ii) The conditions of a given agent's flourishing can be specified independently of the flourishing of other agents.
- (iii) Respect for rights requires that we not initiate coercion against other agents.
- (iv) Requirement (iii) often fails to promote some agents' flourishing.
- (v) Hence respect for rights detracts from some agents' flourishing.
- (vi) Hence some agents lack reason to respect rights.

At this point, we can either conclude that there is an ineliminable conflict between the objective interests of the needy and the able; or we can revise our conception of rights to eliminate the appearance of conflict; or we can deny (iv) outright and insist that the objective interests of the needy and able are consistent with a libertarian regime.

Smith denies (iv). So she has to show that respect for rights and the ban on initiatory coercion *invariably* promotes flourishing for an agent, no matter who the agent is, or what her circumstances. Since she rejects deontology, she has to show this in a way that avoids the deontologist's dogmatic reliance on "moral intuitions." Since she also rejects consequentialism, she has to show it in a way that offers an unequivocal denial of (iv), not the *prima facie* denial of it that we find in consequentialist theories. For Smith, there is an *inexorable* interpersonal connection between every agent's genuine self-interest and every agent's respecting a ban on initiatory coercion.

How does Smith demonstrate this? As far as I can see, she simply begs the question by arbitrarily building the requirement of respect for rights into the conditions of flourishing. So she vigorously asserts that human flourishing just *does* require a principled commitment to freedom, that freedom requires a ban on initiatory coercion, and that this principled commitment is the *only* route to flourishing. She supports this by vigorous assertions to the effect that this principled commitment requires rights, and that the absence of "contextually absolute" rights will undermine the conditions for rationality and productivity for everyone, needy and able alike. This is a good *sketch* of an argument, but in the end, what Smith gives us is really no argument at all. It is easy enough to "prove" that some norm *N* is a "contextually absolute requirement" for bringing about goal *G* in context *C* if you simply assert that a principled commitment to *N* is the "select route" to *G* in *C*. This is just to repeat what we already knew: on an Aristotelian view, it's almost always true that a commitment to genuine moral norms will be part of the identity-conditions for the realization of flourishing. But the relevant question here is: why *is* a commitment to *N* part of the identity-conditions for the realization of *G* in *C*. Why *is* a commitment to an absolute ban on initiatory coercion part of the identity-conditions for the realization of human flourishing in human society? Apart from a few *ad hominem* arguments, Smith provides no credible attempt to answer this question.

I do not mean to deny that rationality and productivity are essential to flourishing, nor to deny that they require a principled commitment to freedom of action. I do not even mean to reject the ban on initiatory coercion. My point is that Smith seems unaware of the burden of proof required to establish these conclusions. We need to know why the freedom that is normatively connected with human flourishing is identical with the freedom that permits people to practice non-coercive injustices which are depraved and may lead to problematic social consequences. To put the point concretely: why is the freedom of action that is required for reasoned action and productivity *identical* with the freedom of action that allows people to waste their property, to become drug addicts, to engage in racial or sexual discrimination, to deny sustenance to the poor, orphans, and the disabled, and in general to be *irrational* and *unproductive*? Smith tells us that such irrationality and unproductivity are "byproducts" of freedom's teleological justification. But she overlooks the fact that if this "byproduct" entails serious costs for the survival and flourishing of some members of society, it is worth showing *why* the costs (to them) are worth the benefits of living by the norms Smith defends. To fail to do this is to open oneself up to the justifiable accusation that one's theory is a convenient ideological device to keep people in their place. Aristotelians have heard that accusation since Aristotle's justification of natural slavery in the *Politics*, and libertarians hear it every day. There is no way to put the accusation to rest but to tackle it headfirst.

Smith does not tackle the issue at all, in part because she never gets around to making the crucial connection between flourishing, productivity, and *justice*.<sup>5</sup> So she never raises the question whether a ban on initiatory coercion that denies people their means of sustenance is *just*, e.g. that it serves the common interests of all agents in a system of reciprocity that cannot otherwise be attained. The result is a theory of "moral rights" that dismisses the concerns of what I have called the "least well-off egoist" without having an entry for "justice" in its index.

## II. Coercion and Positive Freedom

I do not think that Smith has given us sufficient reason to accept her theory of rights, but let us suppose that we accept a right to freedom of action and a correlative ban on initiatory coercion. The problem now arises that we need to know what "freedom" and "coercion" mean. As in part I, Smith places a great premium on definitions. She defines (political) freedom as "the absence of others' interference with a person's ability to govern her own actions" (134). I was not able to locate an explicit definition of the concept of force in the book, despite the index's contention that the term is defined on pp. 141-2. But Smith asserts in passing that, for her, "force" means "the initiation of physical force," where "physical force" is supposed to be a concept broader than "physical violence," but narrower than the conception of coercion at work in the writings of advocates of "positive freedom." The task of identifying some such concept as *the* ideal of political freedom is the task of part II of *MRPF*.

Since Smith asserts that freedom denotes an absence, the crux of her theory of freedom turns out to be her theory of its contrary, force. If force includes violence but excludes "positive freedom," it would help to have a clear account of both of these terms. Waiving deep philosophical issues, it would help to have a clear account of both of these terms. Waiving deep philosophical issues, we can define violence as "physical contact exerted against the person or property of another with the intent to harm or abuse." What about positive freedom? Smith devotes chapter 8 of *MRPF* to this concept, focusing on the conceptions of it defended by Isaiah Berlin and Charles Taylor. I found Smith's discussion of positive freedom, and indeed the whole of part II of *MRPF*, tendentious and sloppily written. Smith seems so opposed to the idea of positive freedom, and so intent on denunciation, that she can't stand the idea of letting the notion have its day in court, even to refute it. Consider, for example, her preface to the issue:

While many theorists spout the distinction between positive and negative freedom, its exact contours remain murky. (Perhaps this helps to explain its acceptance. Haze obscures errors.) (166).

I am not sure how this highhanded assertion made it past Smith's editors, but it shouldn't have. Unfortunately, it is not an isolated instance; claims like it are scattered liberally throughout part II of the book.

Smith's arguments against positive freedom are little better, and many of them involve textbook examples of fallacious reasoning. The following *virtus dormitiva* explanation is supposed to show us why positive freedom is a flawed ideal:

Freedom, by its nature, is negative. It denotes an absence. Like other concepts that are coined to denote the lack or inverse of something...freedom refers to a state of affairs in which something is missing: others are not using physical force against a person. (169).

As proof against the notion of positive freedom, Smith resorts to empirical arguments of the following sort:

Shackled by obligations to ensure positive freedom, individuals' productive capacity would be crippled...It is no accident that there was no Ritz in the Soviet Union, or that the Soviet "equivalent" of a luxury hotel struggled, by Western visitors' accounts, to match the amenities of a Holiday Inn. (170).

The footnote corroborating this assertion reads: "Among my grounds for saying this are reports from J.B. Schneewind, who was one of a group of American philosophers who visited the Soviet Union as part of an exchange program in 1986" (183n.10). Presumably, the Soviet regime was moved by a principled adherence to the ideal of positive freedom found in the works of Isaiah Berlin and Charles Taylor, and we are supposed to regard a second-hand accounting of Prof. Schneewind's hotel experiences as an *a posteriori* proof against a substantive philosophical position.<sup>6</sup>

The caliber of Smith's discussion of these issues forces us to look elsewhere for a fair statement of the case for positive freedom. One of the clearest I know comes from the British journalist and philosopher L.T. Hobhouse. In his 1911 book *Liberalism*, he writes:

May we not say that any intentional injury to another may be legitimately punished by a public authority, and may we not say that to impose twelve hours' daily labour on a child was to inflict a greater injury than the theft of a purse for which a century ago a man might be hanged? On what principle, then, is the line drawn, so as to specify certain injuries which the State may prohibit and to mark off others which it must leave untouched? Well, it may be said, *volenti non fit injuria*. No wrong is done to a man by a bargain to which he is a willing party. That may be, though there are doubtless cases. But in the field that has been in question the contention is that one party is not willing. The bargain is a forced bargain. The weaker man consents as one slipping over a precipice might consent to give all his fortune to one who will throw him a rope on no other terms. This is not true consent. True consent is free consent and full freedom of consent implies equality on the part of both parties to the bargain.<sup>7</sup>

It is worth noticing that, like Smith, Hobhouse accepts the classical liberal ban on initiatory coercion and takes the promotion of freedom to be "the heart of liberalism." He also accepts a conception of liberalism based on an egoistic ethic of self-realization that is similar to the one that Smith invokes. Hobhouse differs from Smith, and from contemporary advocates of free market capitalism ("market liberals"), principally because he offers a stricter interpretation of the conditions of consent than they do; he is skeptical about the market liberal's claim that the conditions of a free market "track" the conditions of consent. So his conception of coercion is wider than the market liberal's. Like the market liberal, he opposes paternalistic legislation and the common law felonies (murder, rape, mayhem, robbery, kidnap, larceny, etc.). But he goes further. On Hobhouse's view, "full freedom of consent implies equality" because the conditions of consent must include a *rational* response to a *reciprocal* trade to count as *informed* consent. Since the conditions of genuine consent are sensitive to (some forms of) economic duress, conditions of duress can render consent null and void. In such cases, State action is required to protect victims of economic duress against fraud or exploitation precisely because these phenomena constitute coercion. Hence State action on behalf of the "least advantaged" can be justified *without* violating the ban on initiatory coercion in a way that stands a better chance of persuading the "least well of egoist."

Smith has two arguments against this sort of view. First, she stresses that *only* physical force, not economic duress, can "nullify" reasoned action. Since reasoned action is the *raison d'être* of rights, whatever undermines it violates rights, but whatever doesn't undermine it is irrelevant to the issue of rights. Since economic duress *cannot* nullify reasoned action, it is irrelevant to the issue of rights. Second, she contends that political freedom is a concept with a very circumscribed meaning: it denotes the sort of freedom that is coercively enforceable. Proponents of positive freedom conflate this circumscribed concept with other normative concepts like autonomy and mistakenly conclude that the conditions of autonomy are coercively enforceable. But not only for autonomy and political freedom distinct concepts, it is impossible to enforce the conditions of autonomy, precisely because autonomy is something that is out of the State's control. Therefore it is a mistake to think that anything more than political freedom is enforceable, and that political freedom is anything more than physical force.

Do these arguments really respond to advocates of positive freedom a la Hobhouse? I don't think so. Consider the first argument. Extreme cases apart, it seems a gross exaggeration to say that force literally "nullifies" reasoned action in the sense of making it impossible or of destroying the conditions for its existence. An action is reasoned if it involves an intentional selection from among two or more alternatives which can, in context, be cardinally or ordinally ranked by some standard. A person who is the victim of another's coercion has three options from which to make such a selection: compliance, flight, or retaliation. In many though not all cases, it *is* possible in principle to rank a victim's selection of these options by standards of survival and even justice: police officers get judged on that basis every day. If that is so, force does not necessarily *nullify* reasoned action, and Smith's thesis is false as stated. Having said that, one can certainly concede the claim that force *undermines* the conditions of reasoned action. But then again, so does economic or physical duress, after a certain point. So with respect to reasoned action, Smith's first argument provides no grounds for opposing positive freedom.

To answer the second argument, the advocate of positive freedom could argue that Smith has begged the question. Smith complains that since values like autonomy are not part of what she calls "political freedom," and only political freedom is coercively enforceable, the conditions of autonomy are not coercively enforceable. Perhaps that is true of as fuzzy a notion as "autonomy," but is it true of informed consent? I do not see that Smith has any argument against the theorist who insists that the conditions of informed consent are undermined by economic duress, that productivity via informed consent is part of the "select route" to human flourishing, that this notion is part of any proper conception of political freedom, and that it should be coercively enforced. This sort of dispute can only be settled by a thorough account of the actualization-conditions of human flourishing and practical rationality. Smith offers no such account. Hence her second argument offers no sufficient argument against positive freedom.

Smith's own analysis of force is torn by two competing but irreconcilable demands. On the one hand, she wants to locate force within the genus of "applications of physical pressure" (142). She is emphatic at times that to qualify as force or coercion, an act has to be *physical*. On the other hand, she wants to tie her account of force closely with the denial of consent (145). This works well enough for cases like rape, where the two

conditions coincide: rape requires penetration, which meets the first condition (physical pressure), but it also requires the denial of consent, which meets the second condition. But there are many cases in which these two conditions diverge, and a theorist has to make a decision as to which of the two conditions is *fundamental* to the nature of coercion.

Smith clearly takes physical pressure to be fundamental, arguing that paradigmatically criminal actions like armed robbery, murder, and rape are instances of force because they involve "the direct application of physical contact against a person's will [that] destroys that person's control over her actions" (148). Oddly, she thinks that *threats* of force can be understood similarly. I found her main discussion of threats unclear (pp. 150-155), but I understand her argument to be as follows. Threats of force can be assimilated to direct applications of force by means of counterfactual conditionals establishing the similarity between the two cases: a threat is a state of affairs in which, if certain morally irrelevant features of the circumstance were to change, the aggressor *would* directly apply force. Apart from the unclarity in Smith's exposition and defense of this view, the problem with her analysis as a whole is her use of the metaphor of physical pressure, which conceals rather than clarifies the nature of force. No one ever literally comes into "physical contact" with anyone else's "will" or any other feature of their consciousness: at most, an aggressor comes into *direct* contact with the agent's *body*. The only entity that can, in the nature of the case, come into "contact" with an agent's consciousness is the agent - and even that is a roundabout way of saying that consciousness is one of the agent's *capacities*.

The equation of force with physical pressure, I think, represents a misdirection from the start. Even *if* we could assimilate threats to the case of physical pressure, it seems obvious that physical pressure is neither sufficient nor necessary for the sort of force that qualifies as a criminal act of coercion (much less the concept of 'political freedom'). It is not sufficient because there are many cases of physical pressure which are consenting and therefore benign: contact sports provide an obvious example. It is not necessary because even if we put aside cases of economic duress or exploitation, there are many criminal acts that are impossible to construe in terms of physical pressure. If I work at a bank, I can ask a subordinate to remove funds from clients' accounts and put them into my own by means of a computer. In this case, I don't have to apply physical pressure to anything or anyone, or threaten anyone. I just need to employ sufficient stealth. Nonetheless, my action qualifies as a case of larceny.<sup>8</sup> Indeed, if Hannah Arendt's depiction of Adolf Eichmann is correct, Eichmann committed *mass murder* without himself applying physical pressure to anyone.<sup>9</sup> Such cases could be multiplied many times over from the criminal law, not to speak of cases of slander, libel, or duress, none of which Smith mentions in her book. Smith's data and analysis are simply too sparse to deal with such cases, and her insistence that coercion be construed as physical pressure produces a crude and impoverished theory of freedom that does little to respond to the arguments of advocates of positive freedom.

The final chapter of *MRPF* contains an account of the rights we hold, and a two-page "refutation" of welfare rights. Smith's basic claim here is that since welfare rights require intrusions into freedom, they are incompatible with a right to freedom as she understands it. Since the claims of this final chapter depend on the claims of its predecessors, the criticisms that apply there apply here. Smith's discussion of welfare rights is further

vitiated by the absence of any discussion of the proper function of the State, and for that matter, *libertarian* (or quasi-libertarian) justifications for a more-than-minimal State. And there are plenty of these in the literature. A.J. Simmons has argued, for example, that it is possible to justify a right to welfare by means of Lockean premises about the nature of property. Robert Nozick has argued that it is possible to justify a welfare state without invoking a *right* to welfare; Jan Narveson has made similar arguments. Finally, Roderick Long has made nuanced distinctions between pure and derived positive rights, and has argued that derived positive rights to welfare can be seen as compatible with rights to freedom. Many libertarians, of course, have disagreed with such apparent concessions to welfare liberalism, and have explained their reasons. By contrast, Smith has nothing to say about this literature, preferring to couch her case against welfare rights in terms of time-honored cliches like "money does not grow on trees" (201).<sup>10</sup>

*Moral Rights and Political Freedom* fails to meet the minimal standards of rigor for a work of professional political philosophy. The book's central claims are poorly argued and do not discharge their burden of proof. Further, Smith fails to discuss many issues that are crucial to her thesis, and her treatment of the secondary literature is on the whole cavalier and superficial. The lapses of rigor are especially problematic given the shrill tone of the work, and the sweeping nature of its assertions. I am sure that there is a good case to be made for libertarianism on Aristotelian grounds. Unfortunately, this book does not make it.

## Endnotes

\* I thank Hilary Persky for helpful comments on the issues of this review.

1. This thought-experiment, of course, derives from John Rawls' procedure in *A Theory of Justice* (Harvard, 1971), substituting Rawls' Kantian presuppositions with Aristotelian ones, and minus the "veil of ignorance."

2. For a good discussion of definitions, see David Kelley, *The Art of Reasoning*, Second Expanded Edition, (W.W. Norton, 1988), ch. 3.

3. Cf. Geoffrey Sayre-McCord, "Introduction: The Many Moral Realisms," in Sayre-McCord ed., *Essays on Moral Realism*, (Cornell, 1988), pp.1-23; David Brink, *Moral Realism and the Foundations of Ethics*, (Cambridge, 1989), ch.2. The *locus classicus* of the argument below is Aristotle *Nicomachean Ethics*, I.1-7 and III.4.

4. I adapt this argument from David Brink, "Rational Egoism, Self, and Others," in Owen Flanagan and Amelie Oksenberg Rorty ed., *Identity, Character, and Morality*, (MIT, 1993), p.340. See also Ayn Rand, "The Conflicts of Mens' Interests," in *The Virtue of Selfishness*, (Signet, 1964).

5. "The moral justification of capitalism lies in the fact that it is the only system consonant with man's rational nature, that it protects man's survival *qua* man, and that its ruling principle is: *justice*." Ayn Rand, "What Is Capitalism?" in *Capitalism: The Unknown Ideal*, (Signet, 1967), p.20, emphasis in original. It is worth adding that Smith offers no discussion of procedural rights or rectificatory justice, despite the prominence of these issues in the literature, and their centrality to issues of justice. Cf. Robert Nozick, *Anarchy, State, and Utopia*, (Basic Books, 1974), pp.96-101, 152-153, 230-231.

6. *MRPF* is the latest installment in Rowman and Littlefield's "Studies in Social and Political Philosophy," edited by James Sterba. I note in passing that I find the use of empirical evidence elsewhere in the series problematic. For a similarly cavalier anecdotal claim about the philosophical significance of events in the Soviet Union and Eastern Europe, consider the following: "Five months of travelling and lecturing in the Soviet Union in 1990 and 1991 have convinced me that what was rejected in Eastern Europe in 1989 and being rejected in the Soviet Union is widespread corruption and authoritarian control over everything by local bureaucrats and ultimately by Moscow." James Sterba, "Liberalism and a Non-Question-Begging Conception of the Good," in C.F. Delaney ed., *The Liberalism-Communitarianism Debate*, (Rowman and Littlefield, 1994). I do not understand why we should take such anecdotal evidence seriously in light of the volumes of genuine empirical studies of these issues.

7. L.T. Hobhouse, *Liberalism* (Oxford, 1964), pp.49-50. Hobhouse's commitment to the ban on initiatory coercion is not consistent throughout the book; my point is that *this* passage evinces such a commitment. I thank David Kelley for bringing Hobhouse's book to my attention.

8. "Embezzlement can be defined as the fraudulent conversion of the property of another who has lawful possession of the property and whose fraudulent conversion has been made punishable by statute." Arnold Loewy, *Criminal Law*, (West Publishing, 1987), p.94 and generally, ch.6.

9. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, (Penguin, 1964).

10. Cf. A.J. Simmons, *The Lockean Theory of Rights*, (Princeton University Press, 1992), ch.6; Robert Nozick, *Anarchy, State, and Utopia*, ch. 9; Jan Narveson, *The Libertarian Idea*, (Temple University Press, 1988), ch. 18; Roderick T. Long, "Abortion Abandonment, and Positive Rights: The Limits of Compulsory Altruism," in E. Paul, F. Miller, and J. Paul ed., *Altruism*, (Cambridge University Press, 1991), [pp. 171-178]. For a revisionist account of "initiating" a coercive action, see Jeremy Waldron, "Welfare and the Images of Charity," *Liberal Rights: Collected Papers 1981-1991*, (Cambridge University Press, 1993), pp.234-237. See also Horatio Spector, *Autonomy and Rights*, (Oxford, 1992).

The work just cited differs from that of theorists whose attempted reconciliations of libertarianism and welfare rights make no attempt to reconcile welfare with the ban on initiatory coercion. For an example of this sort, see James Sterba, "From Liberty to Welfare," *Ethics* 105 (Oct. 1994): pp. 64-98, who apparently takes initiatory coercion against "the rich" to be justified on the grounds that they have a different moral status qua persons than "the poor." Another example is Ted Honderich's *Violence for Equality* (Penguin, 1980), which denies, on consequentialist grounds, the moral importance of the distinction between initiating aggression and withholding assistance to the needy (ch. 2). A defender of a "hard line" conception of libertarianism which takes initiatory coercion to lead exclusively to a "minimal" state is Tibor Machan; see his *Individuals and their Rights*, (Open Court, 1990).