

# Liberalism’s Problem and the Self-Directedness Meta-Norm

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*The Realist Turn: Repositioning Liberalism*<sup>1</sup> by Douglas B. Rasmussen and Douglas J. Den Uyl is chuck full of big, well-developed, and challenging ideas. It is a boldly ambitious philosophical work that proposes nothing less than a fundamental shift in the way that we should think about morally worthwhile lives and the nature of liberal political/legal order – a shift that itself is justified by a reassertion and vindication of metaphysical realism. Section I of my discussion of this work is devoted to identifying the key themes of *The Realist Turn* and exploring their relationship to one another. For me, one of the most valuable features of *The Realist Turn* is the degree to which it got me thinking about the links among these core themes. Section II of my discussion focuses almost entirely on what I call “the self-directedness meta-norm” – especially on questions about the nature of the case for this meta-norm and the character of this meta-norm. Rasmussen and Den

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<sup>1</sup> Douglas B. Rasmussen and Douglas J. Den Uyl, *The Realist Turn: Repositioning Liberalism*, (Switzerland: Palgrave MacMillan, 2020). Henceforth, *TRT*. All parenthetical citations in the text are to *TRT* unless otherwise specified.

Uyl offer an innovative and promising repositioning of the fundamental principles of a liberal political/legal order. Nevertheless, I raise some questions about whether the promise is fulfilled.

### **1. Individualist Perfectionism, Natural Rights, and Metaphysical Realism**

*The Realist Turn* presents the authors' neo-Aristotelian perfectionist ethics and their self-directedness meta-norm which Rasmussen and Den Uyl argue is the foundational principle for liberal non-perfectionist political order. That meta-norm requires that any political/legal order protect and certainly not itself preclude each individual's self-direction of her own life. The authors explain how their perfectionist ethics sets the stage for this most fundamental meta-norm and the basic natural rights to life, liberty, and property which express that meta-norm. (These natural rights are themselves described as meta-norms.) At least in this stage-setting way, their perfectionist ethics is taken to underwrite the self-directedness meta-norm<sup>2</sup> and, hence, the non-perfectionist political/legal order that would arise through the institution of and the respect for that meta-norm.

The authors want to preserve their thoroughly perfectionist – indeed, *self*-perfectionist – conception of “the morally worthwhile life” (p. 22). But they also want to support a political doctrine that centers on moral side constraints that the political/legal order must itself abide by and must enforce upon individuals in their interactions with one another. The self-directedness meta-norm and the natural rights of life, liberty, and property are correlatives of the most basic of these side constraints. According to the authors, compliance with these constraining rights is not as such as aspect or element of self-perfection. Hence, according to the authors, justifiable meta-norms cannot themselves be part of the recipe of self-perfection. Meta-norms are not part of the code for leading a morally worthwhile life. “[A]s important and vital a matter as following natural rights may be, they are nonetheless not central features

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<sup>2</sup> The authors' official formula for what I am calling “the self-directedness meta-norm” constrains each individual's endeavors so as to maintain the *possibility* of each other person's self-perfection. More specifically, it focuses on the necessity of self-direction for every mode or aspect of self-perfection and constrains each individual's conduct so as to maintain the *possibility* of each other individual's self-direction.

– and certainly not the only features – of moral life. . .” (p. 31). These meta-norms are not part of the answer to the questions: What should one seek in one’s life? What would living well consist in? Rather, they are answers to the question: What norms underwrite political/legal order that is appropriate for a society of individuals each of whom quite properly seeks her own numerically and qualitatively distinct perfection? “[T]he natural rights to life, liberty, and property override other ethical notions in determining the function of the political/legal order; but they do not thereby become the most important ethical notions” (p. 32).

Indeed, these constraining rights are not at all among the sort of normative notions that constitute a proper self-perfectionist ethics. In this way, the authors reject what they call “*equinormativity*” (p. 30), the view that all sound norms function in the same way. “[I]t is possible for there to be ethical norms that do not direct conduct but only regulate conditions under which conduct that employs moral concepts [presumably, the moral concepts that are descriptive of a worthwhile life] take places[sic].”( p. 30).<sup>3</sup> The constraining principles that specify or set the framework for social life are sharply distinguished from the principles that specify how individuals ought to live their lives within that framework.<sup>4</sup>

Hence, it is natural to think that the basic division of labor between the norms that guide self-perfection and the meta-norms that forbid conduct that deprives others of self-direction (or of life, liberty, or property) is between goal-oriented norms that are in some broad sense consequentialist and constraining norms that are deontic. However, Rasmussen and Den Uyl insist that the meta-norms are not deontic. To try to divide “. . . rights into either consequentialist or deontological notion, is really beside the point. Rights are not consequentialistic; and once one learns what their function is, they are not deontological either”

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<sup>3</sup> The last two words of this sentence should most likely be “takes place.”

<sup>4</sup> So, Rasmussen and Den Uyl rightly resist the temptation to argue that the reason that each person has to abide strictly by the rights of others is that such compliance is part of each person’s self-perfection. See *TRT* pp. 46-52. They deny that respecting rights is simply a constituent of [or, presumably, a means to] one’s pursuit of the self-perfecting life or a form of living well” (p. 50).

(p. 30).<sup>5</sup> I will return to this claim and the consequences of it in section II.

The normative and meta-normative doctrines that I have mentioned have been articulated and defended in earlier volumes by the authors.<sup>6</sup> What is most new in this volume is their presentation and defense of a neo-Aristotelian version of metaphysical (i.e., ontological and epistemological) realism combined with their contention that this metaphysical realism provides a philosophical basis for their perfectionist ethics and, *mutatis mutandis*, their self-directedness meta-norm. “Ultimately, our aim is to tie the defense of natural rights to a metaphysical realist position in ontology and epistemology” (p. 17). The authors offer both a critique of prominent anti-realists – especially Hillary Putnam -- and a positive neo-Aristotelian defense of metaphysical realism. Metaphysical realism here includes both the affirmation of the existence of and our knowledge about mind-independent entities and the existence of and our knowledge about the nature of those entities.<sup>7</sup> Metaphysical realism includes realism with respect to the existence of the external world and realism with respect to the natures of types of things (including types of externally existing things). I learned most from the chapters within *The Realist Turn* that

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<sup>5</sup> Even though their individualist perfectionist ethics identifies a summum bonum for each individual, Rasmussen and Den Uyl also deny that their individualist perfectionist ethics is consequentialist. See *TRT* 36.

<sup>6</sup> See *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (University Park: Pennsylvania State University, 2005) and *The Perfectionist Turn: From Metanorms to Metaethics* (Edinburgh: Edinburgh University Press, 2016).

<sup>7</sup> I do not believe that the authors ever make explicit the distinction between realism with respect to the external world and realism with respect to natures. Yet clearly there is a distinction to be made. One can be a realist in the first respect without being a realist in the second respect. That is, one can affirm the mind-independence of lots of objects of our (perceptual) awareness while being a nominalist about the natures of those objects. One can also be an anti-realist with respect to the external world and a realist with respect to natures. That is, one can think that all the objects of our awareness are mind-dependent and yet think that one can ascertain the nature of at least some sorts of these mind-dependent objects of our awareness. On the authors’ account, this seems to be the character of Martha Nussbaum’s “internalist essentialism” (pp. 149-151), even though the authors describe Nussbaum’s position as “an essentialism without realism.” (p. 149).

are devoted to the authors' critique of anti-realism and their positive neo-Aristotelian account of the character of our knowledge of the natures of things.

In addition, the authors maintain -- I think as part of their affirmation of metaphysical realism -- that the goodness of a (living) thing of a given kind consists in its actualization of its nature. Hence, the goodness of a human life consists in the realization by that individual of the particular human potential of that individual. This is the element of metaphysical realism that bridges the supposed gap between "is" and "ought," between descriptive and prescriptive propositions. It is because they include this potentiality/actualization doctrine within metaphysical realism that the authors can claim that metaphysical realism and only metaphysical realism can ground their perfectionist ethics.

Do the authors of *The Realist Turn* hold that metaphysical anti-realism, understood simply as the rejection of realism with respect to the external world or realism with respect to natures, is necessary and sufficient for normative anti-realism, i.e., the denial of objectively sound moral propositions? I think the *tone* of *The Realist Turn* is that metaphysical anti-realism is necessary and sufficient for normative anti-realism. The sufficiency claim seems correct and important. If non-normative propositions cannot be grounded in external realities and natures, then normative propositions cannot be so grounded.

Yet, it would be a mistake to hold that metaphysical anti-realism is necessary for normative anti-realism. For one can be a full-fledged metaphysical realist (*sans* the potentiality/actualization doctrine) while still thinking that normative properties do not have objective existence or knowable natures. If one is a metaphysical realist, one still needs something else -- for the authors, it is the potentiality/actualization doctrine -- to get one over the hump to normative realism. Thus, a realist turn (that is not accompanied by the defense of the potentiality/actualization doctrine or some alternative defense of the objectivity of normative properties) would be less of a cure-all than the tone of *The Realist Turn* suggests.

There is a much more specific application of this broad point to the course of argument undertaken in *The Realist Turn*. The book begins with a chapter entitled, "Whence Natural Rights?" in which the authors

note that natural rights thinking no longer dominates philosophical defenses of libertarian or classical liberal argumentation. They seek to explain this unfortunate development as the effect of the abandonment of metaphysical realism by many current supporters of libertarian or classical liberal conclusions. If this is correct what is most needed to bring advocates of libertarian or classical liberalism back into the natural rights fold is the revitalization of metaphysical realism. However, I have my doubts about the authors' particular diagnosis of the turn away from natural rights. For the theorists cited as evidence for this diagnosis do not seem to me to be either metaphysical or normative anti-realists.

Rasmussen and Den Uyl most prominently mention two authors, David Schmidtz and Jacob Levy, each of whom offer a more pluralist and loose-jointed<sup>8</sup> defense of classical liberal conclusions than do the authors. Yet neither seem to show any significant sign of being either metaphysical or normative anti-realists. Schmidtz's analogy of theories as maps that track diverse features of some terrain simply supposes that there are diverse real features which different maps intended for different purposes track and not at all that the features tracked are the product of their being mapped. Levy's tracing of two quite distinct forms of liberalism simply supposes that each of these forms captures part of the political truth and does not imply that there are two competing conceptual schemes untethered to moral reality.

Here is one final observation about the relationship of certain of the major themes of *The Realist Turn*. It is not clear to me whether the authors think that only their individualist perfectionist ethics -- which includes as a vital element the doctrine that the good for any given (living) entity of a given sort is the realization of its potential -- can set the stage for (something like) their self-directedness meta-norm and natural rights. Overall, I do not think they argue or even want to argue that only an ethical doctrine that appeals what I have called the potentiality/actualization doctrine can underwrite (something like) their self-directedness meta-norm and natural rights. For example, neither

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<sup>8</sup> I think that the doctrine developed by David Schmidtz in *Elements of Justice* (Cambridge: Cambridge University Press, 2006) is less loose-jointed than Schmidtz himself suggests. See Eric Mack, *Libertarianism* (Cambridge: Polity Press, 2018), Online bonus chapter at <http://politybooks.com/mack-online-chapter/> pp. 27-36.

John Locke nor Ayn Rand rely upon the potentiality/actualization doctrine. Although the authors would say that this weakens the accounts of the moral life offered by Locke or Rand, I doubt that they would say it weakens their respective moves from their own accounts of the moral life – which still take each person to have ultimate ends of her own the successful pursuit of which requires freedom from interference by others – to the affirmation of natural rights. More precisely, I do not think they would say that it weakens Locke’s or Rand’s *opportunity* to make the type of move to natural rights as meta-normative principles that Rasmussen and Den Uyl make.<sup>9</sup>

## 2. The Self-Directedness Meta-Norm and Natural Rights

In the course of writing this review-essay I have realized that I have not thought carefully enough about the route by which Rasmussen and Den Uyl get to their meta-normative principles. I think I have always taken myself to understand their philosophical motivation for casting their fundamental political/legal principles as “meta-norms” and have always presumed that, except for this particular casting, the basic character of their move to these principles was substantially the same as that of standard natural rights theorists (among whom I count myself). But I now suspect that my lazy presumption was mistaken and, hence, I

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<sup>9</sup> Perhaps Rasmussen and Den Uyl take Rand to come very close to making their sort of move to rights as meta-normative principles. See the passage from Rand cited at *TRT* p. 51. In contrast, I think the dominant view within Rand’s *vindication* of basic rights is that individuals have rights to engage in certain types of action because it is in their interest to engage in those types of action. In her essay on “Man’s Rights”<sup>9</sup> [Ayn Rand, “Man’s Rights,” in *The Virtue of Selfishness* (New York: Signet Books, 1964) pp. 92-100] Rand reproduces this crucial passage from *Atlas Shrugged*.

Rights are conditions of existence required by man’s nature for his proper survival. If a man is to live on earth, it is right for him to use his mind, it is right to act on his own free judgment, it is right to work for his values and to keep the product of his work. If life on earth is his purpose, he has a right to live as a rational being: nature forbids him the irrational. (pp. 94-5 )

The problem with this sort of justification of an individual’s rights is that rights entail obligations on the part of others to abide by the asserted rights yet invoking the value for an individual of not be prevented from acting in certain ways does nothing to explain why others are obligated not to interfere with this individual acting in those ways.

need to think more carefully about the character of the authors' meta-norms and of their argumentative route to them.

More specifically, I need to think more carefully about just what "liberalism's problem" is, about how the self-directedness meta-norm and the natural rights of life, liberty, and property are supposed to solve liberalism's problem, and about how appropriate it is to construe principles that are designed to solve liberalism's problems as natural rights. So, to begin with, what is liberalism's problem and why is it a problem? Liberalism's problem, which they also call the problem of integrated political diversity, arises, according to the authors, from the numerical and qualitative diversity among individuals' self-perfecting lives. For "the divergent pursuit of ends may result in conflict among agents" (p. 42). But, is liberalism's problem the prospect of actual (and troublesome) conflict or is it the absence within the moral/political doctrine of norms or meta-norms that forbid the behavior that would engender (troublesome) conduct? Is the problem actual defective conduct or a deficiency within normative doctrine?

On reflection, I think Rasmussen and Den Uyl must hold that liberalism's problem is a deficiency within normative doctrine. After all, their solution to liberalism's problem is to supplement their individualist perfectionist ethics with accompanying constraining meta-norms to form a more comprehensive normative whole. The authors may expect that acknowledgement of their proposed meta-norms (or this acknowledgement and their enforcement) will in fact reduce actual (troublesome) conflict. However, their philosophical affirmation of those meta-norms is not undermined if actual (troublesome) conflict persists in the face of the acknowledgement (or even acknowledgement and enforcement) of the constraining natural rights to life, liberty, and property. An affirmation of rights is not rebutted by some ongoing violation of those rights.

It is a bit puzzling why the authors focus solely on conflict that might arise between individuals who are on course for self-perfection. Why not think that part of liberalism's problem is the absence within moral/political theory of norms or meta-norms that forbid behavior *by anyone* – including individuals not on a self-perfecting course -- that would engender (troublesome) conduct? Surely the authors hold that both those who are self-perfecters and those who are not self-perfecters



are bound by the same meta-norms and can invoke the same meta-norms against those who engender (troublesome) conflict with them. Perhaps Rasmussen and Den Uyl focus on conflict among self-perfecters because they want to emphasize that something beyond the affirmation of an ethics of individual self-perfection is needed to solve the problem of not having conflict-constraining principles within one's overall normative doctrine. *Even* universal subscription to the authors' self-perfection ethic would not itself solve this problem (pp. 46-52). Hence, the need to go beyond that ethic to constraining normative principles that are not themselves counsels of self-perfection.

More important than who are the parties in possible conflict, is the question, what sort of conflict poses liberalism's problem? I have anticipated this question above by alluding to "(troublesome) conflict." One self-perfecter may open a new beauty salon in town just a block away from the town's one established and quite dreary salon. This brings the owners of the two salons into a sort of conflict. Two teenage glad-handers both run for class president and this brings them into a sort of conflict. One individual forcibly resists another who is set on tweaking the first party's nose even though the resister knows that his resistance will intensify the physical conflict between the tweaker and the tweekee. Yet, it is pretty certain that the prospect of these sorts of conflict – more precisely, the prospect of these conflict-engendering actions not being forbidden -- is not what the authors have in mind as even part of liberalism's problem. I am certain that Rasmussen and Den Uyl do not think that part of the solution of liberalism's problem is the prohibition of competition among hair salons and glad-handing teenagers or of conflict-intensifying resistance.

One might think that the conflict-engendering actions of the new salon owner, the glad-handing teenagers, and the resister are not properly subject to moral prohibition precisely because they do not violate anyone's master right to self-direction or any of the basic rights to life, liberty, or property that are aspects of that master right. One might then say that only those conflict-engendering actions should be forbidden that are in violation of these natural rights. Let us call this the standard natural rights solution to liberalism's problem. However, merely invoking these rights is not much of a solution. A genuine natural rights solution needs to go beyond their invocation to a philosophical

grounding of the invoked rights. Within the standard natural rights project that grounding turns on the identification of seminal and universal properties of persons – properties that make persons bearers of these rights.<sup>10</sup> The guiding intention is the grounding of natural rights in deep, morally significant features of individuals; the welcome byproduct is the solution of liberalism’s problem. Within this project, first come the grounding of natural rights and then comes the solving of liberalism’s problem.

However, for the most part, Rasmussen and Den Uyl pursue a different route to the identification of our basic rights. They seek to base claims about what basic rights we have not on grounding those rights on deep features possessed by all persons but, rather, on an identification of what basic norms are needed to overcome the problem of the prospect of normatively ungoverned conflict among individuals. (Of course, some claims about deep features of human nature will play a role in the authors’ explanation of why certain meta-norms are needed to solve liberalism’s problem.) The authors seek to solve liberalism’s problem by determining which meta-norms must be added to their perfectionist ethics in order to counteract the threat of normatively ungoverned conflict. The guiding intention of the authors’ project is the identification of these conflict-restricting norms; the welcome byproduct of the affirmation of these meta-norms is an inventory of our basic natural rights. First comes the conflict-restricting norms, and then comes an inventory of our basic rights.<sup>11</sup>

My sense is that the authors want to avoid falling back on the sort of arguments typically offered by natural rights theorists because those arguments support a deontic understanding of natural rights and the authors seek to avoid this understanding. Just as the authors deny that their perfectionist ethics is consequentialist, they deny that their meta-norms are deontic. They hold that their construal of meta-norms as the solution to the liberalism’s problem undermines an understanding of

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<sup>10</sup> See Eric Mack, “Natural Rights Justifications: Their Abiding Structure,” *Routledge Companion to Libertarianism*, eds. Benjamin Ferguson and Matt Zwolinski (forthcoming).

<sup>11</sup> See the contrast in passages I cite below between those that say that natural rights derive from the nature of sociality and those that say that natural rights derive from the nature of the individual.

the self-directedness meta-norm and natural rights as deontic elements within a normative scheme. “It is the nature of this problem – not some a priori or deontic view of what ethical principles must be like – that determines the kind of ethical principle or norm that is needed to find a solution” (p. 42).<sup>12</sup> Liberalism’s problem is a *sui generis* problem. The choiceworthiness of the meta-norms is that they are the solution to this problem. Natural rights are reconceived as the meta-norms which provide this solution.

So, what exactly is the argument for the conclusion that the self-directedness meta-norm and its manifestation as the rights to life, liberty, and property are the solution to liberalism’s problem? Certain interpersonal principles have to be found that preclude (troublesome) conflict and do so in a way that is neutral among the parties to be governed by those principles. The authors cast this neutrality as a matter of the principles “not structurally prejudic[ing] the overall social context more toward some forms of human flourishing than others” (p. 42). Perhaps the authors cast liberalism’s problems as the absence of side constraints *among individuals who are all on course for self-perfection* because this supports casting neutrality as neutrality across self-perfecters. And this casting of neutrality suggests the selection of the protection of self-direction as the fundamental meta-norm. For self-direction is the essential common feature of all modes of self-perfection.

Only a norm that protects the possibility of self-direction is compatible with the plurality of forms of human flourishing, because such a norm seeks to determine not the object of self-direction, but only [to protect] its exercise (p. 43).

Unfortunately, this seems like an argument for the self-directedness meta-norm as the fundamental political principle *for a society of self-perfecters*. For it is not clear how this meta-norm is neutral between those who seek self-perfection and those who do not subscribe to the authors’ perfectionist ethic, e.g., those who fundamentally want to be taken care of or to be told how to live. Thus, it is not clear how it qualifies as the fundamental meta-norm for a society composed partly

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<sup>12</sup> Do those who affirm deontic principles really do so because they begin with an “a priori” or “deontic” view about what ethical principles must be like?

of individuals on course for self-perfection and partly of individuals on less estimable courses.

The other problem I see in this argument goes back to my remarks about “troublesome” conflict. Certain constraining principles are to be embraced because they morally forbid conduct that engenders troublesome conflict and does so neutrally. In virtue of performing this task, those principles are taken to be our basic natural rights. We discover what our basic natural rights are by discovering what principles will solve liberalism’s problem. However, my previous remarks suggest that one needs already to know what our basic natural rights are in order to know which conflicts are troublesome, i.e., to know which conflict-engendering conduct has to be forbidden in order to solve liberalism’s problem. So, in order to set up liberalism’s problem, out of which our knowledge of natural rights is to emerge, we need already to have that knowledge. Perhaps the authors can respond by saying that do not need to appeal to rights in order to explain why certain conflict-engendering actions – like the opening of the second hair salon – are to be not to be forbidden. For the reason not to forbid those actions is that their prohibition would not be neutral among value-pursuing individuals rather than the reason being that those actions do not violated rights.

Still, I think there is an ongoing tension within *The Realist Turn* between the standard natural rights project and the endeavor to solve liberalism’s problem first. The view that is distinctive to Rasmussen and Den Uyl is that one discerns natural rights by starting with an account of liberalism’ problem and what principles are needed to solve that problem and, then, natural rights turn out to be the moral claims that are affirmed by those problem-solving principles. On this view the meta-norms and, hence, the rights have the function of solving liberalism’s problem. The other view is that one starts with an identification of natural rights which determine which conflicts are troublesome and which normative constraints are justified because they forbid actions that initiate conflict by violating those natural rights. On this view rights have the function of defining what conflicting-initiating conduct may be forbidden. This prohibition may be conducive to a peaceful and non-conflictual society. But that outcome is not the what for of rights.

Here are some passages that express the first view:

The function of the meta-norms “is to solve the vital political problem of integrated diversity” (p. 30).

The meta-norms “are designed for making . . . self-perfection possible, when living among others, by protecting the possibility of self-direction” (p. 48).

“Rights are for the sake of solving liberalism’s problem . . .” (p. 51).

“. . . when thinking about rights, we are concerned with the conditions that must be secured *for the individualized nature of flourishing to function* (p. 62, emphasis added).

“The key idea is that rights are meta-norms whose function is to provide a social/political context within which individuals are given space to make choices that affect their pursuit of flourishing. . . . They apply to individuals *through the recognition of the nature of a social/political order*” (p. 90, emphasis added).

“. . . rights take their bearing from *some truth about the nature of sociality that has compelling ethical significance*. In this case, in order to protect the self-directedness *of every ethical actor*, rights define in general terms the limits of freedom of action such that *all actors* have equal spheres of freedom” (pp. 91-92, emphasis added)<sup>13</sup>

The functional role for the self-directedness meta-norm and the natural rights to life, liberty, and property is the ultimate basis for the authors’ claim that their meta-norms – including natural rights -- are not deontic elements within their overall normative scheme.<sup>14</sup>

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<sup>13</sup> When the authors speak of the rights protecting “every ethical actor” do they mean to exclude from protection those who are living badly and yet are not rights violators?

<sup>14</sup> Despite the fact that the meta-norms have a different function than the norms of self-perfection, the reason for compliance with both sorts of norms is provided by an appreciation of the function of the norms.

However, I wonder whether their functional account of their meta-norms throws out the rights baby along with the deontic dishwasher. For it seems that rights are essentially reduced to tools – tools *designed* to engender a certain non-conflictual social order. Notice the salience in the passages above of the idea that the case for the meta-norms arises when one considers the prospect for conflict within “the nature of a social/political order” (p. 90) or “the nature of sociality” (p. 91). It seems that the desirability of morally precluding conflict by setting normative limits on how individuals may pursue their own individual flourishing does the primary normative work. Ascriptions of natural rights are justified by compliance with those rights engendering this sort of non-conflictual social order. This is a type of telic, if not consequentialist, account of rights.

I turn now to a number of other passages in *The Realist Turn* that express a less instrumentalist understanding of natural rights. According to Rasmussen and Den Uyl,

[T]he natural rights of individuals to life, liberty, and property determine the rules for what we will metaphorically call “playing the moral game of life among others” (p. 23).

Rather than liberalism’s problem determining what natural rights are to be affirmed, rights determine what sort of political/legal order is to be adopted. Rather than first identifying a problem to be solved and then adopting certain meta-norms that will solve that problem and will thereby be designated as natural rights, here the order is reversed. First one identifies the natural rights and then those rights determine what sort of political/legal order is to be instituted.

[T]he natural rights to life, liberty, and property . . . determin[e] the function of the political/legal order . . . (p. 32).

[T]here are ethical norms – namely, natural rights – to which political orders are subject and which provide *the basis for determining their function* (p. 27, emphasis added).

These natural rights are *the basis for the ethical evaluation* of political/legal orders. Particularly, *they provide the justification* for a political/legal order that protects people from having their lives and possessions, as well as conduct, used or directed by

others for purposes to which they have not consented. (p. 31, emphasis added).

Here rights are not devices that are designed to induce conditions that thwart conflict. They are not norms that are justified by their serving the function of specifying a type of non-conflictual moral order – even if compliance with them constitutes such an order. Indeed, the last cited passage suggests quite a different sort of rationale for these rights, viz., they are correlatives to a moral side constraint against using or directing others “for purposes to which they have not consented.”

. . . we do not refrain from violating someone’s rights so that the overall number of rights violations will be less, but because *not violating rights is the defining norm of all action in society* (p. 69, emphasis added)

[N]atural rights determine what the overall aim or function of positive law *ought* to be (p. 98).

Rights here are in the driver’s seat. They determine what the function of positive law ought to be rather than having their function being determined by what is needed in the way of rules in order for conflict among self-perfecters to be morally precluded. Also,

Natural moral law holds . . . that *it is the nature of the individual human being . . . that provides the foundation of all basic ethical principles*, including the natural rights of individuals to life, liberty, and property (pp. 104-5).

. . . it is the nature of human beings and the moral life that provides the ultimate basis for natural rights (p. 22).

Here natural rights are a reflection of the nature of the individual rather than of “the nature of a social/political order” or “the nature of sociality.” Perhaps they are a reflection of the fact that each individual properly pursues self-perfection in self-directed way and the import of this for each other person is that no individual is to be treated as a being who exists for others’ purposes.

One advantage of rights being grounded in this way in “the nature of the individual human being” is that it allows us to give a simple and direct explanation of severe *state of nature* wrongdoing. Off in an

unowned wilderness Tom is painting a hunting scene on a large rock. He realizes that he is going to need some red liquid to depict the blood of a wounded animal. Fortunately, John comes wandering by and, seeing his opportunity, Tom slits John's throat and collects the useful red liquid. Why does Tom wrong John? The simple and direct answer is that Tom violates John's rights because he treats John as though he is merely a means to Tom's ends.

In contrast, it seems that the authors' meta-normative account of rights precludes their saying that in such a case Tom has violated John's rights. For, in slitting John's throat Tom does not contravene meta-norms that come into play only within a political/legal context. Perhaps Tom's conduct can be criticized by the authors on the grounds that such conduct does not accord with Tom's genuine self-perfection. However, this sort of criticism does not at all capture the fact that the key problem with Tom's behavior is that it victimizes John, not that it fails to be self-perfecting for Tom.

I want to conclude by considering a passage in which the authors anticipate and respond to the objection that their theory of rights is too consequentialist because it makes rights into devices to promote a favored social outcome. Against this objection, Rasmussen and Den Uyl maintain that on their view,

. . . rights are based not on the worthwhile consequences of following them, but on finding a solution to what we call liberalism's problem. . . . [I]t is vital to note that liberalism's problem" does not result from a general concern for finding institutional rules of practice that will lead to a developing economy and a peaceful culture, or worthwhile social consequences in general, but instead from the very character of each individual human being's natural end and moral purpose. . . . Rights provide a principled solution to this problem by protecting the possibility of self-directedness, which is not itself concerned with directly producing particular social or political consequences, and it is because they do that rights are natural (p. 119).

My sense is that for the most part the authors are here emphasizing the abstractness of the social condition that rights function



to foster, viz., the establishment of (or compliance with) rules of the social interaction game that morally preclude conflict among individuals seeking their own self-perfection.<sup>15</sup> However, I still see this social condition as a type of societal outcome that rights are designed to engender. First comes the problem and its abstractly envisioned solution, and then come rights as the instruments that facilitate the solution.

I have tracked *The Realist Turn* by employing a conceptual map which sharply contrasts goal-oriented reasons and status-recognizing reasons and affirms that a proper moral code for individuals includes both of these sorts of considerations. Rasmussen and Den Uyl systematically challenge that conceptual map with a complex and coherent alternative conceptual framework. I join Rasmussen and Den Uyl in thinking that the test for such maps is reality. And my main concern about my essay is that I may not have been sufficiently open to their map as a better chart of reality. Another more interesting and reassuring thought is that the two contending maps are depicting the very same reality albeit from somewhat different angles.

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<sup>15</sup> Here, as in other places, there are interesting parallels between the authors' views and that of F.A. Hayek in *Law, Legislation, and Liberty*. Searching for a function of the rules of just conduct which will provide a non-utilitarian and yet telic rationale for compliance with those rules, Hayek hits upon the "abstract order of actions" – i.e., the complex network of voluntary and mutually beneficial interactions – which will obtain in some unpredictable concrete form if people abide by those rules.