Playing the Rights Game

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Douglas Den Uyl and Douglas Rasmussen's neo-Aristotelian arguments for classical liberalism are thorough and persuasive. Nevertheless, as an attorney and therefore a professional arguer, I cannot resist offering offer a critique in the spirit of the Devil's Advocate, in hopes of illuminating one aspect of their conception of individual rights.

1. Universalism and Certainty

The idea that there are principles of justice that hold for everyone always (though with context-dependent variations) is one of the great legacies of the Enlightenment, and, before that, of the classical western heritage. It lies at the heart of liberalism and its fruits, including the United States Constitution, although its influence can be detected in other nations and other political and legal institutions, too. How bizarre that today this idea is regarded by many, if not most, of the intellectual leaders in the west as essentially a passé superstition. Worse, classical or classical liberal conceptions about human nature and universal justice are noawadays often viewed as dangerous invitations to a kind of Puritanism. What Den Uyl and Rasmussen have shown is that this is incorrect: as long as one grasps that human good, while universal, is also agent-centered—so that while there is such a thing as human flourishing, there is no one best way of life for all—one can have a universal moral standard and diversity, too.

The anxiety over perfectionism that drives the search for a "pluralist" approach to liberalism seems to be largely an artifact of the twentieth century encounter with totalitarianism. The lesson many

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liberals drew from the experience of the World War II era was not that the propositions on which National Socialism and similar evils rested were themselves wrong, but that *all* universal claims about how human beings ought to live are wrong. That is, that *certainty* is wrong. This is evident in slogans such as Judge Learned Hand's assertion that "the spirit of liberty is the spirit which is not too sure that it is right,"[1] and in the writings of other post-war liberals such as Friedrich Hayek or Jacob Bronowski, who emphasized the importance of intellectual humility. Standing at Auschwitz in a famous scene in his documentary series *The Ascent of Man,* Bronowski claimed that the death camps were "what men do when they aspire to the knowledge of gods…. In the end, the words were said by Oliver Cromwell: 'I beseech you in the bowels of Christ: Think it possible you may be mistaken.'"[2]

There are at least two obvious problems with resting the argument for freedom on intellectual humility, however. First, a *thoroughgoing* skepticism about *all* truth claims would be self-contradictory, as is well recognized. Second, even if one rejects extreme skepticism and accepts that there are some things of which we can be certain, it does not follow that one should build the argument for liberalism on the mere possibility of error. That seems to accept the objectionable premise that correctness equates to the legitimate authority to rule others, which would make liberalism into a function of being correct, rather than of the values *about* which one is or is not correct. Moreover, life is more complicated than the simple binary of correct and not correct.

Some have tried to steer the humility course while avoiding these two problems by appealing to the alleged dichotomy between "is" and "ought," and accusing those who cross this alleged gap of committing the "naturalistic fallacy." That term is dangerously misleading, because it is no fallacy to ground one's normative arguments on the nature of the world; that is where all normative arguments must of necessity rest at *some* point if they are to have any relevance for human affairs.

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[1] Irving Dilliard, ed., *The Spirit of Liberty: Papers and Addresses of Learned Hand.* New York: Knopf 1952), p. 190.
[2] J. Bronowski, *The Ascent of Man* (Boston: Little, Brown, 1974), p. 374.

These appeals to humility often argue that liberalism is better defended by appealing to outcomes of tradition, culture, or other "spontaneous orders." But these appeals can tell us nothing about the validity of spontaneously generated rules. On the contrary, to conclude that such rules are the *correct* or *justified* rules just because they have developed in this fashion really is fallacious. As Den Uyl and Rasmussen put it in another context, it is "like saying that the stunted and sickly condition of an organism is as natural as a healthy one,"[3] or like walking through an untended garden and concluding that weeds, wilting leaves, and dry earth are just the way gardens are supposed to be.

The fallacy committed by such a poor observer of gardens lies in failing to appreciate the distinction between living and non-living matter. That distinction lies in the fact that living matter faces the possibility of non-existence, and non-living matter does not. Unlike nonliving matter, living things can "succeed," "fail," "fare poorly," "be flawed," "prevail," etc. These terms are evaluative, meaning that they are simultaneously descriptive and normative. This is because a living entity has a course of development—what the physician calls a person's "quality of life"—which is to say, a *telos*. Things with a *telos* can be evaluated, and therefore classified as a good or bad thing of its kind. Similarly, the nature of existence for a living being includes capacities that, when fully realized, make it flourish. Rocks and other nonliving matter do not flourish, have no *telos,* and consequently, there is no such thing as a good or a bad rock.[4]

This claim can be made more strongly: for living beings, *everything* can be evaluated in terms of "good for," or "bad for," in principle. For living beings, the natural world is, so to speak, layered over with normativity. To invest any of our limited resources (such as time) in anything is to incur a cost, which must be balanced against benefits if we are to continue existing. This means every experience is in principle subject to normative evaluation for living creatures, which is not true for inanimate matter. This (positive) fact is the basis for an

[3] Douglas Den Uyl & Douglas Rasmussen, *Liberty and Nature* (La Salle, Ill.: Open Court, 1991), p. 23.

[4] There can, of course, be rocks that are good for or bad *for living beings*, in terms of *their* goals.

(evaluative) principle of flourishing which gives us a (normative) basis for assessing the world in terms of good or bad. That is a "crane" (as opposed to a "skyhook"[5]), that lifts us from the descriptive to the normative that without committing any fallacies. At the same time, Den Uyl and Rasmussen's recognition of the individualistic nature of flourishing allows for its different modes—all of which can still be legitimately termed flourishing—which alleviates concerns that their account of goodness will, in logically and morally illegitimate ways, impose on other people preconceptions about the right way to live.

2. The Rules of the Game

This recognition is built into Den Uyl and Rasmussen's understanding of rights. They argue that rights are "meta-norms," meaning that the role of rights is not to give reasons for action, but to provide a framework within which moral excellence can be pursued. Thus they serve "the *practical* need[s] of diverse individuals having to live together" (p. 76). Like the rules of an athletic competition, rights are not themselves principles of excellence, but exist to establish the framework wherein people can pursue excellence. They are "concerned *not* with the guidance of individual conduct in moral activity, but rather with the regulation of conduct so that conditions might be obtained wherein morally significant action can take place" (p. 55).

Here, however, the Devil's Advocate senses a subtle contradiction. Den Uyl and Rasmussen view rights as social principles—as marking the boundaries of legitimate action by people "in the company of others."[6] This is a frequent refrain, in fact: they argue that rights enable "the possibility of pursuing flourishing *among others*" (56 (emphasis altered)), that rights "set the conditions or framework for making the employment of moral concepts possible *when seeking to play the moral game of life among others*" (p. 31), and that rights "provid[e] the structural conditions for the possibility of the pursuit of human flourishing *among other persons.*"[7] But what about the rights of

[5] Daniel Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (New York: Simon & Schuster, 1995), pp. 74-75.
[6] Douglas Den Uyl & Douglas Rasmussen, *Norms of Liberty* (University Park: University of Pennsylvania Press, 2005), p. 61.
[7] Ibid., p. 342 (emphasis added).

those with whom one has no interest in associating? Our authors do show that one has reason to respect the principle of rights *within* a shared society, but can this function also as a reason for respecting rights of those who stand outside that society?

This is not an academic question. In 1776, when George Mason and others were writing the Virginia Declaration of Rights, the authors were temporarily stumped by the problem of asserting the equal rights of all mankind while holding slaves. Their answer to the problem was to declare that "that all men are by nature equally free and independent and have certain inherent rights, of which, *when they enter into a state of society*, they cannot, by any compact, deprive or divest their posterity."[8] The italicized phrase was understood to render Africans and their descendants outside the scope of the declaration. A century later, at the California Constitutional Convention of 1878—where a movement was underway to exclude Chinese immigrants from a host of constitutional rights—one racist delegate moved to amend the state's bill of rights:

> Mr. O'Donnell: I move to amend by inserting after the word "men" in the first line, the words, "who are capable of becoming citizens of the United States"....
>
> The Secretary read: "All men who are capable of becoming citizens of the United States are by nature free and independent"….[9]

More fundamentally, in *The Oresteia*, Aeschylus has Athena establish the rule of law only for those within the city walls of Athens: "Let our wars / rage on abroad, with all their force, to satisfy / our

[8] Ralph Ketcham, *James Madison: A Biography* (Charlottesville: University Press of Virginia, 1990), p. 72.

[9] E.B. Willis & P.K. Stockton, eds., *Debates and Proceedings of the Constitutional Convention of the State of California* (Sacramento: State Printing Office, 1880), vol. 1, p. 233. Charles Carroll O'Donnell was in earnest. He was described as "the inaugurator of the Anti-Coolie crusade." D. Waldron & T.J. Vivian, *Biographical Sketches of the Delegates to the Convention* (San Francisco: Francis & Valentine, 1878), p. 60.

powerful lust for fame," she says, but "here in our homeland, never cast the stones / that whet our bloodlust."[10]

In short, the idea that rights function to make possible civilized life among the members of a political community is nothing new. What was revolutionary about the classical liberal conception of natural rights in the Enlightenment is that it viewed (at least some essential) rights as *not* having their origin in one's membership in a political community. And historical incidents such as the Valladolid Debate of 1550 over the rights of Native Americans are celebrated precisely because they concerned the question of whether we are bound to respect the rights of those of whose societies we are not members. According to Locke, even though "a Swiss and an Indian in the woods of America" are "perfectly in a state of nature in reference to one another," they are bound by any contract they might make because "truth and keeping of faith belongs to men as men, *and not as members of society*."[11]

Den Uyl and Rasmussen view rights as "inherently interpersonal" and "an inherently social concept."[12] In their view, the Swiss trader can be sensibly said to be subject to the requirements of *morality* while alone in the woods of America (morality understood, of course, in terms of Aristotelian principles of flourishing), but he cannot coherently be said to have *rights* until he encounters the Indian. Only then does it make sense to speak of each party having *rights* to life, liberty, or property, because these principles establish the framework for morally excellent behavior *inter se*. How, then are their rights *not* a function of some form of agreement between the Indian and the Swiss—if not a full-blown social compact, at least an agreement to interact in morally significant ways, or, at a minimum, to remain in each other's company?

The answer seems to be that their respective rights are *inchoate* until they meet. Rights do not owe their existence to a mutual agreement, but they remain in an imperfect or preliminary form until intercourse brings them to fruition. This is a feature of many interpersonal activities,

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[10] Robert Fagles, trans. *The Oresteia* (New York: Viking, 1970), p. 282.
[11] Peter Laslett, ed., *Locke: Two Treatises of Civil Government* (New York: Cambridge University Press, 2d ed 1988), p. 295.
[12] Den Uyl & Rasumussen, *Liberty and Nature*, p. 87.

such as conversation, waltzing, or playing chess. These are all potential capacities of the individual and remain in an inchoate state until the presence of another person makes it physically possible to converse, dance, or play. In this analogy, rights are not analogous to the dance itself or to the game of chess, but to the dance *moves* or to the *rules* of chess, which are implicit in the nature of these activities, and which facilitate the realization of (the best forms of) these activities once the parties choose to engage in them. This idea of rights seems to be the one contemplated by Robert Frost's famous poem "Mending Wall," in which the neighbors, by constructing the wall that divides them, genuinely do become "good neighbors," but only to as a consequence—and only to the extent—of their mutual effort in building the wall. The rest of their rights, whatever they may be, remain unspecified, in a hazy, inchoate form.

But if, like the Devil, one has no interest in playing chess with another person, or building a wall with a neighbor, then one can have no interest in learning or abiding by the rules implicit in these activities. Someone who does not play chess has the prerogative of disregarding the rules of chess entirely, and a person need not learn how to build stone walls if he has no intention of building such a wall. If rights are guidelines for enabling the pursuit of moral excellence in concert with, or at least in the vicinity of, other people, what interest or obligation can rights have for those who are simply not interested in such an undertaking?

To be clear, the Devil's Advocate is not merely restating the commonplace objection to classical liberalism, to the effect that it gives citizens insufficient reason to respect or fight for the rights of their neighbors. That objection has force, but it is not what the D.A. is getting at. In fact, *that* objection assumes that one's fellow citizens do have rights to begin with. By contrast, Den Uyl and Rasmussen appear to build into their very *definition* of rights a commitment by the "players" to participate in the "game" of pursuing moral excellence in the presence of others. Our authors define rights as meta-norms whose function is to enable our flourishing *vis-à-vis* other people, and suggest that these rights remain inchoate until one interacts with others in ways that raise the possibility of moral excellence. That definition appears to assume as

a condition precedent to the very existence of rights that there is some sort of agreement in place to pursue moral excellence alongside others.

The Swiss and Indian in Locke's hypothetical do intend to live in *some* kind of society with one another, so metanorms have a role to play in their interaction, even if it is as minimal as the neighbors in Frost's poem. But what if they prefer to live apart entirely, like Axel Heyst and the natives in Joseph Conrad's *Victory*? In what sense can Heyst and the Natives be said to have rights with respect to each other, given that they have no intention (and presumably no good reason) to flourish "among" each other? If rights are principles of sociality whose existence is predicated on a desire or need to pursue moral excellence in each other's company, are they not a function of an implicit agreement to do so, and therefore a product of convention after all?

This is obviously objectionable. It cannot be that an interpersonal agreement to pursue moral excellence is necessary for the existence of rights, since a mugger who steals one's wallet—and whom one can never expect to encounter again—is obviously not a party to such an agreement and never will be, and a mugging is the type specimen of a rights-violation. One alternative would be that the community's general agreement to pursue moral excellence in each other's company is what brings one's rights into fruition, and these rights bind the mugger notwithstanding his lack of interest or desire in pursuing moral excellence, on the principle either of tacit consent or that a macro-level agreement should not be deemed invalid simply because micro-level breaches have *de minimis* consequences.[13] These arguments begin to sound much like social compact theory, however, and Den Uyl and Rasmussen expressly deny that any agreement is a necessary predicate of rights existing.

The best answer appears to be that it is the *potential* pursuit of moral excellence in company with others that generates rights, and that without regard to any agreement, one's rights against the mugger come into full existence simply as a function of the interaction itself. But this seems like a kind of Categorical Imperative argument of the sort that Den Uyl and Rasmussen reject. In this view, the mere fact that it is possible to engage in morally excellent behavior constrains a person's

[13] See *Gonzales v. Raich*, 545 U.S. 1 (2005).

actions when interacting with another regardless of their actual and specific needs and concerns, and, presumably, regardless of whether one has an interest in, or stands to benefit from, pursuing moral excellence in concert with others.

But if this is the case, does one (or one's society) have a right to *refuse* to engage in the pursuit of moral excellence with others? And if so, where can *this* right originate? If Locke's American Indian and Swiss trader encounter each other in the woods, on what basis can they decline to interact with one another? Presumably there is at least some case in which it could be objectively proven that they would improve their respective pursuits of moral excellence through interaction. Would such proof entitle one or the other to *compel* such interaction? The answer at first blush would seem to be no, on the grounds that such coercion would violate a principle necessary for each party's own self-direction, and therefore that the question implies a self-contradiction. Yet there are likely cases in which compelled association would, in fact, make both sides better off in the long run—a proposition that Epstein sees as justifying coercion and even coercive association, as in a social compact.[14]

This answer also suggests that the decision by some to pursue moral excellence in each other's company obliges even outsiders to respect their autonomy to do so. This is counterintuitive because we normally do not view the decision of a group of people to pursue other types of excellence as imposing obligations on outsiders. Musicians or athletes may choose to pursue musical or athletic excellence, but that imposes no obligation on anyone else to learn about, practice, or care about the principles of those forms of excellence. One may even interfere with their pursuit of excellence under some circumstances. A Protestant is not obliged to curtail his activities in order to allow for the pursuit of excellent Catholicism by Catholics; he may preach against transubstantiation all he wishes. Likewise, if a group of musicians begins practicing beneath my window, I can ask a court for an injunction to shut them down notwithstanding their pursuit of musical excellence. Why, then, does the decision by a group of people to pursue moral

[14] Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge: Harvard University Press, 1985), pp. 199-200.

excellence in each other's company impose an obligation of respecting rights on outsiders who are not parties to that agreement?

We are left with a strange type of obligation—one that binds people, like the mugger, who have no understanding or interest in pursuing moral excellence; that obliges outsiders, whereas the pursuit of excellence in other kinds of activities imposes no such obligations; and that might even justify compelling outsiders to join the circle of those engaged in the activity—even though doing so would seem to violate that very metanorm itself—and that appeals to our self-interest in pursuing our own excellence, but in which that self-interest plays no necessary role.

3. The Pursuit of Excellence Together

There is an overlapping concern. Den Uyl and Rasmussen argue that rights are a solution to "liberalism's problem"—that is, the problem of individuals pursuing their own flourishing in company with others—but acknowledge that there are rare situations in which it is literally impossible to accomplish this, and that in these cases "individual rights are not applicable" (p. 122).

To test the range of this proposition, the Devil's Advocate will offer two hypotheticals drawn from that fountain of moral imagining, *Star Trek*. In the episode "Space Seed,"[15] the crew of the starship *Enterprise* encounter Khan Noonien Singh, a genetically engineered dictator who, along with his henchmen, was exiled from earth after starting World War III sometime in the 1990s. The dilemma presented in the episode arises from the fact that Khan does not merely *claim* to be a kind of Übermensch, but actually *is* one. He is a genetically engineered, genuinely superior being.[16]

Because Khan is superior, he has no interest in flourishing in company with the crew of the starship *Enterprise*, and their existence cannot in fact benefit him in his pursuit of moral excellence. This means that there is no solution to liberalism's problem with respect to Khan's

[15] Originally aired Feb. 16, 1967.

[16] For this reason, when Captain Kirk thwarts Khan's effort to commandeer the *Enterprise*, he does not execute Khan, but finds a way to put his superhuman skills to productive use, by colonizing a deserted planet.

crew and Kirk's crew. This cannot mean, however, that individual rights are *entirely* inapplicable. Kirk and his crew certainly have rights *inter se*, because—but for Khan—the pursuit of moral excellence amongst themselves *would* be possible. The same is true of Khan and his own crew. Thus each side has rights within their respective boundaries, but no rights valid against the other group. Yet this would imply that Khan commits no violation of rights when he engages in aggression against Kirk and crew, or vice-versa, even though these groups are pursuing moral excellence within their respective boundaries. But if this is the case, then has the theory of rights not failed to accomplish its principal task, which is to make possible the flourishing of those subject to that principle, and to render justice coherent? At a minimum, it appears to return to Athena's conception of rights, as binding only those within the walls of Athens, but not everyone, everywhere.

A second hypothetical, from a *Deep Space Nine* episode,[17] inverts the situation. In this episode, the crew, on a trip to another dimension, accidentally bring back with them a small object that turns out to be a "protouniverse"—that is, an entire new universe in the initial stages of its expansion. Unless returned to the dimension from which it came (which appears impossible to do) the object will inevitably grow to crowd out the existing universe, destroying literally everything. It is within the crew's power to destroy it—but they refuse to do so because they cannot rule out the possibility that inside this tiny universe are sentient beings:

> Dax: I've found indications of life in the proto-universe…. The computer's confirmed that these are life signs.
>
> Kira: Now wait a minute. Single cell microbes are lifeforms too, but Doctor Bashir has [medicines] that will kill them….
>
> Dax: Kira, we could very well be dealing with *intelligent* life here.

This example appears to reverse the Khan hypothetical, except that here, the crew can *never* expect to have *any* form of intercourse with these living beings, assuming they even exist, except for entirely

[17] "Playing God," originally aired Feb. 27, 1994.

obliterating them. So what rights do the inhabitants of the protouniverse have with respect to the crew of Deep Space Nine?

In the episode, the crew conclude that they do have such rights (and manage to find a way to return the protouniverse to its point of origin and save the day). Their position is therefore like that of Bartholomé de las Casas in the Valladolid Debate, who held that because the Native Americans were capable of reason, they possessed (some degree of) rights, *regardless* of whether they played in any role in Europeans' own pursuit of moral excellence. In other words, this argument holds that the natives' interaction with *each other* is sufficient to establish their possession of rights, valid against outsiders. Thus the question: assuming that rights are metanorms that set the groundwork for the pursuit of moral excellence of people in each other's company, is this sufficient grounds for the members of a community to assert rights against those outside that community? To what degree is *participation* in moral excellence with others either necessary or sufficient for the existence of rights with respect to third parties who are not or cannot be involved in this pursuit of moral excellence?[18]

4. Certainty and Rights

These playful hypotheticals are meant to reveal the counterintuitive consequences of defining rights as metanorms designed to preserve the possibility of flourishing in cooperation with, or at least in the same neighborhood as, others. But these consequences obviously

[18] The protouniverse hypothetical contains a potential disanalogy, in that it presents a threat. Nozick has shown—with his famous hypothetical of the well—that there are cases in which one may have a right to initiate force against an innocently created threat, and because the protouniverse's expansion threatens the crew, they would likely be within their rights to defend themselves by destroying it even though its tiny inhabitants are not responsible for creating that threat. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 34. But in Nozick's well hypothetical, the person being thrown down the well does *have* rights—they have been violated by the person tossing him down the well. This interpretation of Den Uyl and Rasmussen, by contrast, seems to suggest that the residents of the protouniverse can have *no rights at all* with respect to the crew of Deep Space Nine, because the two sides are literally incapable of pursuing moral excellence in company with, or even in the same universe as, each other.

have real world consequences that are not so jocular. Societies exist with widely divergent and potentially conflicting conceptions of moral excellence. The 2008 raid by Texas law enforcement on the Yearning for Zion (YFZ) Ranch illustrates these concerns well. The YFZ Ranch was a facility owned by the Fundamentalist Church of Jesus Christ of Latter-Day Saints, which practices not only polygamy but marriage of females as young as 14. Many of these children, having been raised inside the community, raised no objection to such practices, which outsiders obviously consider abusive. (Let us set aside potentially distracting questions about age of consent, which varies from jurisdiction to jurisdiction, and stipulate *arguendo* that the practices within the community qualify as rights-violating according to outsiders.)

To outsiders, these children have been essentially brainwashed into being unconscious of their own abuse. To insiders, by contrast, the outsiders are deluded bigots, interfering with the practice of moral excellence by members of the YFZ Community. To what extent can Den Uyl and Rasmussen's definition of rights—which is intended to be universal and objectively valid, and not a contingent fact based on culture—mediate such a dispute? If it cannot, of what value is it? And if it can, what room does this conception truly leave for diverse practices and cultures? If outsiders can trump the claims of insiders with an allegation of "brainwashing," then the diversity of ways of living that Den Uyl and Rasmussen promise would appear to be illusory, given that outsiders will practically always try to employ that trump card against us. Communists invoke "false consciousness," for example, to characterize classical liberal conceptions of freedom as a sham. "For every church is orthodox to itself," as Locke says.[19] This is the problem that led post-World War II liberals to view intellectual humility as essential to the liberal mindset. To what extent are we confident declaring that the members of YFZ Ranch are simply *wrong* in their conception of the human good, and thereby interfering with their pursuit of what they believe to be moral excellence? The "brainwashing" card appears to make correctess equate to the legitimate authority to rule others, which we rejected in part 1 above. Since Den Uyl and Rasmussen are at such pains to insist that their perfectionism does not require

[19] Mario Montuori, ed., *John Locke: A Letter Concerning Toleration* (The Hague: Martinus Nijhoff, 1967), p. 35.

authoritarianism, the degree to which their argument permits us to play this card seems crucially important, and unclear.

To summarize the D.A.'s case: rights are typically conceived as principles that can be invoked against those who would aggress against us—as showing why that aggression is morally objectionable and why it justifies preventative measures or punishment. But if rights function *only* as a social principle to enable us to pursue happiness in the company of others, then they can have no force against those who lack any interest (whether understood as conscious desire or as an objective benefit) in such a common endeavor. Yet it is often these very parties who present the greatest threat of aggression against us.

On the other hand, if it is legitimate to assert rights against outsiders, then this would suggest the inadequacy of a definition of rights that restricts them to "regulat[ing] conditions under which conduct that employs moral concepts takes place" (p. 30). Den Uyl and Rasmussen analogize rights to the rules of a game—and rules "are not designed to provide guidance for…excellent play," but only "to establish the conditions for making the pursuit of such play possible" (p. 31). What rights can we have, then, against those who have no interest in playing with us, or whose excellence would not be served by doing so? If the answer is "none," that would appear to render rights useless against precisely those aggressors most likely to threaten our rights—those who disregard our value as human beings. On the other hand, if the answer is that we have a right to pursue moral excellence against those who do not want to play, then rights cannot be—like rules—limited to situations in which an agreement to play has already been made. By implying otherwise, Den Uyl and Rasmussen appear to smuggle in a kind of social compact theory through the back door, making rights dependent upon an agreement to play the game of moral excellence in the first place—which, of course, is the opposite of what they intend to show. But if they do not make agreement part of the equation, that would appear to allow outsiders to assert against us that we are simply deluded about the pursuit of moral excellence—which would appear to revive the perfectionism they disclaim.