Aristotle and Edmund Burke on Natural Rights: Recovering a Conservative Tradition

Tristan J. Rogers
Santa Clara University

"Upon the whole, Sir, the bill is dangerous in itself, as being the first step towards a total invasion of the Company's territories in Bengal; and, supposing the motives good, yet it is dangerous for the example—unconstitutional acts founded on unconstitutional motives, springing from unconstitutional acts founded on constitutional motives. An author who is more spoken of than read, I mean Aristotle, declares that acts of this nature have the most pernicious consequences, and accelerate the ruin of every state. I do not, however, deny that you have power to pass this act. Yes, Sir, you have the power; but you have not the right. There is a perpetual confusion in gentlemen's ideas from inattention to this material distinction; from which properly considered it will appear, that this bill is contrary to the eternal laws of right and wrong—laws that ought to bind all men, and above all men legislative assemblies."

—Edmund Burke[1]

1. Introduction

It is a challenge for neo-Aristotelian political philosophy to account for the modern concept of rights, the language in which so many contemporary claims to justice are made. In his landmark study, *Nature, Justice, and Rights in Aristotle's Politics*, Fred D. Miller, Jr., gives neo-Aristotelians the resources to answer this challenge.[2] Rights,

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[1] Edmund Burke, "Bill to Restrain the East India Company from Appointing Supervisors in India," in *The Speeches of the Right Honourable Edmund Burke*, Vol. 1 (London: Longman, Hurst, Rees, Orme, and Brown, 1816), p. 151.

[2] Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics*

according to Miller's interpretation of Aristotle, are moral claims that attach to human beings as members of a political community that secures natural justice. He argues further for the possibility of a neo-Aristotelian liberalism that endorses liberty as among the goods necessary for happiness, leading to toleration (but not endorsement) of divergent views of the good life.

The value of liberty in the good life, and its relation to rights, continues to divide neo-Aristotelians. Martha Nussbaum infuses liberty throughout her list of "capabilities," including the capability to form a conception of the good life (practical reason) and the capability to control one's political and material circumstances.[3] Nussbaum stops short, however, of a full-throated endorsement of liberty, as she supports social-democratic policies characteristic of the welfare state as the best way to serve the realization of human capabilities. A more hardline position on liberty is held by classical liberals Douglas Rasmussen and Douglas Den Uyl, who argue for the central place of self-direction in the good life, which, they argue, requires a negative right to liberty.[4] Finally, there are communitarians like Alasdair MacIntyre, who, in their commitment to the value of community as prior to individual rights, hold no special place for liberty.[5]

Conservatism is oddly absent from neo-Aristotelian political philosophy. Yet Aristotle is sometimes included among the earliest progenitors of conservatism, and Edmund Burke, who is widely considered the father of modern conservatism, was himself a follower of Aristotle.[6] Neither is Burke's Aristotelianism of mere antiquarian

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(Oxford: Oxford University Press, 1995).

[3] Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011), pp. 33–34.

[4] Douglas Rasmussen and Douglas Den Uyl, *Norms of Liberty* (University Park, PA: Penn State Press, 2005), chap. 11.

[5] Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: University of Notre Dame Press, 1984).

[6] See, e.g., Roger Scruton, *Conservatism: An Invitation to the Great Tradition* (New York: All Points Books, 2017), p. 9; and Ferenc Horcher, *A Political Philosophy of Conservatism: Prudence, Moderation, and Tradition* (London: Bloomsbury Academic, 2020).

interest. As I will argue, Burke's theory of rights and his view of the relationship between rights and liberty, challenge default liberal assumptions about justice. Informed by Aristotle's warning against geometric precision in politics, Burke launched his attack on the French Revolution by challenging the doctrine of the "rights of man." Although that doctrine is currently known as "human rights," Burke did not deny that human beings have rights. While he rejects rights in a state of nature, as does Miller's Aristotle, Burke maintains that we can discern natural rights in human nature that are ultimately determined and given contour by the conventions of society. Unlike Miller, who sees potential for a neo-Aristotelian liberalism, the example of Burke holds out promise of recovering the rival conservative tradition of natural rights initiated by Aristotle.

The conservative natural rights tradition emphasizes three ideas about liberty, virtue, and rights. First, the right to liberty must be understood alongside the restraints supplied by the institutions of society. This is *ordered* liberty, or liberty regulated by the virtues: the liberty to do what one morally ought. Second, rights must be mediated by the institutions of society; there are no politically actionable rights prior to society. Third, the institutions of society are the training ground for the virtues. These qualities of pushing and pulling give conservative politics its distinctive character: liberty and authority balanced by prudence.

This article unfolds as follows. In Section 2, I motivate the case for neo-Aristotelian political philosophy and introduce the distinct modern challenge it faces. Section 3 reviews Miller's important interpretation of Aristotle's concept of natural rights based on natural justice. Sections 4 and 5 turn to Burke, who is shown not only to be a follower of Aristotle, but also to share the concept of rights Miller attributes to Aristotle. In Section 6, I turn to the question of whether neo-Aristotelianism should be taken in a liberal direction, as suggested by Miller, or in a conservative direction, as indicated by the legacy of Burke. I briefly conclude by reflecting on the relationship between rights, community, and the good life.

2. Ancient Wisdom, Modern Rights?

Outside narrow scholarly interests in the interpretation of Aristotle, it is reasonable to ask why we need neo-Aristotelian political philosophy. Gerald Gaus, for instance, sees a sharp divide between the ancients, for whom ethics "concerned what a person properly desires or what a proper, virtuous person desires, or finds attractive," and the moderns, for whom ethics "concerns what we must do—what we are required to do even if we are not attracted by it."[7] Given the diversity of views about the former in modern societies, "neo-Aristotelian virtue ethics," Gaus concludes, "is a rejection of modernity rather than a solution to its problems."[8] In a similar vein, John Tomasi writes, "[a]n acceptance of reasonable value pluralism . . . morally precludes the coercive imposition of some people's values on other people that the civic humanist [i.e., Aristotle's] conception of justice would require today."[9] "There is, indeed," Tomasi adds, "no road back to the heroic simplicities of the ancient polis."[10] Even Rosalind Hursthouse, a committed neo-Aristotelian, expresses hesitation about the antiliberal implications of Aristotle's thought: "It would be anachronistic to look for the liberal concept of rights in Aristotle; and yet many of us are unwilling to declare shamelessly that we want no truck with liberalism and to follow MacIntyre in espousing traditionalist authoritarianism."[11]

What is the alternative? Interestingly, John Rawls, who is widely heralded as reinvigorating liberal political philosophy in the twentieth century, disclaims any notion that his definition of social justice deviates from the traditional notion associated with Aristotle.[12]

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[7] Gerald Gaus, *The Order of Public Reason* (Cambridge: Cambridge University Press, 2011), p. 7.

[8] Ibid., p. 8.

[9] John Tomasi, *Liberalism Beyond Justice: Citizens, Society, and the Boundaries of Political Theory* (Princeton, NJ: Princeton University Press, 2001), p. 67.

[10] Ibid.

[11] Rosalind Hursthouse, "After Hume's Justice," *Proceedings of the Aristotelian Society* 91 (1991), p. 229.

[12] John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard

What is distinct about Rawls, however, is his exclusive focus on the basic-structure institutions of society as the application site of justice. For Rawls, justice requires an agreement on the distribution of benefits and burdens in society, against a background of a broad consensus. However, as Katrina Forrester writes, "[Rawls's] consensual vision of ethics and society, set into the foundations of his theory, had been enabled by the postwar ideology of political consensus," a consensus which is evidently no more.[13] Rawls's later work in *Political Liberalism* grapples with the breakdown in this consensus, which had the effect of weakening his commitment to justice as fairness as the only reasonable conception of justice.[14] Brought on by rapid globalization, free trade, and the digital revolution, contemporary societies exhibit a near total breakdown in consensus along not just political and moral lines, but also social, cultural, and religious ones— even the nature of reality itself. Where Rawls imagined contractors coming to the table to bargain over a just distribution of resources, flesh-and-blood members of real societies appear in danger of leaving the table altogether, and likely *not* in peace.

Rawls's mistake was to assume the continued existence of a stable political system from which we might aspire to an ideal of justice. The inevitable decay of consensus—societal entropy—made his ideal bargain ultimately unattainable. Contrary to the frustrations of philosophers, the problem for modern societies is not the failure to live up to an ideal of justice. The problem for modern societies is a basic lack of stable unity and order, from which the aspiration to ideals becomes possible. For this reason, neo-Aristotelian political philosophy, with its emphasis on what a virtuous person desires and finds attractive, is freshly relevant. Moral agents, as Aristotle argues, need a *telos* (end) to aim at if they want to live well; so, too, does a society. This may explain the general public's renewed interest in ancient moral wisdom, as those who are alienated by the political

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University Press, 1999 [1971]), pp. 9–10.

[13] Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton, NJ: Princeton University Press, 2019), p. 39.

[14] John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005 [1993]), p. xlvii.

divide seek genuine moral instruction amidst the moral chaos of modernity.

Political philosophers might likewise renew their interest in the ancients by advancing the ground well-trodden by neo-Aristotelian virtue ethicists into the realm of virtue *politics*.[15] It is Aristotle, after all, who views ethics and politics as continuous domains of inquiry within what he calls "political science."[16] We do not, according to Aristotle, work out an ethical theory in isolation from politics and then "apply" the theory to political questions. Rather, practical philosophy, whether viewed personally or communally, involves reflection and, above all, the application of prudence to how we ought to live together.

Central to ancient political thought was the ever-present threat of political instability brought about by rival factions. If this sounds unfamiliar to the contemporary observer of politics, consider the world described by Thucydides in his *History of the Peloponnesian War*:

> Society had become divided into two ideologically hostile camps, and each side viewed the other with suspicion. As for ending this state of affairs, no guarantee could be given that would be trusted, no oath sworn that people would fear to break; everyone had come to the conclusion that it was hopeless to expect a permanent settlement and so, instead of being able to feel confident in others, they devoted their energies to providing against being injured themselves.[17]

This is the animating idea behind Aristotle's analysis of constitutional change and decay in the *Politics*. As civic conflict goes barely addressed in the din of liberal political philosophy since the 1970s, I

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[15] See Tristan J. Rogers, *The Authority of Virtue: Institutions and Character in the Good Society* (New York: Routledge, 2020). See also Mark LeBar, "Virtue and Politics," in *Cambridge Companion to Virtue Ethics*, ed. Daniel C. Russell (Cambridge: Cambridge University Press, 2013), pp. 265–89.

[16] Aristotle, *Nicomachean Ethics*, trans. Terence Irwin, 3rd ed. (Indianapolis, IN: Hackett Publishing, 2019), I.2 (hereafter, *NE*).

[17] Thucydides, *History of the Peloponnesian War*, trans. Rex Warner (New York: Penguin Books, 1974), p. 244.

humbly submit that we might want to get over our sense of distance from the ancients whose world increasingly sounds much like ours. However, if we are to learn from the ancients again, we must at least address this distance not by making the ancients more like us—that would commit anachronism—but by becoming more aware of the unchanging human condition with respect to political life. I will ask, then, whether neo-Aristotelian political philosophy can make sense of the modern notion of individual rights.

3. Miller on Aristotle's Concept of Natural Rights

Miller argues that Aristotle has a concept of natural rights, which, in principle, ought to be available to neo-Aristotelians. In a famous passage from the *Nicomachean Ethics*, Aristotle appears to recognize a distinction between justice based on *nature* and justice based on *convention*:

> One part of the politically just is natural, and the other part legal. The natural has the same validity everywhere alike, not by its seeming so or not. The legal originally makes no difference <whether it is done> one way or another, but makes a difference whenever people have laid down the rule.[18]

In other words, the naturally just is so independently of what the laws of a given political community are, such that "only one [political] system is by nature the best everywhere."[19] Elsewhere, however, Aristotle emphasizes the idea that there is no justice without the existence of *some* political community: "justice is a political matter; for justice is the organization of a political community, and justice *decides* what is just."[20]

Now, if we understand *natural* rights to be moral claims attaching to human beings as such, independent of their membership in a political community, there would seem to be little support for the

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[18] Aristotle, *NE*, 1134b19.

[19] Ibid., 1135a6.

[20] Ibid., 1253a35 (emphasis added).

idea that Aristotle has a concept of natural rights. But, as Miller shows, there are really two uses of 'natural' applied to 'rights.'[21] In the first sense, natural rights are moral claims human beings have based on natural justice. In this sense, natural rights depend on the existence of a (naturally) just political system. But in another sense, natural rights are moral claims human beings have *independent* of any political system, that is, in a Lockean state of nature, or simply *qua* human being. As Miller points out, modern theorists of this second sense of natural rights, like Locke, "typically treat rights as universal and inhering in human beings as such apart from any social or political relations."[22] While the Lockean notion of natural rights is foreign to Aristotle's thought, Miller goes on to argue for the claim that Aristotle nevertheless has a concept of rights based on natural justice.

In addition to conceptual objections, Miller encounters a linguistic objection to attributing the concept of rights to Aristotle. The objection is that "it is anachronistic to impute any concept of rights to Aristotle or indeed to any ancient thinker."[23] This is allegedly because there is no term or expression in Aristotle's Greek that corresponds to the modern English expression of 'a right.' If language limits thought, this would be strong *prima facie* evidence that Aristotle did not think in terms of rights. Miller, however, argues that it does not follow that because Aristotle has no single word or expression for rights, he has no concept of rights. Making use of Wesley Hohfeld's influential conceptual analysis of legal rights, Miller argues that Aristotle's thought captures each of Hohfeld's four types of rights claims:

(1) *X* has a *claim right* to *Y*'s *A*ing if, and only if, *Y* has a *duty* to *X* to do *A*.
(2) *X* has a *liberty right* to *A* relative to *Y*, if, and only if, it is not the case that *X* has a *duty* to *Y* not to *A*.
(3) *X* has a *power right* to *A* relative to *Y* if, and only if, *Y* has a *liability* to a change in *Y*'s legal position through *X*'s *A*ing.

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[21] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 88.

[22] Ibid.

[23] Ibid., p. 91.

(4) *X* has an *immunity right* relative to *Y*'s *A*ing if, and only if, *Y* does *not* have a *power right* to *A* with respect to *X*.[24]

In plain language, a claim right is a moral claim that correlates to a duty on the part of others; a liberty right is a freedom one has either to perform some action or not, free from third-party interference; a power right is roughly the authority to create or alter existing moral rules; and an immunity right is the right to be exempt from the authority of another person. Miller finds four Greek expressions in Aristotle corresponding to each of Hohfeld's rights locutions: (i) claim is *to dikaion* ('the just thing'); (ii) liberty, privilege is *exousia* ('liberty'); (iii) authority, power is *kurios* ('authority'); and (iv) immunity is *akuros, adeia* ('without authority', 'immunity'). Furthermore, these concepts share a common function of "resolving disputes between rival claimants."[25] Such disputes concern questions like, "Who is deserving of what?"; "Who is free to do what?"; "Who should rule?"; and "Who is immune from whom to do what?" In other words, these are fundamentally questions about justice.

Recalling Aristotle's original distinction between natural and legal justice, Miller argues that natural justice is the normative basis for these rights claims. While rights depend on a political system, on law—there are no pre-political rights in Aristotle—*just* political rights are those founded on natural justice: "[T]he central thesis of *Politics*, III, is that Aristotle's theory of distributive justice yields a theory of political rights which can be evaluated as natural or unnatural (and hence correct or deviant)."[26] While the viability of Aristotle's theory of justice is beyond the scope of this article, the basic idea is that the best constitutions are those that promote (natural) justice and, therefore, natural rights are those specified by the best constitutions. This is the opposite of the Lockean view according to which the best constitution respects pre-political natural rights. Thus, Aristotle has a concept of

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[24] Ibid., pp. 94–95; see also, Wesley N. Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 26, no. 8 (1917), pp. 710–70.

[25] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 108.

[26] Ibid., p. 123.

natural rights, even if he does not (because could not) uphold the pre-political sense of natural rights associated with Locke. Contemporary neo-Aristotelians, then, might take inspiration from Miller's interpretation of Aristotle, meeting Locke's heirs on their own turf of appealing to rights as claims about justice.

4. Burke's Aristotelian Pedigree

Why should neo-Aristotelians care about Edmund Burke? It is Burke who launches the most famous attack on the concept of pre-political natural rights associated with Locke. "Both Aristotle and Locke," as Miller shows, "view nature as a standard by which legal systems and laws may be compared and evaluated."[27] Whereas Aristotle and Burke interpret "nature" to include the nature of human beings as "political animals," Locke—perhaps influenced by the developments in natural philosophy—views human nature as a blank slate, prior to the institution of government. We can, therefore, read into Burke's critique of pre-political natural rights, the original natural rights tradition associated with Aristotle, as recovered by Miller. The plausibility of this proposal, as I will show, is encouraged by the obvious influence of Aristotle on Burke's political thought.

In the opening chapters of the *Nicomachean Ethics*, Aristotle remarks on the method of political science. The first general principle he appeals to is that "we should not seek the same degrees of exactness in all sorts of arguments alike."[28] Since political science examines "fine and just things," which "differ and vary so much as to seem to rest on convention only, not on nature," it would be a mistake to expect geometric certainty from moral and political arguments.[29] We deal with the messiness of political life not by wishing it away or retreating to moral relativism, but by accepting it in a spirit of epistemic modesty, moderating our claims to suit the nature of the inquiry. In like manner, Burke appeals to "Aristotle, the great master of reasoning," who "cautions us, and with great weight and propriety, against this species

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[27] Ibid., p. 122.

[28] Aristotle, *NE*, 1094b13–15.

[29] Ibid., 1094b15–17.

of delusive geometrical accuracy in moral arguments, as the most fallacious of all sophistry."[30] Burke is thus an Aristotelian at the deepest level of moral and political argument. The mistake of early modern moral philosophers was their ambition to establish morality on rational grounds approaching mathematical certainty. Ironically, the liberating abandonment of Aristotelian natural philosophy encouraged philosophers to ambitiously overlook what is perhaps Aristotle's most important moral insight: moral philosophy is not a deductive science.

Aristotle's influence extends to the substance of Burke's critique of social contract theory. In a famous passage from *Reflections on the Revolution in France*, Burke writes:

> Society is indeed a contract. Subordinate contracts, for objects of mere occasional interest, may be dissolved at pleasure; but the state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, callico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection.[31]

Burke's remarks bear a remarkable resemblance to passages from Aristotle's *Politics*.[32] Aristotle writes of the political community as "[having] the most authority of all . . . [and] aims at the highest, that is

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[30] Edmund Burke, "Speech on Moving His Resolutions for Conciliation with the Colonies," in *Selected Writings and Speeches*, ed. Peter J. Stanlis (Washington DC: Regnery Gateway, 1963), p. 217.

[31] Edmund Burke, *Reflections on the Revolution in France*, ed. Francis Canavan (Indianapolis, IN: Liberty Fund, 1999), pp. 192–93.

[32] Arthur L. Woehl documents the breadth of Burke's familiarity with the ancients and the contents of his library; see his "Burke's Reading." Ph.D. thesis, Cornell University, 1928.

to say, at the good that has the most authority of all."[33] This is Burke's society as a "partnership in every virtue, and in all perfection." Later in the *Politics*, Aristotle considers the necessary and sufficient conditions for the existence of a political community. A political community cannot exist merely "for the sake of life, but rather for the sake of living well, since otherwise there could be a city-state of slaves or animals."[34] Neither can a political community exist as a mere alliance for preventing wrongdoing. Aristotle associates such a view with Lycophron, a Sophist, who promoted a proto-social contract theory according to which "law becomes an agreement, 'a guarantor of just behavior toward one another,' . . . but not such as to make the citizens good and just."[35] Therefore, for Aristotle, the purpose of a political community must be living well, which involves a concern for virtue. A political community is "a partnership in every virtue, and in all perfection."

Burke's ideal of statesmanship also bears a close resemblance to Aristotle. "A disposition to preserve," Burke writes, "and an ability to improve, taken together, would be my standard of a statesman."[36] To do so requires respect for the law: "I am sure it is unjust in legislature, by an arbitrary act, to offer a sudden violence to their minds and their feelings; forcibly to degrade them from their state and condition."[37] Aristotle sounds a similar note of caution, writing "care should be taken to ensure that no one breaks the law in other ways, small violations should be particularly guarded against."[38] Aristotle also prefers reform to revolutionary change: "what should be done is to introduce the sort of organization that people will be easily persuaded to accept and be able to participate in, given what they already have, as

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[33] Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis, IN: Hackett Publishing, 1998), 1252a (hereafter, *Pol.*).

[34] Ibid., 1280a30.

[35] Ibid., 1280b5–12.

[36] Burke, *Reflections on the Revolution in France*, p. 262.

[37] Ibid., pp. 260–61.

[38] Aristotle, *Pol.*, 1307b30.

it is no less a task to reform a constitution than to establish one initially."[39] Finally, like Burke, Aristotle thinks that laws based on custom have the most authority, so that respect for the rule of law requires a respect for custom and tradition before written law.[40]

The only direct reference to Aristotle in Burke's *Reflections on the Revolution in France* occurs in Burke's lengthy critique of pure democracy. Quoting from memory a passage from Aristotle's *Politics*, Burke writes, "[i]f I recollect rightly, Aristotle observes, that a democracy has many striking points of resemblance with a tyranny."[41] Aristotle's criticism is that democracy and tyranny both encourage a kind of lawlessness. The lawlessness of the tyrant, who rules in his own interest, is obvious. In a democracy, though, because justice is defined "by the majority being in supreme authority and by freedom," there are no restraints on the desires of the people, leading them away from the common interest, so that "in democracies of this sort everyone lives as he likes. . . . But this is bad."[42] Burke agrees, asking rhetorically, "what is liberty without wisdom, and without virtue?"[43] Of course, liberty without virtue is vice, and therefore a democracy that elevates liberty of this sort is on a short road to tyranny.

A final similarity between Burke and Aristotle centers on their recognition of natural justice. In a speech denouncing what he viewed as an unconstitutional bill governing the British East India Company, Burke cites "Aristotle, [who] declares that acts of this nature have the most pernicious consequences, and accelerate the ruin of every state."[44] Burke may have had in mind Aristotle's observation that without the careful observance of the rule of law, "illegality creeps in unnoticed, in just the way that property gets used up by frequent small

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[39] Ibid., 1289a1–5.

[40] Ibid., III.15–16.

[41] Burke, *Reflections on the Revolution in France*, p. 225; the reference is to Aristotle, *Pol.* IV.4.

[42] Aristotle, *Pol.*, 1310a30–35.

[43] Burke, *Reflections on the Revolution in France*, p. 361.

[44] Burke, "Bill to Restrain the East India Company," p. 151.

expenditures."[45] Then, in the lines that follow, Burke distinguishes between having the power to do something and having the right, invoking "the eternal laws of right and wrong," which recalls Aristotle's definition of natural justice as "[having] the same validity everywhere alike, not by its seeming so or not."[46] Both Burke and Aristotle, then, acknowledge the rule of law as ultimately founded on the natural law(s) of justice.

5. Burke on Natural Rights

Despite his support for the natural law, Burke is best known as a critic of the revolutionary doctrine of "the rights of men." Since this doctrine is a cousin of the modern theory of natural rights, it is reasonable to wonder whether Burke is entitled to a belief in natural rights. Indeed, many commentators view Burke as a utilitarian, not a natural rights theorist. However, although Burke is critical of natural rights, the utilitarian interpretation of Burke has a hard time making sense of the many positive references to natural rights in his *Reflections on the Revolution in France*. For example, in denouncing the idea that government is created out of natural rights, Burke hedges that such rights "may and do exist in total independence of it [i.e., government]."[47] There are also unambiguously clear statements in support of natural rights in Burke's other writings, mostly decrying injustices committed by existing governments, such as this passage from "Tract on the Popery Laws":

> Everybody is satisfied that a conservation and secure enjoyment of our natural rights is the great and ultimate purpose of civil society; and that therefore all forms whatsoever of government are only good as they are subservient to that purpose to which they are entirely subordinate.[48]

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[45] Aristotle, *Pol.*, 1307b30.

[46] Burke, "Bill to Restrain the East India Company, p. 151; Aristotle, *NE*, 1134b19.

[47] Burke, *Reflections on the Revolution in France*, p. 151.

[48] Edmund Burke, "Tract on the Popery Laws," quoted in Peter J. Stanlis,

Thus, while Burke insists that "[g]overnment is not *made* in virtue of natural rights,"[49] he nevertheless wants to maintain that natural rights are "the great and ultimate *purpose* of civil society." Can he have it both ways? I believe he can, provided we recall Miller's distinction between natural rights based on natural justice and natural rights existing in a state of nature. Government is not made in virtue of natural rights because there are no natural rights existing in a pre-political state of nature. However, if natural rights are based on natural justice, and justice is the purpose of civil society, then it follows that natural rights are part of civil society's purpose. Governments are good to the extent that they conserve and secure the enjoyment of natural rights.

What are these rights? Burke begins his account of "the real rights of men" with the general principle: "If civil society be made for the advantage of man, all the advantages for which it is made become his right."[50] Government, therefore, is made in virtue of what is good for human beings living together, and rights are specific moral claims derived from human need. Burke writes:

> Men have a right to live by that rule [of law]; they have a right to justice; as between their fellows, whether their fellows are in politic function or ordinary occupation. They have a right to the fruits of their industry; and to the means of making their industry fruitful. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favour.[51]

Edmund Burke and the Natural Law (Ann Arbor, MI: The University of Michigan Press, 1957), p. 42.

[49] Burke, *Reflections on the Revolution in France*, p. 151 (emphasis added).

[50] Ibid., p. 150.

[51] Ibid.

Burke goes on to include among these myriad human needs "the want, out of civil society, of a sufficient *restraint* upon their passions."[52] In addition to liberty, we need assurance of restraints not just on the desires of others, but on our own desires, so that we may become capable of virtue. "In this sense," Burke adds, "the restraints on men, as well as their liberties, are to be reckoned among their rights."[53] Government is an enabling and constraining instrument administering to human needs.

Burke's unorthodox statement on "the real rights of men" invites philosophical analysis. For it is tempting to conclude that it is nothing more than a rhetorical flourish. I propose that we reprise Miller's Hohfeldian analysis, which I believe also captures Burke's use of rights language. The most fundamental right Burke mentions is a right to the advantages for which civil society is made. This is a generic claim right, which encompasses the right to justice and a right to a fair portion of society's benefits and burdens. Meanwhile, the language of liberty rights captures the passage beginning, "Whatever each man can separately do . . . ." Burke also plainly upholds a power right under the auspices of the state, which has authority over its citizens. This underscores what Burke calls "[o]ne of the first motives to civil society, and which becomes one of its fundamental rules . . . *that no man should be judge in his own cause*."[54] Finally, if Miller is correct that immunity rights capture the idea of free trade, that is, the relative freedom of economic agents from the authority of the state, then Burke's invocation of a right to the fruits of industry falls under a Hohfeldian immunity right.[55]

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[52] Ibid., p. 152 (emphasis added). Cf. Aristotle: "to be under constraint, and not to be able to do whatever seems good, is beneficial, since freedom to do whatever one likes leaves one defenseless against the bad things that exist in every human being" (*Pol.*, 1318b40).

[53] Burke, *Reflections on the Revolution in France*, p. 152.

[54] Ibid., p. 151.

[55] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 105.

Burke's theory of natural rights is far from systematic. His theory begins with abstract moral claims—for example, the right "to consolation in death"—which must then be concretized in conventions to have practical normative force. As Gabriela Remow explains, according to Aristotle, "it is normatively natural for humans to excel at what is distinctive of their descriptive nature."[56] Thus, the fact that human beings need rituals to process the human universal of grief in the face of death, Burke believes, makes this a matter of natural justice. The exact form that the right "to consolation in death" takes on in a given society, though, depends on the existing conventions of a society. This is how abstract natural rights get converted into tangible moral claims. "The rights of men are in a sort of *middle*," Burke writes, "incapable of definition, but not impossible to be discerned."[57]

Burke's account of natural rights bears a close resemblance to Miller's interpretation of Aristotle. For both Burke and Aristotle, natural rights presume the existence of a political society founded on natural justice, which is filled out by an understanding of what human beings need to live well together. Aristotle's view is taken up by Elizabeth Anscombe, who claims that there is "a way of arguing for a right without appeal to custom, law or contract; and similarly of arguing that some customary right is no right but is, rather, a customary wrong."[58] Anscombe adopts Aristotle's understanding of practical necessity from his *Metaphysics* as "that without which some good will not be obtained or some evil averted."[59] If, then, we take "some good" to be the human good, and suppose that some set of institutions is necessary to achieve the human good, then there can be rights that are necessary relative to the *telos* of the human good. As Hursthouse, who develops Anscombe's view, writes:

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[56] Gabriela Remow, "Aristotle, Antigone and Natural Justice," *History of Political Thought* XXIX, no. 4 (Winter 2008), p. 585. Remow also discusses Burke's similarity to Aristotle on natural justice; see ibid., pp. 597–600.

[57] Burke, *Reflections on the Revolution in France*, p. 154.

[58] Elizabeth Anscombe, "On the Source of the Authority of the State," in *Ethics, Religion, and Politics* (Oxford: Blackwell, 1981), p. 145.

[59] Ibid., p. 139; see Aristotle, *Metaphysics*, V, 1015a.

In being *eudaimonia*-based, it is based on human nature; premises about what human beings need, given their nature, if they are to have any hope of achieving *eudaimonia*, provide the grounds for such laws as must be 'constant and inflexible' amongst just societies, and hence for conclusions about what might naturally be described as 'natural' rights.[60]

Miller identifies a difficulty with such views that ground rights in the claim of practical necessity: "from the fact that it is right for individual *X* to do act *A*, it does not follow that individual *X* has *a* right against some other individual *Y* to do that act. . . . The argument appears to be a *non sequitur*."[61] For example, we can object to Burke's claim that men have a right "to instruction in life," on the grounds that it does not appear to impose any duties on third parties. Indeed, this is where the Hohfeldian analysis of Burke's account of rights seems to break down. However, once we recall that Burke's rights only take on life when they merge with conventions, the duties imposed on third parties are evident. The crucial point is that if rights depend on institutions, then rights and duties are not neatly correlative in the way that the simple Hohfeldian analysis supposes. That men have a right "to instruction in life," if understood as part of a society with an education system with recognized roles, then the right does impose duties on third parties, namely, teachers, parents, and administrators.

To take another example, consider the plausible moral claim that children have a right to the love and care of their parents. Such a right presupposes the institution of the family, which prescribes rights and duties according to the roles of mother, father, and child. Discussing Nussbaum's mention of "family love" as among the goods necessary for *eudaimonia*, Hursthouse considers whether interpreting this as requiring a strict right on the part of parents and children "would probably be impossible to implement, and, if so, not a rule that a just society must have."[62] Even if it does not impose strict duties on

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[60] Hursthouse, "After Hume's Justice," p. 240.

[61] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 374.

[62] Hursthouse, "After Hume's Justice," pp. 237–38.

third parties, this need not invalidate the rights claim. Rather, it constrains its realization according to considerations of prudence. Burke similarly questions "the use of discussing a man's abstract right to food or to medicine," whereas the real issue is "upon the method of procuring and administering them."[63] Just as Burke calls in the aid of the farmer and physician before the professor of metaphysics, the advocate for the right to family love may call in the aid of biological parents before inviting Plato's philosopher-kings into the nursery. In both cases, the right is administered to by prudence, not stipulated *a priori*.

6. Natural Rights and Liberty: Recovering a Conservative Tradition

Thus far, I have answered the challenge that neo-Aristotelianism cannot account for the modern concept of rights by leaning on Miller's interpretation of Aristotle's concept of natural rights. That defense finds an unlikely ally in Burke, who shares Aristotle's concept of rights based on natural justice. This concept of rights, however, appears rather different from the modern concept of *individual* rights, since the Aristotelian concept of rights presupposes a political community, upending the idea that individual rights are held against the authority of the community.

This brings us to what Miller calls Aristotle's "principle of community," according to which "individuals ought to be subject to the authority of the community."[64] Later, Miller adds, "[h]ow central freedom or autonomy is in fact to human perfection and flourishing remains a contested issue . . . so that the extent to which a neo-Aristotelian theory turns out to have a 'liberal' character would seem to depend on this issue to a large extent."[65] Since I have found Aristotle to be an ally of Burke, we may draw on Burke's conservatism to tilt neo-Aristotelian political philosophy away from the liberal character Miller suggests. Doing so follows naturally from the fact that neither Aristotle

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[63] Burke, *Reflections on the Revolution in France*, p. 152.

[64] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 357.

[65] Ibid., p. 377.

nor Burke think liberty is an intrinsic good of living well. Indeed, they both believe that liberty requires restraints that lead to virtue, which are provided for by the institutions of society.

Early in *Reflections on the Revolution in France*, Burke announces proudly that he "love[s] a manly, moral, regulated liberty," that is, a liberty ordered to the virtues.[66] Liberty without virtue "is the greatest of all possible evils; for it is folly, vice, and madness, without tuition or restraint."[67] Here, then, is another way of interpreting Burke's claim that human beings have a right to restraints. For the right to ordered liberty requires not just the freedom to do as one pleases, but the freedom to do what one ought, which cannot come about except through a society that puts sufficient restraints on individuals' desires. Institutions provide the "tuition and restraint" without which ordered liberty is not possible. Virtue grows through our participation in the roles and responsibilities assigned by the mediating institutions of civil society. Ordered liberty is freedom *through* the discipline provided by roles and responsibilities.[68]

The demand for obedience implies that the institutions of the political community have the kind of authority supposed by Aristotle, that is, the most authority since the polis encompasses every other community. Against this general line of argument, Miller argues that Aristotle's "inference seems plausible only because two notions which are distinguished by modern political theorists are fused together in his conception of a polis: viz., the state and society."[69] The state refers to the political and legal apparatus of society that has a monopoly on the use of coercive force, whereas society refers to non-political aspects of

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[66] Burke, *Reflections on the Revolution in France*, pp. 92-93.

[67] Ibid., p. 361.

[68] The ancient Greek tradition associated freedom (*eleutheria*) with the condition of not being a slave. Yet Plato says in the *Laws* that "the rulers are slaves to the law" (715d). Similarly, in the ancient Jewish tradition, God demands of the Pharoah (through Moses): "Let my people go, *that they may serve me* in the wilderness" (Exodus 7:16 KJV, emphasis added). True freedom, therefore, is not the absence of service, but service to what is right and just.

[69] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 358.

society, including the family, civic associations, and so on. Miller goes on to argue that communitarians like MacIntyre commit the same error as Aristotle in their claim "that the community has the right to enforce its moral values upon its members."[70]

Does Burke distinguish the state and society? Burke's memorable phrase of "the little platoons" has become almost synonymous with the idea of civil society as distinct from the state.[71] However, as Richard Boyd notes, "Instead of treating 'civil society' as an antonym for the 'state,' as does the currently prevalent usage, or as synonymous with or merely subordinate to political society, as did the original tradition, Burke calls attention to its conceptual indeterminacy."[72] State and society are conceptually indeterminate, for Burke, because there is no neat line you can draw relative to the *telos* of the political community between the state and society. Indeed, Burke views society holistically as "a partnership in every virtue." What makes the difference between the legal apparatus of the state and the other forms of association, is whether their functions are best realized by means of the coercive power of law or the soft power of social opinion and censure. A rigid distinction between state and society, after all, bears the mark of a liberal assumption that the prevention of wrongdoing (per John Stuart Mill's "harm principle"[73]) is the sole purpose of the law, rather than, as Aristotle and Burke believe, the general promotion of virtue and prevention of vice. In one sense, therefore, the question of whether we can sensibly distinguish state and society returns us to Aristotle's disagreement with Lycophron about whether a community limited to the prevention of injustice is a *political* community in the true sense.

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[70] Ibid., p. 361.

[71] Burke, *Reflections on the Revolution in France*, p. 136.

[72] Richard Boyd, "The Unsteady and Precarious Contribution of Individuals: Edmund Burke's Defense of Civil Society," *The Review of Politics* 61, no. 3 (Summer 1999), p. 471.

[73] John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing, 1978).

A reason to say "no" is found in Burke's insistence that natural rights must be mediated by the laws and conventions of society. If Aristotle is correct that a political community must be concerned with virtue, and virtue and vice depend on education and habits, the institutions of society—because they have a role in education and habits—must also have a role in the inculcation of virtue. What's more, determining the exact shape of natural rights in a given society must take into account the existing institutions, all of which imply restraints in the form of legal restrictions, social opinion, or a combination of both. The family, for instance, prescribes legal rights and responsibilities to its members, which are generally supported by a public morality that reinforces negative attitudes about, for example, the neglect of children. For one who insists on the strict liberal distinction between state and society, such negative attitudes are no part of justice because they are not part of the coercive apparatus of government. However, for Aristotle and, arguably, Burke, public moral judgments of this type are essential to the very existence of society.

A liberal inspired by Mill may object that public moral judgments, while necessary to society, ought not to be endorsed or enforced by law. Mill, for example, considers someone who objects to excessive drunkenness in his society, such that "[i]f anything invades my social rights, certainly the traffic in strong drink does. It invades my primary right of security by constantly creating and stimulating social disorder."[74] Would this justify the legal prohibition of alcohol? Perhaps not, but if we follow Burke, it is not because there is no such "social right" to security and public order, but because it would not be prudent, given the circumstances.[75] *Contra* Mill's "harm principle," the

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[74] Ibid., p. 87.

[75] Patrick Devlin, a critic of Mill, writes, "while a few people getting drunk in private cause no problem at all, widespread drunkenness, whether in private or public, would create a social problem. The line between drunkenness that creates a social problem of sufficient magnitude to justify the intervention of the law and that which does not, cannot be drawn on the distinction between private indulgence and public sobriety. It is a practical one, based on an estimate of what can safely be tolerated whether in public or in private, and shifting from time to time as circumstances change"; see Patrick Devlin, *The Enforcement of Morality* (Indianapolis, IN: Liberty Fund, 2009 [1965]), p. 113.

line between what should be legally enforceable and what left up to social censure is not capable of *a priori* stipulation. The notion that a public morality, then, be among the things necessary for the existence of society, must, in principle, be capable of legal enforcement. This follows from the observation of Aristotle that "if arguments were sufficient by themselves to make people decent, the rewards they would command would justifiably have been many and large."[76] He concludes, though, "they seem unable to turn the many towards being fine and good."[77]

Leaving indeterminate the distinction between state and society need not sanction the domination of society by the state, since their joint role is to promote the end of living well: "Political arrangement, as it is a work for social ends, is to be only wrought by social means."[78] Where that is best achieved by legal means, the purview of the state will loom large; where living well is best promoted by community associations, the institutions of civil society naturally suggest themselves. In both cases, the end of living well, which for Aristotelians requires the virtues, is prior to any value that attaches to liberty as such. Following James Fitzjames Stephen, a contemporary critic of Mill, "the question, How large ought the province of liberty to be? is really identical with this: In what respects must men influence each other if they want to attain the objects of life, and in what respects must they leave each other uninfluenced?"[79]

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[76] Aristotle, *NE*, 1179b5.

[77] Ibid., 1179b10.

[78] Burke, *Reflections on the Revolution in France*, p. 275. Cf. Hursthouse: "If a just law, determining a right, cannot, as things stand, be implemented in a particular society, without necessitating that some members of the society act wickedly or wrongly, then it *cannot* as things stand, be implemented" ("After Hume's Justice," p. 242).

[79] James Fitzjames Stephen, "Liberty, Equality, Fraternity," in *Conservatism: An Anthology of Social and Political Thought from David Hume to the Present*, ed. Jerry Z. Muller (Princeton, NJ: Princeton University Press, 1997), p. 208.

Burke's insight about the relation between state and society proceeds from a recognition that Stephen's questions cannot be answered abstractly. As equal members of "the partnership in all virtue," state and society are mutually dependent. The institutions of civil society need the legal apparatus of the state as a framework of governance and maintenance. The family, for instance, cannot (or will not) exist without legal support and definition. Meanwhile, the state, if it is not to become totalitarian and all encompassing, needs the institutions of civil society as a counterweight to its authority.[80] Contrary to the Socrates of Plato's *Republic*, it is ultimately good that citizens feel an allegiance to their family members that potentially competes with (but ideally complements) their allegiance to the state. The state also needs the institutions of civil society to educate and form good citizens in accordance with the type of regime, which gives broad sanction to a program of public education. To some who might decry that this will require coercion, we have the wise counsel of Aristotle, who writes, "living in a way that suits the constitution should be considered not slavery, but salvation."[81]

Bringing together our discussion of rights and liberty, one may ask whether there are any limits to the principle of community. Must the individual be subject to the authority of the community in all cases? Burke would say "no," for the community must respect the natural rights of its members. This is what led Burke to speak out against the abuses of the British government against Ireland, India, and the American colonies. However, such rights, following Aristotle (not the *philosophes*) ultimately depend on natural justice. The critical issue, then, concerns what natural justice requires, which invites discussion about the good life for human beings. As I have shown, conservatives who follow Aristotle and Burke naturally view this issue as involving restraints as much as liberty, or rather, ordered liberty *through* the restraints supplied by institutions. If they are right, then neo-

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[80] See Robert Nisbet, *The Quest for Community* (Wilmington, DE: Intercollegiate Studies Institute, 2014 [1953]), chaps. 10–11.

[81] Aristotle, *Pol.*, 1310a35.

Aristotelian political philosophy might fruitfully move in a more conservative direction than it has hitherto.

7. Conclusion

In fact, a "virtue politics" that reorients political philosophy around the good life instead of abstract ideas about justice and rights would be generally beneficial. Liberal theorists following Rawls's late work fixate on the depth of our deep disagreements about justice, where libertarians, liberals, and socialists all offer rival visions of distributive justice. All tend to agree, however, that part of the point of settling questions of justice is to leave people free to pursue whatever conception of the good life they see fit. It is a virtue of neo-Aristotelian political philosophy to recognize that this is a mistake, and that we cannot disentangle disagreement about what a just society is from disagreement about what a good (or just) life is. Justice is both a virtue of society and a virtue of a person. Instead of lamenting the depth of such disagreement, which leads to despair, we might take inspiration from Aristotle, who sees disagreement about the good as an invitation to pursue wisdom together.

One place to start might be taking seriously the idea that a political community, along with the traditions that make it up, is itself a rich source of views about the good life. A renewal of shared traditions might encourage genuine civic feeling in ways that mitigate the worst excesses of political polarization. We need less heated arguments about abstract political concepts like social justice, and more engagement with shared goods like local community, family, religion, education, and civic participation. These are among the goods secured by political association. "The rights of men in governments," Burke writes, "are their advantages; and these are often in balances between differences of good; in compromises sometimes between good and evil, and sometimes, between evil and evil."[82] In learning to compromise, we learn how to live together; and in learning itself, there is virtue and living *well* together.

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[82] Burke, *Reflections on the Revolution in France*, p. 154.