

The Polis and Rights

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“The end of the polis qua society is the virtuous and happy life, but it does not follow that the function of the polis qua state is to use coercive force against its citizens so as to make them virtuous and happy.”

—Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics*¹

“Principles have a way of asserting themselves even if they are not explicitly recognized.”

—F. A. Hayek, “Individualism: True and False”²

1. Introduction

There has recently been a rising tide of criticism of liberalism from conservative thinkers such as Patrick Deneen, Mark T. Mitchell, and Yoram Hazony.³ These thinkers, who in some respects follow criticisms advanced by Alasdair MacIntyre, Michael Sandel, and

¹ Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Clarendon Press, 1995), p. 360.

² Friedrich A. Hayek, “Individualism: True and False,” in Friedrich A. Hayek, *Individualism and Economic Order* (Chicago, IL: University of Chicago Press, 1980), p. 1.

³ Patrick J. Deneen, *Why Liberalism Failed* (New Haven, CT: Yale University Press, 2018); Mark T. Mitchell, *The Limits of Liberalism: Tradition, Individualism, and the Crisis of Freedom* (Notre Dame, IN: Notre Dame University Press, 2019); and Yoram Hazony, *Conservatism: A Rediscovery* (Washington, DC: Regnery Gateway, 2022).

Charles Taylor,⁴ seek to show two things. First, that liberalism is part of Modernity's movement away from Aristotelian insights, particularly as they pertain to human nature, human good, natural right, and the polis. Second, that such movement leads to not only political disarray, but ultimately ethical nihilism. Simply put, liberalism does not represent the zenith in political theory but a dead end.

Crucial to this conservative criticism is the assumption that liberalism is more than a political philosophy. Liberalism is a comprehensive view of human life and society tied to the epistemological and ontological assumptions of its leading proponents in modern philosophy, such as Rene Descartes, Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and John Stuart Mill. Liberalism as such is incapable of being grounded in different philosophical assumptions, including Aristotelian ones.

There is truth in this claim, because it would be anachronistic to identify Aristotle with liberalism in any sense. Indeed, Aristotle sees the purpose of positive law as the promotion of human good rather than liberty. For him, statecraft was soulcraft. However, that does not show that there cannot be a neo-Aristotelian⁵ grounding of liberal political philosophy. In our various works⁶ seeking to show how this is

⁴ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd ed. (Notre Dame, IN: Notre Dame University Press, 2007); Michael J. Sandel, "The Procedural Republic and the Unencumbered Self," *Political Theory* 12, no. 1 (February 1984), pp. 81–96; Charles Taylor, "Atomism," in Charles Taylor, *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985), pp. 187–210.

⁵ The term "neo-Aristotelian" here means, as Miller explains it, "modern theorizing which incorporates some central doctrines of Aristotle. . . . Such theorizing should critically assess his claims in light of modern philosophical theory, scientific research, and practical experience, revise or reject them where necessary, and consider their application to . . . contexts not envisioned by him"; see Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 336 n. 1.

⁶ These primarily include: Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, IL: Open Court, 1991); Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (University Park, PA: Pennsylvania State University Press, 2005); Douglas J. Den Uyl and Douglas B. Rasmussen, *The Perfectionist Turn: From Metanorms to Metaethics* (Edinburgh: Edinburgh University Press, 2016); and Douglas B. Rasmussen and Douglas J. Den Uyl, *The Realist Turn: Repositioning*

possible, a major influence on us has been Fred D. Miller, Jr.'s *Nature, Justice, and Rights in Aristotle's Politics*. What follows is an account of how liberalism, properly understood, can have an Aristotelian basis, and thus why the conservative (and communitarian) critique of liberalism fails. In the process, we take advantage of many of the points we have developed in arguing for such a foundation, but we also integrate some crucial insights that Miller makes on behalf of such a grounding. We are particularly interested in Miller's account of Aristotle's view of the polis and his claim that Aristotle was an ancestor of the natural rights tradition.⁷

2. Conservative Challenge to Liberalism: True versus False Individualism

Although other values have been added to contemporary liberalism, such as equality, liberalism has for the most part been viewed as the political philosophy that holds liberty as the paramount value or end for the state (or, more generally, for the political and legal order). However, there are at least three meanings of liberty. The first is our natural ability to focus our conceptual capacity on understanding our surroundings and directing our actions, which is the human capacity for self-direction.⁸ The second is conducting our lives so that we are not imprisoned by ignorance or vice, that is, we are living in a flourishing or virtuous manner. The third is that relations among people in society are ordered in such a way that people are not subject to the initiation of physical compulsion (or the threat thereof) in its various forms.⁹ To be exact, the society is governed by a political and legal order whose function is to protect and preserve an individual's

Liberalism (Cham, CH: Palgrave Macmillan, 2020).

⁷ Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 17.

⁸ As Aquinas states: "Man is master of his actions through his reason and will; whence too, the free will is defined as 'the faculty and will of reason'"; see Thomas Aquinas, *Summa Theologiae*, I-II, 1.1. We elaborate on this point: "Self-direction is simply the act of bringing to bear one's reason and judgment on one's surroundings, making plans to act within and upon them, and conducting oneself accordingly" (Rasmussen and Den Uyl, *Norms of Liberty*, pp. 88–89).

⁹ See *ibid.*, pp. 89–90 n. 5.

basic, negative, natural rights of life, liberty, and property.¹⁰ It is the third sense of liberty that concerns liberalism as we (and Miller) understand and defend it, and this will involve an account of natural rights. There is nothing about focusing on this third sense of liberty that requires rejecting the other two meanings; they are necessary for defending the third.

Liberalism need not deny the common conservative claim that liberty is conducting oneself in a morally upright and self-perfecting manner. In fact, liberalism can accept that liberty is self-governance, when understood in terms of attaining and maintaining a flourishing or self-perfecting human life. As we understand and defend it, liberalism has no truck with those who reject moral knowledge or seek to adopt a moral minimalism that reduces morality merely to respecting liberty in the third sense mentioned above. Rather, the robust character of the moral life makes a social order governed by basic negative rights ethically necessary.

It is here, however, that we encounter a frequent complaint against liberalism, namely, that its conception of human nature is atomistic in seeing human beings as primarily non-relational beings who develop into maturity with little or no social interaction. This is an old charge, but it has been recently powerfully voiced in Hazony's account of political conservatism, which bears full statement here:

The conservative paradigm regards political order as hierarchical in nature, consisting of multiple levels: An *individual* is born into a *family*, which combines with other families to form a *clan* (today often called a *community* or *congregation*). Clans combine to form a *tribe* within the alliance of tribes that together constitute a *nation*. This natural hierarchical ordering means that the individual is not perfectly free and equal, but is born into a structure that involves certain constraints and unequal relations from the start. As far as we know, human beings have been born into such political hierarchies for as long as we have lived upon the earth.

This political hierarchy is held in place by bonds of mutual loyalty. . . . The human individual regards family members such as his parents, husband or wife, and children as an integral part of himself, and strives to protect them accordingly. This attachment to others whom I experience as

¹⁰ The possibility of their self-direction is thereby protected.

part of myself is called *loyalty*. When two or more individuals are loyal to one another in this way, a bond of *mutual loyalty* emerges. Bonds of mutual loyalty are what make collections of individuals into families, tribes, and nations—strong political structures capable of sustaining great duress and propagating themselves over generations. Political obligation, whether to one's family, tribe, or nation, does not arise from consent but from the bonds of mutual loyalty and gratitude that bind us to the other members of such *loyalty groups*, including especially the past generations that built up what we have and handed it down to us.

This conservative view does not eliminate consent from the foundations of politics. Individuals can become members of a new family, tribe, or nation in adulthood, and such membership is often by way of mutual consent. . . . But the fact that some relations are established by consent does not alter the fundamental character of political life. It remains the case that mutual loyalty—which is largely inherited, rather than chosen—is the primary force that establishes political order and holds its constituent parts in place.¹¹

Hazony argues that since liberalism ignores these basic features of human nature, its entire approach to politics is fundamentally flawed.

However, this account is for the most part not something with which a neo-Aristotelian defender of natural rights liberalism need take issue. First, in terms of their origin and development, it would be erroneous to conceive of human beings as existing apart from such basic relationships. Second, it would also be an error to suppose that such relationships are initially the result of their consent. Human beings do not choose to be social, but they are from the start social animals. We are naturally disposed to live with and among others. Third, human beings in various ways care for others as part of their self-conception, and thus there are networks of mutual loyalties prior to discussion of the need for or purpose of a political and legal order. A discussion of the purpose of a political and legal order comes within the context of human beings living with and among others. Thus, it would be a fundamental error to ignore the relational character of human living or assume that sociality arises from isolated individuals deciding to create social arrangements.

¹¹ Hazony, *Conservatism*, pp. 101–2.

Nonetheless, it does not follow from this that these relationships are independent realities capable of existing apart from the individuals who ground them, or that human individuals have no nature or identity apart from these relationships in terms of which the worth of these relationships can be evaluated. Furthermore, it does not follow that families, clans, tribes, and nations have a good of their own separate and apart from what is good for the individual human beings who constitute them. They are, after all, constituted by relations of mutual loyalty among individuals.

Families, clans, tribes, and nations are in Aristotelian terms “friendships of advantage,” because it is to the mutual advantage of each individual to be in such relationships. While this does not require that such relationships initially be established through consent (and they usually are not), it does allow for the possibility of changing or exiting relationships, if the relationships are judged no longer to be advantageous to the individuals involved. People, as Hazony admits,¹² can change their relationships and loyalties can also change. This is not to deny that such relationships can develop into ones in which one simply enjoys another’s company (friendships of pleasure) or comes to see another as the embodiment of one’s own values (friendships of character).¹³ Nor is this to deny that such associations can develop determinate ends of their own, such as a team, whose achievement its members know and explicitly accept, and in which they understand their good.¹⁴ Yet this is not to say that a family, clan, tribe, or nation must be such an association with a determinate end or good of its own separate from the good of the individuals involved.

The polis (“city-state”) is “natural” in the sense that it exists in order to fulfill and promote the natural ends of humans. It results from human capacities and dispositions, *not* from some internal principle of its own. “Natural” does not only mean something that has an internal cause; it is also extended to all things that result from natural ends and dispositions of individual human beings. The polis is *partly* determined by the natural social dispositions of individuals and *partly* achieved by

¹² Ibid., p. 102.

¹³ For a discussion of a neo-Aristotelian view of friendships and their role in commerce and the civil order, see Rasmussen and Den Uyl, *Liberty and Nature*, pp. 173–219.

¹⁴ See our discussion of civil and enterprise associations below.

human craft, which is used to complete and enhance the natural endeavor. Human reason and natural inclinations can work together as causes of a thing—in this case, the polis.¹⁵

To consider the social nature of human beings, as Hazony depicts it, is, however, not yet to consider politics in the contemporary sense, that is, as a concern with the state or the political and legal order. This brings us to an important point Miller recognizes regarding an ambiguity in the concept of a polis, which we quote in the article's first epigraph. While it is true that human beings are social and naturally enter into networks of mutual loyalty, this is not yet to talk about the political and legal order. What is true for a human being *qua* member of the polis in the sense of a social order is not necessarily true of a human being *qua* member of the polis in the sense of political and legal order. (We return to this issue below in Section 3.) On this note, Friedrich Hayek points out a central weakness of much conservative thought:

When I say that the conservative lacks principles, I do not mean to suggest that he lacks moral conviction. The typical conservative is indeed usually a man of very strong moral convictions. What I mean is that he has no political principles which enable him to work with people whose moral values differ from his own for a political order in which both can obey their convictions. It is the recognition of such principles that permits the coexistence of different sets of values that makes it possible to build a peaceful society with a minimum of force.¹⁶

Conservatives (and communitarians) grasp the social character of human good, but they seem not to face up to the reality that human good is also highly individualized. This is in part due to their failure to understand the character of individualism, which, as we note above, they falsely hold to be atomistic.¹⁷ In this regard, conservatives adopt

¹⁵ This paragraph is a summary of Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 41–45.

¹⁶ Friedrich A. Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1960), pp. 401–2.

¹⁷ For a fuller discussion of this issue, see Douglas J. Den Uyl and Douglas B. Rasmussen, "The Myth of Atomism," *The Review of Metaphysics* 59 (June

the same misunderstanding of liberalism as do their left-wing counterparts.

The Enlightenment thinkers who ushered in liberalism—that is, Hobbes, Locke, and Rousseau—did so on an individualist foundation. When Hobbes describes the state of nature, from which political order arises, he first describes it as “solitary.”¹⁸ Rousseau’s natural man lives completely alone.¹⁹ Even Locke, for whom some community might be conceivable in the state of nature, generally discusses unattached individuals.²⁰ The alleged problem with this framework is that it ignores or minimizes the social nature of human beings and human life. Doing so not only undermines the importance of a central feature of our humanity, namely, our social nature, but because it ignores our social nature, it thereby pays little or no attention to the conditions for a good and well-functioning social order. The various ills complained of will differ from theorist to theorist, but all in one way or another hold that liberalism’s individualism is to blame.

Liberalism’s central text about individualism is perhaps Hayek’s “Individualism: True and False.” He says the following about “true” individualism:

[True individualism] is primarily a *theory* of society, an attempt to understand the forces which determine the social life of man, and only in the second instance a set of political maxims derived from this view of society. This fact should by itself be sufficient to refute the silliest of the common misunderstandings: the belief that individualism postulates. . . the existence of isolated or self-contained individuals, instead of starting from men whose whole nature and character is determined by their existence in society.²¹

2006), pp. 843–70.

¹⁸ Thomas Hobbes, *Leviathan*, ed. Edwin Curly (Indianapolis, IN: Hackett, 1994), p. 76.

¹⁹ Jean-Jacques Rousseau, *A Discourse on the Origin of Inequality*, in *The Social Contract and Discourses*, trans. G. D. H. Cole (Hawthorne, CA: BN Publishing, 2007), p. 107.

²⁰ John Locke, *Second Treatise*, in *Two Treatise of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), sec. 95, pp. 330–31.

²¹ Hayek, “Individualism: True and False,” p. 6.

True individualism is found mainly in eighteenth- and nineteenth-century British authors such as Edmund Burke, Adam Smith, and Lord Acton as opposed to continental thinkers of the period such as Rousseau. There are crossovers, such as Alexis de Tocqueville, representing true individualism, and Mill, representing the false variety. False individualism manifests itself in the belief that the individual, through reason, can grasp social wholes and direct them toward common social goals. The “true” individualist, by contrast, believes that individual reason is limited and fallible. Thus, we seek to cooperate with others on a more limited basis while being unable to predict or manage what social order would develop exactly from those interactions. In a sense, true individualism embraces spontaneous order while the false variety seeks collective decision-making.

What leads to false individualism, ironically, is the belief that individuals can stand above society—in other words, stand asocially—so that they are able to understand it and thereby manipulate it in ways they deem appropriate. True individualism immerses the individual into society in such a way that the individual does not stand outside of society when forming judgments concerning social interaction, which implies that her judgments are thereby more social and will be more limited in scope. False individualism, in seeing the individual as capable of comprehending and separating herself from the panoply of actions and events in a functioning society, is thus conducive to collectivism. True individualism, which at first looks more individualistic in its anti-collectivism, ends up giving more importance to the social context for individual action.²²

Economists are fond of saying that “all change occurs at the margins.” We believe that this might be a useful trope for discussing individualism. We like the trope of change occurring at the margins because it suggests that movement depends on, and occurs within, a larger context from which it proceeds to a more particular end that constitutes the change. Thus, the context of traditions, community, social life, and the like form the basis from within which the individual moves toward her own particularity. There is neither wholesale immersion of the individual in the social order nor the ability to separate from that order altogether into some sort of radical and independent “free”

²² The epistemological analogue to this distinction would be constructivism versus realism; see Rasmussen and Den Uyl, *The Realist Turn*.

individual. We are thus sympathetic to Hayek's true individualism, but we have a slightly different understanding of individualism and its importance.

We have argued elsewhere that the human *telos* (end) is individualized.²³ This claim suggests first that humans are teleological beings whose ends are significantly peculiar to themselves as individuals. As noted above, we believe that nothing in that statement implies that individuals can or should be asocial or antisocial. Sociality is the ferment from which one's individuality grows and in which it is embedded. In saying this, we suggest also that individuals are not just numerically differentiated, but they are also substantially differentiated. By substantially differentiated we mean that the *telos* differs for each individual because fulfilling the *telos* is a function of the choices, environment, dispositions, talents, and the like that the individual must negotiate to achieve that *telos*. Given the different dimensions of each of these factors, what constitutes fulfillment for you may be different from what it is for another person.

This fulfillment process's particularity puts a special emphasis on self-directedness. The term "self-directed" implies first an idea of a freedom to choose among alternatives as the self confronts her matrix of choices. Second, it implies that there is a self who would need to understand itself sufficiently to make those right choices, that is, choices that recognize unique and common dimensions that can be integrated into a personal outcome. Hayek is not concerned with the ontology of the individual, nor even with the nature of morality. As noted in the above quotation, he pits what might be called social constructivism against a kind of evolving order. Social constructivists suppose that individuals can so understand society and social processes that they can design societies as they see fit, which is false individualism. True individualism, by contrast, holds that individuals concentrate their focus on what and who is close by, leaving society to develop out of those particularized interactions.

In false individualism, social coordination is designed. In true individualism, social coordination is the result of voluntary cooperation. Voluntary cooperation, however, requires the presence of principles followed by all:

²³ Rasmussen and Den Uyl, *Norms of Liberty*, pp. 132-34; Den Uyl and Rasmussen, *The Perfectionist Turn*, pp. 41-42; and Rasmussen and Den Uyl, *The Realist Turn*, pp. 36-37.

Our submission to general principles is necessary because we cannot be guided in our practical action by full knowledge and evaluation of all the consequences. So long as men are not omniscient, the only way in which freedom can be given to the individual is by such general rules to delimit the sphere in which the decision is his. There can be no freedom if the government is not limited to particular kinds of action but can use its powers in any ways that serve particular ends.²⁴

Here, we can see the moral centrality of self-directedness linked to a social theory of cooperation and coordination.

Hayek, however, fails to make the moral connection, leaving the “true” alternative in true individualism as essentially an arbitrary choice. This is why his only defense is a negative one of saying that we need freedom because of our limitations in knowledge. This is not a false claim and it is useful in combatting the hubris of false individualism. However, it somewhat misses the point. This form of individualism is true because individuals need to be responsible for their choices in order to achieve their *telos*. Whether or not our knowledge is limited, and the degree to which it is so, is somewhat irrelevant to the need to make choices. More or less knowledge does not define the centrality of self-directedness in action and thus in social life. With the limited-knowledge argument alone, one is always open to the objection that in X case we have more knowledge now and can proceed accordingly. In the positive case for freedom grounded in a call to protect self-directedness, that argument makes little difference.²⁵ Freedom is a conditional requirement for self-perfection and thus a moral good, whether our knowledge is limited or not. It is equally important to note that freedom does not mean a separation from society, but rather, an incorporation of it into one’s choice set.

²⁴ Hayek, “Individualism: True and False,” p. 19.

²⁵ We contrast an ethics of responsibility with an ethics of respect. It is not that the latter necessarily leads to false individualism or a lack of concern with freedom, but it is more comfortable with universalization in a way that could serve as a catalyst for false individualism; see Den Uyl and Rasmussen, *The Perfectionist Turn*, pp. 14–30.

Like Hayek, we hold that the conservative attack on liberalism for being individualistic is largely an attack on false individualism. Yet Hayek also raises the question of whether a society might be able to become too individualistic in the false sense, namely, “too unwilling voluntarily to conform to traditions and conventions” and refusing to recognize “anything which is not consciously designed or which cannot be demonstrated as rational to every individual.”²⁶ Because human beings can make choices, there is always the chance that a society may move in paths destructive of freedom. However, this last point goes both ways: societies can decline or advance. What is most problematic for true individualism is forgetting the moral importance of freedom for the sake of some other supposed social gain. Valuing freedom is perhaps the first principle of a sound political order. Recognizing our limitations checks the hubris of any movement toward social constructivism.

3. The Polis and Avoiding the Moralistic and Constructivist Fallacies

Miller’s identification of two different senses of “polis” proves invaluable both for a true individualism that recognizes the highly individualized and profoundly social character of human good, and for a neo-Aristotelian argument on behalf of a natural rights classical liberalism. The process of attaining human good, which we identify with self-perfecting or human flourishing,²⁷ requires a polis in the sense of a community or society. The primary need for basic, negative natural rights is recognized when searching for an ethical basis for a polis in the sense of a state or, more generally, a political and legal order that provides the legal backdrop or structure for communal and social life.

Self-perfecting or human flourishing is a real activity and an actuality. Although the process of its actualization starts with what could be understood as tradition—what Aristotle called the *endoxa* (established opinion)—it is completed only through one’s own exercise of practical wisdom (*phronēsis*). Practical wisdom is the primary virtue necessary for the practice of all other virtues and realization of basic goods. It makes what is virtuous and good abstractly considered into something real and definite, concrete and particular. Contrary to

²⁶ Hayek, “Individualism: True and False,” p. 26.

²⁷ See Den Uyl and Rasmussen, *The Perfectionist Turn*, pp. 33–64; and Rasmussen and Den Uyl, *Norms of Liberty*, pp. 111–52.

thinkers such as John Finnis and Robert George (as well as Amartya Sen and Martha Nussbaum), individual human beings are more than loci for the instantiation of so-called generic goods and virtues that constitute human flourishing. Furthermore, human flourishing, which is always and necessarily individualized, is agent-relative as well. That is to say, it is always and necessarily the goods and virtues *for* or *of* some individual or other. It is not agent-neutral.²⁸ As Aristotle defines it, virtue “is a state of character concerned with choice, lying in a mean, i.e., *the mean relative to us*, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it.”²⁹ As a cognitive-independent reality, human flourishing is not abstract, universal, or impersonal, but is a concrete, particular, personal, self-directed activity. Such a moral life is robust with no reduction to the moral minimalism sometimes found among advocates of classical liberalism. Human flourishing is both plural and objective. Saying “One size does not fit all” does not mean that there cannot be a right size for someone.

This robust account of the moral life reveals the need for ethical principles that will reconcile the individualistic and social character of human flourishing. This need requires an ethical foundation for a political and legal order that will not require as a matter of principle sacrificing different forms of human flourishing to one another.³⁰ Since human flourishing as a cognitive-independent reality is not abstract, universal, or impersonal, but is always particular, concrete, and personal, and since self-direction is the *fundamentally* essential feature of human flourishing (needed for exercising practical wisdom), protecting the possibility of self-direction becomes the paramount ethical concern of the political and legal order. This is so not only because self-direction is necessary for the possibility of moral responsibility (and thus human flourishing), but also because it

²⁸ Ibid.

²⁹ Aristotle, *Nicomachean Ethics*, trans. W. D. Ross, in *The Basic Works of Aristotle*, ed. Richard McKeon (New York: Random House, 1968), 1107a1–3, p. 959 (emphasis added).

³⁰ There are more criteria; see Rasmussen and Den Uyl, *Norms of Liberty*, p. 272.

is the only feature of human flourishing the protection of which is compatible with the plurality of forms of human flourishing.³¹

The single most basic and threatening encroachment on self-direction,³² and thus on moral action, is the use of physical force.³³ Thus, we urgently need an ethical basis for a system of positive law whose foundational principles provide negative rights that protect the possibility of self-direction. Since these principles are based on an account of human nature, such rights can be classified as natural rights.³⁴

Besides bringing together the individuality and sociality of human flourishing, natural rights are also the political and legal expression of the common good of society that, in turn, provides the legal conditions for the possibility of more specific and various forms of the pursuit of common goods. To appreciate fully that rights are the political and legal expression of the common good of a society, but not the same as more specific forms of pursuits of common good, we must consider more closely the ambiguity in Aristotelian thought regarding the polis to which Miller alerts us. It is an error to assume that what is true for a polis understood as a society or community is also true for it understood as a political and legal order, and vice-versa. For example, the function of the polis understood as a society or community can be to provide conditions that will assist individuals in flourishing, but it does not follow that the same is true of the state or political and legal order. Assuming that this follows is to commit the moralist fallacy of

³¹ This paragraph is taken, with minor abridgments, from Douglas B. Rasmussen, "A Neo-Aristotelian Basis for Liberty and Virtue," *Law & Liberty* (September 13, 2022), accessed online at: <https://lawliberty.org/grounding-liberty-in-virtue/>.

³² All forms of encroachment on self-direction by others have their basis in physical compulsion. For a detailed account of this point and discussion of related matters, see Rasmussen and Den Uyl, *Norms of Liberty*, pp. 89–90 n. 15, p. 90 n. 16, pp. 279–80, and pp. 303–11.

³³ Self-direction should not be confused with autonomy in either the Kantian or Millian sense. Self-direction is simply "the act of using one's reason and judgment upon the world in an effort to understand one's surroundings, to make plans to act, and to act within or upon those surroundings"; see Rasmussen and Den Uyl, *Norms of Liberty*, p. 89.

³⁴ See Rasmussen and Den Uyl, *The Realist Turn*, pp. 98–100.

equating statecraft with soulcraft.³⁵ Conversely, the order that laws provide may depend upon the presence of a lawgiver or statesman for their execution and direction, but it does not follow from this that the orderly and coordinated conduct we find throughout a society or community requires such direction or planning. Assuming that this follows is to commit the constructivist fallacy of thinking that all orderly and coordinated conduct among persons must be the result of human design or intention.³⁶ Liberalism challenges all such question-begging assumptions.

Michael Oakeshott's distinction between an "enterprise association" and a "civil association" is useful here.³⁷ We can grasp the common good of a society or community in two different ways. An enterprise association is an association of persons who share a common purpose that is a determinate end. That is to say, the end is an object of a purpose with identifiable characteristics that can specify appropriate and inappropriate courses of action for the realization of that end in concrete circumstances. Human flourishing is much too diverse to be such an end, so enterprise associations are more suited to attaining determinate ends with a relatively narrower range of applicability. These run the gamut from familial relationships that nurture to private businesses and corporations that sell a product or service to non-profit enterprises that perform educational or charitable functions. A society consists of a vast array of enterprise associations, which work within the wider context of a civil association.

Civil associations, by contrast, are rule-governed relationships among free and equal persons whose rules specify common responsibilities rather than common ends, purposes, or tasks. These rules are for a large, diverse society or community, which Hayek calls "the great society,"³⁸ and in which many people pursue flourishing lives in diverse ways. The common good for this type of association consists in persons following and enforcing the rules that specify

³⁵ Rasmussen and Den Uyl, *Norms of Liberty*, pp. 66–75.

³⁶ Rasmussen and Den Uyl, *Liberty and Nature*, pp. 152–54.

³⁷ See Michael Oakeshott, "On the Civil Condition," in Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975), pp. 108–84.

³⁸ Friedrich A. Hayek, *Law, Legislation and Liberty: The Mirage of Social Justice*, Vol. 2 (Chicago, IL: University of Chicago Press, 1978), pp. 133–52.

common responsibilities. For the liberal order we defend, the common good of the political community just is the legal structure that protects the possibility of self-direction. As Ayn Rand notes:

It is only with abstract principles that a social system may *properly* be concerned. A social system cannot force a particular good on a man nor can it force him to seek the good: it can only maintain conditions of existence which leave him free to seek it. A government cannot live a man's life, it can only protect his freedom. It cannot prescribe concretes, it cannot tell a man how to work, what to produce, what to buy, what to say, what to write, what values to seek, what form of happiness to pursue—it can only uphold the principle of his right to make such choices. . . . It is in this sense that “the common good” . . . lies not in *what* men do when they are free, but in the fact *that* they are free.³⁹

Protecting the possibility for self-direction provides the basis for connecting the ethical order with the political and legal order, for only such a system is compatible with the highly individualized and profoundly social character of human flourishing.⁴⁰ This legal structure is characterized by basic, negative rights to life, liberty, and property. Liberalism, as we defend it and as Miller suggests, can maintain its neo-Aristotelian basis and yet avoid blurring the difference between a community and its political and legal structure.⁴¹

4. Conclusion

It should be clear that our approach to understanding the polis is neo-Aristotelian and that our thinking has benefited from Miller's

³⁹ Ayn Rand, “From My ‘Future File’,” *The Ayn Rand Letter* 3, no. 26 (September 23, 1974), pp. 4–5 (first emphasis added).

⁴⁰ See Rasmussen and Den Uyl, *Liberty and Nature*, pp. 66–68 and 174–91; Rasmussen and Den Uyl, *Norms of Liberty*, pp. 81–83, 141–43, and 269–71; Den Uyl and Rasmussen, *The Perfectionist Turn*, pp. 53–54 and 60–61; and Rasmussen and Den Uyl, *The Realist Turn*, p. 21.

⁴¹ Most of the material in the last three paragraphs is, with slight abridgments, also found in our forthcoming essay, “Human Flourishing and Private Enterprise,” in the *Oxford Handbook on Private Enterprise*, ed. Edward Stringham.

work. Furthermore, our argument on behalf of individual rights, briefly sketched above, is neo-Aristotelian. Our neo-Aristotelian principles include the following: a teleological conception of the human person, natural sociality, flourishing as our *telos*, the centrality of the virtues, the primacy of practical wisdom, and a realist conception of human nature. While our argument on behalf of individual natural rights and that of Miller's might not be the same, we concur with his claim that Aristotle was an intellectual ancestor of natural rights. This is not to say that Aristotle was a classical liberal, but there are rich resources in his thought that can be used to ground an argument for natural rights.⁴²

⁴² We thank Roger Bissell, Teodora Nichita, and the editors of this volume for their assistance.