

## RASMUSSEN AND DEN UYL ON NATURAL RIGHTS

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In this paper I want to investigate the character and force of the argument for natural rights offered in Douglas Rasmussen and Douglas Den Uyl's *Liberty and Nature: An Aristotelian Defense of Liberal Order*.<sup>1</sup> The argument, which is presented in chapter three of their book, is complex and complexly dependent on the individualistic eudaimonist ethics which is developed in the book's previous chapter. My interest in understanding how the argument is supposed to work encompasses an interest in understanding which elements of that eudaimonism play what role within the grounding of natural rights. I am not at all confident that my criticism of their argument is based upon a correct understanding of it. If my criticism is based upon misunderstanding, then at least it may still have the beneficial effect of eliciting clarifications about the true structure of the argument. I shall begin by recounting, as stage-setting, what I take to be the crucial elements of Rasmussen and Den Uyl's eudaimonism; then I shall turn directly to the case for natural rights.

Rasmussen and Den Uyl's grounding of their Aristotelian ethic centers on the notion of natural function. This is the notion that spans the gap which otherwise would exist between the factual and the normative realms. The natural function of an object or process of a given kind is the activity or deployment of that object or process which promotes the attainment of the end whose possible attainment explains the existence of and/or illuminates the nature of that kind of object or process. The natural end of an object or process of a given kind is the outcome whose possible attainment provides this (functional) explanation. For instance, the natural func-

tion of human hearts is their pumping oxygen-rich and nutrient-rich blood through the human body, this being the end whose possible attainment explains the existence of human hearts and/or illuminates their nature. It is by understanding the natural end and natural function of an object or process of a given type that we can evaluate specific instances of the activity or deployment of an object or process of that kind. This is because an object or process functions *well*—functions as it ought—if and only if its activity or deployment does effectively promote its natural end.<sup>2</sup>

Linking up with this claim about the nature and normative significance of natural ends and natural functions is the crucial contention that the natural function of human valuation, the process by which human beings identify, pursue, and attain ends, is the sustenance of human life. For it is the need to sustain life in the face of continuous challenges to it which explains human valuation. The end of human life as a process of identifying, pursuing, and attaining ends is the maintenance of this very process of value-attainment (45). Rasmussen and Den Uyl offer a number of further characterizations of the end of human life. The end of human life is the actualization of the distinctive human potentialities (45, 46). It is the attainment and maintenance of the “mature state” of human existence (46). It is human flourishing (36). And beyond these characterizations, there are at least four further claims within this Aristotelian ethics which seem to me to be relevant to the argument for natural rights. Quickly and/or roughly these are:

1. Value is agent-relative. For each human being, it is that person’s flourishing that is of ultimate value (56). Rationally, each must recognize the equal ultimacy of the value of each other person’s flourishing. But these other instances of flourishing are not, as such, ends to which our first agent’s pursuits ought to be directed. There is a plurality of ultimate values—one for each being capable of flourishing.

2. The primary virtue by which one lives well is rationality. Two distinct claims are offered in support of this contention. The first is that successful goal pursuit for human beings requires that we “apprehend the world in conceptual terms” and that we bring “intelligence and understanding to bear on the problems and issues . . . life presents” (33). The second is that our potential for rationality is our fundamental potentiality and, hence, that its actualization is most fundamental to *our* actualization (56).<sup>3</sup> Through some combination of these claims<sup>4</sup> we arrive at the conclusion that “the crucial element in an Aristotelian ethics is the idea that living rationally or intelligently is the natural end, function, or *ergon* of a human being” (35).<sup>5</sup>

3. Human flourishing consists in a certain complex of human activity rather than in certain results of human action conceived of as distinct from that activity. This distinguishes Rasmussen and Den Uyl’s Aristotelian ethics from both standard consequentialism and standard deontology. Contrary

to the former, it ascribes value directly to actions and dispositions, while, contrary to the latter, the evaluation of actions and dispositions remains directly tied to the cause of value (59-61).<sup>6</sup>

4. Although rationality is the primary virtue, the form of all valuable, self-perfecting action is autonomy or self-directedness. No human activity can genuinely contribute to the flourishing of an agent unless the agent is autonomous with respect to that activity:

Human flourishing does not consist in the mere possession and use of the goods required for successful human living. Rather, human flourishing or eudaimonia consists in a person taking charge of his own life so as to develop and maintain those ends. . . . (63)<sup>7</sup>

Great stress is placed upon this good of self-directedness. It is said to be “the very form, the only form, in which life in accordance with virtue (human flourishing) can be lived” (74).

With this stage-setting completed, let us turn to the Rasmussen/Den Uyl case for natural rights. And let me begin by revealing my key assertions about their case. I shall maintain that (i) there are in reality two quite distinct arguments—I label them the “expression in a social context” argument and the “obligation to self” argument; (ii) each of these arguments satisfies one of two theoretical conditions Rasmussen and Den Uyl place upon an acceptable doctrine of rights—I label these conditions the “priority of rights” condition and the “primacy of the self” condition; (iii) unfortunately, each of these arguments violates the condition it does not satisfy; and (iv) while Rasmussen and Den Uyl will probably insist that there is a single argument at work, and while, within their exposition, the “expression in a social context” argument does metamorphose into the “obligation to self” argument, my sense is that they retreat back to the former argument and perhaps are wise to do so.

It is instructive to begin with an argument for rights which is presented by Rasmussen and Den Uyl but on which they choose not to rely as a rationale for rights (93-96). This argument—which I will label the “natural function” argument—appeals to a norm (or perhaps one should call it a meta-norm) that is highly congenial to the Rasmussen/Den Uyl perspective and to a further claim of theirs about the natural end of human value-promoting behavior. The norm is: Conduct or respond to the occurrence of activities in accordance with their natural function. For each activity which one cannot conduct because it is the activity of another agent, this norm proscribes thwarting that other agent’s conducting the activity in accordance with its natural function. Rasmussen and Den Uyl’s further claim is that self-directedness is so fundamental to any activity’s contributing to the flourishing of the agent engaged in the activity that self-directedness is an

essential constituent of the natural function of human value-promoting behavior. Given this further claim, any action by one agent which precludes or undercuts the self-directedness of another agent thwarts that agent's conducting his activity in accordance with its natural function. Thus, any such action violates the norm which forbids thwarting that other agent's conducting his activity in accordance with its natural function. The "natural function" argument concludes that, in virtue of this norm, each agent is obligated not to so direct the behavior of others, and, therefore, each has a correlative right against all not to have his activities so directed.<sup>8</sup>

Rasmussen and Den Uyl's rejoinder to the "natural function" argument is striking. What they say is:

Yet this does not show that X has a right to be self-directed or autonomous. It only shows at best that Y, in virtue of his natural end as a human being, has an obligation to respect X's self-directedness or autonomy. (96)

Despite the slight suggestion that they might want to challenge the inference to Y's obligation toward X, the core of Rasmussen and Den Uyl's complaint is that a right of Y established as the conceptually posterior correlative of an obligation of X is not the sort of moral entity for which they are searching. The "natural function" argument and the sort of right it discloses seems to violate each of the two conditions they propose to impose upon a satisfactory doctrine of rights. It violates the "priority of rights" condition according to which rights are conceptually prior to their correlative obligations, and it violates the "primacy of the self" condition according to which the authors' "Aristotelian ethics gives primacy of place to the self and not to others" (62). The "natural function" argument violates the latter condition because the reason it provides to Y to constrain his actions toward X is not at all a function of that constraint's contributing to Y's well-being.

For Rasmussen and Den Uyl, what I call the "expression in a social context" (or "social expression") argument has neither of these purported defects. Let me begin by providing some of the passages which, I think, are central to this argument, and then follow with my gloss upon these passages.

(a) "[T]he individualism which holds that individuals can be a unique source of their own values gives rise to the idea of moral territorialism . . ." (105).

(b) "The moral territory we as individuals possess allows us . . . to 'clash with impartiality' " (105).

(c) "The concept of rights . . . is necessary to preserve the moral propriety of individualism . . ." (105).

(d) “[T]he rights we have are held by us because they are right within the context of a need for a compossible set of moral territories. Since we admit to a large degree of value pluralism . . . , rights define the basic ways in which that pluralism can express itself in relation to others” (106).

(e) “[D]oes human flourishing . . . require that there be a moral concept which provides for a moral territory that protects individualism and is both deontically universal and irreducible? The answer is unequivocally ‘yes’ ” (113).

As I understand this argument, rights in the form of “moral territory” represent the rational expression of individualistic eudaimonism which obtains among individuals engaging in or confronted with the opportunities and dangers of social interaction. Rights represent the rules which are appropriate to interpersonal interaction among rational beings each of whom has his own well-being as his ultimate end. Rights are the appropriate expression of individualistic eudaimonism in the “social context.” They are the appropriate projection of eudaimonism into the “social context” because they are protective of each person’s self-perfecting pursuits and, more specifically, are protective of the essential aspect of self-perfecting pursuits which is endangered by others, viz., self-directedness. And they are impartially protective of each distinct individual by protecting that aspect of flourishing which is essential to each individual, whatever the particular character of his own good. This is how rights “blend impartiality and diversity” (104). Furthermore, by representing each person’s rights as the appropriate interpersonal expression of that person’s teleological mission, Rasmussen and Den Uyl portray rights as conceptually prior to their correlative duties:

It is true that one ‘ought to respect another’s basic rights(s)’, but the reason that restraint is due is not because of what I owe you, but because of my own principled commitment to human flourishing. (106)

Within the “social expression” argument, is it theoretical or practical reason that calls on us to affirm “the objective requirements for producing a compossible set of moral territories consistent with the diversity of value flourishers” (107)? Insofar as the “social expression” argument is distinct from the soon to be described “obligation to self” argument, the answer to this question is that it is theoretical reason. For the force of the passages that I have cited is that the ascription of rights to those individuals who stand at the threshold of interpersonal engagement is a rational projection, into this social state, of the impartial recognition of each of them as moral ends-in-themselves. Since reason endorses a “principled commitment to human flourishing” (106), it must also endorse the interpersonal rules which are appropriate to individuals’ flourishing in a social context.<sup>9</sup> Since

reason endorses "the moral propriety of individualism" (105), it must also endorse rights which are the moral claims that sanctify and preserve this individualism in social interaction. These rights are, so to speak, actualized by one's entrance into interaction with others who, in virtue of those rights, are obligated not to contravene one's self-directedness.

From the perspective of Rasmussen and Den Uyl, the problem with this argument is that, while it makes *A*'s right against *B* conceptually prior to *B*'s obligation to *A*, it does so by ascribing a moral status to *A*—a moral standing for *A vis-à-vis B*—which is not a function of *B*'s prospective flourishing. *B* has theoretical reason to acknowledge *A*'s status as a right-holder quite independently of the practical significance for *B* of *A*'s being accorded this status. This clashes with the "primacy of the self" condition. It constitutes a departure from an ethics that "gives primacy of place to the self and not to others" (62). This defect accounts for the metamorphosis that can be observed in *Liberty and Nature* in which the "social expression" argument is transformed into the "obligation to self" argument.

Throughout the passages which I have read as constituting the former argument, Rasmussen and Den Uyl insist that rights are not fundamentally a manifestation of "what I owe you" (106), or of "what one owes another" (106). But the import of these remarks evolves from the priority of rights over obligations to the idea that "it is not what I owe others, *but rather what I am obligated to do for myself* that grounds rights" (107; emphasis added). The "principled commitment to human flourishing" which gives rise to rights is now to be understood as a commitment to *my* flourishing—albeit a commitment which is informed by my belief that my flourishing is best promoted by my acquiring certain virtues (internalized principles) among which is adherence to a system of individual rights. Within the emerging "obligation to self" argument, the reason one has to accord others their rights—indeed, to believe that there exist rights to accord—is practical reason. The "need" for "a compossible set of moral territories" or for "moral space" for each individual (106, 114) is not now the theoretical need for a form of moral individualism appropriate to the social state, but rather the practical need for adherence to such a structure of rights if *I* am to flourish. Affirming and according these rights to all will best promote what practical reason tells me I have ultimate reason to promote, viz., my own flourishing.<sup>10</sup>

This is why Rasmussen and Den Uyl pass immediately from the claim that what grounds rights is what I am obligated to do for myself, to a consideration of Henry Veatch's view that "natural rights are derived from duties one naturally owes to oneself" (108). According to Veatch, each individual *A* has eudaimonic obligations of self-perfection to himself, and, in virtue of these obligations to self, all other persons are obligated not to prevent *A*'s self-perfecting activity. However, Rasmussen and Den Uyl reject Veatch's view. Their main criticism is that his argument cannot provide *A*

with any right protective of non-self-perfecting behavior. *A* will, at most, have rights vindicating his rightful, i.e., dutiful, actions (108-9). How, then, does Rasmussen and Den Uyl's grounding of rights on obligations to self differ from Veatch's? For these authors, what *A* owes himself for the sake of his own well-being includes his support for and adherence to a system of rights universally protective of self-directedness. Thus, on their "obligation to self" argument, *B*'s rights against *A* are grounded on *A*'s obligations to himself. Unfortunately for Rasmussen and Den Uyl, while this nicely satisfies the "primacy of the self" condition, it violates the "priority of rights" condition. For *B*'s rights now exist in virtue of *A*'s obligations—not *A*'s obligations to *B*, but (worse yet?) *A*'s obligations to himself.

At the core of the "obligation to self" argument is the striking claim that each person is most likely to flourish if he scrupulously adheres to a system of rights protective of self-directedness<sup>11</sup>—at least as long as other persons similarly adhere to those rights. Can this claim be made plausible other than by stipulating that genuine flourishing requires this adherence? One would expect Rasmussen and Den Uyl to support an affirmative answer by bringing to bear their entire doctrine of the human good and the human virtues and, perhaps, by marshaling historical, sociological, and economic generalizations congenial to classical liberalism. But, instead, the discussion that concludes their case for natural rights proceeds entirely in terms of identifying a principle or concept that "protects these basic features of human flourishing" (114). The "moral propriety of individualism and pluralism" is repeatedly cited as the basis for a framework within which "individual human beings may go about determining, creating, and achieving their own values" (114). And the authors answer "unequivocally 'yes' " to the question "[D]oes human flourishing as we have described it require that there be a moral concept which provides for a moral territory that protects individualism?" (113). Unfortunately, whatever the merits of these remarks, they simply cannot lend credence to the striking claim at the core of the "obligation to self" argument. For they represent a retreat back to the "expression in a social context" argument and to the prospect that not all of ethics can be explained in terms of obligations to self.

### Postscript: Rights as Meta-Normative Principles

Clearly my most basic qualms about the natural rights theory developed by Rasmussen and Den Uyl concern that doctrine's aspiration to be consistently and thoroughly teleological. More specifically, my concern is that in failing to incorporate a deontological turn within their doctrine, Rasmussen and Den Uyl fail to capture an essential feature of natural rights. What I have in mind is that these rights constitute moral side-constraints on one's

behavior rather than substantive prescriptions of particular courses of behavior. Rasmussen and Den Uyl are eager to affirm this distinctive property of rights. However, I believe that their affirmation is undercut by the "obligation to self" account of rights, according to which one's reason for acknowledging rights is entirely a matter of acknowledgment of and compliance with these moral claims being instrumental for and partially constitutive of the advancement of one's own prescribed ends. The affirmation of rights as moral side-constraints can only be grounded and preserved by an account of rights in which the existence of other agents as beings with a moral status one must recognize, plays a more fundamental role.<sup>12</sup>

Rasmussen and Den Uyl attempt to affirm the side-constraint character of rights without affirming that these constraints fundamentally reflect, for each constrained agent, the moral status of other rational agents. This is accomplished by an equivocation in the meaning assigned to the proposition that rights are meta-normative principles. When it is first introduced, this proposition amounts to the claim that rights function as moral side-constraints. They are not "specific prescriptive rules" which guide this or that individual's pursuit of ends; they do not specify ends. Rather, rights specify "only the conditions under which their pursuit [i.e., the pursuit of ends] is legitimate" (105). Especially given their commitment to construing the normative realm teleologically, it is not surprising for Rasmussen and Den Uyl to want to mark off the practical reasons one has in connection with others' rights from one's end-oriented reasons by labeling the former "meta-normative." But one can readily accept that rights are "meta-normative" in this specific sense and still recognize that these "meta-normative" side-constraints confront one in one's moral deliberations—confront one as the manifestation of others' moral standing. Thus, if one continues to understand the proposition that rights are meta-normative as the claim that they function as side-constraints, one will be pushed toward a deontological turn which Rasmussen and Den Uyl do not want to make. And, in some cases, standard normative (i.e., teleological) and nonstandard normative (i.e., meta-normative) considerations may even come into conflict.

To avoid both the push toward the deontological turn and the prospect of such conflict, Rasmussen and Den Uyl shift to a different understanding of "meta-normative." Given this alternative understanding, the proposition that rights are meta-normative amounts to the claim that rights are not "principles whose function is to guide personal conduct" (113). Rather, rights provide "the normative basis to law" and "guidance to the creators of a constitution" (112). Rights now are construed as heuristics for the construction of a justifiable legal order and not as constraints on behavior which confront individuals in their ordinary course of behavior. Perhaps it will be acknowledged that individuals will be confronted with and constrained by the legal rules which are erected on the basis of rights. And perhaps it will be further acknowledged that these rules will some-

times call for behavior which conflicts with that recommended by standard normative (i.e., teleological) considerations. But since it will be the institutional emanations of rights—perhaps merely accidental features of those emanations—and not rights themselves that will confront and constrain one's pursuit of ends, and may even conflict with that pursuit, Rasmussen and Den Uyl can avoid acknowledging the contra-teleological character of rights.

Unfortunately, there is no justification for the crucial transition from the first sense of "meta-normative" to the second. The argument implicitly at work seems to be: (i) Since rights do not constitute "specific prescriptive rules" (105) disclosing particular ends to be pursued, "they do not provide normative guidance to individuals in the conduct of their lives" (111-12); (ii) Hence, they must instead provide "guidance to the creators of a constitution" (112). The relevant problem is within claim (i). For, while rights as moral side-constraints do not constitute "specific prescriptive rules," they do nevertheless provide (restraining) normative guidance to individuals in the conduct of their lives. They guide individuals to constrain the means by which they pursue their various ends.

Moreover, Rasmussen and Den Uyl must acknowledge this normative guidance by rights in both state-of-nature and unjust-legal-regime cases. Surely the authors should want to say that at least part of the reason that Anna has for not killing peace-loving and nonthreatening Bella within a state of nature, or under a legal regime that has endorsed the killing of peace-loving and nonthreatening Bella, is Bella's *right* not to be killed. Surely they should want to say that what is at the core of the wrong done to Bella in either case is the violation of Bella's *rights*. I say "should want to say" because, apparently anticipating the present criticism, Rasmussen and Den Uyl seem to resolve not to use the vocabulary of rights and rights violation for describing interactions such as Anna and Bella's. They insist that the view that rights "do not provide normative guidance for individuals in the conduct of their lives" does not preclude "that in the conduct of their lives human beings have particular moral obligations to respect the self-directedness of others." But they also insist "that rights are not the concept which specifies those moral obligations" (111-12).

Presumably, in the state of nature or under an unjust regime, Anna has an obligation to respect Bella's self-directedness, and that obligation would be violated were Anna to kill Bella, but it would be erroneous to describe Bella as having a right against Anna not to be killed. Since rights, in the second sense of "meta-normative," are only rules guiding the construction of a just legal regime, all that can be said in the language of rights when Anna kills Bella in a state of nature or under an unjust regime is that Anna has acted in a way that would be prohibited in a rights-sensitive legal order. This really does move the conception of natural rights out of the core of ethics in a way that is very surprising for natural rights

theorists.

Furthermore, it leaves Rasmussen and Den Uyl with the following dilemma. Either Anna's obligation to Bella is ultimately a matter of obligations that Anna has to herself, or Anna's obligation to Bella is a side-constraint on Anna's behavior reflective of Bella's moral status. In the former case, Rasmussen and Den Uyl will not be able to account for the side-constraint character of Anna's obligation (a side-constraint character usually associated with a right correlative with that obligation). In the latter case, Rasmussen and Den Uyl will be endorsing the existence of side-constraining obligations which cannot be construed as dependent correlatives of rights. For there will be, on their view, no rights for those obligations to be dependent correlatives of.

1. Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (La Salle, IL: Open Court, 1991). Subsequent citations to this work will appear parenthetically in the text. This paper was presented at a symposium on *Liberty and Nature* organized by the American Association for the Philosophic Study of Society. Aside from stylistic changes, I have added note 10 and the postscript.

2. Here I appeal to formulations of my own which are cited by Rasmussen and Den Uyl. In particular, see Eric Mack, "How to Derive Libertarian Rights," in *Reading Nozick*, ed. Jeffrey Paul (Totowa, NJ: Rowman and Littlefield, 1981). In my formulations, natural function and natural end are distinct, whereas Rasmussen and Den Uyl seem to conflate the two. See, e.g., their statement that "there is an end or function that a living thing has in virtue of its nature, and this end or function is the source of all other ends or functions (values) the living thing might have" (46).

3. The two claims are linked by way of Rasmussen and Den Uyl's identification of (1) whatever is the distinctive potential of a thing, with (2) that feature of the thing the activity or deployment of which keeps it in existence. For they contend that "[t]he actualization of a being's potentialities is needed because a being cannot remain in existence, cannot be the sort of thing it is, if it does not actualize its potentialities, and remaining in existence as the sort of thing it is is the natural end or function of a being" (35).

4. Cf. also: "Conceptually attending to the world is the *method* of using our mind and constitutes the distinctively human way of living" (64); and: "Living rationally or intelligently is a human being's unique excellence—*arete*" (71).

5. Perhaps it is at least in part through this sort of insertion of rationality into the content of eudaimonia that Rasmussen and Den Uyl hope to support the claim that acting in accordance with the rational conclusion of (what I shall be calling) the "expression in a social context" argument must contribute to one's well-being. In the language I suggest in note 10, the insertion of this rationality into the content of eudaimonia means that one has instrumental reason to act in accordance with inferential reason.

6. See, e.g., Rasmussen and Den Uyl's claim that "[t]he morality of our actions is judged by normative principles, not consequences, and yet these principles are based on the final ends of human flourishing which, when achieved, constitute that-for-the-sake-of-which morality . . . exists" (60).

7. Part of the virtue of rationality, as it is broadly construed by Rasmussen and Den Uyl, is that it is necessary for self-directedness (65-66). Cf. also their claim that "human flourishing

does not merely require that a human being possess health, wealth, pleasure, and friendship; he must rather attain these goods through the exercise of his own *reason and intelligence*. Thus, *self-directedness* or *autonomy* remains the central or primary feature of rational or intelligent living" (72; emphasis added).

8. Cf. the argument cited by Rasmussen and Den Uyl from Mack, "How to Derive Libertarian Rights" (96).

9. In terms of the basic relationship between "the moral propriety of individualism" and rights, Rasmussen and Den Uyl entirely endorse Ayn Rand's claim that "[r]ights' are a moral concept—the concept that provides a logical transition from the principles guiding an individual's actions to the principles guiding his relationship with others—the concept that preserves and protects individual morality in a social context . . ." (111; quoted from Rand, "Man's Rights," in *The Virtue of Selfishness* [New York: Signet, 1964], p. 92).

10. The terminology of "theoretical" versus "practical" reason does not well convey the contrasting character of the "social expression" and "obligation to self" arguments. Perhaps it would have been better to speak of "inferential" reason versus "instrumental" reason. The idea is that (1) within the "social expression" argument, the conclusion that persons are rights-bearers is to be inferred from the recognition that each person's well-being is his ultimate normative purpose plus the recognition that a structure of individual rights is the interpersonal expression or manifestation of this pluralism of ends—what is crucial is the *conceptual* relationship of the conclusion and its premises; whereas (2) within the "obligation to self" argument, the recognition of this structure of rights recommends itself to each individual as a necessary instrument of his well-being—what is crucial is the *causal* relationship between affirming and complying with rights and one's well-being.

11. Or to a legal order constructed on the basis of such a system of rights.

12. The existence of others with this moral standing does play this more fundamental role within the "natural function" and "expression in a social context" arguments.