

# REASON PAPERS

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## Reason, Rights, and the Rule of Law: A *Festschrift* for Fred D. Miller, Jr.

Edited by Carrie-Ann Biondi

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## Editorial and Appreciation for Fred D. Miller, Jr.

It is with great joy that *Reason Papers* presents a *Festschrift* for Fred D. Miller, Jr. He is not only one of the original members of the *Reason Papers* Advisory Board since the journal's founding in 1974—a position he still holds—but he also contributed an article to that first volume. The publication of this issue seeks to honor the centrality of Miller's supportive role throughout the nearly fifty years that *Reason Papers* has existed as well as his excellence as a scholar, mentor, and colleague.

This volume is somewhat unusual for a *Festschrift* in including a symposium with new commentary on an article Miller first published thirty years ago in addition to the usual collection of full-length original articles. The driving force behind this symposium is a suggestion made in 2017 by Irfan Khawaja to resurrect an important debate about Kantian metaphysics in order to do justice to a difficult-to-locate article Miller contributed to that debate. The debate originally occurred between George Walsh and Fred Miller at a session of the Ayn Rand Society held at an American Philosophical Association Meeting on December 29, 1992. After that debate, Walsh's paper was published in *The Journal of Ayn Rand Studies*,<sup>1</sup> and then both Walsh's and Miller's papers were published in *Objectivity*.<sup>2</sup> The journal *Objectivity* ceased operations many years ago, the volume the debate appeared in is not available online, and hard copies are rare to find. Miller's article has thus been largely inaccessible until its appearance

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<sup>1</sup> George V. Walsh, "Ayn Rand and the Metaphysics of Kant," *The Journal of Ayn Rand Studies* 2, no. 1 (2000), pp. 69–103.

<sup>2</sup> George V. Walsh, "Ayn Rand and the Metaphysics of Kant," *Objectivity* 3, no. 1 (2001), pp. 1–27; Fred D. Miller, Jr., "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant'," *Objectivity* 3, no. 1 (2001), pp. 28–37.

in the present volume. Stephen Boydston, one of the commentators in our symposium and the former Editor-in-Chief of *Objectivity*, graciously allowed *Reason Papers* to reprint Miller's article.

Since earning his Ph.D. in Philosophy from the University of Washington in 1971, Miller has published over one hundred articles, primarily about Aristotle's and Plato's political, moral, and metaphysical thought. His groundbreaking interpretation of Aristotle's *Politics*—*Nature, Justice, and Rights in Aristotle's Politics* (1995)—established him as one of the most highly regarded scholars of ancient Greek philosophy. Miller is also co-editor of *A Companion to Aristotle's Politics* (1991); *Freedom, Reason, and the Polis: Essays in Ancient Greek Political Philosophy* (2007); *Reason and Analysis in Ancient Greek Philosophy: Essays in Honor of David Keyt* (2012); and *A History of the Philosophy of Law from the Ancient Greeks to the Scholastics* (2nd ed. 2012). In recognition of his service to the profession, he was elected President of the Society for Ancient Greek Philosophy for 1998–2004.

While Miller has made major contributions to ancient philosophy, he has also been active in many other areas of philosophy—from business ethics and metaphysics to rights theory and philosophy of law. As if all that wasn't enough, before popular culture and philosophy gained ascendancy as a field of study, he demonstrated vision and creativity in co-editing *Thought Probes* (2nd ed. 1989), a popular anthology and textbook on learning philosophy through science fiction.

This all-too-brief summary of Miller's voluminous philosophical achievements offers only a glimpse into who he is as a person. I first came to know him as a tireless, devoted, and supportive mentor with rigorous epistemological standards. He co-directed my doctoral dissertation in philosophy and guided me in my ancient Greek translation studies for ten years at Bowling Green State University, where he was a philosophy professor for forty years (1972–2012). Miller embodies the paradigm of Scholar-Mentor in equal measure, as pictured below:



**Cropped photo (L to R): Mahesh Ananth, Fred Miller, Carrie-Ann Biondi**  
(Ancient Greek Translation class, Bowling Green State University, 1998; image originally appeared in Social Philosophy and Policy Center, *1996–1998 Report*)

Mentors are often viewed as those who work on the sidelines to support their apprentices on the long journey toward mastery, stepping away as mentees test their wings to take flight. This characterization partially captures Miller’s mentorship. While he is too modest to put it this way, his own level of mastery as a scholar is so high that his work shines like the North Star, inspiring us to stretch ourselves to reach new heights. He thus guides his mentees as much by example as by support and feedback. Miller’s example, though, extends beyond his scholarship. His patience, thoughtfulness, integrity, and practical wisdom provide a model for how to live a flourishing life. Of the many life lessons and pearls of wisdom I have learned from him, one that has paid dividends a thousandfold is “progress not perfection.” Keeping that advice firmly in mind (as well as on a sticky note affixed to my computer during graduate school) has helped me to

keep moving forward more times than I can count—including on the present volume—to create a life well-stocked with value.

I also watched firsthand, while working as a copyediting assistant for the journal *Social Philosophy & Policy*, how Miller used his thirty-year tenure (1981–2012) as Executive Director of the Social Philosophy and Policy Center to support the work of hundreds of scholars across the disciplines through stimulating conferences held twice a year and visiting fellowships. He has a remarkable ability to bring together individuals who hold very different views to foster lively, civil, and productive discussion about controversial issues. This reveals Miller’s commitment to intellectual independence and academic freedom as well as the conditions of liberty that make them possible.

Although Miller retired from Bowling Green State University and has been an Emeritus Professor there since 2013, he has done the opposite of slowing down. Retirement has given him the time to translate and write detailed commentaries on Aristotle’s *De Anima* and *Parva Naturalia* (2018) as well as pseudo-Alexander’s commentary on book Lambda of Aristotle’s *Metaphysics* (2021). Never one to let grass grow under his feet, Miller’s most recent project includes a compilation of sixteen revised essays that he has published over the past fifty years to include in a forthcoming volume entitled *Aristotelian Statecraft*.

From the content of Miller’s philosophical work to his devoted mentorship and expert discussion-facilitator skills, it is no wonder that he and his work have had a profound and lasting effect on many people. We can see that influence at play in the wonderful array of contributions to this *Festschrift*. Contributors range from former colleagues, students, and friends to those influenced by Miller’s work across a range of philosophical topics.

It takes the dedication, support, and hard work of many people to create a volume such as this one. I am grateful to all the enthusiastic contributors to this volume for their insightful original work and patience with my often-extensive copyediting suggestions, to Shawn Klein for allowing me to retake the journal’s helm for this special issue, to Irfan Khawaja for suggesting the symposium, to Stephen Boydston for allowing us to reprint Miller’s article from *Objectivity*, and to Arlene Bady and anonymous donors for their generous support in making possible a limited print run of this *Festschrift*. I offer a special note of appreciation for Pamela Phillips—a fellow former

graduate student of Miller's—who was a lifesaver at the eleventh hour with her experienced proofreading eye.

Honoring Fred Miller with a *Festschrift* after all he has done for his graduate students, his colleagues, and the philosophy profession seems both to fall short of what he deserves and to be the most fitting way to show our deep regard for him. *O Didaskalos*,<sup>3</sup> for all you have done for us, this volume of *Reason Papers* is for you.

Carrie-Ann Biondi  
Independent Scholar

[www.reasonpapers.com](http://www.reasonpapers.com)

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<sup>3</sup> Ancient Greek for “teacher.”



## Symposium: Ayn Rand and the Metaphysics of Kant

### Comments on George Walsh, “Ayn Rand and the Metaphysics of Kant”\*

Fred D. Miller, Jr.  
Bowling Green State University (Emeritus)

\*As delivered before the Ayn Rand Society at the American Philosophical Association Meeting, December 29, 1992. [This paper was then published in *Objectivity* 3, no. 1 (2001), pp. 28–37. We are grateful to Stephen Boydston for permission to reprint this article in *Reason Papers*, with minor edits to correct typos.]

Professor Walsh has provided an illuminating overview of Kant’s metaphysics and of Ayn Rand’s critique of Kantianism. As Walsh remarks, Rand viewed her own philosophy as diametrically opposed to Kant’s concerning every fundamental issue of metaphysics, epistemology, ethics, politics, and religion. Walsh’s paper is confined to issues of metaphysics and epistemology, which Rand regarded as most fundamental.

According to Rand’s interpretation, Kant’s epistemology and metaphysics leads to the view—as summed up by Leonard Peikoff—that “reason is impotent to discover anything about reality.”<sup>1</sup> Rand finds in Kant the argument that “man’s knowledge is not valid because his consciousness possesses identity.”<sup>2</sup> The gist of her interpretation is that reality as human beings perceive it

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<sup>1</sup> Leonard Peikoff, *The Ominous Parallels* (New York, 1982), p. 24; quoted in Walsh, p. 1.

<sup>2</sup> Ayn Rand, *Introduction to Objectivist Epistemology* (New York, 1990; expanded second edition), p. 80 [cited henceforth as IOE]; cited in Walsh, p. 1.

is a distortion. The distorting mechanism is man's conceptual faculty: man's basic concepts (such as time, space, existence) are not derived from experience or reality, but come from an automatic system of filters in his consciousness (labeled "categories" and "forms of perception") which impose their own design on his perception of the external world and make him incapable of perceiving it in any manner other than the one in which he does perceive it. This proves, said Kant, that man's concepts are only a delusion, but a *collective* delusion which no one has the power to escape. Thus reason and science are "limited," said Kant; they are valid only so long as they deal with this world, with a permanent, predetermined collective delusion, but they are impotent to deal with the fundamental metaphysical issues of existence, which belong to the "noumenal" world [which is] . . . unknowable; [but] is the world of "real" reality, "superior" truth and "things in themselves" or "things as they are"—which means: things as they are not perceived by man.<sup>3</sup>

As Walsh correctly observes, Rand here ascribes a series of alleged statements to Kant but does not provide direct quotations in support of her interpretation. The source of the foregoing interpretation is Rand's essay, "For the New Intellectual," which is a polemic and a manifesto for Rand's intellectual followers rather than a work of scholarly exegesis. This work offers a broad-brush history of philosophy containing a number of unflattering cameos of famous thinkers, of which the above sketch of Kant is typical. This approach leaves Rand open to the charge that she is misrepresenting Kant or misunderstanding him, or both. Indeed, I think that Walsh has compiled detailed and persuasive evidence that the explicit statements regarding reason and reality which Rand has attributed to Kant do not agree with Kant's own characterization of his position.

However, even if one agrees with Walsh that Rand attributes to Kant claims regarding reason and reality that he does not explicitly make, there remains the more important question: has Rand accurately identified the fundamental implications or presuppositions of Kant's metaphysics and epistemology—regardless of whether Kant

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<sup>3</sup> Rand, *For the New Intellectual* (New York, 1961), pp. 32–33 [cited henceforth as FNI]; cited in Walsh, p. 1.

acknowledged them as such—when she asserts that “the entire apparatus of Kant’s system . . . [rests] on a single point: that man’s knowledge is not valid because his consciousness possesses identity.”<sup>4</sup> The first question, then, is whether Rand is here offering a fundamental insight into Kantian epistemology or whether, as Walsh maintains, this is “a point of misinterpretation.”<sup>5</sup> The second question is whether Rand has good reasons for rejecting the Kantian view. These are the principal questions which I wish to pursue in this commentary.

Let us begin with the form of argument which Rand imputes to Kant. Walsh denies that Kant ever endorsed this argument, although he correctly remarks that Kant’s alleged major premise is found in Aristotle. Aristotle himself derived this premise from Anaxagoras, a Pre-Socratic philosopher:

. . . since everything is a possible object of thought, mind in order, as Anaxagoras says, to dominate, that is, to know, must be pure from all admixture; for the co-presence of what is alien to its nature is a hindrance and a block: it follows that it can have no nature of its own, other than that of having a certain capacity. Thus that in the soul which is called thought (by thought I mean that whereby the soul thinks and judges) is, before it thinks, not any actually real thing. For this reason it cannot reasonably be regarded as blended with the body: if so, it would acquire some quality, e.g. warmth or cold, or even have an organ like the sensitive faculty: as it is, it has none.<sup>6</sup>

Anaxagoras evidently thought that the mind would be impeded from knowing its objects if it contained any foreign impurities. It would be like a frosted window or a tarnished mirror. Anaxagoras’s principle is that the mind can have knowledge of reality only if it possesses no determinate nature of its own. I shall refer to this as *the transparency requirement*.<sup>7</sup> As we can see from the passage I just

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<sup>4</sup> IOE, p. 80.

<sup>5</sup> Walsh, pp. 15–19.

<sup>6</sup> Aristotle, *De Anima* III.4.429a18-27; revised Oxford translation.

<sup>7</sup> The Greek word for “transparent” is *diaphanes*. Hence, this is referred to as *the diaphanous model* of consciousness. The mirror metaphor is also used by Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York, 1991), p. 47

cited, Aristotle accepts Anaxagoras's transparency requirement and reasons from it by *modus ponens* that the mind (or intellect, as *nous* is usually translated in Aristotle) is unmixed or pure:

1. The mind can know reality only if it has no determinate nature of its own.
2. The mind can know reality.
3. Therefore, the mind has no determinate nature of its own.

For Aristotle the mind or intellect is a pure capacity to know. Since it lacks any material admixture, it is in principle separable from the body and immortal.

However, the transparency requirement is a double-edged sword. Already in ancient times skeptical philosophers were at least implicitly using the transparency requirement as the major premise of a *modus tollens* argument:

1. The mind can know reality only if it has no determinate nature of its own.
2. But the mind does have a determinate nature of its own.
3. Therefore, the mind cannot know reality.

As applied to perception the transparency requirement amounts to the following: "if the means by which we perceive affect the way things appear in perception, then we cannot perceive things as they are, but only their effects on us."<sup>8</sup> The main argument of the ancient skeptics (e.g., Aenesidemus of Cnossus) was that the mind is inextricably bound up with the senses, which depend on the body, are situated in particular places and times and are influenced by all sorts of environmental factors. The more extreme, Pyrrhonian skeptics went so far as to argue that the human beings cannot know *anything*

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[cited henceforth as OPAR]: "The mirror theory holds that consciousness acts, or should act, as a luminous mirror (or diaphanous substances), reproducing external entities faithfully in its own inner world, untainted by any contribution from its organs of perception," p. 47). The mirror metaphor is also used by Richard Rorty in *Philosophy and the Mirror of Nature* (Princeton, 1979).

<sup>8</sup> David Kelley, *The Evidence of the Senses* (Baton Rouge, 1986), p. 104 [cited henceforth as ES].

whatsoever and should reconcile themselves to a state of invincible ignorance. According to Rand, Kant fully grasped the import of this skeptical argument and accepted it, as long as ‘reality’ denotes things-in-themselves or things as they are independently of consciousness.<sup>9</sup> However, Kant sought to evade the snares of skepticism by redefining ‘knowledge’ and ‘reality’. Reality, for Kant, is a construct of consciousness and knowledge is a determinate form of awareness of this construct.

On this interpretation Kant is using a persuasive definition, redefining ‘knowledge’ as a delusion but continuing to use the word because of its comforting, anti-skeptical connotations. As Walsh remarks, Kant’s theory has been interpreted along similar lines by Schopenhauer among others, who states that for Kant, like Plato, “the world presenting itself to the senses has no true being . . . and that the grasp of it is a delusion rather than knowledge.”<sup>10</sup> Because the reality which we perceive is the result of forms which are “hard-wired” into every human mind, the world as all humans perceive is, in Rand’s words, a “collective delusion.”<sup>11</sup>

Walsh objects that this criticism is unfair to Kant, because Kant held that the scientific reasoning was able to grasp empirical reality. Empirical reality is characterized by spatio-temporal relations, which are forms imposed by the mind in perception. To be sure, these forms are “ideal,” in that they do not characterize things-in-themselves independently of being perceived by us. Nonetheless, since the mind cannot escape their use, space and time are predictable features of our future experience.<sup>12</sup> Secondly, Walsh objects that Kant would not agree that the use of space and time and the categories represents a “delusion,” because Kant makes a distinction within our sensory representations between how objects look and how they really are. The distinction is based on empirically observable regularities. We can say

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<sup>9</sup> The connection between Aristotle’s transparency requirement and Kant is also noted by John Herman Randall, *Aristotle* (New York, 1960), p. 91; compare Kelley, ES, p. 38n.

<sup>10</sup> Cited in Walsh, p. 17.

<sup>11</sup> See note 2 above.

<sup>12</sup> Walsh, p. 18, citing Kant, *Critique of Pure Reason* (translated by Norman Kemp Smith, London, 1933), B56 [cited henceforth as CPR].

the stick in the water only “looks” bent but is really straight, because the latter judgment coheres better with our overall observations of the stick. We cannot similarly say that the stick only “looks” spatio-temporal because we have no way of observing it as not spatio-temporal.<sup>13</sup>

Rand’s reply to Walsh’s objections would presumably be that Kant is using the terms ‘reality’ and ‘delusion’ in an equivocal fashion. The shift in meaning is quite explicit and recurs throughout Kant’s *Critique of Pure Reason*, for example, in the following passage from “The Antinomy of Pure Reason” where Kant distinguishes his position from two others: His position, called *transcendental idealism*, holds that “everything intuited in space or time, and therefore all objects of any experience possible to us, are nothing but appearances, that is, mere representations, which, in the manner in which they are represented, as extended beings, or as series of alterations, have no existence outside our thoughts.” This position differs from two other positions: *transcendental realism*, which treats representations, or the modifications of our sensibility, as self-subsistent things or things-in-themselves; and *empirical idealism* (e.g., Berkeley’s theory) which admits only the objects of inner sense but “denies the existence of extended beings in-[space], or at least considers their existence doubtful, and so does not in this regard allow of any properly demonstrable distinction between truth and dreams.” Kant’s own transcendental idealism “admits the reality of the objects of outer intuition, as intuited in space, and of all changes in time, as represented by inner senses. . . . But this space and this time, and with them all appearances, are not in themselves *things*; they are nothing but representations, and cannot exist outside our mind.”<sup>14</sup> In support of this, earlier on, in the “Transcendental Aesthetic,” Kant makes the following statement:

Time and space, taken together, are the pure forms of all sensible intuition, and so are what make *a priori* synthetic propositions possible. But these *a priori* sources of knowledge, being merely conditions of our sensibility, just by this very fact determine their own limits, namely, that they apply to objects

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<sup>13</sup> Walsh, loc. cit., citing D. P. Dryer, *Kant’s Solution for Verification in Metaphysics* (London, 1966), p. 517.

<sup>14</sup> Kant, CPR, A491–92=B519–20.

only in so far as objects are viewed as appearances, and do not present things as they are in themselves. This is the sole field of validity; should we pass beyond it, no objective use can be made of them.<sup>15</sup>

I call attention to the clause regarding time and space: “. . . being merely conditions of our sensibility, just by this very fact determine their own limits . . .” This passage suggests that Rand is on target when she claims that Kant is assuming the transparency requirement. Otherwise, it would be hard to see why from the mere fact that the sensibility has certain conditions it follows that it is limited and does not reveal things as they are in themselves. It would seem then that Kant’s solution is to distinguish between reality *per se* and “empirical” reality and to say that we can know the latter but not the former.

Rand might also reply that Walsh’s second objection requires a similar redefinition of ‘delusion’ or ‘untrue experience’.

Here ‘untrue’ is no longer defined in terms of the correspondence theory of truth but the coherence theory. For ‘delusion’ no longer means ‘an experience not corresponding to things as they are in themselves’ but merely ‘an experience not cohering with our other regular experiences’. The conviction of a group of paranoid schizophrenics that they are being spied on and persecuted by the Salvation Army may turn out to [be] “true” and “nondelusory” in Kant’s coherence sense, even though their belief does not correspond to the facts of reality.

Next, we turn to the question of whether Rand is correct to reject Kant’s view of knowledge and reality. The situation of the human knower for Kant has been compared to that of a person viewing the world through colored spectacles.<sup>16</sup> If I view the world through rose-colored glasses, all objects I see will have a rosy tint. I may be uncertain whether a given object before me is actually rose colored or merely appears to me this way because of my peculiar condition. If other people tell me that the object is white rather than rose-colored, I may conclude that my senses are deceiving me. Of course, I could remove the spectacles and look directly at the object. But the analogy

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<sup>15</sup> Kant, CPR, A39=B56.

<sup>16</sup> H. J. Paton, *Kant’s Metaphysics of Experience* (London, 1952, second edition).

to Kant's theory of sensibility requires that I do not have this option; the spectacles are a permanent part of my sensory equipment, more like the lens in my eye. I may, however, ultimately accept the hypothesis that I see only rose-colored objects because this is a condition of my sensibility. This is analogous to Kant's *Copernican hypothesis*: instead of assuming that all our knowledge must conform to objects, we instead assume that objects must conform to our knowledge. Only in this way, Kant says, can we have *a priori* knowledge of objects.<sup>17</sup>

The analogy of the spectacles is, however, misleading in an important way. By using color perception, the analogy implies that we can perceive external objects, although this awareness is distorted with respect to certain accidental qualities. In contrast, Kant maintains that what the mind contributes to awareness comprehends the necessary and universal properties of things: including space, time, causality, and existence. Therefore, the mind does not merely "color" its objects; it constructs them in a much more radical way. This feature gives rise to questions regarding the overall coherence of Kant's view. Kant never abandons the idea of things-in-themselves, he cannot say *stricto sensu* that these things "exist" or that they are the ultimate "cause" of our experience, because existence and causality themselves are categories which are applicable only within the domain of experience. Hence, Kant's intellectual successors jettisoned things-in-themselves and embraced pure idealism according to which the objects of awareness are entirely constructed through the act of knowing.

Nonetheless, Kant believes that only his approach can account for metaphysical knowledge. Why does he think this? Walsh correctly emphasizes that Kant is trying to explain how it is possible for human reason to arrive at universal and necessary knowledge of reality. Further, Kant maintains that such knowledge is *a priori* because it is not derived by abstraction and it cannot admit of exceptions drawn from experience, for example, "Every event has a cause." Walsh suggests that the key to Kant's theory is to be found in his distinction between two kinds of consciousness, namely intuition or direct awareness of concretes, and conception or thought, which is an indirect awareness of concretes via the awareness of what is common to them.<sup>18</sup> However, I believe that Kant's argument really turns on a more

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<sup>17</sup> Kant, CPR, Bxvi.

<sup>18</sup> Walsh, p. 9.

fundamental distinction, which is, ironically, expressed in terms of the Aristotelian distinction between matter and form. Knowledge is built up out of two components: the raw material of the senses and the forms which are imposed on this material by the mind itself. As Walsh himself notes,<sup>19</sup> this distinction is found on both the level of sensible intuition and of conceptual thought. Space and time are treated as pure *a priori* forms of intuition, which serve to structure all incoming sensory material in a unified spatio-temporal matrix. My knowledge that the shortest distance between two points is a straight line is *a priori* and certain because it is based on my direct awareness of space and time as pure forms of intuition. Further, as Walsh again notes,<sup>20</sup> the matter-form distinction also appears on the level of conceptual thought. The forms of thought include the *a priori* concepts which enable us to synthesize the empirical concepts together into judgments. These formal concepts are called categories. For example, the category of causality enables us to make the judgment that a bolt of lightning caused a forest fire.

The underlying idea in Kant then is that our knowledge is a synthesis of sensory material and forms of consciousness. However, Kant rejects Aristotle's view that knowledge is a process in which forms are *passively* received from external objects by a mind which has a purely potential nature. For Kant accepted the conclusion arrived at by the modern empiricists through Hume that a mere inspection of the passive contents of sensibility cannot reveal universal and necessary metaphysical truths. Instead, the mind must be viewed as essentially active, as structuring the sensory material by means of its own innate forms. This has the two implications for Kant already noted: Because they are innate or "wired in," the forms provide the basis for our *a priori* knowledge. However, because these forms are conditions of our form of awareness, they cannot reveal the way that the world is.

Rand agrees with Kant and opposes Aristotle on a fundamental point: "All knowledge *is* processed knowledge—whether on the sensory, perceptual or conceptual level. An 'unprocessed' knowledge would be a knowledge acquired without means of cognition. Consciousness . . . is not a passive state, but an active process. And more: the satisfaction of every need of a living organism requires an act of processing by that organism, be it the need of air, of

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid., p. 10.

food or of knowledge.” However, Rand rejects Kant’s use of this very point: “From primordial mysticism to [Kantianism], its climax, the attack on man’s consciousness and particularly on his conceptual faculty has rested on the unchallenged premise that any knowledge acquired by a process of consciousness is necessarily subjective and cannot correspond to the facts of reality, since it is ‘*processed* knowledge.’”<sup>21</sup> On Rand’s view, although consciousness is epistemologically active, it is not metaphysically active. As David Kelley remarks, “consciousness no more creates its own contents than does the stomach.”<sup>22</sup> The rejection of the transparency requirement has a central place in Rand’s own epistemology. This leads us to the question of whether her repudiation of this requirement can be defended. I will conclude by briefly touching on two points. The first point concerns the matter-form distinction. If we hold that knowledge is the result of processing by the mind in accord with its own forms, how can we be assured that this is not a distorting process like the rose-colored glasses mentioned earlier? The objectivist epistemology must contain a theory of form different from both Aristotle’s and Kant’s theories. We find a hint of such a theory on the level of sense-perception in Rand’s notion of perceptual form: here ‘form’ denotes “the aspects of the way an object appears which are determined by the manner in which our senses respond to the object in the particular conditions at hand.”<sup>23</sup> For example, the color of an object might be a part of its perceptual form. The form is not in the external object considered as independent of being perceived; nor is the form “in the mind” as an object of perception in its own right. It is instead a relational state arising from the interaction between the object and our perceptual systems.<sup>24</sup> It needs, of course, to be shown that such an analysis can satisfactorily explain sense-perception and deal with the many traditional philosophical problems associated with it. This is a task to which David Kelley has dedicated an important book, *The Evidence of the Senses*.

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<sup>21</sup> Rand, IOE, p. 81.

<sup>22</sup> Kelley, ES, p. 41.

<sup>23</sup> Kelley, ES, p. 86. See Rand, IOE, pp. 279–82.

<sup>24</sup> As Peikoff remarks in OPAR, p. 46, this idea is anticipated in an embryonic form in Plato’s *Theaetetus*.

A similar argument would presumably have to be offered on the conceptual level, to show how the rational faculty plays an active role without distorting its subject matter. Rand provides some suggestions of such an argument in her account of concepts in her *Introduction to Objectivist Epistemology*. She defines a *concept* as “a mental integration of two or more units possessing the same distinguishing characteristic(s), with the particular characteristics omitted.”<sup>25</sup> A concept is thus defined in terms of a *unit*, which is defined in turn as “an existent regarded as a separate member of a group of two or more similar members.”<sup>26</sup> The unit is the conceptual counterpart of perceptual form. However, whereas perceptual forms are the result of automatic processes, units are formed by conscious and volitional acts of consciousness, by isolating objects on the basis of differences and integrating them as units into separate groups according to their similarities. For Rand, then, “the concept ‘unit’ is the bridge between metaphysics and epistemology: units do not exist *qua* units, what exists are things, but units are things viewed by consciousness in certain existing relationships.”<sup>27</sup> The method used in concept-formation is measurement, which is defined as “the identification of . . . a quantitative relationship established by means of a standard that serves as a unit.”<sup>28</sup> The most basic concepts—existence, identity, and consciousness—are called *axiomatic concepts* because they cannot be analyzed or reduce to other concepts or broken into component concepts. Axiomatic concepts, which Rand calls “the foundation of objectivity,” are the closest counterparts in her epistemology to Kant’s categories. She discusses axiomatic concepts briefly in Chapter 6 in *Introduction to Objectivist Epistemology*, where she maintains that they are perceived or experienced directly, but grasped conceptually.<sup>29</sup> The question of the validation of putatively

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<sup>25</sup> Rand, IOE, p. 13.

<sup>26</sup> Ibid., p. 6.

<sup>27</sup> Ibid., p. 7.

<sup>28</sup> Ibid.

<sup>29</sup> Cf. *ibid.*, p. 55.

“axiomatic” concepts and of other basic concepts such as causality has, however, not received sufficient attention.<sup>30</sup>

The second point concerns the character of metaphysical knowledge. I take it that Kant would not accept the sort of analysis offered by Rand because it makes form depend upon the interactions of perceivers and external objects. Since metaphysics aspires to necessary and universal knowledge, it cannot ultimately rest upon forms which are the mere products of contingent interactions. The difference here between Rand and Kant has to do, I think, with the question of whether metaphysicians should aspire to produce a privileged body of truths which are necessary and universal and hence *a priori*.<sup>31</sup> Ayn Rand has a fundamentally different view of the metaphysical from Kant. On her view ‘metaphysical’ refers to facts in so far as they are not created by human action, and within the metaphysical sphere the distinction between necessity and contingency does not apply. In the metaphysical sphere, all facts are necessarily the case.<sup>32</sup> Rand makes distinctions such as those between the essential and the accidental, the more or less fundamental, and the certain and probable; but these distinctions are valid only in well-defined contexts of knowledge.<sup>33</sup> In trying to validate a privileged body of synthetic *a priori* truths, Kant is pursuing a philosophical will-o’-the-wisp which in Rand’s view should be once and for all repudiated.<sup>34</sup>

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<sup>30</sup> Even the character such validation should take remains unclear. In what way does it rely on sense-perception? To what extent does it involve self-refutation arguments (or some counterpart of Kantian transcendental arguments)? Peikoff treats the validation of axiomatic concepts very briefly in OPAR, pp. [8–12].

<sup>31</sup> This is presupposed by the “elimination” argument invoked by Walsh, p. 19.

<sup>32</sup> Rand, IOE, p. 299.

<sup>33</sup> The axiomatic concepts and axiomatic truths (e.g., “Existence exists”) are presupposed by all other concepts in all contexts. But these are also fundamental in only an epistemic sense, and they are not marked off as a special set of metaphysically “necessary truths.”

<sup>34</sup> See Peikoff, “The Analytic-Synthetic Dichotomy,” in IOE. The distinction attacked by Rand and Peikoff has also been criticized by academic philosophers—most notably Quine—over the past three decades, although for somewhat different reasons from Rand’s.

## Kant at the Masked Ball

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### 1. Which of the Two Kants?

We should grapple with the fact that two opposing traditions of scholarship on Immanuel Kant's philosophy have come down to us. On the one side, Kant is presented as the pro-reason philosopher of the Enlightenment. Philosopher Yvonne Sherratt advocates this position, holding that Kant "became known historically as the greatest thinker of the Enlightenment."<sup>1</sup> Kant biographer Otfried Höffe also positions Kant as a paragon of the Enlightenment: "The philosophy of Immanuel Kant represents not only the intellectual climax but also the transformation of the European Enlightenment."<sup>2</sup> Kant scholar Paul Guyer agrees that "Immanuel Kant was the paradigmatic philosopher of the European Enlightenment," explaining that "Kant was the philosopher of human autonomy, the view that by the use of our own reason in its broadest sense human beings can discover and live up to the basic principles of knowledge and action without outside assistance, above all without divine support or intervention."<sup>3</sup>

That position has had heavyweight support historically, beginning with Georg W. F. Hegel's prediction, given Kant's dominance within a generation of his death in 1804: "From the Kantian

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<sup>1</sup> Yvonne Sherratt, *Hitler's Philosophers* (New Haven, CT: Yale University Press, 2013), p. 40.

<sup>2</sup> Otfried Höffe, *Immanuel Kant*, trans. Marshall Farrier (New York: State University of New York Press, 1994), p. 1.

<sup>3</sup> Paul Guyer, "Kant, Immanuel (1724–1804)," in *Routledge Encyclopedia of Philosophy*, accessed online at: <https://www.rep.routledge.com/articles/biographical/kant-immanuel-1724-1804/v-1>.

system and its completion I expect a revolution in Germany.”<sup>4</sup> Poets even chimed in, including Hegel’s former college roommate Johann Hölderlin, who rhapsodizes that “Kant is the Moses of our nation” leading them to the Promised Land.<sup>5</sup>

Yet on the other side, Kant is depicted as the saboteur of reason and launcher of the Counter-Enlightenment. Philosopher and theologian Moses Mendelssohn, Kant’s contemporary, identifies him as “the all-destroyer,” fearful that Kantian philosophy cuts off all access to true reality.<sup>6</sup> In the next generation, University of Berlin philosopher Arthur Schopenhauer identifies Kant as “the most important phenomenon which has appeared in philosophy for two thousand years” and drew from his work as the grounding for his own irrationalist and nihilist views, citing the first part of Kant’s *Critique of Pure Reason* as decisive: “The Transcendental Aesthetic is a work of such merit that it alone would be sufficient to immortalize the name of Kant. Its proofs have such a complete power of conviction that I number its propositions among the incontestable truths.”<sup>7</sup>

Heinrich Heine, a younger contemporary of Schopenhauer’s, agrees with the destructiveness of Kantian ideas: “Our German philosophy is really but the dream of the French Revolution. . . . Kant is our Robespierre,” but then adds that he is even worse: “Immanuel Kant, the arch-destroyer in the realm of thought, far surpassed in terrorism Maximilian Robespierre.”<sup>8</sup> A generation later, Friedrich

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<sup>4</sup> Georg W. F. Hegel, Letter to Friedrich Schelling, April 16, 1795, in *Hegel: The Letters*, trans. Clark Butler and Christiane Seiler (Bloomington, IN: Indiana University Press, 1984), p. 35.

<sup>5</sup> Johann Hölderlin, ‘Kant ist der Moses unserer Nation’, Letter of January 1, 1799, to his brother, Friedrich Hölderlin, in *Sämtliche Werke und Briefe* (Leipzig: Insel, 1914), p. 381.

<sup>6</sup> Moses Mendelssohn, quoted in Lewis White Beck “German Philosophy,” in *The Encyclopedia of Philosophy*, Vol. 3 (New York: The Free Press, 1969), p. 337.

<sup>7</sup> Arthur Schopenhauer, *The World as Will and Representation*, trans. E. F. J. Payne (New York: Dover, 1969 [1818]), pp. xv and 437.

<sup>8</sup> Heinrich Heine, “Religion and Philosophy in Germany: A Fragment” (1834), accessed online at: [https://archive.org/stream/religionandphilo011616mbp/religionandphilo011616mbp\\_djvu.txt](https://archive.org/stream/religionandphilo011616mbp/religionandphilo011616mbp_djvu.txt).

Nietzsche also believes Kantian philosophy to be corrosive: “As soon as Kant would begin to exert a popular influence, we should find it reflected in the form of a gnawing and crumbling skepticism and relativism.”<sup>9</sup>

That assessment also held sway in the twentieth century, as philosopher Lewis White Beck, selected to write the entry on “German Philosophy” for *The Encyclopedia of Philosophy*, identifies the high stakes: “Immanuel Kant was to put almost every fundamental concept of the Enlightenment in jeopardy.”<sup>10</sup> And novelist-philosopher Ayn Rand also agrees that Kant’s philosophy, more than any other, undercut the life-essential achievements of the Enlightenment, stating that “Kant is the most evil man in mankind’s history.”<sup>11</sup>

We are confronted with big names and strong rhetoric on both sides of this debate. How should we proceed to break the interpretive impasse?

At the same time, we should ask the value question about Kantian philosophy: Why does it matter what this now-long-dead philosopher said? The answer is that Kantian philosophy continues to flourish and is perhaps still the dominant philosophy of our era. Historian of philosophy John Passmore states it boldly: “The Kantian revival is so widespread as scarcely to lend itself to illustration.”<sup>12</sup> In his introduction to *The Cambridge Companion to Schopenhauer*, philosopher Christopher Janaway makes this striking claim: “One feature uniting many kinds of recent philosophy is an increasing recognition that we are working within the legacy of Kant.”<sup>13</sup>

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<sup>9</sup> Friedrich Nietzsche, *Schopenhauer as Educator*, in *Untimely Meditations*, trans. R. J. Hollingdale (New York: Cambridge University Press, 1997 [1874]), sec. 3, p. 140.

<sup>10</sup> Beck, “German Philosophy,” p. 300.

<sup>11</sup> Ayn Rand, “Brief Summary” (1971), in *The Objectivist* (Palo Alto, CA: Palo Alto Book Service, 1982), p. 1092.

<sup>12</sup> John Passmore, *Recent Philosophers* (LaSalle, IL: Open Court, 1985), pp. 133–34 n. 20.

<sup>13</sup> Christopher Janaway, “Introduction,” in *The Cambridge Companion to Schopenhauer* (New York: Cambridge University Press, 1999), p. 3.

If Passmore and Janaway are correct, then “We are all Kantians now” is no doubt too strong. Yet all of us, Kantian or not, still need to grapple with Immanuel Kant’s ideas. That philosophical self-understanding requires that we first ask: Which Kantian philosophy are we working within or against?

## 2. The Famous Second Preface

The first edition of *Critique of Pure Reason* appeared in 1781. Yet what Kant meant, as the subsequent opposed scholarly assessments demonstrate, was hardly transparent. Schopenhauer puts the predicament amusingly, in assessing the value quest of Kantian philosophy: “I should liken Kant to a man at a ball, who all evening has been carrying on a love affair with a masked beauty in the vain hope of making a conquest, when at last she throws off her mask and reveals herself to be his wife.”<sup>14</sup> Although it is difficult to imagine Immanuel Kant in pursuit of a love affair, Schopenhauer’s simile captures something important. Which version of Kant’s philosophy is wearing the mask and which is the reality? Once the mask is removed, do we find the hoped-for lovely woman or (apologies to all wives) something less appealing?

Six years after the first edition of *Critique of Pure Reason* was published, Kant issued a second edition and took the opportunity, with the famous Second Preface, to present an overview of his argument, to emphasize its main points, identify his motivations for it, and signal its significance for the future of philosophy. His extra efforts at clarity in that Preface make sense. *Critique of Pure Reason* is his most important work, serving as the foundational book in his trilogy of critiques, followed by *Critique of Practical Reason* and *Critique of Judgment*. Furthermore, by the time of the second edition of *Critique of Pure Reason*, he had enjoyed six years of additional reflection as well as feedback from colleagues. He took pains to modify unclear passages and to add explanatory ones, creating its final form. I thus want to focus on the Second Preface as our best method of unmasking the merely phenomenal “Kant” and getting to real Kantian philosophy in itself.

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<sup>14</sup> Arthur Schopenhauer, *On the Basis of Morality*, trans. E. F. J. Payne (Indianapolis, IN: Hackett Publishing, 1999 [1840]), accessed online at: <https://tinyurl.com/mrzxcvzy>.

### 3. The Plight of Metaphysics

When we do metaphysics, we are pursuing the truth about reality. We grapple with perennial questions such as: Is reality made up of matter or of abstract essences? Are there gods or a God out there? Do miracles and random events occur or does all of reality work strictly by cause and effect? Was the world created in time or is it eternal?

Kant begins his Second Preface by saying that philosophers have made zero progress in metaphysics:

Whether the treatment of such knowledge as lies within the province of reason does or does not follow the secure path of a science, is easily to be determined from the outcome. For if after elaborate preparations, frequently renewed, it is brought to a stop immediately it nears its goal; if often it is compelled to retrace its steps and strike into some new line of approach; or again, if the various participants are unable to agree in any common plan of procedure, then we may rest assured that it is very far from having entered upon the secure path of a science, and is indeed a merely random groping.<sup>15</sup> (Bvii)

Yet, by contrast, Kant notes that other disciplines—such as logic, mathematics, and physics—have made strong progress. Logic, for example, “has already, from the earliest times, proceeded upon this sure path [as] evidenced by the fact that since Aristotle it has not required to retrace a single step” (Bviii).

Why have those three disciplines been so successful while metaphysics has been a failure? Kant’s answer is that the geniuses who started them along their sure paths effected revolutions that involved a common maneuver:

- The revolutionary logician performed an act of abstracting “from all objects of knowledge and their differences, leaving the understanding nothing to deal with save itself and its form” (Bix).
- The revolutionary mathematician was able “to bring out what was necessarily implied in the concepts that he had himself formed a priori” (Bxii).

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<sup>15</sup> All in-text citations are to page numbers in the Akademie edition, and all quotations are from Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (London: MacMillan & Co., 1963 [1787]).

- The revolutionary physicist realized that “reason has insight only into that which it produces after a plan of its own” (Bxiii).

Notice that Kant’s analysis of each revolution focuses only on the subject, not the object: “the concepts that he had himself formed,” the understanding has “nothing to deal with save itself and its form,” and has insight into what it made “after a plan of its own.”

It further follows that if reason has insight only into that which it produces after its own plan, then we need to know what reason’s prior plan is. What does the subject put into the constrained result that it presents to itself? As philosophers, our critical project is thus to isolate the aspects of the process by which reason determines its object completely and purely *a priori*.

A closely related point is about how Kant says we should understand the subject. Rather than as a being passively impressed upon by objective reality and then inspecting the result *a posteriori*, the subject should be seen as active and constructing *a priori*. Reason “must not allow itself to be kept, as it were, in nature’s leading strings, but must itself show the way with principles of judgment based upon fixed laws, constraining nature to give answer to questions of reason’s own determining” (Bxiii). It is not that the subject’s reason simply follows along with nature or that some external objective reality guides us to where it wants us to go. Rather, we subjects provide the plan, we interrogate nature, and we get answers from nature that we extract according to our prior plan. If we can learn from what led to revolutions in mathematics, logic, and physics, then we can return to metaphysics and grasp why it has not achieved its revolution—and thus position ourselves intellectually for Kant’s own philosophical revolution.

#### 4. Kant’s “Copernican” Turn

Metaphysics has failed and must have failed, Kant argues, because of a faulty premise. What has been the assumption of philosophy since its beginnings? “Hitherto it has been assumed that all our knowledge must conform to objects” (Bxvi). That is to say, the assumption of philosophy prior to Kant has been that objectivity—or small-‘o’ objectivism—has been the goal. The objectivist idea is that the subject’s knowledge, that is, what is going on inside our own minds, must conform to something outside of itself, namely, to objects. The assumption has been that objective reality sets the terms and that the subject—if the subject is to have knowledge—must conform to the object.

However, Kant carries on, “all attempts to extend our knowledge of objects by establishing something in regard to them *a priori*, by means of concepts, have, on this assumption, ended in failure” (Bxvi). That is, we have been doing philosophy for millennia, and assuming objectivity as philosophers’ guiding principle has ended only in failures. It is thus time for a sober reassessment. We can keep trying and continue our objectivity-hopeful random groping—or we can make the bold move of accepting that objectivity is and must be a failure. If we can allow ourselves to accept the latter possibility, then we open ourselves to a new approach: “We must therefore make trial whether we may not have more success in the tasks of metaphysics, if we suppose that objects must conform to our knowledge” (Bxvi).

That is a huge reversal. What if, daringly, we reverse the order and say that the subject sets the terms? This is Kant’s revolutionary language. First and foremost, the suggestion is that the subject’s knowledge sets the terms and objects must conform to our knowledge. That is to say, what we call the “object” conforms to the subject. In other words, Kant is either proposing a rejection of objectivism in the direction of a kind of subjectivism or he is rejecting objectivity in the traditional sense for a new kind of subjectivity. Hence, what is sometimes called the “Copernican revolution in philosophy,” as inaugurated by Kant and using language he endorses, “We should then be proceeding precisely on the lines of Copernicus’ primary hypothesis” (Bxvi).<sup>16</sup>

Kant is suggesting a “Copernican” revolution in philosophy on the same order of magnitude. We should reject the assumption of objectivity. That is, we should stop thinking that our knowledge and truth must conform to independent objects and, instead, embrace the view that the object of knowledge must conform to conditions set by the knowing subject. Kant proceeds to give a number of formulations of this revolution in terms of various aspects of knowledge, including intuitions, concepts, and principles.

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<sup>16</sup> As a reminder, Nicolaus Copernicus’s 1543 hypothesis was that astronomers had proceeded on the assumption that the Earth is at the center of the system and that the planets, stars, moon, and Sun rotate around it. However, astronomers had for millennia tried and failed to make such models of the heavens work. If we effect a reversal and place the Sun at the center and make our Earth a satellite, then we get closer to the truth.

On our experience of intuitions, he says, “A similar experiment [that is to say, the Copernican experiment] can be tried in metaphysics, as regards the *intuition* of objects” (Bxvii). The word ‘intuition’ has varied meanings over the course of the history of philosophy, but we can take it here neutrally as becoming aware of things as they appear to us. The traditional problem, then, is: “If intuition must conform to the constitution of the objects, I do not see how we could know anything of the latter *a priori*” (Bxvii). That is to say, if intuition is analyzed by the standard of objectivity, then intuitive knowledge is impossible.

However, if we change our assumption, as Kant suggests, “if the object (as object of the senses) must conform to the constitution of our faculty of intuition, I have no difficulty in conceiving such a possibility” (Bxvii). That is, taking all of the things our senses seem to be experiencing as objects of intuition—if we say that what they are is dependent upon our faculties, our subjective faculties of intuition—then we have the possibility of constructing some sort of knowledge system that makes sense.

When considering where our concepts come from, Kant presents his “Copernican” hypothesis by means of a dilemma:

[E]ither I must assume that the *concepts*, by means of which I obtained this determination, conform to the object[s], or else I assume that the objects, or what is the same thing, that the *experience* in which alone, as given objects, they can be known, conform to the concepts. (Bxvii)

The latter option is Kant’s choice. First come the concepts in the knowing subject and objects conform to the subject because the objectivity option is impossible: “In the former case, I am again in the same perplexity as to how I can know anything *a priori* in regard to the objects” (Bxvii). If we say that concepts are based on objects and objectivity is a requirement, then we are lost, but “in the latter case the outlook is more hopeful” (Bxvii). The subject’s concepts come first and objects conform to them.

As knowing subjects, we put certain things into objects. We constitute them, construct them, make them—and that is how we can know them: “we can know *a priori* of things only what we ourselves put into them” (Bxviii). Again, Kant holds: “we suppose that our representation of things, as they are given to us, do not conform to these things as they are in themselves, but these objects, as appearances, conform to our mode of representation” (Bxx).

The revolution comes at a cost, though, and this is the first big principle that Kant draws from his Copernican move: “For we are brought to the conclusion that we can never transcend the limits of possible experience, though that is precisely what this science [of metaphysics] is concerned, above all else, to achieve” (Bxix). A foundational limit is thus established. We can know experiential objects, but we cannot know anything beyond those experiential objects. As we are now operating on the assumption that those experiential objects are constituted by and conform to the faculty of the knowing subject, it follows that what we experience does not have in any sense a constitution that is objective or independent of the knowing subject.

Reason’s knowledge, then, is severely constrained: “such knowledge has to do only with appearances, and must leave the thing in itself, as indeed real *per se*, but as not known by us” (Bxx). The way things really are—whatever is out there in reality in itself—is not and cannot be known to us. All that we can know are our subject-constituted appearances. Kant’s Copernican revolution is a rejection of the assumption of objectivity in the direction of saying that the knowing subject constitutes its world of experiential appearances and that this subjective reality is all that can be known.

### **5. But Not Solipsism**

Kant immediately rejects solipsism, the thesis that only the world of subjective experiences exists, “otherwise we should be landed in the absurd conclusion that there can be appearance without anything that appears” (Bxxvi). There must be some sort of independent reality out there providing some sort of raw material for the appearances. However, it is filtered, structured, and/or constituted by subjective forms of intuition and conception, yielding an apparent object.

There must be something(s) behind the appearance(s), but while we cannot say what that is, we subjects can imagine them or perhaps conceptualize formulations about them in some way. Kant maintains: “But our further contention must also be duly borne in mind, namely, that though we cannot *know* these objects as things in themselves, we must yet be in position at least to *think* them as things in themselves” (Bxxvi). While that is a legitimate option for Kantian reason to pursue, we must never make the claim that we *know* objective reality, only *that* it is.

## 6. Space and Time? Cause and Effect?

Kant next turns to several specific traditional issues in metaphysics. What about space and time, for example? Are they infinite or finite? Are they absolute or relative? Are space and time real or merely subjective creations? Kant applies his philosophical revolution here and argues that they are not objective: “space and time are only forms of sensible intuition, and so only conditions of the existence of things as appearances” (Bxxv).

Kant thus rejects two traditional objectivist positions that take space and time to be real phenomena. One position argues that space and time are absolute, fundamental features of the universe and that objects and events occur within a kind of space-time container that is fundamental to the universe. The other objectivist position on space-time argues that the order goes the other way. Objects and what objects are doing are more fundamental, and so space and time are ways of relating objects to each other; that is, objects are more basic, and so space and time are functions of whatever it is that objects are doing.

Kant rejects both of those positions, arguing that in no way are space and time out there in reality independent of us. They are only forms of sensible intuition, conditions that we impose on whatever is coming in through our faculties. We add space and time rather than discover space and time out there in reality.

The same holds for causality on Kant’s view. Cause and effect exist as features of objects of experience because we have put causality into the world of appearance. As for things in themselves, such realities are not governed by the subjective cause-and-effect principle, so we subjects cannot say whether things have causal features out there in reality independent of us. Kant holds that “the principle of causality therefore applies only to things taken in the former sense, namely, insofar as they are objects of experience—these same objects, taken in the other sense, not being subject to the principle” (Bxxvii).

Thus, both space and time and cause and effect are features of our apparent world, and they are such features because we subjects have constituted our apparent world that way. Precisely because of our subjective constituting, we are precluded from knowing the way the objective world is itself. Kant concludes: “Thus it does indeed follow that all possible speculative knowledge of reason is limited to mere objects of experience,” and “that we can therefore have no knowledge of any object as a thing in itself” (Bxxvi).

### 7. The Subjective Turn's Positive Value: God, Freedom, and Immortality?

The subjective turn, ruthlessly applied, strikes a cruel blow to aspirations to knowledge of objective reality. As Kant acknowledges, it “has the appearance of being highly prejudicial to the whole purpose of metaphysics” (Bxix). Yet Kant also holds out a simultaneous positive value from the ruthlessness.

Metaphysics based on objectivist assumptions has been corrosive to three traditional metaphysical aspirations: discovering the existence of God, validating the reality of free will, and confirming the existence of an immortal soul. Millennia of rational argumentation have not been able to prove God's existence, belief in the reality of cause and effect seems to have invalidated free will, and the ambitions of scientific-materialist physicalism have left no room for souls. Especially by Kant's generation, many have abandoned God, freedom, and immortality as either disproven or to be discarded as incompatible with modern natural philosophy and science.

Yet, Kant argues, his “Copernican turn” can salvage the possibility of belief in all three traditional pillars of religious belief. He asks, “What is the value of the metaphysics that is alleged to be thus purified by criticism and established once for all?” (Bxxiv). We want to believe that we are free agents, and thus worthy of moral responsibility. However, objectivists have insisted upon strict cause and effect, but if we presume strict causality, that seems to lead to determinism. If we subjects are entirely determined, then we do not have freedom and, hence, we do not have moral responsibility. Causality seems to destroy morality.

Yet if causality is only a subjectively imposed principle, then that “resulting limitation” opens up a possibility, for it allows us to say, “though I cannot *know*, I can yet *think* freedom” (Bxxviii). While we can say that causality is not *known* to be true of the objective world of things in themselves, that leaves open the possibility of *assuming* freedom out there in the objective world, even if it does not seem to exist in the subjective world.

What of God? It seems that in the world of appearances, there is no room for a godlike being. However, if our knowledge is only of an apparent world, then—since we do not know what is really out there in reality in itself—we cannot eliminate the possibility that there is a God out there. We thus can think of the possibility of God.

The same reasoning applies to the possibility of an immortal soul. In the world of appearances, it seems like our bodies and our

minds are subject to cruel space-and-time limitations and to devastating causal processes: we become corrupted and die. There is no room in the world of appearances for a being that transcends all such limitations. Yet, if space, time, and causality are merely subjectively imposed conditions, then we do not know of the soul-in-itself outside of the range of those conditions. We can, accordingly, make imaginative room for thinking of the soul as immortal. Hence, the negative critique of reason yields benefit:

This discussion as to the positive advantage of critical principles of pure reason can be similarly developed in regard to the concept of *God*, and of the *simple nature* of our *soul*. . . . [E]ven the *assumption*—as made on behalf of the necessary practical employment of my reason—of *God*, *freedom*, and *immortality*, is not permissible unless at the same time speculative reason be deprived of its pretensions to transcendent insight. (Bxxx)

We face a harsh either-or: Either reason does have such insight or we can assume religion—but not both. If we continue to believe that reason can do objective metaphysics, that is, that it can figure out what really is out there, then that is a threat to religion and morality. Objective metaphysics eliminates God, freedom, and the immortal soul as possibilities by subjecting everything to principles of reasoning based on the logic of cause and effect and space-time limitations. If we are to preserve any sort of belief in God and, along with it, beliefs in an immortal soul and moral responsibility—that is to say, if we are going to salvage something of traditional religious belief—then we have to adopt Kant’s critical philosophy. Hence his key, oft-cited line: “I have therefore found it necessary to deny *knowledge*, in order to make room for *faith*” (Bxxx).

The belief that reason can know reality as it really is can now be seen not merely as a failed theory, but as a dogmatism and a warlike threat to goodness. Kant’s language then becomes stronger: “The dogmatism of metaphysics, that is, the preconception that it is possible to make headway in metaphysics without a previous criticism of pure reason, is the source of all that unbelief, always very dogmatic, which wars against morality” (Bxxx).

It is belief in the power of objective reason that leads to atheism, materialism, determinism, and the nihilistic undermining of ethics. Those metaphysicians who think that they can prove

materialism and universal cause and effect—and who apply reason and logic to all of reality—are the ones who dismiss God, immortality, and moral freedom. It is precisely their aspirations that must be dismissed as destructive pretensions: “It is therefore the first and most important task of philosophy to deprive metaphysics, once and for all, of its injurious influence, by attacking its errors at their very source” (Bxxxix). By putting severe limits on what reason can do through arguing that reality in itself is off-limits to reason, we leave open the door for a faithful adoption of a religious outlook—that is, a God-oriented outlook, an immortal-soul-oriented outlook, and a moral outlook. That, Kant says, is the chief value of his *Critique of Pure Reason*: “But, above all, there is the inestimable benefit, that all objections to morality and religion will be for ever silenced, and this in Socratic fashion, namely, by the clearest proof of the ignorance of the objectors” (Bxxxix).

Nobody knows reality—and nobody can know reality—as a matter of principle. That philosophical conclusion, Kant believes, is the best defense for “the hope of a *future life*,” “the consciousness of *freedom*,” and “the belief in a wise and great *Author of the world*” (Bxxxix–xl). We can preserve them only by attacking “the arrogant pretensions” of objectivist metaphysical philosophers and, by means of the *Critique of Pure Reason*, “sever the root of *materialism*, *fatalism*, *atheism*, *free-thinking*, *fanaticism*, and *superstition*, which can be injurious universally; as well as of *idealism* and *scepticism*” (Bxl–xli). All schools of metaphysics based on rational attempts will thereby be destroyed. Room is thus created for faith via severely limiting reason to the subject-constituted world of appearances.

## 8. Kant and Our Contemporary Philosophy

The historical Kant has been enormously influential upon the trajectory of philosophy in the centuries since his death. That is a truism. Yet when contemporary historians of philosophy such as Passmore and Janaway say that in our time the Kantian “revival is so widespread” and that collectively we are “working within the legacy of Kant,” that much stronger pair of claims makes imperative not only reading Kant carefully in his own words, but also mapping Kantian terminology onto our own, contemporary terminology.

The following list of five key propositions extracted from this reading of the Second Preface to *Critique of Pure Reason* adds to each a contemporary label for a philosophical position:

- The assumption of objectivity has been and must be a failure: anti-objectivism.
- The world we are aware of is formed by our subjective constitution: subjectivism.
- The world as it actually is, is unknowable to us: skepticism.
- We cannot know whether reality is material or ideal, causal or random, includes a god or is empty of gods, and so on: anti-realism.
- Absent knowledge, we can believe in the possibility of God, free will, and immortality, if we choose: fideism.

This reading leads to the conclusion that Kant's fundamental philosophy is anti-objectivist, subjectivist, skeptical, anti-realist, and fideist.

None of that is to deny that, in some respects, Kant is an advocate of reason, objectivity, and knowledge. However, this is to assert that those respects pertain to secondary, tertiary, or otherwise derivative philosophical matters and that those advocacies must be understood as nested within and governed by a deeper and primary set of anti-theses.<sup>17</sup>

This reading of Kant also has implications for breaking the impasse between the interpretive tradition that places Kant in the pantheon of Enlightenment figures and those who see him as the philosophical pivot upon which the Counter-Enlightenment turns.<sup>18</sup> If we judge a philosopher by his or her fundamental claims, and especially by his or her most distinctive philosophical claims, then this reading of Kant's most important book highlights his self-labeled "Copernican revolution" in philosophy as most fundamental and most distinctive. While the *philosophes* of the Enlightenment were united in

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<sup>17</sup> On several of those important but secondary matters, see Stephen R. C. Hicks, "Does Kant Have a Place in Classical Liberalism?" *Cato Unbound* (2016), accessed online at: <https://www.cato-unbound.org/2016/10/17/stephen-r-c-hicks/does-kant-have-place-classical-liberalism>. See also the colloquium contributions there by Mark White, Roderick Long, and Gregory Salmieri.

<sup>18</sup> On the Counter-Enlightenment consequences of post-Kantian philosophy, see Stephen R. C. Hicks, *Explaining Postmodernism: Skepticism and Socialism from Rousseau to Foucault* (Tempe, AZ: Scholarly Publishing, 2004).

the progressive power of human reason to know *all* of reality—from ordinary everyday experience to the furthest reaches of the developing sciences—Kant’s signal response is: “No, it cannot.”

### 9. Postscript on the George Walsh and Fred Miller Exchange

Now I turn to my interpretation of two interpreters’ interpretations of Rand’s interpretation of Kant. The complexity is daunting not only because it requires keeping track of an original text nested within three stages of interpretation, but also because each of the interpretations requires judgments about:

1. *Translating* across terminological domains (e.g., “faculties of intuition” and “synthetic judgments” // “sense-perception” and “concept-formation”).
2. Allowance for *rhetorical* flourishes (e.g., Rand’s “delusions” and analogies to dying astronauts).
3. Sorting which statements are *explicit* and which are *implicit* in Kant’s text.
4. *Close* implications of Kant’s philosophy (e.g., whether it undercuts the Enlightenment era’s confidence in reason).
5. *Extended* implications of Kant’s philosophy (e.g., whether it opened the door to irrationalist art culture of the 1900s).

Professor George Walsh<sup>19</sup> agrees that there are substantial differences between Kant and Rand on the fundamentals of metaphysics and epistemology, and that those differences underlay their other substantial differences. He does not, however, believe that Rand has consistently characterized those differences correctly, holding that she partially misinterprets Kant:

1. In asserting that Kant’s motive was to *deny* rather than *salvage* reason (p. 17).
2. In taking “Human consciousness has identity” as a *premise* rather than as a *conclusion* (p. 18).

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<sup>19</sup> George V. Walsh, “Ayn Rand and the Metaphysics of Kant,” *Objectivity* 3, no. 1 (Fall 2001), pp. 1–27. All references to Walsh’s claims are in-text parenthetical citations.

3. In describing the collective universal as a “delusion” (p. 20).
4. By using the astronaut analogy to explicate Kant’s position applied to action (pp. 20–21).

Professor Fred Miller<sup>20</sup> responds that Rand’s brilliance is not as an academic doing scholarly exegesis, but as a public intellectual isolating Kant’s most important theses and drawing out their implications. Miller also holds that in her brief foray she nonetheless accurately captures the fundamentals and essentials of Kant’s metaphysics and epistemology.

In light of my above summary and interpretation of Kant’s “Second Preface” to *Critique of Pure Reason*, I judge that Miller is more correct than Walsh is. Drawing on a forest-and-trees metaphor, I think that Rand correctly identifies the Kantian forest and its place in the philosophy ecosystem, as Miller argues, even though she may have mislabeled some of the individual trees and their relative positions within that forest, as Walsh argues. Even that latter judgment is subject to ongoing debate, though, as professional scholars of Kant—I include Walsh and Miller among the ablest—continue to argue the fine details.

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<sup>20</sup> Fred D. Miller, Jr., “Comments on George Walsh, ‘Ayn Rand and the Metaphysics of Kant,’” *Objectivity* 3, no. 1 (Fall 2001), pp. 28–37.

## A Thomistic Appraisal of the Transparency and Passivity of the Intellect

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### 1. Introduction

I take up some philosophical ideas from Fred Miller’s article<sup>1</sup> and connect them to St. Thomas Aquinas’s thought.<sup>2</sup> I am principally interested in the “transparency requirement,” as attributed to Aristotle: “the mind can know reality only if it has no determinate nature of its own” (p. 29). Miller says that Aristotle uses this requirement as the first premise in an argument that shows the mind has no determinate nature of its own; obviously, this is done by asserting as a second premise the claim that the mind can know reality.

Ayn Rand takes the transparency requirement to entail a passivity requirement. If, as the transparency requirement asserts, the mind has no determinate nature, then the mind has no nature. But if the mind has no nature, then how can it act? Conversely, if it does act, how can it fail to have a nature? Transparency requires passivity, or so it seems.

But there’s more. The passive Aristotelian mind, according to Rand, must gain its knowledge through no process at all. As we just saw, it has no nature and hence cannot act. But if it cannot act, it cannot engage in any processes. So whatever knowledge is to be found

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<sup>1</sup> Fred D. Miller, Jr., “Comments on George Walsh: Ayn Rand and the Metaphysics of Kant,” *Objectivity* 3, no. 1 (2001), pp. 28-37; reprinted in *Reason Papers* 43, no. 1 (Spring 2023), pp. 11–22. I use parenthetical in-text page references to the version of this article published in *Objectivity*.

<sup>2</sup> Ayn Rand, perhaps surprisingly (since she was an atheist), held St. Thomas in high regard, which suggests that some Thomistic thoughts might not be taken amiss by those interested in Rand’s thought.

in this passive mind must be knowledge arrived at without any process at all. But because, as Rand writes, “all knowledge is processed knowledge,” we can see that Aristotle’s approach to the mind won’t work, and the fundamental problem is the transparency requirement. The transparency requirement yields passivity, which yields unprocessed knowledge, which is impossible. Therefore, we must reject the transparency requirement.

Surprisingly enough, Rand seems here to disagree with Aristotle and to side with Immanuel Kant. This can be seen in a crucial passage from Miller:

Kant rejects Aristotle’s view that knowledge is a process in which forms are *passively* received from external objects by a mind which has a purely potential nature . . . . Rand agrees with Kant and opposes Aristotle on a fundamental point: “All knowledge *is* processed knowledge—whether on the sensory, perceptual or conceptual level. An ‘unprocessed knowledge’ would be a knowledge acquired without means of cognition. Consciousness . . . is not a passive state, but an active process. And more: the satisfaction of every need of a living organism requires an act of processing by that organism, be it the need of air, of food or of knowledge.” (p. 33)

Any reader with more than a passing familiarity with Rand realizes that she is no fan of Kant.<sup>3</sup> So fear not—the agreement with Kant is quickly joined to a repudiation of Kant:

However, Rand rejects Kant’s use of this very point: “From primordial mysticism to [Kantianism], its climax, the attack on man’s consciousness and particularly on his conceptual faculty has rested on the unchallenged premise that any knowledge acquired by a process of consciousness is necessarily subjective and cannot correspond to the facts of reality, since it

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<sup>3</sup> Though the article that Miller is responding to tries to draw out some similarities between the pair. See George V. Walsh, “Ayn Rand and the Metaphysics of Kant,” *Journal of Ayn Rand Studies* 2, no. 1 (2000), pp. 69–103.

is ‘*processed* knowledge.’” On Rand’s view although consciousness is epistemologically active, it is not metaphysically active. As David Kelley remarks, “consciousness no more creates its own contents than does the stomach.” The rejection of the transparency requirement has a central place in Rand’s own epistemology. (pp. 33–34)

As I understand Miller (and Rand) here, the idea is simple. Rand and Kant agree in rejecting transparency (and hence passivity and hence knowledge-as-unprocessed), but they disagree on a much deeper point. Specifically, Kant infers from the fact that knowledge is processed that it is subjective and doesn’t correspond to the facts of reality. But this inference, Rand thinks, is unjustifiable: the action of consciousness is of a sort that allows for objectivity, that is, correspondence with the facts of reality.

There are two questions, however, that we ought to ask. First, does the transparency requirement entail the passivity requirement? Second, does the transparency requirement lead to what Rand says here; that is, does it entail that knowledge is causeless, and that knowledge occurs without any process? In what follows, I will give St. Thomas’s answers to these two questions, which are a qualified no and a resounding no, respectively.

## **2. Does Transparency Entail Passivity?**

For St. Thomas, that we have knowledge is a self-evident starting point. That we acquire it is also self-evident. It is also clear that this acquisition involves a process. What, exactly, the process *is* can be established with some certainty via philosophical work. An inescapable point for St. Thomas is that we *do* know the world through a complicated process. And he thinks that this process involves a transparent intellect.

Or does he? We must begin with a clarification. The version of the transparency principle presented above is wide open: “the mind can know reality only if it has no determinate nature of its own.” St. Thomas does not accept this wide-open principle, or it at least plays no role in his thought that I am aware of. However, he accepts a transparency principle of his own: a different, but related principle, with a more restricted version of transparency. He also endorses an

argument similar to the one Miller attributes to Aristotle (to Anaxagoras, but he says Aristotle accepts it). Here is St. Thomas's version of the principle, and his version of the argument:

It must necessarily be allowed that the principle of intellectual operation which we call the soul, is a principle both incorporeal and subsistent. For it is clear that by means of the intellect man can have knowledge of all corporeal things. **Now whatever knows certain things cannot have any of them in its own nature; because that which is in it naturally would impede the knowledge of anything else.** Thus we observe that a sick man's tongue being vitiated by a feverish and bitter humor, is insensible to anything sweet, and everything seems bitter to it. **Therefore, if the intellectual principle contained the nature of a body it would be unable to know all bodies.** Now every body has its own determinate nature. Therefore it is impossible for the intellectual principle to be a body. It is likewise impossible for it to understand by means of a bodily organ; since the determinate nature of that organ would impede knowledge of all bodies; as when a certain determinate color is not only in the pupil of the eye, but also in a glass vase, the liquid in the vase seems to be of that same color.<sup>4</sup>

While Miller's version of the principle (the mind can know reality only if it has no determinate nature of its own) is, as I said, wide open, St. Thomas's version is narrower. He claims here, more or less, that the mind can know material being only if it has no material nature of its own. This is not, then, an argument for the *naturelessness* of the mind, but rather an argument for the *immateriality* of the mind. (In the text that immediately follows, it becomes something more: an argument for the *substantiality* of the mind, but we can ignore that for purposes of this article. Another thing we can ignore for purposes of

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<sup>4</sup> St. Thomas Aquinas, *Summa Theologiae*, I, 75, 2 (bold added). All quotations from the *Summa Theologiae* (hereafter, *ST*) are from Kevin Knight's 2017 online edition of *The Summa Theologiae of St. Thomas Aquinas*, 2<sup>nd</sup> ed., trans. Fathers of the English Dominican Province (1920), accessed online at: <https://www.newadvent.org/summa/>.

this article is the issue of how the human being knows immaterial things.<sup>5</sup>)

To put this more clearly, the transparency requirement in Miller's reading of Aristotle plays a role in an argument that goes like this: (1a) The mind can know reality only if it has no determinate nature of its own. (2a) The mind can know reality. (3a) Therefore, the mind has no determinate nature of its own. And (3a) yields passivity, which yields unprocessed and hence impossible knowledge.

St. Thomas's argument in the cited text is completely different from this Aristotelian argument. It goes, instead, like this: (1b) If the intellectual principle contained the nature of a body, it would be unable to know all bodies. (2b) By means of the intellect man can have knowledge of all corporeal things. (3b) Therefore, the intellect does not have a corporeal nature.

Let us take note of a few points. First, unlike (3a), (3b) does not imply passivity—or at least it does not imply passivity, unless you think there is some reason to assert that incorporeal things are essentially passive. St. Thomas certainly does not think that. God is incorporeal and clearly not passive, and the same is true of angels and human souls. Second, (1b) does involve a kind of transparency requirement, even if the transparency of (1b) is not quite as . . . transparent . . . as the transparency of (1a). I will come back to this point.

Third, in fact, St. Thomas reads the relevant Aristotelian text as asserting (1b), not (1a). Here is how he explains the relevant text in his *Commentary on Aristotle's De Anima*:

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<sup>5</sup> The matter is complex, and I can hardly begin to do it justice here. One relevant text is this: "There is, however, a difference between these two kinds of knowledge, and it consists in this, that the mere presence of the mind suffices for the first; the mind itself being the principle of action whereby it perceives itself, and hence it is said to know itself by its own presence. But as regards the second kind of knowledge, the mere presence of the mind does not suffice, and there is further required a careful and subtle inquiry. Hence many are ignorant of the soul's nature, and many have erred about it"; see Aquinas, *ST*, I, 87, 1. So Augustine says (*De Trinitate*. x, 9), concerning such mental inquiry: "Let the mind strive not to see itself as if it were absent, but to discern itself as present—i.e., to know how it differs from other things; which is to know its essence and nature."

Anything that is in potency with respect to an object, and able to receive it into itself, is, as such, without that object; thus the pupil of the eye, being potential to colors and able to receive them, is itself colorless. But our intellect is so related to the objects it understands that it is in potency with respect to them, and capable of being affected by them (as sense is related to sensible objects). Therefore it must itself lack all those things which of its nature it understands. Since then it naturally understands all sensible and bodily things, it must be lacking in every bodily nature.<sup>6</sup>

This is basically the same argument as the one from the *Summa Theologiae*. On St. Thomas's reading, the transparency requirement in Aristotle is limited just as it is limited in St. Thomas's own thinking. Miller and St. Thomas thus interpret Aristotle differently here.<sup>7</sup> Whether St. Thomas is correct in his reading of Aristotle or not, I think the main point is that there is enough shared insight between (1a) and (1b) that we should see (1b) as a narrower version of (1a).

What we can see so far is that at least one version of the transparency requirement, namely, (1b), does not entail passivity. At least, (1b) does not entail passivity via an argument like Miller's

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<sup>6</sup> St. Thomas Aquinas, *Commentary on Aristotle's De Anima*, Book III, Lecture 7, #680. Cf. St. Thomas Aquinas, *Commentary on Aristotle's De Anima*, trans. K. Foster, OP and S. Humphries, OP (South Bend, IN: Dumb Ox Books, 1994), p. 206.

<sup>7</sup> Aristotle writes (as Miller notes in his translation, p. 29), "it has no nature, and is not one, except in being potential," which can seem to support Miller's wide-open reading. St. Thomas's reading of that line is: "From this he concludes, not that in fact the nature of the intellect is 'not one,' i.e., that it has no definite nature at all; but that its nature is simply to be open to all things; and that it is so inasmuch as it is capable of knowing, not (like sight or hearing) merely one particular class of sensible objects, nor even all sensible accidents and qualities (whether these be common or proper sense-objects) but quite generally the whole of sensible nature. Therefore, just as the faculty of sight is by nature free from one class of sensible objects, so must the intellect be entirely free from all sensible natures"; see Aquinas, *Commentary on Aristotle's De Anima*, Book III, Lecture 7, #681. I firmly decline to become embroiled in how best to interpret Aristotle, and so leave aside this discussion.

account of Aristotle's argument. Maybe there is another pathway from transparency to passivity or maybe there is another pathway from transparency to the causelessness of knowledge, but I leave aside such possibilities. Hence, we have St. Thomas's answer to our first question.

### 3. Does Transparency Entail Unprocessed Knowledge?

We have looked at one line of reasoning showing that transparency in St. Thomas's sense doesn't lead to passivity of the mind. However, that does not settle the question of whether St. Thomas is committed to passivity. There could be other lines of reasoning from transparency to passivity. In this section, I take a more detailed look at the process of knowing in St. Thomas and show that knowing involves a process via a mind with an identity.

According to St. Thomas, "the proper object of the human intellect, which is united to a body, is a quiddity or nature existing in corporeal matter."<sup>8</sup> Intellect *as such* is not ordered to the knowledge of bodies. *Angelic* intellects are ordered to the knowledge of incorporeal being, but the *human* intellect, because it is the intellect of a bodily creature, is properly ordered toward other bodily creatures, which they are meant to know.

Other bodies are known through a process that roughly goes as follows. The human knower is put in touch with his surroundings through the senses. The senses receive the forms of the things known, without their matter, but under material conditions. Those forms are "dematerialized" by the agent intellect, and then the forms are received by the possible intellect. Note that the human intellect has two elements: an active element (the agent intellect) and a passive element (the possible intellect). The job of the agent intellect is to dematerialize the received forms. The job of the possible intellect is to receive them, which is to say, to become them. It is at this latter point that transparency is relevant to the process. The possible intellect cannot have a physical nature of its own, else that physical nature would impede the receptions of certain forms by putting its own stamp on those forms. It is through immaterial reception of the forms that we grasp the natures of material things.<sup>9</sup>

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<sup>8</sup> Aquinas, *ST*, I, 84, 7.

<sup>9</sup> In the preceding two paragraphs, I have summarized material from Aquinas,

But we are not yet done. The forms of material things exist in material things; hence, in order to know them as they are, we must know them *as* material. Our knowledge doesn't rest in the immaterial grasp of the nature of the material object. It must reach back outward to grasp the thing in its materiality. As St. Thomas says:

Now it belongs to such a nature to exist in an individual, and this cannot be apart from corporeal matter: for instance, it belongs to the nature of a stone to be in an individual stone, and to the nature of a horse to be in an individual horse, and so forth. Wherefore the nature of a stone or any material thing cannot be known completely and truly, except in as much as it is known as existing in the individual. Now we apprehend the individual through the senses and the imagination. And, therefore, for the intellect to understand actually its proper object, it must of necessity turn to the phantasms in order to perceive the universal nature existing in the individual.<sup>10</sup>

We do not need to worry about the language of *phantasms* here. The short version is that the phantasm is that received form existing under material conditions. The point that matters for us right now is that the *process* of knowing involves an inward movement from the thing to be known to the intellect, and then an outward movement from the intellect back to the thing known. Thus, when Rand insists that all knowledge is processed knowledge, it should be clear that St. Thomas agrees. (At least, he agrees that all *human* knowledge is processed knowledge, but that is all we are examining here.) This is consistent with the version of the transparency requirement that St. Thomas endorses. Knowledge must be passive, as Aristotle argues, if it is to be accurate, for the senses are a way by which objects act upon us, and we passively receive what they have to tell us about themselves. But that's not the end of the story: "We have to remember that in the process of sensation there are two phases: the passive phase, in which the sense is informed and determined by the external object; and the

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*ST*, I, 84, 1 and 6; *ST*, I, 85, 1; and *ST*, I, 75, 2.

<sup>10</sup> Aquinas, *ST*, I, 84, 7.

active phase, which properly constitutes the act of knowledge, and in which the informed faculty determines itself.”<sup>11</sup>

However, even this passive phase is passive only in a broad sense. As St. Thomas explains:

Thirdly, in a wide sense a thing is said to be passive, from the very fact that what is in potentiality to something receives that to which it was in potentiality, without being deprived of anything. And accordingly, whatever passes from potentiality to act, may be said to be passive, even when it is perfected. And thus with us to understand is to be passive.<sup>12</sup>

The possible intellect is passive by simply receiving something. We can look at the first two senses of passivity for contrast:

Firstly, in its most strict sense, when from a thing is taken something which belongs to it by virtue either of its nature, or of its proper inclination: as when water loses coolness by heating, and as when a man becomes ill or sad. Secondly, less strictly, a thing is said to be passive, when something, whether suitable or unsuitable, is taken away from it. And in this way not only he who is ill is said to be passive, but also he who is healed; not only he that is sad, but also he that is joyful; or whatever way he be altered or moved.

The possible intellect is thus passive in that it gains something, and not in any other sense (such as the first or second senses above).

#### **4. The Intellect and Its Process of Knowing**

I should clarify that the possible intellect is not really a thing that might have or lack a nature of its own. Properly speaking, it is a power of the soul, not a substance or a “being” in its own right.<sup>13</sup> To

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<sup>11</sup> H. D. Gardeil, *Introduction to the Philosophy of St. Thomas Aquinas III: Psychology*, trans. John Otto (St. Louis, MO: Herder, 1956), p. 53.

<sup>12</sup> Aquinas, *ST*, I, 79, 2.

<sup>13</sup> Aquinas, *ST*, I, 79, 1.

the extent that we can nevertheless think of it as having (or lacking) a nature, St. Thomas thinks it has one, and likewise he attributes to Aristotle the thought *not* “that [the intellect] has no definite nature at all; but that its nature is simply to be open to all things.”<sup>14</sup>

This is relevant to an interesting, but I think muddled, point of Rand’s. Speaking of Kant’s theory, she writes:

This is a negation, not only of man’s consciousness, but of *any* consciousness, of consciousness as such, whether man’s, insect’s or God’s. (If one supposed the existence of God, the negation would still apply: either God perceives through no means whatever, in which case he possesses no identity—or he perceives by some divine means and no others, in which case his perception is not valid.)<sup>15</sup>

This is a striking claim. The first horn of the dilemma is a *non sequitur*, at least if we apply the thought to human knowers instead of to God. From what we have already seen, we know that since the intellect is merely one of many powers of the human soul (which is itself only a part of the human being), the fact (if it were a fact) that human knowledge occurs through no means whatever would not entail that the *human being* has no identity, even if it does entail (as in fact it does not) that the human intellect has no identity.<sup>16</sup>

The second horn of the dilemma does not hold up, but before I can show that, I need to sort out what it means.<sup>17</sup> If God perceives by some divine means and no others, his perception is invalid . . . why? Is it because *perception* is univocal, and so all perception must occur in

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<sup>14</sup> Aquinas, *Commentary on Aristotle’s De Anima*, #681.

<sup>15</sup> Ayn Rand, *Introduction to Objectivist Epistemology*, 2<sup>nd</sup> ed., ed. Harry Binswanger and Leonard Peikoff (New York: Meridian, 1990), p. 80.

<sup>16</sup> Applying the thought to God is trickier because of the doctrine of Divine Simplicity, but I can hardly attempt to discuss that here.

<sup>17</sup> I should point out that God does not perceive at all: unlike ours, God’s knowledge is causal. He does not become aware of things by observing them; they come to be because he knows them. The objection is flawed from the outset, but it is still worth talking about.

the same way? (Or in near enough the same way to count. For example, insect perception is clearly different from ours in its details but still involves a sensory connection via organs of sense and some kind of neural “processing” system, even if it is not as centralized as the mammalian brain.) But this cannot be, and here is why. Leonard Peikoff presents a thought experiment from Rand involving a species of thinking atoms. These are atoms that have sense perception (and “some kind of sensory apparatus”), but of a kind, obviously, that doesn’t involve eyes or ears (or brains). These atoms perceive other atoms directly. For them (unlike for us), atomic theory is *not* a theory, arrived at via inference, but rather a directly known thing. For these atoms, though, knowledge of the existence of macrophysical objects such as humans or planets would have to be derived through some kind of inference, as the objects exceed their sensory capacities. We are the mirror images of these atoms, in that while we have a direct perception of macrophysical objects such as ourselves, we lack such a perception of atoms, and must arrive at their existence via inference.<sup>18</sup>

Obviously, Rand does not believe in such things, any more than she believes in God. It is not a question of whether thinking atoms or God exist, but of whether their perception would be valid. She claims, according to Peikoff, that the perception of the atoms would be valid, despite its differences from ours. But how? Why? What is the connection between the two forms of perception other than that Rand is *claiming* that the atoms sense? How do they do it? They possess no known sensory apparatus and no known method of gaining contact with the outside world, and yet we can claim that they have this perceptual ability without running into the notion that their perceptions are invalid. Is it simply that we *declare* that their method of knowing is perception, like ours, despite the fact that it is manifestly not like ours? Then I can declare the same thing of God: he has “some kind of sensory apparatus.”

You might say, “But at least the atoms are material! God isn’t!” And I ask, “What difference does that make?” I do not know how God’s perceptual processes work, but I can see that they could, and so I say he uses the same method that we use. And that is all Rand

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<sup>18</sup> Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Meridian, 1993), p. 43.

says about the atoms, after all. Saying “But at least they are material” does no work whatsoever.<sup>19</sup>

The main point here is that while I cannot fully explain the possible intellect, it is a means of knowing. I describe it negatively: it is a potency of the rational soul to grasp form. This is not something I fully or positively understand, except through grasping that I do know things outside of me. I do possess those forms, and hence I know I must have the power to grasp those forms. I also know, through the transparency principle, that this power must not be material, etc. Therefore, I conclude that this somewhat ineffable power exists. Is this a *negation* of consciousness? Of course not. It is an *explanation* of consciousness, though admittedly an incomplete one.

Moreover, the intellect is not “divided” into only agent and possible, but into other “forms” as well. For example, there is the power of reasoning: “For to understand is simply to apprehend intelligible truth: and to reason is to advance from one thing understood to another, so as to know an intelligible truth.”<sup>20</sup> This is another form of processing, in Rand’s terms, the reasoning process. This is not simply to grasp something—for example, knowledge of the cat in front of you—but also involves inferences that one might make about the cat. As St. Thomas explains:

Reasoning, therefore, is compared to understanding, as movement is to rest, or acquisition to possession; of which one belongs to the perfect, the other to the imperfect. And since movement always proceeds from something immovable, and ends in something at rest; hence it is that human reasoning, by way of inquiry and discovery, advances from certain things simply understood—namely, the first principles; and, again, by way of judgment returns by analysis to first principles, in the

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<sup>19</sup> My interest in this thought experiment is primarily to connect it to the possible intellect, but I will pause to say it is characteristic of Rand to be heavy-handed and quite thoughtless in her rejections of God, so this treatment here is not surprising. I have made this kind of argument at length elsewhere; see my “Objectivist Atheology,” *Journal of Ayn Rand Studies* 8, no. 2 (2007), pp. 211–35.

<sup>20</sup> Aquinas, *ST*, I, 79, 8.

light of which it examines what it has found. Now it is clear that rest and movement are not to be referred to different powers, but to one and the same, even in natural things: since by the same nature a thing is moved towards a certain place. Much more, therefore, by the same power do we understand and reason: and so it is clear that in man reason and intellect are the same power.<sup>21</sup>

It should now be clear that St. Thomas's view involves no claim of the ineffability of consciousness, nor does it suggest uncaused knowledge. These notions have no place in St. Thomas's thinking, and yet, we see that the transparency requirement, in at least a modified form, is clearly there.

### **5. Knowledge, Perception, and Form**

Having disposed of Aristotle's and Kant's transparency requirement, Miller argues as follows:

If we hold that knowledge is the result of processing by the mind in accord with its own forms, how can we be assured that this is not a distorting process like the rose-colored glasses mentioned earlier? The objectivist epistemology must contain a theory of form different from both Aristotle's and Kant's theories. (p. 34)

The idea here is that since the transparency requirement has been rejected, we must affirm that the mind does process knowledge in accord with its own form, which raises the standard representationalist puzzle: How do we know that the contents of our minds correspond to a world "out there" that they purportedly represent?

The Thomistic tradition has much to say about this problem, and Rand echoes much of it. But leave this aside for now and consider the second issue here. Miller thinks that the rejection of the transparency requirement involves the rejection of Aristotle's account of form. He goes on to argue that Rand, with her (to me, very abstruse) Objectivist theory of concepts, helps to solve this problem:

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<sup>21</sup> Ibid.

We find a hint of such a theory on the level of sense perception in Rand's notion of perceptual form: here form denotes the aspects of the way an object appears which are determined by the manner in which our senses respond to the object in the particular conditions at hand. For example, the color of an object might be a part of its perceptual form. The form is not in the external object considered as independent of being perceived; nor is the form "in the mind" as an object of perception in its own right. It is instead a relational state arising from the interaction between the object and our perceptual systems. (p. 34)

How would St. Thomas handle this issue of form within his transparency-affirming view? It is simple enough and should be clear, I hope, from what has already been said. The Thomist affirms that the color is in the external object as an accidental form. In perception, that accidental form comes to inform the mind of the knower. This very same form is found, then, both in the thing perceived and in the perceiver. This explains why perception is not a distorting process. But neither is it a non-process. This perceptual knowledge is processed knowledge, processed in the way I briefly outlined above. The result of the process is that the mind grasps the form of the thing known. In short, the ancient principle of "like knows like" is honored in as literal a way as you like. The soul in a way becomes all things, as Aristotle maintains. This is no matter of an ineffable intellect grasping things in an inexplicable way. This is a matter of a rational animal knowing the world around it through the process of perception, part of which involves intentional existence of the form of the thing known in the knower, with the knower becoming the known.

I do not here argue that St. Thomas's theory of the intellect is better than Rand's, Aristotle's, or Kant's. Instead, I argue that his theory—by providing an account that retains transparency, identity, and processed knowledge in the human intellect—avoids the problems alleged by Rand to arise for both Aristotle and Kant.

## Kantian Humility and Randian Hubris?

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### 1. Introduction

When exploring a disagreement, it is best to start with a truth that all can agree on. Here is such a truth: None of us has visited the farthest regions of the universe. In fact, most humans have never even left the surface of the Earth; the few who have left, have gone no further than our moon. In spite of this limited range, humans seem comfortable—and may be unable to refrain from—making claims that range over the whole universe. As a branch of philosophy, metaphysics is devoted to doing just that. Yet, as widespread and entrenched as the practice is, it remains problematic. Were we to picture sea cucumbers never leaving the ocean floor yet confidently chatting about reality writ large, this problem might pop up more clearly. As it stands, philosophers routinely make sweeping claims about all there is, with hardly a hint of the hubris involved.

Compounding this hubris is the fact that many metaphysicians feel they can make such sweeping claims without consulting instruments like radio telescopes or particle accelerators. Argumentation alone, it is held, can yield the knowledge sought. Given that philosophers are humans and no human has first-hand evidence of everything, what could possibly license this confidence? For example, I feel 100% confident that, even in another galaxy, a sheet of printing paper would have a flipside. Were I to turn it over, I would see a surface, not a void. Since feeling right doesn't mean being right, what justifies this belief?

One response would be that all the sheets I have seen have a flipside, so others must be that way, too. However, appealing to a generalization from past observations would compel me to concoct a just-so story where, early in my personal history, I examined sheets of paper and somehow drew a conclusion about their double-sidedness. I doubt I ever performed anything resembling an inference, let alone an inductive one. Moreover, appealing to past observations would imply a probable conclusion that might fail to hold in a distant galaxy. If my

belief rested on such an inductive basis, I would be as confident about distant sheets of paper as I am about, say, extra-terrestrials being carbon-based, namely, less than 100% confident.

Yet, in contrast with defeasible speculations about extra-terrestrials, I cannot seriously entertain the idea that sheets of paper might lack a flipside. A more accurate account would therefore be to say that *I cannot imagine* a sheet of paper with only one surface—and that *neither can anyone else*. Crucially, this reason is no longer inductive. My belief about the double-sidedness of sheets must be true because its falsehood is simply un-thinkable. This is a decent justification, as far as it goes. Yet, does this un-thinkability reveal something about reality or the nature and limits of one's mind? Common sense affirms the former. However, what makes the situation tricky is that, were one to travel to a distant galaxy and find a double-sided sheet, both views would get confirmed. A proponent of the it-tells-us-something-about-the-world interpretation could say that reality is that way there, too, whereas a proponent of the it-tells-us-something-about-the-mind interpretation could say that, because we brought our mind to this new region of space, things naturally conformed to our requirements. Hence, empirical evidence cannot settle this particular philosophical debate. Anyone who fails to see this fails to understand the issue.

## 2. Deep Breaths Everyone

I have taken pains to motivate this philosophic issue without mentioning any philosophers because I want to stress that this is a genuine problem and *those who develop a particular answer to this problem are neither stupid nor evil*. Ordinarily, one would not need to make such a disclaimer. However, owing to the “uncompromisingly negative”<sup>1</sup> attitude that Ayn Rand had toward Immanuel Kant and the equally negative attitudes that most mainstream scholars now have toward Rand, the discussion is in bad shape.

This poor state of the discussion is unfortunate because it risks obscuring the many worthwhile things Rand had to say. When she writes that we cannot impugn human knowledge merely on account of the fact that “man is limited to a consciousness of a specific nature, which perceives by specific means and no others,”<sup>2</sup> she is saying

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<sup>1</sup> George V. Walsh, “Ayn Rand and the Metaphysics of Kant,” *The Journal of Ayn Rand Studies* 2, no. 1 (2000), pp. 69–103, quotation from p. 69.

<sup>2</sup> Ayn Rand, *For the New Intellectual* (New York: Signet, 1984 [1961]), p. 30.

something that epistemologists should pay attention to. Who are we, she argues, to hold that everything the mind grasps becomes unreliable precisely because it has come into contact with a mind? Such a view, Rand held, is gratuitous and unwarranted, since it advances its criticism of human knowledge from an extra-human vantage point that no critic could occupy.

I wholeheartedly agree. However, like all opinionated people who need to take a breath and do more homework, Rand should have made this point without deprecating figures she had not read (carefully) or learned only via secondary sources. A person whose temperament recoils from the demands of rigorous scholarship “should bow out of historical criticism.”<sup>3</sup>

### 3. Blue, Everywhere

Despite my disappointment with Rand, I can see where she comes from when criticizing Kant. Building on an example used by Leonard Peikoff,<sup>4</sup> I take the following to be the gist of her concern. Imagine that, when you look out at the world around you, all you see are blue things. You are not alone: everyone you talk to sees blue things as well. If it helps, picture everything spray painted with the deep blue hue patented and made famous by the artist Yves Klein. In the scenario I am contemplating, none of this is strange, since the world has been blue for as long as anyone can remember. Split an apple and it is blue inside. Ubiquitous blueness, one might say, is just the way things are.

One day, a philosopher pondering this makes a shocking suggestion: What if it is not *the world* that is blue, but rather *our inborn way of seeing* that is blue-tinted? This suggestion, while surprising, fits with the facts at hand. Anyone could confirm by observation that we indeed have a blue-tinted way of seeing. At the very least, it would not be unreasonable to gloss blue’s ubiquity in the manner suggested.

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<sup>3</sup> Randall R. Dipert, “Review Essay on David Kelley’s *The Evidence of the Senses: A Realist Theory of Perception*,” *Reason Papers* no. 12 (1987), p. 61.

<sup>4</sup> Leonard Peikoff, “Immanuel Kant: Is Reality Knowable? Kant’s Revolutionary Hypothesis,” *History of Philosophy*, lesson 42, accessed online at: <https://courses.aynrand.org/campus-courses/history-of-philosophy/immanuel-kant-is-reality-knowable-kants-revolutionary-hypothesis>.

Rand's concern, I take it, is that interpreting blueness as a feature of our mind instantaneously transforms what was previously taken for granted into a mystery. Previously, nothing was more certain than our belief that apples are blue. However, once it is suggested that what is involved is a blue-tinted way of seeing, we are left wondering: What are apples *really* like? In one fell swoop, placing blueness in our minds converts many certitudes into doubts. "The world out there is blue" used to be a premise, but once we regard blue as the by-product of our blue-tinted way of seeing, "The world out there is blue" becomes a conclusion in need of justification. To say that apples are blue, you henceforth need a proof of the external world.

Most people are unable to craft such a proof, so most are dumbfounded. Until other philosophers concoct a viable account, everyone is free to speculate about the "true" color of things. One may not be able to prove one's preferred color scheme, but one cannot disprove it either. People are thus given the freedom to imagine anything about the portion of reality that forever escapes their access. One person might stick to the old-fashioned dogma that apples apart from our perceptions are International Klein Blue, but another person is free to insist that the real world is covered in multicolored polka dots. Scientists had spent centuries learning about the blue world, but now those gains can be discarded or demoted to a study of mere appearances.

The sense of mystery that this enables gains an increasing foothold in the culture, leading to all sorts of consequences, including religious revivals. Clearly, whoever triggered such vast changes with one simple argument must be clever and devious. Not to worry—an even more clever but honest philosopher boldly calls out this nonsense and safely returns the culture to the time when reality was our home, not something inherently out of reach.

This is a neat story, so it feels good to tell it. However, two features make Kant a questionable casting choice for the role of the devious philosopher. First, Kant distinguished sharply the "receptivity" of the senses whereby "an object is given to us"<sup>5</sup> from the "spontaneity" of the understanding. The "spontaneity" of the understanding contributes something to the transaction and this contribution is significant enough to ensure that what we experience from a first-person perspective likely differs in some way from the

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<sup>5</sup> Immanuel Kant, *Critique of Pure Reason* (Cambridge, UK: Cambridge University Press, 1998 [1781, 1787]), A50/B51.

original source materials. Even so, the world must supply the mind with contents, “for how else should the cognitive faculty be awakened into exercise if not through objects that stimulate our senses?”<sup>6</sup> Rand, however, says that Kant regarded “man’s concepts [as] only a delusion, but a collective delusion which no one has the power to escape.”<sup>7</sup> The consensus among those who have demonstrable command of both Rand’s and Kant’s writings is that “the explicit statements regarding reason and reality that Rand has attributed to Kant do not agree with Kant’s own characterization of his position.”<sup>8</sup> According to Kant, when the mind looks at the world, it does something, but it is not making stuff up, whole cloth.

This brings us to the second reason why Kant cannot be the bad guy of the Blue Fable. In that story, some folks conjectured that “the external world” might be covered in multicolored polka dots. Kant, however, is concerned only with basic structures that admit of no conceivable alternative. Try to think of an event without a prior moment, for example. You cannot. It is not that we have a bias in favor of this outcome. Rather, the “bias” is so fundamental that we cannot conceive of any alternative. My example above about the sheet of paper is thus much closer to what Kant was concerned with.

When Peikoff explained Kant’s ideas by saying that “Man is born with blue spectacles taped to his eyes,” his audience chuckled, because they had already decided—in advance of study—that this was silly. Peikoff<sup>9</sup> eventually rephrased the Kantian idea more accurately: “By the way the human mind is built, it must necessarily creatively synthesize the material provided by the noumenal world in such a way that in the phenomenal world he will always encounter a regular sequence of events.” One is entitled to disagree with that claim (if one understands it). Yet, those who want to defend an alternative have work to do. Specifically, in order to say that we all draw a conclusion about the pervasive presence of causality by observing causal events,

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<sup>6</sup> Ibid., B1.

<sup>7</sup> Rand, *For the New Intellectual*, p. 30.

<sup>8</sup> Fred D. Miller, Jr., “Comments on George Walsh, ‘Ayn Rand and the Metaphysics of Kant,’” *Objectivity* 3, no. 1 (2001), p. 29.

<sup>9</sup> Peikoff, “Immanuel Kant: Is Reality Knowable? Kant’s Revolutionary Hypothesis.”

one must explain why we are incapable of imagining—even as a hypothesis—an uncaused event. The people in the blue world are able to speculate about a non-blue world. We can't even get that far.

#### 4. Miller's Juxtaposition

Rand charges Kant with advocating a pernicious, unjustified form of skepticism. Maybe a case can be made that Kant commits the mistake(s) Rand charges him with, but Rand never made that case. Fred Miller has perhaps come closest to vindicating Rand's criticisms of Kant. Miller contrasts two arguments.<sup>10</sup> The first is a *modus ponens*:

1. The mind can know reality only if it has no determinate nature of its own.
2. The mind can know reality.
3. Therefore, the mind has no determinate nature of its own.

Rand would have presumably recoiled from this conclusion, but her philosophical hero, Aristotle, endorses this argument. In *De Anima*,<sup>11</sup> Aristotle argues that because there is a portion of the mind that can be informed (literally, "receive a form") by whatever it encounters, this portion of the mind has a disposition or power to become all things. Consider "dekcwueqcvud." You have never encountered this string of letters before. Even so, your mind had no trouble handling it, precisely because its "passive" portion has no bias toward any particular content. Hence, as Miller explains, "For Aristotle the mind or intellect is a pure capacity to know."<sup>12</sup>

Miller takes this to mean that, for Aristotle, "consciousness lacks identity" (Rand's preferred phrase), which is impossible, on Rand's view. We might nevertheless find a way to align Aristotle's position with Rand's by saying that the determinate nature of consciousness is precisely to lack a determinate nature. An organ that adapts to anything on the spot would be the ultimate evolutionary

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<sup>10</sup> Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" pp. 29–30.

<sup>11</sup> Aristotle, *On the Soul and Other Psychological Works*, trans. Fred D. Miller, Jr. (Oxford: Oxford University Press, 2018), 417a.

<sup>12</sup> Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 30.

adaptation, explaining why we rapidly rose to the top of the food chain. Whatever one thinks of this suggestion, Kant would reject it. His whole epistemological project consists in trying to capture the basic structure that minds must impose on the deliverances of the senses in order for those deliverances to be intelligible. Whereas “[t]he early modern empiricist tradition had depicted the mind as a blank slate awaiting experience . . . Kant added elements of rationalism to depict the mind as a chest of drawers awaiting experience.”<sup>13</sup>

Kant proposes twelve categories that the mind cannot escape, including conceiving of events as having a prior cause, as unfolding in time, and so forth. Like the one-sided sheet of paper, thoughts that deviate from these basic requirements are unthinkable. Hence, according to Miller, we may ascribe to Kant the following *modus tollens*:

1. The mind can know reality only if it has no determinate nature of its own.
2. The mind has a determinate nature of its own.
3. Therefore, the mind cannot know reality.

One does not have to accept Kant’s particular table of categories to accept this argument’s second premise (and thus the conclusion). Charles Sanders Peirce, for example, thought he could reduce Kant’s twelve categories to three.<sup>14</sup> There is thus room for reasonable disagreement. However, few philosophers after Kant would say that the mind is a completely blank slate.

Kant stresses that since our minds *must* see experiences as having prior causes, we are bound to detect causality everywhere. Rand, however, wants to locate this pervasive causality in mind-independent reality. She writes that “[a]ll the countless forms, motions, combinations and dissolutions of elements within the universe—from a floating speck of dust to the formation of a galaxy to the emergence of life—are caused and determined by the identities of the elements

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<sup>13</sup> Marc Champagne, “Kantian Schemata: A Critique Consistent with the Critique,” *Philosophical Investigations* 41, no. 4 (2018), p. 436.

<sup>14</sup> See Marc Champagne, “Some Convergences and Divergences in the Realism of Charles Peirce and Ayn Rand,” *The Journal of Ayn Rand Studies* 8, no. 1 (2006), pp. 19–39.

involved.”<sup>15</sup> Kant would regard this as inconclusive, since we wouldn’t be able to see the world otherwise. An uncaused event is not just rare to the point of never being found. Rather, like a sheet of printing paper without a flipside, it wouldn’t be cognizable even if it were found. The onus is thus on the advocate of an inductive account to show what a counter-example to his generalization would look like. To admit that such a counter-example is unintelligible is to admit a stalemate with the it-tells-us-something-about-the-mind account.

### 5. Not Every Doubt Leads to Skepticism

Looking at the arguments juxtaposed by Miller, I think that Rand’s stance consists in rejecting the conditional that acts as a major premise in both arguments. She rejects the assumption that “any knowledge acquired by a *process* of consciousness is necessarily subjective and cannot correspond to the facts of reality, since it is ‘*processed knowledge*.’”<sup>16</sup> Yet, even if one succeeded in showing that Rand’s stance is preferable to Kant’s, much more work than Rand has done is needed to make this case.

In *Philosophy: Who Needs It*, Rand imagines an astronaut suddenly stranded on some far-off world who wonders, “How can you know whether [your instruments] will work in a different world?” This is a legitimate epistemological question. Yet, Rand immediately cherry-picks a skeptical response and adds: “You turn away from the instruments.”<sup>17</sup> Such a choice makes for captivating storytelling, but it conveniently overlooks more prosaic responses, notably, “You devise a test to find out.”

Rand wants to defend the idea that “My beliefs correspond to reality,” imagines a rival who contends that “My beliefs do not correspond to reality,” finds the latter suggestion manifestly preposterous, and then immediately rejects that imagined rival. Absent from her account, then, are more plausible possibilities, such as “My beliefs correspond to reality *for now*” or “*Most* of my beliefs correspond to reality but surely some *don’t*, yet I am often in no

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<sup>15</sup> Ayn Rand, *Philosophy: Who Needs It* (New York: Signet, 1985), p. 25.

<sup>16</sup> Ayn Rand, *Introduction to Objectivist Epistemology*, expanded 2<sup>nd</sup> ed. (New York: Meridian, 1990), p. 81.

<sup>17</sup> Rand, *Philosophy: Who Needs It*, p. 1.

position to tell which.” The former is ridiculed by Rand, while the latter never gets a mention.

Rand deploys a subjective/intrinsic/objective distinction in her discussions of concepts<sup>18</sup> and values,<sup>19</sup> so the story of the stranded astronaut would have been a great opportunity to show how we “can be both fallibilistic and antiskeptical.”<sup>20</sup> As accustomed as we have become to skepticism, there is no valid inference from the recognition that we *might* be in error to the conclusion that we *are* in error. In fact, almost everything worthwhile happens between the extremes of “I cannot know anything” and “I know it all.” Rand, however, needs her opponents (like Kant) to claim “I cannot know anything,” even if this means turning those opponents into imaginary ones. I thus agree with Roger Bissell that “Rand and Peikoff and others seem to have lost sight of much of the clarifying power of Rand’s original distinction (known familiarly as the ‘trichotomy’) between the intrinsic, objective, and subjective.”<sup>21</sup>

To appreciate why careful scholarship matters, imagine that Kant was the arch-subjectivist that Rand made him out to be. An Objectivist—David Kelley,<sup>22</sup> say—could counter Kant’s subjectivism by insisting that one’s consciousness is in “a relation to something outside me, and so it is experience and not fiction, sense and not imagination.” The only problem is that *Kant* wrote this objectivist-sounding reply.<sup>23</sup> Assuming that we have already established what the good and bad positions are, Kant’s role as the bad guy is questionable.

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<sup>18</sup> Rand, *Introduction to Objectivist Epistemology*, p. 46.

<sup>19</sup> See, e.g., Ayn Rand, “What Is Capitalism?” in Ayn Rand, *Capitalism: The Unknown Ideal* (New York: Signet, 1970), pp. 21–22.

<sup>20</sup> Hilary Putnam, *Words and Life* (Cambridge, MA: Harvard University Press, 1994), p. 152.

<sup>21</sup> Roger E. Bissell, “Ayn Rand and ‘The Objective’: A Closer Look at the Intrinsic-Objective-Subjective Trichotomy,” *The Journal of Ayn Rand Studies* 9, no. 1 (2007), p. 53.

<sup>22</sup> David Kelley, *The Evidence of the Senses: A Realist Theory of Perception* (Baton Rouge, LA: Louisiana State University Press, 1986).

<sup>23</sup> Kant, *Critique of Pure Reason*, p. Bx1; see also Fred Seddon, “On Kelley on Kant,” *Reason Papers* no. 19 (Fall 1994), p. 85.

Rand hyperbolically claims that “[o]n every fundamental issue, Kant’s philosophy is the exact opposite of Objectivism.”<sup>24</sup> Anyone willing to put in the work can confirm that this is demonstrably untrue.<sup>25</sup>

### 6. Metaphilosophies to Match Personalities

I suggest that the core difference between Kant and Rand is not metaphysical or epistemological, but metaphilosophical. It comes down to a single question about questions: Must philosophy have the answer to *everything*? Rand frequently made room for scientific questions that philosophy cannot answer,<sup>26</sup> but I know of no *philosophical* question that she deemed unanswerable (by anyone in any field). For instance, she always spoke of the problem of induction as if it awaited a resolution, but it is unclear what, if anything, underpinned this optimism. Any justification of induction seems destined to be circular and go beyond what we strictly perceive. Kant, by contrast, explicitly made room for philosophical questions that philosophy cannot answer (and in fact credits the problem of induction with jolting him out of his dogmatic optimism).

We can dispute which questions philosophy cannot answer. However, I am only concerned with the more basic contrast between having “all” the answers and having “less-than-all” the answers. I think that, at root, Rand is offended by the suggestion that philosophy and philosophical knowledge may have limits. If this is correct, then all the other technical disagreements (about space, time, synthetic *a priori* judgments, and so on) are merely an outgrowth of this low-resolution picture about philosophical knowledge and its scope.

One could define philosophy as being capable of answering everything. One can even adopt the fancy label “metaphysics” to make such a power sound more plausible. Yet, our ability to imagine a discipline with explanatory access to all of reality without remainder doesn’t mean that such a discipline is possible or feasible. Since humans are ignorant in many respects, it would be surprising if this ignorance suddenly vanished merely on account of meeting, discussing, and swapping texts. Philosophers may be smarter than sea cucumbers at the bottom of the ocean floor, but no amount of erudite

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<sup>24</sup> Ayn Rand, “Brief Summary,” *The Objectivist* 10, no. 9 (1971), p. 4.

<sup>25</sup> Seddon, “On Kelley on Kant,” p. 81.

<sup>26</sup> Rand, *Introduction to Objectivist Epistemology*, pp. 189 and 289.

chit chat about the outer reaches of the universe actually gets us there. Metaphysicians who talk about reality thus lack first-hand acquaintance with most of what they talk about. When Kant engaged in metaphysics from his home in Königsberg, he had the wherewithal to recognize that he was engaging in a tendentious activity. Rand showed no such self-awareness.

Accepting that philosophy does not have *all* the answers is not equivalent to saying that philosophy can have *no* answers. We tend to draw needlessly strong inferences when we are flustered. Calibrating back to something more sensible, it is obvious that a claim like “Don’t put *all* the harissa in the dish” does not entail “Put *no* harissa in the dish.” Similarly, we can acknowledge that philosophy has limits, while rejecting the view that it is impotent.

Cataloguing the “main differences between Rand and Kant,” Walsh explains how “Rand maintains that this world of spatio-temporally and causally related entities is exhaustive of all reality and known to be exhaustive, whereas Kant maintains that another reality, teleologically ordered and exempt from space and time and causality is at least *thinkable*, although not *knowable*.”<sup>27</sup> The ill-chosen expression “another reality”—which Kant never uses—makes Kant’s stance seem needlessly mystical. We know that there exist wavelengths beyond what our organs for vision can detect and we have devised instruments to prove this. Just as the bookends of the visible spectrum are not the bookends of the electromagnetic spectrum, the bookends of the electromagnetic spectrum might not be the bookends of “the reality spectrum” (to coin a felicitous expression). Hence, what is involved in the Kantian stance is not “another” reality but rather *more* reality. Using Euler diagrams, we can picture the circle of human knowledge as fitting entirely within the larger circle of reality. Nothing in such a picture imperils our knowledge of and dealings with the medium-sized dry goods<sup>28</sup> that we know and love. However, to suppose that there is a flush fit between the two circles, without even a thin crescent exceeding our knowledge, is hubristic.

Would Rand accept this picture? She would certainly admit that there are things we presently do not know. “You cannot arbitrarily restrict the facts of nature to your current level of knowledge,” she

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<sup>27</sup> Walsh, “Ayn Rand and the Metaphysics of Kant,” p. 99.

<sup>28</sup> John L. Austin, *Sense and Sensibilia* (Oxford: Oxford University Press, 1962), p. 8.

writes.<sup>29</sup> Amen. However, what is at stake is not contingent ignorance, but rather the idea that there are things we shall *never* and *could never* know, *owing to the structure of our minds*. She was ostensibly hostile to this idea.

As Dana Andreicut explains, “[f]or Rand the answer to these puzzles is simple. . . . Limits to our knowledge? There are none. Kant, on the other hand, would argue that . . . we are severely limited in our ultimate knowledge of reality.”<sup>30</sup> The “severely” added by Andreicut is irrelevant. If the reality spectrum or Euler circle extends farther than what we know, as Kantian humility suggests, then it is pointless to speculate by how far it extends. The idea that reality extends beyond what we can fathom requires one to stay silent about what that extra portion might contain. Some fear that conceding this much will somehow lead to “an orgy of mystic fantasy.”<sup>31</sup> Yet, despite the speculative excesses of some (including Kant), remaining silent about what is beyond our ken does not turn one into a mystic. For, “[e]ven if we suppose that the conditional ‘If x is mystical, then x is ineffable’ is true, there is no valid inference from that premise to the conclusion ‘If x is ineffable, then x is mystical.’ It takes a biconditional to license that inference, but we have no reason whatsoever to endorse an equivalence between ineffability and mysticism.”<sup>32</sup>

I have argued that reason cannot capture or explain everything<sup>33</sup> and defended the view that, when things go right, the red apple we see is red.<sup>34</sup> Such realism does not get a free pass and actually

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<sup>29</sup> Rand, *Introduction to Objectivist Epistemology*, p. 303.

<sup>30</sup> Dana Andreicut, “Kant and Rand on Rationality and Reality,” *Philosophy Now* no. 101 (2014), p. 27.

<sup>31</sup> Leonard Peikoff, *The Ominous Parallels: The End of Freedom in America* (New York: Meridian, 1982), p. 33.

<sup>32</sup> Marc Champagne, “Consciousness and the Philosophy of Signs: A New Précis,” *The American Journal of Semiotics* 35, nos. 3–4 (2019), p. 450.

<sup>33</sup> Marc Champagne, “Just Do It: Schopenhauer and Peirce on the Immediacy of Agency,” *Symposium: Canadian Journal of Continental Philosophy* 18, no. 2 (2014), pp. 209–32; and Marc Champagne, “Don’t Be an Ass: Rational Choice and Its Limits,” *Reason Papers* 37, no. 1 (2015), pp. 137–47.

<sup>34</sup> Marc Champagne, *Consciousness and the Philosophy of Signs* (Cham, Switzerland: Springer, 2018), p. 73.

has quite a bit of work to do, especially if we want to avoid the familiar traps that result from construing perception solely in causal terms. Likewise, I have argued that epistemological and ethical objectivity is possible,<sup>35</sup> making advances in both Objectivist<sup>36</sup> and Kantian<sup>37</sup> scholarship. We can acknowledge both our knowledge and our ignorance, without converting one into the other.

Surely, the burden of proof is on whoever would claim that philosophy's explanatory powers know no bounds. The "less-than-all" side, by contrast, only needs to put forward a single unanswerable question to successfully make its case. It needn't be an unanswerable question *simpliciter*, but it can be a question unanswerable *by philosophy*. Art, for example, might succeed where philosophy fails. Rand's novels show that art can convey admirable conduct better than theory ever could. Judgment—which is the application of a principle—cannot be reduced to a rule (on pain of regress), but it can be powerfully exemplified by narrative fiction.

Moreover, the limitation(s) inherent in philosophical knowledge might be caused not by some elusive answer, but by some ill-considered question. It could be that philosophy is capable of meeting all the demands of ordinary life, but that philosophers emboldened by this success cannot help but go a step further and ask one or more illicit question(s). I might, for example, puzzle over why there is something instead of nothing. A resolution of such puzzlement might be difficult to reach not because of some shortcoming in our conceptual faculties, but precisely because our faculties are so potent that they allow us to conceive problems for which we couldn't possibly conceive a solution. In such a case, unqualified confidence in philosophical argumentation would be misplaced.

Kant held that "questions of metaphysics [...] such as whether the universe as a whole has a cause, are not capable of being answered,

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<sup>35</sup> Marc Champagne, "Experience and Life as Ever-Present Constraints on Knowledge," *Metaphilosophy* 46, no. 2 (2015), pp. 235–45.

<sup>36</sup> Marc Champagne, "My Life Gives the Moral Landscape Its Relief," in *Sam Harris: Critical Responses*, ed. Sandra L. Woien (Chicago, IL: Carus Books, 2023), pp. 17–38.

<sup>37</sup> Champagne, "Kantian Schemata: A Critique Consistent with the *Critique*," pp. 436–45.

even though they may validly be asked. Rand . . . treats all valid metaphysical questions as being equally answerable.”<sup>38</sup> Kant could have argued for his humility in a hand-wavy way since, even in advance of argumentation, the odds clearly favor a humbler stance. To his credit, he took a risk and tried to pinpoint *which* questions fall outside the remit of philosophers. For instance, we cannot help but conceive of events as having a prior cause, but we can accept neither a regress nor an uncaused first cause. How to understand this predicament is a genuine conundrum that won’t go away with un-argued dismissals.

To be clear, having hubris does not automatically mean that one is wrong. It cannot be held as a reproach against Rand that she had an assertive personality and cared ardently about what she said. However, if what one says is to count as more than chutzpah, then one has to back it up. In the end, Rand never gives any non-circular reasons for why we should share her optimism about metaphysics and philosophy generally. If all one ever has in one’s crosshairs are self-defeating we-cannot-know-anything stances, then victory seems assured. What complicates such simplistic set-ups, however, is that Kant never adopts a we-cannot-know-anything stance. Historically, few philosophers have. Despite this, Rand countered hyperbole with hyperbole. In so doing, she developed a view of philosophy that promises more than it can possibly deliver. She positioned herself as a champion of reason, but she was unaware of how unreasonable it is to ascribe to reason an unrestricted scope.

We humans are humans to the same degree that sea cucumbers are sea cucumbers. Our species differs from other species in important ways, but none of us has visited the farthest regions of the universe. Human ignorance thus comes in (at least) two varieties: the kind we can hope to overcome and the kind we can never hope to overcome. All it takes to instantiate Kantian humility is a belief that the latter kind is not an empty set.

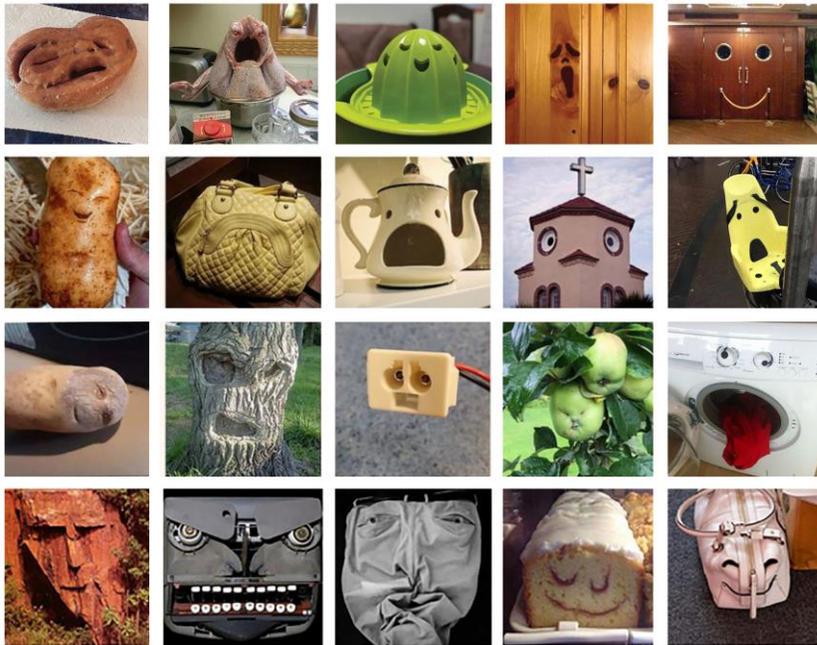
### **7. Face It, Our Mind Structures Perception**

In Section 3, I gave Rand her steel-man moment and did my best to show that her criticism of Kant is not unreasonable. So, in a spirit of parity, let me portray Kantian humility in a favorable light. Kant argued that the human mind automatically structures perception. Now, we can repeat the mantra that “man is being a volitional

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<sup>38</sup> Walsh, “Ayn Rand and the Metaphysics of Kant,” p. 76.

consciousness”<sup>39</sup> all we want, but this will not alter our seeing faces in figure 1.<sup>40</sup>



When I showed this image to my four-year-old son, he asked, “Who is the teacup who is alive?” If philosophers are not going to consult instruments like radio telescopes or particle accelerators, then we must at least pay attention to experience as it occurs. To be sure, we adults can tell ourselves that these aren’t really faces. We would of course be right. Nevertheless, like my son, I cannot help but see these things as faces—and, truth be told, neither can anyone else. Denying this primordial fact only to fit neatly with a simplistic vision of objectivity is dishonest and thus not objective. We may take comfort in

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<sup>39</sup> Rand, *For the New Intellectual*, p. 120.

<sup>40</sup> Adapted from Susan G. Wardle, Sanika Paranjape, Jessica Taubert, and Chris I. Baker, “Illusory Faces Are More Likely to Be Perceived as Male than Female,” *Proceedings of the National Academy of Sciences* 119, no. 5 (2022), e2117413119.

calling our overactive face-detection an “illusion,” but it nevertheless remains our starting place in perception. (Objectivists defend free will precisely on those grounds.) There are thus meaningful philosophical conversations to be had on the topic.

An Objectivist at peace with the idea that “man is limited to a consciousness of a specific nature, which perceives by specific means and no others,”<sup>41</sup> shouldn’t be troubled by the idea that we leave a bit of ourselves in everything we see. You want to avoid subjectivism, but you also want to avoid intrinsicism. Indeed, I suggested above that Rand rejects the *modus ponens* mapped out by Miller, because she rejects the first premise in both arguments of Miller’s juxtaposition. She disagrees that “The mind can know reality only if it has no determinate nature of its own.” Like it or not, faces matter more than mere matter to a human mind, so face-like motifs are foregrounded wherever they are found. We rapidly rose to the top of the food chain in part by detecting other people’s faces immediately and without effort, even if that produces false positives. No one is in charge of this. Rand says that “volition begins with the first syllogism,”<sup>42</sup> but spotting a face is no syllogism (and vastly predates deliberate reasoning in our psychological development). To refuse to acknowledge the contribution of such subpersonal processes would be both unscientific and unrealistic, for this is how the world presents itself. If it is wrong to find human knowledge wanting on account of an extra-human vantage point that no critic could occupy, then it is equally wrong to advance defenses of human knowledge from an extra-human vantage point that no defender could occupy.

## 8. Conclusion

We can unpack Kantian humility narrowly, as an epistemological claim about our ignorance of “things in themselves.”<sup>43</sup> Rand was concerned only with this narrow epistemological claim, which irked her to no end. Yet, given that “Kant does not ask ‘How is experience possible?’” but instead asks “How is metaphysics possible

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<sup>41</sup> Rand, *For the New Intellectual*, p. 30.

<sup>42</sup> *Ibid.*, p. 15.

<sup>43</sup> Rae Langton, *Kantian Humility: Our Ignorance of Things in Themselves* (Oxford: Oxford University Press, 2001).

as science?”<sup>44</sup> it is more accurate to unpack Kantian humility more broadly, as a metaphysical claim about the scope of philosophical knowledge. How deep into reality can philosophical inquiry penetrate? Not all the way, Kant answered.

We thus loop back to the truth we started with: None of us has visited the farthest regions of the universe. I am collaborating with like-minded members of my species to incrementally reduce my ignorance. Yet, even if I knew all I could know—which I don’t—all I can know is not all there is.

Importantly, Kant’s arguments that the reality spectrum exceeds us can be detached from his arguments that put free will and the soul in the excess portion.<sup>45</sup> This detachability lets us clarify what exactly Kant is guilty of. If Rand and others want to criticize Kant for claiming to know what he has explicitly defined as unknowable, then count me among the critics. The unknown is not a blank check for acquiring philosophical goods that one could otherwise never justify. If, however, Rand and others want to criticize Kant for claiming that reality extends farther than our minds, then count me on the side of Kant. Objectivists tend to wobble between these two criticisms, only one of which is defensible. If and when that wobbling stops, I will be in a position to state which side I am on. Appeal to ignorance is a fallacy, but ignorance isn’t.

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<sup>44</sup> Frode Kjosavik, “Kant on Method and Evidence in Metaphysics,” in *Metametaphysics and the Sciences: Historical and Philosophical Perspectives*, ed. Frode Kjosavik and Camilla Serck-Hanssen (New York: Routledge, 2020), p. 28. See Kant, *Critique of Pure Reason*, B22.

<sup>45</sup> Stephen R. C. Hicks, “Does Kant Have a Place in Classical Liberalism?” *Cato Unbound: A Journal of Debate*, October 2016, accessed online at: <https://www.cato-unbound.org/2016/10/17/stephen-r-c-hicks/does-kant-have-place-classical-liberalism/>.



## Kant versus Rand: Much No to Walsh and Miller

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### 1. Introduction

In his article “Ayn Rand and the Metaphysics of Kant,”<sup>1</sup> George Walsh presents Immanuel Kant’s mature conception of metaphysics and he compares it to Ayn Rand’s. I take significant issue with Walsh’s representation of Kant. The similarity Walsh finds between Kant and Rand is overblown; nothing distinctive of Kant’s philosophy is compatible with Rand’s.<sup>2</sup> In his comment on Walsh’s article,<sup>3</sup> one way Fred Miller tries to shrink the degree of similarity Walsh purports is by taking Kant to hold a coherence view of truth. I argue that that was not Kant’s conception of truth and that Walsh’s picture of the large commonality between Kant and Rand in metaphysics is to be corrected in other ways. Miller defends Rand against Walsh’s criticism of her diagnosis of Kant’s fundamental error in epistemology. I argue that that diagnosis by Rand of Kant’s error is off the mark, as Walsh had maintained. Additionally, I argue that Rand’s metaphysics and epistemology are not defeated by Kant’s

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<sup>1</sup> George V. Walsh, “Ayn Rand and the Metaphysics of Kant,” *Objectivity* 3, no. 1 (2001), pp. 1–27. Chris Sciabarra generally follows Walsh’s interpretation; see Chris Matthew Sciabarra, *Ayn Rand: The Russian Radical*, 2<sup>nd</sup> ed. (University Park, PA: Pennsylvania State University Press, 2013), pp. 139–41.

<sup>2</sup> Walsh, “Ayn Rand and the Metaphysics of Kant,” p. 22. The fourth point of similarity Walsh lists—exclusion of philosophy from traditional cosmological speculative metaphysics—is something distinctive to Kant, but Rand did not stay squarely with that position.

<sup>3</sup> Fred D. Miller, Jr., “Comments on George Walsh, ‘Ayn Rand and the Metaphysics of Kant,’” *Objectivity* 3, no. 1 (2001), pp. 28–37.

criticisms of German Rationalism and that her Objectivism is contrary to Kant's Idealism.<sup>4</sup>

## 2. Kant's Big Questions Are Not Rand's

Walsh begins with a set of questions he says Rand and Kant shared: How do we know? What ought we to do? What is the world? What is human being? They shared an interest in those questions and they thought that answers to them gave philosophy a job, but Kant and Rand did not coincide on how metaphysics can be a rational pursuit. Rand did not share interest in *other* questions so burning with Kant: How is metaphysics possible? How is it similar to and different from geometry? How is geometry possible?<sup>5</sup> Kant's answers to *these* questions are key to his critique of the received metaphysics of his time, especially Christian Wolff's.<sup>6</sup> Kant's answers to *these* questions

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<sup>4</sup> As far as she developed her published theoretical philosophy, however, Ayn Rand did not develop an explicit reply to Kant's key criticism of empiricism, namely, failing to account for the necessity in and method of geometry.

<sup>5</sup> See Daniel Sutherland, *Kant's Mathematical World: Mathematics, Cognition, and Experience* (Cambridge: Cambridge University Press, 2022); Emily Jane Carson, *Mathematics, Metaphysics, and Intuition in Kant* (PhD diss., Harvard University, 1996); Emily Carson and Lisa Shabel, eds., *Kant: Studies on Mathematics in the Critical Philosophy* (London: Routledge, 2016).

<sup>6</sup> In Kant's time, Johann Christian Eberhard and Moses Mendelssohn were popular-philosopher defenders of Christian Wolff's philosophy. Eberhard was a prominent critic of Kant's *Critique of Pure Reason* from the standpoint of German rationalist metaphysics. The German Lockeans Johann Georg Heinrich Feder and Christian Garve helped to introduce the English and French Enlightenment into Germany and they were widely read popular-philosophy opponents of Wolff's rationalism. Upon publication of *KrV*, they became empiricist critics of Kant's transcendental idealism as well.

Kant confronted eighteenth-century post-Leibnizian German metaphysics; David Hume's, Rene Descartes's, and George Berkeley's styles of skepticism; and anti-rational Pietism. Post-Leibnizian German metaphysics includes, importantly, Wolff, Alexander Baumgarten, and Christian August Crusius. Crusius was a philosopher of the Pietist stripe, whose arguments were a reservoir for Kant's anti-Enlightenment contemporaries Johann Georg Hamann and Friedrich Heinrich Jacobi. Wolff's grounding of all disciplines in reason was incompatible with the Pietist stance that all ideas were to be

are also key to his innovative epistemology to replace German rationalism and empiricism.<sup>7</sup> Kant's answers to *these* questions form a critique some could make of Rand's theoretical philosophy, and thus invite counters from Rand's standpoint.

Walsh places Rand in substantial agreement with Kant by an informal oral remark she made<sup>8</sup>:

Actually, do you know what we can ascribe to the universe as such, apart from scientific discovery? Only those fundamentals that we can grasp about existence. Not in the sense of switching contexts and ascribing particular characteristics to the universe, but we can say: since everything possesses identity, the universe possesses identity. Since everything is finite, the universe is finite. But we can't ascribe space or time or a lot of other things to the universe as a whole.<sup>9</sup>

Rand's remark that the universe, or the sum of all existents, cannot be regarded as a whole entity having characteristics of its parts applicable to the whole, was not Rand's settled view. Three years after those remarks, she put into published writing that her axiom "Existence exists" entails that the universe as a whole cannot come into or go out of existence. For her, this meant that from metaphysics (based in

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measured by their moral or spiritual impact. Baumgarten's *Metaphysics*, from which Kant lectured, steered a middle course between Wolff and the Pietists.

<sup>7</sup> Kant, *KrV*, A755/B783; see Henry E. Allison, *Kant's Transcendental Deduction: An Analytical-Historical Commentary* (New York: Oxford University Press, 2015), pp. 444–46.

<sup>8</sup> George V. Walsh, "Ayn Rand and the Metaphysics of Kant," p. 22. See Immanuel Kant, *Critique of Pure Reason* (hereafter, *KrV*), trans. Werner S. Pluhar (Indianapolis, IN: Hackett, 1996 [1781, 1787]), A408–67/B435–95. Note that all citations of the various translations of Kant's works are to pages in the original-language *Akademie* volumes rather than to page numbers of the translations.

<sup>9</sup> Ayn Rand, *Introduction to Objectivist Epistemology*, expanded 2<sup>nd</sup> ed., ed. Harry Binswanger and Leonard Peikoff (New York: Meridian, 1990), p. 273.

perceptual experience) we know that duration is applicable to the universe as a whole and that the duration of the universe is endless.<sup>10</sup>

Walsh is correct in maintaining that “Kant was primarily interested in settling once and for all the question of whether metaphysics is possible as a science.”<sup>11</sup> Walsh’s emphasis on this issue for Kant was guided by Douglas Dryer.<sup>12</sup> Walsh gives a definition of metaphysics used by Dryer,<sup>13</sup> which Walsh insinuates was Kant’s definition of metaphysics: “the science of all that is, in so far as it is.”<sup>14</sup> That definition is compatible with Wolff’s,<sup>15</sup> but incompatible with Kant’s account of proper method for metaphysics.<sup>16</sup> Walsh gives no citation for that definition of metaphysics in Kant’s works and I have been unable to find Kant making such a claim.<sup>17</sup> If Kant were on board

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<sup>10</sup> Ayn Rand, “The Metaphysical versus the Man-Made,” in Ayn Rand, *Philosophy: Who Needs It* (New York: Signet, 1982), p. 25. I capitalize ‘existence’ when I mean not only existence *per se*, but also existence as a whole, existence in its entirety.

<sup>11</sup> Walsh, “Ayn Rand and the Metaphysics of Kant,” p. 7. See Kant, *KrV*, Axiii, Axx–xxii, Bxxii–xxiv.

<sup>12</sup> Douglas P. Dryer, *Kant’s Solution for Verification in Metaphysics* (London: George Allen & Unwin, 1966), preface and chap. 1. See also, Yirmiyahu Yovel, “Kant’s Project Reconsidered: Metaphysics as Science and as Ethical Action,” in *Kant Today*, ed. Hans Lenk and Reiner Wiehl (Berlin: Lit Verlag, 2006), pp. 85–98; and Karin de Boer, *Kant’s Reform of Metaphysics: The Critique of Pure Reason Reconsidered* (Cambridge: Cambridge University Press, 2020).

<sup>13</sup> Dryer, *Kant’s Solution for Verification in Metaphysics*, p. 21.

<sup>14</sup> Walsh, “Ayn Rand and the Metaphysics of Kant,” p. 8. This would be a definition of general metaphysics, or ontology.

<sup>15</sup> Wolff writes: “Ontology or first philosophy is the science of being in general, or insofar as it is being”; see Christian Wolff, *Philosophia Prima Sive Ontologia (First Philosophy, or Ontology)* (Frankfurt: Regner, 1730), sec. 1.

<sup>16</sup> Kant, *KrV*, Axiii, Bxx–xxi, B7, B395n. See also, Marcus Willaschek, *Kant on the Sources of Metaphysics: The Dialectic of Pure Reason* (New York: Cambridge University Press, 2018), pp. 36–45.

<sup>17</sup> In his lectures on metaphysics, Kant told his students that the term

with this definition, then his conception of what metaphysics is, as an attainable discipline, would be not far from Rand's, which is that metaphysics is "the study of existence as such."<sup>18</sup> However, before arriving at his method for metaphysics under his Critical philosophy, Kant writes (following Alexander Baumgarten) that "metaphysics is nothing other than the philosophy of the fundamental principles of our cognition."<sup>19</sup> In the second edition of Kant's *Critique of Pure Reason*, he states: "Metaphysics is a speculative cognition by reason that . . . rises entirely above being instructed by experience. It is cognition through mere concepts (not, like mathematics, cognition through the application of concepts to intuitions)."<sup>20</sup> Walsh thus inaccurately casts Rand and Kant as more in step on what is metaphysics than is the case.

From Rand's standpoint, Wolffian metaphysics should be indicted, though not as sweepingly as Kant indicts it. One big differ-

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'ontology' means the science of being, or general doctrine of being, and that metaphysics is supposed to determine the predicables of all or most things. But these are only perfunctory, and that definition and aim of ontology is to be deflated by shifting focus to right epistemological character and limitations. Kant's projected metaphysics conforming to his strictures under the Critical philosophy is not like those of Wolff or Baumgarten, but rather, presentation of all pure *a priori* cognition in a systematic manner. Kant, *KrV*, A845/B873. See De Boer, *Kant's Reform of Metaphysics*, pp. 218-59; Robert B. Pippin, *Kant's Theory of Form* (New Haven, CT: Yale University Press, 1982), pp. 223-28.

<sup>18</sup> Rand, *Philosophy: Who Needs It*, p. 2.

<sup>19</sup> Immanuel Kant, "Inquiry Concerning the Distinctness of the Principles of Natural Theology and Morality," in *Immanuel Kant: Theoretical Philosophy, 1755-1770*, trans. and ed. David Walford (New York: Cambridge University Press, 1992), 2:283.

<sup>20</sup> Kant, *KrV*, Bxiv. This is a redefinition and contraction of the traditional scope of metaphysics. By this time, Kant considered that up until him and his new conception of it, "metaphysics as a science has never existed at all" (*Prolegomena to Any Future Metaphysics That Will Be Able to Come Forth as a Science*, in *Immanuel Kant: Theoretical Philosophy After 1781*, ed. and trans. Henry Allison and Peter Heath [New York: Cambridge University Press, 2002], 4:369). See also, Immanuel Kant, "What Real Progress Has Metaphysics Made in Germany since the Time of Leibniz and Wolff?" in *Immanuel Kant: Theoretical Philosophy after 1781*, 20: 259-61.

ence between the metaphysics of Wolff and of Rand is that, for Rand, existence is most basic. She holds that concrete actualities are the existents upon which all else, such as essences and possibilities, must be framed.<sup>21</sup> For Wolff, though, “philosophy is the science of all possible things, together with the manner and reason of their possibility.”<sup>22</sup>

Wolff’s criterion of possibility is freedom from contradiction, where such contradictions concern things in the world. This makes logical analysis the method for Wolffian metaphysics. Since Wolff took the Principle of Sufficient Reason (PSR) to be a consequence of the Principle of Non-Contradiction (PNC), PSR is also a tool in Wolffian metaphysics.<sup>23</sup> Primacy of possibility over existence infects not only Wolff’s metaphysics, but also Baumgarten’s metaphysics, whose order of foundational steps in metaphysics is (i) the definition of nothing, which is the impossibility of contradiction, (ii) and then something, that which is not nothing.<sup>24</sup>

By contrast, Christian Crusius holds: “All other sciences contain further determinations of those things that arise in metaphysics. . . . Metaphysics reveals the grounds of possibility or necessity *a*

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<sup>21</sup> Rand, *Introduction to Objectivist Epistemology*, p. 173. Leonard Peikoff remarks, “Leaving aside the man-made, *nothing is possible except what is actual*”; see Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Dutton, 1991), p. 28. The possible, I say, should be in contrast to the actual, so I amend Peikoff’s remark a bit on the side of Objectivism: nothing is possible except what are potentials (co-potentials) of actuals. Potentials, like actuals, are existents. I submit that my amendment is consonant with Rand’s philosophy and with what Peikoff is getting at with that remark.

<sup>22</sup> Christian Wolff, *Rational Thoughts on the Powers of the Human Understanding and Its Proper Use in the Cognition of Truth* (London: L. Hawes, W. Clarke, and R. Collins, 1770), sec. 1. This work is commonly known as the *German Logic*.

<sup>23</sup> PSR, for Wolff, is the principle that nothing is without a sufficient reason (or ground) why it is rather than not (*Ontologia*, sec. 70). PNC is the principle that it cannot happen that the same thing simultaneously is and is not (*Ontologia*, sec. 28).

<sup>24</sup> Alexander Baumgarten, *Metaphysics*, trans. and ed. Courtney D. Fugate and John Hymers (London: Bloomsbury, 2013 [1730]), secs. 7–8.

*priori*, through which cognition {of other sciences} becomes more distinct and complete.”<sup>25</sup> Kant’s insistence that metaphysical knowledge be *a priori* conforms to Crusius’s view.<sup>26</sup> Crusius takes metaphysics to be “the science of those necessary truths of reason that are something different from the determination of extended magnitudes,”<sup>27</sup> keeping close to mathematics in method, though not in subject matter. To Crusius’s mind, what we should seek most fundamentally in metaphysics is “a universal fundamental science from which all other human cognition that is to be established *a priori* can obtain its grounds and which also contains within itself the grounds for mathematical and practical sciences {ethics}.”<sup>28</sup>

All three of these metaphysical theories—from Wolff, Crusius, and Baumgarten—were current on the intellectual scene at the outset of Kant’s time. The latter two, especially, gave much weight to metaphysics’s role in fortifying human knowledge and morality and little to the topic of metaphysics itself for a definition of metaphysics. Kant criticized Baumgarten’s definition as resting metaphysics on the level of generality in empirical cognition. Kant, instead, distinguishes metaphysics by the absence of empirical sources in metaphysical cognition, by the *a priori* character of cognition in metaphysics, and by *a priori* cognition from concepts.<sup>29</sup> Rand’s conception, aim, and methods of metaphysics are miles apart from Kant’s in his mature philosophy.

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<sup>25</sup> Christian August Crusius, Preface to *Sketch of the Necessary Truths of Reason*, in *Kant’s Critique of Pure Reason: Background Source Materials*, ed. and trans. Eric Watkins (New York: Cambridge University Press, 2009), p. 137. In quotations I use curly braces to indicate a parenthetical insertion from me, square braces if a parenthetical is from the translator.

<sup>26</sup> On the influence of Crusius on Kant, see Eric Watkins, “Breaking with Rationalism: Kant, Crusius, and the Priority of Existence,” in *Leibniz and Kant*, ed. Brandon C. Look (New York: Oxford University Press, 2021), pp. 57–78.

<sup>27</sup> Crusius, *Sketch of the Necessary Truths of Reason*, p. 137.

<sup>28</sup> *Ibid.*

<sup>29</sup> Kant, *KrV*, A843-44/B871–72.

Kant's *Critique of Pure Reason* is a critique of the methods in and scope of his predecessors' and contemporaries' metaphysics by confining the results of metaphysics to the world we can experience. While their metaphysical views are different from Rand's, hers is a broadly empiricist method that Kant would reject because the necessity in such a metaphysics is not of the *a priori* sort.<sup>30</sup> As Miller observes, Rand spurns such metaphysics.<sup>31</sup>

Kant's project was a critique of both general metaphysics and metaphysics in its customary applications—"special metaphysics"—as Walsh observes.<sup>32</sup> Kant's plan, on its face, was not the abolition of all metaphysics, but a radical reform of metaphysics, beginning with a critique of received metaphysics through a critique of pure reason within which metaphysics is reined in and reconfigured.<sup>33</sup> Pure reason,

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<sup>30</sup> Kant would reject for metaphysics Rand's principle "Existence is identity" as loaded with too much empirical meaning. Rand includes exclusions under identity: leaf/stone, burn/freeze, and all-green/all-red. Kant had taken PNC as the basic logical rule for all universal negative propositions. Departing from Wolff, he had taken the Principle of Identity as the basic logical rule for all universal affirmative propositions. Just as Kant came to reject Wolff's PSR as a purely logical principle, so he would reject Rand's empirically loaded conception of identity as rightly in play in metaphysics or in logic. Then too, Kant would reject Rand's view of causation, her replacement for widest-scope PSR, under the lens of identity, and oppose her principle of causality against his Second and Third Analogies of Experience in *KrV*, his replacement for widest-scope PSR. See Pluhar's note 160 in *KrV* at A201/B246. See Immanuel Kant, "On a Discovery whereby any New Critique of Pure Reason Is to Be Made Superfluous by an Older One," in *Immanuel Kant: Theoretical Philosophy after 1781*, 8:193–98. See also, Eric Watkins, *Kant and the Metaphysics of Causality* (New York: Cambridge University Press, 2015), pp. 185–297; Jeffrey Edwards, *Substance, Force, and the Possibility of Knowledge* (Berkeley, CA: University of California Press, 2000).

<sup>31</sup> Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 35. I add that Rand disputes we have *any* knowledge *a priori*, any knowledge independent of experience. Truth of Rand's axioms, though based in experience, can be shown to be necessary truths in the sense of being not possibly false.

<sup>32</sup> Walsh, "Ayn Rand and the Metaphysics of Kant," p. 6.

<sup>33</sup> Kant, *KrV*, Axx–xxi, Bxxii–xxiii, lxiii. Immanuel Kant, *Prolegomena to any Future Metaphysics That Will Be Able to Come Forth as Science*, sec. 40.

Kant holds, is the instrument by which any science, including a science of metaphysics, can have its principles established in a “law-given way,” its “determining concepts” established distinctly, and its proofs made rigorous.<sup>34</sup> Under his plan, Kant was setting out his substitute for Wolff’s rules for making a science, from the science of geometry to the science of physics to the science of metaphysics.<sup>35</sup>

One difference between Kant and Rand in their conception of metaphysics is that Rand was not interested in establishing metaphysics as a science in Kant’s or Wolff’s sense, and she had no use for what Kant called “pure reason” as method for metaphysics. Then, too, *contra* Kant, under Rand’s epistemology, it can be known that God does not exist.<sup>36</sup> Again *contra* Kant, Rand holds that it can be

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<sup>34</sup> Kant, *KrV*, Bxxxvi–xxxvii.

<sup>35</sup> Wolff, *German Logic*, “Preliminary Discourse,” sec. II. See also, Christian Wolff, *Rational Thoughts Concerning God, the World and the Human Soul, and also All Things in General*, commonly called Wolff’s *German Metaphysics*, in *Early German Philosophy (1690-1750)*, ed. and trans. Corey W. Dyck (New York: Oxford University Press, 2019), pp. 99–134, and in Watkins, *Kant’s Critique of Pure Reason: Background Source Materials*, pp. 7–53. Kant also disputes Wolff’s analysis of how geometry works, including Wolff’s source of certainty in geometry, found in Wolff, *German Metaphysics*, sec. 9. See also Lisa Shabel, *Mathematics in Kant’s Critical Philosophy* (New York: Routledge, 2003).

<sup>36</sup> The existence of such a being is known to be impossible because “a consciousness conscious of nothing but itself is a contradiction in terms: before it could identify itself as consciousness, it had to be conscious of something”; see Ayn Rand, *Atlas Shrugged* (New York: Random House, 1957), p. 1015. The belief of spiritualists that there is such a thing as consciousness without existence is invalid (*ibid.*, p. 1027). The definition of God “that he is beyond man’s power to conceive . . . invalidates man’s consciousness and nullifies his concept of existence” (*ibid.*, p. 1027). The so-called voice of God in you is in truth “nothing more than the corpse of your mind” (*ibid.*, p. 1037). “The alleged short-cut to knowledge, which is faith, is only a short-circuit destroying the mind” (*ibid.*, p. 1018). An approach toward God that says only what the alleged entity is not (which I note is the negative way of Pseudo-Dionysius and Maimonides) “are not acts of defining, but of wiping out” (*ibid.*, p. 1035). That way is contrary to Rand’s metaphysical axiom that existence is identity. See also, Nathaniel Branden, “Since Everything in the Universe Requires a Cause, Must Not the Universe Itself

known that death is exactly as it appears: cessation of the animal and person that is an individual human.<sup>37</sup> Walsh (correctly) points out that Rand, in these cases, took what is determinate and knowable in metaphysics as beyond the confines imposed by Kant on what could be known by us.<sup>38</sup> One of Kant's Antinomies—the eternity of the world past—Rand took to be contained in her axiom “Existence exists.”<sup>39</sup> Kant was trying to rein in metaphysics too far and made claims of profound insolvability about issues which today are perfectly good scientific questions.<sup>40</sup>

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Have a Cause, Which Is God?” *The Objectivist Newsletter* (May 1962), p. 19; Peikoff, *Objectivism*, pp. 17, 21, 27–28, and 31–33.

<sup>37</sup> Rand states: “Life is a process of self-sustaining and self-generated action. If an organism fails in that action, it dies; its chemical elements remain, but its life goes out of existence”; see Rand, *Atlas Shrugged*, p. 1013. “That which you call your soul or spirit is your consciousness” (*ibid.*, p. 1017). Consciousness in animals is done by a living animal's brain processing; see Ayn Rand, “The Objectivist Ethics,” in Ayn Rand, *The Virtue of Selfishness* (New York: Signet, 1964), p. 19. “Consciousness is an attribute of certain living entities”; see Rand, *Introduction to Objectivist Epistemology*, p. 56. Cessation of animal life is cessation of its consciousness.

<sup>38</sup> Walsh, “Ayn Rand and the Metaphysics of Kant,” p. 6.

<sup>39</sup> Rand, “The Metaphysical versus the Man-Made,” p. 25. Kant, *KrV*, A426–33/B454–61. An argument can be made in defense of Rand's stand here, which I have done elsewhere; see Stephen Boydston, “Existence, We,” *Journal of Ayn Rand Studies* 21, no. 1 (2021), pp. 65–104, esp. pp. 69–71. On the other hand, Rand's stand here contradicts her view that there can be no completed metaphysical (physical) infinities and her view, noted by Walsh at the end of his article, that existence as a whole cannot be known to have traits other than existence and identity.

<sup>40</sup> For example, it is often thought that contemporary scientific cosmology has established that the past duration of the universe is finite, extending back only so far as the Initial Singularity. That is a misunderstanding. There is reason to suppose that the total mass-energy of the universe has the same value throughout the past as it has today. Our contemporary cosmology does not propose or conclude that that mass-energy came into existence at the time of the Initial Singularity. Furthermore, our physics and cosmology take it that local physical quantities can be summed for a total value to apply to the universe as a whole. Reasons internal to our cosmology determine which of those quantities conserved locally are also conserved in the universe as a

Notwithstanding the ways in which Rand misunderstands Kant's philosophy in her article "For the New Intellectual," she was right to stress that basic concepts such as *time*, *space*, and *existence* have their basis in reality directly perceived and are not ultimately merely forms brought *from* the perceiving and conceiving subject to experience and reality.<sup>41</sup>

Kant supposed at the outset of his Transcendental Idealism that a valid metaphysics needs to be based only on pure reason, and Wolffian metaphysics failed at that. In getting to their desired pinnacles of showing the existence of God or immortality of the soul, such metaphysics enlists the Principle of Sufficient Reason (PSR), the workhorse of German rationalism. However, PSR is an informative, synthetic principle, in Kant's mature view of PSR, and because it is not purely independent of sensory perception, it is an illicit lever in metaphysics as a science. Knowledge that is at once synthetic and *a priori* must be informative, not merely analytic, yet based purely on reason.<sup>42</sup>

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whole. Our physics and cosmology contain nothing *a priori* and make no use of Kant's pure metaphysics of nature.

<sup>41</sup> Ayn Rand, "For the New Intellectual," in Ayn Rand, *For the New Intellectual* (New York: Signet, 1961), p. 31. See also, Rand, *Introduction to Objectivist Epistemology*, pp. 5–6; Peikoff, *Objectivism*, pp. 8 and 13.

<sup>42</sup> Kant, *Prolegomena*, secs. 2–40. We know that some synthetic *a priori* knowledge is possible, because, in Kant's view, we possess such knowledge about mathematics and pure physics, and those successes are not reasonably to be doubted. See also, R. Lanier Anderson, *The Poverty of Conceptual Truth* (New York: Oxford University Press), pp. 270–86.

In the preface to his *Groundwork of the Metaphysics of Morals*, Kant states: "All philosophy insofar as it is based on grounds of experience can be called *empirical*; but insofar as it sets forth its teachings simply from *a priori* principles it can be called *pure* philosophy. When the latter is merely formal it is called *logic*; but if it is limited to determinate objects of the understanding it is called *metaphysics*"; see Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 4:388, in *Immanuel Kant: Practical Philosophy*, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996). See also, Kant, *KrV*, A841/B869. Walsh quotes from that work and therewith represents Kant as building a bridge between our purely mechanical Newtonian world of fact and our realm of moral values, which includes "man's 'preservation, his welfare, of in a word his happiness'"; see Kant, *Groundwork*, 4:395; Kant, *KrV*, A841–

### 3. Misdiagnoses of Kant's Fundamental Errors

Walsh notes Rand's following remark:

The phenomenal world, said Kant [this is not a direct quote from Kant] is not valid. Reality as perceived by man's mind is a distortion. The distorting faculty is man's conceptual faculty: man's basic concepts (such as time, space, existence) are not derived from experience of reality, but from an automatic system of filters in his consciousness (labeled 'categories' and 'forms of perception') which impose their own design on his perception of the external world . . . . [According to Kant,] man's concepts are only a delusion, but a collective delusion which no one has the power to escape.<sup>43</sup>

Rand errs greatly in stating that, for Kant, "reality, as perceived by man's mind is a distortion."<sup>44</sup> Kant not only did *not* state such a view, but contradicts it:

Still less may *appearances* {*Erscheinung*} and *illusion* {*Schein*} be regarded as being the same. For truth and illusion

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42/B869–70. This is one of the ways in which Walsh exaggerates the closeness of Kant and Rand. The context of Kant's quoted claim conflicts with Walsh's representation. Kant was there saying only that *were those* values correct, then nature would have endowed the human constitution with a well-marked instinct for their accomplishment. Nature has not done this, and that sort of purpose is not the correct moral purpose. Reason is given us "as a practical faculty, that is, as one that is to influence the *will*. . . . This will need not . . . be the sole and complete good, but it must be the highest good and the condition for every other, even of all demands for happiness"; see Kant, *Groundwork*, 4:396. In this, Kant stands in contradiction to the Enlightenment and in opposition to Rand's philosophy.

<sup>43</sup> Walsh, "Ayn Rand and the Metaphysics of Kant," pp. 1–2, citing Rand, "For the New Intellectual," p. 32.

<sup>44</sup> Similarly, "distortion"; see Peikoff, "The Analytic-Synthetic Dichotomy," p. 120. See also, Nathaniel Branden, "The Basic Principles of Objectivism," in Nathaniel Branden, *The Vision of Ayn Rand* (Gilbert, AZ: Cobden Press, 2009), p. 21; and Peikoff, *Objectivism*, p. 51.

are not in the object insofar as it is intuited, but are in the judgment made about the object insofar as it is thought. Hence although it is correct to say that the senses do not err, this is so not because they always judge correctly but because they do not judge at all.<sup>45</sup>

Walsh does not point out this quotation in which Kant flatly contradicts Rand's characterization of Kant. Instead, he counters Rand's characterization by recounting Kant's argument that there is a necessity in Euclidean geometry of a sort not attained in empirical generalization, and Kant saw this as possible only if an important part of our experience of space is contributed by any person's mind. This account does not entail that space is an illusion, even were it form from the mind in experience of things.<sup>46</sup>

Walsh then counters Rand's illusion-delusion charge against Kant's view of empirical knowledge. He endorses Dryer's account of Kant<sup>47</sup> in which the usefulness of regularities in sorting reality from illusions within our experience of the empirical world cannot be applied to distinguish things as they are in themselves from things as experienced by us. Rather, says Dryer, Kant's distinction between things as they are in themselves and as they appear to us must be as follows: "Kant argues that it is only by purely intellectual concepts that we can make meaningful to ourselves the alternative to what are objects of the senses."<sup>48</sup> Those concepts are Kant's categories of the

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<sup>45</sup> Kant, *KrV*, A293/B349-50; see also B70. Against the idea that Kant's "appearances" are illusions, see Anja Jauernig, *The World According to Kant* (New York: Oxford University Press, 2021), pp. 248–57 and 267.

<sup>46</sup> Walsh, "Ayn Rand and the Metaphysics of Kant," p. 20. Walsh is correct in this point against Rand's imputation of illusion to Kant because Kant concludes that spatial relations are forms of outer experience contributed by the mind. In oral discussion, Rand herself thought that perceived spatial relations of length could be what our visual and tactile systems deliver to us in a process-stamped form, yet be objective all the same; see Rand, *Introduction to Objectivist Epistemology*, p. 280.

<sup>47</sup> Dryer, *Kant's Solution for Verification in Metaphysics*, p. 517.

<sup>48</sup> *Ibid.*

understanding by which we think of objects *per se* apart from how the categories may present themselves to the senses. Fundamental categories of the understanding, in Kant's system, are apart from space and time; hence, they are things thought of the world, but not things known of the world, which would require empirical intuition of space.

Miller maintains that Kant took truth not as correspondence with reality, but as coherence in the mind.<sup>49</sup> A falsity under correspondence can pass for truth under coherence, which would leave Kant's view about *appearance* open to being systematic illusion. I hold, to the contrary, that where there is a truth relation in Kant's system, Kant is presuming the correspondence notion of truth, not the coherence notion. In Kant's view, rational true belief requires objects fitting the thought.<sup>50</sup> The quotation from Kant in the opening paragraph of this section relies on the correspondence notion of truth as much as Rand's does when she likewise upholds the inerrancy of percepts.

For Kant, space's *connectedness* and its *necessity* entail that its form be from the perceiver of objects, but such a formal organization without at least possible application in experience in its *givenness* would be only a plaything of the mind and without objectivity.<sup>51</sup> Meaningful consideration of the existence of empirical matters presently unknown to us requires necessarily, in Kant's form of idealism, recognizing that we can reach new knowledge only through perception according to laws of empirical progression. That does not bar him from holding correspondence of the empirical conjecture, before those steps are taken, and confirmation of the correspondence with the subsequent empirical finding.<sup>52</sup> Moreover, although a law of nature depends in the necessity of its inner connectedness ultimately on the categories given *a priori* from the understanding, particular

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<sup>49</sup> Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" pp. 31–32; Miller there gives no reason for this contention.

<sup>50</sup> Kant, *KrV*, B146.

<sup>51</sup> *Ibid.*, A155–57/B194–96.

<sup>52</sup> *Ibid.*, A493–94/B521–22, B168.

empirical laws “are not *derivable completely*” from the *a priori* laws of nature as such.<sup>53</sup>

Kant’s denial of transcendental realism need not lead him to abandon a correspondence theory of truth, but only to curtail the proper range in which truth is operative for us. He needs no theory of truth concerning attainment of knowledge of things as they are in themselves because he thinks we cannot know them beyond knowing that they are real and that they are distinct from and underlie our empirical engagements. It could be said, further, that things in themselves are like noumena in their unknowability by us. Those truths are put forth as possible truths corresponding with facts. Kant’s repeated claims that there can be no such thing as appearances without something (thing-in-itself) which appears, upholds correspondence as his envisioned relation between appearance and its grounding thing-in-itself.<sup>54</sup> Albeit, that would be a correspondence relation we are unable to get hold of with any specificity. Unlike Isaac Newton’s distinction of apparent motions and true motions, where knowledge of the latter is reasoned from the observational data that are the former, Kant’s things-as-they-are-perceived ordinarily or scientifically are not data for revealing things-as-they-are-in-themselves, but for discovering more of what is perceivable. It is not only “things-in-themselves” that might be

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<sup>53</sup> Ibid., B165. Kant’s case against the Ontological Argument for the existence of God is also a testament to a correspondence notion of truth; see Immanuel Kant, “The Only Possible Argument in Support of a Demonstration of the Existence of God,” in *Immanuel Kant: Theoretical Philosophy 1755–1770*, trans. David Walford (Cambridge: Cambridge University Press, 1992), 2:72. Kant makes the following argument: The circumstance that we can self-consistently conceive of a being having every possible kind of positive being there is or can conceive of a cause as the highest cause does not show that such a thing exists. If there were such a being, our concept would correspond to it. The argument that conception of such a being guarantees the existence of such a being fails, meaning (for Kant as for us) that the argument does not establish correspondence of its conclusion with reality; see Kant, *KrV*, A592–602/B620–30. See also, Lawrence Pasternack, “Kant,” in *Ontological Arguments*, ed. Graham Oppy (New York: Cambridge University Press, 2018), pp. 99–120; and Nicholas Stang, *Kant’s Modal Metaphysics* (New York: Oxford University Press, 2016).

<sup>54</sup> See Kant, *KrV*, Bxxvi–xxvii, A251–52; Kant, *Prolegomena*, 4:315; and Pippin, *Kant’s Theory of Form*, pp. 201–15.

quarry and a prize in a hunt for truth.<sup>55</sup> In Rand's metaphysics, "things-in-themselves" are nothing at all, and hence nothing to be sought or won.<sup>56</sup>

Kant holds that whatever is contrary to logical principles is false, but to attain any truth, more is required than conformance to logical principles; one must first obtain reliable information.<sup>57</sup> Knowledge requires not only that information, but also judgment concerning it organized under fundamental concepts, which are Kant's categories of the understanding.<sup>58</sup> *Synthesis* and *unity* are leading ideas in his transcendental, formal idealism. They are essential to cognition and truth,<sup>59</sup> "but even if a cognition accorded completely with logical form, i.e., even if it did not contradict itself, it could still contradict its object."<sup>60</sup> Kant was not an early rider in the coherence-view-of-truth coach even though he overly weighted the side of the subject in the foundations of logic with his doctrine that one should not deviate from

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<sup>55</sup> Similarly, on relative worth, see Graham Bird, *The Revolutionary Kant: A Commentary on the Critique of Pure Reason* (Chicago, IL: Open Court, 2006), p. 175.

<sup>56</sup> Rand, "For the New Intellectual," p. 32; and Rand, *Introduction to Objectivist Epistemology*, p. 80.

<sup>57</sup> Kant, *KrV*, A60/B84–85.

<sup>58</sup> *Ibid.*, A51/B75, A247/B304. This is why Ralph C. S. Walker, in *The Coherence Theory of Truth: Realism, Anti-Realism, Idealism* (New York: Routledge, 1989), took Kant's theory of truth concerning empirical knowledge to be a coherence theory. That would be contrary Kant's contention that although such conceptual placement is required for perception of an object as object, it does not suffice for truth in our knowledge of empirical objects. Paul Abela argues against taking Kant's view of truth as only correspondence or only coherence in his *Kant's Empirical Realism* (New York: Oxford University Press, 2002), pp. 66–73. Frederick F. Schmitt argues that idealism, such as Kant's, can hold to a correspondence notion of truth in his *Truth: A Primer* (Boulder, CO: Westview, 1995), p. 146. Bird, *The Revolutionary Kant*, p. 258, rejects imputing to Kant a coherence notion of truth.

<sup>59</sup> Kant, *KrV*, A97–98, B129–30, B134–35, B137, B151.

<sup>60</sup> *Ibid.*, A59/B84; and A150/B190.

the rules of logic “because the understanding is then in conflict with its own universal rules of thought, and hence with itself.”<sup>61</sup> For Kant, conformance to subject-laden logical form does not suffice for truth.

Kant’s is no less a correspondence theory of truth than Rand’s with her requirement that truth be not only assertion of fact, but also correctness of definitions of the concepts in the assertion.<sup>62</sup> Rand has a context-sensitive and integrative correspondence view of truth. Rand’s metaphysical axioms, and her categories—with their perceptual basis and epistemological role in conceptual thought—involve judgment about present perception.<sup>63</sup> Unlike Kant’s categories applied to present perception, Rand’s axioms and axiomatic concepts are not *a priori*; they get their necessity from the world,<sup>64</sup> not just from being irrefutable. Rand’s axiomatic concepts are thus foundations of objectivity.<sup>65</sup> Unlike Kant’s categories, Rand’s axioms, axiomatic concepts, and categories are drawn entirely from experience; they do not make objects of perception possible as objects in thought.<sup>66</sup> For

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<sup>61</sup> Ibid., A59/B84.

<sup>62</sup> Rand, *Introduction to Objectivist Epistemology*, p. 48.

<sup>63</sup> Rand, *Atlas Shrugged*, pp. 1040–41.

<sup>64</sup> Peikoff, “The Analytic-Synthetic Dichotomy,” pp. 107–9.

<sup>65</sup> See Rand, *Introduction to Objectivist Epistemology*, p. 57; Miller, “Comments on George Walsh, ‘Ayn Rand and the Metaphysics of Kant,’” p. 34.

<sup>66</sup> See Rand, *Introduction to Objectivist Epistemology*, pp. 55–57; Kant, *KrV*, B143–46, B165. Reason, in Rand’s sense, is at work in the activity of human perceptual experience, but reason does not set up *a priori* forms without which no adequate, coherent perceptual experience is possible. Randian integrations in sensory perception, concepts, propositions, and inference are in no part Kantian pure synthesis. Also contrary to Kant, percepts in Rand’s epistemology are not entirely blind without concepts. Then, too, Rand’s distinction between content and action in consciousness does not coincide with Kant’s distinction between matter and form in consciousness; see Kant, *KrV*, A20/B34. See Lorne Falkenstein, *Kant’s Intuitionism: A Commentary on the Transcendental Aesthetic* (Toronto: University of Toronto Press, 1995), pp. 72–142. For an echo of Aristotle in Kant on the matter-form distinction, see Miller, “Comments on George Walsh, ‘Ayn Rand and the Metaphysics of Kant,’” p. 33; and Marco Sgarbi, *Kant and Aristotle* (Albany, NY: State

Kant, the unity of diverse world-presentations of which humans are conscious is from the unity of the apprehending, spontaneously acting self. It is one's possibility of self-consciousness accompanying all one's cognitions that makes synthetic *a priori* judgments possible.<sup>67</sup> The unity of Rand's categories—entity, action, attribute, relationship—is from the unity in the world's identity, the world as it is independently of our discernments of it.<sup>68</sup> Rand's axioms and categories can supplant Kant's *a priori* elements in ordinary experience, physics, and metaphysics.<sup>69</sup> That the objective truths Kant elucidates in his three "Analogies of Experience" are objective unities by ineluctable *a priori* structure of mind,<sup>70</sup> in no way makes Kant's account of empirical truth a coherence theory. It is, rather, a correspondence theory impoverished in the number of correspondences in comparison to what is found in Rand.

According to Kant, "*Intuition* is that by which a cognition refers to objects directly . . . . By means of sensibility objects are given to us, and it alone supplies us with *intuitions*."<sup>71</sup> We thus immediately grasp through perception that outer objects are in space. Kant would have spatiality and externality not given as something independent of our perceptions, though they are real in such perceptions. Instead, he has externality and spatiality emerging from the constitution of our perceptual consciousness. This is the view that Rand and the German

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University of New York Press, 2016), pp. 79–94.

<sup>67</sup> Kant, *KrV*, A117n, B130–35, B140–45, B151–52, B169.

<sup>68</sup> Rand states: "An atom is itself, and so is the universe; neither can contradict its own identity; nor can a part contradict the whole"; see Rand, *Atlas Shrugged*, p. 1016. Rand's axiomatic concepts of existence and identity are a selective focus on and mental isolation of metaphysical fundamentals, but metaphysically they are the widest integration; see Rand, *Introduction to Objectivist Epistemology*, p. 56, *contra* Kant, *KrV*, A116–17.

<sup>69</sup> Similarly, Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 34.

<sup>70</sup> Kant, *KrV*, B22–21.

<sup>71</sup> *Ibid.*, A19/B33 and A239/B298.

empiricists of Kant's time needed to challenge by arguing that the sensory deliverances of objects and their spatial relations are how things are and show themselves to be: as external to the conscious, sensitive subject.<sup>72</sup>

#### 4. The Springs of Form

In Section 1, I stated that Kant's answers to three questions invite counters from Rand's standpoint: How is metaphysics possible? How is it like geometry and different from geometry?<sup>73</sup> How is geometry possible?

We perceive by vision subject-independent separations and degrees of separation between objects in space; we perceive with the

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<sup>72</sup> It is natural to think of Rand's epistemology as empiricist in that it takes all knowledge to be based on sensory experience. In that broad sweep, it is in league with Aristotle, Epicurus, Lucretius, Cicero, John Locke, and John Stuart Mill. Then, too, with Peter Abelard and modern empiricists such as Locke, Rand took reality to be only concrete, aside from our abstractions of it. There is not a mind-independent reality of abstract objects, possibilities, or principles that the mind accesses and brings into coordination with the concrete particulars of sensory experience. There is only one objective realm, not two, guiding our understanding of reality, and it is concrete.

<sup>73</sup> Rand took no notice of nor did she explicate the peculiar method of Euclidean geometry. However, her philosophy contains one significant way of distinguishing between the subject matter of metaphysics and geometry. Having taken identity, rather than PNC, as the deepest base of causality in widest generality, Rand could (but apparently did not notice she could) distinguish metaphysics from mathematics by taking identity (and not also PNC) as the distinctive basis of mathematics; and mathematics, which has not essentially to do with action (only with morphisms and other interrelations of formal objects), has not to do with causality. That is, in contrast to Kant's predecessor Wolff, Rand requires no PSR as a distinguishing note between mathematics and metaphysics. She could, instead, take causality as that distinguishing note. Action and causality are not under the subject matter of mathematics as such. Passage of time also is not under that subject matter. Rand could say that not only is there the law of identity applied to action, which is her metaphysical explication of causality, but in a thinner sense of identity, there is the law of identity applied to things existing through time. Application of the law of identity to action and to mere passage in time goes a significant way to distinguish the subject matter of metaphysics, which deals with those applications in most general form, from the subject matter of mathematics, which does not deal with those applications.

senses subject-independent betweenness-relations among objects; and we perceive all of those relations (unlike parallax or afterimages<sup>74</sup>) as subject-independent. Kant is wrong to slight any of those facts of the content of empirical perception. He errs in thinking that we do not have sensory uptakes that can pick up spatial relations; that is, he did not understand that absences can affect senses.<sup>75</sup> I suggest his reason for slighting them is *mainly* that he thought that on that realist basis we could not end with the sort of universality and necessity we attain in geometry.<sup>76</sup>

Rand never took up this line of thought and does not muster it against Kant. It can be mustered, though, and Leonard Peikoff begins to do so in his “The Analytic-Synthetic Dichotomy.”<sup>77</sup> There, he dissolves from the standpoint of Rand’s theoretical philosophy the key question that runs through Kant’s three burning questions, namely: How is synthetic *a priori* knowledge possible?

Rand argues, instead, that Kant lands in the absurdity that because consciousness, including perception, requires certain means, it is barred by those means of apprehending things as they are apart from perception of them.<sup>78</sup> Miller defends Rand in this analysis of Kant with

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<sup>74</sup> Kant was cognizant of our ability to discern some subject-relativity among some of our perceptions; see Immanuel Kant, *The Jäsche Logic*, in *Immanuel Kant: Lectures on Logic*, ed. and trans. J. Michael Young (New York: Cambridge University Press, 1992), 9:33.

<sup>75</sup> Kant, *KrV*, A20/B34.

<sup>76</sup> *Ibid.*, A25, A46–49/B64–67. Moreover, I say, getting by direct sensory perception some subject-independent geometric relations, does not entail that to intellectually reach further geometric relations, one must do so by empirical means. We have other right intelligence to employ for expansion of certain geometric facts picked up within elementary empirical observations.

<sup>77</sup> Peikoff, “The Analytic-Synthetic Dichotomy.”

<sup>78</sup> See Rand, “For the New Intellectual,” p. 32; Rand, *Introduction to Objectivist Epistemology*, p. 80. Rand’s first counter to Kant is in *Atlas Shrugged*: “‘Things as they are’ are things as perceived by your mind” (p. 1036). Speaking of “things as they are” instead of “things in themselves” is significant. “Things in themselves” meant for Kant, as for Wolff, things as they are without relations to other things. Rand maintains that part of the identity of any existent is its external relations; see Rand, *Introduction to*

respect to perception<sup>79</sup> by pointing to a passage in the *Critique of Pure Reason*:

Time and Space, taken together, are pure forms of all sensible intuition, and thereby make synthetic propositions possible *a priori*. But precisely thereby (i.e., by being merely conditions of sensibility), these *a priori* sources of cognition determine their own bounds; viz., they determine that they apply to objects merely insofar as these are regarded as appearances, but do not exhibit things in themselves.<sup>80</sup>

Miller takes Kant's claim that sensible intuition sets bounds on their application and for this reason cannot reach things in themselves, as an example of Rand's general criticism of Kant.

I dispute that this is the fundamental reason Kant thinks we are incapable of cognizing things in themselves. Prior to Kant's critical philosophy, metaphysicians in the shadow of Gottfried Leibniz held that we know things as they are in themselves (e.g., monads), which do not stand in spatial relations but give rise to things standing in spatial relations,<sup>81</sup> and we know them conceptually through intellectual

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*Objectivist Epistemology*, p. 39. Any existent stands in real relations to things not itself. From Rand's framework, any talk by Kant of things in themselves is not talk of any things as they are. According to Rand, existence as it is, is available in perceptions and actions as well as in conceptions true to perceptions and actions. We begin with existence; it is not something we are missing and must strive in higher thought to contact for the first time.

<sup>79</sup> Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 31.

<sup>80</sup> Kant, *KrV*, A39/B56. The bounds that Critical Kant would place on metaphysics need this bound placed on sensory perception.

<sup>81</sup> See Dionysios A. Anapolitanos, *Leibniz: Representation, Continuity and the Spatiotemporal* (Dordrecht: Kluwer, 1999), pp. 94–173; Vincenzo De Risi, *Geometry and Monadology: Leibniz's Analysis Situs and Philosophy of Space* (Basel: Birkhäuser Verlag, 2007), pp. 300–341; Nicholas F. Stange, "Bodies, Matter, Monads, and Things in Themselves," in Look, *Leibniz and Kant*, pp. 140–76; Wolff, *German Metaphysics*, sec. 81; and Baumgarten, *Metaphysics*, secs. 238–43.

intuition. Kant denies that we can access things in themselves on the ground that we have no power of intellectual intuition.<sup>82</sup> He does not deny that if we had intellectual intuition, we could access things as they are in themselves.

Kant denies also that we have intellectual access to objects called “noumena,” such as God and an immortal human soul. Kant denies such access not on account of needing specific means to access noumenal objects, but because he denies that we have an intellectual *a priori* intuitive power for accessing noumena.

Things in themselves are inaccessible through sensory perception not because we have perception by some specific ways and not others, but because Kant, like his forebearers, had already stripped things in themselves of external relations,<sup>83</sup> including spatial form. Kant also followed the traditional notion that God does not know things by thinking or sensing. God knows noumena and knows things as they are in themselves, which traditionally (and for Kant) meant things not in space. Additionally, Kant hews to the traditional notion that in God’s intellectual intuitive knowledge, God creates the object of the knowledge. Intellectual intuition is not among our powers; “rather, our kind of intuition is dependent on the object, and hence is possible only by the object affecting the subject’s capacity to present.”<sup>84</sup>

I thus set aside Rand’s proposal that Kant’s shortfall is that we cannot know things as they are because consciousness has identity. Kant’s fundamental error(s) concerning cognition is not that. He had

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<sup>82</sup> Cf. Peikoff, “The Analytic-Synthetic Dichotomy,” p. 107. In the account by Kant, we have no intuitive intellect, only discursive intellect; see Kant, *KrV*, B72, A67–68/B92–93; Falkenstein, *Kant’s Intuitionism*, pp. 28–71.

<sup>83</sup> See Kant, *KrV*, A2, B4, B15–16, A21/B35, A23–30/B38–45. Cf. John Locke, *Essay Concerning Human Understanding*, Vol. 1 (New York: Dover, 1959 [1690]), II.VIII.23; Gary Hatfield, “Kant and Helmholtz on Primary and Secondary Qualities,” in *Primary and Secondary Qualities: The Historical and Ongoing Debate*, ed. L. Nolan (New York: Oxford University Press, 2011), pp. 304–38; and Wolff, *German Logic*, I.XXIII.

<sup>84</sup> Kant, *KrV*, B71, B139, and B153. Lucy Allais, *Manifest Reality: Kant’s Idealism and His Realism* (New York: Oxford University Press, 2015), pp. 154, 157–58, and 167, argues that the singularity and immediacy that Kant takes as essential to sensory intuition guarantees existence of their objects.

good insight into Euclid's method and (rightly) rejected the German rationalists' and empiricists' philosophical explications of geometry.<sup>85</sup> Kant thought that only if our abstract consideration of spatial relations in Euclidean geometry (taken in Kant's day to be in all its structure the geometry of the physical world) were of structures brought to the world by our minds, only then could we explain the effectiveness of the method of geometry—posits, constructions, theorems—and the resulting necessity of its truths.<sup>86</sup> It is because of *that* and because the faulty conception “things as they are in themselves” excludes all external relationships that Kant overly weights the subject in our experience of space.

After the misunderstandings of his idealism in the first edition of his *Critique of Pure Reason*,<sup>87</sup> Kant emphasized the primacy of outer intuitions over inner intuition and emphasized the permanent in external presentation as necessary to inner flux of mind.<sup>88</sup> However, Kant did not retreat from his characterization of space as form supplied from the side of the subject, with form as ideal, without which no outer

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<sup>85</sup> See Michael Friedman, *Kant and the Exact Sciences* (Cambridge, MA: Harvard University Press, 1992), pp. 98–104; Sutherland, *Kant's Mathematical World*, pp. 187–218.

<sup>86</sup> Kant, *KrV*, A24, A46–49/B63–66.

<sup>87</sup> The German Lockeans Feder and Garve criticized Kant's idealism, upon its first appearance, in *KrV* of 1781, as if it were the idealism of Berkeley. Kant replied in *Prolegomena to Any Future Metaphysics* (1783) that in his *Critique of Pure Reason* he had not argued for skepticism of the objects of experience; he had argued that and how we have some *a priori* cognition of the objects of experience. Kant had done this by arguing that space and time are not empirical representations, but *a priori* forms necessary for any experience of objects. Space and time, for Kant, are ideal, but not because the material world is ideal. By the time of writing the *Prolegomena*, Kant called his type of idealism not simply *transcendental*, but also *formal*, in contrast to Berkeley's dogmatic or material idealism, and he calls his idealism *critical*, in contrast to Descartes's skeptical idealism. See Kant, *Prolegomena*, 4:374–75. Kant, *KrV*, B519n. On skepticism in the intellectual milieu of Kant's time, see Johan van der Zande and Richard H. Popkin, eds., *The Skeptical Tradition around 1800* (Dordrecht: Kluwer, 1998).

<sup>88</sup> Kant, *KrV*, B274–78 and B291–92.

experience is possible and that does not exist without a perceiving subject.<sup>89</sup> Kant supplants the thought that space and matter are ideal with his ideality of external necessary forms of perception that are sourced in the subject and which, nonetheless, contain existing external objects.<sup>90</sup> Kant's primacy of outer over inner is not Rand's primacy of existence over consciousness,<sup>91</sup> although Rand's primacy is consistent with and suggests that of Kant.

Against the main current of Walsh's exposition, Rand's metaphysics is in thorough discord with Kant's. *Contra* Kant, the unity of things in perception with things in thought is on account of the singularity of the things we access and integration in how we access them.<sup>92</sup>

Miller is right that Objectivism needs a theory of form different from that of Aristotle and Kant.<sup>93</sup> Miller suggests that in form as a "relational state arising from the interaction between the object and our perceptual systems," Rand has a promising alternative to Kant's notion of form in perception as coming from only the subject.<sup>94</sup>

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<sup>89</sup> Ibid., A26–28/B42–44, A42–43/B59–60, A85–89/B118–22, B148, A492/B520.

<sup>90</sup> Jauernig, *The World According to Kant*, pp. 180–86 and 194–237.

<sup>91</sup> Kant, *KrV*, A289/B345.

<sup>92</sup> Cf. Susanna Schellenberg, *The Unity of Perception* (New York: Oxford University Press, 2018); Kant, *Foundations*, 4:475–76; and Kenneth R. Westphal, *Kant's Transcendental Proof of Realism* (Cambridge: Cambridge University Press, 2004), pp. 107–16. Beyond the counter to Kant on Rand's behalf in Peikoff's "The Analytic-Synthetic Dichotomy," the following can and should be done: Challenge and replace Kant's tenet that all formality in episodes of perception is necessarily the product of the subject. Specify a realist replacement for Kant's geometry-susceptible account of space encountered in perception, including form such as betweenness relations, as from the world and from our actions in the world. Cf. Sutherland, *Kant's Mathematical World*, pp. 132–60.

<sup>93</sup> See Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 34; Rand, *Introduction to Objectivist Epistemology*, p. 286.

<sup>94</sup> Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 34.

Miller also proposes that Rand has, with her view of units in her analysis of concepts, a replacement for Kant's notion of the formal in conceptualization.<sup>95</sup> I suggest, rather, that Kant's doctrine of form as from the side of the subject can be replaced by something not tied to the subject side of perception and conception at all: a notion of form as in the world and our actions in the world.<sup>96</sup>

## 5. Conclusion

Kant and Rand are completely opposed concerning what counts as rational metaphysics. Walsh errs in representing the two as closer than they are. Kant's method for arriving at metaphysical

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<sup>95</sup> Ibid.

<sup>96</sup> Rand criticizes modern empiricism for taking knowledge of the world to be "by direct perception of immediate facts, with no recourse to concepts"; see Rand, "For the New Intellectual," p. 30. See also, Rand, "Kant versus Sullivan," in Rand, *Philosophy: Who Needs It*, p. 83. Nonetheless, against Rand's empirical abstraction, Kant still could object that, for example, gathering from sensory experience the concept 'line' ('straight line') together with the concept 'points' will not suffice to yield the certain truth that any two points determine a unique straight line containing them in the Euclidean plane; see Kant, *KrV*, A25/B39–40; Walsh, "Ayn Rand and the Metaphysics of Kant," p. 9. The Randian counter should be that geometric truths can be necessary without being *a priori*. There is no need to explain how geometric truths can be *a priori* because they are not. Spatial necessities coming from the world include: "That my hands each have spaces between the fingers one less than the number of fingers" and "If I slice an apple in half and then slice each half into quarters, I'll end up with four pieces of apple made with only three cuts." There are no possible exceptions.

Kant's *a priori* elements in knowledge are what he took as the formal in knowledge. Unlike Kant, Rand sees no need or warrant for such elements in metaphysical knowledge, as Miller, "Comments on George Walsh, 'Ayn Rand and the Metaphysics of Kant,'" p. 35, articulates. Kant argues that geometry, like metaphysics, is synthetic and *a priori*. Objectivists—or any realists concerning spatial relationships—might give the formal in Euclid's method of geometry its full due by pointing to specific spatial forms in the world, attaching to concretes in the world that are picked up in perception, rather than how Kant sources all such form as from the structure of the human mind. However, this requires making out the fundamental contrast of the concrete to the formal attaching to concretes, rather than the traditional contrast of the concrete with the abstract.

conclusions is not Rand's. Kant takes the status of metaphysical knowledge to be synthetic and *a priori*. Rand denies that metaphysical knowledge (or any knowledge) is *a priori*.

Walsh is right, though, that Rand's representation of Kant's theoretical philosophy is generally incorrect. The concerns in Kant's theoretical philosophy are not Rand's concerns. Kant's question of how metaphysics is possible, though not a central question of Rand's, is answered in her theoretical philosophy. Rand's inattention to Kant's question of how geometry is possible is a gap in her empirical epistemology.

The differences between Rand's metaphysics and the metaphysics of the German Rationalists of Kant's time make Rand's view impervious to Kant's critique of those Rationalist systems. Miller's defense of Rand's system as against Kant's is based on mistakenly attributing to Kant a coherence theory of truth. Kant, I argue, has a correspondence theory of truth. While Rand and Kant do not differ about that, Rand invokes many more correspondences to empirical reality than does Kant in their accounts of metaphysical knowledge and of conceptual, discursive knowledge in general.

## Articles

### Entitlements to Personal and Extra-Personal Assets

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#### 1. Introduction

My article in honor of Fred Miller and his philosophical accomplishments focuses on an early and underappreciated work of his: “The Natural Right to Private Property.”<sup>1</sup> In more recent years, I have often had its most central contention in mind, as it has formed part of the background for my own writings on property rights in extra-personal objects.<sup>2</sup> I refer to this contention as Miller’s Theorem, which holds that “[e]ntitlements to natural assets and entitlements to nonhuman resources should be determined by the same sorts of normative principle.”<sup>3</sup>

I return to Miller’s “The Natural Right to Private Property” to consider the meaning of the Theorem and how to refine it, to describe how Miller himself makes use of the Theorem in upholding a libertarian view about entitlements, and to indicate how two other political philosophers have adopted a version of the Theorem in their accounts of entitlements. Neither of those philosophers—Loren Lomasky and me—has previously given credit to Miller for his earlier articulation of the Theorem.

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<sup>1</sup> That article grew out of a conference sponsored by the American Association for the Philosophic Study of Society (in Ann Arbor, MI, likely during the summer of 1980) and was later published as Fred Miller, “The Natural Right to Private Property,” in *The Libertarian Reader*, ed. Tibor R. Machan (Totowa, NJ: Rowman and Littlefield, 1982), pp. 275–85.

<sup>2</sup> See Eric Mack, “The Natural Right of Property,” *Social Philosophy and Policy* 27, no.1 (2010), pp. 53–79.

<sup>3</sup> Miller, “The Natural Right to Private Property,” p. 276.

Miller's article focuses extensively on criticizing John Rawls's redistributionist liberalism as presented in *A Theory of Justice*<sup>4</sup> and Robert Nozick's libertarian doctrine as presented in *Anarchy, State, and Utopia*.<sup>5</sup> Miller's criticisms are noteworthy and related to his Theorem in interesting ways, so I devote Section 2 to Miller's examination of Rawls and Section 3 to Miller's examination of Nozick. While I endorse and press further Miller's critique of Rawls, I dispute his critique of Nozick. My response to Miller on Nozick turns on my articulation of the Self-Ownership Proviso (SOP), which I argue is a better Lockean proviso than the one Nozick offers.<sup>6</sup> Building on some of my discussion of Miller's Theorem, in Section 4 I turn to a more direct discussion of it and its subsequent employment by Lomasky and me.

## 2. Miller on Rawls

The key distinctive element in Rawls's conception of justice is the "difference principle." This principle asserts that the state, which Rawls coyly calls "the basic structure," should manage the resources morally available to society in order to maximize the income of the members of society's lowest income group. It is important to recognize how demanding the difference principle is because Rawls himself often writes as though economic justice only requires that everyone—including the worst off—gain relative to some egalitarian baseline.<sup>7</sup>

However, the stance that economic justice merely requires that everyone gain simply amounts to what Rawls calls "the principle of efficiency" according to which a distribution is just "when there is no way to change this distribution so as to raise the prospects of some without lowering the prospects of others,"<sup>8</sup> and Rawls explicitly *rejects* this principle of efficiency as a standard for economic justice. This is because Rawls recognizes that in any ordinary social situation there

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<sup>4</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

<sup>5</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

<sup>6</sup> Eric Mack, "The Self-Ownership Proviso: A New and Improved Lockean Proviso," *Social Philosophy and Policy* 12, no. 1 (Winter 1995), pp. 186–218.

<sup>7</sup> Rawls, *A Theory of Justice*, pp. 62, 101, 102, and 107.

<sup>8</sup> *Ibid.*, p. 70.

will be many different available distributions of income each of which would be efficient, and Rawls believes that a principle of justice must determine which of these efficient outcomes is the just one. The role of the difference principle is to remove “the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged.”<sup>9</sup> In particular, the difference principle singles out the lowest income position within society as the position within which income is to be maximized. As Rawls puts it:

In order to make the principle regulating inequalities determinate, one looks at the system from the standpoint of the least advantaged representative man. Inequalities are permissible when [and only when] they maximize, or at least all contribute to, the long-term expectations of the least fortunate group.<sup>10</sup>

Note that Rawls’s insertion of “or at least all contribute to” is a bit of hedging which, if taken seriously, would reintroduce the problem of indeterminateness.

For the impact of the difference principle to be as extensive as Rawls wants, all or almost all productive resources must be morally available to society. Thus, Rawls is eager to debunk any claim that prevents productive resources—such as people’s physical possessions, personal capacities, or talents—from being morally available to society for redistribution.<sup>11</sup> For this reason, Rawls attacks the premise that some individuals *deserve* at least some of their capacities and talents, and so those assets are morally unavailable for Rawlsian redistribution. Against this premise Rawls contends:

The notion of desert seems not to apply to these cases. Thus the more advantaged representative man cannot say that he

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<sup>9</sup> *Ibid.*, p. 75.

<sup>10</sup> *Ibid.*, p. 151.

<sup>11</sup> The Rawlsian arguments discussed in this article operate *outside* of the Original Position. Neither this article nor Miller’s addresses Rawls’s claim that negotiation *within* the Original Position would yield the principles of justice that Rawls endorses.

deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others. There is no basis for his making this claim. From the standpoint of common sense, then, the difference principle appears to be acceptable both to the more advantaged and to the less advantaged individual.<sup>12</sup>

Miller rightly points to the “loose and informal manner”<sup>13</sup> in which Rawls’s argument is expressed. I pause here to examine some loose reasoning that Miller generously omits mentioning.

Rawls depicts the “more advantaged” man as claiming “a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others.” This more advantaged individual holds that, if he has an opportunity to enhance his welfare yet his doing so will not also advance the welfare of others, he ought nevertheless to be allowed to increase his welfare. Even though this may seem entirely reasonable, let us grant for the sake of argument that Rawls is correct in holding that the more advantaged has “no basis for his making this claim.” However, all that follows from this is that others must gain *to some degree* if gains to the more advantaged are to be acceptable. It does not follow that—as the difference principle decrees—the gains to the more advantaged are acceptable only if the less advantaged gain as much as possible.

Against the argument that the more advantaged individual *deserves* those capacities or talents, Rawls responds that every person’s possession of productive capacities and talents is entirely (or almost entirely) due to the arbitrary luck of natural and social lotteries. Hence, no one can *deserve* any of his or her capacities or talents.

Echoing Nozick, Miller first objects that the more advantaged man need not argue that he *deserves* his productive capacities or talents. He may simply claim to be *entitled* to those capacities and talents,<sup>14</sup> and because he is entitled to them, those capacities and talents are not morally available to society. Just as one’s entitlement to one’s eyeball or kidney would be violated by society treating them as

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<sup>12</sup> Miller, “The Natural Right to Private Property,” p. 278, citing Rawls, *A Theory of Justice*, p. 104.

<sup>13</sup> *Ibid.*, p. 278.

<sup>14</sup> *Ibid.*, p. 278, citing Nozick, p. 225.

resources to be utilized for society's ends, so too would one's entitlement to one's productive capacities and talents be violated by such treatment. One does not have to *deserve* one's eyeballs, kidneys, capacities, or talents to be wronged by their being treated as society's assets.

Miller's second objection points to a *non-sequitur* in Rawls's argument. Suppose we accept Rawls's brute luck argument against desert, and we go along with the implicit (and false) premise that, if no one *deserves* his or her capacities or talents, no one is *entitled* to his or her capacities or talents. Then, we could conclude that no individual is *entitled* to his or her productive capacities or talents. Miller points out that Rawls leaps from this conclusion to "Everyone has [joint] title to the individuals' natural assets."<sup>15</sup> As Miller puts it:

Even if there is no moral reason to assign me exclusive title to my left kidney, would it follow that it is a common asset, i.e., that "everyone had a collective title to it?" . . . [E]ven if Rawls were right that "there is no basis" for the entitlement claims of individuals, this would not provide any basis for collective entitlement claims.<sup>16</sup>

Miller explains that, in one form or another, the invalid "*Not I, so Everyone*"<sup>17</sup> argument pervades egalitarian-leaning political philosophy.<sup>18</sup>

A third major objection against Rawls could be ascribed to Miller. Ironically, this objection draws upon Rawls's *affirmation* of Miller's Theorem. Near the beginning of his article, Miller ascribes to Locke the view that

nonhuman assets [or, more precisely, *raw* nonhuman assets] might be distributed or redistributed so as to maximize utility,

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<sup>15</sup> Ibid., p. 278.

<sup>16</sup> Ibid., pp. 278–79.

<sup>17</sup> Ibid., p. 278.

<sup>18</sup> See *ibid.*, pp. 278–80, for Miller's discussion of the reasoning offered by Alan Goldman, "The Entitlement Theory of Distributive Justice," *Journal of Philosophy* 73, no. 21 (1976), pp. 823–35.

but it would not be permissible to enslave individuals, i.e., to coerce them to use their natural assets to maximize utility.<sup>19</sup>

Locke, according to Miller, applies different normative principles to personal assets and to nonhuman assets. Miller then introduces Rawls as a theorist who, *in contrast to Locke*, holds that “these two sorts of assets cannot be distinguished in this way.”<sup>20</sup> For Rawls, “There is no significant, morally relevant difference between facts involving an individual’s natural assets and facts involving that individual’s nonhuman possessions.”<sup>21</sup> Miller then says that “Rawls’ reasoning seems to contain a grain of truth” and that it “suggests the following principle of parity,”<sup>22</sup> which leads right into Miller’s statement of his Theorem. These are understatements. Rawls clearly and fully endorses this principle of parity, that is, Miller’s Theorem.

Miller’s third objection could thus hardly be that Rawls diverges from Miller’s Theorem. Rather, the third objection is the unacceptability of the normative principle—namely, the difference principle—that Rawls *consistently* applies to both personal human assets and nonhuman assets. From Miller’s perspective, it is bad enough that Rawls takes raw natural material and nonhuman products of human action to be common assets. It is worse yet for “the distribution of natural talents” (and of personal capacities such as alertness, willingness to make an effort, far-sightedness, and so on) to be construed as a “common asset” or a “collective asset.”<sup>23</sup> Miller notes:

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<sup>19</sup> Miller, “The Natural Right to Private Property,” p. 276. I believe that Miller misreads Locke’s statement that the earth originally is “common to all men.”

<sup>20</sup> *Ibid.*, p. 276.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, p. 277, citing Rawls, pp. 101 and 179. Why does Rawls say that the *distribution* of natural talents is a common asset rather than that natural talents as such are common assets? Surely, the fundamental Rawlsian proposal is to treat the natural talents, *not their distribution*, as morally available to society for advancing society’s (alleged) purposes. What would it mean to treat *the distribution* of natural talents as a common asset?

It is difficult to avoid the implication, which Rawls does not explicitly draw, that human beings themselves are simply collections of natural resources. Presumably, in *normal* circumstances, this would not justify treating people as collections of spare parts such as corneas and kidneys who could be “cannibalized” against their wills for the benefit of the less advantaged, namely, of people who are blind or without kidneys and cannot find voluntary donors.<sup>24</sup>

Still, Miller adds, “on Rawls’ account, it clearly does justify pooling all benefits, including material goods and social advantages, resulting from the employment of these natural assets, together and allocating these benefits according to principles of distributive justice.”<sup>25</sup> Miller is careful to point out that the validity of his first two objections against Rawls’s case that natural talents are common assets does not establish that “each individual properly is entitled to his or her own natural assets.”<sup>26</sup> Establishing that conclusion requires a separate and independent line of argument.

To this end, Miller offers an account of Ayn Rand’s theory of natural rights (the details of which I will not investigate here). Rand concludes that all individuals possess a natural right to life and this right is to be understood as a “right to engage in self-sustaining and self-generated action—which means: the freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life.”<sup>27</sup> From

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<sup>24</sup> *Ibid.*, p. 277. Miller notes that Rawls’s principle of equal liberty is supposed to have strict priority over the difference principle. According to this lexical priority, further gains to the least advantaged do not justify infringements upon anyone’s equal liberty; see *ibid.*, p. 286 n. 12. Yet many questions can be raised about what rights are to be protected under the rubric of equal liberty. The standard examples are rights to expression, religious freedom, freedom of association, and freedom of life-style choices. It is far from clear that a Rawlsian principle of equal liberty that focuses on such rights would preclude the forced donation of eyeballs or kidneys, except insofar as those forced donations would inhibit the exercise of these rights of self-definition.

<sup>25</sup> *Ibid.*, p. 277.

<sup>26</sup> *Ibid.*, p. 280.

<sup>27</sup> *Ibid.*, p. 281, citing Ayn Rand, “Man’s Rights” in Ayn Rand, *The Virtue of Selfishness* (New York: New American Library, 1964), pp. 93–94. In personal

the affirmation of this right Miller infers that “[e]ach individual has an unconditional title to a particular set of natural [personal] assets.”<sup>28</sup>

Yet, surprisingly, Miller does not go on to provide a parallel line of reasoning *from the right to life* to “the corresponding thesis about private property,” namely, that “[e]ach individual has an unconditional title to a particular set of nonhuman resources.”<sup>29</sup> He does not proceed to show how the normative principle that underwrites rights to natural talents *also* underwrites rights to property in extra-personal resources. Instead, Miller infers “the corresponding thesis” that there are unconditional entitlements to nonhuman resources from the conjunction of unconditional entitlements to personal assets and the Theorem.

This raises questions about the status of Miller’s Theorem. One understanding of the Theorem is that it starts as the hypothesis that one fundamental principle underwrites entitlements to natural personal capacities and talents and entitlements to extra-personal resources. This hypothesis would be confirmed, if each set of entitlements is shown to be supported by the same fundamental norm. Alternatively, the Theorem may be taken as an *already established* truth that can be invoked to support an inference from entitlements to personal assets to entitlements to nonhuman resources (or from nonhuman resources to personal assets). In this latter case, we need some independent argument for the Theorem, but I do not think that Miller offers one.

### 3. Miller on Nozick’s Lockean Proviso

We have already seen that Miller takes Locke to offend against the Theorem because, as Miller sees it, Locke affirms “that individuals have exclusive title to their own natural [personal] assets, and *nevertheless*, reject[s] the corresponding thesis about private property

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correspondence on May 3, 2022, Miller indicates that he now would offer a somewhat different account of natural rights, one based upon a better understanding of Rand’s view.

<sup>28</sup> Miller, “The Natural Right to Private Property,” p. 282.

<sup>29</sup> *Ibid.* I doubt that Miller wants to draw this conclusion as he formulates it. For Miller would not want to hold that every person does in fact have entitlements to at least some nonhuman resources.

[in nonhuman resources].”<sup>30</sup> According to Miller, Locke rejects the second thesis because Locke believes in mankind’s natural joint ownership of the earth.<sup>31</sup> Miller does not ascribe this belief to Nozick, but he thinks that Nozick’s neo-Lockean doctrine still offends against the Theorem. For Nozick adopts a version of Locke’s “enough, and as good” proviso,<sup>32</sup> which “qualifies his theory of entitlements to nonhuman holdings.” Due to this qualifying proviso, Nozick fails to affirm that “[e]ach individual has an *unconditional* title to a particular set of nonhuman resources,” even though he affirms that “[e]ach individual has an *unconditional* title to a particular set of natural [i.e., personal] assets.”<sup>33</sup>

There are many difficulties with Nozick’s Lockean proviso, some of which are well noted by Miller. However, I will not focus on Nozick’s specific proviso and its specific problems. Rather, I want to challenge a more general thesis that Miller seems to endorse. This is that any combination of strong (Miller says, “unconditional”) natural rights to personal assets and a Lockean proviso that “qualifies” rights to nonhuman assets runs afoul of the Theorem. I challenge this general thesis by (i) pointing to a sense in which robust rights need to be conditional and (ii) sketching a better Lockean proviso than that offered by Nozick. I will do both with the Self-Ownership Proviso (SOP), which takes entitlements to extra-personal assets as conditional in precisely the way they should be conditional.

Moral entitlements properly so-called will always be *conditional* in the sense that the party who is entitled to some resource may not use it in any way that transgresses the moral entitlements of others. My liberty rights to use my thumb as I choose and my liberty right to use my knife as I choose are each limited (i.e., conditioned) by your claim right to your eye. I may not thrust either of my rightfully held resources into your eye. This general conditioning of my liberty rights does not nullify or dilute those rights. Rather, it fortifies them. For it is in virtue of this general conditioning that all others are bound to allow me to exercise my liberties as long as I do not violate the

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<sup>30</sup> Ibid., emphasis added.

<sup>31</sup> Ibid.

<sup>32</sup> Nozick, *Anarchy, State, and Utopia*, pp. 174–82.

<sup>33</sup> Miller, “The Natural Right to Private Property,” p. 282, emphasis added.

claim rights that protect others' liberties. If liberty rights were not at least usually accompanied by claim rights against interference with the exercise those rights, we would have a world of Hobbesian blameless liberties and not a world with moral fences that enable us to live at peace and to mutual advantage with one another.

My case for the SOP turns on expanding the range of actions that should be recognized as transgressions of self-ownership and, hence, as uses of one's personal or extra-personal assets that are morally precluded. The key to this expansion is the recognition that certain actions block individuals from exercising their self-owned world-interactive powers, *even though those actions do not physically impinge or intrude upon those individuals or their extra-personal assets (or even threaten such physical impingement or intrusion)*. Hence, those blocking actions also are transgressions of self-ownership.

As the examples I employ and the discussion that follows indicate, based on self-ownership, there is a broad anti-blockage *provision* against actions that preclude individuals from exercising their self-owned world-interactive powers. This provision forbids blocking actions that are carried out when an agent uses his own body or some (owned or unowned) extra-personal objects as a barrier that precludes another individual from applying her world-interactive powers to some otherwise available extra-personal resource. The narrower SOP forbids a subset of the actions that are forbidden by the broad anti-blocking provision. These are certain instances of individuals being blocked from exercising their world-interactive powers by others invoking their own entitlements to extra-personal assets. Before explaining why most instances of an agent invoking his entitlement to some object to preclude other individuals from using *that object* are *not* censured by the SOP, I first present and analyze examples that support a general provision against non-impinging blockage that self-ownership advocates should affirm.

Imagine that you wander into an unowned field, lie down on the lush grass, and fall asleep. When you awake, you find that five people have formed a circle around you and have tightly linked their arms to create a human wall that surrounds you. You indicate your desire to continue your perambulations. However, the spokesman for the five says:

Go ahead if you can without physically aggressing against any of us, i.e., without physically intruding upon any of us. Of

course, since we are all self-owners, you will be acting impermissibly if you initiate any such physical contact. We demand that you keep your filthy hands off our bodies. On the other hand, we'd be happy to unlink our arms so that you can continue your ramble in exchange for a payment of \$5,000.

Consider a slightly different case of non-impinging blockage. Here too you fall asleep in that unowned field. However, in this case a single other person arrives with his lightweight, ten-foot high, plastic fence which he places around you and seals shut. You wake up and demand that the blockage be removed. However, the fence owner responds:

All I have done is to deploy my own property as I desire. I haven't misused my property since I have not in any way touched you with it. In fact, my plastic fence is not that strong. With some determined battering you can probably create a hole in it large enough for you to pass through. However, any such battering will violate my property rights over the plastic. I demand that you keep your filthy hands off my property.

I think the philosophical friend of self-ownership and of entitlements to nonhuman resources will hold that the five's use of their bodies and the plastic-fence owner's use of his plastic are both illicit. In neither case has the encircled party been subjected to physical intrusion—as she would be, were someone smashing her legs. Yet, in both cases she would have a valid complaint *based upon her self-ownership*. That party's valid complaint is based on self-ownership because each person's self-ownership encompasses her own world-interactive powers, that is, her own powers to interact with the world that is beyond the outer surface of her skin. Each of these encirclements is forbidden by the subject's self-ownership because each substantially nullifies a person's capacity to bring her world-interactive powers to bear on the world. Unprovoked imprisonment violates self-ownership whether the victim is brought to the prison through physically impinging action or the prison is brought to the victim through physically non-impinging action.

It is worth noting a somewhat different sort of case of physically non-intruding encirclement. Suppose that a speaker's capacity to address her intended audience is nullified when a crowd of

protesters makes so much noise that the audience cannot hear the speaker. Even if this noise does not physically impinge upon the speaker in a way that violates her self-ownership—suppose she is zooming in from another location—I submit that this blockage of her capacity to address that audience wrongfully contravenes her self-ownership. A duly broad right of free expression arises from a right of self-ownership if and only if such non-impinging blockage of expression counts as a transgression of self-ownership.

In the two encirclement examples, part of the nullification of the encircled agent's world-interactive powers consists in the nullification of her capacity for locomotion. However, the valid complaint that the encircled party would have against arm-linkers and plastic-fence owners is not limited to their nullification of that party's capacity to move around in the world. To see this, consider another plastic-fence example that does not involve blocking locomotion. In this example, the plastic-fence owner encases in his fence every object on which our beleaguered agent would otherwise apply her world-interactive powers. This systematic encasement substantially undermines the agent's capacity to act in the world in pursuit of her ends.

It is natural to take the examples I have offered to involve an agent being blocked from applying her world-interactive powers to *unowned* objects. However, the examples work equally well if we assume that the objects that the agent is blocked from interacting with are owned by one or more other parties. The plastic-fence encaser who blocks this agent from bringing her powers to bear on extra-personal objects owned by others who are willing to have her interact with those objects, transgresses self-ownership in the same way he does when the objects to which he blocks access are unowned.

I recall once reading that early European traders with inhabitants along the coast of West Africa would sometimes preclude those inhabitants from rowing out to trade with competing European traders by firing their cannons across the bows of the inhabitants' canoes. The anti-blockage provision is not needed to explain the wrong of threatening those inhabitants with physical harm. However, that provision is needed to explain why firing across the bows of the canoes also infringes upon the self-ownership of the traders who were thereby prevented from intercourse with those inhabitants. The cannons fired across the bows of the canoes were devices to drive prospective trading partners away from the competitors of the cannon-firers. If you think the competing traders had a complaint in justice against those who

frightened off the canoers, you have reason to affirm the anti-blockage provision.

In contrast to the broad anti-blockage provision, the SOP focuses on individuals being blocked from bringing their powers to bear on extra-personal objects by the owners of those objects not consenting to those individuals using their objects. Suppose someone owns the field on a portion of which our beleaguered agent has fallen asleep. Now, when she awakes, what blocks her movement through and interaction with extra-personal objects is the owner's demand that she not trespass further on his field. Mustn't this physically non-impinging blockage also count as an infringement on the awakened party's self-ownership? However, if it does count as such an infringement, this seems to *strengthen* Miller's claim that advocating the Lockean Proviso deeply compromises entitlements to extra-personal assets.

An individual's entitlement to any extra-personal object is essentially the right to say "no" to the appropriation, use, transformation, or consumption of that object by any other party. Since the SOP objects to individuals saying "no" to others' uses of the owners' extra-personal assets, isn't Miller correct to hold that such provisos systematically undermine entitlements to extra-personal objects? A negative answer to this question turns on recognizing systematic positive effects of the right to say "no." While each (enforceable) entitlement underwrites a "no" to others' non-consensual appropriation, use, transformation, or consumption of the object of that entitlement, the system of "no"s as a whole engenders an almost unimaginable increase of useful objects that are produced and brought to market. The owners of this cornucopia are eager to say "yes" to others' appropriation, use, transformation, or consumption of those objects, typically in exchange for those others saying "yes" to those owners' appropriation, use, transformation, or consumption of the objects created by and brought to market by those other agents.

Smith produces goods and brings them to market because she has confidence that she can say "no" to anyone else who would take control of those goods without her consent, and she has confidence that others have a like confidence that their entitlements to what they produce and bring to market will be respected. Legal regimes that protect peaceful gains from production and trade generate a tide of increasing economic opportunity for all individuals who are willing to swim with that tide. Being willing to swim with the tide involves being willing to respond to the ebb and flow of its currents, that is, being

willing to adjust one's efforts and plans to moving out of the ebbs (the "no"s that the tide needs to rise) and into the flows (the "yes"s that are offered by the rising tide).<sup>34</sup> The SOP forbids precluding (or severely inhibiting) willing people from swimming with the tide.

The dynamism of private property and open market regimes often involves the destruction of some existing opportunities in the course of the creation of new ones. It is crucial to recognize that one cannot sustain the processes that generate increasing new opportunities—often whole new arenas of productive human activity—without allowing some existing opportunities to wither away. Friedrich Hayek makes the point that it is often people who have benefited greatly from the past creation of new opportunities that eliminated yet older opportunities who now seek to suppress the dynamic processes that will open up new opportunities for others (and for themselves): "To ask for protection against being displaced from a position one has long enjoyed, by others who are now favoured by new circumstances, means to deny to them the chances to which one's present position is due."<sup>35</sup> The disappearance of opportunities—such as the opportunity to make wooden wheels for horse carts—is not an indication that private property and open market regimes transgress the SOP.

An individual's legitimate acquisition of the use or ownership of some resource that has been owned by another will almost always involve *some* cost to that individual. Yet costs almost always will have had to be borne in a pre-property state of nature to gain the use or possession of extra-personal resources. Think of any extra-personal resource—say, a reliably sharp cutting tool or a coat that will keep one warm through the winter—that would be available at some cost to individuals within a pre-property state of nature and within a developed private property and open market economy. Almost certainly the cost of acquisition of that good—measured, say, in hours of labor—will be vastly greater in the former setting than in the latter. The reality that individuals have to bear some cost in order to take advantage of economic opportunities generated by widespread, secure,

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<sup>34</sup> Regimes that mix public and private ownership may satisfy the SOP. Satisfying the SOP is necessary but not sufficient for the justice of a legal and economic order.

<sup>35</sup> Friedrich A. Hayek, *Law, Legislation, and Liberty*, Vol. 2 (Chicago, IL: University of Chicago Press, 1976), p. 95. I thank Hans Eicholz for helping me find this passage again.

transferable, private ownership is not an indication that they have just complaints under the SOP.<sup>36</sup>

This is not to say that violations of the SOP will never occur within property rights and open market economic regimes. Blockages that are akin to the examples I have used in advancing the plausibility of the anti-blockage provision are certainly possible. Within such an economic order, some individual or group of coordinated individuals may own land that surrounds another agent and her small interior plot, and may invoke his or their property rights to lock in that agent or to extract an exorbitant exit fee. Or some individual may come to own a proverbial isolated waterhole and refuse access to dehydrated agents or require an enormous payment for lifesaving water. In the surrounding-land case, the SOP requires that the surrounding land be subject to some (suitable) easements. In the waterhole case, the SOP requires something like the traveler not be charged more for a drink of water than the cost would have been for her were the waterhole to have remained unowned.<sup>37</sup>

To provide some sense of how violations of the SOP might arise within private property and open market regimes, consider two further scenarios. First, imagine that there is a small, isolated village in which the demand for the services of a barber is just enough to sustain one barber. Unfortunately, the one barber is hated by the one rich businessman in the town, who builds a fancier barber shop in the town, hires an equally competent and more attractive barber to work in that new shop, requires that no customer ever be charged for that shop's

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<sup>36</sup> See, e.g., Lysander Spooner, *The Law of Intellectual Property*, in *The Collected Works of Lysander Spooner*, Vol. 3, ed. Charles Shively (Weston, MA: M&S Press, 1971), p. 24: "The first man is a hungry, shivering savage, with all the wealth of nature around him. The last man reels in all the luxuries, which art, science, and nature, working in concert, can furnish him."

<sup>37</sup> However, note that had the waterhole remained unowned, it would probably have been vastly over-utilized. In that case, little or no water would now be available to our traveler, except perhaps through very costly excavation and filtration. Is the waterhole a purely natural object or has it come to be owned by being created or maintained in existence by some agent (or series of agents)? If it is the former, it is not clear how it can be owned, and hence how there can be any *owner* to say "no." I take it that our traveler will have a complaint in justice against a waterhole owner only if there is no known feasible alternative route for our agent other than to travel by the waterhole and no known feasible way to avoid needing water from it.

barbering services, and pays the new barber twice what he would receive through customer payments. The result is the collapse of the original barber's business. Moreover, wherever that barber goes and whatever adjustment she makes to deal with this ebb of business, the wicked businessman pursues her and arranges a similar scheme for luring customers away from her. I take it that this barber would have a just complaint against that businessman on the grounds of the physically non-impinging blockage that is inflicted upon her. Concern for that barber's right not to be precluded from bringing her world-interactive powers to bear in the pursuit of her own ends justifies an injunction against the businessman's endeavor.

Second, imagine that a high percentage of the members of an economically dominant racial majority issue "no"s to a high percentage of the members of an economically less well-off racial minority. Through conscious coordination or habit or group-imposed social pressure, many economic opportunities that are offered to members of the majority are withheld from many members the minority. With respect to most members of the minority group, the system of rights to say "no" does not in its usually paradoxical way deliver a rich array of "yes"s. Many members of the minority group are not allowed to enter into and swim with the tide, a tide that, in fact, would be raised higher for all (or almost all) willing swimmers were the minority members to be allowed to enter it.<sup>38</sup> This system of discrimination in jobs; permission to pursue occupations; finding willing trading partners; and acquisition of credit, training, and capital goods would be akin to a world in which devices that have been attached to many of the extra-personal objects remove most of those objects from the reach of members of this minority who seek to use, appropriate, transform, or consume them. By hypothesis, the normal dynamic of competitive markets is undermined by the systemic "no"s issued by a high percentage of the members of the majority.<sup>39</sup> In such a situation, the SOP supports a (suitably formulated) requirement that individuals desist from such forms of discrimination.

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<sup>38</sup> Many of these "no"-sayers would be economically irrational in the same way as the barber-hating businessman would be.

<sup>39</sup> As an empirical matter, coercively enforced state segregation policies are at least usually crucial to the development and maintenance of such patterns of discrimination.

#### 4. Subsequent Use of Miller's Theorem

At the end of Section 2, I pointed to two possible roles for Miller's Theorem. It can operate as a premise that justifies an inference from individuals having (or not having) entitlements of a certain stringency over their personal (human) assets to their having (or not having) entitlements of the same stringency over extra-personal assets.<sup>40</sup> This seems to be the role that the Theorem plays in Miller's article. Unfortunately, he does not offer any independent justification for the Theorem that warrants its use in this way. One could argue that grounding entitlements to personal assets and entitlements to extra-personal resources in fundamentally distinct normative principles will lead to conflicts between the two sets of entitlements. To guard against such conflicting entitlements, one would then need to derive all entitlements from the same fundamental norm or mode of moral reasoning. However, I am not aware of anyone who seeks to develop such an argument.

Alternatively, Miller's Theorem is a hypothesis that the same fundamental normative principle (or mode of moral reasoning) explains the entitlements that individuals have over their personal resources and over extra-personal resources. If the normative backing of those entitlements is the same, so too is their character and stringency. This hypothesis is vindicated if and only if the fundamental normative principle (or mode of moral reasoning) does indeed underwrite "corresponding" entitlements with respect to personal assets and extra-personal resources. In this section, I briefly indicate how both Loren Lomasky and I have employed the Theorem in this second role.

In *Persons, Rights, and the Moral Community*,<sup>41</sup> Lomasky hypothesizes that a single fundamental normative principle (or a single mode of moral justification) underwrites both entitlements to personal assets and entitlements to extra-personal resources. He offers an account of how that single mode of justification yields corresponding entitlements to personal assets and to extra-personal resources. The

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<sup>40</sup> Or it operates as a premise to justify an inference from individuals having (or not having) entitlements of a given stringency over certain extra-personal resources to their having (or not having) entitlements of that stringency over their personal (human) resources.

<sup>41</sup> Loren Lomasky, *Persons, Rights, and the Moral Community* (Oxford: Oxford University Press, 1987); see esp. chaps. 3–6.

entitlements to personal assets and to extra-personal resources are comparably stringent, albeit more conditional than either Miller or I would favor.

According to Lomasky's account, basic rights are the fundamental interpersonal claims that individuals as project pursuers would rationally affirm among themselves so as to form and sustain a social order that is conducive to their respective successful pursuit of their personal projects: "[O]ne will come to see what basic rights *are* as one comes to understand what moral order persons have reason to *acknowledge* and to *value*."<sup>42</sup> For Lomasky, the claims on which the vast majority of individuals would rationally tend to converge are primarily liberty claims in the sense of rights to freedom from interference. These liberty claims encompass extensive rights over one's personal assets and extensive rights to acquire and exercise discretionary control over extra-personal resources.

However, according to Lomasky, a noteworthy number of project pursuers will reasonably believe that their ongoing capacity to pursue their life-defining plans will require that, on some occasions, others come to their assistance. Those individuals will condition their commitment to others' rights against interference upon the commitment of those others to such rights to assistance. In order to bring these more cautious individuals into an extended moral community, individuals who most favor a code entirely composed of rights against interference will settle for the inclusion of certain rights to assistance. Also, in order to enter into an extended moral community with those who most favor a code limited to rights against interference, those more cautious individuals will settle for modest rights of assistance: "So, for example, laws requiring that one rescue someone in peril provided that the rescue attempt will pose no danger to oneself or laws requiring one who is aware of an assault in progress to notify the police are compatible with the spirit of liberalism."<sup>43</sup> Within the sea of mutually affirmed rights against interference, then, there will be currents of mutually affirmed modest rights to assistance.<sup>44</sup>

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<sup>42</sup> Ibid., p. 101.

<sup>43</sup> Ibid., p. 128.

<sup>44</sup> This oversimplifies Lomasky's view. Individuals are also taken to be disposed to affirm assistance rights for others because of their evolved empathy and their perception of the impersonal value of others' flourishing.

According to Lomasky, the mode of moral justification that underwrites basic rights to personal liberty for project pursuers combined with modest rights to assistance against other project pursuers also yields the following (correct) semi-libertarian conclusion with respect to property rights:

Security in one's possessions—what one has—is of value to everyone, and therefore, everyone has some reason to extend deference to others with respect to their holdings conditional upon the receipt of like deference. . . . The only addition to the familiar account [of basic rights] that renders this an examination of *property* rights is the insertion of the proposition that the ability to pursue projects entails the having of goods. . . . Therefore, to posit basic rights to property is neither more nor less warranted than is the positing of basic rights *simpliciter*. If there are basic rights, then there are basic rights to property.<sup>45</sup>

Key to needing property rights for project pursuit, Lomasky holds, is that “purposeful action and command over things are virtually inseparable.”<sup>46</sup>

To complete the parallel with rights *simpliciter*, Lomasky contends that entitlements to extra-personal resources are not limited to negative rights to be left to the peaceful enjoyment of what one has justly acquired. Since there is

no assurance that liberty will universally guarantee to each person the requisites for satisfactory prospects of project pursuit . . . those in exigent straits may demand welfare goods *as a matter of right*. . . . If a person is otherwise unable to secure that which is necessary for his ability to live as a project pursuer, then he has a rightful claim to provision by others who have a surplus beyond what they require to live as project pursuers. In that strictly limited but crucial respect, basic rights extend beyond liberty rights to welfare rights.<sup>47</sup>

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<sup>45</sup> Ibid., p. 121.

<sup>46</sup> Ibid., p. 120.

<sup>47</sup> Ibid., p. 126. Lomasky's claim that the welfare rights of some justify depriving those “who have a surplus beyond what they require to live as

My purpose here is not to affirm Lomasky's conclusions, but rather, to point out how his argument conforms to Miller's Theorem. As with Rawls's doctrine, any critic of Lomasky's doctrine would have to focus on the fundamental normative principle (or mode of justification) that Lomasky applies with consistency to both personal assets and extra-personal resources.

I also make use of the second hypothesized version of Miller's Theorem, most prominently in "The Natural Right of Property." The most fundamental normative principle I defend in that article is the "ur-claim" that all individuals are "to be allowed to pursue their own good in their own way."<sup>48</sup> This ur-claim involves affirming a number of basic rights, each of which provides individuals with moral protection against a basic way in which individuals can be precluded from pursuing their own ends in their own chosen way. Each person's natural right over his or her own person—the basic right of self-ownership—provides each individual with moral protection against being deprived of the possession, enjoyment, or discretionary control of her physical or mental faculties. The SOP is part of a full articulation of the right of self-ownership. Beyond self-ownership, each person's natural right of property provides each individual with moral protection against being deprived of her possession, enjoyment, or discretionary control over extra-personal resources that she has made her own.<sup>49</sup> The ur-claim that each individual is allowed to pursue his or her good in his or her own chosen way extends to a right to make things one's own and to exercise discretionary control over what one has made one's own because

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project pursuers" seems to imply that the more advantaged may be required to surrender *all* of that "surplus." This contravenes his insistence that basic positive rights cannot impose burdens markedly greater than those imposed by basic negative rights. That insistence leads Lomasky to conclude: "There can be no general obligation to give up that which is of considerable instrumental value to the pursuit of one's own projects on the grounds that someone else has a pressing need for those items" (p. 87).

<sup>48</sup> Mack, "The Natural Right of Property," p. 54.

<sup>49</sup> There is also a basic natural right against deceptive manipulation that provides persons with moral protection against induced misdirection.

almost all human life, almost all human goal-pursuit, takes place in and through the purposive acquisition, transformation, and utilization of objects in the extra-personal world. We are not merely embodied beings; we are beings whose lives are mostly lived in and through the physical world that exists beyond the outer surface of our skin.<sup>50</sup>

To be clear, the natural right of property is not a right to any specific extra-personal objects or to any specific share of such objects. It is a right to others' compliance with a practice of private property that consists of a system of rules that define the procedures through which individuals acquire, transfer, abandon, or restore ownership and discretionary control over extra-personal resources. The natural right of property does not require others to provide one with any extra-personal resources. It merely requires others not to preclude one's acquisition, retention, or discretionary control over extra-personal objects (which are not already owned by others).

My view accords with—indeed, vindicates—Miller's Theorem because entitlements to personal assets and entitlements to extra-personal assets are both vindicated by the ur-claim that all persons be allowed to pursue their own ends in their own chosen ways. The vindication of the former set of entitlements runs from that ur-claim through the basic right of self-ownership, while the vindication of the latter set of entitlements runs from the ur-claim through the basic natural right of property.

I conclude by emphasizing the crucial similarity between Miller's view in "The Natural Right to Private Property," Lomasky's view in *Persons, Rights, and the Moral Community*, and my own view in "The Natural Right of Property." The similarity consists of three shared features. First, each of us endorses a fundamental normative principle—respectively, a right to life, a basic claim to be treated as a project pursuer, and an ur-claim to be allowed to pursue one's own good in one's own chosen way—which is open-endedly pro-liberty in its implications. Second, since life or project pursuit or action for the sake of one's ends is achieved through action in the extra-personal world, a condition of each individual's exercise of that fundamental right or claim is that the individual is not precluded from using, acquiring, transforming, exchanging, and consuming objects in the extra-personal world. Third, it follows that the fundamental right or

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<sup>50</sup> Mack, "The Natural Right of Property," p. 62.

claim that is affirmed must encompass a right to others' compliance with a system of rules through which one can make external things one's own and exercise discretionary control over what one has made one's own.

# Can Artificial Rights Be Natural?<sup>1</sup>

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## 1. Introduction

Can artificial rights be natural? Of course not! Natural rights are “by definition” natural and thus not artificial or conventional. The distinction between the natural and the artificial is ancient. Classical Greek philosophers made much of the distinction between *nomos* (law) and *physis* (nature),<sup>2</sup> and some early modern philosophers deployed a version of the distinction to challenge the ancients by denying that the *civitas* (political community) was natural (Thomas Hobbes) or that justice was natural (David Hume). The contrast between the political philosophies of Hobbes and John Locke, as conventionally interpreted, rests in no small part on their different views about natural rights.

I shall suggest that some artificial or conventional rights can be natural. My claim is, I believe, correct, but it will be less preposterous or controversial than it may seem at first. My hope is to expand our understanding of the natural and to see new ways in which our moral attitudes and relations may be natural.

## 2. Natural Rights

What are natural rights? In several earlier publications I have offered characterizations of natural rights. The last one construes them as multi-faceted rights: (1) moral (2) claim rights that are (3) natural, that is, (a) possessed in a state of nature, (b) prior to and independent of convention, (4) held by virtue of possession of some natural attribute(s), and (5) basic.<sup>3</sup> The first two conditions isolate the genus,

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<sup>1</sup> I am indebted to Carrie-Ann Biondi for helpful comments on an earlier draft.

<sup>2</sup> For Aristotle’s understanding of this distinction, see Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle’s Politics* (Oxford: Clarendon Press, 1995), esp. pp. 74–86.

<sup>3</sup> Christopher W. Morris, *An Essay on the Modern State* (Cambridge:

the third and fourth the species. The last condition need not occupy us here; it is just meant to indicate that the rights in question are “fundamental” in some important respects.<sup>4</sup> Our main attention will be to the third condition, the explication of the notion of natural. The first part of condition 3 (“possessed in a state of nature”) is meant to connect natural rights to the modern tradition of political philosophy, where the notion of a state of nature figures prominently. It is mostly the second part of condition 3 (“prior to and independent of convention”) that is central to my concerns in this essay. But I might say something here about 3a, which bears on the interpretation of these notions in classical Greek thought, especially that of Aristotle. I appeal here to a distinction that Fred Miller makes in his study of Aristotle between natural rights that are based on natural justice and those that are possessed in “a pre-political state of nature.” He argues that Aristotle has a conception of natural rights of the first but *not* the second sort, so that Aristotle’s account “belongs to the family of political theories (along with Locke’s theory) which denies that individuals possess rights merely by convention.”<sup>5</sup> My argument won’t turn on the notion of a state of nature but rather that of convention, so in some important respect I am challenging the kind of account offered by Locke and Aristotle.<sup>6</sup> Interestingly, while not Aristotelian, my view

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Cambridge University Press, 1998), p. 144; see also pp. 139–45.

<sup>4</sup> The notion of a basic right or duty can be used to distinguish between natural right theories (e.g., Robert Nozick) and natural duty theories (e.g., John Finnis). See discussion in L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), pp. 104–6.

<sup>5</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, pp. 90–91. To be clear, Miller speaks of “rights based on nature.” I note here that I won’t make use of the notion of a “pre-political” condition. As I’ll say below, humans have always lived in groups, that is, in a *social* setting. If we think of the political as involving the distribution of power, then social settings will be political. Of course, the small communities of *homines sapientes* lacked the institutions and social classes that developed in many places in the last ten thousand years; we may consider them anarchist, hence our focus on them in the pages to come.

<sup>6</sup> In his important study of Locke, John Simmons deploys a conception of natural rights which has them be natural as opposed to conventional or artificial, civil, and institutional; see A. John Simmons, *The Lockean Theory of Rights* (Princeton, NJ: Princeton University Press, 1992), p. 90.

accepts a conception of humans as social and cooperative by nature (“human beings have an innate impulse to live in communities”<sup>7</sup>).

Common sense morality in many places appears to grant everyone some basic rights, or at least the status of beneficiary of some directed duties (duties owed *to*), perhaps the influence of Stoicism, Christianity, and other monotheistic religious traditions. The idea that everyone—every human or human person—*counts* morally or possesses moral standing seems widespread. A modern understanding of this status would attribute to all humans or persons certain natural rights. Sometimes these are said to be human rights, rights one possesses by virtue of being human (condition 4 above), though often human rights today are determined by international law. In American political culture, where Thomas Jefferson’s *Declaration of Independence* is regarded something like a founding document, it’s not uncommon to use the language of God-given natural (or “inherent”) rights to condemn slavery and similar wrongs. These are wrongs *to* the victim.<sup>8</sup> The first section of Virginia’s *Declaration of Right* (1776) states: “That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” The French revolutionary tradition, embodied in the *Déclaration des droits de l’homme et du citoyen* (1789), makes the possession of natural rights the fundamental notion of political society. The idea that people have certain fundamental rights to life and liberty prior to and independently of civil law seems widely shared and may motivate changes in international law.

Such rights, because they were natural and independent of civil law, were received skeptically by some. Jeremy Bentham famously attacked them: “simple nonsense: natural and imprescriptible rights, rhetorical nonsense—nonsense upon stilts.”<sup>9</sup> Non-believers who

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<sup>7</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 35.

<sup>8</sup> The famous second paragraph of the *Declaration of Independence* construes these rights to be *inalienable*, which means they cannot be alienated by the right-holder. Some inalienable rights are not natural (e.g., the right to vote), so these two features are distinct.

<sup>9</sup> Jeremy Bentham, *Anarchical Fallacies*, in *The Works of Jeremy Bentham*,

thought of such rights as God-given or otherwise dependent on the existence of (normative) laws of nature often shared this skepticism. Establishing the existence of natural rights is, of course, challenging. Without the Deity, it is unclear where these rights could come from. We might wonder why they have to *come from* somewhere. Normally, rights and laws have a source—custom or convention, legislation, juridical decisions, and the like. Rights that lack such origins must have another source, no? We might of course claim that it is beneficial for people to have these rights, but difficulties face this line of thought. The difficulty is that sometimes rights may be harmful to others or even to the right-holder. Even if these rights might be beneficial overall, they may often be disadvantageous to those obligated.<sup>10</sup>

Moral and legal theories which base “deontic” or “juridical” relations on the good, especially consequentialist ones, cannot easily secure these. Bentham’s skepticism was more than a mere expression of disbelief. Moral consequentialists, as well as consequentialists in the theory of rational choice, have long had difficulties securing rights and duties or other deontic notions (e.g., principles, rules, norms). Consider the following general argument formulated using the notions of a rule and of the best: A rule requires you to do something; either it requires you to do what is best, in which case you should comply with it, or it requires you to do something else, in which case you should not comply with it (as it tells you not to do the best). In one case, the rule is not needed; in the other, it should not be followed.<sup>11</sup> This argument can be made for rights of any kind but also for duties and obligations, principles and rules, and indeed, all of the deontic notions.

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Vol. 2, ed. John Bowring (Edinburgh: William Tate, 1743), p. 501.

<sup>10</sup> As noted, e.g., by Philippa Foot: “while prudence, courage and temperance are qualities which benefit the man who has them, justice seems rather to benefit others, and to work to the disadvantage of the just man himself” (Philippa Foot, “Moral Beliefs,” in Philippa Foot, *Virtues and Vices* [Oxford: Clarendon Press, 2002], p. 125). See also Morris, “The Trouble with Justice,” in *Morality and Self-Interest*, ed. Paul Bloomfield (New York: Oxford University Press, 2008), pp. 15–30.

<sup>11</sup> For a discussion of this kind of argument and references to its sources, see Scott J. Shapiro, “Authority,” in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. Jules Coleman and Scott Shapiro (New York: Oxford University Press, 2002), chap. 10.

In an important study of moral rights, L. W. Sumner offers an analysis of the concept of a right and argues against natural rights, developing Bentham's case. He argues that these are unlikely to be secured by a plausible naturalistic theory of value. He concludes:

One can imagine successful arguments which run directly from nature to basic principles of the good—that is, a plausible naturalistic value theory. But deontic categories seem the least naturalistic, by virtue of their origins in conventional rule systems. Thus it is harder to imagine successful arguments which run directly from nature to basic principles of duty—that is, a plausible natural duty theory. And rights seem the least naturalistic of all deontic categories, by virtue of their complex structure and their inclusion of second-order Hohfeldian elements. Thus, it is hardest to imagine successful arguments which run directly from nature to basic principles of rights—that is, a plausible natural rights theory. But that means that even within the class of theories which share a realist methodology natural rights theories seem the least likely to succeed.<sup>12</sup>

Sumner favors a conventionalist account of rights and develops an indirect consequentialist theory. Starting with Hume on justice—or perhaps with Glaucon in Plato's *Republic*—there are conventionalist accounts of increasing sophistication.<sup>13</sup> I have briefly recounted familiar worries about deontic notions which are thought to be “natural” in some respect. Nothing is settled by these brief remarks. They are meant to set the stage for a practical conception of rights.

### 3. Natural Justice

As was mentioned above, Hobbes did not think we have any natural rights. Of course, he famously asserts that there is one: “THE RIGHT OF NATURE, which Writers commonly call *Jus Naturale*, is the Liberty each man hath, to use his own power, as he will himselfe, for

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<sup>12</sup> Sumner, *The Moral Foundation of Rights*, p. 126.

<sup>13</sup> The most sophisticated of recent accounts of this kind is that of Peter Vanderschraaf, *Strategic Justice: Convention and Problems of Balancing Divergent Interests* (New York: Oxford University Press, 2019).

the preservation of his own Nature.”<sup>14</sup> However, this “right” is a mere (Hohfeldian<sup>15</sup>) liberty, not a claim-right. In the condition of nature, humans have no obligation to respect the “right” of nature of others. Hobbes is a skeptic about natural claim-rights. He is usually interpreted as thinking that our rights are established by law and thus presuppose the establishment of a sovereign.<sup>16</sup>

I also mentioned Hume, who has a well-developed conventionalist account of justice (and property). He deploys a distinction between natural and artificial virtues, arguing that justice is different from the other virtues and “that the sense of justice and injustice is not deriv’d from nature, but arises artificially, tho’ necessarily from education, and human conventions.”<sup>17</sup> He notes, however,

when I deny justice to be a natural virtue, I make use of the word, *natural*, only as oppos’d to *artificial*. In another sense of the word; as no principle of the human mind is more natural than a sense of virtue; so no virtue is more natural than justice. Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as any thing that proceeds immediately from original principles, without the intervention of thought or reflection. Tho’ the rules of justice be *artificial*, they are not *arbitrary*. Nor is the expression improper to call them *Laws of Nature*; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species.<sup>18</sup>

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<sup>14</sup> Hobbes, *Leviathan*, ed. Noel Malcomb, The Clarendon Edition of the Works of Thomas Hobbes (Oxford: Clarendon Press, 1994 [1651]), XIV.1.

<sup>15</sup> See, e.g., Wesley. N. Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1919).

<sup>16</sup> Note: a careful reading of Hobbes’s laws of nature suggests they may obligate even if they don’t give rise to directed duties. I ignore this aspect of his thought here.

<sup>17</sup> David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge (Oxford: Clarendon Press, 1888 [1739–1740]), Bk. III, sec. I, p. 483.

<sup>18</sup> *Ibid.*, Bk. III, sec. I, p. 484. This passage is quoted by Miller in *Nature, Justice, and Rights in Aristotle’s Politics*, pp. 61–62, where he argues that

The key thought here is that an “invention” that is “obvious and absolutely necessary” and common to a species is *natural* in a perfectly intelligible sense, even if opposed to *artificial*. The state, Hobbes asserts, “is but an Artificiall Man.”<sup>19</sup> Humans did not always live in states. By contrast, even if justice is an artificial virtue, according to Hume, it is natural in the sense above. *Humans never lived entirely without it.*

The last claim may seem incredible or even outrageous, so I need to explain and defend it. This will be essential to determining the way in which artificial rights may be natural. The natural condition of humankind, that is, the conditions in which *homines sapientes* developed a few hundred thousand years ago, bore only some resemblance to the state of nature that Hobbes describes. Life may have been nasty, brutish, and short, and certainly fifty thousand years ago there were no arts or letters. But it was *not* solitary. Hobbes’s infamous state of nature is commonly understood as populated by instrumentally rational, amoral, self-interested people. This interpretation of the texts may be mistaken in several ways, but it is a good foil for the position that I wish to defend. Members of our species (and genus) have always been social animals who raise children and take care of kin and friends, who are capable of cooperating with others in small settings, as well as being careful with whom to cooperate.<sup>20</sup> They are not solitary but live in groups, small and large, and don’t confront other members of the group as enemies.<sup>21</sup> Early

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Hume is closer to Aristotle in some respects than he is to Hobbes (*ibid.*, p. 63), though he needs to qualify his statement that “Hume thus rejects the Hobbesian view that justice and other moral virtues are conventional or artificial.” Hume thinks that justice is both conventional and artificial, but he is close to Aristotle in other respects.

<sup>19</sup> Hobbes, *Leviathan*, “Introduction.”

<sup>20</sup> A point which Aristotle makes: “Anyone who cannot form a community with others, or who does not need to because he is self-sufficient, is . . . either a beast or a god”; see Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis, IN: Hackett, 1998), I.2.1253a27–30.

<sup>21</sup> As Hobbes recognized, in states of nature people have confederates (*Leviathan*, XV.5), and in some places we find “the government of small Families” (*Leviathan*, XIII.10).

humans are also not amoral; they are capable of generating and abiding by norms, many recognizably moral in most senses of the term. (Their moralities are clearly not universal, as I'll note below.)

Real humans—people like us, people in Hobbes's and Glaucon's times, people in prehistory—are first of all social beings. We are like wolves and chimpanzees but unlike bears and tigers. We live in groups; we can't survive outside of groups, and we crave company. These generalizations survive counter-examples (e.g., hermits, grouches). Even solitary animals don't spring "out of the earth, and suddainly (like Mushromes) come to full maturity without all kind of engagement to each other."<sup>22</sup> Even infant bears spend a year or so with their mothers. *Homo sapiens* have since their first appearance lived in groups, and other members of our genus seem to have as well, as do our ape relatives. For some hundreds of thousand years these groups were small. In difficult environments survival and reproduction required collective provision of shelter, defense, raising children, provision for the injured, and at some stage hunting big game.<sup>23</sup> Even after childhood and adolescence, humans characteristically don't live alone.

Recent thinking in biology makes us to be vehicles for our genes. This kind of Darwinian thinking can account for some of the ways in which we are not exclusively self-interested; we are driven to reproduce, and we care tremendously for our offspring, as well as for our kin (though less so). Note for now that caring for ourselves—our interests in the long-term—and for our children and kin requires some self-control in situations of choice where we sacrifice our interests to theirs. We also care for our friends and allies. This can take the form of reciprocal care or gifts that aren't necessarily reciprocated. Kin selection won't explain these last relations, but cooperation in small settings with repeated interaction can be sustained easily enough. In the social settings of tens of thousands of years ago, though, social order depended on more than tit-for-tat strategies (i.e., reciprocal altruism).

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<sup>22</sup> Hobbes, *De Cive*, ed. Howard Warrender, The Clarendon Edition of the Works of Thomas Hobbes (Oxford: Clarendon Press, 1984 [1642]), VIII.1.

<sup>23</sup> See, e.g., Christopher Boehm, *Hierarchy in the Forest: The Evolution of Egalitarian Behavior* (Cambridge, MA: Harvard University Press, 1999); Robin Dunbar, *Evolution* (Oxford: Oxford University Press, 2020); and James C. Scott, *Against the Grain: A Deep History of the Earliest States* (New Haven, CT: Yale University Press, 2017).

Discussion, ridicule, reproaching, and gossip were crucial. For these to be effective, those involved usually were responsive; shame develops very early in infants. Group activities, especially big game hunting and raiding, required cooperation and coordination responsive to the intentions of others and to the roles different members played.

Humans lived for thousands of years in small groups and limited their cooperative arrangements to members of the groups (to pick back up on the relativism mentioned above), but overtures to and trade with members of other groups could occur, the setting permitting. In addition to caring for offspring, kin, and non-kin members of one's group, potential and limited cooperation with outsiders also emerged.

Christopher Boehm has argued that

human nature includes a wide array of dispositions of which we can be reasonably certain. One must include even the need for sleep and creature comfort, along with thirst, hunger, and sexual appetite. Nepotistic and altruistic capacities for giving nurturance and protection are salient, as well as the capacity for attachment, and sociality more generally. We are disposed to communicate, and we may well be disposed to detect cheaters or form political coalitions.<sup>24</sup>

Humans are complicated, in ways that matter. We are beings who straightforwardly seek our ends or those of family and friends, but we also respond to and are guided by general expectations, specifically norms and rules. These may emerge from regularities to become practices, where the latter include normative expectations. Allan Gibbard says, "human beings live socially; we are, in effect, designed for social life. Our normative capacities are part of the design," that is, "that remarkable surrogate for design, genetic variation and natural selection." He thinks: "The capacity to accept norms I portray as a human biological adaptation; accepting norms figures in a peculiarly human system of motivation and control that depends on language. Norms make for human ways of living." I follow Gibbard (and many others) in proposing that humans are beings who possess normative capacities, including "broad propensities to accept norms, engage in normative discussion, and to act, believe, and feel in ways that are somewhat guided by the norms one has accepted."<sup>25</sup> He further says,

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<sup>24</sup> Boehm, *Hierarchy in the Forest*, p. 235.

<sup>25</sup> Allan Gibbard, *Wise Choices, Apt Feelings* (Cambridge, MA: Harvard

“Working out in community what to do, what to think, and how to feel in absent situations . . . must presumably influence what we do, think, and feel when faced with like situations. I shall call this influence *normative governance*.”<sup>26</sup> Humans are social, imperfectly rational, and beings who can be governed by norms.

Norms and rules are important features of human life, and these create requirements and obligations. We may think of a community of early humans as “a highly structured network of individuals linked to each other through ties of kinship, friendship and obligation.”<sup>27</sup> The notion of obligation here is that of something required, not merely a means to an end. It is also often something that is owed *to* another (directed duty), such that the latter can be expected to be angry against one if one fails to do as obligated and can expect that one will understand the anger and perhaps be ashamed. Obligations and compliance with norms are important elements of the social orders of all humans. Creatures lacking the requisite normative capacities would not make reliable partners in the many activities that require coordination and trust: not only caring for kin and friends, but also hunting and fighting.

In general, small human communities secure social order through normative practices, fellow-feeling, shaming, surveillance and gossip, and some sanctions. While hierarchical in some respects, small communities (e.g., fewer than a couple hundred members) have significant egalitarian elements. On the accounts of Boehm and others, there are two important elements to this egalitarianism. The first is a resistance to political leaders; adult males participate equally in collective decisions, and there is strong resistance to the emergence of leaders. The second element is in the egalitarian distribution of meat from the hunt. Especially with big game, where the hunt is very dangerous, meat is distributed equally, even to those who did not participate or did not contribute importantly to the hunt. All members of the community are taken care of. This egalitarianism seems to manifest itself today most clearly in small groups or teams (e.g., military squads or platoons). This ethos seems very important to maintaining order in these anarchist small communities. Larger groups

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University Press, 1992), pp. 26, 7, and 27.

<sup>26</sup> *Ibid.*, p. 72.

<sup>27</sup> Dunbar, *Evolution*, p. 24.

see the emergence of stable hierarchies, with leaders and rulers and elites.

These norms governing early small communities constitute part of a morality, which I shall dub a *natural morality*. The word ‘morality’ is not crucial; we could also talk about collections of norms, restraints, and sentiments. Members of these societies will be governed by norms sustained by their practices, expectations, and sentiments, ready to do their part in the different cooperative arrangements of their community. Not only will they have commitments and obligations, but they will also care for and assist others in various ways even when not obligated. There thus will be something like our virtues of justice and benevolence or charity. Courage, self-restraint, and industry will presumably be admired, resembling some of our self-regarding virtues. We can think of these dispositions, attitudes, and expectations as a kind of natural morality, which is important for our story about homo sapiens. The amoral, asocial creatures that populate many social theories are not fully human.<sup>28</sup>

It is important to emphasize here, as I will below, that the natural moralities of early humans are “relativist” and not universal. We associate doctrines of natural law with Stoic and Christian conceptions of the moral, where all humans have moral standing and are owed moral consideration. However, early human moralities govern only insiders, members of the community, not outsiders. Any morality that assigns obligations to roles (e.g., in the hunt), has rules that are impartial in the sense that they govern anyone who assumes that role. They needn’t be universal and protect or bind all; that is, their *scope* need not be the set of all humans. We mistakenly conflate the impartial and the universal. Early communities have a natural morality, but it doesn’t obligate members to outsiders. This is compatible with treating potential cooperators in other communities in ways one would not treat an adversary, as well as with bringing outsiders into one’s community (e.g., raiding). If one thinks of morality (or justice) as necessarily universal, as many moderns do, then this natural morality won’t qualify, but denying that early human communities were governed by something like a morality is a mistake. Additionally, and of importance for the thesis of this article, this early morality is natural.

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<sup>28</sup> Any human who is without a *polis*, Aristotle says, “not by luck but by nature, is either a poor specimen or else superhuman” (*Politics*, I.2.1253a2–3).

#### 4. Artificial Natural Rights

We can of course “define” natural rights in different ways, but winning an argument by changing a definition is uninteresting. I characterized natural rights above as rights that are (1) moral (2) claim rights that are (3) natural, that is, (a) possessed in a state of nature, (b) prior to and independent of convention, (4) held by virtue of possession of some natural attribute, and (5) basic. I neglected the fifth condition in this article, as it is not central to our concerns here. My main claim is that artificial rights can be natural in a recognizable, sensible sense. Thus, my focus is on condition 3, parts a and b.

Now our artificial natural rights exist in states of nature (condition 3a). These are usually thought to be the conditions of humans living outside of states. If one thinks of states as peculiarly modern forms of organization, as I have, then this characterization is too broad. States of nature need to be understood as lacking the centralization of political power and largely anarchist. Artificial natural rights are rights held against fellow members of the community and in some circumstances against some outsiders (e.g., traders). However, they are conventional and don’t satisfy condition 3b. Artificial rights and obligations depend on practices and norms. We cannot say that someone has an artificial right or obligation unless there exist norms which attribute these to him or her. These norms are created by practices that give rise to expectations: people obligated by the right need to believe that enough other people comply with the norm, and that enough other people have a similar expectation of others. The norms in question are created by behavior and attitudes. Hume’s account of justice and property is conventionalist in this sense, and it is often cited in contemporary discussions of norms.<sup>29</sup> These norms and practices may depend on a variety of cognitive and affective capacities that humans have and that other creatures lack. (Some of these capacities may be possessed by apes and wolves. The process of developing these capacities takes some time with human infants, as any parent knows.) These practices, attitudes, and cognitive-affective capacities are ancient, and may be found in early, small, anarchist communities.

My novel understanding of natural rights illuminates the way in which morality—and notably its deontic elements—can be natural, that is, part of our natures and our natural condition. Recognizably

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<sup>29</sup> See, e.g., David Lewis, *Convention* (Cambridge, MA: Harvard University Press, 1969), p. 5.

cognitive and affective moral capacities appear early in our history as a species, and this time can be understood to be our natural condition or a state of nature in one of the original senses of that notion.

This conception of conventional natural rights is congenial to accounts that tie social morality and its origins to cooperation. I have not addressed Miller's notion of "natural rights based on nature." My account of natural rights (which are conventional) is meant to be agnostic regarding debates about moral realism and associated epistemic controversies. However, my conventionalism rests on a social conception of humans, bringing it closer to Aristotle and Hume than to Hobbes. I cited Miller's comment above that "human beings have an innate impulse to live in communities," which seems correct. After this comment, he refers to a discussion in Aristotle's *Politics*, identifying three motivations for political life:

- (1) humans desire to live together even when they do not need mutual assistance;
- (2) the common advantage brings them together, in so far as a part of the noble life falls to each of them;
- and (3) they come together and maintain the political community for the sake of life itself, because there is perhaps a noble element and natural sweetness in living as such.<sup>30</sup>

Much of what humans achieve—their mere survival, as well as their prosperity and their fulfillment—depends on cooperation with others. This cooperation is sustained by practices and norms, as well as by the affective and cognitive capacities that we possess. In our earliest times, as now, we lived in small communities where an individual adult could not survive on its own. Cooperating with others in one's community was required, as it is now.

This account of our nature and natural conditions reveals many continuities with us today. We cooperate effectively, though not perfectly, on a small scale, just as our early ancestors did—kin relations, fellow-feeling, shaming, surveillance and gossip, sanctions. These are insufficient in larger settings, indeed, in settings larger than a couple of hundred people. Our condition is *not* continuous with that of our early ancestors! The world today is crowded, and much of it has been for several thousand years. The capacities and practices that

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<sup>30</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 35, discussing *Pol.*, III.6.1278b17–30.

maintained social order in small settings still operate in small groups (e.g., teams, platoons), but they are not effective in larger settings—thus our reliance on religion, law, government, and markets. Philosophers and economists often carry on discussions about cooperation using examples or models involving a handful of people—sometimes just two—but our problems involve cooperation between millions. Addressing these involve “expanding the circle,” to borrow Peter Singer’s expression.<sup>31</sup>

This thought leads me to a last one, namely, that legislated human rights, like some of those in the famous *United Nations Declaration* or in more recent doctrines of international law, could be a path to this expansion of basic or fundamental rights to all. These rights would be conventional and not natural in my or any other sense, showing that “human rights,” the preferred phrase today, may be a different notion from older notions of natural rights. The possibilities offered by our complex practices and institutions are considerably greater than those to be found in the natural moralities of our ancient anarchist ancestors, but an understanding of the latter is essential for expanding cooperation in our world.

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<sup>31</sup> Peter Singer, *The Expanding Circle: Ethics, Evolution, and Moral Progress*, expanded ed. (Princeton, NJ: Princeton University Press, 2011).

## Aristotle and Natural Rights Revisited

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### 1. Introduction

Shortly after the appearance of Fred Miller's *Nature, Justice, and Rights in Aristotle's Politics*, David Keyt described it as "the finest book to appear on Aristotle's political philosophy since W. L. Newman published the final volume of his great four-volume commentary at the turn of the century."<sup>1</sup> Recently, over twenty-five years after its publication, Thornton Lockwood has described it as "perhaps the most influential monograph on the *Politics* in the last 50 years."<sup>2</sup> The book presents a comprehensive interpretation of Aristotle's *Politics* and situates Aristotle's thought in relation to modern political philosophy through the late-twentieth century. Supplemented by Miller's other work on these topics, it provides a framework for understanding the whole of Aristotle's political philosophy and for thinking about the prospects of various efforts to develop contemporary neo-Aristotelian theories.<sup>3</sup>

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<sup>1</sup> David Keyt, "Fred Miller on Aristotle's Political Naturalism," *Ancient Philosophy* 16, no. 2 (1996), p. 425.

<sup>2</sup> Thornton Lockwood, "The State of Research on Aristotle's *Politics*," in *Research Handbook on the History of Political Thought*, ed. Cary J. Nederman and Guillaume Bogiaris-Thibault (Cheltenham: Edward Elgar, forthcoming).

<sup>3</sup> Among a host of works, Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995); Fred D. Miller, "Aristotle and the Origins of Natural Rights," *Review of Metaphysics* 49, no. 4 (1996), pp. 873–907; Fred D. Miller, "Naturalism," in *The Cambridge History of Greek and Roman Political Thought*, ed. Christopher Rowe and Malcolm Schofield (Cambridge: Cambridge University Press, 2000), pp. 321–65; Fred D. Miller, "Legal and Political Rights in Demosthenes and Aristotle,"

While not every scholar of the *Politics* would share Keyt's high estimation of *Nature, Justice, and Rights in Aristotle's Politics*, its influence is easy to discern. Whether agreeing with it or developing rival interpretations, subsequent scholarship has been shaped by Miller's work, especially in two broad areas. The first concerns interpreting Aristotle's political naturalism, namely, his ideas that the *polis* exists by nature and that the norms governing political and ethical life are grounded in nature. The second concerns understanding Aristotle's theory of justice, especially the role it gives to the common good and its view of the relationship between individuals and communities. These two areas correspond to the first two terms in the title of Miller's *magnum opus*, where recent scholarship continues to engage explicitly with Miller and to show signs of his influence even when it does not.<sup>4</sup> Things are otherwise, however, with the third term in the book's title.

The initial years following the book's publication saw a flurry of responses, mostly critical, to its contentious claims about rights. Against a widespread consensus, Miller argues that, rightly understood and appropriately qualified, the concept of natural rights is central to Aristotle's political philosophy. Responses varied, but the most prominent objected that ascribing a concept of natural rights to

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*Philosophical Inquiry* 28, no. 1 (2006), pp. 27–60; Fred D. Miller, "Virtue and Rights in Aristotle's Best Regime," in *Values and Virtues: Aristotelianism in Contemporary Ethics*, ed. Timothy Chappell (Oxford: Oxford University Press, 2006); Fred D. Miller, "Did Plato and Aristotle Recognize Human Rights?" in *New Perspectives on Aristotelianism and Its Critics*, ed. Miira Tuominen, Sara Heinämaa, and Virpi Mäkinen (Leiden: Brill, 2014), pp. 93–110; and David Keyt and Fred D. Miller, "Aristotle on Freedom, Nature, and Law," in *State and Nature: Studies in Ancient and Medieval Philosophy*, ed. Peter Adamson and Christof Rapp (Leiden: Brill, 2021), pp. 119–34.

<sup>4</sup> For just a few examples, see the discussions of naturalism and the common good in Adriel Trott, *Aristotle on the Nature of Community* (New York: Cambridge University Press, 2014); David J. Riesbeck, *Aristotle on Political Community* (Cambridge: Cambridge University Press, 2016); George Duke, *Aristotle on Law: The Politics of Nomos* (Cambridge: Cambridge University Press, 2020); and Christof Rapp, "Whose State? Which Nature? How Aristotle's *Polis* is 'Natural'," in *State and Nature: Studies in Ancient and Medieval Philosophy*, pp. 81–118.

Aristotle is anachronistic at best, and at worst a wrongheaded effort to reclaim Aristotle from communitarian theorists in the service of a libertarian form of liberalism.<sup>5</sup> More recent scholarship is largely silent on the question and implicitly sides with Miller's critics in accepting the charge that interpreting Aristotle in terms of rights is unhelpfully anachronistic.<sup>6</sup> The question of natural rights in Aristotle thus seems to be a dead issue.

Yet I propose to resurrect this dead issue. Why? First, I think that Miller had the better of the dialectical exchange with his initial critics and that the common opinion to the contrary is mistaken. His response clarifies his own view and shows the weakness of most of the objections against it. Although I will endorse a version of one prominent objection, this objection does not undermine Miller's overall view and for the most part his arguments hold up when properly understood. Second, and more importantly, Miller's interpretation of Aristotle in terms of natural rights sheds light on both Aristotelian political philosophy and the concept of natural or moral rights. Here, however, I draw a somewhat different lesson from Miller's interpretation than Miller does.

Miller argues that natural rights are central to Aristotle's thought and that Aristotle provides a basis for a theory of rights superior to most modern liberal theories. I will argue that Miller's

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<sup>5</sup> Some representative early critiques were John Cooper, "Justice and Rights in Aristotle's *Politics*," *Review of Metaphysics* 49, no. 4 (1996), pp. 859–72; Richard Kraut, "Are There Natural Rights in Aristotle?" *Review of Metaphysics* 49, no. 4 (1996), pp. 755–74; Malcolm Schofield, "Sharing in the Constitution," *Review of Metaphysics* 49, no. 4 (1996), pp. 831–58; Randall Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," *Reason Papers* 22 (1997), pp. 144–53; Paul Schollmeier, "Review of F. D. Miller, *Nature, Justice, and Rights in Aristotle's Politics* and R. Heinaman, ed., *Aristotle and Moral Realism*," *Social Theory and Practice* 24, no. 1 (1998), pp. 133–51; Daniel C. Russell, "Aristotle on Rights and Justice," *Polis* 16, nos. 1–2 (1999), pp. 73–85; and Vivienne Brown, "'Rights' in Aristotle's *Politics* and *Nicomachean Ethics*?" *Review of Metaphysics* 55, no. 2 (2001), pp. 269–95.

<sup>6</sup> To illustrate, there is no discussion of rights or natural rights in the essays collected in Thornton Lockwood and Thanassis Samaras (eds.), *Aristotle's Politics: A Critical Guide* (Cambridge: Cambridge University Press, 2015).

interpretation helps us to see that an Aristotelian theory of justice can do all the work that we would reasonably want a theory of rights to do while avoiding significant problems that the idiom and rhetoric of rights tend to generate. Where Miller holds it reasonable to ascribe a concept of rights to Aristotle, I will maintain that what his interpretation shows instead is that Aristotle has a different way of talking about much of what we often try to talk about in the language of rights. Miller successfully shows that Aristotle's theory of justice *can* aptly be expressed in the language of rights. However, I will argue that an Aristotelian theory of justice can dispense with that language altogether and that its value as an account of rights lies in part in showing that we do not strictly need the language of rights. An Aristotelian can thereby avoid concluding that natural rights are "nonsense on stilts" or "liberal fictions" without embracing the problematic commitments that have given rise to powerful critiques of rights language and rights theories.<sup>7</sup>

I begin in Section 2 with an overview of Miller's interpretation of Aristotle in terms of natural rights. In Section 3, I provide a brief survey of some major objections to Miller's thesis and a defense against them. I then turn in Section 4 to problems with natural rights raised by some prominent recent critics before showing in Section 5 how Miller's interpretation of Aristotle helps us see the potential for a fruitful way of understanding rights language.

## **2. Miller on Aristotle and Natural Rights**

Miller's most contentious claim is that the concept of natural rights is central to Aristotle's political philosophy. Before we can assess this claim, we need to understand what Miller means by "natural rights." How does he understand rights and what is involved in rights being natural? Miller's account of the concept of a right is taken from Wesley N. Hohfeld's influential analysis of rights language in law.<sup>8</sup>

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<sup>7</sup> Bentham famously called natural rights "nonsense on stilts"; see Jeremy Bentham, "Anarchical Fallacies," in *The Works of Jeremy Bentham*, vol. 2, ed. John Bowring (Edinburgh: William Tait, 1843), pp. 489–534. "Liberal fictions" is Alasdair MacIntyre's description of human rights in Alasdair MacIntyre, *Ethics in the Conflicts of Modernity* (Cambridge: Cambridge University Press, 2016), p. 77.

<sup>8</sup> Wesley N. Hohfeld, *Fundamental Legal Conceptions* (New Haven, CT: Yale

Hohfeld holds that rights language is systematically ambiguous, but that talk of rights can be analyzed or reduced to some combination of four types of relation, each with its corresponding sense of “a right”:

1. X has a *claim-right* to Y’s  $\phi$ -ing if and only if Y has a duty to X to  $\phi$ .
2. X has a *liberty-right* to  $\phi$  relative to Y if and only if it is not the case that X has a duty to Y not to  $\phi$ .
3. X has a *power-right* to  $\phi$  relative to Y if and only if Y has a liability to a change in Y’s legal position through X’s  $\phi$ -ing.
4. X has an *immunity-right* relative to Y’s  $\phi$ -ing if and only if Y does not have a power right to  $\phi$  with respect to X.

Miller accepts Hohfeld’s analysis with some qualifications.<sup>9</sup> First, he argues that Hohfeld succeeds only in providing necessary, not sufficient, conditions for rights. To have a claim-right, Miller argues, it is not sufficient that someone else have a duty to do something that benefits me. I must also be justified in making a claim against the person to the performance of the duty. The duty correlative to a right must be a duty *to* the right-holder, and so Hohfeld’s analysis should be reformulated to state only a necessary and not a sufficient condition for holding a right. Second, Miller argues that Hohfeld’s analysis of liberties is too weak, since it does not entail that any others have a duty of non-interference. Liberties are often thought of as entailing such duties, and so we should either modify the definition to reflect this fact or distinguish between protected and unprotected liberties in terms of whether the liberty entails duties of non-interference. With these qualifications, however, Miller holds that common talk of rights can be analyzed in terms of the relations distinguished in Hohfeld’s analysis.

Two features of Miller’s Hohfeldian conception of rights are especially important for our purposes. First, it neither says nor implies anything about the basis of rights. So far as this analysis is concerned, rights may be prior to duties, such that they generate duties or explain why others have them. Rights may be morally fundamental as self-evident first principles constraining our pursuit of self-interest. Yet so

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University Press, 1919).

<sup>9</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, pp. 94–96.

far as the analysis of the concept is concerned, none of this need be so. Duties may be prior to rights, and rights may be far from morally or rationally fundamental; they may admit of any variety of rational justification. The concept of a right is the concept of a certain kind of normative relationship between persons, with different sorts of rights combining the different elements of the qualified Hohfeldian analysis in different ways.

Second, although Miller does not emphasize it, the same is true of the notion of duties at work in this analysis. The relevant duties may be morally fundamental, categorical, absolute, exceptionless, and inescapable or they may be derivative, hypothetical, context-dependent, liable to exception, and escapable. The concepts of a right and of the duty or obligation correlative to it leave these matters indeterminate. Different conceptions or theories of rights may be committed to some more determinate claims about what kinds of rights and duties people have under what conditions and why, but on this analysis, such claims are not essential to the concept of a right. “A right,” Miller says, “is a claim of justice which a member of a community has against the other members of the community. A theory of justice supports individual rights if it entails that each and every individual within the community has moral standing and a claim to protection.”<sup>10</sup> It is in this sense that Miller argues that rights are central to Aristotle’s political philosophy.

What, though, does Miller mean when speaking of “natural” rights? He distinguishes two senses of the expression. Rights might be natural in the sense that people possess them already in a state of nature, that is, a state conceived as lacking any political community and perhaps even any settled social relationships altogether. Rights are natural in this sense if their bearers have them “solely on account of their natures as individuals and apart from any social or political considerations.”<sup>11</sup> Nature is here understood as contrasting with society, or at least with political community.

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<sup>10</sup> Miller, “Aristotle and the Origins of Natural Rights,” p. 875; cf. Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 17.

<sup>11</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 90.

In a second sense, however, rights might be natural if they are “based on natural justice.”<sup>12</sup> Here nature is contrasted with convention, not with sociality or politics. The key idea is that norms of justice require respect for rights independently of whether those rights receive recognition or respect from the conventions or laws of any given community. Rights possessed in a state of nature are also based on natural justice, but rights based on natural justice need not be possessed in a state of nature. Rights might depend on social relations without being mere artifacts of law or convention. Miller holds that Aristotle recognizes rights based on natural justice despite not recognizing rights possessed in a state of nature.

Miller’s thesis about rights in Aristotle, then, has two parts: Aristotle recognizes rights and he regards at least some of them as based on natural justice. To support the first claim, Miller argues that Aristotle consistently employs certain terms in ways that correspond to each of the four elements in the Hohfeldian analysis of rights. *Dikaion* is used to express claim-rights, *exousia* and related terms denote liberties, the adjectives *kurios* and *akuros* assert or deny powers, and the noun *adeia* names an immunity.<sup>13</sup>

Miller supports the second claim through an interpretation of Aristotle’s political naturalism and his account of the common good. Aristotle holds that the polis exists by nature and that human beings are by nature political animals. As Miller interprets these claims, human beings need to live together in political communities in order to develop and exercise our essential capacities fully, and we tend to form such communities in pursuit of those ends.<sup>14</sup> The function or purpose of a political community is to enable its members to flourish, and the virtue of justice is paradigmatically concerned with cooperation aimed at achieving this goal. When justice is concerned with forms of community other than the political, it is to be understood by reference to justice in political community; in each case, it is a matter of

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<sup>12</sup> Ibid., p. 88.

<sup>13</sup> Ibid., pp. 97–106. He finds examples of this language in Demosthenes; see also Miller, “Legal and Political Rights.”

<sup>14</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, pp. 27–60.

respecting and promoting common goods.<sup>15</sup> Doing so successfully requires recognizing certain claims, liberties, powers, and immunities. In this way, the norms of justice involve rights. Since the goods constitutive of human flourishing and the requirements for successfully pursuing it in common are fundamentally determined by human nature rather than convention, these norms are natural in the relevant sense. The dependence of human flourishing on political community—and on community relationships more generally—means that these norms do not obtain independently of all political and social relations. Consequently, the rights entailed by Aristotle’s theory of justice would not be possessed in a state of nature. Yet they are based on natural justice, which is a set of norms that transcends convention or positive law and provides a standard for assessing them.

### 3. Criticisms of Miller on Aristotle and Natural Rights

Early responses to Miller’s view of Aristotle and natural rights were mostly critical and many objections took a similar form. They held that it is anachronistic or simply mistaken to attribute a concept of natural rights to Aristotle because his theory lacks some feature essential to a concept of rights, such as being based on respect for subjective freedom,<sup>16</sup> holding a foundational role in explaining requirements of justice,<sup>17</sup> contrasting with merit or desert,<sup>18</sup> being circumstantially stable enough,<sup>19</sup> protecting individuals from the demands of the common good,<sup>20</sup> being independent of their value to others besides the right-bearer,<sup>21</sup> or being a moral power that

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<sup>15</sup> Ibid., pp. 67–86.

<sup>16</sup> Cooper, “Justice and Rights in Aristotle’s *Politics*,” pp. 862–66.

<sup>17</sup> Schofield, “Sharing in the Constitution,” p. 852; Russell, “Aristotle on Rights,” p. 77.

<sup>18</sup> Kraut, “Are There Natural Rights in Aristotle?” pp. 760–62; Schofield, “Sharing in the Constitution,” p. 856.

<sup>19</sup> Kraut, “Are There Natural Rights in Aristotle?” pp. 762–64.

<sup>20</sup> Ibid., p. 763.

<sup>21</sup> Ibid., pp. 767–69.

individuals have to make claims on others (or even being something that individuals have at all).<sup>22</sup> The problem with all of these objections is that they insist on treating some feature or other as essential to the concept of rights, when the usage of that concept does not in fact always display that feature.

A look at contemporary rights theory shows that rights are not uniformly regarded as grounded in respect for freedom in contrast to well-being, as logically prior to duties and explanatory of them, etc.<sup>23</sup> To be sure, such features are prominent in some controversial conceptions or theories of rights, but none can plausibly claim to be essential to the concept of a right. No view about the basis or rational justification of rights, their scope or their character as absolute or conditional, or about their relation to other concepts such as well-being, can be taken as essential to the concept. Even the concept of a specifically natural or moral right simply excludes purely conventional or legal bases or justifications, but otherwise leaves the issue of rational justification indeterminate. The core of a concept of a right is given by the qualified Hohfeldian analysis, and the concept of a natural right is the concept of a right not based on convention or law. Such, at least, is Miller's view.

On this account, the concept of a natural right is thin, excluding much that characterizes various rival conceptions or theories of rights. This aspect of Miller's view helps to explain an otherwise puzzling feature of some of the responses to it. Several critics combined objections of the foregoing sort with the complaint that Miller's thesis is trivial because rights simply follow from any account of justice. Malcolm Schofield, for instance, rejects Miller's

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<sup>22</sup> Schofield, "Sharing in the Constitution," pp. 843–45; Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," p. 149; Brown, "'Rights' in Aristotle's *Politics* and *Nicomachean Ethics*?" pp. 281–82.

<sup>23</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 115–17, already makes this observation, but it should also be clear from Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998) and Leif Wenar, "Rights," in *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition), ed. Edward N. Zalta, accessed online at <https://plato.stanford.edu/entries/rights/>, to take but two examples.

interpretation on the grounds that a theory of rights cannot be based on merit or desert and must give rights themselves a fundamental explanatory role.<sup>24</sup> Yet Schofield also holds that “from an account of *objective right* one can simply derive a corresponding account of *subjective right*.”<sup>25</sup> There is an apparent tension, at best, between rejecting Miller’s thesis as mistaken and allowing that it follows as a trivial logical consequence from what Aristotle says. In fact, however, these two pieces of Schofield’s critique fit together perfectly: Miller is right to think that what he calls natural rights follow from Aristotle’s theory of justice, for they do so trivially, but what Miller calls rights are not substantive enough to warrant attributing to Aristotle a “rights-based theory.”<sup>26</sup>

We might think that this conclusion is tantamount to a concession of defeat on Schofield’s part, since Miller does not purport to interpret Aristotle as holding a rights-based theory of justice, but a theory that recognizes rights based on justice. For Schofield to allow that Aristotle’s theory of natural justice entails respect for Hohfeldian rights is to accept Miller’s thesis rather than to challenge it. The deeper problem, however, is that if every theory of justice trivially entails the recognition of Hohfeldian rights, and the concept of rights does no other work in Aristotle’s theory, then Aristotle as Miller interprets him will turn out to have a theory of natural rights only in the same way that every philosopher who rejects conventionalism has a theory of natural rights.<sup>27</sup> If every account of justice can be translated into the language of rights, we learn nothing significant about the theory from so translating it.

Yet, crucially, Miller does not hold that Aristotle recognizes natural rights only in the trivial sense that his theory of justice can be

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<sup>24</sup> Schofield, “Sharing in the Constitution,” pp. 852–53. There are echoes of this view in Curren, “Review of *Nature, Justice, and Rights in Aristotle’s Politics*,” Russell, “Aristotle on Rights and Justice,” and Kraut, “Are There Natural Rights in Aristotle?”

<sup>25</sup> Schofield, “Sharing in the Constitution,” p. 844.

<sup>26</sup> *Ibid.*, p. 856. So too Russell, “Aristotle on Rights and Justice,” p. 73.

<sup>27</sup> Russell, “Aristotle on Rights and Justice,” p. 77.

expressed in terms of Hohfeldian rights. Miller's account of the concept of a natural right is thin, but it is not that thin. For Miller, "what is distinctive about a theory of rights as such is that it prohibits as unjust the sacrifice of individuals and their ends in order to advance the interests of other individuals or groups of individuals."<sup>28</sup> Act utilitarianism and some other forms of consequentialism do not fit this description, since they prescribe acts and policies that promise to produce the best overall outcomes, even when producing those outcomes involves killing or otherwise harming individuals. Yet we could describe the requirements of an act-utilitarian account of justice in terms of Hohfeldian rights. The difference is not that Hohfeldian rights justified by a consequentialist calculus might be highly unstable or frequently liable to exception, for the same is true of some rights on Aristotle's theory as Miller interprets it. Many rights theories also recognize significant limitations or conditions for at least some rights.<sup>29</sup> The difference is that a theory that recognizes rights does not countenance the complete subordination or instrumentalization of individuals to some greater good.<sup>30</sup> Consequentialism, in some of its

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<sup>28</sup> Miller, "Aristotle and the Origins of Natural Rights," p. 876.

<sup>29</sup> Perry, *The Idea of Human Rights*, pp. 48–54 and 85–106; Wenar, "Rights."

<sup>30</sup> Miller says that they do not permit "sacrifice" of individuals and their ends, but whether this formulation is acceptable depends on how we understand sacrifice. If any choice that we can reasonably foresee will result in the loss of something counts as a sacrifice of that thing, then it is implausible to hold that Aristotle's or any other sensible view of justice prohibits the sacrifice of individuals and their ends, because some choices that foreseeably result in loss of life or severe deprivation of well-being may sometimes be inevitable; Miller, "Aristotle and the Origins of Natural Rights," pp. 893–95, responding to Kraut, "Are There Natural Rights in Aristotle?" pp. 769–72, implicitly accepts this point. If sacrifice is understood more narrowly, however, as the intentional harm or destruction of something as a means to an end, then it will be acceptable to say that a rights theory prohibits at least certain sorts of sacrifice of individuals and their ends. This narrower understanding of sacrifice arguably depends on a distinction between intended and merely foreseen consequences and a distinction between acts and omissions, neither of which Aristotle articulates. This issue is beyond the scope of this article, but see Michael Pakaluk, "Mixed Actions and Double Effect," in *Moral Psychology and Human Action in Aristotle*, ed. Michael Pakaluk and Giles Pearson (Oxford: Oxford University Press, 2011), pp. 211–32.

forms, values individual well-being only for its contribution to overall well-being or gives overall well-being strict priority over individual well-being, and thereby completely subordinates or instrumentalizes individuals and their well-being to overall well-being. Miller's conception of a theory of rights is therefore hardly trivial, since it excludes a whole family of moral theories.

Miller's ascription of a theory of rights in this sense to Aristotle is far from trivial in a second way. It might seem that Aristotle subordinates individuals to the common good of the *polis* and therefore cannot hold such a theory. After all, justice for Aristotle is fundamentally concerned with the common good, the polis is prior by nature to individuals, and "we should not think that any of the citizens belongs to himself, but that all belong to the city, for each is a part of the city" (*Pol.*, VIII.1, 1337a27-29). One of the achievements of *Nature, Justice, and Rights in Aristotle's Politics*, however, is to show how Aristotle's conceptions of the priority of the polis and of the common good are compatible with a theory of justice committed to respecting and promoting the flourishing of each individual member of the political community.

The key to this compatibility lies in what Miller calls the "moderate individualist" interpretation of the common good (or, as Miller prefers to translate it, the common advantage). This interpretation is individualistic in that it is opposed to holistic interpretations on which the common good is a collective good over and above the good of individuals. Whether in its extreme or moderate forms, holism does not regard the common good as good for each individual. Its extreme version sees individuals as existing for the sake of the whole and so as mere means to the common good, but even its moderate version sees the common good as a good of the community as a whole that may not benefit each of its members. Individualist interpretations, by contrast, see the common good as benefiting each member of the community as an individual. The common good of a group of people is mutually beneficial for each rather than a merely aggregate good or something overall good for the majority. A moderate individualist interpretation, however, sees the good of individuals as itself including intrinsically other-regarding activities, in contrast to "extreme individualist" views on which the common good must

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contribute to each individual's purely self-confined and self-regarding interests. Friendship, virtue, and participation in the shared life of the community are themselves partially constitutive of an individual human being's flourishing. On a moderate individualist interpretation, then, the common good is irreducibly social, yet it is common and good because it benefits each individual who participates in the community as well as being a shared aim of their co-operative action.<sup>31</sup>

On a moderate individualist interpretation of the common good, individuals are not wholly subordinated or instrumentalized to the common good, even as it includes more than their own good and extends its benefits beyond the good it does for any given individual. Precisely because the common good of the polis makes an indispensable contribution to each individual's good, individuals do not sacrifice their own overall good by contributing to it. By the same token, respecting and promoting the common good does not conflict with respecting and promoting the good of other individuals. The political common good is what it is because it enables each of the members of the community to pursue their flourishing in common with others. The respect for rights that is part of successful cooperation with a view to living well is therefore included in the common good rather than in competition with it.

Miller's most prominent critics largely do not target this moderate individualist interpretation of the political common good, and they even independently embrace something similar to it.<sup>32</sup> By Miller's lights, however, accepting moderate individualism about the common advantage alongside a naturalistic account of human flourishing and

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<sup>31</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 198–205.

<sup>32</sup> With Cooper, "Justice and Rights in Aristotle's *Politics*" and Kraut, "Are There Natural Rights in Aristotle?"; cf. John Cooper, "Political Animals and Civic Friendship," in *Reason and Emotion*, John Cooper (Princeton, NJ: Princeton University Press), pp. 356–77; Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002); and esp. Richard Kraut, "Aristotle and Rawls on the Common Good," in *The Cambridge Companion to Aristotle's Politics*, ed. Marguerite Deslauriers and Pierre Destrée (Cambridge: Cambridge University Press, 2013), pp. 350–74. Schofield, "Sharing in the Constitution," pp. 857–58, agrees with the centrality of individualism in Aristotle's thought. So too Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," p. 148.

the requirements for achieving it is tantamount to accepting a theory of natural rights. Once we appreciate how Miller conceives of rights, we can see that most of the critics' objections beg the question in favor of one or another narrower conception of rights, none of which has a plausible claim to capturing the essential features of the concept. On the whole, then, I think that Miller's ascription of a concept of natural rights to Aristotle escapes the major criticisms leveled at it.

For all that, there is yet one sense in which it would be reasonable to deny that Aristotle has a concept of rights. Miller argues that Aristotle has a concept of rights by pointing to terms and expressions in Aristotle's Greek that are regularly used to assert or deny Hohfeldian rights. As Miller notes, however, most ordinary and legal language about rights does not pick out the elements of Hohfeld's analysis as such. Rather, talk of "a right" typically refers to a complex whole of which individual Hohfeldian rights are aspects.<sup>33</sup> We might doubt that possession of concepts for the various aspects taken in isolation is sufficient for possessing a concept of the whole. In any case, we have good reason to doubt that Aristotle works with precisely the same concepts even for the various aspects. Miller makes a strong case for understanding *exousia* as a Hohfeldian liberty, *kurios* and *akuros* as asserting and denying Hohfeldian powers, and *adeia* as naming a Hohfeldian immunity. His case for regarding *dikaion* as equivalent to a Hohfeldian claim-right, however, is not entirely convincing. Miller easily shows that the possession of a Hohfeldian claim-right is often logically entailed by claims about what is *dikaion* or just.<sup>34</sup> But Cooper seems correct to insist that it often expresses more than that.<sup>35</sup> The term most basically describes something or someone as just or right. Although it at times describes that to which someone has a rightful claim, it can also refer to a duty rather than to

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<sup>33</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 96.

<sup>34</sup> *Ibid.*, pp. 97–101.

<sup>35</sup> Cooper, "Justice and Rights in Aristotle's *Politics*," pp. 866–68. Cooper's objections do not adequately recognize that Miller's concept of a right implies a duty, but he nonetheless seems to show that *dikaion* and 'a right' simply have different meanings even in those contexts in which *dikaion*'s emphasis is on the right rather than the duty.

its correlative claim-right, as Miller himself points out.<sup>36</sup> If *dikaion* and a Hohfeldian claim-right are identical concepts, they should be co-extensive in reference and have the same intension, but it seems that neither is true. Rather, as many have maintained, *dikaion* is a term for “objective right” in the sense of what is right, not a term for a “subjective right,” that is, a right that someone has.<sup>37</sup>

Miller partially concedes this objection, maintaining only that Hohfeldian claim-rights are a significant part of what *dikaion* expressions assert.<sup>38</sup> This concession seems more serious than Miller acknowledges, though, since it allows for a significant sense in which we can deny that Aristotle had the concept of a right. The possession of a claim-right is often entailed by assertions of what is just or right, but the language of *to dikaion* is not the language of rights. Yet we should not overstate the force of this objection. Miller claims that his “main concern in *Nature, Justice, and Rights in Aristotle’s Politics* was to refute the claim that Aristotle was oblivious to rights.”<sup>39</sup> We should agree insofar as what he means is that Aristotle has a language for talking about what many of us try to talk about in the language of rights, and that he regards what we try to talk about in the language of rights as central to his theory of justice. The concepts are not identical, but there is significant overlap that allows us to see Aristotle and modern rights theories as offering competing accounts of the same subject matter, namely, what is owed to whom and why.

#### **4. Some Problems with Natural Rights**

This might seem a rather tepid defense of Miller. After all, even his critics have often agreed that he showed how Aristotle’s thought can be expressed in the language of rights; they simply held that it is not helpful or illuminating to do so.<sup>40</sup> One reason for avoiding

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<sup>36</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 101.

<sup>37</sup> Ibid., p. 92; Schofield, “Sharing in the Constitution,” pp. 844–45; Michael Pakaluk, “Aristotle on Human Rights,” *Ave Maria Law Review* 102, no. 2 (2012), p. 379.

<sup>38</sup> Miller, “Aristotle and the Origins of Natural Rights,” p. 883.

<sup>39</sup> Ibid.

<sup>40</sup> Cooper, “Justice and Rights in Aristotle’s *Politics*,” pp. 861–62 and 866;

Miller's approach, emphasized by Schofield, has to do with the proper goal of historical scholarship: We should emphasize what is distinctive about the thought of the past rather than flattening out or even distorting differences by "retranslating" that thought into our own idiom.<sup>41</sup> Miller's model of "philosophical scholarship," by contrast, seeks to go beyond understanding texts in their own terms by putting the thought of the past into dialogue with later and contemporary philosophy.<sup>42</sup> Although Miller distinguishes this approach to studying Aristotle from neo-Aristotelian theorizing, it is also plainly part of his goal to help make Aristotle's thought more available for such theorizing. Neither this goal nor his general methodology leads Miller to deny or downplay significant differences between Aristotle and modern thought. On the contrary, part of Aristotle's relevance to contemporary philosophy, as Miller sees it, lies in the significant differences between an Aristotelian approach to rights and modern liberal approaches.<sup>43</sup> We might say on Miller's behalf, then, that part of why it is useful and illuminating to formulate Aristotle's theory in terms of rights is that it helps us to compare *and contrast* Aristotle with modern and contemporary thinkers. It also helps us to explore the possibility that Aristotle's thinking about justice might provide a promising approach to rights theory.

Yet even with these goals in mind, it might seem more helpful and illuminating to keep Aristotle's thinking and modern rights language apart. When we consider the way that rights talk tends to figure in contemporary discourse, whether popular or academic, it can seem preferable to find another idiom altogether. Rather than the

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Kraut, "Are There Natural Rights in Aristotle?" pp. 755–57; Schofield, "Sharing in the Constitution," p. 856, echoed by Pakaluk, "Aristotle on Human Rights."

<sup>41</sup> Schofield, "Sharing in the Constitution," pp. 856–57.

<sup>42</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 21–22, drawing on David Charles, *Aristotle's Philosophy of Action* (Ithaca, NY: Cornell University Press, 1984), pp. ix–x.

<sup>43</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 117–28 and 373–77, and Miller, "Aristotle and the Origins of Natural Rights," pp. 879–80, should make this clear.

clarity and orderliness of the Hohfeldian analysis, we often encounter appeals to rights as though they were first principles of morality that make absolute, unconditional demands on all rational persons. Where the articulation of a Hohfeldian right invites the question of why the right obtains—that is, why someone has a right and someone else has a duty—rights language often supposes that the assertion of a right itself gives a fundamental reason for the duty, with no need for any further explanation. Such language also often lacks a clear indication of whose duty it is: some course of action should be taken (by someone or other) *because* these people have a right to it. In part for this reason, rights discourse is often contentious and without much apparent prospect for rational resolution of disagreements, obstructing constructive dialogue and clear thought.

It can be tempting to concur with Mary Ann Glendon’s much-quoted summary of the trouble with “rights talk”:

Our rights talk, in its absoluteness, promotes unrealistic expectations, heightens social conflict, and inhibits dialogue that might lead towards consensus, accommodation, or at least the discovery of common ground. In its silence concerning responsibilities, it seems to condone acceptance of the benefits of living in a democratic social welfare state, without accepting the corresponding personal and civic obligations. In its relentless individualism, it fosters a climate that is inhospitable to society’s losers, and that systematically disadvantages caretakers and dependents, young and old. In its neglect of civil society, it undermines the principal seedbeds of civic and personal virtue. In its insularity, it shuts out potentially important aids to the process of self-correcting learning. All these traits promote mere assertion over reasoning.<sup>44</sup>

We might think that these problems arise from incidental cultural factors rather than from the logic of rights as such, but at least some seem to be baked into the idioms of natural or moral rights. Nigel

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<sup>44</sup> Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991), p. 14.

Biggar's recent *What's Wrong with Rights?* mounts an impressive case against the idea of natural rights, one more philosophically nuanced and historically responsible than those of many prominent critics of rights. After an account of the historical development of rights language and a tradition of skepticism about natural rights, Biggar identifies several problems with the idea of natural rights that ultimately lead him to conclude that while there is such a thing as a natural law or natural morality, and this natural morality justifies certain positive legal rights, "there are no natural rights."<sup>45</sup>

Biggar maintains that the idea of *a* right, in contrast to the idea of what is right, begins as a concept in positive law, where rights have a considerable degree of stability and security that cannot obtain in the absence of a legal system. This difference might be acknowledged in talk of natural rights, but in practice it has been obscured, so that natural rights are assumed to have the same kind of circumstantial invariability as legal rights.<sup>46</sup> In part for this reason, natural rights talk has tended to exaggerate the unconditional character of purported rights.<sup>47</sup> Proponents of natural rights have also often confused historically or culturally contingent ways of satisfying an abstract natural right with the right itself, as with alleged human rights to democratic citizenship, to bear arms, or to freedom from child labor.<sup>48</sup> Natural rights have often been claimed even when duties cannot be ascribed to anyone or it is impossible to fulfill them, rendering the purported rights more like an ideal or aspiration than anyone's duty.<sup>49</sup> So too, natural rights theorists have tended to turn their attention away from the duties of rights-holders themselves and the ways that these duties must condition and limit their rights. Also, because the language of rights has conclusory force, implying a definite verdict about what is

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<sup>45</sup> Nigel Biggar, *What's Wrong with Rights?* (Oxford: Oxford University Press, 2020), p. 131.

<sup>46</sup> *Ibid.*, p. 123.

<sup>47</sup> *Ibid.*, p. 124.

<sup>48</sup> *Ibid.*, p. 124; cf. pp. 102–3.

<sup>49</sup> *Ibid.*, p. 124.

to be done or not done, it often functions rhetorically to trump deliberation or debate, to stifle inquiry into why and whether something should be done or not done, and ultimately to obscure the dependence of claims of right on other principles and considerations.<sup>50</sup>

Some may insist that the idea of natural or moral or human rights can be rescued from the difficulties Biggar raises, so that we cannot conclude that there are no such things. Yet when even influential proponents of human rights theories acknowledge severe problems with rights discourse, it can be tempting to dispense with such language altogether in favor of another that does not so readily succumb to the vices Biggar catalogues.<sup>51</sup> This temptation will probably seem especially strong to those of us with Aristotelian sympathies, precisely because Aristotle and much of the later Aristotelian tradition was able to get along without the language of rights. Rather than follow Miller in “retranslating” Aristotle’s theory of justice into the language of rights, we might opt to follow Alasdair MacIntyre, who has long rejected the idiom of natural rights and resisted efforts to formulate an Aristotelian account of justice in such terms.<sup>52</sup> MacIntyre shares many of Biggar’s objections to natural rights

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<sup>50</sup> Ibid., pp. 124–25.

<sup>51</sup> Ibid., pp. 93–105 and 109–20, surveys some prominent recent theories of human rights, each of which acknowledges significant problems with contemporary rights discourse.

<sup>52</sup> MacIntyre’s critique of natural rights is long-standing and has been developed over a number of writings, only some of the most important of which are Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981); Alasdair MacIntyre, “Are There Any Natural Rights?” Charles F. Adams Lecture, Bowdoin College (1983); Alasdair MacIntyre, “Community, Law, and the Idiom and Rhetoric of Rights,” *Listening: Journal of Religion and Culture* 26 (1991), pp. 96–110; and Alasdair MacIntyre, “What More Needs to Be Said? A Beginning, Although Only a Beginning, at Saying it,” *Analyse & Kritik* 30 (2008), pp. 261–76. Considerable controversy has arisen over the interpretation of MacIntyre’s critique; my understanding follows Mark C. Murphy, “MacIntyre’s Political Philosophy,” in *Alasdair MacIntyre: Contemporary Philosophy in Focus*, ed. Mark C. Murphy (Cambridge: Cambridge University Press, 2003), pp. 152–75; and Mark Retter, “The Road Not Taken: On MacIntyre’s Human Rights Skepticism,” *American Journal of Jurisprudence* 62, no. 2 (2018), pp. 189–219.

discourse, but bases much of his critique on a more fundamental problem that Mark Retter, following Joseph Raz, calls “the individualist fallacy.”<sup>53</sup>

This fallacy arises when “the potential value of the right for the individual holder is presumed to ground an adequate reason to impose duties on others, without due consideration of the social commitments, constitutive of natural justice and necessary to make that value a matter for common concern.”<sup>54</sup> Insofar as proponents of natural or moral rights give reasons to support their rights assertions, they often point to the role of rights in providing people with what they need, want, or will. However, as Retter puts it, paraphrasing MacIntyre, “the fact that I *need, want, or will* something . . . is not reason in itself for me having a *right* to it.”<sup>55</sup> If I have a right, others have a duty to do or refrain from doing something to or for me. That duty cannot be explained simply by my interests or my will. Rather, it must depend on how my interests or will fit into a broader communal context that includes the interests and will of those others who have a duty to me (and perhaps others). As MacIntyre sees it, the language of rights functions to conceal their dependence on these other considerations and to obstruct genuine deliberation and inquiry into how we should live together. We can carry on that deliberation and inquiry effectively without the language of natural or moral rights. Hence, we have ample reason to do so, and Aristotle and Aristotelian philosophy’s value as a resource for us lies in part in the fact that it does so. Retter argues that MacIntyre acknowledges the possibility of formulating a theory of rights with Aristotelian Thomistic foundations. However, he refuses to do so on the grounds that the language of rights is embedded in the social practices of liberal modernity in such a way as to entangle it inextricably with the features that the Aristotelian approach would seek to challenge.<sup>56</sup>

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<sup>53</sup> Retter, “The Road Not Taken”; Joseph Raz, “Rights and Politics,” *Indiana Law Journal* 71, no. 1 (1995), pp. 27–44.

<sup>54</sup> Retter, “The Road Not Taken,” p. 198.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, pp. 215–19.

If popular and academic discourse about natural or moral rights is as problematic as Biggar and MacIntyre think, the value of Miller's retranslation of Aristotle in the language of rights seems dubious. It is not that Miller's interpretation is anachronistic, that it is the product of an inappropriate methodology, or that it is mistaken to hold that, properly understood and duly qualified, we can attribute a concept of natural rights to Aristotle. Rather, his retranslation assimilates Aristotle's theory to a problematic mode of thought and discourse to which it is better suited to provide a fruitful alternative. Or so those with Aristotelian philosophical sympathies might think. I want to argue that even those of us who share these sympathies should not embrace quite this conclusion.

### **5. Aristotelianism and Rights Language**

The language of rights has become virtually unavoidable in two different but related areas of modern Western discourse: law and morality. A legal system that did not recognize or assign rights would be difficult to understand as a legal system, but neither the concept of legal rights nor the indispensable use of rights language in law generates the sorts of problems that trouble critics such as Biggar and MacIntyre. Rather, it is the language of natural, moral, or human rights that poses these problems. There are, however, at least two difficulties with any Aristotelian proposal to expunge the concept and language of rights from moral discourse altogether.

The first is that, for better or worse, the language of rights "is the principal language in which . . . claims about what ought not to be done to any human being and claims about what ought to be done for every human being have come to be expressed."<sup>57</sup> To refuse to speak in that language is to risk suggesting that there *is* nothing that ought not to be done to any human being or that ought to be done for every human being. This is not to say that rights must be conceived as absolute, unlimited, and unconditional or that any absolute, unlimited, and unconditional obligations can only be understood in terms of rights. Rather, the denial of natural or human rights suggests that what we owe to each other is in all cases contingent on circumstances or

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<sup>57</sup> Perry, *The Idea of Human Rights*, p. 6.

expediency, such that it can easily turn out to be justified to sacrifice individual human beings' needs or even their lives as means to some overriding good. Some forms of consequentialism embrace this sort of conclusion, leading them to reject the concept of rights as anything other than a convenient rhetorical tool.<sup>58</sup>

Some neo-Aristotelians might embrace a similar view, but Aristotle himself is not plausibly interpreted in that way. He clearly endorses some exceptionless norms and, as Miller's moderate individualist interpretation has it, refuses to subordinate or instrumentalize individuals in the way that such theories allow.<sup>59</sup> Nor does he limit this kind of respect for individuals to fellow members of one's own political community. Although he infamously does not embrace a *human* right not to be enslaved, he maintains that all "naturally free" human beings—those with the fundamental capacity to live as free people—cannot be justly enslaved by anyone regardless of their prior relations. The idea of not treating such people as though they were slaves is central to his whole way of thinking about justice.<sup>60</sup> Aristotle did not need the language of rights to express this view, and neo-Aristotelians could express it without rights language. To refuse on principle to do so, however, is a bit like refusing to translate your

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<sup>58</sup> See, e.g., Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1993), p. 96.

<sup>59</sup> On exceptionless norms in Aristotle, see Victor Saenz, "Adultery, Theft, and Murder: Aristotelian Practical Rationality and Absolute Prohibitions," *Ancient Philosophy Today* (forthcoming); for earlier interpretations, see Christopher Kaczor, "Exceptionless Norms in Aristotle? Thomas Aquinas and Twentieth-Century Interpreters of the *Nicomachean Ethics*," *Thomist* 61 (1997), pp. 33–62.

<sup>60</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 84–86, strengthened in Miller, "Aristotle and the Origins of Natural Rights," pp. 891–92, in response to Kraut, "Are There Natural Rights in Aristotle?" and Roderick Long, "Aristotle's Conception of Freedom," *Review of Metaphysics* 49, no. 4 (1996), pp. 775–802. On these points, see further David J. Riesbeck, "Aristotle and the Scope of Justice," *Journal of Ancient Philosophy* 10, no. 1 (2016), pp. 59–91, and Keyt and Miller, "Aristotle on Freedom, Nature, and Law."

speech for someone who does not speak your language. Why erect obstacles to mutual understanding?

A second difficulty for Aristotelian refusals to employ rights language in moral contexts is that Aristotelians think there is or ought to be a close connection between justice and law, and contemporary law inescapably employs the language of rights. Aristotelians will argue, in particular, that as a matter of justice the common good requires the effective legal recognition and protection of certain legal rights. That is, positive law should recognize and protect certain bundles of Hohfeldian claim-rights, liberties, powers, and immunities, and should not recognize and protect other possible bundles.<sup>61</sup> They need not express this thought in terms of calling for the institution of legal rights corresponding to already existing moral rights. However, their account of why this or that right should be recognized in law will depend in part on appeal to obligations that people have independently of positive law, and so to the equivalent of bundles of Hohfeldian rights with a normative force independent of legal recognition. To refuse to use the language of rights when discussing the moral foundations of law seems to impose an unduly narrow constraint on the articulation of moral and political discourse.

In the face of these considerations, if there is a good reason for neo-Aristotelian theorists to eschew the language of rights—and thus good reason for historians of philosophy like Miller to eschew projects of “retranslation” of Aristotle’s thought into such language—it will be that the translation of Aristotelian thought into rights language distorts that thought in such a way as to obscure or undermine what is distinctive about it. Perhaps the discourse of rights is so confused and disordered that no reform is possible, and what we need is conceptual

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<sup>61</sup> Gregory S. Alexander and Eduardo M. Peñalver, *An Introduction to Property Theory* (Cambridge: Cambridge University Press, 2012), pp. 80–101, consider a range of Aristotelian approaches to property rights. More generally, see, from different perspectives, Edward Feser, “The Teleological Foundation of Natural Rights,” in *The Cambridge Handbook of Natural Law and Human Rights*, ed. Tom Angier, Iain T. Benson, and Mark D. Retter (Cambridge: Cambridge University Press, 2023), pp. 133–45; and Christopher Tollefsen, “New Natural Law Foundations of Human Rights,” in *The Cambridge Handbook of Natural Law and Human Rights*, pp. 146–59.

revolution. That seems to be MacIntyre's view. Why should we resist it?

Most of the problems that trouble critics of rights language stem from the way that appeals to rights seem to function as appeals to fundamental reasons. Rights are often treated as though they were intrinsic properties of individuals that explain why others are obligated to the rights-bearer in specific ways. Especially in popular discourse, rights assertions either come with no further justification or receive justifications that seem to commit the individualist fallacy: the value of the right to the rights-holder is presumed to be sufficient to ground obligations on the part of others. Rights talk thus expresses practical conclusions while appearing to offer reasons in support of those conclusions, but without in fact presenting any such reasons. It is, accordingly, liable to generate disputes and conflicts that cannot be resolved in its own terms. The basic problem with rights discourse is that although rights cannot be practically fundamental but must depend on other principles or goods, rights discourse often obstructs rather than facilitates inquiry and debate about such goods and principles. If we are not to abandon rights talk entirely, we need a way of thinking and speaking that draws attention to the goods and principles that underlie the obligations correlative to rights without forfeiting the respect for individual human beings that rights language forcefully conveys. It is a considerable merit of Miller's retranslation of Aristotle into the language of rights that it helps us to see a way of retaining the language of rights while making clear that rights can never be practically fundamental and avoiding the individualist fallacy.

If the Hohfeldian analysis is roughly correct, then to say that X has a right can never be to give a fundamental reason for holding Y under a duty, because to say that X has a right is already to say that some Y has a duty to X. That is why rights language is well suited to express practical conclusions but poorly suited to provide fundamental reasons. Rights are not intrinsic properties of individuals, but normative relations between persons, where some persons have a right and others have a duty. The burden of justification for any assertion of rights is therefore to show that there is adequate reason for the relevant class of persons to be held under a duty. Otherwise put, reason must be given to show that the relevant others should respect or promote the interest or freedom to which someone supposedly has a right. Merely

asserting that someone has the right in question never gives such reason. Moreover, merely pointing to the value of some interest or freedom for the rights-holder is insufficient to explain why anyone else should be obligated to respect or promote that freedom or interest. Aristotle's conception of human beings as political animals and his moderate individualist account of the common good, however, provide us with such reasons.

In order to flourish as human beings, we need to enter into relationships with others governed by justice, which is to say, governed by norms of mutually beneficial cooperation and benevolence. These relationships are not of merely instrumental value to us; they are partly constitutive of our flourishing. Norms of respect for and promotion of the good of others are internal to these relationships, such that we cannot achieve the good of these relationships without adherence to such norms. Each of us, therefore, has a duty or obligation to enter into such relationships and not to engage with others in ways contrary to them. This duty or obligation is in part a duty to ourselves—something that we ought to do for our own sake—grounded in our own pursuit of our own flourishing.

Yet it is also reasonably regarded as generating duties *to* others and not merely duties that reliably issue in acts that incidentally benefit or respect them. For it is essential to the sorts of relationships in question that we take others' interests as reasons for our own action and that these others have standing to make claims on us, to call us to fulfill our obligation by respecting them. Our own flourishing obligates us to cultivate respectful and benevolent relations with others and to refuse to cultivate exploitative or despotic ones. These relationships partly consist in normative relations accurately described by the elements of Hohfeld's analysis of rights. Yet these rights are not taken as practically fundamental, and the justifications offered for them avoid the individualist fallacy. Moreover, thinking about rights in terms of relationships conducive to human flourishing promises to help us avoid the other problems Biggar highlights: rights, understood as only one aspect of such relationships, will not crowd out duties or become unsustainably absolute or inflexible.

All of this is exceedingly abstract, and there is no question of supposing that Aristotle himself gave an adequate account of what we owe to each other. To take a few of the most obvious examples, he

endorsed slavery for certain classes of people, he thought fundamentally inegalitarian relations between men and women appropriate, and he struggled to free himself of prejudices in his understanding of non-Greek peoples.<sup>62</sup> Neo-Aristotelian theorists today are likely to think that we have stronger and more extensive obligations to all human beings and that respect and promotion of their good requires greater respect for autonomy. There is nothing approaching consensus on these questions among contemporary thinkers inspired by Aristotle. Some endorse a radically libertarian politics, some a radically anti-liberal sort of communitarianism, and others more moderate sorts of liberalism or social democracy.<sup>63</sup>

It has sometimes been suggested that Miller's interpretation of Aristotle uniquely supports libertarian politics, but it should be clear by now that this is not so. Aristotelians can embrace this view of the compatibility of rights and an Aristotelian theory of justice without begging the question in any intra-Aristotelian disagreements. Such disagreements promise, however, to be more tractable than disagreements between rival assertions of fundamental rights, because they are disagreements about the shape of human flourishing and the forms of social life necessary to make flourishing possible for everyone rather than rival intuitions about how people ought to be treated.

Aristotelian modes of thought would thus not eliminate disagreement. They might, however, do less to obstruct productive debate and collective deliberation. If I am right, this would be debate and deliberation about rights, both the legal rights that ought to have institutional recognition and the moral rights that provide part of the

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<sup>62</sup> For a sensible treatment of these issues, see Kraut, *Aristotle*, pp. 277–356.

<sup>63</sup> See, e.g., Douglas Rasmussen and Douglas Den Uyl, *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (University Park, PA: Pennsylvania State University Press, 2005); Mark C. Murphy, *Natural Law in Jurisprudence and Political Philosophy* (Cambridge: Cambridge University Press, 2006); Kelvin Knight, *Aristotelian Philosophy: Ethics and Politics from Aristotle to MacIntyre* (Cambridge: Polity Press, 2007); Gary Chartier, *Economic Justice and Natural Law* (Cambridge: Cambridge University Press, 2009); Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge: Harvard University Press, 2011).

basis for such legal rights. It would not change the subject by putting deliberation and debate about common goods, obligations, and reasonable distributions of benefits and burdens *in place of* deliberation and debate about rights. It would instead provide a way of carrying on deliberation and debate about who has rights to what precisely *by* focusing attention on the rational considerations that ground the obligations correlative to those rights, obligations rooted in the goods we share as rational animals.

Michael J. Perry puts this conclusion well in *The Idea of Human Rights*:

[P]roperly understood, rights talk is a derivative and even dispensable feature of modern moral discourse. . . . What really matters—what we should take seriously—is not human rights talk but the claims that such talk is meant to express: the claims about what ought not to be done to or about what ought to be done for human beings. We can take rights seriously (so to speak) without taking rights talk too seriously.<sup>64</sup>

In light of the problems with rights discourse, it would be equally important to observe that an Aristotelian theory of justice *can* be expressed in such language *and* that it can be expressed without it. One of the achievements of *Nature, Justice, and Rights in Aristotle's Politics* is to show that this is so; nothing that Miller's critics have said casts doubt on this conclusion. For that reason, Miller's interpretation of Aristotle in terms of natural rights deserves our continued appreciation.<sup>65</sup>

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<sup>64</sup> Perry, *The Idea of Human Rights*, p. 56.

<sup>65</sup> I am grateful to Tom Angier, Carrie-Ann Biondi, Thornton Lockwood, Victor Saenz, and Lea Aurelia Schroeder for feedback on drafts of this article.



The King Alone:  
Law and the Limits of Virtue in Aristotle's *Politics*

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**1. Introduction**

Aristotle asserts in *Politics* III.13 that absolute kingship (*pambasileia*) is appropriate when there is an individual of exceptional virtue. In III.17 he concludes the discussion of kingship by repeating this claim: rule by a *pambasileus* is appropriate whenever there is an individual incomparable to the rest. The goal of this article is to understand these pronouncements by asking three simple questions: What are the subjects like? What is the *pambasileus* like? In what way is the *pambasileus* incomparable to his subjects?

The standard view is that the *pambasileus* is a person of infallible virtue who rules over a population of virtuous people. I claim, instead, that he is a fallible but excellent individual who rules over an agricultural population. The main driver of my alternative is Aristotle's argument against exclusive individual rule, which I introduce in Section 2. This argument demands that, where individuals or groups are equal, one should not rule over the other but political participation should be shared under law. A *pambasileus* ruling over virtuous subjects violates this principle of political justice. Borrowing a principle from Book I's discussion of the household, it seems that absolute rule requires a difference *in kind* between the king and his subjects.

When discussing the character of the subjects in Section 3, I use Aristotle's characterization of two different multitudes in an earlier chapter of *Politics* (III.11) in order to provide an upper and a lower limit on their virtue. On the one hand, the absolute king's subjects cannot be as good as the multitude that is (collectively) authoritative. On the other hand, they cannot be as bad as the multitude that threatens to destabilize the regime. What falls between these is a multitude of peasants whose primary concern is their private affairs rather than politics.

In Section 4, I then consider the virtue of the exceptional individual. It might be an easier task to show how a perfectly virtuous *pambasileus* is incommensurably different from his peasant subjects. However, my reading of the relevant chapters is that the absolute king is subject to bias and inferior to law executed by multiple virtuous people.<sup>1</sup> Thus, when the assertion of *pambasileia* is then repeated at the opening of III.17, Aristotle is, I suggest, allowing that there are *still* some situations in which *pambasileia* is appropriate. Despite the fallibility of the kingly individual, his virtue is still exceptional when compared to a peasant multitude.

Having discussed the character of the subjects and the absolute king, I return, in Section 5, to the condition that for exclusive rule (of any kind) to be just, there must be a difference in kind between ruler and ruled. The difference in kind is, I suggest, that the subjects are *apolitical*.

## 2. Law and Exclusive Rule

Law is slow to appear in *Politics* III. The typology of regimes is introduced in III.6 as an articulation of the statement that a regime is an arrangement of offices and can be identified particularly with the office that is authoritative over all (1278b9, III.6.1). After distinguishing correct from deviant regimes, Aristotle continues in III.7 to further categorize regimes according to whether one, few, or many people are authoritative. Law is finally included in III.10 as one of the options for *what* (rather than just *who*) should be authoritative, but only when the human options have been introduced: “One might assert, however, that it is bad for the authoritative element generally to be man

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<sup>1</sup> This question—“What was the point of the discussion of law versus absolute rule?”—is also asked by David Riesbeck: “The individual’s superiority does not justify kingship in spite of the problems raised by kingship’s opponents. On the contrary, it is on the criteria of the would-be king’s genuine superiority that his rule can overcome these problems”; see David Riesbeck, *Aristotle on Political Community* (Cambridge, UK: Cambridge University Press, 2016), p. 29. My position is the former one, which Riesbeck contradicts; the problems raised elucidate the limited conditions under which *pambasileia* is appropriate and they are not “overcome” by the would-be king’s exceptional abilities. In general, my reading makes III.15–16 similar to III.11 and (the first part of) III.13: they are all arguments by Aristotle to curtail the claims of those who might press for exclusive rule. I take this to be the central concern of Book III of Aristotle’s *Politics*, and certainly not the glorification of kingly individuals. But this is too large a thesis for the present.

instead of law, at any rate if he has the passions that result [from being human] in his soul” (1281a34, III.10.5 Lord).<sup>2</sup> Law’s preeminence is affirmed in III.11, but again almost as an afterthought. After discussing the argument that a decent multitude might be authoritative and a lesser multitude might be given the power to elect and audit officials, and without giving any positive argument in favor of law, Aristotle writes: “As regards the first question, it makes nothing more evident than that it is laws—correctly enacted—that should be authoritative and that the ruler, whether one person or more, should be authoritative with respect to those things about which the laws are completely unable to speak precisely on account of the difficulty of making clear general declarations about everything” (1282a42, III.11.19 Lord).

How does III.11 “make it clear” that law should rule? It is, I submit, because in III.11 Aristotle has been considering arguments for making various multitudes authoritative or at least granting them some powers. Although Aristotle is serious in making these arguments, he realizes that the latter case—of awarding the electing and auditing of officials to the base multitude—threatens the idea that political offices should be held by competent officers. Thus, it is a good idea to have law be in command as much as possible, assuming that the law is just. Aristotle’s elite audiences, both then and now, might be relieved to hear law introduced at this point, to counteract the fear engendered by the thought of rule by a multitude. What they might not realize is that, for Aristotle, law’s advantages apply not only against rule by a multitude (as in III.11), but also apply against rule by any human, even a kingly one.<sup>3</sup>

Chapters 12 and 13 then address the question of what makes law *correct*, and the answer again is that law is correct when it looks to the interest of all of those individuals and groups that have some virtue. The contending groups in III.13 are “the good and the rich and the well

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<sup>2</sup> Aristotle, *The Politics*, trans. Carnes Lord (Chicago, IL: University of Chicago Press, 1984). Book, chapter, and section numbers for *Politics* refer to Lord’s edition. All Bekker numbers refer to Aristotle’s *Politics* unless otherwise noted. When quoting a translation, the name of the translator will be given after the citation, unless translated by me.

<sup>3</sup> Alternatively, but similarly, since the basic problem posed in III.10 is that making any one faction authoritative will result in the disenfranchisement of the others, the solution is that no one faction should rule exclusively. But this too makes it obvious that law should rule, to allocate to all who are eligible their role. When Aristotle speaks of “law,” he includes constitutional law.

born, as well as a political multitude”<sup>4</sup> (1283b1, III.13.4). The desire for exclusive and unfettered rule, whether by oneself or alongside others, Aristotle says, is stimulated by the possibility of using power in one’s own interests (1286b17, III.15.12) and is like a sickness that can apparently only be cured by holding office (1279a15, III.6.3).<sup>5</sup> Many individuals are looking for a way to find something superlative about themselves or to join a faction whose prowess or power is sufficient to carry him into power and allow him (and his fellows) to exclude and victimize others.

Despite their selfish intent, the contestants for power offer a rationalization for their power-grab, a self-justification in terms of some feature that is taken to be politically relevant. Different attributes are put forth by people arguing over political power. The polis needs loyal manpower, and so free birth is a “reasonable” (*eulogōs*) basis for claiming to rule; the polis needs resources, and so wealth is also reasonable; additionally, the polis needs good government, and so virtue and education are also reasonable (1283a10–20, III.12.8–9; 1280b6, III.9.8). Each faction argues that it should rule while others should not. The wealthy, for example, argue that because they are more wealthy than the poor, they should rule and the poor should be ruled. Even the free, who claim that everyone who is free should share equally in rule, in fact think that the rich should be dominated by the poor.

Aristotle thinks that only the claim of virtue (and education) is appropriate for political rule (1281a2, III.9.14; 1283a22, III.12.9), which should be a corrective to the common thought that because a person or group is equal or unequal in one respect that they are equal or unequal in every respect (1280a9–14, III.9.1–2; 1280a19–25, III.9.4–5). This might suggest that those with greater virtue should rule and those of lesser virtue should be ruled. However, Aristotle has

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<sup>4</sup> In III.10 the list is “the multitude, the wealthy, the respectable, the one who is best of all, or the tyrant” (1281a13, III.10.1 Lord).

<sup>5</sup> Note also Jason’s “hunger” when not in power (1277a23, III.4.9) and rule “as a prize of victory” (1296a30, IV.11.17). That the desire for solo rule (and perhaps even tyranny) is deeply rooted is also indicated by the way Aristotle returns in VII.3 to an idea that he has just laid to rest (or so one might have thought), that the best life is the life of domination (1325a34, VII.3.3), and then does so again in VII.14, that the goal of legislation is not military conquest and acquisition or “to rule as masters over many” (1333b16, VII.14.17).

another argument against such thinking, which he says “affect[s] all of those who dispute over political honors” (1283b13, III.13.6), namely, that the group claiming to govern might be exceeded from within by an individual or sub-group. Those who claim to rule on the basis of wealth, for example, might be confronted with someone who is wealthier than all of them. According to their own principle, that those with greater wealth should rule exclusively, the original claimants would have to concede that they should be ruled by this sub-group or individual. The same “perhaps”<sup>6</sup> happens with virtue, Aristotle says: amongst those who compete on the basis of virtue, a single exceptional individual might claim exclusive power over the others because he is more virtuous than all of them (1283b21, III.13.8), even though they themselves are good men (*spoudaiōn ontōn* 1283b23, III.13.8).

Aristotle immediately reverses the argument, to show that the multitude could claim to be superior to a small group or individual; the people of greater individual merit now find themselves on the losing end (1283b25, III.13.8). Aristotle applies this version of the argument to virtue only (though presumably it applies to the other bases): those who would claim exclusive rule on the basis of virtue (*tous kat aretēn axiountas kurious einai tou politeumatōs*) might find themselves surpassed *and excluded*, according to their own criterion, by the multitude. Thus, the argument is said to work “from the other side” (*palin* 1288a21, III.17.6 Rackham<sup>7</sup>; 1283b33, III.13.10).

In this way, Aristotle seems to show that arguments for exclusive rule are unstable and self-defeating in the sense that if they are applied by different groupings—whether this is a smaller group against a larger or a larger against a smaller—the very people who

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<sup>6</sup> The case here is of a competition between virtuous people. The “perhaps” might reflect the idea that “virtue-based partisan” is, in the strict sense, a contradiction in terms, but there might be looser senses of ‘the virtuous’ (such as those based on nobility, notability, or wealth) that would make room for the possibility. In practical politics, disputes on the basis of virtue do occur: Aristotle mentions the Partheniai in Sparta, who challenged the ruling minority on the basis of virtue (1306b30, V.7.2). Similarly, since the discussion of ostracism applies to correct regimes (1284b2, III.13.20), it would imply that the “virtuous” *compete* for power.

<sup>7</sup> Aristotle *Politics*, trans. H. Rackham (Cambridge, MA: Harvard University Press, 1998).

made them to begin with end up losing out.<sup>8</sup> Aristotle concludes the argument by saying that all of the grounds that people use to argue that “they should rule and everyone else should be ruled by them” (1283b29, III.13.9 Lord) are “incorrect” (*oudeis orthos esti* b28). In each case, those who claim exclusive rule are failing to acknowledge that the same basis for rule is present—even if only to a lesser extent—in those they would rule. The dispute over political power should follow the principle of distributive justice (from *Nicomachean Ethics* V.3), which awards goods to people proportional with their merit. In politics, political power should be allocated to different individuals or groups proportional with the strength of their claim. The individual or group that is overmatched deserves *some* level of participation in rather than complete exclusion from government; their disenfranchisement would be “unjust” and destabilize the regime (1280a27, III.10.4; 1281b28, III.11.7, with 1270b20, II.9.22; 1294b36, IV.9.10).

The next paragraph (of III.13) confirms that the lesson to be learned is that power should be shared, and the lesson is applied to virtue, such as when a multitude is not entirely lacking in virtue, especially when taken collectively. This is a specific version of the problem previously posed at the conclusions of III.10 and III.11: What makes laws correct rather than oligarchic or democratic? Using the same commitment to proportionality, the answer is that the laws must be made with “the whole polis” and “all the citizens” in mind (1283b41, III.13.12). In the specific case under consideration, this would mean that although the multitude is said to be better than the few, the few should not be excluded. In other contexts, such as a possible *pambasileia*, it would mean that the many should not be excluded if they have virtue, even if only collectively.

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<sup>8</sup> It is possible that the wealthy who would be disenfranchised by the super-wealthy are upset because their argument was never really about wealth to begin with but rather about status and fitness to govern. As Aristotle says in Book I, the way people talk about ‘slave versus free’ and ‘well-born versus low-born’ indicates that they are really talking about virtue and vice. Greeks think that they should be free everywhere, whereas foreigners deserve freedom only at home, and similarly with birth (1255a33–b1, I.6.7–8). On this view, virtue is always at least a subtext of people’s arguments about political power, latent in proxies such as birth (especially good birth or nobility), notability, wealth, and ability and power. In this way, when Aristotle spends so much time talking about virtue in politics, he takes himself to be strengthening a persistent if struggling impulse in human relations.

For absolute rule to be just, it seems that the ruler cannot differ from the ruled only by degree, but must differ from them *in kind*.<sup>9</sup> “Difference in kind” is a criterion for exclusive rule introduced in Book I, when Aristotle discusses the ways in which a man is “king” of his household: as a husband to his wife, as a father to his son, as a master to his slave. Aristotle’s remarks (in Book III) that the *pambasileus* is like a god among humans suggests that such a criterion is also being adopted in the case of *pambasileia*. (In Section 5, I will offer a suggestion for what this difference in kind is, based on the characterizations of the *pambasileus* and his subjects in Sections 4 and 3.)

Because Aristotle *does* indeed think that *pambasileia* is possible, no sooner does he conclude the argument *against* exclusive rule than he states that a person (or small number of people, but not enough to constitute a regime by themselves) might justly be absolute ruler. This is because the community has given rise to a person “so greatly distinguished in outstanding virtue” (*tosouton diapherōn kat aretēs hyperbolēn* 1284a4, III.13.13) and “so widely unequal in virtue and political ability” (a7) that he is “not comparable” (Rackham) or “not commensurable” (Reeve<sup>10</sup>, Lord) (*mē sumblētēn einai* a6) with the rest, and so he cannot be made equal with others and “will be treated unjustly if deemed worthy of equal status” (*axioumenoi tōn isōn* a7). All of this language fits with the idea that there is a difference in kind between the *pambasileus* and his subjects. After a typology of kingship in the next chapter (III.14), and then the presentation of various arguments against kingship and *pambasileia* in the following two chapters (III.15 and III.16), Aristotle again asserts (in III.17) that for some populaces absolute kingship is appropriate. He also repeats the idea from III.13 that such a populace, in the presence of an exceptionally good person, would realize that it would be foolish to expel such a person from the community, so that the only “natural” option is to willingly obey him (1284b23–32, III.13.25).<sup>11</sup>

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<sup>9</sup> R. G. Mulgan, drawing on *Metaphysics* 1080a19, argues that *sumblētēn* (incomparable) means that the best men are not just better than the sum of the rest, but are “in a class of their own”; see R. G. Mulgan, “A Note on Aristotle’s Absolute Ruler,” *Phronesis* 19, no. 1 (1974), p. 68.

<sup>10</sup> Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis, IN: Hackett, 1998).

<sup>11</sup> Carol Atack gives Isocrates’s account of Theseus and the synoecism of Attica as an example of a people willingly handing power to an exceptional

Here is the problem. On the one hand, it seems that the principle of political justice makes it very difficult for an individual to justly claim to be absolute king; for if there are other virtuous people or groups in the polis, their virtue must be acknowledged and rule must be shared. On the other hand, even though the claim of the best one or few is of the same type as the claim of all partisans—that such people are superior (*kath' huperokhēn*) to everyone else (1288a24, III.17.6)—it seems that the argument Aristotle lodged against all those who claim exclusive rule does *not* forbid the excellent individual who would be *pambasileus*. As a result, we are in search of characterizations of the *pambasileus* and of his subjects that will make the absolute king's rule just.

### 3. The Ruled

The dominant conception of the ruled subjects is that they are virtuous individuals.<sup>12</sup> This would set an extremely high bar for the character of the king to clear, since he is supposed to be not only better than any of his subjects, but better than them taken collectively (not to

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leader; see Carol Atack, “The Discourse of Kingship in Classical Athenian Thought,” *Histos* 8 (2014), p. 349.

<sup>12</sup> Among the scholars who have adopted some version of this position are Fred Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Clarendon Press, 1995), chap. 6.8; R. G. Mulgan, “Aristotle and the Value of Political Participation,” *Political Theory* 18, no. 2 (1990), pp. 195–215; P. A. Vander Waerdt, “Kingship and Philosophy in Aristotle's Best Regime,” *Phronesis* 30, no. 3 (1985), esp. pp. 249–52; Robert Mayhew, “Rulers and Rule,” in *A Companion to Aristotle*, ed. Georgios Anagnostopoulos (Oxford: Blackwell, 2009), p. 535ff.; and Brendan Nagle, “Alexander and Aristotle's Pambasileus,” *L'Antiquité Classique* 69 (2000), pp. 117–32. In general, the motivation for thinking that *pambasileia* is “aristocracy-plus” is that it is “the best” regime or must be at least as good as aristocracy and/or the regime of Books VII–VIII. Space prevents thorough examination of the relative status of *pambasileia* and aristocracy, but my general line of response would be that there's much more wiggle room in the notion of *pambasileus* as “the best” regime than in the need to satisfy political justice. Aristotle includes kingship alongside aristocracy as “the best” in the sense that it is rule by an excellent individual, but aristocracy is better both in terms of the quality of (collective) governance and the greater number of virtuous people who are politically engaged.

mention being different in kind from them).<sup>13</sup> Indeed, I think that Aristotle has ruled out precisely this situation—in which the subjects are themselves virtuous people—as he used it as a case *against* exclusive rule, though with the caveat “perhaps.” However, I will argue that this is no mere hypothetical remark, as Aristotle is explicit about the political justice of the “best few” in comparison with the virtue of various multitudes.

In III.11, Aristotle describes a multitude that is (collectively) superior to “the best few” and so should not be permanently ruled.<sup>14</sup> This multitude is composed of people who are not good men (*ou spoudaios anēr* 1281b2, III.11.2) but who have a share of virtue and

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<sup>13</sup> “Virtuous subjects” also raises the problem of their exclusion from politics. Much of the literature on *pambasileia* seems to have assumed their disenfranchisement and focused on their resulting quality of life: How can they live good lives if they do not govern? Mayhew takes the subjects of the *pambasileus* to be people of sufficient status not to be ruled, even by an exceptional individual, and calls the exclusion from government “the kingship problem” (Mayhew, “Rulers and Ruled,” p. 535ff). A variety of solutions have been proposed, all of which are unnecessary if the assumption of “virtuous subjects” is rejected.

<sup>14</sup> The possibility of the best few being overmatched by a multitude taken *collectively* raises the possibility that the criterion for exclusive rule of “being more virtuous than the rest” might depend on *the number* of people of each type in the polis. A particular multitude might be capable of matching the best few (and vice versa) only if there are enough of them; if the many are not so many, then their collective virtue might fall short of the exceptional people’s. However, Aristotle does not seem to worry about the numbers, relying instead on an understanding of the development of regimes over time that loosely ties the quality of the regime and the quality of the populace to its size. Kings are initially matched by additional virtuous people and “polities” (constitutional regimes) form, but as the size of polises continues to increase, wealth becomes the goal and they tend toward oligarchy, tyranny, and democracy, with power struggles between the rich and the poor (1286b7–20, III.15.11–13). In other words, as polises grow larger, they tend to produce people of worse character, both among the few and the many, shifting the populace from a mix of good and ordinary people to a mix of rich and poor people. Alternatively, but still tying together size and virtue, kingship in small communities becomes aristocracy with the development of cavalry, which becomes polity with the development of infantry warfare (1297b16, IV.13.10; 1289b32ff, IV.3.2; 1279a38, III.7.4).

wisdom (*morion aretēs kai phronēseōs*). I have argued elsewhere<sup>15</sup> that the partially virtuous multitude is the hoplite multitude (1297b2, IV.13.7), and when Aristotle unpacks their character their “military virtue” (1279b2, b12, III.7.4, 9) is itself a number of virtues (courage and endurance) and the soldiering life inculcates a number of other virtues (moderation and justice). They are also the middle class, which adds more positive traits, thanks in part to their moderate good fortune: they are willing to obey reason, are free from both arrogance on one side and pettiness on the other, do not covet the goods of others, and are willing to rule and be ruled (1295b3–34, IV.11.4–9). Not being strongly self-interested, they might avoid crimes of injustice, and by being willing to listen to reason (perhaps coming from the best few), they might avoid mistakes of prudence.

The multitude that is ruled continuously by the *pambasileus* does *not* have the quality of this multitude, as his virtue and theirs is incommensurable. To exclude a multitude of this type from governance would violate the principle of proportionality in political justice, even if the kingly individual is better than the “best few.”<sup>16</sup> The king’s subjects must be worse than the members of this multitude.

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<sup>15</sup> Cathal Woods, “Aristotle’s Many Multitudes and Their Powers,” *Journal of Ancient Philosophy* 11, no. 1 (2017), pp. 110–43.

<sup>16</sup> For present purposes, I am fine with thinking that the kingly individual is better than any of the “best few.” I am inclined to think, however, that Aristotle throughout Book III discusses virtuous people without specifying exactly their number or quality. Thus, in the discussion of kingships and *pambasileia*, he considers that it might be a single outstanding individual, but also (in III.18, in the segue to the ideal regime) he adds that it might be a group: “one certain person or a whole family or a multitude” (1288a35, III.18.1). At the end of III.18, the education for a good man is “practically the same” as would make a man kingly and political; see Richard Robinson, *Aristotle Politics: III And IV* (Oxford: Clarendon Press, 1993 [1962]). At the end of the discussion of *pambasileia*, Aristotle describes the populace fit for kingship as “one that naturally produces a stock that excels in goodness in political leadership” (1288a7, III.18.4 Robinson) and an aristocratic stock is one “capable of being governed under the form of government fit for free men by those who are fitted by virtue for taking the part of leaders in constitutional government (*politikēn archēn*).” The presence of leadership in both suggests that the only difference is that aristocracy involves a constitution (as we will see here in due course); the level of excellence need not differ. Or again, one of Aristotle’s potted histories of regimes (beginning at 1286b8, III.15.11) says, “it was perhaps because of this that kingships existed in earlier times, that it was rare to find [a number of] men who were very outstanding in virtue,

We can also use the second multitude in III.11 in order to establish a *lower* threshold for the absolute king's subjects. This multitude is composed of individuals who are not excellent in any way (*axiōma ekhousin aretēs mēde hen* 1281b25, III.11.6), are not rich, and are not fit for individual office because of their "injustice and folly" (*dia adikian kai di' aphrosunēn* b27), but who should be given some collective role in government. This multitude, which can include artisans, laborers, and traders, is granted the power to elect and audit officials<sup>17</sup> on the ground that as "users" of the regime, they have sufficient perception to judge the "practitioners," plus the practical

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particularly as the polises that they lived in at that time were small" (1286b7–9, III.15.11 Lord). In larger polises there are likely to be a greater number of "similar" people (b12) of this caliber and "the best few" is expanding with the addition of people of similar virtue.

If III.18's general definition of "best" is kept in mind, such that "the best" means "the people of complete virtue (however many there are)," various passages involving "the best" person/few become easier to understand, some of which might otherwise be taken to show that the king rules over other excellent people. In the argument against domination, Aristotle says that in "an aristocratic government based on virtue" (*peri tēs aristokratias epi tēs aretēs* 1283b20, III.13.8 Rackham), one person might claim exclusive rule on the grounds of his superior virtue. He is not saying that an outstanding individual always comes to be in an aristocratic populace, only that one might imagine a dispute among aristocrats where the best person claims exclusive rule. Aristotle is non-committal about whether solo rule is appropriate in this case; his point leans rather toward the opposite, that if being better than the rest (whether in terms of wealth or virtue) is accepted as a reasonable argument, many people will be wrongly disenfranchised. Similarly, it is in "the best regime" that the exceptional person raises the prospect of ostracism (1284b25, III.13.24). Newman (I.573) suggests that *epi tes aristēs politeia* here means a regime where offices are distributed on the basis of virtue, such that the claim of a more virtuous person is acknowledged. Aristotle need not be saying anything about the virtue of the others or the general population, only that exceptional individuals might pose a problem.

<sup>17</sup> W. L. Newman (*The Politics of Aristotle*, III.220) notes that while Aristotle considers the objection that this multitude thereby has power over the most important things, as though electing and auditing make for deliberative authority, these are distinguished in 1318b23, VI.4.4. At 1309a30, V.8.21, Aristotle recommends giving those who participate at least control over some part of government, but not the authoritative offices.

grounds of stabilizing the regime (1281b24–32, III.11.7; 1282a23ff, III.11.15ff).<sup>18</sup>

Even setting aside the question of whether the rationale of having “sufficient perception” attributes any collective virtue to this multitude, it follows from the addition of the stability concern (“to keep the polis from being full of enemies,” 1281b30, III.11.7) that the absolute king’s subjects are *not* this multitude since this multitude is unwilling to allow the excellent people to rule exclusively. The multitude we seek, on the other hand, willingly obeys the best few (1285a25, III.14.7; 1285b3 and b5, III.14.11; 1295a14, IV.10.3; 1313a15, V.10.38).<sup>19</sup> Its members, we can infer, are of better quality than the multitude that elects and audits.

Aristotle says that the *pambasileus*’s subjects are *fit* for being ruled (1287b37, III.17.1; 1288a8, III.17.3; 1288a37, III.18.1). A (fully or partially) virtuous multitude would be capable of participating in government and this is usually taken to be incompatible with being permanently ruled. Nor can they be so bad that they would refuse to be ruled. Thus, the multitude we seek is not an aristocratic multitude, nor a political multitude, nor again a democratic multitude in pursuit of power. This leaves, between those with partial virtue and those who refuse to acknowledge virtue, the multitude of people for whom excellence, particularly political virtue, is not a private concern but who are also not intent on seizing power. The primary candidates for this role are farmers and herders.<sup>20</sup> They are said to have “moderate”

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<sup>18</sup> Aristotle was perhaps channeling Solon in adopting these principles, and also the reason for them: that the mass was capable of revolt; see P. A. L. Greenhalgh, “Aristocracy and Its Advocates in Archaic Greece,” *Greece & Rome* 19, no. 2 (1972), p. 196.

<sup>19</sup> Similarly, the kings with wide powers have a guard composed of subjects rather than mercenaries (1285a24, III.14.7).

<sup>20</sup> Robinson imagines that the *pambasileus* rules over peasants (*Aristotle Politics: III and IV*, p. 65). I concur, though the absolute king’s subjects need not be restricted strictly to agricultural communities. Middle-class people, when there are not enough of them to be authoritative in the regime, as was typical in the “ancient regimes,” are also willing to “put up with being ruled” (1297b28, IV.13.11 Lord). Originally, the middle class lacked the organizational skills of the hoplites, but the middle class and the importance of infantry subsequently grew (1297b19, IV.13.10). If there is a difference in kind between these and the best, they (i.e., the few middle class) can also be

(1292b25, IV.6.2) or “not much” property (1318b12, VI.4.2), which means that they are busy working (1292b27, 1318b13), and so do not have time to engage in politics (1292b29, 1318b13). Their concern for private gain rather than public honor is shown by the fact that they “used to put up with the ancient tyrannies and still put up with oligarchies” so long as they are unmolested (1318b17, VI.4.3 Lord; also see 1308b35, V.8.16). This thought also appears in the chapter on whom to include in a polity. Aristotle writes that “the poor” need not be included because they “are willing to remain tranquil” as long as they are not treated arrogantly or have their property confiscated; they will also fight in wars if they are provided rations (1297b5–12, IV.13.8–9 Lord).<sup>21</sup>

The picture painted is of a multitude of private individuals primarily concerned with making a living who treat politics as an occasional necessity. When there is not an individual of exceptional virtue, this community forms a democracy (1318b7, VI.4.1). This is a democracy rather than a polity because its members do not aim at virtue. However, it is one of the most moderate forms of democracy, being a democracy under law and (as noted) not politically active. We will return to the characterization of the king’s subjects in Section 5 when I discuss the “difference in kind” between the *pambasileus* and his subjects.

#### 4. The Ruler

In Aristotle’s initial statements of the superiority of the exceptional person, he is described as having virtue and political ability to such an extent that he is “like a god among men” (1284a10, III.13.13) and like lions compared to hares (b15), and that to insist he share power would be like “claim[ing] to merit ruling over Zeus by splitting the offices” (b30 Lord). He also differs by as much “as gods and heroes differ from humans” (1332b16, VII.14.2 Rackham; also 1325b10, VII.3.6). It is easy to imagine how the gods would be untouched even by a group of humans, and how lions are incomparable no matter how many rabbits there are. However, in politics the best and

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included in the subjects of the *pambasileus*. See note 14 above about quantity and quality.

<sup>21</sup> Vander Waerdt is concerned by “Aristotle’s willingness to elevate one man to permanent rule over the thymoeidetic citizens of his best regime” (“Kingship and Philosophy,” p. 251), but he does not appear to provide evidence for this characterization.

the rest are of the same species, and indeed are of the same stock (1259b11ff, I.12.3), so the similes cannot be taken literally.<sup>22</sup> Similarly opaque are statements that the virtue of the best is “exceptional” (such as *kat aretēs huperbolēn* 1284a4, III.13.13; *diapherein kat’ aretēn* 1279a39, III.7.4; *hoi kat aretēn diapherontes* 1304b4, V.4.12) or “incommensurable” or “incomparable” (*mē sumblētēn einai* 1284a6, III.13.13), as these concern the gap in virtue rather than its absolute level.

More straightforward are declarations that the best people—whom the exceptional individual matches and perhaps exceeds—“possess virtue” (*hoi tēn aretēn ekhontes* 1283b10, b12, III.13.6). “Having virtue” suggests that the best might be people with every virtue—in contrast with the partly virtuous multitude discussed in Section 3—and we can import the account of the virtuous person in *Nicomachean Ethics*.<sup>23</sup> In *Politics*, the virtues involved in governing, namely, the character virtues and practical wisdom rather than theoretical contemplation and inquiry, are mentioned; it is deliberation, in particular, that makes the good man and the good citizen the same (1277a14–23, III.4.7–9 compared with, e.g., 1334a13–17, VII.15.1–2).

Concerning political *ability*, William Newman refers us to V.9 (1309a32) where “ability to do the job” is one of the three qualities necessary for holders of supreme offices, alongside virtue and loyalty

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<sup>22</sup> R. G. Mulgan, taking the simile at face value, thinks that a ‘god among men’ would be an anomaly and that absolute kings therefore do not exist; see R. G. Mulgan, *Aristotle’s Political Theory* (Oxford: Oxford University Press, 1977), p. 87. He cites 1332b22, VII.14.3, which is in the context of the ideal regime, so perhaps Mulgan thinks only that absolute kings cannot be so different from other virtuous people.

<sup>23</sup> The same substantives used in *NE*—*agathos*, *spoudaios*—are also used in *Politics*. In III.11, for example, in the discussion of whether a multitude might match the best, the best few are *tous aristous* and the basic statement of collective virtue is that while no member of the many is a good man (*spoudaios anēr*), jointly they can gather together what good men (*hoi spoudaioi*) have individually. When Aristotle reconsiders the claim of the multitude, he says that it might collectively be better (*beltious*) than *tous aristous* (the best people) even though it is composed of men who are not good (*ou spoudaios anēr*). *Spoudaios* is used at 1281b10 and 18, III.11.4–5 and *tois beltiosi* at 36, III.11.9. *Anēr spoudaios* is used at 1283b6, III.13.5; *ton spoudaiotaton* at 1281a33, III.10.5; *hoi aristoi* at 1279a35, III.7.3 and 1281a41, III.11.1; *beltios* at 1283a22–36, III.13.1 and 1283b38, III.13.11.

to the regime.<sup>24</sup> What tasks and time this involves will depend on the size and articulation of the polis, but the most important tasks are judging, deliberating, generalship, and religious leadership.<sup>25</sup> Since the main functions of government are judging and deliberating,<sup>26</sup> much of the “political ability” required of the best person seems to be built into “virtue.” The excellent human, that is, is well suited for government, even when as *pambasileus* he is responsible for all of the state’s political functions and executes them without the guidance of law.<sup>27</sup>

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<sup>24</sup> Newman, *The Politics of Aristotle*, III.241. Ability is distinguished by Newman from influence (both translations of the same Greek word *dunamis*), which a few lines later (at 1284a20, III.13.15) is said to follow from “wealth or popularity or some other form of political strength.”

<sup>25</sup> In V.9 Aristotle gives generalship as an example of a job with its own expertise. Generalship and religious roles (including offering sacrifices) were two ways in which the traditional kings kept the polis secure; see Newman, *The Politics of Aristotle*, III.259; and Chester Starr, “The Decline of the Early Greek Kings,” *Historia* 10, no. 2 (1961), p. 137.

<sup>26</sup> Aristotle criticizes Plato’s *Republic* for leaving out “assigning justice” as a necessary function in his primitive city: there is already need of a judge, Aristotle says (1291a22, IV.4.13).

<sup>27</sup> At 1305a11, V.5.7, Aristotle mentions rhetorical skill as an ability lacked by the generals of ancient democracies, though the situation now is reversed. Excellent individuals presumably also have leadership qualities such as the authoritativeness that is said to be lacking in women at 1260a12, I.13.7. At 1308a8, V.8.5, Aristotle advises regimes of the few to bring into the regime those who “have the mark of leaders” from among the many.

A more practical mark of political ability might be found in the fact that, according to Aristotle, the heroic kingships were established because of some “benefaction” done by an individual “in connection with the arts or with war or by bringing them together or providing them land” (1285b6, III.14.12 Lord) or by keeping the city from being enslaved, by liberating the populace, by founding the city, or by acquiring territory (1310a35, V.10.8; see also 1329b12, VII.10.4). The benefactions, however, are singular events and might not guarantee continued virtue and ability in day-to-day operations. It is also not clear that benefactions elevate the heroic kings greatly in terms of virtue; Aristotle gives a list of how kings come to be based on various sorts of “merit” where benefactions are distinct from virtue: “individual virtue, virtue of family, benefactions, or these things together with capacity” (*kat axian gar estin, ē kat idian aretēn ē kata genous ē kat euergeias ē kata tauta te kai dunamin* 1310a31, V.10.7 Lord). One thing that kingship via benefaction suggests, however, is that kingly people need not have been “exceedingly

These descriptions (of political virtue and ability) are simply of people who “have virtue.” In order to create space for the exceptional individual, someone might offer a minimalistic or degraded understanding of this virtue as acceptable for warranting the descriptor “has virtue.”<sup>28</sup> However, those who defend the “virtuous subjects” interpretation do not seem to take this line. Rather, they seem to ascribe perfect virtue to the exceptional individual and then assume that the virtue of the people who “have virtue” is somehow less than this. Richard Kraut writes, “Since these extraordinary human beings never give way to passion, they can be relied upon always to see what must be done in each situation.” Brendan Nagle writes, “The best man’s will is supreme because he *always* makes the right decision.”<sup>29</sup>

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rare” (as Riesbeck, *Aristotle on Political Community*, p. 18, puts it); there might be such a person in any polis, the outstanding person who leads the community. But, of course, the leader of a community is not necessarily virtuous, and so, while there might historically be many exceptional individuals, only a few are exceptional in virtue, as Riesbeck suggests.

Aristotle is balancing historical, practical, and ideal conceptions of kingship, as he does with other topics in *Politics*. Aristotle’s account of *pambasileia*, as with his account of citizenship, refines historical examples into a theory that can be applied critically to historical practice: some so-called kingships were just while some were in fact tyrannies, and some “exceptional” individuals who contended for power were not exceptional. The notion of excellence itself is subject to change over time: A. W. H. Adkins (*Merit and Responsibility* [Oxford: Clarendon Press, 1960], chaps. IX and X) considers a shift in attitude concerning virtue, away from self-expressive greatness toward self-controlled civic management: “*Aristos* here [Euripides’s *Electra* 367] clearly commends self-control, a complete departure from traditional usage” (p. 177); “The self-controlled man is *agathos* because self-controlled men are best at the organization of their cities and their own houses in the interests of prosperity” (p. 195).

<sup>28</sup> The case that the virtuous person of *NE* is *not* perfect has been made by some scholars. For a summary and bibliography, see Christopher Horn, “Aristotle on the Possibility of Moral Perfection,” in *Aristotle’s Anthropology*, ed. Geert Keil (Cambridge: Cambridge University Press, 2019), pp. 200–218. I am sympathetic to these readings and would generally prefer that *Politics* were read before *NE* in order to give an initial understanding of excellence that is far from god-like.

<sup>29</sup> Brendan Nagle, “Alexander and Aristotle’s *Pambasileus*,” *L’Antiquité Classique* 69 (2000), p. 121; Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002), p. 455.

The incommensurability of the *pambasileus*'s virtue and ability would presumably be built on this impeccable judgment. Rather than attempt these tasks on behalf of such scholars, it seems to me that the starting point of perfect virtue is not textually warranted. Aristotle entertains (and, I think, endorses) critiques of the exceptional man. The criticism comes in the discussion of kingship and of *pambasileia* versus law, to which we now turn.

Having introduced five types of kingship in III.14, Aristotle proposes at the opening of III.15 to “set aside” the three kingships between the Spartan general and the absolute king because the extent of their powers falls between the two. He then sets aside the Spartan general as being constitutionally governed and so not, in fact, a regime. This leaves only the fifth type of king—*pambasileia*—and so the “beginning point of the inquiry” is whether it is better “to be ruled by the best man or by the best laws” (1286a8, III.15.3 Lord; 1284b37, III.14.1).<sup>30</sup>

There are two types of argument against *pambasileia* and in favor of law in III.15 and III.16. The first is familiar from III.9 and III.13, that justice disallows kingship when people are roughly equal in virtue. The second is that humans—all humans—are fallible in a way that law is not. Let us turn first to the latter as it pertains most directly to our question of the virtue of the exceptional individual.

Both humans and the law will have the same “universal account” (1286a16, III.15.5), Aristotle says, but only humans are afflicted by emotions. Aristotle writes that “spiritedness (*thumos*) perverts even the rule of the best men” (1287a30, III.16.5; 1286a16, III.15.5; 1286a33, III.15.8). In III.16 this is fleshed out to include exhibiting bias in their own case (1287b3, III.16.8; 1280a14, III.9.2) and toward their friends (1287a37, III.16.7; 1327b40–28a7, VII.7.5–6) where spirit is the source of friendliness and anger and rule. The issue of heredity provides another example of human inability to follow reason. Whether it is due to the affection that fathers feel for their sons or to the desire to see their legacy perpetuated, Aristotle thinks it would be “an act of virtue above the level of human nature” for a king not to

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<sup>30</sup> Steve Wexler and Andrew Irvine contend that democracy rather than kingship is on Aristotle's mind when he asks this question; see Steve Wexler and Andrew Irvine, “Aristotle on the Rule of Law,” *Polis* 23, no. 1 (2006), p. 128. I prefer to take Aristotle at his word and think that while Aristotle is worried elsewhere in Book III about bad rule by multitudes, he is *here* concerned about imperfect rule by individuals.

pass the office on to his children even though the child of a king might not be as virtuous as the father (1286b25, III.15.14).<sup>31</sup>

As with rule by the lesser multitude in III.11, law follows on the heels of worries about corruption, since law is “intellect without appetite” (*aneu orexeōs nous* 1287a31, III.16.5 Lord; anticipated by 1254b7, I.5.6 and 1281a34, III.10.5).<sup>32</sup> As a result, while the generality of laws means human deliberation and judgment are inevitable (1286a22, III.15.6), law should rule as much as possible.<sup>33</sup> We move thus to the question of who should deliberate about particulars: One person or more than one? It is argued that it is better to have a number of deliberators rather than just one (1286a27–35, III.15.7–8), so long as they are all “excellent of soul” and “good men” to avoid the possibility of faction (1286b2–7, III.15.10).<sup>34</sup> If the one best person is a perfect

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<sup>31</sup> W. R. Newell recasts the passionate element as “the leonine qualities of a lord and master”; see W. R. Newell, “Superlative Virtue: The Problem of Monarchy in Aristotle’s ‘Politics’,” *Western Political Quarterly* 40 (1987), p. 173.

<sup>32</sup> See Thomas K. Lindsay, “The ‘God-Like Man’ Versus the ‘Best Laws’: Politics and Religion in Aristotle’s ‘Politics’,” *The Review of Politics* 53, no. 3 (1991), pp. 488–509, for a discussion of “the divine” in the line “One who asks law to rule, therefore, is held to be asking god and intellect alone to rule” (1287a29, III.16.5).

<sup>33</sup> Law might be given by an excellent individual who deliberates at length and is free from the partiality of particular circumstance, but law is upheld and interpreted over time by those who use it. Jill Frank argues that “the rule of law and the rule of men must be understood together”; see Jill Frank, “The Rule of Law and the Rule of Men,” *International Studies Review* 7, no. 3 (2005), p. 509. See also Jill Frank, *A Democracy of Distinction* (Chicago, IL: University of Chicago Press, 2005), chap. 4, and Jill Frank, “Aristotle on Constitutionalism and the Rule of Law,” *Theoretical Inquiries in Law* 8, no. 1 (2007), pp. 37–50. This accounts for the way in which law can appear to be an afterthought in *Politics*; as soon as one says “law should rule,” one immediately asks, “And which humans should be its guardians and interpreters?” Thus, the various discussions throughout *Politics* on *who* should rule (including rule by a multitude in III.11), even if rule by humans is secondary to rule by law.

<sup>34</sup> Aristotle, *Rhetoric*, trans. J. H. Freese (Cambridge: Loeb Classical Library, 1926), 1354a32–b11, I.1: “It is proper that laws, properly enacted, should themselves define the issue of all cases as far as possible, and leave as little as possible to the discretion of the judges; in the first place, because it is easier to

ruler, there ought to be no difference between one person deliberating and a group,<sup>35</sup> but Aristotle here recommends aristocracy over kingship on the grounds of increased incorruptibility and recommends that the rulers consider themselves “law-guardians and servants of the law” (1287a22, III.16.4; 1286b32, III.15.15).

However, deciding on the particulars within the scope of law indicates a constitutional regime (1287a1, III.16.1; “this is already law” 1287a18, III.16.3), and so Aristotle returns to the question of *absolute* kingship and goes back to the basic argument between law and the best man. Some new considerations in favor of law are added (the power of custom); some of the arguments from III.15 are repeated (that doctors are aware of their own bias; that two heads are better than one, and so the king will add people whenever he can); and some of them are subject to additional scrutiny, with more forceful arguments against absolute kingship. One argument against law in III.15 was that the law cannot decide particular cases, but Aristotle points out that “a human being could not decide them either” and that it is law that educates people so that they can give their best decision (1287a24, III.16.5). In III.15 it was argued that just as doctors may depart from the doctrine so lawyers may depart from the law, but in the case of medicine, Aristotle now adds, the doctor’s goal is still to heal the patient, whereas in politics the departure is often in order to act in one’s own interest (1287a33–41, III.16.6–7).

Aristotle concludes with a neutral-sounding sentence: “The arguments of those who dispute against kingship are, then, essentially these” (1287b35, III.16.13).<sup>36</sup> However, the argument seems to go to

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find one or a few men of good sense, capable of framing laws and pronouncing judgements, than a large number . . . . [L]ove, hate, or personal interest is often involved, so that they are no longer capable of discerning the truth adequately, their judgement being obscured by their own pleasure or pain.”

<sup>35</sup> As mentioned already, in *Politics* III.11 the collective virtue of the first multitude is said (at 1281b3, III.11.2) to be equal or *better than* the virtue of the best few, and thus it qualifies (collectively) for inclusion in the authoritative offices, though not for individual offices.

<sup>36</sup> Aristotle, it seems, can be thought an early exponent of Lord Acton’s saying that “absolute power corrupts absolutely [everyone],” though he takes the corruption to be limited to cases of direct personal interest such as passing on rule to one’s son. We need not always find (as Acton goes on to say) “the greatest names coupled with the greatest crimes”; see John Emerich Edward

the proponents of law, as the arguments against law from III.15 are rebutted by the additional considerations in III.16. As far as the virtue of kingly individuals is concerned, it appears that such people are subject to the self-interest of which law is (or can be) devoid.

All I have done with this discussion of Aristotle on law versus the exceptional individual is reject the idea that the exceptional individual is ethically perfect. There might be space enough for an interpretation that would make the *pambasileus* very-but-not-perfectly virtuous and still allow that the subjects “have virtue” in such a way as to explain how the absolute king does not disenfranchise other virtuous people. I leave this as a challenge for those who think that the *pambasileus* rules over virtuous people and turn, instead, to the task of completing my own reading.<sup>37</sup> Of course, by arguing for the kingly individual’s imperfection, I have made it more difficult for my own reading to show how *pambasileia* does not violate political justice. Does it thus follow from III.16 that *pambasileia* is never appropriate? No. The upshot, at the opening of III.17, is that *pambasileia* is appropriate if the populace is “apt for kingship” (1287b37, III.17.1; 1288a9, III.17.4) and there is one person (or a few people) of exceptional virtue (1288a15, III.17.5). If we take the result from the preceding section—that the ruled populace is an agricultural multitude—we can still follow Aristotle to his conclusion. There can still be an incommensurable gap between ruler and ruled. Dispensing with law does not require perfect virtue; it only requires that the

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Dalberg Acton, *Acton-Creighton Correspondence: Three Letters* (1887), Letter 1, accessed online at: <https://oll.libertyfund.org/title/acton-acton-creighton-correspondence>.

<sup>37</sup> Atack (in “The Discourse of Kingship in Classical Athenian Thought” and her “Aristotle’s *Pambasileia* and the Metaphysics of Monarchy,” *Polis* 32, no. 2 [2015], pp. 297–320) explores the tradition of perfection in kings in Greek political thought (specifically, Isocrates and Xenophon) in which the king is “the paradigm of virtue”: “Fourth-century rulers used as exemplars by Isocrates include Archidamus and Nicocles as speakers, and Jason of Pherae (*To Philip* 119–120), Dionysius of Sicily (*Nicocles* 23, *Philip* 65, *Archidamus* 44), Amyntas of Macedon (*Archidamus* 46, *Philip* 106), and Cyrus the Elder (*Philip* 66, 132, *Evagoras* 37–38), but Philip of Macedon assumes a central importance in his later work” (“The Discourse of Kingship in Classical Athenian Thought,” p. 300 n. 6). On my interpretation, Aristotle is less prone to this longing for perfection, and also less so than modern scholars who invoke a god-like *pambasileus*.

demands of political justice can be satisfied in the king's favor. If there is only one good man and the argument can be made that he differs in kind from the rest of the populace, the king would make the law himself and be held to it by himself.

### 5. Difference in Kind

If the reading of the two preceding sections is accepted, *pambasileia* turns out to be a regime in which a single person of complete but imperfect virtue rules without law over people without any excellence. To complete my reading I would like to return to the question of how the exclusive rule of the exceptional person can avoid violating the principle of political justice by being different in kind from those he rules.

To explore the possibility that there is a difference in kind, I turn to Aristotle's discussion of the household in I.12 and I.13. When Aristotle distinguishes the types of kingship (in III.14), he notes that *pambasileia* resembles household rule, which is a kind of "kingship over the house," and so absolute kingship is "household management for a city or a nation (or several nations)" (1285b32, III.14.15 Lord). Household management involves the male head of the household in three different relationships: with the wife, child, and slave. In each relationship the head rules and the other party is ruled, and in each case there is a difference *in kind* between the virtue of the ruler and the ruled. Aristotle writes, "Why should one of them rule once and for all and the other be ruled once and for all? (It cannot be that the difference between them is one of degree. Ruling and being ruled differ in kind [*eidei*], but things that differ in degree do not differ in that way)" (1259b35, I.13.4 Reeve).<sup>38</sup>

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<sup>38</sup> Aristotle begins *Politics* by criticizing certain unnamed theorists who think that the forms of political rule have the same nature as other human power-relationships (1252a7, I.1.2). One could perhaps use this fact to argue that importing the criterion of 'being different in kind' from these relationships to kingship is unfounded. Instead, I think that kingship is not a political relationship and precisely a ruler-ruled relationship, though its goal is different from the goal of the husband, father, or master. Much hay has been made over the "paradox of monarchy" which, in Riesbeck's formulation, alleges that Aristotle's theory of *pambasileia* suffers from two problems: normative and conceptual. The first is that *pambasileia* excludes the subjects from the political participation that is necessary for the good life and the second that monarchy is not political; see Riesbeck, *Aristotle on Political Community*, p. 8. I do not think (a would-be) *pambasileia* can exclude from

We are told that the householder rules over the slave because the slave lacks the deliberative element,<sup>39</sup> the wife has deliberation but it lacks authority (*akuros*), and the child's deliberation is "incomplete" (*ateles*) (1260a13, I.13.7). We are also told that the father rules over the child in a monarchical fashion, rule over the wife is republican (1259b10), and rule over the slave is despotic (1277a33, III.4.11).

If individual rule requires a difference in kind over the ruled, then the differences between the householder and the slave, child, and wife are all differences in kind. The difference with the slave who lacks deliberation is an obvious difference in kind, but so too, apparently, is the difference with the child, whose deliberation is incomplete. Newman explains the child's "incomplete" deliberation by reference to the *Nicomachean Ethics*'s claims that children "live at the prompting of desire" (*NE* 1119b6, III.12 Rackham) and in the absence of deliberate choice (*NE* 1111b8, III.2).<sup>40</sup> The first might provide a more satisfactory explanation of how the child's deliberation differs in kind from his father's. Similarly, the difference between husband and wife is not anything to do with their intelligence but with her rational faculty's lack of authority. Even if she and the husband consult with each other, the decision is ultimately his, due to his greater spirit (*thumos* 1328a6, VII.7.6) and expertise in leading (1259a42, I.12.1).<sup>41</sup>

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governance anyone who could benefit from holding office and I embrace the idea that *pambasileia* is not political.

<sup>39</sup> Though the slave has the rational part of the soul because he apprehends reason (1254b22, I.5.9).

<sup>40</sup> Newman, *The Politics of Aristotle*, I.219. The child thus needs to develop in two ways: first, to associate pain with the improper impulses of the emotions, and second, to inculcate the ability to deliberate.

<sup>41</sup> At 1259b9, I.12.2, Aristotle remarks that the relationship between the man and the woman in the household is like political rule where it happens to be one person's turn to rule and that, like Amasis's footpan-turned-statue, the quality doesn't depend on what exterior form is taken. See also his wry quotation of Sophocles's *Aias* 293 at 1260a30, I.13.11: wives are told by their *thumotic* husbands to shut up even when giving them good advice; see Sophia Connell, "Aristotle on Women," 94<sup>th</sup> Joint Session of the Mind Association and Aristotelian Society (2020), at 14 min. 45 sec.–16 min. 47 sec., accessed online at: <https://www.youtube.com/watch?v=L-f9IRf3ozc>. The quotation is "wry" because if he did not at least sometimes listen, the rule would be monarchical rather than political. As husband and father, the man rules in the

Each of these is a difference in kind that serves as a sufficient reason for the head of the household to rule and the other party to be ruled. What they have in common, of course, is some kind of deficiency, which means that an external source is needed to form or implement the decision: the slave cannot plan at all, the child cannot plan yet, and the woman (who is equal in intelligence to the man) fails to match the spiritedness of her husband. However, the type of ruling-and-ruled relationship that results is different in each case. Since the *pambasileus*'s rule over his subjects is monarchical, we should expect it to be the same as or similar to the relationship between the father and the child, and different from his relationships with the wife and the slave.

The subjects of the *pambasileus* are free, which means that they do not lack the deliberative element, though if they had it as the wife does, their relationship would be political rather than monarchical.<sup>42</sup> Their deliberation might thus be lacking in some way, like the child's. One thing we do know about the subjects (as portrayed in Section 2 above) is that they engage in politics only when necessary and are private citizens more concerned with making a living for themselves and their households.<sup>43</sup> This might be enough to establish a difference in kind. In *Nicomachean Ethics* VI.8, Aristotle distinguishes practical wisdom—the most “characteristic function” of which is deliberation (*NE* 1141b10, VI.7 Ostwald)—from political wisdom (*politikē*), and political wisdom has various concerns: one's own person, the household, and politics (which is itself subdivided into legislative, deliberative, and judicial) (*NE* 1141b32, VI.8). Aristotle continues: “And yet, surely one's own good cannot exist without household management nor without a political system.” The ordinary householders over whom the absolute king rules, with their focus on

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interests of the wife and child, but the father does not take the child's opinion on matters into consideration.

<sup>42</sup> The multitude is composed of free people and is of the same stock as the best few (1259b11ff, I.12.3), as are the wife and the child: both the wife and the child are treated as free persons (1259a39, I.12.1) and the child (if not necessarily the wife) is of the same stock as the father.

<sup>43</sup> See the discussion of the domains of practical wisdom in *NE* VI.8.

private interests, have an incorrect view of their own well-being and fail to see the importance of the political.<sup>44</sup>

If we need a word or a phrase to denote the difference between the deliberation of the *pambasileus* and the subjects, in the same way that the slave's deliberation is "absent," the wife's "not authoritative," and the child's "undeveloped," we might thus say that the subject's is "apolitical." The apolitical stance of the subjects can, in turn, be applied to deliberation and "political ability": if they have little interest and practice in politics and political functions, they would likely be unable to do the jobs that politics requires, whether legislating, deliberating, judging, or leading in war.

In sum, it seems possible to articulate a difference in kind between the *pambasileus* and his subjects. The best people can be *incomparably* better than the many, meaning that the best differ in kind from their subjects. The difference is that the best, despite their imperfections, are virtuous while the many over whom they rule are ordinary folk concerned with making a livelihood.

## 6. Conclusion

Law "must necessarily be concerned with persons who are equal (*peri tous isous*) in birth and ability" (1284a12, III.13.14; 1295b24, IV.11.8 says the same of the polis).<sup>45</sup> Thus, when there are a number of people, they should all be brought into government under legislation rather than being dominated by a single individual or sub-

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<sup>44</sup> Perhaps like the child the subjects also have unruly desires, but against this we must remember that they recognize the king's excellence and become his willing subjects. In any case, it is not necessary to fit the child's deficiencies onto the subjects, but rather find a way in which the rule by someone different in kind can be monarchical.

<sup>45</sup> The idea that law is for equals allows for gathering inhabitants into different groups who are roughly equal and allocating to them roughly equal though different powers (though all are citizens). There are weaker senses of "authoritative" than having power over everything, such as holding only the most important functions of government or of having power to approve or reject but not to formulate law. The mark of a good polity is that it is difficult to tell whether the many or the few are dominant (1294b15, IV.9.6). However, in II.2 Aristotle notes that it would be better for the same people to rule continuously, but even a single body might require ruling and being ruled in turn when there is a large number of citizens. He likens the transition from some people ruling to others ruling to carpenters and shoemakers changing trades (1261a30–1261b3, II.2.4–6).

group.<sup>46</sup> Exceptional people do not fall within this principle, and so “they themselves are law” (1284a15, III.13.14; 1288a3, III.17.2) without violating the principle of political justice. In this article, I have attempted to describe what I take to be Aristotle’s understanding of “exceptionality” when it comes to virtue and leadership. Rather than supposing that the kingly individual differs from and rules over other virtuous people by somehow having an exalted level of virtue compared to theirs, I suggest that it is more sensible to think that for Aristotle an exceptional individual avoids unjustly disenfranchising others when the inhabitants of the polis are fit for kingship in the sense described here, that is, as a populace of politically unengaged individuals, not so good as to warrant authority and not so ambitious as to insist on some office (such as electing and auditing) in the face of a leader who has the interest of the polis in mind (and perhaps has achieved some great feat relating to it) but is capable of occasional self-dealing. He is a single excellent man in want of peers who might together with him constitute a political community and a code of law.

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<sup>46</sup> Outstanding people cause a problem for the stability of regimes, and not just regimes based on virtue. Aristotle broadens his discussion of ostracism (in 1284) to include other forms of exceptionality besides virtue. Even a deviant regime that expels a person who is exceptional in terms of strength, wealth, or popularity (1284b28) does so justly, at least relative to the regime, because the constitution is under threat. Hence, democratic states ostracize powerful people (1284a17), as do monarchs (1284b14). The discussion of ostracism indicates that exceptionality is not an infrequent problem and can take many forms; it is a version of the basic problem with which we began (in the argument against exclusive rule), namely, that people want to rule over other people based on their individual or group superiority. I take it—though I do not argue for this here—that in the discussion of ostracism Aristotle thinks that it’s generally *not* true that the outstanding person is in fact better than everyone else (even taken collectively), even if he thinks he is. Aristotle writes that he would prefer if correct regimes were so constituted that ostracism did not need to be employed, which means that the regime should be constituted so that large gaps between people did not arise (1284b17, III.13.23; 1302b15, V.3.3; 1308b18, V.8.12). Newman (*The Politics of Aristotle*, III.244–45) lists the available measures as “avoid creating great offices held for long terms . . . equalize property . . . and increase the number of the moderately well-to-do.” The first of these measures deprives officeholders of the opportunity to abuse their power and increase it (1308a18–23, V.8.7 and 1310b20–25, V.10.5–6). Restrictions on the distribution of property will hopefully prevent inequalities of wealth, though, as Aristotle notes, it is better to moderate desire (1266b14–30, II.7.6–8).

When there is only one person who is good enough to make and interpret laws, there is no need for laws nor for law in the sense of a constitution.<sup>47</sup>

We can't even really say that absolute kingship is in tension with the rule of law; it simply falls short of being a situation in which law is appropriate. This absence of law is built into the phrase tucked in at the beginning of the introduction to the exceptional man in III.13: an absolute ruler can only be appropriate when there is "one man . . . or more than one [person of exceptional virtue] but not enough to be able to make up a complete state" (1284a4–5, III.13.13 Rackham).<sup>48</sup> The "completeness" of a state does not essentially depend on having many people to perform all of the public functions, as there might be few functions or many, depending on the size of the polis; in a very small community, there might be need for only one ruler. Rather, it depends on whether a constitution is needed in order to distribute offices to people. At 1286b14, III.15.11, the rise of additional virtuous people in the polis leads them to seek "something common and to establish a *politeia*"<sup>49</sup> and "It is therefore just [that they rule and are ruled] by turns. But this is already law; for the arrangement [of ruling and being ruled] is law" (1287a18, III.16.3, again).

The growth of polises is Aristotle's explanation for the scarcity of kingships in contemporary times,<sup>50</sup> compared to when communities were small and lacked public treasuries (1286b20, III.15.13). One of

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<sup>47</sup> Mulgan (*Aristotle's Political Theory*, pp. 87–88) puts the idea as follows: "If men were not sufficiently equal there would be no justification for political rule under law." Robinson (*Aristotle Politics: III and IV*, p. 65) gives two reasons for the king being law. One is the one employed here, that law is a matter for equals. The other is that law as a moral educator is not needed in the case of the exceptional individual. But this assumes perfection on the part of the king. He could, in fact, benefit from being held to the law by others, which is why on my account aristocracy is a better regime, though both are "best" in the sense of being rule by the virtuous.

<sup>48</sup> See also "in relation to the task, and whether they are able to administer the state, or sufficient to constitute a state" (at 1283b11–13, III.13.6 Rackham).

<sup>49</sup> Lord translates *politeia* here as "polity," while Rackham goes for "republican constitution." For discussion, see Brecht Buekenhout, "Aristotle's Peculiar Analysis of Monarchy," *History of Political Thought* 39, no. 2 (2018), p. 227 n. 28.

<sup>50</sup> Except in India, see 1332b23, VII.14.3.

Aristotle's potted histories of regimes says that "it was perhaps because of this that kingships existed in earlier times, that it was rare to find [a number of] men who were very outstanding in virtue, particularly as the polises that they lived in at that time were small" (1286b7-9, III.15.11 Lord). In larger polises, there are likely to be a greater number of "similar" people (b12) of this caliber and shared rule is appropriate. If this is not the case, one person might have to do without law and without the others who might check his self-interest and, instead, must rule alone.



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

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“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<sup>1</sup>

### 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.<sup>2</sup> Rights,

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> Neither is Burke's Aristotelianism of mere antiquarian

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(Oxford: Oxford University Press, 1995).

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

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

<sup>5</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: University of Notre Dame Press, 1984).

<sup>6</sup> 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.”<sup>7</sup> 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.”<sup>8</sup> 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.”<sup>9</sup> “There is, indeed,” Tomasi adds, “no road back to the heroic simplicities of the ancient polis.”<sup>10</sup> 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.”<sup>11</sup>

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.<sup>12</sup>

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<sup>7</sup> Gerald Gaus, *The Order of Public Reason* (Cambridge: Cambridge University Press, 2011), p. 7.

<sup>8</sup> *Ibid.*, p. 8.

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

<sup>10</sup> *Ibid.*

<sup>11</sup> Rosalind Hursthouse, “After Hume’s Justice,” *Proceedings of the Aristotelian Society* 91 (1991), p. 229.

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.

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

<sup>14</sup> 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*.<sup>15</sup> It is Aristotle, after all, who views ethics and politics as continuous domains of inquiry within what he calls “political science.”<sup>16</sup> 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.<sup>17</sup>

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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<sup>15</sup> 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.

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

<sup>17</sup> 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.<sup>18</sup>

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.”<sup>19</sup> 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.”<sup>20</sup>

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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<sup>18</sup> Aristotle, *NE*, 1134b19.

<sup>19</sup> *Ibid.*, 1135a6.

<sup>20</sup> *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.’<sup>21</sup> 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.”<sup>22</sup> 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.”<sup>23</sup> 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 *Aing* 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 *Aing*.

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<sup>21</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 88.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, p. 91.

- (4) *X* has an *immunity right* relative to *Y*'s *Aing* if, and only if, *Y* does *not* have a *power right* to *A* with respect to *X*.<sup>24</sup>

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."<sup>25</sup> 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)."<sup>26</sup> 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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<sup>24</sup> 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.

<sup>25</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 108.

<sup>26</sup> 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."<sup>27</sup> 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."<sup>28</sup> 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.<sup>29</sup> 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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<sup>27</sup> Ibid., p. 122.

<sup>28</sup> Aristotle, *NE*, 1094b13–15.

<sup>29</sup> Ibid., 1094b15–17.

of delusive geometrical accuracy in moral arguments, as the most fallacious of all sophistry.”<sup>30</sup> 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.<sup>31</sup>

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

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<sup>30</sup> 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.

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

<sup>32</sup> 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.”<sup>33</sup> 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.”<sup>34</sup> 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.”<sup>35</sup> 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.”<sup>36</sup> 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.”<sup>37</sup> 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.”<sup>38</sup> 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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<sup>33</sup> Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis, IN: Hackett Publishing, 1998), 1252a (hereafter, *Pol.*).

<sup>34</sup> *Ibid.*, 1280a30.

<sup>35</sup> *Ibid.*, 1280b5–12.

<sup>36</sup> Burke, *Reflections on the Revolution in France*, p. 262.

<sup>37</sup> *Ibid.*, pp. 260–61.

<sup>38</sup> Aristotle, *Pol.*, 1307b30.

it is no less a task to reform a constitution than to establish one initially.”<sup>39</sup> 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.<sup>40</sup>

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.”<sup>41</sup> 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.”<sup>42</sup> Burke agrees, asking rhetorically, “what is liberty without wisdom, and without virtue?”<sup>43</sup> 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.”<sup>44</sup> 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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<sup>39</sup> Ibid., 1289a1–5.

<sup>40</sup> Ibid., III.15–16.

<sup>41</sup> Burke, *Reflections on the Revolution in France*, p. 225; the reference is to Aristotle, *Pol.* IV.4.

<sup>42</sup> Aristotle, *Pol.*, 1310a30–35.

<sup>43</sup> Burke, *Reflections on the Revolution in France*, p. 361.

<sup>44</sup> Burke, “Bill to Restrain the East India Company,” p. 151.

expenditures.”<sup>45</sup> 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.”<sup>46</sup> 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].”<sup>47</sup> 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.<sup>48</sup>

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<sup>45</sup> Aristotle, *Pol.*, 1307b30.

<sup>46</sup> Burke, “Bill to Restrain the East India Company, p. 151; Aristotle, *NE*, 1134b19.

<sup>47</sup> Burke, *Reflections on the Revolution in France*, p. 151.

<sup>48</sup> 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,”<sup>49</sup> 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.”<sup>50</sup> 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.<sup>51</sup>

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

<sup>49</sup> Burke, *Reflections on the Revolution in France*, p. 151 (emphasis added).

<sup>50</sup> *Ibid.*, p. 150.

<sup>51</sup> *Ibid.*

Burke goes on to include among these myriad human needs “the want, out of civil society, of a sufficient *restraint* upon their passions.”<sup>52</sup> 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.”<sup>53</sup> 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.*”<sup>54</sup> 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.<sup>55</sup>

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<sup>52</sup> *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).

<sup>53</sup> Burke, *Reflections on the Revolution in France*, p. 152.

<sup>54</sup> *Ibid.*, p. 151.

<sup>55</sup> 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.”<sup>56</sup> 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.”<sup>57</sup>

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.”<sup>58</sup> 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.”<sup>59</sup> 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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<sup>56</sup> 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.

<sup>57</sup> Burke, *Reflections on the Revolution in France*, p. 154.

<sup>58</sup> Elizabeth Anscombe, “On the Source of the Authority of the State,” in *Ethics, Religion, and Politics* (Oxford: Blackwell, 1981), p. 145.

<sup>59</sup> *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.<sup>60</sup>

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*.”<sup>61</sup> 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.”<sup>62</sup> Even if it does not impose strict duties on

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<sup>60</sup> Hursthouse, “After Hume’s Justice,” p. 240.

<sup>61</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 374.

<sup>62</sup> 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.”<sup>63</sup> 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.”<sup>64</sup> 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.”<sup>65</sup> 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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<sup>63</sup> Burke, *Reflections on the Revolution in France*, p. 152.

<sup>64</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 357.

<sup>65</sup> *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.<sup>66</sup> Liberty without virtue “is the greatest of all possible evils; for it is folly, vice, and madness, without tuition or restraint.”<sup>67</sup> 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.<sup>68</sup>

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.”<sup>69</sup> 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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<sup>66</sup> Burke, *Reflections on the Revolution in France*, pp. 92-93.

<sup>67</sup> *Ibid.*, p. 361.

<sup>68</sup> 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 Pharaoh (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.

<sup>69</sup> 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.”<sup>70</sup>

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.<sup>71</sup> 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.”<sup>72</sup> 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”<sup>73</sup>) 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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<sup>70</sup> Ibid., p. 361.

<sup>71</sup> Burke, *Reflections on the Revolution in France*, p. 136.

<sup>72</sup> 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.

<sup>73</sup> 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.”<sup>74</sup> 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.<sup>75</sup> *Contra* Mill’s “harm principle,” the

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<sup>74</sup> *Ibid.*, p. 87.

<sup>75</sup> 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.”<sup>76</sup> He concludes, though, “they seem unable to turn the many towards being fine and good.”<sup>77</sup>

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.”<sup>78</sup> 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?”<sup>79</sup>

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<sup>76</sup> Aristotle, *NE*, 1179b5.

<sup>77</sup> *Ibid.*, 1179b10.

<sup>78</sup> 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).

<sup>79</sup> 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.<sup>80</sup> 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."<sup>81</sup>

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

<sup>81</sup> 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.”<sup>82</sup> 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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<sup>82</sup> Burke, *Reflections on the Revolution in France*, p. 154.



## 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*<sup>1</sup>

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

—F. A. Hayek, “Individualism: True and False”<sup>2</sup>

### 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.<sup>3</sup> These thinkers, who in some respects follow criticisms advanced by Alasdair MacIntyre, Michael Sandel, and

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

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

<sup>3</sup> 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,<sup>4</sup> 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-Aristotelian<sup>5</sup> grounding of liberal political philosophy. In our various works<sup>6</sup> seeking to show how this is

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>

## **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.<sup>8</sup> 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.<sup>9</sup> To be exact, the society is governed by a political and legal order whose function is to protect and preserve an individual's

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

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

<sup>8</sup> 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).

<sup>9</sup> See *ibid.*, pp. 89–90 n. 5.

basic, negative, natural rights of life, liberty, and property.<sup>10</sup> 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

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<sup>10</sup> 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.<sup>11</sup>

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.

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<sup>11</sup> 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,<sup>12</sup> 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).<sup>13</sup> 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.<sup>14</sup> 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

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<sup>12</sup> Ibid., p. 102.

<sup>13</sup> 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.

<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup> In this regard, conservatives adopt

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

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

<sup>17</sup> 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.”<sup>18</sup> Rousseau’s natural man lives completely alone.<sup>19</sup> Even Locke, for whom some community might be conceivable in the state of nature, generally discusses unattached individuals.<sup>20</sup> 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.<sup>21</sup>

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2006), pp. 843–70.

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

<sup>19</sup> 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.

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

<sup>21</sup> 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.<sup>22</sup>

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”

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<sup>22</sup> 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.<sup>23</sup> 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:

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<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup> 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.

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<sup>24</sup> Hayek, “Individualism: True and False,” p. 19.

<sup>25</sup> 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.”<sup>26</sup> 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,<sup>27</sup> 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

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<sup>26</sup> Hayek, “Individualism: True and False,” p. 26.

<sup>27</sup> 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.<sup>28</sup> 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.”<sup>29</sup> 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.<sup>30</sup> 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

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<sup>28</sup> Ibid.

<sup>29</sup> 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).

<sup>30</sup> 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.<sup>31</sup>

The single most basic and threatening encroachment on self-direction,<sup>32</sup> and thus on moral action, is the use of physical force.<sup>33</sup> 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.<sup>34</sup>

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

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<sup>31</sup> 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/>.

<sup>32</sup> 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.

<sup>33</sup> 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.

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

equating statecraft with soulcraft.<sup>35</sup> 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.<sup>36</sup> Liberalism challenges all such question-begging assumptions.

Michael Oakeshott's distinction between an "enterprise association" and a "civil association" is useful here.<sup>37</sup> 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,"<sup>38</sup> 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

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<sup>35</sup> Rasmussen and Den Uyl, *Norms of Liberty*, pp. 66–75.

<sup>36</sup> Rasmussen and Den Uyl, *Liberty and Nature*, pp. 152–54.

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

<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

#### 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

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

<sup>40</sup> 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.

<sup>41</sup> 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.<sup>42</sup>

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



## Aristotelians and Neo-Aristotelians

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Fred Miller's book *Nature, Justice, and Rights in Aristotle's Politics*<sup>1</sup> was hailed by leading Aristotle scholars as a valuable contribution to scholarship on Aristotle, and Miller himself is regarded as a leading Aristotle scholar.<sup>2</sup> What this means is that Miller offers a close reading and careful analysis of Aristotle's *Politics* that helps us to understand Aristotle's main arguments about key topics and issues in political philosophy. Sometime between 1259 and 1265, Thomas Aquinas wrote on the theme of the purposiveness of human action, arguing that the end (in the sense of purpose) of human action is happiness.<sup>3</sup> This general theme is something Aquinas found in Aristotle, but Aquinas's goal was not to explain Aristotle to us. Rather, he advanced an argument about his theological position using an Aristotelian framework, methodology, and concepts. Hence, we can make a distinction between interpreting Aristotle (as Miller does) and using Aristotle (as Aquinas does). As it happens, Miller takes up this issue in *Nature, Justice, and Rights in Aristotle's Politics*, when discussing interpretive methodology. I will analyze this distinction, concluding that Miller is right to stress it, that different forms of interpretation are important to philosophy, and that they have different criteria for success and failure.

Miller differentiates three ways of interpreting Aristotle's writing, which could also be applied to the work of other thinkers.

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<sup>1</sup> Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995).

<sup>2</sup> I have had the pleasure of meeting Fred Miller on several occasions, and he was kind enough to write an introduction for a collection of essays I edited.

<sup>3</sup> Thomas Aquinas, *Summa Contra Gentiles*, trans. Anton C. Pegis (Notre Dame, IN: Notre Dame University Press, 1975).

Miller refers to the first as “literal exegesis,” which “is to try as far as possible to explicate his thought in his own terms and within his own context.”<sup>4</sup> This means trying to “state the problems as Aristotle understood them and to explicate concepts and [fill out] arguments using notions and techniques that would have been familiar to him.”<sup>5</sup> The second is what Miller refers to as “reconstruction” or “philosophical scholarship,” which involves trying to “understand the text not only on its own terms but also by applying external concepts, theories, and techniques.”<sup>6</sup> This may include “exploring similarities or differences with other modes of thought, such as modern viewpoints,” or consideration of the “further implications of a philosopher’s thought.”<sup>7</sup> The third interpretive method Miller distinguishes is the sort that warrants the “cautionary prefix ‘neo-,’ e.g. ‘neo-Aristotelian.’”<sup>8</sup> His understanding of this approach is philosophizing “in the tradition, more or less broadly understood, of a given philosopher. One adopts certain distinctive principles or methods and treats them as points of departure, not concerning oneself overly with issues of accurate exegesis or anachronism.”<sup>9</sup> Miller stipulates that there are not necessarily sharp distinctions between these three methods, and that plenty of recent Aristotle scholarship has combined exegesis and reconstruction. He says that *Nature, Justice, and Rights in Aristotle’s Politics* can primarily be classified as reconstruction, although it combines all three approaches.

Miller observes that Douglas Rasmussen and Douglas Den Uyl make a similar distinction in their book *Liberty and Nature*.<sup>10</sup>

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<sup>4</sup> Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 21.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., p. 22.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., citing Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order* (LaSalle, IL: Open Court, 1991), p. xv. Their taxonomy is, in turn, inspired by an approach to

Rasmussen and Den Uyl call “originative” work “the personally developed thought of Aristotle as expressed in his writings,” while “continuative” or “school-tradition” work is the work of “thinkers who analyze . . . teachings of Aristotle within the framework of his own principles and methods.”<sup>11</sup> These are contrasted with what they call “recurrent-thematic-classificatory-polemical” work, by which they mean “work which involves the novel use of positions of Aristotle, but without necessarily being historically linked with Aristotle . . . [and thematizing] Aristotle’s ideas within a new intellectual context.”<sup>12</sup> They refer to this last category, which corresponds to Miller’s “neo-Aristotelian,” as “Aristotelian,” which seems less clear than using “neo-Aristotelian.” However, in a later book, *Norms of Liberty*, Rasmussen and Den Uyl switch to using “neo-Aristotelian” to describe this sort of work.<sup>13</sup> In any event, the essence of their taxonomy is to highlight the same point Miller makes: one might be exploring Aristotle’s thought or one might be using his approach as a launching pad for additional philosophizing.

Mindful of Miller’s claim that there may not be rigid dividing lines between these interpretive methods, it will nevertheless be useful to consider some examples of them. We could imagine loose groupings of works that are mainly a mix of the literal exegesis approach and the reconstruction approach, which we can call “Aristotelian.” Those would be in contrast to works that are mainly a mix of reconstruction and new thinking in the tradition or general framework of Aristotle, which we can call “neo-Aristotelian.”

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interpreting modern-period philosophy, namely, that of James Collins, *Interpreting Modern Philosophy* (Princeton, NJ: Princeton University Press, 1974).

<sup>11</sup> Rasmussen and Den Uyl, *Liberty and Nature*, p. xv.

<sup>12</sup> *Ibid.*

<sup>13</sup> 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).

I would classify John Cooper's book *Reason and Human Good in Aristotle* as Aristotelian.<sup>14</sup> Cooper explicates concepts in Aristotle's thought and tries to understand the text largely on its own terms; he does nothing especially polemical nor does he seek to "apply" Aristotle's ideas to some other framework. Cooper is interested in questions such as: What does Aristotle mean by *eudaimonia* (flourishing)? How does this connect to the theory of virtue in Aristotle? What role does Aristotle think practical reason plays in the intellectual life? Contrast that with the aforementioned Aquinas, who is clearly interested in showing how the use of Aristotelian categories and concepts can be brought to bear on Catholic theology. For example, there is no particular reason we should think that Aristotle's "unmoved mover" is the Abrahamic God, but it is also easy to see why a thinker like Aquinas might use the "unmoved mover" as a way to illustrate something about his Catholic understanding of the divine.

Similar to Cooper, Martha Nussbaum's translation of Aristotle's *De Motu Animalium* is accompanied by 300 pages of interpretive essays, which are clearly of the exegetical-interpretive variety.<sup>15</sup> Nussbaum explores questions such as: What does Aristotle mean by *telos* (end)? What role does *phantasia* (imagination) play in Aristotle's understanding of action? How does Aristotle understand the body-soul distinction? Contrast that with Nussbaum's later work, such as *Creating Capabilities* or *Frontiers of Justice*, in which she draws from Aristotelian concepts for a novel set of arguments that she deploys in contexts external to Aristotle's work.<sup>16</sup> Here, we see Aristotelian ideas like the actualization of human potential used in the service of present-day problems in social and political philosophy.

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<sup>14</sup> John Cooper, *Reason and Human Good in Aristotle* (Indianapolis, IN: Hackett Publishing, 1975).

<sup>15</sup> Martha C. Nussbaum, *Aristotle's De Motu Animalium* (Princeton, NJ: Princeton University Press, 1978).

<sup>16</sup> Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006); Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011).

In Nussbaum's *De Motu* essays, she pays a lot of attention to issues in translation and language use. We are always liable to misunderstand authors whose work is in a language not our own, so of course this problem is magnified when we're dealing with ancient thinkers. Exegetical-reconstructive work necessarily involves some attention to those issues. However, in her more recent work on human development, Nussbaum does virtually no such work beyond the occasional parenthetical use of a Greek word. This last point is not a criticism; it illustrates a key difference between doing exegetical scholarship *about* Aristotle's work and doing novel philosophizing that *incorporates* Aristotle's insights.

One corollary of this difference is that while we would expect greater degrees of convergence (though not, perhaps, complete consensus) about exegetical scholarship, neo-Aristotelian scholarship might not converge at all. There is not a tremendous amount of heated controversy about Cooper's scholarship on *eudaimonia*, yet neo-Aristotelian scholarship can go in wildly divergent directions. Aquinas drafts Aristotle's philosophy into the service of Catholic theology, while Ayn Rand, also clearly influenced by Aristotle,<sup>17</sup> develops a wholly secular interpretation. For another example, Nussbaum's recent work on human development is neo-Aristotelian in Miller's sense and points toward policies that in contemporary jargon would be thought of as politically progressive. The work of Rasmussen and Den Uyl is plainly neo-Aristotelian, but it instead points toward a model of classical liberalism in "that protecting liberty, understood in terms of basic negative rights, should be the paramount aim of the political and legal order."<sup>18</sup> Then there is Alasdair MacIntyre, whose work also uses Aristotle as a starting point for novel philosophizing, yet he comes to politically conservative conclusions.<sup>19</sup>

However, shouldn't neo-Aristotelian thinking also converge? If Aquinas is right that Aristotle's unmoved mover is like a

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<sup>17</sup> See, e.g., Ayn Rand, "The Objectivist Ethics," in Ayn Rand, *The Virtue of Selfishness* (New York: New American Library, 1964), pp. 13–35.

<sup>18</sup> Rasmussen and Den Uyl, *Norms of Liberty*, p. xiv.

<sup>19</sup> Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981).

monotheistic God, then wouldn't Rand's atheism be mistaken (or vice-versa)? For political philosophers, one might think that three arguments appealing to Aristotelian framing and concepts should not, if they reason correctly, lead to progressive *and* conservative *and* classical-liberal conclusions. Wouldn't at least two of the three have to have made some kind of mistake? I suspect that the answer to this question is that they would not *have to* have made a mistake (though they may, in fact, have done so), precisely because the goal is not to "get exactly right" what Aristotle said. Rather, the goal is to deploy ideas or framings from Aristotle in the service of an argument that presumably stands or falls on its own merits. Even if, say, MacIntyre is mistaken about what Aristotle thinks is the human *telos*, MacIntyre's argument would not *therefore* be wrong, though it could be wrong on other grounds. Nevertheless, one can have fruitful discussion about the extent to which one neo-Aristotelian or another is making *better* use of Aristotelian concepts.<sup>20</sup>

Despite Miller's admonition that the lines between "Aristotelian" and "Neo-Aristotelian" may get blurry, it is a useful distinction, if for no other reason than in figuring out how to engage with a thinker's work. If the argument is something like "By 'final causation,' Aristotle means XYZ, and here are the textual extractions and etymological evidence to support my contention," we would have a different mode of engagement from one in which the argument were something like "Following Aristotle in thinking XYZ, I will now show that XYZ supports my conclusion about the purpose of government." Both sorts of arguments can succeed or fail, of course, but the criteria for success and failure are different. Indeed, the purpose of the argument is different to begin with. Miller's own book is, as he notes, some of both. It is mostly exegetical-reconstructive, with a neo-Aristotelian concluding chapter. Most of the book is concerned with his establishing that "it is not anachronistic to attribute to [Aristotle] a concept of rights . . . even though it may not be articulated in terms corresponding precisely to ours."<sup>21</sup> However, even if it is true that something like a liberal concept of rights is "in" Aristotle's thought, it

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<sup>20</sup> See, e.g., the various responses to Rasmussen and Den Uyl (and their replies) in *Reading Rasmussen and Den Uyl: Critical Essays on Norms of Liberty*, ed. Aeon J. Skoble (Lanham, MD: Lexington Books, 2008).

<sup>21</sup> Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 22.

would not follow that Aristotle is a classical liberal—*that* would be anachronistic. Miller’s exegetical thesis being true would be a useful supplement to a classical liberal making a neo-Aristotelian argument about political philosophy, which is what Miller does in Chapter 10.

Miller says that his exegetical-reconstructive discussion in *Nature, Justice, and Rights in Aristotle’s Politics* “reconsiders the prospects for neo-Aristotelian political philosophy, i.e. the attempt to recover important Aristotelian insights and apply them to modern issues of political philosophy.”<sup>22</sup> His elaboration on this point appeals to and clarifies his distinction from the introduction:

I use ‘neo-Aristotelian’ for modern theorizing which incorporates some central doctrines of Aristotle, e.g. teleology. . . . Such theorizing should critically assess his claims in the light of modern philosophical theory, scientific research, and practical experience, revise or reject them where necessary, and consider their applications to social and political contexts not envisioned by him.<sup>23</sup>

In other words, arguing that Aristotle was a classical liberal (or a progressive) in the modern sense might be a silly exercise, but arguing that Aristotelian concepts of teleology, virtue, and human nature might well support a classical-liberal (or progressive) position is not. Miller reminds us: “One should distinguish Aristotle exegesis from neo-Aristotelian theorizing, although the two activities are frequently connected.”<sup>24</sup> While Chapters 1 through 9 are engaged with the former project, Chapter 10 is the latter.

The footnotes in Chapter 10 show engagement with Aristotle scholars (such as Allan Gotthelf and Terence Irwin), other neo-Aristotelians who hold contrary views (such as MacIntyre) or similar views (such as Rasmussen and Den Uyl), and thinkers who are not connected to Aristotle one way or the other (such as Ludwig von Mises, Friedrich Hayek, John Stuart Mill, John Rawls, and Robert Nozick). This means that Miller is, in this section of the book, constructing an independent normative argument about the nature of

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<sup>22</sup> Ibid., p. 336.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

the political order. This argument is informed by Aristotelian concepts, but it also unfolds according to its own logic. In other words, supposing Miller's exegetical-reconstructive argument about what Aristotle means were flawed (though I have no reason to suppose this), his neo-Aristotelian argument in Chapter 10 would not thereby collapse.

Making a distinction between Aristotle scholarship and neo-Aristotelian theorizing is not to judge one as preferable or superior to the other. Both sorts of philosophical arguments are important parts of how the discipline of philosophy proceeds. We need scholarship that does the work of explaining, clarifying, and interpreting what ancient thinkers were actually saying, or else we wouldn't be well-grounded in taking them seriously. We also need independent, normative arguments about ethics and political philosophy because, at the end of the day, philosophers tend to care about (and want to have opinions about) what is actually the case. I might want to know both what is the best way to understand Aristotle's political philosophy, but also, *whatever Aristotle thought*, I would want to know how *I* should understand political philosophy. If classical liberalism (or progressivism, conservatism, communitarianism, or socialism) is true, it is true whether or not we can show that Aristotle would or would not have sympathized with it. The last two sentences of Miller's book express this felicitously, so I will close this appreciation for both aspects of Miller's scholarly contributions by quoting them: "In the end, however, a neo-Aristotelian theory will have to stand on its own two legs—philosophical argument and empirical evidence—and not fall back on quotations from Aristotle. None the less, for those engaged in such a project, the texts of Aristotle will undoubtedly continue to be a source of inspiration and insight."<sup>25</sup> I hasten to add, as will those of Fred Miller.

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<sup>25</sup> Ibid., p. 378.

## Other Agents: A Blessing and a Curse

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### 1. Introduction

The thesis of this article is that the presence of other individual agents is two things at the same time: a blessing and a curse for one's own agency and identity. This Janus-faced feature of other agents is the core of my response to an objection that I received regarding my earlier work on constitutivism.<sup>1</sup> In Sections 2-4, I present my most recent response to that objection in the form of an interpersonal extension of constitutivism, introduce a new puzzle that I see in my response's structure, and resolve this puzzle. I introduce in Section 5 a worry concerning my response. Sections 6-9 go into detail regarding my current project, which is to come to a better understanding of Saul Kripke's complex account of Wittgensteinian rule-following. More precisely, I apply "Kripkenstein's" arguments in the course of evaluating individualistic versions of constitutivism.

### 2. The Public Identity Claim

Constitutivist accounts of normativity have recently been popular, with Christine Korsgaard and David Velleman as the most prominent representatives.<sup>2</sup> The historical origins of such accounts are found in Aristotle's and Immanuel Kant's work. The argument constitutivists offer is that certain norms are unconditionally binding

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<sup>1</sup> Christoph Hanisch, *Why the Law Matters to You: Citizenship, Agency, and Public Identity* (Boston, MA: De Gruyter, 2013). This book is based on my PhD dissertation, which I wrote under the supervision of Fred D. Miller, Jr. at Bowling Green State University.

<sup>2</sup> See Christine M. Korsgaard, *Self-Constitution: Agency, Identity, and Integrity* (New York, NY: Oxford University Press, 2009); J. David Velleman, *How We Get Along* (New York, NY: Cambridge University Press, 2009).

because they are determinant (descriptively and normatively) of activities that we are inescapably confronted with. Korsgaard sums up constitutivism's message, when she claims that "the function of action is self-constitution."<sup>3</sup> Human beings, according to Korsgaard, have to constitute themselves into agents, understood as the authors of their actions. Only when they engage in practical deliberation, choice, and action, are individuals successfully turning their first-personal standpoints into stable, internally consistent, and coherent perspectives. The unification in question is achieved when individuals structure their deliberative stances by means of endorsing practical principles that guide their actions.

These sets of principles define an agent's normative self-conception, which Korsgaard calls the agent's "practical identity."<sup>4</sup> Korsgaard says that practical identities are "principles in terms of which we accept and reject proposed actions."<sup>5</sup> She adds that an individual's practical identity is a "set of principles, the dos and don'ts of . . . a role with a point."<sup>6</sup> A practical identity is both the result and the precondition of self-constituting action. Especially important for my proposed social extension of constitutivism is that these normative self-conceptions are an agent's commitment to her principles and rules, which define her as the particular agent she understands herself to be. Constitutivism is a theory of many things, but first and foremost it tries to account for the unconditional normativity of practical principles and the ontology of personal identity.

Kantian constitutivists argue that the categorical and hypothetical imperatives are the two constitutive norms of this activity of action as self-constitution. In order for an agent to unify herself successfully, her actions have to incorporate a commitment to these two Kantian principles. Something important for my argument is to consider two general and not necessarily moral versions of these Kantian imperatives, which are requirements of practical rationality. First, the categorical imperative prescribes that self-constituting actions

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<sup>3</sup> Korsgaard, *Self-Constitution*, p. xii.

<sup>4</sup> Christine M. Korsgaard, *The Sources of Normativity* (New York, NY: Cambridge University Press, 1996), pp. 100–102 and 128–30.

<sup>5</sup> Korsgaard, *Self-Constitution*, p. 22.

<sup>6</sup> *Ibid.*, p. 21.

must have a minimally universal form. Korsgaard rejects the possibility of what she calls radical “particularistic willing.”<sup>7</sup> Such willing is not constituting its agent successfully because it would, if it were possible, consist in an act of choice that does not commit its author at all to any normative correctness standards regarding future choices in identical circumstances. Second, all actions worth the demanding constitutivist label, must minimally comply with means-end rationality. If individuals were to ignore the normativity of the hypothetical imperative entirely, they wouldn’t successfully perform any actions and, hence, wouldn’t get the process of identity-constitution going.

I argue that this account of why we need a practical identity is basically correct, but incomplete. The two Kantian imperatives put structural limits on every agent’s actions and on the principles that guide the choice of these actions. In the presence of other agents, however, this internal and individualistic account about what is necessary and sufficient for self-constitution must be supplemented by interpersonal components. I call this the public (practical) identity claim.

Recall the central constitutivist tenet that “action is self-constitution.” However, action is possible only when other agents commit themselves, together with oneself, to minimal norms of non-interference, including moral principles and legal norms. Mutual non-interference is necessary to perform actions. Actions are the means of identity constitution. Therefore, that others do not randomly interfere with one’s actions is a necessary external prerequisite for constituting oneself successfully into an agent. I call this the “public identity claim.” The public identity claim highlights that the specific norms that regulate these non-interference practices must get incorporated into every agent’s practical perspective. Only if these interpersonal action-enabling principles get internalized into an agent’s practical identity, the agent constitutes herself successfully. Hence, in the presence of other agents, an individual’s self-constitution always results in a practical identity that incorporates this minimally public and interpersonal normative attribute. This is the main thought behind my initial defense of the normative inescapability of public identities and of the interpersonal principles that partly, but necessarily, define those self-conceptions that emerge in the presence of other agents.

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<sup>7</sup> Ibid., pp. 72–76.

### 3. The Objection to the Public Identity Claim

One objection to my argument for public identities calls into question the necessity of these shared non-interference norms. I deliberately emphasize the normativity of the shared practices in question. “Okay,” my critic acknowledges, “the constitutivist story is relatively plausible when it comes to the two Kantian imperatives and their role as principles that every agent must endorse in order to unify her first-personal point of view.” Their normative force appears relevantly inescapable, unless one is “willing” to see one’s agency fall apart entirely as a result of particularistic willing and thoroughgoing instrumental irrationality. However, the objection continues, the same constitutivist story does not seem to be correct when it comes to justifying the interpersonal normative structures that the public identity claim attempts to vindicate as equally non-optional. The best way to summarize the main objection to the public identity claim is the following valid argument:

Premise one: If agency (self-constitution, maintaining a practical identity) is possible in the asocial world with regular laws of nature, then agency is possible in the social world without social norms and practices.

Premise two: Agency (self-constitution, maintaining a practical identity) is possible in the asocial world with regular laws of nature.

Conclusion: Agency (self-constitution, maintaining a practical identity) is possible in the social world without social norms and practices.<sup>8</sup>

Before I respond to this argument in its entirety (and discuss head-on its second premise), I need to present the objector’s sub-argument for premise one. Assume, as stated in the premise’s antecedent, that a character like a born Robinson Crusoe were to successfully constitute himself as an agent. He would perform actions, endorse practical principles, and act according to them as Kantian constitutivists claim. However, the objector continues, interpersonal non-interference *norms*, in the sense of the public identity claim, could

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<sup>8</sup> I am indebted to Michael Weber (who served on my dissertation committee) for this formal construction of the objection.

not have played a role in Crusoe's case. He is, after all, the only individual populating the universe. There are no other agents around who could potentially interfere with his self-constituting actions. Having said that, Crusoe is imagined encountering certain threats to his agency, for example, tigers and tornados. Still, even in the face of these threats, self-constitution is presumed to be possible according to the antecedent of premise one because Crusoe can predict and "manage" these threats, namely, in accordance with entirely descriptive (non-normative) laws and regularities of nature.

Next, the crucial thought underlying premise one—the rationale for its leap from antecedent to consequent—is that individual agents in the social condition appear to be able to take up the same practical attitudes toward other agents that Crusoe was imagined adopting with regard to tigers and tornados. Recall, however, that Crusoe's stance toward these natural phenomena (and threats to his agency) was thoroughly non-normative. It seems, the presenter of premise one concludes, that other agents (in the social condition) *can* be regarded in such a non-normative mode, too, for example, in purely psychological terms that more or less reliably predict how they will behave in response to my action attempts. As stated in premise's one consequent, interpersonal norms would, therefore, be optional requirements even in the social condition, that is, when other individuals are present. At least a crude and rudimentary manifestation of individual agency seems possible when other persons are treated and conceptualized as mere forces of nature (analogously to Crusoe's non-normative stance and attitude toward tigers and tornados).

#### **4. Response to the Objection to the Public Identity Claim**

I begin my response by examining premise two and the notion of a born Crusoe. How might interpersonal accounts of rule-following help my argument? Recall that a practical identity is a set of principles that an agent endorses in the process of practical deliberation. It is an important part of constitutivism that agents inescapably have to tackle the task of self-constitution across time. Practical principles are the "glue" that holds together an agent by structuring her self-constituting activities into a coherent and consistent manner. Notice that we can rephrase the constitutivist view and argue that these principles are rules that individual agents endorse and follow.

According to Kripke's influential interpretation of Ludwig Wittgenstein's *Philosophical Investigations*,<sup>9</sup> rule-following is a

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<sup>9</sup> See Saul A. Kripke, *Wittgenstein on Rules and Private Language: An*

problem for an individual “considered in isolation”<sup>10</sup> from any other potential fellow community members who together maintain shared practices of awarding one another the status of successful rule-followers insofar as they are in *de facto* agreement on how a rule is, and ought to be, followed. These shared practices are influentially referred to as “forms of life”<sup>11</sup> and “language games.”<sup>12</sup> Presuming for a moment the plausibility of “Kripkenstein”<sup>13</sup> so understood, I highlight that such an interpersonal account supports the claim that a character like born Crusoe fails to successfully constitute himself.

If we put together the above account about the role that practical rules play in one’s normative self-conception, on the one hand, and the idea that following any rules is contingent on being embedded in a community of other agents with normative and judgment-enabling abilities, on the other, then premise two of the counter-argument is called into question. Born Crusoe’s attempt at self-constituting action fails because he fails as a rule- and principle-follower in the first place. Crusoe simply cannot put himself under practical rules, unless other independent agents are around who co-guarantee and co-certify the normativity of his identity-defining rules.

My response here to premise two is why we can regard the presence of other agents as a blessing. The Kripkensteinian paradigm helps us to realize that a community of independent agents is capable of providing a source of normativity that no solitary individual can provide or simulate on her own and for herself. I do not deny that we often argue as if individuals hold themselves robustly accountable; Korsgaard makes much of these ordinary ways of talking in order to vindicate her account. The interpersonal view of rule-following, though, rests on a competing thought that the accountability

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*Elementary Exposition* (Cambridge, MA: Harvard University Press, 1982); Ludwig Wittgenstein, *Philosophical Investigations*, 3rd. ed., trans. G. E. M. Anscombe (Malden, MA: Blackwell, 2001).

<sup>10</sup> Kripke, *Wittgenstein on Rules and Private Language*, pp. 79 and 89.

<sup>11</sup> Wittgenstein, *Philosophical Investigations*, p. 148.

<sup>12</sup> *Ibid.*, p. 184.

<sup>13</sup> I follow the convention of labelling Kripke’s (not undisputed) interpretation of Wittgenstein as the arguments put forward by “Kripkenstein.”

relationships that other rule-followers provide are of a distinct and irreplaceable kind. It is their unique ability to provide a normative yardstick for rule-following that even the strongest-willed Crusoe cannot establish for himself in his isolated existence.

Let us continue with the other part of the objection. Premise one claims that if, *pace* my reply to premise two, self-constitution turns out to be possible in born Crusoe's case, then this implies that an individual can constitute herself successfully in the presence of other agents, and can do so even in the absence of any shared (non-interference) norms. It is in the course of criticizing this premise that I ultimately present the positive case in support of my claim that self-constituting action is possible only when agents incorporate certain interpersonal rules into their practical identities, rules that establish spheres of non-interference with action. It is at this point, though, that we can see the unique threat—or curse—that other agents pose to individual agency. In premise two's complete absence of any interpersonal practices, the resulting practical arbitrariness and interference with one's actions leads to a complete mutual undermining of the external preconditions of individual self-constitution.

Even if Crusoe's solitary self-constitution were possible (which is currently presumed), it would not follow that the same feat is achievable in the social condition without interpersonal norms. Different from tigers and tornados, the threat of interference posed by other agents is a distinct expression of the judgment-enabling abilities that had drawn us into the normative realm that I describe above, that is, the space in which individuals co-certify and co-guarantee each other's practical rules that hold them together as agents across their existence. Our inescapable aim of constituting ourselves into unified rule-followers unavoidably hits its target when other potential agents, as distinct from tigers and tornados, are present in the social condition.

However, the other side of the account now becomes relevant. It is these facts about the unique normative capacities of other agents (which underlay the blessing attribute) that are at the same time the explanation for why only these other agents present a unique threat to our self-constituting activities in the social condition. This kind of threat can be eliminated only by putting our individual agencies under shared normative rules of non-interference that guarantee at least some minimum sphere in which each of us can complete, as distinct from merely attempt, her actions in a reliable and stable environment.

### **5. A Puzzle Regarding My Response to the Objection to the Public Identity Claim**

Let me explain what troubles me about my attempt to undermine the objection's first premise.<sup>14</sup> I begin my attack on premise one by granting, for the sake of examining the truth-value of the whole conditional, that born Crusoe's agency is possible. I then have to show that even if this assumption is granted, it does not follow that self-constitution is possible in the presence of other agents without non-interference norms. This is so because other agents present a unique threat to individual self-constitution. It is a unique kind of (potential) interference with one's action, different in kind from the one originating in tigers and tornados, in that the resolution of this threat must be shared normative answers in the form of interpersonal non-interference practices and rules. To overcome the curse of cancelling out each other's agencies, individuals put themselves under shared institutions that prop, at least, these non-interference frameworks.

Notice, however, that the non-interference component of the rejection of premise one appears to ultimately depend for its persuasiveness on denying, along Kripkensteinian lines, the antecedent of that very premise. Recall that I wanted to assume, for the sake of argument, the conceivability of Crusoe's agency. Why does this puzzle emerge? In order to show that the possibility of Crusoe's agency does not imply the possibility of self-constitution in a social (but normatively barren) condition, I was in effect relying on the same normatively determinant features of other agents that had been appealed to earlier, when trying to undermine head-on the possibility of Crusoe's agency. This, however, seems to amount to having denied, contrary to my intended procedure, the conditional's antecedent from the get-go, making the whole conditional of premise one trivially true.

Let me clarify this train of thought. I argued that non-interference norms are non-optional in the social condition. As soon as an individual agent finds herself in the presence of other independent beings who are recognized as possessing the ability to co-certify her first-personal normative rules (something that the first agent needs for the sake of her own individual self-constitution), she gets thereby drawn into the space of normativity rather than the space of exclusively causal and psychological laws and regularities that the sub-argument

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<sup>14</sup> I am indebted to audiences at the University of Pardubice (2018) and at the University of Vienna (2019), who formulated objections in the vicinity of the presented puzzle.

for premise one had appealed to as sufficient for agency in the social condition. Next, my argument against premise one continued, with this acknowledgment of inescapable normativity comes the realization that the *same* certifying, identity-establishing capacities of the other agents are the origin of a peculiar kind of interference threat, namely, one that endangers successful action at the hands of creatures who are inevitably conceptualized as normatively potent beings (as distinct from tigers and tornados).

However, this latter argument then seems (at least implicitly) to depend on rejecting the possibility of a born Crusoe *qua* agent in the first place. What constitutes this tension between the rejection of the conditional as a whole, on the one hand, and the (unintended) rejection of its antecedent, on the other, is that both arguments discussed so far appeal to the same normative competencies that are exclusive properties of agents: one in the curse version (when premise one is rejected) and the other in the blessing version (when premise two is rejected). This creates the impression that I argue in a circle by begging the question. I now turn to the task of rendering these issues less abstract by looking carefully into some of Kripke's and Wittgenstein's arguments. In so doing, I will vindicate my response to the counter-argument.

## **6. Resolving the Puzzle with Kripkenstein (I): The Service and Utility of Independent Wills**

The exchange so far has focused on a structural and dialectical puzzle about my response to a powerful objection to the idea that agency is a normative social phenomenon. Before updating my reply to this objection, I dedicate the upcoming sections to the task of filling in some of the substantive details concerning the interpersonal prerequisites of individual agency by investigating some of Kripke's and Wittgenstein's arguments. My purpose here is to test these passages with respect to their usefulness for critiquing my main target, namely, the solipsistic constitutivist.

I begin with a central passage, in which Kripke replies to the view that it seems intuitively plausible to consider an individual in isolation who seems nevertheless fully capable of correcting herself with regard to a rule that she claims to endorse.<sup>15</sup> My strategy is to

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<sup>15</sup> Keep in mind that this passage is one of the final reflections in Kripke, *Wittgenstein on Rules and Private Language*, that is, it is a passage that gets introduced after Kripke has both presented his comprehensive attack on non-interpersonal accounts of rule-following and after he has introduced the so-

equate Kantians like Korsgaard with the target of Kripke's argument, that is, meaning-determinists who believe that an individual's mental states (e.g., intentions) suffice to constitute the ontological fact that she is following a particular rule. The end of this passage is especially striking:

As members of the community correct each other, might a given individual correct himself? . . . Indeed, in the absence of the paradox [the inevitability of which Kripke defended in the previous pages], it would appear that an individual remembers his own "intentions" and can use one memory of these intentions to correct another mistaken memory. In the presence of the paradox, any such "naive" ideas are meaningless. Ultimately, an individual may simply have conflicting brute inclinations, while the upshot of the matter depends on his will alone. The situation is not analogous to the case of the community, where distinct individuals have distinct and independent wills, and where, when an individual is accepted into the community, others judge that they can rely on his response . . . . No corresponding relation between an individual and himself has the same utility. Wittgenstein may be indicating something like this in §268.<sup>16</sup>

The passage in Wittgenstein's *Philosophical Investigations* that Kripke mentions is worth quoting at length:

Why can't my right hand give [schenken] my left hand money?—My right hand can put it into my left hand. My right hand can write a deed of gift and my left hand a receipt.—But the further practical consequences would not be those of a gift. When the left hand has taken the money from the right, etc., we shall ask: "Well, and what of it?" ["Nun, und was weiter?"] And the same could be asked if a person had given himself a private definition of a word; I mean, if he has said the word to

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called "sceptical solution" (pp. 66-69 and 84-86) to the problem that the individualist is confronted with, that is, the "sceptical [Wittgensteinian] paradox" (p. 21).

<sup>16</sup> Ibid., p. 112 n. 88.

himself and at the same time has directed his attention to a sensation.<sup>17</sup>

The passage on independent wills is a good example of the applicability of Kripkenstein's analysis to a critique of individualistic models of self-constitution. The target of Kripke's passage is the defender of the view that an endorsement of practical rules and principles can be achieved without any contribution by a second, independent person, let alone by a community of such persons and their shared practices and forms of life. In Korsgaard's examples of Jeremy<sup>18</sup> and Derek Parfit's Russian Nobleman,<sup>19</sup> in which she illustrates the mechanics of how specific practical identities work, she presents the process of reflection and endorsement as being completed within the perspective of a potentially lone deliberator whose mental life of past and current intentions provides the material for her self-legislative acts of identity-formation. These examples imagine two fictional characters who fail at the task of self-constitution, but they do so on purely internal grounds, systematically ignoring the principles of instrumental rationality and the categorical imperative, respectively.

When Kripke criticizes the supposed sufficiency of private mental states such as intentions and memories, this target finds its action-theoretical counterpart in the constitutivist's confidence that a robust commitment to practical norms can be achieved from within the first-personal stance. The Kripkensteinian account, however, suggests that the solitary rule- and principle-follower is condemned to achieving, at most, an inconclusive practical identity in which he simply witnesses, as Kripke says above, "conflicting brute inclinations [that he encounters], while the upshot of the matter depends on his will alone." (More on this in Sections 7 and 8 below.)

Still, it remains opaque what Kripke precisely means by the startling things that he says in this passage. I will return to Kripke's curiously Kantian language of "brute inclinations" and the "will," but before we get there, I need to say more about other passages in Kripke's text. I have in mind his claim that there is a special kind of

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<sup>17</sup> Wittgenstein, *Philosophical Investigations*, p. 80.

<sup>18</sup> Korsgaard, *Self-Constitution*, p. 169.

<sup>19</sup> *Ibid.*, pp. 185–86.

“utility” present only in relationships between myself and, at least, one distinct and independent other will.

Concluding his rejection of the traditional, meaning-determinist account of what we can and cannot attribute to a supposed rule-follower considered in isolation, Kripke refers to an influential passage in Wittgenstein that communitarians about rule-following often highlight. I quote the entire passage, but the negative part is crucial for my current purposes: “And hence also ‘obeying a rule’ is a practice. And to *think* one is obeying a rule is not to obey a rule. Hence it is not possible to obey a rule ‘privatively’: otherwise thinking one was obeying a rule would be the same thing as obeying it.”<sup>20</sup> In the literature on Wittgenstein’s *Philosophical Investigations*, it is deemed important to conjoin this quotation with paragraph 258, which is considered the conclusion of the “private language argument.” According to Wittgenstein, by introspectively (and privately) assigning “S” to a specific sensation of mine, thereby attempting to establish my normative rule that is supposed to determine the (stable) meaning of “S,” I can tell myself at most the following: “I impress it [the connection between sign “S” and my sensation] on myself’ [and I do so] by the concentrating of my attention on the sensation.”<sup>21</sup> He concludes his critique of such an attempt at privately defining a sign next: “But ‘I impress it on myself’ can only mean: this process brings it about that I remember the connexion *right* in the future. But in the present case I have no criterion of correctness. One would like to say: whatever is going to seem right to me is right. And that only means that here we can’t talk about ‘right’.”<sup>22</sup>

Immediately after endorsing this set of thoughts by Wittgenstein, Kripke introduces for the first time the rationale for why the shortcomings of private rule-following can be rectified only when “considering [the individual] as interacting with a wider community.”<sup>23</sup> Kripke says, “Others will then have justification conditions for attributing correct or incorrect rule following to the subject, and these will *not* be simply that the subject’s own authority is unconditionally to

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<sup>20</sup> Wittgenstein, *Philosophical Investigations*, p. 69.

<sup>21</sup> *Ibid.*, p. 78.

<sup>22</sup> *Ibid.*

<sup>23</sup> Kripke, *Wittgenstein on Rules and Private Language*, p. 89.

be accepted.”<sup>24</sup> Another telling passage, again deploying the Kantian notion of “inclinations,” is the following: “The criterion by which others judge whether a person is obeying a rule in a given instance cannot simply be his sincere inclination to say that he is, otherwise there would be no distinction between his thinking he is obeying the rule and his really obeying it (§202), and whatever he thinks is right will be right (§258).”<sup>25</sup>

According to Kripke, the practice of acknowledging a specific individual as a rule-follower takes on the role of a verdict, a judgment, a—we might say—public act of awarding the candidate rule-follower a certain status. It is the social status of being someone who has successfully incorporated a certain principle into her practical identity, to put it in constitutivist terms. The above-criticized internal resources of first-personal self-ascription of a rule fall short of providing the kind of accountability relationship distinctive of the one that only other independent agents can provide. Again, “holding accountable” is not a narrowly defined moral notion in the current context. Rather, it is the judgment-based solution to Wittgenstein’s puzzle regarding the conceptual distinction between thinking one follows a rule, on the one hand, and actually doing so, on the other.

An illustration of this abstract train of thought is provided in Kripke’s example of Jones and Smith. Jones resides in a community and claims to perform an act of addition. He thus differs from Crusoe in that he is in the social condition of finding himself in the presence of at least one other agent, Smith. In what follows, let us again pay close attention not only to the deontic language that is used by Kripke, but also to the appeal to normative categories more generally. Kripke argues that Jones

is entitled, subject to correction by others, provisionally to say, “I mean addition by ‘plus’,” whenever he has the feeling of confidence—“now I can go on!” that he can give “correct” responses in new cases; and *he* is entitled, again provisionally and subject to correction by others, to judge a new response to be “correct” simply because it is the response he is inclined to give.<sup>26</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 101 n. 82.

<sup>26</sup> Ibid., p. 90.

Keep in mind that constitutivist accounts are strongly first-personal, that is, they conceptualize the normative question of self-constitution from within the deliberative standpoint of, in our current case, Jones. Without explicitly drawing the distinction between first- and third-personal perspectives himself, this clearly is relevant for Kripke's account. After all, we learn two central things about Jones. First, according to Kripke, a certain kind of relatively stable self-conception suddenly appears feasible for Jones. It now seems that independently of whether or not the other person, Smith, co-certifies Jones's status as a successful member of the addition-community, Jones himself has a practically relevant "feeling of confidence" that makes Jones inclined to utter the claim that he is employing the addition rule. There even seems to be a distinctively normative element to Kripke's account of Jones's practical standpoint, namely, when he is described as having an "entitlement" (in the sense of authority) to do what he does. One therefore wonders, at this point, what has happened to the impossibility of rule-following in the absence of others' judgments regarding one's activities?

### **7. Resolving the Puzzle with Kripkenstein (II): Provisional vs. Conclusive Self-Constitution**

However, let us pay close attention to other features of the Jones and Smith example in which Jones is awarded a distinctive first-personal authority, with its potential to be sufficient grounds for self-constitution. Kripke stresses that Jones's entitlement is merely provisional, that is, it awaits co-certification by at least one other person due to the latter's volitional capacities and powers of judgment. I doubt that Kripke intended any Kantian interpretation of the Jones and Smith scenario. Still, it is striking that his contrast between provisional and conclusive normativity is reminiscent of Kant's practical philosophy. Here, only Kant's political philosophy and jurisprudence are relevant for our interpretive task.<sup>27</sup> With regard to legal rights such as property and contracts, Kant argues that unilaterally declaring in the state of nature, for example, an external

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<sup>27</sup> The contrast between provisional and conclusive norms is developed in Immanuel Kant, "The Doctrine of Right," in Immanuel Kant, *The Metaphysics of Morals*, in *Practical Philosophy*, trans. Mary Gregor (New York, NY: Cambridge University Press, 1996), pp. 409–11.

possession to be mine remains an incomplete act of acquisition. In contrast to John Locke, Kant holds that only when we all move into the normative community (the “rightful condition”) constituted by the “omnilateral will” of all who are subject to the resulting coercive (and law-governed) institutions of property, will a provisional rights-claim become a conclusive, legitimate, and enforceable one. Kripke seems to use this language of provisionality to an analogous end, when describing Jones and his provisional attempts at constituting himself into a successful follower of a specific mathematical rule.

Given the contrast between provisional and conclusive normativity that I see in Kripkenstein, we can reformulate and clarify the objection to the public identity claim. We should ask the objector to clarify the following ambiguity: When you talk about two possibilities of self-constitution in your argument, do you mean the provisional or the conclusive acts of identity-constituting action? In particular, when the possibility of Crusoe’s self-constitution is postulated in premise two, are we talking about a robust, stable, and finalized self-understanding on the part of Crusoe in terms of the principles and rules that he strives to follow?

In light of Kripke’s passages discussed so far, let us state this revised formulation of the objection:

Premise one: If provisional agency (self-constitution, maintaining a practical identity) is possible in the asocial world with regular laws of nature, then provisional agency is possible in the social world without social norms and practices.

Premise two: Provisional agency (self-constitution, maintaining a practical identity) is possible in the asocial world with regular laws of nature.

Conclusion: Provisional agency (self-constitution, maintaining a practical identity) is possible in the social world without social norms and practices.

I investigate this version of the objection because it poses the biggest threat to the public identity claim by undermining the idea that interpersonal norms of non-interference are necessary for self-constituted identity. In the presence of others, my analysis of Kripke’s passages—in which he refers to primitive inclinations as well as to provisional normativity—suggests that premise two of the revised

objection might actually hold, even with Kripke's attack on solitary rule-following. Especially from the first-personal point of view of a practically deliberating agent, it appears plausible that a certain level of subjective confidence regarding one's norms and principles can be achieved and maintained by a character like Crusoe. Crusoe might then count as a provisional rule-follower who tells himself such things as "I've got it!" regarding both the rule of addition and the practical-action principles that constitutivists consider the cement holding together individual deliberative standpoints. If provisional rule-following suffices for self-constitution, why should the Kripkean account present a challenge to individualistic varieties of constitutivism after all?

Let us grant for the moment premise two in its provisional formulation. It might appear plausible that provisional agency in Crusoe (antecedent) implies the same possibility in the case of individuals in the social condition without normative social practices (consequent). Why, the objector repeats, should not an individual agent treat other subjects in the same way in which Crusoe treats tigers and tornados? Yes, these are all threats to his provisional self-constitution. However, they are predictable, manageable threats that do not require a distinctively normative response.

Provisional rule-follower Jones, introduced by Kripke, even appears to satisfy the consequent of premise one. Jones utters, with his unique subjective confidence, the statement "I am engaged in an act of addition." That act seems to be something that he can accomplish without Smith and the community of rule-followers taking him in and without anybody awarding Jones the social status of a conclusive rule-follower. Isn't it enough that he constitutes himself provisionally?

The individualist about self-constitution might even grant that the resulting practical identity is deficient in terms of conclusive self-constitution. However, since self-constitution comes in degrees anyway, the strict necessity and inescapability that my public identity claim postulates is again not established. A provisional and low-degree-instantiation of agency would be possible in both Crusoe's and Jones's cases. And for the objection to do its devastating work regarding the claim that interpersonal norms are necessary for self-constitution *simpliciter* when others are around, establishing the possibility of provisional agency in Jones's case is all that is required for the first premise to remain true. The possibility of Crusoe's provisional practical identity implies the possibility of Jones's provisional self-constitution.

### **8. Resolving the Puzzle with Kripkenstein (III): Crusoe's vs. Jones's Provisional Self-Constitution**

I call into question premise one, though, even in its provisional formulation. In addition, in spelling out why premise one does not hold, I will identify a surprising benefit that comes with analyzing the revised version of the objection, namely, that it avoids the potential circularity identified above in Section 5. First, however, why does premise one fail? In other words, why does the possibility of Jones's provisional self-constitution remain unsecured, even if we grant that Crusoe, considered in isolation, can achieve it? I argue—contrary to what even Kripke seems to claim—that Jones is in an even *worse* position than Crusoe is with regard to his options and opportunities regarding self-constituting activities and rule-following.

In order to outline this last reply, I return to this article's central two contentions, which are reflected in its title: other agents are both a blessing and a curse. First, the presence of other agents ensures the services and utilities that Kripkenstein highlights and that interpersonal views of meaning are commonly thought to champion. Wittgenstein, as well as Kripke—though they do not discuss moral philosophical theses—regard the community and its services as a blessing for achieving the feat of conclusive rule-following. Kripke elaborates on the Wittgensteinian notion of “forms of life,” which he understands “as the set of responses in which we agree, and the way they interweave with our activities.”<sup>28</sup> When he describes Wittgenstein's skeptical solution as “the game of concept attribution,” Kripke connects that general game's service of “providing conditions under which we are justified in attributing concepts to others” with his earlier reflections on the “utility of this game in our lives.”<sup>29</sup>

The utility of this most basic of all games (mutually attributing the status of fellow rule-followers) is illustrated by a mundane interaction between a grocer and her customer who buys five apples.<sup>30</sup> Ignoring some of the nuances of Kripke's description, he concludes that the utility of us agreeing in terms of rules such as addition is evident in allowing two parties to form stable and predictable patterns

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<sup>28</sup> Kripke, *Wittgenstein on Rules and Private Language*, p. 96.

<sup>29</sup> *Ibid.*, p. 95.

<sup>30</sup> *Ibid.*, p. 92.

of interaction and expectations. The same counts for a child, who we take into our community of reliable rule-followers at a certain point in its development. Kripke sums up this act of initiation in the following passage, in which it is important to note what the community members are *doing* with regard to the child:

When we pronounce that a child has mastered the rule of addition, we mean that we can entrust him to react as we do in interactions such as that just mentioned between the grocer and the customer. Our entire lives depend on countless such interactions, and on the “game” of attributing to others the mastery of certain concepts or rules, thereby showing that we expect them to behave as we do.<sup>31</sup>

These claims by Kripke and Wittgenstein, while morally bland, are cast in a stark normative light. They point to the abilities and capacities that the community members *qua* individuals must have in order to succeed at any games and institutions in conclusively establishing and maintaining each other’s status as rule-followers.

At this point, the curse portion of my argument becomes relevant, and we can now return to this point in the light of the distinction between provisional and conclusive agency. The independence of other wills is not merely a prerequisite of conclusive (as distinct from provisional) self-constitution. That independence, manifested by Smith and the other community members vis-à-vis Jones, is for that very reason at the same time a unique threat to the accessibility of conclusive norms. The characteristic unpredictability, both in outward action and with regard to the acts and judgments of awarding the status of conclusive rule-follower, is the other side of Kripke’s coin of independent wills. This radical independence and sovereignty of others—and it must be radical, since individuals cannot emulate and simulate it from within their own first-personal stances and volitional perspectives—must be conceived of as coming with the property of potentially erratic and volatile arbitrariness.

I can now add a corollary to the revised version of premise one of the objection. The curse aspect of other agents’ normative abilities and powers does not merely threaten Jones’s conclusive self-constitution in the social condition insofar as others’ normative abilities remain unchecked by shared non-interference norms in that

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<sup>31</sup> Ibid., p. 93.

condition. The twist is that even the provisionally successful standing as a rule-follower of someone like Jones is in jeopardy due to the curse part of the picture. We need to vindicate this threat to Jones's provisional self-constitution in order to undermine the implication that revised premise one incorporates.

To see how this reply might unfold, I pull together the distinct strands of the argument against premise one that we have available at this point. We can keep granting the possibility of provisional rule-following and self-constitution in Crusoe's case. Even so, and in contrast to Kripke's own presentation of the case, we block precisely that possibility in the case of Jones. Jones finds himself in the presence of other beings like Smith, who possess the aforementioned normative abilities necessary for ascribing the status of conclusive rule-follower to Jones. Because of Smith's presence—and this presence's relevance for Jones's conclusive rule-following—Jones is now *not* in a position to adopt a thoroughgoing non-normative stance toward the potential impediments to his self-constituting actions, which, after all, co-reside in these abilities of Smith's agency. In this important respect, Jones's predicament necessarily differs from our born Crusoe's situation, who, again for the sake of argument, has taken up an entirely non-normative stance with regard to tigers and tornados.

Due to the curse of other agents, which has its origin in the abilities and competences that are necessary to provide the background for *conclusive* rule-following, Jones's prospects for *provisional* self-constitution are actually worse than those of Crusoe. Crusoe's provisional agency is viable in a way that is inaccessible to Jones. Moreover—and now we return to defending the public identity claim—in order to overcome this unique threat to even his provisional self-constitution, Jones must contribute to constructing the practical device of some kind of public identity, with its distinctive rules of non-interference. Only the latter's establishment and public acknowledgment secures the individual "assured free sphere"<sup>32</sup> that Jones needs in order to develop and manifest Kripke's "confidence" in his rule-following assertions, itself a part of his, initially, provisionally constituted practical identity.

As a result of considering the revised version of the objection to the public identity claim, it turns out that the inescapable task of self-constitution in the asocial condition is less of a challenge than its

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<sup>32</sup> Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960), p. 139.

pendant in the social condition. While Crusoe's provisional rule-following will never reach the stage of its conclusive counterpart, it can be accomplished and maintained in the absence of social practices and institutions of non-interference rules. Jones, on the other hand, cannot accomplish this task to the same extent as long as he remains within the reach of Smith's interference attempts.

### **9. Conclusion: Resolving the Puzzle**

There is more work to be done to spell out the notions of provisional and conclusive agency and how they differ from each other. Instead of engaging in that daunting task, let us have a brief final look at the structural consequences concerning my reply to the revised objection. Recall that the question has been: How do the above observations help with overcoming my worry regarding the response to the initial version of the objection? Different from the earlier exchange, we now call into question the possibility of what is postulated in premise one's consequent on grounds that are sufficiently independent of what is going on in any analysis of premise two. Since we are now unambiguously granting premise two and the possibility of Crusoe's rule-following in its provisional manifestation, we are not even implicitly relying on a rejection of premise one's antecedent.

My main task of undermining the truth of premise one now takes a detour via the freestanding idea of "conclusive rule-following," that is, via a claim about what is required for that inescapable aim to be accomplished. It turned out that Kripke's picture of what is required in terms of normative competencies and preconditions on the part of community members for a conclusive individual agency like Jones's, is at the same time the source of the distinct trouble for Jones's provisional (and not merely conclusive) self-constitution. Since the necessary prerequisites of the possibility of conclusive rule-following are conceptually distinct from the necessary prerequisites of the possibility of provisional rule-following, the starting point for attacking the material implication expressed in premise one does not run into the potential pitfall of my rebuttal discussed in Section 5. The more refined conceptual apparatus of the two distinct tasks of provisional versus conclusive self-constitution promises to make available this alternative dialectic.

## An Argument Against Welfare Rights<sup>1</sup>

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### 1. Introduction

Imagine that the majority of people in the United States working in agriculture, healthcare, and education quit their jobs.<sup>2</sup> Food, healthcare, and educational services are in short supply, and many U.S. residents suffer as a result. Have the rights of those who are suffering been violated by this mass exodus from jobs? One could argue that the answer is “yes,” if we assume that there are rights to have access to basic necessities such as food, healthcare, and education—rights that are often referred to as *welfare* rights.<sup>3</sup> Now that there are so few

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<sup>1</sup> Fred Miller was a member of my dissertation committee. At one point, the topic of my dissertation was the question of whether or not welfare rights are compatible with a right to liberty. Although I ended up writing my dissertation on something else, I never lost interest in that question. I’d like to think of this article as a short version of what my dissertation would have become had I not switched topics. As such, this article reflects much of Fred’s input and guidance. For his help (and patience!), I am deeply indebted.

<sup>2</sup> This thought experiment may remind the reader of the “mind strike” depicted in Ayn Rand’s novel *Atlas Shrugged* (New York: Random House, 1957). Unlike the scenario in that novel, my thought experiment does not involve any assumption about the motives that lead all these workers to quit their jobs. Although my argument against welfare rights is similar to arguments made by Randian Objectivists, it does not presuppose any particular moral theory (e.g., ethical egoism). For an Objectivist-inspired argument against the right to healthcare that is similar to my argument against welfare rights generally, see Robert M. Sade, “Medical Care as a Right: A Refutation,” *New England Journal of Medicine* 285, no. 23 (1971), pp. 1288–92.

<sup>3</sup> The international community recognizes such rights in articles 25 and 26 of the United Nations’ Universal Declaration of Human Rights. (Other articles in that document, e.g., articles 23 and 24, also, arguably, mention welfare rights.) I think it is no exaggeration to say that the mainstream view among

people providing food, healthcare, and education, residents of the U.S. are denied what they have rights to.

If our former agriculture, healthcare, and education workers have violated anyone's rights, what are the implications? For one thing, it was unethical for these people to quit their jobs, so they were obligated to stay in their professions. And if it was wrong for these people to quit their jobs because others would no longer have access to the objects of their rights, then it appears persons have a duty to go into these careers when there aren't enough people in these professions to meet the demand for their services. Additionally, if we assume that the rights in question are *prima facie* enforceable by governments, then our former agriculture, healthcare, and educational workers are liable to being forced to go back to work.<sup>4</sup> And if, somehow, there are still not enough people in these professions to meet the demand, then it appears the government may force additional people to work these jobs.

So far, the discussion has centered on a thought experiment. Now let's turn to the real world. Across the globe, people suffer from lack of healthcare as a result of a shortage of medical workers.

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contemporary political philosophers is that there are such rights, at least in the general sense that justice entitles people, either as human beings or members of a political community, access to a set of goods and services that one can *at least* subsist on, if not a larger set of goods and services. There are too many authors who defend welfare rights to list all of them. However, a representative sample includes Elizabeth Ashford, David Copp, Alan Gewirth, Pablo Gilabert, James Griffin, James Nickel, Rodney Peffer, Raymond Plant, Amartya Sen, and Henry Shue. Thomas Pogge's view is difficult to classify because he claims only to be defending, in the first instance, negative duties of justice. Positive duties of justice are indirect, in the sense that they are duties to compensate victims of injustice. Welfare rights, in the way I understand them, directly entail positive duties. In this case, Pogge does not, strictly speaking, defend welfare rights. Nonetheless, Pogge's work has been a huge influence on theorists who do defend welfare rights. See Thomas Pogge, *World Poverty and Human Rights*, 2<sup>nd</sup> ed. (Cambridge, UK: Polity, 2008).

<sup>4</sup> I am unaware of any defenders of welfare rights who deny that they are *prima facie* enforceable. However, some authors deny that it is part of the *concept* of a moral right that it is *prima facie* enforceable. For instance, see John Tasioulas, "The Moral Reality of Human Rights," in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* ed. Thomas Pogge (Oxford, UK: Oxford University Press, 2007), pp. 75–101, at pp. 85–88; Allen Buchanan, *The Heart of Human Rights* (Oxford, UK: Oxford University Press, 2013), chap. 2.

According to the authors of a recent study, “Based on minimum threshold estimates for reaching a UHC effective coverage of 80 out of 100, national health workforce shortages in 2019 amounted to daunting totals: approximately 6.4 million physicians, 30.6 million nurses and midwives, 3.3 million dentistry personnel, and 2.9 million pharmaceutical personnel.”<sup>5</sup> Over half the shortfall in each category is attributable to shortages in Sub-Saharan Africa and South Asia. A large proportion of physicians from these regions end up moving to high-income countries, most often the United States and the United Kingdom.<sup>6</sup> With respect to education, UNESCO estimates that in Sub-Saharan Africa, an additional 16.5 million teachers are needed to achieve universal primary and secondary education by 2030. At current rates of annual teacher growth, this goal will not be achieved.<sup>7</sup> If access to healthcare is a right, then haven’t physicians from Sub-Saharan Africa, South Asia, and other developing countries who have migrated to high-income countries violated people’s rights? If rights are enforceable, shouldn’t developing countries force their physicians to practice medicine at home? If education is a right, don’t many of us have an obligation to teach in Sub-Saharan Africa? Might some African governments be entitled to coerce people to teach?

The line of reasoning presented so far might seem absurd. Few advocates of welfare rights say that there is a duty to work in agriculture, healthcare, education, or any other line of work, let alone that people may be forced to do so. In fact, advocates of welfare rights generally reject such notions.<sup>8</sup> All of this is true. Nonetheless, I will argue that if people do have welfare rights, then others have duties to

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<sup>5</sup> Annie Haakenstad et al., “Measuring the Availability of Human Resources for Health and Its Relationship to Universal Health Coverage for 204 Countries and Territories from 1990 to 2019: A Systematic Analysis for the Global Burden of Disease Study 2019,” *Lancet* 399, no. 10341 (2022), pp. 2129–54, at p. 2143. “UHC” stands for Universal Health Coverage.

<sup>6</sup> Ehui Adovor et al., “Medical Brain Drain: How Many, Where and Why?” *Journal of Health Economics* 76 (2021), article no. 102409.

<sup>7</sup> United Nations Educational, Scientific, and Cultural Organization, *Transforming Education from Within: Current Trends in the Status and Development of Teachers* (Paris, FR: United Nations Educational, Scientific, and Cultural Organization, 2022), pp. 5–6.

<sup>8</sup> There are some exceptions, as we shall see in Section 3.

become things like farmers, doctors, teachers, etc., that is, goods and service (GS) providers. This follows from some commonplace assumptions about rights that every rights-theorist would assent to.

## 2. The Argument

Welfare rights are claim-rights and, as such, entail duties. My argument that welfare rights entail duties to become GS-providers assumes a very modest correlativity thesis regarding claim-rights and duties.<sup>9</sup> The modest correlativity thesis (MCT) is:

If A has a right to  $\phi$ , then someone, in circumstances in which it is feasible, has a duty to make sure  $\phi$  obtains, where such a duty is understood as at least being a *pro tanto* obligation.

MCT is compatible with a wide range of views regarding the relationship between rights and duties. For instance, MCT is entailed by, and so is compatible with, an interpretation of rights that treats all rights as Hohfeldian-claims.<sup>10</sup> On such an interpretation, a right only entails a single duty, namely, a duty with the same content as the right. Also, on this Hohfeldian view, the duty-bearers are always identifiable individuals or groups of individuals (the identifiable individuals may include every living person). To sum up the Hohfeldian view, rights entail, and only entail, duties that assign specific actions to specific individuals.

Although MCT is entailed by the Hohfeldian view, the reverse is not true. MCT does not say that rights necessarily entail duties with identifiable duty-bearers. For instance, MCT allows that I may have a right to assistance in a life-threatening emergency without it being specified who owes me assistance. Even at the time of a life-threatening emergency, there may be no one *in particular* who is obligated to help me, even though *someone* must. Therefore, MCT allows for the rejection of the view that all rights must be claimable against specific individuals.<sup>11</sup> Also, MCT does not say that for every

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<sup>9</sup> Henceforward, I will use “rights” and “claim-rights” interchangeably.

<sup>10</sup> Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*, ed. Walter Wheeler Cook (New Haven, CT: Yale University Press, 1919).

<sup>11</sup> This view is commonly associated with Onora O’Neill. See Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge, UK: Cambridge University Press, 1996), pp. 128–36; Onora

right there is only a single duty with the same content as that right. For instance, MCT is compatible with Henry Shue's view that for every basic right, there are *three* types of duties: "Duties to *avoid* depriving . . . . Duties to *protect* from deprivation . . . . Duties to *aid* the deprived."<sup>12</sup> It is also compatible with Joseph Raz's view that rights are *dynamic*: they give rise to new duties in new circumstances.<sup>13</sup>

MCT does mention performance of an action that is sufficient to bring about  $\phi$ . In *that* sense, MCT says there is *some* duty with the same content as the right. However, MCT allows that the action which would be sufficient for bringing about  $\phi$  may not be currently feasible. In such a case, we might wish to say that the right to  $\phi$  entails duties on others to take actions to make what is not feasible today feasible tomorrow.<sup>14</sup> MCT can even accommodate a view of rights which holds that a right to  $\phi$  may exist not only when bringing about  $\phi$  is currently not feasible, but even when there is no remote possibility of ever being able to bring about  $\phi$ .<sup>15</sup> This is possible because MCT only makes the conditional claim that *if* bringing about  $\phi$  is feasible, *then* someone has

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O'Neill, "The Dark Side of Human Rights," *International Affairs* 81, no. 2 (2005), pp. 427–39. For criticisms of O'Neill's view, see Elizabeth Ashford, "The Inadequacy of Our Traditional Conception of the Duties Imposed by Human Rights," *Canadian Journal of Law and Jurisprudence* 19, no. 2 (2006), pp. 217–35; Elizabeth Ashford, "The Duties Imposed by the Human Right to Basic Necessities," in *Freedom from Poverty as a Human Right*, ed. Pogge, pp. 183–218; Tasioulas, "The Moral Reality of Human Rights," pp. 88–95. For a defense of O'Neill's view, see Stephanie Collins, "The Claims and Duties of Socioeconomic Human Rights," *The Philosophical Quarterly* 66, no. 265 (2016), pp. 701–22; Cristián Rettig, "The Claimability Condition: Rights as Action-Guiding Standards," *Journal of Social Philosophy* 51, no. 2 (2020), pp. 322–40.

<sup>12</sup> Henry Shue, *Basic Rights*, 2<sup>nd</sup> ed. (Princeton, NJ: Princeton University Press, 1996), p. 52.

<sup>13</sup> Joseph Raz, *The Morality of Freedom* (Oxford, UK: Clarendon Press, 1986), pp. 171 and 185–86.

<sup>14</sup> For such a view, see Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford, UK: Oxford University Press, 2012), pp. 137–38; Pablo Gilabert, *Human Dignity and Human Rights* (Oxford, UK: Oxford University Press, 2018), pp. 79–80.

<sup>15</sup> For such a view, see Rodney Peffer, "A Defense of Rights to Well-Being," *Philosophy & Public Affairs* 8, no. 1 (1978), pp. 65–87, at pp. 80–81.

a duty to bring it about. This claim holds true even in cases where there is little, if any, likelihood of the antecedent ever holding true.

Finally, while MCT is compatible with a view that sees rights as generating all-things-considered obligations, it does not entail such a view. MCT only says that rights *at least* entail *pro tanto* obligations. Even if these obligations can be overridden, they are not easily or normally overridden. I gather that most, if not all, rights-theorists would agree.

I don't see how a right to  $\phi$  could be a claim-right while denying MCT. If a right imposes any duty, MCT must be true. Someone might say that the concept of a claim-right only entails that there is some duty on someone else's part. There need be no duty anyone has to bring about  $\phi$ . I understand that being the case when bringing about  $\phi$  is not feasible; after all, "ought" implies "can." However, to say that someone has a claim-right to  $\phi$ , but not a single person has a duty to bring about  $\phi$ , even when doing so is feasible, makes no sense. To say that a person has a right to  $\phi$  would, in this case, be meaningless.

Given the truth of MCT, then it follows straightforwardly that if people have rights to goods and services such as food, healthcare, and education, etc., then some people, in circumstances in which it is feasible, have *pro tanto* obligations to become GS-providers. This implication is troubling, for two reasons.

First, it is one thing to say that we have duties to rescue people when we can do so at little cost, by, for instance, giving someone CPR or donating to charity. It is another thing to say one has a duty to go into a particular profession. This is a much more onerous thing to require of someone than asking him to save someone else in a one-off incident or asking him to part with a small portion of his money.

Second, if welfare rights are *prima facie* enforceable, then it is *prima facie* acceptable for governments to compel citizens to comply with the correlative duties. If the correlative duties include duties to become GS-providers, then welfare rights license forced labor. That is an even more worrisome implication than simply the implication that there is a moral duty to become a GS-provider. For these two reasons, we should reject the view that people have welfare rights.

Nothing is being said here about the onerousness of donating a substantial portion of one's income to poverty relief or about the injustice of redistributive taxation. Typically, when the reasonableness of the demands imposed by welfare rights is discussed, the focus is solely on money: rich nations should devote more of their GDP to

poverty relief in poor countries, the rich should pay more in taxes, etc. Since the demand that a rich person part with some percentage of her income or wealth seems trivial compared to the poor going without food, healthcare, or education, the duties generated by welfare rights are deemed reasonable.

However, welfare rights do not simply require some people to part with their money. All the money in the world won't help anyone meet their basic needs, if no one is willing to produce or provide the food, medical care, and education that money could buy. If welfare rights are to be fulfilled, then some people need to step up to the plate and produce or provide the relevant goods and services. *That*—not the demand for the well-off to pay more in charity donations or taxes—I argue, is an unreasonable demand.

### 3. Objections

One objection to my argument is that nearly every author who has defended welfare rights has said that these rights cannot entail unreasonably burdensome duties, such as the demand that individuals literally provide these goods and services. For instance, James Nickel defends a “secure claim to lead one’s life” and says that this claim entitles people to freedom in the choice of their occupation.<sup>16</sup> Additionally, Pablo Gilabert, who argues for welfare rights on contractualist grounds, says that principles for aiding the poor that do not take into account the importance of personal projects (and relationships) should be rejected.<sup>17</sup> Even more germane to our issue, Gilabert says that people have a generic reason for rejecting any moral principle that would allow for slavery because “people have strong reason to want to be able to be in control of some central aspects of their lives (to choose whether, when, and where to work, for example).”<sup>18</sup>

No doubt welfare rights theorists generally assert that the duties entailed by welfare rights cannot be unreasonably burdensome and that a duty to become a GS-provider would be unreasonably burdensome. However, my point is that such assertions are

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<sup>16</sup> James Nickel, “Poverty and Rights,” *The Philosophical Quarterly* 55, no. 220 (2005), pp. 385–402, at pp. 392–93; James Nickel, *Making Sense of Human Rights*, 2<sup>nd</sup> ed. (Malden, MA: Blackwell Publishing, 2007), pp. 63–65.

<sup>17</sup> Gilabert, *From Global Poverty to Global Equality*, p. 33.

<sup>18</sup> *Ibid.*, p. 30.

incompatible with another assertion, namely, that people are entitled to have access to various goods and services. The only way to make these assertions compatible is to deny MCT, and such a move would be implausible.

A second objection to my argument points out that many welfare rights theorists place the burden of meeting people's needs on *institutions* (in particular, governments), so no individual has a duty to become a GS-provider. For instance, Nickel says, "The primary addressees of human rights are the world's governments."<sup>19</sup> The "right to an adequate standard of living" that David Copp defends is a right that one holds against his or her state.<sup>20</sup> And James Griffin says, "[I]n the case of the human right to welfare it seems to me justified, in these times of concentration of wealth and power in central governments, to place the burden to a large extent on them."<sup>21</sup>

But whatever institutions do is done by individuals who make up those institutions. Thus, institutions bearing the burden of satisfying people's welfare rights does not mean that individuals won't bear this burden. Saying that institutions bear this burden just means that certain individuals, in virtue of their membership in an institution, have a set of responsibilities that they don't have in virtue of merely being human or in virtue of some other fact about them (e.g., having undertaken some action like making a promise).

One could argue that institutions not only have the capacity to assign responsibilities to individuals, but they also have the capacity to do so in a way that is fair and that places reasonable burdens on people. The problem with this move, however, is that there is no way institutions can assign responsibilities such that everyone's welfare rights can be met and the burdens are reasonable. The burdens of producing food, providing healthcare, and providing education will have to be assigned to some people. Those are unreasonable burdens.

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<sup>19</sup> Nickel, *Making Sense of Human Rights*, p. 38.

<sup>20</sup> David Copp, "The Right to an Adequate Standard of Living: Justice, Autonomy, and the Basic Needs," *Social Philosophy & Policy* 9, no. 1 (1992), pp. 231–61.

<sup>21</sup> James Griffin, *On Human Rights* (Oxford, UK: Oxford University Press, 2008), p. 104. For a general discussion of the crucial role of institutions in fulfilling the duties correlative to welfare rights, see Henry Shue, "Mediating Duties," *Ethics* 98, no. 4 (1988), pp. 687–704; Shue, *Basic Rights*, pp. 153–80.

Pushing back on this, the welfare rights theorist might respond that as long as an institution's members have voluntarily chosen to be members, then there is nothing unreasonable in assigning any of those members the burdens just mentioned. However, welfare rights theorists don't generally think the choice to be an institutional member is necessary for having responsibilities for fulfilling welfare rights. For instance, those who identify governments as the primary duty-bearers take this to entail duties on the part of native-born citizens to pay the necessary taxes.

So far, we've assumed that the relevant institutions already exist. What if they don't? Welfare rights theorists typically argue that in the absence of institutions that can meet people's basic needs, members of a society have obligations to create those institutions. Given that any institution capable of meeting people's basic needs must include GS-providers, this means that some members of society have duties to become GS-providers. Since, by hypothesis, the relevant institutions don't yet exist, these duties cannot sensibly be described as institutionally based.

A third objection is that if my argument is sound, it would rule out all rights, not just welfare rights. The motivation for this objection can be found in Henry Shue's influential analysis of a moral right. According to Shue, "A moral right provides the (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats."<sup>22</sup> By the "substance" of a right, Shue means "whatever the right is a right to": the substance of a right to liberty is liberty; the substance of a right to healthcare is healthcare.<sup>23</sup> The third conceptual component places a duty on other people to create or preserve effective institutions that enable people to enjoy the substance of their rights. It is not enough, according to Shue, that no one at the moment is depriving anyone of the substance of their rights.<sup>24</sup> The upshot is that even a right against physical assault, if it is to be adequately guaranteed, requires police, judges, legislators, etc.<sup>25</sup>

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<sup>22</sup> Shue, *Basic Rights*, p. 13.

<sup>23</sup> *Ibid.*, p. 15.

<sup>24</sup> *Ibid.*, p. 16.

<sup>25</sup> For a similar line of reasoning, see Stephen Holmes and Cass Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York, NY: W. W. Norton & Co., 2000). For criticisms of this line of reasoning, see Alan

If it is unreasonable to demand that anyone be a farmer, doctor, or teacher, isn't it unreasonable to demand that anyone be a police officer, judge, or legislator? If so, wouldn't that mean that there is no right to physical security—or any right for that matter?

Since I am inclined to think there is no duty to become a police officer, judge, or legislator, yet I also think people have rights, if Shue's analysis is correct, then that is a serious problem for my argument. However, I don't think that we need to accept Shue's analysis of a moral right. The reason is that the inclusion of the third component is under-motivated. In its defense, Shue says:

Perhaps if one were dealing with some wilderness situation in which individuals' encounters with each other were infrequent and irregular, there might be some point in noting to someone: I am not asking you to cooperate with a system of guarantees to protect me from third parties, but only to refrain from attacking me yourself.<sup>26</sup>

For pretty much everyone, though, Shue goes on to argue, there is no point in merely insisting that others not assault you:

[I]n an organized society, insofar as there were any such things as rights to physical security that were distinguishable from some other rights-to-be-protected-from-assaults-upon-physical security, no one would have much interest in the bare rights to physical security. . . . A demand for physical security is not normally a demand simply to be left alone, but a demand to be protected against harm. It is a demand for positive action, or, in the words of our initial account of a right, a demand for social guarantees against at least the standard threats.<sup>27</sup>

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Gewirth, *The Community of Rights* (Chicago, IL: University of Chicago Press, 1996), p. 35; Alan Gewirth, "Are All Rights Positive?" *Philosophy & Public Affairs* 30, no. 3 (2001), pp. 321–33; Andrew I. Cohen, "Must Rights Impose Enforceable Positive Duties?" *Journal of Social Philosophy* 35, no. 2 (2004), pp. 264–76.

<sup>26</sup> Shue, *Basic Rights*, p. 38.

<sup>27</sup> *Ibid.*, pp. 38–39.

The problem with Shue's response is that it only shows that we have an *interest* in setting up institutions for protecting our rights to physical security. Shue's response does not demonstrate that there is no *conceptual* distinction to be made between a right to physical security and a right to be protected against violations of physical security.<sup>28</sup> One can deny a duty to become a police officer, judge, or legislator without denying the existence of rights.<sup>29</sup>

Finally, one could object to either (or both) of the two assumptions my argument makes: (1) justice does not govern our occupational choices and (2) forcibly assigning jobs to people is unjust. Lucas Stanczyk<sup>30</sup> and Brian Berkey<sup>31</sup> each reject one of these assumptions, doing so on the basis of reasoning similar to my argument *against* welfare rights—up to a point. Stanczyk argues that the following set of propositions is inconsistent: “[1] Justice does not directly constrain occupational choice. [2] Justice forbids forcibly assigning jobs except where liberties are at risk. [3] Justice requires society to ensure more than merely liberties.”<sup>32</sup> He explains why this set of propositions is inconsistent:

Wealth, medicine, education: these are all products of human labor. But so are food, sanitation, clean water, adequate shelter, and virtually everything else some of us take for granted. Yet, if justice forbade forcibly assigning jobs, and if occupational choices could not be unjust, then society could not be required to provide any of these basic goods. For, were

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<sup>28</sup> On this point, see Cohen, “Must Rights Impose Enforceable Positive Duties?” p. 269.

<sup>29</sup> None of these criticisms affects the claim (alluded to in Section 2 above) that Shue's analysis of a moral right is compatible with MCT.

<sup>30</sup> Lucas Stanczyk, “Productive Justice,” *Philosophy & Public Affairs* 40, no. 2 (2012), pp. 144–64.

<sup>31</sup> Brian Berkey, “Obligations of Productive Justice: Individual or Institutional?” *Critical Review of International Social and Political Philosophy* 21, no. 6 (2018), pp. 726–53.

<sup>32</sup> Stanczyk, “Productive Justice,” p. 153. I have added numbers to the propositions.

able people to decline to produce them short of being forced, society could not provide them short of using force.<sup>33</sup>

So far, I am in agreement with Stanczyk, as is Berkey.<sup>34</sup> However, I reject the third proposition, Stanczyk rejects the second proposition, and Berkey rejects the first. Each of us reasons the way we do because we each think that rejecting any other proposition in the set would be more costly. To adequately resolve this dispute would require going well beyond the scope of this article. Instead, I will briefly explain what I see as the costs of denying the first and second propositions.

What I see as the major cost of rejecting the second proposition is that it means no longer being in a position to condemn forced labor. If one is willing to force people to provide, say, healthcare in developing countries where, as Stanczyk says, “Medical work . . . is often extremely difficult . . . and conditions can be horrific,”<sup>35</sup> then one is no longer in a position even to condemn forced labor involving grueling conditions, at least not as such. That means, for instance, that the Soviet Gulag cannot be condemned merely on the basis that it involved forced labor under “horrific” conditions. That, to me, seems very implausible.

With respect to the first proposition, rejecting it means more than just believing we have an imperfect duty of beneficence that we ought to take into account when choosing an occupation (along with personal considerations such as what we find interesting, what would allow us to live a comfortable life, where we would like to live, what our loved ones’ plans are, where can we provide our children with a high-quality education, etc.). If duties of justice grounded in people’s fundamental rights are at stake, then the personal considerations just mentioned shouldn’t be relevant. In fact, to speak of justice in this case as governing our choice of *occupation* is misleading. If we have duties of justice to become GS-providers, then, assuming our own welfare rights are met, why should our fulfillment of those duties be contingent on our making an income from it? No one should have to pay you to respect other people’s rights. Yet, the suggestion that it would be

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<sup>33</sup> Ibid., p. 152.

<sup>34</sup> Berkey, “Obligations of Productive Justice,” p. 728.

<sup>35</sup> Stanczyk, “Productive Justice,” p. 157.

inappropriate to take into account any of the personal considerations just mentioned in deciding what career to go into, let alone that it would be unjust to expect being paid for being a GS-provider, seems implausible to me. But again, I don't have the space here to justify fully that stance.

No doubt, rejecting the third proposition comes with costs of its own. However, as I will explain in the next section, the costs may not be as heavy as they seem.

#### 4. What the Argument Does Not Prove

My argument does not prove that there is anything wrong with government redistribution. It establishes only that one alleged justification for government redistribution—that people have welfare rights—fails. I have not addressed any other possible justifications, nor have I presented any positive argument for thinking that government redistribution is unjust.

One way of justifying government redistribution which my argument leaves open involves appealing to John Locke's "enough and as good" proviso on the appropriation of natural resources.<sup>36</sup> The Lockean Proviso differs in important ways from welfare rights. First, compliance with the Lockean Proviso requires only that we *refrain* from appropriating more than our fair share of natural resources (however "fair share" gets cashed out). There is no positive duty to provide anyone with a set of goods.<sup>37</sup> Only if one has violated the Lockean Proviso is there a positive duty to provide compensation. There is no rationale for such compensation having to take the form of particular goods like food, clothing, shelter, medicine, etc. It seems more consistent with the Lockean Proviso that what is owed in compensation is something fungible, such as money.<sup>38</sup> Herein lies a

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<sup>36</sup> John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, UK: Cambridge University Press, 1988), Bk. II, chap. 5, p. 288.

<sup>37</sup> Left-libertarians, who endorse egalitarian construals of the Lockean Proviso, explicitly reject the existence of enforceable, non-contractual obligations to render personal services. See Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy & Public Affairs* 33, no. 2 (2005), pp. 201–15, at p. 208.

<sup>38</sup> That's not to say that, under certain construals of the Lockean Proviso, the sick or the disabled aren't entitled to a greater share of natural resources—or compensation in the form of money—in virtue of their condition. See Michael

possible rationale for government redistribution: governments can levy redistributive taxes in order to address violations of the Lockean Proviso.<sup>39</sup> Such a rationale has the virtue of not grounding an obligation on anyone's part to become a GS-provider, let alone an enforceable one.

Another thing that my argument does not prove is that there are no positive rights of any kind. My argument is compatible, for instance, with a right to be rescued in an emergency situation (e.g., drowning) when others can do so at little cost. One might argue that people who lack access to basic necessities like food, healthcare, and education *are* in emergency situations. Rather than delve into the metaphysics of emergencies, I'll simply reply by saying that the right to be rescued that my argument leaves intact, whether or not it differs from welfare rights in being triggered by an emergency, differs with respect to what is demanded of duty-bearers. The right to be rescued would include the specification "at little cost to others." As I've been at pains to show, welfare rights entail duties that involve considerable costs.

Finally, my argument leaves room for any rights in the "ballpark" of welfare rights that are not, strictly speaking, rights to good or services. I won't speculate on what these might be. However, if there are such rights, their respect may require the kinds of services routinely provided by welfare states.

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Otsuka, *Libertarianism Without Inequality* (Oxford, UK: Oxford University Press, 2003), pp. 29–35.

<sup>39</sup> I say *possible* rationale because I am not necessarily endorsing it.

## Aristotelian Support for Millian Free Speech

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### 1. Aristotle and the Free Speech Debate

What could Aristotle have to offer to the contemporary debate over John Stuart Mill's view of free speech? Aristotle uses the term *parrhêsia* (often translated "freedom to speak without fear of punishment" or "speak freely") only a handful of times in his corpus. There is also nothing remotely related to Mill's right to express any opinion or sentiment no matter how unpopular or pernicious it is.<sup>1</sup> Given that *parrhêsia* was a privilege given to Athenian citizens rather than a right inherent to a political order,<sup>2</sup> it might seem folly to bring

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<sup>1</sup> Aristotle, in *Nicomachean Ethics*, trans. W. D. Ross, rev. J. O. Urmson, in *The Complete Works of Aristotle*, Vol. 2, ed. Jonathan Barnes (Princeton, NJ: Princeton University Press, 1985), refers to the attitude of the *megalopsuchos* (the great-souled person) who speaks freely (*parrhêsia*) in public as not worrying about reprisal (1124b29–31). He also uses *parrhêsia* in *NE* to refer to the candor that friends have with each other (1165a29–30). In the *Politics*, trans. Benjamin Jowett, in *The Complete Works of Aristotle*, ed. Barnes, *parrhêsia* must be discouraged in order to preserve a tyranny (1313b15–16). In the *Rhetoric*, trans. W. Rhys Roberts, in *The Complete Works of Aristotle*, ed. Barnes, those who speak with *parrhêsia* are not to be feared as those who are duplicitous (1382b19–21). In the *Rhetoric to Alexander*, trans. E. S. Forster, in *The Complete Works of Aristotle*, ed. Barnes, *parrhêsia* is evoked in the context of being candid within the assembly (1432b17–19). In the *Constitution of Athens*, trans. F. G. Kenyon, in *The Complete Works of Aristotle*, ed. Barnes, Peisistratus is pleased with a farmer's *parrhêsia* and makes him exempt from taxes (16.6).

<sup>2</sup> Cf. D. M. Carter, "Citizen Attribute, Negative Right: A Conceptual Difference between Ancient and Modern Ideas of Freedom of Speech," in *Free Speech in Classical Antiquity*, ed. Ineke Sluiter and Ralph Rosen (Leiden: Brill, 2004), pp. 197–214; and Robert Wallace, "The Power to Speak—and Not to Listen—in Ancient Athens," in *ibid.*, pp. 221–32.

Aristotle into the debate over free speech in ethics and political philosophy. It is perhaps as much folly as arguing for the existence of robust rights in Aristotle's political thought, as Fred Miller does in his *Nature, Justice, and Rights in Aristotle's Politics*.<sup>3</sup> Like Miller, I hope to show that the apparent incongruity is overblown. Contemporary debates about freedom of speech can benefit from Aristotle's insights, especially from his discussion of rhetoric and dialectic.

I begin by surveying some general objections to Mill's optimism about free speech. Many are skeptical that liberalism has the resources to defend anything like Mill's unqualified speech rights.<sup>4</sup> One criticism leveled at Millian free speech is that it is too optimistic (if not naïve) to think that unregulated expression in the public arena will further the pursuit of knowledge or the advancement of society.<sup>5</sup> Some go so far as to hold that truth and persuasion are not causally connected at all. Call this "rhetorical skepticism." Mill's optimism about the outcomes of free speech assumes that if different ideas are bandied about under the protection of free speech, then truth will surface amid the clash of ideas.<sup>6</sup> For Mill, while dogmatic certainty is not possible, dialectical discussion will eventually lead to a better society. This assumes that people are rational and that they will choose rational ideas to preserve and build upon. But why think that people are that rational? The rhetorical skeptic argues that the masses will latch on

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<sup>3</sup> Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Clarendon Press, 1995).

<sup>4</sup> See, e.g., David O. Brink, "Millian Principles, Freedom of Expression, and Hate Speech," *Legal Theory* 7, no. 2 (2001), pp. 119–57; and Larry Alexander, *Is There a Right of Freedom of Expression?* (Cambridge: Cambridge University Press, 2005).

<sup>5</sup> See Eric Barendt, *Freedom of Speech* (Oxford: Oxford University Press, 2005), p. 6ff.

<sup>6</sup> John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing, 1978), p. 46. It should be noted that, for Mill, truth is not as important as knowledge. Truth cannot be known with certainty, but knowledge can only come about if we have the best argument for both sides of important discussions. That being said, Mill is an empiricist; while truth may not be known with certainty, he expects that knowledge will track with truth more often than not.

to and follow beliefs that are irrational, contradictory, and even destructive.<sup>7</sup>

While the rhetorical skeptic worries that truth and persuasion are not necessarily connected, a “post-modern objection” claims that truth is contextual. Therefore, the search for truth that Mill thinks is so vital is just a product of Mill’s Enlightenment mentality. Stanley Fish argues that the free speech Mill champions is not so much unlikely as it is conceptually impossible. This is because free speech assumes that rhetoric within the marketplace of ideas can be evaluated according to an ideologically neutral concept of reason. Thus, truth cannot be isolated and evaluated apart from our biases.<sup>8</sup> According to Fish, protecting free speech will only ensure a venue for the dominant to assert their power. Those who control the symbols of expression (i.e., rhetoric) will control the construct.<sup>9</sup> In other words, if we allow unqualified speech rights, those with the loudest megaphone provided by wealth and social privilege will dominate the public debate.<sup>10</sup>

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<sup>7</sup> For a full articulation of this objection, see Barendt, *Freedom of Speech*, pp. 7–13.

<sup>8</sup> Stanley Fish says, “It is not difficult to conclude either (a) that there are no such truths, or (and this is my preferred alternative) (b) that while there are such truths, they could only be known from a god’s eye view. Since none of us occupies that view . . . the truths any of us find compelling will all be partial, which is to say they will all be political”; see his *There’s No Such Thing as Free Speech and It’s a Good Thing Too* (Oxford: Oxford University Press, 1994), p. 8.

<sup>9</sup> Adrienne Davis and Stephanie Wildman put it this way: “To the extent that symbols filter understanding of events and, in particular, affect the way history will record them, the ability to share in their creation and presentation is paramount to constructing reality”; see their “Privilege and the Media: Treatment of Sex and Race in the Hill-Thomas Hearings Create a Legacy of Doubt,” in *Privilege Revealed: How Invisible Preference Undermines America*, ed. Stephanie M. Wildman (New York: New York University Press, 1996), p. 74.

<sup>10</sup> Indeed, this privilege and power extends not just to persons but also to ideologies. Catherine McKinnon castigates protecting pornography on the grounds of free speech as privileging expression (the 1<sup>st</sup> amendment) over equality (the 14<sup>th</sup> Amendment). In fact, McKinnon says, “There has never been a fair fight in the United States between equality and speech”; see

Moreover, the rhetoric used in this “marketplace of ideas” is more likely to confuse and deceive.

Not all objections to Millian free speech come from skeptics of rhetoric and post-modern critics of liberalism. Some objections come from communitarians and conservatives. Robert George, for example, does not think that Millian-style liberalism can provide a principle that would bar the government from promoting virtue by censoring some forms of speech which are “plainly valueless and harmful.”<sup>11</sup> He is adamant that more than a moral right to free speech is needed to justify such a principle.<sup>12</sup> While pragmatic reasons may exist to give free speech what George calls “a strong presumption,” there is nothing sacrosanct about the Millian preoccupation with free speech.<sup>13</sup> All of these objections echo the same general concern that there is no reason for Mill’s optimism that unregulated freedom of rhetorical discussion will lead to a better society.

How does Aristotle figure into the debate over free speech? In his *Rhetoric*, Aristotle argues that truth is necessarily persuasive and that rhetoric—as “counterpart of dialectic”—can be guided by principles.<sup>14</sup> He seems to share Mill’s optimism about the prospects of rhetorical discussion, but why is Aristotle so optimistic about dialectic? More importantly, should he be so optimistic?

Since I claim that Aristotle’s connection between truth, persuasion, and rhetoric can support Mill’s optimism that a free marketplace of discourse can be good for society, Section 2 defends Aristotle’s claims that truth is naturally persuasive and that rhetoric, while being an art, is also a kind of reasoning. This will serve to blunt both the rhetorical skeptic’s and the postmodernist’s objections. Section 3 answers the conservative and communitarian challenge to

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Catherine A. McKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993), pp. 84–85.

<sup>11</sup> Robert George, *Making Men Moral* (Oxford: Clarendon Press, 1993), p. 199.

<sup>12</sup> *Ibid.*, p. 198.

<sup>13</sup> *Ibid.*

<sup>14</sup> As Brad McAdon examines in his “Rhetoric Is a Counterpart of Dialectic,” *Philosophy and Rhetoric* 34, no. 2 (2001), pp. 113–49.

free speech. Aristotle advocates strong restrictions on speech, but within an Aristotelian framework, there is a theoretical basis for something like Mill's freedom of thought and discussion.

## 2. Rhetoric, Truth, and Persuasion

Bringing Aristotle into the debate about free speech and Millian discourse requires some context. To defend Aristotle's optimism that rhetoric and persuasion will for the most part lead to truth, I first need to look at Socrates's view of the matter. In Plato's *Gorgias*, Socrates claims that rhetoric is not a useful art; instead, he holds that it is a false art that does nothing but corrupt the political process. Just as medicine is a true art, but "cookery" (*opspoietike*) is a false art that only serves to damage the health of its patrons, rhetoric looks like a true art, but is worthless and potentially harmful.<sup>15</sup> According to Socrates, dialectic—not rhetoric—is the hope of true philosophy.

Aristotle answers Socrates's criticism in the first sentence of the *Rhetoric*: "Rhetoric is a counterpart (*antistrophos*) of dialectic" (1354a1). He even uses the same term (*antistrophos*) that Socrates does for his comparison between rhetoric and "cookery." Aristotle says that rhetoric is not a counterpart to some false and unhealthy art, but rather, is counterpart to dialectic, which Socrates insists is the source of any true art of persuasion.<sup>16</sup>

While Aristotle links rhetoric with dialectic, it is not the dialectic of Plato's dialogues. For Plato, dialectic is the means to know the ideal Forms and the method to reach the Good. For Aristotle, dialectic is a rational method for inquiry. In his *Topics*, he argues that dialectic is the rational method suited to examining the first principles of all disciplines (101b3–4). By making rhetoric the counterpart of dialectic, Aristotle implies that rhetoric is a rational method.

Aristotle goes even further when says that rhetoric is useful *because* of its connection with truth. Here we find a claim about truth

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<sup>15</sup> Plato, *Gorgias*, 465d, in *Plato: Complete Works*, trans. Donald J. Zeyl, ed. John M. Cooper (Cambridge, MA: Hackett Publishing, 1997).

<sup>16</sup> Plato, *Phaedrus*, 266c, in *Plato: Complete Works*, trans. Alexander Nehamas and Paul Woodruff.

discordant to modern ears: “For the true and the approximately true are apprehended by the same faculty, and at the same time men have a sufficient natural instinct for what is true, and usually do arrive at truth” (*Rhet.* 1355a14-18). For Aristotle, what is true and what is believed to be true come from the same faculty. However, imagination is voluntary while belief is not. In *De Anima*, he says, “It is not up to us to hold a belief; for it is necessary either to be mistaken or have the truth” (427b16-21). Truth must be something that we grasp from the world; our assessment of true or false needs to correspond with what we perceive in order for us to survive and flourish as rational creatures. Fred Miller puts it this way: “Our ability to survive and flourish depends on our capacity to respond appropriately to the specific contingent events which occur around us. Our flourishing requires that the content of our beliefs be imposed on us by reality.”<sup>17</sup> This validates the second half of Aristotle’s statement: human beings “have a sufficient natural *instinct* for what is true, and usually do arrive at the truth.”<sup>18</sup>

Aristotle also connects truth and justice, stating that “[t]he true and just are naturally superior to their opposites” (*Rhet.* 1355a37-38). If what is true or just does not prevail in discourse, it is as if truth and justice have suffered a defeat and those responsible are blameworthy.

Given that human beings come equipped with the proper faculty to believe that which is true, and what is true is easier to prove and naturally superior to untruth, it follows that rhetoric can be useful for truth-tracking. William Grimaldi argues that Aristotle is making an even stronger claim about rhetoric: If truth and justice are defeated, it can only be because the rhetoric used was bad.<sup>19</sup> Therefore, Mill’s optimism that discourse will lead to truth can be justified, if one holds the Aristotelian idea that human beings have a natural capacity for truth and that truth is naturally persuasive.

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<sup>17</sup> Fred D. Miller, Jr., “Aristotle on Belief and Knowledge,” in *Reason and Analysis in Ancient Greek Philosophy: Essays in Honor of David Keyt*, ed. Georgios Anagnostopoulos and Fred D. Miller, Jr. (The Netherlands: Springer, 2014), pp. 285–308; quotation at p. 295.

<sup>18</sup> *Ibid.*

<sup>19</sup> William Grimaldi, *Aristotle, Rhetoric I: A Commentary* (New York: Fordham University Press, 1980), p. 27.

Some might object that the problem is not that truth can be tracked by human beings, but rather, that the coalescing of a bunch of opinions can ever lead to truth. In other words, the worry is that this rhetorical process is full of mere *opinion*, which has little to do with truth. This is certainly a valid concern. While Aristotle holds in his *Politics* that, provided people are not utterly degraded in their character, the mass of people will be better judges than an individual (1281b35–38), left to themselves, the *hoi polloi* will not have sufficient character to make good decisions. Instead, they will rely on ill-chosen opinions. Diodotus complains that, in the assembly, “the man with good advice must tell lies in order to be believed, just as a man who gives terrible advice must win over the people by deception.”<sup>20</sup>

Aristotle links human nature not only to truth, but also to *endoxa* (or reputable opinions): “the man who makes a good guess (*stochastikos*) at what is reputable (*endoxa*) is likely to make a good guess at what is true” (*Rhet.* 1355a). Guessing usually connotes randomness, but *stochastikos* can also mean “skillful aiming or able to hit.”<sup>21</sup> Grimaldi thus translates the above sentence as: “The ability to aim skillfully at *endoxa* belongs to the man who is equally able to aim skillfully at the truth.”<sup>22</sup>

One of many modern objections to Aristotle’s philosophy is its reliance on *endoxa*, which is translated variously as “received opinions” or often just “opinions.” Those who object that the opinions of the masses cannot be said to track truth accurately, however, fail to distinguish between “opinion” and what Aristotle means by *endoxa*. Aristotle defines *endoxa* as that which “commend themselves to all or to the majority or to the wise—that is to all of the wise or to the majority or to the most famous and distinguished among them.”<sup>23</sup>

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<sup>20</sup> Thucydides, *History of the Peloponnesian War*, 3.34, quoted in Ryan K. Balot, “Free Speech, Courage, and Democratic Deliberation,” *Free Speech in Classical Antiquity*, ed. Sluiter and Rosen, p. 237.

<sup>21</sup> Henry George Liddell and Robert Scott, *Greek-English Lexicon*, 8<sup>th</sup> ed. (Oxford: Clarendon Press, 1882), p. 1435.

<sup>22</sup> Grimaldi, *Aristotle, Rhetoric I: A Commentary*, p. 23.

<sup>23</sup> This translation comes from J. H. Freese, *Aristotle: The Art of Rhetoric* (Cambridge: Harvard University Press, 1994).

Aristotle does not think that all opinions are created equal.<sup>24</sup> Some opinions can be more *endoxa* than others. Dialectical reasoning specifically starts not just from *endoxa simpliciter*, but from what is most *endoxon* or as *endoxon* as possible (*Soph. Ref.* 183a37ff).<sup>25</sup> In *Topics*, Aristotle says, “Dialectical reasoning is not equally *endoxon* and persuasive (*pithanon*) on all problems.”<sup>26</sup> *Endoxa* is therefore not a convenient label for the opinions of the many, but rather, seems to be a taxonomy of credible opinion.

According to Robert Bolton, the order of the definition in the *Topics* is consistent with the level of authority that Aristotle accepts with regard to *endoxa*. Things that are unanimously accepted have the greatest weight. Later in *Topics*, Book VIII, Aristotle couples what is more *endoxon* with what is intelligible. One who reasons correctly supports his thesis on the basis of things more *endoxon* and more intelligible than the thesis itself (159b8–9). Linking *endoxon* with intelligibility explains why that which is “accepted by all” carries the most weight.

This formulation does not mean that “what is accepted by all” cannot be challenged or that there cannot be inconsistencies within this consensus.<sup>27</sup> Even though “Aristotle comes close” to saying that what is accepted by all is beyond challenge, “he does not ever quite say it.”<sup>28</sup> Bolton suggests that even in the rare case where two beliefs are equally *endoxa*, one may be more intelligible than the other. In addition, it may be necessary to withhold judgment until proper inquiry can continue (*Soph. Ref.* 182b37–183a4).

In the process of dialectic, the premises that count as most *endoxon*—and therefore most authoritative—are those that are most

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<sup>24</sup> Robert Bolton, “The Epistemological Basis of Aristotelian Dialectic,” *From Puzzles to Principles? Essays on Aristotle’s Dialectic* (Lanham, MD: Lexington Books, 1999).

<sup>25</sup> *Ibid.*, p. 68.

<sup>26</sup> This is Bolton’s translation; see his “The Epistemological Basis of Aristotelian Dialectic.”

<sup>27</sup> *Ibid.*, p. 76.

<sup>28</sup> *Ibid.*

intelligible and believed by the most. Aristotle offers such a hierarchy in his *Nicomachean Ethics*, Book VII:

We must, as in all other cases, set the phenomena before us and, after first discussing the difficulties, go on to prove, if possible, the truth of all the reputable opinions (*endoxa*) about these affections or, failing this, of the greater number and the most authoritative; for if we both resolve the difficulties and leave the reputable opinions (*endoxa*) undisturbed, we shall have proved the case sufficiently.<sup>29</sup>

Aristotle provides a rigorous heuristic for weighing opinions. We should try, if possible, to harmonize all of the reputable opinions. Failing this, we should resort to a combination of the majority and the most authoritative. His point is somewhat different from governing by polls or forming one's opinions by feeling. Sifting and weighing *endoxa* is a rational process that depends on our natural tendency to believe what is true. Beliefs that manage to garner a majority among most people or among the recognized experts are ones that are more likely to be true.

Thus, contrary to the objectors, we can see a direct relationship between truth and *endoxa* or reputable opinions. The one who can aim at truth well is also able skillfully to weigh *endoxa* and form beliefs based on arguments that themselves are based on premises that are the most *endoxa* or more *endoxa* than their conclusion.

Aristotle's argument about reputable opinion has two implications for Mill's optimism about virtually unregulated use of rhetoric in the public square. First, the process of weighing opinions can be rational. If an opinion survives this process of public scrutiny, it can be considered reputable. Second, this process of discourse need not reduce to a cacophony of different ideas bandied about with the audacious hope that truth will somehow inevitably rise to the top. Rather, reputable opinions are the premises for arguments in the public square. Mill's reasoning for having maximally free discourse is so that people can draw from all opinions in the public cauldron to make compelling rhetorical arguments. He argues: "The only way in which a

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<sup>29</sup> *Ibid.*, p. 79.

human being can make some approach to knowing the whole of a subject is by hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind.”<sup>30</sup>

Someone may object that all that has been shown is how dialectic is related to truth. Furthermore, all of the examples and argument above were about *dialectic*, but it is a weak argument to say that because rhetoric is *antistrophos* to dialectic, Aristotle can present rhetoric as being as closely tied to truth as to dialectic. This, however, is exactly what Aristotle does. Rhetoric is just as useful as dialectic for hitting upon the truth.

In *Topics*, Book VIII, Aristotle specifically mentions enthymemes as the principal form of argument associated with rhetoric. In giving instruction about how to practice and be prepared for dialectic, Aristotle gives this advice: “You should make your memorized accounts of arguments universal, even if they were argued as particulars. For in this way, it will also be possible to make the one argument into many. (The same holds in the case of rhetoric for enthymemes)” (164a4–5).<sup>31</sup>

Aristotle opens the *Rhetoric* complaining that his contemporaries have said nothing about the enthymeme, opting instead to concentrate on “things outside the subject,” like the best method for arousing the appropriate emotions (1354a14–16). Aristotle finds this to be a mistake because enthymemes are the main ingredient in rhetorical proofs. Rhetoric is not useful for manipulation; just like dialectic, it is concerned with proof. Aristotle draws a strong connection between rhetoric and dialectic because he does not see enthymemes as merely compressed arguments, but as *syllogisms*—that is, deduction from true premises (*Rhet.* 1355a4–12).<sup>32</sup> For Aristotle, there are only two ways to demonstrate: through *syllogisms* (a deductive method) and *epagoge* (an

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<sup>30</sup> Mill, *On Liberty*, in *On Liberty in Focus*, ed. John Gray and G. W. Smith (London: Routledge, 1991), p. 40.

<sup>31</sup> This is Robin Smith’s translation; see his *Aristotle, Topics Books I and VIII* (Oxford: Clarendon Press, 1997), p. 40.

<sup>32</sup> Myles Burnyeat, “Enthymeme: Aristotle on the Logic of Persuasion,” in Myles Burnyeat, *Explorations in Ancient and Modern Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 2012), p. 97.

induction method). Some demonstrations command belief just by the use of things that are true and primary, such as in science. However, other demonstrations rely on *endoxa*; these are dialectical (*Top.* 100a24–25). We now have a connection between reasoning and rhetoric, for demonstration is reasoning and rhetoric is a demonstration. In the *Rhetoric*, Aristotle holds that rhetorical demonstration through the enthymeme is the most effective of rhetorical proofs (1355a7).

Rhetoric is a form of reasoning that uses enthymemes to provide demonstration of things that are true and primary but not scientific. While it has many of the same elements as scientific demonstration, it does not arrive at its principles in the same way. Scientific demonstration, on the one hand, proceeds from things that are true and primary, and these things command belief through themselves (or other primary and true things). Rhetorical proofs, on the other hand, are demonstrations more akin to dialectic because they proceed not from things that command belief in themselves, but rather, through *endoxa*.

The implications of this distinction are enormous. By connecting rhetoric with *syllogism*, Aristotle claims rhetoric to be a form of argument rather than just eloquent verbal expression. Myles Burnyeat underscores this point: “Aristotle insists that the thought content of speech which Isocrates and Alcidamas contrasted with its verbal expression is *fundamentally argument*.”<sup>33</sup> Unlike his contemporaries, Aristotle claims that the process of rhetorical reasoning results in an argument.

Combining Aristotle’s claim that *endoxa* can be authoritative as premises for arguments about what is true with his view of rhetorical proof, we can see how he regards rhetorical proof as a demonstration that uses *endoxa* to *persuade* concerning truth just as dialectic uses *endoxa* to *inquire* about what the truth is. If rhetorical proofs are concerned with persuasion and truth is easier to prove and more likely to persuade (*Rhet.* 1355a37), then rhetoric is useful for persuading people to believe true things. Furthermore, Aristotle says that people make use of rhetoric and dialectic in the process of making statements and defending them, whether at random or by practice and from habit (*Rhet.* 1354a8–9). Rhetoric can be an art with principles

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<sup>33</sup> *Ibid.*, p. 93; emphasis mine.

useful for making demonstrations, so those who aim at truth well can also aim at reputable opinion using rhetoric. Presumably, those who make rhetoric a practice will be superior at both hitting truth and *endoxa* that is naturally persuasive.

If truth is as naturally persuasive as Aristotle claims, then Mill has good reason to be optimistic about public discourse. Because of their nature, human beings can discern and weigh reputable opinions and hit upon the true ones much of the time. Given that Mill believes that a culture of free speech must exist to give the right arguments room to flourish and to sharpen them on the whetstone of intellectual scrutiny within the public sphere, a free arena of rhetorical proofs seems the best way to get at truths that don't admit of scientific certainty—such as political morality, religion, and public policy—but can be demonstrated nonetheless through principled rhetoric.

It might be objected that all I have shown is that rhetoric *can be* principled, not that it *will be* principled in the public square. However, given that people will use principles of rhetoric and that they value an emphasis on argument, free speech might be justified. The problem is that this argument does not specify how we can ensure that rhetoric is used this way. Perhaps what is needed is some sort of assurance that rhetoric will be principled and virtuous. Regulating speech—as Aristotle calls for (e.g., *Pol.* 1336b11–22)—to prevent unprincipled and manipulative arguments might be justified, even if rhetoric can be principled and not hopelessly domineering. If this is true, then Mill's argument for unregulated speech would fail. This is an important objection because prominent critics of free speech—from social conservatives to their progressive rivals—explicitly call for strict regulation of expression.

### **3. Free Speech or Regulated Speech?**

Given that Aristotle advocates interference with individual expression because the masses are not virtuous, we can reasonably ask two questions: First, does Mill's unqualified speech rights contradict Aristotle's defense of censorship? Second, does Aristotle's view that the state should protect and promote virtue justify regulating opinion and sentiment within the public square? I will argue that the answer to both of these reasonable questions is a qualified "No."

First, I should note that Mill's concept of free speech is not wholly unregulated. People are not enjoined to say whatever they like in whatever way they like. Rather, Mill argues that no *opinion or sentiment* ought to be censored: "I denounce and reprobate this pretension . . . . However positive anyone's persuasion may be—not only of the pernicious consequences, but . . . the immorality and impiety of an opinion—it is still wrong to censor such expression."<sup>34</sup> Surprisingly, pernicious consequences may even include harm to others.

Some have said that Mill only qualifies his speech rights on the basis of its harm to others (e.g., a speech may be censored, if it will produce a riot). However, Daniel Jacobson argues that Mill's speech rights are not, strictly speaking, constrained by a harm principle.<sup>35</sup> Mill holds that the context of a given speech may make it liable to censorship or punishment, "when delivered orally to an excited mob assembled before the house of a corn dealer or when handed about among the same mob in the form of a placard."<sup>36</sup> While *opinion* should never be sanctioned, when opinion becomes *action*, it passes out of the sphere of liberty and into a class of actions that can be censored or regulated.<sup>37</sup> Mill argues that the exact same speech, if circulated through the press and not on the lawn of the offender, "ought to be unmolested."<sup>38</sup>

What's important to note here is that if the same opinion is circulated in the press *and has the same results* as the speech given to the mob outside the corn-dealer's house, then it should not be censored. It is when opinion becomes action, not necessarily when it

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<sup>34</sup> Mill, *On Liberty*, p. 43.

<sup>35</sup> See Daniel Jacobson, "Mill on Liberty, Speech, and the Free Society," *Philosophy and Public Affairs* 29, no. 3. (Summer 2000), pp. 276–309. Jacobson makes the stronger claim that there is no coherent harm principle in Mill, but rather, a general anti-paternalism and anti-moralism principle (*ibid.*, p. 277).

<sup>36</sup> Mill, *On Liberty*, p. 72.

<sup>37</sup> Jacobson, "Mill on Liberty, Speech, and the Free Society," p. 285.

<sup>38</sup> Mill, *On Liberty*, p. 72.

becomes harmful, that it must be regulated. This suggests that, for Mill, speech in the form of opinion or sentiment must be protected. *Performative* speech-acts, however, are not immune from regulation.<sup>39</sup>

Mill's exceptions to free speech notwithstanding, there is still a wide gap between Mill's liberalism and Aristotle's political philosophy. Aristotle's examples of justified censorship of expression must be examined in detail. His strongest statement about censorship occurs in Book VII of his *Politics*. After making the general statement that "[t]here is nothing which the legislator should be more careful to drive away than indecency of speech; for the light utterance of shameful words leads soon to shameful actions" (*Pol.* 1336b1–3), Aristotle says:

And since we do not allow improper language, clearly we should also banish pictures or speeches from the stage, which are indecent. Let the rulers take care that there be no image or picture representing unseemly actions, except in the temples of the gods at whose festivals the law permits ribaldry. . . . But the legislator should not allow youth to be spectators of iambi or of comedy until they are of an age to sit at the public tables and drink strong wine; by that time education will have armed them against the evil influences of such representations. (*Pol.* 1336b11–22)

Aristotle notes that the legislator ought to censor improper language and sexual images in public, except when such images are part of festivals to the gods. Youths who have not completed their virtue education should not be allowed to view bawdy comedies, because they are not yet sufficiently armed in virtue against the damage such comedies would do to their souls.

Censoring indecency for the young is not at odds with Mill's view. Mill allows that the environment of unqualified speech is one that ought to be within the realm of maturity. He writes, "Nobody denies that people should be so taught and trained in youth as to know

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<sup>39</sup> Indeed, Jacobson makes this very claim; see Daniel Jacobson, "Freedom of Speech-Acts? A Response to Langdon," *Philosophy and Public Affairs* 24, no. 1 (Winter 1995), pp. 64–79.

and benefit by the ascertained results of human experience. But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way.”<sup>40</sup> Mill believes that the sifting of ideas and experiments of living are activities reserved for “grown persons.”<sup>41</sup> Indeed, one of the reasons that society cannot impose its values on grown persons is that “it has had the whole period of childhood and nonage in which to try whether it could make them capable of rational conduct in life.”<sup>42</sup> Given these passages, restrictions on public displays of vulgarity or limiting freedom of speech next to schoolyards would not be in violation of Mill’s defense of free speech.

What, then, of Aristotle’s general statement about protecting all citizens from indecent speech, which is the strongest statement he makes with regard to censorship? Indecent speech could refer to vulgar or sexualized language. It might include speech intended to make some point that includes vulgar sentiments, such as when Gary Cohen wrote “Fuck the Draft” on his jacket to protest the Vietnam War.<sup>43</sup> Does Mill’s defense of free speech protect both of these cases? Mill does not discuss in detail unfettered vulgarity. However, given that Mill argues for unqualified freedom to express opinion or sentiment, if someone is standing in the square spouting obscenities, then that could presumably fall outside of Mill’s definition of opinion on the ground that such activity is more like performative speech. If the obscenities in question were uttered in the midst of a performance (e.g., stand-up comedy), then it would seem allowable under Mill’s principle to require such speech to be private where only those who are willing to listen to obscenities would be exposed to them. After all, he allows room for screening off certain self-regarding vices from those who do not want to experience them or even be reminded of their existence.<sup>44</sup>

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<sup>40</sup> Mill, *On Liberty*, p. 55.

<sup>41</sup> *Ibid.*, p. 80.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Cohen v. California* 403 U.S. 15 (1971).

<sup>44</sup> Mill considers and does not condemn the argument that gambling halls “may be compelled to conduct their operations with a certain degree of

As for someone using vulgarity to prove a point, Mill would almost certainly allow Cohen's sentiment because it is expressing a sentiment no matter how vulgar, whereas Aristotle's legislator might censor it. What are we to make of this difference? For Aristotle, freedom is an external good, not a natural right.<sup>45</sup> Thus, no natural right is being violated, if certain liberties are curtailed. The goal of this article is only to show that Aristotle's discussion of truth, rhetoric, and persuasion provides resources for an Aristotelian defense of Mill's optimism about free speech. Since my goal is not to reconcile Aristotelian and Millian political theory, my argument is not undermined by Aristotle's calls for censorship.

It is worth noting, however, that Mill justifies freedom of speech in terms of individual flourishing rather than natural rights. Mill and Aristotle do not differ over the general justification for their policy decisions, only over the means and the probable results. Aristotle and Mill both justify censorship in order to promote virtue, but they differ significantly about which virtues are vital for flourishing. We might say that Aristotle and Mill share an assumption of *eudaimonism*, though they disagree about its social applications.

Mill is optimistic that certain virtues of character can only flourish within a sphere of liberty in which one can express opinion and sentiment without fear of censorship. While laws are necessary to curtail actions, laws that curtail sentiment or opinion stunt the kind of ethical character and individuality that Aristotle attributes to his *megalopsuchos* (or "great-souled man") who speaks openly and without fear (*NE*, IV.3). We can imagine Mill saying that great souls are best produced in a climate where people can learn to express their sentiments and deal with the social stigma that may come from them. However, such character-building is in danger, if there is legal sanction for any sentiment or opinion.

Someone might object that Aristotle's insistence that legislation is necessary to protect virtue puts him irrevocably at odds with Mill's liberal freedom of thought and discussion. After all,

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secrecy and mystery, so that nobody knows anything about them but those who seek them" (*On Liberty*, p. 99).

<sup>45</sup> Aristotle, *NE*, 1178a28–33; cf. Miller, *Nature, Justice and Rights in Aristotle's Politics*, p. 248ff.

Aristotle expresses pessimism about the value of arguments to make men good, holding that arguments are efficacious only for those who are already lovers of what is noble (*NE* 1179b7–8). Those who do not have this quality do not obey the law out of any shame at vice, but out of fear of punishment. Contrary to Mill's optimism, Aristotle pessimistically asks, "What argument would remold such people?"

Even if rhetoric is a species of reasoning, Aristotle claims that such reasoning only affects those who are virtuous. He is more than willing to bring the force of law to bear in order to ensure a virtuous populace, stating, "For this reason their nurture and occupations should be fixed by law" (*NE* 1179b34–35). Aristotle specifically includes adults in his paternalism, writing, "but it is surely not enough that when they are young they should get the right nurture and attention; since they must, even when they are grown up, practice and be habituated to them, we shall need laws for this as well" (*NE* 1180a1–3). For Aristotle, the end of politics, and thus the aim of legislation, is to produce virtue. If only virtuous people are swayed by principled rhetoric, it seems justified to restrict speech when it is totally worthless or hateful because such speech contributes to vice. This seems in direct contradiction to Mill's view that society must not seek to enforce its paternalism on adults because society has had all of childhood to inculcate virtue. Do Aristotle's statements present a problem for Mill's optimism about public rhetoric?

Communitarians like Alasdair MacIntyre push back on Millian free speech for just such Aristotelian reasons. They argue that individuals do not form their identities apart from community.<sup>46</sup> Since the Aristotelian polis is one of shared pursuit of virtue, censorship is justified based on that end.<sup>47</sup> Another communitarian, Michael Sandel, says, "Communitarians would be more likely [than other political theories] to allow a town to ban pornographic bookstores on the

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<sup>46</sup> See, e.g., Charles Taylor, "The Sources of Authenticity," in Charles Taylor, *The Ethics of Authenticity* (Cambridge, MA: Harvard University Press, 1992), pp. 25–30.

<sup>47</sup> Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame, IN: University of Notre Dame Press, 1984), pp. 150–58.

grounds that pornography offends its way of life and the values that sustain it.”<sup>48</sup>

George further argues, on conservative grounds, that speech can be restricted on the basis of its content when the speech is “plainly valueless or harmful” or “the speech in question is likely to result in serious harms or injustices or prevent the realization of important goods.”<sup>49</sup> George indicates that what he has in mind are time, manner, and place restrictions (e.g., Neo-Nazis marching in Jewish neighborhoods); criminal activity (e.g., libel, conspiracy); and speech that reveals national security secrets (e.g., WikiLeaks). However, he concedes both that there is no principle that bars censorship of worthless speech and that the fear of government officials having bad motives creates a prudential reason to give free speech “a strong presumption.”<sup>50</sup>

George challenges civil libertarians to come up with a principle that would explain why it is impermissible to prevent immoral institutions like worthless speech or action, holding that it will not do simply to talk about the putative moral right to the institution of free speech.<sup>51</sup> If there is no principle that preserves the right to speak worthless or vitriolic speech, and given the aim of the political order is to make men virtuous, then there seems to be a justification for regulating speech.

There are ways of answering this kind of objection without sacrificing either Aristotelian or Millian optimism. First, while Aristotle says that laws are necessary to make people good, this does not mean that censoring speech will necessarily accomplish this goal. Mill believes that censoring speech will make people worse, not better.

Second, while Aristotle does say that the purpose of the polis is to make people virtuous, it does not then follow that campus speech

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<sup>48</sup> Michael Sandel, “Morality and the Liberal Ideal,” *New Republic* 190 (1984), pp. 15–17, quoted in Miller, *Nature, Justice, and Rights in Aristotle’s Politics*, p. 363.

<sup>49</sup> George, *Making Men Moral*, p. 199.

<sup>50</sup> *Ibid.*, p. 198.

<sup>51</sup> *Ibid.*, pp. 116–17.

codes or federal laws against racial epithets are necessary for achieving Aristotle's purpose. There is a tendency to equate Aristotle's polis with the state, which is arguably a hasty generalization and one often made by communitarians.

MacIntyre thinks that political virtue is incompatible with liberalism.<sup>52</sup> A liberal order with its emphasis on "live and let live" cannot be a community whose common aim is human flourishing. Miller, however, argues that there are two concepts of the polis in Aristotle's political theory: the polis *qua* community and the polis *qua* state.<sup>53</sup> Book I of *Politics* concerns the polis as a naturally occurring community, while Book III concerns the polis as state. However, Aristotle makes it clear in III.9, that any society that seeks only to prevent harm and promote exchange is a polis in name only because a polis must be concerned with virtue and vice (1280b5–8 and 29–31). Miller argues that Aristotle's conflation of polis as society and polis as state may rest on his view that a "polis resembles an organism in that when it has a function it always has a part whose function is to realize that end."<sup>54</sup>

However, just because citizens participate in political governance, this does not mean that the community is an organic whole like an organism. There are individual and collective pursuits that have nothing to do with the state. Most of the voluntary associations (especially religious ones) and activist groups that seek to persuade others about various aspects of the good life act outside of government policy. On Mill's model of the free exchange of ideas, much of the moral education and discussion about virtue occur through such non-state associations.

*Contra* MacIntyre and Sandel, Mill's free society is compatible with promoting virtue. It is not compatible, though, with the state directly coercing people toward virtue. The purpose of government in such a free society would be to provide a framework for private individuals and community groups whose purpose would be to

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<sup>52</sup> See MacIntyre, *After Virtue*, p. 244ff.

<sup>53</sup> For a complete discussion of the uses of "polis" as both community and state, see Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 357–66.

<sup>54</sup> *Ibid.*, pp. 360–61.

persuade citizens to be virtuous. Peter Simpson argues that such a conception is consistent with Aristotelian principles. He asks, “So why could not Aristotle’s natural or virtuous city be viewed as . . . a community within the state?”<sup>55</sup>

This conception of community within the state fits Mill’s public discourse in that individuals and groups would have the freedom to persuade others toward virtue and away from vice. However, this view does not answer George’s challenge to liberalism, for he asks for a principle that would block the state from preventing worthless speech in the name of virtue.

There *is* an Aristotelian principle that a defender of Mill can appeal to, and it responds to George’s challenge. In *De Anima*, Aristotle says that while perception is non-voluntary, a human being can exercise his knowledge when he wishes (417b18–26).<sup>56</sup> This seems to indicate that because human flourishing requires actualizing rational desire over appetite—in what Douglas Rasmussen and Douglas Den Uyl call “a self-directed activity”<sup>57</sup>—the acquisition of virtue is essentially an individual activity that requires a person to take responsibility for her own flourishing.

Based on my claim above that Mill’s concept of a free society is justified by a kind of eudaimonism, I argue that Mill believes that self-directedness is enhanced rather than hindered by unqualified freedom of opinion and sentiment. If this is correct, then the Millian defender of free speech can answer conservative and communitarian critics by using Aristotelian resources.

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<sup>55</sup> Peter Simpson, “Making the Citizens Good: Aristotle’s City and Its Contemporary Relevance,” *Philosophical Forum* XXII, no. 2 (Winter 1990), pp. 149–65; quotation at p. 160.

<sup>56</sup> This translation is Douglas Rasmussen and Douglas Den Uyl’s from their *Norms of Liberty* (University Park, PA: University of Pennsylvania Press, 2005), p. 138. Rasmussen and Den Uyl note that “wishes” refers to Aristotle’s *boulesis* (or rational desire), not mere whim. The argument I make here about self-directedness and speech is heavily indebted to Rasmussen and Den Uyl’s argument for self-directed human flourishing in *Norms of Liberty*.

<sup>57</sup> *Ibid.*, p. 139.

Mill argues that without the chance of being publicly confronted and challenged, our ideas become stagnant and dead.<sup>58</sup> The price of censorship is the “sacrifice of the entire moral courage of the human mind.”<sup>59</sup> By itself, Mill’s claim here is open to the charge of being hyperbolic. However, Mill’s insistence that the “faculties of judgment, mental activity, and moral preference are actualized only when making a choice,” is made more compelling if we accept Aristotle’s requirement that for an agent to be virtuous, the agent must be in a condition of knowing what he is doing and choosing his actions for their own sake (*NE* 1105a31–32).<sup>60</sup>

Aristotle’s political philosophy allows paternalism to protect people from learning vice. Mill rejects that view, holding that it is only through discussion that vicious ideas can be refuted and virtuous ones can predominate. He thinks that certain virtues—such as individuality, prudence, temperance, and courage—come about through unregulated discussion of the good life. If we allow censorship instead of freedom of thought and discussion, our convictions may be good, but they will not be self-directed in the Aristotelian sense. It is possible that someone may be guided on a good path and kept out of harm, but Mill asks, “What will be his comparative worth as a human being?”<sup>61</sup>

Miller reminds us that Aristotelian “autonomy” is not a virtue in itself, but rather, a component of practical wisdom.<sup>62</sup> Mill believes that an environment of freedom of thought and discussion is necessary for a person’s character to be self-directed. Therefore, there is an Aristotelian principle blocking government intervention in this sphere

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<sup>58</sup> Mill, *On Liberty*: “Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them or to abstain from any active effort for their diffusion” (p. 31).

<sup>59</sup> *Ibid.*

<sup>60</sup> Mill adds “perception” to this list (*ibid.*, p. 56). It isn’t clear what Mill means by saying that perception is a matter of choice, but Aristotle, of course, would disagree with this addition; see Aristotle, *De Anima*, 417b18–26.

<sup>61</sup> Mill, *On Liberty*, p. 56.

<sup>62</sup> See Fred D. Miller, “Aristotelian Autonomy,” in *Aristotle and Modern Politics*, ed. Aristide Tessitore (Notre Dame, IN: Notre Dame University Press, 2002), pp. 375–402.

of liberty in order to secure self-directed pursuit of the good life. Mill's optimism about unqualified speech rights benefits from an Aristotelian framework of virtuous character with its essential component of self-directedness.

### **5. Conclusion**

Aristotle does not have a concept of free speech resembling modern civil liberties. His concept of the state may be at odds with Mill's, but the justification for both is rooted in the pursuit of moral virtue. Additionally, Aristotle's theory about the natural relation between truth and persuasion and his framing of rhetoric as a kind of reasoning provide resources for those who support Mill's classical liberal defense of freedom of speech.

In ancient Athens, it was assumed that if a particular proposition managed to survive the rigorous debates in the assembly, then it was most likely the better judgment.<sup>63</sup> Aristotle's theory about rhetoric makes that optimism reasonable. There is reason to think that rhetoric and discourse within the public square not only can be principled, but that ideas that have weathered Mill's marketplace of ideas are more likely to be true.

Likewise, Mill's optimism about unregulated freedom of thought and discussion leading to individual virtue is not unreasonable or naïve. There is good reason to believe that a Millian environment of uncensored opinion and sentiment produces not only better judgments, but also better people. All of this suggests that an Aristotelian defense of Millian freedom of speech is not jarring or incongruent, but a natural fit.

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<sup>63</sup> Balot, "Free Speech, Courage, and Democratic Deliberation," p. 240.

