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## The Neo-Aristotelian Defense of Rights, or a Minimal State Approach

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Diametros nr 5, 1-20

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2005

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej [bazhum.muzhp.pl](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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# The Neo-Aristotelian Defense of Rights, or a Minimal State Approach

*Dariusz Juruś*

## Introduction

Philosophy is an activity where (sometimes) new theories are created not from scratch, but as a result of a mixture of past theories. In the paper I will discuss theory, which is the combination of the concept of individual rights (e. g. The American Declaration of Independence) with virtue ethics (e.g. Aristotle's ethics). The result of that combination is then "mixed" with the liberal/libertarian concept of minimal state.

Douglas Rasmussen and Douglas Den Uyl tried to square the circle and to show that the concept of individual rights can be based on the self-perfectionist ethics, which is rooted in the Aristotelian virtue ethics. Since traditionally Aristotle's virtue ethics is opposed to rights theories, the task they undertook seems very difficult. Nevertheless they believe that: "There is available to liberalism an ethical view that holds the ultimate moral good to be self-perfection, or human flourishing, and that the central intellectual virtue of such a way of life is phronesis (practical wisdom) or prudence"<sup>1</sup>. At the same time they argue that the crucial feature of self-perfection or human flourishing ethics i.e. self-direction is to be the value protected by the political order. Since political order is limited to protection of conditions for the possibility of human flourishing, i.e. protecting individuals' *self-directness*, it does not express – as one can expect – the communitarian position but the liberal (in the classical sense) minimal state approach. The authors are convinced that contemporary liberalism cannot provide sufficient basis for moral pluralism and to meet the demand for a moral foundation of political order. The neo-Aristotelian approach and the introduction

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<sup>1</sup> Rasmussen, Den Uyl, [1997] p. 23.

of a two-level norm structure (normative and metanormative) are to be the solution to those problems<sup>2</sup>. Rasmussen and Den Uyl try in fact, to find the solution for the ancient question, namely, what kind of state is the most suitable for creating a perfect man. They suggest that a minimal state would be the most suitable for that purpose. Richard Kraut, referring to the theory of Rasmussen and Den Uyl, argued that a minimal state approach is “too minimal” to guarantee human flourishing. I, to the contrary, will argue that if we want to stick to *self-directness* as a crucial part of human flourishing, we must treat a minimal state approach as too large.

### **Human nature and human telos**

Aristotle begins *Nicomachean Ethics* with the following words: “Every craft and every line of inquiry, and likewise every action and decision, seems to seek some good; that is why some people were right to describe the good as what everything seeks”<sup>3</sup>. Then he assumes that there exists the best good for a human being, which must be the ultimate end or object of human life; something that is complete, self-sufficient and choiceworthy. It is *eudaimonia*/happiness. If we consider what the function (*ergon*) of man is (what his nature is), we will find that *eudaimonia* is a virtuous activity of the soul. Thus we can say the man *qua* man has his function, which can be expressed by activity guided by *phronesis* (practical wisdom). Practical wisdom on the one hand presupposes self-directness and on the other hand entails virtues. It is assumed by Aristotle that human nature is teleological. And that her *telos* is self-perfection. Teleology of human nature need not be

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<sup>2</sup> It must be emphasized that that this approach is neo-Aristotelian in the sense explained by the authors (referring to the distinction made by James Collins) in *Liberty and Nature: an Aristotelian Defense of Liberal Order*: “When we use the terms Aristotelian or Aristotelianism to describe our position or approach to certain issues, it will be primarily in the recurrent-thematic-classificatory-polemical sense.” That sense has, in turn the following explanation: “[...] work which involves the novel use of positions of Aristotle, but without necessarily being historically linked with Aristotle or working within Aristotle’s framework and method. Such work thematizes Aristotle’s ideas within a new intellectual context in a manner, which is apart from the systematic interconnections they held in Aristotle’s philosophy. Such work uses the term Aristotelian both to classify fundamental positions regarding philosophical problems and as a convenient starting point for criticism. Such work is more schematic than historical, more argumentatively dictated than based on any independent examination of Aristotle’s text” – Rasmussen, Den Uyl, [1991] p. XV.

<sup>3</sup> Aristotle [1999] 1094 a 1.

however, as Rasmussen and Den Uyl emphasize, associated with “metaphysical biology”. In other words, it is not necessary to hold that cosmos, history, society, or the human race is directed toward one telos. It suffices to grant that individuals have ends. God as a final end is not a necessary hypothesis to explain what human beings are. Contrary to the ancient beliefs Rasmussen and Den Uyl claim that universal and individual orders are separate. It seems that they drew from Henry Veatch who wrote: “[...] the world as seen from the standpoint of science is a mechanistic and nonteleological universe, whereas as seen from the standpoint of philosophy that same world is reckoned to be permeated with teleology”<sup>4</sup>.

The teleological point of view implies that the question about human nature cannot be answered within the scope of the physical sciences. Thus in order to understand who we are, we must go beyond natural, empirical order. When the teleological perspective is taken, it follows that human beings are not a function of social or cultural forces. The concept of *telos* is therefore crucial as regards knowledge of human beings. Rasmussen and Den Uyl assume that cognitive realism is possible, i.e. that what human beings are can be known. A consideration of human nature leads to a list of generic goods and virtues. It consists of knowledge, friendship, pleasure, health, aesthetic appreciation, honor, self-esteem, and justice, courage, and temperance. These goods and virtues are manifested in diverse forms depending on different individuals and cultures. Thus what is included in or excluded from any account of human *telos* is derived from human nature. Since life is a process consisting in passing from what is potential (*dynamis*) to what is actual (*energeia*), we not only have a natural end, but we *ought to* follow it. One ought to live in accordance with the requirements of one’s nature, i.e. one ought to actualize one’s potentialities. The *good* arises when a nature realizes its aim.

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<sup>4</sup> Veatch [1985] p. 244. A similar distinction between method used in science and method used in philosophy was made by Kant. However the teleological point of view is not confined by Kant to the sphere of philosophy. Telos, as something, which is not constitutive but regulative, appears in the sphere of biology as added to that which can be observed. Veatch argues that hypothetico-deductive method, which is reserved to science, and transcendental method proposed by Kant for philosophy have a lot in common. As he writes: “In other words, neither for Kant nor for the modern proponents of the hypothetico-deductive method are our human world-views or theories of nature literally true, in the sense that they represent the way things really are in themselves, or in nature, or in reality” (*ibid.*, p. 239).

### **Eudaimonia/human flourishing**

Since “happiness” depicts rather the state of one’s mind and not a way of one’s life Rasmussen and Den Uyl employ the term *human flourishing* instead of “happiness” to convey the meaning of Aristotle’s *eudaimonia*. Aristotle writes: “The belief that the happy person lives well and does well also agrees with our account, since we have virtually said that end is a sort of living well (*euzoia*) and doing well (*eupraxia*)”<sup>5</sup>. The phrase “human flourishing” conveys the idea of objectivity as the satisfaction of *right* desires that is involved in *eudaimonia*<sup>6</sup>. According to the authors, *human flourishing* possesses six features.

1. Human flourishing or self-perfection is an objective good, a state of being, not a subjective feeling or experience. (We want to flourish *because* it is good, but it is not good *because* we want it.) It is determined by human nature. It is an activity and not a state, since as Aristotle writes the good people do not differ from the bad during half of their lives, i.e. when they sleep, for sleep is not an activity of the soul.

2. Human flourishing is “inclusive”, i.e. not “dominant”. It follows that human flourishing does not compete with or trump other goods and virtues. It is an end, which comprises basic or generic goods and virtues: knowledge, health, friendship, integrity, temperance, courage and justice. Those things are not merely means to the final end, but are constituents of it. They could be pursued for their own sake, and at the same time they contribute to one’s flourishing. The authors write: “If prudence is to succeed at the task achieving, maintaining, enjoying and coherently integrating the multiple basic human goods in a manner that will be appropriate for us as the individuals we are, then the use and control of desires – that is, the creation of rational dispositions – is pivotal to flourishing. As rational dispositions, the moral virtues are expressions of human flourishing and are thus valuable in themselves”<sup>7</sup>.

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<sup>5</sup> Aristotle [1999] 1098 b 20.

<sup>6</sup> Therefore when we understand *eudaimonia* not as a mental state, i.e. happiness, but as e.g. success (but probably not as a flourishing), we can say that after one’s death, his successes may be continued. Aristotle discusses that issue in NE, 1100.

<sup>7</sup> Rasmussen, Den Uyl [1997] p. 25.

3. Human flourishing is individualized. It is dependent on *who* as well as *what* one is, i.e. on one's talents, endowments and circumstances. There is no *the* human flourishing or *ideal* human flourishing, which can and must be attained by everyone. There are many different ways of human flourishing. Since Smith is different from Jones, Smith's flourishing is not the same as Jones' flourishing. Although Smith and Jones have the same task, namely to determine the proper weight and balance of generic goods and virtues, the results of that procedure will be different, since they are based on individual and particular sets of Smith's and Jones' potentialities. Therefore abstract ethical principles and deliberations *alone* cannot determine the proper course of conduct for any particular individual. As Aristotle wrote: "Nor do we deliberate about particulars, about whether this is a loaf, for instance, or is cooked right amount; these are questions for perception, and if we keep on deliberating at each stage we shall go on without end"<sup>8</sup>.

4. Human flourishing is agent-relative. Rasmussen defines this feature as follows: "[...] human flourishing, G, for a person, P, is an agent-relative if and only if its distinctive presence in world W1 is basis for ranking W1 over W2, even though G may not be the basis for any other person's ranking W1 over W2"<sup>9</sup>. It arises within and obtains only in relationship to a person's life. Contrary to impersonal ethics – where impartiality is emphasized – individuals and their values are important in determining their lives. According to Rasmussen and Den Uyl ethics should not be viewed from a universal point of view. The ethics of human flourishing is not impartial and agent-neutral. In that respect it is opposed to deontological and consequentialistic moral theories. Proponents of these theories do not recognize that ethics is first of all a practical activity and that particular facts are crucial to determining what one ought to do. The very relation to oneself makes values, which one believes important. That relation, however is to be established not between one's real desires and wants, but between an individual and these potentialities (desires and wants), which make her a person. Being wanted or desired does not mean being good for a person. (It happens that

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<sup>8</sup> Aristotle [1999] 1113, a 30.

<sup>9</sup> Rasmussen [1999] p. 6.

one desires something, which is bad for him.) In other words, what consists of human flourishing must be good for an individual. The good being related to an individual is still in a way universalizable, i.e. universally recognized as someone's good. As Henry Veatch put it: "If the good of X is indeed but the actuality of X's potentialities, then this is a fact that not just X needs to recognize, but anyone and everyone else as well. And yet given the mere fact that a certain good needs to be recognized, and recognized universally, to be the good of X, it by no means follows that X's good must be taken to be Y's good as well, any more than the actuality or perfection or fulfillment of X needs to be recognized as being the actuality or perfection of Y as well"<sup>10</sup>.

Relativity does not entail subjectivity, since good is related to desires and wants, which stem from the very human nature. It follows as well that an activity or a thing can be objective, i.e. objectively good for someone, not being at the same time universalizable, i. e. being good for everyone. In other words, a thing can be objectively (since in accordance with one's nature) good for someone and *as such* must be universally (intersubjectively) *recognized* by others, not being good for the latter and as such not universal.

5. Human flourishing is a social process. We can actualize our potentialities only by engagement with one another. To be a social person is not a matter of our decision (rather to be an asocial person is) but it is a requirement, which stems from our nature. Sociality – as emphasize Rasmussen and Den Uyl – is open-ended, i.e. cannot be confined to one group of people and values. (But it does not mean that is not confined to *any* group of people and values.) Sociality means being cosmopolitan as well<sup>11</sup>. Sometimes it is better for one to go beyond one's culture and seek for his way of flourishing somewhere else. It could be the case that actual tradition, society and morality cannot provide one with a basis for one's flourishing. Sometimes it is just the opposite. Human sociality means sharing values with other people. But the decision with whom depends on the individual.

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<sup>10</sup> Veatch [1990] p. 194, as cited in: Rasmussen [1995] p. 268.

<sup>11</sup> It is, of course, very unwise to reject *a priori* any kind of tradition.

6. Human flourishing is a self-directed activity. Following Aristotle, Rasmussen and Den Uyl claim that human flourishing is fundamentally a self-directed activity<sup>12</sup>. Since *eudaimonia* is something divine it cannot be subject to chance. It consists in cultivating the proper habits of character and must be attained through a person's own efforts. Therefore it cannot be the result of factors that are beyond one's control<sup>13</sup>. It is in very human nature to decide for oneself; to be an autonomous being<sup>14</sup>. As Rasmussen puts it: "The point here is not that self-direction is merely necessary for the existence of human flourishing, for surely there are numerous necessary conditions for human flourishing's existence. Self-direction is not simply one of those many conditions. The point is rather that self-direction is necessary to the very character of human flourishing. Human flourishing would not be human flourishing if there were no self-direction involved"<sup>15</sup>. Through the process of self-perfection an individual makes herself the agent and the object of that process<sup>16</sup>.

The crucial concept in Rasmussen's and Den Uyl's theory is that of practical wisdom (*phronesis*). On the one hand it is the central intellectual virtue of ethics, which implies exercising of moral virtues. And on the other hand it is the virtue, which stems from the faculty (practical reason), which operates on the particular

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<sup>12</sup> Aristotle contrasts *energeia* (activity) with *hexis*, which means a mere disposition, capacity, ability or faculty.

<sup>13</sup>As Aristotle writes: "[...] happiness appears to be the best good, something divine and blessed. [...] And since it is better to be happy in this way than because of fortune, it is reasonable for this to be the way [we become] happy" – Aristotle [1999] 1099 b, 15 and 20. See also: *Politics*, 1323 b 24-29.

<sup>14</sup> According to Lawrence Haworth there are three traits necessary for autonomy: (i) competence, (ii) procedural independence (not just borrowing one's motivation straight from others), (iii) self-control (not being exclusively subject to one's passions and impulses – acting reflectively, with ability to choose whether one will follow a given impulse or not) – Haworth [1986] p. 42, as cited in: Narveson [1988] p. 16.

<sup>15</sup> Rasmussen [1999] p. 11.

<sup>16</sup> There is a question, as to when the decisions or choices – and the conduct based on them, i.e. self-directed activity – are mine? What kind of influences are justifiable and what kind are not? Maturation is a process in which one becomes a self-directed individual. However, when that process is accomplished, is difficult to say. It seems that regarding self-directness, two kinds of situation should be distinguished, since there is surely a difference when we speak about a child or a teenager who is not a self-directed person, and an adult who is coerced by the state to conduct a particular life. There are cases, in which thanks to coercive action from the part of one's parents or friends one can really flourish. It seems that this kind of non-self-directness is quite different from the kind in which the state forces someone to lead a certain life.

and the contingent, and which is needed in order to determine what *one's* flourishing is. "Practical wisdom is not merely cleverness or means-end reasoning. Instead, it is the ability of the individual at the time of action to discern in particular and contingent circumstances what is morally required"<sup>17</sup>. Therefore practical wisdom "takes always into account" what is partial and contingent.

The tradition of individual flourishing stems also from Wilhelm von Humboldt and John S. Mill<sup>18</sup>. Mill's notion of *spontaneity* or *originality* resembles the Aristotelian concept of action and Neo-Aristotelian concept of self-directness. Mill writes: "The human faculties of perception, judgement, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. [...] The mental and moral, like the muscular powers are improved only by being used"<sup>19</sup>. It seems that the following statement is also in the Aristotelian vein: "A person whose desire and impulses are his own – are the expression of his own nature, as it has been developed and modified by his own culture – is said to have a character"<sup>20</sup>. At first sight Mill seems to agree not only with Aristotle but also with Rasmussen and Den Uyl, when he vehemently rejects any state interference with individuals' private lives. He writes: "The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right"<sup>21</sup>.

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<sup>17</sup> Rasmussen [1999] p. 16-17.

<sup>18</sup> Humboldt writes of „freedom and variety of situations“ from which „individual vigour and manifold diversity“ arises, which in turn leads to „originality“. Mill, however, writing about „human flourishing“ and „self-directness“ employs such terms as „development of individuality“ (Mill [1964] p. 192), „cultivation of individuality“ (p. 193), „spontaneity“ (p. 185), or „originality“ (pp. 193, 195)

<sup>19</sup> Mill [1964] p. 187.

<sup>20</sup> *Ibid.*, p. 189. It is significant that in one place in his essay *On Liberty* Mill combines Aristotle with utilitarianism referring to "judicious utilitarianism of Aristotle" (p. 150).

<sup>21</sup> *Ibid.*, p. 135. In similar vein he writes on other pages: "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind" (142). "But neither one person, nor any number of persons, is warranted in saying to another

It seems, however, that for Mill an individual should be protected mainly not from the state but from the uniform power of society. As he states: “But it must be remembered that taxation for fiscal purposes is absolutely inevitable; that in most countries it is necessary that a considerable part of that taxation should be indirect; that the State, therefore, cannot help imposing penalties, which to some persons may be prohibitory, on the use of some articles of consumption”<sup>22</sup>. But the extreme infringement of individual liberty in the name of utility or common good is expressed by Mill in the following passage: “And in a country either over-peopled, or threatened with being so, to produce children, beyond a very small number, with the effect of reducing the reward of labour by their competition, is a serious offence against all who live by the remuneration of their labour”<sup>23</sup>. Such an attitude is in accordance with utilitarian philosophy, but not with philosophy of human flourishing.

In spite of certain similarities there are great differences – which we can only briefly mention in this paper – between Rasmussen’s and Den Uyl’s approach and that of Mill’s. Rasmussen and Den Uyl draw from the natural rights theory, which Mill rejects in favour of utility. He writes: “It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility”<sup>24</sup>. Rasmussen and Den Uyl make – following Aristotelian tradition – self-directness the crucial feature of human being, while Mill puts emphasis on spontaneity and originality. They all however seem not to be consistent in their defence of self-directness, resp. spontaneity<sup>25</sup>.

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human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it” (206). “All errors which he is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem his good” (207).

<sup>22</sup> *Ibid.*, p. 234.

<sup>23</sup> *Ibid.*, p. 242. It is significant that violations of individual freedom (not to be taxed involuntarily, or to not to be forbidden, to have as many children as one wishes) appears not on the level of theory but on the application level.

<sup>24</sup> *Ibid.* p. 136.

<sup>25</sup> It seems that Mill does not follow his own remark: “Strange it is, that men should admit the validity of the arguments for free discussion, but object to their being »pushed to an extreme«; not seeing that unless the reasons are good for an extreme case, they are not good for any case” (p. 147) since if the reasons for freedom are not good for an extreme case (freedom from the state) and Mill assumes state’s coercion, they are not valid – according to Mill’s own statement – for any case

## **Rights as metanormative principles**

Having defined human good as the ultimate end of human life – human flourishing – we can ask, what is the relation between the good and the rights, which are the core of liberalism and libertarianism discourse. To establish the relationship between human good (human flourishing) and rights, Rasmussen and Uyl begin with distinguishing between equinormative and non-equinormative systems. They write: “Liberalism is best understood if it is not treated as an equinormative system. Equinormative systems are those, which regard normative principles as differing only with respect to subject matter and not type. Another way of putting the matter is to say that in equinormative systems all justified norms regulative of the conduct of persons have status as moral rules”<sup>26</sup>.

They claim that there are “norms [which] regulate the conditions under which moral conduct may take place, [and] others are more directly prescriptive of moral conduct itself”<sup>27</sup>. Liberalism and libertarianism cannot be treated as equinormative systems and as such contrasted with other ethical systems. Liberalism and libertarianism are not ethical systems. Rasmussen and Uyl argue against the traditional liberal theory, which treats rights as normative principles and consequently as expressions of an impersonalist moral theory that can be identified with universalism. Universalism in turn cannot cope with three problems: (i) value conflicts, (ii) motivation, and (iii) liberalism’s problem, i.e. how to reconcile the social nature of human beings with the diversity of ways of human flourishing. In order to solve these problems, they suggest changing the status of rights. Instead of treating rights as normative principles, one should conceive of them as metanormative principles. Rights being metanormative principles cannot be the basis from which moral norms and values can be derived. They are neither norms, which are to guide us towards the achievement of our self-perfection, nor ordinary interpersonal normative principles<sup>28</sup>. Normative and metanormative

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(including that of Mill’s). I discuss the argument concerning Rasmussen’s and Den Uyl’s approach in Chapter “State”.

<sup>26</sup> Rasmussen, Den Uyl [1997] p. 16.

<sup>27</sup> *Ibid.*, p. 16.

<sup>28</sup> *Ibid.*, p. 36.

levels are split not because of the level of abstractness, but because of relation to self-perfection. These norms which are concerned directly with self-perfection are moral norms; while these which refer to conditions of self-perfection – as for instance right of equal freedom – are metanorms<sup>29</sup>. The split between normative and metanormative level is to prevent the general tendency in ethics, which consists in making one ethical system as universal as possible. “Universalism” and “impartialism” are to conceal the real, i.e. substantive, character of that ethical system. The authors suggest that instead of promoting one substantive set of values – and making it universal – it is better “under the umbrella of metanorms”, to allow for diverse forms of flourishing. Liberals, who do not recognize the difference between normative and metanormative, tend to either restrict rights or justice as normative principles to the political sphere or expand rights on the fields, which have been previously reserved for the ethical. In either case rights are conceived of as normative principles. It leads on the one hand to the liberal society based on relativism, subjectivism or skepticism regarding the ethical, and on the other hand to proliferation of (positive) rights. Rights are ethical concepts, which cannot be reduced to other normative concepts. They are metanormative concepts.

According to Rasmussen and Den Uyl, the ethics of human flourishing prevents rights from being reduced to other moral concepts. Rights are to protect self-direction. The theory of rights is based on virtue ethics. Human nature requires human flourishing, human flourishing in turn, requires practical wisdom and practical wisdom requires self-directness. Thus in order to be a man one must protect the possibility of self-perfection. The latter at the same time constitutes the motivation to ethical action. Hence rights are concerned with the protection of the conditions under which self-perfection can occur. They must protect the condition under which self-perfection exists, not self-perfection itself. The right that guarantees that is the right of equal liberty. It prevents someone from taking an action towards another that threatens or destroys that other’s self-directedness. The right to liberty is the basic metanormative principle<sup>30</sup>. Liberty is a

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<sup>29</sup> *Ibid.*, p. 19.

<sup>30</sup> *Ibid.*, p. 68.

precondition of political order. It is a negative right, which is to determine the fundamental character of political and legal institutions. Self-directness is an intermediate element between virtue ethics and rights, and at the same time between normative and metanormative levels. It is the only feature in which each and every person in the concrete situation has a necessary stake; and the only feature of human flourishing whose protection is consistent with the diverse forms of human flourishing<sup>31</sup>. As the authors write: “The right to liberty does not aim at assisting people in achieving their self-perfection or, indeed, in protecting the existence of the numerous and various conditions that are necessary for people to self-perfection. The aim of the right to liberty is restricted to protecting only that condition for the achievement of human flourishing that everyone in the concrete situation has a necessary stake in, and whose protection does not in principle favor one version of self-perfection over another – namely, as said earlier, the political and legal protection of self-direction”<sup>32</sup>.

A political order based on the rights of equal liberty will not favor any particular form of flourishing. Rights cannot be employed as criteria of judging whether people are good or not. Rights are not norms, which require people to flourish; they enable them to do that. Rights being negative, they cannot, however, replace the virtues and cannot tell us what to do in the case of value conflict and cannot motivate us. Therefore we need substantive moral theories – and not neutral norms – to motivate us and justify moral rules. Although Rasmussen and Den Uyl separate ethics from politics, they still claim that politics needs a moral basis and believe that in order to introduce liberal order, an adequate moral vision is absolutely necessary. The theory of rights must be rooted in a moral framework<sup>33</sup> – self-perfectionist ethics.

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<sup>31</sup> It seems, however, that in case of children situation is not so clear. It is obvious that children (up to certain age, what age would that be?) are not self-directed individuals. What would mean for a 6-year-old boy to be self-directed? Indeed, in some cases, we can say that a person flourishes now *thanks to* her parents' proper directions in her childhood. (And of course quite opposite situation may occur.)

<sup>32</sup> *Ibid.*, p. 58.

<sup>33</sup> As they write: “[...] any theory of rights which is capable of motivating human conduct must ultimately be based on a view of the human good” – Rasmussen, Den Uyl [1997] p. 69.

## The State

Rasmussen and Den Uyl defend self-directness and limited power of the state, entirely on moral grounds. Their arguments are not based on historical and empirical failures of government's activities. That kind of approach can be called, following the distinction made by R. W. Bradford, moralistic, as opposite to consequentialistic<sup>34</sup>. Human nature indicates that the most important things resp. ultimate ends should be attained by self-directed activity. Therefore the state cannot provide us with *our* flourishing and in consequence cannot play a leading role in promoting *our* flourishing. The state ought to confine itself to allowing individuals to pursue their own goals. Since individuals are to be self-directed beings they should autonomously pursue their happiness. The state cannot do it for them, or even help them. People differ from each other and their conceptions of flourishing differ as well. Thus the state cannot guarantee flourishing for all of their citizens. The role of the state resp. government is to secure the basic institutional structure that allows individuals to pursue their own ways of lives. The government should limit its activity to promote the rule of law, protect property and safeguard the freedom to and from contracts. The diversity of human fulfillment makes it impossible for the state to play a significant role in providing individuals with means that will allow them to attain their particular goals. The state is not allowed to do that even though many individuals will pursue idle goals. The state is conceived of as a Leviathan, a coercive power, the institution that threatens and punishes those who use violence, theft or in other ways initiate aggression against their fellow citizens. The very essence of the state is to safeguard people's rights.

Richard Kraut, who accepts the Aristotelian basis, finds the conception of state developed by Rasmussen and Den Uyl too narrow<sup>35</sup>. I – contrary to Kraut – will argue that it is too large. Kraut criticizes Rasmussen and Den Uyl's approach showing that, although they start from a similar position to that of Aristotle's, they arrive at different conclusions. One of the arguments, which Kraut puts, concerns

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<sup>34</sup> Bradford [1999a] and [1999b].

<sup>35</sup> Kraut [1997] pp. 359-372.

the role of education in the process of human flourishing. Kraut emphasizes the crucial role of state (*polis*) education in Aristotle's theory of self-perfection. "The process of acquiring moral skills begins in early childhood, when one develops certain habits through the influence and training of one's parents. Parents are not the only ones who make a difference; one is also influenced by the kind of political community in which one lives"<sup>36</sup>. Athenian children were brought up by their parents until they were seven, then the duty to educate young Athenians passed to the state, which paid for that. But who actually paid for that service? The wealthiest – since they "were *legally required* to contribute towards public projects"<sup>37</sup>. But does not "legally required" mean at the end of the day "forced"? If so (and one cannot doubt that this is the case), how can we speak of "self-directed" activity? If somebody is forced to pay a certain amount of his money for public projects, it means that he is deprived of his property without his consent, and it means in turn, that he is hindered from spending his money on those things he thinks will contribute to *his* flourishing. (Instead of paying for the education of someone's children one who is childless may spend his money according to his preferences.) Kraut argues that the skill of literacy makes possible for the countries to play a more significant role in the world market, and also contributes to democracy. That skill is to be, according to Kraut, acquired coercively through the state institutions. There is, however, continues Kraut, no place for compulsory education on the ground of Rasmussen's and Den Uyl's theory. It seems that Kraut confuses two issues: the fact that literacy is something of great value for an individual (and derivatively for society), and the question who/what should provide that educational service<sup>38</sup>. It is one thing to claim that the ability to write and read is something good, and quite another thing to claim that that ability one can only acquire under the auspices of the state. As history shows, there is no *a*

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<sup>36</sup> *Ibid.*, p. 364.

<sup>37</sup> *Ibid.*, p. 365, my emphasis.

<sup>38</sup> Mill is aware of that distinction, when he writes: "Is it not almost a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen?" (Mill [1964] p. 238), but he adds: "The objections which are urged with reason against State education do not apply to the enforcement of education by the State, but to the State's taking upon itself to direct that education" (p. 239).

*priori* connection between education and the state. Indeed, what is obvious, is that private education (being not coercive)<sup>39</sup> is more effective than state education. As W. Allen Wallis, an economist, writes: “In 1833, when the government of England first began to subsidize schools, at least two-thirds of the youth of the working class were literate, and the school population had doubled in a decade – although until then the government had deliberately hindered the spread of literacy to the »lower orders« because it feared the consequences of printed propaganda”, and in the USA “the government began to provide »free« schooling only after schooling had become nearly universal”<sup>40</sup>.

Kraut also argues that parents should not be authorities for their children, “for if they themselves are illiterate or lack foresight, they may not recognize the value of literacy to their children”<sup>41</sup>. From that it follows that some people are to be deprived of their self-directness in the name of the common good. It means that some people treat others as irresponsible, as children, and that fact is to be the ground for forcing them to change their decisions. Kraut also misinterprets Rasmussen and Den Uyl’s approach, when he comments: “Nor would it be plausible to suggest that since reading and writing are active endeavors that we can acquire only through our individual efforts – no one can give you these skills on a platter – we must therefore be left to acquire literacy skills entirely on our own, with no help from others. Very few children become literate without teachers. Literacy requires the cooperation and activity of the child who is learning, but that does not obviate the need for external guidance”<sup>42</sup>. Kraut admits that “at this point Rasmussen and Den Uyl would suggest that education should be left to the market, or charitable organizations, since these institutions use voluntary means”, but he considers that kind of defense as unjustifiable on the ground of Rasmussen and Den Uyl’s theory since that argument goes beyond the moralistic line of argumentation, which the authors put, and instead refers to

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<sup>39</sup> Of course even in anarchy there would be a coercion from the parents’ side.

<sup>40</sup> Wallis [1968], as cited in: Boaz [1997] p. 261.

<sup>41</sup> Kraut [1997] p. 367.

<sup>42</sup> *Ibid.*, pp. 368-369.

empirical data concerning effectiveness of government vs. private organizations. It seems, however, that that argument is still moralistic since as Rasmussen and Den Uyl would argue, the market is better than the state not because it is more effective but because it *is not* coercive. Thus the ground for arguing for the market is purely moralistic and not consequentialistic.

Kraut finds unjustifiable the view that nobody should be forced to contribute to governmental projects. He argues that contribution to the state is a kind of debt, which ought to be paid by those who benefited from being protected by the state<sup>43</sup>. Kraut rejects the possibility, which could be implicit in Rasmussen and Den Uyl's approach, namely that one can owe nothing to the state but to his family, friends and other societal organizations (including private institutions which provide defense and jurisdiction). Kraut believes in the beneficial role of government whose "services smooth the ways of the modern legal order and economy"<sup>44</sup>. Unfortunately, Kraut does not give us any examples of which *government's* services "smooth" our lives.

Kraut sees also no moral objections to taxation. As he writes: "If it could be shown that the very existence of taxation, no matter how simple the mechanism or how low the rates, does great harm to those taxed, then there might be some moral objection to this institution". And he rhetorically asks: "But is there any plausibility to the claim one cannot live a good human life because of the very fact that one is subject to some degree of taxation?"<sup>45</sup> Firstly, as regards the consequentialistic point of view, there is a great difference between 1% and 50% tax rates. There is a difference in quality of our lives. (From the moralistic point of view, it does not matter, whether a thief robbed you of 1 or 50 dollars). Secondly, the question, which Kraut addresses, is not a rhetorical one, since there are many people who *cannot* live good human lives because of coercive taxation. But that is something, which is not seen, i. e. these opportunities, which are lost by somebody because of the tax burden. The logic presented by Kraut may lead to the

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<sup>43</sup> *Ibid.*, p. 369. A similar form of rhetoric one can encounter in Plato's *Crito*.

<sup>44</sup> *Ibid.*, p. 369.

<sup>45</sup> *Ibid.*, p. 369.

conclusion that even in prison one can live a *good* human life. Surely one can. Totalitarian states, Auschwitz and Gulags prove it. But not in the Aristotelian sense of life, where human life means *flourishing*. Could one really flourish in a Gulag?

Kraut considers the moralistic approach an extreme position, which cannot be defended on the Aristotelian foundations. Aristotle himself accepted the coercive role of the state, which was to direct individuals to do what is right. The state was to make people virtuous. But still one can argue that the neo-Aristotelian approach is not Aristotle's approach, and that when Aristotle wrote about the role of the state, he thought about the state in moral terms. As he writes in *Politics*: "Nor does a state exist for the sake of alliance and security from injustice, nor yet for the sake of exchange and mutual intercourse; [...] Nor does one state take care that the citizens of the other are such as they ought to be, nor see that those who come under the terms of the treaty do no wrong or wickedness at all, but only that they do no injustice to one another. Whereas, those who care for good government take into consideration virtue and vice in states. Whence it may be further inferred that virtue must be the care of a state which is truly so called, and not merely enjoys the name: for without this end the community becomes a mere alliance which differs only in place from alliances of which the members live apart; and law is only a convention, »a surety to one another of justice«, as the sophist Lycophron says, and has no real power to make the citizens." Contemporary states have nothing to do with morality, let alone with being a moral guide for their citizens.

On the one hand Rasmussen and Den Uyl seem to ascribe to Aristotle too much when they conceived of self-directedness as an unalienable value, crucial to human flourishing. (Aristotle himself would not accept such approach.) On the other hand they seem to stop half-way, since they allow for the minimal state, which means minimal coercion. But that limitation does not prevent the state from being a coercive institution, since *monopolized* protection is always coercive. That is, however, something which undermines the very essence of self-directedness. Rasmussen and Den Uyl define the encroachment upon self-directedness as the

initiation of physical force by one person (or group) against another<sup>46</sup>. It means, however, that every initiation or threatening of initiation must be considered as encroachment upon self-directness. In the case where political order, i.e. the state is to provide only with condition for possibility of human flourishing, the question arises: what would the state do to provide for such conditions? Is it possible to establish such conditions for a society (how large is it to be?) without violating somebody's right to self-directness? I doubt it. To be coherent, Rasmussen and Den Uyl should either stick to Aristotle or defend anarcho-capitalism. Otherwise we must either allow for the possibility that self-directness is not a necessary condition of self-perfection, i. e. that a certain amount of coercion is tolerable, or redefine the concept of coercion, or defend liberal/libertarian order on consequentialistic but not moral grounds. They did, however, none of that<sup>47</sup>.

## Conclusion

The concept of metanormativity of rights seems to be crucial for Rasmussen and Den Uyl. The theory equipped with the concept is to avoid the weaknesses of contextual *Sittlichkeit* and impersonal *Moralitat*<sup>48</sup>. Metanormative principles are not, however, value-free since they can be derived from the normative principles. For to treat the right to liberty as a metanorm one has to presuppose Aristotelian ethics, with its notion of human nature, flourishing and self-directness, from which the latter – as a condition of a well-organized society – is to be protected. In distinguishing two levels of norms we have to start *volens volens* with a normative theory. It seems that the fundamental controversy does not concern how to separate normative from metanormative, but whether the Aristotelian theory of

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<sup>46</sup> Rasmussen, Den Uyl [1995] p. 62.

<sup>47</sup> They write: “The basic rights we possess are principles of mutual noninterference” (Rasmussen, Den Uyl [1995] p. 64)”, and “thus, to take people’s money from them without their consent is not to take some neutral value but to take the particular values they achieve and maintain by the use of money” (p. 67), and “taking control of another’s property against their wishes can now be seen to be nothing less than taking control of one of the central relationships that constitute a human being’s life” (Rasmussen, Den Uyl [1991] p. 127). It means that taking money from someone without his or her consent is to prevent someone from being self-directed. And *every* act, which prevents one’s self-directness, must be consider morally wrong.

<sup>48</sup> Rasmussen, Den Uyl [1997] p. 65.

human being is to be considered as the universal. Rasmussen and Den Uyl admit that metanormative distinction does not require their approach to ethics, but do not show what kind of approach would fit that distinction. Although Rasmussen and Den Uyl do not agree that liberty is as Acton said “liberty to do what we ought to do” on the normative level, they accept (implicitly) that conclusion on the metanormative level. Since rights as metanormative principles are to protect self-directness; self-directness is the condition of our self-perfection and self-perfection is bound up with our nature as human beings, so rights are to protect our flourishing i.e. that which we *ought* to do. The duty of self-perfection appears on the metanormative level.

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